

Liberal Democratic Party Dissenting Report

1.1 This bill imposes a new layer of regulation and supervision on the banking sector, overseen by APRA.

1.2 Its purpose, as stated by the Treasurer in his Second Reading speech, is to ensure that where community expectations of accountability and integrity of banking directors and executives are not met, “appropriate consequences will follow”.

1.3 The bill is opposed on the following grounds:

- (a) It is not a legitimate exercise of government authority to seek to ensure particular businesses meet community expectations. This is a matter for the market.
- (b) The bill makes no provision for discovering or addressing community expectations. The only expectations to be met are those held by APRA.
- (c) The bill will not prevent a repeat of the problems in the banking sector which were listed in the Explanatory Memorandum. That is, it will have no impact on the manner in which banks serve their customers.
- (d) APRA will become a de facto additional board of directors, with a supervisory role in the appointment of senior executives, their responsibilities and remuneration.

1.4 Of particular concern are S37C and S37CA, which require banks and accountable persons "to take reasonable steps to prevent matters from arising that would adversely affect the ADI's prudential standing or prudential reputation."

1.5 APRA will have complete discretion, with no reference to community or any other external standards, to determine whether a bank is complying with this. The only consideration will be its own view of prudential standing and reputation.

1.6 APRA will have the authority to disqualify a person from acting as an accountable person, depriving them of their ability to remain employed. While an affected person will be able to appeal to the AAT, this amounts to a reversal of the onus of proof.

1.7 The bill requires banks to defer the remuneration of accountable persons for a period of up to four years, with policies that allow for a reduction in remuneration for failure to meet BEAR obligations. The bill also gives APRA the power to direct a bank with respect to the allocation of management responsibilities.

1.8 These are extraordinary intrusions into the management of a private sector business by public servants.

1.9 The merits of deferred remuneration are contested in management theory and entrenching the policy in law amounts to significant over-reach by the government. It also amounts to serious conceit to believe APRA has the expertise to direct a bank as to how to allocate its responsibilities.

1.10 The cost of complying with the legislation is likely to drive small ADIs from the market and reduce competition. This is likely to adversely affect consumer choice.

1.11 The bill will increase Executive risk, potentially making it more difficult and expensive for banks operating in Australia to recruit talented personnel. This has the potential to adversely affect the international competitiveness of the Australian banking sector.

1.12 Finally, the intended date on which the bill is to take effect (1 July 2018) is absurd, given such a significant departure from free market liberalism should be subject to considered scrutiny in the Senate.

1.13 If there are failures in the banking sector that are not being addressed by current regulations or market factors, this bill will do nothing to address them.

Recommendation 1

1.14 That the bill not be passed.

Senator David Leyonhjelm

Senator for New South Wales