

1985

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

BANKS (SHAREHOLDINGS) AMENDMENT BILL 1985
EXPLANATORY MEMORANDUM

(Circulated by authority of the Treasurer, the
Hon. P.J. Keating, MP)

GENERAL OUTLINE AND MAIN PURPOSES OF THE BILL

The purpose of the Banks (Shareholdings) Amendment Bill 1985 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 Banks (Shareholdings) Amendment Bill 1984 was introduced into Parliament in the Budget sittings of 1984, but was not passed. The current Bill incorporates some additional amendments.

There are no significant costs, revenue or savings to the Government arising directly from the legislation.

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 of a person 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, including provisions that the Treasurer and the Governor-General may grant exemptions to the officers of a corporation as a class.

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This clause adds a new section 3 (old section 3 was repealed in 1973) which makes Commonwealth, State and Territory governments and their agencies subject to the Act in so far as they are shareholders of banks as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

This clause amends paragraph 9(3)(a) consequent upon the amendments contained in clauses 3 and 4.

CLAUSE 6 - 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 6(a) substitutes new sub-sections 10(1) and 10(2) and adds new sub-sections 10(2A), 10(2B), 10(2C), 10(2D), 10(2E) and 10(2F). The old sub-section 10(2) related to the transitional provisions in section 11, which are repealed by clause 7. 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-sections 10(2B) and 10(2C) relate to sub-section 10(2) so that the Treasurer may give a 'class' exemption to all of the relevant officers of a corporation exempted under sub-section 10(2) who would otherwise require individual exemptions.

Proposed sub-section 10(2D) 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 6(d)). The proposed sub-section 10(2E) 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 the existing sub-section 10(7). In the event that the Treasurer revokes an exemption for a corporation to have an interest of more than 10% in the voting shares of a bank, pursuant to sub-section 10(2E), then the proposed sub-section 10(2F) deems that the class exemption granted to relevant officers under sub-section 10(2B) is also revoked and has the same effective date as the first-mentioned revocation. The proposed sub-section 10(2G) allows the Treasurer to revoke an exemption given to the relevant officers of a corporation without revoking the exemption for the corporation.

Sub-clause 6(b) makes a formal amendment to sub-section 10(3) to reflect amendments made in the following clauses.

Sub-clauses 6(c) and (n) amend sub-sections 10(3) and 10(9) to remove reference to penalties, which are to be covered by proposed sub-sections, 10(12) and 10(13), added by sub-clause (o). 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 6(d) 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 the new sub-section 10(2D) in relation to a person when he is satisfied that it is in the national interest to do so.

Sub-clauses 6(e), (f) and (j) make consequential amendments to sub-sections 10(5) and 10(7) to reflect the amendments outlined in the preceding sub-clauses. In particular, sub-clause (j) allows the Governor-General to revoke an instrument in relation to the relevant officers of a corporation under the new sub-section 10(5A) (see sub-clause (g)) without revoking an instrument in relation to the corporation.

Sub-clause 6(g) inserts new sub-sections 10(5A) and 10(5B) which provide that where the Governor-General has fixed a percentage greater than 15 per cent in relation to a corporation pursuant to sub-section 10(4) he may declare that the same percentage shall also be applicable to the relevant officers of the corporation. A 'relevant officer' of a corporation is defined in the proposed sub-section 10(14) (see sub-clause (n)) so as to exclude officers of the corporation who have interests in the same bank in which the corporation has an interest other than by the application to the officers of paragraph 9(3)(a) in relation to that corporation. In the event that the Governor-General varies an instrument fixing a percentage in relation to a corporation then that altered percentage or the revocation shall also be applicable to the relevant officers of the corporation with the same date of effect.

Sub-clause 6(h) amends sub-section 10(6) to give a complete listing of all sub-sections under which an application is required, consequent on other amendments to section 10.

Sub-clause 6(k) inserts new sub-sections 10(7A) and 10(7B). The former provides that the Governor-General may only revoke an instrument fixing a percentage in excess of 15% when he is satisfied that to do so is in the national interest. This is the same criterion by which the Governor-General may make or vary such an instrument, as provided for in the new

sub-sections 10(4) and 10(5). If the Governor-General revokes such an instrument then the proposed sub-section 10(7B) deems that the instrument made in relation to the relevant officers of the corporation, under sub-section 10(5A), is also revoked from the same day. Sub-clause 6(m) formally amends sub-section 10(8) to more correctly describe the instrument which is varying the percentage applicable to a person for the purpose of sub-section 10(3).

Sub-clause 6(o) adds new sub-sections 10(10), 10(11), 10(12), 10(13) and 10(14). 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).

Sub-sections 10(12), 10(13) and 10(14) have been mentioned previously.

CLAUSE 7 - 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 6.

CLAUSE 8 - POWERS OF COURT

Sub-clauses 8(a) and (c) amend section 12, consistent with the amendments to section 10 that are covered in clause 6.

Sub-clauses 8(b) and (d) vest the ACT and Northern Territory Supreme Courts with jurisdiction in matters arising under section 12.

CLAUSE 9 - DEFENCE TO PROSECUTIONS

This clause amends section 13, consistent with the amendments to section 10 that are covered in clause 6.

CLAUSE 10 - JURISDICTION OF COURTS

Clause 10 repeals section 15 of the Act which is redundant.

CLAUSE 11 - FORMAL AMENDMENTS

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

CLAUSE 12 - TRANSITIONAL

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

Sub-clause 12(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 as if it were an exemption by the Treasurer if the percentage fixed is not more than 15 or, as the case may be, an exemption by the Governor-General if the percentage fixed is more than 15.

Sub-clause 12(2) provides that where a person now covered by the Act by virtue of this Bill, namely a government or government agency, has an interest in the voting shares in a bank in excess of 15 per cent, the Governor-General is deemed to have given that person an exemption fixing, for the purposes of section 10, that percentage which the government or government agency has immediately after the commencement of this Act.

