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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

BANKING SYSTEM REFORM (SEPARATION OF BANKS) BILL 2019

EXPLANATORY MEMORANDUM

and

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

Circulated by authority of
Senator Pauline Hanson

Banking System Reform (Separation of Banks) Bill 2019

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1. General Outline

This Bill will separate retail commercial banking activities involving the holding of deposits, from wholesale and investment banking involving risky activities. The Bill provides for such a separation to:

- protect deposits;
- end vertical integration, to protect depositors from banks trying to lure them into buying services from the banks' other business;
- ensure deposits are only used for normal lending, which will keep more money in the real economy and available for banks to lend to productive enterprises; and
- stop banks from securitising mortgages—meaning on-selling them to other banks to be bundled into risky derivatives—which will put a brake on mortgage fraud and excessive mortgage lending to risky borrowers.

The effect of the Banking System Reform (Separation of Banks) Bill 2019 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;
6. to strengthen Parliamentary oversight of the activities of the Australian Prudential Regulatory Agency (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.

2. Background to Bill’s provisions

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 European Cooperation 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 prospect has followed the progressive deregulation of the financial system since the breakup of the fixed-exchange-rate Bretton Woods system in 1971. Deregulation led to the financialisation of the economy, a sharp increase in national and household debt, manipulations of fluctuations in currency exchange rates, and the creation of over \$US1 quadrillion in speculative instruments known as derivatives, such as those based on the mortgage-backed securities that provoked the 2007-2008 crash and are once again soaring in number.

A report from the Australian Securities and Investments Commission (ASIC) released 24 January 2019 confirmed the vertically integrated structure of Australia's banks, normal banking being combined with financial advice, wealth management, stockbroking and insurance; the Financial Services Royal Commission hearings have further established the extent of that vertical integration. The conflict of interest inherent in vertical integration is evidenced by the fact, noted by ASIC, that nearly 70 per cent of the funds that banks advised their customers to invest went into in-house products sold by the same bank, despite the fact that nearly 80 per cent of the investment products that bank staff were authorised to sell were from other institutions. Bank staff had a clear bias in pushing their bank's products.

For more than a decade, Australia's banks have had a huge incentive to starve small businesses and family farms of credit, and to foreclose on thousands of those enterprises even when they weren't in default. APRA provided this incentive through its prudential rules, which lowered the "risk-weighting" of mortgages compared with other types of loans, making home loan mortgages far more profitable for banks than loans to productive business enterprises. It also motivated the banks to commit outright mortgage fraud in their pursuit of increasingly risky borrowers, including over-extended investors and "sub-prime" borrowers who couldn't afford repayments. Housing loans now make up over 60% of Australian banks' lending, which, in the words of one financial researcher, has turned the housing market into a \$1.7 trillion dollar "house of cards".

The funds for such lending are increasingly sourced from overseas, resulting in Australia's banks being heavily indebted to overseas interests and markets. Since deregulation, Australia's banking system has become highly concentrated, dominated by four, too-big-to-fail banks, and vulnerable to more than \$37 trillion in little understood derivatives and hundreds of billions of dollars of short-term debt.

Australia has never had a formal Glass-Steagall-style separation of investment banking from commercial deposit-taking banking, but the Australian domestic banking system was not always exposed to the level of risk it is today, as a structural separation effectively existed until the 1980s due to a system of regulatory controls.

The United States introduced bank separation in 1933 through the Glass-Steagall Act, ending vertical integration by separating commercial banks with deposits, from investment banks, insurance companies, and all other financial services. The law was in force for 66 years, until Wall Street banks succeeded in having it repealed in 1999. While Glass-Steagall was in effect, there were no systemic banking crises in the USA; its repeal allowed banks to use deposits to underwrite the massive expansion of financial speculation which caused the global financial crisis just nine years later.

Australia needs Glass-Steagall type legislation to separate retail commercial banking activities involving the holding of deposits, from wholesale and investment banking involving risky activities.

3. Regulatory Impact Statement

The Bill will have a moderate impact as the regulatory authority and powers already exist in respect of the existing regime of regulation of authorised deposit-taking institutions (ADIs).

4. Financial Impact Statement

The bill has no significant impact on Commonwealth expenditure or revenue.

The Bill is intended to operate within the existing regulatory framework subject to Parliamentary oversight of the regulator, APRA.

There will be a transitional cost for banks in the separation of the elements of their businesses and as they adjust to the operation of the new regime as provided for in the Bill.

The compliance cost in relation to the new regime will be minimal as the regulatory authority and powers already exist in respect of the existing regime of regulation of ADIs.

5. Summary Of Key Provisions Of The Bill

The Bill proposes to:

- Prohibit banks from any affiliation with an entity that is not a bank. (Proposed sections 7, 8 and 9)
- Prohibit any entity that is not a bank to engage in the business of receiving deposits. (Proposed subsection 10(1))
- Prohibit banks from investing in structured or synthetic products and products such as derivatives and speculative ventures. (Proposed subsection 10(4))
- Limit the business of banking to retail banking and associated loans and activities. (Proposed section 11)
- Bring APRA, as the licensing and regulatory authority, and its prudential standards and actions and decisions generally, under the oversight of Parliament. (Proposed section 14)
- Limit the Financial Claims Scheme to deposits with banks whose activities do not include any prohibited activities. (Proposed section 13)

Explanation of Provisions of the Bill

Purposes

1.01 Proposed section 2 of the Bill sets out the purposes of the Bill.

1.02 The intention of the Bill is to reduce risks to the financial system and to protect deposits and the interests of depositors by limiting the activities of banks and prohibiting the vertical integration of banks with other businesses.

1.03 It further intends that the Commonwealth should regulate the financial system and ensure an orderly flow of credit and currency to the Australian economy.

- 1.04 It further intends that the regulator, APRA, and its determinations, be brought under the direct oversight of Parliament.

Application to the Crown

- 1.05 The Bill proposes to bind the Crown.

Regulation

- 1.06 The Bill proposes to provide in section 6 that the Australian Government shall not implement any policy nor propose any legislation which is incompatible with the purposes and provisions of the Bill.

Prohibition of affiliation by banks with non-bank entities

- 1.07 Section 7 of the Bill proposes to prohibit a bank from being or becoming an affiliate of an entity which is not a bank, or being in common ownership or control of an entity which is not a bank.
- 1.08 The intention of the Bill is that a bank should not be associated in any way with an entity which is not a bank. A “bank” is defined by the Bill as an authorised deposit-taking institution in respect of which an authority under section 9(3) of the *Banking Act 1959* is in force. Limitations on banking activities are contained in proposed section 10, dealt with below.
- 1.09 Section 7 proposes that a bank shall not issue bonds or securities with attached voting rights the intention being that the creation of such rights should not allow external influences to control the activities of a bank.

Eligibility to serve on boards of banks

- 1.10 Section 8 proposes to prohibit an officer, director, partner or employee of any entity with which a bank is prohibited from being affiliated, from holding such a position with a bank.
- 1.11 The proposed section provides that the Minister, with the consent of the Parliamentary Committee, can determine that the restriction on bank directors shall not apply to a particular individual.

Termination of existing affiliations and activities

- 1.12 It is acknowledged that banks currently have affiliations which are prohibited by the Bill. Proposed section 9 provides that such affiliations shall be terminated as soon as possible and in any event no later than 24 months after the date of commencement of the Bill.
- 1.13 Proposed subsection 9(2) gives APRA the authority to order such termination prior to the expiration of the 24 month period if required to prevent undue concentration of resources, decreased or unfair competition, or conflicts of interest and is in the public interest.
- 1.14 Proposed subsection 9(3) gives APRA the authority to extend the period of 24 months if, in APRA’s opinion, 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 is approved by the Parliamentary Committee proposed to be created by section 14, below.
- 1.15 Any extensions referred to in proposed subsection 9(3) shall not be for not more than 3 months at a time, and in any event, shall not be for more than 12 months.

Limitation on banking activities

- 1.16 The intention of the Bill is to restrict to banks the business of receiving money on deposit subject to repayment upon presentation of a passbook, certificate of deposit, or other evidence of debt, or upon request of a depositor.
- 1.17 Paragraph 10(1)(a) proposes that no person or corporation engaged in any business prohibited to banks shall receive money on deposit in the circumstances referred to in paragraph 1.16 above.
- 1.18 Paragraph 10(1)(b) proposes that no person or corporation other than a bank shall receive money on deposit in the circumstances referred to in paragraph 1.16 above.
- 1.19 Subsection 10(2) proposes to create an offence provision relating for failure to comply with subsection 10(1). The penalty is 5 years imprisonment, or 1,190 penalty units, or both.
- 1.20 The intention of the Bill is to prohibit banks from being engaged in risky and speculative activities and transactions such as derivatives. Subsection 190(3) proposes to prohibit banks from investing in synthetic products and financial instruments 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. The subsection also proposes to prohibit banks from engaging in the business of receiving deposits or extending credit for transactions involving structured or synthetic products.
- 1.21 Proposed subsection 10(4) sets out prohibited activities of a bank or bank holding company, the intention being to limit the activities of banks to their socially valuable core banking activities and the prohibitions are structured accordingly.
- 1.22 Paragraph 10(4)(a) proposes to prohibit banks from engaging 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.
- 1.23 Paragraph 10(4)(b) proposes to prohibit banks from engaging in proprietary trading.
- 1.24 Paragraph 10(4)(c) proposes to prohibit banks from owning sponsor, or investing in hedge funds, or private equity fund, or any other fund that exhibits the characteristics of a fund that takes on proprietary trading activities or positions.
- 1.25 Paragraph 10(4)(d) proposes to prohibit banks from holding ineligible securities or derivatives.
- 1.26 Paragraph 10(4)(e) proposes to prohibit banks from engaging in market-making.
- 1.27 Paragraph 10(4)(f) proposes to prohibit banks from engaging in prime brokerage activities.
- 1.28 Paragraph 10(4)(g) proposes to prohibit banks from promoting or engaging 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.

- 1.29 Paragraph 10(4)(i) proposes to prohibit banks from making any loan or granting any credit to, or in any way supporting, any person or corporation, where 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.
- 1.30 Subsection (5) proposes to prohibit banks from acting 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.
- 1.31 Subsection (10)(6) proposes to prohibits banks from underwriting any issue of stocks, bonds, or other investment securities.

Permitted activities of banks

- 1.32 Consistently with the intention of the Bill to limit the activities of banks to their socially valuable core banking activities proposed section 11 sets out the permitted activities of banks and is structured accordingly.
- 1.33 Proposed subsection 11(1) sets out the permitted core banking services as the business of receiving deposits, the extension of credit to individuals, businesses, not for profit organisations, and other entities, the discount and negotiation of promissory notes, drafts, bills of exchange, and other evidences of debt, and the loan of money on personal security.
- 1.34 Subsection 11(2) proposes to permit banks to participate in payment systems, defined as instruments, banking procedures, and interbank funds transfer systems that ensure the circulation of money.
- 1.35 Subsection 11(3) proposes to permit banks to buy, sell, and exchange coin and bullion.
- 1.36 Subsection 11(4) proposes to permit banks to invest in defined investment securities on the order of customers subject to limitations on volumes which may be held. The subsection proposes to permit banks to invest on their own behalf in securities under such limitations as the APRA with the approval of the committee may prescribe, by regulation.
- 1.37 Subsection 11(5) proposes to provide that in considering the matters referred to in paragraph 1.36 above, APRA and the committee shall give primary consideration the purposes of this Act as set out in Section 2 of the Act and shall not approve any investment security which may directly or indirectly enable any investment or activity prohibited to the bank by this Act.

Evasion of Provisions

- 1.38 Section 12 proposes to declare void and impose penalties on attempts to evade the provisions of the Bill by the structuring of transactions. Subsection 12(2) proposes to create an offence for attempting to structure, in any contract, investment or instrument a product to evade the provisions of the Act. The penalty is proposed to be 5 years imprisonment, 1,190 penalty units, or both.

Financial Claims Scheme

- 1.39 Section 13 proposes to provide that the Financial Claims Scheme, 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 and that the scheme 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 Bill.

Australian Prudential Regulation Authority

- 1.40 The intention of the Bill is that the banks' regulatory authority should not be independent of the direct oversight and control of the Parliament. Section 14 of the Bill accordingly contains provisions to create a Joint Parliamentary Committee on Prudential Regulation to oversee the authority, and review and limit its decisions and actions.
- 1.41 Subsections 14(1) to (6) propose to create the Parliamentary Joint Committee on Prudential Regulation (the committee), which shall consist of 10 members, of whom 5 shall be senators and 5 shall be members of the House of Representatives appointed by each House.
- 1.42 The appointment and eligibility for membership of the committee, procedures for a member to cease being a member, and the committee's powers and procedures are provided for in proposed subsections 14(3) to (6).

Subsection 14(7) proposes to provide that the committee shall hold public enquiries and report to the Parliament on the activities of, and the operation of any law relating to, APRA. The committee will examine each annual report of APRA and report to the Parliament on matters arising from such report which the committee considers should be brought to the attention of the Parliament.

- 1.43 APRA has issued a series of Prudential Standards, pursuant to the *Australian Prudential Regulations Authority Act 1998*. Subsection 14(8) proposes to require copies of the standards, together with accompanying explanatory documents, shall be lodged with the Parliament within 30 days of the passage of the Bill.
- 1.44 Subsection 14(9) proposes to provide for the Minister to give APRA guidelines in relation to the performance of its functions.
- 1.45 Subsection 14(10) proposes to provide that any Prudential Standard proposed by APRA after the commencement of the Bill shall be subject to the approval of the Parliament and shall be void in the absence of such approval.
- 1.46 Subsection 14(11) proposes to provide that either House of the Parliament may pass a resolution disallowing any Prudential Standard. A Prudential Standard disallowed in accordance with proposed subsection 14(11) would cease to have effect from the time of such resolution (proposed subsection 14(12)).
- 1.47 Proposed subsection 14(13) is intended to remove any undue influence which may be exerted on the decisions of the authority by foreign banks or foreign authorities. The proposed subsection provides that the APRA must not consult with, nor accept or implement, the recommendations or decisions of any foreign bank or foreign authority without the consent of the committee. It proposes to require APRA to provide the committee with full details of any request from such foreign authority or bank

or 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 to provide the committee with a copy of all communications with such bodies and a written transcript of any discussions.

- 1.48 Subsection 14(15) proposes to provide for co-operation between APRA and State and Territory Police, and the Australian Federal Police by the provision of information and documents.
- 1.49 Subsection 14(16) proposes to provide for penalties for the evasion or attempted evasion of the provisions of subsection 14(14) and (16).
- 1.50 Subsection 14(17) proposes to provide that in making any determination pursuant to the Bill, APRA and the committee shall give primary consideration to the purposes as set out in section 3 of the Bill.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

Banking System Reform (Separation of Banks) Bill 2019

This bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the bill

The Bill will:-

- re-establish public confidence in the banking system;
- reduce risks to the Australian financial system by limiting the ability of banks to engage in activities other than socially valuable core banking activities;
- 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;
- remove explicit and implicit government guarantees for high-risk activities outside of the core business of banking; to regulate Australian Banks;
- provide Parliamentary oversight of the activities of the Australian Prudential Regulation Authority (APRA) as the banking regulator;
- separate retail commercial banking activities involving the holding of deposits, from wholesale and investment banking involving risky activities.

Human rights implications

This bill does not engage any of the applicable rights or freedoms.

Conclusion

This bill does not raise any human rights issues.

Senator Pauline Hanson

2016-2017-2018-2019

The Parliament of the
Commonwealth of Australia

THE SENATE

Presented and read a first time

Banking System Reform (Separation of Banks) Bill 2019

No. , 2019

(Senator Hanson)

**A Bill for an Act to re-establish confidence in the
banking system, 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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1 **A Bill for an Act to re-establish confidence in the**
2 **banking system, to separate retail commercial**
3 **banking activities involving the holding of deposits**
4 **from wholesale and investment banking involving**
5 **risky activities, and for other purposes**

6 The Parliament of Australia enacts:
7

8 **1 Short title**

9 This Act is the *Banking System Reform (Separation of Banks) Act*
10 *2019*.

1 **2 Commencement**

2 (1) Each provision of this Act specified in column 1 of the table
3 commences, or is taken to have commenced, in accordance with
4 column 2 of the table. Any other statement in column 2 has effect
5 according to its terms.
6

Commencement information

Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this Act	The day after this Act receives the Royal Assent.	

7 Note: This table relates only to the provisions of this Act as originally
8 enacted. It will not be amended to deal with any later amendments of
9 this Act.

10 (2) Any information in column 3 of the table is not part of this Act.
11 Information may be inserted in this column, or information in it
12 may be edited, in any published version of this Act.

13 **3 Outline of the purposes of this Act**

14 The purposes of this Act are as follows:

- 15 (a) to reduce risks to the financial system by limiting the ability
16 of banks to engage in activities other than socially valuable
17 core banking activities;
- 18 (b) to protect taxpayers and reduce moral hazard by removing
19 explicit and implicit government guarantees for high-risk
20 activities outside of the core business of banking;
- 21 (c) to eliminate any conflict of interest that arises from banks
22 engaging in activities from which their profits are earned at
23 the expense of their customers or clients;
- 24 (d) to provide for the safer and more effective use of the assets of
25 banks, to regulate interbank control, and to prevent the undue
26 diversion of funds into speculative operations;
- 27 (e) to re-enforce the Constitutional power of the Commonwealth
28 Parliament to regulate banking and other aspects of the
29 Australian economy, and to promote the exercise of that

1 power in Australia's national interest, including through
2 ensuring an orderly flow of credit and currency to public
3 infrastructure and utilities and to private enterprise engaged
4 in the production and transportation of tangible economic
5 wealth, including manufacturing, agriculture, construction,
6 and mining, successive governments having been deficient in
7 action in the national interest by abrogating such power and
8 relinquishing it to private banking interests, which have been
9 exercising arbitrary judgments on monetary policies in
10 violation of Australia's national economic interest;

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

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

22 4 Definitions

23 In this Act:

24 **APRA** means the Australian Prudential Regulation Authority.

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

29 **bank holding company** means any body corporate, whether or not
30 operating as a bank, which owns a controlling interest in, or
31 controls in any manner the election of directors or trustees of, or
32 directly or indirectly exercises a controlling influence over the
33 management or policies of any bank.

34 **banking business** means:

Section 4

- 1 (a) business that consists of banking within the meaning of
2 paragraph 51(xiii) of the Constitution; or
3 (b) business that is carried on by a corporation to which
4 paragraph 51(xx) of the Constitution applies and that
5 consists, to any extent, of both taking money on deposit
6 (otherwise than as part payment for identified goods or
7 services) and making advances of money or credit;
8 but does not include State banking not extending beyond the limits
9 of the State concerned.

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

18 ***Committee*** means the Parliamentary Joint Committee on
19 Prudential Regulation created pursuant to subsection 14(1).

20 ***investment securities*** means marketable obligations evidencing
21 indebtedness of any person, co-partnership, association, or
22 corporation in the form of bonds, notes, or debentures, and
23 obligations of the Commonwealth government, or of any State or
24 subdivision of the Commonwealth, and does not include managed
25 investment schemes or any of the instruments described in
26 paragraph 10(3)(a).

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

33 ***securities entity*** includes any entity engaged in:

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

- 1 (b) market making; or
2 (c) activities of a broker or dealer; or
3 (d) activities of a futures commission merchant; or
4 (e) activities of an investment adviser or investment company; or
5 (f) hedge fund or private equity investments in the securities of
6 either privately or publicly held companies; but does not
7 include a bank that, pursuant to its authorised trust and
8 fiduciary activities, purchases and sells investments for the
9 account of its customers or provides financial or investment
10 advice to its customers.

11 *swap dealer* or *swaps dealer* means an entity that:

- 12 (a) holds itself out as a dealer in swaps; or
13 (b) makes a market in swaps; or
14 (c) regularly enters into swaps with counterparties as an ordinary
15 course of business for its own account; or
16 (d) engages in activity causing itself to be commonly known in
17 the trade as a dealer or market maker in swaps.

18 *swaps entity* means a swap dealer, security-based swap dealer,
19 major swap participant, or major security-based swap participant.

20 **5 Application to Crown**

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

23 **6 Re-regulation**

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

27 **7 Prohibition on affiliations by banks with non-bank entities**

- 28 (1) A bank may not:
29 (a) be or become an affiliate of any insurance company,
30 securities entity, swaps entity or any company which is not a
31 bank; or

Section 8

- 1 (b) be in common ownership or control with any insurance
2 company, securities entity, swaps entity or any company
3 which is not a bank; or
4 (c) engage in any activity that would cause the bank to qualify as
5 an insurance company, securities entity, or swaps entity or
6 any company which is not a bank.
- 7 (2) No bank or bank holding company shall, after the commencement
8 of this Act, retain or acquire direct or indirect ownership or control
9 of any company or entity which is not a bank.
- 10 (3) A bank may not issue bonds or securities which have any voting
11 rights whatsoever in the management or business of the bank. This
12 provision shall not prevent a bank which is listed on any Australian
13 stock exchange issuing shares which carry voting rights in the
14 management or business of the bank.

15 **8 Individuals eligible to serve on boards of banks**

- 16 (1) An individual who is an officer, director, partner, or employee of
17 any securities entity, insurance company, or swaps entity may not
18 serve at the same time as an officer, director, employee, or other
19 institution-affiliated party of any bank.
- 20 (2) Subsection (1) shall not apply with respect to service by any
21 individual who is otherwise prohibited under that subsection, if the
22 appropriate Minister with the consent of the Committee determines
23 that service by such an individual as an officer, director, employee,
24 or other institution-affiliated party of a bank would not unduly
25 influence:
26 (a) the investment policies of the bank; or
27 (b) the advice that the bank provides to customers.
- 28 (3) Subject to a determination under subsection (2), any individual
29 described in subsection (1) who, as of the date of commencement
30 of this Act, is serving as an officer, director, employee, or other
31 institution-affiliated party of any bank shall terminate such service
32 as soon as is practicable after such date of commencement, and in
33 no event later than the end of the 60-day period beginning on that
34 date of commencement.

9 Termination of existing affiliations and activities

- 1
- 2 (1) Any affiliation, common ownership or control, or activity of a bank
3 or bank holding company with any securities entity, insurance
4 company, swaps entity, or any other person, as of the date of
5 commencement of this Act, which is prohibited under section 7
6 shall be terminated as soon as is practicable, and in no event later
7 than the end of a 24-month period beginning on that date of
8 commencement.
- 9 (2) APRA may order termination of an affiliation, common ownership
10 or control, or activity prohibited by section 7 before the end of the
11 24-month period described in subsection (1), if APRA determines
12 that such action:
- 13 (a) is necessary to prevent undue concentration of resources,
14 decreased or unfair competition, conflicts of interest, or
15 unsound banking practices; and
16 (b) is in the public interest.
- 17 (3) Subject to a determination under subsection (2), APRA may extend
18 the 24-month period described in subsection (1) as to any particular
19 bank for not more than an additional 3 months at a time, if:
- 20 (a) APRA certifies that such extension would promote the public
21 interest and would not pose a significant threat to the stability
22 of the banking system or financial markets in Australia; and
23 (b) such extension, in the aggregate, does not exceed 1 year for
24 any single bank; and
25 (c) such extension has been approved by the Committee.
- 26 (4) Upon receipt of an extension under (3), the bank shall notify
27 shareholders of the bank and the general public that it has failed to
28 comply with the requirements of subsection (1).

10 Limitation on banking activities

- 29
- 30 (1) After the expiration of two years after the date of commencement
31 of this Act it shall be unlawful:
- 32 (a) for any person, firm, corporation, association, business trust,
33 or other similar organisation, engaged in the business of
34 issuing, underwriting, selling, or distributing, at wholesale or

Section 10

- 1 retail, or through syndicate participation, stocks, bonds,
2 debentures, notes, or other securities, to engage at the same
3 time to any extent whatever in the business of receiving
4 deposits subject to cheque or to repayment upon presentation
5 of a passbook, certificate of deposit, or other evidence of
6 debt, or upon request of the depositor; or
7 (b) for any person, firm, corporation, association, business trust,
8 or other similar organisation, other than a bank, to engage to
9 any extent whatever in the business of receiving deposits
10 subject to cheque or to repayment upon presentation of a
11 passbook, certificate of deposit, or other evidence of debt, or
12 upon request of the depositor.
- 13 (2) A person commits an offence if:
14 (a) the person commits or causes a breach of any of the
15 provisions of this section; or
16 (b) the person:
17 (i) is an officer, director, employee, or agent of a person,
18 firm, corporation, association, business trust, or other
19 similar organisation; and
20 (ii) knowingly participates in any such violation.
- 21 Penalty: Imprisonment for 5 years or 1,190 penalty units, or both.
- 22 (3) A bank may not:
23 (a) invest in a structured or synthetic product, a financial
24 instrument in which a return is calculated based on the value
25 of, or by reference to the performance of, a security,
26 commodity, swap, other asset, or an entity, or any index or
27 basket composed of securities, commodities, swaps, other
28 assets, or entities, other than customarily determined interest
29 rates; or
30 (b) otherwise engage in the business of receiving deposits or
31 extending credit for transactions involving structured or
32 synthetic products.
- 33 (4) A bank or bank holding company shall not:
34 (a) engage in the business of a securities entity or a swaps entity,
35 including dealing or making markets in securities, repurchase

- 1 agreements, exchange traded and over-the-counter swaps, or
 2 structured or synthetic products, or any other
 3 over-the-counter securities, swaps, contracts, or any other
 4 agreement that derives its value from, or takes on the form of,
 5 such securities, derivatives, or contracts; or
 6 (b) engage in proprietary trading; or
 7 (c) own, sponsor, or invest in a hedge fund, or private equity
 8 fund, or any other fund that exhibits the characteristics of a
 9 fund that takes on proprietary trading activities or positions;
 10 or
 11 (d) hold ineligible securities or derivatives; or
 12 (e) engage in market-making; or
 13 (f) engage in prime brokerage activities; or
 14 (g) promote or engage directly or indirectly in any managed
 15 investment scheme, including but not limited to the making
 16 of loans or granting of credit to, or in any way supporting,
 17 either the trustee or manager of any scheme or the members
 18 of any scheme; or
 19 (h) make any loan or grant any credit to, or in any way support,
 20 any person or corporation, whether or not a customer of the
 21 bank, if, to the knowledge of the bank, such support or loan
 22 or credit is intended to be employed in the undertaking of any
 23 investment or activity prohibited to the bank by this Act.
- 24 (5) No bank or bank holding company shall act as the medium or agent
 25 of any non-banking corporation, partnership, association, business
 26 trust, or individual in making loans on the security of stocks,
 27 bonds, or other investment securities to brokers or dealers in
 28 stocks, bonds, and other investment securities or in any dealings
 29 whatsoever in respect of stocks, bonds, or other investment
 30 securities.
- 31 (6) No bank or bank holding company shall underwrite any issue of
 32 stocks, bonds, or other investment securities.

33 **11 Permitted activities of banks**

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

Section 11

- 1 (a) the business of receiving deposits;
2 (b) the extension of credit to individuals, businesses, not for
3 profit organisations, and other entities;
4 (c) the discount and negotiation of promissory notes, drafts, bills
5 of exchange, and other evidences of debt;
6 (d) the loan of money on personal security.
- 7 (2) A bank may participate in payment systems, defined as
8 instruments, banking procedures, and interbank funds transfer
9 systems that ensure the circulation of money.
- 10 (3) A bank may buy, sell, and exchange coin and bullion.
- 11 (4) A bank may invest in investment securities as defined in section 4
12 provided that:
13 (a) the business of dealing in investment securities and shares by
14 a bank shall be limited to:
15 (i) purchasing and selling such securities and shares
16 without recourse, solely upon the order, and for the
17 account, of customers, and, subject to subparagraph (ii),
18 in no case for its own account, and the bank shall not
19 underwrite any issue of securities or shares; and
20 (ii) purchasing for its own account investment securities
21 under such limitations as APRA with the approval of
22 the Committee may prescribe, by regulation; and
23 (b) in no event shall the total amount of the investment securities
24 of any single obligor or maker, held by the bank for its own
25 account, exceed 10 per cent of its capital stock actually paid
26 in and unimpaired and 10 per cent of its unimpaired surplus
27 fund, except that such limitation shall not require any bank to
28 dispose of any investment securities lawfully held by it on
29 the date of commencement of this Act.
- 30 (5) In considering any limitations to be imposed by APRA and the
31 Committee pursuant to subparagraph (4)(a)(ii) APRA and the
32 Committee shall give primary consideration to the purposes of this
33 Act as set out in section 3 and shall not approve any investment
34 security which may directly or indirectly enable any investment or
35 activity prohibited to the bank by this Act.

12 Evasion of provisions

- 1
- 2 (1) Any attempt to structure any contract, investment, instrument, or
3 product in such a manner that the purpose or effect of such
4 contract, investment, instrument, or product is to evade or attempt
5 to evade the provisions of this Act shall render such contract,
6 investment, instrument, or product void.
- 7 (2) A person commits an offence if:
- 8 (a) the person attempts to structure any contract, investment,
9 instrument, or product in such a manner that the purpose or
10 effect of such contract, investment, instrument, or product is
11 to evade or attempt to evade the provisions of this Act; or
- 12 (b) the person:
- 13 (i) is an officer, director, employee, or agent of a person,
14 firm, corporation, association, business trust, or other
15 similar organisation; and
- 16 (ii) knowingly participates in any such violation.

17 Penalty: Imprisonment for 5 years or 1,190 penalty units, or both.

13 Financial Claims Scheme

- 18
- 19 (1) The Financial Claims Scheme as created by the *Financial System*
20 *Legislation Amendment (Financial Claims Scheme and Other*
21 *Measures) Act 2008* shall extend to all accounts held with any
22 Australian bank whose banking business does not include any
23 prohibited activities.
- 24 (2) The Financial Claims Scheme as created by the *Financial System*
25 *Legislation Amendment (Financial Claims Scheme and Other*
26 *Measures) Act 2008* shall not extend to any accounts held with any
27 Australian bank whose banking business includes any prohibited
28 activities in breach of the provisions of this Act.

14 Australian Prudential Regulation Authority

- 29
- 30 (1) As soon as practicable after the commencement of this Act and
31 after the commencement of the first session of each Parliament, a
32 joint committee of members of the Parliament, to be known as the

Section 14

- 1 Parliamentary Joint Committee on Prudential Regulation, shall be
2 appointed.
- 3 (2) The Committee shall consist of 10 members, of whom:
4 (a) 5 shall be senators appointed by the Senate; and
5 (b) 5 shall be members of the House of Representatives
6 appointed by that House.
- 7 (3) The appointment of members by a House shall be in accordance
8 with that House's practice relating to the appointment of members
9 of that House to serve on joint select committees of both Houses.
- 10 (4) A person is not eligible for appointment as a member if he or she
11 is:
12 (a) a Minister; or
13 (b) the President of the Senate; or
14 (c) the Speaker of the House of Representatives; or
15 (d) the Deputy President and Chair of Committees of the Senate;
16 or
17 (e) the Deputy Speaker of the House of Representatives; or
18 (f) a chair or deputy chair of a committee of a House of the
19 Parliament.
- 20 (5) A member ceases to hold office:
21 (a) when the House of Representatives expires or is dissolved; or
22 (b) if he or she becomes the holder of an office referred to in a
23 paragraph of subsection (4); or
24 (c) if he or she ceases to be a member of the House by which he
25 or she was appointed; or
26 (d) if he or she resigns his or her office.
- 27 (6) Subject to this Act, all matters relating to the Committee's powers
28 and proceedings shall be determined by resolution of both Houses.
- 29 (7) The Committee's duties are:
30 (a) to hold public inquiries into, and report to both Houses on:
31 (i) activities of APRA, or matters connected with such
32 activities, to which, in the Committee's opinion, the
33 Parliament's attention should be directed; or

- 1 (ii) the operation of any law relating to APRA, or of any
2 other law of the Commonwealth, of a State or Territory
3 or of a foreign country that appears to the Committee to
4 affect significantly the operation of such law; and
- 5 (b) to examine each annual report that is prepared by APRA, and
6 to report to both Houses on matters that appear in, or arise
7 out of, that annual report and to which, in the Committee's
8 opinion, the Parliament's attention should be directed; and
- 9 (c) to inquire into any question in connection with APRA's
10 duties that is referred to it by a House, and to report to that
11 House on that question.
- 12 (8) Within 30 days of the passage of this Act APRA shall lodge with
13 the Parliament a copy of all Prudential Standards created by APRA
14 pursuant to the *Australian Prudential Regulation Authority Act*
15 *1998* together with an explanatory statement for each Standard. If
16 any documents are incorporated in the Standard or explanatory
17 statement by reference, the lodgement shall include a description of
18 the incorporated documents and indicate how they may be
19 obtained.
- 20 (9) Subject to any direction given by the Parliamentary Joint
21 Committee on Prudential Regulation, the appropriate Minister
22 shall, as soon as practicable after the commencement of this Act,
23 by notice in writing, give to APRA guidelines to be observed in
24 relation to the performance of APRA's functions that relate to the
25 Australian financial system and Australia's banking system, and
26 may, from time to time, vary or replace guidelines so given.
- 27 (10) Any Prudential Standard proposed by APRA after the
28 commencement of this Act shall be subject to the approval of the
29 Parliament and if not so approved shall be of no force and effect.
- 30 (11) Either House of Parliament may pass a resolution disallowing any
31 Prudential Standard at any time after such lodgement, but only if
32 notice of the resolution was given within 15 sitting days of the
33 House or Senate after the lodgement.
- 34 (12) On the passing of a resolution disallowing any Prudential Standard,
35 the Standard shall cease to have effect.

Section 14

- 1 (13) APRA shall not consult with nor accept nor implement the
2 recommendations or decisions of any foreign bank or foreign
3 authority including, but not limited to, the Bank of England and the
4 Bank for International Settlements, without the prior express
5 written approval and consent of the Committee. In seeking such
6 approval and consent APRA shall provide the Committee with full
7 details of any request from such foreign authority or bank and the
8 basis upon which APRA seeks to undertake any contact with such
9 institution or bank or to consider any recommendation or decision
10 of such bank or authority and shall provide to the Committee a
11 copy of all communications with such bodies and a written
12 transcript of any discussions.
- 13 (14) A person commits an offence if the person breaches or authorises a
14 breach of subsection (13).
- 15 Penalty: Imprisonment for 5 years or 1,190 penalty units, or both.
- 16 (15) Subject to any terms or conditions as may be imposed by the
17 Committee APRA shall provide to Australian Federal and State
18 Police and law enforcement bodies:
- 19 (a) any documents, information or data requested by such bodies
20 regarding any bank under APRA's regulatory supervision;
21 (b) any documents, information or data which may come to the
22 attention of or into the possession of APRA and which may
23 evidence a crime or breach of any Australian law.
- 24 (16) A person commits an offence if:
- 25 (a) the person evades, or attempts to evade, the provisions of
26 subsection (15); or
27 (b) the person:
- 28 (i) is an officer, employee, or agent of APRA; and
29 (ii) knowingly participates in any such violation.
- 30 Penalty: Imprisonment for 5 years or 1,190 penalty units, or both.
- 31 (17) In the making of any determination to be made by APRA or the
32 Committee pursuant to this Act, APRA and the Committee shall
33 give primary consideration the purposes of this Act as set out in
34 section 3.