Banking System Reform (Separation of Banks) Bill 2018

Legislation for Glass-Steagall separation of commercial banks from all other financial activities

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Explanatory memorandum

Need for this bill

It is obvious that Australia's Big Four banks and Macquarie are devoted solely to their own usurious profits at the expense of the population as a whole. We must therefore break up these "vertically integrated", self-centred and crime-ridden behemoths and return to the sort of tightly regulated banking system which existed under our original Commonwealth Bank, which was dedicated to the Common Good. Towards that end, the Citizens Electoral Council has drafted the Banking System Reform (Separation of Banks) Bill 2018, an explanation of which follows.

General outline

Given the onrushing global financial crisis, this present legislation is proposed for *immediate implementation* within the current Australian banking structures and institutions. It mandates the separation of normal retail commercial banking activities involving the holding of deposits, from wholesale and investment banking, which are rife with risky activities; and, whilst guaranteeing deposits in commercial banks, removes explicit and implicit government guarantees for any such activities outside of the core business of normal commercial banking. It also proposes to provide strict accountability and Parliamentary oversight of the activities of the Australian Prudential Regulation Authority (APRA) as the banking regulator, which since its establishment in 1998 has not only overseen, but actually fostered the growth of Australia's present, speculation-centred, crime-ridden financial system.

Australia's present financial system, particularly those aspects introduced during the waves of deregulation that followed from the 1981 Campbell Report, which allowed its present concentration in the "Big Four" too-big-to-fail (TBTF) banks plus Macquarie and the mixing of normal commercial banking with speculation-ridden investment banking and other financial services within the same institutions, is recognised to be a disaster which fosters financial speculation at the expense of the real, physical economy and the majority of the population. Moreover, the City of London/Wall Street-centred global financial system, of which Australia's banks are an integral part, itself now faces a new collapse.

Background

The Australian and international media have featured repeated warnings from present and former officials of the Bank for International Settlements, the International Monetary Fund, the Organisation for Economic Co-operation and Development, and the U.S. Federal Reserve System, as well as former leading bankers and other prominent commentators, that the world is headed towards a far greater financial crash than that of 2007-2008.

This inevitable prospect has been caused by the waves of "free market reforms" enacted since the breakup of the fixed-exchange-rate Bretton Woods system in 1971. These reforms include privatisation, deregulation, manipulations of fluctuations in currency exchange rates, and the creation of over US$1 quadrillion in speculative instruments known as derivatives, such as the mortgage-backed securities that provoked the 2007-2008 crash and are once again soaring in number.

This new global bubble in the trans-Atlantic system, including Australia, is not simply a bubble in one part of "the market", such as mortgages. Rather, the relentless "quantitative easing" by central banks, totalling an estimated minimum of US$12 trillion since 2008, has created an "everything bubble", including car loans, student loans, corporate loans, the U.S. stock market which has exceeded US$30 trillion, the bitcoin bubble, and others.

This post-2008 system is centred upon a handful of TBTF banks, typified by those in the City of London, on Wall Street, and in the European Union, and Australia's Big Four plus Macquarie, all of which have looted the population in favour of speculative profits.

The creation of this TBTF system was enabled by the 1986 "Big Bang" deregulation of the City of London and the repeal of the U.S. *Glass-Steagall Act* in 1999.

From the time Glass-Steagall legislation was passed in 1933 until it was repealed in 1999, there had been no such systemic crisis in the U.S. banking system.

Australia has never had Glass-Steagall-style banking separation, but the domestic banking system was not always exposed to the level of risk it is today,

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because until the 1980s a system of regulatory controls effectively implemented separation.

Australia's Government-owned Commonwealth Bank was intended by its promoter King O'Malley to be a national bank, but, instead, a watered-down version was legislated in 1911. Nevertheless, it exercised a degree of control over the banking system, and in 1911-1959 the Commonwealth Bank strengthened the banking system, stopping runs on private banks: no Australian banks failed during the Great Depression, compared with the more than 4,000 American banks that permanently closed their doors between 1929 and the 1933 passage of the *Glass-Steagall Act*. Prior to the Commonwealth Bank, banking in Australia had been very volatile, 20 of 22 Australian banks having failed in the 1892 economic crisis.

U.S. President Franklin D. Roosevelt signs the *Glass-Steagall Act* into law, 16 June 1933. Flanking Roosevelt are Senator Carter Glass (white suit) and Representative Henry B. Steagall.

Labor leaders John Curtin and Ben Chifley gave the Commonwealth Bank even greater powers over the private banks during and after WWII. The Commonwealth Bank regulated what the private banks could charge for loans and pay for deposits, and the extent, and nature, of bank lending, but this regulation did not prevent private banks from remaining profitable. Bank regulation was based on the principle of the common good: the financial system must serve the needs of the people. To do that, the banking system had to be structured to ensure that credit was available for the government to build infrastructure and invest in national economic development, and for essential primary and secondary industries, the productivity of which generated the tangible wealth that underpinned the living standard of the population. Banking controls minimised the ability of the private banks to speculate, and encouraged investments in the production of physical infrastructure, goods and essential services.

King O'Malley

The Commonwealth Bank, Martin Place, Sydney.

Chifley's successor, Liberal Party Prime Minister Robert Menzies, stripped the Commonwealth Bank of its regulatory powers over the private banks in 1959, and vested those powers in a new central bank, the Reserve Bank of Australia—the bankers' bank.

The global financial system changed dramatically on 15 August 1971, when U.S. President Richard Nixon ended the Bretton Woods system of fixing the U.S. dollar to gold. This unleashed a global push for financial deregulation, masterminded by the powerful banking houses of the City of London. The post-1971 system constituted a new form of British imperialism—not territorial as of old, but as an "informal financial empire", in the words of its own proponents.

In 1979 the Liberal Party established the Financial System Inquiry headed by Sir Keith Campbell. The resulting 1981 Campbell Report demanded the wholesale elimination of Australia's regulated financial system, including the abolition of government controls over bank lending, by which the government had instructed the banks to give preference to farmers, small businesses, and home-buyers; the sale of all government-owned financial institutions that existed to provide cheaper finance to farms and small businesses, such as the Australian Industry Development Corporation, the Primary Industry Bank of Australia, the Commonwealth Development Bank, and the Housing Loans Insurance Corporation; the abolition of the "30/20 Rule" and other ratios that had obliged the savings banks, trading banks, life offices and superannuation funds to invest a fixed percentage of their assets in government bonds, thus providing security

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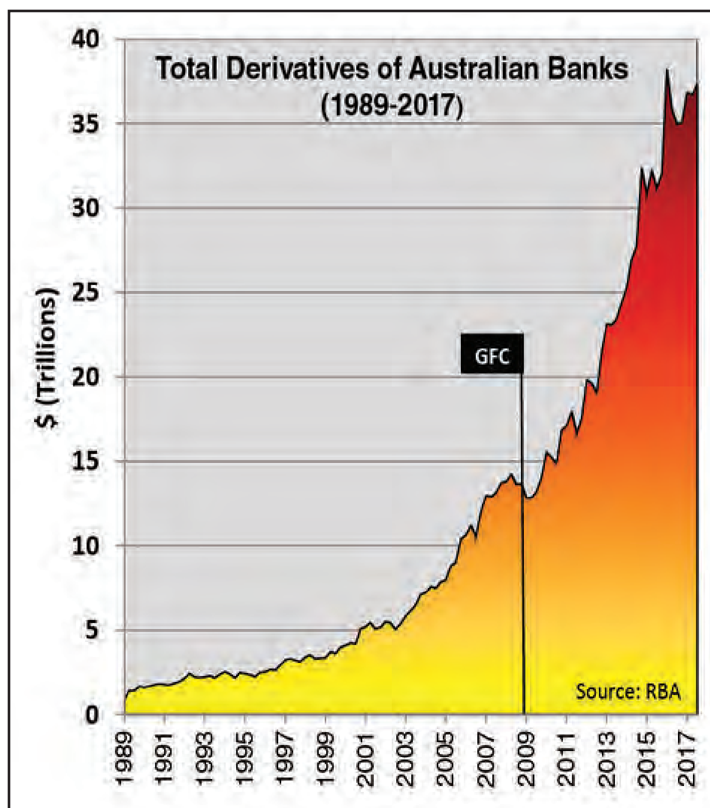

for the financial institution and ensuring the government could borrow readily; the removal of government controls over all interest rates charged by banks; the abolition of government controls over the amount of lending by banks; the lifting of all controls over capital flows in and out of Australia and the floating of the dollar; and the admission of foreign banks into Australia. Liberal Prime Minister Malcolm Fraser opposed many of these demands, so his government implemented only the recommended entry of foreign banks into Australia.

But the subsequent Hawke-Keating Labor Government initiated the 1983-1984 Vic Martin inquiry, which simply rubber-stamped the demands of the Campbell Report. Treasurer Paul Keating had already condemned the senior executives of Australia's banks as smug fat cats, protected by regulation from real competition, and stripped away Australia's banking regulations beginning with the December 1983 float of the Australian dollar.

Liberal Party Treasurer Peter Costello took the process still further by initiating the 1996 Wallis Inquiry, which demanded the removal of restrictions on mergers between the banks and big life insurance offices; stripped the Reserve Bank of its remaining powers to regulate the banks; and established a new, "independent" banking regulator—APRA. Costello publicly confirmed for the first time that there was no formal guarantee for bank deposits in Australia.

From these two periods of banking reform has emerged Australia's highly concentrated, TBTF banking system, with its almost $38 trillion exposure to toxic derivatives and hundreds of billions of dollars of short-term debt. But even the architects of deregulation are well aware that they have exposed the Australian public to enormous risk. Interviewed in the 2008 book *Unfinished Business: Paul Keating's Interrupted Revolution*, Keating admitted to author David Love a "minor" detail kept from the public in the 1980s—that at least two of Australia's Big Four banks would have collapsed at that time, had the government not propped them up because they were already "too big to fail". Reflecting the results effected by the Campbell Report, Keating recalled, "The old domestic banks went like charging bulls into credit expansion from 1985 on .... Eventually, they had us in a position where we dared not check them lest they failed. Westpac and the ANZ virtually did fail: the government and the Reserve Bank had to hold them together until they got back on their feet."

The speculation became even worse following the 1998 establishment of APRA, which supervised the creation of today's mortgage bubble—generally acknowledged as the first or second worst in the world—by rigging prudential regulation to favour speculation in mortgages, much of which was financed by overseas borrowing. Thus, in 2008 the Rudd government had to guarantee the banks' huge foreign borrowings as well as their deposits; without these guarantees, they would have collapsed. All the while, the government was assuring the public that the banks were "sound". Under the benevolent eye of APRA—which is funded by the banks themselves and, while formally

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responsible to Parliament, takes its direction from the Bank for International Settlements in Switzerland, which insists the government must not "interfere" with APRA's operations—the Big Four's holdings of mortgage-centred, ultra-risky derivatives have soared from $14 trillion in 2008 to over $37 trillion today. Australia's TBTF banks now hold 60 per cent of their assets in mortgages, compared with 30 per cent in the USA and just over 20 per cent in London. This property bubble has been financed by massive foreign borrowing. And, contrary to the endlessly repeated mantra that Australia has the "safest financial system in the world", its mortgage bubble is a mortal threat not only to Australia, *but to the entire City of London/Wall Street-centred Western financial system*, a reality reported in the 5 February 2018 *Australian Financial Review* article, "Australian banks may pose global systemic threat".

Thanks to this relentless deregulatory process, initiated with the 1981 Campbell Report and supervised since 1998 by APRA, Australia's "financial sector" now constitutes an astounding 9 per cent of Australia's economy, as opposed to the City of London's "mere" 7 per cent of the UK economy and Wall Street's 6 per cent of the U.S. economy. It has been created at the expense of our real physical economy, such as agriculture and manufacturing, which have been devastated, with family farms almost obliterated and our manufacturing sector at only 6 per cent of GDP—the lowest level in the Western world. Indeed, *this is precisely what Paul Keating intended* when he proclaimed in 1985 that Australia should be the "Wall Street of the South" and, in terms of industry, concentrate on its "long suit" of exporting primary products; in other words, that the proud Australia of the post-war years, with its vibrant new factories and family farm-centred agricultural sector, should devolve into a typical "Third World" economy under foreign imperialist rule.

This deregulation and privatisation process has enriched speculators and the TBTF banks at the expense of the general population, which suffers soaring prices for food, housing, energy and other basic necessities. Moreover, Australia's TBTF banks have been repeatedly caught in criminal activity such as drug money laundering, terror financing, interest rate rigging, stealing from their depositors, and other crimes, committed during the period of APRA's oversight of them since 1998. In short, Australian governments no longer control and direct the financial system, but now operate at the behest of the financial system.

Past periods of profound crisis, including the bank collapses of the 1890s, the Great Depression of the 1930s, and the need to build our economy to fight World War II, forced the government to act to rein in private finance on behalf of the public good. Thus, the Conservative-led Banking Royal Commission of 1936 found that, contrary to the private bankers' control of the financial system in the 1920s and 1930s, "*The Federal Parliament is ultimately responsible for monetary policy and the Government of the day is the executive of the Parliament.*" Or, in the words of PM John Curtin, who with Treasurer Ben Chifley constructed the highly regulated financial system that enabled Australia to industrialise overnight during WWII and make an invaluable contribution to winning World War II in the Pacific, "If the Government of the Commonwealth deliberately excludes itself from all participation in the making or changing of monetary policy"—as happened in the 1920s and 1930s, and again today under an "independent" central bank and APRA—"it cannot govern except in a secondary degree."

Summary of draft legislation

The legislation:

1. Prohibits banks from any affiliation with an entity that is not a bank. (Sections 7, 8, 9)

2. Prohibits any entity that is not a bank to engage in the business of receiving deposits. (Section 10(1))

3. Prohibits banks from investing in structured or synthetic products and products such as derivatives and speculative ventures. (Section 10(4))

4. Limits the business of banking to retail banking and associated loans and activities. (Section 11)

5. Brings the Australian Prudential Regulation Authority ("APRA"), as the licensing and regulatory Authority, and its prudential standards and actions and decisions generally, under the oversight of Parliament. (Section 14)

6. Limits the Financial Claims Scheme to deposits with banks whose activities do not include any prohibited activities. (Section 13)

Effect of draft legislation

The effect of the legislation will be:

1. To re-establish public confidence in the banking system;

2. To reduce risks to the Australian financial system by limiting the ability of banks to engage in activities other than socially valuable core banking activities;

3. To limit conflicts of interest that arise from banks engaging in activities from which their profits are earned at the expense of their customers and the national interest;

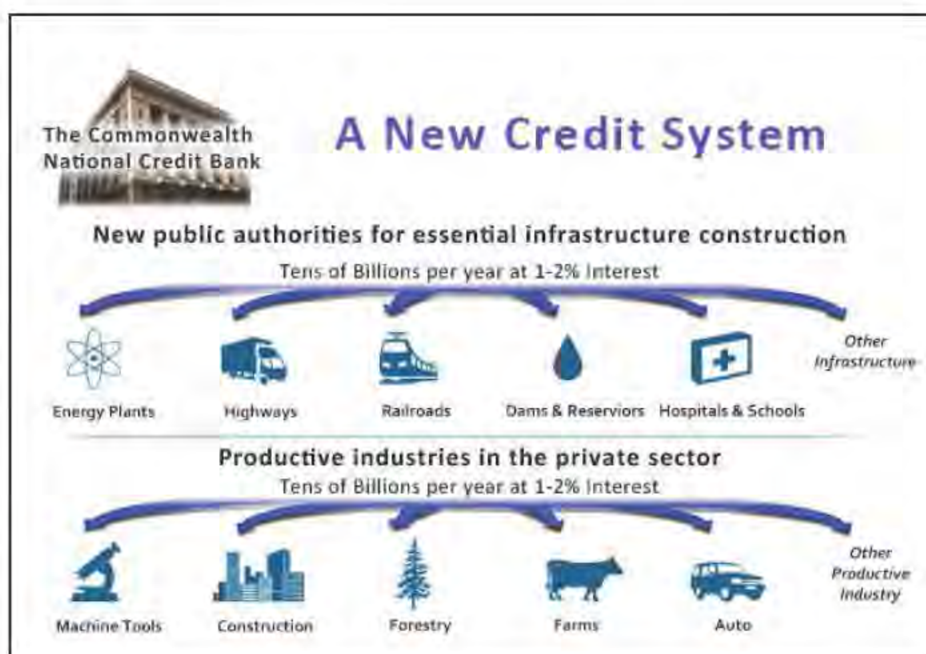
4. To remove explicit and implicit government

guarantees for high-risk activities outside of the core business of banking;

5. To regulate Australian banks and any foreign bank operating within Australia;

6. To provide Parliamentary oversight of the activities of APRA as the banking regulator;

7. To separate retail commercial banking activities involving the holding of deposits, from wholesale and investment banking involving risky activities.



Further financial system reforms

Such urgently required separation is merely the first step. The full reform of Australia's banking system requires a more comprehensive package of legislation that overturns the current monetarist philosophies and policies and returns Australia to a public credit-based system implemented through a system of national banking. Such a system must be anchored upon the re-establishment of a new, government-owned and directed national bank to regulate Australia's national credit, to provide such credit for urgently needed infrastructure projects, and to drive a renaissance of Australia's agro-industrial, physical economy. Legislation for this new national bank is to be modelled principally upon our original Commonwealth Bank as it functioned under its founding director Sir Denison Miller from 1912 to 1920 (before private banking interests seized control of it), and the Australian banking system as it was regulated under Prime Minister John Curtin and Treasurer Ben Chifley and functioned so magnificently during World War II and even up until 1959 when the Reserve Bank was established. The new Commonwealth National Credit Bank would replace the Reserve Bank, and the new bank's Reserve Division would be mandated to licence and regulate Australia's private banks and foreign banks operating in Australia, as did the original Commonwealth Bank, thereby replacing APRA, which would be abolished. In the meantime, APRA must be placed under the strict supervision of Parliament, which is, in turn, responsible to the population as a whole.

The creation of a true national bank would restore to the Australian Parliament the Constitutional power to regulate Australia's economy. It will act in Australia's national interest, through ensuring an orderly flow of credit and currency to public infrastructure and utilities, and to private enterprise engaged in the production and transportation of tangible economic wealth, including manufacturing, agriculture, construction, and mining. Successive governments have been deficient in this regard by abrogating this power, relinquishing it to private banking interests operating in a regulatory framework run by APRA and ultimately directed by APRA's masters in the Bank of England and the BoE-established, supranational Bank for International Settlements in Basel, Switzerland. Thus, foreign and Australian private banking interests have exercised arbitrary judgments on monetary policies, in violation of Australia's national economic interest.

The new national bank would finance nationwide infrastructure projects in water, high-speed rail, and energy among other vital aspects of the economy, to act as science-drivers of real economic development, and to increase Australia's physical-economic productivity and therefore the standard of living of all Australians.

Further legislation required

Separate legislation will be required for the regulation of credit unions, building societies, insurance companies and superannuation fund managers, to either supplement, qualify or replace the legislation at the state level that currently governs such institutions and persons.

Banking System Reform (Separation of Banks) Bill 2018

No __ of 2018

An Act to re-establish public confidence in the banking system; to reduce risks to the Australian financial system by limiting the ability of banks to engage in activities other than socially valuable core banking activities; to limit conflicts of interest that arise from banks engaging in activities from which their profits are earned at the expense of their customers and the national interest; to remove explicit and implicit government guarantees for high-risk activities outside of the core business of banking; to regulate Australian Banks; to provide Parliamentary oversight of the activities of the Australian Prudential Regulation Authority (APRA) as the banking regulator; to separate retail commercial banking activities involving the holding of deposits, from wholesale and investment banking involving risky activities; and for other purposes.

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The Parliament of Australia enacts:

1. Short title

This Act may be cited as the *Banking System Reform Act 2018*.

2. Outline of the purposes of the Act

The purposes of this Act are:

(1) to reduce risks to the financial system by limiting the ability of banks to engage in activities other than socially valuable core banking activities;

(2) to protect taxpayers and reduce moral hazard by removing explicit and implicit government guarantees for high-risk activities outside of the core business of banking;

(3) to eliminate any conflict of interest that arises from banks engaging in activities from which their profits are earned at the expense of their customers or clients;

(4) to provide for the safer and more effective use of the assets of banks, to regulate interbank control, and to prevent the undue diversion of funds into speculative operations;

(5) to re-enforce the Constitutional power of the Commonwealth Parliament to regulate banking and other aspects of the Australian economy, and to promote the exercise of that power in Australia's national interest, including through ensuring an orderly flow of credit and currency to public infrastructure and utilities and to private enterprise engaged in the production and transportation of tangible economic wealth, including manufacturing, agriculture, construction, and mining, successive governments having been deficient in action in the national interest by abrogating such power and relinquishing it to private banking interests, which have been exercising arbitrary judgments on monetary policies in violation of Australia's national economic interest;

(6) to require that the Australian government re-regulate Australia's national financial system by the separation of sound commercial banking, which benefits the average Australian, from the speculative merchant banking activities which have grown like a cancer under financial deregulation, both in this country and worldwide and which have largely caused the present, ever deepening global financial crisis;

(7) to facilitate this re-regulation of Australia's financial system by mandating strict Parliamentary control over APRA, including fines and/or jail terms for APRA officials attempting to evade such supervision.

3. Commencement

This Act commences on _______ 2018.

4. Definitions

(1) In this Act, unless the contrary intention appears:

"APRA" is short for "Australian Prudential Regulation Authority" created by the *Australian Prudential Regulation Authority Act 1998*;

"bank" means a body corporate carrying on banking business and being an authorised deposit-taking institution within the meaning of the *Banking Act 1959* as amended and in respect of which an authority under subsection 9(3) of that Act is in force;

"banking business" means:

(i) business that consists of banking within the meaning of paragraph 51(xiii) of the Constitution; or

(ii) business that is carried on by a corporation to which paragraph 51(xx) of the Constitution applies and that consists, to any extent, of both taking money on deposit (otherwise than as part payment for identified goods or services) and making advances of money or credit;

"bank holding company" means any body corporate, whether or not operating as a bank, which owns a controlling interest in, or controls in any manner the election of directors or trustees of, or directly or indirectly exercises a controlling influence over the management or policies of any bank;

"business of receiving deposits" means the establishment and maintenance of a deposit or account on which the depositor or account holder is permitted to make withdrawals by negotiable or transferable instrument, payment orders of withdrawal, telephone transfers, or other similar items for the purpose of making payments or transfers to third persons or others. Such term includes demand deposits, negotiable order of withdrawal accounts, and savings deposits subject to automatic transfers;

"Committee" means the Parliamentary Joint Committee on Prudential Regulation created pursuant to clause 14(1);

"investment securities" means marketable obligations evidencing indebtedness of any person, co-partnership, association, or corporation in the form of bonds, notes, or debentures, and obligations of the Commonwealth government, or of any State or subdivision of the Commonwealth, and does not include managed investment schemes or any of the instruments described in Section 10(3)(i) hereof;

"managed investment scheme" means a managed investment scheme within the meaning of the *Corporations Act 2001* as amended, in which members make contributions in return for an interest in the benefits the scheme produces, in which contributions are pooled to produce the benefits, and members do not have day-to-day control over how the scheme operates;

"securities entity" includes any entity engaged in—

(a) the issue, flotation, underwriting, public sale, or distribution of stocks, bonds, debentures, notes, or other securities;

(b) market making;

(c) activities of a broker or dealer;

(d) activities of a futures commission merchant;

(e) activities of an investment adviser or investment company; or

(f) hedge fund or private equity investments in the securities of either privately or publicly held companies; but does not include a bank that, pursuant to its authorised trust and fiduciary activities, purchases and sells investments for the account of its customers or provides financial or investment advice to its customers;

"swaps entity" means any swap dealer, security-based swap dealer, major swap participant, or major security-based swap participant;

"swap dealer" and "swaps dealer" means any entity which—

(a) holds itself out as a dealer in swaps,

(b) makes a market in swaps,

(c) regularly enters into swaps with counterparties as an ordinary course of business for its own account, or

(d) engages in activity causing itself to be commonly known in the trade as a dealer or market maker in swaps.

5. Application to Crown

This Act binds the Crown in right of each of the States, of the Australian Capital Territory, of the Northern Territory and of Norfolk Island.

6. Re-regulation

The Australian government shall not implement any policy nor propose any legislation or regulation which is incompatible with the Purposes or provisions of this Act.

7. Prohibition on affiliations by banks with non-bank entities

(1) A bank may not—

(i) be or become an affiliate of any insurance company, securities entity, swaps entity or any company which is not a bank; or

(ii) be in common ownership or control with any insurance company, securities entity, swaps entity or any company which is not a bank; or

(iii) engage in any activity that would cause the bank to qualify as an insurance company, securities entity, or swaps entity or any company which is not a bank;

(2) No bank or bank holding company shall, after the commencement of this Act, retain or acquire direct or indirect ownership or control of any company or entity which is not a bank.

(3) A bank may not issue bonds or securities which have any voting rights whatsoever in the management or business of the bank. This provision shall not prevent a bank which is listed on any Australian stock exchange issuing shares which carry voting rights in the management or business of the bank.

8. Individuals eligible to serve on boards of banks

(1) An individual who is an officer, director, partner, or employee of any securities entity, insurance company, or swaps entity may not serve at the same time as an officer, director, employee, or other institution-affiliated party of any bank.

(2) Clause 8(1) shall not apply with respect to service by any individual who is otherwise prohibited under clause 8(1), if the appropriate Minister with the consent of the Committee determines that service by such an individual as an officer, director, employee, or

other institution-affiliated party of a bank would not unduly influence—

(i) the investment policies of the bank; or

(ii) the advice that the bank provides to customers.

(3) Subject to a determination under Section 8(2), any individual described in Section 8(1) who, as of the date of commencement of this Act, is serving as an officer, director, employee, or other institution-affiliated party of any bank shall terminate such service as soon as is practicable after such date of commencement, and in no event later than the end of the 60-day period beginning on that date of commencement.

9. Termination of existing affiliations and activities

(1) Any affiliation, common ownership or control, or activity of a bank or bank holding company with any securities entity, insurance company, swaps entity, or any other person, as of the date of commencement of this Act, which is prohibited under Section 7 shall be terminated as soon as is practicable, and in no event later than the end of a 24-month period beginning on that date of commencement.

(2) APRA may order termination of an affiliation, common ownership or control, or activity prohibited by Section 7 before the end of the 24-month period described in clause 9(1), if APRA determines that such action—

(i) is necessary to prevent undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices; and

(ii) is in the public interest.

(3) Subject to a determination under Section 9(2), APRA may extend the 24-month period described in clause 9(1) as to any particular bank for not more than an additional 3 months at a time, if—

(i) APRA certifies that such extension would promote the public interest and would not pose a significant threat to the stability of the banking system or financial markets in Australia; and

(ii) such extension, in the aggregate, does not exceed 1 year for any single bank; and

(iii) such extension has been approved by the Committee.

(4) Upon receipt of an extension under Section 9(3), the bank shall notify shareholders of the bank and the general public that it has failed to comply with the requirements of Section 9(1).

10. Limitation on banking activities

(1) After the expiration of two years after the date of commencement of this Act it shall be unlawful—

(i) for any person, firm, corporation, association, business trust, or other similar organisation, engaged in the business of issuing, underwriting, selling, or distributing, at wholesale or retail, or through syndicate participation, stocks, bonds, debentures, notes, or other securities, to engage at the same time to any extent whatever in the business of receiving deposits subject to cheque or to repayment upon presentation of a passbook, certificate of deposit, or other evidence of debt, or upon request of the depositor; or

(ii) for any person, firm, corporation, association, business trust, or other similar organisation, other than a bank, to engage to any extent whatever in the business of receiving deposits subject to cheque or to repayment upon presentation of a passbook, certificate of deposit, or other evidence of debt, or upon request of the depositor.

(2) Any person who commits or causes a breach of any of the provisions of this Section 10 shall upon conviction be fined not more than $250,000 or imprisoned not more than five years, or both, and any officer, director, employee, or agent of any person, firm, corporation, association, business trust, or other similar organisation who knowingly participates in any such violation shall be punished by a like fine or imprisonment or both.

(3) A bank may not—

(i) invest in a structured or synthetic product, a financial instrument in which a return is calculated based on the value of, or by reference to the performance of, a security, commodity, swap, other asset, or an entity, or any index or basket composed of securities, commodities, swaps, other assets, or entities, other than customarily determined interest rates; or

(ii) otherwise engage in the business of receiving deposits or extending credit for transactions involving structured or synthetic products.

(4) A bank or bank holding company shall not—

(i) engage in the business of a 'securities entity' or a 'swaps entity', including dealing or making markets in securities, repurchase agreements, exchange traded and over-the-counter swaps, or structured or synthetic products, or any other over-the-counter securities, swaps, contracts, or any other agreement that derives its value from, or takes on the form of, such securities, derivatives, or contracts; or

(ii) engage in proprietary trading; or

(iii) own, sponsor, or invest in a hedge fund, or private equity fund, or any other fund that exhibits the characteristics of a fund that takes on proprietary trading activities or positions; or

(iv) hold ineligible securities or derivatives; or

(v) engage in market-making; or

(vi) engage in prime brokerage activities; or

(vii) promote or engage directly or indirectly in any managed investment scheme, including but not limited to the making of loans or granting of credit to, or in any way supporting, either the trustee or manager of any scheme or the members of any scheme; or

(viii) make any loan or grant any credit to, or in any way support, any person or corporation, whether or not a customer of the bank, if, to the knowledge of the bank, such support or loan or credit is intended to be employed in the undertaking of any investment or activity prohibited to the bank by this Act.

(5) No bank or bank holding company shall act as the medium or agent of any non-banking corporation, partnership, association, business trust, or individual in making loans on the security of stocks, bonds, or other investment securities to brokers or dealers in stocks, bonds, and other investment securities or in any dealings whatsoever in respect of stocks, bonds, or other investment securities.

(6) No bank or bank holding company shall underwrite any issue of stocks, bonds, or other investment securities.

11. Permitted activities of banks

(1) The business of banking which may be undertaken by a bank shall be limited to the following core banking services—

(i) the business of receiving deposits;

(ii) the extension of credit to individuals, businesses, not for profit organisations, and other entities;

(iii) the discount and negotiation of promissory notes, drafts, bills of exchange, and other evidences of debt; and

(iv) the loan of money on personal security.

(2) A bank may participate in payment systems, defined as instruments, banking procedures, and interbank funds transfer systems that ensure the circulation of money.

(3) A bank may buy, sell, and exchange coin and bullion.

(4) A bank may invest in investment securities as defined in Section 4(1) provided that—

(i) the business of dealing in investment securities and shares by a bank shall be limited to—

(I) purchasing and selling such securities and shares without recourse, solely upon the order, and for the account, of customers, and, subject to Section 11(4)(i)(II), in no case for its own account, and the bank shall not underwrite any issue of securities or shares; and

(II) purchasing for its own account investment securities under such limitations as APRA with the approval of the Committee may prescribe, by regulation;

(ii) in no event shall the total amount of the investment securities of any single obligor or maker, held by the bank for its own account, exceed 10 per cent of its capital stock actually paid in and unimpaired and 10 per cent of its unimpaired surplus fund, except that such limitation shall not require any bank to dispose of any investment securities lawfully held by it on the date of commencement of this Act.

(5) In considering any limitations to be imposed by APRA and the Committee pursuant to Section 11(4)(i)(II) APRA and the Committee shall give primary consideration the purposes of this Act as set out in Section 2 and shall not approve any investment security which may directly or indirectly enable any investment or activity prohibited to the bank by this Act.

12. Evasion of provisions

(1) Any attempt to structure any contract, investment, instrument, or product in such a manner that the purpose or effect of such contract, investment, instrument, or product is to evade or attempt to evade the provisions of this Act shall render such contract, investment, instrument, or product void.

(2) Any attempt to structure any contract, investment, instrument, or product in such a manner that the purpose or effect of such contract, investment, instrument, or product is to evade or attempt to evade the provisions of this Act shall constitute a criminal offence and any offender shall upon conviction be fined not more than $250,000 or imprisoned for not more than five years, or both, and any officer, director, employee, or agent of any person, firm, corporation, association, business trust, or other similar organisation who knowingly participates in any such violation shall be punished by a like fine or imprisonment or both.

13. Financial Claims Scheme

(1) The Financial Claims Scheme as created by the *Financial System Legislation Amendment (Financial Claims Scheme and Other Measures) Act 2008* shall extend to all accounts held with any Australian bank whose banking business does not include any prohibited activities.

(2) The Financial Claims Scheme as created by the *Financial System Legislation Amendment (Financial Claims Scheme and Other Measures) Act 2008* shall not extend to any accounts held with any Australian bank whose banking business includes any prohibited activities in breach of the provisions of this Act.

14. Australian Prudential Regulation Authority

(1) As soon as practicable after the commencement of this Act and after the commencement of the first session of each Parliament, a joint committee of members of the Parliament, to be known as the Parliamentary Joint Committee on Prudential Regulation, shall be appointed.

(2) The Committee shall consist of 10 members, of whom:

(i) 5 shall be senators appointed by the Senate; and

(ii) 5 shall be members of the House of Representatives appointed by that House.

(3) The appointment of members by a House shall be in accordance with that House's practice relating to the appointment of members of that House to serve on joint select committees of both Houses.

(4) A person is not eligible for appointment as a member if he or she is:

(i) a Minister; or

(ii) the President or Deputy President of the Senate; or

(iii) the Speaker or Deputy Speaker of the House of Representatives; or

(iv) the Deputy-President or Chairman of a committee of the Senate; or

(v) the Chairman of a committee of the House of Representatives.

(5) A member ceases to hold office:

(i) when the House of Representatives expires or is dissolved; or

(ii) if he or she becomes the holder of an office referred to in a paragraph of subsection (4); or

(iii) if he or she ceases to be a member of the House or Senate by which he or she was appointed; or

(iv) if he or she resigns his or her office.

(6) Subject to this Act, all matters relating to the Committee's powers and proceedings shall be determined by resolution of both Houses.

(7) The Committee's duties are:

(i) to hold public enquiries into, and report to both Houses on:

(I) activities of APRA, or matters connected with such activities, to which, in the Committee's opinion, the Parliament's attention should be directed; or

(II) the operation of any law relating to APRA, or of any other law of the Commonwealth, of a State or Territory or of a foreign country that appears to the Committee to affect significantly the operation of such law;

(ii) to examine each annual report that is prepared by APRA, and to report to both Houses on matters that appear in, or arise out of, that annual report and to which, in the Committee's opinion, the Parliament's attention should be directed; and

(iii) to inquire into any question in connection with APRA's duties that is referred to it by a House, and to report to that House on that question.

(8) (i) Within 30 days of the passage of this Act APRA shall lodge with the Parliament a copy of all Prudential Standards created by APRA pursuant to the *Australian Prudential Regulation Authority Act 1998* together with an explanatory statement for each Standard. If any documents are incorporated in the Standard or explanatory statement by reference, the lodgement shall include a description of the incorporated documents and indicate how they may be obtained.

(ii) Subject to any direction given by the Parliamentary Joint Committee on Prudential Regulation, the appropriate Minister shall, as soon as practicable after the commencement of this Act, by notice in writing, give to APRA guidelines to be observed in relation to the performance of APRA's functions that relate to the Australian financial system and Australia's banking system, and may, from time to time, vary or replace guidelines so given.

(iii) Any Prudential Standard proposed by APRA after the commencement of this Act shall be subject to the approval of the Parliament and if not so approved shall be of no force and effect.

(9) (i) Either House of Parliament may pass a resolution disallowing any Prudential Standard at any time after such lodgement, but only if notice of the resolution was given within 15 sitting days of the House or Senate after the lodgement.

(ii) On the passing of a resolution disallowing any Prudential Standard, the Standard shall cease to have effect.

(10) APRA shall not consult with nor accept nor implement the recommendations or decisions of any foreign bank or foreign authority including, but not limited to, the Bank of England and the Bank for International Settlements, without the prior express written approval and consent of the Committee. In seeking such approval and consent APRA shall provide the Committee with full details of any request from such foreign authority or bank and the basis upon which APRA seeks to undertake any contact with such institution or bank or to consider any recommendation or decision of such bank or authority and shall provide to the Committee a copy of all communications with such bodies and a written transcript of any discussions. Any person breaching or authorising a breach of these provisions shall on conviction be liable to a penalty of $250,000 or a prison term of five years or both.

(11) Subject to any terms or conditions as may be imposed by the Committee APRA shall provide to Australian Federal and State Police and law enforcement bodies:

(i) any documents, information or data requested by such bodies regarding any bank under APRA's regulatory supervision;

(ii) any documents, information or data which may come to the attention of or into the possession of APRA and which may evidence a crime or breach of any Australian law.

(12) Any evasion of, or attempt to evade, the provisions of Section 14(11) shall constitute a criminal offence and any offender shall upon conviction be fined not more than $250,000 or imprisoned for not more than five years, or both, and any officer, employee, or agent of APRA who knowingly participates in any such violation shall be punished by a like fine or imprisonment or both.

(13) In the making of any determination to be made by APRA or the Committee pursuant to this Act, APRA and the Committee shall give primary consideration the purposes of this Act as set out in Section 2.

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