

Parliament of the Commonwealth of Australia

**REPORT ON THE REGULATIONS AND ASIC POLICY  
STATEMENTS MADE UNDER THE *FINANCIAL  
SERVICES REFORM ACT 2001***

**PARLIAMENTARY JOINT COMMITTEE ON  
CORPORATIONS AND FINANCIAL SERVICES**

October 2002

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# **MEMBERSHIP OF THE COMMITTEE**

Senator Grant Chapman (Chair)

Mr Alan Griffin MP (Deputy Chair to 18 September 2002)

Senator George Brandis

Senator Stephen Conroy

Senator Andrew Murray

Senator Penny Wong (Deputy Chair from 18 September 2002)

Mr Anthony Byrne MP

Mr Steven Ciobo MP

Mr Gregory Hunt MP

Mr Stewart McArthur MP

## **Committee Staff**

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## **DUTIES OF THE COMMITTEE**

Section 243 of the *Australian Securities and Investments Commission Act 2001* sets out the duties of the Committee as follows:

The Parliamentary Committee's duties are:

- (a) to inquire into, and report to both Houses on:
  - (i) activities of ASIC or the Panel, or matters connected with such activities, to which, in the Parliamentary Committee's opinion, the Parliament's attention should be directed; or
  - (ii) the operation of the corporations legislation (other than the excluded provisions), or of any other law of the Commonwealth, of a State or Territory or of a foreign country that appears to the Parliamentary Committee to affect significantly the operation of the corporations legislation (other than the excluded provisions); and
- (b) to examine each annual report that is prepared by a body established by this Act and of which a copy has been laid before a House, and to report to both Houses on matters that appear in, or arise out of, that annual report and to which, in the Parliamentary Committee's opinion, the Parliament's attention should be directed; and
- (c) to inquire into any question in connection with its duties that is referred to it by a House, and to report to that House on that question.



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## ACRONYMS AND ABBREVIATIONS

AAMI	Australian Associated Motor Insurers Limited
AAPBS	Australian Association of Permanent Building Societies
ABA	Australian Bankers' Association
ACA	Australian Consumers' Association
ADI	Authorised deposit-taking institution
AFA	Association of Financial Advisers
AFC	Australian Finance Conference
ASFA	The Association of Superannuation Funds of Australia Limited
ASIC	Australian Securities and Investments Commission
BDP	Basic deposit product
Boutique Group	Boutique Financial Planning Principals Group Inc
CPAA	CPA Australia
CP Act	<i>Financial Services Reform (Consequential Provisions) Act 2001</i>
CSA	Corporate Superannuation Association Inc
CUSCAL	Credit Union Services Corporation (Australia) Limited
EDR scheme	External dispute resolution scheme
FPA	Financial Planning Association of Australia
FSRA	<i>Financial Services Reform Act 2001</i>
IAG	Insurance Australia Group
IABA	<i>Insurance (Agents and Brokers) Act 1984</i>
IBSA	International Banks and Securities Association of Australia
ICAA	The Institute of Chartered Accountants in Australia
IFSA	Investment and Financial Services Association
NCP facility	Non-cash payment facility
NTAA	National Tax & Accountants' Association

NIA	National Institute of Accountants
NIBA	National Insurance Brokers' Association of Australia
OMC	Ongoing management charge
PDS	Product Disclosure Statement
PS 146	ASIC Policy Statement 146: Licensing: Training of financial product advisers
PS 164	ASIC Policy Statement 164: Licensing: Organisational capacities
PS 165	ASIC Policy Statement 165: Licensing: Internal and external dispute resolution
PTAL	Perpetual Trustees Australia Limited
SCT	Superannuation Complaints Tribunal
TCAA	Trustees Corporations Association of Australia
TIA	Taxation Institute of Australia
Wallis Inquiry	Financial System Inquiry (Final Report published in March 1997.)

## **List of Recommendations**

Recommendation p. 10

The Committee therefore recommends that the Department of the Treasury conduct the necessary investigations into the problems identified in paragraph 3.6 of Chapter 3, with a view to making the appropriate legislative amendments.

Recommendation p. 25

The Committee, for the third time, recommends that the Government, either by amending the Corporations Act or regulations, should remove basic deposit products and related non-cash payment facilities from the definition of ‘financial product’.

Recommendation p. 26

The Committee recommends that ASIC urgently review the training requirements in PS 146 so they take into account the special features of basic deposit products and related non-cash payment facilities.

Recommendation p. 26

In addition, the Committee recommends that ASIC consider amending PS 146, as far as possible—and without compromising consumer protection—to:

- provide a framework for more cost-effective reviews of ADIs’ current in-house training requirements;
- ensure training costs—whether in-house or external—are more proportionate to envisaged consumer protection gains; and
- cater for the training challenges presented by agencies and small branches, particularly in regional and remote areas.

Recommendation p. 36

The Committee recommends that the Government amend the Corporations Act or regulation 7.1.29 to provide a licensing exemption for accountants in similar terms to the exemption provided to lawyers in paragraphs 766B(5)(a) and (b) of the Act. The exemption should also make it clear that it will not apply where the exempted activity attracts payment of commission or other benefit from a third party not connected with the client.

Recommendation p. 44

The Committee recommends that:

- ASIC and the Department of the Treasury work together to continue the momentum generated by ASIC's initial investigations into the disclosure of fees and charges for investment products<sup>1</sup> to produce guidelines for a leading-edge, consumer-friendly superannuation fee disclosure model that will facilitate comparability of funds; and
- upon the development of an appropriate disclosure model, ASIC should publish details in a guide for use by the superannuation industry. ASIC should also alert consumers to the advantages of the model and provide working notes.

Recommendation pp. 47-48

The Committee recommends that regulations be made to continue the existing provisions in the *Insurance (Agents and Brokers) Act 1984* with application to wholesale clients in addition to retail clients regarding:

- dealing with unauthorised foreign insurers;
- providing details of the insurer;
- disclosing an association with an insurer; and
- disclosing binder arrangements with insurers.

Recommendation p. 48

The Committee also recommends that ASIC be empowered to collect information about licensees dealing with unauthorised foreign insurers as was the case under the *Insurance (Agents and Brokers) Act 1984*.

Recommendation p. 51

The Committee recommends that regulation 7.6.01(1)(n) be reviewed as soon as possible with the objective of resolving the difficulties involved in its practical application and so make it consistent with the regulatory objective of enhancing efficiency in the provision of financial product

Recommendation p. 54

The Committee urges ASIC to reconsider its timetable with a view to expediting its policy formulation for the regulation of cross-border financial services following the consultation process.

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1 These initial investigations refer to Professor Ramsay's report into fees and charges which ASIC commissioned: *Disclosure of fees and charges in managed investments, review of current Australian requirements and options for reform*, released on 25 September 2002.

Recommendation p. 56

The Committee recommends that the Department of the Treasury and ASIC consult urgently with relevant stakeholders to determine how the licensing uncertainties for corporate and industry superannuation funds can be resolved most effectively.

Recommendation p. 59

The Committee recommends that the Department of the Treasury examine relevant legislation to determine whether the scope of the SCT's jurisdiction can be clearly delineated and, if so, this should be done for the benefit of the superannuation industry.

Recommendation p. 60

The Committee recommends that the Department of the Treasury make regulations to refine the scope of the definition of custodial and depository services.

Recommendation p. 62

The Committee recommends joint action at Commonwealth and State level to ban spread betting on financial markets. At Commonwealth level, this may require an amendment to the definition of 'derivative'. Such an amendment should not inhibit the capacity to invest in genuine investment products. At the State level, it would require governments to ensure that this activity comes under their definition of gaming and is denied a licence.

Recommendation p. 63

The Committee recommends that the Government set up an appropriate mechanism whereby ASIC may refer an application for an Australian financial services licence for a decision regarding whether or not the licence should be granted (providing the applicant meets licensing requirements in all other respects) in circumstances where:

- a) ASIC has reason to believe that granting the licence would not be consistent with the objects of Chapter 7 of the Corporations Act particularly those relating to the enhancement of consumer protection and confidence; and
- b) ASIC is satisfied that the applicant otherwise meets or is capable of meeting the requirements in the Corporations Act for granting of the licence.

Recommendation pp. 71–72

The Government should amend the FSR legislation urgently to ensure that its detrimental impact on the position of insurance multi-agents is ameliorated and their existing rights preserved. In particular, policy and legislation should provide for:

- the protection of multi-agents from arbitrary termination of their rights as multi-agents under contracts entered into under the Corporations Act before the commencement of the FSR legislation;
- ways in which the post-FSR trend away from cross-endorsements can be reversed and insurance licensees encouraged to approve cross-endorsements;
- the prescription of a reasonable period during which licensees must remit monies (including commissions) owing to insurance multi-agents;
- ASIC's exercise of its powers under section 915H of the Corporations Act to protect the position of insurance multi-agents (as authorised representatives) should their licensee's licence be suspended or cancelled;
- the development of a mechanism (for example, a trust fund) to protect payments owed to a multi-agent where the multi-agent's principal becomes insolvent or bankrupt or where such is threatened ('the insolvency event') and regardless of whether the payments at the time of the insolvency event:
  - are owed directly to the multi-agent by the principal; or
  - are payable to the principal by a product provider and in the normal course would be drawn upon wholly or in part for payment by the principal to the multi-agent.

The Committee recommends legislative intervention to achieve the above objectives. However, where the Department of the Treasury and ASIC are able to facilitate non-legislative initiatives within the relevant insurance industry sector to further the interests of insurance multi-agents, the Committee would strongly encourage this.

Recommendation p. 76

The Committee recommends that the Government review the telephone monitoring provisions with a view to removing them from the Corporations Act altogether.