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Monday 20 April 2009

To Committee Secretary  
Senate Standing Committee on Economics  
PO Box 6100  
Parliament House  
Canberra ACT 2600  
Australia

E-mail to: Geoff Dawson, Principal Research Officer, Senate Economics Committee

Dear Sir /Madam

**Senate Economics Committee Inquiry (“Inquiry”) into Financial Sector Legislation Amendment (Enhancing Supervision and Enforcement) Bill 2009 (“Bill”)**

We refer to the above Inquiry and welcome the opportunity to provide comments on the Bill. We have been taken somewhat by surprise that the Bill has been introduced into Parliament. It is unclear to us the level of public consultation that has taken place up to this point. This is the first time ING Australia has had the opportunity to consider its impact, we are therefore very grateful to the Committee for taking steps to alert us to the Inquiry.

ING Australia Limited (“ING Australia”) is a joint venture between the ING Group based in Amsterdam and the ANZ bank. ING Australia is also the ultimate holding company of ING Life Limited which is the authorised life insurance company under the Life Insurance Act, and as such, ING Australia is likely to be directly affected by the Bill. Currently, ING Australia is not registered or authorised as a Non-Operating Holding Company (“NOHC”) under either requirements applying to banks or general insurers. The Bill therefore sets out requirements that are new to our Group.

Our comments are set out below:

1. According to the Second Reading Speech by The Hon Chris Bowen MP, the Bill attempts to bring us into line with the Insurance Core Principle ICPI 17 of the International Association of Insurance Supervisors. The paper which outlines these Core Principles were issued in October 2003. Given that these principles have been in place for more than 5 years, it is unclear to us the rationale for the hasty introduction of the Bill for consideration in Parliament without allowing for sufficient time for consultation. We request a six month period for consultation so that the Bill may be adequately considered by all relevant parties.
2. In the Summary of Regulatory Impact, the Explanatory Memorandum stated that the extra cost of meeting the fit and proper criteria for the Board of NOHCs is likely to be low. It is unclear how this conclusion was formed since ING Australia has never been consulted as to the likely costs of implementation of the new regime. On first impression, the cost of meeting fit and proper requirements for the Board of a NOHC is merely one of the many compliance costs that will arise. There will also be the potential cost of restructuring and educating the Board, cost of the audit process, cost of ensuring the NOHC relevant for the ING Australia group is properly registered, and the cost of responding to any APRA regulatory actions, to name a few. We believe these costs are likely to be substantial particularly in the current difficult economic environment. We urge the Senate Committee to recommend that a proper regulatory impact assessment be conducted particularly as to the cost of compliance.

3. We have not had sufficient time to compare similar supervisory powers of APRA in respect of the NOHCs of banks and general insurance companies. It is unclear to us the extent to which the provisions have been harmonised.

For instance, The NOHC approach to general insurers (made by amendments to the Insurance Act 1973) reflected shortcomings in the regulation of general insurers highlighted by the collapse of HIH. Given the Insurance Act (the main regulating legislation for general insurers) dates back to 1973 this is understandable. Regulation of the Life Insurance Industry was reviewed in the lead up to the passing of the Life Insurance Act 1995, and, therefore, is a comparatively recent law. Important changes were introduced to further protect policyholders at that time. For example, Section 48 was introduced to require that directors of Life Insurers prefer the interests of policyholders to shareholders where there is any conflict. No similar provision exists in the Insurance Act.

The whole regulatory approach for Life Insurers (under the Life Insurance Act 1995) to the organisation of policyholder funds through separate statutory funds, is also considerably stricter than the rules applicable to general insurers. The stability and strength of the Life Insurance industry reflects the tighter controls already in place. Accordingly ING believes that the proposal to introduce a NOHC regime for Life Insurers fails to recognise the nature and effectiveness of the controls present in the existing legislation.

We request that the Inquiry recommend that greater consultation occur on the Bill so that the different Acts affecting general insurance, banks and life insurance NOHCs and their respective regulated subsidiaries may be appropriately harmonised.

4. We recommend that the Committee seek an appropriate period of transition to ensure NOHCs are given sufficient time to make the necessary arrangements to comply. At least two years may be required under the current economic environment, and in light of the time that will be required to prepare for registration and to educate the Board members (among other things). We believe this should form part of any regulatory impact consultation.
5. The Bill proposes very broad powers for APRA to investigate the business of a NOHC. Under the Bill, APRA has the power to investigate the business of a NOHC if it believes it is in the "public interest" that the business be investigated. We have not been provided with the evidence that APRA requires such broad powers to act in the public interest. In the absence of sufficient evidence, a narrower focus of APRA powers, for instance to limit the powers only in relation to the interests of policy holders, may be more appropriate. We recommend that the Inquiry request more evidence and better consultation such that a reasonable basis may be established to warrant the need to extend APRA powers in this way.

We hope the above comments have been useful and look forward to the report to the Inquiry. Please do not hesitate to contact Li Chang at 02 9234 7519 if you have any questions.

Yours sincerely



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ING Australia