



AUSTRALIAN BANKERS' ASSOCIATION INC.

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25 August 2006

Dr Michael Keating AC
Chairman, Independent Pricing and Regulatory Tribunal
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Dear Dr Keating,

NSW Regulation Review

The Australian Bankers' Association (ABA) welcomes the opportunity to provide comments on the Independent Pricing and Regulatory Tribunal (IPART) draft report "Investigation into the Burden of Regulation and Improving Regulatory Efficiency" released in July 2006.

The draft report is the result of the NSW Government's review of the burden of existing regulation in NSW.

The purpose of the review was to:

1. Identify areas of NSW Government regulation which are imposing a significant, unnecessary regulatory burden on business and the community; and indicate priority areas in which regulatory reforms could provide significant immediate gains to business and the community; and
2. Develop recommendations for Government action to significantly improve the efficiency of regulation and reduce unnecessary regulatory burden on business and the community, including consideration of non-regulatory or incentive-based options for achieving this outcome.

The ABA is pleased that the NSW Government has made a commitment to review its regulatory processes, with a view to reducing unnecessary regulatory red-tape and inconsistency of regulation across jurisdictions.

In our initial submission to the review, we highlighted a number of areas where harmonisation of regulation would delivery better outcomes for businesses, employees and consumers in NSW.

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1. Occupational Health and Safety regulation

The ABA is concerned with the lack of uniformity between the *Occupational Health and Safety Act 2000* (NSW) and other equivalent statutes. There are significant differences between the minimum standards for employers across the Commonwealth, States and Territories, which increases regulatory burden and uncertainty for companies conducting business in NSW.

The ABA notes that section 5.15/16 of the draft report endorses the OH&S Act review and encourages the Council of Australian Governments (COAG) to move for greater consistency across jurisdictions.

The ABA supports the Tribunal's recommendations that:

- Government and WorkCover ensure the review proceeds as a priority and that the review follows the principles of best practice regulation and achieves greater consistency of OHS requirements across jurisdictions.
- OH&S Act be reviewed again in five years of commencing amendments in recognition of the significance of OH&S to stakeholders and the broader community.

We also support the Tribunal endorsing the decision by COAG to make OHS standards a cross-jurisdictional priority. However, we believe that the Australian Safety and Compensation Council (ASCC) should not simply look at harmonisation of OHS standards within legislature, but also give consideration to the implementation of these standards at a practical level, in terms of the various approaches by regulators as well as specific regulations and rules, to ensure that there are no unnecessary inconsistencies that create unnecessary cost and complexities for businesses and employees.

The ABA has been engaging with the NSW Government on reforms as part of the review of the OH&S Act (NSW). (Please find attached our submission on the *Occupational Health and Safety Amendment Bill 2006*.)

2. Consumer credit and related legislation

The ABA has had a longstanding and active interest in consumer credit regulation. The ABA played a major role in the development and implementation of the Uniform Consumer Credit Code (UCCC) in 1994 and before that State Credit Acts that were legislated in the 1980s.

The NSW Minister for Fair Trading is a member of the Ministerial Council on Consumer Affairs (MCCA) that has responsibility for the UCCC.

There are several aspects in these areas of regulation that the ABA highlighted as relevant to the NSW regulation review, including regulation of finance brokers and proposed regulation of credit cards.

The ABA notes that section 5.5 of the draft report strongly supports the NSW Government working with other jurisdictions towards greater national harmonisation of consumer protection regulation (in particular, in relation to telemarketing) through continued active participation in COAG and MCCA processes.

However, the recommendations of the "Regulation Taskforce" and the recent response by the Federal Government (see also section 5 below) strongly point to a failure in the MCCA processes for policy development. The Federal Government has supported a public inquiry, to be conducted by the Productivity Commission, into the development of consumer policy and for its report to be provided to the MCCA for its consideration.

The ABA is disappointed with the draft report's limited support for the NSW Government in working towards greater national harmonisation of consumer protection regulation – this is only one aspect of the regulatory paradigm. The Tribunal's support could be interpreted as giving the "green light" to the NSW regulatory proposals when in fact there are fundamental flaws in the MCCA processes in regulatory decision making, development and implementation.

Accordingly, the ABA believes that the Tribunal should not cast its support in the way currently contained in the draft report. Rather, the Tribunal should support the Productivity Commission's public inquiry into consumer policy development processes and for MCCA to consider the results of this inquiry. To recommend otherwise would be a failure on the Tribunal's part to recognise and address the underlying problem.

The ABA believes that market failure does not necessarily justify regulation, and that the costs and benefits of a range of potential responses should be considered prior to introducing additional regulation.

3. Taxes

The draft report addresses payroll tax and taxes on insurance products. There are other State taxes levied in NSW which impact on banks and their customers, raising cross jurisdictional issues and specific NSW issues – as NSW has not moved as fast as some other States and Territories in reform of these taxes.

The ABA recognises the efforts undertaken so far arising from the Inter-Governmental Agreement (IGA) on the reform of Commonwealth-State financial relations, but notes that some IGA taxes remain in effect in NSW.

There will be substantial benefits to States and Territories from their removal, for example from increased real consumption, which leads to increased GST collections.

Abolition of IGA taxes would provide a broad range of public goods, including lowering of business overheads and consumer prices and increased job opportunities. The ABA recommends complete implementation of the IGA.

There are also State taxes not covered in the IGA. These taxes are inefficient, in that they involve in some cases multiple obligations and costs in relation to the same or related transactions and represent obstacles to efficient structuring of business and savings; and, regressive. The ABA recommends further reform of non-IGA taxes.

4. Personal liability (for directors and officers of corporations)

The ABA is concerned with the growing trend and extensive use of derivative liability in Federal, State and Territory statutes, because it can lead to the imposition of penalties on individuals irrespective of their actual degree of blameworthiness or fault in the circumstances. We believe that consideration should be given to the use of derivative liability only in exceptional, clearly defined and limited circumstances.

With this principle in mind, the ABA supports legislative reform for a nationally uniform scheme of personal derivative liability for corporate fault. It is important for unnecessary complexity to be removed so that companies, directors and officers have clarity regarding their particular duties and responsibilities. This is particularly important for companies that operate across jurisdictions and consequently are subject to different liability regimes, not only within a particular State or Territory, but between States and Territories as well.

The ABA supports the Tribunal's recommendation that the NSW Government should support efforts to achieve greater cross-jurisdictional harmonisation of personal liability for directors and other officers of corporations. We also support the NSW Government giving consideration to the findings of the Corporations and Markets Advisory Committee (CAMAC) review of directors' duties and personal liability in terms of adoption of a standard approach for personal liability provisions.

The ABA has been engaging with the CAMAC on its review of directors' duties and personal liability. (Please find attached our submission on the discussion paper "Personal Liability for Corporate Fault".)

5. The Federal Government's Response to the "Regulation Taskforce"

You would be aware that the Federal Government has recently made its final response to the "Regulation Taskforce". The ABA strongly supports the Federal Government's response, particularly on ensuring that there are better processes in place for the development and implementation of regulation.

We encourage the NSW Government to examine the Federal Government's proposals with the view to considering adopting the same measures, and encouraging other State and Territory Governments to do the same, so that there is a consistent approach by all Governments in Australia.

The regulation of industries, like the banking and finance sector, must be consistent across the Commonwealth and the States/Territories, otherwise it causes major problems to industries and creates unnecessary costs for businesses with nationally focused operations. Inconsistent regulation and approaches to implementing regulation is a source of significant cost to business and inconvenience for their customers.

If you have any queries regarding the issues raised in this letter, please contact me or the ABA's Director, Corporate & Consumer Policy, Diane Tate on (02) 8298 0410: dtate@bankers.asn.au (occupational health and safety; personal liability), Ian Gilbert, Director, Retail Regulatory Policy on (02) 8298 0406: igilbert@bankers.asn.au (consumer credit) or Tony Burke, Director, Tax and Security on (02) 8298 0409: tburke@bankers.asn.au (taxes).

Yours sincerely

A handwritten signature in blue ink that reads "David Bell". The signature is written in a cursive style. Below the signature is a horizontal line.

David Bell