

**BANK OF WESTERN AUSTRALIA AMENDMENT BILL 2012**

*Second Reading*

Resumed from 16 May.

**HON KEN TRAVERS (North Metropolitan)** [9.03 pm]: I rise on behalf of the opposition to speak on the Bank of Western Australia Amendment Bill 2012. This bill seeks to amend the Bank of Western Australia Act 1995, which was introduced when the Court Liberal government privatised what was then known as Bankwest and previously would have been known by many as the R & I Bank. At the time of that privatisation, the Bank of Western Australia Act included a number of provisions and they included a requirement that the bank be incorporated in Western Australia, that the bank carry on a banking business 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. There was a requirement for the bank to have its head office—where central control of the bank is exercised—in Western Australia. It was also required that a majority of the board of directors of the bank, including the managing director, be resident in Western Australia, as well as a couple of other things. It operated as a completely independent bank. It was an authorised deposit-taking institution and was regulated under the Australian Prudential Regulation Authority. As members would know, during the global financial crisis Bankwest was purchased by the Commonwealth Bank of Australia and is now a wholly owned subsidiary. In fact, after the privatisation, HBOS, I think it was, had actually bought Bankwest off the shareholders who had bought it when it had originally been privatised. The Commonwealth Bank owns it and again, under the rules for banks in Australia there is a requirement that deposit-taking institutions all operate, when they are fully owned subsidiaries, under one banking licence. I guess the argument for that is that a person should have the protection of the full assets of that company when they are dealing with it. The bank has, therefore, been receiving and being granted exceptions from APRA to operate the two separate licences.

I must say I find it interesting that this bill is probably the first occasion in which we have sought to deal with a bill as an urgent bill under the new standing orders. Originally, under our old standing orders bills were required to sit on the notice paper for only one week before we could deal with them, and I think everyone acknowledged that it was often very difficult, in terms of going through the party room processes and all the rest of it, to deal with bills in that time frame. Therefore, it was agreed that bills originally introduced to the upper house rather than coming as messages from the lower house would sit on the notice paper for, I think, two weeks. We are dealing with this bill after only a week because it is an urgent bill, but I must say that I am surprised that it is an urgent bill and that it has only just arrived in Parliament, when in fact, this matter has been under consideration for some time. I understand that Bankwest approached the government some 18 months ago and raised this issue, and sought for the bill we are dealing with tonight to be brought through. In fact, Bankwest came and saw the opposition last year to discuss this matter with us, because at that stage it thought it had to have the bill through before the end of the year. It was then given a further exemption from the APRA process. Yet at five minutes to midnight, at the time of the budget going through, the government brings in this bill and says that it is urgent and that we need to get it through this house, so we can get it to the lower house, so we can have it passed by 30 June. I am confident that this is not an issue for Bankwest, so this is not a criticism of Bankwest; it is a criticism fairly and squarely aimed at the government for delaying this legislation. Whilst the government has taken all the time it needs to, it has not left the time for the Parliament to effectively look at this legislation and is trying to seek to have it pushed through.

I turn to what this bill does. It allows for the amalgamation of the banks and obviously a number of those earlier provisions and exemptions are removed. The bill seeks to include a number of new obligations. It seeks to maintain a number of obligations, referred to under division 2, “Long-term obligations”, such as the requirement of the Commonwealth Bank to still run a banking business under the Bankwest name; the requirement of the Bankwest head office to be maintained in Western Australia; and the requirement of the managing officer of that business to be maintained in Western Australia. It also requires sufficient records to be kept here to allow the bank to be able to provide information to the minister. The bill also requires that the bank carry on business of a similar type, and of no less scale, than the business as at 30 June 2011. Those are all sought to replace the existing provisions. The bill then moves on to introduce a new set of obligations that apply for five years. The question I look forward to being addressed by the minister—because I cannot understand it—is what the benefit of the five-year provision is, because either the existing provisions about scale provide for and protect us or they do not. Either these provisions are just window dressing and in five years’ time they will disappear and nothing will change or they are provisions of substance that do provide extra protection, and in five years’ time, those protections will disappear and the bank will be able to close and reduce branches across Western Australia, to amalgamate branches with the Commonwealth Bank or to co-locate branches.

This will be particularly significant for parts of regional Western Australia where every job counts. If towns have both Bankwest and Commonwealth Banks operating and all of a sudden there is only one of them, there will be

significant implications for both customer choice and employment in a number of our regional centres. Regional centres are growing; we would expect that to occur and to be positive, but of course it could go the other way.

Under the division concerning obligations relating to the five-year period, it is the requirement that Bankwest continue its sponsorship and community development activities at no less than current levels for the next five years. As I said, the key question that the government needs to answer is whether the substantive clause, which seeks to continue the previous clause about requiring the Bankwest business to be conducted on a scale not significantly less than it was at the time of privatisation in 2011, is of substance and we then do not need these additional provisions, or, whether these additional provisions are of substance, in which case we will lose them in five years and suffer the consequences. The government needs to explain that to us tonight. Hopefully, the minister can explain that to us and we will not need to drill down to it in committee. That is the first point I will be looking for from the government.

The next issue I want to raise is that the bill seeks to add in a number of provisions for the ability to fine a fixed monetary penalty of \$2 million per contravention. I am intrigued to understand whether, if the bank was to significantly close its operations in Western Australia once the five-year provisions have expired, every branch that closed would be a contravention. Would it be a contravention if Bankwest was amalgamated into the Commonwealth Bank and all the signs were changed over to say Commonwealth Bank–Bankwest or the banks were co-located? Is that one contravention or a different contravention for each branch that closes? If Bankwest no longer operated at the scale at which it operated at the time of privatisation, how would we measure the different number of contraventions? Is it just one hit of \$2 million? If Bankwest has done the business case and found out that it would make and save more than \$2 million, it could potentially take the hit and move on. It is important that we understand that before the bill is passed today.

The bill also provides an opportunity for the government to seek an injunction of the court if the state believes, as stated in proposed section 42Q(1) —

... that the Bankwest owner —

- (a) has done or omitted to do or is proposing or attempting to do or omit to do any thing that amounts to, or would amount to, a contravention of a provision of Division 2 or 4; or
- (b) is involved in a contravention of a provision of Division 2 or 4.

It is interesting that the bill has both a provision for an injunction and also a provision for a one-off monetary defined penalty. It would be interesting to know how the government expects the courts to read that, because I would have thought that the courts will say, “Yes, you are entitled to get an injunction to stop people doing it, but if they have already done it, you have the right to take a monetary penalty against them and that is the only right you will have”, and they would be less likely to grant the injunction. I am keen to get an explanation from the government about how it sees the injunctions will work with the operation of the fixed penalties for contravention of this bill and in what circumstances injunctions will be taken. What does the government expect the court to do regarding an injunction if it believed someone had done or omitted to do or proposed or attempted to do or omit to do anything that amounts to, or would amount to, a contravention of the provisions of this bill. Effectively, if the bank wants to move its key personnel or downgrade or close the business in Western Australia, what sort of relief could it seek and gain from the courts by way of that injunction capacity?

As I said, I put these issues out there during this debate on the policy of the bill because if the minister is able to provide us with an answer to those questions, we may be prevented from going into the committee stage. Otherwise, I think we will need to go into the committee stage to drill down into those issues about how the government expects the five-year clauses to operate and why it is necessary over and above the original substantive clause about maintaining an operation of substance. I am very concerned that it is just an attempt by the government to put on a bit of window-dressing, knowing that this path started with the privatisation of this bank and will end up, as we have seen with so many other regional banks in Western Australia, with it getting bought out and consumed by one of the big four banks.

Regardless of all that, the real test will be whether the products offered by Bankwest are substantially different. Certainly in the past Bankwest often offered very competitive rates. That is why I banked with Bankwest; I got a good deal out of it. I also liked the fact that at that stage it was a state-owned Western Australian bank. I liked being able to support a Western Australian company. I am concerned that nothing in this bill will effectively stop Bankwest from becoming over time an identical mirror of the Commonwealth Bank of Australia and not exercising the degree of independence that it certainly has exercised in the past. There does not seem to be anything in this bill as it is written that provides protection of the way the bank will operate, whereas under the existing bill Bankwest has clearly operated in such a way as to provide good deals for families of Western Australia. Again, I look forward to some comments from the minister about how that will operate.

The final thing I want to talk about is the provision in this bill that requires Bankwest to provide the minister with a certificate of compliance with its obligations. It strikes me that it would make sense that a certificate of compliance would become a public document so that all of us are able to see whether this new entity, Bankwest as a subset of the Commonwealth Bank, is operating in a manner and form that complies with the intent of this legislation. However, we see that the compliance certificate will be a confidential document that will be kept by the minister and will not be made public. We are very interested to understand why the government does not believe that document should be made public. I note that proposed section 42O(6) allows for that information on that certificate to be disclosed if —

- (a) it is made with the consent of the Bankwest owner; or
- (b) it is required under another written law; or
- (c) it is made for the purpose of —
  - (i) answering a question asked in a House of Parliament; or
  - (ii) complying with an order or resolution of a House of Parliament that requires information to be given to a House of Parliament.

Basically, that second bit would have been required anyway or we would have to have a section that states that the Financial Management Act does not apply to this particular legislation. Considering that the government has, I understand, signed a formal agreement with Bankwest with respect to this legislation, I would suspect it would have had to have sought that before it signed that agreement, because there is an obligation under the Financial Management Act that no-one can enter into any agreement that prevents it being provided to a house of Parliament.

In fact, again I think there would be a strong argument that, unless the privileges of the Parliament were formally removed, we would have access to that document. There would need to have been a specific request.

One matter on which I am interested in getting further explanation from the minister is the circumstances and the way in which he would see the information being provided by way of an answer to a question asked in a house of Parliament. I will put a proposition before the minister tonight. In 12 months' time, after this bill has passed and a certificate of compliance has been tabled, if I were to ask a question such as, "Will the Treasurer"—I expect it will be the Treasurer responsible for this legislation—"or the minister representing the Treasurer table in the house a copy of the compliance certificate?", does the government see that it would be provided in that circumstance? Or is it still an option for the minister not to provide it? If that is the case, what are the circumstances that the government envisages that information would be provided to the Parliament by way of answering a parliamentary question about this information? I think it is important that we understand. Again, is this a bit of window-dressing on this bill, or is this going to be a matter of substance and the vehicle by which people can be informed? Again, if it is going to be the vehicle by which people can be kept informed, why are we not just making it here and now that a certificate is made public at the time of its presentation?

The other thing is, although the legislation is written in an all-circumstances manner, does the minister envisage that, if a question is asked, the government would still seek the consent of the Bankwest owner providing that information, or does he believe that the government would be quite within its rights to make a decision about releasing that information without consulting the owner? If the minister looks at proposed section 7 it says that disclosure is authorised if it is made with the consent of the Bankwest owner, but then it can be authorised for the purpose of answering a question in Parliament. Would the minister still envisage that he would have to get the permission of the Bankwest owner to provide that information by way of an answer? Could the minister provide clear guidance to the house on that matter?

Again, there may be confidential information. I think it makes sense for us to get a very clear understanding of the legislation within the house, so that the Bank of Western Australia or its new owners, CBA, are very clear about what this legislation means and, when it is passed, how it is intended for it to operate.

As I said, I think I have covered just about all the points. I do not have any amendments. As I mentioned at the outset, the opposition has had to consider this legislation very quickly to be able to sit here tonight to deal with this legislation. My colleagues in the other place and I will continue to look through this legislation to see whether there are any amendments. We will be doing the reverse. We will be giving it very quick scrutiny and passing the legislation. It will then obviously go to the lower house. At that point, if there are any further issues that we have identified as an opposition or if there is some form of amendment, they will be raised there.

Finally, I am interested in whether the minister could provide us with details exactly of the agreement that has been reached between the state of Western Australia and, I assume, and the Commonwealth Bank. What is the nature of the agreement that has been reached? What is the form of the agreement? Is that agreement itself able

to be made a public document? With those comments, I conclude my remarks on the bill and look forward to the responses from the minister to the issues that I have raised.

**HON MATT BENSON-LIDHOLM (Agricultural)** [9.25 pm]: I want to echo the sentiments of Hon Ken Travers in relation to his presentation and the concerns he expressed in relation to the Bank of Western Australia Amendment Bill 2012. I simply want to give more of an Agricultural Region perspective. I think it is important to put on record that what is now called Bankwest of course started in 1895 or thereabouts as the Agricultural Bank of Western Australia. A former banker over there, Hon Philip Gardiner, would probably be able to confirm that situation; I believe that to be correct. This particular bank has its roots in rural and regional Western Australia. For that reason, I think it is important that members in regional parts of the state have some concerns for the evolution and the continued development of this particular banking service in the sorts of areas that some of us represent.

Hon Ken Travers certainly made some very useful points in relation to his concerns about the five-year time frame. In relation to any business of this particular nature, five years may even be considered in some respects quite lengthy, given the nature of the movement in the world economy right now. An agreement has been made, and in that particular five years lots of promises are going to be held.

I would simply put it, though, that the price that the Commonwealth Bank paid for Bankwest—I think it was something in the order of a mere \$2.1 billion—would seem to indicate that the Commonwealth Bank is in quite a good bargaining position in relation to what it can do in five years especially in incurring significant losses. Perhaps it can position this bank later on for some sort of sell-off, I do not know. Maybe the bank itself could in five years' time be on-sold. I am sure that sort of situation is quite possible.

I made a note here of the \$2 million penalty that Hon Ken Travers mentioned. The cost of \$2.1 billion makes losses such as \$2 million for various indiscretions seem quite a paltry amount. I do not know if there is much that the minister could clarify in relation to that, but certainly \$2 million, to my way of thinking, does not seem to be much of a disincentive. I may well be wrong there, but I would like to think that there is some capacity for that amount of money to be revisited.

I would quickly like to go through some of the more relevant parts of this particular bill that I deem appropriate to talk about.

The purpose of the bill is outlined very clearly in the second reading speech, in which the minister indicates —

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.

It continues —

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.

That situation prevails today and is incorporated into this amendment bill. So I certainly do not have issues there.

The minister goes on to say —

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.

Herein lies the big problem, of course, and I know that the minister is fully conversant with this sort of issue —

**Hon Simon O'Brien:** Absolutely!

**Hon MATT BENSON-LIDHOLM:** I am sure the minister is. The issue fairly obviously is that Bankwest cannot exist in its current form, with its own separate, stand-alone authorised deposit-taking institution status, and that problem is what this bill, if I am not mistaken, seeks to address. Bankwest cannot continue to operate in that format and must operate as part of the Commonwealth Bank of Australia, because at present, despite its ownership via the Commonwealth Bank, Bankwest is still a separate corporate body, and that is a situation that

must be addressed immediately. So, what has to be done? Basically, the liabilities and assets of Bankwest have to be transferred to CBA, and that requires this amendment bill. The question now is: how can that APRA requirement be addressed? It can be addressed in one of two ways, of course. We could have a stand-alone bank. But obviously as a stand-alone bank, Bankwest would have to compete in an industry in which bigger seems to be better. That is the way in which the Australian banking industry is progressing in this day and age, because despite all the best intentions of previous governments of all persuasions to free up our banking industry and make it more competitive, it would appear that the big four are getting stronger and stronger. When a bank like the Commonwealth Bank of Australia acquires a relatively small, but certainly significant, player in the market like Bankwest for \$2.1 billion, we can see that the writing is on the wall for some of the other smaller institutions. That has happened prior to Bankwest, of course, with the merger of St George and—I cannot recall, but was it Westpac?

**Hon Simon O'Brien:** I forget.

**Hon MATT BENSON-LIDHOLM:** I certainly do not bank with either of them, so that may account for the fact that I do not know. Alternatively, of course, if Bankwest is not to stand alone, and that obviously cannot happen, full Commonwealth Bank of Australia ownership is the situation that must prevail. So the way forward, obviously, is this amendment bill.

I have a number of questions about this bill. I am keen to look at what this bill will do to protect Western Australians, particularly in regional and remote areas, and how it will address APRA's requirements in relation to the various issues that have been mentioned by Hon Ken Travers. I have already noted the intentions of the bill. The first intention is to preserve the requirement to maintain a business of the same type and scale in Western Australia. I do have an issue with that, and the minister may be able to talk about that a bit later. The second is to preserve the requirement for the Bankwest head office and its managing director to live in Western Australia. I will be honest. In this day and age, that is an issue that does not necessarily worry me to any great extent. The third requirement is that while allowing for Bankwest's operation under the Commonwealth Bank of Australia's ADI authority, cost increases are kept to a minimum. That is very much a positive but may pose problems.

The Commonwealth Bank of Australia has made a number of commitments in support of the merger. The first is a focus on the provision of statutory force to the maintenance of the Bankwest business in Western Australia by also seeking to promote the growth of the Bankwest business in Western Australia. Interestingly, given the pathway that this government is going down, with things like the SuperTowns, regional operations are not necessarily mentioned, and, from what I have read, neither are they defined, so that might be something that the minister could have a bit of a look at. Hon Ken Travers talked about the five-year time frame. I also have issues about that. I am keen to find out more about how the Commonwealth Bank of Australia and Bankwest can maintain a specified minimum number of points of presence—that is, branches—across Western Australia. Supposedly there will be no closures of branches in regional areas. However, amalgamations and relocations in local areas seem to be okay. That all sounds all very well, but those statements do need some level of clarification.

I would, therefore, put the following questions to the minister. Is it not possible that for issues of status—for example, full-time as opposed to part-time—there may be reduced operating hours at a branch in a country town? That is certainly not mentioned in the bill from any of the reading that I have engaged in. Local government amalgamations and the like may also impact on the decisions by the Commonwealth Bank, and that requires some clarification. There is also the issue of relocation of branches in areas in which there might be the amalgamation of two, three or four local government authorities. The example that I would cite is the City of Greater Geraldton, which now incorporates Greenough, Geraldton and Mullewa and has the capacity to include other areas in which Bankwest currently has some presence, be it a part-time or a full-time agency, or whatever. Local government amalgamations are certainly not mentioned. But that is a pathway down which the current government has shown some intention, at least, of heading. Branches may not necessarily change for five years, but the definition of a region certainly may. If the City of Greater Geraldton were to take in three, four or even more previously independent local government authorities in which there was a Bankwest branch, would that be an issue? I think it would be, and I would like the minister to give some clarification as to where we might go with that.

I was going to go through a litany of some of the regional Bankwest branches or store locations. But the same sort of thing as with Greater Geraldton prevails in other parts of Western Australia. In my home town of Albany, with Mt Barker and Denmark being close by, I suppose amalgamation is a distinct possibility in relation to those three areas. They certainly form some sort of a unique entity anyway, so that is certainly not beyond the realms of possibility. There are two Bankwest branches in Bunbury, and there are also branches close by in Busselton and Augusta, and up into the hills at Collie, and down to Dunsborough. The independence of particular towns is an issue that I would like to raise. I would also like to know about the implications for branches outside Western

Australia. I know that we are talking about WA, and this bank has its origins in Western Australia, but that may well be an issue in the overall prosperity or viability of the merger that will occur. The merger of these two banking entities has implications beyond even Western Australia.

Another issue that I would like the minister to give some consideration to is how Bankwest and the Commonwealth Bank of Australia guarantee sponsorship and community support activities in Western Australia, given that perhaps—I only say perhaps—previous levels of support for community groups and the like are not documented or known. What will be the basis for ensuring that that sort of set-up can be maintained ad infinitum? Perhaps that is not quite the correct term, but certainly the point about maintenance at no less than current levels needs clarification. Therefore, the question is: how can the minister guarantee any certainty in those sorts of expenditure and how will enforcement occur? I know that we have referred to \$2 million fines, but I would also like to know about enforcement of the previous levels of expenditure. What about towns that enjoy SuperTown status such as Katanning? Are there any implications in the SuperTown status of places such as Katanning and surrounding locations? Once again, I could perhaps refer to my list of Bankwest branches, but it is quite lengthy. There may well be some implications in a place such as Katanning, where a new goldmine is being developed as we speak. There may even be issues with regional economic downturns in other places that may impact on the bank's commitment to maintain the status quo.

Can the minister explain the supposed strong enforcement regime? I know this point has been made in some of the reading I have engaged in, but what is to stop the Commonwealth Bank on-selling the Bankwest brand? Are there any implications for that? Is further amalgamation with other banks from around Australia or overseas possible? What are the implications for local farmers? The connection to Bankwest, the former Rural and Industries Bank or the old Agricultural Bank of Western Australia is still strong for those who work and live in the agricultural and regional parts of Western Australia. There are implications for people's continued support for this regional banking set-up if and when further amalgamations occur. I return to Hon Ken Travers' point that within five years, given the cost was a mere \$2.1 billion, the government needs to provide this side of the house with some surety or guarantee of ongoing services in regional Western Australia—given its affinity with Bankwest. Can the Commonwealth Bank give any guarantees that it will have any empathy with regional Western Australia, particularly in times of drought?

Hon Ken Travers mentioned unemployment issues, particularly staff cutbacks. Will they be the reality? Given the current layout of this amendment bill, will the Commonwealth Bank use staff cutbacks and those sorts of things while fulfilling the requirement to maintain a presence in a particular country town? Can the bank reduce staff numbers, particularly in some of the bigger banks, if an economic downturn causes banks to enact cost-saving measures of the sort that it cuts back staff by 10, 20 or 30 per cent? Other issues may prevail, such as changes in technology and the like, and impact on the bank's capacity to maintain staff at 2012 levels.

Given that it is nearly time for members' statements, I will leave my comments at that. I hope that the minister can address some of my concerns, particularly those about the Agricultural Region. I look forward to listening to other members' contributions.

Debate adjourned, pursuant to standing orders.