Parliamentary Joint Committee on Corporations and Financial Services

Corporations Legislation Amendment (Simpler Regulatory System) Bill 2007 and related bills

June 2007

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Duties of the Committee

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

(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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Chapter 1

Introduction

Conduct of the inquiry

1.1 On 9 May 2007 the Parliamentary Joint Committee on Corporations and Financial Services resolved to inquire into the Corporations Legislation Amendment (Simpler Regulatory System) Bill 2007 upon its introduction in the House of Representatives. A package of three bills was subsequently introduced in the House on 24 May 2007. [1]

1.2 The inquiry was advertised in the *Australian* newspaper and on the internet. The committee agreed to a closing date for submissions of 6 June 2007, and a reporting date of 19 June 2007 to enable consideration of the bill by the Parliament in the June sittings. A list of submissions appears at Appendix 1.

1.3 The committee held one public hearing in Canberra on 13 June 2007. Witnesses who appeared before the committee are listed at Appendix 2. The Hansard transcript of the hearing is available at http://www.aph.gov.au/hansard.

Background and purpose of the bill

1.4 The proposals contained in the bills include the latest round of Financial Services Reform (FSR) refinements. The bills will implement most of the proposals included in the Corporate and Financial Services Regulation Review *Proposals Paper* released by the Parliamentary Secretary to the Treasurer, the Hon Chris Pearce MP, on 16 November 2006.[2] The paper contained 35 detailed proposals designed to strengthen consumer protection, minimise compliance costs for business, remove regulatory overlap, facilitate access to capital and enhance the accountability of regulators.

1.5 The government invited public comment on the proposals paper and received over 100 submissions from industry organisations, consumer representatives, academics and individual practitioners. It also consulted widely with industry and consumer organisations on the issues raised in the paper. The overall response to the proposals was positive.

1.6 There are four key objectives of the bills, including

- improving access to financial advice by reducing costs and enabling financial service providers to communicate more effectively;

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1 Corporations Legislation Amendment (Simpler Regulatory System) Bill 2007; Corporations (Fees) Amendment Bill 2007; Corporations (Review Fees) Amendment Bill 2007

2 Corporate and Financial Services Regulation Review, *Proposals Paper*, November 2006

- enhancing investor protection by encouraging greater employee ownership of companies and providing opportunities for suitable investors to engage in more sophisticated financial investments;
- improving business efficiency; and
- reducing compliance costs. [3]

1.7 The Simpler Regulatory System Bill includes the government's response to a number of recommendations of the *Rethinking Regulation* report of the Banks Regulation Taskforce of January 2006.[4] This has resulted in initiatives relating to the use of the internet for financial reporting, financial reporting thresholds for proprietary companies, reporting requirements for executive remuneration, and fundraising requirements for employee share schemes.

1.8 Due to the short time-frame for this inquiry, evidence received by the committee focused on a narrow range of issues that are of continuing interest to industry stakeholders. This report in particular reflects these concerns. The remainder of this report is divided into two chapters. Chapter 2 describes the main provisions of the bill that relate to financial services regulation, company reporting obligations, auditor independence, corporate governance, fundraising, takeovers and compliance. Chapter 3 examines a number of issues raised in evidence, in particular industry concerns over the financial services regulation provisions relating to statements of advice, the threshold for requiring a statement of advice and the definition of sophisticated investor.

3 'Pearce delivers consumer benefits & drives reduction in red tape', Media Release No. 021, 24 May 2007

4 *Rethinking Regulation: Report of the Taskforce on Reducing Regulatory Burdens on Business*, January 2006

Chapter 2

Summary of main provisions

Financial services regulation

2.1 One of the primary objectives of the bill is to reduce the regulatory burden on providers of financial services, increase access to financial advice and make improvements to various other aspects of the financial services regulatory framework.

Statements of Advice

2.2 In general, a statement of advice (SoA) must be provided where a person seeks financial advice. Some financial advisers provide a free initial consultation at which general investment options may be discussed but no specific products are recommended. Such discussions would generally constitute the provision of personal advice under the Corporations Act, invoking a requirement on the part of the adviser to provide a SoA to the client. The rigorous requirement to produce a SoA under these circumstances potentially distorts the provision of client focused advice. For example, advisers may consider that the cost of producing a SoA is not economic in relation to a free initial consultation where a client has a relatively small amount of money to invest. Where a financial adviser recommends that a person continue to hold an existing product, such advice may constitute personal advice even if the client is advised to take no action and the adviser receives no additional remuneration. This may result in consumers being unable to access general strategic financial advice.

2.3 The bill provides an exemption to the requirement to supply a SoA in two circumstances. The first is where there is no recommendation to buy or sell in relation to a particular financial product, and no remuneration to the provider of the advice. The second is where the amount to which the advice relates is under a prescribed threshold of $15,000 the amount at which it becomes commercially viable for an adviser to provide advice, based on recovering the cost of preparing a SoA. This measure is directed at consumers who wish to obtain financial advice in relation to a relatively small investment amount and are unable to access or afford it because of its relatively high cost.

2.4 The bill will limit the application of the exemption in relation to superannuation advice. Where the aim of advice is to consolidate or supplement a superannuation fund of which the person is an existing member, the exemption will apply. Similar arrangements will apply to advice regarding retirement savings accounts. However, when a SoA is dispensed with a Record of Advice (RoA) must be kept, which will disclose information relating to remuneration, interests and associations of the adviser.

Financial Services Guide

2.5 Where advice is given to a client, the advisor would normally be expected to provide the client with a Financial Services Guide (FSG) that describes the services the licensee provides, information about remuneration and certain other matters. An existing provision exempts the advising entity from supplying a FSG if the general advice is provided in a public forum.[1]

2.6 The bill aims to resolve this lack of clarity by providing that a FSG will not be required at a forum where ten or more retail clients attend, whether or not it is open to any person to attend the forum.

Retail/wholesale client distinction

2.7 The Corporations Act[2] provides that a financial product or service is provided to a client in a retail capacity except in certain circumstances, and contains a number of tests to determine whether a client is considered retail or wholesale. For example, when dealing in financial products (other than general insurance, superannuation and retirement savings account products), if the individual provides evidence that they have net assets of at least $2.5 million or gross income in the last two financial years of at least $250,000 a year, then they may be considered wholesale investors.[3]

2.8 Although existing tests adequately address the circumstances of many investors, there are some investors who are defined in the legislation as retail investors and are unable to access wholesale status. For reasons such as experience or professional training, these investors may wish to be treated as wholesale investors. Such investors may consider retail disclosure an unnecessary hindrance to activities they well understand and would prefer to access wholesale investor status. They may also wish to access wholesale-only products.

2.9 The bill makes provision for an adviser to certify certain clients as wholesale investors, exempting them from additional disclosure requirements. An investor may be treated as a wholesale client if they satisfy an adviser that they are adequately experienced to be considered a wholesale investor. The licensee would have to document the reasons for his conclusion. The investor would need to acknowledge the effect of being treated as a wholesale client.

Cross-endorsement

2.10 Authorised advisers may act for a number of financial services licensees. However, each licensee must consent to the agent being the authorised representative of each of the other licensees. This is commonly referred to as cross-endorsement.

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1 subsection 941C(4).

2 subsection 761G(1)

3 paragraph 761G(7)(c) and Corporations Regulation 7.1.28

2.11 The cross-endorsement arrangements expose the endorsing licensees to joint responsibility for the activities of cross-endorsed authorised advisers that are authorised to provide the same class of financial service. One class of financial service is advice in relation to general insurance.

2.12 Accordingly, two or more licensees may be responsible for advice provided by an agent, even if the advice relates to a type of general insurance that the agent only handles on behalf of one of the two issuers. This means that, for example, an authorised representative of Licensee A who only handles motor vehicle insurance could expose Licensee A to liability in respect of, say, conduct in relation to advice on travel insurance products offered by the authorised representative on behalf of Licensee B.

Product Disclosure Statement notices

2.13 The bill includes a revised approach for lodging 'in use' notices with ASIC. The approach is an on-line reporting mechanism for product issuers to advise ASIC of matters relating to Product Disclosure Statement (PDS) distribution.

2.14 Product Disclosure Statements contain key information regarding a financial product sold to investors. For most classes of financial product, the Corporations Act requires the product issuer to lodge an 'in use' notice with ASIC within five business days of the first use of the PDS.[4] This requirement ensures ASIC is aware of all products being promoted in the market.

2.15 ASIC received approximately 12,000 in use notices in 2004. However, due to the current manual lodgement mechanism, the notice does not fully serve its regulatory purpose as it does not provide adequate means to determine when a PDS is no longer current, for example when it is out of date and/or when a product is withdrawn from the market.

2.16 The bill requires the person responsible for the PDS to lodge a notice with ASIC within five business days of:

- the first use of the PDS;
- a change to the fees and charges set out in the document; and
- cessation of the use of the document.

2.17 The bill allows the notice to be lodged electronically, commencing 1 July 2008. It requires that it be lodged electronically from 1 January 2009.

ASIC and conflict of interest

2.18 This provision is designed to remedy perceived conflicts of interest between market operators acting as both regulator of a market, and controller of interests in

4 section 1015D

companies which they oversee. The bill provides for the market operator's responsibilities in relation to market oversight to revert to ASIC insofar as a conflict of interest may exist between the operator and its interest in a listed company.

Pooled superannuation trusts and product disclosure

2.19 A pooled superannuation trust is one in which the assets of a number of superannuation funds, approved deposit funds or other pooled superannuation trusts are invested and managed by a professional manager. Pooled superannuation trusts can accept deposits only from complying superannuation funds, complying approved deposit funds, and other pooled superannuation trusts. These are regulated entities typically of significant substance and experience.

2.20 Product disclosure and associated retail client protections in the Corporations Act apply to all investors in pooled superannuation trusts regardless of their nature and scale. In practice, this means that investors in pooled superannuation trusts must be given a PDS, have the benefit of a cooling off period and receive periodic statements even if the investor is itself a large superannuation fund. Other financial services provided by trustees of pooled superannuation trusts are treated differently.

2.21 The bill provides for trustees of superannuation funds, approved deposit funds, pooled superannuation trusts or public sector superannuation schemes with net assets of at least $10 million to be no longer treated as retail clients for the purpose of the product disclosure and related provisions when acquiring an interest in a pooled superannuation trust.

Registered managed investment schemes investing in unregistered managed investment schemes

2.22 Currently, the responsible entity of a registered managed investment scheme may only invest scheme property or keep scheme property invested in another managed investment scheme if that other scheme is registered.[5]

2.23 This restriction is intended to prevent a responsible entity from establishing or investing in an unregistered managed investment scheme to avoid the scheme property protections that apply to registered managed investment schemes.

2.24 A managed investment scheme which operates predominantly outside Australia, such as real estate investment trusts in the United States, will generally not be a registered managed investment scheme. Increasingly registered managed investment schemes seek to diversify their investments among a range of foreign collective investment structures or focus on overseas investments. Generally such investment is not for the purpose of avoiding regulation and is directed to the best interests of members. No such restriction applies to trustees of superannuation funds.

5 Chapter 5C of the Corporations Act (subsection 601FC(4))

2.25 The amendments omit the prohibition on registered managed investment schemes investing in unregistered managed investment schemes.

Company reporting obligations

2.26 The bill will simplify company reporting obligations for companies, helping to reduce compliance costs. The changes include:

- amendments to incorporate in the Corporations Act the accounting standards requirements for executive and director remuneration disclosure;
- increases to the thresholds used to define a large proprietary company and allowance for future changes to the thresholds to be prescribed by regulations;
- changes to notification requirements, payment of annual fees and the company deregistration procedure; and
- allowing companies to make annual reports available on the internet and only require hard copies to be sent to members who request them.

2.27 The bill also introduces a new disclosure requirement in relation to executives and directors hedging their incentive remuneration and several other minor and technical amendments to further refine the framework. The most notable of these are:

- In relation to executive remuneration, the replication of existing regulations into the Corporations Act. This will result in listed companies being required to disclose their policy in relation to directors and key management personnel hedging their incentive remuneration and any relates enforcement mechanisms. One of the important consequences of this change in policy is that all information relating to executive remuneration will be contained within the director's report. Since the accounting standard that deals with executive remuneration will be repealed, the financial statements will not need to include information relating to executive remuneration.
- increasing the thresholds used to define a large proprietary company. A proprietary company will be defined as being large if it satisfies two of the following tests: revenue of $25 million; assets of $12.5 million; and 50 employees. The amendments also allow for future changes to the thresholds to be prescribed by regulations; and
- enabling companies, registered schemes and disclosing entities to make annual reports available on a web site and provide hard copies only to those members who elect to receive them in that form.

Auditor independence

2.28 The bill makes changes to the auditor independence provisions of the Corporations Act. The changes rectify a number of anomalies and unintended consequences that have been identified during the implementation of the *Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Act 2004* (the CLERP 9 Act). They also respond to lessons learned from public consultation

undertaken during a review of auditor independence, and make a number of amendments designed to improve the effectiveness of the auditor independence requirements.

2.29 The CLERP 9 Act introduced a new requirement that an auditor provide a declaration as to whether the auditor is aware of any contraventions of the auditor independence requirements of the act or of any applicable codes of professional conduct. However, this bill provides that the declaration must either be given when the audit report is given to the directors of the company, registered scheme or disclosing entity or must satisfy the following conditions which provide that:

- the auditor's independence declaration be given to the directors and the directors sign the report within 7 days after the declaration is given to the directors;
- the auditor's report on the financial report be made within 7 days after the directors' report is signed; and
- the auditor's report include a statement to the effect that either the declaration would be in the same terms if it had been given to the directors at the time the auditor's report was made, or circumstances have changed since the declaration was given to the directors, and setting out how the declaration would differ if it had been given to the directors at the time the auditor's report was made.[6]

2.30 These amendments are required to address a timing inconsistency in existing legislation.

Reporting of inadvertent breaches

2.31 Current reporting requires the auditors' declaration to include inadvertent breaches of the auditor independence requirements.[7] In the course of day-to-day audit practice, there would be many examples of inadvertent breaches of the auditor independence requirements which would be quickly addressed once the auditor became aware of the breach.

2.32 The policy intention is that only contraventions which relate to an intentional breach, including both knowledge and a failure to take reasonable steps to rectify the breach, should be included in the statement. The measures in the bill will ensure that an auditor will not be required to report inadvertent breaches of the auditor independence requirements in the declaration. This applies where the auditor had reasonable grounds to believe that, at the time of the contravention, a quality control system was in place that would provide reasonable assurance that the auditor would comply with auditor independence requirements.

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6 subsection 307C(5A)

7 subsections 307C(1) and 307C(3)

Money owed prohibition

2.33 The Corporations Act prohibits an individual auditor, an audit firm or an audit company from owing an amount of more than $5000 to the audited body, a related body corporate or an entity that the audited body controls.[8]

2.34 Even though this restriction had been included in the corporations legislation for over thirty years, during the implementation of the CLERP 9 auditor independence requirements, concerns were raised by the accounting profession that this restriction was catching 'ordinary course of business' transactions between an auditor and an audit client.

2.35 The bill accepts that as a general rule, debts incurred in the ordinary course of business and on normal terms and conditions would not constitute a threat to auditor independence. It provides that a debt owed by the person or firm to a body corporate or entity should be disregarded if the debt:

- is on normal terms and conditions, and arises from the acquisition of goods or services on normal trading terms from the audited body, an entity that the audited body controls, or a related body corporate, and the goods or services will be used by the person or firm:
- is for the personal use of the person or firm; or
- is in the ordinary course of business of the person or firm.[9]

Notification procedures

2.36 The bill provides ASIC with the power to extend beyond the current 28 day period the time within which an auditor is required to resolve a conflict of interest situation. When the CLERP 9 Act was drafted, the maximum period of 28 days was considered to give an auditor sufficient time to rectify a conflict of interest situation. However, concerns have been raised that complex circumstances do arise that would not be able to be resolved with 28 days. ASIC was not given the power to extend this period.

Multiple former audit firm partner restriction

2.37 The report of the HIH Royal Commission recommended that in implementing the proposed CLERP 9 Act, the proposals for restrictions on employment relationships between an auditor and the audit client should include ‘a prohibition on any more than one former partner of an audit firm, at any time, being a director of or taking a senior management position with the client’.

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8 Item 15, subsection 324CH(1)

9 Paragraph 324CH(5)(b)

2.38 This bill recognises that the former partner restriction serves a useful purpose, but that some changes should be made to address the perceived over reach of the existing requirement. The bill proposes that former partners of an audit firm and former directors of an authorised audit firm who had departed from the firm or audit company for five or more years should be excluded from the restriction.

2.39 A minimum five year separation period was considered appropriate because the longer former partners have been out of the firm, the less likely they will be in a position to influence the current professional members of the audit team or be so familiar with the audit approach and testing strategy that they are able to circumvent them. A time limit is also easy to apply and enforce.

Cooling-off period for former audit team partners

2.40 The Corporations Act imposes a mandatory period of two years from the date of departure from the firm before a former partner of an audit firm, or a former director of an audit company, who was on the audit team can become an officer of the audit client. In line with international practice and maximise both flexibility and maintain auditor independence, the bill amends this requirement to start the two year period from the time the person ceased membership of the team auditing the client, as opposed to when they resigned from the audit firm.

Introduction of a 'covered person' approach to existing financial relationship restrictions

2.41 The auditor independence regimes in Australia, Canada, the European Commission, the UK and the US have all adopted specific employment and financial relationship restrictions between an audit firm and an audit client. However, only Australia and the UK apply these restrictions on an 'all partner' basis rather than focusing on those people in the audit firm with a close connection with a particular audit. In the US, a person who has a close connection with an audit is referred to as a 'covered person'.

2.42 The bill redefines the application of the restrictions to people in the firm who are involved in, or in a position to influence the audit.

Miscellaneous amendments

2.43 Miscellaneous other amendments include provision for:

- The extension of ASIC relief powers to exempt members of audit firms, former members, professional employees or directors of an audit firm who are registered company auditors from the auditor independence requirements of Division 3 of Part 2M.4 of the Corporations Act.
- Clarification of the need for auditors of registered managed investment schemes' compliance plans to be suitably qualified.
- The provision of assistance and access to records to the auditor from the licensee or their body corporate.

Corporate governance

2.44 The bill will amend the Corporations Act to remove member approval requirements in relation to small transactions between public companies and related parties. It will also allow delegation to ASIC of certain administrative functions regarding identical or unacceptable company names, and approval of changes to certain corporate constitutions. This will streamline administrative processes for corporations.

2.45 The related party transactions provisions in the Corporations Act[10] require that public companies obtain member approval before they can give any financial benefit to a related party (such as a director, a director's spouse, a controlling entity, or entities controlled by mutual entities), unless the benefit fits within certain exceptions. The current provision allows payments at or below $2000 to related parties who are directors or directors' spouses to be made without member approval. Under the new provision, member approval will not be required for giving a financial benefit to these related parties (ie directors or directors' spouses), which is at or below the prescribed level aggregated over a financial year. It is expected that the amount initially prescribed will be $5000.

2.46 The policy rationale for the related party transactions provisions is to protect shareholders' investments from being eroded by the board approving transactions with related parties that are non-commercial or non-arms'-length in nature. However, the cost for business of obtaining member approval for related party transactions not otherwise allowed by the law can be substantial. If the related party benefit is small, then the compliance cost may well outweigh any governance benefits from requiring member approval.

Approval of identical and otherwise unacceptable company names

2.47 The bill allows for the Minister, by signed instrument, to delegate the function of determining whether a particular company name should be granted, notwithstanding the name is identical or otherwise unacceptable, to a member of ASIC (ie a commissioner) or a staff member of ASIC. At present, a prescribed Minister makes the determination. Conveying to ASIC the ability to determine name applications is in keeping with its role as corporate regulator.

Pre-existing licences allowing companies to omit the word 'limited' from their names

2.48 A number of Australian companies hold a licence to omit the word 'limited' from their names. Such licences were generally issued by State and Territory Attorneys-General during the period when corporate law was a responsibility of the State and Territory Governments.

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10 Part 2E.1

2.49 These licences generally require approval of the Minister responsible for corporate law, or another Minister of the Commonwealth, a State or a Territory, or an officer, instrumentality or agency of the Commonwealth, a State or a Territory for any changes to the constitutions of these companies.

2.50 The bill provides for companies to notify ASIC of changes to their constitutions, replacing the requirement to seek approval for any changes to the constitutions of companies. ASIC will have the power to revoke a company's licence if the company fails to notify ASIC of a change to its constitution, in addition to its current powers to revoke such a licence.

Fundraising

2.51 This bill amends the Corporations Act in relation to fundraising by corporate entities. The amendments are generally intended to streamline fundraising through, for example, removal of unnecessary disclosure requirements, inconsistencies between different parts of the Corporations Act; and amendment of the time periods and amounts that can be raised under particular provisions.

Rights issue disclosure for quoted securities and other financial products

2.52 The first measure amends the disclosure requirements relating to rights issues by listed entities. It provides that such rights issues may be conducted without the provision of a prospectus or PDS. The provision relates only to rights issues of securities and interests in managed investment schemes, and ASIC is given the power to require disclosure if certain requirements are not met by the offeror.

Small scale offerings

The second measure raises the threshold at which an offeror of securities may use an 'offer information statement' rather than a (more complex) prospectus, from $5 million to $10 million.

Secondary sale issues

2.53 This measure seeks to simplify disclosure requirements for controllers of shares in an existing, listed security who wish to sell some or all of the shares on the market. The bill reduces the requirement for the security to have been listed on the market, before reduced disclosure requirement apply, from 12 months to 3 months.

Employee unlisted share schemes

2.54 The bill provides relief from certain restrictions contained in the Corporations Act for employee share schemes for unlisted companies. This will be subject to the condition that such schemes must be accompanied by a disclosure document such as an Offer Information Statement (OIS) or a prospectus. Listed entities may also take advantage of this relief if they wish, subject to the same condition.

2.55 At this stage only employee share schemes involving the issue of securities may use an Offer Information Statement as their disclosure document. Employee share schemes involving a sale of securities (for example through a wholly-owned trustee) will still have to provide a prospectus.

2.56 The following relief from the licensing requirements for eligible offers is provided:

- Relief for an issuer from the requirement to hold an Australian Financial Services Licence for the provision of general advice in connection with the offers.
- Relief for an issuer and its controlled entities from the requirement to hold an Australian Financial Services Licence for dealing in a financial product where the operation of an employee share scheme requires the purchase or disposal of shares which occurs:
  - through a person who holds an Australian Financial Services Licence authorising the holder to deal in financial products; or
  - in an overseas jurisdiction through a person who is licensed or otherwise authorised to deal in financial products in that jurisdiction.
- Relief for an issuer and its controlled entities from the licensing requirement for the provision of a custodial and depository service, including licensing relief for dealing in a financial product in the course of providing such a custodial and depository service.
- Amendments providing relief from the hawking provisions in the Corporations Act for eligible employee share schemes, to allow companies to contact their employees and make participation offers to them.

2.57 Contribution plans are exempted from the managed investment and licensing provisions in the Corporations Act. A contribution plan is an arrangement under which funds are deducted from employees' salaries, including through salary sacrifice arrangements, and used to pay for shares under an employee share scheme.

Advertising rules for offers of securities requiring a disclosure document and for offers of other financial products

2.58 This measure aligns the advertising requirements for offers of quoted securities with the advertising requirements that apply to other financial products. Amendments are also made aligning the advertising provisions applying to offers of unquoted securities after the lodgement of a disclosure document with those applying to other financial products. The provisions regarding advertising of unquoted securities prior to the lodgement of a disclosure document remain unchanged. ASIC's powers are extended to allow it to intervene in case of misleading and deceptive advertising of securities, as it is currently able to do in the case of other financial products.

Takeovers

2.59 Currently, a bidder and a target in a takeover situation must record all telephone calls they make to security holders (other than wholesale holders) to discuss a takeover bid during the bid period. The bill removes this requirement.

2.60 Those who hold 85 per cent or more of a class of securities in a company are also required to notify the company in writing of that fact within 14 days of becoming aware that they possess an 85 per cent holding and then remind the company on an annual basis. The bill also removes the requirement to provide these notices. The repeal of these requirements will remove onerous compliance burdens for bidders and targets involved in company takeovers which are not justified by increased levels of shareholder protection.

Compliance

2.61 The bill will amend the Corporations Act to streamline compliance procedures and ensure companies can access newer technologies. The measures include simplifying returns of company particulars and permitting electronic registration of charges.

Simplifying returns of company particulars

2.62 The bill will allow ASIC to give a company or responsible entity of a registered scheme a request for return of particulars if ASIC suspects or believes that particulars recorded in a registered document are not correct. Currently, such a request may be made where the review fee had not been paid or where documents have not been lodged with ASIC for 12 months or more. The bill also increases the time in which a return of particulars must be lodged with ASIC from 28 days to two months.

Electronic registration of company charges

2.63 The bill provides that, from 1 July 2007, ASIC will offer a facility that allows for the electronic registration of charges. Currently, charges can only be lodged with, and certified by, ASIC on paper.

Chapter 3

Issues raised in evidence

3.1 The bills received broad support from submitters, particularly in relation to their objective of reducing the cost of compliance for companies and those involved in the financial services industry. A number of respondents welcomed Treasury's decision to defer further consideration of a new category of advice dealing with sales recommendations. Various submissions also acknowledged the consultation process with government in the development of the legislation.[1] The general exception to this sentiment was in relation to the inclusion of existing superannuation products in the provisions of the bills, a move which caught some stakeholders by surprise.[2]

3.2 However, respondents expressed concern with some aspects of the legislation, particularly provisions dealing with Statements of Advice (SoAs) and Records of Advice (RoAs). This chapter outlines these areas of concern and considers the evidence received in submissions and at the public hearing.

Statements of Advice

3.3 The proposal to exempt advisers from the requirement to provide a SoA in certain circumstances elicited comment from most submitters. Typical of these was the Institute of Chartered Accountants in Australia:

> The Institute supports the intent of this proposal. This is an important step forward for the access of financial advice by consumers and in particular the provision of advice that is of a strategic nature.[3]

3.4 While there was broad support for the measure, some organisations expressed reservations. For example, the Association of Superannuation Funds of Australia (ASFA) offered qualified support for the general intent of the reform. ASFA considered that changing the SoA requirements was potentially hazardous and should be approached with caution, and that the requirement to provide a comprehensive Record of Advice (RoA) in place of an SoA is critical to the system maintaining the necessary consumer safeguards.[4] The Australian Bankers' Association (ABA) criticised the exclusion of certain types of advice from the exemption as a factor limiting the utility of the amendments to financial services providers.[5]

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1 See, for example, Financial Planning Association, *Submission 13*, p.1, CPA Australia, *Submission 1*, p.1.

2 See for example, Australian Institute of Superannuation Trustees, *Submission 3*, p.5.

3 *Submission 12*, p.1.

4 *Submission 6*, p.4.

5 *Submission 4*, p.4.

3.5 In its testimony before the committee, Treasury officials advised that regulations to support the bills would not be available for some time after the bills' consideration by the Senate.[6] This introduces a level of uncertainty into the future operation of a significant number of the bills' provisions.

Records of Advice

3.6 In keeping with its role in achieving simplified disclosure and reduced costs of compliance, the RoA proposal attracted general support, with much of the commentary focusing on the information RoAs ought to contain.

3.7 ASFA emphasised the importance of the client being properly informed, through the RoA, of the costs and other significant consequences of a decision to move funds from one financial product to another.

> ASFA strongly believes that any changes to the Statement of Adice (SoA) requirement must be carefully done. Extending relief too far is hazardous, particularly if it involves a person acquiring a new product or moving monies between funds. The decision of an individual to join a fund, acquire a new product or transfer or rollover significant amounts of money from one fund to another should require investigation of the member's current benefits and costs, and should ordinarily require the provision of an SoA.[7]

3.8 The Australian Institute of Superannuation Trustees (AIST) agreed, noting that the supporting regulations should outline the content requirements of the RoA. It also noted that allowing individual advisers to determine the level, amount, content and specific details of the RoA would be inappropriate. AIST expressed concern that, while the Explanatory Memorandum sets out a list of content requirements for RoAs, these are not described in the legislation.[8]

3.9 There was also concern that advisers are obliged to provide a RoA to clients only at their request, as is reported in the Explanatory Memorandum.[9] Choice argued that:

> To ensure that the RoA accurately reflects the advice the consumer receives, a copy of the RoA must always be presented to the consumer. The consumer needs to be satisfied it is a true reflection of their interaction, especially if the RoA is later required for external dispute resolution purposes.[10]

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6 Ms Ruth Smith, *Committee Hansard*, 13 June 2007, Canberra, p.73.

7 *Submission 6*, p.2.

8 *Submission 3*, p.9. See also Industry Super Network, *Submission 9*, p.3.

9 Explanatory Memorandum, para 1.40.

10 *Submission 8*, p.3.

3.10 However, the committee notes an anomaly in that, at proposed section 946AA(5) of the Bill, the provision of a RoA is mandatory.

Threshold

3.11 Another area of concern relates to the operation of the SoA threshold, and the level at which it should be set. The bill proposes to introduce a threshold amount in relation to the provision of a SoA, which will be required to be prepared and provided to the client if the amount to which the advice relates is $15,000 or more. Where the amount is less than the threshold, the SoA will be substituted with a RoA.

3.12 The evidence revealed a significant level of confusion about the threshold and what should properly be counted in assessing whether a SoA or RoA is required. ASFA was keen to see the definition of the proposed threshold clarified, and in particular, how it applies to future investments. This is particularly germane if the advice relates to superannuation, which is very likely to exceed the threshold over time.[11] ASFA was not alone in expressing confusion about the definition. In their supplementary submission, the ABA put their concerns with the threshold this way:

> It is unclear how future investments will be treated. The Explanatory Memorandum suggests that the threshold will relate to the value that the initial investment and the future amounts anticipated to be reached in the next 12 months. However, [proposed subsections 946AA(1) and (2), read together] seem to restrict subsequent investments made in relation to the advice. [Subsection 1] refers to the total value of all financial investments in relation to which the advice is provided as not exceeding the threshold amount. [Subsection 2] refers to the total value of investments as the 'total acquisition value' and 'total disposal value'. This seems to unduly limit the relief so that in practice it would only apply to one-off small sales or investments. We suggest that the amendment be clarified so that the threshold relates to an acquisition or disposal in a 12 month period.[12]

3.13 Many submitters who expressed an opinion on the threshold considered clarity of its definition to be at least as important as the actual threshold figure itself. Industry Super Network (ISN) argued:

> [W]e agree that the objective of increasing access to advice for small-scale investors is meritorious [but] in order to ensure that the reforms achieve this end without unintended side effects we would urge the Committee to ensure that the $15,000 threshold is well defined so that the *total amount under advice* does not exceed this threshold.[13]

11 *Submission 6*, p.4.

12 *Submission 4A*, p.2

13 *Submission 9*, p.3.

3.14 ISN were in the minority in advocating for a reduction in the proposed threshold, to $10,000, on the basis that the increased limit had been arrived at with insufficient consultation.[14]

3.15 Some stakeholders were dubious about the rationale behind the proposed threshold of $15,000. The ABA, for example, considered that the figure appeared to be arbitrary, and suggested that different thresholds should apply for different classes of product, as each has a different usual minimum investment amount.[15]

3.16 The Financial Planning Association supported the move to grant relief from the need to provide extensive disclosure, and like the ABA, called for the proposed threshold to be raised to $25,000, and for advisers to be able to access the exemption even when being remunerated.[16] IFSA took a similar view, arguing that the calculations undertaken by Treasury as to the 'break even' point for advisers were inaccurate:

> They have actually made an assumption that five per cent of advice provided fell below $15,000. We have had feedback from at least one of our members, who is a major provider of advice in the market, that three per cent of the advice provided falls below $15,000. So, based on that assumption, $25,000 is probably about right.[17]

3.17 While a number of submitters considered the possible utility of anti-avoidance provisions in relation to the threshold, Treasury officials submitted that they could see no clear way for the threshold to be abused without the knowledge and consent of the client.[18]

No product recommendation and no remuneration

3.18 One of the central tenets of the bills is the exclusion for the adviser from a requirement to provide an SoA in circumstances where they receive no remuneration and in which they do not recommend a financial product.

3.19 One issue that was raised by a number of witnesses is the definition of remuneration. To access the exemption, the bill requires that the adviser not receive any direct remuneration or other benefit, other than remuneration already being received for earlier advice, either for, or in relation to, the product.[19]

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14 Mr David Whitely, *Committee Hansard*, 13 June 2007, Canberra, p.30.

15 *Submission 4*, p.4.

16 *Submission 13*, pp.1-2.

17 Mr David O'Reilly, *Committee Hansard*, 13 June 2007, Canberra, p.17.

18 Ms Ruth Smith, *Committee Hansard*, 13 June 2007, Canberra, p.73.

19 Proposed subsection 946B(7)(b).

3.20 The ABA submitted that, in practice, different models of remuneration in the industry made interpretation and compliance with the provision potentially difficult. Elaborating on their concerns, the ABA submitted that:

> Advisers may operate under a number of remuneration structures including on a fee for service basis; under a commission structure linked to a licensed dealer; through salary or wages; or via a plan fee paid directly from a fund/product. Advisers may use more than one of these remuneration structures, depending on their business model and client base … [I]t is unclear how the amendment would impact on an adviser that receives a salary not related to the advice. It is our view that a more definite description of remuneration should be provided.[20]

3.21 AIST were concerned by the use of the word 'directly' in the provision, considering the possibility that 'soft dollar' inducements could be received by advisers while still attracting the exemption.[21] ISN shared this concern, and joined with AIST in recommending that the word 'direct' be deleted, or the words 'and indirect' be added to the provision.[22]

3.22 Another commonly raised issue was the inclusion within the terms of the exemption of advice to 'hold' a product, owing to the requirement that advisers seeking the exemption do not recommend the acquisition or disposal of a product. Choice expressed a common sentiment when they submitted:

> There is no reason why trailing commissions earned on hold advice, which have the potential to generate conflicts of interest for the adviser, should be exempted from the SoA process, particularly as consumers are generally not fully aware of the impact of trailing commissions.[23]

Superannuation

3.23 The inclusion of superannuation in the exemption regime, where no new product is being canvassed by the client and adviser, is another issue that was raised in evidence. The Institute of Chartered Accountants in Australia, ASFA and IFSA supported the inclusion of super in the exemption provisions, with the latter calling for the exemption to be available for all superannuation accounts and advice which fall under the threshold, on the basis that:

> … there does not appear to be any justification for denying low cost and simple retirement planning advice to persons looking at opening a superannuation account … there is little to differentiate advice needed for the choice of the consolidated account, to the opening and consolidation in

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20 *Submission 4*, p.3.

21 *Submission 3*, p.9.

22 *Submission 9*, p.5.

23 *Submission 8*, p.3. See also, for example, ISN, *Submission 9*. p.5; AIST, *Submission 3*, p.8.

> a new account … clients will continue to receive appropriate advice and the provision of a RoA will ensure remuneration [is] disclosed.[24]

3.24 Choice opposed the inclusion of superannuation::

> Compulsory superannuation is deferred earnings designed to fund future retirement. It is a long-term public policy measure and the potential for inappropriate advice or mis-selling is obvious. [25]

3.25 However, it was AIST who argued most strongly against the inclusion of superannuation in the legislation, arguing:

> The decision as to which fund is the correct one into which the consolidation should take place is not necessarily a simple one. Matters like the existence of severe penalties to withdraw from many of the funds provided by financial institutions, the availability and value of life/total and permanent disablement/income continuance insurance arrangements, and the willingness of a current employer to contribute to the selected fund, can all influence a decision that would otherwise be made on the basis of fees or investment returns alone.[26]

3.26 AIST set out its reasons at length. Not least of these was the utility of the provisions as they related to superannuation. To the argument that the provisions would be useful for clients seeking to consolidate accounts, AIST responded:

> Given the average size of lost accounts is in the hundreds of dollars, I cannot imagine that financial planners are going to spend their time trying to consolidate those amounts. It would be only in relation to clients who have got very substantial sums elsewhere that they would get involved in providing advice. I think the whole question of addressing the consolidation of lost accounts of that size has got to be addressed in a totally different fashion.[27]

3.27 More broadly, AIST put forward the compulsory nature of superannuation as a good reason to implement the maximum possible safeguards against uninformed decision making, submitting that:

> Diminishing disclosure requirements and creating loopholes for the minority of financial advisers who are acting unscrupulously, or in bad faith, doers not provide a confident investment environment for consumers to feel that their retirement savings are safe and secure.[28]

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24 ICAA, *Submission 12*, p.2; ASFA, *Submission 6*, p.4; IFSA, *Submission 10*, p.4.

25 *Submission 8*, p.4.

26 *Submission 3*, p.3.

27 *Committee Hansard*, 13 June 2007, Canberra, p.42.

28 *Submission 3*, p.13.

3.28 AIST went on to argue that more analysis and broader understanding is required and that at the very least the inclusion of superannuation be deferred until matters are more deeply assessed. [29]

> Our primary position is that in the time since super appeared on the scene in this bill, there has not been enough time for people to think through—certainly for us to think through—all of the implications of including it. We would like to see its inclusion either not take place or to be deferred until that proper consideration can be given.[30]

3.29 As alluded to by AIST, considerable consternation arose as a result of superannuation's late inclusion in the bill. Several witnesses testified that they were led to believe that it would not appear, and that they were surprised when the bill was made public.[31] The lack of consultation was confirmed by Treasury officials when they appeared before the committee.[32]

Insurance advice

3.30 The evidence revealed some disappointment with the exclusion of certain forms of insurance from being subject to the relief provisions in the bills. The exemption from the requirement to provide a SoA does not apply to a general or life insurance product, except insofar as advice relating to a superannuation product relates to a life risk product.

3.31 The ABA commented:

> It is our view that excluding general insurance products is not scaleable and proportionate to the risk profile of the product and at odds with previous FSR requirements. It is our view that the exclusion should not apply to life risk insurance products … [E]xclusions would create additional complexities for representatives and consumers and sensibly these exclusions should be removed.[33]

3.32 The FPA agreed:

> It is our position that [the exclusion of life risk insurance] would create a bias towards advice on life insurance attached to superannuation, and anecdotal evidence from members suggests that many consumers mistakenly believe that insurance attached to superannuation is adequate.[34]

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29 *Submission 3*, p.3.

30 Mr Graeme Grant, *Committee Hansard*, 13 June 1007, Canberra, p.41.

31 Mr Graeme Grant, *Committee Hansard*, 13 June 1007, Canberra, p.41.

32 Ms Ruth Smith, *Committee Hansard*, 13 June 2007, Canberra, p.74.

33 *Submission 4*, p.5.

34 *Submission 13*, p.2.

'In product' advice

3.33 Some submitters expressed the view that 'in product' advice should be included in the exemption regime. This relates to advice which is given in relation to a product with which the client is already involved. The ISN's argument was typical in this regard:

> If the aim of this reform is to make advice more accessible to consumers, then enabling funds to provide within-product advice would be a more cost effective way of enhancing the coverage of advice without compromising the quality of advice or consumer protection. The advice needs of many consumers, particularly low-income earners, are largely limited to simple issues related to their superannuation – voluntary contributions, salary sacrifice, investment allocation and insurance provided within the product.[35]

3.34 ASFA agreed, observing in relation to 'in product' advice that:

> Appropriately crafted provisions could provide some immediate and meaningful relief to superannuation funds addressing the advice needs of their membership. If these changes are to be about improving cost and access to advice for income earners, then any such changes would be a step in the right direction.[36]

Sophisticated investors

3.35 The amendment provides for an adviser to certify that the client has sufficient experience to be treated as a wholesale investor, enabling expeditious disclosure for the adviser and a larger range of financial products for the client. Existing tests relate to assets and income as the primary indicator of financial sophistication, whereas the new measure will allow certification based on reasonable grounds that sufficient experience is held by the client so as to be treated as a wholesale investor. As is the case currently, general insurance, superannuation and savings account products will not be subject to the provisions, nor any product in connection with a business.

3.36 The ABA's concerns, primarily in respect of the exclusion of small business from the provisions, were serious enough for it to oppose the measure in its current form. The Australian Financial Markets Association (AFMA) also considered this a serious problem.[37] The ABA queried whether the provisions applied to those managing risk, as opposed to investors. They also expressed curiosity as to the longevity of a certification, and whether it applied uniformly across product classes, and suggested that:

> [T]he written statement should be defined to cover a class or sub-class of financial products for which the retail investor shall be treated as wholesale

35 *Submission 9*, p.5.

36 *Submission 6*, p.2.

37 *Submission 11*, p.3.

> for the ongoing provision of financial services for that class or sub-class of financial products by that financial service provider.[38]

3.37 This was said to be particularly relevant where the client is involved in fast-moving foreign exchange markets.[39]

3.38 Other concerns were more general. Choice expressed the view that the proposal:

> … may ultimately blur an important distinction between retail and wholesale investors, and will expose consumers to unacceptable risks of fraud or deceptive conduct. By reclassifying the consumer as a wholesale investor the consumer foregoes a broad range of rights and protections, including their right to
>
> - financial service product disclosure;
> - receipt of a financial services guide;
> - the benefit of a suitability analysis by their adviser;
> - the benefit of mechanisms designed to deter pressure selling; and
> - the benefit of compensation arrangements for fraud or negligence.[40]

3.39 Choice went on to observe that advisers are not ideally positioned to make disinterested and independent judgement of their client's sophistication.[41] The ISN questioned whether the new method of judging client sophistication might pose a particular hazard to operators of self-managed superannuation funds (SMSFs), many of whom it considered to be in danger of being mistakenly identified as wholesale investors even though their experience with managing large sums may be limited. [42] Both Choice and the ISN declined to support the measure.[43]

3.40 The ABA and others expressed their confusion at provision 761GA(f)(ii), which proposes to require the client, as a prerequisite to achieving sophisticated investor status, to acknowledge that they have not been provided with a PDS, or 'any other document' that would otherwise be required to be given to the client. The ABA submitted that:

> The amendment excludes financial service providers from giving their clients documents that can be provided to a retail client. This is nonsensical as it discourages financial service providers giving information to their clients. The written acknowledgement ensures that the client is aware of the

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38 *Submission 4A*, p.3.

39 *Submission 4*, p.7

40 *Submission 8*, p.5.

41 *Submission 8*, p.5.

42 *Submission 9*, p.9.

43 Choice, *Submission 8*, p.6; ISN, *Submission 9*, p.9.

> consequences of being treated as wholesale. We suggest the amendment be changed to indicate that a licensee 'does not have an obligation' or 'is not required' to provide the client such information.[44]

3.41 As it stands, the amendment would appear to bar sophisticated clients from receiving information regarding investment products from the adviser, even where they request them. The Committee queries the justification for such a measure.

Other measures

3.42 Much of the remaining commentary was in broad support of other measures contained in the bills. Two areas, company reporting and executive remuneration, elicited the majority of the remaining commentary.

Company Reporting Obligations

3.43 This measure achieved broad support, with ASFA expressing disappointment that it did not extent to the distribution of annual reports of superannuation funds. ASFA observed that:

> ASFA believes that superannuation funds must provide their members with relevant information so that the member is made aware, and remains aware, of their benefits and rights as members. This information needs to be provided in a way that is relevant and useful to members, so that members can make informed decisions. We would support superannuation funds having the option to make their annual reports available electronically with members then having the right to request, at no cost to themselves, a hard copy of the report.[45]

3.44 IFSA went further, calling for the ability to distribute fund information and significant event notices electronically:

> There is no compelling reason why fund information and significant even notices cannot be distributed via the published content of a website … [L]ike annual reports, fund information and significant event notices are by and large generally available. The information is not specific to a particular holder. There are no overarching dissimilarities in consumer protection terms affecting the distribution of either document…[46]

3.45 The ABA and IFSA questioned whether investors who have already opted out of receiving paper reports will be covered by the provision in the bill, or whether permission to send documents electronically will need to be re-sought. They call for transition arrangements to be clarified in this respect.[47]

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44 *Submission 4A*, p.3.

45 *Submission* 6, p.8.

46 *Submission* 10, p.3.

47 *Submission* 4, p.10; *Submission* 10, p.2.

Executive remuneration

3.46 The Australian Shareholders' Association was disappointed that the amendments do not require companies to report the market value of outstanding executive options, but was supportive of the introduction of reporting requirements for hedging of remuneration.[48]

3.47 The ABA considered that the amendments as they are worded place an inappropriate responsibility on auditors to comment on the narrative contained in the remuneration report, and recommended that that provision be clarified to require auditors to comment on the accounting information within the report.[49]

Conclusion

3.48 This package of amendments has as its primary aim the simplification and facilitation of access to affordable financial advice for consumers. Although the committee heard no firm evidence that the price of financial advice would drop as a result of these measures, the committee believes they will succeed in their objective, and that there is no evidence that consumer protections will be adversely affected.

3.49 The committee is mindful that stakeholders took different views on a number of proposed measures and identified specific areas that might need further refinement. One area relates to product disclosure documents. The committee notes that witnesses who appeared before it did not explain how the bills would reduce the size and complexity of disclosure documents that are currently issued. This is why the committee strongly urges the government and industry stakeholders to continue to work to reduce the length and complexity of disclosure documents and make them more readable. However, suggested changes, where they were offered, were relatively minor and do not in any way challenge the substance of the bills. In noting the broad and consistent support for the bills, the committee does not believe that concerns raised are serious enough to warrant delay in their consideration and passage through the Parliament in their current form.

3.50 The committee reminds all stakeholders that the bills, while an important step forward, represent only one part of the government's financial services reform agenda, and that further opportunities to fine-tune the operation of these and other measures will most likely be forthcoming. The committee, therefore, encourages the government to consult further with industry stakeholders over a number of practical and technical issues raised in evidence to this inquiry.

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48 *Submission 2*, p.1.

49 *Submission 4A*, p.4.

Recommendation 1

3.51 The committee recommends that the government and industry stakeholders consult further and devise ways to reduce the length and complexity of Statements of Advice and Product Disclosure Statements, and make them more readable.

Recommendation 2

3.52 The committee recommends that the bills be passed.

Senator Grant Chapman
Chairman

Minority Report by Opposition Members

1.1 Whilst in general the measures in the Bill represent some progress towards simplifying some elements of our complex financial regulatory system it is far from a comprehensive set of solutions. Indeed it has all the indications of a rushed set of measures. The Treasury submission itself indicates further piece meal reform is still to occur for example on the major matter of sales recommendation "this matter will be the subject of ongoing development for possible inclusions in a future legislative vehicle ". Further, the regulations will not be available, as they should be, given important detail to be included until after passage of the legislation.

1.2 It is disturbing that after 3 years of Financial Services Reform (FSR) disclosure documentation is still lengthy, complex and unreadable often some 50 to 100 pages. There is every indication from treasury and witnesses that it will be little changed after the passage of this legislation. Further, no consumer testing has yet been carried out by Treasury.

1.3 Given the rushed ad hoc nature of the approach it is necessary to ensure there are not adverse, unintended consequences, particularly;

- Given the lack of regulation details, the critical consumer protections to be contained in the record of advice,
- The "do not directly receive" direct remuneration can be circumvented by indirect remuneration,
- The $15,000 threshold provides the capacity for many millions of Australians with super balances less than this figure to potentially receive, in some cases poorer advice.

1.4 In this context both S947D detailed in regulations (not provided) and anti mis-selling surveillance will be critical and should be maintained.

1.5 The lack of detail and undertakings from industry that despite a claimed improvement in efficiency and reduction in cost that prices charged will actually fall is of concern.

Ms Anna Burke
Deputy Chair

Mr Chris Bowen MP

Senator the Hon Nick Sherry

Senator Penny Wong

Appendix 1

Submissions received by the Committee

1. CPA Australia Ltd, Institute of Chartered Accountants in Australia, The National Institute of Accountants

2. Australian Shareholders' Association

3. Australian Institute of Superannuation Trustees

4. Australian Bankers' Association Inc

5. Grant Thornton Association Inc

6. The Association of Superannuation Funds of Australia Limited

7. The Treasury

8. CHOICE

8a CHOICE

9. Industry Super Network

10. Investment & Financial Services Association Ltd

11. Australian Financial Markets Association

12. The Institute of Chartered Accountants in Australia

13. Financial Planning Association of Australia Limited

14 Law Council of Australia

Appendix 2

Public Hearings and Witnesses

WEDNESDAY 13 JUNE 2007 - CANBERRA

Australian Bankers' Association

Mr David Bell, CEO

Ms Diane Tate, Director, Corporate and Consumer Policy

Investment and Financial Services Association

Mr John O'Shaughnessy, Deputy CEO

Mr David O'Reilly, Policy Director – Regulation

Mr David Mico, Senior Policy Manager

Mr Chris McRae, (AMP)

Mr David Squire (MLC)

Ms Deborah Karomalis (BT)

Industry Super Network

Mr David Whitely, Executive Manager

Ms Robbie Campo, Project Manager

Dr Nick Coates, Project Manager

Australian Institute of Superannuation Trustees

Ms Cate Wood, Director

Mr Graeme Grant, Director

Financial Planning Association

Mr Gerard Fitzpatrick, General Manager, Policy and Government Relations

Mr Jason Durate, Policy Analyst

CHOICE (via teleconference)

Mr Gordon Renouf

Treasury

Mr Geoffrey Miller, General Manager, Corporations and Financial Services

Mr Andrew Sellars, Senior Advisor

Mr Greg Hackett, Advisor

Ms Marian Kljacovic, Manager, Market Integrity Unit

Mr Bede Fraser, Manager, Financial Reporting Unit

Mr Matthew Brine, Manager, Governance and Insolvency Unit

Ms Ruth Smith, Managerf, Investor Protection Unit

Mr Peter Levy, Polict Analyst, Financial Reporting Unit