AUSTRALIAN BANKERS' ASSOCIATION

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Mr Peter Hallahan
Secretary
Senate Economics Legislation Committee
Room SG.64
Parliament House
CANBERRA ACT 2600

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

Dear Mr Hallahan,

Submission by Australian Bankers' Association to the Senate Economics Legislation Committee.

Financial Services Reform Amendment Bill 2003

The Australian Bankers' Association (ABA) is pleased to have the opportunity to make this submission to the Senate Economics Legislation Committee on the Financial Services Reform Amendment Bill 2003 (Amendment Bill).

To assist the Committee this submission is lodged in electronic form to economics.sen@aph.gov.au

The Committee will be aware of the various reports of the Parliamentary Joint Committee on Corporations and Financial Services (PJC) of recent years in connection with a number of aspects of the financial services reform legislative package and ASIC's supporting administrative policy statements (together the FSR regime).

The FSR regime is extremely complex. It covers are very broad spectrum of the financial services sector The financial services industry has embarked upon a major compliance implementation program since 11 March 2004 within a two year transitional period to 11 March 2004 to arrange its practices, procedures, documentation and computer systems and to train its staff and authorised representatives in order to satisfy the requirements of the FSR regime.

It is difficult to quantify the cost to member banks of the ABA to this point but suffice to say the cost is many millions of dollars. Implementation costs will continue to be incurred by them until 11 March 2004 or their earlier licensing transition date. After then there will recurrent costs incurred in maintaining and carrying out their compliance arrangements.

The ABA and the industry representatives of other authorised deposit taking institutions have made submissions to the government, to ASIC and to the PJC over the past three or more years concerning the nature of basic deposit products. The ABA and those other representative bodies consider that basic deposit products and related non-cash payment facilities should have been excluded from the FSR regime.

There are at least three reports of the PJC where the majority members of the PJC have recommended that basic deposit products be excluded from the FSR regime for the reasons stated in those reports.

The ABA refers this Committee to those reports.

It is not the ABA's intention, in this submission, to repeat the submissions it has made to the PJC and to others that basic deposit products should not have been included in the FSR regime. The ABA's position on this matter is unchanged. Our members strongly believe that basic deposit products have no place in a regulatory regime that has been devised around investments.

The ABA's purpose in making this submission is to concentrate on the provisions in the Amendment Bill 2003 only as the Committee's terms of reference indicate.

The ABA supports all of the provisions in the Amendment Bill although there are some additional matters that we wish to bring to the Committee's attention.

Section 761A – Definition of 'basic deposit product"

In particular the ABA would like to draw the Committee's attention to Schedule 2, Items 6 and 7 of the Amendment Bill as they relate to the definition of "basic deposit product".

Taking first Item 7, this is designed to address an unintended consequence under section 761A of the Corporations Act (Act). Under the Act, it had always been intended that term deposits with a maturity of two years or less would be treated under the Act as "basic deposit products".

The current definition of "basic deposit product" in the Act requires that in the case of a term deposit, to qualify as a "basic deposit product" the funds on deposit must be

> "able to be withdrawn or transferred from the facility on the instruction of, or by authority of, the depositor:
>
> (i) without any prior notice to the ADI that makes the facility available…."

Due to prudential considerations, the terms and conditions of most, if not all, term deposit facilities do not accord to the depositor an automatic right for the depositor to withdraw or transfer funds from the term deposit facility. Commonly, the ADI retains a discretion whether to permit the withdrawal or transfer of the funds from the term deposit facility before maturity.

However, in practice, the ADI's discretion is invariably exercised in favour of the depositor who wishes to withdraw form the term deposit. Both the 1993 version and the revised version of the Code of Banking Practice provide specifically that a bank must include in the terms and conditions of its term deposit facilities a clause specifying "the nature of any charge or variation to an interest rate resulting from a withdrawal in advance of maturity".

These provisions in the Code of Banking Practice reflect normal practice adopted by banks to allow a depositor to withdraw from the term deposit on the depositor's request.

Under the Act, term deposits were clearly intended to be recognised as "basic deposit products" and Item 6 of Schedule 2 of the Amendment Bill restores Parliament's original intention.

The ABA also supports the enlargement of the class of term deposits from those with a maturity period of two years or less to a period of five years or less under Item 6 of Schedule 2.

The vast majority of term deposits have maturity profiles of two years or less. In the main, for the balance of an ADI's portfolio of term deposits there would be a relatively small number with maturity periods of between two and five years and a negligible number for longer than five years.

If the relatively small number of term deposits with maturities of five years or less are not included in the class of basic deposit products under the Act it will mean that an ADI will have to implement a different compliance program for two classes of term deposits. This will include a different training program for staff who deal in these products.

ASIC Policy Statement 146 deals with the training standards for representatives of banks and other licensees who make a recommendation or state an opinion on the suitability of a financial product deposit product for a client. For investment products and other financial products that are not basic deposit products the standard of training is called Tier 1 and entails a course of training with Diploma equivalence. For other financial products such as basic deposit products including terms deposits of two years or less duration, the lower standard is Tier 2 and entails a less rigorous but adequate and less expensive training regimen.

It is submitted that this is an unnecessary imposition of additional cost on ADIs and increases the prospect of inadvertent non-compliance simply because an arbitrary maturity period of two years or less has been struck by the legislation.

Term deposits are well understood by ADI customers and are a popular and convenient form of depositing money safely and securely with a contractually certain rate of return.

The ABA seeks the Committee's support for the proposed change.

Section 916F

In supporting generally the changes proposed in the Amendment Bill, and in particular those changes in Items 38-40 of Schedule 2 in respect of section 916F, the ABA submits that further relief is needed.

Basically Section 916F requires a body corporate that is an authorised representative of a financial licensee to provide ASIC with written notice of any individual the corporate authorised representative sub-authorises to provide a specified a financial service on behalf of the financial services licensee.

Member banks of the ABA are concerned that where a bank enlists the services of employment agencies to provide temporary and other staffing order to meet the daily demands of providing banking services to bank customers, the employment agencies will be required under Section 916F to notify ASIC of the names of those particular individuals.

The period of time in which the individual might be provided by an agency to serve the bank and its customers could be relatively short, for example a day, a week or perhaps a little longer.

Also, banking services are provided by banks through agency arrangements and this is particularly the case in rural and regional areas. Also, similar arrangements for extending the reach of banks are made through franchising. Community bank structures in regional and rural areas are often based on the franchise arrangement.

For these alternative service delivery arrangements, Section 916F imposes an obligation on these third party agents or franchisees to notify ASIC of the details of the individuals they engage to provide banking services and when those details change including when the individual no longer is engaged in order to comply with Section 916F. There is the concern that this requirement could be a disincentive for third parties to undertake these types of arrangements.

The ABA submits that the compliance burden imposed upon third party agency and franchise arrangements imposed by Section 916F should be removed. This would be consistent with the recommendations of the PJC concerning the need to reduce the compliance burdens under the FSR regime for ADIs.

A related issue is the section 942C requirement for the FSG that is provided by the employment agency or franchisee staff must identify the entity that employs them. Even in the case of basic deposit products disclosure of the employing entity will be required under the modified FSG disclosure requirements under the FSR regime. The

employing entity is not the financial services licensee. This could confuse and concern customers who believe they are dealing directly with the licensee when it only the form or structure for the way in which the services are provided. For all intents and purposes these staff are equivalent to actual employees of the licensee. The financial services are provided by the licensee and often from the same premises of the licensee alongside services provided by direct employees of the licensee.

ABA submits that as the licensee has the responsibility for the actions of staff supplied by employment agencies and staff engaged through a franchise structure, the FSR regime should recognise that allow these arrangements should operate seamlessly for the customer. The identity of the employment agency or owner of the franchise should not have to be disclosed in such cases.

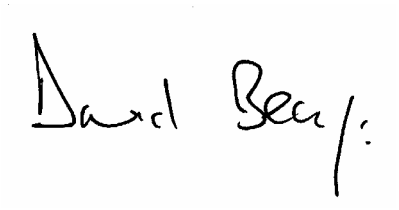
Section 1012G

Prior to the introduction of the Amendment Bill, the government had indicated that there would be amendments to Section 1012G to be included in the Amendment Bill which would reduce the level and complexity of compliance with Section 1012G by which a client can be read a prepared statement in lieu of providing the client with a product disclosure statement.

ABA would support this measure but, not having seen the proposed amendment, the ABA would wish to provide a more informed submission once the details of the proposed amendment have been published.

Subject to the foregoing, the ABA commends the Amendment Bill to the Committee and would welcome the Committees' support for the Amendment Bill and for its early passage.

If you have any queries regarding this submission please contact Ian Gilbert, Director Retail Policy on (02) 8298 0406 or email igilbert@bankers.asn.au.



David Bell
Australian Bankers' Association
Sydney July 2003