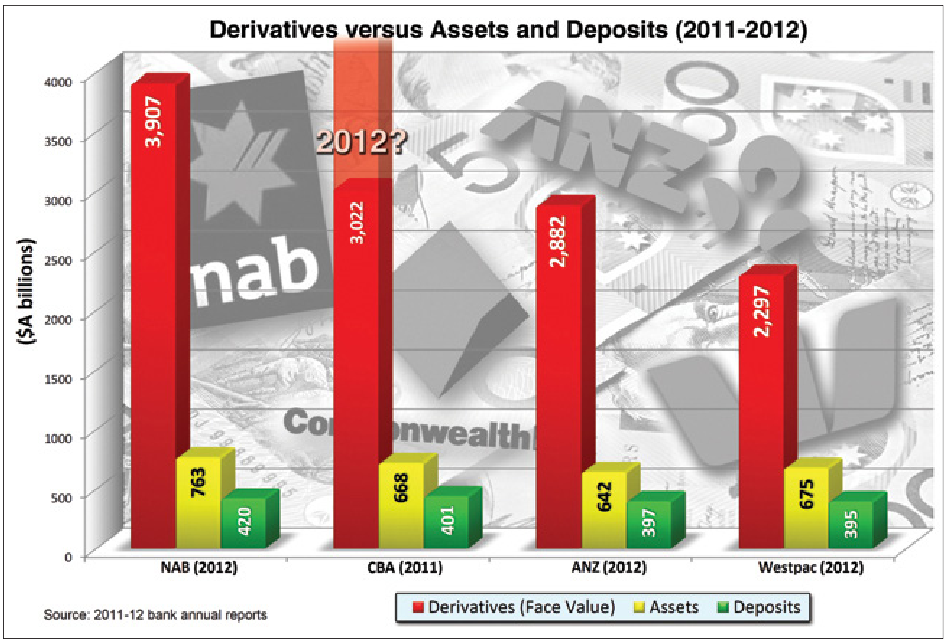
Australia already under effective bail-in regime

By Robert Barwick

The Citizens Electoral Council in 2013 exposed the fact that the Australian banking authorities were preparing to implement bank bail-in rules in Australia, which would put Australian bank depositors at the same risk of losing their savings as bank customers in Cyprus. A CEC investigation unearthed a 2014 report by the Financial Stability Board—the agency headquartered at the Bank for International Settlements in Basel, Switzerland, which the G20 had charged with overseeing the move to a global bail-in regime—which stated that bail-in legislation was "in train … in Australia". Under the pressure of a CEC-led mobilisation against bail-in, the federal government issued repeated denials that bail-in was on the agenda, and the legislation to which the FSB referred never surfaced. However, just as the EU's depositor bail-in regime comes into effect across all member states, financial industry analysts associated with the *Australian Financial Review* have spoken out to confirm that bail-in is effectively already operational in Australia.



Investment banker and regular *AFR* contributor Christopher Joye wrote extensively on the question of bail-in towards the end of 2015. On 20 December, Joye reported that the package of international regulatory responses to the problem of too-big-to-fail banks, of which bail-in is a part, were becoming a major preoccupation for Australia's banks. He wrote, "Reporting by *The Australian Financial Review* has found that experts inside the major banks, and their legal and accounting advisers, are starting to work out how they will be affected by the new rules, which are known as the total loss-absorbing capacity requirements or TLAC.

"These include: how rapidly can APRA take control of a failing bank; are there any fetters on its powers to sell a bank's assets to create a 'good bank/bad bank' structure; *can 'bail-in' (or losses) be imposed on senior bond holders via compulsory asset transfers without unreasonable delays*; would funding costs and the availability of credit change if bond investors were made aware of these hazards; what's the maximum TLAC a bank would realistically require if it failed; and what specific TLAC model 'best suits the particular characteristics of the Australian financial system', as APRA chairman Wayne Byres put it." (Emphasis added.)

Joye zeroed in on a controversial point he has repeatedly made in his reporting: that senior bank bonds can be bailed in under APRA's (Australian Prudential Regulation Authority) existing powers. "The nub of the challenge for APRA", he wrote, "is whether it is prepared to more publicly acknowledge that all bank-issued liabilities (except for deposits), including senior and subordinated bonds, can be forced to wear losses under Australia's laws. 'There is absolutely no doubt that the major banks' senior bonds can suffer losses under the Banking Act and investors would be naïve if they thought otherwise,' says a banker who requested anonymity given the sensitivity of the subject matter."

If bondholders, so too depositors

This controversy over APRA not wanting to acknowledge that, as in every other banking jurisdiction in the world, the senior bonds of Australia's banks will be bailed in to avert a bank failure, is revealing of a dominant attitude in the Australian financial system, which the CEC has repeatedly encountered: denial. Huge effort is expended to project Australia's banks as "sound" and strong, when in reality they are heavily exposed to a massive housing bubble that is under immense strain, as well as to the $2 quadrillion global derivatives bubble, to the tune of, collectively, $32 trillion! APRA knows that at the height of the 2008 GFC all of Australia's Big Four banks and Macquarie were poised to fail, which only the Rudd government's guarantees averted. The fear in Australia, as Joye noted in an 11 January column, is that acknowledging that Australian bank bonds can be bailed in risks undermining confidence in those bonds; he reported that "bank treasury teams and APRA have been closely watching" the bail-in development in Europe, in particular the bail-in of bondholders of Portugal's Novo Banco, which sparked a dramatic "run" on those bonds that collapsed their value from 94 to 14 cents on the dollar in a single day.

From the CEC's work, it is evident that the same attitude of denial about the risks to Australian bank bondholders extends to depositors too. In equivalent jurisdictions to Australia—the EU and UK, the USA, and New Zealand—depositors are also on the chopping block to be bailed in, with only the flimsy reassurance that so-called "protected" deposits will be exempt. Putting aside protected deposits for the moment (see below), as with Portuguese bondholders presently and Cyprus depositors in 2013, *any* bail-in of deposits will destroy confidence in that bank. Given that APRA refuses to acknowledge that bank bonds can be bailed in, Australians have every right to suspect that APRA can and will bail in Australian bank deposits, if that is what the global banking authorities require in an "emergency".

Derivatives

The basis of this suspicion is the fact that in both the USA and EU/UK, where deposits can be bailed in, derivatives contracts—the toxic betting instruments that have brought the world to this crisis—have precedence over deposits and are therefore exempt from bail-in. Remember, bail-in is a policy that has been schemed up for the purpose of "financial stability"—so that the next Lehman Brothers-type failure doesn't trigger another chain-reaction meltdown of the global derivatives bubble. The priority is to ensure that no bank that is a counterparty to derivatives will be allowed to default on its obligations, so every possible measure will be taken, including stealing deposits, to stop that from happening. Given that a) Australia's banks are all heavily exposed to derivatives (collectively $32 trillion); b) those derivatives obligations dwarf their assets and deposits; and c) the FSB which schemed up bail-in named Australia's banks in 2011 as collectively "globally systemically important"—i.e. that a failure of the Australian banking system can bring down the global banking system—what will APRA chairman Wayne Byres, who until recently worked at the BIS in Switzerland which is also the headquarters of the FSB, do if Australia's banks are at risk of defaulting on their derivatives contracts? Will he pretend that he has no power to bail in deposits, or will he do what every other jurisdiction in the world intends to do and confiscate as many deposits as it takes to "stabilise" the system? To ask the question is to answer it.


THE NEW CITIZEN

Citizens Electoral Council of Australia

Glass-Steagall, or the British Crown's Mass Murder:

Do You Intend To Die For The Banks?

THE NEW CITIZEN

Citizens Electoral Council of Australia

"Bail-in" – the British Crown's Plot for Global Genocide

Fight Bankers' Plan to Steal Your Deposits!

The CEC's *New Citizen* newspaper headlines from 2013, which first exposed to Australians the global push for bail-in.

'Protected' deposits

Finally, when the CEC first started fighting against bail-in in Australia, the government's first line of defence against the charge that they were planning to legalise deposit-theft was to claim that Australian deposits are protected up to the amount of $250,000 under its Financial Claims Scheme (FCS). The government has legislated a provision of $20 billion per bank—ADI, Authorised Deposit-taking Institution—to back up the FCS guarantee. The CEC quickly pointed out that roughly 80 per cent of all Australian deposits are in the Big Four, and that if even one of those four went under, around $200 billion in deposits would be at risk—which, of course, the $20 billion provision couldn't hope to cover. As early as June 2009, APRA pointed out the same reality, noting that a "failure by one of the four largest institutions would be likely to exceed the scheme's [FCS] resources."

The recent European experience confirms that point. In the case of the four small Italian banks that were bailed in during December, deposits under EU law were guaranteed up to €100,000. However, Italy's deposit guarantee scheme was unable to honour that guarantee, which forced the Italian government to organise a syndicate of four large Italian banks to put up the money to pay out the guaranteed deposits. And that was just in the case of four small banks. During a general financial meltdown brought on by the implosion of the $2 quadrillion derivatives bubble, which would swamp all banks, no deposit guarantee scheme anywhere in the world will work.

Glass-Steagall

There is only one solution to the mess described above—stop banks from gambling in derivatives etc., so they aren't at risk in the first place. That means Glass-Steagall. Australians must put their MPs under huge pressure to demand APRA and the government come clean as to their intentions, and stop operating secretly; and to enact a full Glass-Steagall separation of banking in Australia, which will require splitting up the Big Four banks into protected deposit-taking institutions separated from any risky investment banking. Read the CEC's 2014 pamphlet *Glass-Steagall Now!*, which includes "The ABCs of Bail-In" and a full explanation of Glass-Steagall.

Experts acknowledge APRA has bail-in powers

Excerpts from "Ensuring the major banks are not too big to fail", Australian Financial Review *20 December 2015, by Christopher Joye.*

The nub of the challenge for APRA is whether it is prepared to more publicly acknowledge that all bank-issued liabilities (except for deposits), including senior and subordinated bonds, can be forced to wear losses under Australia's laws. "There is absolutely no doubt that the major banks' senior bonds can suffer losses under the Banking Act and investors would be naïve if they thought otherwise," says a banker who requested anonymity given the sensitivity of the subject matter. …

"Australia already has a de-facto bail-in regime under the Banking Act and Business Transfer and Group Restructure Act," says Dale Rayner, a partner with Norton Rose Fulbright. "These Acts enable the compulsory transfer of assets out of a bank subject to a requirement the transfers be made on just terms," Rayner says.

APRA evidently agrees, informing the FSI that it has "compulsory transfer of business powers, which … could be used to achieve a similar economic effect to a bail-in". "This power could be used to transfer a failing [bank's] assets to another entity, leaving behind capital instruments and certain unsecured liabilities to absorb losses," APRA says.

Andrew Jinks, a Clayton Utz partner, concurs, concluding "the Banking Act empowers APRA to sell assets on any terms it deems appropriate … and leave unsecured creditors like senior bond holders with whatever proceeds are paid for the assets". "If the proceeds are not sufficient to repay the bonds, then investors suffer losses," Jinks says.