



6 August 2003

Mr Peter Hallahan
The Secretary
Senate Economics Legislation Committee
Room SG.64
Parliament House
CANBERRA ACT
economics.sen@aph.gov.au

FSR AMENDMENT BILL: SUPPLEMENTARY SUBMISSION

Dear Mr Hallahan

CUSCAL makes this supplementary submission in response to the following matters raised during the Committee hearing on 30 July 2003:

- term deposits with terms greater than 2 years;
- Christmas Club Accounts; and
- compliance issues for deposit products that are not “basic deposit products”.

We reiterate our support for the FSR Amendment Bill 2003, particularly the proposed new definition of ‘basic deposit product’.

2-5 year term deposits

Figures available to CUSCAL indicate that the current percentages of credit union term deposits with terms of between 2 and 5 years are:

- 3.2 percent of term deposit accounts; and
- 3.1 per cent of term deposit balances.

The current proportion of term deposits with terms of between 2 and 5 years reflects current market conditions. It does not reflect the provisions of the FSR Act. The FSRA has effectively not yet commenced for providers of term deposits (ie, Authorised Deposit-taking Institutions).

Once the FSRA transition period ends, on 11 March 2004, the impact of the legislation on the marketplace will become fully apparent.

We are saying that the current definition of ‘basic deposit product’, which excludes fixed term deposits which are not at call, and excludes all term deposits with a term of more than 2 years, will have the effect of reducing consumer choice. This is because

the compliance burden of offering deposit products that are not ‘basic deposit products’ will be so great that providers will withdraw some of these products from the marketplace.

The proposed new definition of ‘basic deposit product’ - rather than opening up a new market opportunity - will help to preserve *existing* consumer choice.

Christmas Club Accounts

Enclosed with the hard copy of this submission is a sample of material describing credit union Christmas Club accounts.

A Christmas Club account is a simple savings product enabling credit union members to regularly put away small amounts of money over the year to meet Christmas expenses. Christmas Club accounts remain popular with credit union members and help to reduce consumer debt.

Terms and conditions vary, but withdrawals before a set date - typically November - are discouraged or allowed only in an emergency.

A ‘basic deposit product’, as currently defined, must be at-call whereas the purpose of a Christmas Club account is not to be an at-call account. The proposed new definition of ‘basic deposit product’ will allow credit unions to continue to offer these products without an unrealistic compliance burden.

Non-basic deposit products

In response to comments by committee members and witnesses at the 30 July hearing, I wish to emphasise that the following statement in CUSCAL’s previous submission is neither a ‘beat up’ nor an ‘overstatement’.

“Deposit products that do not fit the [current] BDP definition are subject to the full weight of the FSR regime. This potentially means that a credit union teller talking to a member about a ‘Christmas Club’ account or a three-month fixed term deposit would be required to:

- have a financial planner’s diploma; and
- give the member a Product Disclosure Statement, a Financial Services Guide and a personalised Statement Of Advice.”

FSRA applies uniformly across the country – from a large bank branch in Martin Place to a one-person agency in a small country town. The legislative concept of ‘financial product advice’ applies equally in the big branch and the small agency, and the same compliance consequences flow when advice, including personal advice, is given.

The distinction between merely providing information and providing advice is very fine. ASIC gives the following example of the distinction between factual information and advice:

“A client visits their local bank branch with \$10,000 to deposit. The client asks for the different interest rates on a savings account and a term deposit and is referred to a customer service officer. The officer provides the interest rates

for each of these facilities. This is likely to constitute the provision of factual information. The officer explains the interest rates for each of these facilities but adds that there is an ‘attractive special rate’ available on term deposits for a 6 month term. This is likely to constitute the provision of financial product advice because it is a matter of opinion as to whether the special rate is ‘attractive’ and the teller could reasonably be regarded as intending to influence the client to choose the term deposit.”¹

The line between ‘general advice’ and ‘personal advice’ is equally fine. ASIC advises that the teller need not consider all aspects of the client’s personal circumstances (eg, the client’s objectives, financial situation and needs) for the advice to be personal advice.

“It is enough that either:

- (a) at least one aspect of the client’s personal circumstances was *actually* considered; or
- (b) regardless of whether they were in fact considered, a reasonable person might *expect* the adviser to have considered at least one aspect of the client’s relevant personal circumstances (s766B(3)).”²

I note the use of terms such as ‘exemption’ and ‘carve out’ in the Committee’s discussion of this issue. As advised in our earlier submission, the proposed change to the ‘basic deposit product’ definition will not diminish the FSRA obligations on credit unions (or other ADIs) to:

- ensure that staff providing advice are competent and that their advice is suitable;
- disclose any remuneration, including commission, or other benefits that might reasonably be expected to be capable of influencing the advice; and
- provide a Product Disclosure Statement.

Yours sincerely

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¹ ASIC Frequently Asked Questions About FSR

² ASIC Policy Statement 175 *Licensing: Financial product advisers – conduct and disclosure*.