

*Excerpt from:*

## **Illusion and Reality at the National Australia Bank Part II**

*Evan Jones - July 2011*

The apex of perfidy [with respect to corrupt practices by the National Australia Bank] known to this author has been the default and foreclosure of Sante Troiani's Bundaberg-based Wide Bay Bricks between 1996 and 2001. (Although the taking down of Brendan Communications in the late 1980s, while lesser in scale, appears to be in the top rank of brutality.) Troiani was induced to move his business to the NAB in late 1993, seduced by an October 1993 NAB 'Ethnic Business Award'. The WBB foreclosure process is labyrinthine, and raises unanswered questions regarding NAB's intent.<sup>1</sup> With the business and considerable other property, Troiani and his wife had assets valued at well over \$50 million dollars. Upon being bankrupted by the NAB, Troiani, an initially penniless migrant, was returned to penury. Here is the classic migrant success story, blown out of the water by a gang that hasn't read the script. The NAB even appropriated two superannuation funds, one serving Troiani personally and one serving WBB staff. Troiani died of overwork in 2007, attempting to scratch a living.

The major beneficiary of the taking down of the innovative Troiani was the latter's competitor, the giant building products company Boral, and with whom NAB then had several Directors in common, including Bruce Watson, then Chairman of Boral's Gas Corporation. Troiani had been using LPG from Boral's new Gladstone supply depot to fire his kilns when he switched from diesel in 1984. The gas supplied persistently suffered from impurities, dramatically impeding production. In 1987 Troiani obtained Premier Joe Bjelke-Petersen as a mediator and Boral subsequently paid WBB compensation, acknowledging culpability. When Troiani joined the NAB, the gas impurities (according to Troiani) returned, but the bank demanded that WBB remain with Boral's gas subsidiary, in spite of the fact that a new competitor had appeared (Elgas), offering cheaper rates. The NAB manager who had been cold-calling Troiani to win his business told the naive Troiani that no relationship existed between the NAB and Boral, when Troiani noted to the manager that any such connection would mean no deal. Boral had also made Troiani an offer to buy WBB, without success.

*[What follows was in a lengthy footnote in the original article:]*

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<sup>1</sup> This complex process is partially detailed in John Salmon & Evan Jones, 'Shadow Ledgers and the Default Process in the Australian Banking Sector', April 2010, p.10ff.

\* The NAB/Boral connection was given provincial media attention in 2005 following a speech on the affair in the Queensland Parliament (22 November) by the Independent Member for Maryborough, Chris Foley. Anon, 'NAB accused of dirty tricks in fall of bricks', Fraser Coast Chronicle, 24 November. The article opens with the statement: 'Australia's biggest bank has been accused of colluding with one of Australia's biggest companies to destroy a Wide Bay business.' A bank spokesman was reported as claiming that the bank "vigorously disputed the portrayal given", and would be providing a 'detailed response to the allegations'. No such detailed response was forthcoming. In reportage the following day, 25 November, a bank spokesman claimed that "All those allegations that the Member has made have been before various courts, state courts of appeal, etc, and have all been thrown out of court." Well this claim is grievously in error. The NAB acquired a summary judgement against Troiani in the Queensland Supreme Court on 19 March 2001, Chief Justice de Jersey presiding. Being a summary judgement, no bank documents were discovered (the receiver had the company documents) and the defense was subsequently frail. Troiani's barrister, husband of a Queensland Supreme Court judge, withdrew almost immediately after accepting the case and Troiani had no choice but to accept his offered replacement. Troiani's new barrister, a colleague of de Jersey, instructed Troiani not to attend the hearing. The transcript of the hearing has been destroyed, and the judgement is not publically available. An appeal by Troiani was thrown out (NAB v Troiani, QCA 196, 6 June 2002), not least because Troiani could not afford to appear before their learned gentlemen of the bench.

\* From the Appeal transcript [Appeal No 3447 of 2001, SCQ-CA No 7759 of 2000, hearing date 10 April 2002, p.33], McPherson JA pontificating: "If you want copies of documents and there seem to be literally hundreds of them, if not thousands in this case, you have to pay for copies of them. [The Troianis are referring to documents of their own business, WBB, withheld from them by the NAB's installed receiver, and to NAB documents relevant to their case.] Now if you can't do that there's no point in our even thinking about setting aside the judgment because after a long trial, which will cost a vast amount of money, you will find yourselves in a position where you haven't proved anything and you won't be able to pay for it. Nobody will act for you unless they have a prospect of being paid. It's just like any business; you don't sell bricks without being sure that you'll be paid for it and the barristers and solicitors are just selling bricks but they don't do it free of charge. ...

"Second Appellant [Mrs Rita Troiani]: Your Honour ...

"McPherson JA: It's no good saying that you won't get justice. You won't get justice unless you're able to pay for the people who can bring it to you, and that's barristers and solicitors."

McPherson's dictum is the flip side of Anatole France's 1894 observation that 'The law, in its majestic equality, forbids the rich as well as the poor to sleep under bridges, to beg in the streets, and to steal bread.' McPherson JA neglected to note that even with 'a vast amount of money' spent on legal assistance, the Troianis were not going to get justice in Queensland. In short, the NAB spokesman, regarding the presumed testing of the Troianis' claims in the court, was being economical with the truth.

\* It is also noteworthy that Boral has form in disliking the phenomenon of competition. Greatest publicity has been afforded the events of the early 1990s recession which led to vicious price competition in Melbourne in concrete masonry products. The ACCC brought a case of misuse of market power against Boral, denied by the Trial judge, reversed on appeal in favour of the ACCC and ultimately denied by the Gleeson High Court, which equated competition to the law of the jungle (*Boral Besser Masonry v ACCC*, HCA 5, 7 February 2003). But the facts are that Boral escalated existing price discounting in early 1993, with the prospects of new entrant C&M soon to be producing from a more efficient plant, with the strategic intent to eliminate competitors (especially C&M) so that when the market returned to normal, stability would prevail. Its scale in the market (market power?) enabled that strategy to be pursued and to succeed. Simultaneously, Boral had been participating in a Brisbane-based concrete cartel, which was successfully prosecuted in 1995. ACCC Chairman Allan Fels called this market fixing "... a particularly blatant cartel in which the suppliers met regularly to share out tenders, to collude on prices for tenders and to ensure that each participant achieved an agreed market share." ('Issues in Competition Law', Speech to the Queensland Press Forum, 12 June 2003.)

In 2009 it came to light that 'Boral managing director Rod Pearse lobbied the federal government to block a rival \$110 million brick-making operation in Perth ... Boral has now admitted it helped generated the community backlash by covertly funding defamatory DVDs and leaflets aimed at stopping the rival brickworks and protecting its status as WA's largest brick manufacturer. The material falsely warned the plant would damage the health of local schoolchildren due to its high level of carcinogens, increase local death rates and become a target for terrorists due to its proximity to Perth Airport, including the phrase "remember 9/11"'. Andrew Burrell, 'Boral's brickbats backfire', *Australian Financial Review*, 30 November 2009. More recently, Boral purchased the largest privately-owned construction materials business in Queensland (analysts thought the price excessive). Significantly, 'The purchase eliminates a cost-cutting competitor and increases Boral's market share in the state'. Philip Wen, 'Boral gets set in Queensland with \$173m buy', *Sydney Morning Herald*, 16 April 2011.