

**BANK OF WESTERN AUSTRALIA AMENDMENT BILL 2012**

*Introduction and First Reading*

Bill introduced, on motion by **Hon Simon O'Brien (Minister for Finance)**, and read a first time.

*Second Reading*

**HON SIMON O'BRIEN (South Metropolitan — Minister for Finance)** [7.33 pm]: I move —

That the bill be now read a second time.

The legislative changes introduced by this bill are aimed at securing and strengthening Bankwest's financial and operational commitments to Western Australia. When Bankwest was privatised in 1995, the Bank of Western Australia Act 1995—the act—entrenched certain requirements in the bank's articles, specifically, provisions in section 23 that require the bank to be incorporated in Western Australia; to carry on in Western Australia a banking business of essentially the same type as, and on a scale not significantly less than, the banking business conducted by the bank immediately before the day of privatisation; require the head office of the bank—that is, the place where central control of the bank is exercised—to be located in Western Australia; require that at least a majority of the board of directors of the bank and the managing director, while holding office, be ordinarily resident in Western Australia; and prohibit the alteration of the mandatory articles by any means.

These provisions were a condition of privatisation of the bank and were aimed at ensuring a degree of certainty that an appropriate level of financial skill, expertise, senior staff and decision making, that are logically associated with the headquarters of a bank, were retained in Western Australia. These were and remain laudable objectives in the state's commercial interests and they were generally the subject of bipartisan support in 1995 and are likely still principally supported to this day. Through most of its post privatised history, Bankwest was owned by the Bank of Scotland, which later became HBOS. The Commonwealth Bank of Australia—CBA—acquired Bankwest from HBOS in October 2008 in the aftermath of the global financial crisis.

All banks in Australia are regulated by the Australian Prudential Regulation Authority and each bank, referred to technically as an authorised deposit-taking institution, or ADI, is required to hold an ADI authority issued by APRA. Currently, Bankwest operates with a separate ADI authority from its owner, the CBA. The presently prevailing and serious problem is that APRA has advised an intention to enforce its longstanding policy that there be only one ADI authority within a conglomerate banking group. The objective of this APRA policy is to maximise the protection for depositors by ensuring that all assets of the group are available to all depositors equally and in priority to other creditors. APRA notes that this policy has been consistently applied for some time, most recently with respect to the merger of Westpac and St George Bank. There is no reason to question APRA's contention in this regard.

In line with this policy, APRA has advised that if the present ownership of Bankwest is to remain, it will require CBA and Bankwest to operate under a single ADI authority. Therefore, in order to meet APRA's requirements for a single ADI authority, Bankwest cannot continue to operate as a separate legal entity but, rather, will need to become an operating division of CBA.

In short, while Bankwest is presently and fully owned by CBA, it is still a separate corporate entity. If this situation were not to change, Bankwest would be required by APRA to operate under its own separate ADI and, as I will come to shortly, the financial consequence of this outcome to Bankwest and its customers would be significant and negative.

Complying with the APRA requirement will, amongst other things, require the assets and liabilities of Bankwest to be transferred from its existing corporate structure—the Bank of Western Australia Ltd—into CBA. The legislative issue then becomes that the entrenched mandatory articles in the act currently preclude such a transfer, with the consequence that the APRA conditions for operating under a single ADI authority cannot be met without amendment to the act.

In light of this situation having arisen, CBA and Bankwest approached the government to discuss how they may be able to give effect to the APRA requirement. If Bankwest cannot be integrated into CBA as required, APRA will require it to operate and be regulated as a stand-alone bank. Under this scenario, Bankwest would have to unwind the substantial support it currently receives from its parent, CBA, and raise significant amounts of funding on global financial markets without CBA's assistance. Under current market circumstances, and without the support of CBA's credit rating, to which it would no longer have access, Bankwest's cost of borrowing would likely be substantially higher. The likely outcome would be to make more expensive all Bankwest customers' mortgage rates and increase the cost and/or reduce the availability of loans to businesses in Western Australia by Bankwest.

Given the potential impact on the Western Australian community and small businesses, the government considered it was appropriate to examine how it might facilitate the requested change while still ensuring the substantive outcome meant to be achieved by the original entrenched legislative requirements of the act. The government has discussed with CBA and Bankwest a way forward, which is reflected in the bill now before the house.

With Bankwest ceasing to be a separate entity, and instead becoming part of CBA, the revised provisions cannot be exactly the same as the original provisions in the act. The intention of this bill is to preserve the requirement to maintain a business of the same type and scale in Western Australia, and the requirement for the Bankwest head office and its managing director to be domiciled here; while also allowing for Bankwest's operation under CBA's ADI authority so that Bankwest customers are not disadvantaged by cost increases.

In this process there will be some modification to the previously maintained conditions of Bankwest's operations. There will no longer be a separate Bankwest company, and as a consequence there will no longer be a Bankwest board, and so there will no longer be any efficacy in the requirement that a majority of board members be required to be resident in Western Australia; nor, for the same reason, will the bank continue to be registered in this state. However, in recognition of the state agreeing to amendments to the act, CBA has agreed to a number of new undertakings that will form the significant provisions in this bill and will provide statutory force to the maintenance of the Bankwest business in Western Australia. These relate to CBA's ongoing commitment to growing the Bankwest business in Western Australia.

CBA has agreed to update the requirements for the "type and scale" of business that will appear in the act once it is amended. Presently under the act, Bankwest is only required to maintain a business of the type and scale that existed at the time of privatisation in 1995. The changes agreed to in this bill mean that CBA will now be required to maintain the type and scale of the Bankwest business at no less than June 2011 levels, which, as one might expect, is significantly larger than it was in 1995.

Further, for a period of at least five years from the date Bankwest is transferred into the CBA, the bank will be required to maintain a specified minimum number of points of presence—that is, branches, business centres et cetera—in Western Australia, with closure of branches in regional areas entirely precluded except for amalgamations or relocations in a local area; maintain four specified senior Bankwest officers, in addition to the Bankwest managing director, in Western Australia; and maintain Bankwest sponsorships and community support activities in the state at no less than current levels. These additional undertakings create specific obligations with clear statutory force that go well beyond the provisions of the 1995 act, with an outcome for the community in Western Australia that provides certainty as to the maintenance of a separate Bankwest business entity operating in the state. Importantly, these undertakings are backed by specific enforcement provisions with significant monetary penalties if they are not complied with.

To summarise, the changes agreed and included in this bill will maintain the substance of the benefits sought from the original 1995 provisions—that is, maintaining Bankwest as a significant financial institution headquartered in Western Australia. Although it has been necessary to accept removal of provisions such as having board members resident in Western Australia, new and more detailed obligations, backed by a strong enforcement regime, have been put in place relating to branches, particularly in regional areas, key head office positions and community support activities. Finally, Bankwest depositors will now have the benefit of direct financial backing from the CBA and thereby avoid significant likely increases in their borrowing costs which would ensue in the absence of this bill.

Pursuant to standing order 126(1), I advise that this bill is not a uniform legislation bill. It does not ratify or give effect to an intergovernmental or multilateral agreement to which the government of the state is a party; nor does this bill, by reason of its subject matter, introduce a uniform scheme or uniform laws throughout the commonwealth.

I commend the bill to the house and I table the explanatory memorandum.

[See paper 4528.]

Debate adjourned, pursuant to standing orders.