Dr. Evan Jones 7 April 2014

In mid-March I sent a long letter to Ken Henry, now a non-executive Director on the Board of the National Australia Bank.

Henry had a long and distinguished career as a public service official, with an interlude period advising Treasurer Paul Keating (especially on tax matters), and ending as Secretary of the federal Treasury, 2001-11. His Wikipedia entry charts his stellar career.

Henry resigned from his Secretarial position in March 2011 and was appointed to the NAB Board on 1 November 2011. At the time that Henry's appointment was announced, Henry was also employed by the Gillard Government to head a review of Australia's relationship with Asia. The Coalition raised the issue of a potentialconflict of interest, with Henry simultaneously as well-remunerated government adviser and corporate Board member. The accusation was deflected and Henry continued in both roles until the review was released in mid 2012 titled 'Australia in the Asian Century'.

My letter was spurred by what I consider to be a conflict of interest, but it is of a different order.

There was some suggestion at the time of Henry's appointment to the NAB Board that he might readily be appointed as NAB Board Chairman. A precedent had already been set. As noted in the same article citing Henry's denial of a conflict of interest:

Dr Henry's move into the corporate sector follows the rise of Ted Evans, one of his predecessors as Treasury secretary, to the role of Westpac chairman. David Morgan, another senior ex-Treasury bureaucrat, became chief executive of Westpac. It was "no

coincidence", Dr Henry said, both men were "very close mentors of mine for a long time".

My letter was sent to the mailing address for Henry as is required by and supplied to the Australian Stock Exchange for all company Directors. The letter was returned to sender, marked 'Left Address/Unknown.' Strange. A case of the uncontactable Board Director. By default, my letter is sent, via the web, to Mr Henry, and to all interested parties – not least the myriad victims of our illustrious and highly profitable banking sector. Its contents are publicised in the public interest.

Ken Henry

Board Director, National Australia Bank

Address

13 March 2014

Dear Ken Henry

I am a retired academic who, by chance, has become a repository of accounts by people claiming to be victims of foul play by their bank lenders. The people who contact me are not your bread-and-butter home mortgagors, but small business people and family farmers. In all but a couple of such stories I have judged the writers' self-description as 'victims' to be an appropriate attribution. I have subsequently written

case studies and general accounts of such stories, and in turn receive more accounts from more victims. The situation began in 2000, and it is ongoing.

These people write to me, an inconsequential outsider, as a last resort because they have been treated cavalierly by their elected Representatives, have been told to go away by ASIC and/or have been churned up and swallowed (with rare exceptions) by the compromised Financial Ombudsman Service. And of course, possibly brutalised in an unforgiving court system in which money buys justice. I have ready many court judgments to that effect.

I have written many submissions to Parliamentary Inquiries, typically held in camera ('Confidential') and their contents ignored (albeit my submission to the current ASIC Inquiry has atypically been made public). I have written numerous letters to people in authority (regulators, Members of Parliament), to be perennially brushed aside.

The accounts that I have received sum to a serious indictment of the Australian banking sector in its (what I label) unconscionable and/or fraudulent treatment of SME/farmer borrowers. The character and substantial extent of this phenomenon is unknown or poorly understand because the media (with very rare exceptions) will no longer touch the subject.

The National Australia Bank is the most consistent perpetrator of malpractice against SME/farmer borrowers. This has been so since the mid-1980s. Having the largest market share of these sectors may have assisted in this supremacy.

NAB's adverse culture (not reformed after the 2003 trading desk debacle) is well epitomised in its UK subsidiaries Clydesdale-Yorkshire.

Apart from ongoing bouts of monumental incompetence (reflected in the disastrous attempt to move south), one has bouts of monumental unconscionabiliity – reflected most recently in the embedding of interest rate swaps into SME/farmer mortgages (in the process harassing and marginalising competent and committed staff). The accumulation of these latter peccadilloes has thus resulted in the creation of the NAB

Customer Support Group, which appears to be getting some leverage from Parliamentarians. Has anybody at Head Office discerned the underlying problems?

Admittedly, the CBA is competing with the NAB for the top spot on domestic soil, but Westpac and the ANZ are not immune from temptation – all of the Big 4 are in on the racket. The second tier (Bendigo, Bank of Queensland) have observed the scene (helped by the hiring of Big 4 personnel) and have joined the game.

I wrote to CEO Clyne in July 2010 regarding my estimation of the information in my possession. I offered the opinion that with a re-distribution of the massive resources devoted to advertising and public relations to a revamping of the culture and competence of its SME/farmer lending apparatus, the NAB could then deservedly cement its place indefinitely in these significant sectors. Clyne replied, via a flunkey, that my views are misled and that everything was in perfect working order. Laughable.

Not that Clyne is directing the show. He merely condones the continuance of the underbelly of the NAB's operations. He is aware of some of its dimensions, as particular victims contact him directly. Water off a duck's back.

The adverse implications of major bank malpractice in Australia are significant. The financial and psychic loss to the victims is large-scale and dramatic. Why would anybody start a small business in Australia when the competence and integrity of its bank lender is in doubt? As I have written elsewhere, the power imbalance between bank lender and SME borrower is immense – the bank lender, with all borrower assets (including the family residence, often of that of relatives) taken as security, has the power of life and death over the borrower. The victims, who had entered the lender/borrower relationship in trust, perennially discover in bitterness that that trust was misplaced.

The NAB is amongst the most significant spenders on advertising and PR of any corporate in Australia. I can only infer that a good deal of this spending is incurred precisely to hide the ugly dimensions of its operations – more, to inhibit 'adverse' regulatory and political action against its freedom to behave unethically and unconscionably.

Getting major public figures on board is part of the bank's PR. Thus Steve Bracks (hence the sponsorship of the Melbourne Commonwealth Games). Thus Tim Costello, as co-chair of the bank's 'Social Responsibility Advisory Council'. I have emailed Costello twice (via World Vision Australia) to the effect that the bank's questionable activities have leveraged but compromised his status – to no effect. Thus yourself.

The NAB hired Arthur Sinodinos for over four years until a Senate seat became vacant, during which part of that time Sinodinos was a senior functionary in the Liberal Party. (Don Argus helped bankroll the Liberal Party's victory in 1996.) In his first significant role as Assistant Treasurer in the Coalition Government, Sinodinos has presided over the move to emasculate Labor's overdue financial advisor reforms. Major beneficiaries of this emasculation will be the banks via their (so-called)

wealth management arms. Do the banks now have their own Minister at the heart of government? A disgraceful attempted policy roll-back and a disgraceful conflict of interest.

David Morgan set the scene, albeit in the reverse direction. As relevant Deputy Secretary during the 1980s, Morgan sat on his bum at Treasury […] while the immoderately deregulated finance sector exploded then imploded. In particular, no-one in Treasury nor the RBA lifted a finger to confront the foreign currency loan scandal. The corrupt activity of the still publically owned Commonwealth Bank was met with silence from Treasury.

In 1990, having contributed to facilitating the ‘recession we had to have’, Morgan jumped ship to Westpac, the bank riddled with excess, incompetence and venality, indeed criminality (witness the 1987 Westpac Letters and the bank’s response to their disclosure in early 1991). Although Morgan was for some years in ancillary managerial roles, he continued with employment in a bank which continued to eschew all responsibility for its active flogging of the poisoned foreign currency loan facility and which continued to attempt to destroy remaining FCL litigants during the 1990s. (I am currently writing an article on the utterly corrupt means by which Westpac won on appeal over Potts in 1991/92, thus stemming the string of adverse court judgments against the bank in FCL cases.) Moreover, Morgan continued to repel some dogged FCL victims after he became CEO. Bread-and-butter malpractice against SMEs continued under his rein (albeit subdued compared to the NAB and CBA) and continues to this day. Meanwhile Morgan erected a gossamer ‘corporate social responsibility’ apparatus, of no substantive significance whatsoever.

Roland Wilson [Secretary of the federal Treasury, 1951-66] would have been appalled. Upon his retirement Wilson sat on some boards of then

public authorities, but the quintessential public servant remained serving the public interest until the end.

I would have thought that your acceptance of a Directorship with the NAB (ditto Morgan and Ted Evans at Westpac) has compromised the role of the federal Treasury in its ultimate responsibility for finance sector regulation. Is it not possible that rising stars in Treasury would contemplate the prospects of an attractive future with a major bank and would thus then consider it impolitic to question ongoing dysfunctionality and failures of the current laissez-faire approach to banking sector 'regulation'? (APRA's prudential orientation has never been adequate.)

(By way of close parallels, for example, the current failure of French governing circles to circumscribe bank hegemony, in the face of that sector's central contribution to the GFC and subsequent state indebtedness, is integrally linked to the disarticulation and corruption of France's once imperious Finance Ministry by rampant 'revolving door-ism'. The situation is not dissimilar in other European capitals and, of course, in the belly of the beast – the US itself.)

I note in particular the testimony of Jim Murphy during the hearings of the Senate Economics Committee 'Post-GFC Banking Inquiry', 8 August 2012. That Inquiry was established following pressure from victims of the CBA's corrupt default of hundreds of BankWest borrowers soon after the former took over the latter in late 2008. The Terms of Reference were watered down (and the ensuing worthless Report reflected the cynicism of the whole exercise) but the Committee members (and the interested public inclined to read the submissions and hearing transcripts) were exposed to the nature of CBA corruption and its ugly consequences. Murphy had the temerity to claim that this transparent criminality had nothing to do with the regulatory apparatus,

at which centre sits the federal Treasury. It is a matter for the courts, he said. Contemptible.

It is not irrelevant that the regulators and the then Government itself facilitated and endorsed the CBA takeover of BankWest (not least via a corrupted ACCC determination), with the CBA a private vehicle for the public interest. Having been given the privilege, the CBA denied any responsibility for the public interest while the authorities retreated behind closed doors. Murphy's public utterances show the now irrelevance that is the federal Treasury in serving the public interest in matters of financial sector regulation. (And the pending review of the sector, overseen by someone who both contributed to and has been a beneficiary of banking sector dysfunctionality, will mean more of the same.)

Even given the media's silence, I'm surprised that Board members could be oblivious of the NAB's ongoing bastardry towards selected SME/farmer customers.

Submission #286 to the ASIC Inquiry is representative of the NAB's insouciance and indifference to productive lender/borrower relationships. However, the extent of the bank's perfidy in this case has not been elaborated on in the submission itself.

You would be aware of the Priestley sibling farmer case, because Claire Priestley sent material to all Board members in January 2013. The Priestley's particular concern is the strategic activities of the major banks to emasculate the 2003 revisions of the Code of Banking Practice (when the Code was formally extended beyond retail customers), in which process the NAB had an active role.

The NAB has form in this regard. Then CEO Argus was a key player in attempting to ensure that neither the fledgling Banking Ombudsman scheme nor the mooted Code of Banking Practice would have any teeth. This in the context where the Labor Government, in the wake of the 1991 Martin Inquiry, offered to the banks a way out of re-regulation if they were to introduce meaningful measures of self-regulation, aka the Ombudsman scheme and the Code. The banks broke their part of the bargain, and thus opening the way to the current absolute power through which the Big 4 rule their domain.

The Priestleys made several submissions to the current Senate Economics Committee ASIC Inquiry, to which the NAB, by invitation, responded with a statement marked by its dishonesty.

I mention only one pertinent dimension of the Priestley story. The bank sold the Priestley farming aggregation in mid-October 2013. The Priestleys were left completely in the dark regarding developments, in spite of repeated requests for information. Belatedly, almost five months later, the NAB's solicitors informed the Priestleys, in a letter dated 11 March 2014, of the bare details of the sale (albeit with some important details omitted). In the meantime, Claire Priestley's attempts to access financial assistance through Centrelink were thwarted because she could not show to Centrelink proof of the foreclosure and sale of the farms. Pure sadism on the NAB's part.

One could recount any of innumerable cases of NAB malpractice. Two will suffice here.

One. The NAB initiated a summary judgment plea against a couple in July/August 2011 for possession of their residence as security for mortgage default. This is the public face of a criminal scam of substantial proportions and of extraordinary duplicity, from which the

NAB was happy to benefit and the courts happy to oblige. The NAB has since taken possession.

[The second case outlined remains presently under wraps.]

And so on and so on.

One needs to be reminded of the social and political implications of bank corruption.

Systemic bank corruption (for that's what it is) further corrupts cognate sectors. It corrupts the legal profession (most firms are desperate to get on the bank drip, and those that aren't are bought off or warned off when they front for bank victims); it corrupts the judiciary itself. Indeed, one State Chief Justice has shown himself to be partial to making judgments for banks, especially more recently for the NAB itself, the bank which the judge has admitted to having as his personal banker.

Bank corruption also corrupts the receiver/insolvency sector, the valuer sector, (on the margin) the real estate sector, and bankruptcy trustees. The police themselves are loathe to go near it. As for the pollies …

The costs to the fisc, over which Treasury/Finance presides, are not insignificant. The publically funded court system is overloaded with bank litigation, the magnitude enhanced because the regulators (notably the bloated ASIC) are missing in action. Exhibit A in this regard is the courts recently being clogged with separate litigation from the CBA's aforementioned default of some 900 BankWest borrowers – all occurring at public expense because all relevant authorities have abjured involvement in a caustic environment that they helped to create in the first place.

More, the banks regularly manufacture a residual debt due from defaulted and foreclosed borrowers (unconscionable penalty interest rates, receiver expropriations, sale of borrower assets under value, etc.) – the Priestley foreclosure provides an instance of this phenomenon. This artifice facilitates the banks' pursuit of the foreclosed customer to bankruptcy, thus precluding further litigation from the victim. But it also generates a 'bad debt' which is then written off from bank earnings. The tax-paying public picks up the tab. (APRA of course leaves the determination of bad debts entirely to the banks' discretion, so APRA wouldn't have a clue and, more, doesn't give a damn.)

I am currently privy to some litigation being run in Queensland against a victim of a criminally constructed scam involving a bank lending manager, an ex-bank manager associate of the first, and a pathological mastermind currently in prison. The bank willfully pursuing this hapless individual is not the NAB, but Westpac, albeit the rumour is that the manager and his associate acquired their skills while employed at the NAB. Given the presiding judge's transparent partiality to date (he replaced a previous judge who ruled that Westpac had a case to answer), I have no confidence that the outcome of this litigation in the deeply corrupt Queensland court system will be the appropriate one.

I mention this odd case to highlight that it is representative of a system, evolving from day one with ill-considered financial deregulation, in which the major banks have created an environment in which they are effectively above the law. And almost anything goes.

The carnage out there in the hinterland has occurred and been extended without official acknowledgement and appropriate reaction.

My own view is that your having accepted the position as Director on the NAB's Board puts you in the position of being implicated, if unknowingly, in this unsavoury state of affairs.

In short, given your previous exalted public servant status, I judge that your ongoing position on the Board of the unrepentantly corrupt NAB is untenable.

Sincerely

Evan Jones