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Regulation Taskforce
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Dear Sir

Reducing the regulatory burden on business

I refer to your request for submissions on practical options for alleviating the compliance burden of government regulation on business, and thank you for the opportunity to have met with Taskforce members and secretariat on 9 November 2005 in Sydney.

AAPBS is the peak industry body for building societies. Its members are predominantly regionally-based and are subject to dual regulation by APRA and ASIC.

Preliminary issues

We make the preliminary point that the cost of implementing government regulation falls disproportionately on smaller financial institutions as they are not able to achieve the economies of scale enjoyed by larger players.

The overall effect of this is that regional financial institutions carry more regulatory lead in the saddle compared with the majors. Suffice to say this regulatory burden lessens competition in regional areas to the detriment of consumers.

This needs to be taken into account when considering future regulatory programs and in any review of existing regulation arising out of the present review by the Regulation Taskforce.

Cost benefit analysis

We urge the Taskforce to recommend that Regulatory Impact Statements be required to contain a thorough cost benefit analysis quantifying the cost of the proposed regulation to business, and comparing it against the likely benefits to consumers or its ability to address the market failure or risk in question.

Regulation is a major cost to business in terms of diverting scarce resources and imposing compliance costs. It is of course also a tangible cost to consumers on whom these costs are necessarily passed, and to governments which administer it.

Much of the regulation we see is often made without due consideration for whether the costs outweigh the benefits, a fine example of which is the Regulatory Impact Statement (RIS) prepared in relation to the FSR Act.

We are pleased to note that the Government's Productivity Commission Report[1] stated that:

> "In 2005-06, the ORR (Office of Regulatory Review) intends to further raise the minimum adequacy standards for RISs, with a particular focus on improving the standard of analysis of costs and benefits, and of compliance costs for business. The ORR will also enhance its RIS training and explore the scope to make greater use of information technology to facilitate interaction with regulators"

Benefits of disclosure overstated

We also urge the Taskforce to recommend that, rather than drowning consumers with vast amounts of disclosure, a far better alternative would be to ensure that fundamental protections are built into the legislation itself.

Consumer advocates themselves are now publicly questioning what protection disclosure in fact provides2 and whether or not detailed and prescriptive disclosure actually improves consumers' understanding[3].

Indeed, Access Economics has identified both the Financial Sector Reform Act and the Uniform Consumer Credit Code as classic examples of regulators over-estimating their ability to influence outcomes through regulation and develop regulations that aim to achieve more than is achievable, resulting in worse outcomes than in deregulated markets[4]. This flaw is typically seen when regulation is overly prescriptive, overreacts to current 'hot' issues or is imposed but cannot be enforced.

Options for reducing the regulatory burden

We have identified in Attachment "A" some existing regulation that we consider should be removed or significantly reduced on the basis that it is unnecessarily burdensome, complex, redundant or duplicates other regulations.

Please contact me on 02 9221 2711 should you wish to discuss any of the issues raised in this letter.

Yours sincerely

RAJ VENGA
EXECUTIVE DIRECTOR

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1 Productivity Commission, "Regulation and its Review 2004 – 2005".
[2] "Beyond the Consumer Credit Code – the case for truly national, truly effective regulation of credit", - Tim Gough – Consumer Law Centre of the ACT
[3] O'Shea and Finn, Journal of Banking and Finance Law and Practice, Vol 16, March 2005.
4 Benefits & Costs of Regulation (Access Economics Report)

	Regulation	Action required	Reason
	Financial Services Reform Act (as incorporated into the Corporations Act)	All deposit products (not just basic deposit products) should be exempt from product disclosure statements, statements of advice, financial service guides and Tier 1 training requirements	There is no market failure or risk that needs to be addressed. The regulation has been applied indiscriminately without reference to the simplicity and low risk nature of these deposit products. FSR has taken a one-size-fits-all approach, regulating high risk products such as derivatives and funds management in the same way as deposit products having a term in excess of two years. As long as these products are so regulated, they will not be widely available to consumers.
	Electronic Funds Transfer (EFT) Code	Should be amended such that it only contains provisions dealing with the allocation of liability for unauthorised transactions.	This will avoid regulatory overlap. Provisions other than those dealing with the allocation of liability are generally covered by the FSR Act and existing contractual terms. It is noted that the EFT Code is presently being reviewed.
	Financial Sector (Collection of Data) Act 2001	Consolidate and rationalise returns required to be submitted to the Australian Bureau of Statistics, APRA and ASIC, and have only one of them collect the statistics and returns on behalf of the others.	Despite the fact that in 2001 APRA undertook a project to incorporate government reporting into one set of returns, the ABS still requires financial institutions to complete numerous surveys – an unnecessary burden, particularly for small entities.
	Corporations Act and APRA's APS 520. ASX's Corporate Governance Best Practice Recommendations and APRA's APS 510	APRA's proposed fit and proper person criteria (APS 520) should be made consistent with overlapping provisions in the Corporations Act (eg. responsible person). Similarly, APRA's proposed governance standards (APS 510) should be made consistent, wherever possible, with the ASX's Corporate Governance Best Practice Recommendations.	This will remove regulatory duplication or overlap, and reduce the cost of compliance. We understand that APRA is presently considering how it can better align the different requirements of these regulatory regimes.
	AUSTRAC Annual Compliance Report	The report should be trimmed down substantially.	The majority of questions are repeated year after year and the responses provided are basically the same each year. The report takes over 90 minutes to complete, is cumbersome, particularly in relation to the average amounts of transactions and the necessity to mark 'no' to questions that are not applicable. Some of the questions that seem quite superfluous include: *Does your organisation conduct*

			significant cash transactions (i.e. a transaction involving a cash component of at least $AUD10,000 or foreign equivalent)? ***Y*** *N* *Is your organisation aware of the requirement to report significant cash transactions (i.e a transaction involving a cash component of at least $AUD10,000 or foreign equivalent) to AUSTRAC in accordance with the provisions of the Financial Transaction Reports Act 1988 (FTR Act)?* ***Y*** *N Has your organisation reported a significant cash transaction(s) (i.e. a transaction involving a cash component of at least $AUD10,000 or foreign equivalent) to AUSTRAC in accordance with the provisions of the FTR Act in the last 12 months?)?* ***Y*** *N*
	ASIC's Guide to good transaction fee disclosure for bank, building society and credit union deposit and payment products (Transaction accounts).	ASIC's annual survey of compliance with the Guide should be trimmed down substantially. Perhaps it should only require respondents to indicate where significant changes have occurred since the last return.	An estimated 70% of the questions in the survey are repeated and the same answers are provided from year to year. Also, there is a requirement for the respondent to verify that its product disclosure statement specifies all fees and charges that apply to the relevant product - this requirement is broken up into 11 questions, all of which must be answered. The FSR Act already requires such disclosure and it is unnecessary for the survey to seek that verification.
	ASIC Forms 388 and FS70 & FS71.	The requirement that Australian Financial Services licensees lodge (with ASIC) FS70 and FS71 should be removed.	ASIC Form 388 already requires an entity to provide its annual financial statements and report. An Australian Financial Services licensee is required to again provide their annual accounts to ASIC in form FS70, with an audit signoff in form FS71. This duplication is wasteful and unnecessary.
	ASIC Policy Statement 147	Review of PS 147 required.	The principles of mutuality encapsulated in PS147 are out of date with current industry trends. The continued application of this policy statement has the potential to not only impact on routine changes to a mutual's constitution, but also affect the capital raising options for continued growth
	Uniform Consumer Credit Code (State based legislation)	Remove comparison rate provisions.	The comparison rate provisions have had, and continues to have, a cost impact without any evidence as to its effectiveness. Comparison rates mislead consumers because the complexity and variety of financial products prevents a simple comparison measure. It is also open to abuse by unscrupulous lenders who can manipulate the fees and charges to lower the comparison rate. We understand that Swinburne University, on behalf of the Director of Consumer

			Affairs Victoria, is undertaking a research project into the effectiveness of mandatory comparison rates. The results of the research will feed into the national review of comparison rates that is being undertaken by Hawkless Consulting. The Regulatory Impact Statement reviewing the effectiveness of comparison rates is with the Ministerial Council on Consumer Affairs and will be released shortly.
	Proposed anti-money laundering legislation (AML) and counter-terrorist financing (CTF).	As the FATF recommendations on AML and CTF are principles-based and general in nature, the proposed legislation should not go further than is strictly required under the FATF recommendations, and that a reasonable transition period is afforded to industry.	The proposed anti-money laundering legislation has the potential to burdensome and will result in significant systems, training and other implementation costs.
	ASIC Policy Statements and Information Releases generally.	Further examination required.	While these essentially constitute ASIC's interpretation of the relevant legislation and so are not legally binding, their observance has become almost mandatory and those that treat them as non-binding do so at their own peril. They are now in effect de facto law. Often complicated and containing significant qualifications, they can impose an additional regulatory burden over and above the relevant legislation.
	Self regulatory codes generally	Further examination required.	In determining whether self-regulatory codes are warranted or will be effective, the following should be considered: is there significant market failure or risk in the first place; is a one-size fits all approach being taken, is there regulatory duplication; and is there an over-reliance on disclosure (considering there is little or no evidence that disclosure in fact benefits consumers).