Financial System Inquiry

DATE: Tuesday 26 August 2014.

Chairman David Murray

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DEADLINE for submissions: 26 August 2014

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This Submission/Objection is about David Murray's two questions for more discussion about the "bail-in" of bank deposits to top up the four big banks in Australia.

1. *Is it possible to reduce the perceptions of an implicit guarantee for systemic financial institutions* [i.e. TBTF banks] *by imposing losses on particular classes of creditors during a crisis, without causing greater systemic disruption?*
2. *If so, what types of creditors are most likely to be able to bear losses?*

My submission/objection are as follows:-

1. There has been in the past cases against the Commonwealth Government giving money for instance the scripture union to teach the chaplaincy program into schools. See for example the High Court of Australia Case: *Williams v Commonwealth of Australia* [2014] HCA 23 (19 June 2014) just this year. And, to my memory possibly the Pharmaceutical Benefits Case in the late 1950's and early 1960's said the Commonwealth legislation was beyond power. Should the Federal Government pass legislation to enable those deposits to go into the investment side of banking without compensation from either the banks i.e. Westpac, Commonwealth Bank of Australia, National Australia Bank and the ANZ Bank or the Commonwealth Government, this would conflict with section 51(31) of the Commonwealth Constitution. Section 51(31) reads as follows:-

'The acquisition of property on just terms from any State or person for any purpose in respect of which the Parliament has power to make laws:'

Such a Commonwealth Law without compensation would be struck down by the Federal Court and eventually the High Court of Australia as Unconstitutional.

Our society has prospered because the Australia and English system of law makes accountable in criminal and civil matters and not to blame innocent third parties, which were not responsible for the over-zealous and greedy investment banking section in the first place. The proper remedy is really between the investment creditors and the bank itself and not even other private depositors in the same bank. The directors and the insurance companies for those particular banks can possibly recover money if the bank is somehow found to be at fault. However, when you decide to buy shares or put money into, say, a company like the stock exchange the person/s that have invested the money lose out. The problem started in Australia when we de-regulated the banking industry in the 1980's and the 1990's. The same thing happened in the United States in 1999 when the Federal Government of the United States did away with the Glass-Steagall Act 1933. Here is another example of the same thing happening in another country i.e. the United States as within 10 years of the Federal Government in the U.S.A. doing away with the Glass-Steagall Act in 1999, the U.S.A. had a bank melt-down with the Lehman Brothers, Fannie Mae, and other institutions etc., collapsing. However, in this case the U.S. Federal Government bailed out the banks in the United States and not private people having money in private deposit accounts.

The fault lies with de-regulation of the banking industry in Australia and the United States by doing away with the Glass-Steagall Act and similar de-regulation here in Australia. Investors and the banks got too greedy, too impatient too quickly and as a result their wallets have been burnt from financial losses. The Common Law of the Courts in the United Kingdom and Australia have been this in a nutshell:- 'A person cannot take the advantage by his own wrong.' See *Loke Yew v Port Swettenham Rubber Co Ltd* [1913] AC 491. This is just one of many cases applied in Australia on the subject 'A person cannot take the advantage by his own wrong.' You would need a Commonwealth Constitution Referendum by two-thirds majority to approve seizing money out of private bank accounts through-out Australia to pay the creditors that have lost money etc., and or the banks.

Further, the solution for investment banking would be to hold that part of the capital in that bank under a separate company so that if investments went bad the rest of the bank and particularly private depositors like you and me would not be injured with the investment side of banking. You need a separation of real banking i.e. private deposits etc., like for people you and me and investment banking. The Federal Government needs to pass legislation to separate real banking i.e, private deposits etc., from speculative and investment (gambling) banking. Continually seizing private depositors' accounts whether they are over or under $250,000.00c will only bleed to death bit by bit (gradually) the funds in the private accounts of Australia and this is what is happening in Argentina and other countries.

Further, seizing private funds could catch a number of state statutes for instance here in Queensland., Taking a quick look at some of the Statutes i.e. Financial Intermediaries Act 1996 (Qld) Section (Section = S) 229 'Fraud or Misappropriation'; Industrial Relations Act 1999 (Qld) S430(a)(1), S575(1)(c), S636L(1)(b); The Criminal Code 1899 (Qld) S408C(1)(a)(i)(ii) 'Fraud', S442 'Secret Commissions'. Also the Clth Crimes Act 1914 and the Clth Criminal Code 1995 might need checking. Also the old Trade Practices Act 1974 around S46 monopolies now called the Competition and Consumer Act 2010 – the new monopoly section may give you some problems.

However, generally speaking it is misappropriation of private property into another/s private bank/account. I would not like to be doing this or in David Murray's position or even the Treasurer Joe Hockey's position because this type of thing is like pulling the ears of a Rottweiler or the ears of a Lion.

To sum it all up, I enclose the article in yesterday's Courier Mail below.

Retired judge joins CBA panel

Courier Mail at page22. Monday 25 August 2014

"A RETIRED Queensland Court of Appeal judge has weighed in on the Commonwealth Bank of Australia's attempts to find a satisfactory outcome for customers who may have lost out because they were given poor financial advice.

CBA yesterday said Geoffrey Davies had accepted deputy chairmanship of their Independent Review Panel.

The bank also announced it would fund the cost of plaintiff law firms acting as Independent Customer Advocates to help customers through the process.

Three internal CBA options were now available to customers "who may have received poor financial advice" between September 1, 2003 and July 1, 2012, involving free assessment of the previous advice by a specialists CBA team, an Independent Customer Advocate paid for by CBA, and review by the Independent Review Panel. A fourth option was to approach the Financial Ombudsman Service or pursue a claim."

Note: Geoffrey Davies sat on the Court of Appeal in Queensland for many years.

Back in the early 1990's the Premier of Victoria Joan Kirner did the same thing bailing out private investors in the stock exchange using Victorian Consolidated Revenue and as a result, it nearly destroyed/bankrupted the State of Victoria as people in Victoria had to vote in Jeff Kennett and a 'Liberal Government' to sell off a huge amount of Government assets to fix up the financial mess.

This is an electronic document and is a valid submission/objection because of the Electronic Transactions Act 1999 (Clth) and the Electronic Transactions Act 2001 (Qld).

Yours faithfully,

Chris McDermott.

Date: Tuesday 26 August 2014.