

Reserve Bank Amendment (Australian Reconstruction and Development Board) Bill 2019

No., 2019

The Hon. Drunk_King_Robert MP

A Bill for an Act to amend the *Reserve Bank Act 1959*, and for related purposes

Explanatory Memorandum

The purpose of this bill is to establish the Australian Reconstruction and Development Board, which will assist struggling farmers and producers in regional and rural areas. The lending practices of financial institutions, coupled with low farm incomes, has created a debt crisis. The ARDB will be capable of initiating a process of financial reconstruction and protecting vulnerable primary producers.

Human Rights Impact

This bill has no human rights impact.

Second Reading Speech

Mr Speaker.

In 1980, the level of debt in Gross Value Farm Production was 32%. Now, thanks to deregulation and lower farm incomes, in 2012 that level reached 135%. Now farmers are at risk of foreclosure, and a looming regional financial crisis threatens our country's ability to continue on as the great food producer we are. We cannot allow farmers to be left behind by government inaction. This bill will help address this crisis by empowering a new board, established under the framework of the Reserve Bank, to begin the process of financial reconstruction.

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A Bill for an Act to amend the *Reserve Bank Act 1959*, and for related purposes

The Parliament of Australia enacts:

1 Short title

This Act is the *Reserve Bank Amendment (Australian Reconstruction and Development Board) Act 2019*.

2 Commencement

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

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this Act	The later of: (a) the 28th day after this Act receives the Royal Assent; and (b) the day the Consolidated Revenue Fund is appropriated under another Act for the purposes of the Australian Reconstruction and Development Board. However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur.	

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

(2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

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

Schedule 1—Amendments

Reserve Bank Act 1959

1 Subsection 5(1)

Insert:

development task means the task of developing and offering funding arrangements to contribute to the development of Australian agriculture, associated industries and infrastructure.

2 Subsection 5(1)

Insert:

facilitative task means the task of researching, reporting on and helping to develop, in a timely way, the resilience, capabilities and ongoing financial viability of:

- (a) Australia's food and natural fibre systems; and
- (b) any industries or sectors in need of, or potentially in need of, reconstruction or development, including industries or sectors in systems other than those referred to in paragraph (a) that the Australian Reconstruction and Development Board has identified as being at risk.

3 Subsection 5(1)

Insert:

reconstruction task means the task of addressing market, organisational or other failures or events that have resulted in debilitating financial arrangements in Australian agriculture or associated industries.

4 Subsection 5(1)

Insert:

rural reconstruction and development policy means policy in relation to:

- (a) the reconstruction task; and
- (b) the development task; and
- (c) the facilitative task.

5 Subsection 7A(2)

After "Payments System Board", insert "or the Australian Reconstruction and Development Board".

6 Subsection 7A(3)

After "Payments System Board", insert "and the members of the Australian Reconstruction and Development Board".

7 After paragraph 8(i)

Insert:

- (ia) to acquire, hold, deal with and dispose of property; and

8 Subsection 8A(1)

Omit "2", substitute "3".

9 At the end of subsection 8A(1)

Add:

; and (c) the Australian Reconstruction and Development Board.

10 Subsection 8A(2)

After “payments system policy”, insert “and its rural reconstruction and development policy”.

11 After subsection 8A(3)

Insert:

(3A) The Australian Reconstruction and Development Board is responsible for the Bank’s rural reconstruction and development policy (see section 10BB).

12 Subsection 8A(5)

Omit “2”, substitute “3”.

13 Subsection 10(1)

After “payments system policy”, insert “and rural reconstruction and development policy”.

14 After section 10B

Insert:

10BA Establishment of Australian Reconstruction and Development Board

There is to be an Australian Reconstruction and Development Board of the Reserve Bank which is to be constituted as provided in Part IIIB.

10BB Functions of Australian Reconstruction and Development Board

(1) The Australian Reconstruction and Development Board has power to determine the Bank’s rural reconstruction and development policy.

(2) The Australian Reconstruction and Development Board has power to take whatever action is necessary, including applying capital of the Bank referred to in section 28 as it considers appropriate, to ensure that the Bank gives effect to the policy it determines.

(3) It is the duty of the Australian Reconstruction and Development Board to ensure, within the limits of its powers, that:

(a) the Bank’s rural reconstruction and development policy is directed to the greatest advantage of the people and industries of Australia; and

(b) the powers of the Bank are exercised in a way that, in the Board’s opinion, will best:

(i) fulfil the reconstruction task, the development task and the facilitative task which together comprise the Bank’s rural reconstruction and development policy; and

(ii) in relation to the reconstruction task—ensure that debilitating financial arrangements that arise because of adverse circumstances, poor design, inadequate initial evaluation or other conditions that render loan arrangements no longer tenable are dealt with effectively, reasonably and fairly; and

- (iii) in relation to the development task—ensure that investment and financial arrangements reasonably and realistically recognise the nature of likely yields, revenues, costs, uncertainties and risks over time and circumstances and the impact of such things on the ability of an obligated party to meet offered conditions; and
- (iv) in relation to the facilitative task—ensure that appropriate means are used to assist sound investment and prudent financial decisions; and
- (v) ensure that due regard is had to various interests and that persons being assisted by the reconstruction task assume responsibilities that are fair and reasonable having regard to past efforts but not so onerous as to threaten the person’s ongoing enterprise in a reconstructed form or industry exit on reasonable and accepted terms.

15 At the end of section 10C

Add:

(4) If a policy determined by the Reserve Bank Board and a policy determined by the Australian Reconstruction and Development Board are inconsistent:

- (a) the Reserve Bank Board’s policy prevails; and
- (b) the Australian Reconstruction and Development Board’s policy has effect as if it were modified to remove the inconsistency.

(5) If there is a disagreement between the Reserve Bank Board and the Australian Reconstruction and Development Board as to:

- (a) whether there is an inconsistency of policy to which subsection (4) applies, or the extent of such an inconsistency; or
- (b) the effect of paragraph (4)(b) on a policy of the Australian Reconstruction and Development Board;

the disagreement is to be resolved as determined by the Governor.

(6) If there is a disagreement between the Reserve Bank Board and the Australian Reconstruction and Development Board as to which of the Boards is responsible for determining the Bank’s policy on a matter, the disagreement is to be resolved as determined by the Treasurer.

16 At the end of subsection 11(1)

Add:

- ; (c) the Australian Reconstruction and Development Board is to inform the Government, from time to time, of the Bank’s rural reconstruction and development policy.

17 Subsection 11(2)

After “Australia”, insert “and, in the case of the rural reconstruction and development policy, the industries of Australia”.

18 Subsection 12(2)

Omit “and 10B”, substitute “, 10B and 10BB”.

19 After Part IIIA

Insert:

Part IIIB—The Australian Reconstruction and Development Board

Division 1—The members of the Australian Reconstruction and Development Board

25NA Membership of Australian Reconstruction and Development Board

(1) The Australian Reconstruction and Development Board consists of the following members:

- (a) the Governor;
- (b) one representative of the Bank;
- (c) 7 other members with relevant rural or agricultural experience.

(2) Among the members referred to in paragraph 25NA(c) must be the following:

- (a) an economist;
- (b) an accountant;
- (c) a member of a rural community;
- (d) a representative of the States and Territories;
- (e) a farmer.

25NB Appointment of members

(1) The member who is the representative of the Bank referred to in paragraph 25NA(b) is to be appointed by the Governor. The person appointed must be a member of the Reserve Bank Board or a staff member of the Reserve Bank Service.

(2) Each other member referred to in paragraph 25NA(c) is to be appointed by the Treasurer for a period specified in the instrument of appointment. The period specified must not exceed 5 years.

(3) All appointments under this section are to be in writing.

(4) All appointments under this section are to be on a part-time basis.

Note 1: Members appointed under subsection (1) are not appointed for a specified period, however, their appointments can be terminated at any time (see section 25NK).

Note 2: The Governor is an ex officio member of the Australian Reconstruction and Development Board (and so is not separately appointed to the Board).

25NC Chair of the Australian Reconstruction and Development Board

The Chair is to be appointed by the members of the Australian Reconstruction and Development Board.

25ND Deputy Chair of the Australian Reconstruction and Development Board

(1) The Deputy Chair of the Australian Reconstruction and Development Board is to be whichever of the members referred to in paragraph 25NA(a) or (b) is chosen by the members of the Australian Reconstruction and Development Board.

- (2) The Deputy Chair is to act as the Chair during any period when:
- (a) the office of Chair is vacant; or
 - (b) the Chair is absent from Australia or is, for any reason, unable to perform the duties of Chair of the Australian Reconstruction and Development Board.
- (3) The Deputy Chair has, when acting as the Chair, all the powers, duties, rights and entitlements of the Chair of the Australian Reconstruction and Development Board.

25NE Declaration by members

(1) Each member of the Australian Reconstruction and Development Board must, before first starting to act as a member of the Board:

- (a) make an oath or affirmation of allegiance; and
- (b) make a declaration of secrecy.

However, the member does not have to do so if they are also a member of the Reserve Bank Board and have made an oath or affirmation, and a declaration of secrecy, under section 16.

(2) The oath or affirmation of allegiance:

- (a) is to be in accordance with the form set out in the Schedule to the Constitution; and
- (b) is to be made before a Justice of the Peace or a Commissioner for taking Affidavits.

(3) The declaration of secrecy:

- (a) is to be in the prescribed form; and
- (b) is to be made before a Justice of the Peace or a Commissioner for taking Affidavits.

Division 2—Meetings

25NF Meetings

(1) The Australian Reconstruction and Development Board is to meet at times and places as determined by the Australian Reconstruction and Development Board or as directed by the Chair.

(2) The Chair is to preside at all meetings of the Australian Reconstruction and Development Board at which they are present. In the Chair's absence, the Deputy Chair is to preside.

(3) Five members of the Australian Reconstruction and Development Board form a quorum at a meeting of the Australian Reconstruction and Development Board.

(4) Questions arising at a meeting of the Australian Reconstruction and Development Board are to be decided by a majority of the votes of the members present and voting.

(5) The member presiding at a meeting of the Australian Reconstruction and Development Board:

- (a) has a deliberative vote; and
- (b) if necessary, also has a casting vote.

25NG Conduct of meetings

The Australian Reconstruction and Development Board may regulate proceedings at its meetings as it considers appropriate. However, proceedings at a meeting must not be inconsistent with this Part.

Note: Section 33B of the *Acts Interpretation Act 1901* contains further information about the ways in which members may participate in meetings.

25NH Resolutions without meetings

A resolution is taken to have been passed at a meeting of the Australian Reconstruction and Development Board if:

- (a) the Australian Reconstruction and Development Board has determined:
 - (i) that resolutions may be passed in accordance with this section; and
 - (ii) the method of indicating agreement with a resolution passed in accordance with this section; and
- (b) without meeting, a majority of the members indicate agreement with the resolution in accordance with the method determined by the Australian Reconstruction and Development Board; and
- (c) the majority would have constituted a quorum at a meeting of the Australian Reconstruction and Development Board; and
- (d) all members were informed of the proposed resolution, or reasonable efforts were made to inform all members of the proposed resolution.

Division 3—Other administrative provisions

25NI Remuneration

(1) A member of the Australian Reconstruction and Development Board is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the member is to be paid the remuneration that is prescribed.

(2) A member of the Australian Reconstruction and Development Board is to be paid the allowances that are prescribed.

(3) Subsection 7(13) of the *Remuneration Tribunal Act 1973* does not apply in relation to the office of member of the Australian Reconstruction and Development Board.

Note: The effect of this subsection is to require remuneration of a member of the Australian Reconstruction and Development Board that is determined by the Remuneration Tribunal to be paid out of money appropriated by the Parliament by an Act other than the *Remuneration Tribunal Act 1973*.

(4) Subject to subsection (3), this section has effect subject to the *Remuneration Tribunal Act 1973*.

25NJ Leave of absence

The Australian Reconstruction and Development Board may grant leave of absence to a member of the Australian Reconstruction and Development Board on the terms and conditions that it determines.

25NK Resignation

A member of the Australian Reconstruction and Development Board (other than the Governor) may resign his or her appointment by giving a written resignation to.

- (a) if they are the member referred to in paragraph 25NA(b)—the Governor; or
- (b) if they are a member referred to in paragraph 25NA(c)—the Treasurer.

25NL Termination of appointment

(1) The following provisions apply to the member of the Australian Reconstruction and Development Board referred to in paragraph 25NA(b):

- (a) the Governor may, at any time, terminate the member's appointment;
- (b) the member's appointment is terminated automatically if they cease to be a member of the Reserve Bank Board or a staff member of the Reserve Bank Service.

(2) The Treasurer may terminate the appointment of a member of the Australian Reconstruction and Development Board referred to in paragraph 25NA(c):

- (a) for misbehaviour; or
- (b) if the member is unable to perform the duties of his or her office because of physical or mental incapacity.

(3) The Treasurer must terminate the appointment of a member of the Australian Reconstruction and Development Board referred to in paragraph 25NA(c) if:

- (a) the member becomes permanently incapable of performing his or her duties; or
- (b) the member:
 - (i) becomes bankrupt; or
 - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
 - (iii) compounds with his or her creditors; or
 - (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or
- (c) the member is absent, except on leave of absence granted by the Australian Reconstruction and Development Board, from:
 - (i) 2 or more consecutive meetings of the Australian Reconstruction and Development Board; or
 - (ii) 3 or more meetings of the Australian Reconstruction and Development Board in any period of 12 months; or
 - (d) the member fails to comply with his or her obligations under section 27F or 27J of the *Commonwealth Authorities and Companies Act 1997*.

25NM Australian Reconstruction and Development Board's report to Treasurer

(1) The Australian Reconstruction and Development Board must, as soon as practicable after 30 June in each year, prepare and give to the Treasurer a report that:

- (a) describes the actions the Bank has taken in the financial year ending on that 30 June to give effect to the Bank's rural reconstruction and development policy; and
- (b) describes the impact of those actions; and
- (c) identifies and explains any changes made to the Bank's rural reconstruction and development policy in the financial year ending on that 30 June.

(2) Section 34C of the *Acts Interpretation Act 1901* does not apply in relation to a report under subsection (1).

20 Section 28

After "this Part", insert "and for the purposes of the Bank's rural reconstruction and development policy".

21 Subsection 79A(1) (after paragraph (aa) of the definition of *officer*)

Insert:

; or (ab) a member of the Australian Reconstruction and Development Board; or

22 After paragraph 79A(6)(aa)

Insert:

; or (ab) a member of the Australian Reconstruction and Development Board; or