SECTION VI

OVERVIEW

CHAPTER TWENTY THREE

OVERVIEW

23.1 The Committee's task has been to review the effects of financial deregulation with particular focus on the banking industry. Ten years after the Campbell Committee Report, which led to many of the deregulatory changes, it is timely to assess what deregulation has achieved and what should be the direction for the future.

23.2 In this chapter the Committee makes its overall assessment of financial deregulation. It then looks at the need for continuing parliamentary oversight of the banking industry.

Has deregulation worked?

23.3 The Committee has used the Campbell Committee Report as the benchmark for its assessment of the effects of deregulation. The Campbell Committee emphasised increased efficiency as the principal aim of financial deregulation. It took the view that:

> ... the most efficient way to organise economic activity is through a competitive market system which is subject to a minimum of regulation and government intervention.[1]

23.4 The Campbell Committee considered that 'the discipline of the market remains the most economically efficient basis for allocating funds and resources' for the benefit of the community as a whole. However, it was recognised that 'unregulated financial markets do not always work perfectly', particularly in areas such as competition, information, stability and confidence.[2]

23.5 There was a recognition of a limited role for government intervention. The Campbell Committee carefully defined those areas:

- to ensure free, fair and competitive markets;

- to safeguard the underlying stability of the financial system;

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1 Campbell Committee Report, p. 1.
2 ibid, p. 1.

- *to implement monetary policy; and*

- to influence the spread of ownership in the financial system.[3]

23.6 The Campbell Committee considered that, if government wished to achieve the deployment of resources to particular sectors or to ensure a socially acceptable distribution of finance and resources, it should do so by explicit governmental assistance rather than through intervention in the financial system.[4]

23.7 Financial deregulation has involved major structural changes to the Australian economy. The process of adjustment to the deregulated environment is still occurring.

23.8 The banks considered a preliminary assessment only could be made of deregulation at this stage. For example, the ABA described the Committee's inquiry as a 'progress report, rather than a more definite assessment that would result after a longer period of time'.[5] The banks viewed financial deregulation more as a process of regulatory reform than the creation of an unregulated financial system. They referred to the expansion and formalisation of the regime of prudential controls that had occurred since deregulation to protect the safety and soundness of the system.

23.9 The banks' preliminary assessment was that the benefits had been substantial in terms of increased competition, efficiency and flexibility. Savers have been major beneficiaries and the rationing of finance has been abolished. Banks now offer a much wider product range to consumers. The banks recognised there had been problems with deregulation. These were attributed to their 'learning curve' since deregulation.

23.10 The banks considered it was not possible to 'turn back the clock' on financial deregulation, particularly with the trend to globalisation of financial services.[6] Rather than calling a halt, they considered there was a need to 'build on the successes of deregulation ... by promoting increased efficiency in and competition for banking services'.[7]

23.11 Consumer organisations considered deregulation had delivered considerable benefits to consumers and they did not advocate a return to the regulated environment of the 1970s. However, they questioned whether the promise of the Campbell Committee's recommendations had been fulfilled.[8]

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3 ibid, pp. 12-13.

4 ibid, p. 13.

5 Evidence, pp. 4-5.

6 Evidence, p. 6.

7 Evidence, p. S294.

8 Evidence, p. S1378.

23.12 Policy administrators and regulators believed that, while deregulation had created some problems, these were outweighed by overall benefits. The Department of the Treasury stated that deregulation had produced both 'sustainable benefits and some costs for consumers'.[9] The benefits were in the payment of higher deposit rates, the elimination of credit rationing and the availability of a wider product range. However, it considered that competition in retail banking had not been boosted to the extent expected and many banks had significant problems with bad loans. It noted that there also were concerns about prudential supervision and the conduct of bank customer relations.[10]

23.13 The Committee's assessment is that much of what was envisaged of deregulation has occurred. The efficiency of banks has increased and they have taken market share from other financial intermediaries that had benefited from regulation. Finance has become more widely available, though customers have had to pay a market price for it, including a component to reflect risk. Product range has increased and banks have increased their responsiveness to customers.

23.14 However, deregulation has not delivered some of the benefits envisaged. While competition has been strong (perhaps too strong) in some sectors, particularly in the large business sector, it has not been as strong in the retail market. The failure of the market to deliver better information to consumers and to price better for some products indicates that the retail has still to realise the full benefit of deregulation. The failure of foreign banks to increase market share in the retail market is an important explanation of the lesser competition in this area. The question raised as to whether Australia is overbanked is one that the market will resolve.

23.15 The relationship between banks and customers remains an area requiring major improvement. This is true of small business and farmers and for consumers generally. Information flows need to improve and banks need to become more responsive to customer needs.

23.16 There is a further view that the excesses of the 1980s can be explained by deregulation. The banks considered that macro-economic and other factors were major reasons for the problems experienced in the 1980s.

23.17 However, changes resulting from deregulation removed limitations on access to bank finance and imposed on both banker and borrower the need to more carefully assess risk. As ANZ Bank stated:

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9 Evidence, p. S3030.

10 Evidence, p. S3030.

> For banks, managers are learning that risk has to be priced and managed, while customers are learning about the dangers and pitfall of not making adequate provision for unforeseen outcomes.[11]

23.18 With the benefit of hindsight it can be argued that deregulation took place too quickly. Neither banks nor customers were educated for the changes that occurred, particularly for the allocation of, and pricing for, risk. In many cases, especially for large corporate customers, banks did not take full account of the risk factors. They were driven by the competitive environment and are now facing the consequences of poor decisions. But customers also were unaware that financial deregulation resulted in a greater market risk for their finance, whether a risk on interest rates or foreign exchange.

23.19 There also is a need for a more rigorous supervisory regime in this riskier environment. The supervisor needs to be more vigilant and have the appropriate tools to undertake the task. The Reserve Bank was not as alert as it should have been as to how deregulation had changed its role as supervisor of the banking industry.

23.20 Customers need better information about, and advice on, the risks they are accepting. The financial services industry must remain competitive to ensure that customers can receive the benefits of the deregulated environment.

23.21 The Committee is conscious of further developments affecting the financial system. The trend to globalisation of financial services noted by the Campbell Committee continues. The Australian financial system increasingly is becoming part of a global system. The endeavours to establish international standards for banking institutions through the Basle requirements will have important implications. The regulatory regime in Australia must take account of this trend.

23.22 There is increased blurring of the role and functions of financial intermediaries. It is no longer clear what is a bank nor what is banking business. Further amalgamations and associations between financial intermediaries may occur as a result of the blurring. This trend has important supervisory and competitive implications to which governments must respond.

23.23 The Committee considers that there should be no winding back of the deregulatory changes that have occurred. However, the experiences of the 1980s show, as the Campbell Report suggested, markets are not always rational in their behaviour. A major role exists in a deregulated environment for governments to ensure that markets work efficiently and competitively and that the financial system remains safe and sound. The role of government intervention lies in ensuring an adequate information flow to consumers. There also is a role in ensuring that

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11 Evidence, p. S537.

monopoly control is prevented and competition is strengthened. Finally, government intervention is essential to ensure an appropriate system of prudential control. Within the regulatory framework imposed by government, it will be a matter for the banks, operating in the market place, to deliver to customers and the Australian economy the wider range of benefits expected of deregulation.

The need for continuing review

23.24 As well as the need for appropriate government intervention, the Committee envisages a need for continuing parliamentary oversight of the banking and financial services industries. The inquiry has given the Parliament a valuable insight into their operation and interrelationship. It has provided a forum for those with concerns about the industry to air their problems and for the banks to correct misunderstandings and to respond. There is value in this being a continuing process.

23.25 The Committee was informed of the operations of the parliamentary banking committees in the United States and Canada. These committees consider legislation, review its implementation, undertake general oversight and conduct inquiries into specific areas of concern. They ensure a continuing parliamentary contribution to the debate about the future of the banking systems.

23.26 The Committee considers that the Commonwealth Parliament should have a committee whose responsibility is the continuing oversight and review of the banking industry. The Committee could:

- consider legislation (for example, there may well be legislation resulting from the recommendations made in this report);

- conduct inquiries into specific areas of concern; and

- undertake general review work.

23.27 The Committee is aware of the constraint on the resources of Parliament in staffing new committees. It believes the expertise that has developed in the House of Representatives Standing Committee on Finance and Public Administration should be used in a continuing oversight role. Therefore, the Committee considers that the resolution of appointment of the House Standing Committee on Finance and Public Administration should be amended to include responsibility for review of the banking industry. The Committee's name should change to the House Standing Committee on Banking, Finance and Public Administration to reflect the expanded role. The Committee would require an additional permanent staff position for an expert in the banking or financial services industry.

Recommendation

23.28 The Committee recommends that:

103. the House of Representatives amend the resolution of appointment of the House Standing Committee on Finance and Public Administration to include a responsibility for reviewing the banking industry. The name of the Committee should be amended to House Standing Committee on Banking, Finance and Public Administration.

STEPHEN MARTIN, MP
CHAIRMAN

November 1991

DISSENTING REPORT FROM

MR STEELE HALL, MP

I dissent from the recommendation that foreign banks be allowed to establish branches in Australia because if implemented a further risk factor could be added to our private sector banking.

The effectiveness of Australian prudential oversight depends on the capacity of the Reserve Bank to be fully informed about banks.

When its communications break down as they so clearly did with the State Bank of South Australia, diaster strikes.

However, the Reserve Bank has the advantage that private banks are either headquartered and incorporated in Australia or are subsidiaries of overseas banks and as such are incorporated in Australia.

The Reserve can have the information it needs and has power to intervene and if necessary arrange the sale of assets to protect depositors.

Timeliness in assessing the scene can be vital - the Bank of Adelaide was sold within days of the public becoming aware of its problems.

The question as to whether it should be branch or subsidiary ought not be answered simply in an academic sense.

Australia teetered on the brink of major banking disasters even with the Reserve's capacity to have full knowledge of Australian incorporated banks.

If the Bank of Credit and Commerce International, headquartered in London had operated here with branches supervised under the Basle Convention as it was, Australian depositors would have joined others in 60 countries around the world in hardship and loss.

An article in the Economist on 17-8-91 profiled a report entitled "International Trade in Banking Services" written for The Group of 30 by economists Sydney Key and Professor Hal Scott and contained this reference to regulation:

> *"Branches are the trickiest (as the B.C.C.I. case confirms) because they require the greatest host-country faith in the rules, will and resources of home-country regulators".*

I do not regard the Australian experience as a basis for confidence that the Reserve could prevent another "B.C.C.I." if we opt for branches.

The question of reciprocity for Australian banks is overemphasised.

Our majors have significant and expanding investments in many countries and are secure in the E.E.C. because their position in the U.K. gives them access to other E.E.C. countries.

As for claims by European and United States spokesmen alleging a "restraint of trade" by Australia because we do not allow foreign banks as branches, we are witnessing an exercise in blatant hypocrisy.

Foreign banks are not beating down our doors and some may be considering leaving.

The truth is, these claims are a straw case to be used as trade negotiating tools.

They would have more validity if those countries were not excluding Australian beef and sugar and other produce.

Public confidence and safety in our banking system has priority.

There is not point in local branches having access to resources of their overseas parent when it is insolvent.

We should not approve a policy risk that becomes a public risk.

DISSENT RECOMMENDATION:

> **That foreign banks operate in Australian as subsidiaries of their parent bank.**

STEELE HALL, MP

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APPENDIX ONE

LIST OF SUBMISSIONS

No.	Name of person/organisation
1, 1a-1c	Australian Bankers' Association
2, 2a-2c	Westpac Banking Corporation
3, 3a-3e	Commonwealth Bank
4, 4a-4c	National Australia Bank
5, 5a-5c	ANZ Group
6, 6a-6b	Mr S E I Johnson
7	Dr J W C Cumes
8	Professor I R Harper
9, 9a-9b	Australian Association of Permanent Building Societies
10	Professor J J Mahony
11	St George Building Society Ltd
12	Ms Felicity Grace Department of Government The University of Queensland
13	Senator Paul McLean
14	Ms C Currie
15	Mr G Barrett
16	Department of Primary Industries and Energy
17, 17a-17c	Australian Merchant Bankers' Association
18	Master Builders' Construction and Housing Association Australia Inc

19	Australian Financial Centre Committee
20	Mr G Rogers Senior Lecturer in Banking & Finance University of Canberra
21	Mr A Read Lecturer in Accounting University of Canberra
22, 22a	Advance Bank Australia Limited
23, 23a	Trade Practices Commission
24, 24a-24d	R&I Bank of Western Australia Ltd
25, 25a	Australian Federation of Credit Unions Limited
26	Challenge Bank
27, 27a-27b	Australian Chamber of Manufactures
28	Premier of Tasmania
29, 29a	State Bank of South Australia
30, 30a	Reserve Bank of Australia
31	Financial Counsellors Resource Project
32, 32a	Australian Bank Employees Union
33	Barclays Bank Australia Ltd
34	Australian Banking Industry Ombudsman
35	Commonwealth Bank Officers' Association
36, 36a	Mr J R McLennan
37, 37a	Federal Bureau of Consumer Affairs Attorney-General's Department
38, 38a	Public Interest Advocacy Centre
39	Institute of Public Affairs Limited

40	University Building Society
41	Chase AMP Bank
42	The Institute of Chartered Accountants in Australia
43	Australian Retired Persons Association
44, 44a-44b	State Bank of New South Wales
45	Prof Tom Valentine
46, 46a-46b	Mr A T Rigg
47	Mr I Fisher
48	Messrs T & J Tyrrells
49	Mr C Spice
50	Mr and Mrs J Host
51	Mrs T Rahme
52	Mr C Leigh Carl Leigh and Associates
53	The United Trades & Labor Council of SA
54	Small Business Development Corporation
55	Business Council of Australia
56, 56a-56b	National Farmers Federation
57	Mr G Partington
58, 58a	NSW Farmers' Association
59	Australian National Audit Office
60	Mr Gerhard Moser
61	Hamock Constructions NSW Pty Limited
62	Mr William R Crowe

63, 63a	Citibank Limited
64	Mr J Todd
65	Mr G Foti
66	Mr C G Price
67	Mr E Smith
68	Mr M B Porter
69	Mr D E South
70, 70a	Australian Taxation Office
71	Council of Small Business Organisations of Australia Ltd
72	Mr D Collins MLA
73, 73a	The Treasury
74	Country Women's Association of Australia
75	Mr B Madigan
76	Mr J G Wilkin
77	Metway Bank Limited
78	United Farmers and Stockowners of South Australia Incorporated
79	Mr John Salmon
80	Price Waterhouse
81	Mr J Egan
82	NSW Farmers Association
83	KPMG Peat Marwick
84	Australian Finance Conference

85	Mr W M Robbins Lecturer Charles Sturt University
86	Mrs P Boyd
87	Mr and Mrs Walsh
88	Mr and Mrs Kilmartin
89	Mr and Mrs Edlington
90	Mr K H Whitbread
91	Mr DM & Mrs BL Benson
92	Ms Joy Engleman
93	Mr J W Kerr
94	Mr K M Webb
95	Mr S Aliprandi
96	Dr N Runcie The Australian Economists' Advisory Group
97	Insurance and Superannuation Commission
98	Ms J Taylor
99, 99a	Mr D Evans
100, 100a	*Australian Society of Certified Practising* Accountants and the Institute of Chartered Accountants in Australia
101	Goldsmiths Solicitors
102	Mr D J Kelleher
103, 103a	Mr RLJ Boyd
104	Bank of America Australia Limited
105	The Western Australian Farmers Federation (Inc)

106	Cash Transactions Reports Agency
107, 107a	Mr J S Whalen
108	Australian Securities Commission
109, 109a	Mr A Johnson
110	Mr J W Neale
111	State Government of South Australia
112	Mr H Hobbs, MLA
113	Mr IPN & Mrs RR Oakhill
114	Mr RD Radford
115	Mr R & Mrs J Coveney
116	Mr HW Anning
117	Mr T B Curtin
118	Mr S Yesberg
119	Mr RHV Douglas
120	Mr F W Galbally
121	Mr D Kelly Law Reform Commission Victoria

Confidential Submissions

Nos. 1 - 19

APPENDIX TWO

LIST OF EXHIBITS

No.	Name of person/organisation
1	A Statement by Mr S Fowler (Westpac Banking Corporation) and copies of court orders restraining publication of certain documents
2	The updated version of information previously provided to the Committee by Senator Paul McLean
3	Document outlining the history of foreign currency loans within Westpac and CBA provided by Mr J R McLennan
4	Document entitled 'Alternative Dispute Resolution' provided by Mr J R McLennan
5	Document dated 14 September 1990 of the reasons for judgement in the case between Eltran Pty Ltd and Others and Westpac Banking Corporation provided by Mr J R McLennan
6	Letter dated 18 March 1991 from Mr A Rahme
7	Documents tabled by Senator Bob Collins concerning the Northern Territory Government and Westpac Banking Corporation
8	Additional pages of a court transcript provided by Mr Carl Leigh
9	Letter from Mr G A Harrison to Manager, Westpac Banking Ltd, Wollongong, dated 23 October 1984
10	Letter from Manager, Westpac Banking Corporation, Wollongong to Secretary Enihard Pty Ltd dated 22 November 1984 provided by Mr G A Harrison
11	Agreement for Sale of Land dated 16 April 1985 provided by Mr G A Harrison
12	Letter from Corporate Lending, CBA to Mr G A Harrison dated 29 January 1985
13	Letter from Acting Manager, CBA, Wollongong to Mr G A Harrison dated 9 April 1985

14	Letter from Senior Manager, CBA, Wollongong to Mr G A Harrison dated 22 October 1985
15	Exhibit 'D' referred to in the affidavit of Richard McLane Ford sworn on 16 February 1987
16	Letter of Offer from Broadlands Financial Services to the Manager, G D Price Pty Ltd dated 22 February 1984
17	Bill Facility Agreement between G D Price Pty Ltd and Broadlands International Finance Ltd dated 16 March 1984
18	Copies of Bills between G D Price Pty Ltd and Broadlands International Finance Ltd dated 15 May 1984
19	Copy of Exhibit marked with the letter 'J' referred to in affidavit of Colin Geoffrey Price, dated 21 December 1984
20	Mrs E Smith
21	Mr Porter
22	Samples of Westpac's advertisements of foreign currency loans
23	Samples of letters of offers by Westpac to foreign currency loans borrowers
24	A letter from the Manager, Offshore Commercial Loans, Westpac Banking Corporation
25	Graphs provided by the Commonwealth Bank that were utilised in the Taree Branch
26	The document 'Proposals for reform of the supervisory arrangements for non-bank financial institutions' Special Premiers' Conference Working Group on non-bank Financial Institutions'
27	The document 'Queensland Diary Co-orperatives - An examination of the Single Co-operative Concept' - A confidential report to the Hon Neville Haper MLA, Minister for Primary Industries by Ian Alan London dated 4 August 1987
28	The advertisement tabled by Westpac listing development projects supported by the Bank

29 That various Westpac customer pamphlets

30 An article entitled 'Privacy law will cost consumers $2 billion' from the Australian, July 6-7 1991

31 The document from Westpac 'Complaints handling - standards'

32 The document from Westpac 'Complaints handling - policy'

33 The document from Westpac 'Australian Banking - Markets Review'

34 The document entitled 'Nyngan - $1m Plus'

35 That various documents providing estimated income and cash flow relating to Boyd's property

36 A letter dated 23 September 1983 from Mr R Littlehales, Manager, Nyngan, Commonwealth Bank of Australia

37 A statement from Mr R Littlehales

38 Various documents and newspaper clippings provided by Mrs P Boyd

39 Document entitled 'Lag News'

40 Examples of assessments made by the Lachlan Advisory Group

41 A letter from Mr J Sawyer, Commonwealth Bank of Australia, Nyngan dated 11 January 1991

42 A letter from Mr R McDonald, Regional Manager, Commonwealth Bank of Australia, Dubbo

43 Document supplied by Mr K Whitbread

44 Various documents tabled by Mr Benson relating to his case

45 A letter to the secretary to the Committee from Mrs Joy Engleman dated 22 July 1991

46 An unsigned affidavit from JL & CA Robberds

47 Document: 'Starting Up and Running your Own Business' supplied by Commonwealth Bank of Australia

48 Document: 'Your F.A.R.M.' supplied by Commonwealth Bank of Australia

49	Document: Two newspaper articles from The Land dated 30 August 1984 and 18 July 1991 supplied by Commonwealth Bank of Australia
50	Letter dated 22 July 1991 and attachments from Mr S Fowler, Chairman, ABA to the Committee Chairman regarding the ABA Farm Code
51	Sample cash flow budget provided by Westpac
52	State Bank of NSW Board provided by NSW Government
53	Government Trading Enterprises - Information Requirements - Performance Monitoring provided by NSW Government
54	A Policy Framework for Improving the Performance of Government Trading Enterprises - 15 September 1988 provided by NSW Government
55	Shareholder Reporting and Monitoring for GTEs and SOCs - NSW Treasury
56	A diagram - Average Interest Spreads - Major Banks, average for years to annual balance dates provided by Reserve Bank
57	Document 'Thirty One Cents in the Dollar - A report on Consumer Credit Insurance from Consumers' Perspective' - Australian Financial Counselling and Credit Reform Association
58	Document 'Thirty One Cents in the Dollar - A report on Consumer Credit Insurance from Consumers' Perspective' - Australian Financial Counselling and Credit Reform Association
59	Letters from Mr Greg Kirk, Solicitor, Consumer Credit Legal Centre (NSW) Inc dated 30 July 1991 to the NSW Ombudsman and a response from the Ombudsman dated 2 August 1991
60	Paper entitled 'Westpac Banking Corporation - consumer Credit Insurance'
61	Document 'Regulatory Reporting' - List of Statutory Returns' provided by Westpac
62	Document 'Westpac Property Trust and Real Property Growth Trust - Prospectus'

63	Document entitled 'Australian Guarantee Corporation Limited - Presentation notes for the Parliament Banking Inquiry' provided by Westpac
64	Table 'Returns and Volatilities of Asset Classes' provided by Westpac
65	Diagrams illustrating the Sydney and Melbourne CBD Property Cycle - Commercial Office Market provided by Westpac
66	Document entitled 'Prospectus number 5' from the National Australia Bank
67	Document provided by the Australian Finance Conference entitled 'A Financier's Guide to the Law of Guarantee in Australia (Second Edition)'
68	Documents on the 'Credit Act' provided by the Australian Finance Conference
69	Document entitled 'Account Verification Procedures Under the Cash Transaction Reports Act - A Compliance Package for Finance Companies'
70	Document entitled 'Suspect Transaction Reporting Under the Cash Transactions Reports Act - A Compliance Package for Finance Companies'
71	The Australian Finance Conference 'Annual Report 1991'
72	Document provided by the Business Council of Australia entitled 'Developing Australia's National Competitiveness'
73	Document provided by the Brotherhood of St Laurence entitled 'Credit to the Community'
73a	Submission by the Trade Pratices Commission to the inquiry into mergers, market dominance and unconscionable conduct by the Senate Standing Committee on Legal and Constitutional Affairs
74	Australian National Audit Office document entitled 'Expansion on Suggestions and Recommendations Made at Paragraph 47 of ANAO's Report'
75	Document entitled 'Interest Rates Subsidy Granted by the State Government to the State Bank'
76	Document entitled 'Letter from Superannuation & Insurance Commission'

77	Extract from Rockhampton Morning Bulletin
78	Documents entitled 'Harvey and Partners'

Confidential Exhibits

Nos. 1 - 27

APPENDIX THREE

PROGRAM OF ACTIVITIES UNDERTAKEN BY THE COMMITTEE

Inspections:

4 February 1991	Sydney	Westpac Banking Corporation facilities

Public Hearings:

5 February 1991	Sydney
6 February 1991	Melbourne
28 February 1991	Sydney
1 March 1991	Sydney
7 March 1991	Sydney
14 March 1991	Canberra
15 March 1991	Canberra
18 March 1991	Sydney
19 March 1991	Sydney
20 March 1991	Coffs Harbour
15 April 1991	Canberra
29 April 1991	Sydney
30 April 1991	Adelaide
1 May 1991	Perth
2 May 1991	Perth
10 May 1991	Canberra
21 May 1991	Sydney
22 May 1991	Sydney
4 July 1991	Melbourne
5 July 1991	Melbourne
9 July 1991	Brisbane
10 July 1991	Sydney

11 July 1991	Sydney
22 July 1991	Nyngan
23 July 1991	Dubbo
7 August 1991	Sydney
8 August 1991	Sydney
22 August 1991	Canberra
26 August 1991	Melbourne
27 August 1991	Melbourne
25 September 1991	Canberra
26 September 1991	Sydney
27 September 1991	Adelaide
2 October 1991	Charleville
10 October 1991	Canberra

APPENDIX FOUR

LIST OF WITNESSES APPEARING AT PUBLIC HEARINGS

Witness/Organisation	Date(s) of appearance
Individuals	
Mr Harry Wallace Anning	2-10-91
Mr Gregory Keven Barrett	15-4-91
Mr Donald Mayne Benson	23-7-91
Mrs Patricia Loretta Joan Boyd	22-7-91
Mr Robert Leslie John Boyd	27-8-91
Mr Timothy Marcus Clark	27-9-91
Mr Timothy Russell Anderson Legal Adviser to Mr Marcus Clark	27-9-91
Mrs Janet Rae Coveney	2-10-91
Mr Ross Gordon Coveney	2-10-91
Mr William Roger Crowe	29-4-91
Ms Carolyn Currie	28-2-91 8-8-91
Mrs Lois Lorraine Edlington	22-7-91
Mr Noel Douglas Edlington	22-7-91
Mr James Michael Roche Egan	9-7-91
Mrs Joy Engelman	23-7-91
Mr Ian Hamilton Fisher	20-3-91
Mr Cosimo Foti	30-4-91

Mr Giuseppe Foti	30-4-91
Mr Anthony John Hamod	29-4-91
Professor Ian Ross Harper	4-7-91 27-8-91
Mr George Andrew Harrison	29-4-91
Mr Alfred David John Hein	30-4-91
Mr Howard William Thomas Hobbs	2-10-91
Mr James Kenneth Host	20-3-91
Mr Stephen Edward Ingram Johnson	1-5-91
Mr John William Kerr	23-7-91
Mr Carl Leigh	20-3-91 29-4-91
Mr Robert Gordon Littlehales	23-7-91
Senator Paul Alexander McLean Australian Democrats	15-3-91
Mr Francis William Galbally Legal Adviser to Senator McLean	15-3-91
Mr Edward James Renton Prinicpal Adviser & Researcher for Senator McLean	15-3-91
Mr John Ross McLennan	20-3-91
Mr Kenneth James Moran	9-7-91
Mr Gerhard Moser	29-4-91
Mr Milton Porter	2-5-91
Mr Colin Price	2-5-91
Mr George Price	2-5-91
Mr Antonine Rahme	20-3-91

Mrs Therese Rahme	20-3-91
Mrs Barbara Gesine Reis	30-4-91
Mr Anthony Thomas Rigg	20-3-91
Mr Kenneth William Rose	9-7-91
Ms Frances Susan Rowe	22-7-91
Mr John Alfred Salmon	9-7-91
Mr David Winston Simmons	27-9-91
Mr Michael Abbott Legal Adviser to Mr Simmons	27-9-91
Mrs Elizabeth Smith	2-5-91
Mr Derek South	2-5-91
Mr Charles Henry Spice	20-3-91
Mr Kym Stevens	30-4-91
Mr Christopher Edmund Todd	2-10-91
Mr Jeffrey James Todd	30-4-91
Mr John Torrisi	29-4-91
Mr Jeremy White Tyrrell	20-3-91
Mr Timothy White Tyrrell	20-3-91
Professor Thomas James Valentine	29-4-91
Mr Geoffrey James Walsh	22-7-91
Mrs Shirley Lynette Walsh	22-7-91
Mr John Stewart Whalen	26-9-91
Mr Kenneth Harry Whitbread	23-7-91
Mr Larry Scott Whitbread	23-7-91
Mrs Pamela Whitbread	23-7-91

Mr Stuart Yesberg	2-10-91

Advance Bank

Mr Grant Malcolm Godfrey Chief Manager - Group Planning	1-3-91
Mr John Michael Thame Managing Director	1-3-91
Mr Keith Andrew Ward Group Treasurer	1-3-91

Attorney-General's Department

Mr James Randal Dick Assistant Secretary Competition Policy Branch	15-4-91 10-5-91
Mr David Charles Edwards First Assistant Secretary Business Affairs Division	10-5-91
Mr Paul Griffiths Legal 2, Organised Crime Section Criminal Law Branch	15-4-91 10-5-91
Mr Daryl Ian Maddern Assistant Secretary Consumer Policy Branch Federal Bureau of Consumer Affairs	15-4-91 10-5-91
Mr Peter Roberts Assistant Secretary Fraud Policy and Prevention Branch	15-4-91
Ms Joan Sheedy Assistant Secretary Human Rights Branch	15-4-91
Mr Stephen Skehill Deputy Secretary	15-4-91

Australia and New Zealand Banking Group Limited

Mr Willoughby James Bailey Group Chief Executive	6-2-91
Mr Stuart Henry Brooke Chief Manager NSW Country and ACT Territory Zone	23-7-91
Mr David Thomas Craig Chief General Manager Australian Business Banking	26-8-91
Mr Lawrence Idriess Cox Manager Business Banking	21-5-91
Mr David Lucas DeGaris Senior Economist	6-2-91 21-5-91 26-8-91
Miss Susan McCarthy Chief Manager Public Affairs Retail Bank	6-2-91 4-7-91 23-7-91
Mr John Roland McConnell Senior General Manager Retail Bank	6-2-91 21-5-91
Mr Donald Penn Mercer Chief General Manager	6-2-91 4-7-91

Australian Association of Permanent Building Societies

Mr James Victor Larkey Executive Director	15-3-91
Mr Frederick Charles Shield President	15-3-91
Mr John Neville Toms Assistant Executive Director	15-3-91

Australian Accounting Research Foundation

Mr John Francis Donges Chairman Auditing Standards Board	27-8-91
Mr Gregory David Pound Director Auditing Standards	27-8-91
Mr Kevin Michael Stevenson Member National Technical Standards Committee Australian Society of Certified Practising Accountants	27-8-91
Mr Michael James Ullmer Board Member	27-8-91

Australian Bank Employees Union

Mr Keith Norman Abbott Industrial Research Assistant	28-2-91
Mr Leonard Norton Hingley Federal Secretary	28-2-91

Australian Bankers' Association

Mr Alan Charles Cullen Executive Director	5-2-91 4-7-91 26-8-91
Mr Stuart Athelstan Fowler Chairman	26-8-91
Mr Gary Hugh Healey Director of Research	4-7-91 26-8-91
Mr Brian Weeks Chairman	5-2-91

Australian Banking Industry Ombudsman

Mr Graham McDonald Australian Banking Ombudsman	10-5-91
Sir Ninian Stephen Chairman	10-5-91

Australian Borrowers' Association

Mr Kevin Webb Chairman	23-7-91

Australian Chamber of Manufactures

Mr Philip Matthew Holt Chief Executive Officer New South Wales Division	28-2-91
Mr Ivo Favotto Senior Economist Australian Consumers Associations	28-2-91

Australian Federation of Consumer Organisations

Ms Liza Carver Council Member	19-3-91 7-8-91
Mr Robert Drake Policy Advocate	19-3-91
Dr Evan Jones Consultant	19-3-91
Ms Supriya Singh Consultant	19-3-91
Ms Marie Louise Sylvan Policy and Public Affairs	19-3-91 7-8-91

Australian Federation of Credit Unions

Mr Reginald Elliott Chief Executive Officer	28-2-91
Mr Reginald James Fowler Banking Manager AFCUL Services Corporation	28-2-91

Mr Graham James Loughlin
General Manager 28-2-91

Australian Finance Conference

Mr John Maxwell Bills
Associate Director 27-8-91

Mr Stephen Mark Edwards
Corporate Lawyer 27-8-91

Mr Ronald Thomas Hardaker
Deputy Executive Director 27-8-91

Mr Peter Michel Long
Executive Director 27-8-91

Australian Financial Counselling and Credit Reform Association

Mr Gregory John Kirk
Member 7-8-91

Australian Guarantee Corporation Ltd

Mr Alexander Barry Robertson
Managing Director 8-8-91

Australian Merchant Bankers' Association

Mr Clive Kay Hall
Chairman 18-3-91

Mr John A Hall
Executive Director 18-3-91

Mr Michiharu Kambe
Executive Committee Member 18-3-91

Australian National Audit Office

Mr Thomas Bela Jambrich
Executive Director 25-9-91

Mr Brian Tracey Kimball
Group Director 25-9-91

Mr John Casey Taylor
Auditor-General 25-9-91

Mr Michael Joseph Watson Senior Director	25-9-91

Australian Securities Commission

Mr David Paul Gilbertson Special Adviser	10-10-91
Mr Anthony Geoffrey Hartnell Chairman	10-10-91
Miss Johanna Francis Turner Legal, Policy and International Branch	10-10-91

Australian Taxation Office

Mr Stuart Henry Allan Assistant Commissioner Complex Audit and International	22-8-91
Mr James Michael Killaly Assistant Commissioner International Taxation Branch	22-8-91
Mr Peter Ernest Simpson First Assistant Commissioner Legislative Services Group	22-8-91

Bank of Queensland

Mr Graham James Hart General Manager	9-7-91
Mr David Harry Jeffries Deputy General Manager	9-7-91
Mr George Bruce Duncan Wilson Assistant General Manager Finance and Secretary	9-7-91

Bankers' Trust

Mr Robert Alexander Ferguson Managing Director	8-8-91

Barclays Bank Australia Ltd

Mr Richard Michael Webb Chief Executive	18-3-91

Brotherhood of St Laurence

Mr Jeffrey Kenneth Coley Community Development Worker Fitzroy and Carlton Community Credit Co-op Ltd	27-8-91
Mr Bruce Charles Ellis Director Administration and Finance	27-8-91
Mr Barry Hahn Consumer Advocate Good Shepherd Youth and Family Service	27-8-91
Mr David Herd Chairperson Consumer Advocacy and Financial Counselling Association of Victoria	27-8-91
Mr Bruce William Wilson Chairperson Board of Directors Macaulay Community Credit Cooperative	27-8-91

Business Council of Australia

Dr Matthew William Butlin Director Policy Analysis and Research	27-8-91
Mr Peter Andrew McLaughlin Executive Director	27-8-91
Mr Donald Marshall Morley Director of Finance Administration Western Mining Corporation	27-8-91
Mr Philip MacGregor Norman Senior Economist	27-8-91
Mr Douglas Roger Zimmerman Consultant	27-8-91

Challenge Bank Ltd

Mr Harvey Russell Collins Chief Manager	1-5-91
Mr Patrick Edward Ryan Managing Director	1-5-91

Chase AMP Bank

Mr Lynn Anderson Managing Director	1-3-91
Mr Graham Bruce Cook General Manager Consumer Banking Group	1-3-91
Mr Ross Graham Steele General Manager Transaction Banking Group	1-3-91

Citibank Ltd

Mr Brian Thomas Clayton President and Chief Administrative Officer	29-4-91
Mr Anthony William Thistlewood Company Secretary	29-4-91

Commonwealth Bank of Australia

Mr Arthur Joseph Brown Treasurer Global Dealing	22-5-91
Mr Stanley Roy Ellem General Manager Western Country Zone	23-7-91
Mr Campbell John Ker Head of Institutional Banking	5-2-91
Mr Jan Godfried Koch General Manager	5-2-91
Mr Paul Wallace McCarthy Chief Economist	5-2-91

Mr David Victor Murray	5-2-91
Chief General Manager - Retail	26-9-91
Mr Ronald John O'Brien	
Chief Manager	
Credit Control	22-5-91
Mr Ian Kenneth Payne	
Deputy Managing Director	26-9-91
Mr Barry Arthur Poulter	
Chief General Manager	5-2-91
Group Credit Policy and Control	22-5-91
Mr Dennis John Roams	
Chief Manager	
Commercial Services Retail	23-7-91
Mr Donald Neil Sanders	5-2-91
Managing Director	26-9-91
Mr Brian James Wright	
General Manager	23-7-91
Commonwealth Bank Officers' Association	
Mr Ian John Leeson	
Senior Industrial Officer	1-3-91
Dr Michael Howard	
Principal Researcher - Public Sector	
Research Centre	1-3-91
Mr Kevin Scott	
Federal Secretary	1-3-91
Custom Credit Corporation	
Mr Barry Ernest Farr	
General Manager	
Consumer and Dealer Financial Services	26-8-91
Dalgety Farmers Ltd	
Mr David Fraser McManamey	
General Manager	
Rural Lending and Property	2-10-01

Dr Jeffrey Bruce Wicking Managing Director	2-10-91

Dalgety Queensland Rural

Mr Macolm Couchman Capp General Manager	2-10-91

Deutsche Bank Australia Ltd

Dr Hans Beck Managing Director	18-3-91

Esanda Finance Corporation Ltd

Mr Charles Anthony Griss Managing Director	26-8-91

Elders Limited

Mr Richard Blair Mollison Managing Director	2-10-91
Mr Maxwell George Ormsby General Manager Rural Finance	2-10-91

Financial Counsellors Association of Western Australia

Mrs Judith Ann Bain Committee Member	1-5-91
Mrs Josephine Margaret Keane Committee Member	1-5-91
Mrs Sally Newman President	1-5-91
Mrs Tracey Summerfield Member	1-5-91

Insurance and Superannuation Commission

Mr Richard Matthew Beetham Insurance and Superannuation Commissioner	25-9-91

Mr Ronald Henry Dean Deputy Commissioner Occupational Superannuation Group	25-9-91
Mr Robert George Glading Deputy Commissioner Life Insurance Group	25-9-91
Mr Francis Ignatius Keenan Senior Advisor Policy Group	25-9-91
Mr Richard John Smith Deputy Commissioner General Insurance Group	25-9-91

KPMG Peat Marwick

Mr Patrick Martin Burroughs Partner	26-8-91
Mr Peter Ralph Marriott Partner	26-8-91
Mr Michael James Ullmer Partner	26-8-91

Master Builders Construction and Housing Association of Australia

Dr Robert Campbell Consultant Economist	15-3-91

Metway Bank Ltd

Mr Clifford William Dawson General Manager	9-7-91
Mr Caji DeSouza General Manager Finance	9-7-91
Mr Hugh Richardson Senior Manager Marketing	9-7-91
Mr Trevor Thomas Steel Managing Director	9-7-91

National Australia Bank

Mr Robert John Allanadale Corporate Lawyer	21-5-91
Mr Donald Robert Argus Managing Director and Chief Executive	6-2-91
Mr Glenn Lawrence Lord Barnes General Manager Marketing and Distribution	5-7-91
Mr Maxwell James Bray Chief General Manager Development Ventures	6-2-91 21-5-91 5-7-91 23-7-91 26-8-91
Mr Julian James Pearce Chief Economist	6-2-91 5-7-91 26-8-91
Mr Christopher Kerry Shearer Manager Rural Advisory Services	23-7-91
Mr Raymond John Terkelsen Senior Manager Treasury Operations	21-5-91

National Farmers Federation

Mr Garry Goucher Director of Policy	10-5-91
Mr Peter John Lee Vice-President	10-5-91

NatWest Australia Bank

Mr Philip Whitney Deer Chief Executive	18-3-91

New South Wales Government

Mr Percy Allan Secretary State Treasury	7-8-91
Mr Bruce Buchanan Executive Director Office of State Revenue State Treasury	7-8-91
Mr Nicholas Frank Greiner, MP Premier and Treasurer of New South Wales	7-8-91
Mr John Holloway Commissioner New South Wales *Department of Consumer Affairs*	7-8-91
Mr Michael George Lambert Deputy Secretary State Treasury	7-8-91
Dr Paul John Moy Assistant Secretary State Treasury	7-8-91

Price Waterhouse

Mr Ian Leslie Hammond National Technical Services Partner	8-8-91
Mr Peter Clement Trout Chairman of Banking and Financial Services Group and Partner	8-8-91
Mr Terry Walter Williamson National Director of Audit Services and Partner	8-8-91

Primac Association Ltd

Mr Ian Mark Coman Finance Officer	2-10-91
Mr David Bruce Sneddon Chief Executive	2-10-91

Primary Industries and Energy, Department of

Mr Robert Anthony Calder Assistant Secretary	15-4-91
Mr Philip Jeffrey Harrington Acting Assistant Secretary Economic Policy Branch	15-4-91
Dr Onko Tjerk Kingma Assistant Secretary Headquarters Group	15-4-91

Queensland Government

Mr Alan Mark Gray Assistant Under Treasurer Economics, Queensland Treasury	9-7-91
Mr John Angus Reyment Registrar of Commercial Acts Department of Justice	9-7-91

Queensland Industry Development Corporation

Mr Gavin Charles Emery State Manager Rural Finance	2-10-91
Mr Anthony John Kassulke Branch Manager	2-10-91
Dr Walter Stephen van der Mye Chief Executive	9-7-91

R & I Bank of Western Australia

Mr Stephen Bailey Solicitor of Retail Banking	1-5-91
Mr Michael Lenoard Godrich Senior Manager Strategic Planning	1-5-91
Mr Warwick Gordon Kent Managing Director	1-5-91
Mr David Arthur Taylor General Manager Retail Banking Corporation	1-5-91

Reserve Bank

Mr Leslie John Austin Head of Bank Supervision	1-3-91 14-3-91
Mr Bernie William Fraser Governor	1-3-91 14-3-91 7-8-91
Mr Mervyn John Phillips Deputy Governor-Deputy Chairman	14-3-91 7-8-91
Dr Robert William Rankin Deputy Chief Manager Domestic Markets Department	1-3-91 14-3-91
Mr Graeme John Thompson Assistant Governor (Financial Institutions)	1-3-91 14-3-91 7-8-91

Small Business Development Corporation of Western Australia

Mr Rodney Raymond Lane Managing Director	1-5-91

South Australian Government

Dr Graeme Charles Bethune Assistant Under-Treasurer South Australian Treasury	27-9-91
Mr Peter John Emery Chief Executive Officer South Australian Treasury	27-9-91
Mr Robert Glen Schwarz Assistant Under-Treasurer South Australian Treasury	27-9-91
Mr Bradley Maxwell Selway Crown Solicitor	27-9-91

St George Building Society Ltd

Mr Robert Leslie Manning Executive Manager EFTS Business Systems	18-3-91
Mr Bradley Kevin Matthews Economist	18-3-91
Mr Anthony George Regan Executive Manager Retail Lending	18-3-91
Mr Anthony James Sweeney Chief Executive Officer	18-3-91
Mr John Lawrence Taylor Executive Manager Savings Administration	18-3-91
Miss Fiona Gladys Toose Corporate Solicitor	18-3-91

State Bank of New South Wales

Mr Peter Howard Apps Head of Group Risk Management	21-5-91
Mr David Mark Cowper Chief Operating Officer	21-5-91
Mr John O'Neill Managing Director	21-5-91
Mr Richard William Turner Secretary	21-5-91

State Bank of South Australia

Mr Darryl Gobbett Chief Manager Retail Business Management	30-4-91
Mr Ted Johnson Group Managing Director	27-9-91
Mr Ian Kowalick Head Prudential Management	30-4-91 27-9-91

Mr Trevor Mallett Chief General Manager Corporate and International Bank	27-9-91
Mr Steve Paddison Chief Executive Officer	30-4-91 27-9-91

Trade Practices Commission

Mr Allan Asher Commissioner	25-9-91
Professor Robert Baxt Chairman	18-3-91
Professor Allan Fels Chairman	25-9-91
Professor Brian Johns Deputy Chairman	18-3-91 25-9-91
Ms Susan Johnston Project Officer	18-3-91
Mr Hank Spier First Assistant Commissioner	18-3-91 25-9-91

Treasury, Department of the

Mr Anthony Stuart Cole Secretary	25-9-91
Mr Frederick George Herbert Pooley First Assistant Secretary Financial Institutions Division	10-7-91 25-9-91
Mr Darryl Milburn Roberts Acting Assistant Secretary Banking and Finance Branch	10-7-91
Mr Ewen Leith Waterman Deputy Secretary (Financial)	10-7-91 25-9-91

United Trades and Labor Council of South Australia

Mr John Kosmas Lesses Secretary	30-4-91
Mr John Douglas Spoehr Community Liaison Officer	30-4-91

University Building Society

Mr Raymond Walter Clohessy Director	1-5-91
Mr Davin Power Managing Director	1-5-91

Westpac Banking Corporation

Mr Ashley George Ayre Chief Manager Credit and Lending	22-5-91
Mr John Barling Regional Manager North-west	23-7-91
Mr Lance Bauer Chief Manager Consumer Banking	11-7-91
Mr Alan John Chatterton Chief General Manager Australian Banking	23-7-91
Mr Francis John Conroy Chief Operating Officer	5-2-91
Mr Stuart Athelstan Fowler Managing Director	5-2-91 7-3-91 11-7-91 8-8-91
Ms Helen Lynch General Manager Group Service Quality and Productivity	11-7-91

Mr Anthony David Moore Chief Manager Group Credit Policy	22-5-91
Dr Noel Purcell Chief Manager Marketing Services	5-2-91 7-3-91 22-5-91 11-7-91 23-7-91 8-8-91
Mr Brendan Riordan General Manager Investements Westpac Financial Services	8-8-91
Mr Ian Peter Town Chief Manager Financial Markets Victoria	22-5-91
Mr Barry Russell Watson New South Wales Manager Agribusiness	23-7-91

APPENDIX FIVE

LIST OF ORGANISATIONS VISITED IN EUROPE, JUNE 1991

United Kingdom

Bank of England
Securities and Investment Board
Office of Fair Trading
Mr John Smith, MP (Shadow Chancellor of the Exchequer)
A Merchant bank
A Clearing bank
Department of Trade and Industry
Department of Treasury
Mr Jeremy Mitchell

France

French Bankers' Association
Minister of Financial and Economic Affairs
ECD

Belgium

Belgian Bankers' Association
Commission of European Communities
European Community Bankers' Association
European Commission DG XV

Germany

Deutsche Bundesbank
Bundesverband Deutscher Banken

Switzerland

Federal Banking Commission
Swiss Bankers' Association
Christian Democrat Member of the Council of States (Upper House)
Union Bank of Switzerland
Swiss National Bank

APPENDIX SIX

LIST OF ORGANISATIONS VISITED IN USA AND CANADA, AUGUST-SEPTEMBER 1991

New York

Westpac Banking Corporation
Representatives of Australian banks and Reserve Bank
Institute of International Bankers
Citicorp
Bankers' Trust
Federal Reserve Bank of New York
Chase Manhattan
State of New York Superintendent of Banks

Washington

Mr Jonathan Brown
Department of Justice
Federal Deposit Insurance Corporation
Office of Thrift Supervision
House Committee on Banking, Finance and Urban Affairs
American Bankers' Association
Bureau of Competition, Federal Trade Commission
House Sub Committee on Financial Institutions Supervision, Regulation and Insurance
Senate Committee on Banking, Housing and Urban Affairs
Federal Reserve System
House Sub Committee on Consumer Affairs and Coinage

Canada

Department of Consumer and Corporate Affairs
Bank of Canada
Canadian Deposit Insurance Corporation
Office of the Superintendent of Financial Institutions
Canadian Payments Association
Department of Finance
Canadian Bankers' Association
Canadian Imperial Bank of Commerce

APPENDIX SEVEN

OVERSEAS BANKING STRUCTURES

The results of the comparative observations made during visits to the United Kingdom, mainland Europe, the United States of America and Canada are recorded in this appendix. The description does not pretend to be a definitive comparison of international banking structures. Rather the content reflects the discussions that occurred in the particular countries visited. It also concentrates on those issues that the Committee identified as being of significance for its inquiry into the Australian banking industry.

Britain's banking and financial institutions

Historically, London has been a major world financial centre providing a wide range of specialised services. The increase in the rate of international movements of capital in the 1960s and 1970s and increasing international competition in financial services and developments in technology in the 1980s, saw London develop further as the international centre of banking activity.

Deposit-taking institutions may be divided into those which are authorised as banks under the Banking Act 1987 and are supervised by the Bank of England; and other institutions which offer banking services, of which the most important are the building societies. There are 530 institutions authorised under the Banking Act, including retail banks, merchant banks, branches of overseas banks, discount houses and banking subsidiaries of both banking and non-banking institutions from Britain and overseas.

The English banking system is very similar to that in Australia. There are a small number of 'high street' or 'clearing' banks with extensive branch networks and a lot of smaller specialised banks. The dominant banks in England and Wales are Barclays, Midland, National Westminster, Abbey National, a former building society, Lloyds and the TSB Group, which was formed out of the former Trustee Savings Bank in 1986. These banks all rank in the 60 largest in the world. Almost all banks belong to the British Bankers' Association. This body established the Banking Ombudsman.

In Scotland the Bank of Scotland and the Royal Bank of Scotland are the major banks. The Scottish Banks have been increasingly looking outside the UK for opportunities to expand. The cross-shareholding alliance of the Royal Bank of Scotland with Banco Santander has provided it with access to markets across Europe. The Bank of Scotland is exploiting niche markets in Europe through joint ventures with German and Italian institutions. The Glasgow-based Clydesdale Bank has been revitalised under the ownership of the National Australia Bank. Northern Ireland is serviced by branch networks of five banks.

With the growth of the financial services sector since the 1970s, and with a relaxation of restrictions on competition among financial institutions, the major banks have increasingly diversified the services they provide. They have established or acquired substantial interests in finance houses, leasing and factoring companies, merchant banks, securities dealers, insurance companies, unit trust companies and estate agencies.

Most retail banks also conduct extensive international operations which account for a substantial proportion of their business. In addition to maintaining overseas subsidiaries they are very active in eurocurrency markets.

At the end of 1988 there were 131 registered building societies, of which 110 were members of the Building Societies Association, with assets totalling 192,000 million pounds. The three largest societies (the Halifax, Nationwide Anglia and Woolwich) account for nearly 50 per cent of the total assets of the movement and the 20 largest for some 90 per cent. Building societies are the major lenders for house purchase in Britain and are the principal repository for the personal sector's liquid assets (although banks' shares have increased in both areas since 1985). Some 70 per cent of adults have building society accounts.

The Building Societies Act 1986 and subsequent regulations allowed the societies to diversify their services. As a result, building societies directly, or through subsidiaries, may now offer services within the general areas of banking, investment, insurance, trusteeship, executorship and estate agency. Societies may also now operate throughout the European Community.

In addition to the banks and building societies which form the basis of the British financial system, major investing institutions such as insurance companies, pension funds, unit trusts and investment trusts play an important role in this system. Indeed, the tendency for banks to enter into marketing relationships with insurance companies and similar investing institutions is becoming a major feature of the UK.

Merchant banks have a widely diversified and complex range of activities, with important roles in international finance and the short-term capital markets; the provision of expert advice and financial services to British industrial companies, especially where mergers, takeovers and other forms of corporate reorganisation are involved; and in the management of investment holdings, including trusts, pensions and other funds. A number of merchant banks have become part of financial conglomerates, offering an even wider range of financial services than hitherto. The four largest retail banks all have merchant banking subsidiaries. The British branches of some overseas banks also engage in merchant banking.

Some 255 overseas banks are presently represented in Britain. They provide a comprehensive banking service in many parts of the world and engage in the financing of trade not only between Britain and other countries but also between third-party countries.

A number of banks have their head offices in Britain but operate mainly abroad, often specialising in particular regions such as Latin America or East Asia through extensive branch networks. The major bank in this sector is Standard Chartered.

The central bank, the Bank of England, has as its main functions to execute monetary policy, to act as banker to the Government, to act as a note-issuing authority and to exercise prudential supervision over and to provide banking facilities for the banking system. As agent for the Government, the Bank of England is responsible for arranging government borrowing and for managing the National Debt. It also maintains the register of holdings of government securities on behalf of the Treasury. More generally the Bank has a responsibility for overseeing the soundness of the financial system as a whole.

Prudential supervision

Three pieces of legislation have helped Britain's financial services industry to respond to the new competitive climate, while at the same time maintaining adequate safeguards for the investing public: the *Financial Services Act 1986*, the *Building Societies Act 1986* and the *Banking Act 1987*.

In each of the three pieces of legislation there is provision for improved co-operation and information-sharing between supervisors in different financial sectors. The Bank of England, the Building Societies Commission, the Department of Trade and Industry, the Securities and Investment Board and the self-regulatory organisations (SROs) have statutory responsibility for financial supervision in the sectors to which these Acts apply. There are strengthened government powers to investigate insider dealing, and a department, the Serious Fraud Office, to deal with cases of serious or complex fraud.

Deposit-taking institutions as defined under the Banking Act (most financial institutions in the UK) are subject to the Bank of England's supervision. The Act created a Board of Banking Supervision and increased the Bank's powers to modify the conduct of banking institutions, to investigate cases of illegal deposit-taking, to block bank mergers and takeovers on prudential grounds and to require information to be supplied to it by banks. The Act also enables information to be shared, in strictly controlled ways, among supervisors in different financial sectors, and permits auditors to make reports to the Bank of England about a bank if the circumstances justify it. Regular on-site inspections are not used but the Bank may appoint persons to investigate and report on a bank where there are concerns about it.

The effective co-ordination between the Bank and other supervisors in the United Kingdom is a priority area. This is particularly important as changes within the financial services sector as a whole have been eroding traditional distinctions between financial institutions, with single firms providing a broader range of services, both in domestic and international markets. In the case of banks that are part of wider financial groups, where different supervisors have responsibility for

particular entities within the group, a 'lead regulator' has been appointed who is responsible for calling a meeting of the 'college of supervisors' to co-ordinate the various supervisors involved. A well established college arrangement is extremely valuable at times when a financial group is experiencing problems.

The Building Societies Act established the Building Societies Commission for the prudential supervision of the industry. It also allowed a society to convert into a public limited company, but only with the approval of its savers and borrowers. The society would then be required to become an authorised institution under the Banking Act. Abbey National has successfully pursued this course.

Insurance companies are supervised by the Department of Trade and Industry under the *Insurance Companies Act 1982*. Marketing of life insurance is regulated by the Securities and Investments Board.

As far as branches of overseas banks with authorisations under the Financial Services Act are concerned, in most cases the Bank continues to act as a conduit for the passage of information between the home supervisory authorities and authorities in the UK.

Under the Financial Services Act a new supervisory framework has been instituted. Investment businesses (those effecting transactions in, managing or giving advice on investments taking the form of securities of all kinds, financial and commodity futures, life assurance, options contracts and certain other instruments - but not wholesale money-market instruments) require authorisation and have to obey rules of conduct based on principles set out in the legislation. Supervision is in the hands of the Securities and Investment Board (SIB), which is empowered to recognise SROs provided that they offer investors protection equivalent to that provided by the SIB. Both the SIB and the SROs are practitioner-based bodies. Most investment businesses have opted to achieve authorisation by obtaining membership of an SRO.

There are a number of current policy developments in the area of supervision. These include the implementation by the Bank of England in December 1990 of the European Commission Solvency Ratio Directive, which establishes a standard measure of the credit risk run by banks and sets a minimum capital ratio of 8 per cent from 1 January 1993.

The Bank has also reviewed the criteria established in 1986 for the consolidation of certain subsidiaries of banks when computing their capital ratios (ie covering the authorised institution only). These are intended to capture those subsidiaries whose capital is readily available to support depositors in the parent bank. The Bank continues to regard it as essential that banks are supervised both as a bank and on a consolidated basis.

The Bank has sought to improve its assessment of each bank's liquidity, by asking for a description of its liquidity policy, identification of particular strengths and weaknesses and analysis of its capacity to survive a crisis. The ensuing review with each bank is serving to increase awareness of the need for prudent liquidity management.

In the accounting area, significant progress was made during 1990 towards implementing the European Commission Bank Accounts Directive, which establishes common rules in relation to the content and valuation methods of individual and consolidated accounts of banks and other financial institutions. The Directive is due to be implemented into UK law later this year and will apply to accounting periods beginning on or after 1 January 1993. The UK legislation will introduce a number of major changes to banks' financial statements. These will include setting out specific formats for balance sheets and profit and loss accounts, laying down valuation rules to be applied to particular balance sheet items and prohibiting the establishment of hidden reserves.

Deposit insurance

The Bank of England administers the Deposit Protection Board, established in 1982. It levies banks to cover 75 per cent of the value of deposits up to stg 10,000.

Foreign banks

Supervision of foreign banks is conducted on the same basis as for the United Kingdom incorporated banks and both subsidiaries and branches are permissible, with requirements based on adequate liquidity and home country supervision taken into consideration in respect of licensing branches. From January 1993, European community member state institutions will not require authorisation as a UK branch. At present, there is a notable trend towards establishing subsidiaries of foreign banks in Britain.

With regard to Australian banks located in Britain, the Bank of England relies on home supervision by the Reserve Bank of Australia. Standard returns of information are required by the bank, and issues such as quality of asset portfolios, provisions for bad and doubtful debts and liquidity are of concern to the Bank in meeting its statutory obligations of supervision.

The payments system

The London-based inter-bank clearing systems are administered by three separate companies operating under an umbrella organisation, the Association for Payment Clearing Services. The three clearing companies cover bulk paper clearings (cheques and credit transfers); high-value clearings for same-day settlement (the electronic nationwide service CHAPS [Clearing House Automated Payment System] and the high value paper Town Clearing, which operates only in the City of London); and

bulk electronic clearings (through Bankers Automated Clearing Services, comprising standing orders and direct debits). Membership of each of these clearing companies is open to any bank or financial institution that meets criteria for appropriate supervision and accounts for 0.5 per cent of transactions in that clearing.

All the major banks have substantial networks of automated teller machines or cash dispensers. Many banks and building societies offer home banking services whereby telephone access devices can be used to obtain account information, make transfers and pay bills.

The banks also offer cheque guarantee cards which entitle holders to reciprocal encashment facilities, up to an agreed daily amount. The cards similarly guarantee transactions with retailers up to the same amount. Uniform eurocheques supported by a eurocheque card enable transactions to be made throughout Britain and Europe.

A variety of credit cards, under the Visa and Mastercard international systems, charge cards and debit cards have been introduced by many banks. Annual fees are charged for their use.

Several major EFTPOS schemes are established throughout the United Kingdom. It is envisaged that in due course as existing networks are encompassed in a national scheme uniform rules, standards and procedures will be adopted.

Consumer and competition issues

In the past few years there has been a strong increase in competition in the banking sector, with varying effects on the consumer. Many building societies are now using the additional powers provided to them by the Building Societies Act to compete in the market for retail banking and other financial services. Competition amongst the major commercial banks and building societies for personal customers has clearly intensified. Interest-bearing current accounts, longer opening hours and a variety of card-based facilities are only a few recent examples of the benefits of competition to the retail customer.

Technological innovation has meant that new methods of payment can be offered to customers and this too has led to competition amongst innovators.

The Government has argued that over recent years, it has been competition within a flexible regulatory framework that has benefited the consumer most and it is from this source that further improvements are most likely to come.

The Government, jointly with the Bank of England, commissioned the Review of Banking Services Law and Practice in January 1987. Much of the legal framework for the provision of banking services dates back to the last century and it was not self-evident that it could cope with the rapid changes now being seen. Banking services have changed beyond all recognition since the main statutes were drafted, and it was felt that a full and coherent review of the law would be sensible and timely.

The terms of reference of the Review Committee (referred to as the Jack Committee) were limited to services directly related to personal and business customers of banks and building societies. The ambit therefore included payment and remittance services but excluded taxation, company law effecting banks, and issues related to banking supervision covered by the Banking Act and the Building Societies Act.

The chief objective of the Review was to:

> examine the law and its practical implications from the points of view of banker, customer and the general public interest in the availability, reliability, security and efficient and effective operation of payment, remittance and other banking services.

The Review Committee recognised in its report published in February 1989, that an important constraint on any proposals in the field of banking services was the need to preserve flexibility, and to avoid cramping competition and innovation by excessive regulation. Against that background it considered that changes should give priority to four objectives:

- to achieve fairness and transparency in the banker-customer relationship;
- to maintain confidence in the security of the banking system;
- *to promote the efficiency of the banking* system; and
- to preserve and consolidate the banker's duty of confidentiality to his customer.

To achieve these objectives the Review Committee considered the two main regulatory options, self-regulation and statutory control. It considered that as a first step there should be reliance on some form of regulation by the industry itself. Only if the industry showed itself unable to produce adequate rules would there be a case for imposing regulation from outside. Codes of good practice were considered as possible useful measures short of statutory regulation.

The Review Committee considered legislative measures might be appropriate in some circumstances, for example, the protection of weaker parties, the clarification of existing case law, or the elimination of confusion and anomaly. In addition, legislative measures might be needed to bring the law up to date with modern developments in banking practice and to provide backing, if necessary, for a code of banking practice. The Review Committee found that, in general, banking services law continued to provide an adequate legal framework and there were no major deficiencies or gaps. Even so, there were a number of areas where the law could be usefully clarified or tightened up.

In responding to the report, the approach favoured by the Government was to build on competition for banking services, buttressing that, where necessary, with a voluntary rather than a statutory code of banking practice. Where existing legislation or case law had worked well and was not in doubt, no changes were proposed. But legislation would be presented, when other pressures on the legislative timetable permitted, to clarify and update the law in a number of areas.

The Government fully endorsed the recommendation that representatives of the banks and building societies should draw up and promulgate a non-statutory statement of best practice. The Government believed it was desirable that the code should specify that customers would be given information in clear and simple language about the terms of their contract with the banker and the rights and obligations that apply on both sides; customers should be told of the rights to privacy which the law already affords and the very limited circumstances in which any information about their personal finances may be passed on; how to lodge a complaint if it proves necessary, how such complaints will be dealt with, and how matters may be referred to the relevant Ombudsman; they should be told what banking charges may be levied in what circumstances; and they should be given a simple explanation of the timing of the clearing cycle and when they could normally expect a cheque to be cleared.

The Government saw no need to codify the present rules on confidentiality in statute, but believed it was desirable that the code of banking practice should inform banks' customers of the rules' existence. The code should lay down good practice on the use of information for marketing purposes and the procedures for passing information to credit reference agencies.

The Government proposed to leave the present Ombudsman schemes as they were. Legislation would be introduced to:

- extend to all payment cards the current 50 pound limit on customer liability for losses (which applied only to credit cards) and to ban the unsolicited mailing of cards and PINs;

- clarify the present unsatisfactory position of crossings and markings on cheques; and

- allow for truncation of cheques, to amend and update the Bills of Exchange Act and to deal with a number of other detailed points raised by the Committee.

Banking and financial institutions in Germany

Germany's banking system is generally deregulated in nature. Some 4700 banks operate in Germany - the majority being co-operative or savings banks. Of these, about 550 are domiciled in the region that comprised the German Democratic Republic. Over 1000 private banks conduct business, and the 'big three' are the Deutsche Bank, Dresdner Bank and Commerzbank.

As with other European countries, the Post Office is empowered to conduct a banking function. Two types of Post Office banking are available:

- Savings system which collects deposits, permits a small overdraft facility and pays interest determined by the markets (2½-3 per cent); and

- GIRO system, whereby accounts are held for normal banking transactions. Interest is not available, and low fees are charged for individual transactions.

All enterprises which conduct banking business within the meaning of Section 1 of the Banking Act on a scale which requires a commercially organised business undertaking, are subject to the Banking Act. It does not matter whether the bank is German or foreign-owned. Branches of foreign enterprises are deemed to be of equal status to domestic banks. Moreover, some specialised banks such as mortgage banks, ship mortgage banks, building and loan associations and investment companies are subject to special laws in addition to the Banking Act. Savings banks must comply not only with the Banking Act but also with savings bank laws passed under Lander legislation.

Any person who wishes to operate a bank requires a licence from the Federal Banking Supervisory Office. The licence may be limited to certain types of banking business. No specific legal form for banks is stipulated in the Banking Act. The licence may be refused only for the reasons listed in Section 33 of the Banking Act, eg if the managers lack the requisite personal or professional qualifications or if the bank does not have at least two managers (principal of dual control). The amount of start-up capital (minimum capital) required is determined by the Federal Banking Supervisory Office. At present, DM 6 million is normally needed to conduct deposit business.

Prudential supervision

The legal basis for bank supervision in Germany is the Banking Act. The Act was introduced in 1961, creating the Federal Banking Supervisory Office. The Act is aimed at safeguarding the viability of the banking industry and seeks to fulfil this aim while paying due regard to free market principles, ie the entire responsibility for business decisions rests with the banks' managers. The activity of banks is restricted only by quantitative general provisions and the obligation to disclose their books to the supervisory authorities; the supervisory authorities do not intervene directly in the banks' individual operations.

Bank supervision is carried out by the Federal Banking Supervisory Office in co-operation with the Deutsche Bundesbank (the central bank). The Federal Banking Supervisory Office reports direct to the Federal Minister of Finance. The participation of the Bundesbank is necessary since the Federal Banking Supervisory Office has no substructure of its own. It is only the Bundesbank system, with its main offices and branch offices, that permits efficient and cost-effective supervision at the local level of banks in the Germany.

There is a clear division of functions between the Federal Banking Supervisory Office and the Bundesbank in the area of bank supervision. Sovereign functions, eg the issuing of administrative acts, are the responsibility of the Federal Banking Supervisory Office. Before issuing general regulations, the Federal Banking Supervisory Office must confer with the Bundesbank. The degree to which the Bundesbank is entitled to participate is graduated according to the extent to which these regulations affect its functions. Thus, when issuing principles concerning capital and liquidity, the Federal Banking Supervisory Office is required to reach agreement with the Bundesbank, while in other cases the Bundesbank has merely to be consulted.

The Act amending the Banking Act which came into force on 1 January 1985 introduced a consolidation procedure for bank supervision purposes in addition to the existing supervision of individual banks. Until that time, the banks could build up credit pyramids through their subsidiaries without any increase in the parent bank's capital base and thus bypass the restrictions on business which are based on the bank's capital. The consolidation includes:

- the assessment of the adequacy of the liable capital;
- the application of the regulations governing large loans; and
- regular surveillance on the basis of consolidated monthly returns.

By Principle 1 of the Banking Regulations, a bank's risk assets should not exceed 18 times its liable capital. Section 10 of the Banking Act defines what is to be regarded as liable capital. Risk assets comprise financial swaps, forward contracts and option rights as well as loans and participating interests. For calculating the

Principle 1 ratio, loans are weighted in accordance with various risk groups. Loans to domestic public authorities are deemed to be risk-free and are not included. Financial swaps, forward contracts and option rights are converted into loan equivalents in accordance with their periods to maturity and included in the denominator at the weight for loans, but not at more than 50 per cent.

The parent banks of banking groups must ensure that Principle 1 is complied with on a consolidated basis, too. The consolidation must include all domestic and foreign subsidiaries as well as leasing and factoring companies in which the parent bank has an interest of at least 40 per cent, or over which it can exercise a controlling influence.

To enable the banking supervisory authorities to conduct a regular analysis of the banks' business, the latter have to submit monthly returns to the Bundesbank. The Bundesbank passes on these returns, together with its comments, to the Federal Banking Supervisory Office. The parent bank of a banking group must submit both its own monthly return and a pro rata consolidated monthly return for the group.

The Federal Banking Supervisory Office and the Bundesbank have no auditors of their own; instead, the banks are audited by independent certified auditors whom they select themselves and who, in their audits, have to comply with detailed auditing guidelines laid down by the Federal Banking Supervisory Office. Section 29 of the Banking Act spells out the duties of the auditors. While not having their own audit capacity, the Federal Banking Supervisory Office can have audits undertaken by external certified auditors if considered necessary.

The reports on audits carried out by the deposit guarantee funds provide further information. These reports must likewise be submitted to the supervisory authorities immediately.

The supervisory authorities must have the possibility of intervening if prudential requirements have been breached. The measures permitted in the case of inadequate capital or inadequate liquidity are set out in Section 45 of the Banking Act. If the fulfilment of a bank's obligations to its creditors is actually endangered, the Federal Banking Supervisory Office may take measures pursuant to Section 46ff. of the Banking Act. Revocation of the licence is possible as a final resort.

Deposit guarantee schemes

Virtually all banks which conduct deposit business belong to one of the deposit guarantee funds set up on a voluntary basis by the banking associations. The fund established for the commercial banks aims primarily at protecting depositors, while the schemes operated by the savings bank and credit co-operative sectors are designed to avert member banks' insolvency.

Protection encompasses both deposits in Germany and those at branches abroad, irrespective of the currency in which they are denominated and of whether the creditors are residents or non-residents.

Although, in the case of public savings banks, responsibility for indemnifying depositors ultimately rests with the local authorities (eg town, district) which set up the savings bank, given the existence of what is known as 'guarantors' liability', the regional savings bank and giro associations have nevertheless set up guarantee funds.

The credit co-operatives' by-laws provide for a limited obligation of members to pay up further capital when called. The guarantee scheme operated by the credit co-operative has, however, ensured up to now that not a single insolvency has arisen in the credit co-operative sector.

In order to prevent liquidity crises in the wake of bank failures, the Deutsche Bundesbank and the German banking industry joined forces to set up the Liquidity Consortium Bank in 1974; this Bank grants, as and when necessary, liquidity assistance to banks of unquestioned soundness.

Foreign banks

Overseas owned banks exist as both subsidiaries and branches in Germany. Prudential supervision is administered by both Germany's regulatory authorities and the home country. At present most discussion is centring on the European community post 1993, and as indications are that as it is too expensive to establish retail networks, the search for market niches will continue.

Adoption of Basle conventions in respect of capital adequacy ratios, limits on non-banks, company holdings and the like is tending to produce a more regulated financial environment than in the past.

Financial conglomeration

As in most European countries, financial conglomerates are developing in Germany. Under German law, a non bank financial institution must be a subsidiary in a separate company, although that company can be owned by a bank. Life insurance companies, building societies, mortgage banks etc are common financial intermediaries being fostered by banks.

The question of the prudential supervision of the conglomerates is being discussed in depth. Conferences in Brussels and Basle since 1990 have concentrated on whether establishing one supervising authority is appropriate in Germany. Thus far German authorities have preferred to separate bank and non-bank supervisory institutions. For example, the Federal Supervisory Office for Insurance Companies covers these activities.

Consumer and competition issues

Banks generally are well regarded in Germany. Because of strict anti-cartel laws, margins are low. Fees and charges are, by Australian standards, high and are becoming an increasing part of bank profits. No government impediments exist for banks recovering costs through this mechanism. User pays principles are the basis of such fees and charges, although some criticism has been levelled at banks in regard to transparency issues. All banks are required to advertise conditions of service, terms etc in the bank premises.

To date, no banking Ombudsman scheme is operational. Most financial authorities believe its creation is inevitable, particularly since pressure is being applied from other European community members. Consumer organisations are similarly pressing for this scheme to be developed.

Banking and financial institutions in Switzerland

Switzerland's role in world finance far exceeds its economic size and role in world trade. Domestic saving is high relative to the demand for capital investment at home. Swiss banks specialise in funds management, international lending and securities issue. Along with the favourable political, economic and legal framework, the success of the Swiss financial market depends on its flexible banking structure and the strength of its financial institutions.

Switzerland's three major universal banks (Union Bank of Switzerland, Swiss Bank Corporation, and Credit Suisse) count as special strengths a solid capital and deposit base, language and management skills, sound back office support systems, flexible full-service universal banking licenses, and long experience at home and around the world. They and their subsidiaries together hold nearly half of domestic banking assets, but they are roughly equal in size and face each other aggressively in most lines of business.

While the three major universal banks attract the most attention, Switzerland is also served by some 630 other banks: cantonal, regional and savings banks, specialised trade and private trust banks, securities dealers, finance companies, and credit co-operatives. Among these are some 245 foreign-owned institutions. These banks compete with the three major banks in all lines of domestic business, and with foreign banks in Switzerland and in commercial business in both Switzerland and abroad.

In recent years, foreign banks and finance companies have been able to increase their market share. There has been a corresponding decrease in the number of regional banks and smaller banks as a result of takeovers, mergers and closures. Networking and the establishment of branches, particularly by the big three banks, is continuing.

The Swiss National Bank is the country's central bank responsible for monetary policy. The Swiss National Bank has focused on price stability over the years to provide a hard currency and relatively low and stable interest rates.

Prudential supervision

Swiss banks have had the advantage of tough but flexible regulation. The Federal Banking Commission strictly enforces a few basic laws and capital and liquidity requirements are among the strictest in the world. But otherwise, Swiss banks have been largely free to regulate themselves. Voluntary agreements, most negotiated under the auspices of the Swiss Bankers' Association, have prevented too much competition but have still allowed financial innovation.

The Commission does not normally carry out on-site inspections but relies on external auditors, whose appointment is subject to the Commission's approval. It may however, require special audits to be carried out by a different auditor.

The Federal Banking Commission is responsible only for banks, not for non-bank financial intermediaries such as insurance companies. In Switzerland, banking and insurance are completely separate, with insurance companies supervised by a Government department. Like most European countries, Switzerland adopts Basle standards in relation to capital adequacy ratios although at 10-11 per cent this is significantly higher than the minimum standard.

Foreign banks

Since the share market crash of October 1987, some foreign banks have wound back their activities in Switzerland. As a rule, foreign banks can be subsidiaries or branches. As with most European countries, the issue of reciprocity is important to Switzerland. Supervision requirements are as for Swiss banks.

Competition issues

Switzerland's financial industry has been constrained by a number of 'conventions' - agreements among members of the Swiss Bankers' Association and other specialised banking and finance groups. These agreements covered diverse aspects of banking, ranging from interest rates paid and fees charged for various services to rules for advertising.

The Swiss government recently adopted recommendations by a federal cartel commission to dismantle or modify most of these agreements, some over objections from the banking community.

Domestic Swiss banking will be more competitive by the end of 1992 when the last of the contested conventions are to be abandoned. Profit margins are being tested

and some consolidation of the financial system appears inevitable. All banks have begun to more carefully consider the costs of individual services and to adjust their prices accordingly. Some of the smaller regional and specialised banks are merging, a few into one of the three major banking groups. Other banks may become more specialised, despite their universal licenses, as they eliminate less profitable lines of business.

Consumer issues

Fees and charges for banking services are very low. User pays principles do not operate.

The Giro system of deposits/payments through post offices does not operate in Switzerland. Because of the vast branch network and developments in electronic banking, all financial services can be provided even in the smallest villages. The last two years has seen an upsurge in the use of credit cards.

Banking and financial institutions in Belgium

There are three main categories of the Belgian financial system, although other institutions play a significant role.

Banks originally specialised in short-term deposits and corresponding loans (mainly to industry). There are some 90 banks in Belgium, 65 of which are foreign-owned. The largest bank is Generale Bank, about the size of one of Australia's majors. Others are Kredietbank and BBL.

Private Savings Institutions historically had as their target client group private individuals to whom savings accounts were offered. Since 1985 they have been entitled to call themselves 'savings banks'. Funds collected by these institutions have been reinvested principally in Government stocks and mortgage loans.

Public Credit Institutions, operated by the Government, traditionally were established to perform specific tasks which the market failed to support. For example, the savings department of the General Savings and Pension Fund was charged with developing savings among lower income groups. Restructuring of these institutions is presently under discussion.

A further category with a more limited role is the Postal Cheque Office. It principally handles payment transactions. It does however, collect a considerable amount of individual and corporate side deposits which are reinvested in a variety of activities.

Other deposit-taking and lending institutions which operate in the market, although often in a less obvious way, include private companies, credit associations authorised by the National Fund for Credit to Trade and Industry; two associations authorised by the National Institute for Agricultural Credit; and municipal savings associations.

Insurance companies, pension funds, investment trusts and holding companies also operate as part of the Belgian financial sector. Whilst various insurance companies hold stakes in Belgian banks, some being 100 per cent owned, banks are beginning to sell insurance products through their dense branch network. Since 1987, when the Banking Commission authorised banks to participate with insurance companies, banks have gradually been establishing insurance offices of their own.

The Belgian financial system is currently undergoing a period of significant change associated with the necessary deregulation in advance of post 1992-Europe.

Between 1988 and 1991, major reforms were introduced to radically change the workings of the bond and money markets, and the financing of the public sector. In part, the effect has been to stimulate the banking sector which has relied on making substantial profits by financing the government's huge borrowing needs - while effectively using that entrenched position to subsidise the corporate sector through cheap loans. Other significant changes have been proposed for the regulatory environment, particularly relating to bank charges.

The National Bank of Belgium is the country's central bank and is responsible for implementing monetary policy. It operates traditionally as a lender of last resort, although it has scaled down this activity in recent times. In March 1989 it introduced a new form of lending to financial institutions by the allotment, through tender, of advances with two weeks' maturity against securities and investment of commercial bills.

The Banking and Finance Commission was established in 1935 and entrusted with controlling the day-to-day activities of banks and regulating the public issue of securities. Additional powers have been given to control investment trusts, holding companies and private savings institutions as well as the state-owned bank. It will also have responsibility for public credit institutions in the near future.

Prudential supervision

The National Bank (monetary control), the Banking Commission (prudential control) and the Belgium-Luxembourg Foreign Exchange Institute (control of exchange transactions) can take regulatory action and are empowered to intervene directly and supervise.

This clear separation of powers demands a high degree of consistency in action taken by each of these bodies. In some cases, co-operation between them is provided for by the law. Thus, structural relations which the Banking Commission is empowered to impose may be issued only after obtaining the opinion of the National Bank and with the approval of the Ministers of Finance and of Economic Affairs.

The Banking and Finance Commission's primary concern in exercising its prudential or micro-economic control is with the safety of deposits. 'On the spot' control is assumed by independent 'authorised' auditors, appointed and rewarded by the Commission. These auditors check the company's accounts and ensure that it complies with banking laws and regulations. They monitor the institution's situation from the point of view of solvency, liquidity and profitability and supervise its administrative and accounting organisation and its internal control system. They submit reports to the Commission, which, on the basis thereof, may decide to specify the goals and means of the controls to be effected.

The Commission may also exert its control more directly. It can obtain all the information it requires on the organisation and the operations of every bank. It can inspect a bank and all its documents, both to verify the bank's compliance with the laws and regulations and the accuracy of the reports and returns sent to it, if it believes that there are irregularities or that imprudent or dangerous operations are being undertaken, or that the auditors are failing in their duties.

The Commission can only take account of a bank's relationship with an individual client to the extent necessary for the supervision of the bank. Neither is it entitled to interfere with tax-related matters, unless it be to eliminate 'special devices' set up with the aim or effect of facilitating tax evasion by third parties.

The Commission is empowered to impose corrective measures. It may stipulate a period within which any irregularity it comes across is to be put right. If the institution concerned fails to comply, the Commission may issue more stringent measures, including the nomination of a commissioner with special powers; the suspension of all or part of the bank's activities; or the revocation of the bank's registration.

Foreign banks

Foreign owned banks, which can choose to locate either as branches or subsidiaries, are also subject to supervision by the Belgian authorities.

Consumer and competition issues

The process of deregulation of Belgian financial services has not extended beyond eliminating the setting of interest rates. The setting of fees and charges are subject to approval of the Minister for Finance, and currently approval exists only for fees on credit and debit cards.

Government stipulation means that fees and charges can only be imposed where social obligations are met. By law no one can be excluded from the banking system.

A Banking Ombudsman scheme operates, but is only accessible to individuals. Its decisions are not binding on either party. However, the Savings Banks have established a Tribunal on which consumers are represented, and its decisions are binding.

Recent changes to Belgian law are having a major effect on non-bank financial institutions. Banks may now operate in the stock market, insurance and superannuation, and may buy them or take them over. Often, a holding company is used as the appropriate takeover vehicle. At present, discussion is occurring in respect of prudential supervision, particularly as financial conglomerates are emerging.

Disclosure standards are being pursued in line with European community standards. Transparency, particularly in regard to documentation, and the development of consumer legislation, is seen as being an important next step in the Belgian financial system.

Banking and financial institutions in France

There are six major types of credit institutions in France:

- The major banks are the largest, with a market share of around 40 per cent. The largest banks are Credit Agricole, Campagnie Financiere de Paribas, Banque Nationale de Paris, Credit Lyonnais and Societe Generale, all of which rank in the top 30 in the world. The BNP has a branch in Australia (predating the rules on subsidiaries) and some other French banks have merchant bank operations here;
- Co-operative and mutual banks;
- Savings banks;
- Finance companies, which are subject to banking law; and
- Two types of small state institutions, including the GIRO Post Office type operation.

The Post Office and savings banks offer specific savings accounts which cannot be offered by the major banks. These accounts have a tax-free interest rate of 4.5 per cent and are thus both attractive to the depositor and a cheap source of funds for the institutions concerned. The principal use of these funds has been to finance housing - the funds account for approximately one-third of new housing in France.

These operations are sizeable enough to exert a downward influence on house mortgage rates more generally, and make lending for housing by other institutions less attractive.

Banking and financial services in France, unlike most European community member states, are essentially regulated in terms of a large part of their operations. Government interference is apparent in respect of a number of issues, notably access of all to the banking system and consumer related matters.

In the past decade, the financial performance of French banks has worsened. Provisioning for bad and doubtful debts have been extended, and some 60 per cent of these bad debts relate to Third World indebtedness. As is the case in most western economies, there is a growing tendency for the development of financial conglomerates.

All banks are obliged to belong to the French Bankers Association (Association Francaise des Banques). It serves as an intermediary between the banks and the regulators, advises on applications for banking licences and may have delegated to it disciplinary powers in respect of banking regulations. Since 1980 it has operated a deposit insurance scheme.

Prudential supervision

The Banking Commission (Commission de Controle des Banques) is responsible for supervising banks to ensure they meet prudential standards. The board of the Commission includes representatives of the government, central bank, banks and bank staff. On-site examinations are conducted by the Banque de France (central bank) on behalf of the Commission and may extend to affiliates of a bank or companies holding a controlling interest in it. The Committee on Bank Regulations establishes prudential rules. The Committee on Credit Institutions (Conseil National du Credit) is responsible for the licensing of banks.

The Commission has jurisdiction over the nationalised banks but not some other government-owned credit institutions nor the savings institutions (caisses d'Epargne) which are governed by separate legislation.

Foreign banks

Foreign-owned banks are able to operate in France as bank subsidiaries and branches. It is argued that branching provides access to the entire financial strength of the whole banking group, and establishment costs of banks are accordingly reduced. The French Bankers Association has viewed with concern recent US proposals to require foreign banks to establish holding companies as a means of obtaining access to that market.

Consumer and competition issues

In the 1980s the European Community viewed bank fees and charges as part of a wider consumer/banking brief as they represented a service. Interest rates and their setting were left to individual countries. However, the European community is now beginning to examine the competition aspects of setting interest rates, and this could have a profound impact in France.

The Council of Competition is charged with the responsibility of examining whether banking practices violate the competition laws. A recent problem confronting the banks concerned the development of an agreement on how the banks' common payments system for credit cards would operate. For example, it was proposed that a common set of fees would have to be charged for the use of one bank's credit cards through another bank's machine.

However, setting a common set of fees could be seen as a restrictive trade practice. In developing the final agreement, the Council has imposed a lot of constraints which the banks view as hampering their activities.

The United States financial system

The US financial system is quite different from that of Australia. Most noticeably, there are thousands of banks operating within small regions and in recent years more than a 100 of them have been failing each year. Industry estimates are that 180 banks could fail in 1991 and a similar number in 1992. Non-performing loans now account for 3 per cent of bank 'assets'.

The largest American bank is Citicorp. The East Coast-based Bank America and California's Security Pacific, two of the five largest banks, have just announced the biggest merger in banking history. The new bank, to operate under the Bank America name, will be the second-largest in the US. This follows the merger of the then sixth and tenth largest banks, Chemical and Manufacturers Hanover, and the seventh and eighth largest, NCNB and C&S/Sorvan, earlier this year. It is anticipated that further mergers will occur as rationalisation takes place in the US banking industry.

There are also savings and loan associations, (or 'thrifts') which are similar to our building societies. These too have run into great difficulties, largely by lending at fixed rates and borrowing at floating rates (along with some dubious loans to their directors), with a subsequent cost to the taxpayers estimated at $500 billion.

Credit unions have a 30 per cent share of the US retail market. They pool their funds into a central body (corporate central) on a State basis. The corporate centrals do not offer protection to member credit unions or police their activities.

The larger American banks have not been performing well. One in five of the 362 banks whose assets exceed $1 billion made a loss last year and their overall return on assets was only 0.4 per cent. An over-exposure to property has caused problems.

Some restrictions on banking activities also have had an effect on the success of banks. The *Glass-Steagall Act 1933* prohibited banks from involvement in securities dealing and underwriting. This has had a significant effect on banks' ability to compete for deposits. Other legislation, such as the McFadden Act, restrict banks to only operating within one state. Consideration is being given to the removal of these barriers following initiatives by Treasury Secretary Brady and reports by congressional committees. However these reforms have been opposed by small banks and investment firms, and by consumer lobbies who are concerned about undue concentrations of power.

Establishment of a bank requires approval by either the Office of the Comptroller of the Currency (OCC) or a state regulatory authority. While there are no ownership restrictions, any change of control requires the approval of the OCC. A major factor in the consideration is whether the proposed owners would be a source of financial and managerial strength to the bank.

The main industry body is the American Bankers' Association. It represents the largest number of banks (members have 95 per cent of commercial bank assets in the US). The Association offers affiliate membership for foreign banks, but its primary responsibility is to the American Banks. It has a $65m a year budget and over 450 people work for the organisation. It is both a trade organisation as well as representing the industry to the legislature and the press. The Association also has an educative and training function within the industry. It has a relationship with 52 State banking associations.

The central bank, the Federal Reserve System, has broad responsibilities for achieving the United States' economic and financial goals through its ability to influence money and credit in the economy. It implements monetary policy by open market operations in government bonds.

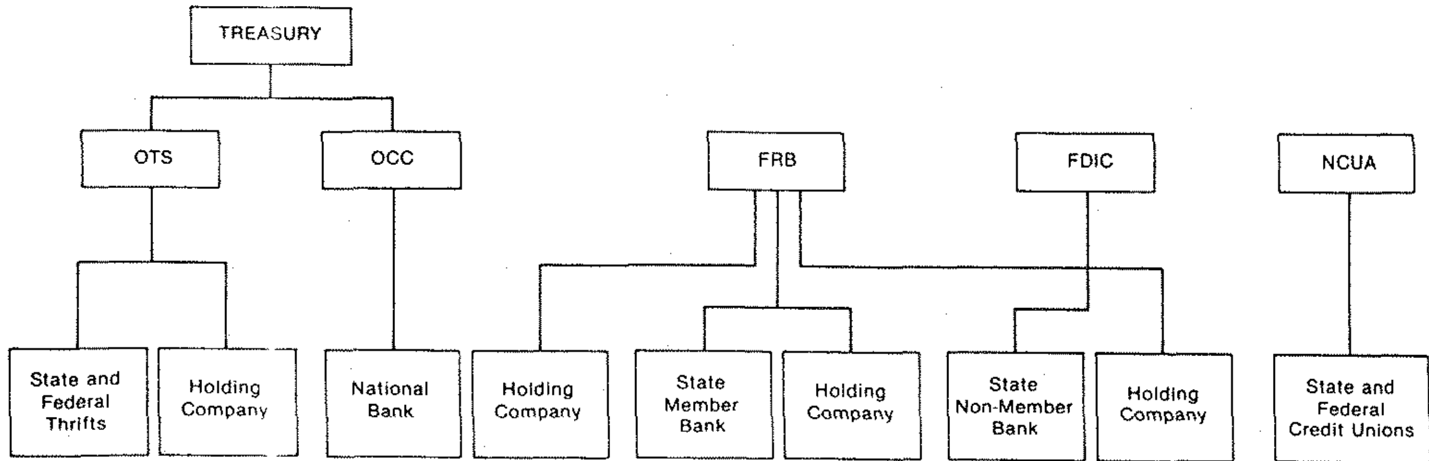
The Federal Reserve is run by a Board of Governors. It is an umbrella organisation and much of the operational work is done by regional central banks, of which the most important is the Federal Reserve Bank of New York.

In addition to its monetary policy responsibilities, the Federal Reserve has supervisory and regulatory functions in relation to activities of various banking institutions. As these responsibilities are shared with other regulatory bodies, there is a detailed discussion of the supervisory framework in the US in the next section.

Prudential supervision

The prudential supervisory structure in the US is complex. There is a myriad of supervisory bodies who tend to be much more intrusive than Australian regulators. The diagram on the following page is a simplified explanation of who looks at whom.

Current Federal Regulation and Supervision of Insured Depositories and their Holding Companies



The OCC supervises the largest number of banks. It operates as part of the Department of the Treasury.

The Federal Reserve is also important as, even when it does not supervise a bank, it may become involved in a rescue as it is empowered to advance funds to a troubled bank. The Federal Reserve also is the primary supervisor of bank holding companies. It has the authority to supervise foreign banks but delegates this to the OCC.

Savings and loans are supervised by the Office of Thrift Supervision (OTS).

State-chartered banks are supervised by both the Federal Reserve and state agencies. In 1990 the Federal Reserve conducted around 3000 bank examinations and held a further 800 meetings with bank directors. It also conducts on-site inspections of banks' funds management subsidiaries.

The Federal Reserve is phasing in the Basle capital requirements. Banks must currently have core capital of 3 per cent of risk-weighted assets, rising to 4 per cent by the end of 1992. The Federal Reserve has been involved with further work on international convergence of supervisory standards under the Basle aegis. It has issued supervisory guidelines to banks under its purview on interest rate risk.

The various regulators are trying to improve the co-ordination of their activities. In March 1991 the OCC, Fed, Federal Deposit Insurance Corporation (FDIC) and OTS issued a joint policy statement covering the accounting treatment of non-performing loans and regulatory issues arising therefrom. Recently there has also been a trend to joint or co-ordinated on-site examinations of banks. The Fed, the OCC, FDIC, OTS and the National Credit Union Administration are members of the Federal Financial Institutions Examination Council.

Regular on-site examinations have been a central element in prudential supervision in the US. The primary objectives are to assess a bank's condition and management's quality, to verify compliance with regulations and identify areas where corrective action is required. Banks are rated on 'CAMEL' criteria (ie. Capital, Asset quality, Management, Earnings and Liquidity). This has been most formalised by the OCC. They have developed 'BERT' (Bank EXPert) which is a computer system which analyses returns from banks. It was developed from lengthy interviews with experienced supervisors and seeks to replicate their expertise. Every large US bank has an annual audit by Certified Public Accountants and since 1977 the OCC has relied more on their work rather than duplicating it.

Deposit insurance system

The Federal Deposit Insurance Corporation (FDIC) was established in 1933, *following the failure of a number of banks during the depression, to provide* protection for bank depositors. It is run by a three man board appointed by the US

President and has the power to borrow up to $3 billion from the Treasury. It raises funds by levying banks on gross deposits. While it aims to maintain the insurance fund at 1.1-1.4 per cent of insured deposits, recent calls reduced its coverage to 0.7 per cent at the end of 1989. To date, the premiums have covered all difficulties.

Reports from the General Accounting Office and the Congressional Budget Office warned that the fund was too thinly capitalised to withstand a recessionary level of bank failures. A proposal to re-capitalise the fund is among the banking reform issues being considered, and likely to be agreed, by Congress.

Some banks are obliged to insure with the FDIC and others join voluntarily. It covers individual deposits up to $100,000 at each insured bank. (The Federal Savings and Loan Insurance Corporation provides a comparable facility for S&L's.)

The FDIC has considerable powers to supervise and inspect insured banks, either directly or in co-operation with other federal agencies. If the FDIC determines an insured bank is unsound it may revoke its insurance.

The FDIC may provide direct assistance to a failing bank to keep it open and help another bank take it over. After a failure the FDIC may assist another bank in taking over the deposits and loans. As a last resort the FDIC will pay off the insured deposits of the failed bank. In 90 per cent of the cases of failure, both the insured and uninsured depositors have been paid out. The FDIC has sought to provide funds quickly in the case of bank failure to maintain confidence in the financial system.

Among issues currently being considered in relation to deposit insurance are:

- limiting insurance coverage to provide better depositor discipline;
- higher capital requirements;
- alternative deposit insurance structures, such as private insurance; and
- risk-related premiums.

Competition issues

The US Department of Justice has important roles in relation to competition issues concerning banks. The first is an anti-trust role which has two elements. The department participates in the review of bank mergers with other organisations such as the Federal Reserve, FDIC and OCC. The Clayton Act bars a merger if 'the

effect of such acquisition may be substantially to lessen competition or tend to create a monopoly'. A quantitative measure (the 'Herfindahl-Hirschman Index') is often used in making such judgements. Divestitures of branches are often negotiated to eliminate competition concerns. The Department reviews about 1000 bank transactions per year and only about 2 per cent of these raise issues of concentration.

The Department also looks at the unreasonable restraints on competition aspects of the anti-trust legislation in relation to banking. The major issues raised have been in electronic banking and the rules of conduct in relation to these (such as managements for new banks joining networks).

As one of the key spokespersons for the administration on competitive issues, the Department has been involved in the new banking legislation. It supports the increased inter-State banking provisions to allow banks to diversify their assets and allowing banks more freedom to operate in securities markets. It also is looking at risk sensitivity in terms of the deposit insurance reforms.

The Federal Trade Commission (FTC) also is concerned with issues of competition. The major act enforced by the Commission is the Federal Trade Commission Act. This Act provides for enforcement against deceptive or false practices. However, the Commission has no direct responsibility for banks or insurance. It is responsible for financial institutions not covered by other regulatory agencies. The FTC also enforces 'truth in lending' law, the regulatory details of which are spelled out in Regulation Z.

An aspect of 'truth in lending' is the requirement for disclosure of an annual percentage rate (APR) in lending. APR includes both interest rates and fees and charges and is designed to provide to the consumer the actual cost of the loan. While the APR is not necessarily the only figure of interest to consumers, it does give a good overall idea of the cost of finance. Lenders complain about the APR because they claim that it is difficult to explain such a difficult concept to consumers in advertising. The FTC has not conducted any studies on the usefulness of APR.

Foreign banks

Foreign banks in the US can operate as branches or subsidiaries. They have very little of the domestic retail market (less than 5 per cent). There has been some niche marketing (particular ethnic groups) and some takeover of retail branches. Foreign banks have about 30 per cent of commercial banking.

Bank charters in US are granted for a State and this can be a limiting factor for foreign banks. However, the changes to cross border banking proposed in the banking reform legislation will probably make little difference to foreign banks as they still need a branching structure and recognition to be successful in retail banking. As US banks merge, their credit ratings may exceed foreign banks, making it harder for the latter to complete.

Foreign banks are subjected to a multitude of regulators. A foreign bank is audited from a wide variety of sources. These include:

- continuing internal audit;
- a complete regular audit from its central office;
- external auditors;
- Office of the Comptroller of the Currency conducts an audit once a year;
- the State regulators undertake regular audits; and
- the Federal Reserve undertakes an audit once a year.

Foreign banks in the US are represented by the Institute of International Bankers. The Institute's position on foreign banks status is that branching is preferable in the context of global banking. It gives access to world wide capital as opposed to a subsidiary which is limited to the subsidiary's capital, and so allows larger loans to be made.

Consumer issues

An area of current consumer concern is with the accuracy of information held on consumers by credit reference bureaux. It has been found that the bureaux could not keep up with the amount of information and that errors were occurring. There was considered to be a need for consumers to have access to information held about themselves and to ensure that the information is accurate. A further concern was the extent to which this information could be passed on to other agencies.

The trend towards packaged products in banking is making it very difficult for the consumer to find out the price of a product. Greater disclosure doesn't necessarily reduce the complexity of shopping for the consumer. Consumer organisations do not have the resources to provide comparative information.

The current issues in credit cards concern disclosure - interest rates, fees and charges, grace periods, etc. There is also a lot of fraud in the credit card area and this is being looked at. Credit cards have not followed the fall in market interest rates.

There is an interest in having truth-in-savings legislation to guarantee three important protections in relation to disclosure on savings accounts:

1) advertising would have to include certain basic information about accounts;

2) terms, conditions and fees would have to be disclosed before accounts are opened, and adverse changes disclosed before they came into effect; and

3) institutions would be prohibited from calculating interest on only part of the funds on deposit.

The Federal Reserve is the only central bank in the world with a large involvement in consumer issues. It has responsibilities for regulating and monitoring various areas of consumer financial services through its Division of Consumer and Community Affairs. Some of the consumer legislation involving the Fed covers:

- truth in lending (regulation Z) covering the disclosure of the cost of credit;

- rules governing the issuance and use of credit cards;

- Equal Credit Opportunity legislation (regulation B) which bars certain forms of discrimination in the granting of credit. Under this legislation, examiners compare 'actual' loan decisions with banks' stated criteria;

- *Community Re-investment legislation (regulation BB), designed* to provide access to banking services through all levels of the community irrespective of income;

- Home Mortgage Disclosure legislation (Regulation C) which requires banks to disclose the percentage of loan applications approved by region, sex, race etc; and

- electronic funds transfer (regulation E).

The Federal Reserve has a Consumer Advisory Council with 30 members with staggered three year terms, including bankers, consumer advocates, state officials, and academics. Its three meetings each year are open to the public and the agenda is planned with the advice of the Federal Reserve's Division of Consumer and Community Affairs.

Parliamentary scrutiny of banking issues

There are 22 House and 15 Senate standing committees in Congress, ranging in size from 7 to 51 members. Each committee has several sub-committees. Representatives normally belong to one or two committees and Senators to two or three. The majority party is also in the majority on each committee. By tradition, the chairman of each committee is almost always the majority party member with the longest number of years of continuous service on the committee.

The two committees concerned with banking issues are the House Committee on Banking, Housing and Urban Affairs and the Senate Banking, Housing and Urban Affairs Committee. The committees do both legislative and oversight work. The committees operate autonomously. There is no mechanism by which the Executive could give a reference to a committee. Each subcommittee of the committees has its own staff, appointed by the Chairman and ranking minority member.

The committees consider legislation either proposed by the Executive or by a Congressman. Hearings are held on the legislation and a wide range of interest groups are called to give evidence on it. The legislation is considered by the relevant sub-committee and 'marked up' or amended with amendments being voted on by the sub-committee. After clearing the sub-committee, the legislation goes to the full committee for ratification. Finally the proposed legislation (along with any dissenting reports) goes to the House or Senate for approval (possibly after review by other relevant committees). Different pieces of legislation can be approved by both Houses. A Conference Committee of the two Houses then endeavours to resolve the differences and agree to a single piece of legislation. If the Conference Committee produces a compromise bill, this must be passed by both Houses. It can then be vetoed by the President (although his veto can be overridden by a two thirds vote in Congress).

After legislation is passed the committees adopt a scrutiny role in overseeing its implementation by the Executive.

Both committees are currently considering a package of reforms which would (amongst other things) re-capitalise the FDIC and reform the deposit insurance scheme, allow banks to expand interstate and into other financial activities and give the Federal Reserve more power to regulate foreign banks. It was considered that only a small number of the reforms would be legislated. In describing the complexities of the US legislative system and the chances for a major piece of reformist legislation to emerge from the current consideration, one staff member commented that 'ninety per cent of the things we do achieve nothing, but ten per cent of the things change the world'.

The Canadian financial system

The Canadian financial system bears a strong resemblance to that of Australia. A handful of major chartered banks with extensive branch networks stretching across a vast country dominate the financial landscape. Canada also shared many of the experiences of Australia; high inflation in the 1970s leading, after a lag, to higher and more volatile interest rates, banks being deregulated in the 1980s and foreign banks allowed to enter while Canadian banks spread internationally, employment in banking boomed and banks faced problems with bad debts in the late 1980s. A difference was that in Canada many of the bad debts resulted from lending to the third world.

Canadians have customarily referred to their financial system as having 'four pillars': banks, trust and loan companies, insurance companies and investment dealers. There has been a weakening of the barriers between these areas during the 1980s, particularly in Ontario, and banks now own investment dealers and there are ownership links between insurers and trust companies.

In 1991 the federal government released proposals to lift many curbs on ownership. Canadian banks, insurance companies and trust and loan companies will be able to own each other. Foreign insurance and securities firms will be allowed to set up bank subsidiaries. However, there is much discussion on whether this should go further. The regulatory tradition had been to keep the activities separate, primarily to avoid conflicts of interest. Banks have sought the removal of these restrictions so as to use their computer technology to bring 'one stop financial shopping' to a broader range of the community. Consumers have expressed concern about the privacy implications of this and questioned whether one organisation would have the expertise to cover all these areas. It is debatable whether the total removal of the barriers would lead to more or less competition, as a small number of conglomerates may emerge in control of all the financial system.

The six major banks are the dominant force in the Canadian financial system. They have a market share of the banking industry of around 90 per cent, having taken over many of the regional banks. The market share of foreign bank subsidiaries' (of which about 60 operate in Canada) peaked at 10 per cent. It may now rise again following the free trade agreement with the US. Co-operatives ('caisses populaire' and 'credit unions') have grown rapidly but are still smaller than both the banks and trust and loan companies.

The big six Canadian banks are Royal, CIBC, Toronto-Dominion, Bank of Montreal, Bank of Nova Scotia and National Bank of Canada. The largest of them rank among the largest 100 banks in size on a global basis, making them only a little larger than the four Australian banks. They all operate extensive branch networks across the country. All earned profits of over C$500 million in 1990 but analysts tip falls due to bad debts in 1991.

Ownership of banks is regulated. No individual or corporation may hold more than a 10 per cent stake in a large (schedule A) bank although smaller (schedule B) banks may be more closely held. Canadian banks are not permitted to own more than 10 per cent of an industrial company and individual loans are restricted to 10 per cent of the bank's capital. These requirements have been reviewed as part of the agenda for reform of the Bank Act.

The Bank of Canada is the central bank. Like the Bank of England, it was originally privately-owned but since 1938 has been a government instrumentality. It is run by a 15 member board with representatives from all the provinces. As in Australia, the Governor chairs the board as well as managing the Bank.

The relationship between the Bank and the government is very similar to that in Australia. The Bank has day-to-day autonomy but consults with the government on overall policy. In the event of an irreconcilable difference of view the government may direct the Bank to take a course of action but this must be disclosed to parliament (a provision never invoked).

The primary function of the Bank is to formulate and implement monetary policy. The major tools used are reserve ratios applying to the banks and open market operations (buying and selling government bonds). In line with prevailing international fashions, the Bank of Canada targeted a monetary aggregate from 1975 to 1982. It now monitors a range of financial and economic indicators, especially the exchange rate, in setting monetary policy.

Other duties of the Bank of Canada include the administration of public debt and the issuance of banknotes. It also chairs the Canadian Payments Association.

The Bank of Canada is not involved in prudential supervision but has broad powers to extend loans to distressed banks against a wide range of collateral.

In Canada the federal government is primarily responsible for regulating banks while it shares the regulation of trusts and insurance companies with the provinces. The policy responsibility lies with the Department of Finance. The Department is responsible for policy development with respect to the regulatory framework for financial institutions. In this it liases with the Bank of Canada and the Superintendent of Financial Institutions. It also leads work on trade in financial services, measures to prevent money laundering and harmonisation of federal and provincial legislation covering financial institutions.

The Bank Act has a sunset clause, requiring that it be reviewed every ten years. The 1980 review, for example, saw the entry of foreign banks. Proposals for reform have emerged from the latest review. The reform agenda is based on four elements:

- integration of the financial services industry through the common ownership of institutions and extension of powers;

- a pragmatic ownership policy which checks the growth of commercial-financial links in the economy while maintaining balanced competition within the financial services sector;

- a stronger framework for prudential regulation; and

- a modern and effective supervisory system.

The main industry body is the Canadian Bankers' Association (CBA). The CBA provides information, research, advocacy, education and operational support services to members.

Prudential supervision

The primary body in Canada responsible for prudential supervision is the Office of the Superintendent of Financial Institutions (OSFI). It was formed in 1987 by the amalgamation of the Inspector General of Banks and the Department of Insurance and given broadened powers and responsibilities for the supervision of federally regulated financial institutions. The Office is responsible for supervising and regulating banks, insurance, trust, loan and investment companies that are federally licensed or registered. It also supervises federally regulated pension funds.

Provincially chartered institutions are regulated at the provincial level. However, as an agent of the Canadian Deposit Insurance Corporation or through federal-provincial agreements, the Office supervises some provincially chartered institutions.
OSFI's goals primarily are to monitor financial institutions and pension plans for solvency, liquidity and compliance with legislation, regulations and OSFI guidelines and act as required when problems emerge. It also aims to contribute to a safe and sound regulatory framework of legislation, regulation and guidelines through policy development.

OSFI is required to conduct at least an annual examination of each bank. The examination concentrates on the major areas of risk exposure in each institution. The critical area of risk is the loss of asset quality. The approach to examination is to send in a team of people which overcomes any problems of a 'club' like relationship developing between the examiners and the bank. The teams comprise a mix of more and less experienced examiners. Some of OSFI examiners are senior ex-bankers who are hired on a consultancy basis. As well as these experienced bankers, examiners come from new ranks of recent graduates.

The results of the examination are discussed with senior officers of the institution. The findings are reported to the institution's Board or its Audit Committee. As well as the on-site examinations, regular monitoring of the returns and other information provided by institutions occurs. Close contact is also maintained with the institutions, auditors, industry bodies and other regulatory organisations.

Other organisations have roles and responsibilities in relation to supervision. While it is not the supervisor of banks, the Bank of Canada has a role in supervision through its capacity as a lender of last resort. In making any decision to provide lending of last resort, the Bank consults with the Superintendent of Financial Institutions about that bank's solvency.

CDIC receives the reports of OSFI's annual examinations. On the basis of these reports, CDIC does a risk assessment of each financial institution and if any are considered risky discussions, take place with them. CDIC has a role in resolving problems with institutions. CDIC also can have examinations undertaken of institutions by consultant examiners in situations where it may have a pay out.

Co-ordination of the regulatory agencies takes place through the Financial Institutions Supervisory Committee. The Committee is chaired by the Superintendent and includes the Governor of the Bank of Canada, the Deputy Minister of Finance and the Chairman of CDIC. Matters addressed by the Committee include issues of prudential regulation, the practices and condition of individual institutions and the co-ordination of action in cases where there are solvency problems.

Deposit insurance system

The Canadian Deposit Insurance Corporation (CDIC) was established in 1967. It insures deposits of up to C$60 000 per person with one institution, with initial term to maturity of five years or less, in banks and some trust and loan companies. About 48 per cent of all deposits in member institutions are covered, but in some small institutions coverage could be up to 95 per cent. CIDC's operations are funded by a flat annual premium equal to 0.1 per cent of insured deposits, levied on member institutions. Premiums bring in around C$300m per year.

The objectives of CDIC are to:

- provide deposit insurance;
- promote standards of sound business and financial practices for member institutions;
- promote the stability and competitiveness of the financial system; and
- minimise CDIC's exposure to loss.

The CDIC has met all of its obligations, although the two bank failures in the mid-1980s necessitated a sizeable borrowing from the federal government which has still not been fully repaid. The deficit has been reduced from C$1245m in 1986 to C$643m at the end of 1990. As at the end of 1990, there were 17 failed member institutions being administered by liquidators on behalf of CDIC.

The CDIC has the power to inspect, acquire assets from or lend to a member institution, prescribe standards of sound business and financial practices or act as liquidator. In practice, the Superintendent of Financial Institutions examines banks on behalf of the CDIC (see earlier discussion).

Competition policy issues

The Bureau of Competition Policy is part of the Department of Consumer and Corporate Affairs. Its responsibility is to promote competition and efficiency through enforcing the Competition Act. The Bureau has to balance these two objectives in its consideration of particular issues. Amendments to this act in 1976 and 1986 broadened the extent to which banks were covered by it.

The Bureau is concerned with investigating practices such as price maintenance, price discrimination, misleading advertising and deceptive marketing practices. The major relevant provisions of the Act are section 45 which deals with conspiracies or agreements to lessen competition unduly, section 49 which deals specifically with banks and section 61 which deals with price maintenance. After inquiry it may refer matters to the Attorney General for action in the courts. These are criminal provisions and involve penalties of fines up to $10m.

Some of the areas being looked at in relation to the banking industry are the anticompetitive implications of the paper-based payments clearing system and the electronic payments system (INTERAC). The Bureau will be involved in current reforms to the clearing system.

Matters such as mergers (sections 91-124), abuse of dominant position (sections 78 and 79), tied selling (section 77), exclusive dealing and market restriction may be referred to the Competition Tribunal, comprising both judicial and lay members.

In assessing merger proposals, the Bureau is conscious of the potential efficiency gains. However, it has to weigh against these gains concerns about conflicts of interest or diminution of competition.

While the Bureau has responsibility for investigating mergers and anti-competitive agreements between banks in the same manner as for other companies, it can be overridden by the Minister of Finance if he certifies that the merger is in the interests of the financial system.

Foreign banks

Foreign banks were permitted to enter Canada following a review of the Bank Act in 1980. Limits were not set on the number of foreign banks entrants. Only one of the foreign banks (Hong Kong & Shanghai) had made an impact on the retail market. It has done so by acquiring some existing banks.

Foreign banks in Canada operate as subsidiaries. The arguments in Canada for foreign banks operating as subsidiaries rather than as branches are:

- there is more supervisory control over subsidiaries than over branches. Notwithstanding Basle agreements, foreign regulators may impose different standards.; and

- with branches there may be some questions as to which jurisdiction would pursue any problems that occurred.

However, the Free Trade Agreement will require US banks to be allowed to establish branches.

Payments issues

The Canadian Payments Association (CPA) was created in 1980 by an Act of the Federal Parliament. It operates Canada's national clearings and settlement system. The CPA is chaired by the Bank of Canada and membership is mandatory for chartered banks. Membership of other financial institutions is not mandated, but membership totals approximately 150.

For direct membership to the clearing system, there is a requirement to have a half of one per cent of the clearings. There are 15 direct members and about 135 indirect members. A few of the indirect clearers (who on the basis of their clearings could be direct members) have seen advantages in remaining indirect members.

Issues currently before the CPA include:

. standards for Electronic Data Interchange payments;

. working on a large-value electronic payment system:

. piloting an Electronic Funds Transfer at Point of Sale (EFT\POS) system, which appears to have been successful;

. assisting in the development of an EFT code of practice.

Cheques remain the predominant form of non-cash payment in Canada. Use of credit cards is also relatively high. They make similar use of ATMs to Australia (electronic clearings have increased to 16 per cent of total and are rising quickly).

Consumer issues

The trend in Canada has been to codify the relationship between banker and customer in statute. The banks have a preference for self-regulation, but recognise that any system of self-regulation would probably have legislative underpinning. It was the view of the Canadian Bankers Association that legislation should incorporate broad principles, with the detailed regulations being left to self-regulation.

The Canadian Bankers' Association considered that the approach of user pays combined with clear and timely disclosure in plain language is the way to introduce more efficiency into the banking system. However, it was conceded that banks mismanaged the introduction of fees, giving customers inadequate notice. Proposed amendments to the Banking Act will introduce requirements for disclosure. Many financial institutions are already complying with the proposals as though they were law. The proposals will require early disclosure of changes in fee structures. In response to the proposed legislation, banks have taken the approach of changing their fee structures annually and sending brochures to customers 60 days in advance of changes.

Consumer and Corporate Affairs compile comparable information about banks' fee charging structures on a quarterly basis.

There are two issues in the credit card area:

- the level of interest rates and the clarity of their disclosure; and
- disclosure of terms and conditions.

The Canadian Bankers' Association has been working with the parliamentary committees and federal and provincial regulators on this issue.

Canada has a wide range of credit card products - some with both an annual fee and a transaction charge, some with a transaction charge but no annual fee and some with an annual fee but no transaction charge. This allows customers to choose the product that best suits their usage. Banks are making good profits on credit cards despite loan losses and fraud. The average balance in credit card accounts is $500 and 40 per cent of customers pay off in full each month.

Banks are required to establish viable complaints handling procedures and report to OSFI on complaints made. OSFI may take particular complaints up with a nominated officer at each bank. OSFI in turn reports to the Minister and the Parliament on complaints overall. One of the parliamentary banking committees then considers the report.

The Canadian Bankers' Association has participated in a 30 person industry, consumer and governmental grouping on the development of an EFT code. The code is close to completion. It has been driven by a threat that if a code is not agreed there will be legislation. The general view is that self-regulation is the way to go. The group will review the code a year after implementation.

Work commenced on the drafting of a privacy code in 1981. A draft was completed in 1987 and comments sought from the parliamentary banking committees and the Privacy Commissioner. Alterations were made as a result of comments received and the code has now been finalised.

The question of the sharing of information between differing subsidiaries has not been addressed in the code. Individual banks may address this matter in their individual codes. The banks should produce individuals codes by the end of the year.

Parliamentary scrutiny of banking

There has been reference on a number of occasions to the role played by parliamentary committees in the scrutiny of, and consideration of issues in relation to, the banking industry in Canada. Both the House of Commons and Senate Finance Committees have a responsibility for scrutiny of the banking industry. They perform two major roles:

- to consider and refine legislation; and

- to conduct investigations into particular issues.

In terms of the first role, the committees have been reviewing the proposed banking reform legislation. They also are consulted about proposals for self-regulatory codes in the banking industry such as the recent privacy code.

Some of the general issues that have been investigated include bank profitability, user pays and credit card interest rates.

The committees have a good deal of autonomy in choosing their references. They are considered to have made an effective contribution to the consideration of banking issues in Canada.

APPENDIX EIGHT

Risk-based Measurement of Capital Adequacy of Banks

Background

The Bank's current approach to the measurement of capital adequacy of banks relates their capital to total balance sheet assets. This approach worked acceptably when Australian banks had broadly similar balance sheet structures and when off-balance sheet business was not large in relation to balance sheet sizes. Deregulation, securitisation and, in Australia's case, the entry of new banks have dramatically changed the nature of banking. They have been reflected in greater balance sheet diversity and rapid growth in the range and size of off-balance sheet business.

The Bank is now introducing a "risk-based" approach to the supervision of banks' capital adequacy. The arrangements will have specific regard to banks' off-balance sheet business. It will also take better account of the varying degrees of risk associated with their business both on- and off-balance sheet.

The Bank's approach is consistent with that agreed during July 1988 by the Basle Supervisors' Group of the Bank for International Settlements, and endorsed by the Group of Ten countries, as a basis for the international convergence of capital measurement and capital standards for banks.

General framework

The risk-based measure of capital adequacy has the following main features:

- the guidelines apply to the consolidated global operations of a bank and its subsidiaries both on- and off-balance sheet;
- the focus is on credit risk, namely the potential risk of borrower or counterparty default and, as a further aspect of credit risk, country transfer risk. While specific account is taken in a limited way of underlying collateral and guarantees and of interest rate risk in holdings of securities, generally other risks need to be taken into consideration as a separate matter when making overall assessment of capital adequacy;
- the key element of capital is shareholders' funds including disclosed reserves but other constituents are recognised. Appendix I sets out the constituents of capital included in core capital and supplementary capital;
- credit exposures (on- and off-balance sheet) are risk weighted according to three broad types of counterparty — government, banks and all others (in the main, non-bank private sector clients); if claims are guaranteed they carry the weighting of the guarantor. There are five general categories of risk weights — 0, 10, 20, 50 and 100 per cent. Risk weights of major assets are shown in Appendix II;
- off-balance sheet transactions are converted to balance sheet equivalents before being allocated a risk weight; four categories of equivalents — 100, 50, 20 and 0 per cent — apply. Details are shown in Appendix III;

* Originally issued as an attachment to Prudential Statement No. 16

- capital adequacy is measured using a "risk ratio". This is calculated by dividing a bank's capital base by the total of its weighted risk assets. Each bank is expected to maintain a ratio of at least 8 per cent (of which core capital will be at least 4 per cent). Transitional arrangements may be established with particular banks.

Appendix I

Definition of Capital

Core Capital (Tier 1)*

- Paid-up ordinary shares.
- Non-repayable share premium account.
- General reserves.
- Retained earnings.
- Non-cumulative irredeemable preference shares.
- Minority interests in subsidiaries.

Supplementary Capital (Tier 2)**

- General provisions for doubtful debts.†
- Asset revaluation reserves.
- Cumulative irredeemable preference shares.
- Mandatory convertible notes and similar capital instruments.
- Perpetual subordinated debt.
- Redeemable preference shares and term subordinated debt. ††

* Goodwill will be deducted from "core" capital and total capital.

** Cannot exceed "core" capital.

† Consistent with the transitional arrangements in the Basle framework, there will be an initial limit of 1.5 per cent of total risk assets.

†† Cannot exceed 50 per cent of "core" capital. Minimum original maturity of at least seven years and an amortisation factor of 20 per cent of original amount to apply each year during the last five years to maturity.

Category of Risk*
Selected Major Items

Nil weight

Notes and coin; gold bullion; balances with Reserve Bank of Australia; Commonwealth Government money market securities (not exceeding 12 months to maturity).

10 per cent weight

Claims on Commonwealth Government (other than money market securities not exceeding 12 months to maturity).

Claims on State Governments (and State central borrowing authorities).

Loans to authorised money market dealers.

Claims on central governments and central banks of the OECD.**

Claims on central governments and central banks of non-OECD countries denominated in the local currency and funded by local currency liabilities.

20 per cent weight

Claims on Australian local governments and public sector entities (except those which have corporate status or are required to operate on a commercial basis).

Claims on non-commercial public sector entities in OECD** countries.

Claims on banks incorporated in Australia and the OECD** and claims on Asia-Pacific area banks agreed specifically by the Reserve Bank.

Claims on other non-OECD banks with residual maturity not exceeding one year.

Claims on international banking agencies and regional development banks.

50 per cent weight

Loans fully secured by mortgage against residential property used for rental or owner-occupied housing.

100 per cent weight

Claims on Australian public trading enterprises which have corporate status or are required to operate on a commercial basis.

Claims on commercial companies owned by the public sector in OECD** countries.

Claims on non-OECD central governments and central banks other than those denominated and funded in the local currency.

Claims on non-OECD banks with residual maturity of over one year (unless agreed specifically by the Reserve Bank).

Claims on non-bank private sector, including non-bank financial institutions.

* Claims guaranteed by (or secured against claims of) a party generally have the risk weight appropriate for that party.

** Includes also countries which contribute to the IMF's General Arrangements to Borrow (at present Saudi Arabia).

Appendix III

Off-Balance Sheet Business

Measurement of off-balance sheet business will involve a two-step process:

(i) the principal (or face value) amounts of transactions will be converted into on-balance sheet equivalents ("credit equivalent amounts") by application of credit conversion factors;

(ii) the resulting credit equivalent amount will be assigned the weight appropriate to the counterparty, or if relevant, the weight assigned to the guarantor or the collateral security.

Credit conversion factors for selected major off-balance sheet transactions will be:

	Instrument	Credit conversion factor
1.	Direct credit substitutes, including financial guarantees, standby letters of credit serving as guarantees and bills endorsed under bill endorsement lines (but which are not accepted by, or have the prior endorsement of, another bank).	100%
2.	Sale and repurchase agreements, forward asset purchases and placement of forward forward deposits.	100%
3.	Transaction-related contingent items, including performance bonds, bid bonds, warranties and standby letters of credit related to a particular transaction.	50%
4.	All note issuance facilities and revolving underwriting facilities; other commitments (e.g. formal standby facilities) with a *residual* maturity exceeding one year.	50%
5.	Short term self-liquidating trade-related contingencies (such as documentary letters of credit and other trade financing transactions).	20%
6.	Commitments with a *residual* maturity not exceeding one year, or which can be cancelled or revoked at any time (e.g. undrawn overdraft and credit card facilities).	0%

Interest rate and foreign exchange rate contracts

The credit risk associated with interest rate and foreign exchange rate contracts is the cost to a bank of replacing the cash flow specified by the contract in the event of counterparty default.

Credit equivalent amounts for market-related transactions may be calculated in one of two ways:

- a current exposure or "mark-to-market" approach where financial instruments are revalued regularly to measure current replacement value plus an allowance for the potential future exposure;
- an original exposure or "rule-of-thumb" approach where there is a simple conversion factor for the notional principal amount of each instrument.

A bank which has a significant volume of market-related business will be expected to adopt the "mark-to-market" method of calculation. A bank which has only a limited involvement in these activities will be permitted to use the simpler "rule-of-thumb" approach.

APPENDIX NINE

FOREIGN CURRENCY LOANS*

Questions for major banks

1. When was the first foreign currency loan sold by the Bank? Were the loans first issued on a hedged or unhedged basis? Were they sold to larger corporations or to small businesses?

2. When were unhedged foreign currency loans first offered by the Bank? To what sort of customers were these loans provided? What servicing capacity did foreign currency borrowers have to meet to obtain loans? Did they have to have the capacity to service the loan at on shore levels of interest rates?

3. Was there a deliberate change from a hedged to an unhedged product and, if so, what were the reasons for the change? Was it so that the product would have wider appeal? Were there competitive pressures to introduce the product and, it so, where were these pressures coming from?

4. Were there tax or other advantages for the borrower or the Bank to be derived from foreign currency loans? If so, can you quantify these in relation to the Bank?

5. Were foreign currency loans marketed by the Bank as a product? if so, can you outline the marketing strategy and the target market? was any marketing research undertaken to identify the market for foreign currency loans? Were seminars held by the Bank to promote the product? If so, where were those seminars held (in general terms)? what information and advice was provided to those who attended the seminars?

6. Were foreign currency loans directed at obtaining new business or at providing an additional product for existing customers? Can you provide the proportions of new versus existing customers?

7. How many unhedged foreign currency loans were written in each year between 1980 and 1986 (inclusive) and what was their value? What proportion of lending by the Bank in each year 1980-86 did foreign currency loans constitute? What proportion of the Bank's total assets did foreign currency loans comprise at the end of 1986?

8. What advice did the Bank provide to customers expressing an interest in foreign currency loans? Was there a standard set of guidelines issued by the Bank for staff to use in providing information on foreign currency loans? Was the selling of foreign currency loans confined to staff working in areas that required a detailed understanding of foreign currency risk? What training was provided to staff involved in selling the product?

9. Who within the Bank had the authority to approve foreign currency loans of the order of $3000 000 - $3 000 000? Did Branch Managers have this authority or was there a senior point of control? If the latter, at what level was control exercised? Were there guidelines for the approval of foreign currency loans? If so, did these change over the time? Can the guidelines for loans approved between 1980 and 1986 be provided?

10. When did the Bank first become concerned about foreign currency loans as a product? What raised the concerns? Were directions given at this stage to cease this form of lending? If so, was this advice implemented throughout the Bank? When was the last unmanaged foreign currency loan sold by the Bank?

11. Did the Bank have a system for the monitoring of foreign currency loans? If so, when was it established and what information did it provide to the Bank executive about the progress of loans? Of this information, how much was passed on to customers?

12. Were customers given appropriate information\advice about their loans early in the currency decline cycle or was the tendency to allow matters to run on? Was advice provided to customs about foreign currency movements and if so how frequently? Did the bank give out forecasts about currency movements? Based on prior performance, how accurate were these likely to be?

13. Did the Bank have a service available to customers to provide advice about, and to assist in managing, foreign currency exposure? If so, when was it established and, if not, why not?

14. When it was clear that large losses were being sustained by the customer (and the Bank), what action did the Bank take to minimise this loss to both the Bank and the customs?

15. What action has been taken by the Bank to settle claims with foreign currency loan customers? If so, how many, and what were the general terms and conditions of these settlements?

16. Has the Bank taken any steps to set up any internal or external review mechanisms to resolve foreign currency loan cases? If so, please *provide details?*

17. Was there concern within the Bank about possible litigation by customers in relation to foreign currency loan cases, and if so, how did the Bank respond? How many of the Bank's cases have resulted in litigation? What has been the Bank's approach to litigation in these cases?

18. What has been the extent of bad debts to date in relation to foreign currency loans? What are the anticipated overall bad debts?

* Not that the term 'foreign currency loan' used in the questionnaire is meant to cover foreign currency loans originally provided on an unhedged basis to Australian residents by either the Bank or any of its subsidiaries. The Committee is not interested in loans made to large corporations (ie: those over about $10m).

APPENDIX TEN

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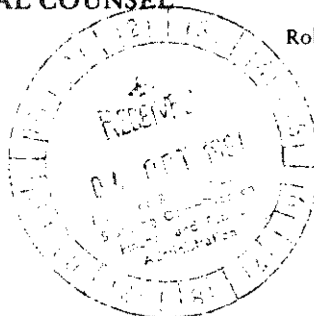

3 October 1991

Mr David Elder
Secretary
House of Representatives
Standing Committee on Finance
and Public Administration
Parliament House
CANBERRA ACT 2600

Dear Mr Elder

I refer to your letter dated 14 August 1991.

The Committee has asked the Department to review the judgments in the foreign currency loans cases you have forwarded and provide it with the following information and advice.

- the legal basis on which the cases have been pursued;
- reasons for success or failure of cases; and
- whether there are any impediments in the law that have prevented redress in cases that could reasonably have been expected to be successful.

A list of the judgments you forwarded is at Attachment A. For convenience, I will refer to them in this memorandum by reference to the name of the first plaintiff. All references are to the versions of the judgments you have provided (in most cases, transcript versions). The 3 folders of judgments are returned herewith.

Comments on the matters on which you have sought assistance are set out below. I preface those comments by observing that, as the Attorney-General explained in his letter of 19 April 1991 to the Chairman of your Committee, the Department does not have specialist legal advisers on banking law as such.

The foreign currency loans cases on which you have sought advice typically involve losses sustained because of adverse exchange rate movements between the time the foreign currency loan was taken out and the time of repayment. The Australian dollar declined in value

against the foreign currency (usually Swiss francs but sometimes United States dollars or Japanese yen) in which funds had been borrowed. As a result, the amount required in Australian dollars to repay the loan increased. Borrowers have claimed that they were not aware of the exchange risks involved in borrowing "off shore" and that lenders, usually banks, did not explain these risks or the techniques available to minimise risks. In some cases borrowers have claimed that lenders positively encouraged borrowing off shore. Borrowers have also claimed that lenders failed to monitor, or manage, the loans.

Litigation is continuing - for example, the High Court's decision in Quade was handed down this morning and the appeal in David Securities Pty Ltd is being argued in the High Court today.

Importance of the Evidence

It is apparent from even the most cursory perusal of the reasons for judgment in the cases you have forwarded that most have turned primarily on the evidence, particularly on the resolution of conflicting evidence relating to representations alleged to have been made by the lender, whether and to what extent risks of exchange rate fluctuations and the possibility of hedging were discussed, and evidence relating to the level of financial sophistication of the borrower including the extent of the borrower's knowledge of off shore borrowing. In some cases there has also been dispute as to the borrower's knowledge of the English language and the capacity of the borrower to understand explanations given in English (eg., David Securities Pty Ltd, Chiarabaglio). Courts have emphasised the difficulties presented in cases "in which there is one witness as to important conversations on each side of the record" (Kullack, on appeal, 32) and the significance of "the demeanour of witnesses and the manner of their giving evidence" (Chiarabaglio, 50, 604 Spice, 8).

In almost all the cases the court has found it necessary to analyse, often in great detail and at considerable length, conflicting evidence given by the borrowers and by officers of the lending organisation and, in some cases, by brokers or other financial advisers. In most of the cases the courts have not found it necessary to analyse applicable legal principles at corresponding length, emphasising that the outcome depended on the facts (eg., Abound Catering Conventions and Receptions Pty Ltd, 25, but contrast the careful analysis of the applicable legal principles by Rogers CJ Comm D in Mehta). Even cases taken on appeal have generally been argued on the basis of the correctness of the findings of fact or of inferences drawn from those facts rather than on applicable legal principles (eg., Chiarabaglio, Spice; in Mehta, the appeal was allowed because the facts as found did not support the necessary inference or

conclusion; contrast, however, the careful analysis of the applicable legal principles by the Full Court of the Federal Court in David Securities Pty Ltd). The issue in the appeal to the High Court in Quade concerned the circumstances in which fresh evidence not disclosed at trial justified a re-trial. Many plaintiffs have failed because the court has not accepted their evidence. To adopt the words of one of the judgments "The difficulty the applicant had ... is not a legal one, but a factual one: I am not satisfied that her account of her dealings with ... is true" (Kullack, 24). In another case, which went on appeal, the Full Court of the Federal Court said -

> "We make it clear that we ourselves have great sympathy for (the borrower). She has been most unfortunate. But it must be understood that she is not entitled to recover from the Bank the very substantial loss she has suffered unless she demonstrates to a court to the requisite standard that her loss is the result of fault of some kind on the part of the Bank or of one or more officers for whom it is responsible. The Bank is not an insurer of her loss. Unless the evidence establishes that it has engaged in misleading or deceptive conduct or is guilty of negligence she has no remedy" (Kullack, on appeal, 38).

In those cases where the borrower has failed, the borrower's version of events has usually differed sharply from that of the lender and the court has preferred the version of the lender. In other words, plaintiffs have failed to persuade the courts to find in their favour on the evidence. Plaintiffs have failed to make out, for example, that they were not aware that their liability to repay the loan was dependent upon the value of the Australian dollar against the foreign currency or that they had accepted the liability on the basis of some false or misleading representation by, or on behalf, of the defendant bank. In another case, it was clear on the evidence that the lender explicitly drew the risk of foreign exchange exposure to the borrower's attention, that the borrower was aware of the risk and that the borrower gambled on any adverse movement in the currency rate not being so large as to leave him a worse position than if he had borrowed in Australian dollars (Quade, 20-21, 33).

The judgments in some of the cases decided adversely to the borrower on the facts indicate that the outcome might have been different had the factual findings been different. For example, in Kullack, Pincus J accepted that a bank may owe a duty to a customer to advise the customer carefully but on the evidence was not satisfied that the applicant acted on the bank's advice in taking out the foreign currency loan.

In other cases, the courts have preferred the evidence of the borrowers where it conflicted with the evidence of the lender. Borrowers have succeeded in actions against lenders where they were able to establish that the lender actively promoted the foreign currency loan, the borrower had no knowledge of the extent of the risks involved in borrowing in foreign currencies or of the sophisticated techniques of risk management, the borrower relied on the lender for advice and that advice was deficient, or the borrower was lulled into a false sense of security and the lender should have hedged (Chiarabaglio, 32,33, Foti, 129-131).

I add that, in one case (Quade), there was material, not disclosed until after judgment, which suggested that the bank was actively promoting foreign currency loans as a matter of policy (on appeal, per Burchett J, 6). The Full Court of the Federal Court ordered a new trial (in David Securities Pty Ltd the Full Court of the Federal Court refused an application for a new trial in somewhat similar circumstances but in that case there were fewer undisclosed documents and the circumstances relating to reliance were different). The High Court in a decision handed down today has upheld the correctness of the approach on which the new trial was ordered (3 October 1991, 5) although the Court has not examined the evidence for the purpose of reviewing the actual decision that there be a new trial.

Applicable legal principles

It is useful to begin with the general observation that neither Commonwealth nor State statute law nor the principles of the common law deal directly with the circumstances in which banks may be liable to their customers in respect of exchange losses suffered in connection with foreign currency loans. Nor is there any general duty on the bank to advise arising simply from the relationship of banker and customer (Mehta, 49). Claims to recover losses so incurred have been founded in applicable principles of the law of tort, the law of contract and the consumer protection provisions of the Trade Practices Act 1974. In some cases relief has also been claimed in reliance on equitable principles relating to unconscionable conduct or on State consumer protection legislation.

Actions brought by borrowers against lenders generally allege some or all of the following.

- breach of contract
- breach of duty of care
- breach of the Trade Practices Act 1974 and, in some cases, of analogous State consumer protection legislation.

As indicated above, most of the cases turn in large part on the evidence, in particular whether the borrower can establish a duty of care, the content of that duty and breach of the duty. The various causes of action are likely to stand or fall together (Quade, 37).

A separate issue raised in some cases (eg., David Securities Pty Limited) concerned payment by the borrower of the amount of withholding tax imposed on the lender. Provisions in mortgages requiring such payments by borrowers are void by virtue of s.261 of the Income Tax Assessment Act 1936. Borrowers have sought recovery of amounts paid in ignorance of s.261, raising questions concerning the right of recovery of moneys paid in mistake of law and possible application of the law relating to unjust enrichment. (These are the issues raised in the current appeal to the High Court in David Securities Pty Ltd). I understand these issues fall outside the Committee's current areas of interest. Accordingly, I will not deal with them further.

Claims in contract

Borrowers have not had much success in obtaining relief in reliance on the express terms of the borrowing agreement, although in one case (McEvoy) the borrower was able to establish a breach of an express term of the loan agreement relating to the actual exchange rate to be applied for foreign currency transactions. More generally, borrowers have not been able to establish any express contractual duty to provide advice on market trends or risk management or to monitor or manage the loan. Borrowers have also failed, on the evidence, to establish that the contract with the lender contained an oral collateral contract or implied terms to this effect.

Borrowers have also alleged breach of the duty of care required or implied by the contract. In view of the overlap between any alleged contractual duty of care and the duty of care under the common law of negligence (see Hawkins v Clayton (1988) 164 CLR 539, especially per Deane J at 582-6) it is for present purposes convenient and sufficient to consider the relevant principles under tort liability.

Claims in tort - General

The basic claim is usually that the lender owed the borrower a duty of care, the duty has been breached and the borrower has suffered damage as a result. Thus it has been claimed that the relationship between the borrower and the lender gave rise to a duty to advise on the risks of exchange rate movements and measures available to minimise those risks and that failure to provide advice or the provision of bad advice caused the borrower's loss. In these cases detailed consideration has had to be given to evidence as to the relationship

between borrower and lender. Borrowers have failed in their actions where, for example,

- the borrower was unable to establish that it was the lender which suggested that the borrowing be in foreign currency (Kullack, on appeal, 36), or
- the borrower was unable to establish that it relied on the lender's advice (David Securities Pty Ltd), or
- the courts have found, contrary to claims made by the borrowers, that the borrowers were aware of the risk of currency fluctuations, were aware that an adverse exchange rate movement would increase the amount they would have to re-pay, and elected to continue notwithstanding the risk.

Causation may also be an issue. Thus in one case where the court found that an accountant was in breach of his duty both in failing to advise the borrowers of the continuing depreciation of the Australian dollar against the foreign currency and in failing to advise the borrowers of techniques such as selective hedging, the borrowers still failed because they did not satisfy the court that, if the advice had been given, the borrowers would have taken steps to prevent the loss - the borrowers failed to demonstrate that they had suffered any loss by reason of the breach (David Securities Pty Ltd; see also Fisher, 16-17, where the court found that the lending bank owed a duty of care to the borrower to explain the advantages and risks associated with a foreign currency borrowing but the borrower made it clear that he placed no reliance on the bank officer and Ralik Pty Ltd, 121-2, where the court held that "the loss suffered by Ralik was not causally related to breach of duty to warn if, contrary to (the court's) view, there existed such a duty" because "no warning would have deterred Ralik from proceeding with the foreign currency loan in the currency of its choice").

Conversely, where the Court was satisfied that the lender was actively promoting off shore lending facilities and that the borrower was a complete novice in off shore borrowing and relied entirely on the representations by the lender, the borrower has succeeded (eg., Chiarabaglio, Spice, Potts, see also Quade, on appeal, per Burchett J, 6).

Duty of care

Development of common law principles imposing liability for negligent misstatements is of relatively recent origin (see Hedley Byrne & Co Ltd v Heller and Partners Ltd (1964) AC 465). At first the principle was limited to circumstances where the speaker had a financial interest or held himself out to have special skill (Mutual Life & Citizens Assurance Co Ltd v Evatt ((1971)

AC 793) but this limitation has since been rejected. The scope of the principles, particularly in relation to economic loss, is still being developed as plaintiffs seek (not always successfully) to apply them to new areas, eg., to establish liability of auditors to shareholders (Carparo Industries PLC v Dickman (1990) AC 605).

The following extract from the judgment of Mason J in Shaddock & Associates Pty Ltd v The Council of the City of Parramatta (1981) 150 CLR 225, 250, summarising the views of Barwick CJ in Mutual Life & Citizens' Assurance Co Ltd v Evatt (1968) 122 CLR 556, 571) conveniently sets out the key principle as it is now applied:

> "... whenever a person gives information or advice to another upon a serious matter in circumstances where the speaker realizes, or ought to realize, that he is being trusted to give the best of his information or advice as a basis for action on the part of the other party and it is reasonable in the circumstances for the other party to act on that information or advice, the speaker comes under a duty to exercise reasonable care in the provision of the information or advice he chooses to give".

Reliance on the misstatement is necessary to found liability:

> "... the plaintiff's foreseeable and reasonable reliance on the defendant's statement has been a constant feature of the cases in which a defendant has been held liable for the economic loss sustained as a result of negligent misstatement." (Sutherland Shire Council v. Heyman (1985) 157 CLR 424 at 462 per Mason J). See also Hawkins v Clayton (1988) 164 CLR 539, per Deane J at 576.
>
> "In cases of negligent misstatement, reliance plays an important role, particularly so when the defendant directs his statement to a class of persons with the intention of inducing members of the class to act or refrain from acting, in reliance on the statement, in circumstances where he should realise that they may thereby suffer economic loss if the statement is not true." (San Sebastian Pty Ltd v. The Minister (1986) 162 CLR 340 at 355 per Gibbs C.J., Mason, Wilson and Dawson JJ).

These principles operate within the general context of the law of negligence. It follows that there is an underlying requirement that it be reasonably foreseeable that the recipient of the information or advice is likely to suffer loss "should the information turn out to be incorrect or the advice turn out to be unsound" (per Brennan J., San Sebastian, 372 and see Spice, 61). In the present content, it is not necessary to consider

further the range of persons to whom the duty may be owed, since proximity is not likely to be contested.

Application of these principles to foreign currency loan situations has led to varying results, depending in large part on the evidence as to the relationship between the lender and the borrower.

According to Rogers, CJ Comm D, in Mehta, there is no duty on the bank to advise arising simply from the relationship of banker and customer (p.49) but a duty may arise where the parties are in an unequal bargaining situation or the bank holds itself out as providing financial advice (Mehta, 50; see also Potts, 60, and the cases there cited). The same judge, in an earlier case, suggested that "It may be that the nature and extent of the advice required from a foreign currency adviser will vary with the known commercial experience of the client" (Lloyd, 288). A bank having entered upon the task of advising an intending borrower is obliged to provide a full and proper explanation of the nature and effect of the transaction. If, in the course of negotiations, advice is sought and given, or volunteered, in circumstances where it was clear to the bank that reliance would be and was placed upon it the bank may incur obligations to exercise reasonable care and skill (Mehta, 51).

In a number of the foreign currency loans cases, it has been held that the lender was under a duty to take care in its discussions with the borrower (eg., Chiarabaglio, 50 624, Potts, 59). The lender's duty has been variously described as a duty "to exercise the skill and diligence of a prudent financier in respect of the transaction, extending to their supply of information which was both accurate and sufficient to enable ... an intending borrower to make an informed decision whether to take it up or not" (Davkot, 117) and as "the responsibility of advising at the level of an adviser of ordinary competent skill and experience in foreign exchange borrowing" (Chiarabaglio, 50, 624). One case drew attention to the "difficult quandary" in which a bank may be placed: "explaining the full extent of the risk might destroy the chance of making the loan and therefore the fee the bank is hoping to attract. On the other hand, failure could bring in its train potentially immense liabilities" (Mehta, 40). In another case the court was of the view that it is appropriate when considering whether the duty of care has been fulfilled or breached in the giving of information or advice in respect of such loans to have regard to the principle of law which requires that the standard of care to be exercised should increase proportionately to the seriousness of the risk involved in any breach of duty (Spice, p.62 and see also Quade, on appeal, per Einfield J at 32). The court went on to find that on the facts the lending bank "had the obligation through its officers to use reasonable care to provide (the borrower) a sufficient explanation in all the

circumstances of the advantages and 'pit-falls' of entering into one of the bank's off shore loan facilities, to enable (the borrower) to make a reasonably informed decision as to whether to take that step or not" (Spice, 63). Failure to do so (at least when coupled with positive words of encouragement) constituted a breach of the duty of care (Spice 74). In another case it was said that "the duty was one requiring (the lender) to place the plaintiffs in a position where they were sufficiently informed as to the transaction, ie., as to how management would operate and as to potential benefits and risks attaching to what was a novel facility which might qualify its apparent advantages, so as to permit an informed decision" (Davkot, p.118). In David Securities Pty Ltd, the Full Court of the Federal Court found on the facts that "the most that the Bank could reasonably be expected to do was to indicate to the appellants, in a general way, that there were risks, that hedging was available at a price, and that independent expert assistance should be sought. This the Bank did" (36). On the other hand, in the appeal in Quade, on the basis of apparently similar documentation, it was said of the bank and its officers that "Their offer to the appellants of an unhedged loan may even have been reckless; it at least manifested a general lack of care in the advice given" (per Einfeld J, 30). Burchett J, who wrote the leading judgment, distinguished David Securities Pty Ltd on the basis that in that case the borrowers were "well versed in the intricies of foreign loans" and did not rely on the bank (see 99 ALR 576 - the relevant part of the judgment is not included in the transcript copy of the judgment you provided).

It will be apparent from the above that no single universally applicable standard of conduct has been adopted. Much will depend upon the circumstances including the evidence concerning the relationship between borrower and lender. In practice, little if anything has turned on different formulations of the duty - cases have been decided on the facts, eg., that failure to apprise an inexperienced potential borrower in relation to exchange rate movement was a breach of the duty of care as an adviser. (Chiarabaglio, 629). The content of the duty depends upon the circumstances, eg., the extent to which the lender is acting in the capacity of adviser (Quade, on appeal, 99 ALR 577). Where the court found that the information given to the borrower sufficiently advised him of the nature of the transaction and the risks involved, the duty was discharged and the borrower failed (Quade, 35, Abound Catering Conventions and Receptions Pty Ltd, 26, 28). Conversely, where "What was said ... fell short ... of explaining the complexity and difficulty involved in monitoring and managing loans of this kind" (Potts, 67) the borrower succeeded. Argument that the rule relating to inherently dangerous things provides an appropriate analogy has been rejected (David Securities Pty Ltd, on appeal, 34, Quade, 99 ALR 579). On the other hand it seems that the standard of

care to be exercised increases proportionately to the seriousness of the risk involved in any breach of duty (Mehta, 51). In one case where doubt was cast on the existence of a duty of care, the court also found that the borrower did not rely on advice or information from the lender (Fisher, 15).

Trade Practices Act 1974

Section 52(1) of the Trade Practices Act 1974 provides as follows.

> "52.(1) A corporation shall not, in trade or commerce, engage in conduct that is misleading or deceptive or is likely to mislead or deceive."

The provision has been described as an attempt to prescribe by statute a minimum level of probity and fairness to which commercial behaviour could be required to confirm as a matter of public interest (Swanston Committee, 1976, para 9.52 quoted in Mehta, 53) but this view has been judicially questioned - another view is that s.52 prescribes "a norm of conduct which should not be interpreted according to established principles of liability under the general law" (Mehta, on appeal, per Samuels JA, 5). Advantages of s.52 over common law actions include that it is not necessary to show fault or intent or failure to exercise reasonable care. Remedies available under ss.82, 87 and 87A include injunction or other order and damages.

Borrowers have claimed that statements by lenders as to the advantage of foreign currency loans were likely to mislead or deceive, contrary to s.52. Courts have accepted that such statements could mislead or deceive unless the exchange risks were explained (eg., David Securities Pty Ltd, on appeal, 23). It has also been claimed that the lender's failure to advise of the mechanisms available to guard against adverse currency movements was itself misleading and deceptive conduct.

It has sometimes been conceded that if the borrower did not succeed in establishing liability in tort, a contravention of s.52 could not be made out (eg., David Securities Pty Ltd, on appeal, 37). In Quade, the High Court noted that "It was common ground that the respondents would succeed on all three causes of action" (ie., (i) breach of s.52 of the Trade Practices Act 1974, (ii) breach of the Contracts Review Act 1980 (NSW) and (iii) common law negligence) "or on none of them" (3 October 1991, 1). Whether this will be so is likely to depend on the facts. It appears that tort liability is not a necessary prerequisite for liability under s.52 (Mehta, on appeal, per Samuels JA, 4). Section 52 may be contravened even though common law misrepresentations may not be established (Ralik Pty Ltd, 122), eg., because there was no duty to give warnings. In one case it was held at first instance that if the lender's "explanation

was not full and complete, even if that fact may not ground a finding of negligence, it could constitute misleading or deceptive conduct, or conduct likely to mislead and deceive within the meaning of section 52" (Mehta, 46 and see also 47, 53, 54). In that case the likelihood of the borrowers being misled or deceived was in relation to the possible extent of the risk - an incomplete explanation allowed the borrower to labour under a false sense of security. Had the bank told the borrower the full story the borrowing would not have been undertaken (Mehta, 54, 56, 57). On appeal, it was held that the inferences or conclusions of the court at first instance were not supported by the findings of fact. The Court of Appeal appears also to have narrowed the basis of liability, eg., by holding that conduct cannot be categorised as misleading or deceptive unless it conveys a misrepresentation (Wadell A-JA, 23). It seems it also was necessary to establish that the borrower relied on the lender's explanation as a full, complete or adequate exposition of the risks (Samuels, JA, 11, see also Ralik Pty Ltd, 122). On the other hand the Full Court of the Federal Court, in David Securities Pty Ltd said it was "now well established that silence, that is the failure to advise on a significant matter when the task of advising has been embraced and undertaken, or there is a duty to advise, may demonstrate a breach of section 52 in the right circumstances" (at 24, referring with approval to Rogers CJ Comm D in Mehta).

Damages

The principles upon which damages are assessed differ according to whether the claim is in contract or in tort. In contract, damages are awarded with the object of placing the plaintiff in the position he would have been had the contract been performed - he is entitled to damages for loss of bargain (expectation loss) and damage suffered, including expenditure incurred, in reliance on the contract (reliance loss). In tort, on the other hand, damages are awarded with the object of placing the plaintiff in the position in which he would have been had the tort not been committed (similar to reliance loss), which may include loss of profit suffered in consequence of altering his position in reliance on the misrepresentation. The measure of damages in tort may therefore resemble the expectation element in the measure of damages in contract so that in negligent misrepresentation cases there may in practice be little difference.

Questions have arisen as to the appropriate form of relief where the proceedings have been brought prior to the time for repayment of the loan. The borrower may already have suffered some detriment if the lender has required additional security to cover the increased Australian dollar amount required to pay back the loan. Should damages be assessed on the basis that the borrower has had the opportunity to bring the loan on shore?

Alternatively can, and should, the court in effect re-write the loan agreement to convert it into a loan in Australian dollars at prevailing interest rates? In one case, the court achieved this result through injunctive relief (Spice, 79). Section 87 of the Trade Practices Act may give a wider range of possible remedies than is available under the general law of damages (Mehta, 53) and appears to authorise restructuring of the loan as though it had been made in Australian dollars (Mehta,61).

Limitation period

Sections 82 and 87 (1CA)(b) of the Trade Practices Act establish limitation periods of "3 years after the date on which the cause of action accrued". Just when this 3 year limitation period commences in relation to a foreign currency loan can be a difficult question, for example, if the dollar begins to fall but the potential loss has not yet crystallised. Clearly, the limitation period commences when the loss is suffered, not when the contravention (ie., the misrepresentation) takes place. (see Magman International Pty Ltd v Westpac Banking Corporation (1991) ATPR 41-097), in which Sheppard J distinguished an English Court of appeal decision that the plaintiff suffered damage when she entered the mortgage). However, time can begin to run well before the date the loan is due to be re-paid. The general rule is that the suffering of some damage starts time running, even though the damage continues to grow. The running of time is not suspended until all the damage which will be suffered has ceased to flow. Further damage does not constitute a fresh cause of action (Jobbins v Capel Court Corporation Ltd (1989) 91 ALR 314). Where foreign currency loans are "rolled over" at regular intervals and the exchange rate has fallen at the time of roll over, it seems the loss is suffered no later than that date (Ralik Pty Ltd, 126, Potts, 55, but see also Magnum International Pty Ltd (supra) in which Sheppard J expressed doubt, because one could not know at that time that the trend was irreversible: there was much to be said for the view that it was only when it was time to repay the loan that one could say that losses had in fact been suffered. However, Sheppherd felt constrained by the decision of the Full Court in Jobbins (supra)). Alternatively, the loss may be crystallised if the loan is brought on shore (Country Properties Pty Ltd v Australia and New Zealand Banking Group Ltd (1990) A.T.P.R. 41-070) or converted to another foreign currency.

Impediments to Redress

The comments below have been provided by the Federal Bureau of Consumer Affairs.

There does not seem to be any technical aspect in the law of contract or tort or in the regime of the Trade Practices Act which has prevented redress in cases that could reasonably have been expected to be successful. Where such law has been applied by the courts in proceedings arising from foreign exchange loans, it has been applied in a manner consistent with precedent in light of relevant findings of fact (although such findings of fact, and the inferences drawn therefrom, may be disputed). Further, contract, tort and trade practices law is regularly used in proceedings other than foreign exchange loan cases, and no evidence has come to light from this broader use to suggest that a particular impediment to the enforcement of legal rights exists. If an impediment exists, it is evidentiary rather than legal in nature, or else stems from the nature of the adversary system of justice itself.

The financial and emotional burden of litigation, for example, can act as an impediment to the institution or maintenance of legal proceedings. While this problem is not confined to foreign exchange loan cases, the financial burden in particular may weigh heavily upon claimants who find themselves in financial difficulties as a result of foreign exchange losses. In some cases legal aid may be available to assist claimants, subject to income and asset tests and the merits of the claim. Issues relating to the cost of justice are currently the subject of inquiry by the Senate Standing Committee on Legal and Constitutional Affairs.

As has been mentioned, the evidence before a court in foreign exchange loan cases is critical in determining the result of the litigation. The precedent value of decided cases is therefore limited. A decision on the facts of a particular case will not be of much assistance to the court in subsequent cases. It is not clear, however, that this situation has acted as a impediment to claimants who might otherwise have expected to be successful.

A brief mention might be made of s.52A of the Trade Practices Act, which prohibits a corporation in trade or commerce, in connection with the supply or possible supply of goods or services to a person, from engaging in conduct that is, in all the circumstances, unconscionable. Section 52A(5) limits the scope of this provision by providing that a reference to goods or services is limited to "goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption". Foreign exchange transactions appear to be outside the scope of the protection afforded by s.52A as a six figure loan in Swiss francs would be unlikely to be a service ordinarily acquired for personal domestic or household use or consumption. This limitation may be seen to be an impediment, as the statutory prescription in s.52A is more favourable to

claimants than the equitable principle of relief from unconscionability.

The Attorney-General has announced that the Government proposes to introduce a prohibition on unconscionable conduct in commerce, but that legislation would not be brought forward until he has had the opportunity of considering the report of the Senate Standing Committee on Legal and Constitutional Affairs, which is currently inquiring into the issue.

Yours sincerely

(ERNST WILLHEIM)
Special Counsel

ATTACHMENT A

LIST OF JUDGMENTS

Case	Date
Lloyd v Citicorp Australia Ltd	22 December 1986
McEvoy v ANZ Banking Group Limited	1 October 1987
Kullack v Australia and New Zealand Banking Group Limited	4 December 1987
National Australia Bank Limited v Nobile	17 March 1988
Davkot Pty Ltd & Ors v Custom Credit Corporation Ltd & Ors	27 May 1988
Kullack v Australia and New Zealand Banking Group Limited	8 July 1988 (on appeal)
David Securities Pty Limited v Commonwealth Bank of Australia	11 May 1989
David Securities Pty Limited v Commonwealth Bank of Australia	6 June 1989
Chiarabaglio v Westpac Banking Corporation	21 July 1989
Spice v Westpac Banking Corporation	1 September 1989
Quade v Commonwealth Bank of Australia	12 October 1989
Abound Catering Conventions and Receptions Pty Ltd v National Australia Bank Limited	26 October 1989
McEvoy v Australia and New Zealand Banking Group Limited	16 February 1990 (on appeal)
Westpac Banking Corporation v Spice	4 April 1990 (on appeal)
David Securities Pty Limited v Commonwealth Bank of Australia	10 May 1990 (on appeal)
Mehta v Commonwealth Bank of Australia	27 June 1990
Fisher v Commonwealth Bank of Australia	10 August 1990
Ralik Pty Ltd v Commonwealth Bank of Australia	14 August 1990

Westpac Banking Corporation v Chiarabaglio	24 August 1990 (on appeal)
Potts v Westpac Banking Corporation	10 December 1990
Quade v the Commonwealth Bank of Australia	14 February 1991 (on appeal)
Commonwealth Bank v Mehta	28 March 1991 (on appeal)

APPENDIX ELEVEN

AUSTRALIAN BANKING INDUSTRY OMBUDSMAN SCHEME

Member Banks

- Australian Bank Ltd.
- Advance Bank
- ANZ Banking Group Ltd.
- Bank of Melbourne
- Bank of Queensland Ltd.
- Banque Nationale de Paris
- Barclays Bank
- Bank of New Zealand
- Chase AMP
- Citibank
- Commonwealth Bank of Australia
- Challenge Bank
- Macquarie Bank
- Metway Bank
- National Australia Bank
- National Mutual Royal Bank
- Nat West Australia Bank
- State Bank of NSW (to join the scheme on 1.3.92)
- State Bank of SA
- State Bank of Victoria
- Rural & Industries Bank of Western Australia
- Westpac

State Banks are covered by their respective State Ombudsmen

APPENDIX TWELVE COMPARISON RATE

The formula for the comparison rate is as follows:

Rate per payment period

1. The following formula is used to calculate a rate per payment period:

$$P_o = \left[\frac{R_1}{(1 + i)^1} \right] + \left[\frac{R_2}{(1 + i)^2} \right] + \ldots + \left[\frac{R_n}{(1 + i)^n} \right]$$

i.e.

$$P_o = \sum_{t=1}^{n} \frac{R_t}{(1 + i)^t}$$

Where–

P_o is the amount of the credit less the amount of any establishment charge;

R_t is the amount of the payment to be made by the debtor at time t;

n is the number of instalments to be paid;

i is the rate for each payment period expressed as a decimal (*e.g.* 1% is 0.01);

t is 1, 2, ... n.

Conversion to annual percentage rate

2. The rate per payment period is then converted into an annual percentage rate by using the following formula:

$$E = [(1 + i)^q - 1] \times 100$$

Where–

E is the comparison rate;

i is the rate per payment period expressed as a decimal;

q is the number of payments to be made in each year.

An example of how the formula works follows:

Suppose a consumer wants $10,000 for five years. She is offered the following five alternatives from five reputable companies. Which is the best deal?

A. A no-fee loan with interest of 20% payable at the end of each year and all principal repaid at the end of the five years.

B. No fees. Interest rate of 20%. Principal and interest *repaid in five equal instalments at the end of each year.*

C. No fees. Interest rate of 14% <u>flat</u> and equal repayments of principal each year.

D. Interest rate of 17%. $100 application fee and $150 annual fee.

E. Interest rate of 17%. $500 application fee and $50 annual fee.

On the basis of quoted interest rates, C looks best. If you know flat rates are more expensive, you might choose D or E. But A, B and C have no fees. The repayments in the first year are lowest for A and highest for E but over the five years, they are highest for A and lowest for E. Which is better of D and E?

<u>Cash Payments</u>

	0	1	2	3	4	5	Total
A	0	2,000	2,000	2,000	2,000	12,000	20,000
B	0	3,344	3,344	3,344	3,344	3,344	16,719
C	0	3,400	3,400	3,400	3,400	3,400	17,000
D	100	3,276	3,276	3,276	3,276	3,276	16,480
E	500	3,176	3,176	3,176	3,176	3,176	16,380

Applying the formula gives the following comparable rates: (note that for the simple cases A and B the comparison rate is the same as the quoted interest rate.)

A. 20.0%
B. 20.0%
C. 20.8%
D. 19.5%
E. 20.0%