



20 February 2004

Dr Kathleen Dermody  
Secretary  
PJC on Corporations and Financial Services  
Parliament House  
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Dear Dr Dermody

## **CORPORATIONS AMENDMENTS REGULATIONS**

Credit Union Services Corporation (Australia) Ltd (CUSCAL) makes the following submission to the PJC's inquiry into batches 6, 7 and 8 of the Corporations Amendment Regulations.

CUSCAL is the main industry body for credit unions. Australia's 179 credit unions have 3.5 million members and total assets of \$29.4 billion. Credit unions are mutual Authorised Deposit-taking Institutions (ADIs), owned by their customers.

### **Batch 6 & Batch 7**

We have no objections to these regulations. We welcome regulations providing for:

- certainty about documents requiring an AFSL number and Commonwealth Acts subject to breach reporting requirements;
- capacity for customers to opt out of receiving information in a verbal PDS situation;
- an exemption from the obligation to provide ASIC with written notice about representatives advising on basic deposit products, non-cash payment products and general insurance; and
- FSG and General Advice Warning (GAW) exemptions for advertising.

We flag with the Committee our view that repeated exposure to the GAW [s949A] in relation to simple, well understood products will be tedious and irritating for consumers.

Representatives giving *personal* advice about basic deposit products and non-cash payment products are exempt from providing a Statement of Advice, but representatives giving *general* advice about such products are required to give the GAW.

The GAW is as follows:

the advice has been prepared without taking account of the client's objectives, financial situation or needs; and because of that, the client should, before acting on the advice, consider the appropriateness of the advice, having regard to the client's objectives, financial situation and needs; and if the advice relates to the acquisition, or possible acquisition, of a particular financial product – the client should obtain a Product Disclosure Statement relating to the product and consider the Statement before making any decision to acquire the product.

### **Batch 8**

Amendments to the Corporations Act made on 5 December 2003 that take effect from 1 July 2004 require disclosure of certain information to be in dollar amounts “unless in accordance with the regulations.”

The information to be disclosed in “dollar amounts” is:

- SOA information about remuneration (including commission), other benefits, and any other interests influencing the adviser;
- PDS information about significant benefits to the holder, the cost of the product and any future amounts payable by the holder, and any commission or similar payments that will or may reduce the return to the holder; and
- Periodic Statement information about opening and closing balances, termination value, summary of transactions, increases in contributions by the holder or another person, and return.

The draft regulations (*Corporations Amendment Regulations 2004, Batch 8 – Disclosure in dollar terms*) allow for disclosure of the information in percentage terms or by some other means “if ASIC determines that, for a compelling reason, it is not possible to state the amount in dollars.”

ASIC is empowered, subject to the “compelling reason” and “not possible” tests, to allow disclosure of relevant amounts to be set out as a percentage, or as a description of the method of calculating the amount. ASIC can allow Periodic Statements to include a statement informing the holder that an amount is applicable and details of the means by which the product holder is able to gain access to information relating to the amount.

ASIC advises CUSCAL that at this stage it is unable to indicate how it would determine what is a “compelling reason” and what is “not possible”.

We are concerned that disclosure that may be “possible” in a strictly technical sense may also be unduly complicated and extremely costly to implement without necessarily delivering any consumer benefit.

### *Deposit and payment products*

Unlike managed funds and superannuation, deposit and payment products are simple and well understood. The “dollar disclosure” requirements impose a complex new

compliance problem on credit unions and other providers of these products for no consumer benefit.

For example, we do not see how it is possible for a PDS to disclose in dollar amounts the “significant benefits” of a deposit product and a related non-cash payment facility.

In the case of a deposit, the main benefit is the return based on the interest rate. The return depends on the size and term of the deposit.

Whether our view on this is “compelling” would be for ASIC to consider and determine. The commencement date is only four months away and we have no guidelines as to ASIC’s approach.

Periodic Statements for deposit products must include “the termination value of the investment at the end of the reporting period (to the extent to which it is *reasonably practicable* to calculate that value for the investment or a component of the investment)” [s1017D(5)(b)].

If such disclosure is considered to be “*reasonably practicable*”, the additional requirement of “dollar amount” disclosure would apply. However, the termination value of a pre-term term deposit would require an elaborate calculation to produce a figure that may confuse or mislead the depositor.

Early withdrawal of part or all of a term deposit generally involves a penalty of some kind, such as a reduction in the interest rate or a fee. The interest penalty may be a specified reduction in the rate, a reduced rate plus a fee, or a sliding scale of rate reductions based on the proportion of the term completed and/or the amount left in the deposit.

These variables would have to be calculated if the “termination value” of a pre-term term deposit is to be disclosed as a dollar amount in a Periodic Statement.

This dollar figure would be immediately out-of-date – ie, it would relate to the point in time that is the “end of the reporting period” rather than the point at which the Periodic Statement is received or any future point.

There is a risk that that the “termination value” figure might be confused with the amount due to the depositor at the end of the term, needlessly alarming the depositor.

Credit unions and their IT suppliers advise CUSCAL that to present such a figure in Periodic Statements would require major systems changes. The cost of systems changes will be borne by the owners and customers of credit unions – credit union members.

In this case, it would appear that the disclosure imperative has become unhinged from the primary consideration – consumer benefit.

Deposits are generally not mentioned in public debate about “dollar disclosure” because they are simple and well understood and, because depositors are fully informed about fees or interest penalties, there is no disclosure problem demanding a

legislative response. Parliamentary debate on “dollar disclosure” focused on managed funds and superannuation for the very reason that these products do have disclosure problems.

CUSCAL recommends that the regulations should exclude deposit products, as defined in section 764A(1)(i), from 1017D(5A).

Yours sincerely

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