Submission to the Financial System Inquiry

April 2014

CONTACT

Richard Batten +61 2 9921 4712
richard.batten@minterellison.com

Mark Standen +61 2 9921 4902
mark.standen@minterellison.com

ADELAIDE
AUCKLAND
BEIJING
BRISBANE
CANBERRA
DARWIN
GOLD COAST
HONG KONG
LONDON
MELBOURNE
PERTH
SHANGHAI
SYDNEY
ULAANBAATAR
WELLINGTON
www.minterellison.com

MinterEllison
LAWYERS

Introduction

Minter Ellison is one of Australia's leading commercial law firms. Established in Sydney in 1827, our firm today operates in Australia, Hong Kong, mainland China, Mongolia, New Zealand and the United Kingdom through a network of integrated offices and associated offices.

We understand the challenges that businesses operating in a globalised marketplace face, and offer clients services that are multi-disciplinary and industry facing. Our firm provides high-level strategic and legal advice to local and international corporations, and we are a leading provider of legal services to a wide range of government departments and statutory authorities.

Financial services is one of the core industries on which Minter Ellison is founded – our clients include banks, insurance companies, superannuation trustees, fund managers, custodians, market participants and financial advice firms.

Our firm is therefore well placed to identify issues relevant to this sector and we appreciate the opportunity to make an initial submission on the issues set out in the Inquiry's terms of reference.

Our submission discusses the themes we believe should be considered by the Inquiry, as well as the legal and regulatory issues and the issues for particular sectors.

Further information and commentary on issues presented in the Financial System Inquiry will be available at Minter Ellison's blog: http://fsinquiry.minterellison.com/

We would welcome the opportunity to expand on any our submissions and to make further submissions on these or any other issues during the course of the Inquiry. Please contact the following if you have any questions relating to our submission.

Contacts

Richard Batten
Partner
+612 9921 4712
richard.batten@minterellison.com

Mark Standen
Partner
+612 9921 4902
mark.standen@minterellison.com

Contents

1. Key themes identified for the Inquiry 4

2. Additional issues for the Inquiry 4

3. Issues affecting the financial system 5

4. Legal and regulatory issues 6

Appendix A: Taxation 13

Appendix B: Banking, Finance and Capital Markets 15

Appendix C: Financial Advice 18

Appendix D: Insurance 19

Appendix E: Managed investments 21

Appendix F: Superannuation 23

Appendix G: World Rankings by Population 26

1. Key themes identified for the Inquiry

We agree with the key themes for the Inquiry identified by Mr David Murray as Chairman of the Inquiry:[1]

a) Funding the Australian economy

b) Ensuring the financial system has the right balance between competition, stability and efficiency

c) Addressing the impact of and facilitating the opportunities arising from technology.

2. Additional issues for the Inquiry

In addition, we believe there are a number of other fundamental issues that the Inquiry should consider. These include:

a) The need for structural change to promote innovation, efficiency and competition

Much of the commentary on Australia's experience through the Global Financial Crisis (GFC) has focused on explaining why we emerged relatively unscathed. There is no doubt that our financial system served us well at that time. However, if Australia is to meet the challenges of the 21st century, structural reform of our regulatory system is needed to ensure it is focussed on promoting innovation, efficiency and competition.

Business as usual will not be good enough. What is required is a fundamental rethink of our regulatory structure and approach.

While regulation is a necessary cost of business in order to create an efficient and fair market for services and products, there has not been sufficient focus on facilitating innovation, efficiency and competition. This theme is touched on in all of the Appendices, and discussed in Section 4 below in particular.

b) The impact of the Asian century and Australia's changing position in the world

The emergence of Asia as a global powerhouse will have a significant impact on Australia in this century. We believe that the Inquiry should consider what can and should be done to prepare Australia and our financial system in relation to the following developments.

- The shift in the global axis from the Atlantic to the Pacific

  East and south Asian countries currently make up a quarter of G20 members and nine of the largest 20 countries by population. Together they represent over 50% of the world's population. A significant shift in the proportion of the middle class located in the Asia Pacific has also been predicted.

  The impact of China and other Asian countries as consumer economies is therefore set to increase dramatically. This will present growing opportunities for Australian wealth managers in Asia and for Asian investment in Australia. In addition to being trading powers, these economies also represent stores of capital capable of funding Australia's growth.

- Reduced significance of the US economy and financial system

  The influence and role of the US economy and financial system in global markets is likely to continue to decline. This in turn is likely to reduce the significance of the US dollar as the global reserve currency. Other currencies will increase in importance in the global financial system and, in some cases, may even ultimately replace the role of the US dollar partly or wholly. These include the renminbi and, over time, possibly even the rupee, rupiah and real.

- Changes to the composition of the G20.

  As Appendix G shows, in a global context, Australia ranks 48th by population (counting the Eurozone as a single economic unit) and tenth by GDP. While the data also demonstrates the ability of smaller countries to contribute a disproportionate share of the world economy (including Australia, which could potentially be ranked as the third-wealthiest country in world), the reality is that Australia is likely to drop in world rankings as emerging markets mature. While this is not a problem in itself, it does mean that Australia is likely to have reduced influence on global economic and financial institutions in the future and we believe that the Inquiry needs to take this into account in its recommendations. Consideration also needs to be give to the impact of global and extra-territorial regulation, for example in relation to derivatives and securitisation as discussed in paragraph 4(g) below.

---

[1] *Conduct of the Financial System Inquiry,* Keynote Lunch Address by David Murray, CEDA Conference, Sydney, 14 February 2014

For these reasons, it is vital that we do not only measure our regulatory system against developed Western economies such as the US, the UK or Europe but also against those of our neighbours in east and south Asia. This is important not only in relation to the Asian Region Funds Passport project (discussed in paragraph 4(l) below and Appendix E: Managed investments) but also to ensure our financial system becomes and remains competitive with current and future regional centres, such as Hong Kong, Singapore, Japan and China.

In Australia, we have become used to ever-increasing and complex levels of regulation, and in that we are not alone. The same is true of other Western economies. However, our Western focus may have blinded us to the opportunities enjoyed and approaches employed by Asian jurisdictions. We therefore believe that any recommendations made by the Inquiry should be informed by a regional perspective and this should be assisted by the International Advisory Panel.

We submit that Australia's goal should be to become the most innovative, efficient and competitive financial system in east and south Asia. This requires us to have the most innovative, efficient and competitive regulatory structure in the region. We discuss some of these issues and possible approaches in Section 4 below and in the Appendices in relation to specific areas.

c) Demographic change in Australia

According to Treasury projections, the proportion of the population aged over 65 years will almost double – to around 25 per cent – over the next 40 years. More recently, the Australian Productivity Commission has indicated that Australian governments are likely to face additional pressures on their budgets equivalent to around 6 per cent of national GDP by 2060, reflecting increased expenditure on health, aged care and the Age Pension. Relevantly to the financial system, we believe that significant insurance and pension reform is required to help Australia meet these challenges as discussed in Appendix D: Insurance and Appendix F: Superannuation below.

3. Issues affecting the financial system

Each sector in the financial industry is currently grappling with significant issues, some of which we will cover in more detail below and in the Appendices.

The Appendices cover the following areas in more detail.

Area	Challenges	Further information
Taxation	How to implement the reform required to enable us to compete internationally?	Appendix A: Taxation
Banking, finance and capital markets	How to regulate systemically important institutions and minimise barriers to capital raising?	Appendix B: Banking, Finance and Capital Markets
Financial Advice	How to improve financial literacy?	Appendix C: Financial Advice
Insurance	How to retain capacity and general availability?	Appendix D: Insurance
Managed investments	How to export services and compete in Asia?	Appendix E: Managed investments
Superannuation	How to manage and invest a significantly increasing capital pool and how manage the demographic transition from a system dominating by the accumulation savings to one more geared toward disbursement of those savings in retirement through pensions?	Appendix F: Superannuation

4. Legal and regulatory issues

There are a number of financial services legal and regulatory issues that we believe the Inquiry should consider. These are summarised in this section.

a) Current structure

While we discuss a number of issues and concerns relating to the structure of financial regulation elsewhere in this section, we confirm that we support the key architecture of the current financial system, in particular:

- The twin peaks regulatory model which separates prudential regulation from securities and consumer protection regulation.
- The role of the Reserve Bank in setting monetary policy, maintaining financial stability and regulating payment systems and currency.

b) Role of regulators

It is important for the Inquiry to consider how regulators can be encouraged to focus on their objectives of promoting innovation, efficiency and competition. This may involve consideration of the following questions:

- Does ASIC have too much on its plate?
- Should ASIC be a more relationship based regulator like APRA, for example?
- Is APRA too focussed on consumer protection and stability and not sufficiently focussed on innovation, competition and efficiency?
- Should policy development be separated from compliance and enforcement?

Minter Ellison recommendations to the Inquiry: Consider the feasibility/desirability of requiring all regulators with responsibilities in the financial sector to be consider the effect of any regulation, policy or guideline on the basis of whether and how it promotes innovation, efficiency and competition in the sector.

A further step might be to require regulators to submit regulatory material to an independent panel (which could be made up equal numbers of representatives from industry, government and consumers and required to make decisions by a two-thirds majority). Regulatory material would need to meet one of two criteria:

- the change promotes innovation, efficiency and competition; or
- if the change is required to protect consumers, via a fair, orderly and transparent operation of financial markets or to reduce systemic risk, the change is implemented in a manner that promotes, or minimises the impact on, innovation, efficiency and competition.

Procedures could be implemented to ensure that such a process does not operate as a significant impediment to making required changes, including by permitting regulators to make urgent changes on an interim basis before panel approval is obtained and by setting time limits on the panel considering material.

Such a process would ensure that all regulators have the goal of promoting innovation, efficiency and competition front of mind. Many regulators have this as their object now,[2] but we submit that there is little evidence that such objects receive significant consideration. At the minimum, we believe that all financial sector regulators should be required to report on the steps that they have take to promote innovation, efficiency and competition in the sector.

c) Plethora of regulators

While our system is commonly described as a twin peaks model, financial institutions are in fact subject to a number of different regulators in addition to ASIC and APRA, including:

- the Australian Consumer and Competition Commission (ACCC) in relation to competition and consumer protection issues;
- the Australian Taxation Office (ATO) in relation to tax;

[2] Section 1(2) of the *Australian Securities and Investments Commission Act 2001* (Cth) requires ASIC to strive to, among other things, maintain, facilitate and improve the performance of the financial system and the entities within that system in the interests of commercial certainty, reducing business costs, and the efficiency and development of the economy and to administer laws with a minimum of procedural requirements. Section 760A of the Corporations provides that the object of Chapter 7 of the Act is, among other things, to facilitate efficiency, flexibility and innovation in the provision of financial products and services. Section 8(2) of the *Australian Prudential Regulation Authority Act 1998* (Cth) requires APRA to balance the objectives of financial safety and efficiency, competition, contestability and competitive neutrality.

- the Australian Transactions and Reports and Analysis Centre (AUSTRAC) in relation to anti-money laundering and counter-terrorism financing regulation and licensing remittance dealers and networks;
- the Department of Foreign Affairs and Trade in relation to trade sanctions; and
- the Office of the Australian Information Commissioner in relation to privacy.

Having multiple regulators risks overlapping and inconsistent regulatory requirements applying to financial institutions. This leads to inefficient outcomes. While we generally support the current split between the roles and responsibilities of APRA and ASIC, we believe that at least some of the responsibilities of other regulators in relation to the financial system could be combined. For example, privacy is essentially a form of consumer protection. Responsibility for it in relation to the financial sector could therefore be undertaken by ASIC as the regulator responsible for other forms of consumer protection in the industry.

There are opportunities to remove duplication between the roles of ASIC and APRA. For example, there is no reason to require APRA regulated bodies, such as banks, insurance companies and superannuation trustees, to also hold an Australian financial services licence. There is already an exemption for APRA regulated bodies in relation to wholesale clients,[3] but we submit that there is no reason to require an AFSL in relation to retail clients. There is nothing to prevent appropriate obligations arising under Chapter 7 of the Corporations Act also applying to APRA regulated bodies in appropriate circumstances, and in fact the obligations arising under Part 7.9 apply to product issuers and not licensees in any case.

Another possibility to reduce regulatory overlap and the challenge for institutions of being accountable to multiple masters might be to adopt a regulatory structure whereby each financial institution or firm has a designated primary regulator. For example, APRA would be the primary regulator for banks, insurance companies and superannuation trustees and ASIC would be the primary regulator for investment managers and financial planning firms. All of the current regulators would remain responsible for their area in terms of administering the law and setting policy. However, direct compliance and enforcement responsibilities would rest with the primary regulator. Another regulator could suggest or request the primary regulator investigate particular concerns regarding their area of responsibility but it would be up to the primary regulator to decide whether and how to conduct any investigation or compliance activities or whether to grant an exemption (in consultation with the other relevant regulator(s)). Such a model would ensure a consistent and coordinated approach for regulated entities informed by a regulator who understands the business of their regulated entities and can ensure that any regulation is enforced in a manner that promotes innovation, efficiency and competition in the particular sector.

We would not expect the primary regulator approach to apply to all regimes. For example, we would expect the ATO to retain its current investigation and enforcement powers in relation to the financial sector. However, we believe that this approach could be suitable for some of the other regulators, such as AUSTRAC, DFAT, OAIC and possibly ACCC. It would also be appropriate as between ASIC and APRA.

There are also overlapping regimes affecting the financial sector, including:

- the foreign investment regime, the Financial Sector Shareholdings Act and the Insurance Acquisitions and Takeovers Act 1991;
- the Anti-Money Laundering and Counter-Terrorism Financing Act, the rump of the Financial Transactions Reports Act, the UN and autonomous sanctions regime and the proceeds of crime and terrorist financing provisions of the Criminal Code.

We also discuss the possibility of having a single prudential regulator for insurance in Appendix D: Insurance.

Minter Ellison recommendations to the Inquiry: Remove duplication between the roles of ASIC and APRA. Adopt a regulatory structure model based on a designated primary regulator.

d) Form of regulation

The regulatory model has evolved significantly since it was first introduced. The appropriateness of certain aspects of this evolution is open to question. There are three aspects of the current regulatory model that should be considered in particular:

- The Corporations Act has been extensively modified by Regulations and Class Orders. In many instances regulations change the content of the Act. Further, Class Orders are being used not only to address anomalies but also to impose regulatory regimes for certain types of products/facilities – for example MDAs,[4] IDPS[5] and IDPS-like schemes.[6] Not only does this make the regime complex, hard to understand and inaccessible, it also raises questions about the supremacy of parliament. As noted above, we seem to be moving away from the principles based regime proposed by the Wallis Inquiry to a prescriptive regime.

[3] Section 911A(2)(g) of the Corporations Act.
[4] ASIC Class Order [CO 04/194] Managed discretionary accounts
[5] ASIC Class Order [CO 13/763] Investor directed portfolio services
[6] ASIC Class Order [CO 13/762] Investor directed portfolio services provided through a registered managed investment scheme

- ASIC is imposing increasingly complex capital standards as part of its AFS licence conditions. These have been made incrementally on a sector by sector basis. In effect, ASIC seems to be becoming a quasi prudential regulator. This role was not contemplated under the model recommended by the Wallis report. The Inquiry should consider the role of these capital requirements and the approach that should be taken in setting them.
- ASIC is also increasingly imposing quasi-legislative requirements on regulated entities, from hedge funds[7] to financial product advertisers,[8] by way of regulatory guides. Although they are generally consulted upon before release, regulatory guides are not legislative instruments and do not have the force of law. Yet rather than being limited to addressing ASIC's approach to administering the law, regulatory guides are increasingly imposing obligations substantially additional to the content of (for example) the Corporations Act.

The goal of Wallis to achieve principle based regulation has failed. It is, however, a worthy goal and the Inquiry should reconsider how the structure of financial regulation in Australia could be changed to achieve it. For example, consideration could be given to separating policy and rule setting from compliance and enforcement. The policy and rule making body could be given explicit representation from industry, consumers and government and tasking it the role of specifying detailed regulation where appropriate, ie where principled based regulation is not sufficient.

The appropriateness of delegated legislative powers and guidance playing such a crucial role does not appear to have been critically considered. It has certainly led to a highly complex regulatory model. A key tenet of the rule of law is that the 'rights and duties of participants in society, and the consequences that will follow from a failure to observe them, are both ascertainable and predictable.'[9]

We also discuss the possibility of combining the general insurance and life insurance regimes could be into a single insurance in Appendix D: Insurance.

Minter Ellison recommendations to the Inquiry: Consider whether our regulatory framework and approach facilitates an innovative, efficient and competitive financial system.

e) 'All in' regulation

One of the challenges of the current financial services regulatory regime in Chapter 7 of the Corporations Act (FSR) is the breadth of some of the concepts used, in particular:

- the definition of 'derivative' in s761D;
- the concept of financial risk facility in s763C; and
- the definition of 'non-cash payment facility' in s763D.

FSR adopts an approach of trying to catch everything and then providing exemptions for things that do not need to be regulated. However, this approach actively stifles innovation and efficiency by requiring consultation with ASIC on any development that might be regulated. While ASIC is willing to consult, it will always have competing consumer protection policy concerns and there will be a risk for ASIC if it is seen to give exemptions too willingly. ASIC's approach generally is that it should not usurp the role of Parliament in setting regulatory policy. It naturally therefore has a general bias against giving exemptions except to correct an obvious anomaly.

The definition of 'derivatives' causes particular problems as the meaning is too wide and the exemptions are too narrow. An example is that if a shopping centre lease is determined by the value of turnover rental, then this could be caught as a derivative. We do not believe that this is an appropriate outcome. Leases should be governed by the relevant law specifically developed for and directed towards leases.

It is also not clear why non-cash payment facilities are financial products. There is no clear policy objective stated either in the Wallis Report or subsequent explanatory material. Furthermore, there are other regulatory regimes which govern these facilities such as the Cheques Act 1986 (Cth), the Banking Act 1959 (Cth) and the Payment Systems and Netting Act 1998 (Cth).

Minter Ellison recommendations to the Inquiry: The definition of 'derivative' and the general definition of 'financial product' in FSR should be narrowed to only capture products which are appropriately regulated by the Corporations Act.

---

[7] ASIC Regulatory Guide 240 *Hedge funds: Improving disclosure* issued 18 September 2012, reissued in May 2013 and October 2013
[8] ASIC Regulatory Guide 234 *Advertising financial products and services (including credit): Good practice guidance* Issued in February 2012 and updated in November 2012
[9] Speech by Hayne J "Dispute Resolution and the Rule of Law" Sino-Australian Seminar, Beijing,20-22 November 2002 Available at http://www.hcourt.gov.au/assets/publications/speeches/current-justices/haynej/haynej_DisputeResolutionBeijing.htm

f) Effective regulation

The Johnson Report recommended that:

any significant regulatory proposals applying to the financial services sector be fully tested and evaluated, in particular and wherever possible by way of detailed industry consultation, to ensure that they are necessary, effective and impose as small a compliance burden on industry as possible.[10]

The Government at the time responded to this recommendation by referring to the Office of Best Practice Regulation guidance and the Government's Regulatory Impact Assessment and Regulatory Impact Statement (RIS) process. With respect to both the former and current Government, recent evidence from regulatory reforms affecting the financial sector (such as the Future of Financial Advice and Stronger Super reforms) shows that such guidance and processes have not had the effect of ensuring that regulation is 'necessary, effective and impose as small a compliance burden on industry as possible'. We submit that the Inquiry should consider alternative means for ensuring that these outcomes are always achieved, such as that discussed in paragraph 4(d) above.

Minter Ellison recommendations to the Inquiry: Consider alternative means to ensure that regulation is always 'necessary, effective and imposes as small a compliance burden on industry as possible.

g) Regular reviews

The Johnson Report also recommended periodic reviews of the regulatory rules and framework applying to the financial sector, focused on:

- ensuring that excessive and unnecessary regulatory rules and requirements do not build up over time, and that
- Australia's regulatory rules and framework remain best practice in the face of changing circumstances, products and market practices.[11]

The Johnson Report did not recommend the frequency of such reviews, although it recommended that the first review should not be conducted until 'it is clear that conditions in financial markets have returned to normal and international regulatory reactions to the crisis are more settled.' The current Government's decision to hold the Inquiry is therefore to be welcomed as consistent with the Johnson Report. The Inquiry should consider when it is appropriate for a successor inquiry to be held and make recommendations about how often and how they should be held.

Canada takes a novel approach to ensuring that its financial legislation is reviewed every five years – key financial legislation has a five year sunset clause which unless amended by Parliament would have the effect of ending the authorisation of banks and other financial institutions to operate in Canada.[12] This measure is designed to ensure that the review does occur every five years 'to maintain the safety and the soundness of the sector, while ensuring that Canada remains a global leader in financial services.'[13] While we do not advocate such a radical solution in Australia, we do believe that it would be appropriate for the Government to legislate for an independent review of the financial system to occur on a regular basis, say every 10 years,[14] without having to wait for a Government to decide that a review is required.

Minter Ellison recommendations to the Inquiry: The Inquiry should consider when it is appropriate for a successor inquiry to be held and make recommendations about how often and how they should be held.

h) The impact of global regulation

Following on from the GFC, banking, securitisation and derivatives have been subject to extensive regulation by offshore bodies. Some of this regulation impacts Australian institutions through the extra-territorial scope of the relevant legislation. Some regulation is implemented by the Australian government to reflect commitments provided by the Australian government at organisations such as the G20. We are currently seeing this in the derivatives trade reporting area.

This trend of offshore regulation impacting Australian institutions is likely to continue.

---

[10] Recommendation 4.1, *Australia as a Financial Centre: Building on our Strengths,* Report by the Australian Financial Centre Forum, November 2009 (**Johnson Report**)

[11] Recommendation 4.2, Johnson Report.

[12] *Financial System Review Act 2012* (Canada), sections 3, 77, 105, 123, 154 and 163 substitute the previous five year sunset clause with a new five year sunset clause in the Canadian *Bank Act*, *Cooperative Credit Associations Act*, *Insurance Companies Act* and *Trust and Loan Companies Act*.

[13] S Glover, Parliamentary Secretary to the Minister of Finance, Second Reading Debate on Financial System Review Act, Parliament of Canada, House of Commons Debates, Official Report (Hansard), Vol 146, No 43, 1st Session, 41st Parliament, 3 February 2012: http://www.parl.gc.ca/HousePublications/Publication.aspx?Pub=Hansard&Doc=73&Parl=41&Ses=1&Language=E&Mode=1

[14] The Wallis Report was subtitled *The Financial System: Towards 2010* and was clearly envisioned to map a path for the next decade. Interestingly, however, Canada previously reviewed its financial legislation every 10 years but reduced this to every five years in 1992 as a result of a banking crisis in the early 1980s: B L Miles, *The Canadian Financial System,* Nova Publishers, 2003, p 56.

As a net importer of capital with substantial investments requirements in the short/medium term to address infrastructure requirements in particular, it is important that Australia is compliant with these requirements. However, equally, and given that the issues that substantially contributed to the global financial crisis arose offshore, we believe Australia should tread carefully in the implementation of these regulations.

Minter Ellison recommendations to the Inquiry: There needs to be a clear commitment to implement global regulations in a manner which preserves the integrity of the agreed principles, but is also sensitive to the efficient operation of the Australian financial markets. Intergovernmental agreements and appropriate safe harbours should be utilised where appropriate to minimise impact and work should be done with overseas jurisdictions to minimise the extra-territorial impact of their regulatory regimes in a way which negatively impacts the innovation, efficiency and competitiveness of Australian's financial system.

i) Anti-Money Laundering and Counter-Terrorism Financing (AML/CTF) regime

This regime is poorly integrated with AML/CTF regimes which operate internationally, causing global organisations to incur additional costs to operate in Australian and Australian organisations to incur additional costs to operate globally. The Australian regime should be made more consistent with the international regime and compliance It should be possible that for a company which can show compliance with a global regime, compliance with Australian compliance is not necessary.

Minter Ellison recommendations to the Inquiry: Amend the AML/CTF regime to allow a greater degree of integration with international regimes.

j) Licence and product passporting

Passporting occurs when the licence provided to a person or disclosure provided in relation to a product in one jurisdiction is recognised in other jurisdictions. ASIC has given licensing relief that allows licensed entities from certain foreign jurisdictions[15] not to have to obtain a separate AFS licence to provide financial services to wholesale clients provided certain conditions are met. There is also currently a mutual recognition scheme with New Zealand in relation to security offers.

There are a variety of advantages that could flow from implementing product passporting – ranging from the Australian investors being able to obtain a wider variety of products, to Australian issuers gaining access to wider pool of investors. However, these advantages must be weighed against ensuring appropriate disclosure and consumer protection outcomes. The Inquiry will also need to take into account the Asia region funds passport initiative, which is intended to provide a multilaterally agreed framework allowing the cross border issuing of funds across participating economies in the Asia region.[16] This is currently undergoing public consultation, with a passport pilot intended to commence in January 2016.[17]

Minter Ellison recommendations to the Inquiry: Take a fresh look at Australia's approach to overseas recognition of both financial products and financial service providers.

Consider broader recognition of overseas regulated entities where their home jurisdiction has adopted global regulatory requirements. This should not be limited to investment managers but extended to prudentially regulated institutions such as banks and insurance companies where reciprocal recognition is given to Australian institutions (see also discussion in Appendix D: Insurance).

k) The retail/wholesale client distinction

The distinction between retail and wholesale clients is crucial to the current financial product and service regulatory framework. Retail clients gain significant additional protections ranging from disclosure (eg financial services guides, statements of advice, product disclosure statements and other information) to conduct (eg best interest duty, conflicted remuneration ban for advice, hawking prohibition, complaints and compensation arrangements).

The definition of retail client has, however, been criticised as 'complex and convoluted'.[18] In 2011, Treasury Paper Wholesale and Retail Clients Future of Financial Advice[19] took the view that serious implications with the current distinction between retail and wholesale clients became more obvious during the recent global financial crisis.[20] However there has been no progress on this question since that time.

Minter Ellison recommendations to the Inquiry: Consider whether the current tests and thresholds remain appropriate.

---

[15] Germany, Hong Kong, UK, USA, and Singapore
[16] http://www.apec.org/~/media/Files/Groups/FMP/201308_ARFP-Public-Info-Aug13.pdf
[17] http://www.fsc.org.au/policy/global-markets/asian-region-funds-passport.aspx
[18] *Compensation arrangements for consumers of financial services Future of financial advice* Report by Richard St. John April 2012 para 3.67 pg 65. Available at: http://futureofadvice.treasury.gov.au/content/consultation/compensation_arrangements_report/downloads/Final_Report_CACFS.pdf
[19] Treasury *Wholesale and Retail Clients Future of Financial Advice Options Paper* January 2011available at http://futureofadvice.treasury.gov.au/content/consultation/wholesale_retail_OP/downloads/Wholesale_and_Retail_Options_Paper.pdf
[20] Ibid para 4.1

l) The disclosure model

Approximately 10 years after its implementation, the product disclosure statement (PDS) regime for various types of financial products seems ready for reassessment by the Inquiry. Indeed, it may be time to reassess where the PDS model is now compared to the single set of principles which were initially proposed. Very different PDS requirements are producing varying documents for different types of financial products. Separate regimes apply to superannuation, simple managed investment schemes, more complex managed investment schemes, life insurance and derivatives. We also have shorter, short-form, long-form and incorporated disclosure. All these variants sit within what was once but is no longer a simple principles-based disclosure regime as originally proposed by the Wallis Inquiry which stated that complex disclosure requirements also increase industry's compliance costs which are ultimately borne by consumers. The aim of regulation should be effective disclosure, not merely the production of information.[21] The current disclosure regime is therefore different from the model recommended by the Wallis Committee.

Notably, Recommendation 10 of the Wallis Inquiry was that shorter prospectuses should be encouraged. Despite the use of shorter and short-form PDSs' in certain contexts, it is not clear that this outcome has yet been achieved. On the other hand, brevity should not be considered a beneficial outcome for its own sake. The shorter content must also be useful for an investor. For example the prescriptive requirements of the shorter PDS regime are so focussed on consumer education that the PDSs produced are not well focussed on what a consumer would need to decide whether to invest in or acquire the product. This is entirely at odds with the approach proposed by Wallis Report that 'Disclosure statements need to be framed to make comparison possible.'[22]

We believe that the Inquiry should re-examine the role and form of disclosure for retail clients. Consideration should be given to whether any form of prescriptive disclosure is required or useful for clients. An alternative approach could simply be to prescribe the information that needs to be brought to clients' attention, such as fees and conflicts, without prescribing the form of disclosure and otherwise simply relying on the general prohibition on misleading and deceptive conduct. Consideration should also be given to removing barriers to electronic disclosure which should be seen as the normal means of disclosure rather than one requiring additional levels of consumer protection as currently seems to be the case. We also discuss electronic disclosure under the heading 'Use of technology' in Appendix F: Superannuation and similar considerations apply to other sectors.

Minter Ellison recommendation to the Inquiry: Re-examine the role and form of disclosure for retail clients.

m) Competition review

The intersection of financial services and competition law is very important for the Inquiry. The terms of reference refer to 'competition' and 'competitiveness' no less than five times.

However, we note that Inquiry's competition analysis also needs to take into account the concurrent 'Root & Branch' review of competition law in Australia. The panel and final terms of reference were announced on 27 March.

There are many potentially significant overlaps between the inquiries, for example:

- cartel price signalling rules apply only to banks and the competition review will look at why they have not been used and whether they should be extended to other sectors;
- privatisation of government service delivery businesses such as Australia Post is in the competition remit and this is a potentially leading financial services business;
- the competition review will have to grapple with the operation of competition law to distribution of financial products, after a case involving ANZ and brokers where the ACCC tried to say they were competitors.

Minter Ellison recommendations to the Inquiry: Take into account the concurrent 'Root & Branch' review of competition law in Australia.

n) Corporate Governance

We believe that a transparent and efficient governance structure is an essential component of success for all significant entities that participate in the Australian financial system. Those significant entities include banks, investment banks, general and life insurers, registered superannuation entities, significant providers of other financial services, trade unions and some government-owned entities.

We believe there should be minimum governance standards for all such entities regarding board structure, risk management, transparency of reporting and conflicts.

[21] Financial System Inquiry Final Report March 1997 Chapter 7 para 7.3.2 pg 261
Available at - http://fsi.treasury.gov.au/content/downloads/FinalReport/chapt07.pdf
[22] Financial System Inquiry Final Report March 1997 Chapter 7 pg 269
Available at - http://fsi.treasury.gov.au/content/downloads/FinalReport/chapt07.pdf

Board structure

We acknowledge that the model of a board of directors comprising a majority of independent directors and an independent chair will not be appropriate for all participants in the financial system. But the objectives that underlie such a model should be taken seriously and pursued by all participants.

For example, although a board participating in the financial system may not have a majority of independent directors, it should have in place arrangements to ensure that the board effectively monitors management, and that directors understand their obligation to exercise judgment independently of management influence. As a practical matter, even when it is thought inappropriate for the entity to have a majority of independent directors, there should be at least some independent directors on the board, who can be relied upon to hold their fellow directors to proper standards.

It is important for all participants in the financial system to adopt clear delegation arrangements between the board and management, so that responsibility for all significant financial decision-making is clearly allocated and understood. We suggest there are some weaknesses in the governance arrangements of some participants, particularly in the public sector, regarding the relationship between the board and management.

Risk management

Some of the entities that operate in the financial system are ASX listed and are therefore required to report, on an 'if not why not' basis, whether they comply with the 29 Recommendations in the ASX Corporate Governance Council's Principles and Recommendations. The 3rd edition of the Principles and Recommendations, which will apply to each listed entity's first full financial year commencing on or after 1 July 2014, was published on 27 March 2014.

In our opinion, the 3rd edition makes significant improvements in the governance arrangements for listed entities. Particularly relevant to the Financial System Inquiry are the recommendations regarding risk management, such as that:

- the board of a listed entity should have a committee that oversees risk, with a majority of independent directors and an independent chair;
- the listed entity should disclose how the internal audit function is structured and works, and if it does not have an internal audit function, it should explain the processes for evaluating and continually improving its risk management and internal control;
- the listed entity should disclose whether it has any material exposure to economic, environmental and social sustainability risks and if so, how it manages those risks.

Of course, the risk management requirements for an APRA-regulated institution are more onerous than the ASX Corporate Governance Council's recommendations, and they are mandatory – for example the requirements as from 1 January 2015 to have a Board Risk Committee and Chief Risk Officer. But many important entities whose activities materially affect the financial system are not APRA-regulated. In our submission, those entities should be expected to reach the governance standards for risk management that are recommended by the ASX Corporate Governance Council.

Transparency of reporting

The legal requirements for periodic reporting by participants in the Australian financial system are generally adequate, in our opinion. However, the transparency of the reporting process and access to potential reports can be improved, particularly in the public sector, so as to enhance public and counterparty confidence in the operations of participants. Additionally, participants should be expected to report to an appropriate level on matters relating to exposure to economic, environment and social sustainability risks (as recommended by the ASX Corporate Governance Council), and on such matters as diversity objectives and policies.

Conflicts

It is appropriate for some aspects of governance to be expressed in principles and recommendations rather than compulsory requirements. But some governance matters should be prescribed by law. The Corporations Act lays down requirements for all companies concerning disclosure of 'material personal interests', and for public companies the Act addresses the circumstances in which a board member should be excluded from voting and from participating in discussion at the board. These principles are of fundamental importance and in our view, the Inquiry should make recommendations designed to ensure that the same or similar requirements apply to all participants in the financial system.

In the financial system, many conflicts and potential conflicts are not between duty and personal interest; rather they are between conflicting duties. Conflicting or potentially conflicting duties are not dealt with adequately anywhere in Australia's statutory law. We submit that the Inquiry should recommend clear and consistent regulation of the circumstances in which conflicts of duties should be disclosed and should prevent voting and participation in discussions.

Minter Ellison recommendations to the Inquiry: Consider minimum corporate governance, risk management, reporting and conflict of duty standards that should apply in the financial sector.

Appendix A: Taxation

The Australian Financial Centre Forum's 2009 report, *Australia as a financial centre: Building on our strengths* (the 'Johnson Report'), included 19 recommendations for reform. The Johnson Report identified that tax uncertainties and the scope of the Australian tax system acted as a significant restraint on cross-border business and were an impediment to Australia's recognition as a regional financial services centre.

Australia is losing ground in its quest for international recognition and reputation as a financial services centre. Sydney's ranking in the recently released Global Financial Centre Indexi fell eight places (from 15th to 23rd) and Melbourne fell four places (from 33rd to 37th). This is so despite support from both sides of politics that Australia should be promoted as a regional financial services centre.

Although this result seems a little at odds with the findings of the 2013 *Australian Investment Managers Cross-Border Flows Report*[23], the extent to which tax uncertainty, taxation reform and the incomplete implementation of such reforms remains an impediment should be further investigated and considered by the Inquiry.

Several significant reforms from the Johnson Report appear to be outstanding. One question for the Inquiry will be how to achieve a more responsive rate of progress on any such reforms. Announcement without a corresponding implementation can be just as uncertain as uncertainty itself.

For example, there are six different projects currently in train to reform taxation of trusts relevant to investment funds, most of which are not yet complete.[24] Some of these reforms concern issues which are fundamental to an efficient financial services system – including whether a trust is a fixed trust so that franking credits may 'flow through' the trust to the ultimate investors and whether certain custodial arrangements are indeed relevant trusts for these purposes.

We have noted below some other important tax reform initiatives which were suggested in the Johnson Report but are not yet complete.

Global tax harmonisation

Global tax systems are looking increasingly to harmonise 'disclosure' through the automatic exchange of information and tax transparency. However, the cost of this global tax harmonisation seems to be borne in large part by the financial services sector – both in Australia and elsewhere.

In considering compliance and regulatory costs for our financial services system, the Inquiry should have regard to the extent to which our domestic systems are harmonised (or not) with international regulatory, reporting and taxation systems. It should also consider whether information collection and reporting requirements may thereby duplicate the compliance and regulation burden, including for tax purposes. The extent to which international harmonisation may reduce this burden seems a reasonable and realistic objective.

Although harmonised domestic and international reporting should help minimise the 'public cost' that is ultimately transferred to the financial services sector, we are not convinced that this has been the experience to date. This is especially so because the global tax policy for sharing and collection issues is under review and in flux and domestic systems may be deficient without the benefit of global co-operation, which is yet to be fully achieved. We submit that the Inquiry should consider how this public cost can be minimised for the financial services sector.

For example, the US and Australia have recently completed a FATCA agreement that is to be signed imminently. This will impose a high compliance cost on financial institutions which must both identify US accounts and report information relating to US accounts to the Australian Taxation Office. A global extension of the FATCA model is currently being prepared by the OECD, which will require due diligence and reporting on behalf of all participating nations.

There are also reporting and exchange requirements to satisfy domestic tax compliance.

While tax transparency is a worthy objective, we believe it is appropriate for the Inquiry to consider whether this may be more efficiently achieved for less cost.

A broader range of collective investment vehicles

We consider that a broader range of 'tax transparent' collective investment vehicles (CIVs) is necessary to align the Australian experience with internationally recognised CIVs. This includes tax transparent limited partnerships and companies (and not just trusts).

---

[23] The Report included the following key finding - *There has been a significant increase in the flow of funds into Australia through Managed Investment Trusts over the three year study period. Funds have grown 78% from A$20.30 billion at 1 January 2010 to A$36.19 billion at 31 December 2012 or an average increase of 21.3% per year, compound.*

[24] 1) The project to rewrite the rules for taxing the income of resident investors with interests in foreign trusts; 2) the managed investment trust (MIT) proposals; 3) the investment manager regime (IMR); the review of collective investment vehicles (CIVs); 5) redrafting the trust income regime; 6) rewriting the 'fixed trust' rules: Prof G S Cooper, 'Reforming the Taxation of Trusts: Piecing Together the Mosaic' (2013) 35 Syd LR 187 at 190-194.

The Johnson Report recommended that the Board of Taxation review:

- the scope for providing a broader range of tax flow-through CIVs; and
- restrictions on the Venture Capital Limited Partnership (VCLP) vehicle to see if they are all necessary and consistent with the Government's objective of developing Australia as a leading financial centre.

Other recommendations, such as the Venture Australia Package, are yet to be implemented.

As part of the process to clear the backlog of unenacted measures, the Government announced in December 2013 that it would not be proceeding with this measure.

The Government has not publicly indicated any views on the Board of Taxation's 2011 review of CIVs.

The Government has been undertaking general engagement with the venture capital industry.

Accordingly, it appears to us that a significant amount of work has already been invested (including through public submissions by the tax community and financial services community) to investigate the potential for a broader range of 'tax transparent' CIVs in Australia.

We submit that given this background work, that these developments be given a high priority for implementation.

Islamic Finance Products

The Johnson Report recommended that the Treasurer refer to the Board of Taxation the question of whether any amendments to existing Commonwealth taxation provisions are necessary in order to ensure that Islamic finance products have parity of treatment with conventional products, having regard to their economic substance.

The Government is yet to provide a response on this issue.

- A discussion paper was prepared by the Board of Taxation in October 2010.
- A completed report was prepared and provided to the Assistant Treasurer in April 2013.

Summary

We support the recommendations of the Johnson Report and believe that they should be implemented in full. This includes, in particular in relation to tax:

- a broader range of 'tax transparent' collective investment vehicles;
- removal of withholding tax on:
  - interest paid on foreign raised funding by Australian banks;
  - interest paid to foreign banks by Australian branches; and
  - financial institutions' related party borrowing (Recommendation 3.4);
- removal of LIBOR cap on deductibility of interest paid on branch parent funding (Recommendation 3.5);
- ensuring Islamic finance products have parity of treatment with conventional products (Recommendation 3.6);
- removal of all state taxes and levies on the insurance sector (recommendation 3.7).

We also discuss reform of pension taxation in Appendix F: Superannuation.

Appendix B: Banking, Finance and Capital Markets

Systemically important institutions

There needs to be a rigorous, objective, unconflicted and transparent (publicly available) assessment, repeated reasonably regularly, of the following:

- the extent, if any, to which individual systemically important institutions engaged in maturity transformation, regardless of their form, enjoy an implicit government guarantee or subsidy, in reduced funding costs or otherwise, by being perceived to be too big, too leveraged or too interconnected to be allowed by government to fail;
- the extent (taking into account evolving business models and market developments), if any, beyond which there are no demonstrable current or reasonably foreseeable economies of scale or scope from particular types of banking or financial services business housed within large or systemically important institutions; and
- those elements (if any) of the systemically important institutions' businesses or undertakings that are considered to be systemically significant and those which are not (accompanied by a rebuttable regulatory presumption that the systemically significant should be structurally separated).[25.]

Such assessments would assist informed decision making by stakeholders, and particularly by governments and regulators on what specific additional policy measures to take in respect of systemically important institutions having regard to maintaining and enhancing system safety, the desirability of 'level playing fields' in contestable areas of business, and encouraging appropriate credit growth or better service or both through competition and innovation. We have a preference that the Inquiry recommend, where possible, measures that encourage shareholders themselves (and genuinely at risk debt providers) to vote for or promote in response more rational, streamlined or separated (according to the assessments above) business agglomerations. An example of such measures appears to be the reforms (including additional, graduated capital requirements calibrated to market share above 10%, total assets beyond a threshold and exposure to other systemically significant institutions)[26] introduced in Switzerland in 2010/2011 in respect of Switzerland's systemically important companies: UBS and Credit Suisse.

There are numerous dimensions to the problem of pro-cyclicality affecting our and other financial systems. Some of these are being addressed by current reform processes. Others are not, or are decidedly difficult. One example is the reality of the CEO's (or asset manager's) dilemma during times of boom of being expected by his or her board or investors to deliver returns as good as the peer group where the higher returns (on equity) might be (or it is uncertain whether the higher returns are) inflated. That is, the higher returns may arise, as they in many cases did in the period prior to the GFC, not by superior underlying business performance but by increased or hidden leverage, or by inadequately priced or ignored or hidden risk. Sustained prudent behaviour during booms will often result in the CEO or asset manager being eventually replaced since, as has periodically been demonstrated, asset prices can keep going up (in some cases for years) beyond what is later agreed to have been the point of rationality. It is also difficult for supervisors for sustained periods (even if not subject to regulatory capture) to lean against structurally flawed expectations of management and investors (who, overseeing or invested in a systemically important institution, may economically rationally be responding to an asymmetrical risk profile). We would recommend that the Inquiry thoroughly survey, and make recommendations supplemental to the current reform processes to counter, the problem of pro-cyclicality.

Personal Property Securities Register

There are a number of issues, both legal and technical or operational, relating to the *Personal Property Securities Act 2009* (Cth) (**PPSA**) and the Personal Property Securities Register (**PPSR**) which affect the efficiency of the financial system. These include:

1. Substantive issues relating to the operation of the PPSA, such as the breadth of the types of 'security interests' covered by the PPSA, for example:
    - whether its appropriate that a turnover trust, where one person agrees to hold money received on trust for another person to secure their obligation to pay the money to that person, should be treated as a security interest that has to be perfected;
    - the absence of any clear definition of various concepts – such as a 'flawed asset arrangement' - which are now expressly specified to be a security interest under the PPSA but without any clarity as to the scope of these concepts,
2. Issues affecting the functionality of the PPSR, including issues arising on the migration of security interests from other registers, the restriction on the ability to amend or update certain information on the PPSR, limitations on the

[25] We note in this regard the analysis and recommendations in the UK's 'Vickers Report', the Independent Commission on Banking Final Report (September 2011).
[26] Based on the Final report (September 2010) of the (Swiss) Commission of Experts for limiting the economic risks posed by large companies.

information that can be obtained from the PPSR regarding the security interests granted by a person (for example, it is often not possible to determine what assets are covered by a particular security interest) and difficulties searching the register.

While a review of the PPSA is scheduled to occur by 30 January 2015, we believe that the Inquiry should have regard to the impact of the PPSA on the efficient operation of financial markets.

Dual PDS and prospectus regimes

In addition to the general issues relating to disclosure discussed in Section 4(l) above, we believe that the Inquiry should consider why two different disclosure regimes apply to listed investments. A PDS is required to be given in relation to listed trusts, whereas a prospectus is given for debentures and shares. We do not believe that there is any policy justification for this outcome. It has complicated raising capital, in particular through stapled structures.

In our view, the prospectus regime should applied to all listed investments, regardless of the vehicle used.

REITs/Investment Entities

As discussed elsewhere in this submission, there is a general lack of equivalency between listed trusts and companies. It is unclear why we do not have flow through companies like the US. Further from a taxation perspective, a trust which is not a managed investment trust loses the benefit of franking credits on the way through.

There are also different treatments between real estate investment trusts (REITs) and companies under the Corporations Act. One example is the exemption from the stamping fee exemption. However, the issue goes beyond FOFA obligations. There is an exemption which states that companies do not need a licence to issue their own securities, however no such exemption exists for trusts.

Consideration should be given to whether there is any justification for REITs (and investment companies) to need an authorisation from a licensed intermediary to issue their own securities.

Finally, there are different requirements imposed on trusts and companies, for example for meetings (Part 2G.2 of the Corporations Act for companies and Part 2G.4 for managed investment schemes. In practice, this has lead to practical difficulties, for example when trying to design a proxy voting form for stapled securities.

We believe that the Inquiry should review the differing obligations for trusts and companies and make recommendations to ensure they do not impede capital creation and raising.

Listed vs non listed

We believe that the key difference for applying different obligations should be whether an entity is listed or not. Listed and unlisted entities involve a different investment decision on the part of the investor. Once an entity is listed, it should be treated as functionally equivalent and regulated accordingly. The legal structure adopted is essentially irrelevant. The difference between a trust and a company should be removed for listed entities. Adopting a streamlined approach in this way would significantly simplify the process of capital raising

Limitations of the tracing and substantial holder notice regimes

The substantial holder notice and tracing notice regimes in the Corporations Act are an important element for ensuring the transparency of the market. They mean that one investor cannot secretly amass a significant stake in a listed entity.

However, these requirements only apply to Australian listed companies. Therefore (for example) if a company is incorporated in New Zealand, it is not subject to the substantial holder notice regime. However, if an Australian company is listed on a New Zealand exchange, the New Zealand substantial holding regime applies.

Given the functional equivalence (from the perspective of an investor) of entities listed on an Australian exchange, the substantial holding notice regime should apply equally to entities listed on Australian exchanges in order to properly promote market transparency.

Debenture Regime

The current debenture regime is very restrictive and limits the capacity to raise capital in Australia. While the requirements may have been appropriate in the past, we believe a review is overdue. In particular, the trustee structure should be reconsidered. The role of trustee is based on the idea that there needs to be a person who can be sued on the debt. However, recent developments in class actions mean that investors themselves are well placed to enforce their rights through plaintiff firms. Any perceived shortfall in consumer protection could be addressed by granting ASIC standing to enforce debentures.

Market regulation due to changes in trading

The increase in electronic trading has meant there is now much less human intervention in the day to day conduct of the market compared to 1997. This increases the possibility of inadvertent market volatility. In a recent report, ASIC stated that:

'*Advances in technology have facilitated more trading away from lit exchange markets. It is now easier and more common for market participants to trade directly with clients, or to match client orders with each other*'[27]. ASIC went on to state *'Technology has also fundamentally changed the way orders are generated and executed by all users of the market. Human decision-making has largely been replaced by computers. Computer algorithms now generate a large proportion of all orders on Australian financial markets.'*[28]

Risks arising from due to such trading are highlighted by the NYSE 'Flash Crash' of May 6, 2010 and demonstrate the importance of ensuring trading technology is appropriately regulated.

We believe the Inquiry should consider the impact of technology on the efficient operation of Australian financial markets.

Other issues

Other issues we believe the Inquiry should consider include:

- recent developments here and overseas in relation to 'crowd-funding' and other means of peer to peer funding;
- the implications of Bitcoin and other forms of electronic currency on our financial stability;
- role of the Commonwealth government in the bond market;
- shadow banking and ebanking – what should be allowed and how should it be regulated;
- implementation of the Johnson Report recommendations relating to the banking sector and capital markets.

We also discuss the impact of global regulation in Section 4(h) above.

[27] ASIC REPORT 331: Dark liquidity and high-frequency trading March 2013 at 331.37
[28] Ibid at 331.35

Appendix C: Financial Advice

Future of Financial Advice (FOFA)

While the FOFA reforms are not perfect and do give rise to some issues for product issuers and advisers, we believe that the Inquiry is probably not the best forum to consider these issues. In our view, the current reforms (subject to the corrections currently being discussed) should be allowed to settle in before there is any substantive review of how effective they have been. Advisers have undergone significant change already and we do not believe it is appropriate to contemplate further reform for that sector in the short-term.

Regulation of all investment advice

The Inquiry should consider whether the current different forms of regulation of investment advice depending on the nature of the investment remain appropriate. For example, financial product advice is regulated under the Corporations Act, while real estate investment advice is regulated under state-based regimes and other forms of investment may not be specifically regulated at all. Consideration should be given to whether a single investment advice licensing regime regime should be introduced based on the activity rather than the nature of the investment.

Consideration should also be given to the multiple forms of licensing applying and proposed to apply to financial advisers. Financial advisers are required not only to be covered by an Australian financial services licence, to register with the Tax Practitioners Board (from 1 July 2014) and to hold an Australian credit licence if they give consumer credit related advice. There are also inconsistencies regarding the regulation of credit advice – consumer credit advice (domestic and residential investment) requires an Australian credit licence, margin lending advice requires an Australian financial services licence and advice relating to a loan for non-residential investment purposes is unregulated.

Improving financial literacy among Australians

Events over the past decade have demonstrated the importance of financial literacy. The recent retail financial collapses, for example, may not have occurred if the community was better educated in that regard.

We therefore believe that an important focus for the Inquiry should be on improving financial literacy standards. This is consistent with the recommendations of the Ripoll committee which led to the Future of Financial Advice (FOFA) reforms.[29]

The increasing number of self-managed superannuation funds (SMSFs) has undeniably raised the stakes and heightened the need for greater financial understanding. The empowerment brought about by expansion of SMSFs has significant benefits but also raises risks, in particular because it provides fertile ground for investment spruikers and other fringe dwellers. Increased engagement should however lead to a higher level of financial understanding.

Government and industry will play a key role and have a degree of responsibility for the success of any program to improve financial literacy

One way the government can help is by not over-regulating the retail wealth industry. Regulatory overreach stifles innovation and can backfire in terms of consumer protection. Consideration needs to be given to whether consumers should be 'protected from themselves' (which is how the current system tends to work), or whether they should be empowered to protect themselves.

The solution is not necessarily a legislative or regulatory one. However, the role of the regulator, policy settings (including the objective of the disclosure regime), the licensing regime and the complexity all have a role to play in limiting the ability of the industry to focus on consumer education. At the heart of all of this is the main stakeholder – the consumer – and what we can reasonably expect of them. We believe that the industry as a whole needs to move to a position where we can expect more of consumers because they are better educated. Not only will this will make business easier for everyone, it is also critical to achieving a goal of being the most innovative, efficient and competitive financial system in the region.

---

[29] Parliamentary Joint Committee on Corporations and Financial Services, *Inquiry into financial products and services in Australia,* November 2009, Recommendation 11

Appendix D: Insurance

Insurance capacity

The insurance industry in Australia has until recently been perceived as being stable and subject to only incremental change. While there has been a significant improvement in the level of prudential oversight, particularly in relation to general insurance, the nature of insurance products and the approach to underwriting risk has not, until recently, undergone significant change.

However, a number of challenges have or are likely to arisen for the insurance industry which have the potential to significantly affect the shape of the industry and potentially the general availability of insurance. These challenges include:

Technology

The impact of technology takes a number of forms in the insurance industry. However, the most significant is 'big data'. This takes a number of different forms. However, whether referring to payment pattern and other behavioural data through access to payment systems, the use of telematics or the potential implications of genetic testing and biotechnology, access to data and revolutionary breakthroughs in our understanding of human behaviour and health have the potential to revolutionise the pricing of insurance risk.

The insurance market is dynamic and highly competitive in Australia and the industry is very responsive to market pressures and the opportunities arising from technology. However, this also means that the industry is subject to market pressures to use 'big data' to underwrite risk. While this has the advantage of reducing the cost of insurance for low risk customers, it also means that insurance for higher risk customers may cease to be available or may not be economically viable. This has significant implications not only for such customers but also for the economy as a whole.

Natural disasters

The increasing incidence of natural disasters is likely to continue to have an impact on the availability of insurance of economically important regions and activities, such as agriculture, mining, offshore extraction, transport, forestry, coastal regions (particularly in northern Australia, but increasingly further south) and bushfire and flood-prone areas.

This has already had an impact on the availability of flood insurance in certain areas and strata insurance in northern Queensland. While the industry's response in relation to flood insurance is welcome, we believe the Inquiry should consider what can and should be done to maintain insurance capacity in Australia.

Insurance through superannuation

The life insurance industry has been significantly challenged recently by the growing incidence of disability claims, particularly in relation to insurance provided through superannuation. This is caused by a number of factors including the application of the statute of limitations and the approach of the courts to generally used definitions. Structural changes in superannuation may also be having an impact, such as choice of superannuation fund and the availability of self-managed superannuation funds, which may be increasing selection risk for insurance providers. The challenge is to work out how Australia can retain its relatively unique availability of automatic insurance cover through superannuation at a reasonable cost.

Longevity

Longevity poses two challenges for the insurance industry: the availability of health insurance at a reasonable price and the availability of longevity products to meet the needs of retirees. Both of these issues deserve the consideration of the Inquiry. We discuss related issues on the availability of pensions in Appendix F: Superannuation.

Insurance is about the transfer and pooling of risk and averaging the cost of that risk, ultimately via reinsurance through the economy as a whole. The availability of insurance and the ability to transfer risk is a keystone of the modern capitalist system. An increase in economically uninsurable risks poses challenges for economy as a whole and increases the social burden borne by the community.

We believe that the Inquiry should consider the implications of the changes and stresses in the insurance market for the financial system and economy as a whole.

Single prudential regulator

The Inquiry should consider the appropriate approach to the regulation of insurers. At present there are significantly different regulatory frameworks (and governing acts) between life, general and private health insurance companies. In particular, private health insurers are regulated by a different regulator (the Private Health Insurance Administration Council (PHIAC)) than general and life insurers (the Australian Prudential Regulatory Authority (APRA)). Given both regulators perform a similar role, we submit that the Inquiry should consider whether all prudential regulation of insurance should come under one regulator.

We also submit that Australia should be prepared to permit insurance companies authorised by recognised overseas insurance regulators to operate in Australia without having to seek separate APRA authorisation.

The International Association of Insurance Supervisors (IAIS) has been upgrading its level of coordination and oversight of insurance regulators since the GFC, with the adoption of revised Insurance Core Principals (ICPs) in October 2011 and the establishment of a Standards Observance Committee (SOSC) in late 2010. The SOSC has committed to conducting self-assessment and peer review of all ICPs and the IAIS released its first Self-Assessment and Peer Review aggregate report in October 2013.[30] While this report only provides aggregated data and only covers three of the 26 ICPs, over time it should become possible to identify and recognise overseas regulators which fully comply with the ICPs. While there may be international resistance to releasing this information publicly, Australia could take a lead in agreeing both to its release and to recognise regulators that meet the required standard.[31] We do however believe that such recognition should only occur on a reciprocal basis.

Single insurance regime

The changes to the regulation of general insurers in the wake of the HIH collapse mean they are now regulated much more similarly to life insurers than previously. Apart from the requirement for statutory funds for life companies, the primary difference is the different capital requirements imposed for different lines of business and APRA has done significant work to make capital regulation more consistent.

There remains a cross over between the types of insurance provided by general and life insurance companies – such as the similarity between sickness and accident cover and disability cover. Indeed some forms of insurance such as consumer credit insurance typically require two insurers side by side to provide the cover which does not seem to be an efficient outcome.

There are also conflicts between the types of benefits life companies are permitted to offer and those prohibited by private health insurance legislation. We submit that artificial restrictions on the types of expenses that life companies can reimburse not only restricts innovation and efficiency in that industry, they also impede the ability of life companies to offer rehabilitation benefits to encourage insureds to return to work which would benefit not only the life company and the insured but also society by reducing burden on taxpayers.

We submit that the Inquiry should consider whether separate regulatory regimes for general insurance, life insurance and health insurance remain appropriate and whether the artificial distinctions between these regimes are necessary or appropriate to facilitate competition, innovation and efficiency. An alternative would be to adopt a single insurance licensing regime with authorisations and capital requirements set as appropriate for the product lines offered by the particular insurance company.

Other issues

Other issues we believe the Inquiry should consider include:

- Ensuring we have the correct balance in prudential regulation, in particular in relation to the level of data collection undertaken by APRA.
- Implementing the following Johnson Report recommendations:
  - the removal of all state taxes and levies on the insurance sector (recommendation 3.7); and
  - standardising state regulation of the insurance sector (recommendation 4.7).
- Introduction of a robust and practical product rationalisation regime (as discussed in the 'Product rationalisation' section of Appendix E: Managed investments).

[30] IAIS Report from Expert Review Teams Conducting the Self-Assessment and Peer Review of ICPs 1, 2, and 23: http://www.iaisweb.org/view/element_href.cfm?src=1/20120.pdf (**IAIS Report**)

[31] APRA does not appear to have participated in the initial self-assessment and peer review, although PHIAC has: Annex 1 of the IAIS Report. We are not aware of any explanation for this but believe that APRA should be encouraged to take part in this process.

Appendix E: Managed investments

Leveraging our domestic capability internationally

We believe that it is important for the Inquiry to focus on what government and industry needs to do to leverage our domestic capability internationally. Key issues include choice of investment vehicle, tax and passporting.

Investment vehicle

In Australia, a trust structure is the most common vehicle for investment funds. However, this structure is much rarer outside Australia and not generally well understood, especially in Asia. More common structures include corporations, limited partnerships and contractual arrangements.

A key reason for this is that trusts are the most flexible structure in Australia which permits tax liability to be passed through to investors. Tax reform is therefore critical to facilitate the use of a broader use of vehicles for investment funds in Australia. We discuss this and related tax issues in Appendix A: Taxation.

Tax is the primary problem with use of other types of investment vehicle in Australia. However, there are other impediments, particularly in Australian company law which is not as flexible as the company law regimes of other jurisdictions where companies are used as investment vehicles.

Passporting

The ability to market Australian funds and investment management services is also crucial to our ability to export these services. The recently announced pilot for Asian Region Funds Passport involving Australia, South Korea, Singapore and New Zealand is a welcome development. However, it is crucial that other countries become involved, in particular those with a high level of funds under management and those with the potential to grow funds under management significantly.

We also note that the Asian Region Funds Passport is limited to:

- retail funds;
- the operation of funds and not marketing of those funds;
- services relating to funds and not the provision of other investment management services.[32]

We submit that reciprocal recognition of licensing regimes more generally would also be a goal worth pursuing, not only in Asia but globally.

Other aspects of Johnson Report

The above issues are identified by the Johnson Report[33] which also identifies the following issues in relation to investment management which we agree need to be addressed:

- single regulatory online gateway (recommendation 4.4);
- increased competition on exchange traded markets (recommendation 4.5); and
- tax issues discussed in Appendix A: Taxation.

Encouraging innovation and efficiency

In the current low yield environment it is even more important than normal to encourage innovation to bring products to market efficiently. Significant impediments to innovation and efficiency include the following discussed below.

Disclosure

The current product disclosure regime provides for a number of different types of disclosure depending upon the particular type of managed investment scheme (MIS) product – including, for example, short form PDSs, long form PDSs and additional disclosure requirements for 'hedge funds'. These requirements are documented in a combination of legislation and ASIC policy.

[32] Asian Region Funds Passport Framework Document:
http://www.fsc.org.au/downloads/file/policy/APEC_StatementofIntentonestablishmentoftheAsianRegionFundsPassport.pdf
[33] Johnson Report, recommendations 3.1, 3.3 and 4.3.

As a result, the current regime involves complexities which potentially inhibit the efficient bringing to market of MIS products.

As discussed in Section 4(l) above, we believe that the Inquiry should consider whether the current product disclosure regime is appropriate, or whether changes are required to facilitate the efficient bringing of products to market.

Hedge funds

ASIC has created a definition of 'hedge fund' for the purpose of regulating product disclosure for such products. The definition is very broad and captures a variety of funds, including balanced funds, which traditionally would not be considered hedge funds.

We believe that the Inquiry should consider ASIC's role in relation to the imposition of these disclosure requirements and whether it is appropriate to adopt such a wide definition which can apply to funds which would not normally be regarded as hedge funds.

Product rationalisation

Treasury released a paper on product rationalisation for managed investments and life insurance in December 2009 but no action has been taken in relation to this reform proposal since. While we do not support the restrictive and prescriptive regime proposed by Treasury at that time, we do believe that this is an important matter for the Inquiry to consider. Establishing a robust and practical product rationalisation regime (such as the existing superannuation successor fund transfer regime) for the managed investment and life insurance industries will do much to increase the efficiency of the Australian financial system.

Latest CAMAC report

The recently released discussion paper by the Corporations and Markets Advisory Committee (**CAMAC**) provides a broad review of the establishment and management of MISs and opens up all aspects of the legislative structure. The report which focuses on reducing compliance burdens and aligning the regulatory regime for MIS with companies, identifies some important issues which we believe the Inquiry should consider (for example, the streamlining of the MIS registration process with ASIC and reforms regarding the related party transaction provisions).

However, there are other aspects of the report, which although designed to align MIS regulation with that of companies, we believe will impose additional compliance burdens on MISs and, go against current regulatory developments ,and should not form part of the Inquiry's considerations (for example, the report's proposal that wholesale MIS be registered and introducing additional content requirements for MIS constitutions).

Other issues

Other issues we believe the Inquiry should consider include the following:

- The current licensing regime does not promote the development of an efficient secondary market for unlisted products which would take the pressure off building in liquidity mechanisms in scheme constitutions.
- Different tests for 'liquidity' for withdrawals from registered schemes in Part 5C.6 of the Corporations Act and the test for when a shorter PDS is required.
- A specific, tailored related party regime should be developed for managed investment schemes.
- The current uncertainty arising from case law about the circumstances in which scheme constitutions can be amended without going to the expense of a special resolution of members needs to be addressed.
- The voting majorities required for certain resolutions relating to registered schemes should not disadvantage schemes with uninterested members.
- The restrictions relating to the AQUA platform for managed investment schemes should be reviewed to promote the efficient bringing of products to market.
- There should be a review of the proposed ASX Managed Funds Service (mFunds) should be reviewed to ensure it includes the right features.
- Consideration should be given to whether a specific regime for the voluntary administration and winding up of insolvent schemes should be introduced in light of previous CAMAC recommendations.

We discuss ASIC's role in imposing capital requirements in Section 4(d) above.

Appendix F: Superannuation

Superannuation investment

On some predictions, superannuation assets may exceed bank financial assets by 2036.[34] Accordingly, we believe the Inquiry should consider the role of superannuation funds as a means of funding growth.

There are challenging questions regarding the means by which superannuation funds should be incentivised to invest in longer-term projects and how funds can be made available to small to medium enterprises, (the 'engine of growth' in the Australian economy).

It may be argued that Australia's combination of defined contributions and investment choice means that it is necessary and more appropriate for superannuation funds to invest in liquid assets, such as listed equities. On the other hand, there is likely to be a need for superannuation funds to make longer-term investments as our aging population shifts the balance from a predominantly accumulation based system to one that is more geared to paying pensions.

Pension reform

Superannuation legislation regulates the various types of benefit that may be paid by a superannuation fund. For a retired member, who has reached preservation age (currently age 55), their superannuation benefit can usually be paid as a lump sum or pension.

The majority of post-retirement (longevity) products offered in the superannuation system are allocated or account based pensions.

As highlighted above, it is projected that over the next 40 years, the proportion of the population over 65 years will almost double to around 25 per cent. [35] With this ageing population comes the greater risk that an individual's retirement savings will be exhausted before the individual dies. This is known as longevity risk.

While longevity risk is not a new phenomenon, the potential for this risk to be realised and the impact of this risk has grown as a result of the following factors:

- the increase in life expectancy of Australians;
- the relative lack of diversity in the retirement products available to address longevity risk in the Australian superannuation market; and
- the reduction of tax incentives for those taking pensions.

We submit that there are a number of legal and regulatory reasons for the relative lack of diversity in the retirement products available to address longevity risk in the Australian superannuation market.

Restrictive and inflexible rules

Superannuation trustees must comply with the pension standards set out in regulation 1.06 of the Superannuation Industry (Supervision) Regulations 1994 (Cth) in order to ensure that their pension product is eligible for the tax exemption relating to the underlying assets supporting a pension. However applying the provisions of regulation 1.06 to particular products is not at all straightforward..

To meet the pension standards, a pension must satisfy each of the characteristics set out in the applicable standard. A pension cannot comply partially with the requirements for one type and partially with those for another. This is excessively restrictive and inflexible, and represents a significant barrier to the development of flexible longevity products.

Further, the superannuation legislation does not readily enable new types of pensions to be offered, even those which simply combine elements of several of the existing pension types.

We submit that the Inquiry should consider removing or amending the pension standards in the Superannuation Industry (Supervision) Regulations 1994 (Cth) to enable greater flexibility and innovation in the offering of retirement products.

Tax incentives relating to pensions

There are also barriers in the income tax system which inhibit the development of flexible longevity products.

---

[34] See for example http://www.industrysuperaustralia.com/super-must-lead-the-way-in-infrastructure-investment
[35] Treasury Paper *Australia's Demographic Challenges'* 2004 available at http://demographics.treasury.gov.au/content/_download/australias_demographic_challenges/html/adc-04.asp

As set out above, a superannuation fund is eligible for tax exemptions on income earned on fund assets which support liabilities for pensions which comply with the pension standards in the Superannuation Industry (Supervision) Regulations 1994 (Cth).

However, the tax exemption only applies to assets that are used to meet current pension liabilities. In practice, this prevents new pension products from being created which could involve both a currently payable pension and a deferred pension as the underlying assets of the deferred pension will not qualify for the tax exemption.

One of the effects of the "Better Super" changes in 2007 was to overhaul the regime by which retirement benefits were taxed. Prior to the commencement of these changes (1 July 2007), the amount of concessionally taxed superannuation benefits a person could receive over their lifetime was tested against what was called the "Reasonable Benefits Limits" or "RBLs". Superannuation benefits paid in excess of a person's RBL were subject to additional tax.

A different RBL applied to lump sums and pensions. The pension RBL was significantly higher than the lump sum RBL. In order to qualify for the higher pension RBL, at least half of the superannuation benefit must have been taken in the form of a complying pension or annuity – that is, a pension or annuity that was payable for the life of the beneficiary, or for a term corresponding to the beneficiary's life expectancy (and that met certain other prescribed standards in the superannuation legislation).

While a tax exemption is still provided on the investment earnings of the underlying assets used to support the payment of pensions, this exemption applies to pension assets generally and is not restricted to complying pensions and annuities as was previously required by the pension RBL.

Legal and regulatory over-emphasis on superannuation costs

One of the stated objectives of the Stronger Super reforms was to introduce new low-cost, simple default superannuation products (ie. MySuper). This focus on the costs of superannuation products has found its way into various legislative and regulatory obligations for superannuation trustees, for instance, the obligation for a superannuation trustee to only offer or acquire insurance of a particular kind, or at a particular level, if the cost of insurance does not inappropriately erode the retirement income of beneficiaries.

We submit that there is an over-emphasis on superannuation costs which inadvertently creates a market barrier to the introduction of new innovative products designed to address longevity risk which may appear more costly when compared to existing "basic" products. This over-emphasis on costs also does not take into account the commercial reality that the pricing of innovative or sophisticated retirement products are typically higher than that of "basic" products to adjust for the risk of adverse selection, whereby such products are typically purchased by persons who are expected to live longer than the average.

Our submission

We submit that in order to address increasing longevity risk in Australia, retirees should have a wider choice of innovative retirement income stream products and that this can only be achieved through, among other things:

- the removal of legal/regulatory barriers (such as complex, restrictive and inflexible pension rules) which impede the creation and offering of retirement products in Australia;
- extending the tax incentives available to superannuation funds to increase market demand for, and to incentivise the development of, innovative retirement income stream products; and
- introducing further tax incentives for retirees to incentivise taking out pensions; and
- the adjustment of an unhealthy legal and regulatory over-emphasis on superannuation costs.

Use of technology

The use of online services has grown at an exponential rate over recent years. This has resulted in greater flexibility for consumers with regard to accessing information as well as relatively inexpensive and timely sharing of information and services by organisations.

In 2008, ASIC recognised that benefits could be obtained from financial service providers communicating with financial consumers through electronic means and that online information has the potential to make disclosure more interactive, innovative and user-friendly. The cost savings for businesses obtained through online delivery of information was also recognised. This culminated in regulatory guidance and class order relief being provided to facilitate electronic disclosure of regulated financial services documents such as Product Disclosure Statements, Financial Services Guides and Statements of Advice.

However, there remains uncertainty and inconsistency in relation to the requirements for electronic delivery of disclosure documents. The manner in which documents can be delivered online vary according to the type of document being provided.

For example, for Significant Event disclosure to be provided online, a consumer must consent to electronic delivery, whereas no consent is required in the case of a superannuation fund's Annual Report. In addition, a majority of disclosure documents can be provided via a hyperlink to a website, but Statements of Advice cannot.

We recommend that the Inquiry consider reviewing current legislation with a view to providing greater certainty and consistency in relation to online transactions and disclosure. Options the Inquiry may wish to consider include allowing electronic disclosure without the consent of consumers, with an option for consumers to opt out of electronic delivery and request paper documents. The Inquiry could also consider permitting all documents to be provided via a public website, with password protection or another form of security applied to documents that contain personal information (such as Statements of Advice) (relevant to TOR 2.1, 2.3 and 3.1).

Appendix G: World Rankings by Population

Country / economic unit	Population (POP)[36]	% of world POP	Rank by POP[37]	GDP (USD)[38]	% of world GDP	Rank by GDP[37]	Wealth index (WI)[39]	Rank by WI[40]
World	7,151,600,000	100%	–	$72,216,373	100%	–		
*China[41]	1,363,460,000	19.1%	1	**$8,221,015**	**11.38%**	**3**	0.60	
*India	1,241,860,000	17.4%	2	**$1,841,717**	**2.55%**	**8**	0.15	
*Eurozone[42]	335,120,526	4.69%	3	**$12,460,362**	**17.25%**	**2**	**3.70**	**9**
*United States	317,740,000	4.44%	4	**$16,244,575**	**22.49%**	**1**	**5.07**	**6**
*Indonesia	249,866,000	3.49%	5	$878,536	1.22%	13	0.35	
*Brazil	201,032,714	2.81%	6	**$2,253,090**	**3.12%**	**6**	1.11	
Pakistan	185,969,000	2.6%	7	$225,558	0.31%	36	0.11	
Nigeria	173,615,000	2.43%	8	$270,211	0.37%	30	0.05	
Bangladesh	152,518,015	2.13%	9	$122,980	1.70%	48	0.80	
*Russia	146,046,000	2.01%	10	**$2,029,813**	**2.81%**	**7**	1.40	
*Japan	127,120,000	1.78%	11	**$5,960,269**	**8.25%**	**4**	**4.63**	**7**
*Mexico	119,713,203	1.67%	12	$1,177,398	1.63%	11	0.98	
Philippines	99,304,500	1.39%	13	$250,182	0.35%	35	0.25	
Vietnam	89,708,900	1.25%	14	$155,565	0.22%	47	0.18	
Ethiopia	86,613,986	1.21%	15	$42,516	0.06%	67	0.05	
Egypt	86,160,600	1.2%	16	$256,729	0.36%	34	0.30	
Iran	77,303,000	1.08%	17	$548,590	0.76%	17	0.70	
*Turkey	76,667,864	1.07%	18	$788,299	1.09%	14	1.02	
Congo[43]	67,514,000	0.94%	19	$17,247	0.02%	92	0.02	
Thailand	65,926,261	0.92%	20	$365,966	0.51%	27	0.55	
*United Kingdom	63,705,000	0.89%	21	**$2,476,665**	**3.43%**	**5**	**3.85**	**8**
*South Africa	52,981,991	0.74%	23	$384,315	0.53%	23	0.72	
*South Korea	50,219,669	0.7%	24	$1,129,536	1.56%	12	2.23	11
*Argentina	40,117,096	0.56%	29	$475,211	0.66%	21	1.18	
Poland	38,502,396	0.54%	31	$489,795	0.68%	20	1.26	
*Canada	35,344,962	0.49%	34	**$1,821,445**	**2.52%**	**9**	**5.14**	**5**
*Saudi Arabia	29,994,272	0.42%	43	$788,299	1.09%	15	**2.60**	**10**
*Australia	23,426,145	0.33%	48	**$1,541,700**	**2.13%**	**10**	**6.45**	**3**
Sweden	9,651,531	0.13%	81	$523,804	0.73%	18	**5.62**	**4**
Switzerland	8,112,200	0.11%	90	$631,183	0.87%	16	**7.91**	**2**
Norway	5,109,056	0.07%	108	$499,633	0.69%	19	**9.86**	**1**

[36] Source: http://en.wikipedia.org/wiki/List_of_countries_by_population (23/3/14) (apart from Eurozone population, see footnote 42 below)

[37] These rankings count the Eurozone as a single economic unit.

[38] *Nominal 2012 GDP for the world and the European Union (EU)* World Economic Outlook Database, October 2013, International Monetary Fund, retrieved 2013-10-08.Source: http://en.wikipedia.org/wiki/List_of_countries_by_GDP_(nominal) (23/3/14) (apart from Eurozone population, see footnote 42 below)

[39] Wealth index is calculated by dividing a country's percentage of GDP by its percentage of population

[40] Rankings are only as between countries and economic units shown in the table

[41] Excluding Hong Kong and Macau

[42] The Eurozone is currently comprised of European Union members who have adopted the Euro, currently Austria, Belgium, Cyprus, Estonia, Finland, France, Germany, Greece, Ireland, Italy, Latvia, Luxembourg, Malta, Netherlands, Portugal, Slovakia, Slovenia, Spain. Source: http://en.wikipedia.org/wiki/Eurozone (23/3/14)

[43] Democratic Republic of the Congo

Minter Ellison Offices

AUSTRALIA

BRISBANE LEVEL 22 WATERFRONT PLACE 1 EAGLE STREET BRISBANE QLD 4000 • T +61 7 3119 6000
CANBERRA LEVEL 3 MINTER ELLISON BUILDING 25 NATIONAL CIRCUIT FORREST CANBERRA ACT 2603 • T +61 2 6225 3000
MELBOURNE LEVEL 23 RIALTO TOWERS 525 COLLINS STREET MELBOURNE VIC 3000 •T + 61 3 8608 2000
PERTH LEVEL 4 ALLENDALE SQUARE 77 ST GEORGES TERRACE PERTH WA 6000 • T +61 8 6189 7800
SYDNEY LEVEL 19 AURORA PLACE 88 PHILLIP STREET SYDNEY NSW 2000 •T +61 2 9921 8888

ASIA

BEIJING UNIT 1022 LEVEL 10 CHINA WORLD TOWER ONE 1 JIANGUOMENWAI AVENUE BEIJING 100004
PEOPLE'S REPUBLIC OF CHINA • T +86 10 6535 3400
HONG KONG LEVEL 25 ONE PACIFIC PLACE 88 QUEENSWAY HONG KONG SAR • T +852 2841 6888
SHANGHAI SUITE 4006-4007 40th FLOOR CITIC SQUARE 1168 NANJING ROAD WEST SHANGHAI 200041
PEOPLE'S REPUBLIC OF CHINA • T +86 21 2223 1000
ULAANBAATAR SUITE 612, CENTRAL TOWER, GREAT CHINGGIS KHAAN'S SQUARE 2, SUKHBAATAR DISTRICT 8, ULAANBAATAR 14200
MONGOLIA • T +976 7700 7780

UK

LONDON 10 DOMINION STREET LONDON EC2M 2EE • T +44 20 7448 4800

Minter Ellison Legal Group Associated Offices

AUSTRALIA

ADELAIDE LEVEL 10 GRENFELL CENTRE 25 GRENFELL STREET ADELAIDE SA 5000 • T +61 8 8233 5555
DARWIN LEVEL 1 60 SMITH STREET DARWIN NT 0800 • T +61 8 8901 5900
GOLD COAST GROUND FLOOR 165 VARSITY PARADE VARSITY LAKES QLD 4227 • T +61 7 5553 9400

NZ

AUCKLAND MINTER ELLISON RUDD WATTS LEVEL 20 LUMLEY CENTRE 88 SHORTLAND STREET AUCKLAND 1010 • T +64 9 353 9700
WELLINGTON MINTER ELLISON RUDD WATTS LEVEL 17 125 THE TERRACE WELLINGTON 6140 • T +64 4 498 5000

www.minterellison.com