Anthony Thomas Rigg

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Committee Secretary,

Parliamentary Joint Committee on Corporations and Financial Services,

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**The impairment of customer loans.**

I desire to make a submission to the committee and give evidence.

The submission is in the nature of allegations, with supporting documentary evidence. The allegations, in summary and by way of reference to the Committee's terms of reference are as follows.

The Commonwealth Bank defrauded us

The Commonwealth Bank of Australia deliberately engineered us into default, following which the bank sold our industrial and residential properties cheaply to bank staff mates and had us bankrupted so that we could not fight back.

In our case, the default was not initially triggered by fraudulent re-valuations of our assets. Rather, the default was engineered over several years, set in place from the beginning of the relationship, by the systematic plundering of our income via charges that remained unspecified and for which the bank refused to explain or render account.

However, following the engineered default, the bank obtained several valuations from the same company for our factory complex, ridiculous under-estimates, which complemented the bank's sale of the complex significantly under value. The bank also sold our house significantly under value.

Our case is outlined at length in my submission to the 1991 Martin banking inquiry, published as: House of Representatives Standing Committee on Finance and Public Administration, submissions authorised, Volume 13, pp. 3477 – 3626.

Regarding our experience with the Commonwealth Bank and the context, a brief summary was read into Hansard by Senator Paul McLean on 23 August 1990 (along with two other contemporary cases of Commonwealth Bank malpractice against small businesses).

Our case is also referred to by Senator McLean in the Senate, 23 August 1990, 13 September 1990 and 14 September 1990.

Probably the most informative summary of our case was rendered by Dennis Stevenson, then Independent member of the ACT Parliament, in the ACT Parliament, 7 December 1994, pp. 4170-75. That account is not available on the web, but is available on request.

If The Committee wishes to read more of our case, the Committee can google Tony Rigg vs Commonwealth Bank, which includes photos of some of the buildings we supplied and erected and a photo of the house we built in Singapore as a demonstration of Australian expertise in steel house framing.

Our business history, briefly

Our business began in Nowra in 1972 as a welding business. Gradually, the business moved into steel frame manufacture for residential, commercial and farm buildings. By 1985, it had become one of the most significant and innovative manufacturing business in this field in Australia, employing 15 people and with a turnover of nearly $1 million. We had developed a very productive relationship with BHP subsidiary Lysaght out of Port Kembla.

With support from Austrade, Lysaghts, BHP and others we built a house in Singapore as a demonstration in steel house framing. Austrade advertised our business in a magazine called *What's New in Building*. The magazine was printed in Singapore and distributed throughout ASIA. As a result we had inquiries from companies in 33 countries. This is why we needed a bigger factory to cope with orders.

Our company would have been of great benefit to the local community of Nowra and to the Australian economy more generally. The CBA's own files acknowledge that we would have been an exporter and joint venturer.

One of our apprentices topped the State for 2 years in roof plumbing. Today we would have employed more apprentices and produced more tradesmen. Yet the Shoalhaven has an ongoing high unemployment rate and high youth unemployment.

With the prospects of a significant increase in business we approached the CBA with the view to them financing a larger factory on a large parcel of land that we had purchased in a suitably located light industrial area on the Princes Highway, South Nowra.

At this early stage, the bank itself was extremely supportive. This from a memo from a Nowra branch manager to the Regional manager, 6 May 1985:

> "Mr Rigg has proven management ability and the company has shown that it can operate profitably … the arrangement with Lysaght Brownbuilt Industries and the assistance of the Department of Trade should ensure that lucrative overseas markets should open up. There have already been a number of interested parties from overseas countries expressing an interest in the product … The overall project is considered viable as it will be the only warehouse of its type south of Wollongong where the majority building trades will be represented. The complex will be open seven days a week … the industrial units will be under cover … tradesmen will always be on hand to give expert advice rather than just sales personnel."

The memo also expressed enthusiasm about the likelihood of expanded commercial lending opportunities for the branch given the local network that the Riggs enjoyed.

The Commonwealth Bank loan

In June 1985 my wife and I arranged a loan CBA Nowra. We were given a commercial bill facility of $485,000 and an overdraft of $40,000, to build our factory to make steel house frames, factories, machinery sheds on a supply only or supply and build basis. The bank took our new factory site, our previous factory and personal guarantees as security for the loan. We owned the property at 158-160 Princes Highway, South Nowra.

In April 1986, the bill facility was replaced by two bill facilities totalling $750,000. The increased debt, agreed upon, was due to cost over-runs, largely due to an unfortunate coincidence of three month's rain during the site preparation period.

It is important to note that the bill facility/facilities was in the names of Anthony Thomas and at 5-6% interest. The overdraft was for a separate company account under the name Tony Rigg Welding & Manufacturing Pty Ltd.

Without our knowledge the Commonwealth Bank immediately allocated the bill facility, negotiated in our personal names, to our company account. The first time we knew about it was when we needed funds to pay the sub-contractors when we were building our factory.

I complained immediately to lending officer at the bank (first drawdown July August 1985). told me it is easier while the factory is being built and he would change the account to our names when our factory was finished. The bank subsequently refused to change the account back into our names even though our company was a separate legal identity.

The bank then proceeded to charge to the company account astronomical interest charges, two advisers estimated the rates at about 50% interest, as well as fees associated with the bills and bill rollovers. We could never get an honest answer nor accurate documentation as to what was going on. We have been denied key documentation for the entire length of the bill facilities to this day.

In all, we had a succession of 34 bill facilities – this over a period of a mere 2 ½ years. This endless turnover of bills was entirely at the discretion of the bank – we had no control over it.

The bank evidently used this turnover as a further means of loading its fee charges and further draining our company account, increasing the deficit way over the account's agreed limit.

We were also hampered by the fact that we had always previously had good relationships with the banks with which we did business, in particular the State Bank of NSW. We had an implicit trust in banks, expecting honesty and professionalism, and we were desperately trying to work out why we were being treated as we were.

The bank ceased to roll over the bill facility (of which we were uninformed) just before Christmas 1987. We were put into default sometime in early 1988.

After we had been put into default, I wrote to the CBA Nowra manager ( superior) on the 20 June 1988 and asked the bank – could you tell us what authority your bank had to transfer the interest from our private investment in the name of A T and Rigg to our company in the name of Tony Rigg Welding and Manufacturing Pty. Ltd.? The reply, 20 June1988, from was:

> "In response to your correspondence of 20 June, we are unable to answer your first inquiry as we are unaware of any interest transferred from private investment in your names to Tony Rigg Welding and Manufacturing Pty. Limited."

This was a transparent lie.

Regarding our bill facility, we belatedly confronted that the Commercial Bills were not negotiated on the open money market. In accordance with the Bill of Exchange Act, if the Commercial Bills are not negotiated on the open money market it is fraud. The bank kept the commission which should formally have been paid to the Acceptor of the Commercial Bill on the open money market.

In particular, we later discovered that the bank forged my wife's signature on the last Commercial Bill for $750,000, dated 20 November 1987. (That bill 'matured' on 22 December, on which we were not advised, and there were no future rollovers.) The bank refused to produce the original Commercial Bill on subpoena. The Bill was held at Minto, NSW. The bill has her signature on it, but she didn't sign it. Thus a forgery.

The bank changed the account back when it suited the bank in February 1989, so that they could pursue us for the claimed debt. Prior to hearing the case on legal advice of Legal Counsel, the Bank reversed the $750,000 on 3 February 1989 from the company account for which the provision for loss was established (letter from Regional Manager (Canberra) to Head Office, 21 May 1990, confirms). The bank then served letters of demand for the claimed debt on my wife and I in the same month of February 1989.

When we were forced into litigation in 1989, a Commonwealth Bank lawyer faxed to our lawyers and said, all the evidence you have subpoenaed is irrelevant. That was from day 1. Then justice , giving summary judgement to the bank for the claimed debt of $1.215 million (Rigg v CBA, NSWSC, 19 April 1989), struck out our subpoenas, denied us access to

critical documents on discovery, denied us evidence on a NOTICE to PRODUCE to demonstrate that we were never in default on the bank's own files.

The NSW Court of Appeal ( , 24 October 1989) confirmed summary judgement decision. The pattern was the same all through our case – we were denied evidence.

It is important to emphasise the state of play. Two judgements were given against us, first in Trial then on Appeal, for which we had access to no bank documentation whatsoever of the grounds and process by which we were defaulted. The courts gave the bank the claimed sum of $1.215 million. That has to be compared to the sum borrowed of $790,000 in June 1986. Between June 1986 and April 1989 – two years 10 months – the claimed debt had been increased by $425,000, an increased of 54%!

The Settlement Agreement

We were forced into signing a SETTLEMENT AGREEMENT on the 23 November 1989 to pay the bank $980,000 in two instalments. The same goes for the settlement agreement regarding the complete lack of relevant documentation available to us.

We had no choice but to sign the Settlement Agreement as the bank had engineered us into a corner so we had no way out but to sign the agreement under duress. A bank lawyer wrote it –

The ruthlessness of the bank is reflected in the fact that the Settlement Agreement forced on us a grovelling public apology to the Commonwealth Bank Staff which appeared in the Nowra News and South Coast Register on page 3 as a half page advertisement.

The business was returned to our hands, if briefly. The bank imposed an impossible time frame to renegotiate alternative finance. We had arranged promising alternative finance.

But, apart from the ridiculous time frame, the bank threw up other obstacles. The receiver had not maintained the leases of our factory complex, and new and long term leasings had to be arranged (and during the Christmas/holiday break) to satisfy a prospective lender. Also, the bank's in-house solicitor refused (letter, 23 January 1990) to permit prospective lenders to access material outlining the deterioration of the bank-Rigg relationship and that would also provide evidence of the then state of our assets and liabilities which was a crucial basis without which a prospective lender could not proceed.

It was perfectly clear that the bank was determined to prevent us obtaining alternative finance to get our business back onto a sure footing and thus to destroy out business.

In addition, a former lawyer of ours, , phoned me and told me that the Commonwealth Bank Manager was demanding an additional $80,000 to settle. We have in our possession a note penned (no date) by , another sometime lawyer for us and known to , indicating that ' phoned and demanded additional $80,000'.

This was in November 1989. This was outside the Terms of Settlement. When was Cross Examined at our 5 day hearing in the Supreme Court of NSW claimed that he could not remember phoning me about the $80,000 demand. I believe that this spurious claim of the bank constitutes extortion, pure and simple.

'Troublesome' interest rates

We belatedly obtained copies of some bank documents that allowed us partial insight into the corrupt process by which we were defaulted and sold up.

Memoranda from the Regional Office (Canberra) in May 1990 disclose that the bill facility debt had been transferred out of the Rigg company account in February 1989. The debt had been transferred to a branch suspense account and the bank was not profiting to the maximum from this transfer. Directions were given to convert the debt ('matured bill') to a fully drawn loan. A memo of 21 May 1990 notes:

> "Obviously, no interest has been charged against the amount since 3 February 1989 and the bank has not obtained the taxation benefits due."

A memo of 17 May 1990 instructs the branch:

> "Apply troublesome interest rate."

This memo also notes:

> "… it is an internal accounting matter however no advice is to be provided to the Riggs. Please ensure that statements etc are not issued to them but rather are to be forwarded to your branch for your personal attention and filing."

The 21 May memo discloses that the 'troublesome interest rate' was to be set retrospectively, starting at 22% and rising to 25.5%. Interest calculated at the proposed rates results in the figure of $271,412, over a period of a mere 15 months, to be added to the claimed debt owing at May 1990.

The bank imposed discretionary penalty interest rates on us, at an unprecedented level. The use of the word 'troublesome' is telling. This is a key indication of a fraudulent act. The only conclusion can be that the bank aimed to destroy our business and to drive us to bankruptcy, not merely making us penniless but also preventing us from taking legal action against them.

A letter from the CBA's legal department on 29 October 1999 (in answer to our query), claims that, as at May 1993 (in the lead up to the attempted sale by the bank of our repossessed factory), the claimed amount owing was $1,457,541, made of principal of $980,000, interest of $518,762, less rent received of $41,221. The so-called 'principal' itself includes interest at discretionary rates previously imposed.

In the period of 5 ½ years since the bank declined to roll over the bill facility in December 1987, the claimed debt has risen to almost double the original loan.

The rents from our factory units were paid into a ‘No. 2 account’ in our company name without our knowledge. A bank statement was sent to us by mistake. It had about $42,964.90 in that account at that time, 14 January 1990, but increased to $96,853.38 on 14 June 1993. I tried to get the money from the bank as it was of course our money. Bank staff member refused to give us the money. As we had been defaulted by this stage, and a debt total fabricated by imposition of the outrageous ‘troublesome’ interest rates, the bank was stealing our rental income to offset the manufactured debt total.

We knew nothing about the imposition of the massive penalty interest charges at the time the Settlement Agreement was signed, nor those imposed since. We still do not know the amount of interest we were paying at the time, or even now. As the 17 May 1990 memo indicates, we were explicitly to be kept in the dark.

In essence, if all the illegal charges were removed from the company account it would demonstrate that we were never in default and would have probably paid the loan out.

Sale of factory and site

(This is the following section are relevant to Terms of Reference 1 a & 2 d.)

The Commonwealth Bank valued our factory at $ 1.3 million on the 30.6.85.

During the process of seeking alternative finance, subsequent to the late 1989 Settlement Agreement, we obtained two valuations in January 1990, both from local specialists familiar with the area. valued the property at $1.1 million. (the agent for the factory rental units, familiar with its occupants), valued our factory at $1.3 to 1.4 million.

The Commonwealth Bank sold our factory for $725,000 28 June 1994. It was a fire sale.

The bank obtained two valuations of the property from , for $675,000 (12 February 1993) and $680,000 (18 April 1994). Apart from the fact that the Receiver had let the property run down and not renewed leasing (nor paid rates and insurance), these valuations were laughable.

We had had imposed a caveat on the factory title in May 1993, and a bank diary note (written by a Senior Recovery Officer) of 11 March 1993 highlights the subterfuge by which the bank was operating to evade that caveat and to destroy us. The note reads:

> “In view of Rigg’s efforts, it is now proposed that we pursue strategies outlined in GCPC paper 22/2/93 immediately rather than wait for auction to occur. These strategies basically are:
>
> 1. Sale of security 3 [i.e. our home] to proceed, [In pencil] which will necessitate possession/eviction.
>
> 2. Bankruptcy of Mr and Mrs Rigg.”

Under these words, a superior has written:

> "Action supported. Branch to be advised of the above as Rigg will become more active in his campaign. Prepare/retrieve history etc to enable us to brief H/O quickly should it become necessary."

Of relevance is a memorandum for General Manager, State Administration NSW , from , Team Leader, NSW Lending Services, 12 April 1994. This memo is part of the bank's preparations for the property sale. gives an entirely sanitised version of the bank-Rigg relationship, omitting the bank's responsibility for the destroying of our business and the impending forced sale of our factory and site.

bought our property by PRIVATE TREATY SALE. The Directors are worked at the Commonwealth Bank in Nowra at the time.

I had a chance meeting with , a Financial Adviser in Nowra. told me that phoned him and said he had been offered our factory by Real Estate in Nowra for $725,000.

The Commonwealth Bank Memorandum to Mortgage T340042, Registered with ASIC, is quite clear. It states that when a receiver is appointed the property must be auctioned. Our property was not auctioned. In fact no FOR SALE signs were ever placed on the property.

After the receiver was appointed by the Commonwealth Bank I phoned at the bank in Nowra to get a copy of the appointment of the receiver. He said to me OK because we have you by the balls. The document was not signed. The receiver was Real Estate in Nowra.

admitted in hearings before in the Supreme Court of NSW, in November 1999, that the purchasers of our factory were family friends of and himself. was the Licensee of in Nowra and was the manager at in Nowra.

received commissions for selling our property to

The Receiver, , refused to answer letters from our lawyers. The Commonwealth Bank Memorandum to Mortgage T340042 is quite clear (as is the general law). If a receiver is appointed by the bank the receiver acts for the Mortgagor – that means my wife and me. admitted in court that he took instructions from the Commonwealth Bank.

We knew nothing about the Memo to Mortgage T 340042 until we were in litigation, but the Memo was used against us in court. The Memo was added to the contract after we had signed the contract. Is this legal?

We lost in court before Judge (CBA v Rigg, NSWSC 9, 1 February 2000) who, as with Justice in April 1989, uncritically took CBA bought valuations as gospel. We had a 5 day hearing in the Supreme Court in Sydney in November 1999, during which my

wife and I gave evidence. Austrade and BHP subsidiary Lysaght also gave evidence on our behalf.

gave judgement for the bank for $1.041 million on the grounds that we had failed to repay the $980,000 (plus accumulated interest) as per the 1989 Settlement Agreement. The bank sold our factory and site for $725,000 in 1994 (acknowledged by Brownie) but the bank's endless escalation of the claimed debt had never been questioned by a succession of judges.

The manufactured debt level was a vehicle to claim not merely the factory but also our family home.

Forced sale of our repossessed family home

We were tricked into signing our family home over to the bank for more security in 1987. If the bank had abided by the contracts we signed there would have been no need for more security as the income from our building and manufacturing business and the income from the factory units was more than ample to pay off the loan.

A letter to the Sheriff to evict us from our family home was dated 19 October 1999. After our attempt to have the eviction order overturned in court was rejected, we were ordered by the Sheriff on 15 March 2000 to vacate our home. We were evicted from our home on the 24 March 2000 at 12 Noon by Sheriff .

Our family home at
eal Estate in Nowra and Rural Real Estate in Sydney by a private deal, which compounded the fraud.

The house was sold for $187,000. It was a fire sale. The house was definitely worth well over $300,000.

The Commonwealth Bank then leased our home from Real estate in Nowra on 25 November 2000, to be used as a residence for bank staff, which I understand is contrary to the rule in Keech v Sandford.

Complicity of local authorities with the bank

We also have a document from the Shoalhaven City Council which proves that the Council was working for the Commonwealth Bank against us. A man called at our home and said we have not paid the excess water rates. We said we know nothing about it. He handed my wife a letter from Council. The address on the letter is A T and Rigg / , Manager Debt recovery, Commonwealth Bank, Sydney. We do not know who authorised the Council to send our rate notices to the bank.

The Commonwealth Bank Manager in Nowra at the time was . He had me arrested and charged with 'Remain on Enclosed Lands' in the public car park of our factory complex on the24 June 1993. I was taken away in a Police Paddy Wagon. I was charged and then released on bail. My lawyer at the time, , said at the last minute that he was

too busy to represent me in court. So I represented myself. I cross-examined witnesses, including the Police Officer who had arrested me on the 24 June 1993. The property was not enclosed. I proved that the property was not enclosed using photographs.

I was found guilty by Magistrate although the Police Officer changed his story under oath in the witness box and his Statement of Fact was false. I believe the Police Officer committed perjury. I appealed the Guilty verdict and had my Appeal stood over for over 9 years while our civil action was proceeding. Finally on the 28 November 2003 I was called into court, and the DPP dismissed the charge without my Appeal being heard. His Honour said to me, "Wow Mr. Rigg, it is the longest running Appeal in District Court History and now the DPP has dismissed the charge of 'Remain on Enclosed Lands'. His Honour said that the Magistrate was wrong.

Bankruptcy and ongoing harassment

The Commonwealth Bank had us bankrupted. We received documents from the Insolvency and Trustee Service of Australia (ITSA). We filled the documents in, but did not send them to ITSA. If we had that would have been an admission that we are bankrupt. How could we be bankrupt as the bank did not abide by the contracts we had signed. We then received letters from ITSA saying as we have not returned the documents we will be charged 5 points at $100 a point in accordance with Section 4aa of the Crimes Act 1914 and our bankruptcy may go on longer. I wrote to ITSA explaining what had happened and ask ITSA for help. There was no reply from ITSA. We did not pay the fine and the bankruptcy did not go on longer. The bankruptcy was for 3 years.

I received a letter from on the 10 November 2003, a debt collection agency, to pay about $10,000 dollars. It was a Credit Card debt that we knew nothing about. That evening a lady phoned me demanding payment of the debt. I sent evidence to explaining that the Commonwealth Bank had bankrupted us. Subsequently, withdrew from any action.

Summation

If the bank had abided by the contracts we had signed, today we would have been a major employer and exporter.

We have never been able to understand why the bank set about to destroy out business (and ruin our lives). Especially when Nowra branch staff were so initially enthusiastic about obtaining our businesss. A senior BHP manager, with whom we have developed a close commercial relationship, was of the opinion that the bank did the bidding of the timber industry, which was terrified that steel frame buildings would dramatically undercut that industry's reliable profits from the construction industry, especially in residential housing. The timber industry was at that time putting out stories that one could get readily electrocuted in a steel frame house. This suggestion, that a bank would act to destroy a business in the

interests of other businesses and customers, is not far-fetched, as it has occurred on other occasions.

The nature of the fraud perpetrated against us is summarised in a 10 page documents submitted to the High Court of Australia Sydney Office Registry, File No.S271of 2001, Anthony Thomas Rigg and v The Commonwealth Bank of Australia. This document was in support of an application for special leave to appeal from the full court of the Federal Court 271/2001, heard 5th November 2001, delivered Sydney 9th November 2001.

Most of the points 1 to 38 formally carry a prison sentence for the bank staff and others. The practices outlined in point 1 to 38 are all contrary to the Commonwealth Crimes Act but are also in breach of the Commonwealth Criminal Code 1994 as in effect in 2001.

As we noted in that document (p.7):

> "And yet despite all these matters being in evidence before the Full Court of the Federal Court, in effect they said that there was no evidence of fraud nor can we find any basis to say the primary judge was wrong and we can find no basis for going behind the judgment.
>
> "The transcript of the appeal discloses that the thinking of this court (by questions to counsel) was in effect, even if there was a history of malpractice, it doesn't matter because you apparently borrowed the money, that's your fault, if you didn't repay. The fraud commenced the day the Riggs signed the contract in June 1985."

I could expand this document a great deal but I feel there is enough evidence for the committee to read which includes the Hansard and other evidence.

IT IS MOST IMPORTANT THAT I GIVE **VERBAL EVIDENCE** TO THE INQUIRY WITH DOCUMENTARY EVIDENCE TO EXPLAIN IN DETAIL HOW WE WERE ENGINEERED INTO A POSITION SO THE COMMONWEALTH BANK COULD SELL OUR PROPERTIES TO THE CBA MATES AT ABOUT HALF THE REAL VALUE.

I will bring the documents I have mentioned and bring more for the committess perusal.

Faithfully, Anthony Thomas Rigg