

## **MINORITY REPORT**

The Labor members support the general principles encapsulated in the draft Bill. However, no recommendation can be made as to whether the Bill in the final form should be passed until the form of the final Bill is known.

Specific recommendations in relation to some of the issues identified in the report by the Coalition members of the Committee are made below. On other issues the Labor members can only make general comments, or consider them technical issues which hopefully will be resolved when the final form of the Bill is known.

The Labor members however, have a number of other concerns - such as cold calling and the manner in which disclosure is made - which they would also have liked to examine further in this inquiry. That is, this inquiry should have also addressed whether the draft Bill achieved the objective of enhancing consumer protection.

In that regard, the Labor members note that evidence was obtained from the Australian Shareholder Association and Legal Aid NSW, but understand that the Committee did not contact the Financial Services Consumer Policy Centre to ask them if they would appear before the Committee or if they would copy the submission they made to Treasury to the Committee. There was also no submission from the Australian Consumers Association. The Financial Services Consumer Policy Centre in particular represents a broad constituency of financial consumers, including bank customers, and may have assisted the inquiries of the Committee considerably.

As indicated above, it was also anticipated that the final form of the Bill would be introduced into Parliament during the course of the Committee's inquiry. This would have assisted in the examination of the new regime proposed in the draft Bill. Accordingly, the Labor members propose that a further inquiry to cover all areas of concern be conducted when the Bill is introduced into Parliament. It is hoped that all members will be genuinely consulted on dates for any hearings which may be necessary as part of that inquiry, and also on who is invited to make submissions at such a hearing.

### **Comprehensive Consumer Protection**

The Labor members acknowledge that the draft Bill may impose additional costs on approved deposit taking institutions. The Labor members do not however, believe that this warrants excluding basic banking products from the ambit of the draft Bill.

Retaining banking products within the ambit of the Bill will better achieve the objective of uniform disclosure obligations for all financial products and will enhance consumer protection. Retail consumers of all financial products deserve equal protection and to know if there are any factors influencing the advice given to them.

The Labor members believe it would be more appropriate to identify where the Bill imposes costs which may affect the provision of banking services to regional and rural areas and attempt to minimise those costs. In this regard, the Labor members note the submission and evidence from the Credit Union Services Corporation (Australia) Limited.

Accordingly, the Labor members would recommend that Treasury give due consideration to such issues raised in various submissions as:

- the level of training and monitoring required being proportionate to function being performed;
- increasing the time in which changes in authorised representatives have to be notified to ASIC;
- permitting employees of related companies to act as representatives of the licensee without having to be authorised representatives; and
- the timing obligations of the product disclosure provisions of the draft Bill.

Extending the commencement date for the legislation, as the Labor members recommend below, would also assist financial service providers to adjust to the new regime.

### **Australia as an international financial centre**

The Labor members support promoting Australia as a global financial centre. This requires, among other things, confidence in Australia's regulatory system. It also, as pointed out by the ASX, requires a regulatory system that is flexible enough to permit participants to respond rapidly to changes and new developments and that does not impose costs on participants which exceed the benefit from such regulation.

In this regard, the Labor members note the submission of IFSA that the requirement to lodge product disclosure statements and supplementaries "is a bureaucratic imposition with no regulatory or consumer protection imperative". Similar comments were also made by the ABA, ASIC, Westpac, JFIMA, BT and AMP.

Accordingly, if ASIC is to have no role in pre-vetting product disclosure statements, Labor members adopt the recommendation of ASIC in this matter. That is, lodgement should be required only for listed managed investment scheme and some of the non-mining primary producer managed investment schemes, where ASIC does conduct some vetting, but other than for these cases, the lodgement requirement could be removed, provided the issuer keeps the product disclosure statements for a fixed period, say 7 years.

### **Commission Disclosure**

Several issues arise in relation to the disclosure of commission. One issue is whether the commission on risk products should be disclosed. The Labor members acknowledge the submission by the Insurance Council that the stated return on risk insurance products is unaffected by the level of commission. However, unless risk insurance products are identical, information on commission payments may be relevant to customers in determining whether the recommendations of a financial service provider have been influenced by the payment of commission and should be disclosed.

Labor members also believe that the draft Bill should give greater emphasis to directing the disclosure of commission, fees and other charges in a manner which is meaningful to consumers. Labor members believe that consumers will more readily

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comprehend a dollar amount and recommend that commissions, fees and charges be disclosed in dollar terms whenever possible, or if that is not possible, in percentage terms with an “illustrative example” provided in dollar terms.

### **Co-regulation and the position of professional bodies**

The Labor members do not support the declaration process by which professional bodies are exempted from the requirement to be licensed. A number of submissions – ASFA, SIA, ASX, the Insurance Council – stated opposition to the declaration process or recommended that ASIC consult with all the relevant and interested parties before making any declarations. Other submissions, such as from IFSA and AMP, would regard it as essential that the standards imposed on such bodies would result in the members of declared bodies being subject to exactly the same conduct, disclosure and competency requirements as licensees.

ASIC also raised a number of regulatory concerns. Most notably, ASIC said that the introduction of clause 882A may create a number of problems or gaps in regulatory coverage and is likely to be resource intensive both for ASIC and the participants involved.

The Labor members, however, acknowledge that solicitors and accountants have a system of training and statutory obligations which warrant retaining an exemption for incidental advice by solicitors and accountants in public practice. The existing exemption in section 77(5) should be retained or, as suggested by the Law Institute of Victoria, there could be a carve-out from the definition of “financial product advice” to exclude advice provided to a client as part of, or incidental to, the lawyer’s legal practice.

### **Group Structures and the Definition of Retail Client**

The Labor members identify two issues in relation to the “proper recognition of corporate structures under the retail/wholesale client”.

The first issue relates to the practice of many businesses being run as a corporate group, with the consequence that the entity which is licensed may not be the entity which employs the relevant staff. A number of submissions stated that the requirement that employees of wholly owned subsidiaries be authorised individually would create a significant cost for such financial conglomerates.

The Labor members agree that the cost of authorisation for all employees of wholly owned subsidiaries would exceed the regulatory benefit. Accordingly, the Labor members recommend that the draft Bill be amended to exempt employees of wholly owned subsidiaries from the requirement to be individually authorised as representatives of the licensee, provided the licensee also assumes the obligations it would have had under its licence if those employees had been employed by the licensee.

The second issue relates to the definition of retail client. The Labor members are concerned to ensure that people who are not financially sophisticated are defined as retail clients. The Labor members particularly note the submissions of the ASX and

the National Council of Financial Adviser Associations that prescribing an amount of \$500,000 in section 716G is too low relative to potential superannuation payouts. It was also submitted that such an amount should not apply to persons in receipt of compensation payments, court judgements or lottery.

Accordingly, the Labor members recommend that the any amount which may be prescribed under section 716G is regularly reviewed, indexed, or otherwise amended to reflect any increase in the average superannuation payout. Regard should also be had to the submission of the ASX that the “price” test in section 761G be based on the total costs of the transaction exceeding the prescribed amount.

Equally, the Labor members are also concerned that people who are financially sophisticated are not classified as retail clients. If this is not the case, it will unnecessarily raise the cost of providing financial services. Accordingly, the Labor members recommend that holders of financial service licences be excluded from the definition of retail client.

### **Commencement Date**

The Labor members note that many submissions expressed alarm at a proposed commencement date of 1 January 2001.

With the delay in the introduction of the Bill to Parliament, there is insufficient time for participants to comprehend, digest and prepare for the new law if the commencement date remains as 1 January 2001. Accordingly, the Labor members recommend delaying the commencement date of the Bill to 1 July 2001.

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Mr Bob Sercombe, MP

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Senator Stephen Conroy

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Senator Barney Cooney

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Mr Kevin Rudd, MP