NAB - Top Of The Big Four For Unconscionable Predatory Lending

Summary:
Loan Application Fraud, Predatory Lending - Tools of the trade for NAB. Why don't the Courts and the Government go after banks behaving badly?

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Article: "Banks: Still The Untouchables"

Ten years ago, the Canberra Times published an article of mine on bank malpractice against small business/farmer clients. I wrote then: ''Major bank practices towards small business and the family farm range from the insouciant to the malicious, with parlous effects. This environment has been facilitated by comprehensive indifference to bank practices by borrower representative bodies,

regulatory authorities and political parties.''

A decade later, nothing has changed. When a small business/farmer contracts for a substantial loan with a bank, they enter into the most asymmetric of any relationship in modern commerce. Henceforth, the bank has your assets and the future of your family at its discretion.

Borrowers believe that they are negotiating with a professional, with attendant capacities and scruples. On the contrary; they are meeting a money lender, whose prime interest is not the viability of your business but your assets and gaining security over same.

Family farmers are particularly vulnerable. The NSW Farm Debt Mediation Act was passed in 1994 to partially offset the bank-borrower power imbalance. But the banks have learned how to rort the mediation process, entrenching borrower subordination. Section 11 (3) was inserted into the Act after a 2000 review which directed the lender to act ''in good faith''. But this section was repealed in 2004 after the National Competition Council deemed the amendment anti-competitive.

> The Big Four (occasionally the second tier) have their dark side, but the top performer appears to be the National Australia Bank.

Some recent stories:

Western Australia, 2006: **The bank lent on a rural property on a contrived loan application, including false documentation, unseen by the borrowers.** The success of the venture depended upon the borrowers' existing ''urbanising'' property being subdivided and sold. The bank foreclosed on both properties just as subdivision gained approval. The properties were sold under value and both have since been subdivided, with significant capital gains for the purchasers. **Predatory lending in operation.**

Victoria, 2007: A couple were induced to move their (trivial) home mortgage from one bank to the NAB as partial security for an initial business loan for the wife's parents' business venture. **The loan ''application'' concocted details of the couple's employment status and income,** and even had the house located in the wrong town. In 2009, the couple were served with a claim for the entire business debt as well as the entire home-mortgage principal. The couple was subsequently locked out of the home and their personal property stolen. The NAB has added another oppressive weapon to its armoury. For long, its overdraft facility has been repayable at call - itself unsavoury. The **NAB has now introduced mortgage facilities that are repayable at call ''whether or not the borrower is in breach of the agreement'.' More, a defaulted customer can be loaded with penalty interest rates (up to almost 20per cent) that drain customer assets, rates that are not in the contract.**

> Once in default, getting discovery of original documents, undoctored, out of the NAB is a struggle.

Victoria, beginning 2006, another instance of predatory lending: The borrower's annotation on a key loan document, noting that the borrower was dissuaded from seeking external advice, was not on the bank's discovered copy.

At a subsequent meeting at the bank's headquarters, the borrower's folder of documents was purloined. The bank's leverage is enhanced by controlling the information available in prospective litigation.

The bank also conjoined its attack with a law firm, the latter suing the borrower for bankruptcy on the strength of a contrived minor debt. The banks buy or warn off law firms and others.

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> Bank corruption thus poisons the cognate professions - the law, receivers, valuers, real estate agents, bankruptcy trustees, etc.

The courts are the banks' best friend. Judges will grant a bank writ of possession over a customer's home before reposing over a self-satisfied lunch. A contract is a contract, regardless of how corruptly it has been constructed or manipulated (c/f NAB v Lawrence, November 2011). Judges will readily decide for a bank for which they have acted en route to the bench, or in which they hold shares or have a banking relationship. The absence of a register of financial interests facilitates the complicity.

In NAB v Thirup, August 2011, Johnson J handed the Thirups' property to the bank on the preposterous grounds that the Thirups had benefited from the NAB's paying out of the Thirup's existing mortgage. Yet the Thirups are victims of a criminal conspiracy, involving a rogue NAB officer. **The NAB mortgage documents, which the Thirups refused to recognise, contained forged signatures, false information** on the property, and facilitated the disbursement of moneys for the presumed purchase of non-existent earthmoving equipment.

Bank victims rarely get redress. The Financial Ombudsman Service is an inappropriate instrument for small business/mortgagor complainants. The FOS lacks enforcement powers, and it is bank-financed, making independence impossible - the power imbalance and bank venality are assumed away. The ombudsman might obtain the odd bank document for victims, but (from cases known to me) the latter waste their time and come away with nothing.

Business to business unconscionable conduct was legislated into the Trade Practices Act in 1998 (s.51AC). Responsibility for unconscionable conduct in financial services was handed to the Australian Securities & Investments Commission beginning March 2002 (s.12CC of the ASIC Act), following the Wallis financial system inquiry.

No litigation against a bank has yet been pursued under these provisions. ASIC tells complainants to go away (I have copies of correspondence). ASIC lacks commitment to and competence in unconscionable conduct, responsibility for which should be returned to the Australian Competition & Consumer Commission.

Treasury and the Treasurer's office care only about bank stability, not bank integrity.

> Some Members of Parliament are regular recipients of bank victim stories. But the party bosses will not touch bank power.

It is long overdue that those in political authority confronted that bank malpractice is systemic, and that they acquire some moral fibre in addressing this continuing scandal.

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