

1984

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

BANKS (SHAREHOLDINGS) AMENDMENT BILL 1984

EXPLANATORY MEMORANDUM

(Circulated by authority of the Acting Treasurer,
the Hon Chris Hurford MP)

GENERAL OUTLINE AND MAIN PURPOSES OF THE BILL

The purpose of the Banks (Shareholdings) Amendment Bill is to introduce a number of amendments to the Banks (Shareholdings) Act 1972 (the Act) which will facilitate the establishment of new banks in Australia as well as improve the administration of the Act. The Banks (Shareholdings) Act will continue to serve as an important adjunct to the prudential supervision of banks in Australia.

The main provisions of the Bill will

- make any shareholdings in banks authorised under the Banking Act held by Governments and their agencies subject to the Act,
- increase the size of individual shareholdings in a bank which may be held without the Governor-General's approval from 10 per cent to 15 per cent,
- provide that the Governor-General can grant exemptions to this limit when it is in the national interest to do so,
- require the Treasurer's approval for changes in shareholdings in a bank which take a new or existing shareholding beyond 10 per cent but within the 15 per cent threshold, and
- allow for a more flexible application of the association provisions of the Act.

NOTES ON CLAUSES OF THE BILL

CLAUSE 1 - SHORT TITLE

Self explanatory

CLAUSE 2 - COMMENCEMENT

Self explanatory

CLAUSE 3 - CROWN TO BE BOUND

This clause adds a new section 3 (old section 3 was repealed in 1973) which makes Commonwealth, State and Territory governments and their agencies subject to the Act in so far as they are shareholders of banks as defined in the Act

CLAUSE 4 - INTERPRETATION

This clause amends the definition of corporation in section 6 to include governments and their agencies, consequent on the amendment made by clause 3.

CLAUSE 5 - LIMITATION OF SHAREHOLDINGS IN BANKS

This clause amends section 10. The old section 10 limited any one shareholder or a related group of shareholders to a holding of less than 10 per cent of the voting shares of a bank unless otherwise exempted by the Governor-General (sub-section 10(1) specified the limit). The new section 10 raises the limit, before an exemption by the Governor-General is required, to 15 per cent.

Sub-clause 5(a) substitutes new sub-sections 10(1) and 10(2) and adds new sub-sections 10(2A), 10(2B) and 10(2C). The old sub-section 10(2) related to the transitional provisions in section 11, which are repealed by clause 6. The new sub-sections 10(1) and 10(2) provide that an individual shareholder or related group of shareholders will not have a holding in a bank that exceeds 10 per cent of the voting shares of a bank, without the Treasurer's approval. Proposed sub-section 10(2A) provides that the Treasurer will only refuse approval for the interest of a shareholder or of a related group of shareholders to exceed 10 per cent of the voting shares of a bank if it would not be in the national interest to grant approval. Proposed sub-section 10(2B) provides that, even if the Treasurer approves a shareholding to exceed 10 per cent, a shareholder's interest in a bank must not exceed 15 per cent of the voting shares of a bank, except where the shareholder has received an exemption from the Governor-General to hold a higher percentage, as provided for in sub-sections 10(3) and 10(4) (refer sub-clause 5(c)). The proposed sub-section 10(2C) gives a shareholder 3 months to reduce its interest in a bank if the Treasurer, in the national interest, revokes the approval for the shareholder to have an interest of more than 10 per cent in the voting shares of a bank. This is consistent with sub-section 10(7).

Sub-clauses 5(b) and (j) amend sub-sections (3) and (9) to remove reference to penalties, which are to be covered by proposed sub-section 10(12), added by sub-clause (k).

Sub-section 10(12) changes the method of imposing penalties for breaches of the Act from a daily penalty to a maximum fine. The fines have been increased to more contemporary levels.

Sub-clause 5(c) substitutes a new sub-section 10(4). The old sub-section 10(4) provided that the Governor-General may grant exemptions to the shareholding limit of 10 per cent as prescribed by the old sub-section 10(1). No criteria were specified for the granting of such exemptions. The new sub-section 10(4) provides that the Governor-General may fix a percentage greater than the 15 per cent prescribed by new sub-section 10(2B) in relation to a person when he is satisfied that it is in the national interest to do so

Sub-clauses 5(d), (e), (f) and (g) make consequential amendments to sub-sections 10(5), (6) and (7) to reflect the amendments outlined in sub-clause 5(c).

Sub-clause 5(h) provides that the Governor-General may only revoke an instrument fixing a shareholding in excess of 15 per cent when the Governor-General is satisfied that to do so is in the national interest. This is consistent with the criteria when the Governor-General may make or vary such an instrument, as provided for in sub-clauses 5(c) and (d).

Sub-clause 5 (k) adds new sub-sections 10(10), (11) and (12). Proposed sub-section 10(10) allows a more flexible application of the "association provisions" in section 9 of the Principal Act. Where, in the opinion of the Treasurer, a person's degree of control of a share, and of the rights in respect of a share, is regarded as insignificant then the Treasurer may declare that that interest may be disregarded for the purposes of section 10. Proposed sub-section 10(11) gives a person 3 months to reduce its interest in a bank to an allowable level where the Treasurer revokes a declaration under sub-section 10(10).

CLAUSE 6 - REPEAL OF SECTION 11

This clause repeals section 11. Section 11 was a transitional provision and is no longer relevant. This necessitates the repeal of sub-section 10(2) which is covered in clause 5.

CLAUSE 7 - POWERS OF COURT

This clause amends section 12, consistent with the amendments to section 10 that are covered in clause 5.

CLAUSE 8 - DEFENCE TO PROSECUTIONS

This clause amends section 13, consistent with the amendments to section 10 that are covered in clause 5.

CLAUSE 9 - FORMAL AMENDMENTS

This clause provides for minor drafting amendments, which are set out in the Schedule.

CLAUSE 10 - TRANSITIONAL

This clause outlines transitional provisions for the amendments to the Act that are provided for in the Bill

Sub-clause 10(1) provides that an instrument made under the Act providing for a shareholding in a bank in excess of 10 per cent continues in force after the commencement of this Act.

Sub-clause 10(2) provides that a person now covered by the Act by virtue of this Bill, namely a government or government agency, which has an interest in the voting shares in a bank in excess of 10 per cent but not exceeding 15 per cent, is deemed to have the Treasurer's approval to have such an interest in excess of 10 per cent.