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Mr John Hawkins
Committee Secretary
Senate Standing Committee on Economics
Economics Legislation Committee
Parliament House
CANBERRA ACT 2600

Email: economics.sen@aph.gov.au

Dear Mr Hawkins,

**Banking Amendment (Delivering Essential Financial Services for the
Community) Bill 2010**

The Australian Bankers' Association (ABA) is pleased to have the opportunity to assist the Committee in its consideration of this Bill. We apologise for the short delay in providing this submission and appreciate the additional time made available to complete the submission.

The ABA is the peak national body representing 23 banks authorised by the Australian Prudential Regulation Authority (APRA) to carry on banking business in Australia.

APRA has consented, pursuant to section 66 of the Banking Act 1959, to ABA's members assuming or using the word "bank" in connection with their banking activities. In this submission we refer to these entities as banks and to other authorised deposit taking institutions (ADIs) as non-banks. This difference is relevant to certain of the Bill's provisions.

First, certain claims that appear to underpin the approach to the Bill should be questioned.

- (1) A claim that banking is an essential service is questionable. Banking is not an essential service in the sense that there is a monopoly public utility that provides services essential for human existence such as water and heating. Otherwise, food production and food retailing would be essential services. Banks, which include all ADIs, are financial services providers numbering over 150 in a competitive market.

Banks essentially provide two services – (a) loans to households and businesses and (b) deposit and other savings facilities such as transaction accounts.

While most adults in Australia have transaction accounts, in many countries in the world there are large numbers of people who do not have a bank account. These people are generally referred to as "unbanked". The USA is one notable example.

This suggests that banking services are not "essential services" in the same way that housing, food, and electricity can be considered.

It is true that the provision of currency is an essential service, but this is not a bank responsibility. The production and distribution of currency is a government responsibility, not a private banking responsibility.

Also, if the Government deems that an individual needs a transaction account to obtain social security payments, this is a government rule, not a bank rule. The government always has the option of paying social security in currency.

- (2) A claim that, on average, Australian households pay about \$1,000 per year on bank fees is incorrect. The Reserve Bank of Australia (RBA) conducts a comprehensive annual survey on bank fees. Using RBA statistics, the average fees paid yearly amount to approximately \$590 per household, which is substantially lower than the claimed \$1,000.
- (3) A claim that an average person earning around \$50,000 is likely to be paying \$28.85 per week towards bank profits is highly questionable. If this is correct it would mean on average, such a person would be paying \$1,500 per year (\$28.25 per week) in bank fees, or 2.5 times more than the average household would pay.
- (4) The Bill appears to be based on the assumption that financial services provided by banks are insufficient in meeting the needs of the Australian community. First, the Bill draws no distinction between individuals, incorporated and unincorporated businesses and other entities. Secondly, a recent article on the consumer financial product reference agency, Cannex, website titled "Fee Free Transaction Accounts Now the Norm" states "Recently there has been a big push by banks to make fee-free banking for all a reality." Below, there is a table that provides evidence of the availability of fee free bank accounts.

1. Part 1- Conditions on banks' authorities

1.1 Basic account

The Bill, if passed, would mandate that banks, as distinct from other ADIs, offer a basic account, as defined in the Bill, to all account holders in Australia, whatever their legal and financial status, as a condition of a bank's authority granted by APRA to conduct banking business in Australia.

No other business in Australia is required to provide its services free of charge or the features of those services as the Bill would mandate. Further, the Bill would require banks but not other financial services providers to do this.

Banks already provide voluntarily and competitively a range of basic bank accounts that allow customers on low incomes to access basic services at no cost.

They also offer accounts which are free of exception fees.

The effect of the Bill if passed would be to create a market distortion where non-banks could wind back their concessional account offerings to reduce their costs with the result that banks only offer these products. For the smaller non-banks that offer low cost as distinct from no cost accounts, competition from banks that are required to offer fee free accounts with regulated features would force them to lower their fees on these accounts or discontinue these services because of the costs of continuing to maintain them. Consumers would be the losers.

When the proposals for this Bill were first announced in April 2010, the ABA published the following response to specific proposals:

Greens proposal	ABA response
<p>A ban on \$2 ATM fees (for using a foreign ATM)</p>	<p>There are real costs associated with providing ATM services to another bank's customers and banks legitimately recover these costs – just like any business does when it provides a service.</p> <p>Some of the costs which a bank incurs in providing an ATM fleet to customers are hardware, installation, cash delivery, security, information technology, maintenance, card issuing and rents to retailers.</p> <p>Bank customers don't have to pay these fees – they can seek out an ATM owned by their bank or in a networked arrangement.</p> <p>Customers of banks who own an ATM fleet shouldn't have to subsidise the cost of non-customers using their ATMs – this wouldn't be fair. No other business is expected to provide free services to its competitors' customers.</p>
<p>Fee-free basic bank accounts for all customers</p>	<p>Banks already provide basic bank accounts that allow customers on low incomes to access basic services at no cost. They also offer accounts which are free of exception fees. This accounts for one in six customers in the Australian banking population.</p> <p>All customers can minimise fees by choosing an account which suits the way they complete their banking and by staying within transaction limits. Banks have many accounts where a number of transactions are free before charges apply.</p> <p>On exception fees – banks have been abolishing and reducing these fees over the past three years. The reductions in exception fees and the emergence of accounts which don't charge these fees demonstrates the market is delivering results for bank customers.</p>
<p>Fair price on mortgages – fixing a gap on what banks pay for their money and the interest rate they charge</p>	<p>This proposal will disadvantage people on low-incomes and those intending to buy a home. It's a throwback to the days of unfair regulation. In the 1970s, a major reason for deregulation of banking (when there were interest rate ceilings and quantity limits) was to advantage lower-income people. Up until deregulation, the banking system typically benefited those who were wealthy and disadvantaged those who were poor.</p> <p>The Reserve Bank recently made comments about margins on home loans which should reassure Australians who are working hard to pay off their homes.</p>

	<p><i>"Margins on variable rate housing lending relative to bank funding costs have actually declined a little over the past two years. The margin between the standard home loan rate and the cash rate has indeed increased, but with banks funding costs rising materially more than the cash rate, the overall margin has declined."</i>¹</p>
<p>Up-front notification of exit fees</p>	<p>Banks already disclose exit fees when customers borrow to buy a home. Non-banks have the most expensive exit fees - they typically charge higher fees than banks, and it was these institutions that pioneered the use of deferred fees.</p> <p>Most customers don't pay exit fees, because they are typically waived after three or four years. The rate of home loan refinancing - particularly since the emergence of mortgage broking - remains strong. Australian Bureau of Statistics data shows that around 30 per cent of home loans (owner-occupied) are refinanced each year.</p>

Since then several of these proposals have been modified in the Bill. Despite these modifications the same consequences described in the table remain relevant.

The fact remains that banks already provide basic bank accounts that allow customers on low incomes to access basic services at no or comparatively low cost. They also offer accounts which are free of exception fees. This accounts for one in six customers in the Australian banking population.

The Bill goes much further in providing that basic accounts should be offered to everyone with the potential to create a market distortion disadvantaging consumers.

1.2 ATM Fees

The Bill proposes that a basic account must be free of ATM usage fees by a customer of their own bank's ATM as well as when the customer uses a foreign ATM. Further, the Bill would prohibit a bank charging any customer of another ADI a fee for using the bank's ATM. The ability to charge fees would require the prior approval of APRA provided a fee is not greater than the reasonable costs incurred by the bank in providing the relevant ATM service.

This would create two regulatory bodies to oversee charging in the payments system; the RBA (Payments Systems Board) and APRA, each with differing economic roles.

Further, there is a number of varying competitive and pricing implications that the Bill is likely to create.

For example, the pricing implications of the Bill would be likely to create a market distortion. A customer of another ADI could use a bank's ATM network free of charge or at the bank's reasonable cost as determined by APRA. Due to the scale of the bank's ATM services operations, the bank's costs of providing its ATM service is likely to be lower than its competitor ADI's costs of maintaining its ATM network. If the other ADI's ATM

¹ Remarks to Minter Ellison Financial Services Industry Forum, Guy Debelle, Assistant Governor (Financial Markets), Sydney - 19 November 2009. Web link: <http://www.rba.gov.au/speeches/2009/sp-aq-191109.html>

transaction activity falls below the minimum sufficient to maintain its ATM service, the ADI's ATM services in all likelihood would be reduced.

We assume under this Bill, non-bank ATM owners would still be able to levy whatever fee they deem appropriate. If this is the intention, the number of bank provided ATMs could decline over time as it would become less and less viable for banks to provide an ATM network. Further, this would mean that customers using non-bank ATM facilities would be paying more than is currently the case.

It would be an extraordinary result that no business other than a bank would be required to provide its services to its customers and to non-customers, that is to customers of a competitor ADI, at no cost or at a price set by a regulator.

Another consequence of the Bill's requirement for APRA to approve a bank's ATM fees according to the bank's costs of providing an ATM service would be to entrench differential pricing in ATM services between city and regional and remote areas. Banks account for approximately 12,500 or 46% of the approximately 27,000 ATMs around Australia.

The Bill would require APRA to assess the reasonable cost to a bank of providing each of its ATM services at each and every of its ATM sites. Inevitably, these costs will vary widely depending on whether the site is located in a city or in a regional or remote area; higher cost in regional and remote areas and lower cost in the cities.

Fees for usage of banks' ATM will reflect these costs and cause this differential pricing effect.

2. Part 2 – Fixed interest gap mortgages

The Bill proposes that an ADI (which it is assumed includes banks, building societies, and credit unions) that offers any mortgage product must offer a fixed interest gap mortgage to all of its existing and prospective customers.

If this is interpreted correctly, an ADI would face a complete restructure of its entire consumer, small business and larger business mortgage books, including fixed rate mortgage products, and profit forecasts should existing customers accept the offer of a fixed interest gap mortgage where the net interest margin must be negotiable.

Demand for such a product is unknown yet banks and other ADIs would be subjected to additional costs in developing and administering the product that would add cost to providing the product.

The resulting effects on fixed interest rate mortgage products, mortgage products priced by reference to bills of exchange or other marker rates and on non-ADI financiers and the securitisation market are not known. There is no regulatory impact statement accompanying the Bill that explains what economic effects the Bill may have if it is enacted, including whether these provisions of the Bill offend the constitutional rule about the acquisition of property on just terms as they apply to existing customer mortgage facilities.

3. Part 3 – Exit fees on mortgages

This Part of the Bill would apply only to ADIs but not to other mortgage product providers such as finance companies and non-conforming lenders including fringe and predatory lenders.

The Commonwealth's National Credit Code that replaces the former uniform Consumer Credit Code first enacted in 1994 continues to regulate early termination fees on consumer mortgage facilities, including fixed interest rate mortgages.

In June 2010, the Australian Securities and Investments Commission (ASIC) released for public comment Consultation Paper 135 "Mortgage early exit fees: Unconscionable fees and unfair contract terms" (CP 135).

CP 135 sets out ASIC's proposals for guidance to financiers on factors ASIC will consider in deciding whether to take action under the National Credit Code or the unfair contract terms provisions of the ASIC Act in relation to early mortgage exit fees.

The Bill would add another layer of regulation to a regulatory regime that the Government and ASIC see as dealing with the issue of early mortgage exit fees.

Further, ASIC's consultation is expected to provide the community with greater insight into the nature, extent and factors underlying early mortgage exit fees across the market unlike the Bill that would apply only to ADIs and leave non-conforming and fringe credit providers free to charge mortgage exit fees without oversight by APRA.

Again, it is noted that the Bill is not informed by a regulatory impact assessment regarding its intended limited coverage.

4. Conclusion

The ABA believes the Bill fails to reflect the wide range of no and low cost products already available to customers and the major reductions in customers' bank fees driven by competition between banks and has not taken into account the perverse outcomes for consumers that could result should the Bill be enacted.

Yours sincerely,

Steven Münchenberg