

CHAPTER 1

THE COMMITTEE'S INQUIRY

Review of the Managed Investments Act

1.1 On 6 August 2001 the then Minister for Financial Services and Regulation, the Hon. Joe Hockey MP, announced that Mr Malcolm Turnbull would conduct a review of the *Managed Investments Act 1998*. The review was to report to the Minister by 3 December 2001, within the six months mandated for the report following the triennial anniversary of the Act.

1.2 The terms of reference for the review determined it should evaluate key elements and objectives of the Act, principally to assess whether it had secured better investor protection, a stronger compliance regime and was more cost effective. The terms of reference required that:

The review would evaluate the effectiveness of the arrangements for the regulation of managed investments introduced, contained in Chapter 5C of the *Corporations Act 2001*, to determine whether:

- the arrangements have delivered benefits in terms of:
 - better protection of investors' investments;
 - greater certainty as to the responsibilities, obligations and liability of scheme operators (known as 'responsible entities' under the legislation);
 - the rights of investors in managed investment schemes; and
 - reducing the costs of investing in managed investment schemes.
- the arrangements have strengthened compliance practices, procedures and awareness amongst responsible entities and others involved in the managed investments industry;
- the arrangements cater for the diversity of managed investments, including consideration of the way in which the legislation is administered by the Australian Securities and Investments Commission; and
- refinements could be made (whether requiring legislative amendment or not) to enable the arrangements to operate more efficiently and effectively, while not unnecessarily detracting from the protection afforded to investors.

1.3 The Parliamentary Secretary to the Treasurer, Senator the Hon. Ian Campbell, released the *Review of the Managed Investments Act 1998* (Turnbull Review) on 19 December 2001. Announcing the release, Senator Campbell stated that the findings of the Turnbull Review indicated that, overall, the regulatory arrangements for the managed investments industry were working effectively.¹

1 Review of the *Managed Investments Act 1998*, Press Release, 19 December 2001.

1.4 While the scope of the terms of reference were broad, the Turnbull Review nevertheless focussed on operational and technical implications of provisions enshrined in the Act. As the Executive Summary explained, the review did not set out to re-examine the case for the single responsible entity (RE) arrangements in comparison to the previous dual-party structure for managed investments. Instead, it sought to evaluate whether the new arrangements had proved to be efficient, cost-effective and accountable.²

1.5 The review also acknowledged its findings were constrained because a large part of the industry was still in transition to the new regime until well into 2000. This made it difficult to determine with any degree of certainty whether or not the new arrangements had reduced risk or decreased costs compared with the former dual-party structure.

1.6 Some issues addressed in the review were subsequently referred for clarification to the Department of the Treasury for public consultation. The Department released the *Managed Investments Act 1998* Consultation Paper on 29 May 2002, and invited responses by the extended date of 17 June 2002. The results of the consultation have not yet been published.

Initiation and conduct of the Committee's inquiry

1.7 On 20 March 2002, the Committee decided to inquire into the Turnbull Review and adopted the following terms of reference for its inquiry:

To assess the findings of the review by Mr Malcolm Turnbull of the *Managed Investments Act 1998*, with particular regard to:

- a) the risks to investors in the current arrangements, taking into account the extent to which any lack of independent checks and balances may have contributed to recent financial failures in Australia and overseas;
- b) global best practice in investor protection of managed funds;
- c) the acknowledgment by the review that, under section 1325 of the *Corporations Act 2001*, a number of parties may be held accountable for member losses;
- d) the rejection by the review of proposals which might conflict with the concept of having only a single entity responsible in the event of member losses;
- e) the review conclusion that scheme operators not have the option of appointing an external corporate entity for compliance purposes, pending ASIC monitoring of compliance performance;
- f) the reasons why the strong growth in managed funds has not resulted in a significant reduction in fees, and
- g) any other relevant matters.

2 Turnbull Review, pp. 14–15.

1.8 This inquiry follows that into the Managed Investments Bill 1997, which was conducted by this Committee as the Joint Statutory Committee on Corporations and Securities in early 1998.

1.9 The Committee's inquiry into the Turnbull Review was advertised in two national newspapers, the *Australian* and the *Australian Financial Review*, on 6 April 2002. Details were also placed on the Committee's web site and included the terms of reference for the inquiry.

1.10 Written submissions were invited from interested parties to be lodged by 3 May 2002. In addition, the Committee contacted those organisations responding to the Turnbull Review to ascertain their views on the effectiveness of the review and the appropriateness of its findings. A total of 12 submissions, plus two supplementary submissions, was received. A list of submissions is at **Appendix 1**.

1.11 The Committee held public hearings for industry representatives on 11 and 12 July 2002 in Sydney. The Committee also heard from representatives from the Department of the Treasury and from the Australian Securities and Investments Commission (ASIC) in Sydney on 7 August 2002. A list of witnesses who appeared before the Committee is at **Appendix 2**.

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

