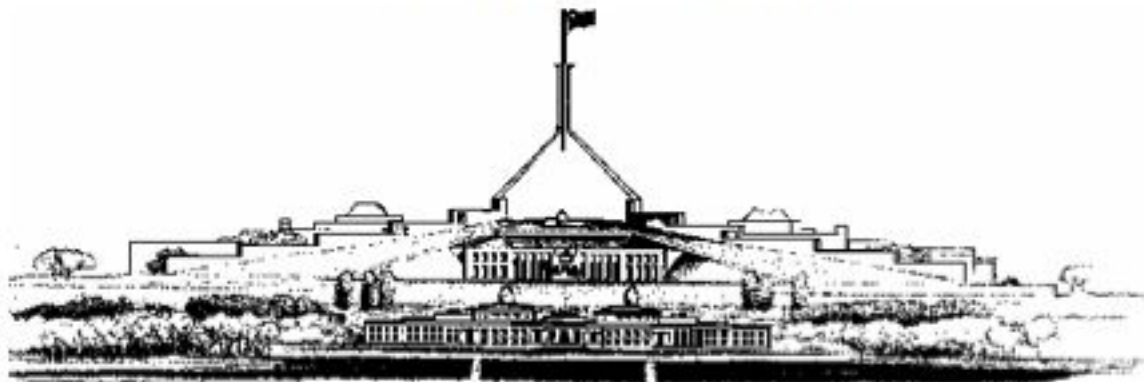




COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES



THE SENATE

**AUSTRALIAN BUSINESS INVESTMENT
PARTNERSHIP BILL 2009**

**AUSTRALIAN BUSINESS INVESTMENT
PARTNERSHIP (CONSEQUENTIAL
AMENDMENT) BILL 2009**

Second Reading

SPEECH

Tuesday, 12 May 2009

BY AUTHORITY OF THE SENATE

SPEECH

Date Tuesday, 12 May 2009
Page 2368
Questioner
Speaker Eggleston, Sen Alan

Source Senate
Proof No
Responder
Question No.

Senator EGGLESTON (Western Australia) (1.30 pm)—I must say, in response to Senator Cameron, that I am very proud to be part of the cheer squad for the ‘no’ case for this legislation, the Australian Business Investment Partnership Bill 2009 and the Australian Business Investment Partnership (Consequential Amendment) Bill 2009, which we consider to be an unnecessary overreaction to an unlikely event. And the unlikely event is, of course, the withdrawal of foreign banks from the Australian commercial property market. This whole legislation is predicated on the concept that foreign banks that are heavily involved in the commercial property market—not as heavily involved, I have to say, as our four major banks; the four domestic banks hold 63 per cent of the investment in the commercial property market, but I will come back to that—will all withdraw from the Australian commercial property market.

In giving evidence to the Senate Standing Committee on Economics, the Property Council of Australia said that of the 23 foreign banks in Australia, only one, the Royal Bank of Scotland, has actually withdrawn from the Australian market. The other bank that had a question mark over it was Citibank. It faced some difficulties in the United States but has remained in Australia. So in fact only one bank, the Royal Bank of Scotland, has withdrawn from the commercial property market, and it appears that it is very unlikely that any other foreign banks will withdraw from the Australian commercial property market. In fact, the Reserve Bank’s February 2009 statement on monetary policy said:

Over recent months there has been some speculation that many foreign-owned banks will withdraw from the Australian market and that this will create a significant funding shortfall for businesses. While there is a risk that some foreign lenders will scale back their Australian operations, particularly if offshore financial markets deteriorate further, at this stage there is little sign of this, with most of the large foreign-owned banks planning to maintain their lending activities in the Australian market.

In other words, there is no evidence of foreign banks withdrawing from the Australian market, and yet this is the underlying rationale of ABIP, or Ruddbank, as it is more commonly known. This means, in effect, there is no reason to establish the ABIP, or Ruddbank, because the possibility that it is being set up to deal with is not occurring—namely, the foreign banks are

not withdrawing from the Australian market at all. That is a very important point that Senator Cameron should take on board. This is a totally unnecessary proposal that could cost Australian taxpayers up to \$28 billion—if, in fact, this is being set up for the purpose that Prime Minister Rudd has said it is being set up for. There is the question of whether there may be a wider agenda here than just dealing with the withdrawal of the foreign banks from this country.

We have other concerns beyond the fact that the rationale for the establishment of this proposal, this bank, has no basis. These concerns deal with the fact that, as Professor Henry Ergas said, there was a very real possibility that the very act of establishing Ruddbank, or ABIP, would in fact encourage the withdrawal of foreign banks from the Australian commercial property market—and Senator Cameron referred to Professor Ergas in his speech. In fact, if there is a safety net there willing to guarantee 100 per cent of the investment of these foreign banks in commercial property, the banks will probably avail themselves of it; they will take the money, get 100 per cent of their money and the poor old Australian taxpayer will be carrying the can. Under the buyback proposal, it is possible that ABIP can guarantee up to \$28 billion of loans.

Senator Cameron was very critical of Professor Ergas, when in fact Professor Ergas is a clear-thinking and highly regarded economist. The point he makes that ABIP could create the situation which it is supposed to be preventing is one which the coalition senators on the economics committee found to be very convincing. There is a very real danger that, if ABIP is set up, foreign banks will avail themselves of the guarantees it offers and withdraw from the commercial property market in Australia. That is another reason why it is a very bad idea to set up ABIP, because at the moment there is no suggestion whatsoever that foreign banks will be withdrawing from the Australian commercial property market.

We in the coalition were also deeply concerned about the structure of Ruddbank, or ABIP. We were very concerned about the fact that this bank is exempted from the Trade Practices Act. The exemption of ABIP from the Trade Practices Act means that there is real scope for anticompetitive market activities, which, again, means that this bank

is a very questionable entity if it is set up. It is very interesting that there was no consultation with the ACCC, the Australian Competition and Consumer Commission, about the exemption of ABIP from the Trade Practices Act. The ACCC was obviously concerned about this, because setting up a bank of this kind with the kind of market power that it could have could create very serious distortions in the Australian market. We were very concerned about this, but we were supportive of some amendments.

Another professor—whom we regard highly but I doubt that Mr Cameron does—Professor Frank Zumbo of the University of New South Wales, made a submission in which he suggested three recommendations which would require legislation to establish that any section 51 exemptions be accompanied by a competition impact study so that, in future, the government at least could not simply exempt an entity such as ABIP from the jurisdiction of the ACCC. Secondly, he believed that the ACCC should be empowered and required to systematically review all section 51 exemptions currently in effect, including a requirement that a competition impact study be prepared and tabled in the Senate within three months of the ABIP Bill coming into force and every year thereafter.

There are very real concerns that ABIP, if set up in its current form, could exercise undue market power. This is because the board of ABIP consists of the Commonwealth government and the four major banks in Australia. Between them, these four banks in fact control some 63 per cent of the commercial property market, with an investment valued at \$103.8 billion. The other banks and financial institutions in Australia are responsible for only some 18.5 per cent of the commercial property market in Australia. So here you have the four banks that, as I have said, are responsible for 63.1 per cent of the commercial property market sitting on a board, along with the Commonwealth, and each of the four major banks has the power of veto over any decision that ABIP might make. We believe that this certainly gives them a very broad range of powers and, at the very least, opens ABIP up to concerns about conflict of interest. We believe this is a quite undesirable situation to exist. Accordingly, we think that the board of ABIP, as Senator Bob Brown has suggested, should, if it is set up, at least have some independent members on it. Senator Brown suggested four independent directors. In their report, coalition senators also thought that, in addition to the four major banks—if they are to remain on the board, each with the power of veto—there should be four independent

directors so that there is some balance and a reduction in the possibility of conflict of interest.

Coalition senators are also rather concerned about the real purpose of ABIP. In his early statements, the Prime Minister said that ABIP was being established as a precautionary measure to deal with the impact of the withdrawal of, as I have said, the foreign banks from the commercial property sector in Australia, but, as I have also said, there was no evidence given confirming any intention of any foreign bank to withdraw from the commercial property market. In the actual bill, the scope for entering into refinancing agreements by ABIP appears to be broader than just commercial property. In fact, proposed section 7(2), dealing with the objects of ABIP, or Ruddbank, reads that it should be:

... to provide financing in other areas of commercial lending through financing arrangements of a kind agreed to by the members of ABIP Limited ...

That is, the four major banks. Considering the broad wording of this clause, coalition senators are rather concerned that ABIP might have a broader objective than the Prime Minister has actually conceded in public. We believe that the Prime Minister has an obligation to clarify the proposed extent of ABIP's activities so that the possible impact on the Australian economy and in particular on government debt can be evaluated, given that ABIP has the authority to guarantee debts up to \$28 billion. We find that this is a matter of serious concern because the Rudd government have shown a great propensity to increase the debt of the federal government. At the present time they have a credit card limit of \$200 billion. While adding another \$28 billion may not be a matter of any concern to the Treasurer, Mr Swan, or to the Prime Minister, we in the coalition certainly feel that potentially adding another \$28 billion in debt to the Commonwealth's already high debt is something that we as Australians should all be gravely concerned about.

It took the coalition 10 years to pay off the Keating government's debt of, I think, \$94 billion. One has to wonder how many years the people of Australia will be paying off the debt left by the Rudd government, including the addition of another \$28 billion for ABIP to that debt when it seems there is no need for this bank to be established. The very rationale of it has been proved to not exist—that is, the foreign banks are not withdrawing from Australia. It is very hard indeed to see why this organisation should be guaranteed an additional \$28 billion by the Commonwealth government. We certainly believe that this is not in the public interest, and that it is a very strong reason, even if there are no others—and there

are plenty of other reasons, as I have said—for ensuring that this legislation is not passed.

Coalition senators were also concerned that ABIP was being set up as a semigovernment agency but, unlike most government agencies, it is unaccountable and unregulated. It has a board, whose independence of judgment could be open to question, yet there are no lines of responsibility to the government. There is no overseeing of the activities of ABIP by a minister or by the parliament, for example through the Senate estimates process. We in the coalition see it as a very serious defect in this legislation that there is no oversight of the activities of ABIP, and we think that there should be some accountability mechanism put in place if this legislation is passed—although, as I have said, we certainly do not think it should be passed, because it is not in the public interest.

One of the rationales which Senator Cameron referred to for the establishment of ABIP, or Ruddbank, is that it would prevent the loss of 50,000 jobs. This is a line that Prime Minister Rudd has used consistently in seeking to justify the establishment of this curious little agency. We have to ask where the 50,000 jobs would be lost. There is no evidence at all that foreign banks are withdrawing from Australia. So, in other words, the commercial property sector is not under threat. The charter of ABIP states that it can only invest in financially viable commercial properties, so if the commercial property sector is not under threat where is the ABIP money going to protect jobs?

This is where we come to those vague additions to the purpose of ABIP under clause 7(2). ABIP, according to its charter, will not be investing in projects which are not commercially viable. But is it possible, if the government finds that the commercially viable sector is not collapsing, that, in fact, ABIP and its \$28 billion might be used to prop up non-commercial property investments and developments? That is an interesting possibility which the coalition feels deeply concerned about. As I said, we really believe the Prime Minister should clarify the meaning of clause 7(2) in this legislation because it does appear to open Ruddbank up to a whole range of other possible investments, which certainly is a cause for concern. No-one has actually said that this bank will be used to invest in developments which are not commercially viable, but the Prime Minister has said that this bank will be used to protect 50,000 jobs. That could mean that the area where jobs might be lost might be in developments which are not particularly financially sound. That is a possibility which we in the coalition regard very seriously and regard as a very strong reason for not supporting this legislation.

In conclusion, I repeat that the coalition members of the economics committee could find no justification

whatsoever for the setting up of ABIP on the grounds given, that the foreign banks were going to withdraw from the commercial property market in Australia. We think this is very bad legislation and should not be passed because there are too many questions about the structure of this organisation.