

Canada's openness on bail-in contrasts to Aussie stealth

Australian regulators have done everything in their power to suppress awareness of the Australian Prudential Regulation Authority's (APRA) new emergency powers passed 14 February, the *Financial Sector Legislation Amendment (Crisis Resolution Powers and Other Measures) Act 2018*. By contrast, the Canada Deposit Insurance Corporation (CDIC) has openly heralded its own new powers, declaring, "Bail-in is an important step in strengthening Canada's bank resolution regime." A statement by the organisation announced that the new "bail-in regime aligns with the Financial Stability Board's (FSB) Key Attributes for Effective Resolution Regimes, a set of international standards developed following the global financial crisis". This contrast demonstrates the effectiveness of the Citizens Electoral Council's campaign against bail-in in Australia, which meant that the only way the government could meet its commitment to the G20 to legislate bail-in was to sneak it through.

Michèle Bourque, CEO of the CDIC, self-described as a federal Crown corporation established to protect the savings of Canadians, made its announcement on 18 April when the regulations for bail-in were published. Bail-in legislation was passed by an amendment to existing laws in 2016; now, specific regulations for the banking sector will allow its implementation.

A lengthy multi-phased consultation process had been conducted by the Finance Department from 2014, resulting in a mere 25 written submissions from industry associations, investors, academics and a handful of citizens, with feedback largely positive towards the proposal. Compare this to the thousands of submissions, the majority negative, received by the Australian Parliament's Senate Economics Legislation Committee which scrutinised similar legislation here.

The bail-in rules will allow the CDIC to "convert some of a failing D-SIB's [domestic systemically important bank] debt into common shares in order to recapitalise the bank and allow it to remain open and operating". CDIC can take full control of a bank for a period of up to 5 years. Like APRA it can replace directors and restructure the bank as necessary. Also like APRA, the CDIC is beholden to protect the stability of the financial system as well as depositors. In the case of Canada, however, bail-in powers were not given to the prudential regulator, the Office of the Superintendent of Financial Institutions (OSFI), but to the deposit insurer. The new regulations



The front page of the CDIC's website. Photo: Screenshot

apply only to Canada's DSIBs, which have until 2021 to fully implement the requisite changes within their organisations but must begin the process next year. The OSFI lists Canada's six largest banks as domestically systemically important.

A gazette of the Bank Recapitalisation (Bail-in) Conversion Regulations published by CDIC states: "Some Canadians, senators and members of Parliament raised concerns about whether consumer deposits would be eligible for conversion into common shares under the bail-in regime. The Government has indicated that deposits would not be eligible for bail-in, and the Regulations are consistent with that position."

The CDIC announcement states that "Deposits, including deposits in chequing accounts, savings accounts and term deposits, are not affected by the bail-in regime." While Australian officials claimed the same, the Australian legislation, which was closely scrutinised by the CEC and by legal and prudential regulation experts, does not explicitly exclude deposits. In fact, it leaves room "for future changes to APRA's prudential standards" that can redefine "other instruments" for bail-in, opening a back door to include deposits, which by definition are "instruments". An amendment by Pauline Hanson's One Nation to explicitly rule out deposit conversion was sidelined by the government.

With only 25 submissions to the consultation on Canada's bail-in law, there may not have been sufficient scrutiny to similarly test the CDIC's verbal reassurance. For instance, the published Canadian regulations do not specify if its exemption for deposits only applies to insured deposits which cover C\$100,000 per Canadian financial institution.