ROYAL COMMISSION INTO MISCONDUCT IN THE BANKING, SUPERANNUATION AND FINANCIAL SERVICES INDUSTRY

Hon Kenneth Hayne AC QC
Commissioner
Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry

25th October 2017

Dear Commissioner

The following preface is significant to appreciating the Commission's inquiry into misconduct into the Banking, Superannuation and Financial Services Industry.

It is not anectodical but fact that senior regulatory functionaries of the international financial institutions were incapable of forecasting the 2008 crisis (the Global Financial Crisis or GFC).

Notwithstanding, those that raised any alarm of an impending crisis were ostracised and their pleas for sanity discounted or dismissed. This is a statement of fact and verifiable by all who have knowledge about the financial industry.

After the GFC of 2008, on October 3, 2008, the US Federal Government enacted the Emergency Economic Stabilization Act of 2008. This act authorized the United States Secretary of the Treasury to spend up to $700 billion with the creation of the Troubled Asset Relief Program (TARP) to purchase distressed assets, especially mortgage-backed securities, and supply cash directly to banks. Over the next six months, TARP was dwarfed by other guarantees and lending limits. Analysis showed the Federal Reserve had, by March 2009, committed $7.77 trillion to rescuing the financial system.[1] Subsequently, the United States Federal Reserve was offered by the President Barak Obama, to be the "bank of last resort" to support the European Central Bank "bail-out" of the European Union.

From 2009 The Bank of International Settlements (BIS) focused on alternative processes to preserve the "too big to fail's". The BIS identified the global systemically important banks – termed Systemically Important Financial Institution (SIFI) or Systemically Important Bank (SIB). These institutions were banks, insurance companies, or other financial institutions whose failure might trigger a financial crisis.

The BIS was critical in developing the novel concept of the "bail-in" as foresight of continued application of the "bail-out" process, projected to potentially cripple the financial sector of first world nations. Thus, applying the mechanism of bail-out, such as was used to protect the insolvent banks in the 2008 crisis, was rejected as it would trigger more significant financial crises.

As an alternative control mechanism, the "bail-in" was introduced as the tool of choice of the international financial regulators. And this method permitted SIFI banks to sequest the money of unsecured creditors from private bank accounts.

In September of 2012, the Australian Government, Department of the Treasury, issued the consultation paper, **"Strengthening APRA's Crises Management Powers"**. Page 5 of that document included the infamous ***bail-in*** as a strategy to manage Australia's financial system in times of crisis. To paraphrase that document *"...powers that jurisdictions should have available for dealing with financial institution distress... include the need for robust statutory powers to (enact a raft of proposals including) bail-in".*

The bail-in was trialled in Cyprus in 2010. Sadly, the international banking system has accepted the bail-in principle (and developed, because of the 2008 crisis, the method approved by the IMF); the practical test carried out in Cypress in 2010 resulted in devastating consequences. Now this policy is advocated by the international banking fraternity, to apply to the peoples of our nation. This policy should not be permitted to occur in this country.

Australia has been devastated by the free trade system; without industry, our nation is vulnerable. We sell very little now but our land. Perhaps the Reserve Bank of Australia is of the view that the property market is sufficient to keep afloat the Australian Economy; the infamous property market is in a bubble, as all in the property industry surely know. The last leg of Australian financial growth now rests on the property market. Our current predicament appears historically unique with the gross value of the Australian Stock Exchange now dwarfed by that of the Australian property market.

The current international system is exposed to increasing levels of international debt, greater than that which preceded the GFC of 2008. When the debt crisis is realized, Australia will be in an economic emergency.

Our country will indisputably be in crisis; and this crisis, coupled with current pressure established by an international trade war, would have disastrous consequences on Australian middle income earners. The method of stabilising the banking system will undoubtedly be the bail-in, providing a devastating blow to Australian citizens.

Australia, because of free trade, has no other productive sector and when the property market collapses, the Australian economy will be put under great strain with the likelihood of further collapse. Bubbles, by definition, always collapse! The Financial Sector Legislation Amendment (Crisis Resolution Powers and Other Measures) Act 2018 has given our banks the legislative power to apply bail-in (under APRA's crisis management policy), and bail-in will enable a legal sequestration (holding of money) from the average Australian's bank account.

This submission to the Royal Commission opposes the intentional duplicity and negligence to the Australian public of the bail-in proposal contained within the Financial Sector Legislation Amendment (Crisis Resolution Powers and Other Measures) Act 2018. Although, in the Act, avoiding the specific term, bail-in (rather uses the alternative "conversion or write-off provisions") the couching of the Act allows the Australian Prudential Regulatory Authority (APRA) to permit bail-in of unsecured deposits (average commercial and domestic bank accounts).

This sequestration would exacerbate a financial collapse, which could easily follow if the speculative property market downturn occurs within the current economic landscape, forcing interest rates to increase and consequently imposing downward pressure on fixed income markets and the stock market. Such a cascade of deleterious effects would leave our economy "on the ropes". Mortgage holders will be unable to service their loans and the sequestration of savings would be enforceable by law.

The Royal Commissions has the power to investigate any conflict of interests responsible for APRA's promotion of the Crisis Resolution Powers of "bail-in".

A conflict of interest can be at the core of systematic exploitation within financial institutions (a conflict of interest, incumbent upon institutional mechanisms favour a status quo, contrary to the best interests of the people). Such a conflict of interest has the potential to cause extensive pain, dislocation and suffering to entire sections of community and nation. If such an abuse occurred with an intent to do so (to cause pain, etc) it would generally be classified as a crime, alternatively, if such an abuse occurred through negligence of those in society who are expected to know better, such an abuse may be classed as criminal negligence.

If, in the immediate future, in case of some "unforeseeable crises", a "bail-in" is applied, in spite of regulators insisting that it is not the purpose of the Financial Sector Legislation Amendment (Crisis Resolution Powers and Other Measures) Act 2018, and financial regulators consider that the unsecured creditors accounts, shall, under various terms, conditions and mechanisms of the financial institutions, be "bailed in"; then those doing so may be complicit in a crime against the nation if the intent all the time was to commit to such an undertaking, or a gross criminal negligence, if all but intent was present. This is a very serious matter and directly within the scope of the Royal Commissions Act 1902, that regulates this nation's Royal Commissions.

The Royal Commission can protect the Australian public by advocating a ***banking separation bill***. Such a bill would protect the unsecured creditors of the banking system (the Australian Citizen) and invoke a clearer separation of speculative banking practices from legitimate lending and commercial activities.

The Royal Commission can undertake an investigation of APRA's crisis powers and inform the Australian public that banks will not be permitted the power of "bail-in" options in the face of any "unforeseeable crisis".

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1. Source: https://en.wikipedia.org/wiki/Emergency_Economic_Stabilization_Act_of_2008