

CHAPTER FIVE

CONCLUSIONS AND RECOMMENDATIONS

Final Bill should be passed

5.1 The Committee concludes that there is general support for the broad thrust of the draft Bill. Almost all submissions, however, included detailed comments on individual provisions in relation to their application or technical drafting. The Treasury has assured the Committee that all of these concerns will be taken into account in the final Bill, which would include drafting changes to ensure that the Bill, as it comes before Parliament, precisely expresses its policy intent. Therefore, subject to the Committee's further recommendations set out below, the Committee **recommends** that the draft Bill proceed as the basis for the final Bill to be introduced into Parliament.

Adverse effects of the draft Bill on the delivery of financial services in rural and regional areas

5.2 The Committee accepts the overwhelming and unanimous evidence presented by the regional banks, building societies, credit unions and the major banks that, as presently drafted, the inclusion of basic banking products within the ambit of the draft Bill imposes requirements on approved deposit taking institutions which would have a devastating effect on the level of services offered by agencies of these institutions in regional areas. In many cases these institutions would be forced to terminate their rural agencies, which would have an unacceptable effect on the local community. Indeed, in some cases the withdrawal of the agency would mean that the business operating the agency would not be viable.

5.3 Moreover, the Committee also recognises that the disclosure and training requirements associated with more complex financial products - which are by nature investment products - are inappropriate for basic banking products where there have been few concerns expressed about inadequate consumer protection. Furthermore, the Committee recognises that such requirements on basic banking products are not aligned with the express intent of the Wallis Inquiry on this matter.

5.4 Accordingly, in order to solve this problem, the Committee **recommends** that the draft Bill be amended as follows :

AMENDMENT TO DEFINITION OF FINANCIAL PRODUCT

A facility or arrangement provided by an authorised deposit taking institution within the meaning of the Banking Act 1959 (Cth) shall not be taken to be a financial product where:

- (1)
 - (a) the facility or arrangement is a deposit of funds received in the course of banking business; and
 - (b) the amount of funds held on deposit cannot, under the terms and conditions governing the facility or arrangement, diminish other than as a consequence of one or more of:
 - (i) a withdrawal or transfer on the instructions or by the authority of the depositor;
 - (ii) a debit authorised by the depositor for the payment of fees or charges; or
 - (iii) a payment of government charges, or duties, on receipts or withdrawals; or
 - (iv) the exercise of any right to combine accounts or any right pursuant to a contract, lien or charge arising by operation of any Act, law or custom; or
 - (v) compliance with a court order or statutory obligation; and
 - (c) the amount of any return to the depositor, or the interest rate for calculating any return to the depositor, is fixed under the terms and conditions governing the facility or arrangement;

OR

- (2) under the terms and conditions governing the facility or arrangement, the funds held on deposit may be withdrawn upon the demand, or under the authority, of the depositor;

OR

- (3) the facility or arrangement provides a means of payment by which funds are drawn or transferred from, or paid to, a facility or arrangement described in (1) or (2).

The information economy and e-commerce

5.5 The Committee concluded that the e-commerce and other issues, particularly the issue of advice on non-financial products, raised by Telstra have merit and **recommends** that they should be addressed directly in the final Bill if appropriate or in the regulations or policy statements. In relation to the issues of non-financial products the Committee **recommends** that the draft Bill be amended as follows:

[insert at 766B (6)]

For the purposes of this section, information that:

- (a) is provided to a person in relation to the provision of a good or service that is not a financial product; and*
- (b) is not provided wholly or predominantly in relation to the provision of a financial product;*

is not financial product advice.

Australia as an international financial centre

5.6 The Committee concluded that the Australian Stock Exchange (ASX) evidence raised important issues relating to the international competitive position of Australia and its role as a global financial centre. The Committee accepts the ASX advice that its concerns are vital to these matters. In this context the Committee noted that a stated purpose of the financial sector reform process was to strengthen these areas.

5.7 Accordingly, the Committee **recommends** that the final Bill or the regulations address the concerns of the ASX. In particular, the Committee **recommends** that the transitional and administrative measures suggested by the ASX be adopted.

The impact on small business

5.8 The Committee concluded that the disclosure of commissions on risk insurance products has the potential to impact unfairly on small business. The Committee supports retaining the requirement that persons selling these products are required to indicate on the Statement of Advice that they will receive a commission. However the Committee **recommends** that the requirement that a quantum be disclosed on risk insurance products (where return is unaffected by the level of commission) be removed.

Co-regulation and the position of professional bodies

5.9 The committee concluded that the concerns expressed by the Law Institute of Victoria (LIV) and the Accounting Bodies in relation to their members are valid. The Committee **recommends** that the final Bill or the regulations should clarify the position. In relation to the broader issue of co-regulation and professional bodies, the Committee **recommends** that the co-regulation model be expanded to include as wide a range as possible of other areas of the financial services sector.

Proper recognition of corporate structures and the retail/wholesale client definition

5.10 The Committee concluded that the concerns expressed by the Commonwealth Bank, the Australian Bankers' Association and others about the failure of the draft Bill to recognise that a typical Australian financial corporate structure was a conglomerate, are valid. The Committee believes that no conglomerate should be exposed to additional costs, disruption or especially capital gains tax, as a result of this apparent deficiency in the draft Bill. The Committee therefore **recommends** that the final Bill expressly provide exemptions in relation to the operation of related entities within a conglomerate. Anomalies in the distinction between wholesale and retail clients should also be addressed.

Start date of the bill

5.11 Throughout the many submissions received by the Committee the issue of starting date was continually raised with a number of organisations requesting a start date of 1 July 2001. Given the scope, magnitude and significance of the bill the Committee **recommends** that consideration be given to the timing concerns expressed by those who have made submissions to the Committee's inquiry.

Senator Grant Chapman
Chairman