A Submission to:

A submission to the issues raised in the supplementary issues paper.

Review of the financial system external dispute resolution paper.

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A submission to the issues raised in the supplementary issues paper.

Review of the financial system external dispute resolution paper.

Attention: Professor Ramsay

Dear Sir

My interest in your inquiry relates to the second section of your inquiry, for which the Terms of Reference require the Panel to *consider the merits and issues involved in providing access to redress for past disputes.* I will restrict the comments in my submission to this section and how it impacts the SME sector.

1. Contract terms

The fundamental issue that needs to be addressed in any dispute resolution mechanism, as well as any mechanism to provide redress, is the issue of the contract terms between the parties.

If the contract terms between the parties are unbalanced, unfair and are negotiated in an environment where there is an imbalance of power, then any dispute resolution mechanism can only fail if the contract terms are relied upon. I have had first hand experience with this problem when I helped a friend with an insurance dispute with the FOS. After many months of submitting evidence and responding to evidence from the other side, the ombudsman made a decision. This decision reflected the contract terms.

In paragraphs 133 to 144 the Panel discusses various circumstances that would prevent small businesses from accessing redress through an EDR. These include:

1. The dispute is outside the monetary limits of the EDR.
2. The dispute is outside the time limits if the EDR.
3. The complexity of the dispute.

Even if all these matters were resolved, but the EDR mechanism relied upon the contract terms between the parties, then the any redress mechanism would fail.

This takes us to your paragraphs 165, 167 and 168. What are the decision-making criteria? You state in paragraph 168 that the FOS among other things relies upon legal principles. If the EDR mechanism is based upon the FOS model and relies on legal principles, then little will be achieved.

The question then becomes, is it possible to have an EDR that has the power to set aside the contract terms between the parties and evaluate a claim under some other set of guidelines. This seems to me to be highly problematic.

The answer to me is quite clear. I have addressed this same matter in my earlier submissions.

The contracts between the banks and their SME client parties need to be fair and balanced. This will provide greater protection to the banks' clients and in the majority of cases it will enable them to use the court system as an effective EDR. Moreover it will reduce the amount of disputes, as banks will not be able to default clients as easily. The fall back position for redress would then be the expanded EDR body.

The recommendations of the ASBFEO Inquiry into small business loans dated 12 December 2016 goes some way to achieving reform to contract terms. At this stage they are only recommendations. However, more needs to be done and this would include:

1. Extending the recommendations to all commercial loans rather than limiting them to loans under $5 million.
2. Providing a standstill provision to enable a corporate restructuring in the case of a genuine monetary default.

My proposition is that for any EDR process to work effectively, fair contract terms between the bank and commercial clients would be essential.

2. Standstill Provision – The EDR response time is critical

When an SME finds that it is in a dispute with a bank, time is of critical importance. Currently a bank can call in a loan and appoint receivers at a moments notice. When this occurs the SME needs immediate assistance to prevent the business being destroyed.

For this reason any EDR mechanism must include a standstill provision. If the SME lodges an application to the EDR body then the bank should be frozen from taking any action against the company thus providing the EDR mechanism time to function.

A dispute between an SME and a bank is very different to a dispute with an insurance company. If an insurer fails to pay a claim then the matter could be referred to the FOS and over time the dispute could be settled. These disputes would not normally create a situation that would lead to the failure of a business.

When a bank currently moves against an SME, the SME will almost certainly fail. Once this happens any EDR mechanism becomes fairly meaningless. The whole process then becomes a huge, lengthy and expensive fight for compensation where nobody wins rather than working to save the SME and the families who own it.

Such a provision in an EDR mechanism would work in a similar way to Chapter 11 in the USA. The significant difference would be that it would be far less complicated and the courts would not need to be involved.

3. Redress for past disputes

Providing redress for past disputes is much more that providing justice to those SMEs who have been treated badly by the banks. It is a once in a lifetime opportunity to expose the conduct of the banks as described in the ASBFEO Inquiry as *"unacceptable and possibly unconscionable".*

This exposure will provide the opportunity to have a complete reset of the relationship between banks and commercial customers. The SME sector employees 70% of the private sector work force. The Australian economy relies on the SME sector to create jobs, build wealth and pay taxes to support our social services and to sustain and build upon our standard of living.

However, these individual Australians who start small businesses and build them into medium size businesses are treated so badly. As their businesses grow these people need to borrow money to grow and when they do so they are forced to take risks that by any measure are **draconian and totally unacceptable**.

A cursory glance at a bank's commercial loan documentation will reveal that a bank can default and call in a commercial loan at any time it chooses. As well it can bankrupt the company directors, take possession of any personal assets including the family home and dispose of these assets even before it sells the secured asset. Sadly, this is in fact how banks do act and they do so regularly.

Redress for past disputes is therefore critical for 2 reasons.

1. Provide compensation for badly treated commercial bank clients.
2. Expose the behaviour of the banks to force a reset of the contractual terms between banks and commercial clients.

I have been working on and contemplating all these matters since I delivered a paper titled *"The imbalance of power between banks and small business"* to the Menzies Research Centre in 2012. In my view the only solution to the matter of redress for past disputes is as follows.

Voluntary redress by the banks

In this case the banks would need to agree to allow all disputed commercial loans to be reviewed by an independent body on the following basis:

1. Whether the banks acted in an ethical and conscionable manner.
2. Whether the banks acted in accordance with the motherhood statements made to the PJC inquiry titled *"the impairment of customer loans"* as outlined in my earlier submissions to the panel.
3. The contract terms between the parties are set aside.

If the banks were not willing to engage in this process then the Government would need to act.

Forced redress by the banks

A Royal Commission should be established to fully understand the actions and motivation of the banks in defaulting and calling in so many commercial loans particularly in the last 10 years. Once there is transparency around these events the Government can then decide how to proceed. At this time the banks may be willing to adopt a voluntary redress process. Alternatively the Government could introduce retrospective legislation to force the banks to comply with a review as described above.

4. Answers to questions

I have provided answers to questions related to my area of interest and expertise and where my comments may be helpful to the Panel

Question 1
Is the Panel's approach to the scope of these issues appropriate? Are there additional issues that should be addressed?

Point 35 states,
The Panel considers that consumers and small businesses that have obtained a decision from any dispute resolution process (including from a tribunal or a court) have had access to redress and therefore are ***outside the Review's amended Terms of Reference.***

In my earlier submissions you will recall that I explained that the contract terms in a commercial loan document are such that is it impossible for an SME to challenge a bank in court. This problem is in addition to the comment made by the ASBFEO in point 158, "*…the borrowers having limited resources and the banks having overwhelming resources".* As far as I am aware, not one of Bankwest's SME customers had a victory against the CBA in court once the CBA commenced Project Magellan.

It is for these reasons that I would argue that even though an SME may have a court judgment against it, the SME would not have had proper redress. Any redress system should include any disputed commercial loan.

Question 35
What evidence is there about the extent to which lack of redress for past disputes is a major problem?

The existence of a major problem resulting from a lack of redress for past disputes can be demonstrated by the following:

There have been 3 enquiries of which I am aware that have been established in recent times to study evidence relating to the bad behaviour of banks against SMEs. In each case hundreds of submissions were received. These inquiries are:

1. Senate Inquiry. 2012. The effects of the global financial crisis on the Australian banking sector.
2. Parliamentary Joint Committee for Corporations and Financial Services inquiry titled, *The impairment of customer loans.* (PJC)
3. The ASBFEO inquiry titled *small business loans inquiry.*

Over the last 10 years and particularly in the GFC years, thousands of SMEs loans were defaulted and called in. These actions had devastating impacts on businesses and peoples lives. The magnitude of these mass defaults is unknown. A small number of cases have been examined in detail by the ASBFEO. I can provide some further evidence.

Further evidence that a lack of redress for past disputes is a major problem would include specific information relating to the Commonwealth Bank and the ANZ Bank.

Commonwealth Bank

On 10 November 2015 the CBA provided a letter to the PJC inquiry mentioned above. This letter explained that the CBA defaulted and called in 1958 loans from the Bankwest performing loan book **on which the CBA lost money (Appendix 1)**. This document was also included in my previous submission. I am advised that the ASBFEO has subsequently been informed by the CBA that the value of these performing loans was $3 billion.

What I do not know and have been unable to establish is:

1. The number and value of Bankwest performing loans that were defaulted and called in **upon which the CBA did not lose money.**
2. The number and value of Bankwest loans **classified as non- performing loans** that the CBA defaulted called in. It should be noted, that a non performing loan could be a loan that has expired and where the bank has refused to extend the term, even though all monetary covenants have been met and no reasonable notice given of Bankwest's intention not to roll over the loan.

As well as the mass default of Bankwest loans the CBA also called in and defaulted its own clients. One particular example I mentioned in my previous submission was [redacted] and his company [redacted]. You may recall that this company was one of the ASBFEO's deep dive cases. The 60 Minutes program is currently doing a story on this case. **(Appendix 2)**

At this stage we do not have transparency around the magnitude of the mass default program instigated by the CBA. However based upon the evidence that we do have, I believe that as a minimum the number of loans defaulted and called in would be 5000 with a value of $10 billion. However is it likely that these numbers are very conservative.

ANZ Bank

During the GFC the ANZ purchased a farming loan book known as the Landmark Loan Book. Mr [redacted], the deputy CEO of the ANZ bank gave evidence to the PJC inquiry in this regard. He told the PJC that the ANZ bank defaulted 11% of the loan book by value and about 600 in number. You may recall a 60 Minutes program relating to one of these farmers, a Mr [redacted] [redacted] Following the program the then CEO of the ANZ bank, Mr [redacted], went to visit Mr [redacted] at his farm. This was recorded on a subsequent 60 Minutes program. Mr [redacted] returned the farm to Mr [redacted] debt free in addition to a large cash settlement.

I understand that the ANZ has made many more settlements with farmers. However the number of outstanding disputed loans is unknown.

Question 42
What are the strengths and weaknesses of the Westpac proposal?

The strengths of the proposal are:

1. The bank agrees to pay the determinations made by the expert panel.
2. The bank acknowledges disputes made by bankrupt persons.

The weakness of the proposal is that it is too restrictive in its eligibility criteria.

Question 43
What range of parties should be provided access to redress?

This process should be a catch up and reset process. Looking backwards all disputed loans should have access to redress.

Question 44
What mechanism should be used to resolve disputes.

My suggestion is the voluntary and or forced redress solutions discussed earlier in this submission.

Question 45
What time limit should apply?

No time limit. Ethical behaviour is not time dependent.

Question 46
Should any mechanism of dealing with past disputes be integrated into the new Australian Financial Complaints Authority or should it be independent of that body.

A tribunal established to review past disputed loans could be continued to review new disputes loans once the huge backlog is cleared. This could be helpful if the terms of the review process are based broadly on ethical behaviour. However, the work of such a tribunal would rapidly reduce once contract terms are balanced and fair and the court system is allowed to function again.

Question 47
Who should be responsible for funding redress for past disputes?

As mentioned earlier, all my comments are addressed to the bank / SME sector. Accordingly the banks should pay for the redress process. The unethical conduct of the banks has created this problem and it is fitting that they be held to account for their conduct.

Question 48
Should there be monetary limits. If so should the monetary limits that apply be the EDR scheme monetary limits.

There should be no monetary limits to the redress process. Two of the largest cases are [redacted] [redacted] / CBA loan) and [redacted] / Bankwest loan). In both of these cases the loans were approximately $160 million. In these 2 cases the bank destroyed the projects, the businesses and the lives of the business owners. In my view only the Government and the largest of public companies have the capacity to resist the will of a bank.

Questions 49 and 50
My previous answers apply to these questions.

Question 51
Are there any other issues that need to be considered in providing access to redress for past disputes?

Yes. I refer the panel to the earlier chapters of this response, namely *Contract Terms, EDR response time is critical* and *Redress for past disputes*.

Appendix 1

CBA answer to questions on notice from PJC 10 November 2015

QON - 2.

Commonwealth Bank Group
Commonwealth Bank of Australia
ABN: 48 123 123 124

Commonwealth Bank
Tower 1
Darling Park
201 Sussex Street
SYDNEY NSW 2000

Reply
GPO Box 2719
SYDNEY NSW 2001

10 November 2015

Ms [redacted]
Secretary
Parliamentary Joint Committee on Corporations and Financial Services
Parliament House
Canberra
ACT 2600

Dear Ms [redacted]

Re: inquiry into the impairment of customer loans Questions on Notice

I refer to our letter to the Committee of 8 October 2015 in which we provided responses to Questions on Notice 1 to 4 and Question 6, but advised that further time would be required to respond to Question 5. I now attach our response to Question on Notice 5.

In our previous response of 8 October 2015 we committed to providing "a split of the loan impairment expense between the pre and post-acquisition Bankwest loan portfolio".

The total Bankwest loan impairment expense on the commercial loan portfolio recognised after acquisition was $1,866 million[1]. Of this, $1,656 million is attributable to the pre-acquisition commercial loan book, with the majority of the expense being incurred from acquisition to 30 June 2010.

An explanation of the difference between loan impairment provisions and write-offs is provided at the end of our response to Question on Notice 5.

We categorically reject accusations that Commonwealth Bank manufactured customer defaults in order to reduce the purchase price of Bankwest. We would be pleased to provide further information which might assist the Committee.

Yours sincerely,

[redacted]
Group Executive Group Corporate Affairs
Commonwealth Bank of Australia

[1] This figure is derived by adding together figures from commercial loans post acquisition in the chart under 'Bankwest loan impairment expense' provided in our previous response to the Committee

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Question 5. For each financial year from 30 June 2008 to 30 June 2015, the number of loans and financial details of any losses that Bankwest and the Commonwealth Bank have subsequently incurred from loans that were established prior to 19 December 2008 and were not assessed to be impaired or in default as at 19 December 2008.

In reviewing the response below it is important to note that:

(a) The information covers both commercial and retail loans existing as at the acquisition date of 19 December 2008; and
(b) Losses incurred in relation to those loans (known as write offs) are not the same as loan impairment provisions. A summary of the differences is provided at the end of this response.

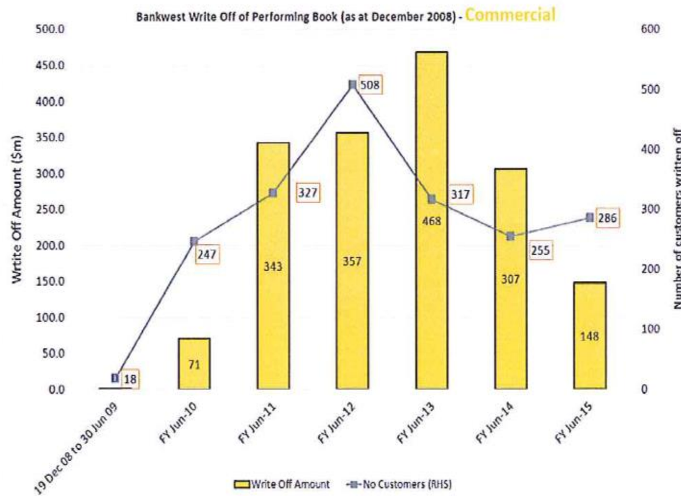
Prior to the acquisition date, Commonwealth Bank did not have the ability to set, nor did it set, the level of impairment provisions held in connection with the Bankwest loan portfolio. HBOS was solely responsible for setting the level of provisions against Bankwest's loan portfolio. As a result, the response to this question only considers the period from which Commonwealth Bank controlled Bankwest; that is, from 19 December 2008 onwards.

Performing Loans

The Bankwest Commercial and Retail Loans existing as at 19 December 2008, excluding loans in default and impaired loans, ('performing book') were as follows:

Portfolio	Amount $ million
Commercial	22,869
Retail	34,566
Total	**57,435**

Of this performing book, write-offs incurred for the period 19 December 2008 to 30 June 2015 totalled $1,898 million (22,953 in number). This has been illustrated for the commercial ($1,694 million and 1,958 in number) and retail ($204 million and 20,995 in number) loan portfolios in the graphs that follow:



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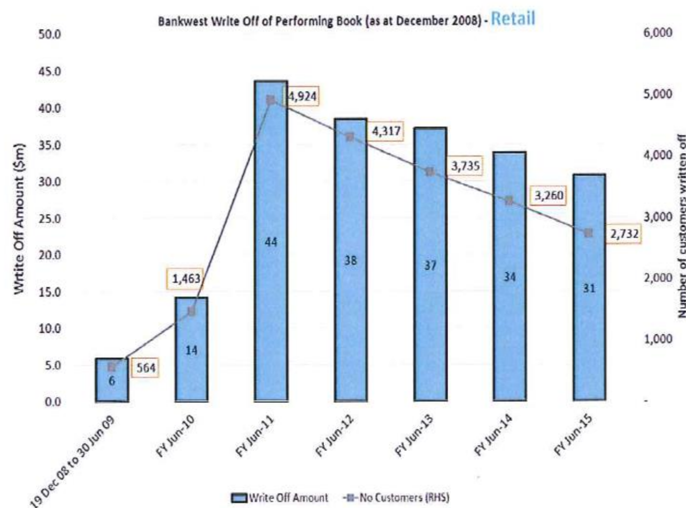

Impaired Loans

The total loan impairment provision, after the Independent Expert's determination, for both retail and commercial loan portfolios held at 19 December 2008, was $630 million ($250 million collective provision, $380 million individual provision).

Total Losses

The losses incurred subsequent to acquisition date on the performing retail and commercial loan portfolios and on the defaulted and impaired portfolio are shown below:

	Amount $ million
Write-offs incurred on the performing loan portfolio	1,898
Write-offs incurred on the defaulted and impaired portfolio	872
Total write-offs incurred	**2,770**
Less: loan impairment provision as at 19 December 2008	(630)
Write-offs in excess of the loan impairment provision	**2,140**

Performing

Total

Therefore total write-offs exceeded the loan impairment provision by $2,140 million. This had no impact on the purchase price paid for Bankwest, and was recorded in Bankwest's post acquisition income statement.

Difference between Write Offs and Loan Impairment Provisions

Our previous responses to the Committee referred to loan impairment provisions. Write-offs differ to loan impairment provisions.

Accounting standards require loan impairment provisions to be recognised as soon as there is objective evidence that a loan (either individually or collectively) is considered to be impaired. Under Bankwest's accounting policies individually

assessed provisions were recognised against impaired loans. Loans that did not fall into this category (i.e. performing loans) were assessed for impairment on a collective basis. These provisions represented an estimate of the losses that were anticipated to be incurred.

The creation of an accounting loan impairment provision does not necessarily indicate that the customer is in legal default. As we outlined in our original submission, if a customer appears to be in difficultly we first determine whether there is a strategy to enable the customer to meet their obligations and improve their credit position. If this is not possible, we determine a strategy to minimise any losses following the legal default of the customer. This may include selling secured assets, the appointment of a receiver or company liquidation.

It is not until other efforts have been exhausted that the final write-off is recorded.

Appendix █

█ – Carnell Report

Inquiry into small business loans

█ case review

4/03/17

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Australian Government

Australian
Small Business and
Family Enterprise
Ombudsman

3 March 2017

The Hon Michael McCormack MP
Minister for Small Business
House of Representatives
Parliament House
Canberra ACT 2600

Michael

Dear ~~Minister McCormack~~

SMALL BUSINESS LOANS INQUIRY – Addendum on deep dive case Mr Roy Lavis

The following addendum comprises the confidential information on the deep dive case for Mr [redacted] and the CBA which was examined as part of the terms of reference for the Small Business Loans inquiry you referred to my office on 6 September 2016.

In the terms of reference, you asked me to review a selection of Parliamentary Joint Committee cases. In the course of the review we reviewed over 23 submissions with a more in depth examination of a select few. This document contains the summary of this case on which we conducted a 'deep dive' analysis with the input from a panel of experts.

The information contained in this document was produced from submissions and documents provided by financial institutions, private individuals in support of private and public hearings which I held. As such, I have determined this information should be kept confidential and will not be publicly released.

I trust you will find this information insightful when read in conjunction with our final report on the Inquiry into Small Business Loans.

Yours sincerely

Kate Carnell

Kate Carnell AO
Australian Small Business and Family Enterprise Ombudsman

PJC Submission [redacted] and CBA

Issues:

- **It is highly likely that the [redacted] would have survived if not for the actions of the CBA.**
- **Since the start of the relationship with CBA in 2004 [redacted] met all required payments.**
- **In preceding years/months the CBA communicated strong encouragement and support for the [redacted] and it's forward strategy;**
- **The CBA has a sudden reversal of support on agreed lending strategies and the business is blindsided with no time to manoeuvre to seek alternative arrangements;**
- **Different areas across the bank were actively trying to cross-sell financial products with limited communication between them which resulted in inconsistencies in approach to risk and some products offered clearly inconsistent with the business need;**
- **The bank demanded highly unrealistic time frames for rapid debt reduction leaving the [redacted] no option but to radically downsize which ultimately makes the business unsustainable.**

Mr [redacted] was a director of the [redacted] and many of its subsidiaries. [redacted] began banking with the CBA in 2004. [redacted] was listed on the ASX operating in civil engineering and construction materials. [redacted] expanded their group entering residential property development and waste management. [redacted] operations were based in northern Queensland.

[redacted] sought to take advantage of the boom times and with the encouragement of CBA rapidly expanded its development property portfolio during 2007. [redacted] had successful equity capital raisings in 2006 and 2007 totalling $41 million. Throughout 2007 CBA supported [redacted] growth strategy by increasing the debt facility from $106m to $169m, up by 59% (in 12 separate drawdowns from February to December 2007). The funds were primarily used for land purchases for property development. CBA undertook a credit risk assessment against each request. CBA looked at the operations of the business and considered that [redacted] was able to support its borrowings through its business operations cash flow and planned asset sales from the property development.

The facility was due to expire at the end of 2007 and on 20 December 2007 CBA increased facilities by $18 million and extended them to 28 February 2008.

CBA credit risk assessments indicate that several options were considered in late 2007 to manage CBA's exposure. A further capital raising was mooted for 2008, as was a syndication agreement whereby another

lender took 50% of the debt. [redacted] agreed for CBA Loans Market team to investigate syndication and in August 2007 CBA appointed Allens Arthur Robinson (Allens) to draw up a syndication agreement on the expectation that National Bank was interested in taking $72m of the debt (fees to be billed to [redacted]. CBA did not communicate to [redacted] that if CBA failed to get another bank to agree a syndicated loan that CBA would subsequently withdraw its support.

CBA's credit assessment against the final drawdown of $18m on the 20th of December 2007 notes that the CBA Loan Markets team were confident of acceptance by NAB of a syndication facility by early January 2008.

In January 2008 Allens sent an amended quote for legal fees to CBA in relation to drafting a syndication agreement as the work required was more complex than expected. The draft Syndication Agreement, dated 16th January 2008 indicated a term of 2 years and 11 months with CBA's commitment of $98m and a note *[Details of other participants to be inserted]*. Allens fees rose to $160,000 (from $100,000). The letter from Allens expresses the view that the financial close of the arrangement was now expected by 22 February 2008. This would indicate that as late as January 2008 a loan agreement with the possibility of syndication was expected by both parties and CBA had not altered its intention to continue with the facility.

On 12 February 2008 CBA approved an increase in the working capital component of the facility of $7m. By mid-February it had become clear to CBA that syndication was not going to proceed. It also became apparent that [redacted] income had weakened and had breached the interest cover ratio covenant (down from 3.8 times in June 2007 to 1.2 times in December 2007). Without notice to [redacted] CBA downgraded its risk rating and transferred management of the facility to CBA's Credit Management Unit.

In late February 2008 Mr Lavis was called to a meeting with CBA in Brisbane. He anticipated the meeting was to confirm the loan facility agreement. CBA advised him that in order for the loan facility to be extended beyond 28 February 2008, [redacted] would have to agree to major asset sales to reduce debt. CBA offered an extension of the facility to 31 May 2008 on the basis that [redacted] commenced an asset divestment programme to reduce the debt to $120m (decrease of $49m, 29%) in three months. [redacted] were left with no time to seek alternative arrangements and were faced with no option but to agree. The CBA demand for massive asset sales in such a short time frame was totally unexpected by [redacted] as the bank had recently supported the acquisition of additional assets.

During the Inquiry private hearing David Cohen of CBA acknowledged that '[facility] expired on the 28th of February and the intention of the parties was to get the syndication away before then, I understand he [redacted] had a sense also that the bank would continue to support him if that didn't happen.'

By May 2008 [redacted] successfully reduced the debt facility to $120m. Having met this requirement [redacted] reasonably expected the facility to continue and business operations to return to normal. CBA retained its view of a poor credit risk and offered to extend the facility on the basis that [redacted] continued to sell down assets to reduce debt to $80m by 31 October 2008.

[redacted] did reduce the debt facility to $80m by 31 October 2008 and, following a meeting in Melbourne in November 2008, expected the facility for $80m to be rolled over with a two year term. Instead, the documents received mid February 2009 offered a new facility but required regular repayments to reduce the debt to $65m by January 2010. [redacted] would need to repay $2.5m by April 2009, a further $2.5m by July 2009, a further $5m by 31 October 2009 and a further $5m by January 2010.

Again, with no notice, the current facility expired, [redacted] had no choice and signed the offer on 17 February 2009 and continued to sell assets executing the agreement on 3 March 2009. The further sell down now required the sale of [redacted] quality income producing assets which predictably significantly impacted cash flow. It is [redacted] belief that the sale of assets tarnished business confidence in the firm which resulted in a loss of work and revenue generation.

The deteriorating cash flow, the loss of work, meant that [redacted] had difficulty in meeting interest payments. On 6 May 2011 [redacted] appointed voluntary administrators. On 11 May 2011 CBA appointed a receiver and manager over all the assets of the [redacted]

At face value it this reversal by CBA from December 2007 to February 2008 leading to the stringent asset sale requirement (to realise $89 million in just 8 months compared with the $63 million provided over 11 months in 2007) seems highly unreasonable and potentially unconscionable.

Another aspect of this case is the hedge facility. In late 2007 another area of the bank, Global Markets Division (GMD), was in discussions with [redacted] to establish an interest hedge facility for seven years when the debt was ~ $159m and due to expire within months. On 15 February 2008, confirmation letters of an agreed interest hedge transaction were sent to [redacted] The hedge combined an interest SWAP against the notional amount of $80m, fixed interest rate 8.17%, and an interest cap against the notional amount of $20m, fixed interest rate 8.12% for seven years. As noted above in late February, [redacted] was called to a meeting with CBA in Brisbane where the CBA offered him the short-term, three month extension of the loan facility providing there was a significant debt reduction.

There appears to be a lack of communication across the CBA regarding the [redacted] loan facilities which led to inconsistencies in risk management and communication with the customer. It is inconsistent for the

CBA GMD to offer an interest rate hedging strategy against the notional amount of $100m to a customer which the CBA Business Bank considers has a deteriorating credit rating and the CBA Credit Management Unit required a massive, rapid debt reduction of $89 million in eight months.

CBA explained that the hedging strategy would have been negotiated with the GMD without reference to the Business Bank and the GMD would not be privy to the debt reduction plans in February 2008 of the Business Banking team. Documents provided by CBA support that the hedge was not discussed in the credit risk assessment, or the impact of the cost of servicing the hedge, of 26 February 2008 by the Business Banking team.

In February 2009 conditions of the new facility offered were to reduce the debt from $80m to $65m by January 2010 and that a general hedge strategy was in place. In addition [redacted] were required to backdate acknowledgment of previous hedging transactions dated from 2 June 2008.

The interest rate swaps were terminated on 4 April 2011 at a cost of $5.9m to [redacted]

The CBA demand that [redacted] commenced an asset sale programme led to the business collapsing. Over 5000 families and small businesses were affected by the closure. The Company had 2500 creditors, including sub-contractors, 1800 shareholders, many local families and 700 employees. [redacted] and his wife now live in a garage and draw a pension.