



# Australian Citizens Party

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## MEDIA RELEASE

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### **Senate committee must not gate-keep the bail-in inquiry —demand public hearings!**

The Senate Economics Legislation Committee is inappropriately gate-keeping the inquiry into the [Banking Amendment \(Deposits\) Bill 2020](#) introduced by Senator Malcolm Roberts on 27 February. The inquiry has caught the government out—while it claims it won't bail in bank deposits, it is opposing the simple amendment to clarify the law to ensure deposits *can't* be bailed in. To help the Australian Prudential Regulation Authority (APRA) justify the government's opposition to clarifying the law, the Committee Secretariat cherry-picked points from correspondence to the Committee that argues against the government's position, so APRA can respond. [The Committee has published APRA's response](#), but not the correspondence, thus presenting only one side of the argument.

This is not how an inquiry should be conducted. All the issues raised in the submissions and correspondence should be examined transparently, and the forum to do that is in public hearings, at which Treasury and APRA can present their position, but the experts on bail-in can also back up their perspective that the law is unclear and must be clarified. Concerned Australians should call the Committee members and demand they hold public hearings and not allow the Secretariat to filter the debate.

It is clear from APRA's responses why the Committee is filtering the exchange. APRA repeatedly makes false and disingenuous claims in the expectation it won't be challenged. The ultra-secretive APRA's responses are in the name of Chairman Wayne Byres himself, who has extensive experience at the Bank for International Settlements (BIS) in Basel, Switzerland, which is the headquarters of the Financial Stability Board that devised the bail-in policy. Byres chaired the BIS's Basel Committee on Banking Supervision in 2012 when it issued its "Core Principles for Effective Banking Supervision", which stated there must be "no government or industry interference which compromises the operational independence of the supervisor". In other words, APRA and Wayne Byres don't like scrutiny and accountability.

#### **Depositor protection vs financial system stability**

APRA's response to the Committee proves it needs scrutiny and accountability, however. In his 29 July response, Wayne Byres tried to "clarify" a "misconception". (This is ironic because obviously Byres thinks it's reasonable to clarify confusion, yet not when it comes to passing Senator Malcolm Roberts' bill to clarify the law.) The supposed misconception Byres sought to clarify had arisen from his previous letter to the Committee, in which he had repeated four times that, hand on heart, APRA would not and could not bail in deposits because its "paramount objective" is the protection of depositors. However, as the Citizens Party had noted [in a 17 July release](#), and as [solicitor Robert Butler had elaborated in a detailed 27 July letter to the Committee](#), APRA actually has twin objectives, not one paramount objective. These are protection of depositors *and* financial system stability, and Butler showed that sometimes those objectives are in conflict. Wayne Byres was responding to Butler's letter.

Byres wrote: "APRA's financial system stability objective has been characterised as an alternative to depositor protection that could be used to implement measures contrary to depositor protection (such as bail-in of deposits). This characterisation is incorrect. As the *Banking Act 1959 (Banking Act)* makes clear, APRA's twin objectives are complementary." He then claimed that bailing in deposits would "offend" these "complementary" objectives. However, to emphasise his point, Byres footnoted his claim of "complementary" to this statement:

"See *Banking Act* s. 2A(1) and the use of 'and' rather than 'or' when setting out APRA's twin objectives." (In other words, APRA's objectives are depositor protection *and* financial system stability, rather than depositor protection *or* financial system stability.)

This is a perfect example of why the Committee should hold public hearings, rather than allow APRA to give one-sided responses. Because Byres was responding to Butler's letter from two days earlier, he knows that Butler had already shown this statement by Byres is wrong; but by only publishing Byres' letter and not Butler's, the Committee has ensured the public don't know that.

In a detailed analysis of the twin objectives, Butler had shown that while the *Banking Act* does state the objectives as depositor protection **and** financial system stability, it also states the objectives as

depositor protection **or** financial system stability. Specifically, Butler quoted Section 11CH(2) of the *Banking Act*, under Subdivision D, titled “Secrecy and disclosure provisions relating to all directions”, which states: “APRA may determine, in writing, that the direction is covered under this subsection if APRA considers that the determination is necessary to protect the depositors of any ADI **or** to promote financial system stability in Australia.” (Emphasis added.) “This section again refers to the dual objectives but replaces the earlier ‘and’ with ‘or’, *confirming the potential conflict of objectives*”, Butler had noted. (Emphasis added.)

Interestingly, this section of the *Banking Act* had been inserted by the very bail-in law under dispute, the 2018 bail-in law snuck through Parliament on St Valentine’s Day with only eight senators present, the *Financial Sector Legislation Amendment (Crisis Resolution Powers and Other Measures) Act 2018*. Why is all this significant? Because if the twin objectives are in conflict, other sections of the law, including the *Reserve Bank Act*, show that financial system stability trumps depositor protection. And the entire rationale of bail-in, as devised by the Financial Stability Board, is that sometimes bank depositors have to lose some of their money in order to save a failing bank so the collapse of one bank doesn’t trigger a banking crisis and cause financial *instability*, i.e. the FSB argues bailing in deposits is the way to ensure financial stability. With all his BIS-FSB experience Byres knows this, which is why he blatantly ignored Butler’s explicit contradiction of his claim the law only says “and”, not “or”.

Byres states other blatant mistruths in his letter, all of which could be challenged in the full light of day in public hearings. The actions of the Committee shows the government is trying to quietly get away with pretending APRA won’t bail in deposits while refusing to simply clarify the law so it can’t. Don’t let them—flood the Committee members with calls and emails to demand public hearings!

### **Call and email the Committee 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 should 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](mailto:senator.brockman@aph.gov.au)

**Deputy chair: Senator Alex Gallacher (ALP)**

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**Senator Andrew Bragg (Lib)**

(02) 9159 9320

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**Senator Jenny McAllister (ALP)**

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[jennifer.mcallister@aph.gov.au](mailto:jennifer.mcallister@aph.gov.au)

**Senator Susan McDonald (LNP)**

(07) 4771 3066

[senator.mcdonald@aph.gov.au](mailto:senator.mcdonald@aph.gov.au)

**Senator Rex Patrick (CA)**

(08) 8232 1144

[senator.patrick@aph.gov.au](mailto:senator.patrick@aph.gov.au)

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

