

CHAPTER THREE

GENERAL SUPPORT FOR DRAFT BILL IN SUBMISSIONS

3.1 The vast majority of the 67 submissions received by the Committee expressed general support for the principles and objectives of the draft Bill. Numbers of submissions referred favourably to the draft Bill implementing aspects of the Financial System Inquiry recommendations. In this context several submissions referred to the draft Bill as a milestone or a watershed for Australian financial services. In particular, submissions supported the policy objectives of the draft Bill, especially its uniform requirements within a single comprehensive framework. In this context several submissions pointed to the advantages of a level playing field. A number of submissions suggested that the draft Bill would facilitate the use of information technology in financial services. A considerable number of submissions expressed satisfaction that the draft Bill had taken into account suggestions and concerns expressed earlier in the consultative process. The following paragraphs set out comments made in submissions about the general scheme of the draft Bill. The comments are intended to illustrate the range of support for the draft Bill across the whole of the financial services sector.

3.2 The Australian Securities and Investments Commission (ASIC) submitted that, apart from the issue of the transitional arrangements to the new licensing regime, it strongly supported the proposed single statutory regime for intermediary licensing, which would protect consumers and facilitate efficient business conduct by imposing consistent regulatory standards across functionally equivalent financial services.

3.3 The AMP Limited submitted that it supported the aim of uniform regulation of financial products. The draft Bill was a significant milestone in the process of financial services industry reform. It was a legislative package capable of establishing the foundations for a dynamic, evolutionary and expanding financial services sector in Australia. AMP appreciated the extent of consultation that was undertaken and offered its congratulations on this process and the extent to which the legislative framework had been adjusted to meet the commercial realities of the modern financial services industry; it was sensible, focussed dialogue on financial sector reform. AXA Australia also broadly supported the reforms proposed in the draft Bill. AXA advised that these were a welcome step in producing a globally competitive and dynamic financial sector. The reforms should provide a strong foundation for national economic and business growth and would help to position Australia as a leader in financial services within the Asia-Pacific region.

3.4 NRMA Limited advised that it supported the general thrust of the draft Bill, which was an important milestone for the Australian financial services sector. The draft Bill would deliver significant benefits both to the sector and to consumers. These benefits include potentially lower costs from uniformity of regulation and greater

consumer confidence in the industry and its products. NRMA was pleased to note that the draft Bill had addressed several areas of concern which it had raised earlier.

3.5 The Insurance Council of Australia (ICA) advised that congratulations were due for the way in which this wide and complex issue had been handled. The ICA was greatly encouraged that a number of its earlier recommendations had been included in the draft Bill. Lloyds Australia Ltd welcomed the draft Bill and supported its intention of a more efficient and flexible regime for financial markets and products through an integrated regulatory framework. The National Insurance Brokers' Association (NIBA) supported the proposed structure of the draft Bill, which should benefit business and consumers. NIBA was particularly pleased that many of the earlier comments and concerns had been addressed. The Australian Aviation Underwriting Pool Pty Ltd advised that it supported the main elements of the draft Bill.

3.6 Telstra advised that it understood the impetus for reform of the financial services sector and commended such radical action. The reforms should have a positive impact on consumer confidence in using online financial services. APIR Systems Pty Ltd submitted that the draft Bill was a major contribution to the changing ecology of the financial services environment which will provide an impetus to industry in the context of the new market; the draft Bill replaces the present process driven regulatory regime with one that is outcomes oriented and solidly based in commercial rather than regulatory needs. The Australian Society of Certified Practising Accountants (CPA) and the Institute of Chartered Accountants in Australia (ICAA) submitted that they supported the underlying policy objectives of the framework of the draft Bill.

3.7 The Australian Financial Markets Association (AFMA) and the Securities and Derivatives Industry Association (SDIA) commended the commitment to establish a comprehensive regulatory framework that facilitates innovation and promotes business, while at the same time ensuring adequate levels of consumer protection and market integrity; the draft Bill is a watershed, significantly progressing the existing regulatory position. Australian Stockbroking Limited submitted that the draft Bill was an ambitious attempt to rationalise financial services law and, among other things, to recognise the significance of electronic provision of financial services.

3.8 The Financial Planning Association (FPA) submitted that it fully supported the intention of the draft Bill to introduce a comprehensive regulatory framework and a single licensing system based around universal principles that can be adopted to meet new developments. The Investment and Financial Services Association Ltd (IFSA) submitted that the draft Bill effectively implements the broad thrust of the Financial System Inquiry reforms in the licensing and distribution of financial services. The result should be to rationalise and modernise the regulatory and consumer protection regimes for the financial services sector. IFSA strongly supported the flexible and rigorous single licensing regime and the conceptual approach of the financial product disclosure provisions. The Association of Superannuation Funds of Australia Limited (ASFA) supported the general direction of CLERP6. The Securities Institute of Australia (SIA) advised that it supported the

general concept of an integrated regulatory framework for Australia's financial markets, clearing and settlement facilities and financial service providers, as recommended by the Financial System Inquiry. The Association of Financial Advisers (AFA) supported the general thrust of the draft Bill, advising that the change to one regulator and one set of regulatory rules was especially important. The National Council of Financial Adviser Associations (NCFAA) also supported the thrust of the draft Bill and was pleased to note that many of the issues which it previously raised had been now adequately covered.

3.9 BT Funds Management Limited offered congratulations on the reform and rationalisation of the financial services industry and in particular on the initiatives for a single licensing and disclosure regime. Morgan Stanley Dean Witter (MSDW) advised that it supported the thrust of the Financial System Inquiry; the draft Bill would effectively implement many of the recommendations of that Inquiry. In particular, MSDW supported the initiatives in the draft Bill which:

- promote the consistency of regulation of similar financial products;
- increase the flexibility of the regulatory structure to ensure that it is better able to cater for change, especially technological change, within the financial system; and
- remove unnecessary and burdensome regulatory requirements which add little to consumer protection and impose significant compliance costs on industry participants.

3.10 The Deutsche Bank Group advised that it supported the reform program and the positive changes which are being made to the financial sector and markets. The Credit Union Services Corporation (Australia) Limited (CUSCAL) supported the policy objectives of the draft Bill, including a single licensing framework, better consumer protection and a better informed financial services marketplace.

3.11 The Australian Conservation Foundation (ACF) welcomed efforts to put in place a regulatory framework for the Australian financial services industry, in particular the uniform disclosure obligations for financial products provided to retail clients. The Finance Sector Union of Australia (FSU) submitted that it generally supported the obligations which the draft Bill placed upon licensees to ensure that competence, skills and experience to provide financial services are maintained and that representatives are adequately trained and competent.

Policy and drafting clarification of aspects of the draft Bill

3.12 As noted above, almost all of the submissions received by the Committee supported the general thrust of the draft Bill. The submissions, however, almost without exception, included detailed suggestions for clarification of provisions of the draft Bill in relation to its intended effect and to drafting. In this context the Committee noted the extensive consultation process organised by the Treasury in the development of the draft Bill. The process started in December 1997 with the release

of an initial position paper for public comment. In March 1999 a consultation paper sought reaction to a more detailed outline of the proposals. The draft Bill and an associated commentary was issued in February 2000 for comment by interested parties. In April 2000 Treasury organised three roundtables with thirty stakeholder representatives. Treasury has also had a considerable number of direct meetings with interested parties since the release of the draft Bill.

3.13 Treasury officials advised the committee that generally speaking reaction to the draft Bill had been positive, with most comments relating to technical finetuning and drafting. In relation to these, however, the officials advised that definitional comments could have a substantial effect on whether a particular activity came within the ambit of the draft Bill.

3.14 The Treasury officials also advised that it would not be appropriate to announce any changes to the draft Bill or of policy intention resulting from their consultations, in advance of any statement by the Minister. The officials stated, however, that in general terms the final Bill, which it was intended to introduce into Parliament early in the spring sittings, would not be substantially different from the draft Bill. This was because the comments received by Treasury were less to do with fundamental policy issues and more to do with the drafting of individual provisions, whether particular activities are included within these provisions and the practical implications of this. The Government's response to the concerns and comments received during the public consultation process would be the final Bill as introduced into Parliament. This response would be determined by considering all comments in the light of whether the present drafting is appropriate to achieve what was intended. If not, then the drafting of the final Bill would be changed.

3.15 The 67 submissions received by the Committee were well over 1,000 pages. As mentioned earlier, most of these were extremely detailed, consisting mainly of comments on the drafting of specific provisions and the possible effect of these on the individual stakeholder. It would not be possible for the Committee to address all of these technical drafting concerns, but it accepts that the Treasury has done so and that the final Bill will clarify any provisions to ensure that the practical effect of the legislation will mirror its policy intentions. The Committee has decided, therefore, to highlight a number of the more important broad issues raised by the draft Bill where it appears that changes could be made to its intent and drafting. The six issues chosen are not intended to be an exhaustive survey of all unintended consequences or possible anomalies in the draft Bill. Rather they were chosen to illustrate the different interests of stakeholders across the whole spectrum of the financial services sector and the need to ensure that drafting should precisely reflect policy intent. The Committee has also decided to report as early as possible, so that the Government's response to its recommendations can be included in the final Bill.