

The Senate

Standing Committee on Economics

Reserve Bank Amendment (Enhanced
Independence) Bill 2008 [Provisions]

June 2008

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ISBN 978-0-642-71929-4

Printed by the Senate Printing Unit, Parliament House, Canberra.

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Chapter 1

Introduction

Background

1.1 Central banks will generate superior economic outcomes when they base monetary policy decisions on their view of the economic outlook rather than political considerations. The cross-party support for this view in Australia means that the Reserve Bank of Australia has operational independence.

1.2 However, it is important that central banks are not only independent of governments but that they are seen to be independent and that this independence is expected to endure. In forming views on this, financial markets and other commentators will often look at the relevant legislation. The current provisions of the *Reserve Bank Act 1959* could give analysts the impression that just because the power exists under the Act, a future Treasurer might be tempted to influence the decisions of the Reserve Bank Governor by threatening their dismissal and replacement by a partisan appointment.

1.3 For this reason, the Prime Minister and Treasurer announced on 6 December 2007 that the Government would seek to amend the *Reserve Bank Act 1959*.¹ The bill proposes to amend the *Reserve Bank Act 1959* (the Act) to introduce revised arrangements for the appointment, suspension and termination process for the Governor and Deputy Governor of the RBA.

1.4 The Reserve Bank Amendment (Enhanced Independence) Bill 2008 was introduced into the House of Representatives on 20 March 2008 and passed on 26 May 2008. The Senate referred the provisions of the bill to the Senate Standing Committee on Economics on 14 May 2008 for report by 31 May 2008.

Conduct of the inquiry

1.5 The committee placed information about the inquiry on its website, inviting written submissions by 23 May 2008. The committee also contacted some relevant organisations and individuals inviting written submissions.

1.6 The six submissions received, listed in Appendix 1, are available at http://www.aph.gov.au/Senate/committee/economics_ctte/rba_08/submissions/sublist.htm.

1.7 The committee held a public hearing in Canberra on Friday 30 May 2008. The witnesses are listed in Appendix 2. Later that day, the committee submitted an interim

1 Joint Media Release of the Prime Minister of Australia and the Treasurer, the Hon Wayne Swan MP, 'Rudd Government announces new era of independence for RBA', 6 December 2007.

report to the President of the Senate indicating it intended to present the final report by Wednesday, 11 June 2008.

1.8 The committee thanks those who participated in the inquiry.

Structure of the report

1.9 The economic arguments about central bank independence, and its implications for inflation, are discussed in Chapter 2. The views about whether the bill leads to a desirable change in the actual and perceived independence of the Reserve Bank are analysed in Chapter 3. The committee's conclusions are presented in Chapter 4.

Chapter 2

Central bank independence

Background

2.1 It is now part of the economic canon that central bank independence is desirable to achieve low inflation and maximise longer run economic growth.¹

2.2 The explanatory memorandum for the bill refers to central bank independence as being 'regarded as international best practice'. This was supported in evidence to the inquiry. For example, Professor Sinclair Davidson, representing the Institute of Public Affairs, stated:

Broadly speaking, the economic literature is in agreement or shows a consensus that central banks that are more independent are more likely to be associated with low levels of inflation.²

2.3 Then Reserve Bank Governor Bernie Fraser put it this way in a 1996 speech:

The usual argument for an independent central bank is that governments and politicians cannot be trusted to do the right thing with interest rates. They are assumed to be driven by the electoral cycle, and prone to manipulate monetary policy for short-term political gains...The corollary of this argument is that an independent, expert body not bound up in the electoral cycle would do a better job than politicians in conducting monetary policy. This seems to me to be the strongest reason for entrusting responsibility for monetary policy to an independent central bank.³

2.4 Economist Saul Eslake explained how more independent central banks may lead to lower inflation:

...inflation expectations are...informed by people's understanding of how economic policy will react to a rise in inflation. If it is widely believed that those responsible for economic policy are unwilling to take firm action in response to an acceleration in inflation, or that they will be unable to sustain that action in the face of an adverse public reaction to slowing economic growth and rising unemployment, or that they will postpone a response

1 The consensus is that central banks should have *instrument independence* (sometimes called 'economic independence') but not *goal independence*. This means that the government sets the (inflation) target for the central bank but allows the central bank to adjust interest rates (and other instruments) as they see fit to achieve this target. An important aspect of central bank independence is that the central bank does not need to approach the government for its funding. This is true of the Reserve Bank of Australia and this bill does not alter that.

2 Professor Sinclair Davidson, *Proof Committee Hansard*, p.2.

3 Bernie Fraser, 'Reserve Bank Independence', talk to the National Press Club, 15 August 1996, reprinted in *Reserve Bank Bulletin*, September 1996, pp 14–20.

because of an imminent election, then people will expect inflation to accelerate and hence will seek to take actions to protect themselves against it – actions which will make a further rise in inflation more likely.⁴

2.5 He continued:

As the significance of inflation expectations to the inflationary process became more widely recognized and understood among economists, the importance of policy credibility to influencing inflation expectations gained more recognition. ‘Policy credibility’ means the belief that those responsible for formulating and implementing economic policy have both the intention and the ability to achieve their stated policy objectives, even if it entails some political or other costs. In the context of monetary policy, ‘policy credibility’ has come to be associated with central bank independence – that is, the ability of central banks to set monetary policy without any requirement to seek approval or permission from elected officials for their proposed course of action.⁵

2.6 If the central bank is perceived as independent, financial markets, businesses and employers and employees are less likely to revise up medium-term inflationary expectations when there is inflationary shock to the economy such as a jump in petrol or food prices. This means that the central bank does not have to keep interest rates as high or for as long to return inflation to its target band.

2.7 Associate Professor Steve Keen is less impressed by the performance of independent central banks. While they have performed well on keeping inflation low, he argues they have not maintained the stability of the financial system.⁶

Empirical studies of the impact of central bank independence

2.8 There is now an extensive body of econometric research on this topic. The majority of studies conclude central bank independence is associated with lower inflation.⁷ This does not in itself prove that central bank independence *causes* low inflation. It could be that countries with a particular aversion to inflation would tend to have both independent central banks and low inflation and the correlation between the two overstates the degree of causality from central bank independence to inflation.⁸

4 Mr Saul Eslake, *Submission 1*, p. 2.

5 Mr Saul Eslake, *Submission 1*, p. 2.

6 Associate Professor Steve Keen, *Submission 3*.

7 There are admittedly a minority of studies that question whether there is any correlation. Ahsan, A., Skully, Prof. M., Wickramanayake, J., Department of Accounting and Finance, Monash University, *Central Bank Independence and Governance and Inflation in Asia Pacific*, http://www.melbournecentre.com.au/Finsia_MCFS/2007/AhsanA.pdf, p. 5.

8 For example, hyperinflation in the Weimar republic fuelled the rise of Nazism and left Germans particularly averse to inflation. This might be why they both gave substantial independence to the Bundesbank (central bank) and ran sufficiently tight macroeconomic policies to keep inflation low.

2.9 These studies involve quantifying the degree of central bank independence. For example, a study by some International Monetary Fund economists shows that, in terms of institutional autonomy, the RBA scores as 'independent' on only two out of eight criteria, ahead of only Japan and Korea, whereas the European Central Bank scores a full eight and the central banks of Sweden and Switzerland seven.⁹

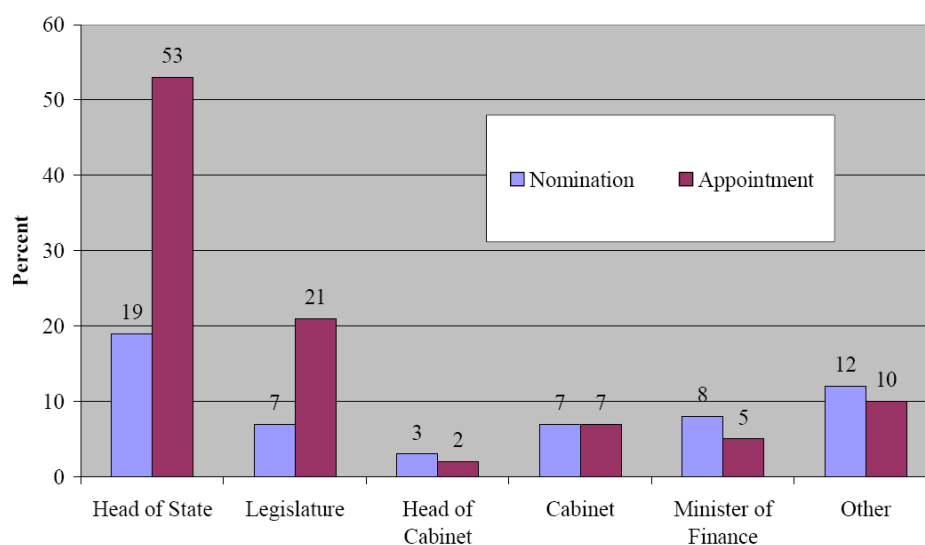
2.10 A similar study by Princeton University academics showed that in an examination of legal indicators of independence, Australia's score varies depending on the indicators used.¹⁰

Overseas practice in appointment and dismissal of governors

2.11 A variety of practices is evident in a study of the appointment of the governors of 98 central banks worldwide, although as shown in Chart 1 the most common procedure is appointment by the head of state (although for some countries this is also the head of government).

Chart 1 – Party who nominates or appoints¹¹

The chart shows who appoints and – in case a second body is involved – nominates the governor [Source: IMF/Lybeck, N=98].



2.12 Similarly, a study of the dismissal of central bank governors showed that this is most commonly done by the head of state (Chart 2).

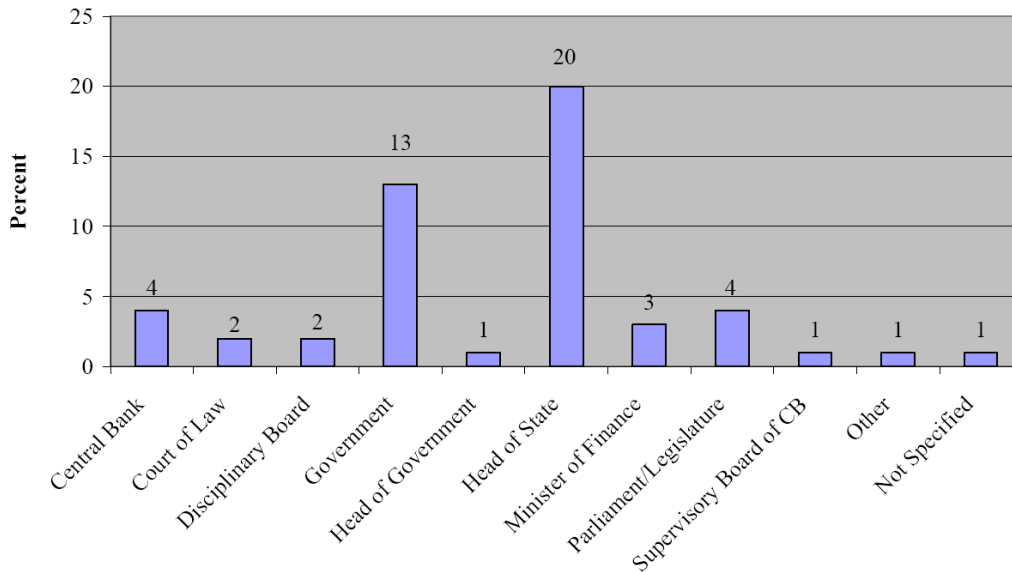
9 Marco Arnone, Bernard J. Laurens, Jean-François Segalotto, and Martin Sommer, 'Central Bank Autonomy: Lessons from Global Trends', *IMF Working papers*, no 07/88, April 2007.

10 Eijffinger, S. and De Haan, J., 'The Political Economy of Central-Bank Independence', *Special Papers in International Economics* No. 19, May 1996, International Finance Section, Department of Economics, Princeton University, Princeton New Jersey, p. 23.

11 Frielal, L., Roszbach, K., Spagnolo, G., Sveriges Riksbank, 'Governing the Governors: a clinical study of central banks', *Sveriges Riksbank Working Paper Series* 221, Figure 14, p. 22.

Chart 2 – Party who dismisses¹²

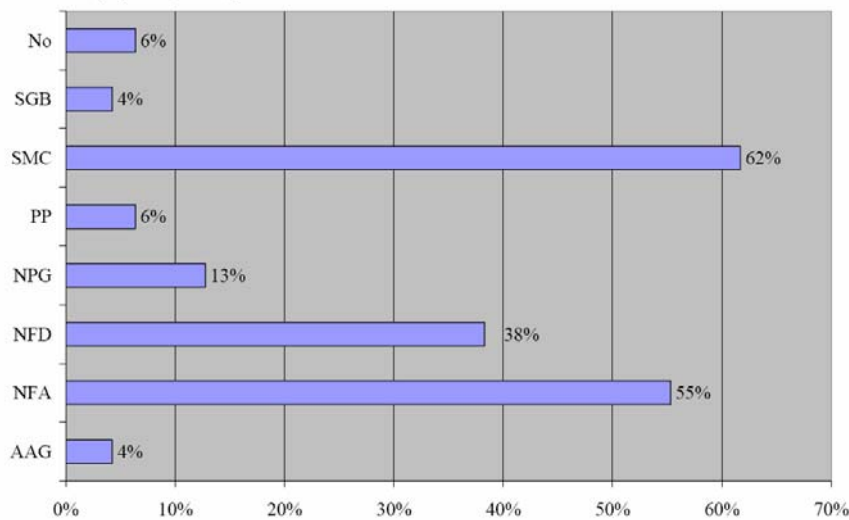
The bars show by whom central bank governors can be fired. The numbers sum up to more than 100% because more than one body in a country may be able to do so [Source: Frisell Roszbach Spagnolo, N=47].



The grounds for dismissal of governors of central banks also vary. (Chart 3)

Chart 3 – Grounds for dismissal¹³

The bars show what events are explicitly mentioned in the statutes of central banks as possible reasons for dismissal (expressed as a percentage of all banks in the sample). Multiple grounds are possible. Key: No: No Precise Definition/ Reports no reason for dismissal; SGB: Governor holds office subject to good behavior; SMC: Serious misconduct or conviction for a serious criminal offence; PP: Poor performance; NPG: Dismissal possible but no precise definition of grounds; NFD: Non-fulfillment of duties; NFA: Non-fulfillment of requirements for appointment or for the performance of duties; AAG: Acting against government policy; [Source: Frisell Roszbach Spagnolo, N=47].



12 Frielal, Roszbach and Spagnolo (2008) Figure 15, p. 22.

13 Frielal., Roszbach and Spagnolo (2008) Figure 16, p. 23.

The reality and perception of central bank independence

2.13 Even when the central bank is effectively independent, the perception of independence may be easily damaged. A famous example was the effect of then Treasurer Paul Keating's 'Placido Domingo' speech of December 1990. Speaking at a supposedly off-the-record function, the day after the death of his Treasury Secretary and friend Chris Higgins, an emotional Keating said:

‘I have Treasury in my pocket, the Reserve Bank in my pocket, wages policy in my pocket, the financial community both here and overseas in my pocket’.¹⁴

2.14 No-one present thought that Keating literally had the global financial community under his complete control. But the phrase about the Reserve Bank was lifted out of context. As then Reserve Bank Governor Bernie Fraser commented about the phrase:

I believe Mr Keating regretted being associated with those throwaway lines and, to my knowledge, he never repeated them. On more than one occasion, he complained that the Bank had acted in ways which were contrary to his own preferences – clear enough evidence, I would have thought, that the Bank was not in his pocket. I also have denied that the alleged ‘in the pocket’ jibe was ever an accurate description of the relationship between the Treasurer and the Reserve Bank, as did my predecessor, Bob Johnston. The original quip was unfortunate enough, but its repetition ad nauseam, in the face of all the denials, was even worse in my view; it certainly did nothing to enhance the Bank’s standing in financial centres around the world.¹⁵

2.15 Almost two decades later, the phrase is still trotted out.¹⁶ It is this difficulty in maintaining a reputation for independence that leads to attempts to convince outside observers of the central bank's independence by grounding it in legislation.

Cross-party support for central bank independence

2.16 An independent Reserve Bank has cross-party political support in Australia. Both the current and previous Treasurers have signed agreements with the Reserve Bank Governor publicly expressing their 'common understanding...on key aspects of Australia’s monetary policy framework'. It includes a commitment by the Government which 'recognises the independence of the Reserve Bank and its responsibility for monetary policy matters'.¹⁷

14 Cited by William Coleman, 'How the Bank got its groove back', *Agenda*, vol 12, no. 1, 2005.

15 Bernie Fraser, 'Reserve Bank Independence', talk to the National Press Club, 15 August 1996, reprinted in *Reserve Bank Bulletin*, September 1996, pp 14–20.

16 See, for example, Hon Malcolm Turnbull, MHR, *House Hansard*, 14 May 2008, p. 2773.

17 Statement on the conduct of monetary policy, by the Treasurer and the Governor of the Reserve Bank of Australia, 6 December 2007 on RBA website, www.rba.gov.au.

Chapter 3

Provisions of the bill

3.1 The bill amends sections 24 and 25 of the *Reserve Bank Act 1959* as shown in the following table.

Table 3.1: Changes proposed in the bill

section	Current act	Proposed by bill
24(1)	<p>The Governor and the Deputy Governor:</p> <p>(a) are to be appointed by the Treasurer; and</p> <p>(b) Shall be appointed for such period, not exceeding 7 years, as the Treasurer determines but are eligible for re-appointment; and</p> <p>(c) Hold office subject to good behaviour.</p>	<p>The Governor and the Deputy Governor:</p> <p>(a) are to be appointed by the Governor-General; and</p> <p>(b) Shall be appointed for such period, not exceeding 7 years, as the Governor-General determines but are eligible for re-appointment; and</p> <p>(c) Hold office subject to good behaviour.</p>
24B	<p>The Governor or the Deputy Governor may resign his or her appointment by giving a written resignation to the Treasurer.</p>	<p>The Governor or the Deputy Governor may resign his or her appointment by giving a written resignation to the Governor-General.</p>
25		<p>(1) The Governor-General may terminate the appointment of the Governor or Deputy Governor if each House of the Parliament, in the same session of the Parliament, presents an address to the Governor-General praying for the termination of the appointment on a ground for termination specified in subsection (8).</p> <p>(2) The Governor-General may suspend the Governor or the Deputy Governor from office on a ground for termination specified in subsection (8).</p> <p>(3) The Minister must cause to be laid before each House of the Parliament, within 7 sitting days of that House after the suspension, a statement identifying the office holder suspended and the ground of the suspension.</p> <p>(4) A House of the Parliament may, within 15 sitting days of that House after the day on which the statement is laid before it, declare</p>

	<p>If the Governor or the Deputy Governor: (a) becomes permanently incapable of performing his or her duties; or</p> <p>(b) engages in any paid employment outside the duties of his or her office; or</p> <p>(c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her salary for their benefit;</p> <p>the Treasurer shall terminate his appointment.</p>	<p>by resolution that the appointment of the office holder identified in the statement shall be terminated.</p> <p>(5) If a resolution is passed by each House of the Parliament in accordance with subsection (4) in the same session of the Parliament, the Governor-General must terminate the appointment to which the resolution relates.</p> <p>(6) If a resolution is not passed by each House of the Parliament in accordance with subsection (4) in the same session of the Parliament, the suspension of the office holder identified in the statement terminates on the day after the last day that such a resolution could have been passed.</p> <p>(7) The suspension of the Governor or the Deputy Governor from office under this section does not affect any entitlement of the Governor or the Deputy Governor to be paid remuneration and allowances.</p> <p>(8) For the purposes of this section, it is a ground for termination if the Governor or the Deputy Governor: (a) becomes permanently incapable of performing his or her duties; or</p> <p>(b) engages in any paid employment outside the duties of his or her office; or</p> <p>(c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her salary for their benefit</p> <p>(9) The appointment of the Governor or the Deputy Governor must not be terminated on a ground for termination specified in subsection (8) except as provided by this section.</p>
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3.2 In some aspects this is moving back towards the original formulation. When the Reserve Bank was established in 1959, the Governor-General appointed and terminated the Governor and Deputy Governor. In the *Financial Sector Legislation Amendment Act (No.1) 2002* these powers were given to the Treasurer. The then Government argued that the amendments would streamline the appointment and termination process.¹

1 Diane Spooner, 'Reserve Bank Amendment (Enhanced Independence) Bill 2008', *Bills Digest*, No 97, Parliamentary Library Canberra, 2007-08, 29 April 2008, pp 3-4.

Appointment procedures

3.3 The bill moves the power of appointment from the Treasurer to the Governor-General. This would rarely make any practical difference as in the ordinary course either the Governor-General and the Treasurer would be acting on a cabinet decision. The bill does **not** accord a role to the Parliament in appointing the Governor, which would be a move towards the American model.

3.4 It does remove the very small probability of a 'rogue Treasurer' making an appointment without Cabinet authority, perhaps the day before the Treasurer expected to be dismissed.

3.5 An advantage of the amendment is that it helps avoid the perception of the post of Governor as being the personal gift of the Treasurer and thereby may raise perceptions of the independence of the Governor.

Dismissal provisions

3.6 The three grounds for dismissal in section 25 are retained, namely incapacity, outside employment and bankruptcy. (The three grounds are also required for suspending the Governor.) There are three key aspects. Firstly, the three reasons are no longer *mandatory* grounds for dismissal. Secondly, they are the *only* grounds for dismissal without involving the courts. Thirdly, *Parliament* can initiate the dismissal process and must ratify it if the Treasurer initiates it by suspending the Governor.

Should the grounds be mandatory?

3.7 The bill allows, but does not oblige, the Parliament to request the Governor-General to dismiss a Governor or Deputy Governor and having received their request the Governor-General *may* act on it. This is seen by some witnesses as allowing too much discretion on what they view as objective criteria:

...a bankrupt may remain as RBA governor if the Parliament so chooses. The government has not articulated any argument why this may be good policy. It is inconceivable that anyone who was incapacitated, or bankrupt, or engaged in paid outside work should continue as RBA Governor, or Deputy Governor. The government has not explained what additional considerations the Parliament would bring to bear that the Treasurer would be unaware of – as already indicated these are objective phenomena.²

...the amendment proposes to politicise (via parliamentary debates) matters about termination, which, under the listed eventualities (personal incapacity, bankruptcy, or being externally employed) are largely matters of a factual nature...³

2 Institute of Public Affairs, *Submission 4*, p. 8.

3 Professor Stephen Bell, *Submission 2*, p. 1.

3.8 The case partly depends on the extent to which there truly is any subjectivity about the three criteria, and whether there is any case for leniency.

3.9 The question of whether any incapacity is serious enough to prevent the Governor undertaking their responsibilities, and whether such incapacity is temporary or permanent, is a matter of judgement. Often the judgement is a medical one. Particularly in the case of mental incapacity, it can be a judgement about which views can differ. The terms in section 25 appear quite strict. It is apparently not enough that the Governor is no longer capable of performing their duties *fully*. It seems that they must be completely *incapable* of performing them. There remains doubt about the interpretation as it has not been tested in the courts.

3.10 The question of paid employment should be capable of objective determination. However, there may be a case for leniency. For example, should a well-performing Governor given ten dollars for refereeing an under-tens soccer game on the weekend have to be dismissed?

3.11 The question of bankruptcy is objective and there seems little doubt that having a declared bankrupt serving as Governor would not be in the interests of public confidence.

Should the grounds be exclusive?

3.12 Another argument was that the Governor should be able to be dismissed on other grounds.

3.13 At one end of the spectrum is the view is that the Governor should be able to be dismissed for not following the Government's wishes. This would be a quite reasonable view of someone who rejected the arguments in Chapter 2 about the benefits of central bank independence. But it is not the committee's view and it is not consistent with the cross-party support expressed for central bank independence.

3.14 Another view is that the Governor should be able to be rejected for poor performance. On this view if inflation was not maintained within the agreed target range over the medium-term, then the Governor should be removed.

3.15 New Zealand is often cited as a case where the Governor can be dismissed by the Board for poor performance.⁴ However, an important difference is that in New Zealand monetary policy decisions are the sole responsibility of the Governor, whereas in Australia the decisions are taken by the Board. While the Governor chairs the Board, and has the most influential voice, he has in the end only one vote and so it may be unfair to punish him or her severely for the Board's decisions.

3.16 A much milder sanction is applied to the Governor of the Bank of England, who is required to write a public letter to the Chancellor of the Exchequer (the UK

4 Dr Stephen Kirchner, 'A new era for the reserve bank', *Policy*, Vol.24 No.1, Autumn 2008, p. 2.

equivalent of the Treasurer) when inflation goes outside the target band, explaining the reasons and the response.

3.17 It could also be argued that the Governor may damage the Reserve Bank's reputation by other acts than the three grounds listed in the Act. Even if, for example, making inflammatory or irresponsible remarks or being convicted of a criminal offence could lead to the governor being dismissed under the 'behaviour' provisions of section 24, getting a court decision may be a lengthy process (as discussed below).

Should Parliament be given the power to dismiss?

3.18 The committee heard views that involving Parliament may ensnare the governor more in political matters than does the current arrangement.

It is being portrayed as a way of increasing their [the Reserve Bank's] political independence but it would actually make them more politically exposed.⁵

3.19 An alternative approach would be for the Reserve Bank Board to be given the responsibility for dismissal of the Governor, either unfettered or limited to certain grounds. They already have the right to set the Governor's remuneration, under section 24A of the Act. An analogy could be drawn with the dismissal of the CEO of a company by its board.⁶ A difference is that the Reserve Bank Board does not have the power to appoint the Governor.

3.20 Mr McDonald from Treasury argued that it is preferable for Parliament rather than the executive to have the power to dismiss the Governor to build confidence in the central bank's independence:

When you have some degree of judgement or discretion on a question on something as sensitive as the dismissal of a Governor or a Deputy Governor of the Reserve Bank, then there is a risk that by allowing that to be entirely in the discretion of the executive government, people could well infer that the dismissal was not in fact made for those grounds but was made for other grounds.⁷

Practicality concerns

3.21 Some submissions raised concerns that the new procedures proposed in the bill are too slow in cases where a Governor clearly needs to be removed quickly. The suspension by the Governor-General, the Treasurer making a statement to Parliament, and then a motion supporting termination being passed by both houses would take a lot longer than a simple determination by the Treasurer (especially if Parliament were

5 Associate Professor Steve Keen, *Proof Committee Hansard*, p.12.

6 Senator Andrew Murray, *Proof Committee Hansard*, pp 6–8.

7 Mr Tony McDonald, *Proof Committee Hansard*, p. 26.

in recess⁸). Associate Professor Steve Keen uses the example of the Governor falling into an irreversible coma.⁹

3.22 The 'coma' case could be dealt with by the Deputy Governor acting as Governor under sections 12(3) and 21(2) of the Act. Even without either the Governor or Deputy, the Reserve Bank Board could still have a quorum and, depending on the interpretation of section 21, may still be able to meet and set monetary policy.

3.23 Furthermore, the suspension provisions allow for a Governor to be removed from office until Parliament resumes sitting. In most cases of medical incapacity it would not be necessary to wait for Parliament to meet as the Governor would voluntarily resign. If a bankrupt Governor were clinging to office during a parliamentary recess just to collect the salary, then the Reserve Bank Board could cut this to zero under section 24A of the Act.

Comparison with dismissal provisions for other officeholders

3.24 An analogy was drawn with the dismissal provisions for the Taxation Commissioner, the Australian Statistician and the Auditor-General, three other positions for which it is important that the occupants are seen as independent of the government of the day. In the second reading speech on the bill, the Treasurer declared:

The Rudd government committed to enhance the independence of the Reserve Bank by raising the positions of Governor and Deputy Governor to the same level of statutory independence as the Commissioner of Taxation and the Australian Statistician.¹⁰

3.25 The occupants of these posts are subject to similar provisions as those in the bill. They can be dismissed by the Governor-General following a request by both Houses of Parliament. A difference is that in the event of bankruptcy they are required to be dismissed by the Governor-General, rather than allowing parliament some discretion.

8 A point made by Professor Stephen Bell, *Submission 2*, p. 1.

9 Associate Professor Steve Keen, *Submission 3*, p. 10.

10 Hon. Wayne Swan MHR, *House Hansard*, 20 March 2008, p. 2381.

Table 3.2: Dismissal procedures for selected officeholders

Taxation Commissioner (*Taxation Administration Act 1953, section 6C*) (1) The Governor-General may remove the Commissioner or a Second Commissioner from office on an address praying for the removal of the Commissioner or the Second Commissioner, as the case may be, on the ground of proved misbehaviour or physical or mental incapacity being presented to the Governor-General by each House of the Parliament in the same session of the Parliament. (2) The Governor-General may suspend the Commissioner or a Second Commissioner from office on the ground of misbehaviour or physical or mental incapacity. (3) Where the Governor-General suspends the Commissioner or a Second Commissioner, the Minister shall cause a statement of the grounds of the suspension to be laid before each House of the Parliament within 7 sitting days of that House after the suspension. (4) If, at the expiration of 15 sitting days of a House of the Parliament after the day on which the statement was laid before that House, an address under subsection (1) has not been presented to the Governor-General by each House of the Parliament, the suspension terminates. (5) The suspension of the Commissioner or a Second Commissioner from office under this section does not affect any entitlement of the Commissioner or Second Commissioner, as the case may be, to be paid remuneration and allowances. (6) If: (a) the Commissioner or a Second Commissioner becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; (b) the Commissioner or a Second Commissioner engages, except with the approval of the Minister, in paid employment outside the duties of the office of Commissioner or Second Commissioner, as the case may be; or (c) the Commissioner or a Second Commissioner is absent from duty, except on leave of absence, for 14 consecutive days or 28 days in any 12 months; the Governor-General shall remove the Commissioner or Second Commissioner, as the case may be, from office. (7) The Governor-General may, with the consent of the Commissioner or a Second Commissioner, retire the Commissioner or Second Commissioner, as the case may be, from office on the ground of physical or mental incapacity. (8) The Commissioner or a Second Commissioner shall not be suspended, removed or retired from office except as provided by this section.

Australian Statistician (*Australian Bureau of Statistics Act 1975*) (1) The Governor-General may remove the Statistician from office on an address praying for his or her removal on the ground of misbehaviour or incapacity being presented to the Governor-General by each House of the Parliament in the same session of the Parliament. (2) The Governor-General may suspend the Statistician from office on the ground of misbehaviour or incapacity. (3) Where the Governor-General suspends the Statistician from office, the Minister shall cause a statement of the ground of the suspension to be laid before each House of the Parliament within 7 sitting days of that House after the suspension. (4) Where such a statement has been laid before a House of the Parliament, that House may, within 15 sitting days of that House after the day on which the statement has been laid before it, by resolution, declare that the Statistician should be removed from office and, if each House so passes such a resolution, the Governor-General shall remove the Statistician from office. (5) If, at the expiration of 15 sitting days of a House of the Parliament after the day on which the statement has been laid before that House, that House has not passed such a resolution, the suspension terminates. (6) The suspension of the Statistician from office under this section does not affect any entitlement of the Statistician to be paid remuneration and allowances. (7) If the Statistician becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, the Governor-General shall remove the Statistician from office. (8) The Governor-General may, with the consent of the Statistician, retire the Statistician from office on the ground of incapacity. (9) The Statistician shall not be removed or suspended from office except as provided by this section.

Auditor-General (*Auditor-General Act 1997, schedule 1:6*) (1) The Governor-General may remove the Auditor-General from office if each House of the Parliament, in the same session of the Parliament, presents an address to the Governor-General praying for the removal of the Auditor-General on the ground of misbehaviour or physical or mental incapacity. (2) The Governor-General must remove the Auditor-General from office if the Auditor-General does any of the following: (a) becomes bankrupt; (b) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; (c) compounds with his or her creditors; (d) assigns his or her remuneration for the benefit of his or her creditors.

The 'good behaviour' provisions

3.26 As shown in Table 3.1, section 24(1)(c), which states that the Governor and Deputy 'hold office subject to good behaviour', is retained. It has been suggested that the bill in some way changes its application:

If in the future... if the governor is caught inside-trading or taking bribes, there is considerable doubt whether anybody – Treasurer or parliament – will be able to remove him.¹¹

The amendment drops, without any apparent reason, the earlier (current) provision to make tenure contingent on 'good behaviour'.¹²

3.27 However, a legal opinion from the Australian Government Solicitor, tabled by Treasury, indicates that nothing in the bill has the effect of nullifying the 'good behaviour' provision.

3.28 The Solicitor advises that in order for a Governor or Deputy Governor to be removed under section 24(1)(c) 'it would be necessary for legal proceedings to be brought in an appropriate court by a person having sufficient standing'. The Government would have the necessary 'legal standing' but not a private member. The interpretation of the expression 'good behaviour' has not been tested in the courts.

3.29 Concerns have been expressed that legal proceedings could take a very long time.

If you institute legal proceedings in the Federal Court—and...the governor is a person of sufficient financial substance to be in a position to defend those proceedings...it might take years, might it not?¹³

3.30 Quite how long it may take is open to question:

if the evidence of misbehaviour was so compelling and so overwhelming I find it hard to see that the courts would take a period of years to elaborate on it.¹⁴

3.31 It should be remembered that if this is a problem, it is a problem in the current legislation, not one that would be created by the bill.

3.32 Mr Saul Eslake would like to see the 'good behaviour' provisions removed:

11 The Hon. Malcolm Turnbull, MHR, 'The risk of creating an untouchable', *Sydney Morning Herald*, 28 May 2008, p. 11. Mr Turnbull draws an analogy with the Italian central bank governor who refused to resign after being improperly involved in a takeover of a commercial bank. The article summarises arguments in *House of Representatives Hansard*, 14 May 2008, pp 96-100.

12 Professor Steven Bell, *Submission 2*, p. 1.

13 Senator the Hon. George Brandis, *Proof Committee Hansard*, p. 20. He drew an analogy with the drawn-out proceedings involving a dismissal of the head of the Department of Defence.

14 Mr Tony McDonald, Treasury, *Proof Committee Hansard*, p. 21.

A government could, for example, conceivably interpret decisions by a Governor and Deputy Governor to raise interest rates which it found especially politically inexpedient to constitute such a departure from ‘good behaviour’ as would, in the terms of section 24 (1) of the Reserve Bank Act, provide grounds for termination of their appointments. That possibility may well be very remote. It might even be said that it exists only in theory. Nonetheless, removing that possibility, even if it is only theoretical, would serve to enhance perceptions of the Reserve Bank’s independence.¹⁵

3.33 He suggested:

It would seem prudent, therefore, that if the tenure of the Governor and Deputy Governor of the Reserve Bank is to be enhanced in the way envisaged by the Bill, that the Bill should also include provision for ‘proven misbehaviour’ to be a ground for removal upon a resolution to that effect by both Houses. Desirably, ‘proven misbehaviour’ might be specifically defined to exclude decisions with regard to the cash rate target per se as constituting ‘proven misbehaviour’ simply because the Government of the day disagreed with them, or even if they turned out (with the benefit of hindsight) to have been ill-advised.¹⁶

The 'override' provisions

3.34 Also unchanged by the bill are the provisions of section 11 of the Act, which allows the Government, through the Governor-General, to direct the Reserve Bank Board to adopt the Government's policy, subject to the Government having to table in Parliament the Bank's reasons why it rejected the Government's view.¹⁷ In the five decades this potential restraint on central bank independence has been in place, it has never been used.

3.35 Associate Professor Steve Keen wrote:

The substantive capacity of the Government to direct the RBA to conduct monetary policy as the Government sees fit is also unaffected by this Bill. Those powers reside in Section 11, and are not amended by this Bill—and nor should they be.¹⁸

3.36 Professor Davidson commented:

The government can overrule the central bank at any time under section 11. The fact that a government chooses not to do so actually points to the credibility of the government itself in its conduct of monetary policy. So

15 Mr Saul Eslake, *Submission 1*, p. 4.

16 Mr Saul Eslake, *Submission 1*, p. 4.

17 The UK, Canada and Japan have similar provisions in their central banking legislation but many countries do not. Such provisions are more common in central banks whose legislation dates from an era before central banks had clearly defined objectives.

18 Associate Professor Steve Keen, *Submission 3*, p. 10.

there is a nuanced argument in terms of the line we need to draw between how much independence the Governor of the Reserve Bank should have, and the accountability that the governor has to the government and that ultimately the government has to the electorate.¹⁹

Is the bill necessary given the current independence of the Reserve Bank?

3.37 In recent years, there has been cross-party support for central bank independence. While Treasurers and Prime Ministers have offered commentary on decisions by the Reserve Bank, there have been no serious accusations, let alone documented cases, of threats being made by Government ministers to dismiss a Governor.

3.38 As a witness argued, there has recently been a very good example of central bank independence:

The current Reserve Bank governor raised interest rates during an election period. That is not nothing; it is a remarkable act of frank and fearless advice.²⁰

3.39 This has led some writers to argue that the bill is unnecessary:

The RBA's senior officers have always enjoyed a high degree of independence owing to the fact that dismissal would be politically costly to the government.²¹

there is too much ado about RBA independence in my view. The RBA is already quite independent.²²

3.40 It is hard to judge the extent to which dismissing a Reserve Bank Governor would be politically costly. Perhaps the fact it has not happened is itself an indication that it would be politically costly. Senator Brandis put strongly his view that the political costs of dismissing a Governor would be almost prohibitive:

given the gravity of such a measure, no government would dare make it unless there were very, very powerful and almost self-explanatory reasons to do such a thing.²³

3.41 On the other hand, when interest rates are high and rising, making a scapegoat of a central bank Governor could be quite politically popular in the short term. When

19 Professor Sinclair Davidson, *Proof Committee Hansard*, p. 3.

20 Professor Sinclair Davidson, *Proof Committee Hansard*, p. 8.

21 Dr Stephen Kirchner, 'Independence:2 accountability:0', *The Age*, 27 March 2008, p. 12.

22 Professor Stephen Bell, *Submission 2*, p. 1.

23 Senator George Brandis, *Proof Committee Hansard*, p. 24.

tabloid papers excoriate the Reserve Bank governor on their front pages, they are unlikely to attack a Government for dismissing him.²⁴

3.42 The stronger sanction against dismissal would be likely in financial markets, especially if the dismissal was regarded as being motivated by a desire to run a looser monetary policy and allow higher inflation. In that case, it is likely that the exchange rate would depreciate sharply and bond yields soar.

3.43 Professor Davidson concluded there are already sufficient safeguards to protect the central bank Governor:

The Reserve Bank governor...is a highly visible person not only to the electorate, the media and the opposition but to the international financial markets. It is the media, the international financial markets, the opposition and the electorate at large who provide the Reserve Bank governor with all the protection that he actually really needs.²⁵

3.44 While these considerations may lead a government to pause before dismissing a Reserve Bank governor, they do not remove entirely the credibility of a threat to dismiss him, and so allowing the Treasurer free reign to dismiss the Governor could potentially allow the Treasurer to influence him. Even if astute judges of Australian politics may not believe the threat was credible, having legislation which seems to allow it may diminish the perceived independence of the Reserve Bank in international markets.

Does the bill go far enough?

3.45 Some critics of the bill contend that it does not go far enough:

While in some respects an improvement, the new arrangements leave the RBA operating under an outdated and internationally anomalous governance structure that is incompatible with modern demands for central bank transparency and accountability.²⁶

3.46 It has been suggested that changes should be made to the manner and nature of appointments of the other Reserve Bank Board members. The incoming Treasurer announced in December 2007 'the Secretary to the Treasury and the Governor will maintain a register of eminent candidates of the highest integrity from which the Treasurer will make new appointments to the Reserve Bank Board. This procedure removes the potential for political considerations in the appointment process and ensures only the best qualified candidates are appointed to the Reserve Bank Board.'²⁷

24 *The Daily Telegraph*, 5 April 2008, splashed across its front page an unflattering picture of Governor Stevens and a large headline 'Is this the most useless man in Australia'.

25 Professor Sinclair Davidson, *Proof Committee Hansard*, p. 3.

26 Dr Stephen Kirchner, 'A new era for the reserve bank', *Policy*, Vol.24 No.1, Autumn 2008, p. 1.

27 Statement on the conduct of monetary policy, by the Treasurer and the Governor of the Reserve Bank of Australia, 6 December 2007 on RBA website, www.rba.gov.au.

3.47 The committee welcomes this as an improvement but notes concerns that it may mean that challengers to the dominant economic paradigm may be unlikely to be appointed. A possible response was suggested by Associate Professor Keen. The Board could be enlarged to allow four academics so that different schools of economic thought can be represented in its deliberations. The academics could be chosen from a shortlist prepared by a committee of the Economics Society of Australia. Associate Professor Keen also called for efforts to ensure the Board encompassed people representing community groups as well as with practical business experience.²⁸

3.48 The United Kingdom Government appointed a Commissioner for Public Appointments, following the recommendations of the Nolan Committee, to ensure appointments are based, and are seen to be based, on merit. This model might be usefully considered in thinking about further reforms.

3.49 Other matters raised during the inquiry included the presence of the Secretary to the Treasury on the Board. Some witnesses wanted the Reserve Bank to look at a broader range of influences on the economy. These matters are important but outside the remit of this report.

Increasing accountability of the Reserve Bank

3.50 Related to central bank *independence* is the *accountability* of the central bank. Indeed accountability could be regarded as the price central banks must pay for being given independence. Central bankers were once almost hermit-like; a 'medieval mystery' as one central banker put it.²⁹ Now central banks publish detailed analyses of the economy, release statements after their meetings and their Governors make many speeches.

3.51 A specific aspect of accountability is discharged by many central banks by appearing before parliamentary committees. For about a decade the Reserve Bank of Australia has appeared twice a year before the House of Representatives Economics Committee.

3.52 When this bill was debated in the House an amendment was unsuccessfully moved to increase the frequency of the Bank's appearances from two to four, so that:

...the people and the parliament of Australia will see more of the Reserve Bank and understand more about their work. The Reserve Bank will know that it is accountable four times a year. That increase in frequency will underline and emphasise the independence of that institution³⁰

28 Associate Professor Steve Keen, *Submission 3a*.

29 H C 'Nugget' Coombs, long-term governor of the Reserve Bank, in his autobiography, *Trial Balance*, p. 141.

30 Hon Malcolm Turnbull, *House Hansard*, 14 May 2008, p. 2774.

3.53 The Reserve Bank Governor has indicated that he would be happy to appear more often. He said to the committee 'It is really in the hands of the committee how often you want me to come.'³¹

3.54 Saul Eslake's submission to the inquiry opposed this suggestion:

...although the Committee's hearings do, in principle, provide an opportunity for more detailed questioning and scrutiny of the Bank's thinking, all too commonly members of the Committee have instead seen them as providing opportunities to attempt to ensnare the Governor or other officials into supporting a particular line of political argument (attempts which successive Governors have thus far managed to avoid), or for individual Committee members to demonstrate how 'in touch' they are with, or sensitive they are to, the consequences of higher interest rates or rising bank fees for their constituents. It is not readily apparent how doubling the number of opportunities for grandstanding of this nature would enhance the accountability of the Reserve Bank.³²

3.55 Some committee members have suggested that the current arrangements be changed to the governor appearing four times a year to a joint hearing by the House and Senate Economics committees.

31 Mr Glenn Stevens, *House Economics Committee Hansard*, Friday 4 April, p. 36.

32 Mr Saul Eslake, *Submission 1*, p. 6.

Conclusions and recommendations

4.1 The committee believes that both the reality and perception of central bank independence are likely to enhance economic outcomes. They reduce the cost of keeping the average rate of inflation within the target band and mean that interest rates do not have to rise as much following an inflationary shock.

4.2 There is an unavoidable trade-off between making it too hard to get rid of a clearly inappropriate Governor and making it appear too easy for a Treasurer to thwart the independence of a Governor by threatening them with dismissal. The committee believes the amendments in the bill get this balance right. A bad Governor can still be removed but only with the sanction of the courts or Parliament, which protects a good Governor from having pressure applied by a Treasurer.

Recommendation 1

4.3 **The committee recommends that the bill be passed.**

4.4 A matter raised in the inquiry, but outside the scope of the bill, is the appointment of the other members of the Reserve Bank Board. The committee commends the Government for its recent initiative aimed at ensuring the probity of future appointments.

Recommendation 2

4.5 **The committee recommends that the Government continues to consider ways of improving the appointment procedures to the Reserve Bank Board to make them transparent and accountable and ensure a board of intellectual and moral quality but with a diverse range of perspectives.**

Senator Annette Hurley

Chair

Reserve Bank Amendment (Enhanced Independence) Bill 2008

Coalition Senators' Dissenting Report

Introduction

The Reserve Bank Amendment (Enhanced Independence) Bill 2008 (the Bill) was introduced by the Treasurer on 20 March 2008. In his second reading speech, the Treasurer said:

“The Rudd government committed to enhance the independence of the Reserve Bank by raising the positions of Governor and Deputy Governor to the same level of statutory independence as the Commissioner of Taxation and the Australian Statistician. This is the purpose of the legislation I am introducing to the parliament today. The Rudd government also committed to improving the transparency of future Reserve Bank Board appointments and to remove political considerations. Accordingly, the Secretary to the Treasury and the Governor of the Reserve Bank will maintain a register of eminent candidates of the highest integrity from which the Treasurer will make appointments to the Reserve Bank Board”.

The Bill amends the *Reserve Bank Act 1959* (the Act) so that the Governor-General in Council, rather than the Treasurer, would appoint the Governor and Deputy Governor of the Reserve Bank. The Bill does not change the appointment process for the Reserve Bank Board or the Payments System Board which remains with the Treasurer.

It also amends the Act so that the termination of the appointment of the Governor or Deputy Governor would be by the Governor-General in Council following Parliamentary approval. This replaces section 25 of the Act. The Bill specifies three grounds for the termination of an appointment; where a Governor or Deputy Governor¹:

- becomes permanently incapable of performing his or her duties; or
- engages in any paid employment outside the duties of his or her office; or
- becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her salary for their benefit.

Clause 25(8) of the Bill provides:

¹ Proposed clause 25(8) of the Bill. To simplify further reference to these three conditions, the Report will use the terms: permanently incapacitated, in outside paid employment and bankrupt.

25(8): The appointment of the Governor or the Deputy Governor must not be terminated on a ground for termination specified in subsection (8) except as provided by this section.

The effect of this clause is to ensure that Parliamentary consideration of the termination of a Governor or Deputy Governor may only be on the three reasons of permanent incapacity, paid employment and bankruptcy.

The proposed section 25 of the Bill contrasts with section 25 of the Act which provides that the Treasurer shall terminate the appointment of the Governor or Deputy Governor if he or she is bankrupt, permanently incapacitated or in outside paid employment.

So the effect of the Bill would be to change the mechanism for the termination of the Governor or Deputy Governor on these three grounds. Presently termination for bankruptcy, outside paid employment and permanent incapacity is mandatory. If the Bill is enacted, it would become optional in two degrees. First, the Parliament would need to agree to the termination on these grounds. Then the Governor-General in Council would need to agree to execute the termination.

Misbehaviour

Subsection 24(1)(c) of the Act provides that:

24 (1) The Governor and the Deputy Governor:

... (c) hold office subject to good behaviour.

The Bill does not amend that subsection, although its effect may, in some opinions, be affected by clause 25(8) of the Bill; specifically the process for removing a Governor or Deputy Governor for misbehaviour (see discussion below).

Coalition Senators note that the Bill does not legislate for a 'register of eminent candidates'.

Coalition Senators also noted an amendment moved by Hon. Malcolm Turnbull MP requiring the Governor to make himself or herself available to give evidence before the House of Representatives Standing Committee on Economics *and the Senate Standing Committee on Economics* not less than four times a year.

Submissions and Testimony

The Treasury

The Treasury's submission states that the Bill raises the positions of Governor and Deputy Governor to 'the same level of statutory independence as the Commissioner of Taxation and the Australian Statistician'. The submission also cites advice from the Australian Government Solicitor (which was tabled by Mr McDonald in testimony on 30 May 2008. The pertinent part of the advice states:

“In our view, a court would need to determine whether the Governor or Deputy Governor had failed to exhibit ‘good behaviour’ for the purposes of s 24(1)(c). For termination to occur in accordance with s24(1)(c) it would be necessary for legal proceedings to be brought in an appropriate court by a person having sufficient standing alleging that the Governor or Deputy Governor had failed to fulfil the condition of his or her office as to ‘good behaviour’ and seeking a declaration as to when that failure occurred”².

Coalition Senators note that the advice was first sought by the Treasury on 15 May 2008 (in draft form).

In testimony before the Committee, Mr McDonald did not give any evidence that would suggest that it would be an improvement on the status quo to allow Parliamentary debate on whether a Governor or Deputy Governor should be terminated for bankruptcy, outside paid employment or permanent incapacity. He did, however, suggest that permanent incapacity required judgement and was not purely a matter of fact.

Mr McDonald—The first point is that, as I said before, section 25(2) provides for the immediate suspension in those circumstances. The second point is that it is not quite the case that these three grants—and it may well be the case for bankruptcy—take the ground of permanent incapacity. I know that in earlier testimony people said, ‘If the governor was comatose’, and various other grounds can be put forward, but that is not something that would just be a question of pure opinion; the Treasurer of the moment would need to have a basis for forming that opinion. There is more than one ground, and the test of incapacity is one that requires some judgement³.

Mr McDonald also argued for the retention of the present formulation with respect to removing a Governor or Deputy Governor for misbehaviour.

Mr McDonald—I suppose we come back to the counterfactual: is it preferable to make it easier and, with due respect to the parliament, more engaged in the political process, for either house of parliament to be able to move such a motion on the grounds of misbehaviour⁴.

Mr McDonald—I suppose we come back to the alternative: what actually happens if you have a different test—if you amend section 25(8)? In that instance it is the parliament that needs to be convinced that the governor or deputy governor is guilty of misbehaviour, and not

² Australian Government Solicitor advice to the Treasury of 28 May 2008, page 2.

³ Testimony to the Committee, 30 May 2008, page E.25.

⁴ Testimony to the Committee, 30 May 2008, page E.23.

*a court. Again, with respect to the parliament, that is a lesser test than exists at the moment*⁵.

Senator Brandis argued that, taking the AGS advice at face value, would potentially lead to very long delays if the court case was contested.

Senator BRANDIS—*I am. I ran dozens and dozens of Federal Court trials in my earlier career, and I can tell you that a contested Federal Court proceeding is not something that can happen quickly. It is not in the nature of the process. What effect do you think it would have on the Australian financial system if public confidence in the Governor of the Reserve Bank was undermined by prolonged proceedings in the Federal Court*⁶.

Senator Brandis also noted that a Government wishing to terminate a Governor for misbehaviour would need very strong grounds.

Senator BRANDIS—*With respect, I do not think you are right because, given the gravity of such a measure, no government would dare make it unless there were very, very powerful and almost self explanatory reasons to do such a thing. But, even if you were right about that, what is the greater mischief? That or a public declaration by the government that it has no confidence in the man who runs the financial system which would drag on for, let us say, even weeks if it were dealt with in an extremely urgent way by a court. What is the greater mischief?*⁷

Saul Eslake

In Mr Eslake's submission, he states that it is odd that the three grounds of outside paid employment, bankruptcy and permanent incapacity are included as optional grounds for termination but misbehaviour is not. Mr Eslake thought it would be an improvement to include 'proven misbehaviour' as a ground on which should be adjudged by Parliament.

Stephen Bell

In Mr Bell's submission, he writes that he does not support the Bill and the amendment "has little to do with the RBA's independence". He considers it undesirable for Parliamentary debate on matters that are essentially of a factual nature.

⁵ Testimony to the Committee, 30 May 2008, page E.23.

⁶ Committee Transcript, 30 May 2008, page E.21.

⁷ Committee Transcript, 30 May 2008, page E.24.

Steve Keen

Professor Keen's submission concludes:

“Since further independence for the RBA is not warranted, and this Bill in any case makes comical rather than substantive changes to its independence, I recommend that the Bill be rejected”.

In his testimony, Professor Keen was very clear on his opposition to the Bill.

Prof. Keen—No, I do not. I think the bill as written is silly. Looking at the bill, changing from the Treasurer to the Governor-General is not necessarily a bad thing. I am not opposed to that particular part of the bill. But the following grounds for removal of the governor or deputy should not be optional: if they are bankrupt, comatose—'incapable of performing his or her duties'—or working for another organisation. They should be compulsory, as the current act says. It is the classic, old expression, which you have heard many times, I am sure: it is rearranging the deck chairs on the Titanic⁸.

Sinclair Davidson

Professor Davidson's submission concludes that the Bill might add to moral hazard and thought the current institutional arrangement “are appropriate, sensible and should be maintained”.

In his testimony, Professor Davidson was equally clear in his opposition to the Bill, as the following exchange with Senator Bushby makes clear⁹.

Senator BUSHBY—That is right. Do you think that changing the situation actually enhances the independence of the Reserve Bank?

Prof. Davidson—No. It is inconceivable that a bankrupt would remain as Reserve Bank Governor.

Senator BUSHBY—But theoretically under the—

Prof. Davidson—Yes, under the amendment, that could happen.

Senator BUSHBY—Under the proposed bill it is quite conceivable that, for whatever reason—whether political or otherwise—one of the houses of parliament could elect to not—

Prof. Davidson—That is correct.

⁸ Testimony to the Committee, 30 May 2008, page E.14.

⁹ Committee Transcript, 30 May 2008, page E.5.

Senator BUSHBY—*move the address to the Governor-General. Similarly, with the Commissioner of Taxation, the Governor-General must remove them if they engage in paid employment. Do you think that moving that requirement from the Reserve Bank enhances independence?*

Prof. Davidson—*Absolutely not—no.*

Senator BUSHBY—*Similarly, if he is absent from duty, but that is not as relevant. The same applies for the Statistician. If the Statistician becomes bankrupt, the Governor-General shall remove them. So he is required to remove them and, once again, we have established that, in the case of the proposed bill, you do not believe that enhances the independence of the Reserve Bank board at all.*

Prof. Davidson—*No.*

Senator BUSHBY—*Was it the intention to amend the Reserve Bank Act 1959 such that the automatic termination for permanent incapacity, paid employment outside the RBA or bankruptcy now becomes optional, such that the parliament might decide. Do you think that they are intending to make it optional by doing this in those circumstances?*

Prof. Davidson—*If I read the bill correctly, it actually looks like the parliament could agree to have a bankrupt, for example, as the Governor of the Reserve Bank. I do not think that is at all wise and, if the government thinks that it is wise, it is up to them really to explain to us why that would be the case. I have not heard those arguments. I have heard the argument that this will enhance the independence of the Reserve Bank. I suspect that what might be happening is that it is believed that somehow section 24(1)(c) has been modified and that these become the only conditions under which the Reserve Bank Governor could be removed, but that is not the opinion that is in the Treasury submission, for example.*

In summary, the submissions and testimony – with the exception of Treasury – were consistent in their opposition to the proposed Bill.

Discussion

As the stated purpose is to raise the positions of the Governor and Deputy Governor to the same level of statutory independence as the Commissioner of Taxation and the Australian Statistician, Coalition Senators firstly considered the relevant provisions of the *Taxation Administration Act 1953* and the *Australian Bureau of Statistics Act 1975*.

Both the Tax Commissioner and Australian Statistician are appointed by the Governor-General in Council for terms of up to 7 years.

The Tax Commissioner may be dismissed by the Governor-General in Council subject to the agreement of Parliament for “proved misbehaviour or physical or mental incapacity”. The Governor-General must terminate the appointment of the Tax Commissioner for outside paid employment or bankruptcy.

The Australian Statistician may be dismissed by the Governor-General in Council subject to the agreement of Parliament for “misbehaviour or incapacity”. The Governor-General must terminate the appointment of the Statistician for bankruptcy.

So the Bill’s exclusion of misbehaviour as a ground for Parliament’s determination is inconsistent with these Acts.

And the Bill’s inclusion of bankruptcy as an optional grounds for removal is inconsistent with both Acts where it is mandatory for the Governor-General to terminate an appointment (as is outside paid employment in the case of the Tax Commissioner).

In a survey of other statutory officers (see Attachment A), there is no instance where Parliament is called upon to determine whether a bankrupt officer should remain in office.

Coalition Senators are strongly of the view that a Governor or Deputy Governor who is in outside paid employment, permanently incapacitated or bankrupt should be subject to the mandatory termination of his or her appointment. These three grounds are essentially matters of fact – outside paid employment can be demonstrated by an employment contract; permanent incapacity can be evidenced by a medical certificate and bankruptcy can be evidenced by a court order. It would be a gross error for proceedings on these grounds to be optional and subject to Parliamentary debate.

Coalition Senators note that there are differing opinions on the method for dismissing a Governor or Deputy Governor for misbehaviour. On the one side, the Australian Government Solicitor considers that it would be necessary to act via court proceedings. On the other, the Parliamentary Library (in its Bills Digest) consider that the Treasurer could terminate an appointment on these grounds, but that would become more problematic should the Bill be enacted.

In any case, Coalition Senators are surprised that the Government did not take the opportunity afforded by the Bill to clarify the termination procedure for misbehaviour.

Coalition Senator’s do not agree with Mr McDonald who in testimony suggested that dismissal via a court order would be superior to Parliamentary involvement because it would be less political. As Senator Brandis has noted, Federal Court proceedings could take months if not years were they to be contested, and this would be likely as otherwise a misbehaving governor would have resigned. Given the importance for stability in the financial sector, it is necessary that the execution of any dismissal for misbehaviour be swift.

Further, there is no other instance that could be found where it would be necessary to take court proceedings. Indeed, for High Court Judges – arguably having an even greater need for independence than the RBA Governor – it is necessary to use Parliamentary proceedings.

Conclusion

Coalition Senators do not support section 25 of the Bill, which they consider would be a grave error. The three grounds of outside paid employment, bankruptcy and permanent incapacity should be mandatory and remain with the Treasurer for execution. This is important since there is a need for swift execution of the termination of an appointment because of the effects on the financial sector which Executive Council proceedings would delay.

Sections 1 and 2 of the Bill are symbolic. In practice there is no difference between the Governor-General in Council signing an instrument of appointment or the Treasurer. Both processes would have involved Cabinet consideration of the proposed appointees. Nonetheless, given that the comparable Acts cited at Attachment A all involve the Governor-General, Coalition Senators are willing to consider these amendments.

Given the opportunity afforded by the Bill, and the uncertainty evidenced by the Australian Government Solicitor advice over the termination of a Governor or Deputy Governor for misbehaviour, Coalition Senators would consider amendments clarified the Law such that either the Governor-General (acting alone or following Parliamentary debate) may terminate the appointment of a Governor or Deputy Governor for misbehaviour. But if such an amendment were to be brought forward, Coalition Senators consider that the suspension provisions should involve the Treasurer not the Governor-General given the time-sensitive nature of any decision to remove an RBA Governor or Deputy Governor.

Coalition Senators support Mr Turnbull's amendment to require the RBA Governor to testify to a conjoint meeting with the House Economics Committee *and the Senate Economics Committee* four times a year as a measure which would increase the accountability and transparency of the Reserve Bank and hence its independence *in both houses of parliament*.



Senator Alan Eggleston (Deputy Chair)

Attachment A

Appointment and Termination of Selected Statutory Office Holders

This section lists the relevant sections of comparable Acts that provide for the appointment and termination of statutory officers. It does not purport to be complete, but provides a thorough sample of key officials that require statutory independence including Judges, the Australian Statistician, the Tax Commissioner, the Auditor-General, the Commonwealth Ombudsman, the Australian Electoral Commissioner, the Privacy Commissioner, the Director of Public Prosecutions, the Chairman of the Australian Competition and Consumer Commission, the Chairman of the Australian Securities and Investments Commission, and the Chairman of the Australian Prudential Regulation Authority.

Summary of appointment and dismissal procedures

	Appointment	Termination
Judges	Governor-General	Governor-General and Parliament for proved misbehaviour or incapacity
Australian Statistician	Governor-General for up to 7 years	Governor-General and Parliament for misbehaviour or incapacity. Governor-General shall terminate appointment for bankruptcy
Tax Commissioner	Governor-General for up to 7 years	Governor-General and Parliament for proved misbehaviour or physical or mental incapacity. Governor-General shall terminate appointment for paid employment or bankruptcy
Auditor-General	Governor-General for up to 10 years and not eligible for reappointment. Needs approval by the Joint Committee of Public Accounts and Audit	Governor-General and Parliament for misbehaviour or physical or mental incapacity. Governor-General shall terminate appointment for bankruptcy.

Ombudsman	Governor-General for up to 7 years	Governor-General and Parliament for misbehaviour or physical or mental incapacity. Governor-General shall terminate appointment for bankruptcy.
Electoral Commissioner	Governor-General for up to 7 years	Governor-General for misbehaviour or physical or mental incapacity. Governor-General shall terminate appointment for bankruptcy or paid employment.
Privacy Commissioner	Governor-General for up to 7 years	Governor-General for misbehaviour or physical or mental incapacity. Governor-General shall terminate appointment for bankruptcy.
Director of Public Prosecutions	Governor-General for up to 7 years	Governor-General for misbehaviour or physical or mental incapacity. Governor-General shall terminate appointment for bankruptcy or paid employment.
ACCC Chairman	Governor-General and approval of majority of States	Governor-General for misbehaviour or physical or mental incapacity. Governor-General shall terminate appointment for bankruptcy or paid employment.
ASIC Chairman	Governor-General for up to 5 years	Governor-General for misbehaviour or physical or mental incapacity or bankruptcy.
APRA Chairman	Governor-General for up	Governor-General for misbehaviour or physical

	to 5 years	<p>or mental incapacity or bankruptcy.</p> <p>Governor-General shall terminate appointment if becomes a director, officer or employee of a body regulated by APRA.</p>
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The Constitution of Australia

72 Judges' appointment, tenure and remuneration

The Justices of the High Court and of the other courts created by the Parliament:

- (i) shall be appointed by the Governor-General in Council;
- (ii) shall not be removed except by the Governor-General in Council, on an address from both Houses of the Parliament in the same session, praying for such removal on the ground of proved misbehaviour or incapacity;
- (iii) shall receive such remuneration as the Parliament may fix; but the remuneration shall not be diminished during their continuance in office.

Australian Bureau of Statistics Act 1975

7 Appointment and tenure of office of Statistician

- (1) The Statistician shall be appointed by the Governor-General and, subject to this Act, holds office for such period, not exceeding 7 years, as is specified in the instrument of his or her appointment but is eligible for re-appointment.
- (3) The Statistician holds office on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined by the Governor-General.

12 Removal from office

- (1) The Governor-General may remove the Statistician from office on an address praying for his or her removal on the ground of misbehaviour or incapacity being presented to the Governor-General by each House of the Parliament in the same session of the Parliament.
- (2) The Governor-General may suspend the Statistician from office on the ground of misbehaviour or incapacity.

- (3) Where the Governor-General suspends the Statistician from office, the Minister shall cause a statement of the ground of the suspension to be laid before each House of the Parliament within 7 sitting days of that House after the suspension.
- (4) Where such a statement has been laid before a House of the Parliament, that House may, within 15 sitting days of that House after the day on which the statement has been laid before it, by resolution, declare that the Statistician should be removed from office and, if each House so passes such a resolution, the Governor-General shall remove the Statistician from office.
- (5) If, at the expiration of 15 sitting days of a House of the Parliament after the day on which the statement has been laid before that House, that House has not passed such a resolution, the suspension terminates.
- (6) The suspension of the Statistician from office under this section does not affect any entitlement of the Statistician to be paid remuneration and allowances.
- (7) If the Statistician becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, the Governor-General shall remove the Statistician from office.
- (8) The Governor-General may, with the consent of the Statistician, retire the Statistician from office on the ground of incapacity.
- (9) The Statistician shall not be removed or suspended from office except as provided by this section.

Taxation Administration Act 1953

4 Commissioner and Second Commissioners of Taxation

There shall be a Commissioner of Taxation and 3 Second Commissioners of Taxation, who shall be appointed by the Governor-General.

6C Suspension and removal from office of Commissioner or Second Commissioner

- (1) The Governor-General may remove the Commissioner or a Second Commissioner from office on an address praying for the removal of the Commissioner or the Second Commissioner, as the case may be, on the ground of proved misbehaviour or physical or mental incapacity being presented to the Governor-General by each House of the Parliament in the same session of the Parliament.
- (2) The Governor-General may suspend the Commissioner or a Second Commissioner from office on the ground of misbehaviour or physical or mental incapacity.
- (3) Where the Governor-General suspends the Commissioner or a Second Commissioner, the Minister shall cause a statement of the grounds of the suspension to be laid before each House of the Parliament within 7 sitting days of that House after the suspension.
- (4) If, at the expiration of 15 sitting days of a House of the Parliament after the day on which the statement was laid before that House, an address under subsection (1) has not been presented to the Governor-General by each House of the Parliament, the suspension terminates.
- (5) The suspension of the Commissioner or a Second Commissioner from office under this section does not affect any entitlement of the Commissioner or

- Second Commissioner, as the case may be, to be paid remuneration and allowances.
- (6) If:
- (a) the Commissioner or a Second Commissioner becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit;
 - (b) the Commissioner or a Second Commissioner engages, except with the approval of the Minister, in paid employment outside the duties of the office of Commissioner or Second Commissioner, as the case may be; or
 - (c) the Commissioner or a Second Commissioner is absent from duty, except on leave of absence, for 14 consecutive days or 28 days in any 12 months;
- the Governor-General shall remove the Commissioner or Second Commissioner, as the case may be, from office.
- (7) The Governor-General may, with the consent of the Commissioner or a Second Commissioner, retire the Commissioner or Second Commissioner, as the case may be, from office on the ground of physical or mental incapacity.
- (8) The Commissioner or a Second Commissioner shall not be suspended, removed or retired from office except as provided by this section.

Auditor-General Act 1997

1 Appointment of Auditor-General

- (1) The Auditor-General is to be appointed by the Governor-General, on the recommendation of the Minister, for a term of 10 years.
- Note: The effect of section 19A of the *Acts Interpretation Act 1901* is that “the Minister” refers to the Minister who administers this clause. The administration of Acts or particular provisions of Acts is allocated by Administrative Arrangements Orders made by the Governor-General.
- (2) The Auditor-General holds office on a full-time basis.
- (3) For the purposes of the *Superannuation Act 1976* and the Trust Deed under the *Superannuation Act 1990*, the minimum retiring age for the Auditor-General is 55. However, if the instrument of appointment specifies a younger age, then the younger age applies.
- (4) A person cannot be appointed as Auditor-General if the person has previously been appointed as Auditor-General under this Act or under the *Audit Act 1901*.

2 Minister must refer recommendation for appointment of Auditor-General to the Joint Committee of Public Accounts and Audit

- (1) The Minister must not make a recommendation to the Governor-General under clause 1 unless:
- (a) the Minister has referred the proposed recommendation to the Joint Committee of Public Accounts and Audit for approval; and
 - (b) the Committee has approved the proposal.
- (2) A referral under paragraph (1)(a) must be in writing and may be withdrawn by the Minister at any time.

6 Removal from office etc.

- (1) The Governor-General may remove the Auditor-General from office if each House of the Parliament, in the same session of the Parliament, presents an address to the Governor-General praying for the removal of the Auditor-General on the ground of misbehaviour or physical or mental incapacity.
- (2) The Governor-General must remove the Auditor-General from office if the Auditor-General does any of the following:
 - (a) becomes bankrupt;
 - (b) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors;
 - (c) compounds with his or her creditors;
 - (d) assigns his or her remuneration for the benefit of his or her creditors.
- (3) If the Auditor-General is:
 - (a) an eligible employee for the purposes of the *Superannuation Act 1976*; or
 - (b) a member of the superannuation scheme established by the Trust Deed under the *Superannuation Act 1990*;the Governor-General may, with the consent of the Auditor-General, retire the Auditor-General from office on the ground of physical or mental incapacity.
- (4) For the purposes of the *Superannuation Act 1976*, the Auditor-General is taken to have been retired from office on the ground of invalidity if:
 - (a) the Auditor-General is removed or retired from office on the ground of physical or mental incapacity; and
 - (b) the CSS Board gives a certificate under section 54C of the *Superannuation Act 1976*.
- (5) For the purposes of the *Superannuation Act 1990*, the Auditor-General is taken to have been retired from office on the ground of invalidity if:
 - (a) the Auditor-General is removed or retired from office on the ground of physical or mental incapacity; and
 - (b) the PSS Board gives a certificate under section 13 of the *Superannuation Act 1990*.

Ombudsman Act 1976

21 Appointment of Ombudsman

- (1) An Ombudsman shall be appointed by the Governor-General.
- (2) An Ombudsman holds office on such terms and conditions (if any) in respect to matters not provided for in this Act as are prescribed.

22 Tenure of office

- (1) Subject to this Act, an Ombudsman holds office for such period, not exceeding 7 years, as is specified in the instrument of his or her appointment, but is eligible for re-appointment.

28 Suspension and removal of Ombudsman

- (1) The Governor-General may remove an Ombudsman from office on an address praying for his or her removal on the ground of misbehaviour or physical or mental incapacity being presented to the Governor-General by each House of the Parliament in the same session of the Parliament.

- (2) The Governor-General may suspend an Ombudsman from office on the ground of misbehaviour or physical or mental incapacity.
- (3) Where the Governor-General suspends an Ombudsman from office, the Minister shall cause a statement of the grounds of the suspension to be laid before each House of the Parliament within 7 sitting days of the House after the suspension.
- (4) Where such a statement has been laid before a House of the Parliament, that House may, within 15 sitting days of that House after the day on which the statement has been laid before it, by resolution, declare that the Ombudsman should be removed from office and, if each House so passes such a resolution, the Governor-General shall remove the Ombudsman from office.
- (5) If, at the expiration of 15 sitting days of a House of the Parliament after the day on which the statement has been laid before that House, that House has not passed such a resolution, the suspension terminates.
- (6) The suspension of an Ombudsman from office under this section does not affect any entitlement of the Ombudsman to be paid remuneration and allowances.
- (7) If an Ombudsman becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, the Governor-General shall remove him or her from office.
- (7A) If an Ombudsman is absent from duty, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months, the Governor-General may remove him or her from office.
- (8) An Ombudsman shall not be removed or suspended from office except as provided by this section.

Commonwealth Electoral Act 1918

21 Terms and conditions of appointment etc.

- (1) An electoral officer shall be appointed by the Governor-General.
- (2) Subject to this Act, an electoral officer holds office for such period, not exceeding 7 years, as is specified in the instrument of appointment, but is eligible for re-appointment.

25 Termination of appointment

- (1) The Governor-General may terminate the appointment of an electoral officer by reason of misbehaviour or physical or mental incapacity.
- (2) If an electoral officer:
 - (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit;
 - (b) is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or
 - (c) engages in paid employment outside the duties of his or her office without the approval of the Commission;
 the Governor-General shall terminate the appointment of the electoral officer.
- (3) If the Electoral Commissioner, or the Deputy Electoral Commissioner while acting as the Electoral Commissioner, fails, without reasonable excuse, to comply with his or her obligations under section 11, the Governor-General shall

terminate his or her appointment as Electoral Commissioner or Deputy Electoral Commissioner, as the case may be.

Privacy Act 1988

19A Privacy Commissioner

- (1) There shall be a Privacy Commissioner, who shall be appointed by the Governor-General.
- (2) A person is not qualified to be appointed as the Privacy Commissioner unless the Governor-General is satisfied that the person has appropriate qualifications, knowledge or experience.

20 Terms and conditions of appointment

- (1) The Commissioner holds office for such period, not exceeding 7 years, as is specified in the instrument of the person's appointment, but is eligible for re-appointment.

25 Termination of appointment

- (1) The Governor-General may terminate the appointment of the Commissioner by reason of misbehaviour or physical or mental incapacity.
- (2) The Governor-General shall terminate the appointment of the Commissioner if the Commissioner:
 - (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for their benefit;
 - (b) is absent from duty, except on leave of absence, for 14 consecutive days or for 28 days in any period of 12 months; or
 - (c) contravenes section 23.

Director of Public Prosecutions Act 1983

18 Appointment, and terms and conditions of appointment, of Director

- (1) The Director shall be appointed by the Governor-General.
- (2) A person shall not be appointed as the Director unless he or she is a legal practitioner and has been a legal practitioner for not less than 5 years.
- (3) The Director shall be appointed for such period, not exceeding 7 years, as is specified in the instrument of his or her appointment, but is eligible for re-appointment.
- (5) The Director holds office on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined by the Governor-General.

23 Termination of appointment

- (1) The Governor-General may terminate the appointment of the Director or Associate Director for misbehaviour or physical or mental incapacity.

- (2) If the Director or Associate Director:
- (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit;
 - (b) is absent from duty, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months;
 - (c) engages in practice as a legal practitioner outside the duties of his office;
 - (d) without the consent of the Attorney-General, engages in paid employment outside the duties of his or her office; or
 - (e) fails, without reasonable excuse, to comply with his or her obligations under section 24;
- the Governor-General shall terminate the appointment of the Director or Associate Director, as the case may be.
- (3) In spite of anything contained in this section, if the Director or Associate Director:
- (a) is an eligible employee for the purposes of the *Superannuation Act 1976*; and
 - (b) has not reached his or her maximum retiring age within the meaning of that Act;
- he or she is not capable of being retired from office on the ground of invalidity within the meaning of Part IVA of that Act unless the Commonwealth Superannuation Board of Trustees No. 2 has given a certificate under section 54C of that Act.
- (4) In spite of anything contained in this section, if the Director or Associate Director:
- (a) is a member of the superannuation scheme established by deed under the *Superannuation Act 1990*; and
 - (b) is under 60 years of age;
- he or she is not capable of being retired from office on the ground of invalidity within the meaning of that Act unless the Commonwealth Superannuation Board of Trustees No. 1 has given a certificate under section 13 of that Act.

Trade Practices Act 1974

7 Constitution of Commission

- (1) The Commission shall consist of a Chairperson and such number of other members as are from time to time appointed in accordance with this Act.
- (2) The members of the Commission shall be appointed by the Governor-General and shall be so appointed as full-time members.
- Note: A member of the Commission who is also appointed as an AER member remains a full-time member of the Commission: see section 44AN.
- (3) Before the Governor-General appoints a person as a member of the Commission or as Chairperson, the Minister must:
- (a) be satisfied that the person qualifies for the appointment because of the person's knowledge of, or experience in, industry, commerce, economics, law, public administration or consumer protection; and
 - (b) consider whether the person has knowledge of, or experience in, small business matters; and
 - (c) if there is at least one fully-participating jurisdiction—be satisfied that a majority of such jurisdictions support the appointment.

- (4) At least one of the members of the Commission must be a person who has knowledge of, or experience in, consumer protection.

13 Termination of appointment of members of the Commission

- (1) The Governor-General may terminate the appointment of a member of the Commission for misbehaviour or physical or mental incapacity.
- (2) If a member of the Commission:
- (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit;
 - (b) fails to comply with his or her obligations under section 17;
 - (c) without the consent of the Minister engages in any paid employment outside the duties of his or her office; or
 - (d) is absent from duty, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months;
- the Governor-General shall terminate the appointment of that member of the Commission.

Australian Securities and Investments Commission Act 2001

10 Chairperson and Deputy Chairperson

The Governor-General is to appoint as Chairperson of ASIC a person who is, or is to be, a full-time member and may appoint as Deputy Chairperson of ASIC a person (other than the Chairperson) who is, or is to be, a full-time member.

108 Term of office as member

- (1) Subject to this Act, a person appointed as a member holds office for such term of at most 5 years as is specified in the instrument of appointment, but is eligible for re-appointment.

109 Term of office as Chairperson or Deputy Chairperson

- (1) Subject to this Act, a member appointed as Chairperson or Deputy Chairperson holds office as such until:
- (a) in any case—the end of his or her current term as a member; or
 - (b) in any case—he or she otherwise stops being a member; or
 - (c) in the case of a member appointed as Deputy Chairperson—he or she is appointed as Chairperson;
- whichever happens first.
- (2) A person is not ineligible to be appointed under section 10 merely because he or she has been so appointed before.

111 Termination of appointment

- (1) The Governor-General may terminate a member's appointment because of misbehaviour, or the physical or mental incapacity, of the member or if the member:
- (a) becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or assigns remuneration or property for their benefit; or

- (b) is a full-time member and engages without the Minister's consent in paid employment outside the duties of the member's office; or
- (c) is a full-time member and is absent from duty, except on leave of absence, for 14 consecutive days, or for 28 days in any period of 12 months; or
- (d) is a part-time member and is absent, except on leave granted in accordance with subsection 113(2), from 3 consecutive meetings of ASIC; or
- (e) without reasonable excuse, contravenes section 123, subsection 124(2), (4) or (6) or section 125.

Australian Prudential Regulation Authority Act 1998

16 Appointment of APRA members

- (1) APRA is to consist of not fewer than 3 members nor more than 5 members.
- (2) The APRA members are to be appointed by the Governor-General by written instrument.

18 Appointment of Chair and Deputy Chair

- (1) The Governor-General is to appoint a full-time APRA member as Chair of APRA.
- (2) The Governor-General may appoint another full-time APRA member as Deputy Chair of APRA.

20 Term of office as an APRA member

An APRA member holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.

25 Termination of appointment

- (1) The appointment of an APRA member is immediately terminated if the member becomes a director, officer or employee of a body regulated by APRA.
- (2) The Governor-General may terminate the appointment of an APRA member:
 - (a) for misbehaviour or physical or mental incapacity; or
 - (b) if the member:
 - (i) becomes bankrupt; or
 - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
 - (iii) compounds with his or her creditors; or
 - (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or
 - (c) in the case of a full-time member—if the member is absent from duty, except on leave of absence:
 - (i) for 14 consecutive days; or
 - (ii) for 28 days in any period of 12 months; or
 - (d) in the case of a part-time member—if the member is absent, except on leave of absence, from 3 consecutive meetings of APRA; or
 - (e) in the case of a full-time member—if the member engages, except with the Minister's approval, in paid employment outside the functions of his or her office; or

- (f) in the case of a part-time member—if the member engages in paid employment that conflicts or could conflict with the proper performance of the functions of his or her office; or
- (g) the member is or becomes a director, officer or employee of a body operating in the financial sector, other than a body regulated by APRA, and the Minister considers that the person is, will be, or could be, prevented from the proper performance of the functions of his or her office because of resulting conflicts of interest; or
- (h) if the member fails, without reasonable excuse, to comply with subsection 48A(1) or 48B(1); or
- (i) if the member has an interest that has been, or should have been, disclosed under subsection 48A(1) or 48B(1) and that conflicts, or could conflict, to a significant extent, with the proper performance of the functions of his or her office.

**Senate Standing Committee on Economics
Reserve Bank Amendment (Enhanced Independence) Bill 2008**

Additional Remarks: Senator Andrew Murray

The *Reserve Bank Amendment (Enhanced Independence) Bill 2008* (the Bill) is a modest bill that does not do much. It marginally increases the independence of the appointment process by going one step further from the present process of the Treasurer appointing the Governor of the Reserve Bank of Australia (RBA) after the approval of the Cabinet, to ensuring that the Governor-General, on the advice of the Cabinet, appoints the Governor of the Reserve Bank.

The Bill amends the *Reserve Bank Act 1959* (the Act) so that the Governor-General in Council will appoint the Governor and Deputy Governor of the Reserve Bank. The Bill does not change the appointment process for the Reserve Bank Board, which remains with the Treasurer.

In s25 (8) the Bill amends the Act so that the termination of the appointment of the Governor or Deputy Governor would be by the Governor-General in Council following Parliamentary approval. This replaces section 25 of the Act which entrusts this task to the Treasurer. The Bill specifies three grounds for the termination of an appointment; where a Governor or Deputy Governor:

- becomes permanently incapable of performing his or her duties; or
- engages in any paid employment outside the duties of his or her office; or
- becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her salary for their benefit.

The Government have missed an opportunity to review this fifty-year old Act, including governance matters, to bring Australia's central bank legislation up to date with international and domestic law. The present system needs modernising, and the Bill is not sufficiently comprehensive. I will only deal with appointment and dismissal issues below.

The Board

Dealing just with appointment and dismissal, by far the greatest criticism in the last decade or two has been with reference to the RBA's Board – its composition, skills set, and function. That is not to say there have not been good appointments to the Board, but not all Board members pass the 'excellence' test.

The Democrats are concerned that whenever appointments are made to institutions set up by legislation, independent statutory authorities or quasi-government agencies, the processes by which these appointments are made should be, and be seen to be, transparent, accountable, open and honest. It is still the case that appointments made

to public authorities are left largely to the discretion of ministers with the relevant portfolio responsibility.

It is important that the public have confidence that appointments by the Executive are made against core principles of merit, probity and transparency. Instead there is a widespread perception that Government appointments made through a secret process against unknown criteria, at the discretion of the Minister or the Cabinet, can and do result in partisan patronage.

A main failing of the present system is that there is no legislation which sets out a standard process to regulate the procedures for making appointments to statutory authorities and other agencies. Perhaps more importantly, there is no external scrutiny or analysis by an independent body of the procedure and merits of appointments. This entrenches the public perception of 'jobs for the boys'.

The issue of appointments on merit was comprehensively examined by the Nolan Committee appointed by the United Kingdom Parliament in 1995. It set out the following principles to guide and inform the making of such appointments:

- A Minister should not be involved in an appointment where he or she has a financial or personal interest;
- Ministers must act within the law, including the safeguards against discrimination on grounds of gender or race;
- All public appointments should be governed by the overriding principle of appointment on merit;
- Except in limited circumstances, political affiliation should not be a criterion for appointment;
- Selection on merit should take account of the need to appoint boards which include a balance of skills and backgrounds;
- The basis on which members are appointed and how they are expected to fulfil their roles should be explicit; and
- The range of skills and backgrounds which are sought should be clearly specified.

The UK Government fully accepted the Committee's recommendations. The Office of Commissioner for Public Appointments was subsequently created (with a similar level of independence from the Government as the Auditor General) to provide an effective avenue of external scrutiny.

UK Prime Minister Brown has announced that even better scrutiny will be introduced for appointments in particular areas, including involving Parliament's select committees in the appointment of key officials.

For the health and integrity of Australian democracy, the public must have trust and confidence that the Government will not allow improper or irrelevant considerations, political interest or political obligation, to influence public appointments.

The Governor

The removal/replacement of the Governor of the RBA can be looked at from an objective and subjective basis. Objective issues are those that rest on fact not opinion, and subjective issues are those that rest on opinion not fact.

I agree with the Coalition that dismissal should be mandatory for bankruptcy. As is illustrated below, I believe the Board should have a greater role than it does at present.

Objective

Objective issues are those that rest on fact not opinion - death, resignation, bankruptcy, physical incapacity, mental incapacity, and outside employment. These should exclude any involvement of the G-G, the Executive or the Parliament.

For me a 'clean' approach to these issues could be as follows:

- *Death* - the Deputy Governor of the RBA steps in, the Board approves final settlement of terminated employment, and the appointment of the successor Governor is as per the Act.
- *Resignation* - the Deputy Governor of the RBA steps in, the Board approves final settlement of terminated employment, and the appointment of the successor Governor is as per the Act.
- *Bankruptcy* - the Board must suspend the Governor as soon as bankruptcy proceedings begin and the Deputy Governor of the RBA stands in. If the bankruptcy is confirmed, then the Governor is automatically dismissed, the Deputy Governor of the RBA stands in, the Board approves final settlement of terminated employment, and the appointment of the successor Governor is as per the Act.
- *Physical incapacity* - on being incapacitated, the Deputy Governor of the RBA steps in. Subsequently, on objective independent medical opinion, the Board can decide that the Governor can not be expected to recover sufficiently or quickly enough to fulfil the Governor's duties, the Deputy Governor of the RBA stands in, the Board approves final settlement of terminated employment, and the appointment of the successor Governor is as per the Act.
- *Mental incapacity* - on being incapacitated, the Deputy Governor of the RBA steps in. Subsequently, on objective independent medical opinion, the Board can decide that the Governor can not be expected to recover sufficiently or quickly enough to fulfil the Governor's duties, the Deputy Governor of the RBA stands in, the Board approves final settlement of terminated employment, and the appointment of the successor Governor is as per the Act.
- *Outside employment* – the Governor should be prohibited from outside employment, but not from receiving payments (such as royalties from book sales). All grey areas should be determined by the Board. The Board can decide that the Governor must be dismissed on 'outside employment' grounds, the Deputy Governor of the RBA stands in, the Board approves final settlement of terminated employment, and the appointment of the successor Governor is as per the Act.

Subjective

Subjective issues are those that rest on opinion not fact - namely, performance, or misconduct/misbehaviour.

The approach should be:

- *Board* - a Governor who loses the confidence of the Board must go. The Deputy Governor of the RBA steps in, the Board approves final settlement of terminated employment, and the appointment of the successor Governor is as per the Act.
- *Executive* - a Governor who loses the confidence of the Executive should have the matter referred by the Executive to the Parliament, and have his/her future decided by the Parliament. While that process is under way, the Deputy Governor steps in. If termination is recommended by the Parliament, the Deputy Governor of the RBA stands in, the Board approves final settlement of terminated employment, and the appointment of the successor Governor is as per the Act. (In practice I cannot see any Governor being willing to go through this and I am sure they would resign).
- *Parliament* - a Governor who loses the confidence of the Parliament must go. While that process is under way, the Deputy Governor steps in. If termination is recommended by the Parliament, the Deputy Governor of the RBA stands in, the Board approves final settlement of terminated employment, and the appointment of the successor Governor is as per the Act. (In practice I cannot see any Governor being willing to go through this and I am sure they would resign).

I would keep the Courts out of all these matters if possible.

The Bill should be amended in at least one respect - to keep bankruptcy a mandated ground for dismissal.

Senator Andrew Murray

APPENDIX 1

Submissions Received

Submission Number	Submitter
1	Saul Eslake
2	Stephen Bell
3 & 3a	Associate Professor Steve Keen
4	Institute of Public Affairs
5	Amirul Ahsan
6	Treasury

Additional Information Received

TABLED DOUMENTS

Additional Information received from the Treasury on 30 May 2008. Advice from Australian Government Solicitors.

APPENDIX 2

Public Hearing and Witnesses

CANBERRA, 30 MAY 2008

DAVIDSON, Professor Sinclair, Senior Fellow,
Institute of Public Affairs

KEEN, Associate Professor Steve

McDONALD, Mr Tony, General Manager,
Macroeconomic Policy Division, Macroeconomic Group, Department of the Treasury

VERSPAANDONK, Ms Rose, Manager,
Monetary and Fiscal Policy Unit, Macroeconomic Group, Department of the Treasury

