




AUSTRALIAN CHAMBER OF
COMMERCE AND INDUSTRY



Response to
Financial
System Inquiry
Final Report

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**The Australian Chamber of Commerce and Industry
is the leading voice of business in Australia**

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CONTENTS

Contents	3
Introduction	5
1. RESILIENCE	7
1.1 Relevant FSI recommendations and ACCI responses	7
2. SUPERANNUATION	10
2.1 Relevant FSI recommendations and ACCI responses	11
3. INNOVATION	14
3.1 Relevant FSI recommendations and ACCI responses	14
4. CONSUMER OUTCOMES	19
4.1 Relevant FSI recommendations and ACCI responses	19
5. REGULATORY SYSTEM	20
5.1 Relevant FSI recommendations and ACCI responses	21
6. OTHER ISSUES	23
6.1 Relevant FSI recommendations and ACCI responses	23
7. ABOUT ACCI	26
7.2 Who We Are	26
7.3 What We Do	26
ACCI MEMBERS	28

INTRODUCTION

ACCI welcomes the release of the Financial System Inquiry (FSI) final report and the opportunity provided by the Government to comment on the implementation of the Inquiry Panel's recommendations.

ACCI believes the objectives of the FSI and the framework of the final report are sound. In general terms, ACCI supports recommendations to make the financial system more resilient. While the recommendations to improve financial system resilience are likely to increase funding costs, the Panel has considered that the benefits of reducing the risks of a financial crisis outweigh the costs of doing so. Financial crises damage the ability of households and businesses to access credit and are typically associated with large and protracted falls in output and employment – outcomes which are to be avoided if the costs of doing so are reasonable.

ACCI notes that the superannuation system has considerable benefits, but that these are not being fully realised, due to a lack of price-based competition and that it is not reducing reliance on government funded pensions, as much as was hoped when the system was introduced. ACCI supports the adoption of legislated system objectives to ensure that superannuation policy is consistent with those goals. First and foremost, it is important that superannuation is an effective means of providing incomes in retirement. ACCI supports greater competition in the choice of default funds and recommends that a review of the recent *Stronger Super* reforms is undertaken sooner than 2020. An important part of competition is the ability of employees to be able to choose their fund into which their Superannuation Guarantee contributions are paid. In this context, ACCI supports the choice of superannuation fund being removed from enterprise agreements and being left to the discretion of each individual employee. ACCI also supports strengthening the governance arrangements of superannuation fund boards by mandating a majority of independent directors on boards of corporate trustees of public offer superannuation funds.

ACCI supports financial system innovation, particularly where this provides alternatives for businesses to traditional sources of finance. ACCI believes that collaboration between the private sector and regulators will enhance the perspective of policymakers and facilitate innovation. ACCI is keen to work with the Government in providing identity verification services for businesses and so the Panel's recommendation for a federated, competitive model for provision of such services is welcome. ACCI supports the Panel's proposed reforms to interchange fee arrangements but believe that proposed surcharging reforms would be complex to administer and therefore, more work needs to be done on a surcharging regulation regime. ACCI also supports changes to the regulatory regime to enable crowd-sourced equity funding and peer-to-peer lending to provide alternatives for businesses (particularly start-ups) to traditional sources of finance.

ACCI supports a regular review into the state of competition into the financial sector and improved reporting requirements for financial regulators. It is important the Government's response to the FSI is consistent with the response to the Competition Policy Review. ACCI believes that a newly created Australian Council for Competition Policy (ACCP) would be more appropriate to conduct such a review as well as periodic market studies. ACCI does not support competition being included in ASIC's mandate unless regulator performance is undertaken by an independent body. If an ACCP is created, it would be well placed to assess financial regulator performance.

ACCI supports the introduction of unfair contract term protections for small businesses although encourages the government to proceed cautiously. The ACCC should adopt an 'educate first, punish last' approach. Small business to small business contracts should not be included in the regime. Financial services should be included in the regime. ACCI encourages the financial sector to develop standards on the use of non-monetary default covenants, in particular, granting borrowers time to source alternative finance. If the industry-led response proves inadequate, then the Government should leave open the option to formally regulate the use of such covenants.

ACCI believes that the Government should carefully consider reforms to elements of the insolvency regime. Areas of particular interest are 'safe harbour' provisions, a moratorium on *ipso facto* clauses during restructuring and the interaction of the insolvency and personal bankruptcy regimes. In this light ACCI calls on ASIC to produce more user-friendly data to enable detailed research into these issues to be undertaken.

1. RESILIENCE

Chapter 1 of the final report covers the issue of financial system stability and resilience noting that, historically, Australia's financial system has been strong and stable, supported effectively by its policy settings. However, the Australian system also has characteristics such as high interconnectivity (both domestically and internationally) and a strong dependence on importing capital that give rise to risks.

The inquiry's recommendations aim to:

- Strengthen the resilience of the financial system by reducing the probability of failure;
- Reduce the costs of failure; and
- Support trust and confidence in the system.

Financial crises impose high costs that are broad ranging. Of particular concern to business is that financial crises can constrain households' and businesses' access to credit inhibiting investment, business expansion and international trade. Financial crises are historically associated with large and protracted falls in output and rises in unemployment.

1.1 Relevant FSI recommendations and ACCI responses

FSI Recommendation 1 – Ch 1, p 41

Set capital standards such that Australian authorised deposit-taking institution (ADI) capital ratios are unquestionably strong.

ACCI supports recommendation 1.

Comment:

The Financial System Inquiry (FSI) notes that financial crises occur, on average, every 20-25 years in a given country (equating to a 4-5 per cent chance of a crisis occurring in any given year). The median cost of a financial crisis is estimated by the Basel Committee for Banking Supervision to be around 2.5 to 3 per cent of GDP or roughly \$40 to \$50 billion. If an upper bound estimate was used, the costs could be as large as \$100 to \$120 billion per year.

The FSI states that a small reduction in the probability and/or cost of a crisis could yield significant benefits. This does not account for the reduction in perception of an implicit guarantee for financial institutions (thereby lowering risk by reducing moral hazard), nor reductions in volatility, providing greater confidence to households and businesses to invest. Higher capital requirements would also protect the government, and ultimately taxpayers, from the costs of direct support to the financial sector in the event of a crisis.

Offsetting these benefits is the expected costs of increasing capital requirements. The FSI estimates that a one percentage point increase in capital requirements would increase the average interest rate on a loan by less than 10 basis points if the full cost was passed on to consumers and there was no offsetting reduction in the RBA cash rate. The FSI believes that an increase in capital requirements would generate a net benefit to taxpayers and the economy at large.

FSI Recommendation 2 – Ch 1, p 60

Raise the average internal ratings-based (IRB) mortgage risk weight to narrow the difference between average mortgage risk weights for ADIs using IRB risk-weight models and those using standardised risk weights.

ACCI supports recommendation 2.

Comment:

APRA's prudential regulation framework for ADIs uses two approaches to determining risk weights used to calculate capital adequacy ratios:

- The 'standardised' approach which uses a common set of risk weights that are conservative in nature and reflect general risks of various broad asset classes; and
- The 'IRB' approach which enables accredited ADIs (the 'big four' banks plus Macquarie Bank) to use their own internal models to determine tailored risk weights for credit exposures which are more 'granular' than the broad standardised risk weights.

The IRB mortgage risk weights are lower for a number of reasons. However there are concerns that IRB accredited ADIs accrue a funding advantage over smaller ADIs and hence the regulatory regime is not competitively neutral. The FSI considers that while there are valid policy reasons for standardised and IRB weights to vary, the gap between them is not justified. Hence the FSI considered ways to reduce the gap. Essentially two options were considered:

- Lowering the 'standardised' risk weights; or
- Raising the average 'IRB' risk weights.

APRA indicated a strong preference for increasing IRB risk weights to maintain appropriate prudential settings. FSI recommendation 2 does not seek to eliminate the gap entirely (as was the case prior to the introduction of Basel II in 2008). It takes into account the need to maintain incentives for ADIs to improve risk management practices to achieve accreditation and that the IRB approach can improve efficiency by better aligning capital with risk.

The effects of raising IRB risk weights are complex but there is a strong possibility that while it will increase the cost of funding overall, it may lead to greater competition in the banking sector thereby at least partially offsetting this impact. It may also lead to a reallocation of ADI loan portfolios away from mortgage lending towards other forms of lending.

2. SUPERANNUATION

Chapter 2 of the final report contained the following observations regarding superannuation:

- The superannuation system is not operationally efficient due to a lack of strong price-based competition and, as a result, the benefits of its scale are not being fully realised.
- Substantially higher superannuation balances and fund consolidation over the past decade have not delivered the benefits that would have been expected. These benefits have been offset by higher costs elsewhere in the system rather than being reflected in lower fees.
- Superannuation assets are not being efficiently converted into retirement incomes due to a lack of risk pooling and an over-reliance on account-based pensions. ...
- Tax concessions in the superannuation system are not well targeted at improving retirement incomes increasing the cost of the superannuation system to taxpayers; increasing distortions; and contributing to policy instability, undermining long-term confidence in the system.¹

The FSI identified three main areas of action, to:

- Set a clear objective for the superannuation system to provide income in retirement;
- Improve long-term net returns for members by introducing a formal competitive process to allocate new workforce entrants to high-performing superannuation funds, unless the Stronger Super reforms prove effective; and
- Meet the needs of retirees better by requiring superannuation trustees to pre-select a comprehensive income product in retirement for members to receive their benefits, unless members choose to take their benefits in another way.

¹ Pp89 - 90, *Financial System Inquiry – Final Report*, November 2014

2.1 Relevant FSI recommendations and ACCI responses

FSI Recommendation 9 – Ch 2, p 95

Seek broad political agreement for, and enshrine in legislation, the objectives of the superannuation system and report publicly on how policy proposals are consistent with achieving these objectives over the long term.

ACCI supports recommendation 9.

Comment:

The FSI proposes agreed statutory objectives as a way of providing improved system stability and coherence and of providing a means to assess how the superannuation system is performing. The FSI recommends that the government seek broad political support by a joint parliamentary inquiry into the proposed objectives. It recommends that the primary objective should be “To provide income in retirement to substitute or supplement the age pension”. The report also proposes a number of secondary objectives.²

The FSI also received submissions which supported establishing an oversight body to assess consistency with objectives and system outcomes, but was not attracted to this idea. It preferred broad political agreement supported by periodic government reporting of how well the system was meeting its objectives (perhaps through the intergenerational report) and thought that this mechanism would lead to more informed public debate.

FSI Recommendation 10 – Ch 2, p 101

Introduce a formal competitive process to allocate new default fund members to MySuper products, unless a review by 2020 concludes that the Stronger Super reforms have been effective in significantly improving competition and efficiency in the superannuation system.

ACCI supports recommendation 10 and encourages the Government to undertake the proposed review sooner than 2020.

Comment:

The FSI was concerned about the relatively high level of MySuper fees attributable in part to market fragmentation (too many, too small funds), multiple accounts and lack of consumer driven competition, as well as to such factors as policy changes.

The FSI proposes that the Productivity Commission undertake a review of competition in the default fund market, changes to and comparison between

² P 95, *Financial System Inquiry – Final Report*, November 2014

MySuper fees and net returns, and the flow to the choice market. The FSI recommended the proposed inquiry is undertaken by 2020 because MySuper has only been available since 1 July 2013 and not all accrued default amounts will be transferred into MySuper products until 30 June 2017³.

The FSI recommended that in 2015 the Productivity Commission begin work on what such a competitive process should look like and develop a recommended model. If funds were forced to focus on fund performance so as to be able to compete for members, standard MySuper product offering funds would focus less on employers as their new member supply base. It would also provide stronger imperatives for fund amalgamation.

FSI Recommendation 12 – Ch 2, p 131

Provide all employees with the ability to choose the fund into which their Superannuation Guarantee contributions are paid.

ACCI supports recommendation 12.

Comment:

The FSI was concerned that about 20% of employees cannot exercise choice and saw that fact as contributing to the excessive number of multiple accounts. It recommended removing regulatory barriers to choice. For private sector employers this means repealing some or all of s 32C(6) of the *Superannuation Guarantee (Administration) Act 1992*. The current “choice suppression” effect of specifying a fund in an agreement would go.

Giving effect to the recommendation raises transitional issues which would need to be addressed, both for existing enterprise agreements and continuing instruments of various kinds. Care would also need to be exercised that moving to the principle of universal choice would not detrimentally impact defined benefit schemes.

³ “Accrued default amounts” are member assets which are held in funds’ pre-MySuper default investment products. The long transfer timeline was provided because some assets are quite illiquid.

FSI Recommendation 13 – Ch 2, p 133

Mandate a majority of independent directors on the board of corporate trustees of public offer superannuation funds, including an independent chair; align the director penalty regime with managed investment schemes; and strengthen the conflict of interest requirements.

ACCI supports recommendation 13.

Comment:

Part 9 of the *Superannuation Industry (Supervision) Act 1993* requires funds to have equal representation of employers and members although it is possible for public offer funds⁴ to have independent directors. However independent directors cannot have a casting vote, and there must be equal representation policy committees to advise the trustee board. The Cooper Committee made a series of recommendations about increasing independent and non-associated directors so that they comprised at least 1/3rd of the board and there were no restrictions on their voting.⁵

This FSI recommendation sits in the context of its other recommendations. As fund membership separates from awards and employer allocation, unions and employers are less representative of the members, contributors or their employees. Fund amalgamation will also dilute industry specificity.

⁴ A public offer fund will accept contributions for a member which are made by an employer which does not have a contractual relationship with the fund (that is, the employer is not a “participating employer” of the fund – or in the language of superannuation legislation is not a “standard employer sponsor” of the fund).

⁵ Pp 53-56, Rr 2.4-2.8, *Super System Review – Final Report Part 2*, June 2010

3. INNOVATION

Chapter 3 of the report focuses on the disruptive elements of digital technology that have enabled vast evolution in the Australian financial system in recent years. Innovation in the financial sector has, and will continue to create vast benefits for consumers and suppliers of financial products. However, innovation also creates new risks that need to be managed by suppliers and regulators. It is essential that the regulatory architecture evolves so that it does not hinder the introduction of new products and processes nor prevent the emergence of new avenues of competition in the financial sector.

At the same time, regulation needs to be flexible to respond to new developments and manage new risks to the efficient operation of the financial system. The FSI recommended four broad courses of action:

- Industry and government can work together to identify innovation opportunities and emerging network benefits;
- Government and regulators can remove unnecessary impediments to innovation;
- Government and regulators can support data-driven business models; and
- Regulators need flexibility to respond to future developments.

3.1 Relevant FSI recommendations and ACCI responses

FSI Recommendation 14 – Ch 3, p 147

Establish a permanent public-private collaborative committee, the 'Innovation Collaboration', to facilitate financial system innovation and enable timely and coordinated policy and regulatory responses.

ACCI supports recommendation 14.

Comment:

The FSI identified a number of problems with how the current regulatory and institutional architecture of the financial system deals with innovation. Specifically, recommendation 14 seeks to address:

- Low awareness of, and impediments to, innovation;
- Siloed perspectives and inability to identify system-wide opportunities;
- Inability to influence Government and regulators in a coordinated way;
- No single point of contact for innovators; and
- Potential impacts on international competitiveness.

The FSI notes an estimate from KPMG that \$27 billion of current banking industry revenue is under threat from digital disruption. The FSI recommended the IC model to provide regulators with the benefits of regular, timely interactions with innovators, and allow innovators to have a method of influencing policy and regulation.

ACCI supported this recommendation in the recent submission to the Productivity Commission inquiry into *Barriers to Business Set-up and Closure* and supports it.

FSI Recommendation 15 – Ch 3, p 151

Develop a national strategy for a federated-style model of trusted digital identities.

ACCI supports recommendation 15.

Comment:

The FSI notes that participants in Australia's financial system need confidence in peoples' identities and that the current identity infrastructure is a fragmented network of identity credentials. There is no clear structure or vision for legislative requirements for digital identification. There is scope to reduce duplication and complexity and lower costs.

The FSI considered two models to address this issue. The first option is a federated model, where the private and public sector compete to supply trusted digital identities to individuals and businesses. The second option is a syndicated model where one single government identity credential is provided to individuals and businesses with a single sign on access point for both the public and private sectors.

The FSI preferred the first option, as it has the potential to provide consumers with choice and convenience while enhancing privacy. A federated model would also allow for further innovation in identity verification as technology evolved, whereas a syndicated model would be more difficult to change as any changes would need to be driven by government. There would also be significant opportunities for ACCI and its members to be involved with the provision and verification of trusted digital identities for businesses.

FSI Recommendation 17 – Ch 3, p 168

Improve interchange fee regulation by clarifying thresholds for when they apply, broadening the range of fees and payments they apply to, and lowering interchange fees.

Improve surcharging regulation by expanding its application and ensuring customers using lower-cost payment methods cannot be over-surcharged by allowing more prescriptive limits on surcharging.

ACCI supports the first part of recommendation 17 (interchange fee regulation) and the specific proposals contained therein.

ACCI believes, however, that the surcharging reform proposals have the potential to add significant complexity and compliance burdens for retailers and other merchants. ACCI does not support the current proposed surcharging reforms and believes that the case has not been made for a more prescriptive regime.

Comment:

Interchange fees and surcharges are regulated by the Payments System Board of the Reserve Bank of Australia (RBA). Interchange fees are wholesale fees paid between a merchant's financial institution and a cardholder's financial institution when a cardholder undertakes a transaction. With the removal of the 'no-surcharge' rules in 2003, merchants are able to charge a fee to cardholders to cover the relative cost of accepting various payment methods.

The regulation of interchange fees is primarily through a series of caps – 12c per transaction for debit systems and 0.5 per cent of transaction values for credit systems. The specific proposals put forth by the FSI for interchange fee regulation include:

- Publishing thresholds for determining which system providers will be regulated;
- Broadening interchange fee caps to include all amounts paid to customer service providers in payment systems (including service fees in companion card systems);
- Lowering interchange fees by reducing the caps, but also replacing three year weighted average caps with hard caps so every fee falls below the caps

(reducing differences in fees paid by small and large merchants) and applying the caps as the lesser of a fixed amount and a fixed percentage of transaction values instead of only one component;

The proposals for changes to surcharging regulation include the following reforms by the Payments System Board (PSB) of the RBA:

- Allowing low-cost system providers (essentially systems subject to debit interchange fee caps) to prevent merchants from surcharging;
- Allowing medium-cost system providers (systems subject to credit interchange fees caps) to apply surcharge limits set by the PSB;
- Allowing high cost providers to apply reasonable cost-recovery rules.

The objectives of these proposals are to enhance competitive neutrality, improve efficiency and effectiveness of price signals and reduce the potential for cross-subsidisation between customer groups and merchant groups.

To the extent that these proposals would achieve their objectives, they are worth supporting. However, ACCI notes that implementing a more prescriptive regime of surcharging regulation has the potential to result in significant complexity for retailers and other merchants. ACCI recommends that the Government undertake further analysis of the costs of a more prescriptive regime and not implement such a regime until these concerns are addressed in detail.

FSI Recommendation 18 – Ch 3, p 177

Graduate fundraising regulation to facilitate crowdfunding for both debt and equity and, over time, other forms of financing.

ACCI supports recommendation 18 subject to sufficient investor and issuer protections being developed.

Comment:

The FSI observes that current regulatory settings impede the development of crowdfunding. It is well-known that SMEs, in particular start-ups, have limited access to external financing options and usually are exposed to higher financing costs. Crowdfunding is an alternative form of financing that provides competition to existing lenders and enables smaller firms to access external equity funding without the onerous (often prohibitive) compliance requirements associated with adopting a public company structure.

There are significant risks associated with crowdfunding, particularly for crowd-sourced equity funding (CSEF). In our submission to the Productivity Commission Inquiry into *Barriers to Business Set-up and Closure*, ACCI supported the development of a comprehensive crowdfunding regulatory regime that encompasses both investor and issuer protection. The now-defunct Corporations and Markets

Advisory Committee (CAMAC) made a series of specific recommendations in relation to CSEF that may help to mitigate these risks:

- Capping issuer's fundraising at \$2 million per 12-month period and in return, limiting disclosure requirements;
- Investor caps - \$2 500 per issuer and \$10 000 overall in any 12-month period; and
- Requiring issuance to occur through a licenced intermediary that is prohibited from providing investment advice, soliciting investors and lending to investors.

ACCI would naturally support anything that provides more external funding options to businesses, particularly SMEs. Therefore ACCI is inclined to support the general recommendation and believes that the specific investor and issuer protection proposals are worthy of further consideration in detail.

4. CONSUMER OUTCOMES

Chapter 4 of the report focuses on the consumer protections in the Australian financial system and the need to align the governance and corporate culture of financial firms, employees and other representatives with consumer interests. The FSI recommended three broad courses of action:

- Make issuers and distributors more accountable for design and distribution of products and introduce a product intervention power;
- Focus financial firms and advisers on the interests of consumers; and
- Facilitate innovative forms of disclosure, including by encouraging industry to further use technology.

4.1 Relevant FSI recommendations and ACCI responses

FSI Recommendation 20 – Ch 4, p 190

Support industry efforts to expand credit data sharing under the new voluntary comprehensive credit reporting regime. If, over time, participation is inadequate, Government should consider legislating mandatory participation.

ACCI supports recommendation 20.

However, ACCI encourages the government to conduct a formal review of a voluntary scheme before resorting to legislating mandatory participation.

5. REGULATORY SYSTEM

Chapter 5 of the report focuses on the regulatory architecture in the Australian financial system. The FSI recommended five broad areas of action:

- Improve the regulator accountability framework and effectiveness of regulators;
- Strengthen ASIC; and
- Rebalance the regulatory focus towards competition; and
- Improve the process of implementing new financial regulations.

As with chapter 4, many of the recommendations in this section are not directly relevant to business. Nevertheless, ACCI is only proposing to comment on one recommendation from this chapter – FSI recommendation 30 (and thereby indirectly on recommendation 27). While ACCI is supportive in principle of the increased focus on competition in the financial sector, there is a concern that the FSI final report is inconsistent with recommended courses of action in the Competition Policy Review (CPR). ACCI believes that the suggested competition framework in the CPR would have the ability to deal with competition issues specific to the financial sector and that a newly established Australian Council for Competition Policy would be a superior instrument to address competition issues as opposed to a beefed-up Australian Securities and Investments Commission (ASIC) for reasons that are well explained in the CPR draft report.

5.1 Relevant FSI recommendations and ACCI responses

FSI Recommendation 30 – Ch 5, p 254

Review the state of competition in the sector every three years, improve reporting of how regulators balance competition against their core objectives, identify barriers to cross-border provision of financial services and include consideration of competition in the Australian Securities and Investments Commission's (ASIC's) mandate.

ACCI supports a regular review into the state of competition into the financial sector and improved reporting requirements contained in recommendation 30.

It is important the Government's response to the FSI is consistent with the response to the Competition Policy Review. In this context, ACCI believes that a newly created Australian Council for Competition Policy (ACCP) would be more appropriate to conduct such a review as well as periodic market studies. This would avoid ASIC having a conflict of interest as investigator and enforcer, as well as having responsibilities for conducting regular competition reviews and specific market studies.

ACCI does not support competition being included in ASIC's mandate unless regulator performance is undertaken by an independent body. If an ACCP is created, it would be well placed to assess financial regulator performance.

Comment:

Although ACCI is not proposing to comment directly on FSI recommendation 27 regarding the establishment of a Financial Regulator Assessment Board (FRAB), FSI recommendation 30 proposes that the recommended reporting would feed into the FRAB's overall assessment of regulator performance. The inclusion of competition in ASIC's mandate is potentially at odds with the recommendations contained in the CPR draft report regarding the establishment of an Australian Council on Competition Policy (ACCP).

Recommendations 39 and 40 from the CPR draft report⁶ recommend the establishment of an Australian Council for Competition Policy with well defined roles. Recommendations 41, 42 and 43 from the CPR draft report would empower the ACCP to undertake market studies, for all Australian governments to be able to request market studies and for annual competition analysis to be undertaken. ACCI supported these recommendations in the submission-in-reply to the CPR draft report.

It is on this basis that ACCI would support the broad thrust of FSI Recommendation 30, however that the ACCP would be better placed than ASIC to undertake this role. Part of the rationale for establishing an ACCP outside of the Australian Competition

⁶ <http://competitionpolicyreview.gov.au/draft-report/> see pp.57-58

and Consumer Commission (ACCC) is to separate the role of competition policy advocate from the compliance and enforcement role of the ACCC to remove any conflict of interest. ACCI believes this approach is sound and therefore, ASIC should not be granted a mandate to review its own performance as regulator and enforcer.

6. OTHER ISSUES

Appendix 1 of the FSI report focuses on various other issues not considered elsewhere in the report. There is a section on issues relevant to small and medium enterprises and another on the corporate administration and bankruptcy regimes where ACCI is likely to comment.

6.1 Relevant FSI recommendations and ACCI responses

FSI Recommendation 33 – Appendix 1, p 263

Reduce disclosure requirements for large ‘listed’ corporates issuing ‘simple’ bonds and encourage industry to develop standard terms for ‘simple’ bonds.

ACCI supports recommendation 33.

Comment:

To the extent that this will increase access to alternative sources of external finance for some businesses, ACCI supports this recommendation.

FSI Recommendation 34 – Appendix 1, p.265

Support Government’s process to extend unfair contract term provisions to small businesses.

Encourage industry to develop standards on the use of non-monetary default covenants

ACCI supports recommendation 34, although encourages the government to proceed cautiously. The ACCC should adopt an ‘educate first, punish last’ approach. Small business to small business contracts should not be included in the regime. Financial services should be included in the regime.

ACCI encourages the financial sector to develop standards on the use of non-monetary default covenants, in particular, granting borrowers time to source alternative finance. If the industry-led response proves inadequate, then the Government should leave open the option to formally regulate the use of such covenants.

Comment:

ACCI supported the introduction of unfair contract term protections for small businesses in a submission to Treasury on this issue and advocated the inclusion of financial services contracts in the regime.

ACCI highlighted the pernicious nature of non-monetary default covenants that were applied without due consideration for the borrowers who remained creditworthy but the value of underlying assets used for security purposes had deteriorated. In the first instance, ACCI would welcome an industry-led initiative but believes the Government should leave open the option to regulate the use of non-monetary default covenants if the industry-led initiative did not prevent the overzealous use of such covenants.

FSI Recommendation 36 – Appendix 1, p 265

Consult on possible amendments to the external administration regime to provide additional flexibility for businesses in financial difficulty.

ACCI supports recommendation 36 and further, that ASIC should publish data on external administration in a fashion that would enable detailed research to be undertaken on the performance and outcomes of the regulatory regime.

Particular items for consideration in any review should include ‘safe harbour provisions’ for company directors that are seeking to restructure, a moratorium on ‘*ipso facto* clauses’ while restructuring efforts are being made and the interaction of the external administration and personal bankruptcy regimes.

Comment:

In the submission to the Productivity Commission inquiry on *Barriers to Business Set up and Closure* ACCI recommended that the government should consider two elements of the United States’ *Bankruptcy Code’s* Chapter 11 framework. The first is ‘safe harbour’ provisions for company directors to avoid the incentive for directors to seek the shelter of voluntary administration and the second is a moratorium on the use of ‘*ipso facto*’ clauses during restructuring. ACCI believes both of these measures are worthy of further consideration. ACCI also believes that the interaction between the external administration and personal bankruptcy regimes warrants investigation and possible reform.

7. ABOUT ACCI

7.2 Who We Are

The Australian Chamber of Commerce and Industry (ACCI) speaks on behalf of Australian business at a national and international level.

Australia's largest and most representative business advocate, ACCI develops and advocates policies that are in the best interests of Australian business, economy and community.

We achieve this through the collaborative action of our national member network which comprises:

- All eight state and territory chambers of commerce
- 29 national industry associations
- Bilateral and multilateral business organisations.

In this way, ACCI provides leadership for more than 300,000 businesses which:

- Operate in all industry sectors
- Includes small, medium and large businesses
- Are located throughout metropolitan and regional Australia.

7.3 What We Do

ACCI takes a leading role in advocating the views of Australian business to public policy decision makers and influencers including:

- Federal Government Ministers & Shadow Ministers
- Federal Parliamentarians
- Policy Advisors
- Commonwealth Public Servants
- Regulatory Authorities
- Federal Government Agencies.

Our objective is to ensure that the voice of Australian businesses is heard, whether they are one of the top 100 Australian companies or a small sole trader.

Our specific activities include:

- Representation and advocacy to Governments, parliaments, tribunals and policy makers both domestically and internationally;
- Business representation on a range of statutory and business boards and committees;
- Representing business in national forums including the Fair Work Commission, Safe Work Australia and many other bodies associated with economics, taxation, sustainability, small business, superannuation, employment, education and training, migration, trade, workplace relations and occupational health and safety;

- Representing business in international and global forums including the International Labour Organisation, International Organisation of Employers, International Chamber of Commerce, Business and Industry Advisory Committee to the Organisation for Economic Co-operation and Development, Confederation of Asia-Pacific Chambers of Commerce and Industry and Confederation of Asia-Pacific Employers;
- Research and policy development on issues concerning Australian business;
- The publication of leading business surveys and other information products; and
- Providing forums for collective discussion amongst businesses on matters of law and policy.

ACCI MEMBERS

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