



Australian Citizens Party

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MEDIA RELEASE

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The law on bail-in is unclear! No cost to providing clarity for depositors

Following is former APRA Principal Researcher Dr Wilson Sy's response to Treasury's and APRA's submissions to the Senate Economics Legislation Committee's Inquiry into the [Banking Amendment \(Deposits\) Bill 2020](#).

In view of Treasury's submission, confidential late submissions and one from APRA, I need to emphasise a key point which may be distracted by these submissions. Please accept this supplement [to my original submission](#) (No. 186) which urgently refocuses on the essential issues besides legal details.

I emphasise here that the lengthy arguments in the official submissions for why the "bail-in" legislation is clear have proved exactly the opposite: that the law is unclear. The cost of passing the Banking Amendment (Deposits) Bill 2020 (hereafter The Amendment) for clarification is now negligible, but the benefit is immense for millions of Australians.

Markets need clear information

Clarity of the law and how it applies in various situations are essential for bank depositors to make well-informed decisions. Indeed, neoliberalism and efficient financial markets, to which the Government and the Treasury subscribe, are predicated on well-informed participants.

The large number of submissions in favour of The Amendment shows that there is significant public interest in the clarification that The Amendment provides. The official view expressed by the Treasury and APRA is that clarification is unnecessary—unnecessary for whom? The people who are most affected by the possibility of "bail-in" have expressed "loud and clear" in their submissions that clarification is necessary.

Treasury obfuscation

The attempts by the Treasury and APRA to show that the law is clear, are frankly laughable. There are many errors of fact and contradictions in those submissions, which could be debated, but it is unnecessary to do so here. Importantly, anyone who makes a serious attempt to follow the Treasury submission is left totally confused and must conclude that the Treasury is also confused. You may notice that there are many non-sequiturs and misdirected references.

The Treasury submission asserts "the *Banking Act* contains several explicit provisions that expressly rule out the possibility of any form of conversion, write-off or bail-in of deposit accounts", but it failed to cite one single "explicit provision" anywhere. In fact, the *Banking Act* is not explicit at all about "deposit accounts" because the term "deposit accounts" does not even appear anywhere in the current legislation. How could there be any "explicit provision" for "deposit accounts"?

The Treasury resorted to convoluted arguments to arrive at the conclusion that the Government "does not consider that the bill would allow the 'bail-in' of Australians' savings and deposits". The arguments require the reader to consult and trace at least 20 references all over the *Banking Act* and accept Treasury's interpretation of those references. Surely, this proves that the conclusion is far from simple or clear and that it is virtually impossible for the average educated citizen to verify their understanding of the law.

Ineffective regulation

Regardless of missions and mandates, the Government and its regulators have prioritised protection of the banks and the financial system over people and bank depositors, as evidence has shown (see below). Missions can fail and mandates can be breached, typically without adverse consequences for the regulators. Some foreign governments have justified "bail-in" as the best way to protect bank depositors! These governments have effectively and honestly admitted their failures to protect their bank depositors.

The Hayne Royal Commission exposed [a tiny tip of a giant iceberg of incompetence and ineffectiveness of Australian financial regulation](#). When customers suffered from financial fraud by the

banks, APRA's chair, Wayne Byres, reminded the Australian Senate in July 2018: "caveat emptor still exists in the system", thus blaming victims for their own errors of not being more "savvy" or better informed. During the current COVID-19 pandemic, the Australian banking system proved not to be so "unquestionably strong" as claimed by APRA, when the regulator had to lower capital standards, putting depositors at greater risk. Under the current assumptions of free markets and deregulation, the Government and its regulators do not, and perhaps cannot, protect the people. Only clearly articulated law can provide adequate protection of bank depositors.

Zero cost for benefit

It is frankly quite ridiculous that someone must seek legal advice before they know whether their bank deposits are safe from "bail-in". Why not put the Government's opinion clearly in the law?

Essentially, the main change that The Amendment makes is to clarify a definition 11CAA(b) under Subdivision B on conversion and write-off provisions. The Amendment qualifies "any other instrument" to read "any other instrument (not including a deposit account)". Even if this amendment is implied (but not) by a lengthy reading of the *Banking Act*, as claimed by the Treasury and APRA, what is the cost of this clarification? Why is there so much argumentation and resistance to this clarification?

The fact is the opinions of the Government and the regulators may not always be trusted, as has been demonstrated by many cases lost by the Government in the court of law. After lengthy judicial processes and at great cost to taxpayers, rulings have often been found against the Government demonstrating it failed to understand the law. Bank depositors do not want to risk a Government mistake and then need to take a costly and tortuous route of litigation only after a "bail-in" of their deposits.

It would be of immense benefit to the society to avoid potentially high costs of litigation. For all bank depositors or millions of citizens, clear information is essential to make sound financial decisions, to practise caveat emptor. What is the cost for this benefit? From here, the cost is practically zero, if the Banking Amendment (Deposits) Bill 2020 were passed quickly. The sunk cost has already been paid by thousands of individuals who spent time and effort investigating the issue of "bail-in" and the time lost by them and their parliamentary representatives in discussing and debating this matter in numerous meetings.

Financial Instability

There is now no further cost to obtain from The Amendment the said benefit for Australians and the economy. However, unless The Amendment is passed, we must assume that "bail-in" is not only possible, but likely in a banking crisis. Further costs will likely be incurred when the rest of the Australian population becomes aware of the uncertainty in the law and must expend resources to decide for themselves what the risks of "bail-in" are. Debate would continue and there could be further agitation and complaints to politicians about the Government's refusal to clarify the law.

The refusal to clarify could be interpreted as a sign that the Government is just saying one thing now and will be doing something else later. The loss of trust in a prevaricating Government could well precipitate a bank-run and cause financial system instability, which the Government has expressed a desire to avoid. The Government can say anything it likes, but the question is whether people believe in the Government or in the law. The uncertainty about bank deposits could precipitate financial instability.

Please do the right thing: make the law simpler and clearer so that Australians can trust the law to make informed decisions, which are assumed necessary for the neoliberal market-based approach espoused by the Government and the Treasury. The "bail-in" law needs clarification and it can be done at near zero cost for immense benefits to all Australians.

Stop Press: On 28 July [Alan Jones interviewed economist Adam Creighton](#), who agreed that deposits can be bailed in, although was mistaken that bail-in would only apply to deposits over \$250,000. Creighton is the most senior mainstream media expert to confirm that bail-in is real, which further proves the law needs to be clarified.

Call and email MPs and Senators!

The bottom line is the [Banking Amendment \(Deposits\) Bill 2020](#) will put the issue beyond all doubt. If it is passed, *there can be no bail-in of deposits!* Concerned Australians have about three weeks to flood politicians with phone calls and emails demanding they pass Senator Malcolm Roberts' bill. Make these points to the politicians:

1. There is confusion over bail-in which the bill will clarify;
2. APRA is saying it won't bail in deposits because its "paramount objective is to protect depositors", but it is deliberately not saying that under the law that objective is balanced against "financial system stability", which is the reason used worldwide to bail in deposits;
3. Treasury's submission didn't mention that Australia is part of the FSB, which says bail-in should include deposits, and lied that the Banking Act already contains "explicit" provisions that

- “expressly” protect deposits from bail-in, when it doesn’t;
4. The entire purpose of Senator Roberts’ bill is to insert into the *Banking Act* an “explicit” provision that “expressly” protects deposits from bail-in—why is the government trying to stop it?
 5. Call the members of the committee to demand they take advantage of the cancellation of the next sitting of Parliament to extend the inquiry to hold public hearings at which experts on all sides can testify.

Here are the contact details for the members of the committee:

Chair: Senator Slade Brockman (Lib)

(08) 6245 3305

senator.brockman@aph.gov.au

Deputy chair: Senator Alex Gallacher (ALP)

(08) 8269 6022

senator.gallacher@aph.gov.au

Senator Andrew Bragg (Lib)

(02) 9159 9320

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Senator Jenny McAllister (ALP)

(02) 9719 8100

jennifer.mcallister@aph.gov.au

Senator Susan McDonald (LNP)

(07) 4771 3066

senator.mcdonald@aph.gov.au

Senator Rex Patrick (CA)

(08) 8232 1144

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