



AUSTRALIAN BANKERS' ASSOCIATION

David Bell
Chief Executive Officer

Level 3, 56 Pitt Street
Sydney NSW 2000
Telephone: (02) 8298 0401
Facsimile: (02) 8298 0447

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Mr Peter Hallahan
Secretary
Senate Economics Legislation Committee
Room SG64
Parliament House
CANBERRA ACT 2600

By email to: economics.sen@aph.gov.au

Dear Mr Hallahan,

Financial Services Reform Amendment Bill 2003 (Bill)
(1) Citation of Australian Financial Service Licence Numbers on Documents
(2) Reporting Breaches

The Australian Bankers' Association supports the proposed amendments contained in the Bill concerning citation of Australian Financial Services Licence (AFSL) numbers on documents (Section 912F(1)) and a licensee's obligation to report breaches (Section 912D(1)).

Some of the evidence given to the Senate Economics Legislation Committee on 30 July 2003 covered these amendments but, with respect, the evidence the Committee received on these provisions was we feel incomplete. The ABA wished to address the following aspects.

Disclosure of AFSL numbers on documents

The key issue for bank and other financial service providers is the cost of having to include the AFSL numbers on every document in which a financial services licensee identifies itself in connection with providing financial services under its licence.

This obligation would extend beyond citation of the AFSL number on documents required to be provided under the legislation such as the Financial Services Guide,

Product Disclosure Statement and Statement of Advice to every other relevant document by which the licensee communicates with the client.

The ABA agrees that on the initiation of a potential financial services relationship with a client, a licensee should disclose its AFSL number on relevant documents such as the FSG, PDS and SOA, its application form and relevant advertising and promotional material. However, once the financial services relationship has been formed with the client and the client has been made aware of the licensee's AFSL number it is questionable what further value disclosure of the AFSL number on documents given to the client as part of that relationship adds when compared with the additional cost of the licensee doing so.

Relevant documents include documents in both physical and electronic form necessitating a licensee going through its entire document database, identifying those documents related to financial services which are regulated under the legislation and those that are not and including the AFSL number accordingly.

There could be confusion where an exempt product, such as credit facility is linked to a regulated product such as a mortgage offset account and the AFSL number is cited on a document relating to those facilities. A customer could misunderstand from the documents citing the AFSL number that the credit provider is licensed by ASIC for the purpose of the credit facility.

If a financial conglomerate is communicating with its client after the financial services relationship has been formed with the client and the correspondence with the client relates to a number of related entities there could be numerous AFSL numbers cited in the one document. If the document is one where an Australian Company Number must be cited the list of numbers will be longer.

The ABA submits that a licensee should disclose its AFSL number on documents that are directly relevant to the creation of the financial services relationship with the client and in particular the AFSL number should be disclosed on the FSG, SOA and PDS together with application forms and relevant advertising and promotional material.

The structure of the proposed amendment to Section 912F(1) will assist government and the industry in reaching a cost effective disclosure requirement for the AFSL number to be cited on documents by regulation. Regulations made under the Act can be reviewed by the relevant Parliamentary Committee.

Reporting of breaches

The ABA supports the government's approach in introducing a materiality test into the breach reporting obligation under Section 912D(1) It is the ABA's belief that the proposed provision does not dilute the efficacy of the breach reporting provision. It will ensure that breaches of significance will be reported to ASIC. Reporting minor,

insignificant or trivial breaches to ASIC could flood ASIC with inconsequential information where ASIC will have to make the judgement as to whether a particular breach is of significance for ASIC to take action in respect of that breach. This will impose a very significant workload on ASIC both in dealing with the number of breach reports and their classification as serious or immaterial.

Under the proposed amendment in the Bill, licensees will have the responsibility of applying the materiality test and reporting accordingly to ASIC. The decision making for ASIC on whether to take action in respect of a breach will be much simpler under that scenario.

The ABA believes that the reporting of fewer but significant breaches will actually strengthen the ability of ASIC to enforce the legislation.

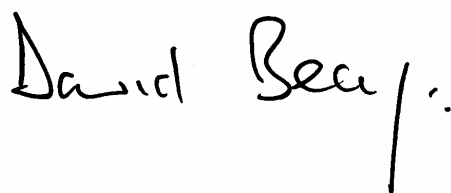
The Hansard of 30 July 2003 contains an example of a possible minor breach involving ATMs.

A more appropriate example of a relatively minor breach of the legislation is where an ATM, having processed a transaction for a customer, malfunctions and does not deliver confirmation or receipt of the transaction to the customer or produces an illegible confirmation slip. This event could occur hundreds of times in a day at the one ATM and each such event would, under the existing provisions, have to be reported to ASIC.

The customer is able to report the fault to the bank and is able to obtain a statement of account from the bank to verify the transaction has been processed correctly. A materiality test would signify such an event unnecessary to report.

The ABA believes that the introduction of a materiality test will assist ASIC in the effective policing of the financial services reform legislation and have industry to play its part in that regard.

Yours sincerely,



David Bell

Copies to: Senator George Brandis
 Senator Stephen Conroy
 Senator Andrew Murray