

SUBMISSION TO THE SENATE STANDING COMMITTEE ON ECONOMICS BY ALLAN K WARREN RE:

BANKING AMENDMENT (DEPOSITS) BILL 2020

1. I am a self funded retiree and my fund is heavily weighted in bank term deposits. For more than 2 years I have been concerned about the lack of clarity and potential duplicity within the Bail In law in respect to its hidden power to entrap bank deposits.
2. Hence this submission supports the Banking Amendment (Deposits) Bill 2020. Its passing into law will ensure retail bank deposits cannot be confiscated by Bail In laws. This would be consistent with the ongoing public assurances and promises by parliamentarians and key financial regulators that deposits cannot be seized by this law.
3. It is problematic that the Financial Sector Legislation Amendment (Crisis Resolution Powers and Other Measures) Act 2018 (FSLA Act) does in fact allow politicians and/or their regulatory authorities to confiscate bank deposits for purposes of Bail In.
4. Section 31, 11CAA(1) of the FSLA Act amends, by insertion, the Banking Act 1959 to allow Conversion and Write Off of “additional Tier 1 and Tier 2 capital; or any other instrument”. Also, subsection 11CAB (1) (a) inserts into the Banking Act that Bail In applies to instruments that contain terms (and conditions) that are issued by Authorised Deposit-Taking Institutions (ADIs) - the banks. APRA needs only to tell these ADIs to alter their customer account as to allow deposits to be confiscated.
5. The little known paragraph of 5.15 of the Explanatory Memorandum to the FSLA Act raises serious doubts against the government’s assertions that deposits are excluded from Bail In law. Under the heading ‘Conversion and Write- off of Capital Instruments’ it in part reads:

“The provision in the prudential standards that set these requirements are currently referred to as ‘loss absorption requirements’ and requirements for ‘loss absorption at the point of non-viability (4). The term ‘conversion and write-off provisions’ is intended to refer to those provisions. However the amendments leave room for future changes to APRA’s prudential standards, including changes that might refer to instruments that are not currently considered capital under prudential standards.”
6. APRA is the prudential regulator. Para 5.15 above allows it, using its power under s11AF of the Banking Act 1959, to decide that bank deposits are to be treated the same as capital instruments. This decision or opinion by APRA can made instantaneously and in secret before

bank account holders know what has happened. It is a criminal offence for anyone to alert the public when APRA intends to activate this Bail In law, with punishment of up to 2 years gaol for offenders.

7. The Bail In law as it now stands, is ambiguous and seemingly ambivalent. Irrespective of whether this was intentional or not the Banking Amendment (Deposits) Bill 2020 should be passed into law to clarify the status of bank deposits as exempt from Bail In. This would uphold the assurances that key officials have consistently given to the public.

Allan Warren

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25 June 2020