ANZ Submission to the Taskforce on Reducing the Regulatory Burden on Business

December 2005

Executive Summary

The *Taskforce on Reducing the Regulatory Burden on Business* is seeking specific examples of Commonwealth Government regulation which is unnecessary and burdensome, complex, redundant or duplicates regulations in other jurisdictions and areas in which regulation should be removed or significantly reduced as a matter of priority.

In ANZ's view, the areas of business regulation in the financial services sector that need to be addressed as a matter of priority are:

- Financial Services Reform: to further simplify the disclosures to customers and the training requirements for general insurance advisers;

- Corporate Governance and Reporting: to address the increasingly complex regulation governing internal affairs and reporting and improve the harmonisation of requirements among regulators; and

- Consumer Protection Laws: to encourage a more uniform approach by States and Territories, with the Australian Uniform Credit Laws Agreement 1993 as a possible model.

To improve the future standard of financial sector regulation, ANZ also makes the following recommendations:

- The current inconsistencies in regulation between State, Territory and Federal jurisdictions identified in this submission be accorded a high priority at the Council of Australian Governments (COAG);

- Improved accountability arrangements for financial sector regulators and regulations be made:

    - A strengthened role for regulatory impact statements and the Office of Regulatory Review;

    - Regulators (as distinct from Executive Government) being expressly tasked with ensuring regulation reflects the intent of legislation rather than making it more onerous and that regulatory requirements are practicable and workable both for businesses and their customers; and

- Adoption of periodic independent reviews of financial sector regulation every 5 to 10 years to identify problems and recommend solutions.

Introduction

ANZ is pleased to provide its comments to the *Taskforce on Reducing the Regulatory Burden on Business* ('the Taskforce').

In its terms of reference, the Taskforce has sought examples of where legislation or regulations are unnecessarily complex or burdensome, have been duplicated, are inconsistent across borders or simply unnecessary – that is, the regulatory goal could be met in a more effective, less onerous way.

ANZ provides 11 examples of legislation where change would result in significant compliance cost reductions for industry and therefore its customers, while still meeting the goals of the regulation. The first two are Commonwealth legislation and we would acknowledge that there are processes underway to address some of the problems, although the changes could usefully go further. The rest are State-based: overlaps and inconsistencies across jurisdictions, which drive up costs to nationally operating companies without commensurate benefit to consumers.

Specific concerns and proposed changes are outlined in Section 2. Before turning to those specific concerns, ANZ makes the following high level recommendations aimed at addressing financial sector regulation issues in a more structural, long-term way.

1. High Level Recommendations

First, and most immediately, the inconsistencies in regulations across States and Territories should be accorded a high priority at COAG. Specific areas of concern include regulations on credit, finance brokers, OH&S, workers compensation and the design of various State taxes, particularly stamp duty.

Second, improved accountability arrangements are needed for financial sector regulators and regulations. ANZ would support:

- A strengthened role for regulatory impact statements and the Office of Regulatory Review;
- Regulators (as distinct from Executive Government) being expressly tasked with ensuring regulation reflects the intent of legislation rather than making it more onerous; and
- Regulators and Government being accountable for ensuring sufficient and effective public consultation on regulatory requirements in their developmental stage and that regulation is practicable and workable both for businesses and their customers

Third, given the central role performed by the financial services sector and the fact it is subject to a very specific, detailed regulatory regime, there is a need to have a dedicated financial sector solution to the regulatory burden. It is unrealistic to expect all the issues to be satisfactorily addressed solely through a broader regulatory review process. Therefore, regular independent reviews of financial sector regulation every 5 to 10 years, along the lines of those conducted in Canada should be conducted. The purpose of the reviews should be to identify regulations in the financial services sector which do not reflect the principles of flexible, proportionate and cost effective regulation and recommend changes.

2. Specific Regulatory Issues of Concern

While the above considered recommendations aimed at improving the framework for financial sector regulation, there are a number of specific matters that ANZ would like to draw to the Taskforce's attention. These issues represent ANZ's view on the persistence of particular problems which can be relatively easily fixed, with potentially significant compliance cost reductions for both financial service providers, and other businesses more generally while meeting the goals of the regulation.

The areas of concern relate to Commonwealth legislation, overlap between regulations across countries, Commonwealth/State legislation overlap and purely State-based regulatory concerns. The main areas of concern include:

- The Financial Services Reform Act;
- Corporate Governance/Reporting Requirements;
- Consumer Protection Legislation (Fair Trading) and the Uniform Consumer Credit Code (UCCC);
- Cross Boarder Issues;
- Australia-New Zealand Prudential Harmonisation;
- E-commerce amendments to the UCCC;
- Finance Broker Regulation;
- Workers' Compensation;
- Occupational Health and Safety;
- State Taxes – Payroll Tax and Stamp Duties; and
- Statutory Trusts.

This submission will deal with each of these areas in turn and provide a view on what should be done to address the particular issues raised.

3.1 Financial Services Reform Act

In general terms, the sound principles embodied in the objectives of the FSR legislation were lost in the translation in the legislative drafting and subsequently in the specific obligations imposed in the many regulations and ASIC policies issued subsequent to the passage of the initial Bills.

A costly and complex regulatory regime has been introduced. The Act was intended to be 'principles-based' however the actual provisions of the Act, particularly those relating to disclosure, are overly prescriptive. The Government's refinement process reflects that the cost of compliance with the original FSR disclosure regime has outweighed the corresponding benefit to consumers.

While the recent amendments through the refinement process have been welcome, a number of specific issues remain of concern. They indicate that the refinement exercise has not solved all the issues with the detailed implementation of FSRA and significant difficulties will persist and, at some point, will need to be addressed.

ANZ understands that there will be a further round of refinements and welcomes this development. Beyond that, like all financial sector regulation, FSR should be subject to a continual improvement process as both ASIC and the regulated entities become more familiar with its application and limitations. In this context, ASIC should be encouraged to explore the scope for adopting forms of more light-handed regulation including the use of alternative compliance models.

In addition, the limitations of these refinement efforts need to be recognised. While necessary and welcome, they tend to concentrate on detail and do not lend themselves to a fundamental evaluation of the how well the regulations meet the ultimate policy objectives. Given the importance and breadth of FSR, it is important that its implementation is subjected to a thorough assessment against the original policy objectives as articulated in the Wallis Inquiry.

The immediate FSR issues are included below for consideration. The examples included are designed to illustrate continuing concerns with the regulations. They are not comprehensive.

The distinction between retail and wholesale client

A distinction is made between "retail" and "wholesale" clients for the regulation of various financial services including for general insurance, superannuation and other financial products. However, the criteria used differs according the product in question and therefore an individual client may be regarded as either retail or wholesale depending on the product. For example, it is not uncommon for advisers being called upon to discuss a client's superannuation and insurance needs during the one consultation, but these products would be subject to different tests to ascertain whether the client should be treated as retail or wholesale.

Also, complications arise due to the definition of a small business which relies on the number of employees rather than income or net assets as in the case of individuals. In light of the difficulties, banks often adopt the conservative approach of treating many businesses as retail in order to minimise their operational risk even though this may add to the costs for both bank and customer.

These issues are reviewed in more depth in the Appendix to this submission.

- *ANZ considers that greater consistency is needed in the distinction between retail and wholesale clients across financial products and services.*

General Awareness Advice

ANZ aims to avoid seemingly meaningless procedure or disclosure which irritates with a customer and appears out of context with a service consultation. The refinements currently being considered should soften some of these problems. However, in ANZ's view, the changes have not gone far enough. For example, under the proposals, a general advice warning would still be required even where the customer service consultant is simply making the customer aware of the benefits of a service which has already been issued to a customer.

An example would be where the consultant mentions to a consumer that in undertaking a particular transaction it would be quicker for the customer to perform the transaction via internet banking. In circumstances such as this, it should be open to the financial service provider to provide simple and helpful awareness advice without disclosures and training requirements, particularly in circumstances where there is also an element of enhanced financial literacy involved. In particular, the staff member in raising awareness is also contributing to raising the financial literacy level of the customer and it would be a pity to erect a barrier in the form of a warning to that benefit.

- *ANZ considers that the general advice disclosures should not be triggered in circumstances where a customer service consultant is simply providing helpful awareness advice to a customer.*

Training

Current refinements to the law will simplify the training requirements for advice on basic deposit products – in particular, removing the need for advisers on these products to undergo 'generic' training about financial markets. This is welcome, however the arguments in support of these changes apply equally strongly to the provision of advice on simple general insurance products. There should be consistency in the treatment of basic deposit products and general insurance in relation to training as often the front line branch staff invariably sell both these simple products. For example, generic knowledge about financial markets is no more relevant for individuals providing advice on insurance than for those advising on basic deposit products. It is worth noting that in any event, all advisers will require, and continue to receive, detailed product knowledge of both products.

Relief for only one product will undermine the objective of flexibility in the provision of basic banking services, as there will be little practical benefit or saving if front line branch staff still require extensive training for the general insurance products that they may offer to customers.

- *ANZ considers that the simplified training arrangements afforded in relation to basic deposit products should be extended to general insurance products.*

Disclosure of Commissions/Conflicts

The FSR contains relief from having to disclose information about a product during an over-the-phone transaction with a customer where the customer has already rejected the offer. The current refinements project has delivered further relief from product disclosure where the product has a cooling off period and the customer will in any event receive the documentation before being bound by the product.

Despite this relief, an operator who has provided advice must still in these circumstances provide the customer with lengthy disclosures about commissions that the company may receive. This unnecessary disclosure can grate with customers, particularly where they have already decided that they are not interested in the relevant product or where they will be receiving the same disclosures in documentation.

- *ANZ considers that it would make sense to extend relief that is currently provided for product information, to capture disclosures about commission arrangements as well, in cases where the customer has already decided that they are not interested in a product and/or where the customer will receive*

documentation containing the information before becoming bound by the product.

Termination Value

There is a problem with the requirement to disclose 'termination values' for term deposits and at-call deposit accounts on account statements. For term deposits the termination value will be the balance adjusted for accrued interest, less any government taxes and any administrative fees for early withdrawal. The termination value for at-call deposits is the closing balance.

The requirement to have a 'termination value' on a statement of account can only be the value as at the date of the statement, which is already likely to be out of date by the time the customer receives the statement. Therefore the value of including this information is questionable, especially given the considerable systems development that would be required to calculate this value on a term deposit statement. This is a particularly disproportionate regulatory cost given the many other channels through which the customer can obtain this information.

- *ANZ does not support this regulatory requirement under the FSR.*

3.2 Corporate Governance/Reporting Requirements

Corporate governance and reporting requirements are either inconsistent or duplicative for ANZ and other financial sector providers which are regulated under the Corporations Act, the ASX Corporate Governance principles, the Sarbanes-Oxley Act for companies with US reporting obligations, and the new APRA Standard on corporate governance.

Many of the obligations are unnecessarily burdensome and duplicative. For example, under CLERP 9, remuneration reporting must contain information about executive and director remuneration including:

- Board policy on remuneration;
- The link between remuneration and company performance;
- Detail of any performance conditions;
- The remuneration of each director and the top 5 remunerated executives in the company;
- Details about the securities and other options received as part of remuneration.

While the policy intent of such provisions is to ensure shareholders are informed about remuneration policies, and ANZ has no objection to the requirement in principle, the level of detail required means remuneration reports are long. This adds considerably to the length of the concise annual report, which now runs to 94 pages for ANZ. In response ANZ has also adopted a short-form non-statutory shareholder

review as an alternative for shareholders, and this document has a large uptake (40 per cent of shareholders have selected to receive this document).

It is ANZ's view that this simply highlights that while shareholders have an interest in levels of executive remuneration, not all of them desire such extensive disclosure, particularly in concise annual reports and given that other developed jurisdictions such as the UK require much less information.

- *ANZ would support moves to reduce the mandatory remuneration detail required to be part of the concise annual report, so that information in the concise annual report can be scaled back with more information available upon request or in the full annual report.*

There is evidence of increasing recognition in other jurisdictions that shareholder disclosure must be proportionate and relevant to the needs of shareholders. The New York Stock Exchange (NYSE) has recently proposed changes to its Listed Company Manual to remove the obligation on companies to send Annual Reports to shareholders. Under the new arrangements, a listed company which publishes its annual report on a website will only need to distribute hard copy reports to shareholders who request them. This measure followed a study confirming that over 70% of American households had internet access. In addition, UK Chancellor of the Exchequer Gordon Brown recently announced a 'winding back' of some aspects of that country's corporate reporting regime.

- *ANZ would support relief from providing all shareholders with an annual report on the basis that the report was available online and on request of the shareholder*

The approach adopted by the various regulators to corporate governance and reporting can differ in significant ways. Of particular concern is the recent APRA corporate governance standard that adopts a strict compliance model. In contrast, the ASX corporate governance principles adopt the more sensible "if compliance has not been met, why has it not been met" approach. This approach implicitly acknowledges that a "one size fits all" model is not always the best approach, given that companies all have differing governance arrangements, even within the same industry.

APRA has chosen to impose a stricter standard in part because of the importance that financial institutions have in relation to the stability of the economy. While this is indeed the case, this does not mean that the obligations on all aspects of financial institutions' operations need to be subject to additional regulatory requirements.

The APRA Corporate governance standard also duplicates requirements on financial service providers under other reporting obligations, including obligations under Sarbanes-Oxley and the ASX corporate governance principles. It would be very desirable if arrangements could be developed whereby recognition is accorded for compliance under alternative regulatory obligations.

- *ANZ would support the provision of relief under the APRA corporate governance standard for financial service providers who are already complying with the ASX corporate governance principles and the Corporations Act.*

3.3 Consumer Protection Legislation (Fair Trading) and the Uniform Consumer Credit Code (UCCC)

In 1983, the Commonwealth and State and Territory Consumer Affairs Ministers agreed to adopt uniform consumer protection legislation. The State and Territory legislation was modelled on the Commonwealth Trade Practices Act (1974) consumer protection provisions, to provide protection in circumstances beyond the reach of the Commonwealth Act (which is largely limited to regulation of corporations only).

Despite the intention to achieve uniformity, there have been several legislative developments in recent years in particular States and Territories which have created inconsistencies. These changes highlight the difficulty in instituting and then maintaining coherent and consistent regulations across different jurisdictions.

A recent example is where NSW and Victoria both introduced similar but inconsistent amendments to their Fair Trading Acts to regulate unsolicited marketing.[1] While the objectives of regulating the conduct and disclosure obligations of marketers selling to customers as a result of an unsolicited contact were similar, the practical application of the law differed.

Four areas where problematic differences persist relate to:

- Scope: In NSW the customer contact could be over the telephone, or a meeting at a location other than the supplier's business premises, whereas in Victoria, the customer contact covered is only in relation to telephone contact.

- Exclusions: In NSW exclusions apply to 'financial products' and UCCC regulated credit, and does not capture supplies of goods and services for business purposes, whereas in Victoria the exclusions apply to 'financial products' and any contact which is solely for the provision of credit, and does not capture supplies of goods and services which are defined to be of a kind ordinarily used for personal, household or domestic use.

- Cooling-off: In NSW a consumer has 5 days cooling off to cancel, after a direct commerce contract is made, and the supplier must provide written advice of this right to the consumer (in a form of the supplier's choosing), whereas in Victoria, a consumer can cancel a contract within 10 days of receiving notification of the supply documentation (and the form of the written notification to the consumer from the supplier is a prescribed document).

- Consent: In Victoria, a consumer must provide explicit informed consent before a telephone marketing agreement is made, and the consent must be recorded in writing or by means of a recording device. No equivalent provision applies in NSW.

Other examples of divergences in approach across the jurisdictions include changes introduced in the ACT in 2002 where additional obligations were placed on offerings related to, *inter alia*, credit card limit increases to ACT residents. The ACT's actions

1 Victoria – Fair Trading (Further Amendment) Ac 2003; Fair Trading (Consumer Contracts) Act 2004 and Fair Trading (Amendment) Regulations 2004. NSW – Fair Trading Amendment Act 2003 and Fair Trading (General) Amendment (Direct Commerce) Regulation 2004.

did not recognise the efforts that had been taken to address perceived problems through the Banking Industry Code of Practice. ANZ has had to specifically tailor its marketing/lending practices for a small segment of customers for no demonstrated policy reason.

This change, and the differences noted above in relation to NSW and Victorian unsolicited marketing regulation introduce significant differences in obligations and coverage applying to customer contact marketing, and highlight the difficulties that a national organisation faces in complying with varying regulations, especially in relation to clear and consistent rules and training of staff. The changes also work against the spirit and intent of the original agreements providing for uniform consumer protection across the country. Also, differences across jurisdictions lead to increases in various compliance costs including the cost of legal advice.

- *ANZ is encouraged by a recent announcement by the Parliamentary Secretary to the Treasurer, the Hon Chris Pearce MP, which outlines a commitment to work with the Ministerial Council on Consumer Affairs to achieve a nationally consistent consumer policy framework.*

- *ANZ supports the recent Productivity Commission Recommendation[2] that the Australian Government should establish a national review into consumer protection policy and administration in Australia, focussing on, among other things, mechanisms for coordinating policy development and application across jurisdictions and for avoiding regulatory duplication.*

- *ANZ would also support the incorporation of some positive obligations on State and Territory fair trading departments to ensure consistency in consumer protection laws. A possible model is the 'template model', reflected in the Australian Uniform Credit Laws Agreement 1993, which if adopted for consumer protection laws, would require States and Territories to enact laws to adopt a template Fair Trading Act (along with any amendments) and for any changes to this template to be approved by a majority of the Ministerial Council of Consumer Affairs.*

3.4 Cross-border issues

There is a need to develop better models of mutual recognition of regulation across jurisdictions.

There are numerous examples of areas where mutual recognition could be explored. The forthcoming draft Anti-Money Laundering Bill is expected to be extraterritorial in its application. This will require ANZ to effectively apply Australian standards when dealing with customers in the Asia Pacific where different requirements may apply. The mutual recognition of jurisdictions would allow each organisation to operate effectively within their respective regions without the complexity of different processes driven by the regulatory requirements of the country in which the parent company resides.

2 Review of National Competition Policy Reforms, 28 February 2005.

A further example reflects a failure of the Australian law and regulators to recognise the financial services regulatory regime in the United Kingdom. Largely in response to customer demand, ANZ offered a service of processing applications and initial verification checks for UK-based transaction accounts. This service was designed for Australian travellers who wished to operate a UK-based transaction account while travelling in the UK. These customers could complete the initial account opening procedures in Australia (facilitated by ANZ) thereby reducing what needed to be done to complete the account opening in the UK. However, because deposit accounts issued by foreign banks technically do not satisfy the definition of 'basic deposit product' in the FSR Act (because they are not issued by an Authorised Deposit-Taking Institution), this service was considered to be a dealing in either a debenture or other deposit product. Either interpretation triggered more complex disclosure requirements and, where advice is provided, higher training standards compared to those applying to identical products issued in Australia. Due to the complexity of disclosure and training involved, ANZ recently decided to cease offering this service, even though it was popular with customers.

3.5 Australia-New Zealand Prudential Harmonisation

A further cross-border issue relates to New Zealand. ANZ supports the efforts of both Governments to develop a single economic market (SEM) between Australia and New Zealand and views seamless banking operations across the two countries as being critical to that objective. In turn, this will require prudential regulations in the two jurisdictions that are designed to facilitate seamless banking operations. Implicit in such operations will be the outsourcing of certain functions between different arms of each banking group in order to take advantage of economies of scale and effectively tap areas of expertise within the group.

The Reserve Bank of New Zealand (RBNZ) is in the process of finalising a new policy aimed at regulating outsourcing by "systemic" banks in New Zealand. The four major (systemic) New Zealand banks are subsidiaries of the four major Australian banks.

The RBNZ's outsourcing policy has already been partially implemented in respect of ANZ's New Zealand subsidiary, ANZ National Bank Limited, through revised conditions of registration. These revised conditions have required, for example, the relocation to New Zealand of computer systems previously operated in Australia by ANZ on behalf of ANZ National. The associated cost to date is in the order of NZ$110 million.

The extent to which large banks in New Zealand will be able to enter outsourcing agreements with their Australian parents following finalisation of the RBNZ's Outsourcing Policy is expected to depend, in part, on trans-Tasman "harmonisation" of relevant legislation. The more legal certainty that can be provided comfort the RBNZ can be given, through legislative change, in relation to the enforceability of such outsourcing agreements (under normal business conditions and also in the unlikely event of the failure of the Australian parent) then the greater will be the potential for outsourcing. This greater potential for outsourcing can in turn achieve cost savings through not having to relocate systems and services currently provided from Australia to New Zealand and through the efficiencies and economies usually associated with outsourcing arrangements.

3.6 E-commerce amendments to the UCCC

The Uniform Consumer Credit Code Management Committee (UCCCMC) last year released draft amendments to the Uniform Consumer Credit Code which, if enacted, will expressly permit electronic communications in connection with consumer credit contracts. This means that most documents will be able to be 'given' electronically, including credit contracts and statements of account.

ANZ believes that in particular, electronic statements of account will enhance the regulatory regime for both credit providers and their customers. ANZ is currently required to issue paper statements of account to debtors, and in the case of joint debtors, to each individual debtor (even if they reside at the same address). Electronic statements would obviously reduce substantially the cost to credit providers of issuing statements (including replacement statements on request).

The e-commerce amendments will not only improve the process of issuing statements, but also the way in which co-debtors can elect the way they receive their statements. Despite the default requirement in the UCCC that each debtor of a joint loan must receive a statement of account, joint debtors can nominate one debtor to receive the statement. However, this nomination must be in the form prescribed by regulations to the UCCC and signed by each debtor. This provision, in particular the implied requirement that the nomination be in written form, adds an unnecessary level of complexity and cost to ANZ's operations. ANZ believes joint debtors should be able to, if they so wish, nominate a single recipient of statements of account through electronic communication. This is more efficient for the debtor and makes it easier for the credit provider to automate the processing of the request. ANZ expects the current draft e-commerce amendments will address this issue.

- *Despite initial indications that the e-commerce amendments would be before Parliament by early 2005, industry has not seen a further draft or final version of the Bill since the initial draft provisions were released in July 2004. ANZ would support the passage of the e-commerce amendments to the UCCC as soon as possible.*

3.7 Finance Broker Regulation

The regulation of finance brokers varies markedly across the States and Territories. WA, Victoria, NSW and the ACT have passed legislation specifically regulating finance brokers. South Australia, Tasmania, the Northern Territory and Queensland are yet to legislate specifically on the topic.

The regimes of NSW, Victoria and the ACT are similar and focus primarily on the disclosure requirements for brokers. They apply only to brokers dealing in consumer credit. However, in WA, there is also a licensing regime, a code of conduct, and a function for a 'regulator' which has an ongoing industry oversight role. It also captures intermediaries who deal in commercial as well as consumer credit.

These variations across jurisdictions pose difficulties for a financier like ANZ with a national network of finance brokers. While ANZ does not have direct compliance responsibility under the various laws, it provides compliance training and support for many brokers and has an obvious interest in ensuring its brokers are competent, appropriately qualified and law abiding.

It is much easier for ANZ to set standards for the good character and conduct of its brokers if those standards can be based on one nationally uniform legislative regime and one set of licensing, conduct and disclosure requirements. The difficulties of inconsistent legislation are compounded for national broking companies, which do have direct responsibility for compliance with this legislation.

- *ANZ would support moves to develop nationally uniform finance broker legislation, and provided a submission in response to a recent Discussion Paper[3]on a proposed regime. ANZ understands that consultation on some soon to be released draft provisions will be held in the near future. To the extent that jurisdictions adopt a consistent approach, this problem will be reduced, however this issue requires continued monitoring and attention.*

3.8 Workers' Compensation

As a national employer, ANZ is required to comply with a variety of State and Territory Workers' Compensation laws. These laws differ according to:

- The calculation of weekly benefits for eligible employees;
- The documentation required to be provided to employees outlining mutual rights and responsibilities;
- The financial and prudential requirements required by employers by each state authority to safeguard obligations;
- The reporting requirements of employers (eg. headcount information, remuneration levels, workers' compensation claims and other statistical data); and
- The audit requirements of each state authority, requiring multiple jurisdiction specific process manuals, information collection protocols and documentation.

This variation in state-based legislation means ANZ is unable to centralise its management of workers' compensation issues and benefit from more efficient allocation of resources. ANZ retains staff in Queensland, ACT, Tasmania, SA and WA to ensure compliance, even though ANZ employs a relatively small number of staff in these states and even though the workers' compensation claims in these areas can number as few as one or two at any one time.

- *ANZ would support moves to develop nationally uniform workers' compensation legislative requirements.*

3.9 Occupational Health and Safety (OH&S)

The Commonwealth and each State and Territory have separate and legislation setting out minimum standards for employers in relation to OH&S. While the laws are broadly similar in scope, there are several differences which impose compliance costs on ANZ. For example, the Queensland law requires each workplace with 20 or

3 Office of Fair Trading (NSW), National Finance Broking Regulation, Discussion Paper 2004.

more employees to have a trained Work Health and Safety Officer.[4] In SA, the legislation requires the appointment of senior executive officers as 'responsible officers' who must reside in SA and take reasonable steps to ensure the employer organisation complies with the SA laws. These requirements are particular to the Queensland and SA regimes, which require national organisations such as ANZ to put in place specialised arrangements in each case.

These inconsistencies present obvious difficulties for organisations like ANZ, as they do not enable the adoption of a consistent set of OH&S measures and practices across the organisations' whole employee population.

- *ANZ would support moves to develop nationally uniform OH&S legislative requirements.*

3.10 State Taxes – Payroll Tax and Stamp Duties

Since payroll tax became a State-based tax in 1971, amendments made by individual jurisdictions have resulted in widely variable payroll tax arrangements across the country. Differences include exemption thresholds, payroll tax rates, general exemptions, the amounts included in taxable wages and differing treatment of contractors and employment agencies. These differences impose significant compliance costs on entities such as ANZ operating across jurisdictions.

- *ANZ would support the development of a common template for payroll taxes.*

There is also a strong case for the harmonisation of stamp duty laws across the States and Territories. While a rewrite of the State-based duties acts was attempted in the past, only NSW, Victoria, Tasmania and the ACT adopted a common model. Queensland adopted its own version which is not wholly consistent with the other rewrites, and WA has adopted only some aspects of the rewrites in other jurisdictions. Other specific tax differences include:

  - Deed duty is payable only in SA, WA and the NT, and even then, the amount payable differs;
  - Corporate Trustee Duty and Credit Business Duty are payable in Queensland but not in other jurisdictions;
  - The time for payment of duty varies across jurisdictions, ranging from 30 days from liability in Queensland, to 3 months after liability in NSW and Victoria.

- *ANZ would support any moves to harmonise stamp duty rates and associated regulations across jurisdictions.*

3.11 Statutory Trusts

Various legislation in each State and Territory regulates the conduct of solicitors and real estate agents. One of the common obligations imposed is the requirement to pay client money and other funds into trust accounts. These trust accounts must commonly be maintained with a financial institution authorised to accept deposits of statutory trust funds under the relevant legislation.

4 Workplace Health and Safety Act 1995 (QLD). section 93-97.

Unfortunately the calculation and treatment of interest earned on statutory trust funds is not uniform across jurisdictions. The interest rates required to be paid on accounts can also differ. ANZ must therefore provide for accounting and information technology systems which can accommodate these statutory differences. The cost of establishing these different systems is considerable.

- *ANZ would support moves to develop nationally uniform regimes to regulate statutory trust funds and the calculation of interest on these trust accounts.*

Appendix – Detailed analysis of Retail/Wholesale client issue

The meaning of "retail client" and "wholesale client" which is set out in the Corporations Act 2001 (Cth) (section 761G) is different depending on the kind of financial product in question. For example, different tests determine who is a retail or wholesale client where a financial service is provided in respect of general insurance products, superannuation and retirement savings account (RSA) products or all other kinds of financial products.

A person is to be treated as a retail client if they are provided with a financial service in relation to specified general insurance products and they are an individual or a small business. "Small business" is defined to mean a business employing less than 100 people (if the business involves the manufacture of goods) or less than 20 people for all other types of businesses. For superannuation and RSA products, all clients must be treated as retail with some limited exceptions. For all other financial products excluding general insurance, superannuation and RSA products, a number of categories are specified which, if met, mean the client is deemed to be a wholesale client. One of the categories specified is that the financial product or financial service is provided for use in connection with a business that is not a small business.

The different tests which apply in determining who is a retail or wholesale client present practical difficulties for an Australian financial services licensee such as ANZ. These difficulties relate to:

- the practical implementation of the tests each time a financial service is provided to a client, particularly where the service relates to a number of products;

- the challenge of maintaining records determining who is retail or wholesale; and

- the "small business" definition (refer to section 761G(12).

(a) Practical Implementation

It is not uncommon for financial services advisers to discuss a client's superannuation and insurance needs and make recommendations about investment products all in the one consultation. Section 761G(11) makes it clear that where a person acquires a package including both general insurance products and other kinds of financial products, the customer must be treated in accordance with the relevant tests for each product – in other words, the customer may be treated variously as wholesale and retail in respect of the one package.. In practical terms, the complexity involved in applying the tests in this way means the client will be treated as a retail client for all products even if they qualify as a wholesale client in respect of the insurance and investment products. This default position is adopted because it is simply too complex to treat the customer according to a multitude of tests in respect of one transaction. However, it also means that the provisions in the Corporations Act relating to "wholesale clients" are not working effectively and wholesale clients are in many cases being provided with the amount of paperwork afforded to retail clients. From a cost perspective, wholesale clients may be charged

for a full Statement of Advice (SoA) in circumstances where a full SoA was not required by the regulation.

(b) Effectiveness of maintaining records

Any system recording a client's retail or wholesale status would necessarily need to be complex so that the different tests for all relevant financial products are captured and mechanisms are in place to ensure that the data are updated regularly to ensure that definitions such as the small business definition continue to be met. ANZ has not implemented one because of the complexity and time required to ensure that the data remains accurate. Instead, a determination of the client's retail or wholesale status must be undertaken each time a financial product is provided.

(c) Small business test

Those elements of the retail/wholesale client definition which refers to a "small business" are difficult to implement and monitor. As a financial services licensee, the number of employees engaged by a business is not information which is readily available. While this information can be obtained from the business, questions arise as to the type and form of evidence which is sufficient to satisfy this test. For example, in order to demonstrate that appropriate enquiries have been made, is it necessary for the licensee to obtain confirmation in writing and from a relevant employee, eg. the human resources department? For those businesses that are close to the threshold number of employees, confirmation would need to be sought prior to each occasion where a financial service or product is to be provided to take account of the fact that employee numbers may fluctuate.

For the above reasons, the small business test is difficult and onerous to comply with from a practical perspective, particularly where the business is a regular client or financial services are provided on an ongoing basis. In light of the difficulties, a conservative approach is often adopted (i.e. to treat the business as a retail client) to stem the operational risk to the licensee that the confirmation of employee numbers is not obtained each time a financial service is to be provided.

ANZ would support a retail/wholesale definition for business which is similar to the net assets and gross income test for individuals. A definition based on the value of assets or annual turnover of the business is capable of being measured more easily and which would only need to be confirmed by the licensee once every specified period.