Citizens Electoral Council of Australia

Postal Address: PO Box 376, Coburg Vic 3058
Phone: 1800 636 432 Fax: 03 9354 0166
Home Page: www.cecaust.com.au **Email:** cec@cecaust.com.au

Authorised by R. Barwick, 595 Sydney Road, Coburg, Victoria 3058. Printed by Citizens Media Group Pty Ltd., 595 Sydney Road, Coburg, Victoria 3058.

Independent Political Party

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Success! APRA 'bail-in' bill referred for parliamentary scrutiny—*have your say*!

The thousands of meetings, phone calls and emails that Australians have had with or sent to their MPs and Senators have successfully foiled the government's hopes of sneaking its APRA crisis resolution bill through parliament. It has been referred to a Senate committee for scrutiny, and is reported in today's *Australian Financial Review*.

The bill, Financial Sector Legislation Amendment (Crisis Resolution Powers and Other Measures) Bill 2017, gives the bank regulator APRA (Australian Prudential Regulation Authority) sweeping crisis resolution powers, including powers that could be used to "bail in" the savings of unsuspecting bondholders and even depositors to prop up failing banks. To deflect attention, Treasurer Scott Morrison announced it in a Friday afternoon press release on 18 August, and downplayed it to his colleagues as "technical" amendments; even by November many MPs and Senators had no idea about the bill until they were informed by CEC supporters. The Greens, however, also recognised the danger that the bill could enable deposits to be bailed in, and have referred it to the Senate Economics Legislation Committee, where it can be subjected to a detailed examination.

Due to the scale of activation by everyday Australians against this bill, the mainstream media has finally reported on it, in an article in today's 21 November *Australian Financial Review*. Notwithstanding the attempt by the editors of *AFR*—who would side with the banks against their own grandmothers—to spin the issue in defence of the banks against calls for a banking inquiry, the article clearly spells out the issues with the bill, and the CEC's calls for the government to instead legislate a Glass-Steagall separation of deposit-taking banks from all forms of speculation.

Everyone make a submission!

With the APRA bill now before the Senate Economics Legislation Committee, there is an opportunity for the public to have their say on whether the government should give APRA such sweeping powers. This is one time when every Australian should take responsibility to make their voice heard, with rare confidence that it can make a difference. The government's weakness is scrutiny, and while most major party MPs are usually inclined to take the advice of technocrats and wave a bill like this through, a flood of submissions from everyday people will make them nervous enough to look more closely. Under such scrutiny this bill can be defeated.

To make your submission, write or email a letter to the committee.

Email your submission to: economics.sen@aph.gov.au
If you can't email, mail your submission to:
Senate Standing Committees on Economics
PO Box 6100
Parliament House
Canberra ACT 2600

Identify the bill that is the subject of the inquiry: the Financial Sector Legislation Amendment (Crisis Resolution Powers and Other Measures) Bill 2017 [Provisions].

Address one or more of the terms of reference, which are:

To understand exactly what capital instruments are covered by the Bill. (This refers to whether APRA will be able to make determinations in the future that deposits are capital for conversion or write-off ie. bail-in.)

To understand what consultation process APRA would be required to undertake before making determinations under the Bill. (Could APRA make a determination about deposits without consulting Parliament or the government?)

To understand what power the executive and/or parliament is ceding to APRA. (This relates to APRA's operational independence. The supranational banking regulation agencies that APRA represents, the Bank for International Settlements [BIS] and Financial Stability Board [FSB] based in Basel, Switzerland, insist that there must be no government interference in its activities, but such "independence" removes it from democratic accountability. Whereas a democratic government would tend to avoid extreme actions like bail-in, because the damage it would do to the community would destroy its electoral support, an independent APRA could push ahead with bail-in regardless of the consequences.)

To understand the possible implications to market concentration in the banking sector. (This refers to the Big Four Too-Big-To-Fail banks, in which Australia's banking system is becoming increasingly concentrated. The solution to this problem is to break up the banks with Glass-Steagall.)

Write your submission in your own words. *It doesn't matter how long or short it is, or how you write it*. Even if your submission in just one sentence, the most important thing is that the committee will register your concerns, and those of many, many others.

If the Australian people can defeat this bill, it doesn't just protect Australians from bail-in. It will start to derail the global bail-in agenda, which APRA's superiors in the Bank of England, the BIS, the FSB and the TBTF banks have pushed since 2008 to preserve the existing banking practices, so they wouldn't be subject to a Glass-Steagall banking separation that would force them to stop gambling with deposits.

The deadline for submissions is 18 December, but don't delay. Make your submission immediately! *Please send the CEC a copy of your submission at cec@cecaust.com.au*

For essential background information you can use in your submission, see "Questions MPs must ask before they vote on the APRA crisis management—'bail-in'—bill", overleaf.

Questions MPs *must* ask before they vote on the APRA crisis management—'bail-in'—bill

Are federal MPs willing to vote for a bill that could allow the deposits of their constituents—individuals, businesses, non-profits—to be confiscated to prop up a failing bank?

If not, they'd better seriously examine the Financial Sector Legislation Amendment (Crisis Resolution Powers and Other Measures) Bill 2017 that Treasurer Scott Morrison introduced into Parliament on 19 October, and demand to know whether this bill gives the Australian Prudential Regulation Authority (APRA) the power to "bail in" bank deposits. *As it stands, the broad language of the bill certainly could allow APRA to bail in deposits, unless MPs amend it to specifically exempt deposits from any bail-in*.

This APRA crisis management bill does not use the term "bail-in"—the policy developed after the 2008 crisis to prop up failing banks by confiscating (through write-off, or conversion to shares) the funds of unsecured creditors, which can include depositors. Instead of bail-in, it uses the term "conversion or write-off provisions".

The question is: Will the conversion or write-off provisions of the bill apply to bank deposits? It is already outrageous that they apply to the $43 billion of so-called hybrid securities, a.k.a. bail-in bonds—high-interest bonds that convert into worthless shares if the bank runs into trouble—that APRA has allowed the banks to sell to hundreds of thousands of "retail investors"—unsuspecting self-funded retirees, self-managed super funds and so-called "mums and dads".

Following are specific questions that MPs must ask, and demand answers to, *before* they vote on this bill:

1. Hybrid securities

APRA can order a conversion or write off "despite any impediment there may be … *in any domestic or foreign law* … other than a specified law". (Emphasis added.) This particularly applies to hybrid securities, which can automatically convert into shares, based on triggers buried in the fine print of the contracts, or which APRA can order to be converted, i.e. bailed in. Because APRA has allowed the banks to sell $43 billion worth of these hybrid securities to hundreds of thousands of Australian retail investors who are unlikely to understand they can be bailed in, it should be possible, under the provisions in the *Trade Practices Act* that protect consumers from misleading conduct, for a court to set aside a conversion, including an APRA conversion order. The changes to existing legislation contained in this bill mean that APRA does not need to consider those issues (or any other) in relation to conversion and write-off of hybrid instruments.

Question:

Will APRA's powers override the provisions in the Trade Practices Act *that protect consumers from misleading conduct, and stop courts from blocking conversions of hybrid securities if the investors were demonstrably misled about the risks?*

2. 'Other instruments'

The *Banking Act* provides that APRA can determine Prudential Standards that are binding on all Authorised Deposit-taking Institutions (ADIs i.e. banks, building societies, credit unions, etc.), and when APRA issues a new Prudential Standard it does so under the authority of the *Banking Act*, i.e. it does not require new legislation.

Section 11CAA of the new APRA bill defines that "conversion and write-off provisions means the provisions of the prudential standards that relate to the conversion or writing off of:

(a) Additional Tier 1 and Tier 2 capital [which categories include shares, cash, subordinated debt and hybrid securities]; or (b) *any other instrument*. …" (Emphasis added.)

Question:

What other "instruments" may APRA be empowered to include in its prudential standards for conversion or write-off?

3. Deposits

Since 2003 APRA has had the power to order a bank not to repay deposits under certain conditions, including if: "there has been, or there might be, a material deterioration in the body corporate's [bank's] financial condition"; or "the body corporate is conducting its affairs in a way that may cause or promote instability in the Australian financial system". The APRA bill strengthens this section of the *Banking Act*.

Moreover, since 1 January 2013 APRA's prudential standards have incorporated the provisions of the Bank for International Settlements' (BIS) Basel III global regulatory framework on bank capital adequacy. These include "that AT1 and T2 capital instruments must be written-off or converted to ordinary shares if relevant loss absorption or non-viability provisions are triggered".

The Explanatory Memorandum of the APRA bill states that it allows for future changes to the prudential standards to expand the meaning of "capital" for conversion or write-off?

"5.14 Presently, the provisions in the prudential standards that set these requirements are referred to as the 'loss absorption requirements' and requirements for 'loss absorption at the point of non-viability'. The concept of 'conversion and write-off provisions' is intended to refer to these, while also leaving room for *future changes to APRA's prudential standards, including changes that might refer to instruments that are not currently considered capital under the prudential standards*." (Emphasis added.)

A legal expert noted to the CEC: "It is a relatively smaller step to then convert or write-off what the ADI has been prohibited from paying out [i.e. deposits]. … Unless there was a prohibition in the Bill against the making of any determination to declare deposits to be capital capable of conversion or write-off, the worry would be that APRA could make such a determination."

Question:

Given that APRA can already order banks not to repay deposits, will APRA now have the power to declare deposits to be capital, and order they be converted or written off, i.e. bailed in?

Stop this bill!

To date, the bill has advanced with virtually no scrutiny except from the Citizens Electoral Council. However, the Greens have now expressed concern that the bill could allow APRA to bail in deposits, and intend to refer it to the Senate Economics Legislation Committee for inquiry.

Join the CEC's mobilisation to stop this bill from being snuck through under the radar! Before Parliament resumes at the end of November, visit, phone or email your MP and Senators to: 1) give them this release; 2) demand they get answers to these questions; 3) demand they support a Senate inquiry that can scrutinise this bill.