Bank Corruption - Unchecked By Government And Its Regulators

Summary:
There is plenty of evidence of corrupt - predatory bank behaviour but the government turns a blind eye. Evan Jones exposes the racket and how it damages people and businesses.

Article Information**Category:** Banking News
Banking Company: Banks in General
Bank Malpractice Type: Predatory Lending
Corruption
Unconscionable Conduct
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Source: CounterPunch
Date First Published: 31 Dec 2014

Posted ByPeter Brandson
6 Apr 2014 - 4:59pm





Bank Corruption Down Under

On 25 November Lawrence Tomlinson issued a report[1] exposing yet another spectacular case of bank bastardry in the UK. Tomlinson had been commissioned by the British Business Minister, Vince Cable, to examine any difficulties that small business faced in escaping the debilitating aftermath of the GFC, especially in the arena of credit availability.

Tomlinson's brief report exposed a concerted strategy within the Royal Bank of Scotland to default viable business customers. Tomlinson compiled his report from evidence obtained from victimized customers and an RBS insider. It is noteworthy that the RBS, crippled by the usual excesses leading to the GFC, is at present 80% nationalized.

Notes Tomlinson: "The bank extracts maximum revenue from the business [consigned to its 'turnaround' division] … to such an extent that it is the key contributing factor to the business' financial deterioration. … rather than supporting a business, there are times when it is more profitable for a bank to stress the business. … it became very clear, very quickly that this process is systematic and institutional."

Tomlinson describes an unholy cabal of valuers, insolvency practitioners, receivers and lawyers in league with the bank to pillage the business and strip it bare. Customers are completely isolated in the process. Communication is severed, transparency is non-existent and the bank's 'internal complaints procedures' are a farce.

The report has received extensive coverage in the British media and expressions of mock shock horror from the financial establishment. Tomlinson, an engineer cum successful businessman, is from the North – decidedly non-establishment. A contemporaneous much larger report, initiated by RBS and written by the decidedly establishment Sir Andrew Large, curiously overlooked the scam outlined in Tomlinson's report.

In Australia, myriad small and medium business / family farmer borrowers would be painfully familiar with the practices described by Tomlinson. **Major bank malpractice is entrenched down under.** But Australia has no equivalent of Lawrence Tomlinson – because nobody in Australian politics cares to know. I have been writing on bank corruption in Australia for well over a decade, with no impact on officialdom whatsoever.

Comprehensive financial sector deregulation during the 1980s turned bankers into money lenders, with little or no commitment to the viability of the enterprise of small business borrowers. Bank lenders' interest is focused on customer assets. 'Will you walk into my parlour' said the spider to the fly. Multiple publicly-owned banks, including specialist small business and rural lenders, have all been privatized, leaving the field free to the increasingly rapacious private banks.

The borrowers themselves, imbued with the mythical baggage of the ethical banker, believe that they are dealing with professionals, embodying competence and integrity. **They discover the truth only after they have lost every last penny – always, of course, including the family residence.**

Australian (and New Zealand) banking is dominated by four banks – the privatized Commonwealth Bank of Australia, Westpac, ANZ and the National Australia Bank. The quartet's market share has been reinforced post-GFC, courtesy of discriminatory government support.

All of Australia's Big 4 banks engage in corrupt practices. The NAB, with the largest SME and agribusiness market shares, is the most consistent predator. The NAB owns the Sioux Falls-based Great Western Bank[2], a relationship which has so far remained under the radar. But the NAB has exported its serial incompetence and corruption to its British subsidiaries, the Clydesdale and Yorkshire Banks, where victims have formed their own support group.

The CBA, as well as common garden variety takedowns, has a predilection for irregular large-scale ripoffs. The CBA was created by a Labor Government in 1911 to provide an alternative to the elitist private banking sector. The so-called 'People's Bank' is now run by spivs and has become the People's Predator.

Witness the CBA's foreclosure of almost 1000 BankWest borrowers after the CBA acquired the provincial BankWest (also a privatized public bank) from the failed Halifax Bank of Scotland in December 2008. Victims were typically non-corporate developers or hoteliers.

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Senior management claims that the foreclosed borrowers were casualties of the GFC and that the bank did as much as it could with these hapless borrowers. Ross McEwan, recently-appointed CEO of RBS and ex-CBA senior manager, is singing from the same song sheet with respect to the casualties described in Tomlinson's report.

The CBA takedown of the BankWest borrowers is a masterpiece of the predation genre – involving corrupted devaluations of customer assets (triggering default), usurious 'penalty' interest rates, complicit and/or thieving receivers, complicit sales agents, and sale of customer assets dramatically under value. The public purse provides tax deductibility on the banks' 'losses' arising from the manufactured residual debt on the loans of its foreclosed customers.

Two examples. Sean Butler and his wife rebuilt and managed a profitable 70-room resort in Bunbury, Western Australia, valued at $20 million in 2007. BankWest had the property devalued to $14.7 million (dubious) in November 2009, then to $11.4 million (transparently fraudulent) in June 2010. Butler's repayment capacity was assured, so the valuations are irrelevant. Butler was also rebuilding the heritage National Hotel in Fremantle (a coastal suburb of Perth), valued at $7 million in mid-2011.

CBA/BankWest imposed penalty interest rates and demanded full repayment of debt to an impossible deadline. The Butler accounts were not irregular. Bank-appointed receivers plundered the businesses. (It is pertinent that at law a receiver operates under the direction of the borrower. The banks and the courts behave otherwise.) The properties were apparently sold for $9.5 million and $3.5 million respectively. BankWest has cut off all communication and Butler's accounts remain in limbo.

Rory O'Brien was building a luxury resort development at Airlie Beach, Queensland, with its BankWest valuation at one stage at $250 million. The resort was close to completion, with $100 million presales contracted, and a reputable international firm designated as resort manager. In January 2009 (shortly after the CBA takeover) BankWest declined to turn over the debt, contrary to a previous commitment.

The bank-appointed receiver discarded the pre-arranged sales and sold the resort in August 2010 to a bottom feeder for $56 million. In January 2011 CBA/BankWest sought payment from the guarantors of the manufactured residual debt. O'Brien is currently in court, having acquired a rare judgement on appeal in April 2013, in which the judges opined that O'Brien's claims of foul play potentially has legs.[3]

> In Australia, the legal profession, the valuers and the receivers – all grievously corrupted – are on the drip of bank largesse.

The courts, with rare exceptions, decide for the bank lender. At base is a legal culture thick-headed yet partisan – devoted to the sanctity of contract, but to which only the weaker party is bound. Bank malpractice doesn't exist in fat banking law textbooks, and is generally inconceivable in the judicial mind. Banks are absolved in denying to the customer discovery of key documents prejudicial to the bank's intent.

Judges preside over litigation involving banks for whom they have previously acted as barristers or with whom they have a current banking relationship. There is no register of pecuniary interests for the Australian judiciary.

Bank victims are thrown into the court system because the regulators are missing in action. Business to business unconscionable conduct was belatedly legislated into the Australian Trade Practices Act in 1998 and, with respect to financial services, was moved to the Australian Securities and Investments Commission Act in 2002.

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The regulatory and relevant bureaucratic communities (lawyers, economists, etc.) have their own cultural problem, not least due to an impoverished education. Commerce operates according to the law of the jungle – those who fall by the wayside by definition deserve their fate. But there is more to regulatory acquiescence than a myopic culture.

> In spite of its legislated responsibility, ASIC has not initiated a single case against a bank corruptly defaulting a SME/farmer customer. Instead, well-paid staff dispense obfuscatory letters, telling bank victim complainants to go away. I have copies of such correspondence.

A complementary body, the Financial Ombudsman Service, operates under ASIC guidelines. Its formal role is as mediator between financial service provider and aggrieved customer. It is funded by the financial institutions themselves, and it is a bottomless sink for bank victims seeking justice. Victims who seek assistance from their elected Parliamentarians are advised merely to talk to their bank or to complain to the FOS.

The FOS is the latter day bloated incarnation of an entity created by the banks to head off serious re-regulation threatening during a 1991 banking inquiry. There was simultaneously created a Code of Banking Practice. The twosome were intended to demonstrate the efficacy of self-regulation regarding banking sector responsibility towards its customers. A sick joke.

The banks from the start acted to inhibit the effective functioning of these structures. The Code, now 72 pages long, is universally honoured in the breach (although it is inserted in borrower contracts), and the courts won't go near it.

A Senate Parliamentary Committee 'Post-GFC Banking Inquiry' was established in 2012 following pressure from BankWest victims. Committee members heard tales of transparent criminality and were exposed to gut-wrenching submissions from victims. Yet the November 2012 report[4] is a travesty, ignoring completely the travails of the victims. A cynical watering down of the Inquiry's Terms of Reference foreshadowed the perennial political fix.

The relevant regulatory and bureaucratic authorities, questioned at this inquiry's hearings, displayed blissful indifference to victim concerns. The courts are there for commercial disputes, and it is not our problem.

The regulators' dominant concern is evidently for the stability of the financial system, which means in effect the profitability of the Big 4 banks. The banks are de facto public utilities but with all the prerogatives of a private organisation, including gangsterism into the bargain.

The same Senate Committee is currently engaged in another inquiry, into the main financial regulator ASIC itself.[5] The inquiry was initiated following whistleblowers highlighting a scam run by the CBA's 'wealth management' subsidiary, Commonwealth Financial Planning, whose 'financial advisers' were ripping off hapless investors seeking non-speculative retirement packages. ASIC, as is its custom, sat on the complaints.

The complaints submitted to the ASIC Inquiry are diverse and mountainous, but it is unlikely (given past experience) that the systemic long term subjugation of SMEs and farmers will be confronted head on.

There has thus evolved in Australia a near perfect Clayton's regulatory system which is parlayed as admirably functional but through which banks have placed themselves outside the law. SME/farmer victims face a Kafkaesque labyrinth from which there is only a grisly exit. **Very occasionally, a bank victim will emerge with smoking gun evidence in tow, necessitating a monetary settlement from the bank. It will be confidential, and then it will be business as usual for the bank.**

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The mainstream media will not touch the systemic problem. The carnage in the hinterland is widespread and deep. But, without exposure or acknowledgement, it has no public presence. It does not exist.

Worse, the media run regular ‘enterprise’ supplements extolling the bounteous rewards of entrepreneurial initiative while steadfastly neglecting to publicize the piranhas circling the sector. This same media also runs shameful interviews with major bank CEOs – puff pieces presenting these amoral suits as corporate and public interest visionaries. The misleading razzmatazz is supplemented by the existence of a junior Small Business Ministry, where incumbents merely hone their window dressing rhetoric with their eye on promotion to Cabinet.

It’s a brilliant, almost failsafe, system. The major banks run a racket, courtesy of their banking license, stealing the assets of the entrepreneurial class. It’s smarter than mafia operations because legitimized. It is legitimized de facto by a regulatory apparatus and political class steeped in complicity.

In all probability there are no brown paper bags under the table in Australia (save perhaps for members of the judiciary). But a revolving door employment gravy train beckons for the most prominent amongst the regulators and politicians. And for the bulk of their brethren, opportunism and craven cowardice reigns. A Minor Party politician who conducted a crusade for bank victims in the late 1980s was crucified. That fact is etched in the consciousness of Australian political wannabes.

Confront that we’re talking about Australia. Purportedly in the first rank of civilized countries, it has been feted as sailing through the GFC due in no small part due to a well-oiled financial regulatory system. Behind the facade we have the practices of a banana republic.

Welcome to the real Australia. The blood of SME/farmer victims (as well as hapless retiree investors) has been distilled into the lustrous figures of bulging bank profits – rates that have drawn the envy of bankers globally. The miracle that is financial deregulation has fulfilled the pundits’ early expectations of its ‘universal’ benefits because the human sacrifices to the neoliberal deity have been obliterated from the record.

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Websites For More Information: 1. The Tomlinson Report
http://www.tomlinsonreport.com/docs/tomlinsonReport.pdf
2. CounterPunch
http://www.counterpunch.org/2007/12/12/the-raid-on-great-western/
3. CBA - Bankwest - Uncoscionability & the Courts
http://www.bankvictims.com.au/dr-evan-jones/item/10803-cba-bankwest-unconscionability-and-the-courts
4. Senate - Post GFC Banking Inquiry
http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Completed%20inquiries/2010-13/postGFCbanking/index
5. Senate ASIC Inquiry
http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/ASIC

Source URL (modified on 9 Jun 2014 - 5:42pm): https://mail.reformnow.com.au/node/137

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