Greens Additional Comments

Putting some meat on the BEAR-bones

1.1 Australian banks deserve their current poor reputation amongst the majority of the Australian people. They have failed to protect consumers from bad advice and unethical behaviour, failed to report breaches of corporate and consumer law, and have donated to political parties and lobbied Canberra to stack the system in their favour. They have also failed to properly manage systemic risks and prevent the build-up of household debt to perilous heights. As custodians of the financial system, most importantly they failed to meet the 'higher standards of accountability and integrity' that are expected of them. Fundamentally, banks failed to respect that their very existence is a privilege, not a right.

1.2 A bank's privilege is that which is granted to them by the Commonwealth in the form of a banking license. This is the privilege of being able to operate in an industry in which every individual and business is a customer; and, given the importance of the industry, being able to operate a business which is insured by the government.

1.3 But having a rock solid customer base and getting a government guarantee for free was not enough. The banks failed to resist the temptation of ever greater profits. The very existence of the BEAR implicitly acknowledges this fact. There would be no BEAR if the banks had properly balanced their responsibilities to their shareholder with their social licence to operate.

1.4 The Australian Greens support the introduction of the BEAR. However, we propose a number of amendments to strengthen the Bill and to ensure it better meets its stated aims. Irrespective, we in no way see the BEAR and other measures being put forward by the government as being a substitute for a Royal Commission—or similarly constituted Parliamentary Commission—to fully explore the failure of the banks.

Executive pay caps – changing culture from the top.

1.5 Implicit in the BEAR is that the remuneration paid to executives has been a central component of the market failure of the banks, and a key contributor to the poor culture that has let the public down. This poor culture has been consistently recognised and publicly acknowledged by commentators, and the even the former Chair of ASIC Greg Medcraft, who has said that remuneration is 'clearly a driver, particularly in finance, because finance is money'.[1]

1.6 A profit at all costs or profit before people culture at the banks and big financial services companies is directly linked to executive pay and the expectations of some shareholders. Consistently cutting staff, services and branches, overcharging

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1 Mr Greg Medcraft, Chairman, Australian Securities and Investments Commission, *Committee Hansard*, Economics Legislation Committee, Supplementary Budget Estimates, 26 October 2017, p. 20.

fees, cross selling of products, a culture of conflicted remuneration and meeting sales targets, unethical and illegal conduct are just some of the costs of such a culture. Others costs include the duress and loss of life for victims of financial crime, and systemic risks that could lead to economic meltdown and market contagion.

1.7 The Greens have often stated that any organisation's culture starts at the top. It makes sense that if senior executives are remunerated based on profit or return, then there will pressure on those below to make as much money as possible. This is the culture that has let the banks down. A simple way to address this is to cap executive pay, and set this remuneration at levels that better reflect community expectations. It may be heresy for some, but it would solve one of the biggest problems facing this sector.

1.8 The Treasurer says in his Second Reading speech that measures requiring the part deferral of executive remuneration will 'increase incentives for these people to focus on the long-term outcomes of their decisions'. The corollary is that the current unregulated approach encourages a focus on short-term gain for executives and some shareholders, at the expense of both customers and the nation.

1.9 The public knows this. We have all witnessed the spectacle of bank CEOs getting multi-million dollar pay packets while pushing the bounds of the law and common sense. Some senior bank executives earn over 100 times what the average Australian earns in a year. And we all know that this is wrong. It has not improved the lot of customers, it has not made for a more stable economy and it is eroding the social compact upon which banks depend.

1.10 Well, we do not need to tolerate it. We can take control. We can use the BEAR to reign in the fat-cats.

1.11 There is simply no justification for bank CEOs, who run a business that is embedded into society and that has a clear social responsibility, to be paid the ridiculous salaries that they have been paid. Excessive banker pay is emblematic of a system that has got its priorities wrong. It is encourages the pursuit of profit above all else and undermines the financial services industries social licence. The part deferral of executive pay that exists in the BEAR is not enough. It is time to establish pay caps in the banking sector.

Recommendation 1

1.12 That absolute limits be established on the remuneration payable to accountable persons at ten-times the average national wage for base remuneration; and a further five-times the average national wage for variable remuneration.

1.13 Australia would not be a pioneer in this field. In 2016, Israel agreed to establish a cap on executive pay in the banking and insurance sector at 44 times the wage of the lowest paid worker in the company.

Penalties

1.14 The penalty regime, as proposed, does not adequately reflect the difference in size between the big-four banks, smaller regional banks, and the customer-owned banking sector. As noted in the Chair's report, the three-tiered penalty regime could have a disproportionate impact on smaller banks.

1.15 Instead of the proposed three-tiered structure, maximum penalties should be pegged to the value of the resident assets of covered entities: the bigger the bank, the bigger the risk, the bigger the penalty. This reflects one of the purported aims of the BEAR being to discourage activity within banks that gives rise to prudential risk.

Recommendation 2

1.16 That maximum penalties for breach of the BEAR be set at 10 penalty units for every $1,000,000 in resident assets.

Scope

1.17 As is detailed in the Chair's report, a number of submitters have raised issues with the scope of the BEAR. In particular: the BEAR is restricted to banks and does not cover the broader financial sector; and the BEAR is restricted to prudential matters and does not provide regulations aimed at directly protecting consumers.

1.18 These issues are too large to be addressed through amendments to this Bill at this time. However the government should commit to expanding the scope of BEAR to include them in the future.

Recommendation 3

1.19 That the government commit to broadening the scope of the BEAR to include the entire financial sector, and to provide regulation to directly protect consumer outcomes.

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