



UNIVERSITY  
OF WOLLONGONG  
AUSTRALIA

# Shut Down

## Inquiry into Bank Closures in Regional Australia

**AN INVITED SUBMISSION TO THE SENATE RURAL AND  
REGIONAL AFFAIRS AND TRANSPORT REFERENCES  
COMMITTEE**

**DR ANDY SCHMULOW**  
OF LAW, ASSOCIATE PROFESSOR  
SCHOOL OF LAW  
THE UNIVERSITY OF WOLLONGONG

**5 FEBRUARY, 2024**

*When it comes to closing branches, **Australia is a free for all** in which banks are entirely unconstrained: there is **no degree to which they are held to account** in discharging their obligations to communities which have supported them for generations. This, it is respectfully submitted, is **disgraceful and indefensible**.*

# Executive Summary

---

1. Branch closures have been a point of considerable contention for over **two decades**.
2. Past promises, made by the industry and the ABA, that they would not shut any more branches, indicates that neither should be regarded as **bona fide**.
3. In **South Africa** there exists a regulatory framework, enforced by their financial industry market conduct and consumer protection peak, the **FSCA**, which ensures that bank customers are **treated fairly, and their needs addressed**, if and when banks **close branches** (or remove ATMs).
4. So to, in the **United Kingdom**, where their financial industry market conduct and consumer protection peak, the **FCA**, regulates and monitors the **provision of bank branches**, to ensure that customers are **treated fairly**, and that banks fulfil their obligations under the new **Consumer Duty**.
5. **ASIC**, Australia's financial industry market conduct and consumer protection peak has, characteristically, been **asleep at the switch**.
6. Australian taxpayers provide crucial and highly valuable forms of support to the banking industry – and to no other industry – and have done so for generations. They **guarantee bank liabilities, insure deposits, create and maintain a central bank, and have directly contributed some \$74 billion to bank profits over the past two decades**.
7. This forms the basis of a **social contract between banks and the community**.
8. In return, the very least that we should be **able to expect, is that banks support the communities that have supported them** for generations.
9. This Inquiry should convene a **Committee of Experts**, comprised of people who are at arms-length to the industry, to **examine regulatory models elsewhere**, and then propose a set of regulations for Australia.
10. These regulations would mirror world's best practice, and would **regulate the provision of bank branches in the bush**.
11. Such a Committee should report back to this Inquiry within **three months**.



## A long-festering sore

---

12. The issue of bank branch closures has been a **festering sore** for Australians for over **two decades**.
13. In **2004** the issue of branch closures was investigated by the Parliamentary Joint Committee on Corporations and Financial Services.<sup>1</sup>
14. That in turn relied upon the **1999 Hawker Report**.<sup>2</sup>

14.1. In a media release to accompany the report, issued at the time by the lead author, David Hawker MP, the following undertaking was given:<sup>3</sup>

*'We understand that the banks are under pressure to reduce costs. They must understand that they play a key role in the economic and social fabric of regional and remote communities.' ... The Committee has **welcomed signals of a change of heart by the banks but has put the banks on notice**. 'We are **determined to make sure existing commitments are upheld** and there is still room for improvement on these. We will be watching closely both in terms of the level of services **provided to regional and remote communities** and in terms of the treatment of communities.'* [Emphasis added]

15. In its 2004 Report,<sup>4</sup> the Joint Committee found, *inter alia*, as follows:

*A number of ABA member banks have **now declared their branch rationalisation strategies at an end**.* [Emphasis added]

- 15.1. The irony of that assertion cannot be over-stated. Nor, indeed, **could the assertion have been more wrong**.
- 15.2. From there many of the **assertions made by banks** are troubling, in that they so demonstrably **misrepresented their intentions**. Statements such as this:

*In November 1998, **Westpac 'drew a line in the sand'** and announced its commitment to maintain face-to-face service in localities where it already had a presence. The **ANZ also suspended closures in 1998**. It told the Committee that it was conscious of the impact a branch closure would have on a rural community and in recognition of its obligations, introduced a moratorium on withdrawing face-to-face services from any of the rural communities in which it operated. According to the bank, the **moratorium has been enshrined as a 'promise' in ANZ's Customer Service Charter**.*<sup>5</sup> [Emphasis added]

---

<sup>1</sup> Commonwealth Parliament of Australia, Parliamentary Joint Committee on Corporations and Financial Services, (January, 2004), *Money Matters in the Bush*, Inquiry into the Level of Banking and Financial Services in Rural, Regional and Remote Areas of Australia, available at: [https://www.aph.gov.au/~media/wopapub/senate/committee/corporations\\_ctte/completed\\_inquiries/2002\\_04/banking/report/report\\_pdf.ashx](https://www.aph.gov.au/~media/wopapub/senate/committee/corporations_ctte/completed_inquiries/2002_04/banking/report/report_pdf.ashx).

<sup>2</sup> Parliament of Australia, House of Representatives Committees, Standing Committee on Economics, Finance and Public Administration, Regional Banking Services, (March 1999), *Money too far away*, available at: <https://nla.gov.au/nla.obj-1826869030/view?partId=nla.obj-1834552182#page/n2/mode/1up>.

<sup>3</sup> Parliament of Australia, House of Representatives Committees, Standing Committee on Economics, Finance and Public Administration, (22 March, 1999), "Money Too Far Away – No Longer?," Media Release, available at: [https://www.aph.gov.au/parliamentary\\_business/committees/house\\_of\\_representatives\\_committees?url=efpa/rbs/22mar99.htm](https://www.aph.gov.au/parliamentary_business/committees/house_of_representatives_committees?url=efpa/rbs/22mar99.htm).

<sup>4</sup> Parliamentary Joint Committee on Corporations and Financial Services, (January, 2004), *op cit.*, § 4.1, at 45.

<sup>5</sup> *Ibid.*, § 4.4, at 46.

and this:

*In August 2002, the **Commonwealth Bank announced that it would maintain the number of its branches around the level of 1,000 Australia wide**, with roughly a third of those being located in rural and regional areas. Mr Hugh Harley, Commonwealth Bank, stressed that this was a **'watertight commitment'** not to reduce traditional branch numbers below a thousand.<sup>6</sup> [Emphasis added]*

16. At the time the Australian Banking Association (ABA) implemented a code for branch closures, which they have maintained ever since, and updated from time to time.<sup>7</sup>

16.1. It is respectfully submitted that the **ABA's code for branch closures has had virtually no impact** in ameliorating the persistency of branch closures in the bush, and was only ever a **distraction**: it was devised and implemented to mollify the ABA's members' critics, and **give the appearance that something was being done**. By studiously refusing to incorporate key recommendations from the Hawker Report, the ABA ensured that, notwithstanding its code, **banks could continue to steadily divest themselves of a branch network**. And this they have done.

17. Other examples of the industry suborning proper redress of this problem is to be found in the 2021 *Taskforce into Regional Banking Report*, where it is alleged that:

*Unfortunately, the taskforce comprised just two parliamentary representatives, with the majority of its members from the major banks, minor banks and banking industry. Those banks and banking representatives all made submissions to the taskforce which they themselves then used to write a final report... The Regional continues to fight to have the report wiped from government records and the process in which **commercial interests were invited to sit on a government committee and allowed to make recommendations about their own behaviour be investigated**.<sup>8</sup> [Emphasis added]*

18. Having regard to past assurances made by the industry, and by its peak lobby, the ABA, it is respectfully submitted that this Inquiry should treat the **notion that banks, and the ABA, are bona fide partners** in resolving this problem with the **greatest degree of circumspection**.

---

<sup>6</sup> Parliamentary Joint Committee on Corporations and Financial Services, (January, 2004), op cit., § 4.5, at 46.

<sup>7</sup> See details of first code at Ibid., Table 4.2, at 49ff.

<sup>8</sup> Dale Webster, (12 November, 2022), *Big Four Banks Casting a Dangerous Shadow, Investigation Report*, Regional Journalism Australia, in 'Bank closures in regional Australia Submission 1 - Supplementary Submission,' at 18, available at <<https://www.aph.gov.au/DocumentStore.ashx?id=ec22cafe-599e-47b6-ab81-9fa718977bc7&subId=734202>>.



# What others are doing

---

## SOUTH AFRICA

19. South Africa’s Financial Sector Conduct Authority (FSCA) – their consumer protection peak (analogous to ASIC) – within their Twin Peaks regulatory model, has issued **two Communications** to South African banks, on the issue of branch closures.
20. By way of explanation, neither Communication *lays down the law* (so to speak), in that neither communication sets forth provisions in the form of rigid rules, which must be obeyed. Instead, the FSCA **‘requests’** banks to comply with the provisions of the Communications. **This should not be misinterpreted**, for the following reasons:
  - 20.1. The FSCA couches these Communications as ‘requests’ because it **does not have to designate them as rules** that must be obeyed, in order to enforce them.
  - 20.2. Elsewhere in the legislation (most notably the *Financial Sector Regulation Act*<sup>9</sup>), the **FSCA is extensively empowered** to take steps against regulated entities that fail, or are at risk of failing, to uphold the principles set forth in the legislation, most notably the requirement to ***treat customers fairly***.
    - 20.2.1. This test **enables the FSCA to activate its powers** for a very broad range of forms of industry conduct.
  - 20.3. In interviews conducted with senior officials at the FSCA<sup>10</sup> this was the sense that they conveyed: that **their powers**, proscribed elsewhere, **were sufficient to ensure that banks complied closely with the ‘requests’** set forth in their Communications.
  - 20.4. In interviews conducted with senior executives at one of South Africa’s *Big Four* banks (Nedbank), this sentiment was – somewhat – confirmed.
  - 20.5. ‘Somewhat’ because the interviewees agreed that **‘requests’** made by the FSCA were **generally interpreted as ‘hard’ requests** (in light of the FSCA’s extensive authority), but that that was not their primary motivation in obeying the FSCA.
  - 20.6. Their primary motivation was to adhere to the highest standards of market conduct, to satisfy the rigorous oversight of their in-house Market Conduct Committee, and that an integral part of their approach was **not to simply walk away from their obligations to serve their customers**.
21. This represents the first significant insight to be gleaned from the South African experience: the **profoundly different mindset** that exists towards, *inter alia*, branch closures, in South Africa. And this before I have discussed the Communications themselves.

22. The first Communication<sup>11</sup> states as follows:

---

<sup>9</sup> S 7(1)(c), and (f)-(g); s 57 and s 58(1)(a), (d)-(f), and (i) and, crucially, ss (5)(b), *Financial Sector Regulation Act*, No 9 of 2017, (South Africa), available at: <[https://www.gov.za/sites/default/files/gcis\\_document/201708/4106022-8act9of2017finansectorregulationa.pdf](https://www.gov.za/sites/default/files/gcis_document/201708/4106022-8act9of2017finansectorregulationa.pdf)>.

<sup>10</sup> Interview conducted with Financial Sector Conduct Authority, 25 January, 2024, by virtual platform.

*The purpose of this communication is to outline the FSCA's expectations regarding Bank branch closures and the removal of Automated Teller Machines (ATMs) and to **request banks to notify the FSCA of their intention to close a branch, permanently or temporarily ... The FSCA would like to ensure that **the bank has conducted the necessary assessments** prior to the closure or transformation that **considers fair outcomes for customers.*****<sup>12</sup> [Emphasis added]

*The FSCA has noted that when formulating their strategies ... a popular cost cutting initiative by banks is cutting down on physical brick and mortar structures. The FSCA has further noted on numerous occasions that **banks continue to close branches and remove ATMs without considering fair outcomes for customers.***<sup>13</sup> [Emphasis added]

*A bank should carefully consider the impact of the closure of a branch ... has on customers. **The needs of the financial customers should always be at the center** [sic] of the decision-making process.*<sup>14</sup> [Emphasis added]

*Banks are **requested** to inform the FSCA of their plans ... to **enable the FSCA to assess whether financial customers are being treated fairly.** Engagement with the FSCA should be **done prior to a bank making the final decision** and continuing with the closure process.*<sup>15</sup> [Emphasis added]

*Prior to the closure of the branch, a **bank is required to conduct a robust needs analysis** of the financial customers ... and consider the impact of the proposed closure on these customers.*<sup>16</sup> [Emphasis added]

23. Their second Communication<sup>17</sup> largely clarifies points in the first, and re-affirms that branch closures are a decision for the bank, but **within the constraints of their obligations to treat customers fairly.**
24. So deeply have South African banks internalised this philosophy on how to treat their customers – and also to evidence to the FSCA that they are contributing to the FSCA's mandate – including financial inclusion – that all of the major banks in South Africa have deployed substantial resources to **provide full branch-banking facilities to the most remote communities in the country**, ones typically with no access to electricity, and which have never had a bank branch anywhere near them.
25. Major South African banks combine, then convert, **shipping containers into full-service branches**, mount them on trucks, and drive them into the most remote parts of the country. They undertake to give remote customers access to a mobile branch at least once a week.

---

<sup>11</sup> Kedibone Dikokwe, (1 September, 2021), FSCA Communication 18 of 2021 (Banks) – *Conduct of Business Supervision. The FSCA's expectations regarding bank branch closures and Automated Teller Machine (ATM) removals*, Financial Sector Conduct Authority, available at: [https://www.fsc.co.za/Regulatory%20Frameworks/Temp/FSCA%20Communication%2018%20of%202021%20\(BANKS\).pdf](https://www.fsc.co.za/Regulatory%20Frameworks/Temp/FSCA%20Communication%2018%20of%202021%20(BANKS).pdf).

<sup>12</sup> At § 1.

<sup>13</sup> At § 2.3.

<sup>14</sup> At § 3.1.

<sup>15</sup> At § 3.2.

<sup>16</sup> At § 3.3.

<sup>17</sup> Farzana Badat, (10 November, 2023), FSCA Communication 30 of 2023 (Banks) – *Clarification of supervisory expectations regarding branch closures and automated teller machine (ATM) removals by banks*, Financial Sector Conduct Authority, available at: [https://www.fsc.co.za/Regulatory%20Frameworks/Temp/FSCA%20Communication%2030%20of%202023%20\(BANKS\).pdf](https://www.fsc.co.za/Regulatory%20Frameworks/Temp/FSCA%20Communication%2030%20of%202023%20(BANKS).pdf).



26. Below are examples of *banks on wheels* provided by two of South Africa’s big four banks. The first is First National Bank (FNB), the second is ABSA Bank.



## THE UNITED KINGDOM

27. The UK’s Financial Conduct Authority (FCA) has published guidance<sup>18</sup> for banks to follow when they are considering branch closures, partial closures, ATM withdrawals or fee-free ATM service withdrawals (ie where bank-branded, fee-free ATMs are replaced with generic ATMs that attract transaction fees).<sup>19</sup>
28. In promulgating these regulations, the FCA specifically recognises the reliance on cash and the need for branch networks for those consumers deemed ‘vulnerable’.<sup>20</sup> It is to be expected that the **need for cash and branches would be greater in rural and remote parts of Australia**, where branch closures have been most exacerbated.
29. The FCA couches its branch and ATM provision policy within its *Principles of Business*, specifically principles 6, 7 and 11.<sup>21</sup> These state as follows:

**Principle 6** - ‘A firm must pay due regard to the interests of its customers and treat them fairly’

**Principle 7** - ‘A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading’

**Principle 11** - ‘A firm must deal with its regulators in an open and cooperative way, and must disclose to the FCA appropriately anything relating to the firm of which that regulator would reasonably expect notice’<sup>22</sup>

<sup>18</sup> Financial Conduct Authority, (11 October, 2022) “FG22/6: Branch and ATM closures or conversions,” in *Publications*, available at: <<https://www.fca.org.uk/publications/finalised-guidance/fg22-6-branch-and-atm-closures-or-conversions>>.

<sup>19</sup> Financial Conduct Authority, (October, 2022) “Finalised Guidance. Branch ATM closures and conversions,” FG 22/6, available at: <<https://www.fca.org.uk/publication/finalised-guidance/fg22-6.pdf>>.

<sup>20</sup> *Ibid.*, § 1.2 and 1.3, at 1.

<sup>21</sup> *Ibid.*, § 1.6, at 2.



- 29.1. From 31 July, 2023, these obligations were increased with the introduction of **Principle 12 - the Consumer Duty**.
30. These provisions are **activated whenever a regulated entity proposes to close** fully or partially a site, or convert a fee-free ATM to one which attracts fees.<sup>23</sup>
31. The FCA guidance is instructive for the purposes of this Inquiry, in that it sets out circumstances which the FCA recognises require branch access. These include:
- 31.1. **Cash deposits, and or withdrawals**, including use of a passbook.
  - 31.2. **Opening or closing** an account.
  - 31.3. **Proving identity**.
  - 31.4. Dealing with issues related to **power of attorney or bereavement**.
  - 31.5. Dealing with issues related to **fraud or scams**.
  - 31.6. Providing support to **customers in financial difficulty** or requiring advice, with for example, money management.<sup>24</sup>
32. When banks do not comport with the strictures set forth in the guidance, the FCA makes it clear what its approach will be:
- We expect to **challenge processes** and may **ask firms to delay their closure** or **conversion plans** where **we are not satisfied** that they are complying with Principles 6 or 7. The guidance is potentially relevant to supervisory and **enforcement action** and we may take it into account when considering whether firms could reasonably have understood or predicted that the conduct in question fell below the standards required by Principle 6, Principle 7, or Principle 11.<sup>25</sup> [Emphasis added]*
33. When contemplating closing a branch, firms are required to inform the FCA as soon as possible, and **before they finalise a decision**.<sup>26</sup> The FCA will then determine whether the closure comports with treating customers fairly and, after July 2023, with the Consumer Duty.<sup>27</sup>
34. In assessing whether to close a branch, firms are required to **assess usage trends**, customer needs, and the manner in which those **needs will be met if a branch is in fact closed**.<sup>28</sup>

*We expect firms to provide us with a clear summary of the results of this detailed analysis covering customer usage, customer needs, expected impact, potential alternatives, commercial evaluation and stakeholder engagement plans. We may ask firms for further analysis if we are not satisfied.<sup>29</sup>*

*The decision on whether to close or convert a site is for firms to take. But in considering or implementing this decision, firms must have **due regard to the interests of their***

---

<sup>22</sup> Ibid.

<sup>23</sup> Ibid., § 1.7, at 2.

<sup>24</sup> Ibid., § 1.11, at 3.

<sup>25</sup> Ibid., § 1.15, at 3.

<sup>26</sup> Ibid., § 1.16, at 4; §§ 2.12 – 2.13, at 8.

<sup>27</sup> Ibid.

<sup>28</sup> Ibid., § 1.17 – 1.19, at 4; § 2.14, at 8.

<sup>29</sup> Ibid., § 1.20, at 4.



**customers and treat them fairly.** We also expect firms to consider how relevant SMEs or micro-businesses will be affected by their proposals, given the critical role of businesses in the cash cycle.<sup>30</sup> [Emphasis added]

Firms should have carried out a robust analysis of the impact of a proposed closure or conversion on their customers, particularly in terms of lost access and potential harms to customers in vulnerable circumstances including relevant vulnerable SME customers or micro-businesses. They should have analysed the services that the firm's customers can access at alternative sites, and **how these meet their needs and compare to the services currently used at the site proposed for closure.** Firms should also have made an analysis of new alternative access arrangements that the firm could reasonably put in place.<sup>31</sup> [Emphasis added]

35. Crucially, for this Inquiry, the FCA requires banks to evaluate **quality and availability of internet access**, and levels of inconvenience caused by **more onerous travel requirements** in order to access a branch, when assessing possible alternatives for customers. This is particularly germane for this Inquiry, concerned as it is **with the access to banking services for rural and regional communities.**

*Assess the suitability and likely longevity of alternatives(s), including for customers in vulnerable circumstances. This should include consideration of the relevant characteristics of customers and of the area, such as the quality of internet or mobile signal, which may influence the range of alternative channels that can appropriately be offered to customers. The assessment of alternatives should take into account the location of the site and of available alternatives, their opening times, transport availability and the impact that vulnerabilities such as particular physical needs and disabilities may have on customers' ability to access them.*<sup>32</sup>

36. Alternative arrangements are required to be in place **before a branch is closed**, and firms are required to support customers who decide to switch providers as a result of a branch closure. The requirement to provide such support must be factored into the timelines proposed for a branch closure. Firms are required to provide customers affected by branch closures with alternatives through clear and accessible information.<sup>33</sup>

36.1. That includes communicating to all identified stakeholders a high-level analysis of the factors listed in 34, above.<sup>34</sup>

36.2. Such communications must provide customers with a reasonable amount of time to make alternative arrangements.<sup>35</sup>

37. The FCA's guidance requires firms to treat fairly, in particular, those customers deemed vulnerable.<sup>36</sup> For the purposes of this Inquiry this is instructive, because some customers in remote and regional areas would also fall into the category of 'vulnerable'. The fact that they

---

<sup>30</sup> Ibid., § 2.19, at 9.

<sup>31</sup> Ibid., § 2.20, at 9.

<sup>32</sup> Ibid., § 2.31, at 11.

<sup>33</sup> Ibid., § 1.21 – 1.24, at 4.

<sup>34</sup> Ibid., § 1.26, at 5.

<sup>35</sup> Ibid., § 1.27, at 5.

<sup>36</sup> Ibid., § 2.41 – 2.47, at 14/15.

are located in remote areas **aggravates that vulnerability**, and thus **increases the need for the adoption of similar protections in Australia**.

38. In July 2021, the UK government announced it was reviewing measures additional to those in the guidance,<sup>37</sup> aimed at protecting access to cash<sup>38</sup> and deposit and withdrawal facilities in local communities.
39. What the FCA guidance demonstrates is the **extent of the difference in the obligations** contingent upon banks in Australia, versus a **comparable, English-speaking, common law, Twin Peaks jurisdiction**. Put differently, in the **United Kingdom** – arguably our closest comparative jurisdiction – **extensive obligations exist, and are enforced against banks, when it comes to branch closures**.
40. By comparison, **Australia is a free for all** in which banks are entirely unconstrained, and in which there is **no degree to which they are held to account** in discharging their obligations to communities which have supported them for generations. This, it is respectfully submitted, is **disgraceful and indefensible**.
41. Of further note are examples of firms that have embraced the FCA guidelines, and been deemed exemplars of good practice.<sup>39</sup> This underscores the feasibility of the FCA’s approach: **it can, and it has, been successfully implemented elsewhere**.
- 41.1. Moreover, in instances where firms have **failed to meet the FCA’s expectations**, the UK regulator has **requested that closures be paused**.<sup>40</sup>

---

<sup>37</sup> Ibid., § 1.28, at 5.

<sup>38</sup> Subsequently published by HM Treasury on 18 August, 2023. (See: HM Treasury, (18 August, 2023), *Cash Access Policy Statement*, Policy Paper, available at: <<https://www.gov.uk/government/publications/cash-access-policy-statement/cash-access-policy-statement>>.

<sup>39</sup> Financial Conduct Authority, (25 January, 2023), “Branch and ATM closures or conversions; good practice and areas for improvement,” available at: <<https://www.fca.org.uk/firms/future-access-cash/branch-atm-closures-good-practice-areas-improvement>>.

<sup>40</sup> Financial Conduct Authority, (11 October, 2022), “FCA updates guidance for branch closures,” in *News*, available at: <<https://www.fca.org.uk/news/press-releases/fca-updates-guidance-branch-closures>>.



## Sorry, not sorry

---

42. Branch closures represent more than mere inconvenience. They bring with them **real, demonstrable disadvantage** to affected communities. These include **starving those regions of productive capital**, and many other forms of detriment canvassed elsewhere.<sup>41</sup> But one form of detriment that has largely been overlooked is the evidence that branch closures are followed by the arrival of **‘alternative financial service providers’** (AFSP). The evidence indicates that those AFSPs routinely demonstrate **poorer regulatory behaviours**.<sup>42</sup>

42.1. As a result, customers in remote and rural areas suffer a double disadvantage: they lose access to bank branches, and the gaps are filled with even less scrupulous operators. A downward spiral of *beggar thy neighbour*.

43. In what can only be described as an **extraordinary failure**, the Australian Securities and Investments Commission (ASIC) – the consumer protection regulator for the financial industry – **failed to make a submission** to this Inquiry on the question of branch closures *per se*. It made one submission that addressed the impact of branch closures on First Nations only.<sup>43</sup> While that is commendable, why the consumer protection regulator would deem itself aloof from the plight of the remainder of Australians affected by branch closures, is **inexplicable**.

---

<sup>41</sup> See for example Adams, John, (28 April, 2023), *Inquiry into Bank Closures in Regional Australia*, Bank closures in regional Australia, Submission 518, § 17ff at 6ff, available at: <<https://www.aph.gov.au/DocumentStore.ashx?id=8c055a40-7dda-4837-81ac-0c3f70138c28&subId=743286>>.

<sup>42</sup> Ashton, John, and Andros Gregoriou, (2 October, 2023), “Mapping the Slippery Slope, Bank Branch Closures, Two Tier Financial Provision and Regulatory Behaviour,” *SSRN Papers*, available at: <<http://dx.doi.org/10.2139/ssrn.4589717>>.

<sup>43</sup> Australian Securities and Investments Commission, (April 2023), *Inquiry into bank closures in regional Australia. Submission by the Australian Securities and Investments Commission*, Submission 542, available at: <<https://www.aph.gov.au/DocumentStore.ashx?id=9aeaa383-f5f5-443a-a119-9ca193d96083&subId=741433>>.

# Quid... where's the pro quo?

## BREACH OF THE SOCIAL CONTRACT

44. A contract is defined as a (legally binding) exchange of value for value (*quid pro quo*<sup>44</sup>). An acceptance by party A of some form of value from party B, in contemplation of an **exchange** of some form of value from party B back to party A. This **creates an obligation** – an obligation to complete the exchange contemplated.<sup>45</sup> This is the fundamental nature of a legally enforceable bargain we call a contract.

44.1. Analogous to that is a **social contract**. The theoretical underpinnings of which have been recognised and discussed for some 500 years by such eminent philosophers as Thomas Hobbes, John Locke, and Jean-Jacques Rousseau.<sup>46</sup>

44.2. Under a social contract – or social covenant – **society gives, and recipients must reciprocate**. As a general and broad example we, as individuals, benefit from all manner of benefits provided by society: roads, hospitals, schools, defence of the realm, maintenance of law and order et cetera. In return we, as **beneficiaries must reciprocate**, by paying our taxes.

45. I argue that **Australia's banks operate subject to a social contract**, and that the existence of this contract is **undeniable and indubitable**. That social contract evidences itself in the **provision to, and acceptance by, banks, of a series of significant benefits**. These benefits are provided to them by the community in which they operate – what may be termed **the quid**. In exchange there is a legitimate expectation by those who provide the *quid* – the community – **for receipt of pro quo**.

45.1. These significant benefits include **taxpayers guaranteeing bank solvency in times of crisis**. They do this by standing guarantee for bank liabilities, and exercise that guarantee by **bailing-out banks in distress**.

45.2. By providing **guarantees** – through the Federal government – **of the safety of depositors' funds** (up to \$250,000 under normal conditions,<sup>47</sup> up to \$1 million during the global financial crisis<sup>48</sup>).

---

<sup>44</sup> Literally translated as “something given or received for something else”.

<sup>45</sup> See for eg: *Carlill v Carbolic Smoke Ball*, Court of Appeal [1893] 1 QB 256; [1892] EWCA Civ 1; *Coulls v Bagots Executor & Trustee Co Ltd* (1967) 119 CLR 460; *Australian Woollen Mills Pty Ltd v The Commonwealth* High Court of Australia (1954) 92 CLR 424; *Beaton v McDivitt*, Court of Appeal of the Supreme Court of New South Wales (1987) 13 NSWLR 162.

<sup>46</sup> See for eg: Black, Antony, (1993), “The juristic origins of social contract theory,” *History of Political Thought*, 14, no. 1, 57-76; Ernst, Zachary, (2001), “Explaining the Social Contract,” *British Journal for the Philosophy of Science*, 52, no. 1; Boucher, David, and Paul Kelly (2003), *The social contract from Hobbes to Rawls*, Routledge.

<sup>47</sup> Australian Prudential Regulation Authority, (2024), *Financial Claim Scheme*, in ‘Knowledge Centre,’ available at: <<https://www.apra.gov.au/financial-claims-scheme-0>>.

<sup>48</sup> Ministers (Treasury Portfolio), (24 October 2008), *Government Announces Details of Deposit and Wholesale Funding Guarantees*, in ‘Media’, available at: <<https://ministers.treasury.gov.au/ministers/wayne-swan-2007/media-releases/government-announces-details-deposit-and-wholesale-funding>>.



45.2.1. **Guarantees** for the safety of depositors' funds **mitigate** the risks of depositor panic cum **bank runs**. Bank runs, in turn, metastasise into what, in the technical literature is termed, **contagion**.

*In fact, confidence by depositors can erode quickly, and this situation can result in a run on bank that may have a severe effect even on relatively healthy institutions. To avoid such runs and maintain confidence, depositors are being given assurance regarding the safety and availability of their deposits and claims through a deposit insurance arrangement.*<sup>49</sup>

45.2.1.1. *Contagion* – financial crises – causes banks to become insolvent due to the spread of depositor panic, **irrespective of whether affected banks are well run, highly profitable, and with strong balance sheets, or not.**<sup>50</sup> This is the nature of '**systemic risk**' – a risk which bedevils banking industries in every country, and which is unavoidable. Indeed, the only reliable method by which to mitigate systemic instability, and the fragility inherent in the business of banking, is for taxpayers to stand surety for bank liabilities. This they do everywhere, whether explicitly or implicitly.

45.3. **Without taxpayer support modern-day banking, and banks, would not exist.** That support is crucial, ever-present, and constitutes a **significant benefit** that is provided to banks **by society**. It is the *quid*.

45.4. Moreover, it establishes what some would argue is a most invidious state of affairs: when the **going is good, bank shareholders win. When the going is bad, taxpayers lose**. Put differently, we routinely **privatise bank profits but socialise bank losses. No other industry** enjoys this benefit.

45.5. That in turn requires the provision of a *quo pro* in exchange. That is to say, banks, in return for the significant benefit they enjoy thanks to the largesse of society, are **morally obligated** to ensure that the **industry serves the community** that sustains it, not the other way around.

46. Additional benefits are provided to banks by the community, over and above those discussed above. For example, the Australian community, through its duly elected representatives in Federal Parliament, have created a **central bank** – the Reserve Bank of Australia. That in turn provides forms of support to banks (such as lender of last resort facilities<sup>51</sup> and access to the RBA's discount window or 'cash rate'<sup>52</sup>) which are tremendously valuable, **but unavailable to the same people who created that facility – we the people**.

---

<sup>49</sup> Schich, Sebastian, (2019) "Implicit bank debt guarantees: Costs, benefits and risks," *Contemporary Topics in Finance: A Collection of Literature Surveys*, edited by Iris Claus and Leo Krippner, John Wiley & Sons, Incorporated, 41-78, at 42.

<sup>50</sup> Kiss, Hubert J., Ismael Rodriguez-Lara, and Alfonso Rosa-Garcia, (2022), "Preventing (panic) bank runs," *Journal of Behavioral and Experimental Finance*, 35, 100697, at 1.

<sup>51</sup> See for eg: Domanski, Dietrich, Richhild Moessner, and William R. Nelson, (2014), "Central banks as lenders of last resort: experiences during the 2007-10 crisis and lessons for the future," *BIS Paper 79c*, Bank for International Settlements, available at: <<https://elischolar.library.yale.edu/ypfs-documents/8402>>.

<sup>52</sup> Reserve Bank of Australia, (2001–2024), *How the Reserve Bank Implements Monetary Policy*, in 'Education, Resources, Explainers,' available at: <<https://www.rba.gov.au/education/resources/explainers/how-rba-implements-monetary-policy.html>>.

47. Put differently, the Reserve Bank offers overnight liquidity facilities (the ‘cash rate’) at a **rate of interest that cannot be accessed by the community**.
48. **It can only be accessed by banks** – despite the fact that the Reserve Bank is created, not by banks, but as an expression of the will of the community.
49. In return for the creation of this benefit by *we the people* – a central bank – but a benefit that only banks can access, unique value is provided by the community to, and accepted by, banks. That **creates a moral obligation upon banks to provide value to the community**, in exchange for the value they receive through the creation and maintenance of a central bank. That **obligation is to serve the community** which provides support – support which banks readily accept.
50. Taxpayer support for banks renders them, effectively, **riskless to insolvency**. That creates an extraordinary benefit to bank shareholders who **enjoy the benefits of competition in a free market**, but with **none of the disbenefits**.
- 50.1. This attribute has discernible and extensive benefits. Principally, these relate to **bank funding costs**.
- 50.2. Australian banks borrow money from other banks – Australian and foreign.
- 50.3. **Bank funding costs** are, like the funding costs for individual borrowers, **determined** to a large degree by the **risk of borrower default**. Where the risk of default is reduced to zero – thanks to taxpayer guarantees – the **costs of funding which banks incur is lower**.
- 50.4. The value of the taxpayer funded guarantee enjoyed by Australian Banks has been estimated to be **worth up to \$3.7 billion annually**.<sup>53</sup>
- 50.5. Since the 2004 Senate Inquiry, Australian banks have enjoyed, thanks to taxpayer support, **savings in funding costs of approximately \$74 billion**. That may be expected to be sufficient to fund a thousand branches, for a thousand years.

---

<sup>53</sup> Yeates, Clancy, (25 May, 2016), “Taxpayer subsidy worth up to \$3.7 billion for big four banks,” *Sydney Morning Herald*, in ‘Business, Banking & finance,’ available at: <<https://www.smh.com.au/business/banking-and-finance/taxpayer-subsidy-worth-up-to-37-billion-for-big-four-banks-20160525-gp3obl.html>>.



## Recommendations

---

51. I respectfully recommend that this Inquiry call for the **establishment of a Committee of Experts**, drawing upon, *inter alia*, experts who are at **arm's length from the industry** and its various lobby groups (such as academics who specialise in comparative law and financial regulation, think tanks, community representatives or the like).
- 51.1. The purpose of such a Committee would be to **examine the legislative and regulatory frameworks** which operate to regulate bank branch closures in other, leading, Twin Peaks, common law, English-speaking jurisdictions, such as **South Africa and the United Kingdom**.
  - 51.2. To make recommendations to this Inquiry, for the **adoption of a legislative and regulatory framework**, modelled on the jurisdictions listed above.
  - 51.3. Such a framework would draw upon world's best practice in devising obligations to place upon Australian banks. Such a framework would **constitute legislative and/or regulatory obligations** for banks, to meet the needs of the communities in which they operate, and which have supported them for generations.
  - 51.4. To make those recommendations to the Inquiry within a reasonable, but not excessively lengthy timeframe, such as **within three months**.
52. I place on record that I would be willing to serve on such a Committee, *pro bono*. I believe that there is substantial precedent that can be adduced from other jurisdictions to, once and for all, make it clear to Australian banks: your propensity to abandon your customers in regional and rural areas is what will, henceforth, be **shut down**.



## Author's expertise

---

53. The author is an Australian academic, specialising in regulator efficacy; regulatory enforcement; combatting misconduct in retail financial markets; financial system regulation; the 'Twin Peaks' financial system regulatory model; the UK's Treating Customers Fairly framework (located within the UK's Twin Peaks regime); and financial regulatory theory. The author has written and published widely on ASIC. The author has provided advice on these topics to various governments and NGOs (South African National Treasury; New Zealand Financial Markets Authority; UK House of Commons House of Lords All Party Parliamentary Group; CGAP/World Bank; Parliament of Europe; Parliament of the Republic of South Korea; Ministry of Finance of the Federal Republic of Brazil etc) and, by invitation, to Australian Inquiries (Royal Commission of Inquiry into Misconduct in the Banking, Superannuation and Financial Services Industry; Senate Committees; Australian Law Reform Commission; Financial Regulator Assessment Authority; Commonwealth Treasury).

