

MINORITY REPORT

REVIEW OF FINANCIAL SECTOR LEGISLATION AMENDMENT BILL

Labor and the Democrats support the amendments to the Banking Act to introduce a “fit and proper person” standard for directors and senior managers. However, we are concerned that the proposed amendments do not set out the minimum criteria by which the fitness and integrity of directors and senior manager’s will be assessed.

Instead APRA would devise a standard under the Banking Act, which would set out the minimum criteria against which fitness and integrity will be assessed. However, APRA was unable to tell the Committee, other than in very general terms, what minimum criteria would be included within the fit and proper standard.

A standard is not a disallowable instrument and so there would be no opportunity for parliamentary review of the minimum criteria. Labor and the Democrats therefore propose to introduce an amendment by which the minimum criteria for the fit and proper standard are defined by a regulation and hence subject to disallowance (Attachment 1).

The Government’s proposed self-regulatory approach to the application of a fit and proper person test is based on the principles of the Basle Accord, which were framed prior to recent financial scandals. If the Accord were drafted in the wake of these scandals it is likely to have favoured a more prescriptive approach to regulation.

SENATOR JACINTA COLLINS
Labor Senator for Victoria

SENATOR RUTH WEBBER
Labor Senator for Western Australia

SENATOR ANDREW MURRAY
Australian Democrats

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The Parliament of the
Commonwealth of Australia

THE SENATE

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Financial Sector Legislation Amendment Bill (No. 2) 2002

(Amendment to be moved by Senator Conroy on behalf of the Opposition in committee of the whole)

- (1) Schedule 2, item 17, page 18 (after line 9), at the end of section 21, add:
- (7) For the purposes of subsection (1), the regulations must prescribe a standard of a fit and proper person to be a director or a senior manager which must include but not be limited to consideration of whether a director or senior manager has:
- (a) been subject to an adverse settlement in civil proceedings;
 - (b) been subject to disciplinary proceedings by the regulator;
 - (c) contravened any regulatory requirement;
 - (d) been subject to a justified complaint relating to regulated activities;
 - (e) been involved in a business which has been refused a license or had a license revoked;
 - (f) refused the right to carry on business requiring a license;
 - (g) been investigated, disciplined, suspended or criticised by the regulator or professional body;
 - (h) been dismissed or asked to resign from a position of trust;
 - (i) been disqualified as a director or manager;
 - (j) failed to be candid and truthful in dealing with a regulatory body.
- [fit and proper person]***