



Strong banks – strong Australia

House of Representatives Standing Committee on Economics

Review of the four major banks (second report)

Australian Bankers' Association

ABA07QW: At the Public Inquiry the ABA was unable to provide clarity on the date for launch of the Industry Register. Please advise what steps the ABA will take to address the ongoing delays with this project.

Answer: The banking industry is committed to taking action to address concerns with individuals with poor conduct moving around the industry. Identifying and sharing better information about poor conduct and improving recruitment practices are aimed at promoting good conduct and ethical behaviour across the financial services industry.

As acknowledged in the third progress report published by Mr McPhee, the development of an industry register as a mechanism to improve recruitment practices and decisions is one of the more difficult measures to implement given the legal issues and divergent stakeholder views involved.

There is a view held by some that a register would be a public 'black list' – this is not correct. A register would be an information repository providing additional information about the conduct history of individuals, with details about breaches of relevant laws, codes of conduct, standards or policies. This information would be used as one source of information by employers to make their own informed recruitment decisions.

The industry has been working through these challenges to make sure a register can be developed to achieve the underlying intent without creating legal uncertainties for banks and their employees. We have commissioned legal advice and are continuing to work through the legal issues and divergent stakeholder views to identify a workable solution. We have been engaging with ASIC, the Finance Sector Union and consumer groups, as well as the Office of the Australian Information Commissioner.

The legal issues, including privacy, are significant. Operational issues include the provision, storage and use of information, access rights and coverage of the register, including limitations due to only applying to banks and not all financial services providers.

In the meantime, the industry has published the ABA's Reference Checking & Information Sharing Protocol for financial advisers. This protocol was published last year and came into effect on 1 March for subscribing banks and licensees¹. The protocol introduces a new, standardised series of fact-based questions about the conduct history of financial advisers. Currently the subscribing banks and licensees account for 38 per cent of all financial advisers.

At the ASIC Forum and in a recent ASIC report, the regulator has been encouraging wider adoption of the protocol. The ABA has been contacted by a number of non-bank financial advice businesses. Following a short period of operation by banks and a post implementation review, other licensees will be invited to subscribe to the protocol from July 2017.

¹ The protocol was developed by the financial advice banks and AMP. A list of subscribing banks and licensees is on the ABA website. <http://www.bankers.asn.au/financial-advice>



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As another step towards addressing concerns with poor conduct moving around the industry, the ABA's Conduct Background Check Protocol for bank employees is due to be published in April. The major banks have committed to implementing this new protocol by 30 June, and the non-major banks by 30 September.

The ABA's Conduct Background Check Protocol complements the ABA's Reference Checking & Information Sharing Protocol for financial advisers by formalising obligations for banks to ask a series of fact-based questions as part of the hiring process about whether the individual is subject to an ongoing investigation relating to defined categories of misconduct or was dismissed or resigned in specific circumstances relating to misconduct.

Importantly, this new protocol does not specify processes or outcomes relating to appointing prospective employees, other than the requirements for the conduct background check. Banks acknowledge their legal obligation not to enter into any arrangement or understanding with each other about those matters.

The operation of the protocol will require significant volumes of personal information to be exchanged between banks. To address the privacy risks, a Privacy Impact Assessment (**PIA**) has been performed. The ABA has discussed the outcomes of the PIA with the Office of the Australian Information Commissioner. The protocol was also developed in consultation with an external law firm, which has also completed a review of the final protocol. The protocol has been developed as a way to better manage privacy risks and to provide flexibility so that prospective employers can discuss the outcomes of a conduct background check with prospective employees.

The industry has indicated to Mr McPhee that we would seek to have a register by the end of 2017. We will continue to work with the various stakeholders.