

CHAPTER 3

Overview of submissions

1.1 The terms of reference for this inquiry, namely, to ascertain the extent to which the regulations and ASIC policy statements are consistent with the objectives and principles of the *Financial Services Reform Act 2001* (FSR Act), are broadly framed.

1.2 It is consequently not surprising that issues raised in evidence covered a wide range of concerns.

1.3 Several issues were outside this inquiry's terms of reference because they related only to provisions in the *Corporations Act 2001* (the Corporations Act) and had no nexus with the regulations or ASIC's policy statements. A number of the more complex issues are listed at the end of this report.

1.4 The main concerns raised within the inquiry's terms of reference generally fell into three categories.

1.5 The first category related to less complex drafting inconsistencies between provisions in the Corporations Act and the regulations. The Committee understands that the Department of the Treasury is addressing these types of concerns as they are identified.

1.6 The second category pointed to more substantive difficulties arising from the regulations including:

- a) inconsistencies in the interaction between subsection 1017F(6) and regulation 7.9.61D regarding standing facilities and the confirmation of transactions;
- b) the absence of a definition of 'eligible successor fund' in regulation 7.9.61D;
- c) uncertainty about the ambit of regulation 7.9.62 and whether the exemptions it provided allowed for the crediting of negative interest in some circumstances without requiring confirmation under section 1017F;
- d) whether it was appropriate that the allocation prices—as opposed to the redemption price—of an interest in a managed investment should be paid to a 'cooling off' investor under regulation 7.9.67; and
- e) whether it was appropriate that regulation 7.9.68 should deem an employer-sponsor to be a client for the purposes of 1019A(3).

1.7 The Committee accepts that these concerns require further examination. However, as they generally involve technical drafting issues or otherwise policy matters which are somewhat confined in their scope, the Committee considers it would be more appropriate for the Department of the Treasury to investigate these.

Recommendation

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

1.8 Finally, the third category comprised concerns appearing to represent more serious departures from the Corporations Act's principles and objectives. These included, for example, issues relating to:

- a) ASIC's training requirements in Policy Statement 146: *Licensing: Training of financial product advisers* as they apply to front-counter representatives of authorised deposit-taking institutions (ADIs);
- b) the licensing of accountants and regulation 7.1.29;
- c) Schedule 10B of the regulations and disclosure requirements regarding the ongoing management charge (for superannuation funds);
- d) ASIC's licensing requirements, particularly in Policy Statement 164: *Licensing: Organisational capacities* and Policy Statement 165: *Licensing: Internal and external dispute resolution*, and the impact on small business;
- e) regulation 7.6.01(n) and the restriction of the licensing exemption for offshore service providers to 'dealing'; and
- f) ASIC's approach to its assessment of overseas regulatory authorities to accommodate the provision of financial services to wholesale clients by offshore providers.

1.9 The Committee believes these issues must be addressed because of their potentially substantial impact on the financial services industry generally or on large sectors within the industry. In several cases particularly, licensing and disclosure concerns were raised that the Committee considers require urgent resolution. The focus of the Committee's inquiry has consequently been on these issues. The Committee's findings are discussed in the following chapters.

1.10 In addition, the Committee touched on two matters not strictly within its terms of reference. The first relates to the impact of the FSR legislation on small business, particularly in the context of the operations of insurance multi-agents. The Committee examined small business issues at its two earlier inquiries into financial services reform and is concerned that these issues are still being raised.

The second matter concerns whether it is appropriate for the FSR regime to accommodate the licensing of persons to deal in and advise on spread betting activities. The Committee believes the issues involving this matter call into question whether the FSR Act is meeting its consumer protection objectives.

