Date Introduced: 3 October 1984
House: House of Representatives
Presented by: Hon. P.J. Keating, M.P., Treasurer

Short Digest of Bill

Purpose

To increase from 10 per cent to 15 per cent the general limit on shareholdings in a bank which may be held by a shareholder and allow higher limits if deemed to be in the national interest.

Background

The introduction of this bill reflects the government's intention to facilitate both the establishment of new domestic banks and the entry of foreign banks.

The Treasurer has expressed the view that prudential controls on bank shareholdings are unnecessary in the case of foreign banks. The latter are subject to prudential controls having similar aims in the place of their or their parents' incorporation. Hence the Treasurer has indicated that foreign banks are not generally to be subject to the general 10 or proposed 15 per cent limit on shareholdings. This needs to be seen in the context of the Treasurer's announcement on 10 September 1984 of changes to government policy on foreign banks.

Since 1945 it has been government policy not to allow foreign interests to acquire interests in Australian banks. The two foreign banks now operating in Australia, Bank of New Zealand and Banque Nationale de Paris, were established well before 1945. However, both this and the previous government have announced intentions to change policy on foreign banks. The present Treasurer has announced the Government's aim of achieving 50 per cent Australian equity in new banks but would consider proposals with less than 50 per cent Australian equity.

With his 10 September statement, the Treasurer called for applications from both foreign and domestic interests seeking a banking licence and set out details of the criteria which would be looked at in making decisions. These criteria relate to the economic benefits expected. In...
addition it was announced that the Bank of China would have its authority restored.

There has never been any legal impediment to foreign bank entry. However, the proposed amendment would make it clear that approval for foreign ownership above 15 per cent would be approved only where net economic benefits are likely.

In the absence of approval by the Governor-General the Banks (Shareholdings) Act 1972 in section 10 limits interests in shares in a bank which may be beneficially held by each shareholder (or group of related shareholders) to less than 10 per cent of the voting shares. The Act allows the Governor-General to fix a higher limit in relation to a particular person following application by that person to the Treasurer. Transitional provisions exempted shareholdings in banks held prior to May 1970.

The question of controls on bank shareholders was examined by both the Committee of Inquiry into the Australian Financial System (Campbell) and the Review Group into the Australian Financial System (Martin). Both regarded the general 10 per cent limit on shareholdings as restrictive and likely to represent a strong barrier to entry and so limit competition. However, this needed to be weighed against a need for prudential controls on shareholdings. Campbell recommended the repeal of the Banks (Shareholdings) Act and the transfer of discretionary controls on shareholdings to the Reserve Bank of Australia by amendment to the Banking Act. However, the Martin Report favoured retention of the Banks (Shareholdings) Act but with increases in the general limit on shareholdings to 15 per cent and with provision for exemptions embodied in the Act.

Main Provisions

The Bill is to commence with Royal Assent and amends the Banks (Shareholdings) Act 1972. A number of formal amendments are set out in a Schedule to the Bill (clause 9).

Section 10 of the Banks (Shareholdings) Act 1972 limits a shareholding in a bank to 10 per cent. The Governor-General may fix a percentage greater than 10 per cent either on his own motion or following an application made to the Treasurer.

Under the proposed amendments to section 10, the Treasurer may, following an application, increase the shareholding limit to 15 per cent. The Treasurer may not refuse an application (up to 15 per cent) unless the
Treasurer is satisfied that to refuse would be in the national interest. Above 15 per cent the Governor-General may again fix a higher percentage following an application to the Treasurer and provided the Governor-General is satisfied that to do so is in the national interest.

Section 9 of the Principal Act deems a person's interest in a bank to include the shareholdings of associates. The Treasurer may declare the latter is to be disregarded under the new subsection 10(10) provided the associate's shareholding is insignificant and likely to remain so. However, that declaration may subsequently be disregarded. New and generally higher penalties are imposed under the new subsection 10(12).

For further information, if required, contact:

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References


