

Topics

1. LEGAL SUPERVISION OF BANKS AND ADIS
2. CHEQUES, PAYMENTS AND THE CONCEPT OF NEGOTIABILITY
3. BASIC PRINCIPLES OF BANK LENDING & THE ADI/CUSTOMER RELATIONSHIP
4. DUTIES & LIABILITIES OF BANKS & ADIS
5. AN INTRODUCTION TO GUARANTEES, AND OTHER DOCUMENTS IMPOSING PAYMENT OBLIGATIONS
6. SECURITY FOR DEBT (PPSA)
7. BILLS OF EXCHANGE

1 Legal Supervision of Banks and ADIs

1.1 Institutions

(a) ADIs (authorised deposit-taking institutions)

- (i) A body corporate, authorised by APRA, to engage in banking business (*Banking Act ss 5, 9(3)*)
- (ii) Examples
 - (A) Banks
 - (B) NBFIs (non-bank financial intermediary): credit unions and building societies

(b) Banks

- (i) ADI granted authority by APRA to use the words 'bank', 'banker', 'banking'
- (ii) It is an offence to use restricted words: bank, banker, banking, building society, and credit society/union in Aust without APRA permission (*Banking Act ss 66(1), (4)*)
- (iii) Exceptions:
 - (A) An ADI may use 'bank, banker or banking' in relation to the ADI's financial business (*Banking Act s 66(1AC)*)
 - (B) RBA may refer to itself as a bank, or use 'banking' etc (*Banking Act s 66(1AB)*)
- (iv) 'Banking business'
 - (A) Banking Act s 5
 - (1) A business carried on by a corporation of taking money on deposit, and making advances of money
 - (2) Any business related to any other fin. activities prescribed by the regulations:
 - Purchased payment facilities, IF APRA determines that the facility is a widely available purchased payment facility that gives the customer the right to demand a refund or redemption of unpaid value in Aust currency (*Banking Regulations s 6*)
 - e.g. Paypal
 - (B) Common law (*Permewan*)
 - (1) Reservoir test:
 - Collecting money (eg through deposits) **and**
 - Lending money back out again
 - Must be the real and substantial business of the body of persons, NOT merely an ancillary or incidental branch of another business
- (v) Three categories of banks:
 - (A) Australian owned banks
 - e.g. CBA, NAB, Westpac, ANZ
 - (B) Australian-incorporated foreign subsidiary banks
 - e.g. HSBC Australia and Arab Bank Australia which are also subsidiaries of foreign banks
 - (C) Branches of foreign banks operating in Aust ('foreign banks')
 - Banks that are (not themselves incorporated in Australia. e.g. RBC, Credit Suisse, Bank of China

Banking Act s 50 Control of interest rates

- (1) The Reserve Bank may, with the approval of the Treasurer, make regulations:
- (a) making provision for or in relation to the **control of rates of interest payable to or by ADIs**, or to or by other persons **in the course of any banking business** carried on by them;
 - (b) making provision for or in relation to the control of rates of discount chargeable by ADIs, or by other persons in the course of any banking business carried on by them;
 - (c) providing that interest shall not be payable in respect of an amount deposited with an ADI, or with another person in the course of banking business carried on by the person, and repayable on demand or after the end of a period specified in the regulations; and
 - (d) prescribing penalties, for offences against the regulations, not exceeding:
 - (i) if the offender is a natural person—a fine of \$5,000; or
 - (ii) if the offender is a body corporate—a fine of \$25,000.

(b) APRA

- (i) Prudential regulator for the financial sector bodies (*APRA Act s 3(2)*) e.g. ADIs (banks, building societies, credit unions), super funds
- (ii) Purpose (*APRA Act s 8*)
 - (A) issues standards under *Banking Act s 11AF*
 - (B) Regulates bodies in financial sector per Cth laws (*Banking Act s 8(1)*)
 - (C) Regulates the *Banking Act* financial claims scheme (*APRA Act s 8*)
 - (D) Develops the practice and procedures that it needs to perform the above roles

APRA Act (Cth)**7 Establishment of APRA**

- (1) The Australian Prudential Regulation Authority is established by this section.
- (2) For the purposes of the finance law (within the meaning of the Public Governance, Performance and Accountability Act 2013):
- (a) APRA is a listed entity; and
 - (b) the Chair is the accountable authority of APRA; and
 - (c) the following persons are officials of APRA:
 - (i) the Chair;
 - (ii) the other APRA members;
 - (iii) the APRA staff members; and
 - (d) the purposes of APRA include:
 - (i) the purposes of APRA referred to in section 8; and
 - (ii) the functions of APRA referred to in section 9.

8 Purpose for establishing APRA

- (1) The main purposes for which APRA exists are as follows:
- (a) **regulating bodies in the fin. sector** in accordance with other laws of the Cth that provide for prudential regulation or for retirement income standards;
 - (b) administering the **fin. claims schemes** provided for in the Banking Act 1959 and the Insurance Act 1973;
 - (c) developing the admin practices and procedures to be applied in performing that regulatory role and administration.
- (2) In performing and exercising its functions and powers, APRA is to ***balance the objectives of fin. safety and efficiency, competition, contestability and competitive neutrality** and, in balancing these objectives, is to promote financial system stability in Australia.

9 APRA's functions

- APRA has the following functions:
- (a) the functions conferred on it by or under this Act or any other law of the Cth;
 - (b) the functions conferred on it by or under any law of a State or Territory in accordance with subsection 9A(1);
 - (c) the function of providing prudential reg or advice services under a/ments entered into in accordance per sub-s 9A(2)