

CHAPTER 1

Background to the inquiry

1.1 The *Financial Services Reform Act 2001* (the FSR Act) introduced significant reforms into the *Corporations Act 2001* and was passed by Parliament on 28 August 2001. However, it was not until 11 March 2002 that most of the reforms commenced.

1.2 The FSR Act set up an integrated regulatory framework for the financial services industry covering licensing, disclosure and conduct requirements of financial service providers, financial product disclosure arrangements and the licensing of financial markets and clearing and settlement facilities.

1.3 For those financial sector participants affected by the new legislation, the *Financial Services Reform (Consequential Provisions) Act 2001* (the CP Act) set out detailed arrangements for their transition from the old to the new regime. Under the CP Act, participants were generally allowed a maximum of two years to do this.

1.4 The FSR Act was drafted to provide the basic principles for uniform regulation across the financial services sector. It was intended that regulations made under the FSR Act would provide the detail for the practical application of the legislation. In particular, the regulations would allow for flexibility in application where, for example, exemptions from or variations to licensing or disclosure requirements might be appropriate for particular activities or entities.

1.5 In early August 2001, the Department of the Treasury released the first of several tranches of draft regulations that would be refined through public consultation over the ensuing months. These regulations¹ provided much of the machinery for implementation of the new regulatory regime and commenced on 11 March 2002. The Department has continued to make new regulations as areas requiring adjustment are identified.

1.6 The Australian Securities & Investments Commission (ASIC) is the administrator and main regulatory body responsible for implementation of the new regime. Through an extensive consultation process beginning in April 2001, ASIC formulated policy statements and guidance papers to elucidate the general principles under which ASIC proposed to exercise the discretionary powers conferred by the new regime. In tandem with the development of its policy statements, ASIC conducted nationwide ‘ASIC Speaks’ seminars on the new legislation and placed comprehensive ‘Question and Answer’ information on its website which continues to be updated.

1 In consolidated form, the regulations are the Corporations Regulations 2001.

1.7 On 28 November 2001, ASIC released a guidance paper on financial product advice and dealing, and six policy statements concerning licensing, disclosure and transitional arrangements. Further process-related publications were issued over the next few months.

1.8 On 20 March 2002, the Committee resolved to inquire into and report on the Corporations Regulations 2001 (the Corporations Regulations) and ASIC's policy statements to ascertain the extent to which they were consistent with the stated objectives and principles of the FSR Act. The Committee advertised nationally on 6 April 2001 inviting submissions from interested parties.

1.9 Written submissions totalled 40. There were an additional 7 supplementary submissions. A list of these submissions is in Appendix 1 to this report.

1.10 Public hearings were held in Melbourne on 23 May 2002 and in Sydney on 11 and 12 July 2002, and on 7 August 2002. A list of witnesses who appeared before the Committee is in Appendix 2.

1.11 All submissions and the Hansard of the Committee's hearings are tabled with this report. The Hansard of the hearings is available at the Parliamentary website (www.aph.gov.au/hansard/joint/committee/j-corps-fs.htm).

1.12 The Committee acknowledges the assistance of those who made submissions or who appeared as witnesses.