Submission on Round 5 Superannuation General Questions

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Introduction

The Australian Banking Association (ABA) welcomes the opportunity to make a submission on the general questions raised in the Round 5 closing submissions.[1] The primary purpose of the ABA is to provide analysis, advice and advocacy for the banking industry and to contribute to the development of public policy on banking and other financial services.

While some of our members own or provide superannuation services, superannuation is not part of the ABA's policy remit. Given this, this submission does not respond to all questions raised in the Round 5 closing submission on superannuation.

However, there are two topics subject to general questions in the Round 5 Superannuation closing submission that have broader banking sector implications. These topics are:

- The sale of superannuation products through retail channels, such as branches; and
- Identification requirements for Aboriginal and Torres Strait Islander people.

Both topics are considered in detail below.

The sale of superannuation products through retail banking channels

825.7	Is it appropriate that superannuation be sold through bank branches? Is it reasonable to think that there is any prospect that this is likely to produce an outcome that is in the best interests of consumers?
825.8	Are there statutory reforms that are required to address this problem (if it is a problem) or are the existing laws with respect to personal financial advice and general financial advice sufficient? What is the nature of the "advice" that a customer of a bank receives when told by a bank branch staff member about the availability of a superannuation product offered by a bank?

Sale of superannuation in bank branches

The Royal Commission hearings have shown that at times the practices of the industry have failed and inappropriate bank branch sales models were adopted. Those failures have impacted customers and trust and confidence in the role of banks in superannuation. Banks must make sure these problems are fixed.

Banks should retain the ability to provide superannuation products through bank branches. To do this banks must have the right risk and compliance controls in place, staff must be appropriately trained on the banks' legal obligations, have a culture of service and integrity and focus on good customer outcomes.

Banks have a useful role in providing information and sales of superannuation products to customers. Those services should only be provided in a compliant way that puts customers first. In a market where many customers are disengaged and use a default fund, visiting a bank branch may be one of the few occasions where they can have their attention drawn to their superannuation.

Importantly, personal advice on superannuation is expensive to obtain[2] and the availability of products through bank branches means customers can access fee-free information and general advice.

[1] https://financialservices.royalcommission.gov.au/public-hearings/Pages/round-5-hearings.aspx#closing-submissions
[2] Cost for a financial plan can vary between $2000 and $5000, with ongoing fees often a minimum of $1000.

Legal and regulatory framework reforms

The concerns regarding the sale of superannuation products through bank branches relate to general advice distribution models. ASIC considered that these practices led to 'personal advice' being given by those not authorised to do so. ANZ and CBA have now ceased using those distribution models and have given enforceable undertakings to ASIC.

It is the ABA's view that ASIC's actions have emphasised the regulator's expectations for compliant distribution practices and put the banking industry on notice. Banks who sell superannuation through their branches must refocus on staff training (aligned with the requirements of RG146), investing in adequate oversight and risk controls and working harder to ensure customers understand the nature of the services they receive.

The recently announced Design and Distribution Obligations (DDO) will prioritise the interests of customers in the distribution of financial products. The DDO will apply to superannuation products sold under general advice models.[3] The DDO will impose obligations on issuers and distributors of products to ensure that their suitability for 'target markets' has been properly assessed.

There is an opportunity to reform the current regulatory framework for financial advice to improve customer outcomes. The industry is concerned that the distinctions between 'personal' and 'general' financial advice are not properly understood by the customer. This issue was identified by the Financial System Inquiry (the FSI), which observed that the use of the word 'advice' may cause customers to believe the information is tailored to their needs. The FSI recommended that 'general advice' should be replaced with a more appropriate, customer-tested term to help reduce consumer misinterpretation and excessive reliance on this type of information. The ABA supports reconsidering the "general" and "personal advice" terms to improve consumer understanding.

Banking Code of Practice

More broadly, the ABA considers that self-regulation provides additional protections for customers who purchase superannuation products through bank branches.

The Banking Code of Practice is the primary vehicle of self-regulation of ABA members. It expresses the banking industry's key commitments and obligations to individual and small business customers on standards of practice, disclosure and principles of conduct for their banking services. The current Code applies to all products sold through branches which includes superannuation products. The Code applies to banking services which:

> "…means any financial service or product provided by us in Australia to you: (a) including any financial service or product provided by us whether supplied directly or through an intermediary; and (b) in the case of a financial service or product provided by another party and distributed by us, extends only to our distribution or supply of the service or product to you and not to the service or product itself."[4]

Some key commitments and general obligations of the existing Code relevant to the distribution of superannuation products are:

- Promote better informed decisions about banking services by:
    - providing effective disclosure of information and by explaining the information provided.
    - By providing advice through authorised staff or by referring you to appropriate external sources such as a financial adviser.
- Act fairly and reasonably in a consistent and ethical manner.
- Compliance with the Code and the Law.

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[3] This does not apply to apart to 'MySuper' or default products, which already have separate distribution considerations.
[4]Part H Clause 42 https://www.ausbanking.org.au/images/uploads/2013_ABA_CODE.pdf

- Ensuring staff are competently trained so they can efficiently discharge their functions that they are authorised to provide in compliance with the Code; and have an adequate knowledge of the Code provisions and its application to banking services.

There are also specific requirements regarding providing information on banking services to customers which include:

- Providing the terms and conditions of any ongoing banking service currently offered including fees, charges and interest rates.
- Ensuring information about the terms and conditions of the product are provided before an agreement is entered into.

The new ASIC approved Banking Code of Practice (the new Code) will apply from July 2019 (or potentially earlier where banks opt for accelerated compliance) and adopting the new Code will be a mandatory requirement for all retail bank ABA members. The new Code will introduce a range of additional measures to make banking products easier to understand and more customer focussed. One of those new measures is the statement of guiding principles that will guide banks in their decision-making when performing their work and serving their customers.

The relevant provisions of the new Code will be enforceable as part of a customer's contract with their bank. An independent compliance committee, the Banking Code Compliance Committee, will investigate breaches of the new Code. Customers will also be able to refer alleged breaches of the Code to the financial services external dispute resolution scheme, the Australian Financial Complaints Authority, if the customer has suffered a loss and is not satisfied with the bank's internal dispute resolution.

Identification requirements for Aboriginal and Torres Strait Islander people

825.9	Are the identification procedures used by superannuation funds appropriate for their Aboriginal and Torres Strait Islander members? (i) If those procedures are appropriate, are those identification procedures sufficiently understood and implemented by staff on the ground? (ii) If those procedures are not appropriate, what should be changed?

Flexible identification protocols, which cater for the cultural sensitives in indigenous communities, has been fully adopted by the banking industry. It has improved access to banking services for indigenous communities. These protocols provide a framework for the superannuation industry to address the issues arising out of this round of hearings.

The AML/CTF regime requires reporting entities (including superannuation fund trustees) to carry out procedures to verify a customer's identity in certain circumstances.

AUSTRAC publishes a Compliance Guide[5] which specifically allows for flexible identification procedures to be adopted where appropriate. Part 4.15 of the AML/CTF Rules provide that, in limited and exceptional circumstances, a reporting entity can accept a self-attestation by a person as to their own identity. The ABA supports the flexible identification protocols provided for by AUSTRAC across both banking and superannuation, as these protocols provide clear benefits. A standard approach across banking and superannuation will:

- Ensure consumer expectations for consistency across financial services are met.
- Avoid the creation of additional complexity and reduced regulatory certainty from differing approaches.

[5] http://www.austrac.gov.au/part-b-amlctf-program-customer-due-diligence-procedures

- Provide a more timely approach to an existing consumer issue.

The AUSTRAC guidance can assist a Registered Superannuation Entity (RSE) to develop AML/CTF compliant identification protocols to help those in the community who have difficulties providing identification documentation to access their superannuation. AUSTRAC recommends that, where appropriate, reporting entities consider adopting a flexible approach to the identification and verification of persons of Aboriginal and/or Torres Strait Islander heritage, while remaining mindful of social and cultural sensitivities. This may include using 'reliable and independent' means of alternative identification.

AUSTRAC rules and guidance is developed and continually reviewed in consultation with industry and the community. The ABA continues to work with AUSTRAC on its regular reviews of its Compliance Guide including a recent consultation on the AUSTRAC Compliance Guide on Self-attestation of identity. The ABA has recommended that the AUSTRAC guidance makes it clear that self-attestation should only be considered once all other alternative identification processes have been exhausted. We believe this will better align with the wording and intention of Part 4.15 of the AML/CTF Rules.

About the ABA

With the active participation of member banks in Australia, the Australian Banking Association provides analysis, advice and advocacy for the banking industry and contributes to the development of public policy on banking and other financial services.

The ABA works with government, regulators and other stakeholders to improve public awareness and understanding of the industry's contribution to the economy and to ensure Australia's banking customers continue to benefit from a stable, competitive and accessible banking industry.