

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

(Presented and read a first time, 28 May 1991)

(SENATOR McLEAN)

A BILL

for

**An Act to provide for a Commission of Inquiry in relation to
certain banking practices in Australia and for related purposes**

BE IT ENACTED by the Queen, and the Senate and the House of Representatives
of the Commonwealth of Australia, as follows:

Short title

- 5 1. This Act may be cited as the *Commission of Inquiry (Banking Practices) Act
1991*.

Commencement

2. This Act commences on the day on which it receives the Royal Assent.

Definitions

- 10 3. In this Act, unless the contrary intention appears:
 “**Commission**” means the Banking Practices Commission established in
 pursuance of this Act.

Establishment of Commission

- 15 4. (1) There shall be a Commission of Inquiry in relation to banking practices, having
 the terms of reference specified in section 5.

(2) The Commission shall be known as the Banking Practices Commission.

(3) The Commissioners shall be 3 persons appointed by the Governor-General, each of whom shall be a judge, or former judge, of a Federal Court or the Supreme Court of a State or Territory and one of whom shall be appointed to be the President of the Commission.

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Terms of Reference

5. (1) The Commission shall, after due inquiry, report to the Governor-General on the matters set out in the terms of reference contained in the Schedule.

(2) The Commission shall, subject to this Act, conduct such inquiry as it thinks necessary for the purposes of reporting in accordance with subsection (1).

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(3) Proceedings of the Commission shall be in public, but the President has power to exclude any person for reasons the President thinks sufficient.

(4) If the Commissioners are not in agreement as to the report that should be made, a Commissioner may submit a separate report.

(5) Upon receipt by the Governor-General of a report under this section, the Attorney-General shall cause a copy of the report to be laid before each House of the Parliament.

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Commission may sit at any place

6. The Commission may sit at any place or places in Australia.

Application of *Royal Commissions Act 1902*

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7. The following provisions of the *Royal Commissions Act 1902* apply, by force of this Act, to and in relation to the Commission as if it were a Commission under that Act established by the Governor-General by Letters Patent under the Great Seal of Australia, being a relevant Commission within the meaning of that Act, and having the terms of reference specified in this Act, namely sections 1B, 2, 3, 4, 5, 6, 6A, 6B, 6C, 6D, 6DD, 6F, 6FA, 6G, 6H, 6I, 6J, 6K, 6L, 6M, 6N, 6O, 6P, 7A, 7AA, 7C, and 7D.

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SCHEDULE

Section 5

Terms of Reference Commission of Inquiry into certain bank practices

1. The Commission shall, after due inquiry, report to the Governor-General on the following matters:

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- 5 (a) all the circumstances surrounding the foreign currency dealings of all banks operating in Australia, including the Westpac Banking Corporation and Partnership Pacific Limited between 1984 and 1987, commonly known as the Offshore Foreign Currency Loans Matter, with particular reference to:
- (i) the devising and marketing of the foreign currency loans products;
 - (ii) the management and administration of the foreign currency loans products;
 - 10 (iii) whether there were losses to clients above and beyond fair trading losses and whether these losses were the fault of the abovementioned corporations; and
 - (iv) whether the corporations sought to conceal from clients details of the foreign currency loans dealings or to mislead them as to details of those dealings; and
- 15 (b) to examine whether the activities of the abovementioned corporations or their advisers, in relation to these offshore foreign currency dealings were carried out in compliance with the law and in compliance with established principles of fiduciary relationships between banks and clients;
- 20 (c) to examine whether any other activities and banking practices of the abovementioned corporations were carried out in compliance with the law and in compliance with established principles of fiduciary relationships between banks and clients; and
- (d) to recommend, if the activities were not in compliance with the law,
- 25 (i) what action, if any, should be taken against the corporations or advisers concerned;
 - (ii) what compensation arrangements if any, should be made available to aggrieved clients; and
 - (iii) what amendments if any, to existing law and practice in this area are required or desirable.



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