

2008-2009

The Parliament of the  
Commonwealth of Australia

THE SENATE

*Presented and read a first time*

**Banking Amendment (Keeping Banks  
Accountable) Bill 2009**

**No.     , 2009**

*(Senator Fielding)*

**A Bill for an Act to amend the *Banking Act 1959* to  
keep banks accountable in setting mortgage interest  
rates, and for related purposes**



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1     **A Bill for an Act to amend the *Banking Act 1959* to**  
2     **keep banks accountable in setting mortgage interest**  
3     **rates, and for related purposes**

4     The Parliament of Australia enacts:

5     **1 Short title**

6                     This Act may be cited as the *Banking Amendment (Keeping Banks*  
7                     *Accountable) Act 2009*.

8     **2 Commencement**

9                     (1) Each provision of this Act specified in column 1 of the table  
10                     commences, or is taken to have commenced, in accordance with  
11                     column 2 of the table. Any other statement in column 2 has effect  
12                     according to its terms.

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**Commencement information**

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<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	
2. Schedule 1	The 28th day after the day on which this Act receives the Royal Assent.	

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1 Note: This table relates only to the provisions of this Act as originally  
2 passed by both Houses of the Parliament and assented to. It will not be  
3 expanded to deal with provisions inserted in this Act after assent.

4 (2) Column 3 of the table contains additional information that is not  
5 part of this Act. Information in this column may be added to or  
6 edited in any published version of this Act.

### 7 **3 Schedule(s)**

8 Each Act that is specified in a Schedule to this Act is amended or  
9 repealed as set out in the applicable items in the Schedule  
10 concerned, and any other item in a Schedule to this Act has effect  
11 according to its terms.

1  
2 **Schedule 1—Amendment of the Banking Act**  
3 **1959**  
4

5 **1 After Division 2C of Part II**

6 Insert:

7 **Division 2D—Movements in mortgage interest rates**

8 **18B Objects of Division**

- 9 (1) While commercial banks in Australia are the beneficiaries of a  
10 substantial public guarantee of funds supporting their private  
11 profitability, the Parliament intends that those banks should act in  
12 accordance with the public interest.
- 13 (2) Accordingly, the objects of this Division are:
- 14 (a) to give effect to the expectation that banks will set mortgage  
15 interest rates in line with movements in official interest rates;
- 16 (b) to require banks to explain any decision to set interest rates  
17 contrary to movements in official interest rates;
- 18 (c) to enable the Treasurer to consider whether such decisions  
19 are contrary to the public interest;
- 20 (d) to enable the Treasurer to revoke the public guarantee of  
21 funds applying to any bank which sets its rates in a manner  
22 which is contrary to the public interest.

23 **18C Effect**

24 This Division ceases to have effect at the same time as the  
25 Financial Claims Scheme ceases to have effect.

26 **18D Interpretation**

- 27 (1) In this Division:

28 **amount**, in relation to a change in interest rates, is measured by the  
29 number of basis points.

30 **bank** means an ADI to which Division 2AA applies.

1                    **Financial Claims Scheme** means the financial claims scheme for  
2                    account-holders with insolvent ADIs provided for by  
3                    Division 2AA.

4                    **movements** in official interest rates are the changes in the cash rate  
5                    targets announced from time to time by the Reserve Bank  
6                    following meetings of its Board.

7                    **official interest rate** means the cash rate target announced by the  
8                    Reserve Bank.

9                    **standard variable interest rate** has the meaning given in  
10                    section 18E.

11                    (2) Determinations and other instruments made by the Treasurer under  
12                    this Division are not legislative instruments.

### 13                    **18E Standard variable interest rate**

14                    (1) For the purposes of this Division, a bank's **standard variable**  
15                    **interest rate** is the rate advertised by the bank as its standard  
16                    variable home loan or mortgage interest rate.

17                    (2) If the Treasurer considers that a bank does not advertise a rate that  
18                    meets the definition in subsection (1), the Treasurer may, in  
19                    writing, nominate one of the bank's advertised interest rates as the  
20                    bank's standard variable interest rate for the purposes of this  
21                    Division.

### 22                    **18F Application to bank interest rate decisions**

23                    (1) This section applies to a bank, in relation to its decisions in setting  
24                    its interest rates, if:  
25                    (a) within 5 business days of a reduction in official interest  
26                    rates—the bank fails to reduce its standard variable rate by at  
27                    least the same amount, or at all; or  
28                    (b) at any time—the bank increases its standard variable rate,  
29                    other than in response to an increase in official rates; or  
30                    (c) within 5 business days of an increase in official interest  
31                    rates—the bank increases its standard variable rate by more  
32                    than that amount.



- 1 (2) For the purposes of this section, successive movements in a bank's  
2 standard variable rate announced or occurring within a period of 5  
3 business days are taken to be one movement in rates.

4 Example: A reduction in rates of 15 basis points on Monday followed by a  
5 further reduction of 10 basis points on the following Friday is taken to  
6 be a single reduction of 25 basis points.

7 **18G Explanation of bank decisions**

- 8 (1) If section 18F applies to a bank the Treasurer may, in writing,  
9 require the bank, within a specified period, to explain its decisions  
10 in setting its interest rates.
- 11 (2) If the bank fails, within the specified period, to provide an  
12 explanation which is satisfactory to the Treasurer, the Treasurer  
13 may do either or both of the following:
- 14 (a) declare that the bank's decisions in setting its interest rates  
15 are contrary to the public interest;
- 16 (b) direct the bank, in writing, to set its standard variable rate at a  
17 different rate before the end of a specified period.

18 **18H Treasurer may determine financial guarantee no longer applies**

- 19 (1) If the Treasurer:
- 20 (a) has declared that a bank's decisions in setting its interest  
21 rates are contrary to the public interest; or
- 22 (b) has made a direction to a bank under paragraph 18G(2)(b)  
23 with which the bank fails to comply;
- 24 the Treasurer may determine, in writing, that the Financial Claims  
25 Scheme will cease to apply in relation to that bank from a specified  
26 time.
- 27 (2) Division 2AA ceases to apply in relation to the bank from the time  
28 specified in the determination made under subsection (1).
- 29 (3) If the bank subsequently complies with a direction made under  
30 paragraph 18G(2)(b), or if the Treasurer is satisfied that it is in the  
31 public interest, the Treasurer may make an instrument revoking a  
32 determination made under subsection (1).
- 33 (4) If the Treasurer revokes a determination relating to a bank in  
34 accordance with subsection (3), Division 2AA applies in relation to

1 the bank from the time the revocation is made, or from another  
2 time specified in the instrument.

3 **18I Treasurer may request information**

- 4 (1) The Treasurer may give APRA, ASIC or the Reserve Bank a  
5 written request for advice or information about a matter relevant to  
6 making a determination under this Division (including a matter  
7 relating to the affairs of a bank).
- 8 (2) As soon as reasonably practicable after being given the request,  
9 APRA, ASIC or the Reserve Bank as the case may be, must give  
10 the Treasurer the advice or information about the matter.
- 11 (3) In making a decision about a determination, the Treasurer must  
12 take into account the advice and information (if any) that he or she  
13 has been given. This does not limit what the Treasurer may take  
14 into account in making the decision.