The Sins of Westpac

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Our vision and strategy
Westpac's vision is "To be one of the world's great service companies, helping our customers, communities and people to prosper and grow." Our strategy seeks to deliver on this vision by building deep and enduring customer relationships …

Westpac's PR machine, as with the other banks, involves comprehensive misrepresentation.

We note recent peccadilloes – manipulation of the bank bill swap rate, robo house lending criteria, and the 23 million breaches of the Anti-Money Laundering and Counter-Terrorism Financing Act. We pass over these for the current purpose, merely to note how Westpac staff spend their time when they are not breaking their professional obligations towards their small business and family farmer borrowers.

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Westpac was created in May 1982 after the takeover by the long-lived Bank of New South Wales of the Melbourne-based Commercial Bank of Australia. The takeover and the name change were in preparation for the era of financial deregulation, the bible for which was the 1981 Campbell Report.

There was a concomitant transformation of culture under Westpac's then CEO Bob White, as outlined in Edna Carew's 1997 Westpac: the bank that broke the bank. White wanted to eradicate the Bank of New South Wales' presumed 'stuffiness'. Since 1982, in the mad dash for market share in a newly volatile environment, Westpac has not ceased to engage in unconscionable and fraudulent actions against its customers.

I Westpac and the Banking Royal Commission

Westpac got off relatively lightly from the Hayne Financial Services Royal Commission, not representative of its sterling long-term contribution to the banking sector's malpractice.

However, Westpac does figure badly in the first case study of week 3 of the FSRC hearings on 21 and 22 May 2018 (transcripts here). The case concerns one Carolyn Flanagan who became a guarantor in 2010 for her daughter's and son in law's purchase of a franchise.

Adele Ferguson's book Banking Bad summarises the brutality of the story (Ch.18). From Ferguson:

'[Counsel assisting] Hodge went through the loan application for Flanagan's daughter and showed it to be riddled with errors, inconsistencies and contradictions. This prompted Commissioner Hayne to suggest that getting a small-business loan was more about process than substance, box-ticking rather than checking facts.

'"Yes, I think that's a correct assessment", Westpac general manager of commercial banking Alistair Welsh told the commission. "It was more form, and the substance was more anchored in the security position and not anchored in [the] understanding of Ms Flanagan's income or potential to pay back the debt." …

'Alistair Welsh repeated the banking industry's mantra that the practice of parents acting as guarantors should be allowed to continue nevertheless, saying. "Many parents want to back their children. The reality is in Australian society we're often asset rich and cash poor … The support of a guarantee for many small businesses is critical."'

The franchise business failed and Westpac went after Flanagan's house in 2012.

Flanagan had multiple maladies, essentially unfit and incompetent to even rationally fill in the relevant loan documents. She should have been a natural case for 'disability unconscionability' litigation, based on the strong precedent legacy of guarantor-supporting judgments of Amadio (1983), Nobile (1987-88), Garcia (1993-98), Petit-Breuilh (1999) and Ashton (2001).

Welsh's support for the phenomenon of parental guarantees is inappropriate, devoid of conscience. Parents are naturally not happy to gamble with their precious family home, typically acquired after a lifetime of hard work. And what does 'asset rich and cash poor' mean? Banks take family residences as loan security because they are too lazy, possibly incompetent, certainly irresponsible, and cost-driven to assess the merit of business ventures behind loan requests. Parental guarantees are simply a ready vehicle for straight-out plunder, with the usual devastating consequences.

The Flanagan story is in the broader context of behind-the-scene bank deals with particular franchisors and bank lender indifference to the structural predation of franchisee by franchisor built into the entire franchise sector – a context ignored by Hayne. Potential franchisees are met with a double whammy of power plays (franchisor, bank lender) against which they are mere pawns.

Westpac Chairman Lindsay Maxsted didn't appear before the Royal Commission in Round 7 – reflecting the limited time allocated for questioning of major bank senior executives. But as Ferguson notes in her book (p.313):

'Maxsted gave an insight into his thinking in his December 2018 [AGM] address to shareholders, saying that Hayne's summation of banks being greedy didn't apply to Westpac. "We are not an organisation based on greed or short-term profit", he claimed, adding that much of the conduct aired during the royal commission had been “historical, has been previously reported to regulators, and in many cases, had been resolved or is being addressed.”’

On the contrary.

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IIa The Foreign Currency Loan Saga

In 1979 Brisbane builder Tony Lanza-Volpe applied for a loan (successfully) from his long-time banker Westpac to complete some townhouses. Local complaints against the building application saw the process delayed and the approval lapse. By March 1982, building approval had been granted, but the bank changed its offer. It was now a foreign currency loan (FCL), larger quantum and in Yen, or nothing. The Westpac Loan manager noted to his superiors: “Because of current high interest rates and tight liquidity [the RBA had imposed quantitative lending controls], off-shore borrowing was outlined to applicant as an alternative.” Thus was Lanza-Volpe, good at building but utterly ignorant of foreign exchange, early caught in the foreign currency trap. Queensland Managers International Business Neville Imhoff and his successor Albert Look were known pushers of this toxic product, as documented in numerous FCL judgments involving Westpac. Imhoff (recently returned from Japan, thus imbued with ‘authority’) claimed to Lanza-Volpe and his accountant that the Dollar-Yen rate was highly stable, offering no caution regarding potential risks. Lanza-Volpe survived the unconscionable pushing of this toxic product, but the bulk of FCL borrowers were not so fortunate.

The Lanza-Volpe vignette highlights that Westpac had jumped the gun on financial deregulation and the associated development of a cowboy culture.

During the 1970s, the Bank of NSW received some requests for bank support (standby letters of credit) in obtaining FCLs sourced overseas. Relevant staff were then strongly opposed to any such involvement because of known exchange risk, referring to any such arrangement as ‘funny money’. The dollar was not floated until December 1973, so expertise Australia-wide was thin on the ground.

Thus did Westpac (with CBA and ANZ) knowingly rush headlong into FCLs to hapless small business people, farmers, minor suburban property developers and others. With the inevitable denouement following the AUD fall against the FCL currencies, dramatically with the Swiss franc in 1985, and escalation of borrower debt in AUD, Westpac (with the other banks) turned nasty against the borrowers. I have outlined in detail the major Westpac FCL litigation in the courts in my March 2014 ‘Westpac, the Foreign Currency Loans Scandal and the de Jersey Factor’.

An atypical series of judgments for the borrowers in the courts led Westpac to drastic action in its appeal against the 1990 lower court judgment for retired pilot turned small time property developer Lionel Potts. Potts also had his FCL pushed on him by Imhoff at the same time as had Lanza-Volpe, in May 1982. Part of a string of FCL customers’ successful litigation against Westpac in Chiarabaglio (1989-90), Spice (1989-90), Fernyhough (1991) and Thannhauser (1991, MacKenzie J decided for Potts in December 1990. Westpac, broke, had its back to the wall.

Westpac's appeal against Potts was a masterpiece of underhandedness, with a whiff of judge shopping behind it. The appeal judgment went to Westpac on 16 April 1992, decided by the majority of de Jersey J (as barrister a recipient of a Westpac retainer) and Dowsett J (de Jersey's Brisbane Grammar school chum and personal friend) in what contemporary Brisbane legal circles judged an absolute stinker, and that was the end of successful borrower victories against Westpac in the courts.

CEO White gave way to new CEO Stuart Fowler in 1988. In the ten years of White's tenure Westpac's assets were increased from $10 billion to $70 billion, 35 per cent of them off-shore. White was obsessed with market share in post-deregulation uncertainty. But White bequeathed to his successor a mayhem of profligate lending and a tatty record system, computerisation still in its infancy, incapable of monitoring the complexity. Westpac came crashing down in 1991. Carew's Westpac refers, complemented by the long-time contribution of the masterful financial investigative journalist Trevor Sykes.

IIb The Westpac Letters

In February 1991, the 'Westpac Letters' were made public. The two letters were by Allen Allen & Hemsley partner B. P. (Paddy) Jones to Warwick Kent, General Manager Corporate & International, dated 24 November 1987 (14pp.) and 11 December 1987 (4pp.). They are labelled 'absolutely private and confidential' – for good reason.

The letters refer to the operations of a Westpac subsidiary, Partnership Pacific Ltd, which enjoyed a good deal of autonomy from its parent (as did the other maverick subsidiary AGC). PPL started pushing FCLs to select customers in 1984. This was several years after Westpac had begun flogging them, but PPL was selling a 'package', with management of the loan thrown in – that is, active engagement in currency exchanges in order to supposedly minimise the risk.

It is estimated that PPL made 86 of these loans. A trivial number, compared to the not far off a thousand (unmanaged) contracted by parent bank Westpac. What made the PPL story sensational was what Jones' investigation uncovered.

Jones highlighted that there was significant inter-personal conflict between relevant PPL personnel – senior executives and foreign exchange dealers/managers – which resulted in management incoherence and key staff turnover.

PPL proved incompetent in that which it promised to the FCL borrowers. In addition, Jones highlighted that PPL was profiting surreptitiously from trading formally on behalf of its clients but secretly creaming off extra revenue on exchange deals ('point taking') and attributing to the client loss-making deals ('deal switching').

Jones noted that internal documentation was self-incriminatory. He recommended that Westpac adopt a strategy to minimise ultimate losses, admitting nothing, settling with borrowers with a few measly dollars extra to get them out of the way. Jones highlighted optimistically that Westpac should take comfort from the fact (an accurate assessment) that borrower victims face an uphill battle to get justice in the courts.

PPL was closed down immediately after the December letter was sent.

Westpac devoted huge resources in attempting to prevent publication of the documents or disclosure of their contents. Westpac's efforts were ultimately successful. Apart from the further dent in its already tarnished 'reputation', Westpac suffered no investigation or punishment from the authorities who were busy trying to prop up the banking sector and inhibit collapse in the context of the early 1990s recession.

Democrat Senator Paul McLean, who had done much to expose banking sector wrongdoing, was calling for a Royal Commission with the associated powers necessary to bring out the full story behind Westpac's stonewalling and other banking sector crimes. The then Labor government resolutely impeded any such development, not least because it was in the process of privatising the CBA.

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It appears that Westpac learned nothing from its experience in the foreign currency loans saga. However, it did learn one lesson – the banking sector could act with impunity. Senior Treasury official David Morgan, in a shameless revolving door move after his responsible Department had ignored 1980s bank malpractice, joined Westpac in 1990. As head of retail (before becoming CEO) Morgan made token gestures to the contemporary zeitgeist, putting Westpac regularly at the top of the 'corporate social responsibility' index. On business that mattered, it was business as usual.

Here follows select stories of Westpac's treatment of particular borrowers.

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III Six Westpac borrowers experience the Westpac blowtorch

1. Colin Uebergang 1991 –

Westpac was broke in 1990 and undercapitalised, given the combined impact of massive losses from 1980s intemperate lending and the pressures of Basel I for increased capital adequacy ratios introduced in 1988. Westpac wrote off $2.76 billion for the years 1989-91, and over $6.36 billion for the years 1989-(mid)1993 – by far the most prominent self-inflicted banking casualty of 1980s excess. At the time, the ANZ instigated the foreclosure and appropriation of a number of large-scale agricultural holdings to shore up its sagged bottom line, including those of the iconic Wright family in northern NSW. It appears that Westpac went after Colin Uebergang for comparable reasons.

In earlier decades during the post-World War II rural expansion, Uebergang had developed significant wheat production from cleared scrubland. For a period he manufactured and imported innovative soil erosion control and moisture conservation agricultural equipment. By the mid-1980s, Uebergang had developed and specialised in two fields – organic wheat production and tea-tree oil for skin care products. By this time he had proved himself as a successful and innovative farmer, with then support from the BNSW/Westpac. In the mid-1980s, he expanded involvement in both fields – a partnership for an organic flour mill and a Japanese partnership in tea-tree oil production. These developments involved increased debt and patient nurturing, but they were developments to which Westpac had given agreement and cooperation. But then came the recession and the Westpac crash.

In 1991 Westpac Sydney insisted that Uebergang's operations be put on 'watch'. Westpac then stopped rolling over Uebergang's 180-day bills. The systemic use from the 1980s onwards of bank bills by the banking sector (developed initially for corporate customers) in small business / family farmer lending which needs long-term finance is indicative of the insouciance of the banking sector in its treatment of this segment of its client base – segments crucial to the health of the economy and of viable social structures. The bank bill facility has since proved a ready medium for under-the-radar default of small business/farmer borrowers.

Westpac impaired Uebergang's profitable operations as bad and doubtful and sent in receivers L R Dickson in December 1991, which successfully mismanaged Uebergang's wheat holdings through seeming incompetence, indifference and corruption. Westpac needed to control the receiver while not being seen to do so, so initial instructions were crucial. Yet the issue of the highest importance – interaction with NASAA regarding certification of organic status – fell through the cracks. There were at least three separate contamination events. In particular, the receiver directed farm staff to mix and load 1,500 tonnes of organic but uncertified wheat (readily paddock identifiable) for delivery to Uncle Toby in Victoria - an act admitted by the receiver in court. In another event, Uncle Toby itself used dihedron to control grain beetles because it had neglected its purchased wheat in its own storage.

With Uebergang gaining traction for a claim against Westpac in the federal court, a conspiracy of Westpac, the receiver and Uncle Toby arranged in 1993 to have Uebergang indicted on a trumped-up charge of claiming to Uncle Toby's buyer that non-organic wheat was organic. The associate receiver was heard to have stated in 1993: 'It was recommended to the bank to place criminal charges on Uebergang, as this would stop him from surfacing again'. Uebergang then had external financial backing, but Westpac was hoping to drain Uebergang's resources via the action in the criminal court. As late as 1997-98, Westpac managed to obtain, via three hearings before a compliant judge, orders for costs against Uebergang to cripple any further litigation on his part.

Uncle Toby was the sole litigant in the criminal proceedings but Westpac was the driving force behind the litigation. Westpac was shown in court to have indemnified witnesses from Uebergang's previous employees for any information 'that might result in criminal or civil liability'. More, the receiver paid Uncle Toby $150,000 to carry the can; in turn the receiver was reimbursed by Westpac (committal hearing before O'Donnell SM, 13 April 1995, p.5).

Thus a fraudulent default under CEO Stuart Fowler was extended in its criminality under CEO Bob Joss. Uebergang was subject to a trial that lasted 18 days which followed a 52 day committal hearing. Uebergang was gaoled by Boyce J for two years in late 1997.

Uebergang, then imprisoned and penniless, was denied access to the Boyce judgment. This denial proves indubitably to this detached analyst that the judgment was bent. Denial of hearing transcripts to borrower litigants is known and judges not making judgments publicly available is also known, so the missing Boyce judgment is not unique. Westpac's amenable law firm in the whole operation was the Brisbane establishment firm Feez Ruthning.

Uebergang's sentence was overturned unanimously on appeal five months later (R v Uebergang, QCA, 27 February 1998). Westpac consistently denied document discovery, tolerated by Boyce (and with assistance by Queensland police who conveniently lost all initial police charge documentation) and has done so to this day.

Westpac sold Uebergang's 9,000 acre wheat farm not as a NASAA registered organic farm because its receiver had used chemicals and NASAA had withdrawn certification. It was sold dramatically undervalue at $1.8 million. Federal Court documents put together by Uebergang's then barrister John Muir QC showed valuations for the organic wheat and organic tea tree oil properties at at least $20 million and a total loss estimate as at 1994 of double that figure. Uebergang was left penniless, and for the interim had to rely on support from family and friends.

After another recent attempt by Uebergang (in the backwash of Hayne) to receive acknowledgment and compensation for past wrongs by Westpac against him, the current leadership of Westpac Customer & Corporate Relations, via Group Executive Carolyn McCann, advised Uebergang on 11 June 2019, "We have found no evidence to suggest Westpac, its officers and the receivers engaged in criminal conduct, fraud or other improper conduct". Successive rounds of Westpac senior management remain intransigent in the face of clear evidence of past sins, not least in the Uebergang committal hearings transcripts.

To top it off the letter notes: "Please let me know if you would like to consider seeking assistance from third party support or counselling services and we will do what we can to assist you to connect with suitable service providers." It is sweet to know what consideration Westpac has for the psychological state of its borrowers, presumed having nothing to do with the borrower's Westpac relationship.

2. Patrick Hayes 2007 –

In 2005, successful developer Patrick Hayes, via his company Funk Road Developments (FRD), had taken an option on two dairy farms on a 14-hectare site at Yatala, on the Gold Coast outskirts, with a view to facilitating the nurturing of a major transport logistics hub. He sought leasing pre-commitments from major companies with a view to on-selling his organised structure for a profit. In late 2006, Hayes was approached by a financier (in possession of a lucrative valuation of the site), first for a buyout, subsequently revised to 75% ownership, with Hayes remaining in the business with 25%. This company lacked the full finance itself, so sought accommodation from Westpac, which granted approval for $10.5 million in December 2006. On that basis, the dairy farmer owners were paid the arranged $250,000 deposit each, with settlement initially due in mid 2007 but, under financier pressure, brought forward to end of February.

Out of the blue in late January 2007, Hayes is approached by a Gold Coast finance broker that he vaguely knew, one Tas Dempsey (name changed). Dempsey said that he had heard about the property and potential deal, but he had a better proposition. Take on board a couple of Italians who are much better placed, with over $100 million in assets. He claimed them to be outstanding private wealth clients of Westpac. Other Hayes' projects could also be financed by the Italian twosome and Westpac.

Dempsey rings Hayes in early February to say that Westpac has cancelled its loan contract with Hayes' prospective financier. However, his clients were ready to step into the breach. Hayes noted that his clients were not a public company and demanded something in writing. On 14 February, Hayes receives a letter from Westpac Brisbane loan manager Shayne Draper (ditto), dated 13th, offering $10.5 million on the basis that Hayes takes on one Mario Girardo as partner. Hayes rang Draper, noting that Dempsey's clients, Girardo and partner Sebastian Muscolino, lacked a certain 'professionalism'; 'couldn't Westpac lend me the funds directly or do a joint venture with me?' No, said Draper, it's with Girardo or nothing.

Neither Dempsey nor Draper informed Hayes that their clients did not have $100 million in assets; rather, they had zilch. Nor was Hayes informed that some Westpac loan managers (in Brisbane and Sydney) had lent Girardo $6.8 million on a Gold Coast property deal on 13 November 2006. The bank bill was due for rollover on 13 February, which doesn't occur, with Girardo defaulting. Hayes was being unwittingly dragooned into having his assets cover for Girardo's insolvency. The cancellation of the financier's loan contract forced the unknowing Hayes into the deal. In settling the forced deal in Westpac's Brisbane office 20 February, Hayes faced thousands of pages of mortgage documents. Hayes wanted time to discuss the documents with his solicitor but was told he had to sign then and there or the deal was off. So he signed reluctantly, giving a guarantee on the loan along with guarantees given by Girardo and several of Girardo's companies. Girardo was formally installed as a director of FRD (he had been illegally installed earlier by the use of a corrupt Gold Coast accountant with direct access to the ASX registration system).

Behind this story, select Westpac bank loan officers had been handing over fraudulent loans to Girardo for corrupt real estate deals since 2003, even given Girardo's previous known criminal record (NAB and ANZ were at certain periods also involved in comparable scams, having in common some personnel moving between banks who are moved on but given glowing references).

Subsequently, Hayes was pressured into accepting Girardo as 50% partner, via Girardo's Knight Property Investment No.3 (KPI), in return for Girardo paying Hayes a lesser sum for the latter's expenses on Yatala to date.

The dairy farmers were paid out in late February. Mid-year Girardo pushes to buy out Hayes at a knock-down price, which Hayes refuses. However, soon after, a sale contract is signed for a reasonable sum with a developer. Things look promising, and Hayes pursues in earnest leasing pre-commitments. In particular, discussions were underway with Woolworths for the potential construction of one of the largest warehouses in Australia, at 60,000 s.m.

In spite of the contracted purchaser lodging a deposit, things were not looking good for ready settlement in the required time for settling the Westpac loan by January 2008. In any case, Hayes had lined up another developer and obtained not merely an offer but for a higher price. Hayes told Westpac that he was nervous about the purchaser's prospects of sale completion on time as they were seeking an extension. However, in the meantime and again unbeknown to Hayes, Girardo's in-house friends had given him further Westpac funding, but by now higher managerial ranks were aware of the scam. With the Yatala purchase not clearly in the bag, Westpac defaulted Girardo. Girardo in turn, with power as director, attempted to put FRD into liquidation in early February 2008; Westpac formalised the liquidation on 11 February.

From then on, it would be the hapless Hayes who would pay the price for the scams in which he not merely had no part but of which he was oblivious. Westpac demanded repayment of the entire Yatala loan from FRD on 19 February 2008 and sued for recovery on his guarantee in June 2009. Westpac had bankrupted Girardo in February 2009, moving him conveniently out of picture. Hayes early received a sympathetic hearing from one judge, but she was later replaced. After multiple hearings, the Queensland Supreme Court, Peter Lyons J presiding, decided against him on 3 November 2014 (SCQ, No.7887 of 2009) after a hearing for which Hayes was absent due to an extreme medical condition, essentially ongoing.

Over an extended period involving multiple court hearings, Hayes' demand for document discovery was met with dribs and drabs, tolerated by the courts. By the time of the decisive judgment by Lyons, Hayes still had only a vague understanding of what Westpac had done to him. Moreover, the court process was a farce. Westpac's law firm representatives (Allens, Gadens) committed perjury, as did complicit Westpac staff. Gadens and Allens (with Minter Ellison, representing Balmain Commercial, onside) were demonstrably coaxing witnesses both inside (to which Lyons was a witness) and outside the courtroom. Hayes claims that he faced one silk, three barristers and 14 solicitors crushing him with legal technicalities.

The Lyons judgment (predictably not available publicly) is a mere 6 pages long. Hayes had made a counterclaim against Westpac on grounds of misleading conduct under the ASIC Act. Lyons readily dismissed the counterclaim, claiming that there was no evidence, and could be no evidence, of Hayes' reliance on possible disclosure and hence causation as to Hayes' decisions. Lyons gave judgment for $10,763,000 to Westpac on the standard grounds that FDR and Girardo's KPI obtained the loan, and the loan had not been repaid upon demand. The litigation has Westpac suing both KPI and FRD, but the judgment is curiously only against FDR and its guarantor Hayes. The judgment is specious and gratuitous but, as one who has read many judgments involving bank plaintiffs, it is par for the course. Hayes lost an appeal against the Lyons judgment on 4 December 2015 (QCA 260), which judgment was made on purely technical grounds with no consideration of substance.

The Yatala property was sold in June 2011 for $3.2 million to someone that real estate insider gossip claimed to be a well-known friend of Westpac. The property was variously valued by several valuers during 2006-07 at between $15-17 million. Westpac had it valued at the height of the GFC in 2008 for $11 million. Westpac at first wanted to park the property to obtain a decent price but, in taking Hayes to court, the bank quickly offloaded the property on the cheap. Thus a classic and extreme case of the perennial customer asset sale under value. The receivers presiding over the sale were PPB, a perennial recipient of the ‘dodgy brothers’ label by foreclosed bank customers. Real estate gossip also has it that the lucky purchaser on sold Yatala for $3.2 million to LMP Property Investments P/L, plus receipt of an extra $5 million in black money deposited offshore. Nice work if you can get it!

This crime against Hayes was initiated while the squeaky-clean ex-senior bureaucrat David Morgan was CEO and perpetuated under the equally squeaky-clean CEO Gail Kelly from February 2008. Ex-Treasury Secretary Ted Evans, brought in by Morgan, was on the Westpac Board 2001-11, and Chair 2007-11. Evans’ recent death elicited universal praise in obituaries, but the saintly Evans also missed what was going on on the shop floor (as he had at Treasury).

CEO Kelly and next Board Chairman Lindsay Maxsted were apprised of the fraud against Westpac by Girardo and his Westpac staff associates, a fact that the bank publicly denied for years. In 2008 (after Kelly’s appointment) Westpac commissioned its solicitors Allen to investigate the Girardo connection. An Allens’ staffer’s substantive reports showed the history and how the frauds were perpetrated. But Hayes was to be the fall guy. Westpac subsequently sacked some staff (with glowing references, one key staffer now in a prominent position at NAB, from which he had been sacked twice previously) and protected (and promoted) other complicit staff.

Hayes met the Customer & Corporate Relations senior team, Adrian Ahern and Carolyn McCann, at Westpac’s Head Office on 13 March 2019 (I was present). The then CEO Brian Hartzer also sat in on the second half of the meeting. As with Uebergang, Hayes subsequently received word from Westpac that Westpac effectively denies his claim for recognition and compensation, claiming that information provided by Hayes to date is not conclusive. Yet Hayes is a walking encyclopaedia on his case and its context, much information having been belatedly obtained from sometime members of Girardo’s associates themselves.

Westpac’s denial comes in the form of a 2 ½ page document forwarded to Hayes by Carolyn McCann on 16 May 2019. The document has no addressee, is curiously unsigned (nobody takes responsibility for it) and undated. It is titled ‘Summary of core issues regarding Thomas Patrick Hayes’. McCann notes, ‘The attached is not intended to be a final response but rather a list of issues we are grappling with …’. The document, de facto, remains the definitive final response. To the outsider, this document would appear to be a devastating indictment of Hayes’ case, yet it is the proverbial pack of lies. The document’s construction has evidently depended heavily on a person or persons deeply involved in the Girardo saga, possibly including Allens, Westpac’s law firm. More, the omissions and lies are so insouciant that its author/s and the bank evidently feel confident that they have absolute immunity from any possible reprisal from the financial regulatory authorities or from the police.

Three claims in this ‘core issues’ document, selected at random, highlight the charade.

#1. Quote: ‘The Funk Road credit application was presented to Westpac by Funk

Road’s broker, Balmain Commercial. Funk Road had entered into contracts for the purchase of the Yatala land without first having secured finance, and had paid large deposits.’ Rather, Balmain Commercial was not Funk Road’s broker; Westpac paid a brokerage fee to Balmain’s Dempsey. ‘Without first having secured finance’? Westpac granted FRD’s financial backer finance by January 2007, and it was only on that basis that FTD paid the dairy farmers $250,000 each as pre-arranged deposit. Westpac insiders broke that contract in February to force Hayes and FRD onto Girardo.

#2. Quote: ‘It was a term of the Funk Road Facility that there was to be a debt reduction of $872,000 upon receipt of a GST refund from the ATO on or by 31 May 2007, whichever was the earlier. The debt reduction was not made and Mr Hayes caused Funk Road to pay that amount to entities associated with him. This is a key issue and it appears is the core reason why Funk Road was placed into liquidation and receivership.’ Rather, Westpac agreed to waiver the repayment of the GST refund due at this date (possibly due to some machinations between Westpac and Girardo). Hayes and Girardo signed the loan variation with Westpac. It was acknowledged at some point in the court process that this signed variation meant that there was no longer a requirement to repay the GST sum. The liquidation causal link claim is complete rubbish; FRD was solvent when it was put into receivership in February 2008.

#3. Quote: ‘Mr Hayes has alleged that an unsecured loan was made on 13 November 2006 to Knight Property Investments for $6.8m. Whilst the bank cannot provide details of facilities provided to other customers this allegation is not correct.’ Rather, the ‘allegation’ is correct. The $6.8 million was deposited by Westpac Sydney into a $2 shelf company with no funds, in turn transferred to a Gold Coast solicitor’s trust fund. That sum was partly used to purchase a Gold Coast property for $5 million (‘Platinum’) and not for $8.5 million which was the fraudulent valuation sum and the fraudulently claimed purchase price. The vendors of the property received $3.5 million and the remainder was subject to money laundering.

It is possible that Ahern and McCann, front and centre for customer remediation, were pushed aside in this crucial case. Whatever, in their formal roles, they are now in the front line for this ongoing travesty.

3. Anonymous I 2007 –

Bob and Janet Smith (pseudonyms) started a signage and graphics business in 1994. They moved to the present business location in 2005, a location with attractive qualities, on terms of rental with option to purchase. That and previous premises were not up to satisfying the requirements, technical and representational, of the business. The post-2005 premises required immediate additional expenditure for extensive renovations. The need for business-specific premises generated a strong incentive to take up the purchase option.

Thus, in late 2007, the Smiths pursued the purchase option with their then banker Westpac. The financing deal was confirmed in February 2008. Business revenue had been irregular, but business prospects were improving just prior to the decision to purchase. However, loan repayments ($2800 per month) were considerably higher than prior rental payments ($1500), putting net cash flow immediately under strain, with failure to make the regular repayment as early as November 2008 and others subsequently.

Considerable sums continued to be expended on the premises to enhance their functionality. Considerable sums were also expended on an external government-recommended business consultancy and its recommendations, with the right intentions to pursue all options to increase revenue. However, this consultancy expenditure proved to be an unproductive and costly diversion of scarce resources. Such specific losses can hardly be attributed to ineptitude on the part of the Smiths as proprietors as they were merely subscribing to what is considered as 'best practice' from respectable sources in the drive for improved business performance. In the process, Bob worked much longer hours, much of it unpaid, and incurred extra debts.

Westpac bears heavy responsibility for the Smiths' plight. The Westpac loan manager's Smith application form (signed 6 December 2007, dated 10 December) includes two entries that dramatically overstate the Smiths' financial position. The value of their business is listed as $150,000, and the value of their furniture is initially listed as $100,000, the latter crossed out and replaced by $80,000. These figures would have been known to be inaccurate (the figures for furniture are preposterous), so their entry is a fraudulent act. Thus were the Smiths' net assets discretionally inflated. Bob Smith only obtained this form belatedly in late 2016, after repeated requests. Westpac has declined to supply other documents requested.

Information contained in Westpac's Credit Memo loan tracking compounds the bank's responsibility. The bank's initial figures for the proposition had the business premises engorged by the inclusion of the neighbouring property in the valuation. The deflation of the valuation of the specific property seem to not have comparably deflated bank staff's buoyant evaluation. The LVR on the business premises is noted as 113.8; the LVR of the overall proposition, including the family home, is 110.3. This is not a banking proposition. Bank staff comment on 11 December notes: 'Approval subject to: … LLVR <100% …' [LLVR?]. The basis for ready approval been a cursory dependence on 'serviceability evident based on FYE 2007 figures', and 'restructure supported on the basis of client's history with the Bank. Existing facilities well conducted & in order'. The LVRs should have had bells ringing.

More, 'Value of the proposed property has appreciated 60% during last 30 months. Therefore client has the ability to sell at a higher margin if need arises'. This last self-reassuring claim avoids confronting that the imperative to purchase the business premises arose from the need to control an infrastructure tailor-made for this particular business, a need which drove expenditure even with rental status and which foreshadowed additional expenditure after purchase (subsequently effected). Possible sale of the premises to resolve financial pressures depended upon the improbable finding of a philanthropic landlord prepared to be in it for the long haul.

It appears that the bank did not demand a detailed best estimate of likely revenues and costs necessarily associated with the purchase of the premises. One may argue that it is to the Smiths primarily with whom this responsibility lies. But Bob Smith highlights that he trusted the bank; he was expecting expertise in this matter. Smith was not aware, as were thousands of other defaulted small business and farmer borrowers, that banks had changed their spots in the process of comprehensive financial deregulation following the 1981 Campbell Report.

Bank staff had ceased to be professionals (as for doctors, with presumed competence, patience dependence, and associated ethics) and had become mere money-lenders, with no competence, obligations, nor ethics inside the same bank premises that camouflaged the dramatic cultural shift. Trust in their bank lender, lenders with an established brand, was the source of bank borrowers' dependence of presumed professional expertise. In legalese, it is called reliance. But that trust proved to be misplaced. Why isn't the judiciary, steeped in common law, all over this perennial abdication of lender duty of care?

It is possible that, in the Smith approval process, bank staff did not possess predatory intent (a motive and practice well represented in the contemporary banking sector) involving the ready abuse of security of what would become the Smiths' two property assets. That inference is supported by Westpac's subsequent pragmatic variation of Smith loan facilities, albeit that subsequent pragmatic assistance only served to deepen the Smiths' debt dilemma. But gaining extra business with minimal personnel resources committed to functional loan-making, with an eye only on gaining security of borrower assets, is now in the banking sectors' DNA. It's called 'asset lending' and it is unconscionable. In general, the effect of the Westpac approval on the Smiths' business and lives is comparable to that in which predation had been intended.

The Smiths were forced into a Deed of Settlement on 11 December 2018 – a perennial act of unconscionability. The next day Holt AJ enforced the Deed, giving judgment to Westpac for the sum of $358,341 plus interest accruing from the date of 11 October 2017. By 1 December 2019, the sum owing had ballooned to $570,040, thanks to compound interest on an onerous interest rate, and ludicrous unconscionable regular charges under the rubric of 'production of legal notices'. Nice work if you can get it.

In the meantime, Smith had approached the Financial Ombudsman Service (FOS), hoping for assistance – in particular, in obtaining from Westpac documentation requested by Smith but denied by the bank. To FOS, Smith had questioned the validity of the debt on the grounds that he had not been properly informed in full of his loan application process, FOS replied, 3 February 2015:

"Whilst a Financial Services Provider (FSP) must provide you with certain documentation in relation to your outstanding debt, there is no obligation on Westpac to provide the information requested by you. Further, any liability to pay the debt is not conditional upon their response. … In these circumstances, your dispute lacks substance and therefore FOS exercises its discretion under our Terms of Reference to not consider the dispute."

No explanation was forthcoming as to what documentation discovery was appropriate and what was not. Smith's further attempts to get clarification and assistance from FOS were met with a comparable response. I have obtained considerable bank customer correspondence with FOS and, whereas FOS consistently ultimately came down in the bank lender's favour (the reason for its replacement by AFCA), I have never seen such a crude and brutal dismissal of an applicant as in this letter.

In April, Smith had a court hearing seeking Westpac document discovery. The bank continues to deny discovery, stonewalling by pursuing further irrelevant documentation from the Smiths.

4. Peter Casaceli 2008 –

Peter Casaceli was previously both a property investor and developer and a furniture retailer – successful in both business ventures. He and his wife Janet, via associated entities, owned a portfolio of residential and commercial properties at Caringbah, Cronulla, Fyshwick, Ramsgate, Taren Point and, subsequently, Chatswood. The estimated net worth of their property holdings and assets as at mid-2007 was over $17 million. They are now in debt to the order of $500,000.

In particular, the Casacelis operated a successful retail furniture business, Nataceli, in NSW over sixteen years, holding a significant distribution agreement with the up-market Italian leather furniture manufacturer Natuzzi. Subsequently they developed their own complementary furniture line named Culture. The Natuzzi business generated healthy figures, with profits regularly over several million dollars per annum.

Their business finances were long managed by Westpac, where all bank accounts were held. In 2007, the Casacelis sought to increase their property holdings and decided to stay with Westpac. This decision was primarily due to Peter's extended family's long-standing relationship with the bank, a decision based upon a sense of loyalty to the organisation.

The Casacelis had a productive relationship with their loan manager at the Westpac Bankstown commercial loans centre. The appointment of a new relationship manager, Chris Thomas, at Bankstown in 2005 was (with the arrival of the GFC) at the origins of Westpac ultimately destroying their business ventures. Casaceli claims that this appointment led directly to the Casacelis receiving poor financial advice, reflected in an amateurish financial plan. Thomas at one stage admitted his inexperience in the domain of the Casacelis' business operations.

In 2007 Peter proposed the purchase of a well-situated but rundown Chatswood property on the Pacific Highway with a view to its redevelopment as a furniture showroom. The Chatswood property was intended to replace the Natuzzi outlet in the Chatswood Chase complex, a retail space costing an onerous $450,000 rental per annum. Westpac financed the full purchase price of the property in July 2007, adding $300,000 for the expenses of the development application. The DA was obtained in November 2007. But then Westpac went silent, abnormal given a long and productive relationship between bank and customer.

This was 2008, and the GFC was inundating finance sectors worldwide. Westpac had put out a notice in August 2007, immediately after the Chatswood purchase, exposing bank concern about impending problems in the US. Coincidentally, the Chatswood tenant, a rug dealer, vacated the property in early 2008, leaving the property vacant and thus not generating income. Thomas belatedly suggested a 'soft refit' of the property, which was not a suitable option. Earlier, a $1.65 million loan was mooted for the necessary total rebuild of the showroom but that component had disappeared off Westpac's agenda.

Westpac's refusal to fund redevelopment led to an impasse, with ongoing costs bleeding the exchequer. This was in spite of the appropriate DA being previously granted in November 2007 and with Westpac promising that it would be full steam ahead on the basis of that approval.

Thomas advised the Casacelis to sell their Ramsgate property to fund Chatswood, and to cover outstanding payments. Yet the Ramsgate property was without debt, profitable and injecting $120,000 p.a. into the business portfolio. However, it had been held as security on the overdraft that funded the furniture business' stock. Thomas threatened the Casacelis with a dramatic stranglehold on their business, with a new valuation (read devaluation) of all their properties at their own expense and their loans being sent to loans management. The valuer Herron Todd White has a long term business partnership with Westpac, so how could the former be deemed independent? Thomas' demand was followed and the Ramsgate property was sold in October 2008. This property should not have been sold. The demand of Thomas resulted in the total equity held by the Casacelis to be reduced significantly, and their entities' lending ability and serviceabilty for the loans was subsequently reduced.

The loss of income lead to a lowering of the credit rating held by the companies. This had an adverse effect on their lending, and they were asked to provide a $500,000 bank guarantee, which further hampered attempts to increase business profitability through property improvements.

At the same time the Casacelis' furniture operation Nataceli was running into difficulty with its contractual relation with Natuzzi. Natuzzi had a separate relation in NSW with retailer David Jones, but Natuzzi had allowed the number of DJ galleries to blossom beyond that in the agreement with Nataceli. This was patched up, a new contract was signed in early 2008 and Natuzzi paid compensation. But the stalled Chatswood development, its associated financial drain and the Casacelis' impaired reputation provided the opportunity for the agent who stood between the Casacelis and Natuzzi to attempt to break the relationship and to appropriate or destroy Casaceli's Natuzzi outlets. The franchise agreement with Natuzzi was finally terminated in mid-2012, after significant expenditure on legal costs.

In November 2008, in spite of the sale of Ramsgate on demand, the Casacelis' Business Banker Thomas put all their accounts in 'Loans Management', claiming misleadingly that they would be better managed there. This was the last straw for the demise of their businesses, financial strength and significant personal loss. The accounts were not then in default. Thomas' replacement put ongoing pressure on the Casacelis to sell remaining properties, threatening higher interest margins on the loan debt which were increased over the ensuing three years.

The Casaceli facilities with Westpac expired in March 2011 and were not renewed.

Attempts to get support from FOS in 2013 were rebuffed by FOS, and Westpac sought enforcement of its (manufactured) debt. Ferrier Hodgson was appointed as receivers and managers of the entire Casaceli Group in February 2014. Loans Management advised selling off all assets and proposed an Agreement with a deadline on 1st December 2015.

The receivers proceeded to sell Casaceli properties under value – a widespread practice utterly representative of receiver practices under bank-led receiverships. Fyshwick was sold for $1,270,000 in December 2015 but it was then valued at $2,800,000. Chatswood had earlier been sold for $2,350,000 in August 2012; the property was resold for $6,250,000 in 2019.

In April 2016 the Casacelis executed, under duress, a Deed of Settlement. As per usual, the deed exonerated Westpac from any liability and claims that the Casacelis or their companies might seek to bring against the bank. They are now seeking to overturn that Deed, as having been unconscionably obtained.

The Casacelis' substantial family home was sold in February 2019 for $4.5 million. The Casacelis' residence, valued at $5 million in 2007, had a then mortgage of a mere $300,000 against it. But Thomas demanded that it be used as security for the Chatswood purchase. Westpac didn't need the family house, as the Casacelis' other properties would have been sufficient as security for the increased Casaceli indebtedness. But this is standard bank fare, to incorporate a previous separate home mortgage into security against the owners' business ventures. What is de facto legal is juicy raw material for what is effectively fraud. Westpac pocketed the full proceeds of the home's sale, leaving the Casacelis homeless.

5. Anonymous II 2012 –

There is the ongoing matter of a Westpac victim who had two investment properties for her retirement. By a fraudulent impairment, with corrupt property (de)valuations from January 2013 in tow (done without the victim's knowledge and forwarded to her only in 2017 which is the first time she knew about them), she was forced to sell one property quickly and under value; then, by a fraudulent default, based on defective default notices had her second property appropriated and sold under value (complicit real estate agent assisting). The full proceeds of the sales were retained by Westpac in both cases.

The overseas-based borrower attempted to refinance with a willing lender (ANZ) in late 2012 but was promised then denied bank statements necessary to facilitate the refinancing. Westpac's default action began at this time. It is remarkable how many times this author has heard about a bank setting out to destroy a borrower (involving considerable use of resources) rather than let that borrower move smoothly to another lender. Few pundits who consider themselves expert on bank culture have countenanced the pervasive dimension of non-rationality that resides in this sector. The bank had appropriate loan products in Australia which the borrower could have transferred to yet the bank never offered them, instead choosing to pursue the borrower legally with defective default notices which the borrower had asked to be lifted. The borrower has only learned of the appropriate loan products available to expats returning to Australia after AFCA investigated this issue.

This person's loans were initially taken out in the mid-2000s when the borrower was resident in Singapore, and they were denominated in Singapore dollars. Westpac Singapore was then assertively pushing SGD loans to expatriates. This was an activity staggering in its insouciance given Westpac's disastrous foray into foreign current loans in the early 1980s and its criminal pursuit of FCL borrowers in the courts and cover-up of its responsibility in pushing such toxic loans – as above. Westpac devoted the 1990s to expensive public relations exercises to exorcise the stench. And here was Westpac at it again, offshore, with regulatory indifference. Moreover, (short-term) foreign currency loans to business firms in Indonesia had become a staple by the 1990s, partly due to the peculiarities of Indonesia's monetary regulation regime. The Asian financial crisis after 1997 brought the system down and foreign currency borrowing in Indonesia into disrepute. What was Westpac Head Office and Singapore branch office staff thinking in pushing know toxic loan facilities in Singapore?

This victim took her complaint to the then Financial Ombudsman Service, which catered blindly to Westpac's insistence that the loan was outside FOS' 'jurisdiction' (15 June 2015) on the grounds that the loan was originally taken out in Singapore. But the bank is Westpac (incorporated in Australia and holding an Australian banking license), Westpac Singapore has no independent legal status, the loans had by then been converted to AUD with the victim's return to Australia and it was Westpac HO that was brutally foreclosing her. The victim outlined these and other decisive details only to have FOS, via its legal counsel, ignore the substance and re-iterate crudely and brutally that is decision on jurisdiction stands. Outside FOS' jurisdiction? FOS merely used the excuse provided by Westpac itself to deny the borrower a hearing and subsequent justice.

FOS later relented and in August 2015 offered to serve as mediator for a conference between the borrower and Westpac. Westpac refused to participate. In May 2017, Westpac CEO Brian Hartzer and 'Secured Recoveries' officer Donna Stevens (who oversaw the fraudulent foreclosure and sale under value of the second property) were apprised of the bank's then failure to right its past sins (an ongoing breach of the Code of Banking Practice). Westpac replied (under Stevens' name) with a concoction of untruths, following which relevant bank personnel had to be again corrected of their misunderstandings. Stevens, at last reckoning, was now employed by AFCA – the revolving door curse for regulatory integrity.

By late 2017, the victim was in the hands of Westpac's customer advocate office, from which followed (under the name of senior review manager Sabina Rojas) another dense pack of untruths, with the victim having to outline the true historical record yet again. The victim's 21 December 2017 email noted accurately that "… your Customer Advocate Group is nothing but an extension of your legal department, designed to wear down customers that have disputes against the bank". Which it remains to this day.

Through all this, Westpac continued to demand the repayment of a substantial debt that had been concocted both by dramatic incompetence and malevolence, enhanced with the usual discretionary penalty interest rates and fees. During the long dispute, the bank would send spreadsheets and figures as to the claimed debt, none which were the same. After Rojas had reviewed this victim's case, the bank waived the debt (around $280,000), presumably because it knew if it attempted to sue her for this manufactured sum, and it went to court, the bank would be exposed regarding its inaccurate claims and the fraudulent activity behind them.

The Australian Financial Complaints Authority replaced the discredited FOS (and other bodies) in late 2018. Anonymous thus took her case to AFCA. In June 2019, AFCA determined, after much shuffling, that it had jurisdiction, as deemed to be a complaint or obligation 'arising under Australian law'. Yet in a November 2019 preliminary assessment full of inaccuracies, AFCA decided that the complaint was unfounded, and that the bank had full rights under its mortgage. The bank offered the victim $10,000 after the conciliation call and maintained that the waived debt would remain waived. The victim rejected the offer and is now in the hands of AFCA to make a final determination.

AFCA's preliminary assessment even claimed that the 2003 Code of Banking Practice did not apply to the contracts signed in Singapore by the complainant. Thus the bank need only divulge statements on loan accounts "if it was practicable to do so"! In other words, professional ethics can be readily bypassed in Westpac's Singapore subsidiary (or any other part of the bank). AFCA personnel had clearly not apprised themselves of the fact that the 2003 Code (the first to include small business) had been strategically neutered in its inception by the banks via the Australian Bankers' Association, a reality that even the newly established overseer Code Compliance Monitoring Committee admitted publicly. That the banking Code from its inception in 1996 has never been adhered to and has merely been a public relations exercise for the banks has also bypassed the understanding of AFCA personnel. The meaningless of the Code is precisely why AFCA exists and why it gets tens of thousands of complaints every year. AFCA personnel, from CEO David Locke down, have yet to join the dots. AFCA's birth, accompanied by much fanfare, has proved a bitter experienced for aggrieved bank borrowers.

Anonymous thus has to devote more resources to correcting AFCA's mis-reading of Westpac's unconscionable default and subsequent sale under value of her property assets with the associated addition of discretionary charges and the creation of a manufactured debt that has been created out of a planned comfortable retirement nest egg.

6. Lena Anderson 2014 –

In 2009, aged 48, Lena Anderson obtained a mortgage from St George Bank (acquired by Westpac in 2008) for $280,000 to buy a one-bedroom unit in an apartment complex in the northern suburbs of Melbourne. After a working life on low incomes, this was to be her security in retirement after a lifetime of renting. As a Bookkeeper/Office Manager and skilled at budgeting and financial forecasting, Anderson did her homework thoroughly on the serviceability of the loan terms, also obtaining professional advice and a broker to assist in the deal. The term of 23 years was set by St George Bank.

In 2014 the Bank of Melbourne (St George's successor in Victoria, which Westpac acquired in 1997), paid a third-party unverified claim of $22,369.68 without

Anderson's knowledge or consent. The bank then added the sum to the loan principal, adding $116,000 to total loan repayments that included $95,000 of additional interest payments, and adding four years to the term of the loan in the bargain. A mortgage structure that had been negotiated after extensive deliberation had been unilaterally distorted. This change made the loan unviable.

When Anderson discovered the withdrawal from her account to pay a fraudulent claim regarding a matter unrelated to her banking relationship, she lodged a complaint with the bank. Rather than handle the complaint directly and with urgency, the bank immediately and wrongly referred her to FOS. After six months of frustration dealing with FOS with no result, Anderson withdrew the complaint and sought to settle the matter directly with the bank again, due to the impact it was having on her health which had deteriorated dramatically as a result of the stress induced by the bank's actions and FOS' inaction. Relevant Bank of Melbourne personnel lied that FOS had found in the bank's favour whereas it had made no determination. Westpac refused Anderson's settlement offer so the matter ended up in the County Court of Victoria. Westpac's lawyers, Gadens, now with a reputation as the most brutal bank law firm in the country, took advantage of Anderson's impecuniosity.

Anderson had pleaded that Westpac breached their contract, by withdrawing monies from the 'fixed' component of her account (in which no variation was contractually possible) and, by failing to inquire before making payments from that account, as required under the terms of the agreement and memorandum of common provisions; had breached the provisions of the National Credit Code and the Australian Securities & Investments Commission Act by failing to act with due care and skill when it increased the loan without first checking whether she could afford the extra payments and by rendering the loan no longer fit for its original purpose; had breached several provisions of its Code of Banking Practice by failing to investigate her complaint, act fairly and reasonably, in a consistent and ethical manner, have regard for its prudential obligations, comply with all relevant laws relating to banking services, promptly process a complaint that a direct debit was unauthorised, exercise the care and skill of a diligent and prudent banker in selecting and applying its credit assessment methods and in forming its opinion about a customer's ability to repay it.

Westpac's position was that it has the right to pay large private third-party claims from a customer's account without their knowledge or consent "at any time" and to add that amount to the principle of the loan; it has the right to make financial decisions on a customers' behalf, including how their expenses are paid, and when and how their property is sold; its back-room staff are empowered to determine the legitimacy of any claim sent to the bank without the need for the claim to be first verified by the customer or any court or tribunal; the customer must at all times continue to service the increased loan and has no right to contest the banks actions.

Ten months into proceedings, after Westpac had lost a summary judgment application and the parties were due to go to a trial of evidence, Westpac repaid the monies in dispute – one would have thought implicitly admitting the guilt of its fully owned subsidiary. Westpac denied guilt, but farcically claimed that it repaid the monies to avoid the cost of another trial. Yet Westpac immediately sought a second summary judgment for possession of the property and repayment of the loan on the basis that Anderson no longer had a case against it as the money in dispute had been repaid! This was after Westpac had added over $95,000 in legal costs to her loan principle. Here is the banking sector at its most venal and the court system at its most complicit.

Despite every effort and tens of thousands of dollars spent on legal advice, and the transparent rightness of her cause, Anderson lost her case both in the Trial court (VCC 1519, 11 November 2017) and on appeal (VSCA 2226, 5 September 2018). The High Court of Australia refused her ultimate appeal application without reason.

Westpac pursued the legal claim against Anderson despite being aware of the misconduct of its officers when it repaid the disputed monies and sought a second summary judgment to avoid a trial of evidence. The Victorian County Court should not have allowed this second summary judgment application. Had the matter gone directly to trial before these monies were repaid to Anderson she would have won her case. In allowing Westpac to make two summary judgment applications the court effectively destroyed Anderson's opportunity to obtain justice.

The County Court further complicated matters by splitting the action – Westpac's claim and Anderson's counter-claim – and making separate orders which then had to be appealed separately in the Court of Appeal. The court had no regard for the unnecessary difficulties facing Anderson as an impoverished self-represented litigant. This added at least two years and several hundreds of thousands of dollars in legal costs to the proceedings. In the end Westpac spent over $700,000 of shareholder funds pursuing a property valued at around $350,000. Add the un-computed cost to the public purse that underwrites the court system.

The courts wilfully accepted the erroneous submissions of Westpac that the claim it paid was for owners' corporation fees for which Anderson was in default, over later admittance from the owners' corporation manager implicated in the affair that the claim was for the legal costs for a lawyer that the owners corporation had voted against engaging. Anderson owing a debt to the owners corporation was integral to the bank's case and the integrity of the judgments of the County Court and the Court of Appeal rest exclusively on this false statement, despite evidence that the debt had not been verified by a relevant court or tribunal, as required under owners corporation law.

Westpac's lawyers, Gadens, perjured themselves by affidavit about the service of documents which Gadens later had to admit were false. Gadens' casual complacency in flouting laws that would see the rest of us in prison highlighted to Anderson the essentially corrupt character of the legal and judicial process when banks are a party to litigation. Not merely on the bank's side, lawyers employed by Anderson also trashed their formal professional status by corruptly exploiting her and abusing their power.

Naïve and trusting as with most bank customers, if Anderson had known of Westpac's capacity for fraudulent dealings she would never have contracted a mortgage with Westpac or any of its subsidiaries.

* * *

IV The Supporting Cast

The banking sector, lead by the Big Four, has been acting with relative impunity for at least thirty-five years. This behaviour would not have been possible without several rings of protection which bolster its relative autonomy.

In the forefront is the legal fraternity, which performs the banks' difficult and perennially dirty business. In complementary roles are the receiver/manager sector and the property valuer sector, even public authorities like the gun-slinging sheriff's office and bankruptcy trustees, and, to a lesser extent, the real estate sector. Undesired bank borrowers must be despatched as expeditiously as possible. Select law firms, receivers and valuers depend upon the bank teat, and they carry out bank instructions, indeed lead the way, or they risk being shut out from bank largesse. The prospect of trails of revenue, ongoing and substantial, for what are generally partnerships facing potentially uncertain conditions, transcends ethical considerations. The lucre is filthy or not at all.

In further rings are the inter-related financial regulators, the banking/financial ombudsman, and the political class.

The political class assented to comprehensive financial deregulation during the 1980s, and it has never since had the intelligence and the courage to revisit that decision. Integral to that process was the privatisation of all public financial institutions (demanded by Campbell) and lack of support for the mutual sector. Governments thus handed a monopolised role of fundamental public significance to the profit-driven private sector and have since allowed themselves to be blackmailed into supporting it (government guarantees were given after the GFC) without demanding a quid pro quo. The banking sector has not been a passive recipient of such largesse but has long been one of the most assertive and generous lobbyists in Canberra (notably, the NAB sponsored John Howard's electoral victory in 1996).

Transparent anti-social bank incompetence and malpractice in the 1980s, then well covered in the media, led not to re-examination of the financial system and redress but to acquiescence. The Labor Government 1991 Martin Report was a whitewash. Concomitantly, Labor ushered in self-regulation, in the form of the banking ombudsman and a code of banking practice. The banking/financial ombudsman, in matters of significance, has always lacked competence, courage, independence and integrity. The ombudsman's latest incarnation as AFCA has carried on the tradition. The code of banking practice, going through various amendments since its belated (privatised) birth in 1996 has always been a joke, with no substantive effect whatsoever. The National Australia Bank even had the witlessness to argue, at Trial hearing in NAB v Rice (VSC 10, 2015), and again on appeal, that the code had no contractual status.

Governments have legislated, at snail's pace, adequate statutes for unconscionable conduct. The refreshing belated acknowledgment of 'business to business' (read here bank malpractice against small business/farmers) unconscionable conduct was belatedly incorporated as s51AC into the Trade Practices Act in 1998 and as s12CB&CC in 2001 amendments to the ASIC Act. But the statute has been conscientiously, even religiously, ignored by first the ACCC and then ASIC and has never (read never) been brought to bear against the banking sector. Banking sector complainants to ASIC are met with disdainful instructions to go away, with the recommendation to go and litigate one's case in court.

Given endless banking sector dysfunctionality, successive governments respond with Parliamentary inquiries which proceed as glorified pantomimes and function to dispel public frustration and despair, with copious victims' submissions ignored. The Hayne Financial Services Royal Commission was extracted from the Coalition Government only after the most extreme public pressure, but then came and went with much hoopla but little enduring substance. Without doubt, the Royal Commission was organised and played out strategically as a whitewash in the domain of bank malpractice against small business and family farmer borrowers. The situation is now worse than if the Royal Commission had never taken place, because the banks have been emboldened in their actions in this unreported arena of bank lending. The media has lost interest because the curtain has come down on the theatre.

It is perennially opined by senior regulators, bureaucrats and politicians that the most appropriate means of aggrieved small business/farmer borrowers is in the courts.

The courts? The courts are the outer ring of the banking sector's protection framework. The pro-bank bias of the courts is a well-kept non-secret – transparent to its victims but invisible to those who matter. The bias is facilitated by a multi-layered structure.

At rock bottom is the legal fraternity's impoverished education into the character of the use and abuse of power in the marketplace. The judiciary in general does not understand, declines to educate itself on, the nature of bank lending and the credit contract. Behind the judiciary's incomprehension is an inexcusable lack of interest by most of legal academia in the subject. Banking law texts are risible.

In particular, the bank lender – small business/ farmer borrower relationship is one of the most asymmetric of all commercial marketplace interactions. A bank lender can default a SME/farmer borrower at will, repossess the family home (automatically the farm homestead within a property) typically taken as security. Thus the borrower and family finds itself on the street, on public welfare. Judges have proved themselves entirely nonchalant in granting banks possession over the borrower's family home.

The bank's discretion over the credit relationship is so profound that the potential for abuse by the more powerful party, indeed the tendency or imperative for abuse, is built in. Bank corruption is spawned from a richly fertile structural characteristic of bank credit-making. (The discretion is such that it extends to accommodating and ultimately covering for criminal gangs, who readily observe such rich pickings, operating in partnership with select bank staff – as in Hayes above.) The asymmetry facilitates a healthy dose of sadism, uncharted, in the sector which has nothing to do with the banks' bottom line. Bank staff destroy borrowers simply because they can. This corruption imperative inevitably fans out to the handmaidens of the banks' exercise of its power – the legal profession, the valuers and the receivers. No-one in authority wants to know, including generally the police who have formal

responsibility for fraud. The Hayne Royal Commission's soft pedalling around the SME/farmer sector (evaluated briefly here) – with shockingly explicit support for the CBA large scale takedown of Bankwest commercial borrowers – is so transparently sketchy, puerile, condescending, that it flashes a strategic intent to bury this crucial arena from present or future investigation and exposure. All that expert firepower couldn't possibly be so naïve.

In addition, there are unsavoury trappings of the court system itself that reinforce the bias. These seemingly unseemly dimensions include judges presiding over bank litigation that involves as party the bank with whom the judge banks, barristers acting for a bank on the way to the bench and then presiding over litigation involving that bank, and so on.

To top it off, there are judgments, not rare, involving bank litigation that are so questionable that one must attribute to those presiding either a laziness and/or an ill-educated incompetence, or a knowing complicity. Westpac v Potts, as above, is representative. Ditto, Somerset / Kabwand v NAB (QSC, G65 of 1986). This layer, in particular, is the elephant in the room of the entire questionable system. If some judges are necessarily either not up to the task or bent, how did they get to that elevated rank and how are they able to remain there?

How else can we interpret the Tasmanian Chief Justice's instigation of the deletion of s146(2) of the Land Titles Act 1980 in October 2018? The sub-section read:

(2) On application being made under subsection (1), the Supreme Court may issue a summons directed to a mortgagor, encumbrancer, or lessee referred to in that subsection, calling on him on a day and at a place to be named in the summons, to show cause why the Supreme Court should not order possession of the premises referred to in the summons to be given up by that mortgagor, encumbrancer, or lessee to the applicant.

The Chief Justice's own defense, that of reducing red tape, doesn't hold water. The Tasmanian Parliament, relying on the high reputation of the office of the Chief Justice, gave, without thought, unanimous assent to this unfortunate repeal.

A banking licence grants not merely extraordinary privileges to its holder but also extraordinary power. It gives the holder a licence to plunder a customer's assets, should the intent be there and the temptation is enormous. The intent and its implementation have been present on a continuous basis since governments let the sector off the leash in the 1980s.

I have elaborated on these matters in my submission to the Hayne Royal Commission and in my submission (#53) to the early 2019 Senate Legal and Constitutional Affairs Committee inquiry, Resolution of disputes with financial service providers within the justice system. These highly significant issues need no further embellishment here.

I raise here the dimension of the 'supporting cast', though its airing may be in bad taste to sensitive souls, because the ongoing asymmetry between bank lender and borrower cannot be understood without acknowledging the supporting cast's existence and pivotal role.

The banking sector and its support network, active and passive, which includes the entire regulatory, political and judicial apparatus of the country, operates in a closed loop. Actions that to those of conventional standards of rationality and morality are deemed illegitimate, odious, unconscionable, contemptible, criminal, unbelievable, are to those in the bubble legitimate, representative of how business is done. Self-respect within the bubble might be skin deep, given that the bad smell of the behaviour has a permeating character, but the mutual reinforcement, not least because swathed in the authority of institutions of state, keeps the system operative.

It remains, however, a racket, and one on a significant scale.

* * *

V Customer 'advocacy'

In November 2016, Westpac's newly created position of Customer Advocate was filled by long-time lawyer Adrian Ahern. In August 2017, he noted promisingly (regarding SME disputes):

'It has been said by many, and I expect we all agree, that it is fundamental in a Western democracy such as ours that justice should be the same for everyone, both in substance and availability, without regard to economic or social status. …
'Westpac now has a very clear policy of not approaching discussions or mediations with customers with the purpose of seeking the best solution for Westpac. Rather, we look to resolve disputes in a way which is fair and balanced for all parties having regard to all of the circumstances.'

In February 2018, Ahern noted, again optimistically:

'At the heart of my role is ensuring customers don't feel it is a "David versus Goliath" fight if they feel wronged by the bank, and making sure people are properly prepared to put their best foot forward when dealing with the bank. Access to justice is an issue that concerns me greatly …

'But despite negative headlines about banks, my continuing observation of Westpac is that the employees are passionate about seeking to ensure customers are at the centre of all what they do, and Westpac and the industry more broadly are actually seeking to make a real difference, including through the creation of roles like mine.'

On 24 March 2020, mid-Coronavirus crisis, there appeared in the papers the advertisement headed: 'Australia, we're here to help when it matters'. Westpac was offering a significant and meaningful package of relief measures to customers in straitened circumstances. The mentality behind this offer did not apply to the backlog of Westpac victims long in distress.

In mid-April 2020 Westpac foreshadowed a $1.43 billion provision for costs associated with systemic failures regarding the reporting to Austrac of foreign exchange transactions. No comparable provision has been made regarding compensation to SME borrowers (by Westpac or, indeed by any of the Big Four banks) for wrongful treatment during over 30 years of a cowboy culture prevailing since financial deregulation in the 1980s.

At Westpac's AGM, 8 December 2017, held just after the government announced the establishment of a Royal Commission, Hartzer claimed:

'"Banks have been a political football for too long. That's why we have now accepted the need for a royal commission to create certainty and confidence in our banking system," Mr Hartzer said. Mr Hartzer conceded the inquiry might find "issues" in the industry, but he hoped it would also show the bank was acting to resolve past problems, and investing in customer service.'

Westpac victims would certainly have liked to see Mr Hartzer's 'hope' fulfilled. As Westpac's CEO between February 2015 and November 2019, Brian Hartzer inherited the dirty linen, but why would he want to wear it when at the helm? Ditto the current CEO Peter King.

The Westpac customers whose experience is summarised above are still looking for acknowledgment of their circumstances and redress for their treatment. Westpac's Customer Advocate section appears, to date, to be not part of the solution but an additional part of the problem.