Submission to the Parliamentary Senate Committees on Economics

Inquiry into the post-GFC banking sector.

Justices Act 1886

I acknowledge by virtue of section 110A(5)(c)(ii) of the Justices Act 1886 that:

(1) This written statement by me dated 03/06/2012 and contained in the pages numbered 1 to 7 is true to the best of my knowledge and belief; and

(2) I make this statement knowing that, if it were admitted as evidence, I may be liable to prosecution for stating in it anything that I know is false.

L A J Vogel JP (Qual)

....Signature

Signed at Redcliffe.this.3rd day of June 2010.

Submitted by: Lucas Vogel

Pre GFC Banking Behaviour.

In May 2008 I commenced efforts to refinance my mortgage away from Macquarie Mortgages; the interest rate being charged was approx 2% above current market rates.

I was advised by my financial adviser to make contact with the CBA Aitkenvale Branch, and that they would look after me.

At that time, my income was approximately $45,000 p.a. and my wife and I had engaged in a very limited fashion in some options trading to supplement our income. This additional income never exceeded approx $37,000 and was unlikely to be duplicated given the state of the markets in May 2008.

The refinancing loans were approved and in fact an additional $50,000 was approved for investment purposes making our total borrowings $600,000.

After the engineered default of Storm Financial by the CBA, and the subsequent illegal sell down of my investment portfolio without proper process I started to investigate my loans and in hind sight, how such loans could possibly have been prudently approved.

The responsibility for the Global Financial Crisis (GFC) has been squarely placed on overseas banks that engaged in sub-prime lending. It is now very clear to me that our own local “pillars” were engaged in similar practices here in Australia.

Sadly despite forensic scrutiny of the documentation (or the lack of it), the banks are in denial purely because they can and more importantly they have managed to avoid proper robust scrutiny of their practices.

In essence, they are above the law.

Post GFC Behaviour

I have written several letters and e-mails and made several phone calls to managers and staff within the CBA organisation; stonewalled at every opportunity.

I have engaged in a “Resolution Scheme” with my lawyers and to date the bank remains in full denial of their aberrant behaviour.

The FACTS supported by documentation where it exists or the absence of documentation by the banks own admission follow:

1. The bank made a $600,000 loan to us without a signed application form.
    a. This means we were never afforded the opportunity to check and verify the basis upon which the loan was subsequently approved.
    b. Dependent children (2 of) were not recorded in the banks computer record (or the records were altered) resulting in a reduction in calculable living expenses thus skewing the banks serviceability calculations in favour of the loan approval.
    c. Income was attributed to my non-working wife using the ABN-for-a-day mechanism. This subterfuge had two benefits (to the bank), firstly it improved the apparent serviceability of the loans, and secondly it removed my wife as a dependant thus skew the serviceability calculations further in favour of the loan approval.
    d. The bank holds and relies solely on a Low-Doc declaration form which was supplied blank to my wife for signing. Examination of that document clearly shows two or three distinctly different hand writings, only the signature of which is belonging to my wife. In other words the document was altered post signing. We know this because the income and asset figures entered on that document bear no resemblance to reality and match numbers detailed on a prior date within the banks file notes.

e. “Deemed” income from an investment portfolio was increased from 5% to 8.5% again further skewing the serviceability calculations in favour of loan approval. This amounts to attribution 70% greater than considered prudent by its own guidelines. The kicker is, because it fell outside its own guidelines, the branch staff sought and got approval to increase that attribution yet the bank has stated that it made no difference to its serviceability calculations!

2. The bank made a loan to us without a signed privacy waiver. The ramifications of this are far reaching.
    a. Without a privacy waiver the bank would be in breach of the Privacy Act if it sought to determine our credit worthiness/suitability for and ability to service a loan.
    b. Without a privacy waiver the bank would be in breach of the Banking Code of Practice because it failed to “exercise the care and skill of a prudent and diligent banker” in evaluating the loans.
    c. The bank to date maintains that it did act properly … how is that possible?
3. The Bank failed to determine creditworthiness in that it never sought (despite offers) supporting documentation and proof of our options trading income. Simply put, if they had of received supporting documentation including tax returns for all borrowers the loan would have failed serviceability testing. Further, the supporting documents would not have matched the contrived income figures that had been attributed to my wife.

In essence the bank engaged in fraudulent and illegal behaviour.

All of the above elements point to a bank that was high on profits in the heady days of the pre-GFC era had their snouts so deep in the sub-prime trough that it could not see, and to this date refuses to see, that it did anything wrong.

Why does the bank behave this way? Simply because it can … it is above the law.

Moral Hazard

It appears to the vast majority of Australians that a remarkable shift in moral and basic human rights has been thrust upon us without much if any comment.

How is it defensible that the Australian Government can and did rush to the aid of "The Four Pillars" during the later part of 2008 by guaranteeing funds and borrowings to ensure a fundamentally strong banking system when at the same time those very same banks failed dismally to accord the same latitude to the same "mum and dad" Australians who guaranteed the banks security!

The term for such an imbalance is **Moral Hazard.**

Definition: **Moral hazard** is the prospect that a party insulated from risk may behave differently from the way it would behave if it were fully exposed to the risk.

It must be clear that the bank has engaged in behaviour that can only be labelled as morally hazardous. Above I have identified that the bank did not in spite of poor prudential behaviour expose itself to any real risk.

Coupled together with a Government guarantee underwritten by the Australian general public, it must be clear to all and sundry that the banks have conducted their affairs without regard for their customers or in deed the Australian general public and do not deserve in any way shape or form to be considered with anything other than contempt for the way it and its subsidiaries have behaved now and in the past.

Recommendations

1. I ask Senate to **demand** a ROYAL COMMISSION with broad Terms of Reference. Parliament has held five or six Inquiries into property, banking and finance and we are still holding inquiries. We have not had a Royal Commission, since the Stan Wallis Royal Commission into banking in 1996. Simply put, the need for multiple enquiries is evidentiary of the need for such an enquiry that must delve deeply into bankers conduct. Let's get serious about fixing the problems.

   BANKS MUST NOT BE ALLOWED TO REMAIN ABOVE THE LAW.

2. Documentation & Information

   Ensure that ALL financial institutions are required by law to:

   a. Provide ALL requested documentation in a complete and timely manner
   b. Answer ALL requests for information in a complete and timely manner
   c. To be accountable for provision of a) and b) above.

3. Lender Liability - Ensure through legislation that financial institutions at all levels **are held responsible and liable** for the practices that contravene existing and future laws of the land.

4. Additionally the individuals within the institutions must be held accountable for breaches of their own Code of Conduct and the laws of Australia. These individuals must be financially held to account for their sins. Not one banker would allow a breach of the law if they personally had to pay out of their pockets for their sins.

5. I urge the Inquiry to lobby the Australian Government to order the CBA and other banks to show cause why they should be allowed the privilege of holding a Financial Services license within Australia where breaches of the law are proved.

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