Good riddance: Wayne ‘Bail-in’ Byres to retire as APRA chairman

2 Aug.—Wayne Byres, chairman of banking regulator the Australian Prudential Regulation Authority (APRA), announced last Tuesday that he will step down on 30 October, 18 months before the expiry of his second five-year term. A career financial technocrat since the 1980s, Byres is a die-hard champion of the idea that *caveat emptor* (Latin for “Let the buyer beware”) must be the core principle of the financial marketplace, and in 2011-14 was one of the architects of the Switzerland-based Bank for International Settlements’ (BIS) plans for a global “bail-in” regime under which depositors—on the basis that they are not customers but *investors* who willingly take on a share of their banks’ risks—would have their funds seized to save banks from the consequences of their speculative excesses, to preserve “financial stability”. Yet APRA and Byres personally have been instrumental in creating and maintaining the veil of secrecy around the banks’ workings that make *caveat emptor* impossible for the average person.


Wayne Byres

According to Byres’ biography on the APRA website, he began his career at the Reserve Bank of Australia (RBA) in 1984, where he worked for some 13 years including an unspecified period on secondment to the Bank of England. When the RBA’s regulatory division was split off and became APRA in 1998, Byres went with it, and “held a range of senior executive positions … covering both its policy and supervisory divisions” ending as Executive General Manager in late 2011, when he left APRA to take up the appointment as Secretary General of the BIS’s Basel Committee on Banking Supervision (BCBS). In June of that year the BCBS had finalised the “Basel III capital framework”, which sets out how much and what types of “loss-absorbing capital” banks must hold relative to their lending and investment risks; and in November 2011, the BIS/G20 Financial Stability Board (FSB) adopted its “Key Attributes of Effective Resolution Regimes for Financial Institutions”, intended as a global template for preserving so-called financial stability in future systemic crises. The latter was presented as a plan to prevent the collapse of “systemically important financial institutions”, a.k.a. too-big-to-fail (TBTF) banks, without resorting to multi-trillion-dollar publicly funded bailouts as the US Federal Reserve, European Central Bank, BoE and others had done in the wake of the 2007-09 global financial crisis (GFC). As the Citizens Party (then Citizens Electoral Council) exposed,[1] however, this was merely a pretext for applying the 2013 “Cyprus template” to the entire world, forcing so-called unsecured creditors to eat the losses incurred by their banks’ gambling on high-risk financial derivatives—including by seizing depositors’ funds and converting them into worthless shares to keep failed banks nominally solvent.

As BCBS Secretary General in 2011-14 Byres’ role included overseeing the design and implementation of bailin regimes consistent with Basel III and the “Key Attributes” worldwide, which the FSB tried but failed—thanks in large part to a mobilisation led by the Citizens Party and its cothinkers around the world—to have formally adopted at the November 2014 G20 Leaders’ Summit in Brisbane. Byres meanwhile had returned to APRA that July, to preside over the installation of bail-in in Australia, which the Liberal government and Labor “opposition” conspired to sneak through Parliament by subterfuge and in virtual secrecy in the form of the *Financial Sector Legislation Amendment (Crisis Resolution Powers and Other Measures) Act* on 14 February 2018. APRA and the federal government pretend that the law applies only to so-called hybrid securities, a.k.a. bail-in bonds, which have conversion provisions written into their terms of sale; however the Act also gives APRA write-off and conversion powers in respect of “any other instrument”, a legal definition which includes deposits.[2] In its 2012 “Core Principles for Effective Banking Supervision” the Byres-helmed BCBS demanded regulators be given dictatorial control over the bail-in process, stating that there must be “no government or industry interference which compromises the operational independence of the supervisor”—which in Australia’s case means Byres himself, as chairman of APRA.

‘Transparency’?

It is unsurprising therefore that the bosses of Australia’s own “Big Four” TBTF banks are full of praise for Byres and sorry to see him go. “Mr Byres has played a critical role in helping to maintain and strengthen the robustness of Australia’s financial system”, the *Australian Financial Review* quoted Commonwealth Bank CEO Matt Comyn on 26 July. “Wayne has played a crucial role in promoting stability and trust in the Australian financial system, … [and] we look forward to maintaining our important relationship with his successor”, said National Australia Bank chief executive Ross McEwan, while “Australian Banking Association chief executive Anna Bligh said Mr Byres would leave behind a safer, more stable financial system that was ‘unquestionably strong’”, the *AFR* reported. Similarly, Treasurer Jim Chalmers issued a press release the same day “thank[ing] Mr Byres for his outstanding contribution to APRA and his dedicated service to Australia. … Under Mr Byres’ leadership, APRA’s

public profile has been strengthened through his commitment to transparency and communication— important in underpinning public trust in the security of Australia's financial system."

One wonders which Australia Jim Chalmers has been living in, and which Wayne Byres he has been observing, these past eight years. Apparently not the same one as Graeme Samuel, the former chairman (2003-11) of business regulator the Australian Competition and Consumer Commission (ACCC) who in 2019 led a "Capability Review" of APRA commissioned by then-Treasurer Josh Frydenberg. In a 26 July interview with Sky News business editor Ross Greenwood, Samuel opened by praising Byres and his predecessor John Laker for seeing Australia's banks and other financial institutions through the GFC and a subsequent "series of issues, not the least of which has been COVID". But as for "transparency", Samuel continued, "there was a fundamental disagreement between Wayne and myself over the issue of transparency of regulator operations. When I first commenced the review, along with Diane Smith-Gander, a leading company director, and Grant Spencer, the former deputy governor of the Reserve Bank of New Zealand, the first thing that Wayne said to us was, 'We rely upon secrecy in our dealings with the major financial institutions— the major banks.' And he said, 'We do that because that's the way we get cooperation from them.'

"And I raised my eyebrows and said, 'But Wayne, as a former regulator with the ACCC, I'm well aware that you don't seek the good grace of the organisations that you are regulating by saying to them, "Well look, we'll keep things secret, we'll negotiate with you secretly, if you will cooperate with us."' Their cooperation was not their *gift*; it was their *obligation*. But Wayne was insistent on that. And in fact that was the message given to us by all the major banks, when they came to see us; they said, 'Graeme, don't worry about transparency. Cooperation is what we give APRA, and in return we negotiate in private—we negotiate secretly.'" The reviewers offered advice on several areas, including capability gaps in "regulation technology" (computerised reporting systems), the closing of which would reap both efficiency and transparency benefits, but Byres "was resistant to that". Said Samuel, "I would have thought that a really good regulator would say [to himself], 'Here are three people who are well experienced, they're offering some advice to you. Take it!' Look at it seriously, and perhaps look at how things might change as a result." But of course, nothing has. The Capability Review made its final report to the Treasurer in July 2019, but "I'm not sure what happened to [it]", Samuel said. "I haven't seen any significant changes."

A guard dog, not a watchdog

The lack of action from both Byres and the government was particularly puzzling, Samuel opined, in light of the 2018 Financial Services Royal Commission conducted by Justice Kenneth Hayne, whose final report chided corporate regulator the Australian Securities and Investments Commission (ASIC) and APRA for having "rarely" and "never" taken banks to court, despite abundant evidence of criminal misconduct in both their lending and investment-banking activities.

Byres' own remarks in response to the Hayne Commission, however, suggest that his resistance to transparency is due not to mere institutional inertia, but to a fundamental belief that the need to preserve financial stability simply overrides all else—and moreover, that the principle of *caveat emptor* absolves them of wrongdoing anyway. Even before the royal commission, the Citizens Party had published a dossier of already publicly known bank crimes— including interest-rate rigging, money laundering, and various kinds of outright theft—that should have seen them shut down and their executives jailed, were Australia's financial sector truly well regulated rather than having APRA as the protector of the banks, above the interests of the citizenry.[3] The royal commission confirmed and expanded upon that list, revealing (among other things) rife and deliberate criminal mis-selling of insurance and investment products that had defrauded thousands of Australians of many millions of dollars, in some cases over decades.

Whereas the then newly appointed ASIC Chairman James Shipton and his deputy, Melbourne barrister Daniel Crennan QC, immediately set about adopting Hayne's recommendation to make "Why not litigate?" the regulator's default mindset (for which Liberal Prime Minister Scott Morrison dumped them from office in a manufactured expenses scandal in late 2020),[4] Byres blamed the victims. "It is important that the concept of *caveat emptor* remains in the system", Byres told the Australian Senate, as quoted 11 July 2018 by the *AFR*. "Regulators cannot be everywhere overseeing everything. It is important the community understands that", he said, and complained that "consumers want all the benefits of a 'dynamic, innovative financial sector … but no-one has any appetite to lose a cent.'"

In other words, as former APRA Principal Researcher Dr Wilson Sy noted in a July 2020 submission to the Australian Senate, Byres' and APRA's position is that the victims were at fault "for their own errors of not being more 'savvy' or better informed". The problem with that, Dr Sy pointed out, is that "neoliberalism and efficient financial markets, to which the Government and the Treasury [and, evidently, APRA] subscribe, are predicated on well-informed participants". By refusing to make transparent its negotiations with the banks over regulatory and enforcement standards, APRA denies the public information that is absolutely necessary in order to do due diligence before buying any financial "product"—including, since 2018, a deposit account— and thus throws *caveat emptor* straight out the window.

The subject of Dr Sy's submission, to the Senate Economics Legislation Committee, was the Banking Amendments (Deposits) Bill 2020, introduced by Senator Malcolm Roberts of One Nation to close the

loophole in the 2018 bail-in law by making explicit the government, Treasury and APRA's assurances that deposits would not be touched. "It is frankly quite ridiculous that someone must seek legal advice before they know whether their bank deposits are safe from 'bail-in'", he wrote. "Why not put the Government's opinion clearly in the law?"

Why indeed? The bill has long since lapsed, but could be re-introduced and passed any time the government chooses. In the meantime, whom Chalmers appoints to succeed Byres will say much about whether Labor intends to haul Australia's corrupt, predatory banks into line, or whether it will remain the claque of bankers' lackeys it has been since it deregulated Australia's financial markets in the 1980s.

Footnotes

1. "'Bail-in': They Plan to Steal Your Personal Bank Deposits and Pensions!", *The New Citizen*, May/June/July 2016.

2. R. Butler, "Legal opinion: Australian deposits can be 'bailed in'", *AAS*, 10 April 2019.

3. "Crimes of the Australian banks", *End the BoE-BIS-APRA Bankers' Dictatorship: Time for Glass-Steagall and a National Bank!*, May 2018.

4. "Morrison government overthrows another inconvenience to the banks", *AAS*, 16 June 2021.

By Richard Bardon, Australian Alert Service, 3 August 2022
