2019

The Parliament of the Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

Australian Banks (Government Audit) Bill 2019

No. , 2019

(Mr Katter)

A Bill for an Act to provide for the auditing of Australian banks by the Commonwealth Auditor-General, to reinforce the Constitutional obligation of the Commonwealth to regulate Australia’s banking system and resultant currency and credit within the Australian economy and to better protect deposits within Australia’s banking system, and for related purposes
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A Bill for an Act to provide for the auditing of Australian banks by the Commonwealth Auditor-General, to reinforce the Constitutional obligation of the Commonwealth to regulate Australia’s banking system and resultant currency and credit within the Australian economy and to better protect deposits within Australia’s banking system, and for related purposes

The Parliament of Australia enacts:
Part 1 Preliminary

Section 1

Part 1—Preliminary

1 Short title

This Act is the *Australian Banks (Government Audit) Act 2019*.

2 Commencement

(1) Each provision of this Act specified in column 1 of the table

commences, or is taken to have commenced, in accordance with

column 2 of the table. Any other statement in column 2 has effect

according to its terms.

<table>
<thead>
<tr>
<th>Column 1</th>
<th>Column 2</th>
<th>Column 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Provisions</td>
<td>Commencement</td>
<td>Date/Details</td>
</tr>
<tr>
<td>1. The whole of this Act</td>
<td>The day after the day on which the Consolidated Revenue Fund is appropriated under an Act to the Department in which this Act is administered for payment for the purposes of this Act..</td>
<td></td>
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</tbody>
</table>

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

(2) Any information in column 3 of the table is not part of this Act.

Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Purposes of this Act

The purposes of this Act are:

(a) to provide for an independent audit of the banks as listed in Schedule 1 hereto by the Commonwealth Auditor-General;

(b) to provide for an audit of the banks as listed in Schedule 1 hereto by an entity independent of private interests;
(c) to re-enforce the Constitutional obligation of the
Commonwealth to regulate Australia’s banking system;
(d) to re-enforce the Constitutional obligation of the
Commonwealth to regulate currency and credit within the
Australian economy;
(e) to better protect deposits within Australia’s banking system.

4 Definitions

In this Act:

Auditor-General means the Auditor-General appointed under the
ADI means an authorised deposit-taking institution within the
meaning of the Banking Act 1959.
APRA means the Australian Prudential Regulation Authority.
ASIC means Australian Securities and Investments Commission.
Bank means an ADI that is a D-SIB.
derivative includes the following:
(a) any arrangement or financial product having a value deriving
from and dependent upon an underlying variable asset;
(b) any investment in a structured or synthetic product;
(c) any financial instrument in which a return is calculated based
on the value of, or by reference to the performance of, a
security, commodity, swap, other asset, or an entity;
(d) any index or basket composed of securities, commodities,
swaps, other assets, or entities, other than customarily
determined interest rates.

D-SIB means a Domestic Systemically Important Bank as
determined by APRA and includes:
(a) the Banks listed in Schedule 1; and
(b) any Banks prescribed by the rules.
Part 1 Preliminary

Section 5

*Joint Committee of Public Accounts and Audit* means the Joint Committee of Public Accounts and Audit established by the *Public Accounts and Audit Committee Act 1951*.

*mortgage* means any deed, memorandum of mortgage, instrument, or agreement whereby security for payment of moneys or for the performance of any contract is granted over real property in Australia or any interest therein, and includes an equitable mortgage by deposit of title deeds, and any document by which the duration of a mortgage is extended or by which any provision of the mortgage is varied.

*rules* means rules made under section 13.

5 Act binds the Crown

This Act binds the Crown in right of each of the States, of the Australian Capital Territory, and of the Northern Territory.
Part 2—Bank audits

6 Audits to be undertaken by the Auditor-General

(1) The Auditor-General’s functions include carrying out audits of the books, accounts and transactions of the Banks.

(2) The Auditor-General must inspect and audit the books, accounts and transactions of the Banks, and must draw the Treasurer’s attention to any irregularity revealed by the inspection and audit that, in the opinion of the Auditor-General, is of sufficient importance to justify doing so.

(3) The Auditor-General must undertake an inspection and audit as referred to in subsection (2) in respect of each of the Banks and must commence the first of such audits within 90 days after the day this Act commences and must complete each such audit as soon as practicable thereafter.

(4) The Auditor-General must carry out further inspections and audits in respect of each Bank at such time or times as the Auditor-General determines but such that there must be a period of not more than 12 months between the time of completion of an inspection and audit and the time of commencement of the next audit and inspection of each Bank.

(5) For the purposes of subsection (4), the time of completion of an inspection and audit is taken to be when the Auditor-General reports to the Treasurer the results of the inspection and audit under subsection 7(1).

7 Reports on audits

(1) The Auditor-General must report to the Treasurer the results of each inspection and audit carried out under section 6.

(2) The Treasurer must give a copy of each report to the Joint Committee of Public Accounts and Audit.
Part 2  Bank audits

Section 8

(3) The Treasurer must cause a copy of each report to be laid before each House of the Parliament within 15 sittings days of that House after the day the report is given to the Treasurer.

8 Powers of Auditor-General when conducting audits

(1) The Auditor-General or an authorised official:

(a) may at all reasonable times enter and remain on any premises occupied by a Bank; and

(b) is entitled to full and free access to all accounts, records, documents and papers of the Bank relating directly or indirectly to the receipt or payment of moneys by the Bank or contracts or obligations entered into by each Bank or to the acquisition, receipt, custody or disposal of property of the Bank.

(2) An authorised official is not entitled to enter or remain on Bank premises if he or she fails to produce a written authority on being asked by the Bank to produce proof of his or her authority. For this purpose, written authority means an authority signed by the Auditor-General that states that the official is authorised to exercise powers under this section.

(3) If an authorised official enters, or proposes to enter, premises under this section, the Bank must provide the official with all reasonable facilities for the effective exercise of powers under this section.

(4) For the purpose of exercising powers under this section, a Bank must give the Auditor-General access to its books, accounts, records, documents or papers and must give to the Auditor-General such information and facilities as the Auditor-General requires to conduct the audit investigation.

(5) The Auditor-General or an authorised official may make copies of, or take extracts from, any such books, accounts, records, documents or papers.

(6) The Auditor-General or an authorised official may require a Director, officer, employee, agent or contractor of a Bank to give the Auditor-General such information in the possession of such person or to which such person has access as the Auditor-General
or authorised official considers necessary for the purposes of an
inspection or audit under this Act, and such person must comply
with the requirement.

(7) To avoid doubt:

(a) nothing in this section authorises the Auditor-General to
furnish a report with respect to the affairs of any individual
customer of a Bank; and

(b) this section does not limit the operation of Part 5 of the
Auditor-General Act 1997 in relation to an audit under
section 6 of this Act.

(8) In this section, authorised official means an official of a
non-corporate Commonwealth entity (within the meaning of the
Public Governance, Performance and Accountability Act 2013)
who is authorised by the Auditor-General, in writing, to exercise
powers or perform functions under this section.

9 Audit requirements

The Auditor-General must include in an inspection and audit of a
Bank under section 6, an investigation, consideration and
evaluation of the following matters and must include the
Auditor-General’s observations, findings and conclusions as to
such matters in the Auditor-General’s report on the inspection and
audit referred to in subsection 7(1):

(a) the derivatives exposures of the Bank (both gross contracts
and net exposures by type) and whether off or on
balance-sheet including an assessment of the assumptions
made by the Bank and which underlie the derivatives
contracts and an assessment of the true risk such derivative
contracts present to the Bank;

(b) the home loan portfolios of the Bank and a marking to market
of housing loans against mortgage security held by the Bank
(the market value of the security properties and not limited to
original book value);

(c) the adequacy of provisions for defaults and delinquencies in
the Bank’s housing loans including loans made by the Bank
to any non-bank mortgage lender or financial institution
Part 2 Bank audits

Section 10

conducting a business of lending money on mortgage and the assumptions underlying the Bank’s provisions for such defaults;
(d) any Internal Ratings Based (IRB) model by which the Bank has assessed the Bank’s risk and set risk-weighted capital levels and whether such model has caused or contributed to a housing bubble in Australia and may be too weak and unreliable (based on questionable assumptions) to guide the Australian economy.

10 Attorney-General

In undertaking investigation, consideration and evaluation of the matters referred to in section 9 the Auditor-General may call upon the services of the Attorney General who must provide such service and assistance as may be requested.

11 Additional staff and resources

The Auditor-General may increase the staff, resources and facilities available to the Attorney-General to undertake the inspections and audits under section 6 and must advise the Treasurer of the additional cost and funding required.

12 Auditor-General staff and resources

(1) In undertaking audits under section 6, the Auditor-General must not engage either as an officer, employee, agent, consultant or contractor, a person who is or has been a director, partner, officer, employee, agent, consultant or contractor of an auditor which has undertaken or been responsible for the audit of any one or more of the Banks.

(2) In undertaking audits under section 6, the Auditor-General must not engage either as an officer, employee, agent, consultant or contractor, a person who is or has been an officer, employee, agent, consultant or contractor of APRA or ASIC.
(3) Despite subsections (1) and (2), the Auditor-General may engage a person in undertaking audits under section 6 if:

(a) for a period of at least three years before the proposed date of appointment the person has not worked in any of the capacities referred to in those subsections; and

(b) the Auditor-General is satisfied that the person has experience, skills and abilities which would be of substantial benefit and assistance in undertaking the audits.

13 Rules

(1) The Treasurer may, by legislative instrument, make rules prescribing matters:

(a) required or permitted by this Act to be prescribed by the rules; or

(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Without limiting subsection (1), the rules may prescribe requirements about the conduct of inspections and audits under this Act.

(3) To avoid doubt, the rules may not do the following:

(a) create an offence or civil penalty;

(b) provide powers of:

(i) arrest or detention; or

(ii) entry, search or seizure;

(c) impose a tax;

(d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;

(e) directly amend the text of this Act.
Schedule 1—List of D-SIBs

1 List of D-SIBs

The following are D-SIBs for the purposes of this Act:

(a) Australia and New Zealand Banking Group Limited (ANZ);
(b) Commonwealth Bank of Australia and its subsidiary Bank of Western Australia Limited trading as BankWest;
(c) National Australia Bank and its subsidiary UBank
(d) Westpac Banking Corporation and its subsidiaries Bank of Melbourne and St. George Bank Limited.