

Senate Economics Committee  
Competition within the Australian banking sector

Please find my Banking Amendment (Delivering Essential Financial Services) Bill 2010 attached, and a transcript of my second reading speech.

The bill is an attempt to deal with some of the complex and contested issues under consideration by the Committee. It may be useful to the Committee's deliberations, and I look forward to any constructive commentary it may attract.

Regards,

Senator Bob Brown

SECOND READING SPEECH

Banking Amendment (Delivering Essential Financial Services) Bill 2010

Banking is an essential service. A basic bank account is essential to function properly in present day Australian society. This means that the nature of banking services – the kinds of financial products that are offered and the fees that are charged – has a very broad impact and the rights of consumers should be protected by law and not, as is currently the case, by the self-regulation of the banking industry.

The Banking Amendment (Delivering Essential Financial Services) Bill 2010 provides legislative protection for banking customers in a number of basic banking services, including minimising or removing fees from basic services and ensuring mortgage arrangements are transparent and fair for consumers.

Banks enjoy a position of overwhelming market dominance in Australia, with around ninety per cent of the national market in loans and advances. This kind of market power leaves them free to charge their customers a range of fees that often bear little relationship to the actual or reasonable costs of providing banking services. These sorts of practices have resulted in ever increasing profits for banks at the expense of their customers.

In the 2008-09 financial year, Australia's major banks announced massive net profits

despite the global financial crisis. For example, the 'big four' banks each posted profits between \$4.7 billion and \$2.6 billion, despite the global financial crisis. At the same time, Fujitsu Consulting estimated that, on average, Australian households spend about \$1000 per year on bank fees – roughly 22% more than UK householders and 10% more than the US. The Australia Institute recently calculated that the average person earning around \$50k is likely to be paying \$28.85 per week toward bank profits.

Recently, consumer organisations have successfully campaigned for a better deal from the banks. The banks have responded to some extent and voluntarily improved their approach to fees in some areas. For example, now most banks do not charge their own customers for the use of another bank's ATMs, even though it is open to them to do so. Other banks have dropped overdrawn account fees and reduced their other penalty fees. A number of banks have also introduced fee-free or low fee basic accounts for low income customers. These are very welcome changes. The Banking Amendment (Delivering Essential Financial Services) Bill 2010 ensures that these changes apply to all banks as a matter of law, and makes further important improvements for the benefit of banking customers.

This Bill delivers fee-free essential banking services and greater competition and transparency in the mortgage and loan markets by: requiring banks to offer basic, fee-free transaction accounts to all; making bank ATM transactions free or capped at the cost of service provision; requiring financial institutions to offer mortgages and other loans with an interest rate fixed at a negotiated margin above the institution's cost of funds; and by limiting mortgage and loan exit fees to a level that recovers the cost to the lender of the early termination, and ensuring that customers are made aware of these fees up front.

The proposed basic transaction account offers banking customers an easy to understand account that provides essential banking services without any hidden profiteering in the form of exploitative fees. It is similar to the accounts some banks choose to offer to low income customers at present, but it will ensure that such accounts offer the same minimum features and are available to all customers of all banks. It will provide essential transactions, internet banking, a debit card, freedom from ongoing service fees or unfair penalty fees for the actions of third parties, with other penalty fees capped at a level sufficient to recover the cost to the bank of the penalised conduct. This represents a return to a simpler banking model where banks benefit from the use of their customers' money, and in exchange they keep the funds secure and offer the customer secure and convenient access. The only fees that may be levied will be for breaches of contract that the account-holder is personally responsible for, and these fees will be purely to recover the cost to the bank of the breach.

The Bill prohibits banks from charging their own customers for ATM transactions (locking in banks' current practice), and caps the charge for using another bank's ATMs at a level sufficient to cover the cost to the bank of the transaction. The most common fee charged for foreign ATM transactions is around \$2, yet in 2007 the Reserve Bank of Australia estimated that the average cost to banks for ATM transactions is 75 cents – less

than 40% of the fee they levy upon consumers. Australians are the second highest per capita ATM users in the world, with some 800 million withdrawals made in 2006, so the profits the banks make through this premium on ATM transactions is significant. This has a disproportionate impact on poorer people, who are more likely to withdraw smaller sums and therefore pay a greater proportion of each withdrawal (and indeed of their income) in ATM fees. The Bill's restrictions on charges for ATM use would address this problem, while still permitting banks to break even on the cost incurred when non-customers use their ATMs.

The Bill introduces a requirement that authorised deposit-taking institutions (ADIs) offer 'fixed interest gap' mortgages and loans with interest rates fixed at a negotiated percentage above the lender's cost of funds. The ADI's cost of funds will be calculated according to a formula approved by the Australian Prudential Regulation Authority. These loans will protect customers from interest rate fluctuations that are not genuinely caused by changes to the ADI's cost of funds. In the past, there have been occasions where the RBA has lifted interest rates and the banks have lifted their interest rates even higher. If the ADIs were only passing on increases to their costs, their interest rate rises would be lower than those of the RBA, as a third of their borrowing is done in overseas markets that are unaffected by RBA interest rate hikes. These additional increases would not be possible with fixed interest gap loans. By keeping the lender's margin on the loan constant, and faithfully passing on changes to the lender's costs under the supervision of an independent authority, these loans will offer customers greater transparency and reassurance by behaving as customers expect variable rate loans to behave.

Finally, the Bill limits mortgage and loan exit fees to the actual and reasonable costs of early repayment, and obliges lenders to make consumers aware of the existence and amount of these fees up front. The existence of exit fees must be mentioned in advertising, and they must routinely be included in the mortgage/loan contract under the uniform heading 'early repayment charges'. Exit fees are presently disclosed in the fine print of mortgage contracts, but this measure will ensure that they can be identified much more easily. They must be given as a dollar amount for variable rate loans, and a plain language explanation of how the fee will be calculated for fixed rate loans (as it is not possible to anticipate the cost of early termination for these loans). These changes would introduce greater transparency to the lending market, and remove a significant barrier to greater competition. In 2008, the Australian Securities and Investments Commission observed that 'some [exit fees] do not appear to be related to the underlying costs they are purporting to recover' and 'the size of these fees might now present a barrier to switching loans'. The fact that many lenders waive exit fees after three or four years does not assist in most cases, as ASIC observed that 'the average Australian mortgage is terminated or refinanced within approximately three years'. The changes made by the Bill reduce this barrier to switching loans and make it easier for unhappy customers to take their business elsewhere, pressuring lenders to offer consumers a better deal or risk losing their business.

The provisions of this Bill will not prevent ADIs from offering a range of other financial products. They simply ensure that banking customers also have access to basic, essential,

transparent banking services on fair and reasonable terms.

I commend this Bill to the Senate.

2010

The Parliament of the  
Commonwealth of Australia

THE SENATE

Presented and read a first time

Banking Amendment (Delivering Essential Financial Services) Bill 2010

No. , 2010

(Senator Bob Brown)

A Bill for an Act to deliver essential financial services at reasonable cost, fair loans and mortgages and increased competition for the community, and for related purposes

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A Bill for an Act to deliver essential financial services at reasonable cost, fair loans and mortgages and increased competition for the community, and for related purposes

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the Banking Amendment (Delivering Essential Financial Services) Act 2010.

## 2 Commencement

This Act commences on the day after it receives the Royal Assent.

## 3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

### Schedule 1—Amendment of the Banking Act 1959

#### Part 1—Conditions on banks' authorities

##### 1 After section 9

Insert:

##### 9AA Variation of conditions of banks' authorities—accounts

(1) APRA must, within 30 days of the commencement of the Banking Amendment (Delivering Essential Financial Services for the Community) Act 2010, vary the conditions of all existing section 9 authorities of banks to give effect to this section and any new section 9 authority granted to a bank after the commencement of that Act must include conditions that give effect to this section.

##### Basic accounts

(2) A bank's section 9 authority must require the bank:

- (a) to offer to account-holders and prospective account-holders a basic account with the minimum features listed in subsection (3); and
- (b) to make account-holders and prospective account-holders aware of the existence of that type of basic account.

##### Features of basic accounts

(3) A basic account must have the following minimum features:

- (a) the basic transaction services of deposit, withdrawal and transfer;
- (b) Internet access to the account;
- (c) an ATM card or an EFTPOS card linked to the account suitable for use in ATM and EFTPOS transactions;
- (d) a debit card linked to the account suitable for use in credit card transactions;
- (e) the account is to be free of:
  - (i) ongoing service fees such as monthly account service fees; and
  - (ii) penalty fees for actions and transgressions of third parties;
- (f) a real-time warning that a proposed Internet, electronic or face-to-face transaction may result in the imposition of a fee under subsection (5) or (8) and the opportunity to discontinue the proposed transaction.

(4) The regulations must prescribe the actions and transgressions of third parties covered by subparagraph (3)(e)(ii).

##### Penalty fees

(5) A bank's section 9 authority must require a basic account offered to account-holders and prospective account-holders by the bank to be free of any penalty fee for a breach of a term of the contract by the account-holder, unless the bank has applied in the prescribed form for approval of the fee by APRA and the fee has been approved by APRA.

(6) In deciding whether to approve a fee under subsection (5), APRA:  
(a) must not approve a fee covered by subparagraph (3)(e)(ii); and  
(b) must be satisfied that the fee is not greater than the reasonable costs incurred by the bank in relation to the breach.

#### ATM fees—own-branded ATMs

(7) A bank's section 9 authority must require any account offered to account-holders and prospective account-holders by the bank to be free of any access fees for use of the bank's own-branded ATMs by the account-holder.

#### ATM fees—foreign ATMs

(8) A bank's section 9 authority must require the bank (the relevant bank) not to impose either of the following fees:

(a) in the case of any account of an account-holder of the relevant bank—an access fee if the account-holder uses a foreign ATM;

(b) in the case of any account of an account-holder of another ADI—an access fee if the account-holder uses one of the relevant bank's own-branded ATMs; unless the relevant bank has applied in the prescribed form for approval of the fee by APRA and the fee has been approved by APRA.

(9) In deciding whether to approve a fee under subsection (8), APRA must be satisfied that the fee is not greater than the reasonable costs incurred by the bank in providing the relevant service.

(10) The regulations must provide for:

(a) the collection of cost information and data from banks; and

(b) the period of review of the cost structures of banks; and

(c) any other matter identified in regulations made for the purposes of this paragraph;

to facilitate the calculation by APRA of the reasonable costs incurred by banks for the purposes of paragraph (6)(b) and subsection (9).

#### Definitions

(11) In this section:

ATM card means any magnetic stripe card or smart chip card issued by an ADI to a customer of the ADI, which enables that customer, as an ATM cardholder, to effect ATM transactions.

ATM cardholder means a customer of an ADI who is issued an ATM card and who has a PIN for use with it.

ATM transaction means a cash deposit, a cash withdrawal or a balance enquiry effected by an ATM cardholder's use of an ATM card and the keying in by the cardholder of the cardholder's PIN at an ATM.

automatic teller machine or ATM means an electronic hardware device, owned or operated by or on behalf of an ADI, a constitutional corporation, or a person, body corporate or corporation that uses an eligible communications service to provide a cash facility, that is capable of automatically dispensing cash in response to a cash withdrawal transaction initiated by an ATM cardholder, to be debited against or charged to an account of the cardholder, through the use of an ATM card issued by an ADI that is a member of the Consumer Electronic Clearing System (CS3) and the keying in by the cardholder of the cardholder's PIN, and includes limited service devices (cash dispensers) that only allow for cash withdrawals, although other transactions such as balance

enquiries may also be supported by an automatic teller machine.

bank means an ADI listed on the APRA web site as a bank.

cardholder means an ATM cardholder, an EFTPOS cardholder or a credit cardholder.

cash facility means:

- (a) an ATM; or
- (b) an EFTPOS terminal; or
- (c) any other prescribed facility that enables a person to gain access to the

funds in his or her account or to a cash advance through a credit card.

constitutional corporation means a corporation to which paragraph 51(xx) of the Constitution applies.

Consumer Electronic Clearing System (CS3) means the standards, policies and procedures coordinated by the Australian Payments Clearing Association for the purpose of settlement of obligations incurred between ADIs that arise from the operation of the national automatic teller machine and EFTPOS networks.

credit card means any magnetic stripe card or smart chip card issued by an ADI, a credit card company or a charge card company to a customer of the ADI, the credit card company or the charge card company, which enables that customer, as a credit cardholder, to effect credit card and charge card transactions, including obtaining cash advances.

credit card company or charge card company means a company that issues a card that allows the cardholder to purchase goods or services or to obtain a cash advance against the card at multiple locations and with entities that are not related to the company issuing the card.

credit cardholder means a customer of an ADI, a credit card company or a charge card company who is issued with a credit card or a charge card and who may have a PIN for use with that card.

credit card terminal means an electronic hardware device used to put into effect a credit card transaction.

credit card transaction means a transaction initiated by a credit cardholder to be charged to an account of the cardholder, through the use at point of sale of a credit card issued by an ADI, a credit card company or a charge card company at a credit card terminal, to purchase goods or services or to obtain a cash advance.

debit card means any magnetic stripe card or smart chip card issued by an ADI to a customer of the ADI, which enables that customer to withdraw money or to have payment for goods or services made directly from the customer's account with the ADI.

eligible communications service means a communications service to which paragraph 51(v) of the Constitution applies.

EFTPOS means an electronic funds transfer at the point of sale.

EFTPOS card means any magnetic stripe card or smart chip card issued by an ADI to a customer of the ADI, which enables that customer, as an EFTPOS cardholder, to effect EFTPOS transactions.

EFTPOS cardholder means a customer of an ADI who is issued with an EFTPOS card and who has a PIN for use with that card.

EFTPOS terminal means an electronic hardware device used to put into effect an EFTPOS transaction.

EFTPOS transaction means an electronic funds transfer initiated by an EFTPOS

cardholder, to be debited against or charged to an account of the cardholder, through the use at point of sale of an EFTPOS card issued by an ADI that is a member of the Consumer Electronic Clearing System (CS3), and in the normal course, the keying in by the cardholder of the cardholder's PIN, at an EFTPOS terminal, and includes any cash withdrawal, refund and reversal of any such transfer.

foreign ATM means an ATM not owned by the relevant bank.

own-branded ATM means an ATM owned by the relevant bank.

personal identification number or PIN means the number that is either issued by an ADI, a credit card company or a charge card company, or selected by the cardholder, for authenticating the use by the cardholder of the ATM card, EFTPOS card or credit card, as the case may be.

## Part 2—Fixed interest gap loans and mortgages

### 2 After section 9

Insert:

#### 9AB Variation of conditions of authorities—fixed interest gap loans and mortgages

(1) APRA must, within 30 days of the commencement of the Banking Amendment (Delivering Essential Financial Services for the Community) Act 2010, vary the conditions of all existing section 9 authorities to give effect to this section and any new section 9 authorities granted after the commencement of that Act must include conditions that give effect to this section.

(2) A section 9 authority must require an ADI that offers loan or mortgage products, including loans or mortgages offered through or packaged by third parties:

(a) to offer fixed interest gap loans or mortgages, as the case may be, to existing and prospective customers; and

(b) to develop its own formula for the benchmark base rate that it will offer to customers under a fixed interest gap loan or mortgage.

(3) An ADI must apply in the prescribed form for approval of a formula developed under paragraph (2)(b) and the formula must be approved by APRA before the ADI offers the relevant fixed interest gap loan or mortgage to customers.

(4) In deciding whether to approve a formula under subsection (3), APRA must be satisfied that the formula does not produce a result that is greater than the costs incurred by the ADI to borrow funds.

(5) APRA may, in writing, determine guidelines in relation to:

(a) the obligation on an ADI periodically to recalculate its benchmark base rate and vary its existing and prospective fixed interest gap loans or mortgages; and

(b) the calculation by an ADI of its net interest margin or margins.

(6) In this section:

benchmark base rate means the basic interest rate, calculated by an ADI using the formula approved under subsection (3) and that reflects the actual costs incurred by the ADI to borrow funds, to be offered to customers as part of a fixed interest gap loan or mortgage.

fixed interest gap loan or mortgage means a loan or mortgage the interest rate of which is the total of the benchmark base rate of an ADI and the net interest margin which that ADI offers to an individual customer.

net interest margin means the additional interest rate negotiated by an ADI with a customer, based on competitive pressures, reserve requirements, the customer's financial



history and any other matters considered relevant by the ADI or included in guidelines under paragraph (5)(b), to be offered to that customer as part of a fixed interest gap loan or mortgage.

(7) The regulations must provide for:

(a) the collection of cost information and data from ADIs; and

(b) any other matter identified in regulations made for the purposes of this

paragraph;

to facilitate the making of a decision by APRA under subsection (3).

Part 3—Exit fees on loans and mortgages

3 After section 9

Insert:

9AC Variation of conditions of authorities—loan and mortgage products

(1) APRA must, within 30 days of the commencement of the Banking Amendment (Delivering Essential Financial Services for the Community) Act 2010, vary the conditions of all existing section 9 authorities to give effect to this section and any new section 9 authorities granted after the commencement of that Act must include conditions that give effect to this section.

(2) A section 9 authority must require an ADI that offers variable interest rate loan or mortgage products or fixed interest gap loan or mortgage products, including loans or mortgages offered through or packaged by third parties:

(a) to submit to APRA for approval, and receive approval of, a formula that links the level of its early termination fees charged in conjunction with a loan or mortgage product with the actual and reasonable costs of the early termination of the relevant loan or mortgage; and

(b) to include as part of the loan or mortgage contract the costs of the early termination of the relevant loan or mortgage, under the heading “Early Repayment Charges”; and

(c) to include in any advertising of a loan or mortgage product reference to the existence of an early termination fee in relation to the relevant loan or mortgage.

(3) A section 9 authority must require an ADI that offers fixed interest rate loan or mortgage products, including loans or mortgages offered through or packaged by third parties:

(a) to submit to APRA for approval, and receive approval of, a formula that links the level of its early termination fees charged in conjunction with a loan or mortgage product with the actual and reasonable costs of the early termination of the relevant loan or mortgage; and

(b) to include as part of the loan or mortgage contract a plain English explanation of its formula for the calculation of the early termination fee in relation to the relevant loan or mortgage, under the heading “Early Repayment Charges”; and

(c) to include in any advertising of a loan or mortgage product reference to the existence of an early termination fee in relation to the relevant loan or mortgage.

(4) APRA must, within 30 days of the commencement of the Banking Amendment (Delivering Essential Financial Services for the Community) Act 2010, prescribe guidelines in relation to the ability of an ADI to vary its formula for the calculation of its early termination fees.

(5) In this section:

early termination fee means any additional charge imposed on a borrower or mortgagor in any situation in which the borrower or mortgagor chooses to pay out the loan or mortgage contract, as the case may be, ahead of the time specified in the relevant loan or mortgage contract.

- (6) The regulations must provide for:
  - (a) the collection of cost information and data from ADIs; and
  - (b) any other matter identified in regulations made for the purposes of this

paragraph;

to facilitate the making of a decision by APRA under paragraph (2)(a) or (3)(a).