

Reserve Bank Amendment (Enhanced Independence) Bill 2008

Coalition Senators' Dissenting Report

Introduction

The Reserve Bank Amendment (Enhanced Independence) Bill 2008 (the Bill) was introduced by the Treasurer on 20 March 2008. In his second reading speech, the Treasurer said:

“The Rudd government committed to enhance the independence of the Reserve Bank by raising the positions of Governor and Deputy Governor to the same level of statutory independence as the Commissioner of Taxation and the Australian Statistician. This is the purpose of the legislation I am introducing to the parliament today. The Rudd government also committed to improving the transparency of future Reserve Bank Board appointments and to remove political considerations. Accordingly, the Secretary to the Treasury and the Governor of the Reserve Bank will maintain a register of eminent candidates of the highest integrity from which the Treasurer will make appointments to the Reserve Bank Board”.

The Bill amends the *Reserve Bank Act 1959* (the Act) so that the Governor-General in Council, rather than the Treasurer, would appoint the Governor and Deputy Governor of the Reserve Bank. The Bill does not change the appointment process for the Reserve Bank Board or the Payments System Board which remains with the Treasurer.

It also amends the Act so that the termination of the appointment of the Governor or Deputy Governor would be by the Governor-General in Council following Parliamentary approval. This replaces section 25 of the Act. The Bill specifies three grounds for the termination of an appointment; where a Governor or Deputy Governor¹:

- becomes permanently incapable of performing his or her duties; or
- engages in any paid employment outside the duties of his or her office; or
- becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her salary for their benefit.

Clause 25(8) of the Bill provides:

¹ Proposed clause 25(8) of the Bill. To simplify further reference to these three conditions, the Report will use the terms: permanently incapacitated, in outside paid employment and bankrupt.

25(8): The appointment of the Governor or the Deputy Governor must not be terminated on a ground for termination specified in subsection (8) except as provided by this section.

The effect of this clause is to ensure that Parliamentary consideration of the termination of a Governor or Deputy Governor may only be on the three reasons of permanent incapacity, paid employment and bankruptcy.

The proposed section 25 of the Bill contrasts with section 25 of the Act which provides that the Treasurer shall terminate the appointment of the Governor or Deputy Governor if he or she is bankrupt, permanently incapacitated or in outside paid employment.

So the effect of the Bill would be to change the mechanism for the termination of the Governor or Deputy Governor on these three grounds. Presently termination for bankruptcy, outside paid employment and permanent incapacity is mandatory. If the Bill is enacted, it would become optional in two degrees. First, the Parliament would need to agree to the termination on these grounds. Then the Governor-General in Council would need to agree to execute the termination.

Misbehaviour

Subsection 24(1)(c) of the Act provides that:

24 (1) The Governor and the Deputy Governor:

... (c) hold office subject to good behaviour.

The Bill does not amend that subsection, although its effect may, in some opinions, be affected by clause 25(8) of the Bill; specifically the process for removing a Governor or Deputy Governor for misbehaviour (see discussion below).

Coalition Senators note that the Bill does not legislate for a 'register of eminent candidates'.

Coalition Senators also noted an amendment moved by Hon. Malcolm Turnbull MP requiring the Governor to make himself or herself available to give evidence before the House of Representatives Standing Committee on Economics *and the Senate Standing Committee on Economics* not less than four times a year.

Submissions and Testimony

The Treasury

The Treasury's submission states that the Bill raises the positions of Governor and Deputy Governor to 'the same level of statutory independence as the Commissioner of Taxation and the Australian Statistician'. The submission also cites advice from the Australian Government Solicitor (which was tabled by Mr McDonald in testimony on 30 May 2008. The pertinent part of the advice states:

“In our view, a court would need to determine whether the Governor or Deputy Governor had failed to exhibit ‘good behaviour’ for the purposes of s 24(1)(c). For termination to occur in accordance with s24(1)(c) it would be necessary for legal proceedings to be brought in an appropriate court by a person having sufficient standing alleging that the Governor or Deputy Governor had failed to fulfil the condition of his or her office as to ‘good behaviour’ and seeking a declaration as to when that failure occurred”².

Coalition Senators note that the advice was first sought by the Treasury on 15 May 2008 (in draft form).

In testimony before the Committee, Mr McDonald did not give any evidence that would suggest that it would be an improvement on the status quo to allow Parliamentary debate on whether a Governor or Deputy Governor should be terminated for bankruptcy, outside paid employment or permanent incapacity. He did, however, suggest that permanent incapacity required judgement and was not purely a matter of fact.

Mr McDonald—The first point is that, as I said before, section 25(2) provides for the immediate suspension in those circumstances. The second point is that it is not quite the case that these three grants—and it may well be the case for bankruptcy—take the ground of permanent incapacity. I know that in earlier testimony people said, ‘If the governor was comatose’, and various other grounds can be put forward, but that is not something that would just be a question of pure opinion; the Treasurer of the moment would need to have a basis for forming that opinion. There is more than one ground, and the test of incapacity is one that requires some judgement³.

Mr McDonald also argued for the retention of the present formulation with respect to removing a Governor or Deputy Governor for misbehaviour.

Mr McDonald—I suppose we come back to the counterfactual: is it preferable to make it easier and, with due respect to the parliament, more engaged in the political process, for either house of parliament to be able to move such a motion on the grounds of misbehaviour⁴.

Mr McDonald—I suppose we come back to the alternative: what actually happens if you have a different test—if you amend section 25(8)? In that instance it is the parliament that needs to be convinced that the governor or deputy governor is guilty of misbehaviour, and not

² Australian Government Solicitor advice to the Treasury of 28 May 2008, page 2.

³ Testimony to the Committee, 30 May 2008, page E.25.

⁴ Testimony to the Committee, 30 May 2008, page E.23.

*a court. Again, with respect to the parliament, that is a lesser test than exists at the moment*⁵.

Senator Brandis argued that, taking the AGS advice at face value, would potentially lead to very long delays if the court case was contested.

Senator BRANDIS—*I am. I ran dozens and dozens of Federal Court trials in my earlier career, and I can tell you that a contested Federal Court proceeding is not something that can happen quickly. It is not in the nature of the process. What effect do you think it would have on the Australian financial system if public confidence in the Governor of the Reserve Bank was undermined by prolonged proceedings in the Federal Court*⁶.

Senator Brandis also noted that a Government wishing to terminate a Governor for misbehaviour would need very strong grounds.

Senator BRANDIS—*With respect, I do not think you are right because, given the gravity of such a measure, no government would dare make it unless there were very, very powerful and almost self explanatory reasons to do such a thing. But, even if you were right about that, what is the greater mischief? That or a public declaration by the government that it has no confidence in the man who runs the financial system which would drag on for, let us say, even weeks if it were dealt with in an extremely urgent way by a court. What is the greater mischief?*⁷

Saul Eslake

In Mr Eslake's submission, he states that it is odd that the three grounds of outside paid employment, bankruptcy and permanent incapacity are included as optional grounds for termination but misbehaviour is not. Mr Eslake thought it would be an improvement to include 'proven misbehaviour' as a ground on which should be adjudged by Parliament.

Stephen Bell

In Mr Bell's submission, he writes that he does not support the Bill and the amendment "has little to do with the RBA's independence". He considers it undesirable for Parliamentary debate on matters that are essentially of a factual nature.

⁵ Testimony to the Committee, 30 May 2008, page E.23.

⁶ Committee Transcript, 30 May 2008, page E.21.

⁷ Committee Transcript, 30 May 2008, page E.24.

Steve Keen

Professor Keen's submission concludes:

“Since further independence for the RBA is not warranted, and this Bill in any case makes comical rather than substantive changes to its independence, I recommend that the Bill be rejected”.

In his testimony, Professor Keen was very clear on his opposition to the Bill.

Prof. Keen—No, I do not. I think the bill as written is silly. Looking at the bill, changing from the Treasurer to the Governor-General is not necessarily a bad thing. I am not opposed to that particular part of the bill. But the following grounds for removal of the governor or deputy should not be optional: if they are bankrupt, comatose—'incapable of performing his or her duties'—or working for another organisation. They should be compulsory, as the current act says. It is the classic, old expression, which you have heard many times, I am sure: it is rearranging the deck chairs on the Titanic⁸.

Sinclair Davidson

Professor Davidson's submission concludes that the Bill might add to moral hazard and thought the current institutional arrangement “are appropriate, sensible and should be maintained”.

In his testimony, Professor Davidson was equally clear in his opposition to the Bill, as the following exchange with Senator Bushby makes clear⁹.

Senator BUSHBY—That is right. Do you think that changing the situation actually enhances the independence of the Reserve Bank?

Prof. Davidson—No. It is inconceivable that a bankrupt would remain as Reserve Bank Governor.

Senator BUSHBY—But theoretically under the—

Prof. Davidson—Yes, under the amendment, that could happen.

Senator BUSHBY—Under the proposed bill it is quite conceivable that, for whatever reason—whether political or otherwise—one of the houses of parliament could elect to not—

Prof. Davidson—That is correct.

⁸ Testimony to the Committee, 30 May 2008, page E.14.

⁹ Committee Transcript, 30 May 2008, page E.5.

Senator BUSHBY—*move the address to the Governor-General. Similarly, with the Commissioner of Taxation, the Governor-General must remove them if they engage in paid employment. Do you think that moving that requirement from the Reserve Bank enhances independence?*

Prof. Davidson—*Absolutely not—no.*

Senator BUSHBY—*Similarly, if he is absent from duty, but that is not as relevant. The same applies for the Statistician. If the Statistician becomes bankrupt, the Governor-General shall remove them. So he is required to remove them and, once again, we have established that, in the case of the proposed bill, you do not believe that enhances the independence of the Reserve Bank board at all.*

Prof. Davidson—*No.*

Senator BUSHBY—*Was it the intention to amend the Reserve Bank Act 1959 such that the automatic termination for permanent incapacity, paid employment outside the RBA or bankruptcy now becomes optional, such that the parliament might decide. Do you think that they are intending to make it optional by doing this in those circumstances?*

Prof. Davidson—*If I read the bill correctly, it actually looks like the parliament could agree to have a bankrupt, for example, as the Governor of the Reserve Bank. I do not think that is at all wise and, if the government thinks that it is wise, it is up to them really to explain to us why that would be the case. I have not heard those arguments. I have heard the argument that this will enhance the independence of the Reserve Bank. I suspect that what might be happening is that it is believed that somehow section 24(1)(c) has been modified and that these become the only conditions under which the Reserve Bank Governor could be removed, but that is not the opinion that is in the Treasury submission, for example.*

In summary, the submissions and testimony – with the exception of Treasury – were consistent in their opposition to the proposed Bill.

Discussion

As the stated purpose is to raise the positions of the Governor and Deputy Governor to the same level of statutory independence as the Commissioner of Taxation and the Australian Statistician, Coalition Senators firstly considered the relevant provisions of the *Taxation Administration Act 1953* and the *Australian Bureau of Statistics Act 1975*.

Both the Tax Commissioner and Australian Statistician are appointed by the Governor-General in Council for terms of up to 7 years.

The Tax Commissioner may be dismissed by the Governor-General in Council subject to the agreement of Parliament for “proved misbehaviour or physical or mental incapacity”. The Governor-General must terminate the appointment of the Tax Commissioner for outside paid employment or bankruptcy.

The Australian Statistician may be dismissed by the Governor-General in Council subject to the agreement of Parliament for “misbehaviour or incapacity”. The Governor-General must terminate the appointment of the Statistician for bankruptcy.

So the Bill’s exclusion of misbehaviour as a ground for Parliament’s determination is inconsistent with these Acts.

And the Bill’s inclusion of bankruptcy as an optional grounds for removal is inconsistent with both Acts where it is mandatory for the Governor-General to terminate an appointment (as is outside paid employment in the case of the Tax Commissioner).

In a survey of other statutory officers (see Attachment A), there is no instance where Parliament is called upon to determine whether a bankrupt officer should remain in office.

Coalition Senators are strongly of the view that a Governor or Deputy Governor who is in outside paid employment, permanently incapacitated or bankrupt should be subject to the mandatory termination of his or her appointment. These three grounds are essentially matters of fact – outside paid employment can be demonstrated by an employment contract; permanent incapacity can be evidenced by a medical certificate and bankruptcy can be evidenced by a court order. It would be a gross error for proceedings on these grounds to be optional and subject to Parliamentary debate.

Coalition Senators note that there are differing opinions on the method for dismissing a Governor or Deputy Governor for misbehaviour. On the one side, the Australian Government Solicitor considers that it would be necessary to act via court proceedings. On the other, the Parliamentary Library (in its Bills Digest) consider that the Treasurer could terminate an appointment on these grounds, but that would become more problematic should the Bill be enacted.

In any case, Coalition Senators are surprised that the Government did not take the opportunity afforded by the Bill to clarify the termination procedure for misbehaviour.

Coalition Senator’s do not agree with Mr McDonald who in testimony suggested that dismissal via a court order would be superior to Parliamentary involvement because it would be less political. As Senator Brandis has noted, Federal Court proceedings could take months if not years were they to be contested, and this would be likely as otherwise a misbehaving governor would have resigned. Given the importance for stability in the financial sector, it is necessary that the execution of any dismissal for misbehaviour be swift.

Further, there is no other instance that could be found where it would be necessary to take court proceedings. Indeed, for High Court Judges – arguably having an even greater need for independence than the RBA Governor – it is necessary to use Parliamentary proceedings.

Conclusion

Coalition Senators do not support section 25 of the Bill, which they consider would be a grave error. The three grounds of outside paid employment, bankruptcy and permanent incapacity should be mandatory and remain with the Treasurer for execution. This is important since there is a need for swift execution of the termination of an appointment because of the effects on the financial sector which Executive Council proceedings would delay.

Sections 1 and 2 of the Bill are symbolic. In practice there is no difference between the Governor-General in Council signing an instrument of appointment or the Treasurer. Both processes would have involved Cabinet consideration of the proposed appointees. Nonetheless, given that the comparable Acts cited at Attachment A all involve the Governor-General, Coalition Senators are willing to consider these amendments.

Given the opportunity afforded by the Bill, and the uncertainty evidenced by the Australian Government Solicitor advice over the termination of a Governor or Deputy Governor for misbehaviour, Coalition Senators would consider amendments clarified the Law such that either the Governor-General (acting alone or following Parliamentary debate) may terminate the appointment of a Governor or Deputy Governor for misbehaviour. But if such an amendment were to be brought forward, Coalition Senators consider that the suspension provisions should involve the Treasurer not the Governor-General given the time-sensitive nature of any decision to remove an RBA Governor or Deputy Governor.

Coalition Senators support Mr Turnbull's amendment to require the RBA Governor to testify to a conjoint meeting with the House Economics Committee *and the Senate Economics Committee* four times a year as a measure which would increase the accountability and transparency of the Reserve Bank and hence its independence *in both houses of parliament*.



Senator Alan Eggleston (Deputy Chair)

Attachment A

Appointment and Termination of Selected Statutory Office Holders

This section lists the relevant sections of comparable Acts that provide for the appointment and termination of statutory officers. It does not purport to be complete, but provides a thorough sample of key officials that require statutory independence including Judges, the Australian Statistician, the Tax Commissioner, the Auditor-General, the Commonwealth Ombudsman, the Australian Electoral Commissioner, the Privacy Commissioner, the Director of Public Prosecutions, the Chairman of the Australian Competition and Consumer Commission, the Chairman of the Australian Securities and Investments Commission, and the Chairman of the Australian Prudential Regulation Authority.

Summary of appointment and dismissal procedures

	Appointment	Termination
Judges	Governor-General	Governor-General and Parliament for proved misbehaviour or incapacity
Australian Statistician	Governor-General for up to 7 years	Governor-General and Parliament for misbehaviour or incapacity. Governor-General shall terminate appointment for bankruptcy
Tax Commissioner	Governor-General for up to 7 years	Governor-General and Parliament for proved misbehaviour or physical or mental incapacity. Governor-General shall terminate appointment for paid employment or bankruptcy
Auditor-General	Governor-General for up to 10 years and not eligible for reappointment. Needs approval by the Joint Committee of Public Accounts and Audit	Governor-General and Parliament for misbehaviour or physical or mental incapacity. Governor-General shall terminate appointment for bankruptcy.

Ombudsman	Governor-General for up to 7 years	Governor-General and Parliament for misbehaviour or physical or mental incapacity. Governor-General shall terminate appointment for bankruptcy.
Electoral Commissioner	Governor-General for up to 7 years	Governor-General for misbehaviour or physical or mental incapacity. Governor-General shall terminate appointment for bankruptcy or paid employment.
Privacy Commissioner	Governor-General for up to 7 years	Governor-General for misbehaviour or physical or mental incapacity. Governor-General shall terminate appointment for bankruptcy.
Director of Public Prosecutions	Governor-General for up to 7 years	Governor-General for misbehaviour or physical or mental incapacity. Governor-General shall terminate appointment for bankruptcy or paid employment.
ACCC Chairman	Governor-General and approval of majority of States	Governor-General for misbehaviour or physical or mental incapacity. Governor-General shall terminate appointment for bankruptcy or paid employment.
ASIC Chairman	Governor-General for up to 5 years	Governor-General for misbehaviour or physical or mental incapacity or bankruptcy.
APRA Chairman	Governor-General for up	Governor-General for misbehaviour or physical

	to 5 years	<p>or mental incapacity or bankruptcy.</p> <p>Governor-General shall terminate appointment if becomes a director, officer or employee of a body regulated by APRA.</p>
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The Constitution of Australia

72 Judges' appointment, tenure and remuneration

The Justices of the High Court and of the other courts created by the Parliament:

- (i) shall be appointed by the Governor-General in Council;
- (ii) shall not be removed except by the Governor-General in Council, on an address from both Houses of the Parliament in the same session, praying for such removal on the ground of proved misbehaviour or incapacity;
- (iii) shall receive such remuneration as the Parliament may fix; but the remuneration shall not be diminished during their continuance in office.

Australian Bureau of Statistics Act 1975

7 Appointment and tenure of office of Statistician

- (1) The Statistician shall be appointed by the Governor-General and, subject to this Act, holds office for such period, not exceeding 7 years, as is specified in the instrument of his or her appointment but is eligible for re-appointment.
- (3) The Statistician holds office on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined by the Governor-General.

12 Removal from office

- (1) The Governor-General may remove the Statistician from office on an address praying for his or her removal on the ground of misbehaviour or incapacity being presented to the Governor-General by each House of the Parliament in the same session of the Parliament.
- (2) The Governor-General may suspend the Statistician from office on the ground of misbehaviour or incapacity.

- (3) Where the Governor-General suspends the Statistician from office, the Minister shall cause a statement of the ground of the suspension to be laid before each House of the Parliament within 7 sitting days of that House after the suspension.
- (4) Where such a statement has been laid before a House of the Parliament, that House may, within 15 sitting days of that House after the day on which the statement has been laid before it, by resolution, declare that the Statistician should be removed from office and, if each House so passes such a resolution, the Governor-General shall remove the Statistician from office.
- (5) If, at the expiration of 15 sitting days of a House of the Parliament after the day on which the statement has been laid before that House, that House has not passed such a resolution, the suspension terminates.
- (6) The suspension of the Statistician from office under this section does not affect any entitlement of the Statistician to be paid remuneration and allowances.
- (7) If the Statistician becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, the Governor-General shall remove the Statistician from office.
- (8) The Governor-General may, with the consent of the Statistician, retire the Statistician from office on the ground of incapacity.
- (9) The Statistician shall not be removed or suspended from office except as provided by this section.

Taxation Administration Act 1953

4 Commissioner and Second Commissioners of Taxation

There shall be a Commissioner of Taxation and 3 Second Commissioners of Taxation, who shall be appointed by the Governor-General.

6C Suspension and removal from office of Commissioner or Second Commissioner

- (1) The Governor-General may remove the Commissioner or a Second Commissioner from office on an address praying for the removal of the Commissioner or the Second Commissioner, as the case may be, on the ground of proved misbehaviour or physical or mental incapacity being presented to the Governor-General by each House of the Parliament in the same session of the Parliament.
- (2) The Governor-General may suspend the Commissioner or a Second Commissioner from office on the ground of misbehaviour or physical or mental incapacity.
- (3) Where the Governor-General suspends the Commissioner or a Second Commissioner, the Minister shall cause a statement of the grounds of the suspension to be laid before each House of the Parliament within 7 sitting days of that House after the suspension.
- (4) If, at the expiration of 15 sitting days of a House of the Parliament after the day on which the statement was laid before that House, an address under subsection (1) has not been presented to the Governor-General by each House of the Parliament, the suspension terminates.
- (5) The suspension of the Commissioner or a Second Commissioner from office under this section does not affect any entitlement of the Commissioner or

- Second Commissioner, as the case may be, to be paid remuneration and allowances.
- (6) If:
- (a) the Commissioner or a Second Commissioner becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit;
 - (b) the Commissioner or a Second Commissioner engages, except with the approval of the Minister, in paid employment outside the duties of the office of Commissioner or Second Commissioner, as the case may be; or
 - (c) the Commissioner or a Second Commissioner is absent from duty, except on leave of absence, for 14 consecutive days or 28 days in any 12 months;
- the Governor-General shall remove the Commissioner or Second Commissioner, as the case may be, from office.
- (7) The Governor-General may, with the consent of the Commissioner or a Second Commissioner, retire the Commissioner or Second Commissioner, as the case may be, from office on the ground of physical or mental incapacity.
- (8) The Commissioner or a Second Commissioner shall not be suspended, removed or retired from office except as provided by this section.

Auditor-General Act 1997

1 Appointment of Auditor-General

- (1) The Auditor-General is to be appointed by the Governor-General, on the recommendation of the Minister, for a term of 10 years.
- Note: The effect of section 19A of the *Acts Interpretation Act 1901* is that “the Minister” refers to the Minister who administers this clause. The administration of Acts or particular provisions of Acts is allocated by Administrative Arrangements Orders made by the Governor-General.
- (2) The Auditor-General holds office on a full-time basis.
- (3) For the purposes of the *Superannuation Act 1976* and the Trust Deed under the *Superannuation Act 1990*, the minimum retiring age for the Auditor-General is 55. However, if the instrument of appointment specifies a younger age, then the younger age applies.
- (4) A person cannot be appointed as Auditor-General if the person has previously been appointed as Auditor-General under this Act or under the *Audit Act 1901*.

2 Minister must refer recommendation for appointment of Auditor-General to the Joint Committee of Public Accounts and Audit

- (1) The Minister must not make a recommendation to the Governor-General under clause 1 unless:
- (a) the Minister has referred the proposed recommendation to the Joint Committee of Public Accounts and Audit for approval; and
 - (b) the Committee has approved the proposal.
- (2) A referral under paragraph (1)(a) must be in writing and may be withdrawn by the Minister at any time.

6 Removal from office etc.

- (1) The Governor-General may remove the Auditor-General from office if each House of the Parliament, in the same session of the Parliament, presents an address to the Governor-General praying for the removal of the Auditor-General on the ground of misbehaviour or physical or mental incapacity.
- (2) The Governor-General must remove the Auditor-General from office if the Auditor-General does any of the following:
 - (a) becomes bankrupt;
 - (b) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors;
 - (c) compounds with his or her creditors;
 - (d) assigns his or her remuneration for the benefit of his or her creditors.
- (3) If the Auditor-General is:
 - (a) an eligible employee for the purposes of the *Superannuation Act 1976*; or
 - (b) a member of the superannuation scheme established by the Trust Deed under the *Superannuation Act 1990*;the Governor-General may, with the consent of the Auditor-General, retire the Auditor-General from office on the ground of physical or mental incapacity.
- (4) For the purposes of the *Superannuation Act 1976*, the Auditor-General is taken to have been retired from office on the ground of invalidity if:
 - (a) the Auditor-General is removed or retired from office on the ground of physical or mental incapacity; and
 - (b) the CSS Board gives a certificate under section 54C of the *Superannuation Act 1976*.
- (5) For the purposes of the *Superannuation Act 1990*, the Auditor-General is taken to have been retired from office on the ground of invalidity if:
 - (a) the Auditor-General is removed or retired from office on the ground of physical or mental incapacity; and
 - (b) the PSS Board gives a certificate under section 13 of the *Superannuation Act 1990*.

Ombudsman Act 1976

21 Appointment of Ombudsman

- (1) An Ombudsman shall be appointed by the Governor-General.
- (2) An Ombudsman holds office on such terms and conditions (if any) in respect to matters not provided for in this Act as are prescribed.

22 Tenure of office

- (1) Subject to this Act, an Ombudsman holds office for such period, not exceeding 7 years, as is specified in the instrument of his or her appointment, but is eligible for re-appointment.

28 Suspension and removal of Ombudsman

- (1) The Governor-General may remove an Ombudsman from office on an address praying for his or her removal on the ground of misbehaviour or physical or mental incapacity being presented to the Governor-General by each House of the Parliament in the same session of the Parliament.

- (2) The Governor-General may suspend an Ombudsman from office on the ground of misbehaviour or physical or mental incapacity.
- (3) Where the Governor-General suspends an Ombudsman from office, the Minister shall cause a statement of the grounds of the suspension to be laid before each House of the Parliament within 7 sitting days of the House after the suspension.
- (4) Where such a statement has been laid before a House of the Parliament, that House may, within 15 sitting days of that House after the day on which the statement has been laid before it, by resolution, declare that the Ombudsman should be removed from office and, if each House so passes such a resolution, the Governor-General shall remove the Ombudsman from office.
- (5) If, at the expiration of 15 sitting days of a House of the Parliament after the day on which the statement has been laid before that House, that House has not passed such a resolution, the suspension terminates.
- (6) The suspension of an Ombudsman from office under this section does not affect any entitlement of the Ombudsman to be paid remuneration and allowances.
- (7) If an Ombudsman becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, the Governor-General shall remove him or her from office.
- (7A) If an Ombudsman is absent from duty, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months, the Governor-General may remove him or her from office.
- (8) An Ombudsman shall not be removed or suspended from office except as provided by this section.

Commonwealth Electoral Act 1918

21 Terms and conditions of appointment etc.

- (1) An electoral officer shall be appointed by the Governor-General.
- (2) Subject to this Act, an electoral officer holds office for such period, not exceeding 7 years, as is specified in the instrument of appointment, but is eligible for re-appointment.

25 Termination of appointment

- (1) The Governor-General may terminate the appointment of an electoral officer by reason of misbehaviour or physical or mental incapacity.
- (2) If an electoral officer:
 - (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit;
 - (b) is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or
 - (c) engages in paid employment outside the duties of his or her office without the approval of the Commission;
 the Governor-General shall terminate the appointment of the electoral officer.
- (3) If the Electoral Commissioner, or the Deputy Electoral Commissioner while acting as the Electoral Commissioner, fails, without reasonable excuse, to comply with his or her obligations under section 11, the Governor-General shall

terminate his or her appointment as Electoral Commissioner or Deputy Electoral Commissioner, as the case may be.

Privacy Act 1988

19A Privacy Commissioner

- (1) There shall be a Privacy Commissioner, who shall be appointed by the Governor-General.
- (2) A person is not qualified to be appointed as the Privacy Commissioner unless the Governor-General is satisfied that the person has appropriate qualifications, knowledge or experience.

20 Terms and conditions of appointment

- (1) The Commissioner holds office for such period, not exceeding 7 years, as is specified in the instrument of the person's appointment, but is eligible for re-appointment.

25 Termination of appointment

- (1) The Governor-General may terminate the appointment of the Commissioner by reason of misbehaviour or physical or mental incapacity.
- (2) The Governor-General shall terminate the appointment of the Commissioner if the Commissioner:
 - (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for their benefit;
 - (b) is absent from duty, except on leave of absence, for 14 consecutive days or for 28 days in any period of 12 months; or
 - (c) contravenes section 23.

Director of Public Prosecutions Act 1983

18 Appointment, and terms and conditions of appointment, of Director

- (1) The Director shall be appointed by the Governor-General.
- (2) A person shall not be appointed as the Director unless he or she is a legal practitioner and has been a legal practitioner for not less than 5 years.
- (3) The Director shall be appointed for such period, not exceeding 7 years, as is specified in the instrument of his or her appointment, but is eligible for re-appointment.
- (5) The Director holds office on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined by the Governor-General.

23 Termination of appointment

- (1) The Governor-General may terminate the appointment of the Director or Associate Director for misbehaviour or physical or mental incapacity.

- (2) If the Director or Associate Director:
- (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit;
 - (b) is absent from duty, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months;
 - (c) engages in practice as a legal practitioner outside the duties of his office;
 - (d) without the consent of the Attorney-General, engages in paid employment outside the duties of his or her office; or
 - (e) fails, without reasonable excuse, to comply with his or her obligations under section 24;
- the Governor-General shall terminate the appointment of the Director or Associate Director, as the case may be.
- (3) In spite of anything contained in this section, if the Director or Associate Director:
- (a) is an eligible employee for the purposes of the *Superannuation Act 1976*; and
 - (b) has not reached his or her maximum retiring age within the meaning of that Act;
- he or she is not capable of being retired from office on the ground of invalidity within the meaning of Part IVA of that Act unless the Commonwealth Superannuation Board of Trustees No. 2 has given a certificate under section 54C of that Act.
- (4) In spite of anything contained in this section, if the Director or Associate Director:
- (a) is a member of the superannuation scheme established by deed under the *Superannuation Act 1990*; and
 - (b) is under 60 years of age;
- he or she is not capable of being retired from office on the ground of invalidity within the meaning of that Act unless the Commonwealth Superannuation Board of Trustees No. 1 has given a certificate under section 13 of that Act.

Trade Practices Act 1974

7 Constitution of Commission

- (1) The Commission shall consist of a Chairperson and such number of other members as are from time to time appointed in accordance with this Act.
- (2) The members of the Commission shall be appointed by the Governor-General and shall be so appointed as full-time members.
- Note: A member of the Commission who is also appointed as an AER member remains a full-time member of the Commission: see section 44AN.
- (3) Before the Governor-General appoints a person as a member of the Commission or as Chairperson, the Minister must:
- (a) be satisfied that the person qualifies for the appointment because of the person's knowledge of, or experience in, industry, commerce, economics, law, public administration or consumer protection; and
 - (b) consider whether the person has knowledge of, or experience in, small business matters; and
 - (c) if there is at least one fully-participating jurisdiction—be satisfied that a majority of such jurisdictions support the appointment.

- (4) At least one of the members of the Commission must be a person who has knowledge of, or experience in, consumer protection.

13 Termination of appointment of members of the Commission

- (1) The Governor-General may terminate the appointment of a member of the Commission for misbehaviour or physical or mental incapacity.
- (2) If a member of the Commission:
- (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit;
 - (b) fails to comply with his or her obligations under section 17;
 - (c) without the consent of the Minister engages in any paid employment outside the duties of his or her office; or
 - (d) is absent from duty, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months;
- the Governor-General shall terminate the appointment of that member of the Commission.

Australian Securities and Investments Commission Act 2001

10 Chairperson and Deputy Chairperson

The Governor-General is to appoint as Chairperson of ASIC a person who is, or is to be, a full-time member and may appoint as Deputy Chairperson of ASIC a person (other than the Chairperson) who is, or is to be, a full-time member.

108 Term of office as member

- (1) Subject to this Act, a person appointed as a member holds office for such term of at most 5 years as is specified in the instrument of appointment, but is eligible for re-appointment.

109 Term of office as Chairperson or Deputy Chairperson

- (1) Subject to this Act, a member appointed as Chairperson or Deputy Chairperson holds office as such until:
- (a) in any case—the end of his or her current term as a member; or
 - (b) in any case—he or she otherwise stops being a member; or
 - (c) in the case of a member appointed as Deputy Chairperson—he or she is appointed as Chairperson;
- whichever happens first.
- (2) A person is not ineligible to be appointed under section 10 merely because he or she has been so appointed before.

111 Termination of appointment

- (1) The Governor-General may terminate a member's appointment because of misbehaviour, or the physical or mental incapacity, of the member or if the member:
- (a) becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or assigns remuneration or property for their benefit; or

- (b) is a full-time member and engages without the Minister's consent in paid employment outside the duties of the member's office; or
- (c) is a full-time member and is absent from duty, except on leave of absence, for 14 consecutive days, or for 28 days in any period of 12 months; or
- (d) is a part-time member and is absent, except on leave granted in accordance with subsection 113(2), from 3 consecutive meetings of ASIC; or
- (e) without reasonable excuse, contravenes section 123, subsection 124(2), (4) or (6) or section 125.

Australian Prudential Regulation Authority Act 1998

16 Appointment of APRA members

- (1) APRA is to consist of not fewer than 3 members nor more than 5 members.
- (2) The APRA members are to be appointed by the Governor-General by written instrument.

18 Appointment of Chair and Deputy Chair

- (1) The Governor-General is to appoint a full-time APRA member as Chair of APRA.
- (2) The Governor-General may appoint another full-time APRA member as Deputy Chair of APRA.

20 Term of office as an APRA member

An APRA member holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.

25 Termination of appointment

- (1) The appointment of an APRA member is immediately terminated if the member becomes a director, officer or employee of a body regulated by APRA.
- (2) The Governor-General may terminate the appointment of an APRA member:
 - (a) for misbehaviour or physical or mental incapacity; or
 - (b) if the member:
 - (i) becomes bankrupt; or
 - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
 - (iii) compounds with his or her creditors; or
 - (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or
 - (c) in the case of a full-time member—if the member is absent from duty, except on leave of absence:
 - (i) for 14 consecutive days; or
 - (ii) for 28 days in any period of 12 months; or
 - (d) in the case of a part-time member—if the member is absent, except on leave of absence, from 3 consecutive meetings of APRA; or
 - (e) in the case of a full-time member—if the member engages, except with the Minister's approval, in paid employment outside the functions of his or her office; or

- (f) in the case of a part-time member—if the member engages in paid employment that conflicts or could conflict with the proper performance of the functions of his or her office; or
- (g) the member is or becomes a director, officer or employee of a body operating in the financial sector, other than a body regulated by APRA, and the Minister considers that the person is, will be, or could be, prevented from the proper performance of the functions of his or her office because of resulting conflicts of interest; or
- (h) if the member fails, without reasonable excuse, to comply with subsection 48A(1) or 48B(1); or
- (i) if the member has an interest that has been, or should have been, disclosed under subsection 48A(1) or 48B(1) and that conflicts, or could conflict, to a significant extent, with the proper performance of the functions of his or her office.