# Submission to the Parliamentary Joint Committee on Corporations and Financial Services

***Inquiry into issues associated with recent financial product and service provider collapses such as Storm Financial, Opes Prime and other similar collapses.***

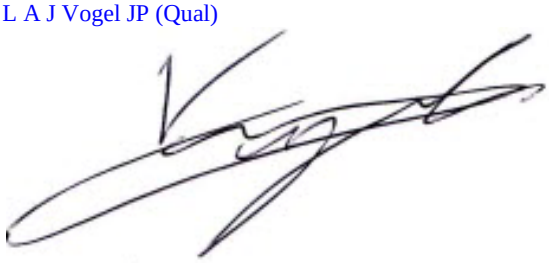
**Justices Act 1886**

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

(1) This written statement by me dated 20/07/2009 and contained in the pages numbered 1 to 37 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)



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Signed at Redcliffe.this.20th day of July 2009.

**Submitted by: Lucas Vogel**

# Personal Circumstances Overview

- Lucas Vogel
- 50years old
- Married (19years) with 2 teenage sons.
- Sales Representative, Aluminium Extrusion Industry for over 20 years prior to July 2004.
- July 2004 joined Ron Jelich Professional Planning primarily in an administrative role.
- Ron Jelich Professional Planning was a financial planning office operating under the Storm Financial Dealership umbrella.
- 31 March 2007 finished with Ron Jelich Professional Planning prior to amalgamation of all dealership offices in preparation for a planned float in November 2007.
- July 2007 commenced employment with an independent financial advisory firm in an administrative role.
- July 2008 seconded back to the aluminium extrusion industry.
- We have invested in the Share market for the last 7years (since May 2002).
- We have used gearing and equity to grow portfolio for that entire period.
- I have never missed an interest repayment or been late for an interest repayment.
- My banking record is flawless.
- Invested with Jelich Jones May 2002.
- First Invested with Storm February 2004.
- At the time our total income was about $60,000 gross.
- Loans by CBA approx $600,000.
- Colonial Geared Investments (CGI) margin loan $920,000.

# Retail Borrowings.

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.

The manner in which Macquarie Mortgages behaved was without doubt unconscionable. To force clients to seek alternative lenders by raising interest rates above and beyond Reserve bank rates in difficult times was extreme in its own right and calculated to facilitate the shutting down the of that division of the Macquarie businesses. The subsequent implementation and charging of "break fees" as a result of this same action is demonstrative of a bank with absolutely no regard for its customers, uncompromising and ruthless attention to its bottom line, and at the same time a team of people who lacked any duty of care and or attention to detail.

My experience with Macquarie Mortgages was poor to say the least. Innumerable errors and a complete incapacity to "get it right" forced me to seek refinancing.

I was advised by my Storm 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 participated in some options trading on the USA market in previous years to supplement our income.

Over the next couple of months I provided CBA with all requested documents for proof of income and other supporting documents. I advised the CBA personnel that my best options trading year provided a gross income of $37,000 however this had not been the case recently due to the market collapses. It could not be counted on as regular income.

The CBA bank officer was advised that I was a Storm client and asked me how much money I would like. We were offered more money than just the total amount to be refinanced.

I made it clear to the CBA officer that I did not wish to exceed a 60% LVR against my property. Our house was valued by the bank at $1,000,000.

The refinancing loans were approved and in fact an additional $50,000 was approved for investment purposes making our total borrowings $600,000 (60% LVR) The additional funds were not invested. They were placed into a CBA "Accelerator Cash Account" in order to provide additional security for the margin loan.

Having subsequently viewed my loan application document (most of which was blacked out under the guise of being "Commercially sensitive evaluative information" - National Privacy Principle 6.2) I found that our income levels had been artificially inflated and expenses understated (2 dependent children had not been recorded).

As is my right under the National Privacy Principles, I have requested an explanation regarding the decision processes … I have yet to be given an explanation. This is the first of many requests for information that have gone unanswered.

I have received written advice from the CBA that they did not intend to provide answers to me. The apparent reason for this was my employment history as a so called ex-Storm employee, and the perceived "collateral purpose" of my questioning.

Anecdotal evidence contained in other submissions will demonstrate that mine is not an isolated case and that the bank had adopted a stonewalling behaviour in order to further hide and obscure its activities. This behaviour I have come to learn is a common tactic of the large banks in order to silence its critics.

# Margin Loan – Colonial Geared Investments

I have been a CGI client since May 2002.
I have never missed any interest repayments or shirked any responsibility regarding my margin loan facility.

Having worked for a short period of time in the financial services industry I became aware of a number of short comings of the Colonial Geared Investment product. Regrettably my awareness came too late.

During the first half of 2008 I was working as an assistant to a financial planner whose clients were under stress as a result of market volatility.

On a number of occasions I received margin calls from CGI call centre staff advising that certain clients were in "margin call". On one of these occasions I questioned the validity of the "margin call". I had determined through my own calculations that the client was in fact NOT in margin call. Further enquiry into the matter uncovered the processes involved within the CGI operation.

All "platform" providers and fund managers were required by agreement/contract to provide CGI with updated unit prices on a prescribed regular schedule. In some cases these might have been daily, weekly or monthly. In the case of Oasis Asset Management their agreement stated a weekly update.

This information was provided to CGI electronically so that CGI staff could then update their internal information systems. If the internal information system was updated on one day, it should have been visible on the CGI web-site on the following day.

I discovered however that the provided electronic information was often not updated immediately and that it in fact required manual efforts by CGI back office staff in

order to have the data entered and uploaded. This often caused delays of **several** weeks.

Having now determined how the system operated, my first question to CGI call centre staff became "What is the date of the data file that you are currently operating from?" More often than not the clients were NOT in margin call.

During this time I was also aware that Colonial Geared Investments were making large numbers of margin calls to directly to clients (often Commsec clients) and adviser offices. At its peak, I was told that CGI made over 3000 calls in one day. I was informed by CGI call centre staff that the vast majority of calls were being made to clients directly.

In communications to other Storm clients CGI has asserted at the highest levels that it had no obligation to contact clients directly.

The CGI process for Margin Calls that I experienced firsthand whilst still working in the financial services industry was described as being threefold:

1. The Advisory office would always receive a phone call advising of the margin call.
2. The client would automatically be sent a Margin Call letter advising the client of the situation.
3. The Advisory office would receive a copy of the same letter that was sent to the client.

In my work within the financial services industry I was left in no doubt that:

1. I as the client had an agreement with CGI wherein I would be contacted either by phone or in writing should I ever be approaching buffer or margin call levels.
2. I would be given time (5 working days in the case of managed fund investments) to bring the loan back within the terms of the loan.

I have **never** received a margin call.

I have **never** received a margin call letter from CGI.
I have **never** seen any proof (despite asking the question) that CGI even attempted to call my adviser.

Based on my earlier discussion regarding the timeliness and accuracy of information, how is any retail investor expected to monitor and manage their margin loan?

Herein lies another point of contention … CGI have repeated stated (to other clients) that management of the loans was my responsibility. How?

I was led to believe that Storm had in place (or were putting in place) a large cash deposit in an Accelerator Cash Account that was being used as security on the entire margin lending book in order to improve all their clients LVR positions and hence avoid margin calls.

Given that I have never received a margin call in any form, I have also never been given an opportunity to remedy the situation.

The first contact I had with CGI regarding my portfolio position was notifications after the fact that my investments had been sold down in accordance with my instructions. No such instructions had ever been given by me directly to CGI.

Attempts to contact my advisor subsequent to these notifications were unsuccessful. I have been advised that Storm advisers were order by ASIC not to contact their clients. I am aware that some people within ASIC have denied this. ASIC's behavior will be discussed later in this document.

I spent several weeks in the precarious position of not knowing what my real position was. I have subsequently asked CGI many questions regarding my loan facility.

Again, I have been told that they (the bank) do not feel obliged to answer my questions because they (the bank) perceived that the questions were being asked with collateral purposes in mind. Again, given that I was asking questions about **MY**

margin loan facility why should I not be entitled to information regarding same? Surely there is an obligation by the bank to explain exactly what was going on with the loan facility? Surely the disclosure of relevant and timely information is covered by the "Banking Code of Conduct"? If they failed to operate under that code of conduct what remedy is available to me and all other clients who found themselves in the same predicament? What is it that the bank is hiding?

Subsequent to the formation of the Storm Investors Consumer Action Group Inc (SICAG) I have started to piece together the extent of the calamity that faced us and several hundreds of other Storm clients.

# The Banks behaviours

I have written several letters and e-mails and made several phone calls to managers and staff within the CBA organisation and have been refused answers to all of my questions. It seems that the CBA feels under no obligation to engage with me as a client.

I have requested copies of all my loan application documents in writing. I still await much of the requested documentation.

I received a letter dated 16 March 2009 by CBA offering help to clients who were experiencing financial hardship.

On 1 April 2009 I rang the provided phone number and eventually made contact with a person who, reading from my client file identified that I and my wife had been accredited with significantly higher levels of income than had been correctly advised to the CBA almost 12 months earlier.

The extent of the "help" that the CBA was prepared to offer was the capitalisation of the loan interest for a period of six months.

Even a cursory look at the offer would reveal that it was in no way shape or form helpful in the short, medium or long term. I refused the offer after explaining to the "Hardship Team Lending expert" that in six months time I would in fact be in a worse position, owing the CBA a larger principle amount and being required to make interest payments on the larger (capitalised) amount. Effectively, the only thing the offer would achieve was the increase in debt to a secured creditor and the equivalent further reduction in my capacity to meet interest repayments.

In an e-mail to this CBA person I demonstrated the mathematics behind the offer as being flawed and long term unhelpful.

On hearing that my income had been grossly inflated, I advised the CBA person that I had a right to see my loan application documents and insisted that they be provide to me as a matter of urgency. After initial reluctance she agreed.

On 27 April 2009 I received a loan application document that had significant areas of the text blacked out. This was justified on the basis that it was commercially sensitive "evaluative information" and under National Privacy Principle 6.1(c) and 6.2 the bank was not obliged to reveal same.

The loan application also showed that the CBA had not included my two children as dependants and as such this distorted the expenses side of the balance sheet.

Of course, all my questions remain unanswered so I have been given no explanation or insight into how and why certain figures were arrived at.

I have requested an explanation of the decision making process as is my right under the same National Privacy Principles and again the bank has not responded to my request.

I have now concluded that the CBA has much to hide and is avoiding scrutiny through obfuscation and prevarication in any way they can.

I have further asked:
What has the CBA got to hide and why are they going to such lengths to avoid the release to me of my personal information?

Even the most casual bystander would observe a bank engaged in damage control at all levels.

I have been advised on 28 April 2009 that my case has been given to a "Relationship Manager". I have now made several requests for information via him and on occasion around him.

I have **never** received answers to any of my questions through him.
I have **never** received answers to any of my questions around him.
I have received a letter from him wherein he states that "… the Bank is under no obligation to assist ex-Storm staff in their personal agendas and will be communicating as much to the Joint Parliamentary Committee".

Please be advised that I have never been an employee of Storm Financial Ltd.

I have to date also never received copies of ANY margin lending applications and documents as formally requested in writing to Mr. John Clothier – Manager of Margin Lending in March 2009.

I understand through other submissions to this Joint Parliamentary Committee investigation that CGI has constantly stated that "… CGI had no legal obligation to contact clients and further stated that they never contact clients directly" (underlining added)

This clearly contradicts their own terms and conditions and application forms as well as the admissions from call centre staff that they were busy making 3000 calls in one day!

This also clearly contradicts my own personal experience whilst working for an independent financial planner in 2007-2008. I received several margin calls on behalf of clients and know that clients all received letters from CGI directly.

It is also well known that in the height of the stock market meltdown that it was nearly impossible for adviser offices to contact CGI because of the significant delays imposed.

I have on numerous occasions during that time been in "the telephone queue" to CGI for periods that rarely were less than 45minutes, but often more.

There can be no doubt that the CBA had engaged with Storm as an active agent for the mutual benefit of both organisations.

CBA have stated in letters to clients that Storm were solely responsible for the management of the margin loans. It is my understanding that CBA were found to have a case to answer in terms of deceptive and or misleading conduct as a result of these letters.

If Storm was an agent of the Bank, and there was some sort of mismanagement, then the Bank is responsible for the conduct of its agents and employees.

It is my understanding that when I signed an application for a loan between myself and CGI or CBA that they and I are the only parties to the loan. CBA have stated that Storm as a third party were solely responsible for the proper conduct of the loans.

I am not aware of any clause or agreement in any loan application stating that Storm were responsible.

Clearly, CBA/CGI has made considerable efforts to hide their own culpability and subsequently attribute blame to another party.

I have asked for copies of all my margin lending documents. None have yet been provided. My original request for information was made in writing on 23 March 2009. Is it acceptable business practice for client requests for information to go unanswered?

It may be determined in another forum that CBA in fact engineered a default of Strom Financial Ltd's corporate loan facility in order avoid greater scrutiny by the courts of its unconscionable conduct and behaviour in 2008/09.

Is it acceptable business practice for client requests to be treated with total indifference as a result of an incorrect perception that I am an ex-Storm staff member? (Again I repeat that I have never worked for Storm Financial Ltd).

I am sure that it is not legal to engage into a contract with one party and have the management and or responsibility transferred to a third party who was not a signatory to the original agreement.

I am also sure that it is not legal to engage in such conduct without at the very least informing the affected parties and securing written consent for same by all parties concerned.

As a result of the banks deliberate decision to not notify me, we have been financially destroyed.

I am aware (as is ASIC) that the CBA is looking to secure arrangements with disaffected clients within which these clients have been required to sign away any right to further legal action should any legal action be forthcoming. Why?

If the bank is being truly altruistic as it would have everyone believe, why would they seek to cover themselves with such a written agreement?

I am also now aware that the CBA had the intention of treating ex-Storm staff (and also some clients whom they perceive to be ex-Storm staff) with total indifference. Why?

I have **never** received answers to my questions regarding my margin loan.
I have **never** received answers to my questions regarding my home loans.
I have been sidelined by the CBA in writing whereby the only channel for communication is through a relationship manager who does not respond in any timely matter to my communications. Even when a response is forthcoming, it is usually empty of content.

It is also clear that my work within the SICAG organisation has contributed to the indifference treatment being metered out by the CBA.

In short I have been victimised by the CBA as a result of my efforts to seek justice for all ex-Storm / CBA clients.

It is clear from subsequent obfuscation and prevarication that the CBA recognises that it has performed in unconscionable conduct at the very least and illegal and predatory practices at best in order to further their own balance sheet at the expense of “mum and dad” investors whose only crime was to plan for the future and become financially independent in their retirement years.

It is also clear that the CBA has engineered a default in the case of Storm Financial Ltd in order to destroy any opportunity for a legal precedent being established against the bank.

# ASIC

At the inaugural meeting in January 2008 during which SICAG was formed we had the pleasure of a number of people from different organisations. ASIC was amongst them.

During the discussion that followed and a short Questions and Answers session, the question was asked of ASIC "Why did ASIC gag Storm Financial?"

The answer came back clear and strong "… that **ASIC did not gag Storm**". This was repeated several times.

This was contrary to what we as investors had been told, in writing, by Storm Financial. Subsequent pursuit of this issue (which has contributed in no small way to the total distress of ex-Strom clients) has uncovered to following:

- ASIC did **seek** to gag Storm through the mechanism of an "Enforceable Undertaking" (EU) in December of 2008.
- Storm Directors (quite correctly) refused to sign the EU on the basis that to deny contact with clients for the mandated 12 month period was extremely heavy handed to say the least. It would also have destroyed the business proper.
- Storm Directors apparently did agree to cease contact with their clients until after the Christmas period in good faith. (So technically, ASIC didn't gag Storm, but they did seek to!)
- It has also been determined that ASIC sought the EU from Storm on the assertion by the CBA to ASIC that Storm had advised their clients "not to pay the negative equity" that they had found themselves with.

It is my understanding that (from the ASIC web-site):

ASIC is Australia's corporate, markets and financial services regulator.

We contribute to Australia's economic reputation and wellbeing by ensuring that Australia's financial markets are fair and transparent, supported by confident and informed investors and consumers.

We are an **independent** Commonwealth Government body. We are set up under and administer the Australian Securities and Investments Commission Act (ASIC Act), and we carry out most of our work under the Corporations Act.

It is clear that ASIC engaged in a very heavy handed treatment of Storm Financial on the basis of an ASSERTION by the CBA. This assertion has never to the best of my knowledge been backed up by any form of evidence.

Given the heavy handedness of the EU one would expect that Storm had been found to be engaging in significant levels of illegal behaviour and that legal action should and would be forthcoming.

What were the laws that were broken?

What were the charges brought against Storm and or Storm directors?

Has there been any real proof?

Despite giving Storm a clean bill of health only a few months earlier, ASIC acted with extreme hast to attempt to gag Storm on the basis of an assertion. Where is the proof of that assertion?

Is ASIC as a regulator truly independent?

What needs clarification (in much greater detail) now is exactly what ASIC did and did not do and why?

# Risk - What Risks?

I have questioned the CBA/CGI regarding the need for a mechanism such as a margin call where an investment is of an index nature.

You guessed it … no response.

An Index Fund by its very nature is a fund that invests its input funds across all shares that constitute a particular index. The Storm Financial Colonial First State Australian Share market Index Fund constituted shares of **ALL** companies that constituted the ASX300 index. (Similar to the benchmark All Ordinaries Index)

As such, the fund would track the Australian share market up and down as the market fluctuated up and down. Essentially, this meant that the investment was extremely safe. Given that funds were invested across the top 300 companies that constituted the ASX300, the risk of the fund "going bad" was infinitesimally small.

Understand this clearly; for the Index Fund to "go bad" **EVERY ONE OF AUSTRALIA'S TOP 300 COMPANIES WOULD SIMULTANEOUSLY GO BUST.**

Unlike some more speculative property trusts or hedge funds, index funds would probably be less risky than investment in "bricks and mortar" residential housing for the above reason.

The fact that CGI increased the maximum LVR of the index funds over time from 70% to 80% is an implied confidence that the index funds are both less risky and enjoyed highly liquidity.

CGI for whatever reason **increased** the LVRs of all the Storm badged funds (also MLC's index fund was increased in October 2008!). This had the effect of exposing the Storm clients to a significantly greater risk of loss if a margin call option was to be

exercised. In hind sight, that is exactly what happened. Portfolios dropped rapidly as the markets fell, leaving no room (or time) to act.

What due diligence/risk management processes did CGI engage in prior to increasing the funds LVRs?

Assuming that some due diligence / risk management was undertaken, who in the CGI hierarchy was responsible for providing the OK? Who signed off on it on my behalf?

Were clients told of the LVR increases and or given an opportunity to opt out if they were uncomfortable with the decision? The answer is no.

Another aspect of CGI's behaviour has to be its understanding of the difference between risk and volatility.

It has already been established that Index Funds are safe. (Even CGI must acknowledge is by virtue of the fact that it increased its allowable lending from in some cases 60% up to 80%).

Volatility on the other hand is a measure of the upward and downward movement of unit prices over a short period of time (measured in months). We have witnessed over recent months market volatility the likes of which has rarely been seen.

We have however not seen more than a handful of companies devastated by the stock market volatility. (And in some cases the demise appears to have been engineered by unscrupulous hedge fund managers and traders … but that's another story).

But for the sake of a few months of volatility (not risk), my portfolio would now be certainly out of buffer/margin call territory.

I have pointed out to the bank that there is a significant difference between risk and volatility. It is clear that financial planners throughout the globe understand the difference between risk and volatility. It is now clear that the CBA/CGI management do not understand this difference.

It is clear that the CBA panicked at the height of the 2008 volatility.

It is clear that the CBA are now seeking to dodge responsibility for their ineptitude as a fund manager, dodge responsibility as a margin lender, dodge responsibility as one of our "four pillars" who lost their nerve, and dodge responsibility as a responsible corporate citizen for having destroyed the futures of my family and that of thousands of other "mum and dad" investors who only sought to provide for themselves in retirement.

But for a phone call I could have and would have corrected my portfolio and still have an investment portfolio that would have grown and maintained my family through retirement.

I am now expected to pay off a huge mortgage debt with no income producing assets to support it, and dealing with a bank refusing to answer any questions or provide any proof of its claim of acting appropriately.

CBA CEO Ralph Norris has now admitted that the CBA has engaged in conduct that "it is not proud of".

I believe that it is essential that this Joint Parliamentary Committee ensures that behaviour as we have seen is never be allowed to be repeated.

I believe that it is essential that this Joint Parliamentary Committee ensures that where banks in particular are found guilty of this type of conduct that they be held accountable to the fullest extent of the law.

All too often we see cases swept under the carpet where litigation becomes impossible due to the exorbitant cost and the deceptive and delaying tactics of the banking legal fraternity.

All too often we see cases swept under the carpet where litigation becomes so onerous as to become impossible due to the argument of insignificant points of law or other inconsequential excuses purely for the purpose of out lasting the opposition.

Essentially businesses including banks must be made accountable by and to the community who are its customers. Too long have they (the banks) been able to behave in a manner that has no affordable redress.

# 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 with 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 last year 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. In insurance, moral hazard that occurs without conscious or malicious action is called *moral hazard*.

Above I have identified that the banks were in reality NOT exposed 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 CBA/CGI 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.

Lucas Vogel
Scarborough QLD

# Questions:

Additional to the questions asked above, I have several questions (also asked in other submissions) that need answers and exploration.

1. What is the banks standard formula for lending? Typically it amounts to no more than 30% of the client's income. CBA approved a loan to the client's with repayments amounting to more than 70% of their total income? (In my case it would appear that CBA was comfortable with in excess of 100 %!)

2. The bank has stated in the press through a spokesperson that it has not relaxed lending standards to Storm clients. How is it that the CBA allowed a $1,500,000 loans to clients with a joint income of $approx $60,000?

3. If this is indicative of CBA loans can it provide the percentage of non Storm clients that received loans with similar repayments repayment schedules with similar percentage totals income?

4. Can the bank explain the budget that these clients would need to adhere to, to maintain such a loan long term?

5. What % of Storm clients had loans with repayments above 75%?

6. Why is the biggest bank in Australia using unlicensed loan brokers to secure hundreds of millions of dollars worth of loans on its behalf?

7. What was the nature of the relationship between Storm Financial and all the banks that allowed this to occur?

8. Who was involved? Who approved the relationship? What written agreement exists of this arrangement?

9. What branches/sections of the bank assessed the Vogel's application?

10. Why is the bank refusing to provide the client with copies of all documents associated with these loans? Why also does it feel necessary to hide behind a "privacy principle"?

11. What remuneration did the bank give Storm for brokering these loans?

12. Was it simple a case of 100% approval which benefits both Storm and the bank in the case of inflated loan figure? Remember both the bank and Storm received upfront remuneration based on a percentage of the investment undertaken.

13. Is there evidence that Storm Financial benefited by way of contributions by CBA/CGI to client's overseas trips, functions and special loans to advisors?

14. Was the relationship in accordance with strategic guidelines formulated to deal with managing conflicts of interest?

15. Why was the relationship between bank and financial planner not declared to the clients at anytime during the compliance periods of selling the strategy and applying for the loan?

16. This relationship/strategy was such that it benefited the bank and Storm Financial by disregarding the retail client's consumer rights of safety and information regarding risk. How does the bank explain not only participating in but designing and implementing this inappropriate relationship and strategy?

17. This relationship/strategy contributed to, and exaggerated the catastrophic results of margin call. How does the bank explain this as appropriate?

18. Is it standard banking practice to double gear retail clients in the manner they participated in with Storm Financial? If not, why?

19. Further, if it is not standard practice, why did CBA/CGI continue to allow it to happen for years without check?

20. Should the bank as an active participant in this investment strategy have considered or recognised the propensity for failure in a receding market?

21. Should they have informed the client of this propensity prior to accepting the loan application so as to ensure the client's decision was informed?

22. Has the bank got any records to show that due diligence was followed in relation to clients position?

23. In the event the answer to this is "No" What statutory exculpation exist allowing the bank to sell a product of this inherently dangerous nature without obligation to warning clients of the danger to their financial position?

24. Surely if Nestle have to put warnings on 50 cent chocolate bars that it "May contain traces of nuts" then a disclosure of risk individual to the client's multimillion dollar investment would be considered minimum risk management practice?

25. Perhaps "may destroy you financially and emotionally as the bank refuses any responsibility for its products and conduct" would have been appropriate in this case?

26. Why does the bank not address each such loan on an individual basis, preferring to address risk with a generic vague and misleading combination of documents?

27. Is their remuneration not sufficient to spend a couple of hours with the client?

28. What auditing process did the banks perform to ensure that all risk management concerns and appropriate conduct was adhered to by Storm Financial staff that were brokering these loans on mass, on the bank's behalf, and with the banks knowledge?

29. If CGI insists that it was the responsibility of the client to manage their own margin loans via information available on the internet, why were clients never obligated to obtain access to the CGI website to monitor their loans?

30. Is it appropriate that the bank allowed this systemic unlicensed brokering to occur on their behalf and for their benefit, without ensuring the clients are appropriately informed?

31. If it is found to be the case that the higher LVR levels are flawed, how did the bank come to be selling this catastrophic product?

32. Who from the bank and their position approved the upward movement of these trigger points? Why? What documentation exists showing the reason behind the consideration of such a move?

33. What stress testing was applied to the margin lending product in the research phases that led to it been deemed suitable for sale to retail investors?

34. When did the higher LVR privilege come to be part of the relationship with Storm Financial and CBA/CGI?

35. How many other financial planning companies had this product (higher LVRs) available to them?

36. Who negotiated the higher buffer and margin call trigger points?

37. How many other financial planning companies have received this deal and under what circumstances?

38. What statutory exculpations exist to free CBA/CGI from responsibility to ensure their products are safe and appropriate for retail clients?

39. How could it be considered appropriate that CBA/CGI did this with no contact with the Vogel's whatsoever?

40. Can CBA/CGI ensure the Vogel's were given a copy of the terms and conditions document? If not why not?

41. Despite claiming it is the clients are responsibility to monitor their own portfolio via a website. What did CBA/CGI do to ensure the client had the prerequisite skills, desire and availability to resources to fulfill this obligation?

42. What documentation exists that demonstrates the Vogel's were aware that the obligation to monitor their portfolio meant, 24Hr monitoring 7 days a week, to ensure that margin call did not occur?

43. What documentation exists that demonstrates the Vogel's had indicated to the bank it was their desire to and that they had the resources and ability to fulfill the obligation?

44. If only for their own protection why did CBA/CGI not assess the client's comprehension of the investment strategy they were borrowing the money for?

45. Why were the terms double gearing or tiered gearing not mentioned or explained at any time?

46. Why did the bank not feel it necessary to provide any sort of insight as to the effects of a margin call?

47. The CBA/CGI made no contact with the Vogel's except after the sell down. How then did it adequately assess the appropriateness of this retail client being exposed to this type of product?

48. Is it appropriate for "one of the four pillars of our community", to only assess their own risk when dealing with retail clients albeit at the cost of the retail investor?

49. Would it be standard practice to approve a loan with alterations that had not been initialed, without questioning the changes, and who made them?

50. How did the bank come to the conclusion that with a $920,000 margin loan the $600,000 loan was an appropriate amount to loan this retail client who only had a stable income of $45,000?

51. Can the bank explain how the Vogel's loans came to be approved for a so-called very high risk strategy during a market downturn of the type witnessed in 2008 given the banks statement that there has been no departure from lending practices for Storm clients AND that it had as recently as October 2008 increased the LVR on some funds from 75% to 80% because they were considered safe?

The following ten questions need to be considered in unison. They provide an insight to the banks mentality re lending.

52. What was the risk to the bank if the client reached margin call? Answer: None. Apart from the fact they stand to benefit significantly given the value of the real estate held as security, the previous discussion regarding Index Fund safety demonstrates that there was NO REAL RISK.

53. What was the risk to Storm if their clients reached margin call?
    Answer: None they already had their upfront fees.

54. What was the risk to the client if the client reached margin call?
    Answer: Catastrophic financial devastation.

55. What, if any, benefit was there for any party involved in margin lending in the event of a margin call?
    The bank was able to free up cash for lending to other clients thereby gaining addition revenue in fees and charges. This smacks of an "engineered default" that can only ever benefit the bank.

56. Having established that a "margin call" mechanism serves no useful benefit in the arena of managed Index Funds, why has the bank persisted with and exercised such a mechanism when in reality it knew there was no real risk (only volatility)?

57. How does the bank explain the above as not alarming (if it truly believes that a real risk existed)?

58. How then does the bank decide that the loan is therefore appropriate for retail clients? How does the bank defend not disclosing this risk to the client fully and in clear easy to understand language?

59. What incentive existed for the bank to ensure that clients did not go into margin call?

60. Why was this incentive not enough to force CGI to pick up the phone and ring the clients direct?

61. Why did the bank depart from their standard operating practice re contacting clients on this occasion?

62. If as CGI asserts, that it was Storm Financial who was the sole responsible manager of the margin loans, how does the bank see it as reasonable that the investor/borrower be made (without their knowledge) a third party in conducting their financial affairs, effectively removing them from essential knowledge and control of their own financial investment portfolio?

63. In regard to the Margin Lending Terms and Conditions; Why do these terms and conditions not clearly explained in no uncertain terms that the bank had no intention of contacting the Vogel's directly, despite the same document and application form directly contradicting this mind set?

64. Further, that other clients **have been** contacted directly in the past?

65. Can the bank please provide historic examples of their use of this clause in the manner that it has been applied to Storm clients on this occasion?

66. Hundreds of "high value" CGI/Storm clients entered into margin call and negative equity positions without raising a finger to correct their LVR positions. Is it reasonable for Australia's biggest bank to hide behind the only sentence its lawyers could find when it has so obviously and inappropriately failed (for whatever reason) in its obligations to communicate with its clients?

67. Given that Storm had one centre point of contact within CGI (Kamal Aranout) how does CGI explain not noticing something strange about the fact that not one of these people lifted a finger to correct their LVR position?

68. How does CML explain not one Storm client contacting them to plead for mercy or ask for assistance of any kind?

69. Were any of the shares sold at the bottom of this market purchased by CBA or any of its subsidiaries?

70. If so, how much profit has the bank made from such acquisitions?

71. What risk management strategies did the bank have in place to recognise that communication of their notices had failed or otherwise?

72. Once the failure was recognised what remedial action did the bank take given it was their responsibility to ensure the client received and comprehended the notices as per the Terms and Conditions and Application Documents?

73. Why is the bank suggesting it is comfortable with notifications via a reported defective web site when its own computer system “Empire” automatically produced notifications for clients and advisors as the system recognised the LVR trigger points being reached?

74. How many other clients, of other financial advisors had the “Empire” notifications ignored and were advised via the CGI website during this time?

75. Why did the bank choose to make a change to their standard notification procedures at this time?

76. Why single out Storm Financial clients?

77. Would a reasonable person expect contact directly from the bank under these circumstances?

78. Is it reasonable for a bank to not disclose that it will not contact its client due to a conflict of interest with the client’s financial planning company?

79. Is the relationship between the bank and Storm Financial appropriate, given the matters discussed in this submission?

80. Do the CBA's actions meet the minimum standard required of the largest bank in Australia when considering ethics, honesty, transparency and lawfulness?

81. Who is the banks client in respect of the Margin Loan?

82. Is it reasonable to expect that the person who holds the loan, carries the responsibility for the loan, is the sole respondent for the obligation and the sole entity in respect of consequences for failure to meet those obligation, is NOT in the banks view the person who should be contacted in view of critical event such as entering buffer and or Margin Call levels?

83. Are the documents presented or at least which should have been presented to the client misleading and deceptive given the admissions (in writing and spoken word) by Mr. Phelps, Mr. Cameron and Mr. Clothier that clients never get contacted by the bank?

84. Have any of these individuals or the CBA/CGI itself ever been prosecuted for deceptive or misleading conduct?

85. Given what the bank is now claiming to be crucial component of the margin loan product (client management through the CGI web-site), what risk management systems does it have in place for ensuring compliance by its clients?

86. Several information flaws have been identified in respect of the CGI web-site. Why has CGI continued to deny these flaws exist when even a casual review of the presented data will show inconsistencies?

87. If, as CGI assert, the information was correct, can CGI please explain how a portfolio with securities all of which have LVRs of 80% could then have a margin call LSR of 83% (or more!)?

88. Why also did CGI enter into a program to “sanitise” the web-site by correcting the errors?

89. Does CBA/CGI recognise that such an error has had the undesirable effect of further increasing the already high LVRs to even higher levels?

90. Given that these LVR levels included a “buffer” to account for adviser fees in the standard industry fee model (and that this was clearly known by CGI management), why then did CGI not correct the errors to correctly report the LVRs with clients using the Storm Fee model?

91. What attempts have been made to correct the flaws and when?

92. What work has been done since October 2008 relating to any and all changes on the website and within the programming of the CGI web-site?

93. Who authorised and requested the corrective work to be performed and for what purpose?

94. Has any attempt been made to sanitise the system of evidence relating to issues at hand?

95. Can the bank explain why clients were not automatically issued with usernames and passwords to access the CBA/CGI web-site?

96. Especially given the banks eagerness to allocate blame to the clients for not monitoring their portfolio, Is it appropriate that the application form is at best vague in its instruction or responsibility and definition of the clients obligation to monitor their portfolio?

97. Does a notification via a definitively flawed information system to advise clients and financial advisors of significant events in relation to their margin

loan facilities meet or exceed a minimally acceptable standard for banking information systems?

98. Should the bank have disclosed it was selling a product with defective technical elements and that the bank would be relying upon under these flawed technical elements in all circumstances?

99. If I then went on to invest in a margin loan, would it be the ASICS position that there was no more it could have done to help the client as retail investor prepare for the pitfalls of this lending practice?

100. Would it be the position of the ASIC as demonstrated in the Storm Financial matter that the client was at least partly to blame?

101. Why should the CBA be allowed to lend ever again, given their behaviour in this matter?

102. Given the deceptive prevarication and obfuscational behaviours employed in addressing these situations with clients it could be suggested that a systemic culture of dishonesty and non transparency exists within the CBA/CGI and indeed all of the major banks. This must surely bring into question the leadership of these organisations and their right to hold a financial services license?

103. Given what we now know about ASICs involvement regarding the gagging of Storm, what if any explanation can ASIC offer as to the reasons for their behaviour?

104. Can and will ASIC address the fact that they, through their ineptitude, have exacerbated the heartache and despair caused to “mum and dad” investors on the assertion of a “pillar” who’s behaviour in itself has now been

proven to be less than honorable at best and clearly dishonestly calculating and ruthless with total disregard and indifference to its clients?

105. Does ASIC recognise that it has clearly be less than impartial in its handling of the matters at hand?

106. What can and will ASIC do to ensure that in future it will remain impartial?

107. What can and will ASIC do to improve its capacity to identify beforehand shortcomings of organisations under its supervision and subsequently its capacity to act in appropriate measure to deal with these shortcomings?

108. Can and will ASIC compensate these mum and dad investors for the heartache and despair caused by ASIC?

109. Given ASICs ineptitude, what does it plan to do to (it is the “all powerful regulator”) to ensure that such events never occur again?

110. What if any action is ASIC planning on taking in relation to section 50 of the ASIC Act in order to extract “pain and suffering” compensation from the institutions found culpable of misdeeds for and on behalf of the victims of the institutions?

111. Does ASIC believe that it is essential to prosecute the offenders (both institutional and individuals) to the full extent of the law in order to ensure/encourage future compliance with laws and banking codes of practice or does it feel that a slap on the wrist is sufficient?

112. Does ASIC believe that it has or should have the capacity and or responsibility to “sponsor” litigation on behalf of “mums and dads” where it is clear that the law has been broken?

113. Current negotiations between CBA and Slater & Gordon are developing a “framework” to determine compensation on behalf of many ex-Storm clients. Does ASIC believe that this is sufficient to the “put the matter to bed” or only part of the solutions and that the “pillars” of our financial society should be prosecuted fully for their complicity and overt flaunting of their code of conduct and in some cases the laws of the land?

114. In all of the events surrounding all of the events that have unfolded surrounding Storm Financial, Opes Prime and others, where has APRA been?

From the APRA web-site:

The **Australian Prudential Regulation Authority (APRA)** is the prudential regulator of the Australian financial services industry. It oversees banks, credit unions, building societies, general insurance and reinsurance companies, life insurance, friendly societies, and most members of the superannuation industry. APRA is funded largely by the industries that it supervises. It was established on 1 July 1998. APRA currently supervises institutions holding approximately $3.4 trillion in assets for 21 million Australian depositors, policyholders and superannuation fund members.

**Our vision:** is to be a world class integrated prudential supervisor recognised for its leadership, professionalism and innovation.

**Our mission:** To establish and enforce prudential standards and practices designed to ensure that, under all reasonable circumstances, financial promises made by institutions we supervise are met within a stable, efficient and competitive financial system.

We also act as the national statistical agency for the Australian financial sector and play a role in preserving the integrity of Australia’s retirement incomes policy.

**Our values:** We play a critical role in protecting the financial well-being of the Australian community: as a result, high standards are required in everything we do. In our work and in our interactions with others, we value and seek to demonstrate:

115. In all of the events surrounding Storm Financial, Opes Prime and others, where has APRA been?

116. Margin lending has been in existence for over a decade. How is it that it is not a regulated product?

117. Does APRA accept any responsibility for allowing banks and their subsidiaries to run amuck on their watch?

118. What can and will APRA do to live up to the “Vision” “Mission” & “Values” statements on their web-site?

# Recommendations

1. 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.

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

3. Additionally these institutions must be held accountable for breaches of their own Code of Conduct.

4. 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.

5. I would further urge the distinguished members of this Parliamentary Inquiry to lobby the Government to fund test cases on behalf of the victims in this matter so as to level the playing field against these corporate predators that have too much money and as a result too much power within the judicial system.

6. Who watches the watchers? I would further urge the Inquiry to implement a strategy designed to ensure that regulatory bodies are themselves accountable and impartial when dealing within the scope of their responsibilities.