



## SECURITIES INSTITUTE

19 November 2004

Mr John Salerian  
Assistant Commissioner  
Productivity Commission  
Level 28, 35 Collins Street  
MELBOURNE VIC 3000  
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Dear Mr Salerian

**RE: DRAFT RESEARCH REPORT: AUSTRALIA NEW ZEALAND COMPETITION & CONSUMER PROTECTION REGIMES**

The Securities Institute of Australia (SIA) is pleased to provide comments on the Productivity Commission's draft research report *Australia New Zealand Competition & Consumer Protection Regimes*.

On 24 June 2004, the Treasurer asked the Productivity Commission to: (i) assess how the operation, administration and enforcement of Australian and New Zealand competition and consumer protection laws affects, impedes or fosters an integrated trans-Tasman business environment; and (ii) identify and assess the expected net benefits for Australia and New Zealand of options for greater co-operation, co-ordination and integration of their competition and consumer protection policy and law, and its administration and enforcement, for the purpose of fostering and enhancing a trans-Tasman business environment.

Through the Australia New Zealand Closer Economic Relations (CER) Trade Agreement, the governments of both countries made a commitment for the Australian and New Zealand economies to become increasingly integrated. The objective of trans-Tasman reform is to "deepen the trans-Tasman relationship within a global market, through increased co-ordination of business law, thereby creating a mutually beneficial trans-Tasman commercial environment"<sup>1</sup>.

The SIA supports the key finding of the draft report that indicates that radical change (such as full integration or a single regulator model) is not warranted due to the high implementation costs and consequences for existing national regimes. Given that the Government is yet to completely consider and implement important recommendations from the 'Dawson Review', we do not believe it is timely to consider measures other than those limited to improving existing arrangements; for example enhancing information sharing powers between regulators and providing investigative powers for Australian and New Zealand regulators to assist each other. It is important that appropriate safeguards accompany any new regulatory powers. The SIA supports regulators engaging in greater co-operation aimed at improving any enforcement outcomes aimed at protecting consumers (and investors) and building the integrity of our markets.

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<sup>1</sup> The Memorandum of Understanding Between the Government of Australia and the Government of New Zealand on Coordination of Business Law signed on 31 August 2000 replaces the Memorandum of Understanding Between the Government of Australia and the Government of New Zealand on Harmonisation of Business Law signed on 1 July 1988.

The SIA believes that initiatives that promote greater financial and investment activities between Australia and New Zealand, enhance competition in our financial and capital markets and reduce compliance costs for business, should be pursued. Greater co-operation, co-ordination and integration offers an opportunity for Australia and New Zealand to consider how both countries can strengthen investor confidence, encourage economic efficiencies and promote regional market integrity.

However, while enhancing current practices is desirable, we believe that further consideration is needed for changes that would impact more fundamentally on how our legal and regulatory frameworks interface. It is essential that a greater co-ordinated approach is lawful (does not generate conflicts of laws in other areas, e.g. privacy law) and that any changes to the legal and regulatory framework in each country do not generate unintended consequences for the protections of commercial business as well as consumers. It would be undesirable for the legislative intent of our competition and consumer protection regime to be compromised or for business operations to be hindered.

As set out in the MOU, "co-ordination is multi-faceted and does not necessarily mean the adoption of identical laws, but rather finding a way to deal with any differences so they do not create barriers to trade and investment. In working towards greater co-ordination, the efforts of both Governments will focus on reducing transaction costs, lessening compliance costs and uncertainty, and increasing competition".

The SIA endorses initiatives that provide an effective mechanism for: (i) promoting improved commercial and economic opportunities for business, (ii) encouraging increased investment choice and opportunities for consumers; and (iii) 'dealing with' regulatory barriers that artificially increase compliance burden. However, while we endorse initiatives that support greater cross-border economic interaction, we believe that as a strategy to benefit Australia in the global marketplace it is equally important to improve market efficiencies, remove unnecessary legal and regulatory barriers and promote greater activity in the Australian financial and capital markets.

As the move to greater co-ordination between Australia and New Zealand is pursued, the SIA looks forward to the opportunity for further input into the consultation process. We recently provided comment on the joint Australian Department of the Treasury and New Zealand Ministry of Economic Development Discussion Paper *Trans-Tasman Mutual Recognition of Offers of Securities and Managed Investment Scheme Interests*, as the proposals impact on our membership and industry.

It is important that both businesses and consumers can participate in cross-border financial and investment activities with confidence. It is equally important that Australia maintains a strong, dynamic and growing economy.

If you have any queries about the comments in our submission, please contact me on (02) 8248 7651 or the SIA's Senior Manager, Policy & Government Relations, Diane Tate on (02) 8248 7556 or via email [d.tate@securities.edu.au](mailto:d.tate@securities.edu.au).

Yours sincerely

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Chief Executive Officer