Inquiry Shocked By CBA's Conduct

Summary:
Inquiry hears from victims and ASIC whistleblower. Royal Commission becomes more likely with damning revelations of predatory and unconscionable behaviour by CBA. The "Clawback", long denied by CBA, has been proven. Bankwest clients defaulted by CBA to improve its position in the takeover. Many clients had never missed a payment.

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Committee Hears Of Commonwealth Bank's $8.2 Billion 'Fraud'

The Commonwealth Bank committed "fraud" when it deliberately impaired more than 1000 performing commercial loans worth more than $8.2 billion, a parliamentary hearing has been told.

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The human cost was huge, with valuers instructed to come up with lower valuations on the commercial loan book of BankWest, which CBA bought in 2008 during the global financial crisis.

> It didn't fall apart, it was assassinated... It was dead man walking the day they [CBA] took it [BankWest] over - *Rory O'Brien*

The lower valuations enabled CBA to foreclose on the loans even if customers had never missed a payment and had adequate security. The loans were business loans, for both family-run businesses and medium-sized ventures. The average loan size was $8 million.

One family was forced to stop fighting the bank after their seven-year-old suffered repeated suicidal thoughts. "The family gave up the fight against the bank because of the challenges to the health of the children," Mr Ross Waraker told the hearing.

"This is but one story, of hundreds of families torn apart and often shunned by their communities, who lose honest, hard-earned wealth and are left destitute," Mr Waraker said.

Mr Waraker said there should be a Royal Commission into CBA in light of its treatment of customers who had loans with BankWest.

The senate hearing into impairment of commercial loans was told that CBA committed fraud. "It was financial benefit by deception," Sydney-based solicitor Trevor Hall, who has represented at least one customer, said.

Mr Hall said the bank had two motivations in impairing the loans. The first was to reduce the purchase price of BankWest as per the clawback clause in the acquisition agreement that allowed the CBA to demand repayments from BankWest's former owner British bank HBOS. The bank's second motivation was to lower its cost of capital by culling loans related to the Basel Advanced Accreditation requirements to get the so-called tier-two bank, BankWest, up to first-tier bank status.

The inquiry has wide-ranging terms of reference that target loan defaults, and whether the banks deliberately engineered some of them to sell people up to improve their capital.

CBA has denied any wrongdoing.

A Commonwealth Bank spokeswoman said: "Commonwealth Bank welcomes scrutiny, has actively participated in all inquiries since these issues arose in 2008 and is openly cooperating with this Parliamentary Inquiry."

"Our position has not changed and we believe these claims are without foundation and are untrue. We are scheduled to appear before the Committee on December 2, 2015," the spokeswoman added.

Other banks, including ANZ, National Australia Bank, Westpac and others will also come under the inquiry's scrutiny. ANZ received attention over its treatment of farming families thrown off their stations by the big banks. In some cases it is alleged the prices the properties sold for were low ball.

Earlier on Friday, the parliamentary hearing heard the Commonwealth Bank lied to the New South Wales sheriff to avoid paying a $40,000 legal bill awarded by a Supreme Court judge to a former client on BankWest who had his loan foreclosed in a manner that was found unfair by the court.

The explosive allegation against the bank was made by property developer Rory O'Brien, who had his BankWest loan foreclosed shortly after the Commonwealth Bank acquired the second-tier lender from British bank HBOS in October 2008.

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Mr O'Brien also said CBA chief counsel David Cohen admitted to him the only reason the bank foreclosed on the loan was so it could utilise a clause in the deal between CBA and HBOS that allowed CBA to claim the full face value of a loan in BankWest if it had foreclosed on it.

The parliamentary committee also heard from BankWest victim Romesh Wijeyeratne, who said documents showed Mr Cohen had admitted the bank had foreclosed on the 1000 loans to utilised the clawback provisions in CBA's acquisition of BankWest from HBOS.

> "The bank denied this clawback clause. We now know the clawback exists," said Mr Wijeyeratne, saying Mr Cohen had deceived the Senate in his explanation of the clawback provision.

Mr O'Brien, who was speaking under parliamentary privilege because he is subject to a gag order as part of a $100,000 settlement with the bank, said the CBA foreclosed on his BankWest loan despite the fact that his $250 million-plus resort project in the Whitsundays was successful and had more than $106 million in pre-sales to the luxury property development.

"It didn't fall apart, it was assassinated ... I was dead man walking the day they [CBA] took it [BankWest] over" he said, adding the bank had engaged in unconscionable conduct.

In 2013, the NSW Court of Appeal found Mr O'Brien's loan had been foreclosed on unfairly and awarded him $40,000 in legal costs. After months the CBA had still not coughed up the costs and Mr O'Brien and his lawyers at King & Wood Mallesons were forced to call in the NSW Sheriff to CBA's head office in Martin Place to seize property equivalent to the value of the costs order.

Mr O'Brien said the executive assistant to CBA chief executive Ian Narev told the sheriff assets in the builder were CBA's and there were no BankWest assets that could be seized.

"The sherriff was hoodwinked into believing it was a BankWest problem ... This is standard operating procedure by CBA and it is financial bullying."

Websites For More Information: Committee Hears Of Commonwealth Bank's $8.2 Billion 'Fraud'
http://www.smh.com.au/business/banking-and-finance/committee-hears-of-commonwealth-banks-82-billion-fraud-20151113-gky7df.html
Former ASIC Employee Calls For Royal Commission Into Banking Practices
http://www.abc.net.au/news/2015-11-13/former-asic-employee-calls-royal-commission-banking-practices/6939468

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