

**Senate Standing Committee on Economics
Reserve Bank Amendment (Enhanced Independence) Bill 2008**

Additional Remarks: Senator Andrew Murray

The *Reserve Bank Amendment (Enhanced Independence) Bill 2008* (the Bill) is a modest bill that does not do much. It marginally increases the independence of the appointment process by going one step further from the present process of the Treasurer appointing the Governor of the Reserve Bank of Australia (RBA) after the approval of the Cabinet, to ensuring that the Governor-General, on the advice of the Cabinet, appoints the Governor of the Reserve Bank.

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

In s25 (8) the Bill 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 which entrusts this task to the Treasurer. The Bill specifies three grounds for the termination of an appointment; where a Governor or Deputy Governor:

- 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.

The Government have missed an opportunity to review this fifty-year old Act, including governance matters, to bring Australia's central bank legislation up to date with international and domestic law. The present system needs modernising, and the Bill is not sufficiently comprehensive. I will only deal with appointment and dismissal issues below.

The Board

Dealing just with appointment and dismissal, by far the greatest criticism in the last decade or two has been with reference to the RBA's Board – its composition, skills set, and function. That is not to say there have not been good appointments to the Board, but not all Board members pass the 'excellence' test.

The Democrats are concerned that whenever appointments are made to institutions set up by legislation, independent statutory authorities or quasi-government agencies, the processes by which these appointments are made should be, and be seen to be, transparent, accountable, open and honest. It is still the case that appointments made

to public authorities are left largely to the discretion of ministers with the relevant portfolio responsibility.

It is important that the public have confidence that appointments by the Executive are made against core principles of merit, probity and transparency. Instead there is a widespread perception that Government appointments made through a secret process against unknown criteria, at the discretion of the Minister or the Cabinet, can and do result in partisan patronage.

A main failing of the present system is that there is no legislation which sets out a standard process to regulate the procedures for making appointments to statutory authorities and other agencies. Perhaps more importantly, there is no external scrutiny or analysis by an independent body of the procedure and merits of appointments. This entrenches the public perception of 'jobs for the boys'.

The issue of appointments on merit was comprehensively examined by the Nolan Committee appointed by the United Kingdom Parliament in 1995. It set out the following principles to guide and inform the making of such appointments:

- A Minister should not be involved in an appointment where he or she has a financial or personal interest;
- Ministers must act within the law, including the safeguards against discrimination on grounds of gender or race;
- All public appointments should be governed by the overriding principle of appointment on merit;
- Except in limited circumstances, political affiliation should not be a criterion for appointment;
- Selection on merit should take account of the need to appoint boards which include a balance of skills and backgrounds;
- The basis on which members are appointed and how they are expected to fulfil their roles should be explicit; and
- The range of skills and backgrounds which are sought should be clearly specified.

The UK Government fully accepted the Committee's recommendations. The Office of Commissioner for Public Appointments was subsequently created (with a similar level of independence from the Government as the Auditor General) to provide an effective avenue of external scrutiny.

UK Prime Minister Brown has announced that even better scrutiny will be introduced for appointments in particular areas, including involving Parliament's select committees in the appointment of key officials.

For the health and integrity of Australian democracy, the public must have trust and confidence that the Government will not allow improper or irrelevant considerations, political interest or political obligation, to influence public appointments.

The Governor

The removal/replacement of the Governor of the RBA can be looked at from an objective and subjective basis. Objective issues are those that rest on fact not opinion, and subjective issues are those that rest on opinion not fact.

I agree with the Coalition that dismissal should be mandatory for bankruptcy. As is illustrated below, I believe the Board should have a greater role than it does at present.

Objective

Objective issues are those that rest on fact not opinion - death, resignation, bankruptcy, physical incapacity, mental incapacity, and outside employment. These should exclude any involvement of the G-G, the Executive or the Parliament.

For me a 'clean' approach to these issues could be as follows:

- *Death* - the Deputy Governor of the RBA steps in, the Board approves final settlement of terminated employment, and the appointment of the successor Governor is as per the Act.
- *Resignation* - the Deputy Governor of the RBA steps in, the Board approves final settlement of terminated employment, and the appointment of the successor Governor is as per the Act.
- *Bankruptcy* - the Board must suspend the Governor as soon as bankruptcy proceedings begin and the Deputy Governor of the RBA stands in. If the bankruptcy is confirmed, then the Governor is automatically dismissed, the Deputy Governor of the RBA stands in, the Board approves final settlement of terminated employment, and the appointment of the successor Governor is as per the Act.
- *Physical incapacity* - on being incapacitated, the Deputy Governor of the RBA steps in. Subsequently, on objective independent medical opinion, the Board can decide that the Governor can not be expected to recover sufficiently or quickly enough to fulfil the Governor's duties, the Deputy Governor of the RBA stands in, the Board approves final settlement of terminated employment, and the appointment of the successor Governor is as per the Act.
- *Mental incapacity* - on being incapacitated, the Deputy Governor of the RBA steps in. Subsequently, on objective independent medical opinion, the Board can decide that the Governor can not be expected to recover sufficiently or quickly enough to fulfil the Governor's duties, the Deputy Governor of the RBA stands in, the Board approves final settlement of terminated employment, and the appointment of the successor Governor is as per the Act.
- *Outside employment* – the Governor should be prohibited from outside employment, but not from receiving payments (such as royalties from book sales). All grey areas should be determined by the Board. The Board can decide that the Governor must be dismissed on 'outside employment' grounds, the Deputy Governor of the RBA stands in, the Board approves final settlement of terminated employment, and the appointment of the successor Governor is as per the Act.

Subjective

Subjective issues are those that rest on opinion not fact - namely, performance, or misconduct/misbehaviour.

The approach should be:

- *Board* - a Governor who loses the confidence of the Board must go. The Deputy Governor of the RBA steps in, the Board approves final settlement of terminated employment, and the appointment of the successor Governor is as per the Act.
- *Executive* - a Governor who loses the confidence of the Executive should have the matter referred by the Executive to the Parliament, and have his/her future decided by the Parliament. While that process is under way, the Deputy Governor steps in. If termination is recommended by the Parliament, the Deputy Governor of the RBA stands in, the Board approves final settlement of terminated employment, and the appointment of the successor Governor is as per the Act. (In practice I cannot see any Governor being willing to go through this and I am sure they would resign).
- *Parliament* - a Governor who loses the confidence of the Parliament must go. While that process is under way, the Deputy Governor steps in. If termination is recommended by the Parliament, the Deputy Governor of the RBA stands in, the Board approves final settlement of terminated employment, and the appointment of the successor Governor is as per the Act. (In practice I cannot see any Governor being willing to go through this and I am sure they would resign).

I would keep the Courts out of all these matters if possible.

The Bill should be amended in at least one respect - to keep bankruptcy a mandated ground for dismissal.

Senator Andrew Murray