

1987

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

COMMONWEALTH BANKS AMENDMENT BILL 1987

EXPLANATORY MEMORANDUM

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

COMMONWEALTH BANKS AMENDMENT BILL 1987

GENERAL OUTLINE AND MAIN PURPOSE OF THE BILL

The purpose of this Bill is to amend the Commonwealth Banks Act 1959 so as to promote the more efficient conduct of the operations of the Commonwealth Banking Corporation (Corporation) and its member banks. The Bill also defines more clearly the relationship between the Commonwealth banks and the Government, having regard to the Government's general policy towards oversight of statutory authorities and introduces a dividend requirement for the Commonwealth Development Bank (Development Bank). These changes were decided upon following a major review of the Commonwealth Banks Act which identified those areas of the Act which served to inhibit the efficiency of operation of the Commonwealth banks.

The main provisions of this Bill will:

- . expand the charter of the Commonwealth Bank of Australia (Commonwealth Bank) and the Commonwealth Savings Bank (Savings Bank) to enable them to provide insurance services where, in the opinion of the Board, this is necessary for the Commonwealth Bank and the Savings Bank to remain competitive with other banks;
- . expand the powers of the Commonwealth Bank and the Savings Bank to include a wider range of banking and investment services;
- . require the Board of the Corporation to prepare and submit to the Treasurer a corporate plan stating the objectives of the Commonwealth banks and outlining the policies and strategies to be pursued in achieving those objectives;
- . provide the Board of the Corporation with a formal role in the determination of dividend payments by the Commonwealth banks;
- . introduce a dividend requirement for the Commonwealth Development Bank; and
- . give the Corporation greater flexibility in staff management.

FINANCIAL IMPACT STATEMENT

The introduction of a dividend requirement for the Development Bank will result in the payment of \$6.9 million to the Commonwealth in the 1987-88 financial year and the Commonwealth should benefit from dividend payments by the Development Bank in future years. Improvements in the competitiveness of the Commonwealth banks arising from this package of amendments should enhance profitability and should give rise to increased dividend payments in future years.

NOTES ON CLAUSES

CLAUSE 1 - SHORT TITLE

Self explanatory

CLAUSE 2 - COMMENCEMENT

Self explanatory

CLAUSE 3 - ASSETS AND LIABILITIES OF THE CORPORATION

This clause provides for the assets and liabilities of the Corporation (other than assets and liabilities held by the Corporation on behalf of a superannuation fund established under section 110 of the Act) to be vested in the Commonwealth Bank. This will enable the Commonwealth Bank to include in its accounts those assets and liabilities that were previously held by the Corporation in serving its member banks. As a result, the Commonwealth Bank will be able to report on a basis similar to the holding company structure adopted by other Australian banks.

CLAUSE 4 - FUNCTIONS OF THE BOARD

Clause 4 amends section 9 so as to provide that, in performing its functions, the Board of the Corporation shall have regard to the need for the Corporation and its member banks to perform economically and efficiently and to operate in accordance with commercial principles.

CLAUSE 5 - DELEGATION BY THE BOARD

Clause 5 adds a new section which provides that the Board may delegate any of its powers under the Act (except the power of delegation) to a committee of the Board consisting of two or more members. This formalises the power the Board has under the Act to establish such committees.

CLAUSE 6 - CORPORATE PLAN

Sub-clause 6(a) amends section 11 so as to provide that the Board shall prepare, at least once a year, a corporate plan setting out objectives (including financial objectives) in relation to the operations of the Commonwealth banks and outlining policies and strategies to be pursued in achieving those objectives. The corporate plan is to be provided by the Board to the Treasurer as soon as practicable prior to its commencement, with the date of commencement and the terms of the corporate plan to be determined by the Board in consultation with the Treasurer. Procedures to be followed should either the Treasurer or the Board wish to vary the plan are set out, and in the event that the Treasurer and the Board have a difference of view in relation to the plan, they are required to endeavour to reach agreement.

Sub-Clause 6(b) amends subsection 11(3) to provide that procedures to be followed in relation to a difference of view between the Board and the Treasurer on any policy matter arising under subsection 11(1) shall also apply to any difference of view in relation to a corporate plan or any variation to a corporate plan.

CLAUSE 7 - MANAGEMENT OF THE CORPORATION

Clause 7 amends section 12 by specifying the functions and powers the Managing Director may perform or exercise in managing the Corporation. The section provides that the Managing Director may perform or exercise all of the functions and powers of the Corporation other than those functions or powers, if any, as may be specified by the Board.

CLAUSE 8 - DELEGATIONS BY THE MANAGING DIRECTOR

Clause 8 adds a new section, section 12A, which provides a statutory basis for the Managing Director to delegate functions and powers he may perform or exercise under the Act to other officers of the Corporation. The exercise or performance of the power or function delegated, when exercised by the delegate, shall be deemed to have been exercised by the Managing Director.

CLAUSE 9 - MEMBERSHIP OF THE BOARD

Sub-clause 9(a) amends section 14 so as to allow for a period of appointment of Board members (other than ex officio members) of up to five years rather than for a set term of five years as provided for in the old section 14.

Sub-clause 9(b) repeals subsection 14 (4). The old sub-section (4) provided that where a member of the Board ceased to hold office prior to the termination of his period of office, the period of appointment of a person appointed in his place would be the balance of the term. This is no longer necessary following the amendment in Clause 9(a).

CLAUSE 10 - VACATION OF OFFICE

Clause 10 amends section 17 so as to allow the Board, rather than the Treasurer, to grant members of the Board leave of absence. Further, the clause will enable a member appointed under section 14(1)(d) to resign his office by delivering to the Governor-General a signed notice of resignation rather than having to have the appointment terminated by the Governor-General as required under the old section 17.

CLAUSE 11 - MEETINGS OF THE BOARD

Clause 11 amends section 19 so as to enable the Board to appoint a member to preside over meetings where both the Chairman and Deputy Chairman are absent. A quorum of six is to be retained but the presence of the Chairman or Deputy Chairman will no longer be required to form a quorum. This Clause also allows proposed resolutions of the Board to be passed at a meeting or where all members of the Board entitled to vote on a proposed resolution notify the Chairman, in writing, that they agree with the proposed resolution.

CLAUSE 12 - DISCLOSURE OF A PECUNIARY INTEREST

Clause 12 introduces two new subsections into section 24. Subsection 3A provides that where a member of the Board has disclosed an interest in a matter, and the interest is of a prescribed type, the member may be present during the deliberations of the Board and may take part in any decision by the Board in respect of that matter unless the (remaining) members of the Board otherwise determine. Subsection (6) provides that a disclosure requirement will not apply in respect of an interest that a Board member has as a customer of a member bank and in common with other customers.

Section 24 as a whole will continue to operate to ensure that members of the Board will not be present at discussions of matters where they have a conflict of interest. These amendments are directed towards ensuring that the procedures to achieve this do not inadvertently inhibit the effective functioning of the Board. Board members will be able to be present at discussions of the Board of matters where they have a pecuniary interest as a customer of the bank in common with other customers (as may arise with interest rate changes) or where they have a pecuniary interest in a matter (as may arise from an insurance policy or a minor shareholding in a company) which is not considered by other Board members to give rise to a conflict of interest.

CLAUSE 13 - VACATION OF OFFICE

Clause 13 amends section 26 so as to allow the Managing Director and Deputy Managing Director to enter into paid employment outside the duties of their respective offices with the approval of the Treasurer. This clause also enables the Managing Director and Deputy Managing Director to resign their respective offices through delivering to the Governor-General a signed notice of resignation, rather than having to have their respective appointments terminated as was previously required.

CLAUSE 14 - GENERAL FUNCTIONS OF COMMONWEALTH BANK

Clause 14 amends section 28 so as to expand the functions of the Bank to enable it to provide insurance services where, in the opinion of the Board, this is necessary to enable the Bank to remain competitive with other banks.

CLAUSE 15 - POWERS OF COMMONWEALTH BANK

Clause 15 amends section 29 so as to expand the powers of the Commonwealth Bank to include a wider range of banking and investment services. The range of services listed reflects the activities that banks generally are engaged in following the deregulation of the financial system. It is noted that in exercising these powers the Bank is required to have regard to its functions as specified in Section 28 of the Act.

CLAUSE 16 - DIVIDEND PAYMENT

Sub-clause 1 substitutes a new section 32. The old section 32 provided that the Treasurer could determine an amount up to 45 per cent of the net profits in each financial year of the Commonwealth Bank and the Savings Bank to be paid to the Commonwealth. Section 32 now provides the Board with a formal role in the determination of a dividend payment to the Commonwealth.

Specifically, Section 32 requires that the Board of the Corporation, not later than 3 months after the end of each financial year, recommend to the Treasurer whether a dividend is to be paid to the Commonwealth from the profits of the Commonwealth Bank and the Savings Bank and, if so, the amount of the dividend payment. In doing so, the Board is to have regard to the need of the Commonwealth Bank and the Savings Bank to achieve a reasonable rate of return on capital, to increase reserves to fund expansion of activities and to meet prudential requirements.

The section also provides that the Treasurer will have the right to accept such a recommendation or, where the recommendation is less than 45 per cent of net profits, to specify a different amount up to a maximum of 45 per cent of net profits. In making such a decision, the Treasurer is also required to have regard to those factors that the Board is required to take into account in making its recommendation.

Once a dividend has been determined by the Treasurer, the section provides such an amount shall be paid to the Commonwealth as soon as practicable.

Sub-clause 2 provides that the arrangements specified in the new section 32 apply to profits earned by the Commonwealth Bank and the Saving Bank in the financial year commencing on 1 July 1987.

CLAUSE 17 - MANAGEMENT OF THE COMMONWEALTH BANK

Clause 17 amends section 35 by specifying the functions and powers that may be performed or exercised by the Managing Director or a person managing the Commonwealth Bank appointed pursuant to sub-section (1). The section provides that the Managing Director or the person managing the Bank may perform any function or exercise any power of the Bank provided that this is in accordance with the policy of the Bank and the directions of the Board.

CLAUSE 18 - EXPENSES OF THE CORPORATION

Clause 18 substitutes a new section 36.

The old section 36 provides that the Commonwealth Bank pay the Corporation an amount determined by the Board to be the proportion of the Corporation's expenses attributable to the Commonwealth Bank. Section 36 now provides that the Commonwealth Bank shall meet all the expenses of the Corporation.

CLAUSE 19 - FUNCTIONS OF SAVINGS BANK

Clause 19 amends section 41 so as to enable the Savings Bank to provide insurance services where, in the opinion of the Board, this is necessary to allow the Savings Bank to remain competitive with other savings banks.

CLAUSE 20 - POWERS OF SAVINGS BANK

Clause 20 amends section 42 so as to expand the powers of the Savings Bank to include a wider range of banking and investment services. The range of services listed reflects the range of activities that savings banks generally are engaged in following the deregulation of the financial system. Except for the power of the Commonwealth Bank to hold shares in the Savings Bank, the powers of the Commonwealth Bank and the Savings Bank are the same, reflecting the fact that they provide the same range of services, but to different sectors of the market. It is noted that in exercising these powers the Bank is required to have regard to its functions as specified in section 41 of the Act.

CLAUSE 21 - MANAGEMENT OF SAVINGS BANK

Clause 21 amends section 47 by specifying the functions and powers that may be performed or exercised by the Managing Director or a person managing the Savings Bank appointed pursuant to sub-section (1). The section provides that the Managing Director or the person managing the Savings Bank may perform any function or exercise any power of the Savings Bank provided that this is in accordance with the policy of the Savings Bank and the directions of the Board.

CLAUSE 22 - EXPENSES OF CORPORATION

Clause 22 amends section 48 so as to provide that the Savings Bank shall pay to the Commonwealth Bank (rather than the Corporation) that amount of the expenses of the Corporation attributable to the Savings Bank.

CLAUSE 23 - POWERS OF DEVELOPMENT BANK

Clause 23 amends section 74 so as to expand the powers of the Development Bank. The range of powers listed reflects the activities appropriate to the Development Bank having regard to the specialist charter of the Bank in the now deregulated financial system.

CLAUSE 24 - DIVIDEND PAYMENT BY DEVELOPMENT BANK

Sub-Clause 24(1) inserts a new section 77A to provide for the payment of a dividend to the Commonwealth from the profits of the Development Bank.

The new section 77A provides that the Board of the Corporation, not later than 3 months after the end of each financial year, shall recommend to the Treasurer whether a dividend is to be paid to the Commonwealth from the profits of the Development Bank and, if so, the amount of the dividend payment. In doing so, the Board is to have regard to the need of the Development Bank to achieve a reasonable rate of return on capital and to maintain an appropriate level of reserves having regard to the role of the Development Bank.

The section also provides that the Treasurer will have the right to accept such a recommendation or, where the recommendation is less than 45 per cent of net profits, to specify a different amount up to a maximum of 45 per cent of net profits. In making such a decision, the Treasurer is also required to have regard to the factors the Board is required to take into account in making its recommendations.

Once a dividend has been determined by the Treasurer, the section provides that such an amount shall be paid to the Government as soon as practicable.

Sub-clause 2 provides that the arrangements specified in section 77A apply to profits earned by the Development Bank in the financial year commencing on 1 July 1987.

Sub-clause 3 provides that the Development Bank shall in respect of its earnings in 1987-88 pay the Commonwealth prior to the end of 1987-88 an interim dividend of \$6.9 millions. This payment is in addition to any dividend in respect of 1987-88 earnings that may subsequently become payable as a result of the application of section 77A.

CLAUSE 25 - MANAGEMENT OF DEVELOPMENT BANK

Clause 25 amends section 80 by specifying the functions and powers that may be performed or exercised by the Managing Director in managing the Development Bank or a person managing the Development Bank appointed pursuant to sub section (1). The section provides that the Managing Director or the person managing the Development Bank may perform any function or exercise any power of the Development Bank provided that this is in accordance with the policy of the Development Bank and the directions of the Board.

CLAUSE 26 - EXPENSES OF THE CORPORATION

Clause 26 amends section 81 so as to provide that the Development Bank shall pay to the Commonwealth Bank (rather than the Corporation) the amount of the expenses of the Corporation attributable to the Development Bank.

CLAUSE 27 - APPLICATION OF MERIT PRINCIPLE

Clause 27 provides for a new section, section 87A, which specifies the way in which powers under the Act in respect of the appointment, promotion or transfer of officers shall be exercised. This will require procedures to be adopted which preclude patronage and favouritism and ensure that all persons have, as far as practicable, a reasonable opportunity to apply for appointment, promotion or transfer. In addition, the section requires that the procedures will have regard to the suitability of applicants for appointment, promotion or transfer. In assessing this the nature of the duties and the attributes of the applicant are to be taken into account.

CLAUSE 28 - APPOINTMENT OF OFFICERS

Clause 28 repeals sections 88 and 89 relating to the appointment of officers and introduces a new section 88.

The old sections 88 and 89 empowered the Corporation to appoint officers, who constituted the Commonwealth Banking Service Corporation, and temporary and casual employees. The new section 88 provides that the Corporation may appoint officers, who shall constitute the Commonwealth Banking Corporation Service and be employed on terms and conditions determined by the Corporation. The practical effect of the amendment is that all persons appointed by the Corporation will now be officers of the Commonwealth Banking Corporation Service. Clause 35 makes transitional provisions to cover officers and employees appointed under the old sections 88 and 89.

CLAUSE 29 - BENEFITS

Clause 29 substitutes a new subsection 110A(1). The old section 110A(1) provided a power to make regulations in respect of payments to officers retired under circumstances specified in sections 102 and 103. With the repeal of those sections under Clause 34, there is a need for a consequential amendment to sub-section 110A(1). Accordingly, the new sub-section 110A(1) provides that the regulations may make provision for a payment on the retirement of an officer, in certain prescribed circumstances, of a benefit ascertained in accordance with the regulations.

CLAUSE 30 - ENTITLEMENTS OF STATUTORY APPOINTEES

Clause 30 substitutes a new section 112.

The old section 112 addressed entitlements of statutory officers of the Corporation on their retirement from statutory office but did not clearly specify what those entitlements were or cater for such entitlements where a person who was not a member of the Commonwealth Banking Corporation Service was appointed as a statutory officer. The new section 112 provides a statutory officer who was previously a member of the Corporation Service shall be entitled to the same benefits on death, retirement or termination of office as would have been payable had he remained a member of the Service.

The section also provides that a statutory officer who was not a member of the Service prior to his appointment shall be entitled to the same benefits on death, retirement or termination of office as would have been payable had he been an officer of the Service during the period served as a statutory officer.

CLAUSE 31 - ACCOUNTS AND RECORDS

Clause 31 substitutes a new section 118.

The old section 118 provided for any amounts written off bank premises or provided for contingencies to be approved by the Treasurer. In doing so the Corporation followed normal commercial accounting practices. The new section 118 requires the Corporation and its member banks to keep proper accounts and records in accordance with accounting principles generally applied in commercial practice. The section also requires the Corporation and its member banks to ensure payments are properly authorised and that adequate control is maintained over assets held and liabilities incurred. This section will formalise the accounting practices applied by the Corporation and its member banks and is consistent with the general arrangements outlined for the keeping of accounts and records by Government trading authorities in section 63F of the Audit Act.

CLAUSE 32 - TAXATION

Clause 32 amends section 119 to provide that the vesting of an asset of the Corporation in the Commonwealth Bank under section 7A will not give rise to the payment of stamp duty or other tax under a law of the Commonwealth.

The section also provides that, for the purposes of the Income Tax Assessment Act 1936, property vested in the Commonwealth Bank will be treated on the same basis as that which would have applied to the Corporation had the Corporation continued to hold the asset.

CLAUSE 33 - AFFIXING OF SEALS

Clause 33 introduces two new sections, section 124A and 124B.

Section 124A provides that where the seal of the Corporation, the Commonwealth Bank, the Savings Bank or the Development Bank is affixed to a document, the Managing Director or any person authorised by the Managing Director may witness the affixing of the seal. The section also provides that a person dealing with the Corporation and its member banks is entitled to assume that a seal has been duly affixed where it bears the seal of the appropriate body and appears to have been witnessed by the Managing Director or a person so authorised. The operation of this section is not to be taken to affect the operation of any other law of the Commonwealth or of a State or Territory relating to the execution of documents by bodies corporate.

Section 124B provides that a person dealing with the Managing Director or a person managing the Commonwealth Bank, the Savings Bank or the Development Bank is entitled to assume that the performance of a function or the exercise of a power is in accordance with the policy of the body and the directions of the Board.

CLAUSE 34 - OTHER AMENDMENTS

This clause amends the Act by omitting parts of sections or repealing sections as set out in Parts I and II of the Schedule. The effect of these amendments on the operations of the Act is outlined below.

CLAUSE 35 - SAVINGS

This clause preserves certain rights of officers and employees of the Corporation when proposed amendments to Part VIII of the Act, come into effect on 1 July 1988. The section provides that where an officer or an employee has a right of appeal to the Promotions Appeals Board or the Tenure and Disciplinary Appeal Board or where an appeal was in progress prior to 1 July 1988, the Promotions Appeal Board and the Tenure and Disciplinary Appeal Board will continue to operate until the right of appeal has lapsed or the appeal has been determined.

The section also provides that persons who have been appointed under the old sections 88 and 89 of the Act (which are to be repealed with effect on 1 July 1988) shall be deemed to have been appointed to the Corporation under the new section 88. The section further provides that the terms and conditions of employment applying to persons appointed prior to 1 July 1988 shall continue to apply as if they had been determined under the new section 88.

SCHEDULE - OTHER AMENDMENTS OF THE PRINCIPAL ACT

PART 1

Section 5

This section deletes reference in section 5 to section 5A.

Section 5A

This section was included in 1973 so that the Act would no longer extend to Papua New Guinea (then an external territory of Australia). As Papua New Guinea is no longer a territory this section is no longer required.

Section 15

This amendment removes the requirement for a Board member to give on oath of allegiance before entering upon his duties or exercising a power under the Act. As the question of suitability for appointment to the Board is addressed prior to appointment, this further requirement was considered unnecessary.

Subsection 16(2)

This subsection is omitted as it is no longer relevant. It was inserted to cover the situation of a particular Board member who was at the same time both a member of the Corporation Board and a member of the Board of the Papua and New Guinea Development Bank.

Section 39

This section provides the Commonwealth Bank with the power to establish branches and agencies, arrange agents and act as an agent of any branch. This section is no longer necessary as Clause 15 of this Bill serves to widen the powers of the Commonwealth Bank to include the powers specified in section 39.

Section 51

This section provides the Savings Bank with the power to establish branches and agencies, arrange agents and act as an agent of any bank. This section is no longer necessary as Clause 20 of this Bill serves to widen the powers of the Savings Bank to include the powers specified in section 51.

Section 52

This section provided the Board with the power to determine interest rates on deposits with the Savings Bank. This section is redundant as the Savings Bank has the requisite power to set interest rates under section 42 of the Act.

Part VI

This Part of the Act sets out arrangements to be followed by the Commonwealth Bank and the Savings Bank in providing housing loans as well as home insurance facilities in respect of such loans. Such provisions are no longer necessary as both banks have specific powers to make housing loans and, with the proposed widening of functions, to provide a range of insurance services. The repeal of this Part will also serve to enhance the flexibility available to the Commonwealth Bank and the Savings Bank in developing innovative packages to assist home buyers and will ensure that the Commonwealth banks are on an equal footing with other banks in the range of home lending facilities they can offer.

Section 85A

This section provides that borrowings of the Development Bank may only be undertaken with the approval of the Treasurer. Such a restriction on the Bank's activities is no longer appropriate given that the Bank is now operating on a commercial basis in a deregulated financial market.

Section 111

This section restricts the Commonwealth Banks in the amount they may lend to an officer of the Corporation, other than for purposes of home purchase or renovation. Such a provision is no longer considered necessary. Its repeal will provide the Corporation with the same flexibility to lend to staff members as is available to private commercial banks.

Section 113

This section provides that the Treasurer may direct that a list of officers of the Corporation be prepared and circulated amongst officers and that a copy be sent to the Treasurer for presentation to Parliament. Such a requirement is no longer relevant.

Section 115

This section requires that the head office of the Corporation and its member banks be in Sydney but not in the same building as the Reserve Bank. Such a requirement is no longer relevant.

Section 129, paragraphs (a), (b) (c) and (d)

These paragraphs provide authority for the making of regulations in respect of deposits and withdrawals and the calculation of interest on deposits by the Savings Bank, payments to the estate of a deceased person and payments to persons with a legal incapacity. With the deregulation of the financial system and the widening of the powers of the Commonwealth Bank and the Savings Bank, regulations of this nature are no longer appropriate.

PART II

Section 87 (definitions of "the Promotions Appeal Board" and the "Tenure and Disciplinary Appeal Board").

Self explanatory.

Heading to Division of Part VIII

Self explanatory.

Sections 90, 92, 93, 94, 95 and 96

These sections specify procedures for admission of officers to the Commonwealth Banking Corporation Service, and generally require that officers pass a prescribed entrance examination in open competition prior to appointment. Procedures for examinations and circumstances in which officers can be appointed without examination are also specified. Removal of these sections will provide the Corporation with greater flexibility in the appointment of officers. However, the application of merit principle will continue to apply to appointments as outlined in the new section 87A.

Divisions 3, 4, 5 and 5A of Part VIII

These Divisions specify procedures for classification of positions, promotions, tenure of office and disciplinary action. Removal of these sections will provide the Corporation with greater flexibility in staff management. However, the application of merit principle will apply to appointments, promotions and transfers as outlined in the new section 87A.

