



COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES



HOUSE OF REPRESENTATIVES
FINANCIAL SECTOR LEGISLATION
AMENDMENT BILL (NO. 2) 2002

Consideration of Senate Message

SPEECH

Tuesday, 4 November 2003

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES

SPEECH

Date Tuesday, 4 November 2003
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Questioner
Speaker Cox, David, MP

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Question No.

Mr COX (Kingston) (4.38 pm)—The Financial Sector Legislation Amendment Bill (No. 2) 2002 contains amendments to seven financial sector acts in the areas of banking, insurance and superannuation. The government has honoured its commitment made when Labor agreed to support the Financial Sector Legislation Amendment Bill (No. 1) to extend the fit and proper person test to the banking sector. Labor has waged a long campaign on the application of a fit and proper person test to directors and senior managers of these financial institutions. We therefore have given our in principle support for this amendment.

However, Labor expressed concern when this bill was first introduced that it did not set out the criteria by which the fitness and integrity of directors and senior managers would be assessed. The explanatory memorandum was also silent on this issue. The bill in its original form established the existence of the test as a standard but left it to the Australian Prudential Regulation Authority to determine the exact form of the test. As a result, Labor referred this bill to a committee in order to provide officials of the Treasury and APRA with the opportunity to inform the parliament about the likely substance of the standard. Unfortunately, the officials were unable to tell the committee what form the fit and proper standard would take in other than the most general terms, nor what criteria would be used to make the assessment.

Labor's concern rested on the fact that a standard is not a disallowable instrument. As a result, parliament would have had no opportunity to review the content of the standard once it had been devised. As a result, Labor proposed an amendment with the support of the Democrats, which would have seen the criteria for a fit and proper person defined by regulation which would be subject to parliamentary disallowance. The proposed amendment set out specific criteria to determine a person's fitness and integrity, framed with reference to the UK's Financial Services Authority fit and proper test for approved persons.

We have subsequently had fruitful discussions with the government. They have agreed to frame the test as a regulation and as such have introduced an amendment to the Banking Regulations 1966. The regulation sets out a comprehensive set of criteria that APRA may take into account where it believes that the matter is relevant to whether the person is not a fit and proper person. Labor supports this new amendment. The amendment gives the industry greater confidence in what APRA expects from directors and senior managers whilst giving the regulator scope to exercise its discretion with respect to relevance.

The other key change introduced by this bill is intended to strengthen APRA's monitoring capabilities. In particular, the bill requires institutions to immediately notify APRA of any prudential breaches and material developments that may be detrimental to a company's financial position. This amendment is very welcome in light of recent events within the financial sector since it places the onus on trustees, directors and management to be proactive in their communications with the regulator. This will improve the flow of information to the regulator and enhance their capacity to perform their supervisory responsibilities. However, such a change does not in any way diminish the responsibility of APRA to be proactive in their supervisory activities. As recent events have shown, there will be instances where directors and senior managers will not act honestly in their dealings with regulators and investors.

I will go through briefly the other key amendments. The bill extends the fit and proper person test to auditors and enables APRA to remove auditors who fail to perform adequately and properly. The bill empowers APRA to undertake supervision and apply prudential standards on a consolidated basis and to seek information from any member of a conglomerate from any other member of that conglomerate. It expands APRA's grounds for revoking the authority granted to a bank where the application for the authority contained false and misleading information. It ensures that the indemnity provisions are consistent between the Banking Act and the APRA Act to ensure that legal protection is afforded to staff and auditors, provided that they have acted in good faith.

With respect to the Insurance Act, the bill requires insurance companies to notify APRA of any breach in prudential standards, including material developments detrimental to its financial position in line with the

requirements imposed on banks. It allows APRA to discuss with third parties submissions from a director or senior manager who is being removed, in order to test the veracity of any claims.

Regarding the Superannuation (Resolution of Complaints) Act, the bill removes the arbitration powers of the Superannuation Complaints Tribunal. (*Extension of time granted*) In 1999, the High Court overturned a 1998 Federal Court decision that the review powers of the Superannuation Complaints Tribunal were invalid. In response to the 1998 decision, the Commonwealth had legislated to give the Superannuation Complaints Tribunal power to arbitrate. That is now redundant. The bill requires parties to a dispute to attend a conciliation conference and will impose penalties for noncompliance if the defendant does not appear and will consider the case withdrawn if the complainant does not appear. It also gives the Superannuation Complaints Tribunal discretion to deal with complaints relating to disability benefits that take longer to resolve than the previously prescribed time limits.

With respect to the Superannuation Industry (Supervision) Act, the bill recognises current awards that emerged from arbitration, even though the arbitration power has been removed. Labor will support the bill in its amended form.

Question agreed to.