



Australian Citizens Party

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MEDIA RELEASE

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AAP Fact Check fails on basic ‘bail-in’ facts

AAP’s “fact check” of the Citizens Party’s warnings against deposit bail-in does nothing to reassure Australians their savings are safe.

The AAP news agency’s fact-checking division, AAP Fact Check, ran the following headline on 7 March: “Claim that government can grab bank deposits in a crisis has no currency”. AAP reported that it had fact-checked the claim that “The government can take any deposits in excess of \$250,000 from your bank account and instead you can receive shares in the bank.” Under OUR VERDICT, AAP Fact Check concluded: “False. The claim is based on opinions that have been investigated by a parliamentary committee and found to be unsupported.” Unfortunately for Australians concerned about losing their savings to prop up banks, AAP Fact Check’s verdict is no assurance, because it fact-checked the wrong claim.

AAP Fact Check sources the claim to a Facebook video made by a social media “influencer” named Espen Hjalmbly. AAP notes that Hjalmbly told his followers to Google “Bail-in law 2018 Australia”, which AAP did, bringing them to the information of the Australian Citizens Party, which has led the debate in Australia on bail-in. However, AAP did not contact the Citizens Party, leading to the major flaw in their fact check.

In essence, AAP Fact Check effectively sided with the Morrison government’s position, based on the claims of a 2020 Senate inquiry. AAP accepted the findings of the report of the 2020 Senate inquiry into Senator Malcolm Roberts’ bill to amend the 2018 law, which, “after taking advice from the federal Treasury and regulator the Australian Prudential Regulation Authority (APRA), rejected concerns that deposit accounts of bank customers could be subjected to any kind of bail-in or write-off in a financial crisis.

“In its final view the committee stated: ‘The committee concurs with the advice of the Treasury and APRA that the explicit protection of deposits in the Banking Act—the objects clause, priority repayment, and the Financial Claims Scheme—is inconsistent with a concern deposit accounts could be subject to any kind of conversion, write-off or bail-in.’”

To back up this position, AAP consulted three academic legal experts. The first, Associate Professor Andrew Godwin from the University of Melbourne, correctly identified that the issue was about whether the acknowledged bail-in provisions in the legislation could extend to deposits, but he called the concern “a strained interpretation”.

The second, UNSW Scientia Professor Ross Philip Buckley, flat out denied the “government could order” a bail-in, using similar language: “An extreme and strained reading of a phrase in the *Financial Sector Legislation Amendment (Crisis Resolution Powers and Other Measures) Act 2018* (Cth) could lead to that result but it is not a reading any Australian court would adopt.”

The third, ANU Associate Professor Will Bateman, said the claim had “no truth”, based on the understanding that: deposits are guaranteed by the government Financial Claims Scheme up to \$250,000; the bank regulator is obliged by law to “protect depositors”; and Section 51 of Australia’s Constitution prevents the government from acquiring property without providing “just terms”, or compensation, which Bateman said would prevent a bail-in.

Citizens Party’s response

First, AAP should have contacted the Citizens Party, because it made a mistake in fact-checking the imprecise claims of a social media influencer, instead of the [precise claims of the Citizens Party](#).

Second, to be precise, bail-in is not the “government” grabbing deposits in a crisis. A bail-in is actually when the independent regulator, APRA, working in cooperation with the Bank for International Settlements and its Financial Stability Board in Switzerland, orders a failing bank to either convert into shares, or write off, a percentage of its liabilities to “unsecured creditors”. The Australian legislation identifies the specific financial instruments held by unsecured creditors that would be converted or written off, but then adds the very broad words: “or any other instrument”.

Third, the concern arises because Australia is a member of the G20, which in 2009, following the global financial crisis, charged the FSB with developing a policy to avert future crises, and then in

2011 endorsed the policy the FSB cooked up, called the “Key Attributes of Effective Resolution Regimes”. The policy includes bail-in, which the FSB makes clear applies to unsecured creditors—this includes depositors. In April 2013, one month after the EU bailed in depositors in banks in Cyprus, the FSB noted in a report that “bail-in legislation is in train in ... Australia”.

Fourth, all of Australia’s closest allies, which have similar financial systems, have bail-in laws that apply to deposits. These include the USA, UK, EU, Canada, Japan, and New Zealand. This proves it is not unthinkable, as the government pretends.

Fifth, the \$250,000 FCS guarantee cannot be a protection against bail-in, both because it is unfunded—only backed by a \$20 billion provision that the regulators admit cannot cover deposits in the Big Four banks—but more importantly because it is “unactivated”. This means it must first be activated to be used, but, according to the government’s own website, it is only intended to be activated *after* a bank fails—and even then it is at the discretion of the government. Bail-in is an emergency policy intended to apply before a bank fails, in order to avert a failure. There are no circumstances in which the FCS can protect against bail-in.

Sixth, as depositors are “unsecured creditors”, a bank defaulting on its liabilities is not the same as confiscating property. Therefore, the Constitution does not protect against bail-in.

Seventh, the Citizens Party and Senator Roberts did not claim that the 2018 law explicitly provided for a bail-in of deposits, but that the clause “any other instruments” opened a potential loophole that in extreme circumstances created the risk of a bail-in. Senator Roberts’ amendment bill sought to put the issue beyond doubt by closing the potential loophole in the abundance of caution, ensuring the legislation said what the government claimed. This was actually an opportunity to increase consumer confidence in the banking system—why did the government reject it?

Put in context with the rest of the grounds for concern about bail-in, elaborated above, neither the government’s actions, nor AAP Fact Check, would reassure anybody.

[Click here to sign the Citizens Party’s petition: Hands off our bank deposits—stop ‘bail-in’!](#)