



<b>*** MAY JUSTICE ALWAYS PREVAIL ***</b>			
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Constitutionalist & Paralegal Independent Consultant & Author		<b>INSPECTOR-RIKATI®</b> Series of books on certain constitutional and other legal issues	

Financial System Inquiry  
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3-8-2014

**Ref: 20140803-G. H. Schorel-Hlavka O.W.B. to Financial System Inquiry-Supplement 3**

### NOT RESTRICTED FOR PUBLICATION

**Submission** Stability - Addressing too-big-to-fail

Sir,

I provide this **supplement 3** as I view it is relevant to matters I referred to previously.  
QUOTE SUBMISSION SUPPLEMENT 2

**Also, the question is if the Commonwealth of Australia in the first place has any legislative powers to transfer ownership of shareholders and customers entitlements to the bank?** In my view it can regulate banks, but it has no legislative powers to interfere with the civil rights of customers and shareholders to remove their ownership rights. It can however make directors legally responsible for the bank and this I view is the real issue that should be addressed, as to avoid customers/shareholder having to make up for the unlawful conduct by the banks.

HANSARD 27-1-1898 Constitution Convention Debates  
QUOTE

**Mr. BARTON.-Our civil rights are not in the hands of any Government, but the rights of the Crown in prosecuting criminals are.**

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END QUOTE

Therefore, I raised the issue that the Commonwealth cannot alter ownership of entitlements as only a court of competent jurisdiction can do so if and only if the court finds upon the evidence before it this is appropriate. For example, in property settlement cases. Just that it appears to me that people accept whatever the Commonwealth does without question. Law are to effectively "regulate" not to alter ownership merely because it suits the Commonwealth to do so. Even in the constitution it is provided for that Subsection 51(XXXI) of constitution provides:

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## QUOTE

(xxxi) 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;

## END QUOTE

As such where the Commonwealth must compensate a citizen appropriately then how can the Commonwealth allow the taking of property of any citizen not by itself but by what is really a stranger to the Commonwealth.

In my view neither “**bail-in**” nor “**bail-out**” can be justified because “**bail-in**” would be that the legislators are transgressing into the judiciary area, unilaterally providing benefits for one party without any proper hearing to determine the rights of each party, whereas “**bail-out**” would be unconstitutional as it would mean the Commonwealth would be spending Consolidated Revenue Funds for non “**public purposes**”. And neither could any bank guarantee by the Commonwealth of Australia be held constitutionally valid, this is because the Commonwealth cannot achieve by backdoor manner what it cannot achieve in a direct manner. A bank guarantee by the Commonwealth would be the equal to a “**bail-out**”.

I recall that I purchased AMP shares only to have them dropping soon afterwards to about 20% of their value I had paid for AMP supposed to be an advisory body in investment, but as I understand it they do not seem to understand how to conduct such matters.

I (being a **CONSTITUTIONALIST**) discovered on 19 May 2009 that suddenly a vacancy eventuated due to the resignation of Meredith Hellicar (adverse finding by the courts as I understood it to be) and wrote to the Board of Directors that it could appoint me with in clause 61 and 62 of the AMP constitution to fill the vacancy as per AMP constitution.

This request was printed on a A3 magnet and forwarded in a roll. However, the Board then had one of its directors suddenly standing for re-election even so she was not at all due for re-election. As such con job to avoid that I would be appointed as a directors, this despite that I had previously been an authorised Insurance agent and in fact with Businessmen Insurance had attained the highest earning place as published then in its company newsletter.

And I held this was a corrupt conduct by the Board of directors to prevent me, despite my experiences, to be a part of the AMP Board of Directors and by this misused and abused its position. After all, where nominations already were closed for any election then to suddenly have a board member standing for re-election preventing anyone to challenge this in itself may underline the fraudulent conduct.

Further, as nominations had been closed then the board member neither could stand for re-election afterwards. Neither could the AMP Board of Directors accept for the board member to stand for re-election or nominate her to fill a vacancy where she still had her term to complete well past the election already in progress at that time.

It was therefore clear that the AMP Board was misusing and abusing its powers rather than to comply with the AMP constitution.

It was also clear that the AMP Board of Directors has no powers to act in contravention of the AMP Constitution.

And obviously the AMP Board of Directors discovered that I just happen to understand the AMP constitution better than they had and so sought to outmanoeuvre me as obviously what I view their corrupt conduct is not what they wanted to be further exposed.

And this then brings me also to the Board of Directors of the Reserve Bank of Australia, as if there is so to say a conflict of interest where for example Mr Joe Hockey is treasurer and also a

board member then little surprise he organised the \$8 billion to be transferred, without due legal processes. I wonder how much, if any, of a kick back he got from this, if any?

5 With the Bendigo Bank, there was a request for a committee to be set up to create a Heidelberg branch of the Bendigo Bank. I was elected to the committee. One of my task was to organise for people to purchase shares in the new branch to be. Within a short time I became concerned that  
10 Ivanhoe Branch willing to back the project then in return desired that its shareholders would receive about something like 3 for one shares. In my view this would constitute insider trading and opposed this. I held that if any internal dealings were to be done then one had to make this  
15 known to any would be purchaser of shares in the Bendigo Bank to be at Heidelberg. After a few weeks a meeting was held where I refused to cooperate with what I held deceptive conduct, and I was requested to resign which I refused. Even so at that meeting were many people who were not members of the committee, nevertheless the chairman allowed them to vote to oust me from the committee and by majority I was then deemed to be ousted. In my view the voting was rigged by  
allowing persons who were no more but visitors to vote to oust me.

I am unaware any investigation was conducted as to insider trading where those who were on the committee for the to be formed Heidelberg branch also were shareholders of the Ivanhoe Branch. Bendigo Brank itself was notified by me but I understood they refused to get involved, I  
20 understand they neither reported this matter of insider trading to the relevant authorities.

I held that my integrity was more important then to give in to what I held to be insider trading and deception to prospective and later shareholders of the Heidelberg Branch of Bendigo Bank.

25 As I alluded to earlier I was an insurance agent, but when I detected what I deemed swindle by the insurance company upon clients I personally attended to my clients to explain to them I would be resigning from the company as I didn't want to be involved in any fraudulent conduct. And after having personally notified my clients, which I held was appropriate to do, as after all they trusted me, I resigned from the company.

30 I am therefore well aware that considerable formes of swindle is going on including what I held with the AMP Board of Directors.

At the AMP 2000 AGM (Annual General Meeting) I then questioned why Mrs Hewson (the wife of former Leader of the Liberal Party John Hewson) allegedly being employed with the Adelaide  
35 University as a Risk Management lecturer had advised AMP tom purchase shared of the GIO when the Commonwealth Bank had gotten rid of them. I understood that her response was that she got the news from the newspapers to purchase the shares.

Moment we have a Member of the Board of directors who does no more but to look in a newspaper and that is risk management? And this cases a huge loss in the price of shareholding!

40 And we therefore have to look at the kind of directors that are appointed to Banks!  
Are they merely appointed because well they have some friends in good places? They are mates and so appoint each other to the various Board?

And, in the process they have a quick rich scheme making a bundle from all kinds of directorships to which they cannot give any proper attention because they are burdened with too  
45 many directorships.

So, the Risk management is worthless as such.

The competence may be non-existence.

Why indeed allow speculation to be part of an investment bank? In my view, any investment bank should never be allowed to participate in investment gabbling such as in derivatives of overseas bonds, etc.

- 5 <http://www.institutionalinvestor.com/blogarticle/3367200/four-years-later-dodd-frank-and-derivatives/asset-management-regulation.html#.U9z2PaF-IU>

QUOTE

One member ventured to pose the question that was on everyone's mind: "What is a derivative? I wouldn't know one if it hit me in the face."

10 END QUOTE

This was about half a dozen congress members who were members of the House of Representatives, when the USA already was well into a financial crisis.

- 15 And if in the very country where this started members of Congress or at least some of them never even knew about what "derivatives" was about then how could they possibly have make informed decision s to legislate. They didn't know and didn't legislate.

- 20 And, we had even Mr Peter Costello then as treasurer allegedly gambling away a reported \$5 billion dollars on if the price of the Australian dollar would go up or down. And, clearly we seems to lack appropriate legislation to prevent this kind of gambling.

What we also have is this conflict of interest where board members of a bank also possibly belonging to other boards may use and misuse their positions to benefit another board they are part of.

- 25 Also, as I exposed during 2001 and thereafter certain matters must be published in the gazette, such as the exchange rate, etc. But as I exposed already long ago, Special Gazette's published for this are only published in the states where the Commonwealth bookshop held it was financial viable to have a copy and other states simply wouldn't have one at all and so no publication existed until the general Gazette was published, where as I pointed out (and my books published  
30 in the **INSPECTOR-RIKATI**® series on certain constitutional and other legal issues canvasses this extensively with copies of the relevant Gazettes)

- 35 For example in Tasmania the Gazette would be published up to 21 days after the special Gazette already had been published in Canberra. I exposed how aviation matters published in the Gazette was published at times weeks after the notice was already deemed applicable, just that clearly non-publication cannot provide for this.

- 40 I pointed out how the Commonwealth had Gazetted certain conditions regarding compensation claims that were to be done within a certain time of the notification in the gazette, just that the notification was published after the last date due to file a claim, and so prevented people to apply unless their lawyers happen to be as alert as I was. This I doubt.

What this underlines is that we have all kinds of board of directors but none seems to bother to check legalities and then when it goes wrong then the customer/shareholder cops their incompetent caused problems.

- 45 "Bail-in" or **Bail-out** is no more but to assure board of directors and others TO REMAIN IGNORANT TO THEIR DUTIES AND RECKLESSLY GAMBLE AWAY BANK SECURITIES AS THEN OTHERS WILL COP IT, BUT THEY WILL REMAIN SHIELDED. That I view is beyond the Parliament to provide for and it must not go down that path of even to try to do so.

- 50 It can regulate the banking industry but it cannot removed the responsibility and accountability of those conducting the bank affairs.



I am deluges with emails such as the following

QUOTE

5 **Your ANZ Online Banking is Temporarily Restricted**

ANZ online Dear ANZ Valued Customer, We noticed suspicious activities on your account from an unrecognized device. This may have been you via a mobile device or an unrecognized P.C.

For your security, we have te

To noreply.customers

10 Aug 1 at 11:57 AM

**Dear ANZ Valued Customer,**

We noticed suspicious activities on your account from an unrecognized device. This may have been you via an unrecognized P.C. For your security, we have temporarily restricted access to domestic and international transactions. To protect your **identity** with us.

What do you do? To verify your identity and resume normal banking activities, please visit: [www.anz.com/verify](http://www.anz.com/verify)

ANZ will periodically send you such notifications to ensure the safety of our account. To view secure messages, please log in to [www.anz.com](http://www.anz.com) and click on Secure Message Center.

By accessing the Bank's online services, you confirm you are an authorised user and have agreed to the applicable terms and conditions (See [Electronic Banking Conditions of Use](#)).

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END QUOTE

As I do not have any ANZ account with this bank it is obviously a scam.

- 5 But as a person who is sick and tired of reporting to the banks such scam emails because generally banks never give a decent reply and neither warn their customers about this, and so allow their customers to remain at risk rather than to prevent such scams to be successful, then one has to ask who is getting paid to manage the banking industry and who cops it when the banks are losing a lot of monies?
- 10 Now the banks seeks to demand pin numbers where the elderly such as those on age pension will gradually (even so they may not be aware of it) lose their hearing, eye sight, alertness, sight, etc. So the banks make known get a medical certificate.
- 15 Who pays for the cost of the medical certificate, the age pensioners from the little monies they have? At what cost? Having to travel to and from a medical practitioner and perhaps further cost of an eye specialist and then in the end ending up without a certificate? How many age pensioners really would be aware when their facilities reduces that they may no longer remember a pin number? So, who gives a damn about the age, the infirm and the disabled, just hold them accountable when something goes wrong. For sure they might not be aware that when they use a pin number an overhead camera may record this and the person attending at the cash register may
- 20 skim their card and so additional charged are charged against the card without knowledge or authority of the card holder but the banks make clear just cop it unless you can prove to us that you didn't give out your details.
- 25 But when it comes to the bank recklessly so to say gambling away monies in all kind of absurd investments, such as overseas, then somehow we cannot hold the bank directors and others responsible. Then they argument is they are too big to fail!
- Well, there can be no such thing as too big to fail because if it really is an issue of too big to fail the Parliament would have appropriate legislation in place to ensure this never can eventuate. If therefore a bank were to fail then parliament is the first port of call to blame for failing to have put in place a system that prevents this to happen. After all if the Parliament fails to legislate that
- 30 investments banks cannot get involved in speculation then it clearly fails to act in the interest of citizens.
- Currently the perpetrator (the banks and its board of directors, etc) are being shielded from responsibilities and the victims (customers/shareholders) are made to pay. That is like having not a criminal facing court for sanctions by the court but to have the victim charged with the crimes
- 35 of the criminal and the victim serving the punishment that should be handed out to the criminal. And, do you really think that the banks (so its board of directors) will improve anyway in their dealings where they are deemed too big to fail and so can misuse and abuse monies as they deem fit? Take a reported expensive holiday by a bank where it hired an entire resort island for

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bank staff, but obviously they didn't have to pay for it, and this while the Commonwealth was guarantee for the banks!

Also, when one consider the absurd huge salaries and bonuses paid out for what? For destroying the viability of a bank or other entity? Like with AMP where the share price plunged to less than 20% of its original value and the Members of the board left with millions of dollars for a job allegedly well done.

If banks are deemed too big too fail then the Parliament better put in place legislation that will prevent any conduct by the bank that can risk the viability and security of the bank. The banks must accept that if they seek some form or another security then they must earn this. If this means a more controlled bank conduct of reporting, etc, then so be it.

If an age pensioner can be deemed liable for any unauthorised usage of his/her car unless he/she can prove not to have acted inappropriately for example not having given out a pin number, then let the banks also be held accountable that unless they can prove they are not at fault they better cop it and so the board of directors that they can be personally held liable for all losses, even if it means the confiscation of their own home and other personal belongings.

I have outlined various matters and they are all inter connected.  
For example, if the Gazette is published too late then in the meantime a business entity unaware of a Gazette details may enter into a contract upon details known and then after signing the contracts discover that the overdue Gazette undermines his (at the time) informed business decision.

The same with aviation. A person may take a plane in Tasmania, unaware that new regulations were Gazetted that may make unlawful certain items to take into a plane, but because it was not published in Tasmania the person unaware of this lawfully takes the times on board, only then when entering the airspace where the gazette was published can be held liable for being in breach of law/regulations. Yet despite I have exposed this rot since at least 2001 nothing has changed for the better. Actually it has gone worse.

So, same with the banking industry, no regulation has caused the banks to improve their conduct and as such the issue of too big too fail cannot be maintained as a valid arguments because again the parliament would have put in place appropriate legislation had this been an issue to ensure it cannot happen in the first place.

To expert customers/shareholders to cop the incompetence of banks is that the Parliament ignores its responsibility to protect citizens from undue harm.

The following will also make clear that the Framers of the Constitution intended to have **CIVIL RIGHTS** and **LIBERTIES** principles embedded in the Constitution;

HANSARD 17-3-1898 Constitution Convention Debates (Official Record of the Debates of the National Australasian Convention)

QUOTE Mr. CLARK.-

the protection of certain fundamental rights and liberties which every individual citizen is entitled to claim that the federal government shall take under its protection and secure to him.

END QUOTE

Hansard 1-3-1898 Constitution Convention Debates

QUOTE

Mr. HIGGINS.-Suppose the sentry is asleep, or is in the swim with the other power?

**Mr. GORDON.-**There will be more than one sentry. **In the case of a federal law, every member of a state Parliament will be a sentry, and, every constituent of a state Parliament will be a sentry.**

As regards a law passed by a state, every man in the Federal Parliament will be a sentry, and the whole constituency behind the Federal Parliament will be a sentry.

5 END QUOTE

Therefore, every Member of Parliament, regardless of his/.her political association is bound to protect the innocent.

10 I do not accept that the Framers of the Constitution held that despite its acquisition provisions were to have accepted that unilaterally the Commonwealth of Australia so to say can give away the belongings of an innocent citizen merely because banks are rough in their conduct and acting irresponsible at the very least.

15 And it would undermine government policy to demand that citizens put aside monies for old age and then have the banks rip it off because of their scandalous incompetence to squander it all away. As such, even to protect the Commonwealth of Australia, and so its taxpayers, it cannot condone for the banks to unilaterally take the savings/shareholdings which are intended to provide for old age, etc.

20 To allow for this kind of disregard of security makes it irresponsible for the parliament to provide for. It must follow the principle that as much as possible citizens shall save and contribute to a pension/superannuation scheme for their old age, and are entitled that the Commonwealth of Australia will protect this savings, etc. as to ensure they (the citizens) shall not become deprived of their financial security and have to rely upon an age pension, etc.

25 **This correspondence is not intended and neither must be perceived to contain legal advice nor to refer to all issues/details.**

**MAY JUSTICE ALWAYS PREVAIL®**

*(Our name is our motto!)*

30 Awaiting your response,  **G. H. Schorel-Hlavka O. W. B.** (Friends call me **Gerrit**)