

Existing Regulatory Arrangements in Australia

Introduction

C.1 This appendix summarises the existing regulatory arrangements in the Australian financial system. There are both functional and institutional elements. Most of them are covered by Commonwealth law and have a national focus, but there are also State/Territory functional and institutional responsibilities.

C.2 At the Commonwealth level, there are 4 key agencies—the Reserve Bank of Australia (RBA), the Australian Securities Commission (ASC), the Insurance and Superannuation Commission (ISC) and the Australian Competition and Consumer Commission (ACCC). Portfolio responsibility for these agencies lies with the Treasurer. However, the ACCC also reports to the Minister for Small Business and Consumer Affairs on consumer affairs matters.

C.3 At the State/Territory level, there are nationally co-ordinated arrangements for some financial institutions (eg the Financial Institutions Scheme for credit unions and building societies co-ordinated by the Australian Financial Institutions Commission—AFIC) and functions (eg consumer credit). In other cases, arrangements in each State/Territory are similar but with local differences, eg for friendly societies, public trustees and trustee companies.

C.4 Table C.1 summarises the regulatory structure of the Australian financial system.

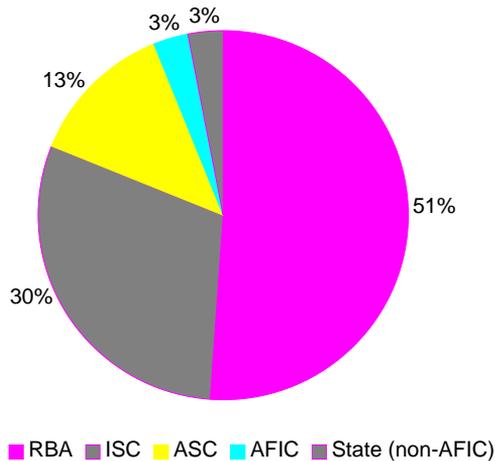
Table C.1: Regulation of the Financial System

Regulator	Financial Institutions	Financial Services & Markets
Reserve Bank of Australia	<ul style="list-style-type: none"> ◆ banks (consolidated) 	<ul style="list-style-type: none"> ◆ currency issue ◆ foreign exchange dealers ◆ settlement
Australian Financial Institutions Commission	<ul style="list-style-type: none"> ◆ building societies ◆ credit unions ◆ special services providers 	
Insurance and Superannuation Commission	<ul style="list-style-type: none"> ◆ life companies ◆ general insurers ◆ superannuation (pension) funds 	<ul style="list-style-type: none"> ◆ insurance agents and brokers ◆ approved trustees (public offer superannuation)
Australian Competition and Consumer Commission		<ul style="list-style-type: none"> ◆ access to essential facilities ◆ restrictive trade practices / exemptions ◆ consumer protection ◆ prices surveillance
Australian Securities Commission	<ul style="list-style-type: none"> ◆ unit trusts ◆ merchant banks ◆ finance companies ◆ pastoral finance companies 	<ul style="list-style-type: none"> ◆ fund raising by corporations and trusts ◆ securities, futures and options exchanges ◆ exempt securities and futures markets (bonds, over the counter derivatives) ◆ securities dealers and investment advisers ◆ futures brokers and advisers ◆ auditors and liquidators ◆ accounting standards
State authorities	<ul style="list-style-type: none"> ◆ friendly societies ◆ trustee companies ◆ public trustees ◆ co-operative housing societies ◆ state government-owned insurance offices 	<ul style="list-style-type: none"> ◆ consumer protection ◆ consumer credit ◆ authorised trustee investment status ◆ insurance (vehicle compulsory third-party and workers' compensation)

C.5 Figure C.1 shows assets on the balance sheets of financial institutions or under management in Australia, split by the principal agency regulating their activities. The following sections provide more information on each of the key regulatory agencies; co-regulatory arrangements (the stock and futures exchanges); co-ordination arrangements through the Council of Financial Supervisors (COFS); and consumer protection arrangements in Australia.

**Regulation of the
Financial System . . .**

Figure C.1: Per cent of Total Assets or Funds Under Management, March 1996



Source: Council of Financial Supervisors, Submission No. 62 to the Australian Financial System Inquiry.

Reserve Bank of Australia

Structure, Objectives and Responsibilities

C.6 The RBA is Australia's central bank, established by the *Reserve Bank Act 1959*. It is a statutory agency headed by a Governor appointed by the Governor-General and reporting to the Treasurer. It has a Board of 11 appointed by the Governor-General and chaired by the Governor. There are 3 other ex-officio members (the Secretary to the Treasury, and 2 Deputy Governors). Five of the remaining 7 members are required to be appointed from outside the Reserve Bank and the Australian Public Service. The Governors are appointed for terms of up to 7 years and other members for 5 years (except the Secretary to the Treasury who has no fixed term).

C.7 The RBA has a range of central banking functions including note issue, monetary policy, bank regulation, provision of final settlement for the payments systems and banker to the Commonwealth Government. The RBA's regulatory role has 3 primary objectives:

- preservation of confidence in the banking system as a whole;
- the stability and integrity of the banking system and of the domestic and international payments systems; and
- the protection of bank depositors.

C.8 The RBA also has broad responsibilities to promote the stability and efficiency of the financial system. In keeping with this objective, the RBA keeps abreast of prudential and other developments in the non-bank financial sector. However, other than in respect of dealers in foreign exchange markets, the RBA does not have responsibilities or powers to regulate non-banks.

C.9 While the RBA does not have a specific consumer protection role, it chairs the Australian Payments System Council (APSC) and provides its secretariat. The APSC has the responsibility for monitoring various codes of conduct (eg the EFT Code of Conduct, the Code of Banking Practice). The RBA is represented on the Board of the Australian Banking Industry

Ombudsman Scheme, an industry-sponsored scheme for independent resolution of consumer complaints about the provision of banking services.

Primary Legislation

- The *Reserve Bank Act 1959*.
- The *Banking Act 1959* and Regulations.
- The *Banks (Shareholdings) Act 1972* and Regulations. (These are the responsibility of the Treasurer who consults the RBA and the ACCC on matters arising under the Act.)

Approach to Regulation

C.10 The RBA's approach to regulation of banks is based on the view that the prime responsibility for prudent management of a bank's business lies with the bank's management and board. The RBA satisfies itself that individual banks follow management practices which limit risks to prudent levels, and that each bank's own prudential standards are being observed and adjusted to changing circumstances.

C.11 The aims of regulation are to reduce the probability of serious problems developing and to deal with those that arise in ways that protect the interests of depositors and, more broadly, to maintain stability in the financial system. It is not the purpose of the RBA to prevent banks from making losses, or to protect bank shareholders from such losses (although it would obviously prefer that losses not occur).

C.12 To facilitate its prudential regulation of banks, the RBA has established, in consultation with banks, a framework within which each authorised bank is to operate. This framework is expressed in a set of Prudential Statements within which banks have considerable flexibility in the ways that they conduct their business.

C.13 The Prudential Statements themselves are not legal documents. However, either by virtue of the conditions attaching to banking authorities or on a voluntary basis, banks undertake to comply with the RBA

prudential standards. The main aspects of banks' operations covered in the Prudential Statements are ownership and control; minimum capital requirements; liquidity management, including the Prime Assets Requirement Ratio; limits on large credit exposures; identification and reporting of impaired assets; guidelines on associations with non-bank financial institutions; guidelines on banks' funds management and securitisation activities; and external auditor arrangements.

C.14 Monitoring is conducted through the receipt and analysis of data supplied by banks. The RBA also visits banks to assess systems for monitoring and controlling credit and market risks. In addition, regular meetings—both formal and informal—are held with senior management and staff of banks to discuss developments within individual banks.

Sanctions

C.15 Where the RBA forms an opinion that a bank is likely to be unable to meet its obligations, it may appoint a person to investigate the affairs of that bank. Also, the RBA may assume control of, and carry on the business of, the bank until such time as the deposits with the bank have been repaid, or the RBA is of the opinion that it is no longer necessary for it to remain in control.

C.16 The Banking Act provides that the assets of a bank in Australia shall be available to meet its deposit liabilities in Australia ahead of all its other liabilities.

Co-ordination Arrangements

C.17 In addition to their ongoing bilateral contact, the main domestic regulatory agencies meet regularly in the Council of Financial Supervisors (see later in this appendix). It is chaired by the Governor of the RBA. The RBA also provides its secretariat.

C.18 The RBA also liaises closely with counterpart regulators in other countries, and with the Basle Committee of Banking Supervisors.

Australian Financial Institutions Commission (AFIC)

Structure, Objectives and Responsibilities

C.19 AFIC is a statutory authority set up under State and Territory laws (in 1992) following agreement between State/Territory heads in 1991. Its Chairman and Board (9 members — 8 part-time including the chair and an executive director) report to the Ministerial Council of Financial Institutions (MINFIN), which comprises State and Territory Ministers who have portfolio responsibility for credit unions and building societies in their respective jurisdictions. With the exception of the Executive Director, the AFIC Board is appointed by the Queensland Governor in Council, on the recommendation of the Ministerial Council. The Executive Director is appointed by the Queensland Governor in Council, on the recommendation of the AFIC Board.

C.20 AFIC was established by the Australian Financial Institutions Commission Code (Queensland) and given effect in other jurisdictions by an application of laws mechanism.

C.21 AFIC administers the Financial Institutions (FI) Scheme, the objectives of which are to:

- protect and promote the financial integrity and efficiency of the State-based Financial Institutions Scheme; and
- protect the interests of depositors.

C.22 Within the FI Scheme, each State and Territory has established a State Supervisory Authority (SSA) with responsibility for the day-to-day regulation of building societies and credit unions incorporated in their jurisdiction. In some cases, the SSA may have regulatory responsibility outside the FI Scheme for other State-based institutions, such as friendly societies, co-operative housing societies and even funds of other state authorities.

C.23 AFIC's key responsibilities are to:

- promote the integrity and efficiency of the Financial Institutions Scheme arrangements;
- maintain the effective implementation of prudential and other standards of building societies and credit unions; and
- ensure uniform regulation of these institutions by SSAs across Australia.

C.24 AFIC also has direct responsibility for the oversight of industry-funded liquidity support arrangements, and the regulation of certain industry organisations (Special Services Providers) that provide centralised treasury, payments and other special services to member institutions.

Primary Legislation

- *The Australian Financial Institutions Commission Code 1992.*
- *The Financial Institutions Code 1992.*

Approach to Regulation

C.25 While AFIC is concerned with the protection of depositors, neither AFIC nor any State or Territory Government guarantees deposits with societies. Primary responsibility for prudent management of each building society and credit union rests with the management and board of that institution.

C.26 Minimum operating standards for building societies and credit unions are based broadly on those applied to banks, although there are some differences reflecting the size, ownership structures, and nature of operations of building societies and credit unions.

C.27 Key prudential standards cover risk management, including prime liquid asset requirements; operational liquidity; market and credit risks; capital adequacy; accounting and disclosure, including relationships with internal and external auditors; subsidiaries and managed funds products;

ownership; and industry-funded emergency liquidity support arrangements.

C.28 Under the emergency liquidity support arrangements, AFIC can require the industry to fund liquidity support facilities for illiquid, solvent building societies and credit unions

C.29 Regulation is conducted:

- through the receipt and analysis of data supplied to SSAs by building societies and credit unions on a quarterly and annual basis (also aggregated at the national level by AFIC);
- by on-site inspections of building societies and credit unions by SSAs; and
- through interview with society auditors and review of their work.

C.30 In 1994, MINFIN unanimously agreed to proceed with a national scheme of prudential regulation for friendly societies with AFIC undertaking the co-ordinating role for regulation and development of prudential standards. An Implementation Task Force is developing legislative proposals and AFIC is drafting prudential standards for public exposure.

Enforcement

C.31 SSAs have extensive powers of direction, administration and wind-up. (AFIC has the same powers in respect of Special Service Providers.)

Co-ordination Arrangements

C.32 AFIC:

- is a member of the Council of Financial Supervisors.
- has signed Memoranda of Understanding with each of the ASC and the ISC.

C.33 An Interstate Consultative Committee, comprising representatives of SSAs (usually chief executive officers), co-ordinates discussion of policy issues to raise in joint forum with AFIC.

Insurance and Superannuation Commission

Structure, Objectives and Responsibilities

C.34 The ISC was established in 1987 as the financial regulator of the insurance and superannuation industry. It is directed by a Commissioner, who is a statutory office holder, appointed by the Governor-General for up to 5 years and responsible directly to the Treasurer. Deputy Commissioners head prudential regulation groups for life insurance, general insurance and superannuation. The Australian Government Actuary is located within the ISC, which also administers the Life Insurance Actuarial Standards Board.

C.35 The ISC's objectives are to promote:

- public confidence in the insurance and superannuation industries by protecting — but not guaranteeing — the interests of insurance policy holders and superannuation fund members;
- efficiency and innovation in the insurance and superannuation industries through information disclosure, effective competition and market forces;
- fair and open dealing between the insurance and superannuation industries and their customers; and
- saving for retirement and capital formation through insurance and superannuation.

C.36 The ISC's responsibilities are:

- prudential regulation of the insurance and superannuation industries in the interests of policy holders and fund members; and
- oversight of compliance (for tax purposes) by superannuation entities with the Commonwealth Government's retirement income standards.

C.37 The ISC has also been involved in consumer protection initiatives to improve information disclosure and raise standards of sales, advice and complaints handling relating to life and general insurance, and superannuation.

Primary Legislation

- *The Insurance Act 1973.*
- *The Life Insurance Act 1995.*
- *The Insurance (Agents and Brokers) Act 1984.*
- *The Insurance Contracts Act 1984.*
- *The Insurance Acquisitions and Takeovers Act 1991.*
- *The Superannuation Industry (Supervision) Act 1993.*

Approach to Regulation

C.38 The ISC states that it has a market-based approach to regulation of insurance companies and superannuation entities which seeks to minimise interference in commercial activities except for prudential and other public interest reasons. The regulatory framework puts primary responsibility for the prudent management of policyholders' and funds managers' monies on the financial entities themselves, requiring insurance companies and superannuation funds to have adequate risk management policies and internal controls in place.

C.39 The ISC's regulation of the insurance industry includes licensing (entry and ownership) restrictions and solvency requirements. The ISC monitors insurance companies through regular financial reporting, company lodgement of audited accounts and company visits and inspections by ISC officers. The insurance distribution system is also covered by ISC regulation through licensing and reporting requirements on brokers, and through rules governing standards of conduct and advice.

C.40 The size and structure of the superannuation industry necessarily restricts the ISC's ability to maintain close and frequent contact with every

individual fund. Accordingly, the regulatory framework for superannuation is based on the principle that trustees are primarily responsible for the viability and prudent operation of funds and for compliance with the standards. In its day-to-day regulation of the industry, the ISC pays particular attention to the public offer segment of the superannuation system, where a relatively small number of approved trustees manages a substantial volume of personal and small business superannuation.

C.41 Other checks and balances in the superannuation legislation include disclosure requirements; internal complaints-handling arrangements; equal employee representation on the trustee boards of employee-sponsored superannuation funds; and minimum capital requirements for trustees of public offer funds.

Sanctions

C.42 The ISC has powers to take remedial action in respect of life companies, general insurers and superannuation fund trustees. This includes powers of direction and replacement of management/trustees. For superannuation funds, the Commission can remove funds' concessional tax status. If as a last resort it is necessary to liquidate a life company statutory fund, policy holders have priority over other creditors.

Co-ordination Arrangements

- Member of the Council of Financial Supervisors.
- Founding member of the International Association of Insurance Supervisors which was established in 1993-94 with the principal purpose of co-operation among regulators with respect to the exchange of information and the promotion of efficient markets for the protection of policy holders.

Australian Securities Commission

Structure, Objectives and Responsibilities

C.43 The ASC (established in 1991) is a portfolio agency of Treasury, whose Chairman reports to the Treasurer. There are 3 full-time Commissioners, including the Chairman, appointed for terms of up to 5 years by the Governor-General. There is provision in the enabling legislation for the appointment of additional full-time and part-time Commissioners.

C.44 Section 1(2) of the Australian Securities Commission Law requires the ASC to:

- maintain, facilitate and improve the performance of companies and of the securities and futures markets, in the interests of commercial certainty, reducing business costs and improving the efficient development of the economy;
- maintain the confidence of investors in securities and futures markets by ensuring adequate protection for such interests;
- achieve uniformity throughout Australia in the performance of its functions and exercise of its powers, and administer the national scheme laws (ie the *Corporations Law* and ASC Law) effectively, with a minimum of procedural requirements;
- receive, process and store documents lodged with it efficiently and quickly, ensuring that those documents are publicly available as soon as possible; and
- take enforcement action to give effect to the national scheme laws.

C.45 The ASC's responsibilities, insofar as they are relevant to this Inquiry, are:

- regulation of fundraising, and securities and futures markets and exchanges;
- licensing of securities and futures dealers and advisers;

- modification of the takeovers, fundraising and accounting provisions of the *Corporations Law* in line with legislative policy, and administration of exemptions from the *Corporations Law*; and
- enforcing securities and futures laws.

C.46 The ASC is also responsible for the administration and enforcement of company law, maintenance of public company information, registration of company auditors and liquidators, and for investigating and taking action on complaints against company officers and directors. In relation to the information function, the ASC maintains the public corporate database (ASCOT) and a publicly-accessible electronic document retrieval system (DOCIMAGE).

Primary Legislation

- The *Corporations Law*
- The *Australian Securities Commission Act 1989*.

Approaches to Regulation

Facilitating Business

C.47 The ASC develops policy and procedures to deal with market developments and to support business activities in various ways. It uses its statutory discretions to grant relief from the law by modifying or setting aside certain provisions, especially in relation to the takeovers, fundraising and financial reporting provisions.

C.48 To assist applicants seeking exemptions or modifications of the *Corporations Law*, the ASC has streamlined procedures for processing and considering many standard applications. It publishes also policy statements, practice notes and proforma instruments. Where an application raises new or complex matters, the ASC may need to establish new policy on how it will regulate similar commercial activity before deciding the application.

Market and Corporate Integrity

C.49 The ASC's role is to ensure that investors and creditors have the information they need to make informed investment decisions. It promotes compliance through surveillance programs which include post-vetting of selected prospectuses and takeover documents; regulation and surveillance of securities dealers and investment advisers; analysis of public company financial statements; and scrutiny of trustees and managers of collective investment schemes. The ASC is also placing greater emphasis on obtaining market intelligence and information about corporate and market behaviour by establishing closer links with the Australian Stock Exchange (ASX) and the Sydney Futures Exchange (SFE), and developing its capacity to undertake complex market investigations.

Enforcement

C.50 The ASC enforces the law through criminal prosecution; civil action for the preservation or recovery of assets; administrative sanctions (such as banning orders); and by providing assistance to civil litigants in cases of public interest.

Co-ordination Arrangements

C.51 The ASC:

- Is a member of the Council of Financial Supervisors.
- Has signed Memoranda of Understanding with each of various domestic agencies (ISC, AFIC, SFE, ASX, Director of Public Prosecutions, Australian Taxation Office, various State police forces) and a number of international agencies (British Columbia Securities Commission, China Securities Regulatory Commission, Commission des Operations de Bourse of France, Securities and Futures Commission of Hong Kong, Ontario Securities Commission, Securities Commission of New Zealand, UK Treasury, Securities and Investments Board of the UK, Commodities Futures Trading Commission of the US, and Securities and Exchange Commission of the US). Lesser

arrangements have also been agreed with a range of other regulatory bodies covering, for example, exchange of information and investigative assistance.

- Is the current Chair of the executive committee of the International Organisation of Securities Commissions.

C.52 The ASC Chairman is an ex-officio member of the Companies and Securities Advisory Committee, which advises the Treasurer on securities law matters.

The Co-Regulatory Agencies

C.53 A co-regulatory approach is taken to regulating the integrity of markets conducted through approved securities and futures exchanges. While legislative underpinnings and certain sanctions are provided by the *Corporations Law* administered by the ASC, day to day oversight of the conduct of the market and exchange members is provided by the exchanges themselves. The ACCC also has a role in preventing misleading or deceptive conduct under the *Trade Practices Act 1974* and in authorising arrangements between exchange members which might otherwise be considered anticompetitive.

The Australian Stock Exchange

C.54 The ASX is a company limited by guarantee. Members of the company are Australian stock brokers (individuals and organisations). Voting is mutual. The Board comprises 15 Directors—10 elected by members, 4 appointed by the Board (both of these groups for 3 year terms) and the Managing Director. At least one member director must come from each State.

C.55 The role of the ASX is to help channel investors' capital into its most productive uses, to provide a market for trading company securities and certain derivative products, and to act as an efficient price discovery mechanism. For these, the market needs to be fair, well informed and efficient. This requires rules for listing, trading, information disclosure, and

monitoring and enforcement action to ensure that business rules are observed.

C.56 Prudential requirements for stock brokers include adequate capital to support the scale of their trading. Draft new requirements are due for release in the near future. The ASX conducts inspections of members to ensure that its business rules are being observed. More serious breaches are dealt with by the National Adjudicatory Tribunal, the decisions of which may be appealed to an Appeals Tribunal chaired by a retired judge. Matters involving possible breaches of the *Corporations Law* (eg evidence of market abuse) are referred to the ASC.

C.57 ASX Settlement and Transfer Corporation Pty Ltd is an ASX subsidiary company responsible for the development and operation of the Clearing House Electronic Sub-register System (CHES). The Securities Exchanges Guarantee Corporation, another subsidiary of the ASX, administers the National Guarantee Fund (\$143 million at June 1996), the purpose of which is to guarantee completion of trades, and provide compensation for unauthorised transfers of quoted securities or loss of property held on trust by stockbrokers who become insolvent. Excess monies in the Fund may be used, with the Treasurer's approval, for securities industry development projects. The development of the screen-based Stock Exchange Automated Trading System and CHES are two such projects.

C.58 In October 1996, members of the ASX voted in favour of a proposal to convert the exchange from a mutual organisation to a limited liability company with traded shares. Under the proposal, a shareholding would no longer be a requirement for membership of the ASX; new affiliates would be accepted on meeting admission criteria. The Government may impose some restrictions on ownership to ensure that the role of the ASX is not compromised. All existing regulatory, clearing and guarantee arrangements would remain largely unchanged. The proposal is subject to government acceptance and passage of enabling legislation.

The Sydney Futures Exchange

C.59 The SFE is a not-for-profit company, incorporated by guarantee and owned by its members, which are domestic and international securities houses and broking firms. There are 3 classes of membership—floor (full trading and voting rights), associate (no trading rights, but may hold client funds) and local (who are permitted to transact business only on their own account or on behalf of other members). The Board has 10 members comprising 5 elected to represent floor members, 2 to represent local and associate members and 2 independent members (all elected on a 2-year rotating basis) and the Chief Executive of the exchange.

C.60 The role of the SFE is to:

- conduct markets for futures and options trading which operate freely and efficiently, which are fair and which protect the interests of members and of the general public;
- formulate rules and regulations governing the operation of the futures and options markets and to establish specifications for commodities deliverable under contract;
- promote existing and new futures and options markets and to provide information and education for members and the general public; and
- provide the necessary organisation and support facilities to achieve the above.

C.61 The *Corporations Law* places primary responsibility for the organisation of futures business on the relevant self-regulatory organisations constituted for the purpose. In addition to the monitoring of member reporting requirements, regular member inspections are conducted by exchange staff. The ASC's role is one of general regulation, record-keeping, information gathering and discipline. It licenses market participants and advises the Treasurer on applications for approval of futures markets, associations and clearing houses. Approval criteria include that there should be rules, including rules for qualifications for membership, execution of client instructions, off-market dealing and protection of the public.

C.62 The clearing of SFE's markets is provided by Sydney Futures Exchange Clearing House Pty Ltd (SFECH), a wholly-owned subsidiary of the exchange. It has a board of 5, comprising 2 independent directors, 2 elected by clearing members and 2 SFE board members. There are 28 clearing members (who must be either floor or associate members of SFE), representing major domestic and international financial institutions and specialist clearing organisations. The clearing house is financially supported by SFE, SFECH members and catastrophe insurance to provide \$100 million in backing against defaults by clearing house members. SFECH risk management systems are fully integrated with those of the exchange to provide for cost-effective clearance, margining and settlement facilities.

C.63 A fidelity fund has been set up by the SFE to protect clients of its members against losses caused by the member or its employees fraudulently using money or property deposited with the member for either SFE or overseas futures trading. The SFE has trading links with a number of overseas exchanges and provides an after-hours trading system (deals are cleared next day). The New Zealand Futures and Options Exchange is a subsidiary of the SFE.

Australian Competition and Consumer Commission

Structure, Objectives and Responsibilities

C.64 The ACCC is a statutory authority, established in 1995 by (amendment to) the *Trade Practices Act 1974*. Its members are statutory officers appointed by the Governor-General and it is headed by a Chairperson who reports to the Treasurer. There are 5 full-time Commissioners, a number of part-time (associate) Commissioners appointed for terms of up to 5 years and 4 ex-officio associate members. The latter groups attend Commission meetings, as needed, to offer expert advice.

C.65 The ACCC's objective (in respect to financial services matters) is to promote the development of sound practices and competitive structures which provide Australians with choice and quality from competitive

financial service providers. This underpins all merger, consumer protection, enforcement and pricing-related activities.

C.66 The ACCC's jurisdiction was recently expanded as a result of the National Competition Policy to cover, amongst other things, unincorporated bodies including professions, utilities and rural marketing boards. Its responsibilities cover:

- access — including to essential facilities;
- restrictive trade practices — agreements and conduct in restraint of trade, including price fixing; misuse of market power; secondary boycotts; exclusive dealing; resale price maintenance; mergers/takeovers substantially lessening competition, etc;
- consumer protection — prohibition of misleading, deceptive and unconscionable conduct; unfair practices; product safety; conditions and warranties etc. Other related activities include compliance education (eg 'best and fairest' program for in-house training) and self-regulation activities, including codes of conduct;
- prices surveillance — oversight of prices in those markets where competition is too weak to constrain price rises; public inquiries into areas of the economy where pricing problems are perceived to exist; prices, cost and profit monitoring in certain industries or markets where competition may be ineffective; and
- authorisations — restrictive practices permitted on the grounds of public benefit.

Primary Legislation

- *The Trade Practices Act 1974.*
- *The Prices Surveillance Act 1983.*

Approach to Regulation

C.67 For financial services, the approach has been to ensure that practices which are unfair, inequitable or anti-competitive, are subject to close scrutiny.

C.68 For bank mergers each proposal is assessed on its individual merits. Regional markets have been assessed as relevant and the Commission would look closely at any merger proposal involving the last major regional bank in each State. However, the Commission recognises that market definitions are not static and that the financial sector is in a state of flux.

C.69 The approach to consumer protection has been to give priority to matters with national, multi-state or international features; where there is significant public detriment or blatant disregard for the law; where enforcement will have high deterrent or educational effects; and where new market issues are involved or there is detriment to the disadvantaged.

C.70 The ACCC believes significant market failure in the financial sector relates to information asymmetries between consumers and suppliers that make informed decision-making difficult (eg poor or inadequate disclosure). Other issues include high transactions/switching costs; enforcement; and dispute resolution.

Enforcement

C.71 The ACCC seeks to ensure that breaches of the Act do not occur in the first place. Thus it puts considerable resources into education and compliance training activities. Where enforcement action is taken, however, the objectives are to stop any unlawful conduct which is occurring; compensate victims; prevent repetition of unlawful conduct; and punish offenders. The ACCC has a range of legislatively-based and informal remedies including:

- informal administrative resolution;
- enforceable undertakings;
- corrective advertising;
- injunctions;
- damages;
- civil and criminal penalties; and

- enforced disposal of shares/assets gained in takeovers contravening the Trade Practices Act.

Co-ordination Arrangements

C.72 The ACCC is not a member of the Council of Financial Supervisors.

C.73 Operating agreements are in place with ASC, ISC and the Banking Industry Ombudsman and regular liaison meetings are held with the ASC, ISC and RBA.

C.74 There is liaison with State/Territory governments concerning State fair-trading legislation and consumer affairs; and extensive bilateral contact with a broad range of domestic and international government and other bodies.

The Council of Financial Supervisors

C.75 The COFS is made up of the RBA, ISC, ASC and AFIC. It was established in 1992 (following a recommendation of the 1991 Parliamentary Inquiry into Banking and Deregulation) to improve co-ordination and communication between the main regulators of the financial system. The Treasurer has ministerial responsibility for the COFS, which is a non-statutory body. The Chairman and administrative support for the COFS are provided by the RBA. The COFS's main objectives are to:

- facilitate exchanges of information bearing on the efficiency and well-being of the financial system, including the promotion of regular liaison among financial regulators;
- assist each regulatory agency to be aware of, and understand, developments in other parts of the financial system;
- identify issues and trends important to the financial system as a whole; and
- avoid unintended gaps, duplication and inconsistencies in regulation.

C.76 The COFS is not a regulator in its own right, and it does not seek to override the statutory responsibilities of its members. It encourages harmonisation of regulatory requirements where interests of agencies overlap, but does not seek to promote identical standards for all institutions or products. This approach has been taken on the basis that the protection afforded different investors will vary depending on the risk characteristics of the products in question, the institutions and investors involved, and the statutory responsibilities and community expectations of regulators. The COFS has augmented rather than replaced other channels of communication among the agencies.

C.77 A focus of the COFS' attention has been on the implications for its individual members of the operations of financial conglomerates. Guidelines for co-operation have been established. These include a guideline that the regulator of the parent (or largest) entity will normally act as co-ordinator for liaison if problems occur and that information will be shared as necessary and practicable. The agencies are pursuing changes to legislation to remove impediments to information sharing between themselves and appropriate other bodies, such as overseas regulators. Agreement has also been reached on an approach to a regulatory framework for non-operating holding companies for bank/insurance conglomerates. Necessary legislative amendments have been suspended pending the outcome of this Inquiry.

Consumer Protection Arrangements in Australia

C.78 Table C.2 provides an overview of arrangements in Australia for the protection of consumers of retail financial products by broad functional description. These involve a complex range of measures including legislation (both Commonwealth and State); common law including contract law; mandatory and voluntary codes of conduct; and dispute resolution schemes.

Table C.2: Overview of Consumer Protection Regulation in Australia

	Deposit Taking Institutions	General Insurance, Life Insurance and Superannuation	Collective Investments/Securities
Economy-wide Laws and Regulators	<p>Part IVA & V of the <i>Trade Practices Act 1974</i> — administered by the ACCC. Prohibits unconscionable and misleading and deceptive conduct.</p> <p>State/Territory Fair Trading Acts — administered by State/Territory Consumer Affairs Agencies. Essentially mirror Part V of TPA.</p> <p><i>Prices Surveillance Act 1983</i> — administered by the ACCC. Includes power to monitor prices.</p> <p><i>Corporations Law</i> — administered by the ASC. Directors duties and takeover provisions apply, but not financial reporting provisions or fundraising provisions for bank or non-bank short term deposits.</p> <p>At least one State has legislation to provide relief from unfair contracts — <i>Contracts Review Act 1980 (NSW)</i>.</p> <p>Common Law.</p>	<p>Part IVA & V of the <i>Trade Practices Act 1974</i> — administered by the ACCC. Prohibits unconscionable and misleading and deceptive conduct.</p> <p>State/Territory Fair Trading Acts — administered by State/Territory Consumer Affairs Agencies. Essentially mirror Part V of TPA.</p> <p><i>Prices Surveillance Act 1983</i> — administered by the ACCC. Includes power to monitor prices.</p> <p><i>Corporations Law</i> — administered by the ASC. Directors duties and takeovers provisions apply but not financial reporting provisions.</p> <p>At least one State has legislation to provide relief from unfair contracts — <i>Contracts Review Act 1980 (NSW)</i>.</p> <p>Common Law.</p>	<p>Part IVA & V of the <i>Trade Practices Act 1974</i> — administered by the ACCC. Prohibits unconscionable and misleading and deceptive conduct.</p> <p>State/Territory Fair Trading Acts — administered by State/Territory Consumer Affairs Agencies. Essentially mirror Part V of TPA.</p> <p><i>Prices Surveillance Act 1983</i> — administered by the ACCC. Includes power to monitor prices.</p> <p><i>Corporations Law</i> — administered by the ASC. Directors duties, takeovers, securities and futures dealing, fundraising, and financial reporting provisions apply.</p> <p>At least one State has legislation to provide relief from unfair contracts — <i>Contracts Review Act 1980 (NSW)</i>.</p> <p>Common Law.</p>
Economy-wide Dispute Resolution Bodies	<p>Courts — including Commercial and Small Claims Courts/Tribunals in some jurisdictions.</p>	<p>Courts — including Commercial and Small Claims Courts/Tribunals in some jurisdictions.</p>	<p>Courts — including Commercial and Small Claims Courts/Tribunals in some jurisdictions.</p>

Table C.2: Overview of Consumer Protection Regulation in Australia (Cont.)

	Deposit Taking Institutions	General Insurance, Life Insurance and Superannuation	Collective Investments/Securities
Financial Sector Specific State Laws and Regulators	<p>Uniform Consumer Credit Code. Administered by State/Territory Consumer Affairs Agencies. Includes coverage of disclosure, documentation and dispute resolution.</p> <p>At least one State has specific consumer protection legislation dealing with credit to farmers — <i>Farm Debt Mediation Act 1994 (NSW)</i>.</p>		
Financial Sector Specific State Dispute Resolution Bodies	<p>State/Territory Commercial/Credit Tribunals/Courts. Hear complaints under the UCCC. If no such specialist forum — UCCC complaints heard by regular courts.</p>		
Financial Sector Specific Commonwealth Laws and Regulators	<p>Credit Reporting provisions of the <i>Privacy Act 1988</i> — administered by the Privacy Commissioner. Includes coverage of collection, and access to, credit data.</p> <p><i>Banking Act 1959</i> — administered by the RBA. Includes prohibition on use of term 'bank' unless licensed as a bank or exempted.</p>	<p><i>Insurance Contracts Act 1984</i> — administered by the ISC. Includes the requirement to act with utmost good faith.</p> <p><i>Life Insurance Act 1995</i> — administered by the ISC. Amendments have been proposed to add a new consumer protection Part to the Act.</p>	<p><i>Corporations Law</i> — administered by the ASC. Covers licensing of securities dealers and investment advisers, disclosure of commission, advice giving and other conduct rules including misleading conduct and insider trading.</p>

Table C.2: Overview of Consumer Protection Regulation in Australia (Cont.)

	Deposit Taking Institutions	General Insurance, Life Insurance and Superannuation	Collective Investments/Securities
Financial Sector Specific Commonwealth Laws and Regulators (cont.)		<p><i>Insurance (Agents and Brokers) Act 1984</i> — administered by the ISC. Provides for ISC registration of insurance brokers (not agents). Brokers must hold professional indemnity insurance.</p> <p>ISC Life Insurance Circular No. G.I.1 covers product disclosure rules. Does not have the force of law.</p> <p><i>Superannuation Industry (Supervision) Act 1993</i> — administered by the ISC. Includes disclosure rules and internal complaints handling.</p>	
Financial Sector Specific Commonwealth Dispute Resolution Bodies		<p>Superannuation Complaints Tribunal. Considers complaints from individuals about certain decisions made by superannuation fund trustees and about life company superannuation products. No limit on awards.</p>	

Table C.2: Overview of Consumer Protection Regulation in Australia (Cont.)

	Deposit Taking Institutions	General Insurance, Life Insurance and Superannuation	Collective Investments/Securities
Industry-wide Self-Regulatory Codes Of Conduct	<p>Code of Banking Practice — monitored by the Australian Payments System Council (APSC). Covers such matters as disclosure, privacy, guarantees and dispute resolutions.</p> <p>Credit Union Code of Practice — monitored by the APSC. Similar to the Banking Code.</p> <p>Building Society Code of Practice — monitored by the APSC. Similar to the Banking Code.</p> <p>Electronic Funds Transfers (EFT) Code of Conduct — monitored by the APSC. Sets out rules to cover disputes involving EFT transactions.</p>	<p>General Insurance Code of Conduct — monitored by Insurance Enquiries and Complaints Ltd.. Covers agents' and employee competency, policy documentation, claims handling and dispute resolution.</p> <p>Life Insurance Code of Practice. Covers needs analysis, quality of advice, status disclosure, competencies, dispute resolution etc. ISC circular. Does not have the force of law.</p> <p>General Insurance Brokers' Code of Practice. Coverage includes standards of practice, disclosure and dispute resolution.</p>	<p>ASX Business Rules. Includes coverage of ethics; priorities of client's orders; disclosure and conduct.</p> <p>ASX Listing Rules. Covers the obligations of companies whose shares are listed on the ASX and includes requirements to keep the market informed.</p> <p>SFE Business Rules. Covers obligations of SFE members (brokers). Includes coverage of ethics, priorities of client's orders, disclosure and conduct.</p> <p>Financial Planning Association Code of Ethics and Membership rules (includes requirement for professional indemnity insurance).</p>
Industry-wide Self-regulatory Dispute Resolution Bodies	<p>Banking Industry Ombudsman Scheme. Binding decisions up to \$150,000. Deals with complaints about banking services provided to individuals and unincorporated entities.</p>	<p>Life Insurance Complaints Service. Deals with complaints arising from a life insurance contract. Binding decisions up to \$250,000.</p>	<p>Fidelity Funds for Futures Brokers. Covers fraud or defalcation (doesn't cover negligence or incompetence) \$500,000 limit.</p>

Table C.2: Overview of Consumer Protection Regulation in Australia (Cont.)

	Deposit Taking Institutions	General Insurance, Life Insurance And Superannuation	Collective Investments/ Securities
Industry-wide Self-regulatory Dispute Resolution Bodies (cont.)	<p>Credit Union Dispute Reference Centre. Can make binding determinations of up to \$100,000 and recommendations above that amount. Deals with complaints from members about the Credit Union Code and the EFT Code.</p> <p>AAPBS has prepared a model external disputes scheme for building society customers and recommended it to member societies. It recommends binding decisions up to \$50,000. The model covers disputes involving breaches of the Building Society Code.</p> <p>The Mortgage Industry Association of Australia (MIAA), whose membership includes mortgage originators, has developed non-binding procedures to help resolve disputes between members and customers.</p>	<p>General Insurance Enquiries and Complaints Scheme. Can make binding awards up to \$105,000 and recommendations up to \$260,000. Covers complaints about claims on personal lines of insurance from individuals and certain small businesses.</p> <p>National Institute of Insurance Brokers' Dispute Facility. Limit of \$10,000, or \$50,000 if claim involves a life policy or broker waves limit.</p> <p>Financial Planning Association's Complaints Resolution Scheme. Limit of \$50,000, or \$100,000 with principal member and insurer consent.</p>	<p>ASC Securities Dealers or Investment Advisers Bonds (\$20,000) — may be applied to compensate for failure of licensee to carry on business adequately. (Good Advice Report recommends replacing this with requirement for professional indemnity insurance.)</p> <p>Fidelity Funds for Non ASX Brokers. Covers defalcation or fraud (no cover for negligence or incompetence). \$500,000 limit.</p> <p>National Guarantee Fund for ASX Brokers. Covers failure of securities contracts for any reason, including insolvency or defalcation. (Does not otherwise cover negligence or incompetence). Limit of \$500,000.</p> <p>Financial Planning Association's Complaints Resolution Scheme. Limit of \$50,000, or \$100,000 with principal member and insurer consent.</p>

