WALLIS INQUIRY — LEGAL IMPLICATIONS FOR FINANCIAL SERVICE PROVIDERS

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INTRODUCTION

One financial commentator described the implications of the Wallis Inquiry recommendations as "anodyne". However fair that description may be to sub-editors looking for headlines, the breadth and depth of legislative change required if the recommendations are to be implemented make the description quite inappropriate in a legal context.

This paper is confined to the Inquiry's recommendations regarding institution structures, ownership restrictions, mergers and competition policy, prudential regulation and protective mechanisms for depositors and policy holders. It follows the format of summarising the Inquiry's approach to each of these issues, describing the principal recommendations, and commenting very selectively on some legal issues that flow from the particular recommendations referred to.

STRUCTURE OF THE FINANCIAL SERVICES INDUSTRY

While the Committee expects gradual rather than revolutionary change to industry structure, it expects that the financial services industry will have an increasing array of participants, products and distribution channels and that the traditional categorisation of firms will be blurred. Forces for change will see at least two developments:

(a) provision of products and services by niche players; and

(b) competitive responses to that by the existing institutions.

The Committee is anxious to ensure that those responses can be undertaken by larger institutions without any competitive regulatory disadvantages. This can be achieved through either:

(a) a commonality of regulation for all players; or

(b) the ability to establish conglomerate structures under holding companies with subsidiaries subject to regulations applicable to their particular activities.

The Committee suggests that the first cannot necessarily be achieved and therefore believes that provision must be made for the second. However, the creation of the Australian Prudential Regulation Commission (APRC) to oversee licensing and regulation of the financial services industry, and the creation of the Corporation and Financial Services Commission (CFSC) as an economy wide regulator of market conduct and disclosure are substantial moves towards the first response.

The Inquiry's recommendations directly affecting existing structure may be grouped as five proportions:

(1) While for the moment regulated financial activities should remain separated from those which are not regulated, regard should be had for:

- inter-relationships between financial services and some other (non-regulated) activities;
- relevant experience in any activity which is considered for regulation; and
- likely conformity with intended prudential regulations.[1]

(2) Mutual entities should be permitted to hold all classes of licences, provided they satisfy tests of probity, financial standing and ongoing ability to comply with capital requirements.[2]

(3) A non-operating holding company structure should be permitted, provided that structure meets requirements relating to:

- capital;
- management;
- adequacy of firewalls;
- reporting of intra-group activities;
- independent board representation on subsidiary entities.[3]

(4) "Conglomerates" (including those permitted to have non-operating holding company structures) should be permitted to hold licences for different activities, including multiple licences of the same type (eg, two banking licences) and should be able to conduct non-regulated financial activities provided:

- prudential standards are not compromised;
- deposit holders and other investors are treated equitably.

(5) Extension of the privacy regime and future codes of conduct should specifically allow the sharing of information among entities within a group, unless the customer has taken some action to indicate refusal, but the opportunity of exercising a right of refusal must be easily and readily available.

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1 Recommendation 46.

2 Recommendation 47.

3 Recommendation 49.

The extent to which the Inquiry believes conglomerates with the potential non-financial businesses can own financial service providers is unclear. Recommendation 46 reads as uncharacteristically obtuse. The Inquiry acknowledged the tension between the perceived need to prevent the safety of the financial sector from being compromised by the fortunes of other businesses (except their customers!) on the one hand, and the restrictions on competition and innovation in both financial and industrial markets caused by requiring separation of financial entities, on the other hand. In the end, it opted for a retention of the principle of separation, but with the scope for some flexibility to permit licensed entities to operate some non-financial activities.

However, the factors which, according to the Inquiry, the APRC should have regard to in displaying their flexibility, appear directed more to bringing in activities within the regulatory net, rather than permitting non-financial activities to be owned within a conglomerate so long as adequate firewalls are constructed.

The adequacy of firewalls is also postulated as an important condition for approval of a non-operating holding company structure. It is for the APRC to establish standards on this subject, directed not only to legal firewalls, to protect creditors of one unit seeking to pursue other group entities, but resolving the issue of permitting intra-group economic support where that is desirable and economically rational to protect the goodwill of the brand, without allowing a bail-out to threaten the solvency of the other entities in the group.

Of course, if regulatory powers (including powers to manage sales and mergers for distressed institutions) work, the issue of legal separation is ultimately irrelevant. In cases where it is unsuccessful, but some early attempts at intra-group support have been mounted, a distortion can arise. If subsidiary A lends $100,000,000 to subsidiary B and subsidiary B subsequently becomes insolvent, able to pay creditors only 50 cents in the dollar, then the assets of subsidiary A represented by their $100,000,000 are diminished by $50,000,000, and the amount available to creditors of B (other than in A) increases by $50,000,000. That simple analysis ignores questions of depositor preference and the life insurance statutory funds, but the effect remains similar. If legal and economic separation is to be preserved, but short term justified assistance is to be permitted, perhaps it would be appropriate to require prior notification to the APRC of any such transfer and for A to have priority for the transferred amount so as to protect the pre-transfer status quo.

For holding company structures, the APRC is also required to establish standards for independent boards of directors. I have great difficulty with this. If regulatory structures clearly define the permitted intra-group transactions, which I believe they should, there is no need to establish a separate set of watchdogs, for different subsidiaries. Legal compliance with such guidelines raises no issues for directors different in kind from other compliance issues. On the other hand, non-identity of board membership between parent and principal operating subsidiaries divides authority and accountability.

I firmly believe that, whatever the delegations made from time to time, one board should be in control of an entity with the same ultimate ownership. The placement of relevant expertise at different parts of an organisation to do different jobs is a matter for appointment of and delegation to management, and the involvement of independent board members at levels other than the ultimate parent amounts either to the engagement of mis-named consultants (who cannot really fulfil duties as directors) or to a division and weakening of ultimate accountability.

One unsatisfactory feature of current mergers of financial institutions is the need for legislative assistance to permit their full implementation. While governments have a track record of co-operation, a waste of both parliamentary, executive government and corporate resources is occasioned. Why is it necessary? Principal drivers for this process include:

(a) the general imposition of stamp duty on property transfers measured with respect to gross assets with the result that, a rate of 4%, and a gearing ratio of 10:1, the effective stamp duty on net assets (leaving out goodwill in either case) is 40%.

(b) the operation of section 38A(3) of the Commonwealth Banking Act 1959, which permits the overriding of Commonwealth laws upon the merger of banks, only where a State law is passed for the purpose of making provisions in relation to that merger.

As to the first, the issue will become less critical if the Inquiry recommendations permitting the retention of parallel licences is implemented. There will be no regulatory imperative to merge businesses within a single licensed entity within a transitional period. Nevertheless, there may be many commercial reasons which make such a course desirable, and a rationalisation of approach to stamp duty upon transfers of businesses of highly geared financial institutions within a merger context is long overdue.

Section 38A(3) of the Banking Act is useful so far as it goes. Federal laws make mergers of financial institutions difficult in a number of areas. Among them are:

- provisions of the Privacy Act, concerning the use of tax file numbers and credit information;
- provisions of the Income Tax Assessment Act and the Taxation Administration Act concerning tax file numbers;
- provisions of the Financial Transactions Reports Act regarding account information and signatory information;
- provisions of the Proceeds of Crime Act relating to retention and release of customer generated financial transaction documents.

Section 38A needs attention in two major areas. Firstly, as currently written it requires a State law to form the basis of an exemption; this should be administratively permitted by a single body, and since the APRC will be at the centre of any proposed merger, it may be the appropriate body to issue the exemption, perhaps after consultation with other relevant agencies.

Secondly, at the moment section 38A is limited to the merger of two or more bodies corporate that carry on "the general business of banking". It is suggested that:

(a) this could be usefully extended to all licensed financial institutions;

(b) that it should further apply to mergers in the wider sense not just to the "merger of two or more bodies corporate"; and

(c) it should have effect on an ongoing basis, and for existing groups which have already been "merged" in some fashion in the past.

OWNERSHIP OF THE FINANCIAL SERVICES INDUSTRY

The Committee considered three possible purposes for regulating ownership of firms operating in the financial system:

- competition policy;
- foreign investment policy;
- prudential regulation.

The general approach taken by the Inquiry was that the financial services industry should be dealt with in the same manner as other industries with respect to the application of competition and foreign investment policy and that prudential issues should be judged by the APRC.

As for foreign investment policy, having said that it should be applied consistently to this as for other industries, the comment is made that "a large scale transfer of ownership to foreign hands would reduce Australia's future policy flexibility and should be considered contrary to the national interest".[4]

The Recommendations

The following are the principal recommendations made in this area:

1. The general principle of widespread ownership of regulated financial entities (or holding companies) should be retained and handled through a single Acquisition Act with a 15% shareholding limit.

2. That 15% should be capable of being lifted by the APRC in favour of another regulated entity if prudential requirements are met.

3. The Treasurer would be entitled to exempt other acquisitions if a national interest test is met.

4. Section 50 of the Trade Practices Act should continue to apply to the financial system and its application to that system should be administered by the ACCC and only the ACCC.

5. Mergers should have to meet prudential tests to be applied by the APRC.

6. The "six pillars" policy should be removed.

7. Substantial changes occurring in the industry should be considered and should be taken into account by the ACCC in assessing sources of competition and market definition.

8. Foreign acquisition should be assessed only under the Foreign Acquisitions and Takeovers Act and in particular the policy position prohibiting foreign takeovers of any of the four majors should be removed.

9. Foreign investment regulations applying to foreign ownership of controlled funds managers where the principal investment is in Australia should be removed.

Recommendation 45 of the Inquiry suggests that a common Acquisitions Act should prohibit acquisitions of more than 15% of a regulated financial entity or its holding company. It contemplates an exemption enabling the APRC to permit mergers by way of acquisition by another licence holder, subject to the operation of section 50 of the Trade Practices Act and to the provisions of the Foreign Acquisitions and Takeovers Act.

Recommendation 82 further states that legislation should make it explicit that the only competitive assessment of a merger should be under the Trade Practices Act.

That would leave the only roles for the Treasurer, or the Government, in approving ownership changes under administration of foreign policy, or if more than 15% of a licensed entity is sought to be acquired by a non-licensed institution.

The rationale for giving that power in such limited circumstances is not clear. If it should be retained at all, it is hard to see why it should not equally extend to acquisition by licensed institutions.

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4 Overview, p 26.

In the event, upon the release of the Inquiry's report, the Treasurer made it clear that "It has been decided to retain the discretionary powers to make assessments of these matters having regard to, but not being bound by, the views of the ACCC and the prudential regulators."

The Treasurer also announced the Government's view that "At this time there is insufficient competition to allow a merger of the four largest banks."

A position of double jeopardy thereby arises. Whereas now, taking the Banks (Shareholdings) Act 1972 as an example, Treasurer or Governor-in-Council approval is required to acquire more than 10% or 15% of a licensed bank, that approval can be expected to be progressed through, and on the advice of, the Reserve Bank, although there is undoubtedly room for an independent "whole of government" (ie political) view to be taken.

Now, however, initial approaches must be sought separately from the APRC as prudential regulator and from the Government as an independent assessor. The potential for political deals to be done, or refused, on other than consistently applied and published policy grounds, would appear to be maintained and enhanced by this approach. Its desirability on public policy grounds is open to question.

A final comment on this area may be made on the application of foreign investment policy. While the Inquiry recommends application of the general provisions of foreign investment policy to the financial system, and explicit removal of a policy prohibiting foreign takeover of any of the four major banks, it also comments that:

- there would be no economic disadvantage in an increase of foreign ownership of the Australian financial system, including ownership of the major institutions; but

- a large scale transfer of ownership of the financial system would be contrary to the national interest.

The Government's announcement, in releasing the Inquiry's report, specifically acknowledges this latter observation. This may signal that one foreign takeover of a major financial institution has a chance of approval but the opportunities become dramatically narrowed thereafter, in the medium term at least.

MERGERS AND COMPETITION POLICY

Professor Fels' paper delivered at this conference addresses the remarks made by the Inquiry into the application of section 50 of the Trade Practices Act to mergers between financial institutions, especially banks. Clearly, the Inquiry sees increasing competitive moves in the financial system as making mergers in the future easier to contemplate as complying with section 50. The principal moves it identifies in this regard are:

- the unbundling of services offered by financial institutions;

- the development of more national markets for financial products.

On the first issue, the Inquiry believes that defining a retail or small business market by reference to a cluster of basic services will become less justifiable as customers show an increasing willingness to acquire different retail products from different providers, suggesting that the potential competitors in a market should be defined by reference to the number of competitive suppliers of particular products, product by product, and not looking only at those who offer a basic range or cluster of say housing loans, credit cards and deposit accounts.

I suggest nevertheless that, if there was active competition across many fronts for each of such products, but say only one institution in an area providing all of them, that institution would retain significant market power.

A more difficult question is raised by the problem of determining competition policy at a single point in time, in a market or series of markets whose boundaries are changing rapidly. The difficulty is increased with uncertainty about the extent to which it is valid to take account of likely future developments which would lessen the competitive effect of a proposed acquisition over a foreseeable time frame, during the earlier parts of which no immediate effects may normally be measurable in any event.

Clearly a forward look in assessing the anti-competitive effects of mergers is permissible. Hence the Trade Practices Tribunal in *Howard Smith Industries & Adelaide Steamship Industries*[5] (a decision made when the merger test was substantial lessening of competition) stated the following:

> "... we should stress at this point that in analysing the likely pro-competitive or anti-competitive effects of a merger, the Tribunal cannot limit its consideration to the effects on existing competition alone. It is necessary also to consider whether there is potential competition from prospective entrants into the relevant market and whether this potential competition is likely to be affected by the merger."

In this decision the Tribunal considered the effect on existing competition and potential competition separately and determined in relation to each that the merger would not substantially lessen either existing or potential competition.

The Merger Guidelines issued by the ACCC also discuss the importance of considering potential competition. The Guidelines outline a number of factors that must be considered by the Commission when determining whether a merger is likely to have the effect of substantially lessening competition. The two which are of particular relevance to an assessment of the impact on the potential competition are an examination of barriers to entry and a consideration of the dynamics of the market.

Barriers to entry

Essentially, if the barriers to entry to a market are low then a short term concentration of market power should not substantially lessen competition as it would in fact create an environment conducive to the introduction of new competitors. This is supported by the finding in respect of *Peninsula Gold Holdings Limited's* acquisition of *Southern Peninsula Transport Service Pty Ltd* where the Commission found that although the merger represented a significant increase in concentration of market shares, there were several competitors including the large Melbourne-based carriers and entry into the market was relatively easy. In these circumstances competition in terms of price and service standards was not likely to be lessened by the acquisition.

Dynamic market

The second factor from the Merger Guidelines that appears to be of particular relevance is the consideration of the dynamic characteristics of the market, including growth, innovation and product differentiation. Where a market is growing as a result of expanding demand, diminishing regulation or where new technology is providing new improved products, the ability to exercise market power may be less than in a mature market where demand and supply are in equilibrium and products remain unchanged. In these circumstances, it is more difficult to establish that the merger is likely to substantially lessen competition.

While much of the discussion on the issue of future effects is directed towards finding additional pitfalls, the combination of a dynamic market, with relatively low barriers to entry, could lead to a conclusion that short term market power should be ignored because any attempt to exercise it will attract new competitive responses, and hence will be effectively constrained from the outset.

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5 ATPR 40-023.

Adoption of Wallis Inquiry recommendations lessening the distinctions between deposit taking institutions is clearly relevant to this analysis.

PRUDENTIAL REGULATION

The Inquiry approach may be summed up in two propositions:

(a) the bases of prudential regulation do not need a radical change;

(b) all prudential regulation of financial services, and financial institutions, should be undertaken by a single, independent regulator.

The inquiry's specific recommendations are many. Ten principal ones are:

(1) The scope of prudential regulation should include deposit taking from the public, the offering of capital backed investment products, term life and general insurance products and superannuation.

(2) A single regulator should carry out all prudential regulation of the financial system and it should be separate from (but with close information links to) the Reserve Bank.

(3) All deposit taking institutions should be within a single licensing regime.

(4) The only differentiation between DTIs to be retained are:

    (a) a restriction on the ability to call oneself a bank unless certain minimum capital standards are met and an exchange settlement account is held with the RBA (leaving the RBA the power to determine eligibility to membership of the club of banks);

    (b) using the name credit union or credit society is to be limited to institutions which are mutually owned;

    (c) no limit is proposed on a deposit-taking institution which wishes to call itself a building society.

(5) Building societies, credit unions, friendly societies and special services providers should become corporations under the Corporations Law.

(6) Only licensed DTIs should be exempt from prospectus fund raising provisions of the Corporations Law but the CFSC should have power to continue limited further exemptions, as for example for pastoral finance companies[6] but only after consultation with the APRC.

(7) Compliance by excluded superannuation funds should be monitored only by the Australian Taxation Office but all members of excluded funds should be trustees.

(8) All licensed financial institutions should be able to offer retirement savings accounts.

(9) The existing entry capital requirements for licensed financial services providers should be retained but the APRC should administer them flexibly.

(10) No changes are proposed to the operations of money market corporations or finance companies.

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6 Section 65(1)(b)(i) of the Corporations Law.

At present, banks, life officers and general insurers carrying on their business are required to be licensed under federal laws. Hence the Banking Act 1959 virtually prevents an entity not recognised as a bank (by licensing or otherwise) under the Banking Act to conduct banking business.

In a similar fashion an entity carrying on "life insurance business" must be registered under the Life Insurance Act 1995. Whereas the Banking Act leaves it to the common law to determine what banking business is, the Life Insurance Act contains a complicated definition. Businesses that consist of any or all of the issuing of life policies, the issue of sinking funds, the undertaking of liability under life policies or sinking fund policies or any business which relates to businesses referred to above constitute life insurance business, subject to specific exceptions. The exceptions include benefits provided by friendly societies or trade unions, employees associations, provision by an employer or employees of superannuation benefits, the issue of policies to employees and the provision of benefits such as funeral, burial and cremation services.

The Insurance Act 1973 again adopts the approach of a generic description (the undertaking of liability by way of insurance, including re-insurance, in respect of all loss or damage contingent upon the happening of a specified event) with a series of specific exclusions including life insurance, associated accident insurance, ancillary loss insurance incidental to banking business, friendly society or trade union benefits and other exclusions similar to those in respect of life insurance business.

On the other hand non-bank financial institutions registered under the Financial Institutions Code do so not primarily because of a statutory prohibition upon them carrying on particular forms of business unless so registered, but to attract the exemptions available for bodies of that status under the Corporations Law from raising money only by way of registered prospectus.

Finally it is thought that friendly societies, at least in so far as they are participating in the financial services industry, have traditionally adopted that form to attract certain income tax exemptions.

The Inquiry's recommendations appear to envisage separate licensing requirements for:

- deposit taking institutions;
- entities offering capital backed investment products;
- institutions selling term life and general insurance products (it is not clear whether these would be separate categories or a similar one);
- superannuation funds.

Section 1083 of the Corporations Law exempts a bank from the prospectus provisions in relation to things done "in the ordinary course of its banking business". Similarly, section 1083A exempts "financial institutions" (registered under the Financial Institutions Code) in respect of the issue of withdrawable shares, deposit taking and other things done "in the ordinary course of its banking business" (defined to mean business substantially similar to that of a bank). Protective prospectus provisions also apply to special services providers for the purposes of the Financial Institutions Code.

A range of related exemptions can be found applicable to financial institutions in the definition of excluded corporation (section 65 of the Corporations Law) and in regulations 7.12.04, 7.12.05 and 7.12.06.

The law regarding what constitutes a banking business may be able to be cast aside. Since there is to be no change to the operation of finance companies, which do not presently require licensing, the implementation of licensing requirements for deposit taking institutions may be achieved simply by extending the present exemptions under the Corporations Law to any entity

which is licensed as a deposit taking institution but abandoning the link to banking business. No attempt has to be made to define what a deposit taking institution might be, though thought will need to be given to restricting the nature of the products which a licensed institution will be permitted to offer, without a prospectus, in a way that does not leave regulatory gaps.

The approach to licensing of other investment products or insurance products is the basis for some further possibilities. It may be, for example, that the existing Corporations Law exemptions for offering prescribed interests be re-defined and extended to apply to entities holding the appropriate licences. Alternatively, it may be that a positive obligation is imposed requiring registration for entities which offer investment or insurance products of a nature identified in the Inquiry. A compromise, which may be preferable to either route, would be to include intended investment products and insurance products (broadly defined) as exemptions to the prescribed interest provisions, so long as the entity offering them held the appropriate licenses so that the sale of a product falling outside the definition would require a prospectus registration.

Obviously considerable thought will need to be given to find what is intended to be included within the scope of the deceptively simple descriptions of "capital backed investment products, term life and general insurance products".

RESOLUTION OF FINANCIAL FAILURE

The Inquiry's general approach was to endorse, and to make uniform, current approaches to this issue. In particular, it considered in detail and rejected the option of a compulsory deposit insurance scheme.

The Inquiry's recommendations may be summarised as follows:

(1) The depositor preference mechanism that currently applies to banks should be extended to all deposit taking institutions and should be administered by the APRC.

(2) Powers of management intervention ultimately exercisable by the Reserve Bank in relation to banks, should extend to insurance companies and superannuation fund trustees.

(3) Existing contingency funds operated for credit unions should be permitted, and extended to other deposit taking institutions, on a voluntary basis; participation should be taken into account in determining the extent of prudential regulation applying to a participant.

(4) Existing policyholder preferences relating to statutory funds of life companies should be retained, and extended to benefit funds of friendly societies.

(5) Where losses as a result of fraud are incurred by beneficiaries of superannuation funds, the Treasurer should be given power, on the advice of the APRC, to levy superannuation funds and superannuation providers (at a rate not exceeding 0.05% of assets) where restitution (limited to 80% of loss) is considered to be in the national interest.

Currently, the Banking Act 1959 expressly imposes a duty on the Reserve Bank to exercise its powers and functions for the protection of depositors[7] and gives the Reserve Bank power to assume control of, and carry on the business of a bank, in certain circumstances including where the Reserve Bank is of the opinion that the bank is likely to become unable to meet is obligations.

Under the Life Insurance Act 1995 where the Insurance Commissioner is satisfied that there are reasonable grounds for believing that the assets of a statutory fund would not provide adequate

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7 Section 12.

capital for the conduct of the fund's business, the Commissioner has power to issue directions[8] and where it appears to the Commissioner that a life company is likely to become unable to meet its policy or other liabilities, the Commissioner is empowered to give directions preventing dealing with assets.[9] These powers fall well short of taking control of a life company's business. It can be anticipated that powers of intervention similar to those in the Banking Act will be extended to apply to all licensed institutions.

The depositor preference provisions of the Banking Act require that, in the event of a bank becoming unable to meet its obligations or suspending payment, "the assets of the bank in Australia shall be available to meet that bank's deposit liabilities in Australia in priority to all other liabilities of the bank".

There is no guidance on the difference between deposit liabilities and any other liabilities. While the Inquiry gives gentle encouragement for some better definition of the preference (to be extended to all deposit taking institutions):

> "In principle, it would be desirable also to establish a clear definition of the deposits subject to depositor preference ... (by excluding commercial deposits or capping the preference) ... In practice, both of these courses raise problems that are potentially counter-productive."

The Inquiry also appears to give some respect to reported descriptions that the depositor preference provisions are "constructively ambiguous".

While it is conceded that the task of definition risks the encouragement of ways to circumvent any lines which are clearly drawn, the approach of avoiding the issue runs counter to the Inquiry's admission that the extent of depositor protection is enhanced by increasing non-depositor funding (a course which cannot occur unless it is clear what is and is not non-deposit funding) and should not be regarded as acceptable in any event as a matter of public policy.

As noted, the Inquiry also recommends retention of policyholder preference for life company statutory funds and its extension to friendly societies. The central provision of the preference scheme in the Life Insurance Act 1995 is the requirement that the assets of a statutory fund are to be applied first in discharge of policy liabilities referable to the fund.[10] This is supported by the requirement to keep the assets of a statutory fund distinct and separate.[11] There is no separate legal or equitable ownership of a statutory fund however, and it exists only in the records of a life company. Its efficacy is therefore heavily dependent upon the integrity of those records in properly identifying assets, and upon strict and ongoing observance of section 34(3).

CONCLUSION

From the selective issues on which I have made some comments, it will be clear that the existing legislative tapestry which decorates the operations of the financial services industry in Australia will need to be substantially unpicked and rewoven. While many of the motifs will be retained, some will disappear entirely and others will cover a much larger area. Most will need adjustment in the detail, wherein the devils will be found. The Reserve Bank Act, the Banking Act, the Banks (Shareholdings) Act, the Life Insurance Act, the Insurance Act and the Corporations Law, to name some only of the relevant Commonwealth laws, will all be significantly affected. There is an enormous challenge in ensuring this vast task is undertaken with consistency and care, to meet the objectives of the Inquiry. To emphasise the challenge of this task, it is worth concluding by noting the final observation of the Inquiry in its Overview Report:

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8 Section 73(1).

9 Section 34(1).

10 Section 187(2)(a).

11 Section 34(3).

"This would provide much more than a restructuring and rationalisation of existing regulatory arrangements. The reconfiguration of the regulatory framework would:

- create a flexible structure better able to adjust regulation to maintain cost effectiveness in the face of changing circumstances;
- provide a more clearly focused and accountable structure that meets (and helps form) legitimate community expectations for consumer protection and financial safety;
- provide more efficient and effective regulation for financial conglomerates;
- provide more consistent regulation and greater competitive neutrality across the financial system; and
- contribute to the effective implementation of the various other reforms which the Inquiry has proposed and which aim at establishing more contestable, efficient, and fair financial markets.

The successful pursuit of these goals will require considerably ongoing effort."