Supplementary 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.

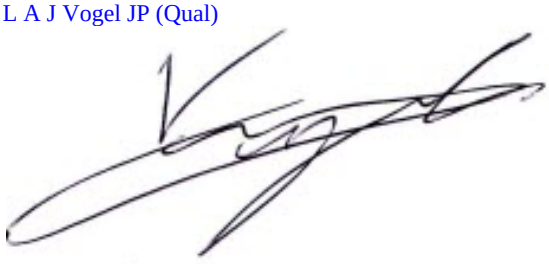
Justices Act 1886

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

(1) This written statement by me dated 27/07/2009 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)



....Signature

Signed at Redcliffe.this.27th day of July 2009.

Submitted by: Lucas Vogel

Preamble

As a parent of two teenage boys, my wife and I have attempted throughout our parenting lives to teach our boys some of life's important lessons.

These lessons include:

- Golden Rule; Do unto others as you would have them do unto you.
- The Ten Commandments.
- The difference between right and wrong.
- A belief that justice can and will be done.
- Innumerable others.

I have always taught my sons the lessons of "Actions & Consequences"; the indisputable truth that **they** are ultimately responsible for **their** actions and that there are always consequences for those actions.

I am now faced with the immutable truth that I must now teach then that there are those in society who are above the law; that if you have enough money you can avoid prosecution, avoid the consequences of your actions.

It would appear that the banks and some individuals within them are in a legal sense, above the law.

I have to teach them that the Golden Rule that I taught, was from a generation long since deceased and that I need to revisit the Golden Rule as being:

"*Whom ever has the gold, makes the rules*".

Banking Code of Practice

From The Australian Bankers Association Inc web-site:

ABA's Code of Banking Practice.

> The Code of Banking Practice is the banking industry's customer charter on best banking practice standards. It was last revised in May 2004. The Code sets out the banking industry's key commitments and obligations to customers on standards of practice, disclosure and principles of conduct for their banking services. The Code applies to personal and small business bank customers

It appears from information published on the Australian Bankers Association web-site that all major Australian banks have adopted the code of practice.

The code of practice is a voluntary code of conduct designed to establish a set of good banking practices that should be followed in order to provide an ongoing improvement in service and quality standards in the banking industry.

“Voluntary” means that a bank can choose whether it wishes to adopt the Code. Once a bank adopts the Code, it is contractually bound by its obligations under the Code.

Under the Code, banks give a general commitment to act fairly and reasonably towards customers and guarantors in a consistent and ethical manner.

The Code also gives customers of banks that adopt the Code important legal rights, and confirms their existing rights in a number of areas such as but not limited to:

- Disclosure of fees and charges and other terms and conditions
- Changes to terms and conditions and fees and charges
- Disclosure of general information about banking services
- Privacy and confidentiality
- Statements of account
- Copies of documents

- Direct debits
- Chargebacks on credit cards
- Debt collection
- Complaints handling

Given the events described by the collapses of Opes Prime, Storm Financial and others, it is critical to review the Code of Banking Practice and determine where and how the banks have fallen short of their commitments given under that code.

It would also appear that whilst the code is voluntary and those banks that have taken it on board are only too willing to appear virtuous for having adopted it, the mainstream public would agree (and it is supported by the banks actions of late) that the banks are a long way from actually living up to their responsibilities as a corporate citizen.

Let's start at the beginning.

Section 2.1(b)(i) *We will promote better informed decisions about our banking services by providing effective disclosure of information.*

Even a casual glance at margin lending products will confirm that advertising of same rarely goes into much detail if any detail about the down-side risk of engaging in such a product. Typical advertising of these products provides a reasonably detailed "what if" description of the up side followed by an "Oh yeah, there might be a downside to this product".

Clearly there has been insufficient disclosure of the potential down-side and more importantly exactly how such down-side would be exercised.

There is little or no explanation of the margin call process in terms and conditions and even where some explanation does exist it is unclear to retail investors exactly what it means and how it will be (or could be) exercised.

Section 2.1(d) ***We*** *will provide information to you in plain language; and …*

Again, Terms and Conditions are so full of legalese and obfuscation that nobody could possibly comprehend nor understand their rights and or obligations under such a contract.

There appear to be many clauses that contradict themselves on the single issue of a margin call and who is responsible. Clearly those that constructed the document either had no idea what they were talking about or sought to deliberately create loopholes through which the margin lender would hope to escape if ever taken to task.

Over and above the complexity of such a document, CGI somehow maintain that the management of a margin loan was somehow the responsibility of a third party (Storm Financial) who was not a signatory to the agreement. They did this in writing to Storm clients in letters asserting that Storm Financial was wholly and solely responsible for the management of the loans. Of course, it was later found that the CBA had a case to answer in respect of false and misleading information.

I know for a fact that if I were to purchase a refrigerator from a white goods retailer and entered into a hire purchase arrangement with a finance company to do so, then that retailer will not be making sure that I am making my repayments or conduct the loan with terms.

Colonial Geared Investments appear to believe that they have the right to exercise a margin call at any time above the margin call LSR without due regard to or consultation with the client. Given the behaviour of CGI, they (the bank) insist that

there is nothing illegal or immoral in being a bastard! They have every right to wait until their clients are essentially in significant negative equity until exercising unannounced a margin call. Where is the "Duty of Care"?

Section 2.2 *We will act fairly and reasonably towards you in a consistent and ethical manner. In doing so we will consider your conduct, our conduct and the contracts between us.*

There is sufficient anecdotal evidence already submitted to this inquiry and additionally through investigations currently being conducted by ASIC to demonstrate that this particular part of the Code of Banking Practice has been until recently, totally disregarded.

I personally have been seeking assistance under the hardship provisions of the banks charter and this Code of Banking Practice. When it became know by CBA staff that I had previously had some connection with Storm Financial in an employment sense, the shutters came down.

I was very quickly duck shoved to a "Relationship Manager" who has demonstrated on many occasions a heavy handed and unsympathetic approach to my plight. Many phone calls were left unanswered, and several e-mails were similarly ignored or returned with almost monosyllabic responses.

I remain to this date still waiting for answers to my written questions regarding my margin loan facility and also copies of documents, applications etc; all requested in writing in march of this year.

Has the bank acted fairly and reasonably towards me? No.

Section 2.3 *In meeting our key commitments to you, we will have regard to our prudential obligations.*

Prudential is such an interesting word. From www.dictionary.com:

pru·den·tial

–adjective

1. of, pertaining to, characterized by, or resulting from prudence.
2. exercising prudence.
3. having discretionary or advisory authority, as in business matters.

In respect of the Storm Financial meltdown, we really need to identify when if ever did the CBA exercise any duty of care to its clients and or have regard to its prudential obligations.

As a committee member for the Storm Investors Consumer Action Group (SICAG Inc) we have seen countless examples of loan applications that would appear to have been routinely massaged/doctored in order to "get them across the line". This was all motivated by a culture within the banks driven by profits and bonuses at the expense of prudential common sense and ultimately the lives and homes of hundreds of innocent well intentioned "mum and dad" investors.

Are there any penalties that can be metered out to defaulters of this "Code of Banking Practice"?

Section 3.1 *We will comply with all relevant laws relating to banking services, including those concerning:*

a) Consumer credit products;
b) Other financial products and services;
c) Privacy;
d) Discrimination.

Interestingly, it would appear that the banks are using this section to dodge their obligations to comply with the law. Apparently margin lending which has been around for in excess of ten years is/was an unregulated product and as such is not covered by the Universal Credit Code. This essentially wipes out a) and b) above as irrelevant.

That means that it is not obliged to comply with any laws because there are none.

The banks have clearly demonstrated reluctance to provide detailed information regarding loan application forms and other revealing documents. They hide behind National Privacy Principles section 6.2 to avoid scrutiny by clients of the lengths that the banks have had to go to in order to get loans across the line. The information blacked out on all application documents is considered "Commercially sensitive 'evaluative' information".

I would ask, in my particular case why they have not provided me with an explanation of the decisions arrived at as is my right under the National Privacy Principles, given that I have asked for these in writing?

The answer is clear. In a written response from the banks dated 11.5.2009.

"We believe that we have complied with our obligations under the Privacy Principles and will not debate with you the interpretation and application of the principles".

This interpretation by the bank of the National Privacy Principle essentially wipes out c) above and through obfuscation and prevarication denies transparency to those attempting to seek the truth.

Again I ask what the bank has to hide?

That only leaves d) discrimination, that they have an opportunity to comply with. Oh, but wait, there's more!

I mentioned earlier in this document that when the CBA realized that I was somehow tied up with Storm Financial, I was immediately segregated from the normal "hardship team" efforts and side lined by a "relationship manager".

I have uncovered other such cases where ex-employees including other back-office staff have been refused assistance on the basis that they were Storm staff and that as such they contributed to the Storm melt down.

I have yet to be advised how it is possible that I (not having worked anywhere near Storm Financial for almost two years) could have contributed to the Storm melt down. I have been stonewalled and discriminated against in view of my past employment history.

Hat trick!

Section 5.3 (a)(b) *We will require the ABA to establish, and we will support, a forum (including consumer, small business and banking industry representatives) for the exchange of views on:*

a) Banking issues; and
b) The effectiveness of this Code.

Why is it that in today's day and age, banks are unable to identify and self regulate a product that has been in existence for over ten years?

The answer is clear.

They are simply incapable of adequate self regulation.

They lack the moral capacity to recognise when they have done wrong. Even if they have recognised that wrong was done, they will avoid at all costs the setting of precedence's against them. They are beyond the law, having the ability to launch

legal defense that cannot be matched monetarily by individuals or small businesses alike.

Section 7 Staff Training and competency.

The CBA in particular have asserted that Storm Financial were solely responsible for the management of the margin loans (They said so in writing).

I'm sure that such an assertion directly implies that Storm Financial under such an arrangement is in essence an agent of or authorised representative of the bank.

Is there any evidence to show that the CBA did in fact carry out the required training of Storm staff as would be mandated under the Code of Banking Practice?

But wait, I hear the bank saying "No, they weren't agents or authorised representatives of the bank".

If that is the case, how could the bank have exercised its prudential and fiduciary obligations by demanding that an unqualified third party be responsible for the management of one of their own products?

There's another interesting word; "fiduciary". Again from www.dictionary.com:

fi·du·ci·ar·y

–noun

1. *Law*. a person to whom property or power is entrusted for the benefit of another.

Section 25.1 ***Provision of Credit*** *"Before we offer or give you a credit facility (or increase an existing credit facility), we will exercise the care and skill of a diligent and prudent banker in selecting and applying our credit assessment methods and in forming our opinion about your ability to repay"*

What a mine field this principle opens up.

Where was the "skill of a diligent and prudent banker" when the $1.5M loans (both retail and margin) were allowed for a couple with a combined income of approximately $60,000pa?

Where was this same skilled diligent and prudent banker when it came time to issue/make a margin call? They (the skilled diligent and prudent bankers) chose to sit on their hands and wait until the investments fell into negative equity, only to cry foul when it was revealed that their systems were inadequate, their staff incapable of dealing with the enormity of the events confronting them.

Where were the skilled diligent and prudent bankers when decisions were made at high managerial levels to increase the LVR's on some securities from 60 and 70% to over 80%!?

Where was the skilled diligent and prudent bank when every year they offered to Storm clients (and all other margin lending clients for that matter) directly the "opportunity" to increase the credit limits on the margin loan facilities and subsequently enter into a loan prepayment arrangement?

Where was the skilled diligent and prudent banker when the late sell down of assets forced clients to pay down their margin loans and subsequently incur "break fees" amounting to several thousands of dollars?

In researching the content of this document I discovered an interesting paragraph on the CBA web-site:

CBA Statement of Professional Practice - Honesty
Staff should be absolutely honest in all their professional activities. Stealing, borrowing, misappropriating money or property for private use, unauthorised access to information and fraudulent acts generally are criminal offences.

Staff should report any knowledge of fraud, error, breach of law or concealed practice which may be detrimental to the interests of the Bank.

(Emphasis added).

Little doubt now exists that there are individuals both at the coal face and in positions of significant authority who have knowingly contributed to the culture that makes the second paragraph a sarcastic joke or mantra that is to be recited at “end of Year” bonus or performance parties.

The Code of Banking Practice clear has intentions that are honourable. It should be clear by the end of this treatise that it may provide some level of “warm and fuzzy” comfort to those who wrote it however the results since its incepting has fallen far short of its objectives.

Typically we witness a banking culture that “talks the talk” but time and again fails to “walk the walk”.

Reputation vs. Character

The circumstances amid which you live determine your reputation;
The truth you believe determines your character.

Reputation comes over one from without;
Character grows from within.

Reputation is what you have when you come into a new community;
Character is what you have when you go away.

Your reputation is learned in an hour;
Your character does not come to light for a year.

Reputation is made in a moment;
Character is built in a lifetime.

Reputation grows like a mushroom;
Character grows like an oak.

A single newspaper report gives you your reputation;
A life of toil gives you your character.

Reputation makes you rich or makes you poor;
Character makes you happy or makes you miserable.

Reputation is what men say about you on your tombstone;
Character is what angels say about you before the throne of God.
~Author unknown

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.