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Submission to the Financial Services Royal Commission.

In The Public Interest. – That is the Question.

I make this submission in the hope that through this Royal Commission that a great evil which has long oppressed this land may be rendered a significant body blow

The matters that the Royal Commission has been charged with investigating, important though they are, amount to only a symptom of the great evil I refer to, and that is the subjugation of the public interest of we the people, and of this nation, to vested private interests, in particular the banking and financial systems, which the commission has been charged to investigate.

I am not directly a victim of the banks or the other financial institutions the commission has investigated and reported on, but we Australians are all victims of the greater evil, of which the issues exposed by the commission are but a part.

What in the past has been called "The Money Power" has long exercised a level of dominance over the government of Australia that has been little known outside the inner sanctums of high finance and in recent times has seldom been challenged.

The unregulated orgy of fiscal malfeasance which the Royal Commission has exposed is but the tip of the iceberg of evil, the hidden hand of which so influences our government and our nation's destiny.

The Royal Commission now has a rare opportunity to use the exposure of a culture of greed and corruption to strongly recommend re-regulation and a separation of the functions of the Banks, which may go some way to restoring the supremacy of Parliament over the Money Power., and averting the worst effects of the next GFC, which is already looming.

Effectively unregulated financial institutions, and the culture of greed inherent therein, have been the cause of misery and instability in many nations over many centuries, but few men or women know sufficient of the real history to be even aware of the problems.

The fiscal fads of deregulation and privatisation which swept the world during the 1,990's were possible only because of the extensive influence of the Money Power

over governments, to convince them of the so called benefits. There are benefits aplenty, to the vested interests promoting deregulation and privatization, but only costs and chaos to the populace generally.

The public cost and chaos of deregulation and privatisation has become clear in Australia's electricity and telecommunications industry, and the Banking Royal Commission has revealed it in the finance sector.

The Commonwealth Bank, once a great public institution, serving the nation, but consumed in the orgy of privatisation of the 90's has become just another private bank engaging in widespread greed inspired criminal activity.

Should the Regulatory Architecture Change?

I think the honourable commissioner well knows that the only correct answer to this question is a resounding YES!

Apart from detailed questions about the complexity of existing regulation, which come to nothing when none of it is enforced by the tame regulators, the important issue is that **an essential – the most important - element of the regulatory framework is totally missing.**

Banking separation legislation is needed, that is the missing link. Were the basic "boring banking" functions (deposit taking and prudent lending) separated, by statutory requirement, from the speculative areas of banking, insurance, stockbroking, derivatives and currency trading, many of the conflicts of interest which exacerbate the opportunities for greed and thence criminality to flourish would cease to exist.

Some of the conflict of interests revealed in evidence is the result of so called vertical integration of financial services. The situation exists because it suits the institutions, suits the banks, and their influence on government is such that the public interest comes in a poor second.

This is not a case of "If it isn't broke, don't fix it", clearly the regulatory system hasn't been working, at all well, if at all. **One of the reasons is the "revolving door" for staff between the financial institutions and the regulators.**

It is no accident that this situation exists. It is a manifestation of "jobs for the boys" similar to the situation in state and federal government where ex politicians are given positions on QANGOS or various boards or authorities or in the diplomatic service when they lose office, regardless of their capability.

The situation suits the financial institutions very well, to have a tame regulator and never be held to account. It is not an accident, but a planned situation which governments generally are quite happy to go along with. Because of the influence of

the financial institutions on government the public interest is not given its rightful place of prominence.

It does not matter if the relevant financial regulations are too complex or too simple when the regulator fails so conspicuously to enforce any of them. Whether intentional or not the situation amounts to "self regulation" the Holy Grail espoused by the deregulation and privatisation devotees who gained ascendency in the 1,990's.

Result, - the "public interest" has become a forlorn orphan

The concept of self regulation has been shown to be nothing more than a convenient fantasy which has enabled corporate cowboys to ride roughshod over not only their trusting customers, but over governments and nations.

Those that do not learn from history are destined to relive it. History going back beyond the great depression of 1,929 clearly shows that lack of proper regulation leads to imprudent and even criminal behaviour by banks.

In fact the history of inadequately regulated banking causing financial instability and national misery and chaos goes back a lot further than that, and a reading of the following book:-

> **"The Bank of England's Charters"** The cause of our social distress. By Thomas W Huskinson. London. Published by P.S.King and Son. Orchard House Westminster 1,922.

shows that inadequate regulation of banking in the UK, all throughout the nineteenth century, led on multiple occasions to financial panics and depressions, several of which in the 1,890's flowed on to Australia.

Several UK parliamentary inquiries into the incidents of fiscal mayhem led to the conclusion that in every case the financial instability was caused (deliberately) by the Bank of England acting in its own interests within the terms of its charter, which effectively in financial matters placed the bank in an almost totally unregulated position, with its private interests superior even to the British parliament and people.

Despite the findings and recommendations of several nineteenth century UK parliamentary inquiries, successive UK governments still failed to regulate the bank effectively.

Why is it so?

Any impartial assessment of the situation can only reach the conclusion that The Bank of England was able to exercise enormous hidden influence over the members of the British parliament. While that influence benefited the Bank of England enormously, the populace and the nation itself suffered periods of severe hardship and instability as the price of vested interests being superior to the national interest.

We in Australia, now stand in a similar position!

Vested interests verses the National interest. This Royal commission has the capacity to set the course of the Australian ship of state for the foreseeable future, by forcefully recommending that the government legislate and regulate the banks with the National Interest paramount, in a way it has not been for many years.

We need consider the events leading up to the establishment of this commission. Recall that over an extended period of calls for a Banking Royal Commission, the now Prime Minister Scott Morrison voted against it 26 times, until Malcolm Turnbull eventually agreed to establish it, when the banks themselves agreed to it, perhaps hoping it would be a whitewash, and that a "sound" man had been found to conduct it.

It is a testament to the integrity and courage of the Royal Commissioner Mr Hayne and counsel assisting that it has been anything but a whitewash.

Somewhere in hidden corridors of power of the hidden hand, there is a "Sir Arnold" saying, "But, but, you told me he was SOUND! Humphrey!

It is only the overwhelming evidence of widespread financial institutions criminal behaviour which the commission has revealed that has caused the reluctant government to change its tune, and admit there is a very real problem.

The terms of reference for the commission have been criticised for not being broad enough, but even within those terms, the irrefutable evidence of widespread criminality in banking has forced the asking of questions about the very structure of banking in Australia.

The evidence heard by the commission so far points to the lack of adequate regulation, and ineffective enforcement of what little regulation there was, permitting the greed mentality to overwhelm prudence and honesty to the point of wholesale criminality.

Apart from the little known history of the Bank of England, the better known story of the financial crash of 1,929 and the great depression provide more lessons which need to be learned if we are not to again relive them.

The lessons of history are there, but our parliamentarians are ignorant of them. Lessons such as the Ferdinand Pecora commissions investigation of the great 1,929 crash related in "The Hellhound of Wall Street" by Michael Perino, and the subsequent action in the US government passing the **Glass Steagall** act in June 1,933.

The effective separation of basic "boring banking" from speculative and merchant banking is the essence of Glass Steagall type legislation, and it provided a stable regulatory framework in the USA, without a major financial crisis for over 60 years.

The 1,990's saw the global emergence of the deregulation and privatisation manias, and after 20 years of lobbying by the "Wall Street Banks" the US government repealed Glass Steagall in 1,999, and the result was the unregulated speculation and widespread criminal behaviour that led to the Global Financial Crisis (GFC) in 2007/8.

It is the deregulation and privatisation fad that created the conditions which led to the need for this Royal Commission, to the crimes against customers, with lap dog regulators, content to always look the other way.

So far the personal suffering and injustice revealed in evidence before the commission is confined to a minority the population. Bad as it is, the factors that allowed it to occur locally are global, greed and criminality on a global scale.

The need for separation of banking functions. (Glass – Steagall) Legislation. – THE required change of the regulatory Architecture.

The risk of a further, new, GFC is acknowledged by many analysts of sound repute, and a financial crisis caused by Australian banks exposure to the housing bubble, which was fuelled by their own greed and fraudulent lending practices, and exposure to the complex and unstable international financial derivates market, underlines the urgent need for an **Australian Glass-Steagall** type of banking separation.

Separation of banking functions to remove the speculative areas of banking (gambling on financial derivatives etc) from the basic banking functions of deposit taking and lending is needed to protect depositor's funds from the risk of confiscation in a fiscal crisis (Glass-Steagall) is needed.

It should not be necessary for the government to have to guarantee deposits, which if it ever had to be put into effect would be a case of taxpayers bailing out the banks. Separating the "boring banking" from the risky speculative aspects of banking is the simple risk free way to go.

A bill is already before parliament to do this. The Royal Commission needs to clearly express support for Australian Glass-Steagall type legislation.

Don't consult with the banks. TELL THE BANKS WHAT THEY CAN NOT DO!

You cannot gamble with depositor's funds – "simples!"

Risky banking practices, (derivatives etc) must be undertaken only by a totally separate corporate entity, clearly distinguished in all respects and separately capitalised from the basic "boring banking" business.

By even posing the question in the interim report, "**Should the regularity architecture change?**, the commission shows that it knows the answer already, **YES, things need to change, DRASTICALLY.**

That we have got to this stage indicates that two arms of government have failed in their duty to the people and to the nation.

The executive arm of government has failed to recognise the problem, and has allowed itself to suffer the improper influence, nay not merely suffer, but grovel obsequiously to the same kind of vested interests that held the British Parliament in the palm of its hand all through the nineteenth century.

The legislative arm of government has also failed to exercise its power to govern in the national interest.

It remains only for the judicial arm of government, embodied in this Royal Commission to do what is necessary, right and just, and to state its findings in a loud and courageous voice that the executive and legislature dare not contradict or ignore.

The Hayne Royal Commission has both the opportunity and the duty to have a lasting and noble influence over the future of Australia.

Corporate Criminal Behaviour.

The commission has clearly exposed the facts that our banks and super funds have behaved in ways which are clearly criminal, fraudulent, deceitful and dishonest, and that the underlying cause of such has been greed.

Individuals, banking executives and board members, who must be recognised for what they are, white collar criminals, are clearly responsible for the criminal acts of the banking institutions. Their actions were premeditated and carefully planned crimes, as dangerous to the well being of society as the crimes of any armed robber, drug dealer, or purse snatcher.

The Royal Commission knows all this, and in the interim report wonders and asks what to do about it. Surely this must be a rhetorical question, for the answer is as clear as the crimes committed.

There must be "consequences" for the "corporate bag snatchers", consequences which society will recognise as a punishment to fit the crime. **That means *mass criminal prosecutions*, and jail for significant time for all those convicted.** Their fraud and deceit, their crimes, have affected thousands of victims, not only those who have had the opportunity to give evidence to the commission, but thousands of silent victims who are watching the reports of proceedings , and hoping that some small measure of justice will be seen to prevail.

The commission has exposed both "corporate crime" and underlying individual criminal actions, which should be perused by different paths, with different objectives.

Corporate Crimes. Should be perused by the regulator against the corporate entity (bank or super fund) with a view to making **monetary restitution** to victims.

Financial Crimes Ombudsman

The regulator should establish a **"Financial Crimes Ombudsman"** office to handle the cases for making restitution individually ON BEHALF OF VICTIMS, as it is not practical to expect victims to mount their own actions, already having suffered great financial damage.

Specific Damages.

The presumption of action for "specific damages" being that the victim is entitled to be restored to the position which he could have been reasonably expected to be in, had his transactions with the institution been conducted in an honest (crime free) manner and the institution had exercised a proper level of financial prudence and professional competence in dealing with or advising the client.

Special damages.

Furthermore in the case of proven claims that the claimant be automatically awarded further special damages of an additional 50% of the "specific damages" as some compensation for the emotional pain and suffering inflicted on the victim of crime by the institutions criminal actions

"Settled" older cases.

In cases which have already been "settled" by foreclosure by the bank, that a customer defrauded or misled in any manner identified as possible grounds for action, be able to bring a case to the "Financial Crimes Ombudsman" and if proven would be entitled to "specific damages" of financial compensation plus interest to restore them to the position that they could reasonably have expected to be in but for the criminal, fraudulent or incompetent actions of the bank its agents servants or brokers.

Restitution would be all monetary where for instance a property had been foreclosed on by an institution and sold on to a third party unless (at the absolute discretion of the victim of crime) the new owner is willing to resell the property for up to 150% of the 'original price" with the extra to be paid by the convicted offending financial institution.

Limitation on antique actions.

It would be necessary to set some time limit regarding the basis for such "settled actions" to avoid the bringing of antique claims

Further, the commission should recommend that the corporate regulators publish information to clarify the forms of criminal activity that may be prosecuted, to assist victims to recognise their circumstances as falling within the required class and to register their complaints with the Financial Crimes Ombudsman to seek restitution.

Apart from making restitution to individuals able to prove that they were the victims of criminal activity, (fraud, misrepresentation, overcharging etc) the regulator should seek the imposition of heavy fines, of ten times the amount that an institution may have gained by engaging in criminal activity, levied against the corporation, as a deterrent against future transgression

Individual Crimes.

Operating from the premise that where there has been a corporate crime, that there are individuals responsible, and that they must not be allowed to escape justice behind a corporate veil. Individual criminal prosecutions should be launched with the objectives of punishment and deterrence.

I submit that the commission recommend that criminal prosecutions be instigated by the regulator against all responsible "bank" senior executives, directors and board members where evidence already heard before the commission points to corporate and or individual criminal behaviour.

Further that where claims for restitution brought to the "Financial Crimes Ombudsman" demonstrate that there was a corporate crime, that there be a **presumption of "associated individual criminality**" and that all such cases be further investigated by the regulator, assisted as necessary by police, with a view to laying charges against a specific individual.

Justice beyond the Royal Commission.

The duration of the commission has been a political bone of contention. Many "victims" have not had the opportunity to o come before the commission, and as they number in the thousands, and many cases will be essentially similar and hearing them would be endlessly repetitive, I submit that there is no need for most to do so.

The existing evidence has clarified the picture sufficiently for the commission to recommend that procedures such as establishment of a "Financial Crimes Ombudsman" provide an effective simple and affordable mechanism for victims of crime, not heard directly by the commission, to seek financial restitution and justice.

The Commission should recommend.

1. **Banking Separation.** Passing by parliament immediately of a Banking Separation Act – (Glass-Steagall) in similar form to that already before the Australian parliament.

2. **"Financial Crimes Ombudsman"** -Establishment of a simple inexpensive system a "Financial Crimes Ombudsman", for compensation for customers defrauded or financially disadvantaged by bank or institutional fraud, incompetent advice, or overcharging, the costs and compensation awarded to be paid by the institution at fault.

3. **Provision for Special Damages – Emotional pain and suffering inflicted.** That even in cases which have already been "settled" by foreclosure by the bank, that a customer defrauded or misled in any manner identified as possible grounds for action, be able to bring a case to the "Financial Crimes Ombudsman" and if proven would be entitled to "specific damages" of financial compensation plus interest to restore them to the position that they could reasonably have expected to be in but for the criminal, fraudulent or incompetent actions of the bank its agents servants or brokers. Furthermore in the case of proven claims that the claimant be automatically awarded further special damages of an additional 50% of the "specific damages" as some compensation for the emotional pain and suffering inflicted on the victim of crime by the institutions criminal actions.

4. **Criminal Prosecutions (Corporations).** Criminal prosecution of corporations and individuals being executives above a certain level, and board members, responsible for crimes against customers.

5. **Criminal Prosecutions (Individuals and Boards).** In the case of a corporate entity being charged with a crime, any individual executives or even the entire board of directors may be tried as a group at the same trial for the same crime as that of the corporation. Penalty Jail for a statutory minimum of two years without parole if convicted.

6. **Restructuring of the regulator** to be a feared and merciless regulator, free of incestuous revolving door staff relationships with the institutions it oversees.

7. **National Development Bank.** The reestablishment of a National Development Bank in full public ownership to finance public works and infrastructure development. (Yes I know it's not in the terms of reference, but it needs saying and it needs doing, and having the courage and audacity to do so will ensure that the Hayne Royal Commission will not be just another obscure banking investigation in 50 years time, but will go down in history as a great turning point in Australian history.)

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