



Submission to the Australian Government Regulation Taskforce

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1 Executive summary

In recent years, the regulatory burden on general insurers has increased sharply.

The Wallis Inquiry resulted in sweeping reforms across the sector, including a fundamental overhaul of the *Insurance Act 1973* (Insurance Act). Financial Services Reform (FSR) required insurers to obtain new licences and to rewrite documents to comply with a cross industry disclosure regime. Reforms that spread across various sectors of the economy such as GST and private sector privacy regulation required significant change within the financial sector. Recently, a second generation of reforms was initiated, with proposed amendment to prudential standards under the Insurance Act and refinements to FSR.

Many of these reforms instituted positive change in the industry. Change to prudential regulation saw the introduction of risk-based regulation. Licensing of financial service providers improved training standards and service quality for consumers. Privacy laws formalised a long tradition of insurers handling customers' confidential information with care.

However, the volume of new regulation combined with a prescriptive "one size fits all" regulatory design has resulted in high compliance costs. Larger insurers (over 500 employees) have indicated ongoing compliance costs range from \$18-20 million per annum. Both large and small insurers have indicated that compliance issues now consume between 10% and 25% of senior management and Board time.

The present, marking a decade since the Wallis Inquiry, presents a timely opportunity to take stock of the regulatory burden. ICA welcomes the Regulation Taskforce and applauds the steps taken by the Prime Minister and Treasurer to address unnecessary regulatory burden.

In this submission, ICA makes the following key recommendations for alleviating the burden of regulation:

- Increase the use and accuracy of cost benefit analyses together with the depth and frequency of consultation prior to new regulation being introduced;
- Establish a Bureau of Financial Sector Regulation to improve the accountability and monitoring of financial sector regulators;
- Implement the package of reforms recommended by the HIH Royal Commission that were intended to improve the regulatory environment and which were accepted by the Government but remain outstanding, namely the regulation of all insurance and insurance-like products, removal of overlaps between State and Federal prudential regulation, a light touch safety net for policyholders and removal of a number of excessive State taxes on insurance; and
- Reduce overlapping and otherwise excessive regulation in other areas, most urgently by tailoring the dollar disclosure provisions of FSR to general insurance.

ICA makes a total of 27 recommendations which are set out in Appendix 1. ICA strongly urges the Regulation Taskforce to consider immediate concerns of business that can be addressed relatively quickly to relieve red tape, together with longer term systemic problems – such as the limited use of consultation, cost-benefit analyses and post implementation reviews – that will contribute to high costs of regulation in future.

2 Introduction

The Insurance Council of Australia (ICA) is the representative body of the general insurance industry in Australia.

ICA membership represents more than 90 percent of total premium income written by APRA authorised private sector general insurers.

ICA members provide non life insurance products ranging from those usually purchased by individuals (such as home and contents insurance, travel insurance, motor vehicle insurance) to those purchased by small businesses and larger organisations (such as product and public liability insurance, workers compensation, commercial property, and directors and officers insurance).

ICA members, both insurers and reinsurers, are regulated and licensed by the Australian Prudential Regulation Authority (APRA) and are a significant part of the financial services system. Recently published statistics from APRA show that the private sector insurance industry generates direct premium revenue of \$28.4 billion per annum and has assets of \$80.1 billion.¹ The industry employs about 43,000 people.²

Australian general insurers issue more than 41 million insurance policies annually and deal with 3.5 million claims each year.³ The industry provides protection for a substantial amount of Australia's assets, held by households, governments and businesses. On average, about \$55 million in claims is paid each working day.

Insurance allows individuals to engage in risky activities, such as starting up a business because it an insurer is better able to absorb losses. Insurance plays an important role in ensuring the smooth operation of the national economy. The collection of premiums by insurance companies also provides a mechanism by which savings are mobilised.⁴

Having regard to the importance of insurance for individuals and the economy as a whole, it is essential that regulation of insurance achieve the proper balance between protecting policyholders, consumers, and efficiency. This submission seeks to assist in achieving that balance and is made to the Regulation Taskforce announced jointly by the Prime Minister and Treasurer on 12 October 2005 (Taskforce).

3 Burden of regulation on general insurers

The exact impact of regulation⁵ on insurers is difficult to quantify. However, some key indicators of the direct cost of regulation and the opportunity cost of the resources consumed by compliance follow.

¹ APRA, *Quarterly General Insurance Performance, June 2005*.

² ICA Human Resources Standing Committee Research October 2005

³ APRA *Selected Statistics on the General Insurance Industry, Year Ending June 2002*

⁴ Centre for International Economics "The General Insurance Sector: Big Benefits but Overburdened" (August 2005) prepared for the Insurance Council of Australia page v

⁵ This submission adopts the defining of "regulation" set out in the Regulation Taskforce Issues Paper p2: "to include any laws or other government 'rules' which influence or control the way people and businesses behave. Under this definition, regulation is not limited to legislation and formal regulations; it also includes 'quasi-regulation' (such as codes of conduct, advisory instruments or notes etc)".

Our members have indicated that there has been a dramatic increase in overall compliance costs over the past 5 to 10 years. For larger insurers (over 500 employees), ongoing compliance costs range from \$18 - 20 million per annum. Two medium size insurers have estimated that their total compliance costs amount to \$5.5 million and \$7.4 million per annum respectively. Smaller insurers (under 500 employees) report compliance costs in the order of \$5 million per year.

Both large and small insurers have indicated that compliance issues now consume between 10% and 25% of senior management and Board time. The need to focus on compliance at the senior management and Board level also runs the risk of stifling innovation and creativity. One small insurer has estimated total senior management time spent on compliance is five times greater than five years ago and ten times greater than ten years ago.⁶

Compliance with regulation has a disproportionately high impact on small insurers with fewer than 500 employees. For example, one small insurer has indicated that compliance expenses as a percentage of operating income has risen from a base of 0.8% ten years ago, to 0.9% five years ago to 2.1% in 2005.

These costs of compliance are inevitably reflected in the premiums, distorting the prices that consumers must pay.

The key factors that contribute to high costs of compliance are:

- The level of complexity in insurance regulation;
- The rapid change in insurance regulation; and
- The volume of regulation.

Each of these factors is discussed below.

3.1 Complexity in insurance regulation

General insurers are subject to a complex regulatory environment. Regulation in this sector is characterised by overlapping responsibilities of regulators, inconsistent and sometimes unnecessary regulation. There is also a significant gap in regulation, which means that high costs are imposed on some insurers, while relatively low regulatory requirements are imposed on others. These are set out in the map in Appendix 2.

Industry specific regulation at the Federal level includes the Insurance Act for prudential supervision, the *Insurance Contracts Act 1984* (IC Act) for consumer protection and Institute of Actuaries of Australia as well as APRA accounting standards. State and Territory Governments also subject insurers to prudential supervision, deal with aspects of market conduct and consumer protection and the various statutory insurance schemes, which operate in each State and Territory.

In addition to industry specific regulation, general insurers are also subject to the regulation that applies across the financial sector, most notably FSR. The industry is subject to the corporate regulatory regime that applies to Australian incorporated businesses generally. This includes the

⁶ That small insurer indicated that where compliance matters took 104 hours of senior management time ten years ago, that figure rose to 195 hours of senior management time five years ago and has since risen to 1014 hours per month in 2005.

legislative regimes of the *Corporations Act 2001* (Corporations Act), the *Trade Practices Act 1974* (TPA) and for public listed companies, the requirements of the Listing Rules of the Australian Stock Exchange (ASX).

Regulation that applies to multiple sectors is also complex. This is felt acutely in the area of taxation and accounting, where insurers are required to keep three parallel "books" in order to comply with their taxation obligations, insurance accounting and APRA reporting requirements.

3.2 Rapid change in insurance regulation

Over the past decade, this complex regulatory environment has undergone dramatic change.

The Wallis Inquiry of 1996 resulted in sweeping reforms across the sector. Following the collapse of the HIH group of companies in 2001, the Insurance Act underwent a major overhaul and a number of new prudential standards were introduced. It improved regulation of general insurance by introducing a risk based capital requirement, incorporating a requirement for significant prudential margins to be held by insurance companies.

In 2002 the new licensing and disclosure regime for financial services in the form of FSR required insurers to obtain new licences and to rewrite documents. Over the same time-period, reforms that spread across various sectors of the economy, including the introduction of GST and application of the Privacy Act to the private sector, also required significant change within the financial sector.

In 2003, a second generation of reforms were initiated by APRA to amend prudential standards and earlier this year a package of refinements to FSR was proposed. Together with these changes, other changes to the Corporations Act, TPA and Insurance Act, are proposed. A list of proposed changes to regulation which have a direct and significant impact on the insurance industry is set out in Appendix 3.

3.3 Volume of insurance regulation

The volume of regulation in general insurance is best measured by the structures and procedures that insurers put in place in order to comply with that regulation. These include:

- A suite of committees

Typically an insurer will have at least one of each of the following committees staffed by senior management and middle management: risk management committee, risk management subcommittees, audit committee, compliance committee and dispute resolution committee. This suite of committees assists insurers to maintain a robust compliance framework.

- Growing compliance groups

A large insurer has indicated that staff numbers in compliance groups have grown by 20-30% in the last two years alone. A medium sized insurer has reported that ten years ago they had one lawyer doing all compliance work, plus additional time from accounting and internal audit staff; five years ago this had increased to two in house counsel, with increased contributions required from accounting, internal and external audit staff; and currently it employs a full time compliance manager, four in house counsel, an actuary plus external assistance, enlarged accounting, internal and external staff, plus substantial compliance costs throughout the organisation.

Compliance groups are required to perform new tasks required to meet with regulation, including:

- Development and implementation of training resources and materials – including on line training modules and purchase of software licences;
- Conducting training sessions for staff;
- Developing incident reporting tools and the monitoring, reporting and rectification of incidents;
- Preparing manuals particularly for authorised representatives;
- Appointing and monitoring authorised representatives;
- Spending many minutes per phone call reading prescribed scripts;
- Monitoring and complying with obligations to report material FSR breaches to ASIC and all breaches to APRA; and
- Higher demand for auditing and actuarial resources

Increased audit reporting has raised costs of retaining auditors together with developing processes to support audits, staff and management time. These costs have increased significantly in the past three years since the introduction of the new APRA regime which requires additional audit of APRA returns and imposition of the annual targeted review process.

- Staff time spent on compliance

Sales staff, including call centre staff, spending many minutes per phone call reading prescribed scripts. Typically, this would include:

- General Advice Warning that complies with FSR;
- Duty of Disclosure Statement that complies with the *Insurance Contracts Act 1984*; and
- Privacy Statement that complies with the *Privacy Act 1988*.

ICA has estimated that the ongoing cost of giving privacy notices over telephone sales costs the industry between \$1-2 million per annum due to the ongoing costs of training, staff time and other compliance considerations.⁷

- Growth in tax compliance

The continuous additions to the income tax legislation have contributed to the need for large tax groups within large insurers and a heavy reliance on external expert taxation advice for small insurers. The introduction of the GST led to a rapid increase in the volume of taxation regulation with which insurers must comply. Initial costs included systems changes, staff training and expertise development. Having now been in place for some years, it is clear that the GST has transformed tax compliance from a simple function that could largely be performed by automated systems into a complex area of regulation. Where, for example, claims clerks could once process claims simply,

⁷ ICA submission on Issues Paper – Review of the Privacy Act – Private Sector Provisions (December 2004) p18

senior claims clerks and taxation experts are now called upon to intervene and assess the way in which the tax law applies to a claim.

- Increasing consumption of legal resources

Legal resources have become necessary to assist with compliance in the following areas:

- Preparing documentation specific to regulatory requirements such as the Corporations Act and IC Act;
- Ensuring that marketing materials comply with relevant regulatory requirements; and
- Preparing scripts for telephone sales and inquiries.

Having regard to these costs of compliance, together with the pace of change, the complexity of the regulatory environment and the volume of regulation, ICA makes 27 recommendations for improving insurance regulation in the following section.

4 Improving insurance regulation

Improving insurance regulation requires reform in three key areas: firstly, the process of implementing regulation undertaken by the regulators; secondly, high-level reform of insurance regulation recommended by the HIH Royal Commission; and thirdly, a reduction in unnecessary regulatory burden in other areas of overlapping, inconsistent, complex or excessive regulation.

4.1 Improving regulatory process

The processes of regulation in the financial sector, including the design, implementation and supervision of regulators, has recently been the subject of a Report produced by CRA International for the Finance Industry Council of Australia (FICA) (Report).⁸ ICA is a member of FICA and endorses each of the recommendations of that Report, a copy of which forms Annexure A to this submission.

The Report makes a total of eleven recommendations. Based on the premise that “prevention is better than cure”, the recommendations are made to encourage the design of less prescriptive regulation, ensure an outcome-oriented culture within financial sector regulators, develop a stronger information base, boost the monitoring and accountability of regulators and advocate flexible approaches to regulation in international fora. ICA supports each of the Report’s recommendations as set out below.

⁸ CRA International for the Finance Industry Council of Australia (FICA) (7 November 2005)

Recommendation 1

Following the policy framework articulated in the Wallis Inquiry, the Government should be encouraged to adopt light-handed models of regulation in the major reviews of regulations currently under way. The implementation of these regulations, as for all regulation, should use the minimum level of market intrusion necessary to give effect to the identified policy objectives. It should be proportionate to the demonstrated market failure and applied efficiently.

Recommendation 2

Consultation should be comprehensive focused on ensuring the most cost-effective means to achieve the stated policy intent of any new or substantially modified financial sector regulations be undertaken at all stages of the development of the regulations i.e. when policy is designed, legislation is drafted, and the legislation is translated into specific regulations and procedures applied by the relevant regulator.

Recommendation 3

The business community should continue to support a broad debate on the need for further microeconomic reform, with the development of well-designed regulations being an essential element of that agenda.

Recommendation 4

For major pieces of financial sector regulation, the Government should release a statement of policy intent, initially in the form of its 2nd reading speech and thereafter conduct a post implementation review within two years to measure whether the objectives were being achieved in the most cost effective manner.

Oversight and co-ordination of regulators

ICA supports the current Commonwealth regulatory framework covering the financial services sector with:

- (a) APRA responsible for prudential regulation,
- (b) ASIC responsible for market conduct regulation,
- (c) ACCC responsible more broadly for competition matters and consumer protection, and
- (d) ATO responsible for the implementation of Commonwealth taxation laws.

However, as the Report concludes, there is a strong argument for improvement in the oversight and co-ordination of Regulators.

The Report calls for a new body *to monitor and assess the appropriateness of how regulations are being implemented in detail.*

ICA recommends that a Bureau of Financial Sector Regulation (Bureau) should be established to improve the accountability of and monitoring of regulators and to oversee the implementation of the Government's regulatory policy for the financial services sector. Responsibility for much of the oversight of financial sector regulation be devolved to the Bureau. In brief, the Bureau would have three main functions:

- The identification and filtering of issues;
- The development of a deeper understanding of the costs and benefits of financial sector regulations; and
- As a public voice for best-practice regulation in the financial sector.⁹

The Bureau would not function as a "super-regulator". Rather, like the Inspector-General of Tax, it would be tasked explicitly with reviewing only systemic issues that may lead to recommendations involving policy design and regulatory practice.

Part of the role of the Bureau would be to have regard to the co-ordination of ASIC and APRA's roles. Formal measures require APRA and ASIC to facilitate co-ordination are currently in place:

"The agencies agree that consistent with their separate roles they will co-operate where it is within their administrative powers to reduce duplication and compliance costs and achieve effective enforcement and compliance outcomes."¹⁰

However, there is ample evidence that these formal measures are not being fully applied. For example, over mid 2005, both APRA and ASIC were consulting insurers on major reforms. This limited the ability of insurers to engage thoroughly in each of these consultations. There is a clear role for the Bureau in overseeing and co-ordinating regulators, including the timing of consultation.

Recommendation 5

A Bureau of Financial Sector Regulation should be established to oversee financial sector regulation.

Cost-benefit analyses

The Report reviews the path of regulation set down by the Wallis Inquiry.¹¹ Wallis advocated "light-handed" regulation in financial services which relies on market discipline where possible, is based on principles rather than prescribing processes and encourages alternatives to regulation.

However, the idea of light handed regulation was overtaken by events.

Much recent regulation has suffered from a lack of thorough cost-benefit analysis and robust consumer testing. Although the Office of Regulatory Review has an extensive role "on paper" it has had relatively little influence in practice.¹²

⁹ CRA International for the Finance Industry Council of Australia (FICA) (7 November 2005) at 36

¹⁰ Memorandum of Understanding 1.2

¹¹ Financial System Inquiry *Final Report* 1997 at www.fsi.treasury.gov.au

¹² CRA International for the Finance Industry Council of Australia (FICA) (7 November 2005) at 37

In particular, the FSR has been criticised for the lack of analysis of the benefits that consumers gain from the complex and cumbersome disclosure regime, relative to the costs of complying with that regime. Following the implementation of FSR, industry has been left to address systemic issues with the FSR regime by making applications to ASIC for class orders, each of which have may only address a limited part of a much broader area of concern. A good example of this has been the dollar disclosure provisions (and ensuing class orders) which is discussed in detail in paragraph 3.3.1 of this submission.

Together with consumer testing where legislation is intended to provide consumers with protection or benefits, cost benefit analyses are fundamental to the health of the regulatory system. They go hand in hand with a sustained and thorough consultation period. They should not be restricted to legislation but should be undertaken, where appropriate, for regulations and disallowable instruments such as APRA prudential standards.

Accordingly, there is a role for the Bureau in contributing to accurate cost assessments by developing a deeper understanding of the costs and benefits of financial sector regulation and lifting the standards of cost-benefit analysis.

Recommendation 6

The Bureau of Financial Sector Regulation should be tasked with the development of common methodologies to calculate the costs of complying with financial sector regulation. The Bureau should work closely with FICA (or the different industry associations) to help to ensure that this effort is as cost-effective as possible.

Recommendation 7

The Bureau of Financial Sector Regulation should be given a mandate to lift the quality of the cost-benefit analysis of financial sector regulation, and be resourced adequately for this task. The Bureau should encourage a deeper understanding of best practice regulation.

Recommendation 8

The Government should recognise the potential usefulness of regulated entities being able to develop their own compliance models to achieve regulator-specified outcomes. APRA and ASIC, in particular, should be encouraged to define what is expected of regulated entities and to develop a framework for alternative compliance models for specified areas of regulation.

Recommendation 9

The Reserve Bank should be encouraged to reconsider its current approach to the regulation of interchange and explore less constraining means to encourage appropriate competition.

Recommendation 10

The Bureau of Financial Regulation should have a mandate to monitor areas of duplication and inconsistency across regulators.

Recommendation 11

The Government should continue taking a lead in the developing of outcomes-based models of regulation in international forums. It should also encourage the recognition that regulatory frameworks may need to evolve as specific regulations are made operational. In adoption of international standards, Australian legislators and regulators should take due regard to the impact of early adoption on international competitiveness of domestic players.

4.2 Improving the regulatory environment

In its submissions to the HIH Royal Commission, ICA identified a range of weaknesses in the regulatory environment that partially contribute to the conditions in the HIH Group of companies collapsed.

ICA developed and submitted a blueprint for insurance regulation to the HIH Royal Commission. Many components of the blueprint for insurance regulation were accepted by the HIH Royal Commission in its recommendations to the Government, including a package of inter-related reforms, being the four components of the blueprint.

ICA's blueprint for insurance regulation is designed to strengthen and simplify the regulatory framework. The foundation of that blueprint is that all insurance and insurance-like business is regulated. That means that the gap that currently allows Discretionary Mutual Funds (DMFs) and Direct Offshore Foreign Insurers (DOFIs) to avoid prudential regulation is removed. Once the base of regulation is properly established, then it is necessary to overcome the duplications and inconsistencies created by State/Federal overlap, State/State inconsistency, to introduce a policyholder protection scheme and to remove the taxes that affordability of general insurance.

Making this package of reforms a priority should improve the efficiency of the sector.

4.2.1 Regulation of all insurance business

Not all insurance or insurance-like business is subject to the same prudential regulation.

Under the Insurance Act, an insurer that carries on insurance business in Australia must be authorised by APRA. The main object of the Act is the protection of the interests of policyholders and prospective policyholders under insurance policies in ways that are consistent with the continued development of a viable, competitive and innovative insurance industry.¹³

Under that Act 'insurance business' is defined in to mean 'the business of undertaking liability, by way of insurance (including reinsurance), in respect of any loss or damage, including liability to pay damages or compensation, contingent upon the happening of a specified event, and includes any business incidental to insurance business as so defined...'.¹⁴

There are restrictions to the scope of the Insurance Act that arise in the context of the definition of 'insurance business'. The threshold requirement is an undertaking of liability. Discretionary entities and insurance mutuals, whilst they offer protection in the nature of insurance, do not undertake

¹³ Section 2A of the *Insurance Act*.

¹⁴ Section 3 of the *Insurance Act*.

liability and are not captured.¹⁵ DOFIs that do not have a branch in Australia or who do not actively solicit business in Australia are not prudentially regulated.

- Consumer protection

More Australian policyholders would be protected, and the strength and viability of the general insurance market in Australia could be enhanced if all entities underwriting general insurance or offering insurance like arrangements were regulated by the Insurance Act.

A range of entities currently undertake the business of general insurance or arrangements of the nature of insurance outside the requirements of the Insurance Act. These entities include mutual organisations and government insurers.

As a result, the interests of significant numbers of policyholders or people with indemnity arrangements are not protected under the Insurance Act.

If the requirements of the Insurance Act applied to such entities, more policyholders could enjoy the security afforded by the prudential standards under the Insurance Act, and the benefits of the policyholder protection scheme proposed below by ICA.

- Competitive neutrality

At the heart of the argument for competitive neutrality is the fact that consumers have choices when it comes to their insurance decisions and for the most part that choice is made based on price. The regulatory burden is a factor affecting insurers costs, but the biggest issue around competitive neutrality is taxation. The tax advantage granted to these unauthorised players is significant and it is real.

While technically insurance policies offered by DOFIs are subject to these taxes as they are payable by the policyholder if the insurer is not registered, there are little if any enforcement mechanisms to ensure that these taxes are paid. Since the products of DMFs are not considered to be insurance, they are able to avoid these punitive taxes completely. The Potts Review found that DMFs benefit from significant cost advantages over authorised insurers, because their exemption from State taxes and prudential regulation and that DOFIs enjoy significant tax advantages over Australian authorised insurers.

A uniform and consistent framework for the prudential regulation of all entities underwriting insurance or offering insurance like arrangements would enhance a fair, open and competitive market for general insurance in Australia, and potentially increase the size and strength of the insurance market.

These outcomes can be best achieved by:

- (a) The Commonwealth exercising, to its fullest extent, its constitutional power to make laws in respect of insurance;¹⁶ and

¹⁵ In addition, there are a number of specific exclusions from the definition of 'insurance business' in section 3 of the *Insurance Act*. These exclusions relate to particular types of business that would otherwise be 'insurance business', such as life insurance which is governed by the *Life Insurance Act 1995 (Cth)*.

¹⁶ The Commonwealth Parliament has constitutional power to make laws with respect to insurance, other than State insurance, but including State insurance extending beyond the limits of the State concerned. The Commonwealth has a very broad power to make laws with respect to insurance, except where such insurance can be categorised as State insurance not extending beyond the limits of

- (b) To the extent that the Commonwealth's constitutional power is not sufficient to extend the operation of the *Insurance Act* to all entities underwriting insurance and arrangements of the nature of insurance, the establishment of arrangements between the States and the Commonwealth to ensure the consistent regulation of all entities underwriting general insurance or offering insurance like arrangements.

Preliminary developments

This issue was the subject of the 2003-2004 Review by Mr Gary Potts. The Potts Review made recommendations that DMF cover be offer as a contract of insurance under the Insurance Act but that DOFIs marketing insurance in Australia be exempt from prudential regulation in Australia if they are domiciled in a country Australia considers to have comparable regulation.

While the Potts recommendations go some way to addressing the issues around DMFs and DOFIs, they would not sufficiently address the problems of distorted competition and consumer protection.¹⁷

From a consumer protection perspective, ICA remains concerned that the primary source of protection for consumers, specifically having assets within the reach of the Australian regulator in the event of a corporate failure of an insurer, is not fully addressed in the Potts recommendations. For DOFIs, it is highly unlikely that a requirement to have adequate assets in Australia will be part of a comparable regulatory regime assessment. Consumers of DMFs that Potts recommends be exempt from APRA authorisation would not have the benefits of effective prudential oversight nor will they have any priority access to assets in the event of a failure.

Implementation of the Potts recommendations not only permits but encourages the presence of unauthorised insurers through setting out the rules under which these insurers can operate in Australia.

The only real solution for all stakeholders is to ensure that all insurance or insurance type business is effectively regulated. The prudential oversight provided through APRA regulation, combined with requirements to hold sufficient assets within reach of the jurisdiction in Australia, are critical consumer protections that benefit not only policyholders but the industry as a whole.

ICA understands that a response to the Potts recommendations is immanent and looks forward to working with the Government on creating an even playing field for Australian insurers.

Recommendation 12

The concept of 'carrying on insurance business in Australia', as set out in the Insurance Act, should be interpreted and applied so that all DMFs and DOFI providing protection for risks in the Australian market are regulated by APRA.

the State. That is insurance which is not 'State Insurance' and State insurance extending beyond the limits of the State is within the legislative power of the Commonwealth.

¹⁷ For further detail, refer to ICA submission in reply to the Potts Recommendations

4.2.2 Removing overlap, duplication and inconsistency in prudential regulation

Overlap, duplication and inconsistency characterise the regulatory environment that insurers now operate in.

General insurers in Australia are potentially subject to differing regulatory requirements in eight jurisdictions for statutory insurance in relation to any of the following features of a particular scheme¹⁸:

- The prudential and financial regulation of general insurers involved in the scheme, either as underwriters of, or agents for the scheme;
- The setting of premiums for a scheme or supervision of price;
- Compensation or benefits and controls on access to certain types or levels of compensation or benefits;
- The regulation of service providers for a scheme such as the medical, health and legal professions;
- Claims handling and dispute resolution processes; and
- Mechanisms to deal with non-insured parties.

Duplication and inconsistencies between pieces of regulation arise largely because of two regulatory cleavages: first, overlapping regulatory responsibilities between APRA and State prudential regulators and secondly between State regulators.

State/Federal overlaps and inconsistencies

Currently each State/Territory licenses and conducts prudential oversight of any insurers that underwrite statutory classes of insurance (specifically Compulsory Third Party (CTP) and workers compensation) within its boundaries. For private insurers, this is in addition to APRA's prudential regulation that looks at all of an insurers book of business.

The justification that the States and Territories give for prudential oversight is that in the event of a failure of an insurer that underwrote either CTP or workers compensation within their jurisdiction the State/Territory would have to cover any liabilities as nominal insurer. This was the situation in NSW and Queensland as it related to the CTP business of the HIH Insurance Group and H.O.W.

ICA supports the recommendations of the HIH Royal Commission that the States and Territories not undertake any prudential regulation of general insurance, that APRA should be the sole prudential regulator¹⁹ and that the States and Territories implement a process designed to reduce inconsistencies in their statutory schemes.

Recommendation 13

¹⁸ Appendix A lists general insurers and the statutory schemes for which they are either underwriters or agents in personal injury motor accidents, workers compensation and builders warranty insurance.

¹⁹ Recommendation 49

That the States and Territories not undertake any prudential regulation of general insurance.***Inconsistent State/State Regulation***

States and Territories responded in various ways to the need to provide guaranteed access to compensation or benefits for people suffering loss in certain circumstances such as employees injured at work or people injured in a motor vehicle accident. Appendix 4 provides an overview of statutory classes across the country.

Workers compensation provides a clear example of the problems of inconsistent regulation. The compulsory nature of workers compensation and its role in the broader industrial relations environment have resulted in a far more intense level of regulation and government intervention than any other insurance product. To date this regulation and government intervention has been almost entirely state-based in Australia (other than for Commonwealth employees and seafarers). The result is the current patchwork of different schemes for each State and Territory, plus specific national schemes for federal government employees and seafarers as well as special schemes such as the coal miners' in New South Wales. Each has evolved largely in isolation with very limited coordination at the national level. While all these schemes are under almost continual review there has been no change to the fundamental structure since the 1980s. Provision of workers compensation continues to be dominated by the state public sectors and licensed private insurers remain excluded from direct underwriting in four of the five larger states.

The HIH Royal Commission also recommended that the "States and Territories implement a process designed to reduce inconsistencies in their statutory schemes."²⁰ ICA continues to strongly support this recommendation.

ICA supports nationally consistent frameworks in the key areas of statutory classes and such frameworks would remove unnecessary costs and compliance burdens.

Recommendation 14**That the States and Territories implement a process designed to reduce inconsistencies in their statutory schemes.****4.2.3 Policyholder safety net**

The third component of the package of reforms recommended by the HIH Royal Commission was that, "the Commonwealth Government introduce a systematic scheme to support the policyholders of insurance companies in the event of the failure of such a company".²¹

The existence of such a scheme is the ultimate form of consumer protection and underpins foreign regulatory regimes such as those in the United Kingdom and Canada.

ICA supports the introduction of an appropriate policyholder protection scheme as part of the package of reforms discussed above.

²⁰ Recommendation 51

²¹ Recommendation 61

Prudential regulation of DMFs and DOFIs is the primary step. If a policyholder protection scheme was introduced without proper regulation of DMFs and DOFIs, a levy on Australian authorised insurers would encourage further growth in the use of unregulated insurers.

The creation of a PPS should be tied to States' and Territories' removing themselves from prudential regulation and shutting down their nominal defendant and nominal insurers schemes that activate when an insurer fails. If a policyholder protection scheme were introduced before the removal of States and Territories from prudential regulation, then there would be duplication in those schemes. A well-designed PPS that provides the same level of protection as the existing nominal insurer arrangements would nullify this threat to state finances. A State or Territory government would still have the right to impose licensing controls on insurers that operate within its borders, but would bear no financial risk for their operations. Thus, there would be no need for a nominal insurer type arrangement to exist in case of insurer failure and, similarly, no plausible justification for continued prudential oversight. The introduction of a PPS that has a benefits structure at least equivalent to the nominal insurer arrangements must result in the States and Territories ceasing to conduct prudential regulation.

The industry's preferred model for a policyholder protection scheme has been articulated in a number of submissions. Essential points are:

- Post event funding through a levy on all insurance products;
- Independent industry administration with participation a condition of APRA licensing;
- Eligibility for benefits limited to individuals who are Australian citizens or permanent residents; small businesses with turnover of up to \$1 million and all policyholders under eligible statutory schemes; and
- Benefit levels of 100% for of the policy coverage personal injury motor accidents and workers compensation schemes, 100% up to \$5,000 for all other claims and 90% of the policy coverage for the remainder of that amount up to a maximum of \$500,000.

In mid November 2005 further support was lent to the policyholder protection scheme. The Council of Financial Regulators supported a model for a safety net for general and life insurance policyholders as well as deposit holders. Whilst ICA supports a scheme that is specific to general insurance, ICA welcomes such steps towards giving effect to the HIH Royal Commission package of reforms.

Recommendation 15

That the Government introduce a systematic scheme to support the policyholders of insurance companies in the event of the failure of such a company, as part of the package of reforms of insurance regulation.

4.2.4 Direct taxes on insurance

General insurance is one of the most highly taxed industries in Australia and Australian general insurers are some of the most highly taxed general insurers in the world. The Centre for International Economics' August 2005 Report concluded that: "[d]espite the unique importance of insurance in the

Australian economy, current tax arrangements place a punitive burden on the industry that is out of line with tax levels in other countries.”²² In 2003-2004 the States and Territories took in more than \$2 billion in stamp duty on insurance and \$550 million²³ in fire service levies for those states where this antiquated form of funding the fire brigades remains.

Taxes include the Australian Income Tax and Capital Goods Tax, Stamp Duty, Superannuation Surcharge/Guarantee, NSW Insurance Protection Tax, Fire Services Levy, Interest Withholding Tax, Payroll Tax, Land Tax, Goods & Services Tax, Fringe Benefits Tax and Pay As You Go Withholding.

Some State taxes, such as the Fire Services Levy, have different requirements in different jurisdictions, which adds to the regulatory burden involved in developing systems, accounting and specialist taxation staff. Some of these taxes are calculated in a cascading manner. GST is calculated in top of the FSL and stamp duty is applied on premium including both of these taxes.

The impact of insurance premium taxes on consumers was the subject of an independent study looking at the effect of removing the Emergency Services Levy in Western Australia on property insurance premiums. According to this report, the “removal of FSL in Western Australia contributed to Western Australia having one of the most price competitive insurance markets in Australia in 2003” with buildings and contents insurers dropping their premium rates.²⁴

The HIH Royal Commission made a suite of recommendations for State tax reform in general insurance. It recommended that State and Territory governments abolish stamp duty on general insurance products, those States that have not already done so abolish fire services levies on insurers, State and Territory governments exclude the cost of the GST for the purposes of calculating stamp duties on any other state or territory levies that are imposed on insurance premiums and that governments avoid imposing on insurers levies and other taxes that cannot be passed on to policyholders (i.e., NSW Insurance Protection Tax).

These unequivocal recommendations were supported by arguments that high insurance taxes led to consumers making decisions to underinsure or not insure at all, or to consider unregulated alternatives.

Despite the urgings of ICA, the HIH Royal Commission and other business and industry groups such as the BCTR and ACCI, all of which support abolition of insurance taxes, limited action has been taken by governments.

Recommendation 16

That State and Territory governments abolish stamp duty on general insurance products.

Recommendation 17

That those States that have not already done so abolish fire services levies on insurers.

²² Centre for International Economics “The General Insurance Sector: Big Benefits but Overburdened” (August 2005) prepared for the Insurance Council of Australia page vi

²³ Source 2003-04 Budget Papers for the States and Territories.

²⁴ *Consumers have responded to cheaper insurance by increasing their insurance cover to more adequately protect themselves.* “Emergency Services Levy Insurance Compliance Review: Final Report, Sigma Plus Consulting, April, 2004, p. 3. The report goes on to demonstrate that sums insured for home and contents insurance increased 7.2 percent of the year and 10.9 percent for commercial property insurance, pages 21 and 22.

Recommendation 18

That State and Territory governments exclude the cost of the GST for the purposes of calculating stamp duties on any other state or territory levies that are imposed on insurance premiums.

Recommendation 19

That governments avoid imposing on insurers levies and other taxes that cannot be passed on to policyholders (i.e. NSW Insurance Protection Tax).

4.3 Removing and preventing unnecessary regulatory burden in insurance

There are a number of further areas in which regulatory burden is in place or is proposed and which are the subject of Recommendations 20-27 of this submission. Of these, Recommendation 20, that proposes tailoring dollar disclosure to general insurance is of greatest urgency.

4.3.1 FSR

ICA has welcomed the FSR Refinements announced by Parliamentary Secretary the Hon Chris Pearce, MP in May 2005. ICA is particularly encouraged by the acknowledgement that there is a need to "tailor" FSR to different products, including general insurance. ICA has had the opportunity to comment on draft amendments to the Corporations Act and is continuing to consult with Treasury in relation to these.

However, as ICA identified in its June 2005 response to the FSR Refinements package, there are a number of proposals that ICA believes could be developed further to complete the refinement process.

A key requirement of FSR, the dollar disclosure provisions,²⁵ has been overlooked in the FSR Refinements Proposals. Although the industry currently has the benefit of transitional relief from the provisions, this is due to expire in mid 2006.

The objective of the dollar disclosure provisions is to enhance consumer understanding and to help consumers compare products, especially between differing suppliers.

ICA supports the objective of the dollar disclosure provisions. However, the detail of the current provisions is such that they do not achieve their objectives for general insurance. This is a case in which "one size" of regulation simply cannot "fit all" general insurance. Although the provisions would provide useful disclosure in the context of investment products, they are likely to produce little, if any, benefit to consumers. To the contrary, the provisions are likely to produce disclosure that is *not meaningful* for consumers, is confusing and potentially misleading. These provisions will necessitate a significant review of PDSs, paragraphs and possibly pages of additional disclosure, the costs of which are inevitably passed on to consumers.

²⁵ The dollar disclosure requirements are contained in the Corporations Amendment Regulations (No 6) 2004 (Cth) (the dollar disclosure regulations), which were gazetted on 25 June 2004.

After consulting with ASIC and consumer representatives, ICA developed a proposal for solving the problem by “tailoring” dollar disclosure to general insurance.²⁶ Essentially, ICA believes that insurers should be able to meet the dollar disclosure provisions by disclosing dollars in their customised policy schedules and other ancillary documents rather than the PDS.

ICA’s proposal for resolving dollar disclosure is currently under consideration by the Parliamentary Secretary Hon Chris Pearce, MP and Treasury. ICA recommends that its proposal for “tailoring” dollar disclosure to general insurance be adopted, as it will reduce unnecessary costs of compliance with regulation whilst retaining high levels of consumer protection.

Recommendation 20

That Regulations that are “tailored” to general insurance should be introduced to produce meaningful dollar FSR disclosure for general insurance products.

In addition to dollar disclosure, there are a number of ongoing extension issues under FSR. These are complex matters which have not been addressed in the FSR Refinements package, but which need careful consideration as the practical operation of FSR comes into clear view.

These extension issues include the definition of wholesale/retail clients²⁷ in the context of bundled general insurance products, cross endorsement, the impact of the FSR advice regime on the retail general insurance market, including the extent to which there has been a withdrawal of advice to retail clients. ICA believes that there is a clear case for FSR to be monitored on an ongoing basis in order to identify and assist in the resolution of issues that extend past the current FSR Refinements.

Recommendation 21

That Treasury monitor the ongoing operation of FSR, in order to identify and assist in the resolution of issues that extend past the current FSR Refinements.

4.3.2 APRA Stage 2 Reforms

In 2003, APRA commenced developing its latest raft of reforms to prudential standards (referred to collectively as “APRA Stage 2 Reforms”). A list of the APRA Stage 2 Reforms, together with their current status is set out in Appendix 3.

There are a number of areas where APRA Stage 2 Reforms to prudential standards create overlaps and inconsistency. In recent discussions with ICA, APRA has indicated its intention to reduce the areas of overlap and inconsistency in its forthcoming redraft of the prudential standards. ICA welcomes this approach from APRA and is currently working co-operatively and constructively with APRA to ensure that the prudential standards achieve an appropriate balance.

ICA’s concern with the current drafts include:

- Duplication of corporate governance regulation. APRA Stage 2 Reforms include a proposal to regulate in the area of corporate governance. However, specific governance and other related requirements for corporations fall primarily under ASIC regulation and are laid out in the

²⁶ ICA “Proposal Paper: Tailoring Dollar Disclosure to General Insurance” (September 2005)

²⁷ “Retail” clients are individuals and small businesses under the FSR provisions

Corporations Act with its various amendments, including the most recent CLERP 9 reforms. Companies that are publicly listed are also required to adhere to the Australian Stock Exchange (ASX) *Principles of Good Corporate Governance and Best Practice*. In its proposed prudential standards, APRA also seeks to regulate corporate governance, including rules that are inconsistent with those set down by ASX and ASIC. Minor inconsistencies in wording between different regulations can create significant administrative problems and increased cost to general insurers with no benefit to policyholders.²⁸

- Overlapping “fit and proper” requirements. Provisions for fit and proper persons are included in a number of different Australian regulations and legislation, in addition to those included in the proposed APRA Prudential Standards that form part of the Stage 2 Reforms. Considering only those applicable to financial services companies, there are organisational capacity requirements set by ASIC for Responsible Officers (as provided by the ASIC Guide (July 2003) of *Responsible Officers: Demonstrating compliance with organisational competency obligations*), as well as the *ASX Principles of Good Corporate Governance*. APRA’s proposed prudential standard on Fit and Proper would also govern the quality of persons in key positions within insurance companies. The proposed standards differ substantially from the criteria set down by ASIC and the ASX and APRA has determined not to recognise persons that have been approved as fit and proper by ASIC.

In addition to the current consultation on draft prudential standards, ICA looks forward to further opportunities to work with APRA at the early stages of developing new prudential standards. ICA believes that co-operative and constructive consultation at the early or developmental stages of new prudential standards should produce appropriate standards in a timely manner.

Consistent with Recommendation 2, such consultation should be focused on ensuring the most cost-effective means to achieve the stated policy intent. Consultation should be undertaken at all stages of the development of the regulations, including when policy is designed, standards are drafted and the legislation is translated into specific regulations and procedures applied by APRA.

4.3.3 ASIC regulatory projects

ASIC conducts a number of “campaigns” relating to insurance. These include “shadow shopping”, reviews of financial services products sold by motor dealers and the proposed review of life time no claim bonuses for motor vehicle insurance.

In some instances, these reviews are conducted without full transparency as to whether there is a systemic basis for the campaign and the process by which the campaign will be conducted.

In some cases, such campaigns require insurers to expend significant resources on compliance, sometimes with statutory notices, including the production of documents. They require significant compliance and should, as in the case of regulation, be subject to cost-benefit assessment.

Recommendation 22

That ASIC should implement a transparent process whereby any proposed campaigns are subjected to a stringent cost benefit analysis prior to initiation.

²⁸ Refer to ICA submission “Prudential Supervision of General Insurance – Stage 2 Reforms: Finance and Risk Management, Corporate Governance, Fit & Proper” (August 2005)

4.3.4 Differing federal obligations for breach reporting – APRA/ASIC

Breach reporting is a compliance obligation that insurers are subject to under the Insurance Act and the Corporations Act. Yet, the threshold test for matters that must be reported are different under each Act, for reasons that are not entirely clear.

The Insurance Act requires an insurer to notify APRA as soon as practicable in writing if it becomes aware of a breach of a prudential standard or any other matter or occurrence that materially affects its financial position.²⁹ A failure to comply with this section is a criminal offence attracting penalty units for the individual or corporation concerned. All breaches, no matter how significant, must be reported.

Under the Corporations Act, an Australian Financial Services Licensee is only required to report a breach where that breach is “significant” having regard to five prescribed factors. ICA believes it is preferable to have this threshold in place and encourages the Government to undertake a review of the provisions of the Insurance Act that govern breach reporting.

Recommendation 23

That the Government undertake a review of the provisions of the Insurance Act that govern breach reporting.

4.3.5 Proposed amendments to the regulation of insurance contracts

During 2003-2004, an independent review panel undertook a thorough review of the IC Act. It made 38 recommendations for reform. The review of the IC Act also recommended the standard cover provisions of the Insurance Contracts Regulations be updated on the basis that these provisions have “not kept pace with market developments”.³⁰

Whilst ICA supports the majority of recommendations by the IC Act Review, ICA believes that the IC Act should not be amended unless:

- There is a proven problem with the operation of the IC Act;
- A proposed amendment would redress the problem;
- The costs and benefits for consumers have been thoroughly investigated through effective consumer testing; and
- The costs and benefits for insurers have been thoroughly investigated using appropriate modelling.

A careful cost benefit analysis should have particular regard to the level of consumer benefit of the recommendations on non disclosure, misrepresentations and utmost good faith, which are likely to have the heaviest compliance costs for industry.

²⁹ Section 35A, *Insurance Act 1974*

³⁰ Review of the Insurance Contracts Act '984 "Final Report on Second Stage: Provisions other than section 54" at 46

In addition, appropriate transitional arrangements that take into account the interaction between the FSR Refinements and the IC Act and the impact on policy documentation should be considered.

Recommendation 24

That amendments to the IC Act, including the proposed update of the standard cover provisions, should not be initiated unless first subjected to a stringent cost benefit analysis that is informed by consumer testing.

4.3.6 Privacy Regulation – State/Federal overlaps and inconsistencies

The Privacy Act 1988 (Privacy Act) became applicable to the private sector in 2001. In general, ICA supports the Privacy Act and its members have found it to be a good example of light-touch regulation that has provided effective protection for consumers.

However, since 2001, insurers have witnessed a ballooning in privacy legislation, which has now developed into a “patchwork” of regulation in the States and Territories. In addition to the Office of the Federal Privacy Commissioner there are State Privacy Commissioners in multiple jurisdictions.

In some instances, a single piece of personal information, such as a name or an address, may have multiple pieces of legislation applying to it and multiple regulators to monitor and enforce compliance with that legislation.³¹

This is a particular problem and most obvious in the area of personal information that is defined as “health records”, although this is but one of a number of areas where a “patchwork” has emerged. There are now inconsistencies between State legislation and the Privacy Act, additional obligations imposed by the State legislation over and above the Privacy Act and different obligations imposed by the State legislation.

The privacy “patchwork” adds to the regulatory burden. It requires legal advice to clarify the application of different legislation, staff time to respond to multiple regulators and to meet differing regulatory regimes.

The “patchwork” was acknowledged by the Privacy Commissioner in her 2004-2005 review of the private sector provisions of the Privacy Act. ICA strongly supports the Commissioner’s recommendations to resolve this patchwork by clarifying jurisdictional issues and asking the Council of Australian Governments (COAG) to endorse national consistency in privacy related legislation.³²

Recommendation 25

The Government should consider amending section 3 of the Privacy Act to remove any ambiguity as to the regulatory intent of the private sector provisions.

³¹ Refer to findings of the Office of the Privacy Commissioner “Getting in on the Act: The Review of the Private Sector Provisions of the *Privacy Act 1988*” (March 2005)

³² Office of the Privacy Commissioner “Getting in on the Act: The Review of the Private Sector Provisions of the Privacy Act 1988” (March 2005)

Recommendation 26

The Government should consider asking the Council of Australian Governments (COAG) to endorse national consistency in privacy related legislation.

4.3.7 Corporate Governance

In June 2005 the Corporations and Markets Advisory Committee (CAMAC) released two discussion papers, Corporate Duties Below Board Level (Below Board DP) and Personal Liability for Corporate Fault (Personal Liability DP), to which ICA responded in October 2005.

If implemented, the proposals set out in the Below Board DP would extend directors duties to an indefinite pool of management together with external consultants and contractors. This would further contribute to the compliance mentality that has emerged in corporations and would introduce a new definition of "senior management", in addition to those currently in place under the Corporations Act and APRA prudential standards. The Personal Liability DP includes a number of options for remodelling personal liability for corporate fault and expanding derivative liability which could have the effect of limiting risk taking and stifling innovation in the industry.

Recommendation 27

That no amendments to address the issues raised in the CAMAC May 2005 reports on extending corporate duties below board and extending derivative liability should be initiated unless first subjected to a stringent cost benefit analysis.

Appendix 1 – ICA Recommendations for improving the regulation of insurance

Review of financial sector regulation

1. Following the policy framework articulated in the Wallis Inquiry, the Government should be encouraged to adopt light-handed models of regulation in the major reviews of regulations currently under way. The implementation of these regulations, as for all regulation, should use the minimum level of market intrusion necessary to give effect to the identified policy objectives. It should be proportionate to the demonstrated market failure and applied efficiently.

Consultation

2. Consultation should be comprehensive focused on ensuring the most cost-effective means to achieve the stated policy intent of any new or substantially modified financial sector regulations be undertaken at all stages of the development of the regulations i.e. when policy is designed, legislation is drafted, and the legislation is translated into specific regulations and procedures applied by the relevant regulator.
3. The business community should continue to support a broad debate on the need for further microeconomic reform, with the development of well-designed regulations being an essential element of that agenda.
4. For major pieces of financial sector regulation, the Government should release a statement of policy intent, initially in the form of its 2nd reading speech and thereafter conduct a post implementation review within two years to measure whether the objectives were being achieved in the most cost effective manner.

Bureau of Financial Sector Regulation

5. A Bureau of Financial Sector Regulation should be established to oversee financial sector regulation.
6. The Bureau of Financial Sector Regulation should be tasked with the development of common methodologies to calculate the costs of complying with financial sector regulation. The Bureau should work closely with FICA (or the different industry associations) to help to ensure that this effort is as cost-effective as possible.
7. The Bureau of Financial Sector Regulation should be given a mandate to lift the quality of the cost-benefit analysis of financial sector regulation, and be resourced adequately for this task. The Bureau should encourage a deeper understanding of best practice regulation.
8. The Government should recognise the potential usefulness of regulated entities being able to develop their own compliance models to achieve regulator-specified outcomes. APRA and ASIC, in particular, should be encouraged to define what is expected of regulated entities and to develop a framework for alternative compliance models for specified areas of regulation.
9. The Reserve Bank should be encouraged to reconsider its current approach to the regulation of interchange and explore less constraining means to encourage appropriate competition.

10. The Bureau of Financial Regulation should have a mandate to monitor areas of duplication and inconsistency across regulators.

Place of Australia in global regulation

11. The Government should continue taking a lead in the developing of outcomes-based models of regulation in international forums. It should also encourage the recognition that regulatory frameworks may need to evolve as specific regulations are made operational. In adoption of international standards, Australian legislators and regulators should take due regard to the impact of early adoption on international competitiveness of domestic players.

Discretionary Mutual Funds and Direct Offshore Foreign Insurers

12. That the concept of 'carrying on insurance business in Australia', as set out in the Insurance Act, should be interpreted and applied so that all DMFs and DOFI providing protection for risks in the Australian market are regulated by APRA.

Federal prudential regulation

13. That the States and Territories not undertake any prudential regulation of general insurance.
14. That the States and Territories implement a process designed to reduce inconsistencies in their statutory schemes.

Policyholder Protection Scheme

15. That the Commonwealth Government introduce a systematic scheme to support the policyholders of insurance companies in the event of the failure of such a company, as part of the package of reforms of insurance regulation.

Insurance taxes

16. That state and territory governments abolish stamp duty on general insurance products.
17. That those states that have not already done so abolish fire services levies on insurers.
18. That state and territory governments exclude the cost of the GST for the purposes of calculating stamp duties on any other state or territory levies that are imposed on insurance premiums.
19. That governments avoid imposing on insurers levies and other taxes that cannot be passed on to policyholders (i.e., NSW Insurance Protection Tax).

Refining FSR

20. That Regulations that are "tailored" to general insurance should be introduced to produce meaningful dollar FSR disclosure for general insurance products.
21. That Treasury monitor the ongoing operation of FSR, in order to identify and assist in the resolution of issues that extend past the current FSR Refinements.

Breach reporting

21. That the Government undertake a review of the provisions of the Insurance Act that govern breach reporting.

ASIC

23. That ASIC should implement a transparent process whereby any proposed campaigns are subjected to a stringent cost benefit analysis prior to initiation.

Insurance contracts regulation

24. That amendments to the IC Act, including the proposed update of the standard cover provisions, should not be initiated unless first subjected to a stringent cost benefit analysis that is informed by consumer testing.

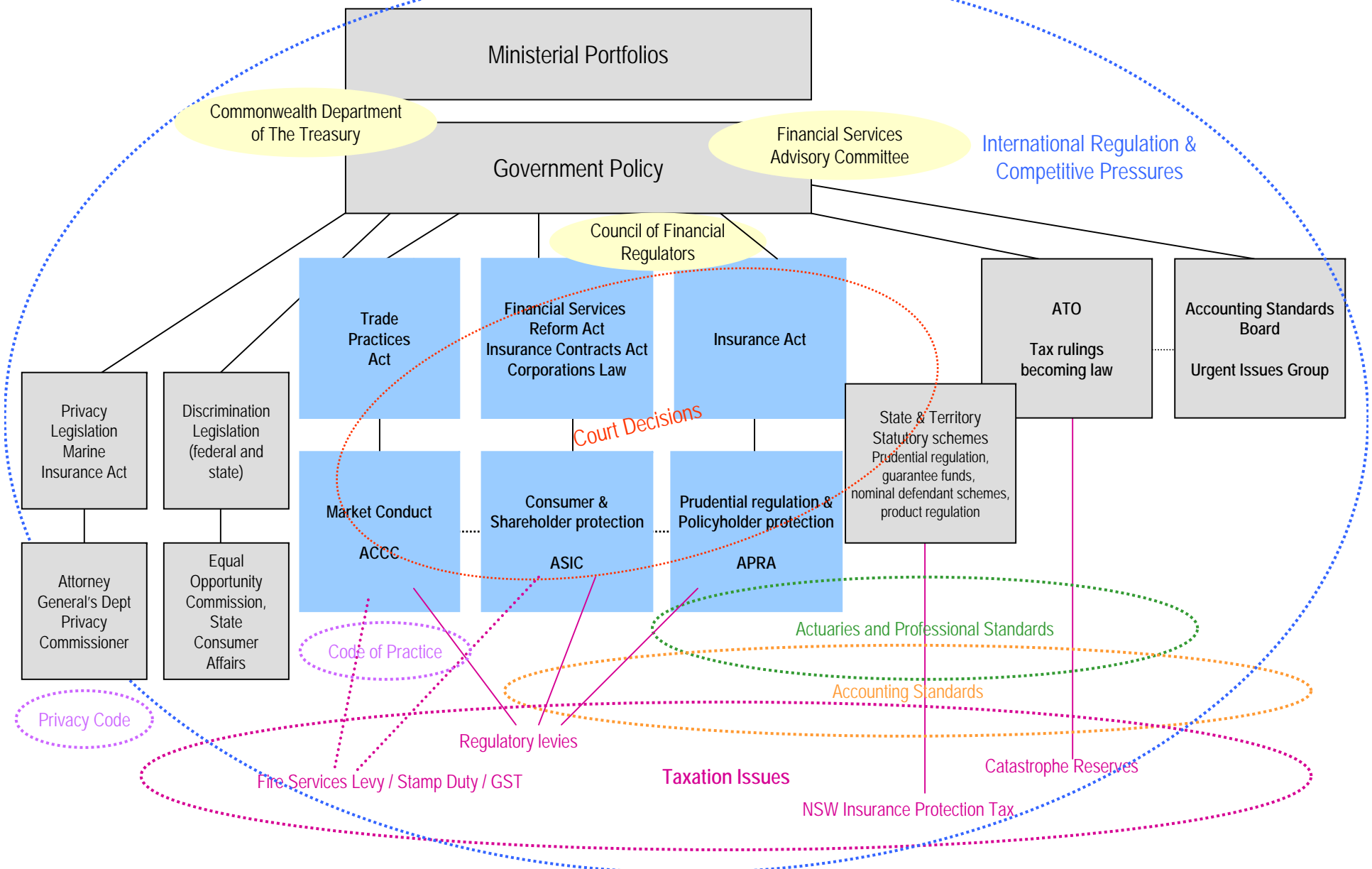
Privacy

25. The Government should consider amending section 3 of the Privacy Act to remove any ambiguity as to the regulatory intent of the private sector provisions.
26. The Government should consider asking the Council of Australian Governments (COAG) to endorse national consistency in privacy related legislation.

Corporate Governance

27. That no amendments to address the issues raised in the CAMAC May 2005 reports on extending corporate duties below board and extending derivative liability should be initiated unless first subjected to a stringent cost benefit analysis.

Regulatory Environment for the General Insurance Industry



Appendix 3 – Table of proposed reforms to general insurance regulation

Responsible Department or Regulator	Pending Reform	Regulatory impact on insurance	Status
APRA	Revised Draft Prudential Standards and Prudential Practice Guides on Risk Management	Replaces the existing prudential standard. Requires Board and senior management to approve and maintain a satisfactory Risk Management Framework.	Revised draft released November 2005. ICA and APRA working co-operatively and productively on achieving appropriate regulation.
APRA	Revised Draft Prudential Standards and Prudential Practice Guides on Outsourcing	Introduces a new standard for Boards to approve all material outsourcing arrangements.	Revised draft released November 2005. ICA and APRA working co-operatively and productively on achieving appropriate regulation.
APRA	Revised Draft Prudential Standards and Prudential Practice Guides on Reinsurance Management	Revises and expands the current standard imposing requirements on the documentation of reinsurance arrangements.	Revised draft released November 2005. ICA and APRA working co-operatively and productively on achieving appropriate regulation.
APRA	Revised Draft Prudential Standards and Prudential Practice Guides on Audit and Actuarial	Introduces new standards imposing a requirement to prepare an annual financial condition report and peer review for actuarial reports.	Revised draft released November 2005. ICA and APRA working co-operatively and productively on achieving appropriate regulation.
APRA	Second Draft Prudential Standard and Guidance Notes on Corporate Governance	Revises and expands the current standard imposing requirements for the governance of general insurers.	Second draft released May 2005. ICA expects a further draft to issue in January 2006.
APRA	Second Draft Prudential Standard and Guidance Notes on Fit and Proper	Revises and expands the current standard requiring insurers to have a policy for ensuring that responsible persons are fit and proper.	Second draft released May 2005. ICA expects a further draft to issue in January 2006.
APRA	Discussion Paper re Prudential Regulation of Corporate Groups.	Introduces a new standard covering the regulation of corporate groups including significant requirements regarding the concentration of risk.	ICA response made in October 2005
APRA	Adoption of IFRS Prudential Approach, Tier 1 Capital & Securitisation.	Introduces a new standard bringing APRA reposting into line with IFRS.	Discussion paper issued August 2005.
APRA	Draft Prudential Standards & Guidance Notes on Capital, Assets in Australia, Custodian Requirements	Introduces additional technical requirements on authorised insurers.	ICA currently being consulted by APRA as at the date of this submission.
Treasury	Corporations Amendment Regulations 2005 – refining the operation of Chapter 7 of the Corporations Act on the basis of the Government's May 2005 paper proposing a set of refinements to FSR.	Likely to increase regulatory burden in the short term as insurers review documents, systems and training in order to comply with proposed legislation, but should reduce costs of compliance in the long-term.	Expected 2005.

Responsible Department or Regulator	Pending Reform	Regulatory impact on insurance	Status
Treasury	Review and possibly amend Australia's product safety framework.	Implications for the affordability and availability of product liability insurance.	Productivity Commission currently consulting on this issue. ICA made a submission in 2005 identifying the possible implications for insurance.
Treasury	Trade Practices Legislation Amendment Bill (No 1) 2002 – a Bill to amend the TPA to implement the Dawson Review, including a notification process to facilitate collective bargaining by small businesses with large business.	Implications for the arrangements between insurers and smash repairers, amongst other small businesses that provide goods and services to insurers.	Following amendment in the Senate in October 2005, the Bill will return to the House of Representatives for further consideration.
Treasury	Proposed Financial Sector Legislation Amendment Bill 2006 to give effect to certain HIH Royal Commission recommendations and amend the Insurance Act 1973, the Financial Sector (Collection of Data) Act 2001 amongst others to enhance APRA powers. Further amendments will also be made to the scope of the Terrorism Insurance Act 2003.	Changes the powers of the prudential regulator of insurance, APRA.	Bill may be introduced during 2006.
Treasury	Proposed Financial Sector Legislation (Discretionary Mutual Funds and Direct Offshore Foreign Insurers) Amendment Bill 2006 to give effect to the recommendations of the Review of Discretionary Mutual Funds and Direct Offshore Foreign Insurers which the Government accepted in May 2004.	Possible modifications to the regulation of insurance and insurance-like business that is currently unregulated.	Expected to be completed and introduced following finalisation of the related prudential standard by APRA.
Treasury	Proposed General Insurance Supervisory Levy Amendment Bill	Modifies levies on insurers in order to cover funding for the National Claims and Policies Database.	Financial sector levies will be determined, announced and invoiced in the second quarter of 2006.
Treasury	Insurance Contracts Act Amendment Bill implementing the recommendations of the IC Act Review.	Involves significant new regulation for insurers, particularly with respect to proposed changes to the non-disclosure and misrepresentation provisions, and the amendments to the duty of utmost good faith. This may require amendments in training, systems, documents, contracts and other areas.	Consultation paper to be released 2006.
Treasury	ASIC (Enforcement Powers) Bill to change information gathering, investigative and enforcement powers of ASIC.	Changes the powers of the consumer protection regulator of insurance, ASIC.	Bill expected 2006.
CAMAC	Possible amendments to the Corporations Act with respect to "below board" duties and to Personal Liability for Corporate Fault	Implications for the affordability and availability of Directors and Officers insurance.	CAMAC consulting 2005.

Appendix 4 – Table of regulation of insurance by States and Territories

Queensland	Workers Compensation	<ul style="list-style-type: none"> ▪ Government monopoly ▪ Regulatory functions removed from WorkCover to Q-Comp ▪ No direct private sector involvement ▪ No private sector involvement 	CTP	<ul style="list-style-type: none"> ▪ Private underwriters ▪ Regulatory and structural barriers to competition ▪ Very minor change after NCP review
NSW	Workers Compensation	<ul style="list-style-type: none"> ▪ Public underwriting ▪ Privatisation in 1999 deferred, then cancelled ▪ McKinsey Review further entrenches role of WorkCover Authority ▪ Insurers will become contracted service providers to WorkCover 	CTP	<ul style="list-style-type: none"> ▪ Private underwriters ▪ Some capacity for competition ▪ Satisfied NCP tests
Victoria	Workers Compensation	<ul style="list-style-type: none"> ▪ Public underwriting ▪ Privatisation from “appointed day” removed from legislation ▪ Insurers operate as contracted claims managers 	CTP	<ul style="list-style-type: none"> ▪ Public underwriting ▪ TAC is pure monopoly ▪ No effective change following NCP review
Tasmania	Workers Compensation	<ul style="list-style-type: none"> ▪ Private underwriting and competitive ▪ Little restriction on competition 	CTP	<ul style="list-style-type: none"> ▪ Public underwriting ▪ MAIB is pure monopoly ▪ No effective change following NCP Review ▪ Pricing subject to review by GPOC
South Australia	Workers Compensation	<ul style="list-style-type: none"> ▪ Public underwriting ▪ Insurers appointed as claims agents only ▪ No effective change following NCP review 	CTP	<ul style="list-style-type: none"> ▪ Public underwriting ▪ One insurer appointed as claims manager ▪ No effective change following NCP review
Western Australia	Workers Compensation	<ul style="list-style-type: none"> ▪ Private underwriting ▪ Competitive market 	CTP	<ul style="list-style-type: none"> ▪ Public underwriting ▪ ICWA is pure monopoly ▪ No effective change following NCP review

ACT	Workers Compensation	<ul style="list-style-type: none"> ▪ Private underwriting ▪ Competitive market 	CTP	<ul style="list-style-type: none"> ▪ Private underwriting ▪ One insurer only, others can apply to participate
Northern Territory	Workers Compensation	<ul style="list-style-type: none"> ▪ Private underwriting ▪ Competitive market 	CTP	<ul style="list-style-type: none"> ▪ Public underwriting via TIO ▪ No private sector participation ▪ No change following NCP review

Source: ICA



Supplementary Submission to the Australian Government Regulation Taskforce

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1 Introduction

In November 2005, ICA made its primary submission to the Regulation Taskforce ("primary submission"). It made twenty seven recommendations for improving the regulatory process, the regulatory environment and removing unnecessary or duplicated regulation.

ICA also met with the Regulation Taskforce and attended the industry Round Table held by the Regulation Taskforce. Following on from questions raised in those discussions, this submission sets out a number of case studies that underpin the primary submission. The Supplementary Submission does not contain any recommendations in addition to the twenty seven recommendations made in our primary submission. Rather, it contains detailed accounts of the industry's recent experiences in various aspects of regulation.

This Supplementary Submission includes:

- Case studies on the general insurance industry's experience in light-handed self-regulation in developing the General Insurance Code of Practice and establishing the independent regulator, the Insurance Ombudsman Service (providing background to Recommendation 1 for using more light-handed models of regulation);
- Examples of consultation that have resulted in less effective regulation, such as the Financial Services Reform package, the proposed amendment to section 54 of the Insurance Contracts Act 1984 and the amendments to taxation legislation that were intended to encourage the structured settlement of damages claims (providing background to Recommendation 2 for improving the depth and regulatory of consultation);
- A case study of regulation that is regulated in each jurisdiction, yet inconsistent across those jurisdictions (providing background on our recommendation that the States and Territories implement a process designed to reduce inconsistencies in their statutory schemes, Recommendation 14); and
- The regulatory burden placed on a hypothetical insurer, XYZ Insurance by State and Federal taxation (providing background on Recommendations 16 - 19 for reducing the tax burden on insurance).

This submission should be read together with the primary submission of 30 November 2005. All abbreviations used in that submission are adopted in this Supplementary Submission.

2 Light-handed Regulation

This section supplements the matters raised in section 4.1 of the primary submission and provides background on Recommendation 1. Together with the Finance Industry Council of Australia, ICA has recommended that following the policy framework articulated in the Wallis Inquiry, the Government should be encouraged to adopt light-handed models of regulation in the major reviews of regulations currently underway. The implementation of these regulations, as for all regulation, should use the minimum level of market intrusion necessary to give effect to the identified policy objectives. It should be proportionate to the demonstrated market failure and applied efficiently (Recommendation 1).

In the 1990s, ICA developed a form of “light handed regulation”. ICA developed the General Insurance Code of Practice (“GI Code of Practice”) and established the Insurance Ombudsman Service (“IOS”) (formerly known as Insurance Enquiries and Complaints Limited) to administer the GI Code of Practice and to resolve disputes between insurers and consumers. The GI Code of Practice supports the IOS by requiring insurers who adopt the GI Code of Practice to participate in the IOS, and also requiring participating insurers to establish internal dispute handling procedures.

Background on the IOS and GI Code of Practice is set out in Boxes 1 and 2 respectively.

Box 1

Case Study on an Independent Industry Supported Regulatory Body: the Insurance Ombudsman Service

In 1991, ICA initiated an external dispute resolution scheme which was launched by the then Federal Minister for Consumer Affairs.

The scheme, called the General Insurance Claims Review Panel (“Panel”), was supported by the Insurance and Superannuation Commission and the Trade Practices Commission, as APRA and the Australian Competition and Consumer Commission were then known. The Panel, together with the life insurance industry’s alternative dispute resolution scheme, was overseen by an independent council, the Insurance Industrial Complaints Council (“IICC”). Similar to the current IOS Board, the IICC comprised an independent chair, together with two industry representatives and two consumer representatives, as set down by the Federal Minister for Consumer Affairs.

In 1993, the IICC was replaced by the body that came to be known for the next decade as the Insurance Enquiries and Complaints Limited, which oversaw the activities of the Insurance Enquiries and Complaints Scheme (“IEC”). By the time ASIC came to approve the IEC scheme in August 2000, it had come to be viewed as a “mature and highly regarded finance sector complaints scheme” which complied with ASIC’s policy on dispute resolution schemes. Upon introducing FSRA in 2001, the Federal Government looked to the model provided by the IEC when it made it compulsory for all Australian Financial Services Licensees (“AFSLs”) to have external dispute resolution. In late 2003, changes to the regulatory framework triggered the IEC to expand its jurisdiction to improve alignment with the new environment. In 2004, it changed the name to IOS.

The IOS has a number of arms, each with distinct responsibilities. The industry has been instrumental in working with IOS to create and shape each of these roles. Each role is independent from the industry, yet has the full support of the industry. The three key roles are:

1. Responding to enquiries from consumers
2. Resolving disputes

IOS has jurisdiction to handle disputes between insurers and insureds or insurers and third parties to within its financial jurisdiction, where the dispute has not been resolved through internal dispute resolution procedures.

3. Monitoring the GI Code of Practice

In monitoring the GI Code of Practice, the IOS, through the Code Compliance Committee, has the power to sanction participants through compliance audits, corrective advertising, publicity of non-compliance and specific rectification.

These multiple roles make the IOS an invaluable part of the general insurance industry.

Box 2

Case Study on Self Regulation: the General Insurance Code of Practice

The First General Insurance Code of Practice ("First GI Code") was developed by ICA in 1994 as a self-regulatory code that aimed to raise the standards of practice and service in the insurance industry. Its provisions for clear documentation, agent and employee training, fair claims handling were adopted enthusiastically and used by many companies to drive cultural change towards a greater customer focus.

The effectiveness of the First GI Code did not escape the interest and attention of the drafters of the Financial Services Reform Act 2001 (Cth) ("FSRA"). Six out of the seven sections of the industry's self-regulatory First GI Code are now embedded in the Corporations legislation, and apply across the wider financial services industry. The Government incorporated many of the minimum service standards, including training, proper dispute resolution mechanisms and standards for consumer disclosure into the FSR licensing and disclosure regime.

The industry responded to the challenge of new legislation and higher consumer expectations by developing the GI Code of Practice. This Code was developed in partnership with consumers, business and the insurance industry. There was extensive consultation with the Consumers' Federation of Australia, Australian Chamber of Commerce and Industry, Office of Small Business, the Insurance Ombudsman Service and other industry groups.

During 2004 there was a three month public consultation period on a draft GI Code of Practice to give consumers, business and government an opportunity to have their say on what they would like in a new code. David Knott, former Australian Securities and Investments Commission Chairman reviewed all the submissions received and made 36 recommendations in his Independent Review. The GI Code of Practice incorporates all 36 of Mr Knott's recommendations.

The GI Code of Practice must be adopted by all fifty six of ICA's members (which means over 90 per cent of insurance business transacted in Australia). It covers seven key areas: buying insurance, making a claim, financial hardship, catastrophes and disasters, consumer information and education, complaints and disputes and monitoring and enforcement. The general principles underlying the GI Code of Practice are:

- All customer services (including product information, sales procedures, claims handling and the management of complaints or disputes) will be conducted in a fair, transparent and timely manner.
- If an error is made in accessing applications, deciding on claims or investigating complaints, the insurer will take immediate action to correct.
- Customers will have access to any information that has been used to assess applications for insurance, claims or complaints and will have the opportunity to correct any mistakes or inaccuracies with this information.

- Insurers will make sure that not only its employees, but also its Authorised Representatives and Service Providers must meet the standards of the GI Code of Practice.

The GI Code of Practice provides that the IOS administers the GI Code of Practice and participants must use the IOS to resolve disputes externally.

From the involvement of the industry in developing the GI Code of Practice and helping to establish the IOS, ICA had gleaned the following important “learnings”:

- **Self Regulation can be efficient regulation**

The GI Code of Practice provides a benchmark for minimum services. It establishes minimum claims handling and training standards and requires insurers to be in regular contact with clients who have made a claim. Importantly, the GI Code of Practice sets *standards* for service but does not attempt to prescribe the *method or procedure* that GI Code of Practice participants will use to achieve this standard. To ensure its standards are met or exceeded, each company who adopts the GI Code of Practice will implement its requirements in the most appropriate way for *their* business, their employees and their customers, and implementation considerations will vary from company to company.

The GI Code of Practice differs considerably from much of the direct government regulation that the industry has received over the past five years in the form of FSR and early drafts of the APRA Stage 2 Reform prudential standards. It is *outcome based* rather than *process driven*, which allows industry the necessary flexibility to meet those standards, whilst adapting to changing market conditions.

Industry self regulation provides a benchmark standard. Once this benchmark is set, there is a strong incentive for individual companies to exceed the benchmark in order to attract customers and expand market share.

For example, many insurers used the First GI Code as a benchmark and then introduced their own consumer service charters that set standards that exceeded that benchmark, thereby raising service standards above the base level required in the First GI Code. By way of further example, at least one global insurer applied the First GI Code to its offshore operations thereby raising service standards for consumers in offshore jurisdictions.

- **Self Regulation can keep direct costs low**

Although the data on the relative costs of direct government regulation and self regulation is limited, the industry takes the view that generally, self regulation imposes lower compliance costs on industry.

This is partly because it is less prescriptive, so that insurers can meet the standards set by the GI Code of Practice in a way that suits their existing business systems and cultures, (as discussed above), and partly because regulation has been developed in a cost-sensitive manner. For example, the GI Code of Practice has introduced dispute resolution procedures which are simpler than those that apply in court. They are based on the principle that the dispute resolution process should start with the parties, so an insurer about which a consumer complains should have the first opportunity to address the consumer's complaint. Failing that, the dispute can be brought before the industry external disputes resolution body, the IOS. The IOS is independent from the industry and provides referees, adjudicators and panels to resolve disputes between claimants and insurers.

- **Strong industry investment is essential**

The self-regulation measures and bodies that the general insurance industry has did not emerge without considerable investment by the industry itself. Updating the General Insurance Code required an investment of two years by industry in drafting and consulting over 2003-2005. The transition period will involve a further twelve months. Time and other resources have been expended by the industry to develop and implement the GI Code of Practice at all levels of insurers.

In this sense, the development of the GI Code of Practice was by no means a cheap or simple option for the industry.

However, it is a long term investment in the industry. Having invested so much in the GI Code of Practice, the industry has a great deal of interest in the GI Code of Practice's reputation and proper application.

The Code Compliance Committee has considerable powers to sanction an insurer that is non-compliant. Their powers include the power to sanction participants through compliance audits, corrective advertising, publicity of non-compliance and specific rectification. A good reputation with competitors, vertically related industries and consumers is vital to success. Few companies wish to risk their reputation by failing to abide by measures adopted by their peers. This risk of condemnation by other organisations, and thus possible rejection by consumers, is a potent sanction.

- **Consumer confidence is enhanced by industry involvement in regulation**

The GI Code of Practice demonstrates the confidence that the industry has in its own capacity to meet minimum standards, providing a platform for enhancing consumer confidence in the industry. ICA undertook a thorough consultation process to ensure the GI Code of Practice delivered meaningful enhancements for customers. ICA investigated the experiences customers have in their various interactions with the general insurance industry and standards were developed to respond to customer expectations and needs.

ICA saw the role of the GI Code of Practice in enhancing consumer confidence as pivotal. This is demonstrated by the symbol of the GI Code of Practice, a mark of quality service standards.

ICA also worked hard to ensure that the GI Code of Practice is consumer friendly. Written in the first person, using non-technical language and spanning only 10 pages, it is easy for a consumer to pick up, to understand what they can expect from their insurer and how to go about complaining if their expectations are not met.

- **Self Regulation should be forward looking**

Direct regulation is often the result of an event or events, some of which involve damage to consumers. It responds to such events, often by prohibiting or limiting the conduct that led to that damage.

By comparison, self regulation takes as its starting point "what can the industry do better"? The development of the GI Code of Practice started with an analysis of what consumers want and where their wants were not met by the legislation. In the early stages of developing the GI Code of Practice, the industry analysed consumer surveys amongst other sources, to identify areas that the industry could improve in the years to come.

3 Regulatory process

3.1 Pre-regulation consultation

This section supplements the matters raised in section 4.1 of the primary submission and provides detailed example of the industry's experience with pre-regulation consultation. Recommendation 2 is that, consultation should be comprehensive focussed on ensuring the most cost-effective means to achieve the stated policy intent of any new or substantially modified financial sector regulations be undertaken at all stages of the development of the regulations i.e. when policy is designed, legislation is drafted, and the legislation is translated into specific regulations and procedures applied by the relevant regulator.

In the recent history of general insurance regulatory reform, there have been three cases of pre-regulation consultation of particular concern to the industry. The first and probably most serious case of ineffective consultation was the package of reforms commonly referred to as FSR. The second involved proposed amendments to section 54 of the Insurance Contracts Act 1984 (Cth) ("IC Act") while the third involved structured settlements. These are discussed in detail in boxes 3 – 5 respectively.

Box 3

Case Study on Consultation: FSR

FSR represented a significant change in the way in which financial services were regulated in Australia.

It introduced two wide ranging reforms for financial services. First, it introduced a single licensing regime across the financial sector. Banks, general insurers, life insurers and brokers would all be required to obtain a licence ("AFSL"). The AFSL of a deposit holding institution would permit different practices from an insurance broker, but both were required to hold a licence. Second, it introduced a single disclosure regime across the financial sector. AFSLs were required to communicate to their clients through prescribed media: the Statement of Advice for personal advice, the Financial Services Guide and the Product Disclosure Statement (PDS).

The industry's concerns about the FSR method of consultation are as follows.

- A lack of consultation on FSR as a total package of reforms

What was distinctive about FSR consultation is that the whole picture was not revealed until well after the transition period ended. This is demonstrated in the timeline of consultation set out in Appendix A. Rather, regulation was being made by "drip feed", piece by piece, until 2004. "Refinements" to FSR are still underway at the date of this submission.

The picture of FSR presented to the industry in 2001 did not reflect the reality of FSR as it bedded down in 2005.

Had the industry had a sense of the complexity of FSR when it was first being developed, the industry would have been in a position to properly consult with the Government on what it was proposing.

- Consultation and implementation occurred contemporaneously

A number of aspects of FSR (such as the dollar disclosure provisions) were not finalised prior to the end of the transition period.

Continuing to make law *during the transition period* made for an unsettled and unsettling environment for companies to operate. Just as insurers were preparing for the laws to be settled and putting systems in place to ensure that they are in compliance, new, or variations on the law would emerge.

Some aspects of FSR are still not resolved or in a state in which the industry can start bedding them down, 5 years post.

- Consultation periods were not appropriate for the proposed regulation

As Appendix A demonstrates, FSR was characterised by a number of very short consultation periods.

However, this is an ongoing problem. For example, of the FSR Refinements package recently instigated by the Hon Chris Pearce MP, a number were to be implemented by ASIC. Although they were announced in May, and many did not come into effect until many months later, in September or October, industry was only permitted to review what was proposed for a matter of weeks. Short consultation periods enable industry to identify whether there are glaring drafting and similar problems, but not to assess the detail of proposed regulation.

- High expectations of the regulator

Just as ASIC was starting to mature as an organisation, it was given a voluminous and complex new chapter of the Corporations Act to implement and enforce.

On one view, this placed ASIC in a difficult position. It was changing dramatically as an organisation, at the same time as it was implementing revolutionary legislation. This undermined the consistency and knowledge base within the regulator.

These problems with the FSR consultation process have produced severe and long term consequences for the regulation of insurance FSR. Most seriously, FSR is built on the assumption that all financial services products are so alike, that "one size" of regulation can "fit all" products. This has meant that FSR was introduced without full regard for the insurance specific regulation – such as the Insurance Contracts Act 1984 (Cth) ("IC Act") and the first GI Code. Based on the assumption of like products, FSR drew an artificial distinction between "wholesale" and "retail" products, disregarding the important role of intermediaries in the retail/wholesale distinction. Crossing various financial services, FSR does not deal with a cornerstone of consumer protection in the context of insurance: high quality claims handling. FSR has demonstrated the high costs of a "drip feed" approach to consultation.

Box 4**Case Study on Consultation: Section 54 of the Insurance Contracts Act**

Section 54 of the IC Act has received a judicial interpretation over the past decade which has had a significant impact on shaping professional indemnity lines of insurance. Specifically, it has reduced the affordability and, to some extent, availability of professional indemnity insurance.

In order to restore affordability and availability of professional indemnity insurance to professionals in the early 2000's, ICA encouraged the Government to review the operation of section 54 of the IC Act. A Review was announced in September 2003, comprising Ms Nancy Milne and Mr Alan Cameron, A.M. ("Review").

ICA made detailed submissions to that Review on section 54. In early 2004, the Review released its report on section 54, recommending amendments with the objective of reversing some of the impact of the judicial interpretation of that section.

ICA supported the recommendations of the Review. In April 2004, the Review released draft amendments to sections 40 and 54 of the IC Act, together with a new section.

ICA opposed the draft amendments, on the basis that they would increase uncertainty in the marketplace over how the judiciary would interpret section 54 in the future, not decrease uncertainty. ICA stated its position in a subsequent submission to the Government in response to the Review.

From subsequent meetings with the Review, ICA came to understand that the Review had not sighted the draft amendments prior to their exposure to stakeholders and shared a number of ICA's concerns about how the draft amendments would operate if adopted. No statements were made by any party to counter this.

In ICA's view the proposed amendments to section 54 of the IC Act represents a failure of substance – and also of process. Accepting the Review statement that it had not sighted the draft amendments prior to release, this suggests a significant breakdown in the communications between the Office of Parliamentary Counsel, Treasury and the independent Review Panel commissioned by Treasury.

The costs of this type of problem with consultation are significant. They include costs of responding to a pre-exposure draft and the opportunity cost of reduced time to respond to proposals on the balance of the IC Act. The ongoing cost to the industry is the market that is lost due to uncertainty of the current position. The cost to the community is higher premiums for their professionals.

Box 5**Case study on consultation: Structured settlements**

ICA identified some years ago that, unlike in offshore jurisdictions, Australian plaintiffs could not choose to structure their settlements. ICA identified two amendments to law that would encourage the use of structured settlements by plaintiffs. Firstly, an amendment to enable courts to make an award in a form other than a lump sum was necessary. Secondly, an amendment to the tax laws to make structured settlements more attractive.

In 2001-2004, the States and Territories changed their civil liability legislation to allow courts to make awards in the form of structured settlements. The Commonwealth Government also made amendments to the relevant taxation laws. However, there are stringent conditions that limit the circumstance in which beneficial tax treatment is available for a structured settlement.

ICA was consulted on the draft amendments to the taxation provisions before they were passed. ICA expressed its view that the proposed amendments to the taxation provisions were excessively restrictive and would impede the uptake of structured settlements.

Since the reforms, there are no cases that ICA is aware of that have been settled by way of structured settlement.

3.2 Post implementation reviews

This section supplements the matters raised in section 4.1 of the primary submission and provides detail as to how Recommendation 4 could be implemented. Recommendation 4 is that, for major pieces of financial sector regulation, the Government should release a statement of policy intent, initially in the form of its 2nd reading speech and thereafter conduct a post implementation review within two years to measure whether the objectives were being achieved in the most cost effective manner.

ICA believes there should be an appropriate process put in place for post-implementation reviews. Generally, these should be conducted within two years of the commencement of legislation to measure whether the objectives are being achieved in the most cost effective manner.

However, it is appropriate that a preliminary "gateway" be put in place to ascertain whether a full review at two years is necessary.

One year after commencement, a general inquiry should be made of the industry affected by regulation as to whether the regulation is operating satisfactorily.

- (a) If it is found that the regulation is operating satisfactorily – that is, meeting the objectives of that legislation as set out in the 2nd reading speech – then there would be no need to conduct a review at two years post-commencement.
- (b) If it is found that the regulation requires "fine tuning" – that is, that there are some small technical matters that may need amendment, or that the implementation may need some bedding down – then there would be no need to conduct a review at two years post-commencement and a mechanism would need to be put in place to "fine tune" the regulation.
- (c) If it is found that the regulation is not operating satisfactorily – that is, that the regulation is not and will not within the reasonably foreseeable future, achieve those objectives – then there would be a need to conduct a review at two years post-implementation.

If the "gateway" to a post-implementation review is passed, then the review should be conducted to the highest standards of consultation.

A post implementation review should have regard to the following matters:

- Whether the regulation is meeting its objectives. A proper assessment of whether regulation has met its objectives rests on whether *measurable* objectives have been laid down at the outset. It

should also incorporate consultation with the end-users of the regulation. This could be achieved through consumer testing. If not meeting its objective, why not? Are there underlying environmental factors that may have led to this?

- Costs of compliance for industry and other stakeholders.
- Whether the costs of compliance are proportionate to the problem that the regulation seeks to address.
- Whether a further review is recommended.

4 State/State Overlap

This section supplements the matters raised in section 4.2.2 of the primary submission and provides background material for the reasons for Recommendation 14. Recommendation 14 is that the States and Territories implement a process designed to reduce inconsistencies in their statutory schemes.

Box 6

Case Study of State/State overlap: Home Warranty Insurance

A form of homebuilders warranty insurance is compulsory in every State and Territory in Australia and, in general, provides for compensation for loss or damage arising from a contractor's failure to complete work or to meet certain standards of workmanship.

The requirements of such insurance are prescribed by legislation. Various Acts in the States and Territories govern the way in which this insurance is administered and underwritten, as well as minimum benefits that are payable to the party suffering loss as a result of incomplete or defective work.

An overview of the various schemes is provided in Appendix B.

In some States, the insurance is a prerequisite for the commencement of work. In others it is not. With the exception of Queensland and the Northern Territory, home warranty insurance schemes are privately underwritten by insurers approved under the relevant legislation. Some jurisdictions also set out particular provisions for developers, owner builders and kit home suppliers. The States and Territories differ dramatically.

5 Tax

This section supplements the matters raised in section 4.2.4 of the primary submission and provides background material in support of the following recommendations:

Recommendation 16: That state and territory governments abolish stamp duty on general insurance products.

Recommendation 17: That those states that have not already done so abolish fire services levies on insurers.

Recommendation 18: That state and territory governments exclude the cost of the GST for the purposes of calculating stamp duties on any other state or territory levies that are imposed on insurance premiums.

Recommendation 19: That governments avoid imposing on insurers levies and other taxes that cannot be passed on to policyholders (i.e., NSW Insurance Protection Tax).

Australia's taxation treatment of general insurance products is in the same vein as the "sin" taxes that apply to cigarettes and alcohol and has resulted in our maintaining the highest level of insurance taxes in the world.

ICA recently commissioned the Centre for International Economics (CIE) to conduct a study on the contribution of the insurance industry to the Australian economy. As part of this study, CIE reviewed insurance taxation levels in Australia compared with other countries.

By international standards, taxes on general insurance in Australia are high.

Taxes on property insurance in most Australian States and Territories are higher than in the majority of the comparator countries. International taxes as a proportion of premiums are as low as 2 per cent in Ireland and Singapore and 2.4 per cent in the USA (California).

Australian taxes on property insurance are particularly high compared with international competitors in the area of business insurance. Premium taxes on commercial insurance in country Victoria are more than 16 times greater than those imposed in the United Kingdom. Taxes in both Tasmania and New South Wales are more than 10 times higher.

The level of taxes on household premiums in many Australian States and Territories is above those in countries such as South Africa, Germany and Switzerland. In contrast to the approach in Australia, household premiums in Japan are tax-deductible.

In addition to the direct cost of taxation for policyholders, taxation also has a high indirect cost. This is the cost of collecting taxes. The costs of tax collection and complying with a different collection regime in each State and Territory are inevitably passed on to the consumer. Box 7 contains a case study of a hypothetical insurer's taxation compliance burden.

Box 7

Case Study of taxation compliance burden on XYZ Insurance

Insurer XYZ is authorised by APRA and holds an AFSL. It sells a variety of insurance lines, including retail products that attract the fire services levy in those states that still charge it. During any financial year it is required to prepare and submit numerous returns.

To the Australian Taxation Office ("ATO"), XYZ Insurance must submit a Goods and Services Taxation – Business Activity Statement Lodgement 21 days after the end of the month and an Instalment Activity Statement on a quarterly basis. On different days throughout the year, it must also lodge Non Admitted Reinsurers Tax Return, Income Tax Return and Fringe Benefits Tax Return.

XYZ Insurance must also submit returns to those States that continue to charge a Fire Services Levy. In Victoria, this includes the Metropolitan Fire Emergency Services Board and Country Fire Association on an annual basis. In NSW, this includes the NSW Fire Board and NSW Regional Fire Services on an annual basis. Tasmania also requires a return on an annual basis.

To the Offices of State Revenue in each State and Territory, XYZ Insurance must meet differing deadlines and comply with different methods of stamp duty calculation. ACT, NSW, Victoria, Western Australia, South Australia, Northern Territory, Queensland and Tasmania each require a return for collected duties. Many States also require a further return for Unclaimed Monies.

These taxes place a heavy burden on consumers. When XYZ Insurance sells home or business insurance, the consumer collects a number of taxes on top of the policy.

Appendix C sets out two ICA tables showing the impact of State and Federal taxes on both household and business insurance. In each table a hypothetical basic premium of \$100 is used to demonstrate the point about the huge taxation impost on these policies.

For example for a home insurance premium in NSW, a \$100 premium charged by XYZ Insurance will attract a \$16 fire service levy (based on ICA's advisory levy percentage), \$11.60 in Goods and Services Tax and \$11.48 in stamp duty. This brings the price of the policy for the consumer to \$139.08.

Appendix A – FSR Timeline of Events

2005	
24 November	ASIC updates FSR licensing kit (version 7) to reduce the amount of paperwork required to be submitted as part of an application for an AFS licence
17 June	FSR regulations on 'common fund' disclosure (released in draft on 19 May 2005) receive Royal Assent
2 May	Government releases proposals paper, <i>Refinements to Financial Services Regulation</i> , which contains 25 proposed refinements to improve the operation of the financial services regulation framework
10 March	FSR regulations on fee disclosure (released in draft on 23 December 2004) receive Royal Assent
11 January	ASIC updates policy statement on licensing discretionary powers and transition matters to take account of licensing relief offered to securitisation special purpose vehicles (amendments to PS 167)
2004	
15 December	ASIC releases policy statement on dollar disclosure (PS182)
13 December	ASIC updates FSR licensing kit (version 6) and Small Business Guide for information that new licence applicants will be required to provide to ASIC regarding their main agreement of conflicts of interest obligation (which commences on 1 January 2005)
30 September	ASIC updates FSR licensing kit (version 6)
30 August	ASIC releases policy statement in relation to conflicts management (PS 181)
25 June	Fee disclosure regulations (batch 8) receive Royal Assent
2 June	Parliamentary Joint Committee on Corporations and Financial Services' Report on FSR regulations 7.1.29A, 7.1.35A and 7.1.40(h) released. (This report follows on from the Committee's report released on 25 March 2004.)
31 May	ASIC releases policy statement on foreign collective investment schemes (PS 178) (which replaces PS 65)
13 May	Disallowance of superannuation fee disclosure regulations by the Senate (on 24 March) rescinded
24 March	Parliamentary Joint Committee on Corporations and Financial Services' Report on <i>Corporations Amendment Regulations 2003 (Batch 6)</i> , <i>Corporations Amendment Regulations 2003/04 (Batch 7)</i> and <i>Draft Regulations - Corporations Amendment Regulations 2004 (Batch 8)</i> released.
24 March	Superannuation fee disclosure regulations disallowed by the Senate

15 March	ASIC releases policy statement in relation to regulation of managed discretionary account services (PS 179)
11 March	ASIC updates FSR licensing kit (version 5)
10 March	Transition period (which commenced on 11 March 2002) ends
26 February	FSR regulations (released in draft on 24 December 2003) receive Royal Assent
2003	
23 December	Further FSR regulations receive Royal Assent
17 December	<i>Financial Services Reform Amendment Act 2003</i> receives Royal Assent
13 November	Further FSR regulations receive Royal Assent
23 October	Government releases final version of proposed amendments to the Financial Services Reform Amendment Bill 2003 (introduced on 26 June) to be debated by Parliament
21 October	ASIC updates FSR licensing kit (version 4)
26 September	Government announces that it will move amendments to the Financial Services Reform Amendment Bill 2003 (introduced on 26 June) when it is debated by Parliament
12 September	ASIC releases policy statement in relation to wholesale foreign services providers (PS176 - reissued 17 May 2005)
26 June	Government introduces Financial Services Reform Amendment Bill 2003
26 June	ASIC releases policy statement on conduct and disclosure obligations for financial product advisers (PS175 - reissued 13 May 2005)
12 June	Regulations (based on draft regulations released on 12 March and 28 March) receive Royal Assent
1 May	Regulations (including many of the draft regulations released on 12 March and part of the draft regulations released on 17 December 2002) receive Royal Assent
29 April	ASIC updates FSR licensing kit (version 3)
8 April	Regulations (to address issues associated with making unsolicited offers to retail investors) receive Royal Assent
11 March	Regulations (released in draft on 13 December 2002) receive Royal Assent
11 March	Transition period expires in one year's time (10 March 2004)
2002	
6 November	Regulations (released in draft on 24 September) receive Royal Assent

23 October	Senate Joint Committee report on Corporations and Financial Services Regulations and ASIC Policy Statements made under the FSR Act released
15 October	ASIC updates FSR licensing kit (version 2)
16 September	Superannuation disclosure regulations disallowed by Federal Opposition
14 August	ASIC updates FSR licensing kit (addendum to version 1)
30 June	Due date by which licensees must have in place training and supervision regime in accordance with requirements under ASIC PS 146 for many who advise retail clients
27 June	Regulations (released in draft on 24 May) receive Royal Assent
18 June	Notice of Disallowance of superannuation product disclosure statement and anti-hawking regulations given by Federal Opposition in Senate
14 June	Further regulations (released in draft on 16 April and 2 May) receive Royal Assent
5 April	<i>Financial Services Reform (Consequential Provisions) Act 2002</i> receives Royal Assent
11 March	FSR begins
5 March	Further regulations under second stage of FSR regulations receive Royal Assent
21 February	Second stage FSR regulations receive Royal Assent
14 February	Government introduces Financial Services Reform (Consequential Provisions) Bill 2002
1 February	ASIC releases FSR licensing kit (version 1)
2001	
20 December	ASIC releases policy statement on financial licensing requirements under FSR (PS166 - updated 8 November 2002; reissued 13 May 2005)
28 November	ASIC releases 6 policy statements and a guidance paper on implementation of licensing and product disclosure requirements under FSR (PS146 - updated 22 January 2003; PS164 - updated 8 November 2002; PS165 updated 8 November 2002 and 2 October 2003; PS167- updated 8 November 2002 and 2 October 2003 and reissued 13 May 2005; PS168 and PS169 - updated 8 November 2002 and 2 October 2003 and reissued 13 May 2005)
27 September	FSR receives Royal Assent, and some parts commence
15 July	Commonwealth's <i>Corporations Act 2001</i> commences
5 April	Joe Hockey* introduces FSR Bill to parliament
4 April	Joe Hockey introduces the Corporations Bill 2001 into parliament

29 March	NSW passes referral legislation
2 February	Joe Hockey threatens to press ahead with FSR, without the backing of all the states, if necessary
2000	
22 December	The Commonwealth, NSW & Victoria agree on the referral powers; WA says no to the deal
29 November	Joe Hockey announces FSR on hold until the Corporations Law problem is solved
6 October	Joe Hockey (Commonwealth Minister for Financial Services & Regulation) announces FSR delayed until 1 July 2001
14 August	Parliamentary Joint Statutory Committee's Report on the Draft FSR Bill released
July	Public hearings into the Draft FSR Bill held in Sydney, Melbourne and Canberra
11 March	Parliamentary Joint Statutory Committee invites submissions to its inquiry into the Draft FSR Bill. A total of 67 submissions are received (tabled in the 14 August report above)
8 March	Parliamentary Joint Statutory Committee on Corporations and Securities resolves to hold an inquiry into the draft Bill
February	Draft Financial Services Reform Bill released

Source: Allens Arthur Robinson www.aar.com.au

* Former Commonwealth Minister for Financial Services and Regulation

Appendix B – Comparison of Home Warranty Regimes

	VICTORIA	NEW SOUTH WALES	QUEENSLAND	SOUTH AUSTRALIA	WESTERN AUSTRALIA	TASMANIA	ACT	NORTHERN TERRITORY
Regulator/Government agency	Minister for Consumer and Business Affairs	Department of Fair Trading	Building Services Authority	Commissioner for Business and Consumer Affairs	Ministry of Fair Trading	Attorney-General, Justice and Industrial Relations Department	Dept of Urban Services	Dept of Lands, Planning & Environment
Governing Legislation	Domestic Building Contracts and Tribunal Act 1995	Home Building Act 1989	Queensland Building Services Authority Act 1992	Building Work Contractors Act 1995	Home Building Contracts Act 1991 Builders Registration Act 1939	Housing Indemnity Act 1992	Building Act 1972	NT Building Act
Date of introduction of current scheme	1996	1997	1992	1995	1997	1993	1986	1995
Complaints resolution mechanism	Victorian Civil and Administrative Tribunal	Dept of Fair Trading Tribunal	Building Services Authority dispute resolution service	Direct to insurers	Builders Registration Board and Fair Trading	Office of Consumer Affairs & Fair Trading	Direct to insurers	Consumer Affairs

Appendix C – Impact of Australian Government Taxes on Home Insurance Premium

METROPOLITAN AREA														
STATE	VIC	%	NSW	%	SA	%	WA	%	QLD	%	TAS	%	ACT	%
Basic Premium	\$ 100.00		\$ 100.00		\$ 100.00		\$ 100.00		\$ 100.00		\$ 100.00		\$ 100.00	
Plus Fire Levy	<u>\$ 18.00</u>	18%	<u>\$ 16.00</u>	16%	<u>\$ -</u>	0%	<u>\$ -</u>	0%	<u>\$ -</u>	0	<u>\$ -</u>	0	<u>-</u>	0%
	\$ 118.00		\$ 116.00		\$ 100.00		\$ 100.00	#	\$ 100.00		\$ 100.00		\$ 100.00	
Plus GST	<u>\$ 11.80</u>	10%	<u>\$ 11.60</u>	10%	<u>\$ 10.00</u>	10%	<u>\$ 10.00</u>	10%	<u>\$ 10.00</u>	10%	<u>\$ 10.00</u>	10%	<u>\$ 10.00</u>	10%
	\$ 129.80		\$ 127.60		\$ 110.00		\$ 110.00		\$ 110.00		\$ 110.00		\$ 110.00	
Plus Stamp Duty	<u>\$ 12.98</u>	10%	<u>\$ 11.48</u>	9%	<u>\$ 12.10</u>	11%	<u>\$ 11.00</u>	10%	<u>\$ 8.25</u>	7.5%	<u>\$ 8.80</u>	8%	<u>\$ 11.00</u>	10%
	\$ 142.78		\$ 139.08		\$ 122.10		\$ 121.00	*	\$ 118.25	*	\$ 118.80		\$ 121.00	
COUNTRY AREA														
STATE	VIC	%	NSW	%	SA	%	WA	%	QLD	%	TAS	%	ACT	%
Basic Premium	\$ 100.00		\$ 100.00		\$ 100.00		\$ 100.00		\$ 100.00		\$ 100.00		\$ 100.00	
Plus Fire Levy	<u>\$ 19.00</u>	19%	<u>\$ 15.00</u>	15%	<u>\$ -</u>	0%	<u>\$ -</u>	0%	<u>\$ -</u>	0	<u>\$ -</u>	0	<u>-</u>	0%
	\$ 119.00		\$ 115.00		\$ 100.00		\$ 100.00	#	\$ 100.00		\$ 100.00		\$ 100.00	
Plus GST	<u>\$ 11.90</u>	10%	<u>\$ 11.50</u>	10%	<u>\$ 10.00</u>	10%	<u>\$ 10.00</u>	10%	<u>\$ 10.00</u>	10%	<u>\$ 10.00</u>	10%	<u>\$ 10.00</u>	10%
	\$ 130.90		\$ 126.50		\$ 110.00		\$ 110.00		\$ 110.00		\$ 110.00		\$ 110.00	
Plus Stamp Duty	<u>\$ 13.09</u>	10%	<u>\$ 11.39</u>	9%	<u>\$ 12.10</u>	11%	<u>\$ 11.00</u>	10%	<u>\$ 8.25</u>	7.5%	<u>\$ 8.80</u>	8%	<u>\$ 11.00</u>	10%
	\$ 143.99		\$ 137.89		\$ 122.10		\$ 121.00	*	\$ 118.25	*	\$ 118.80		\$ 121.00	

WA FSL phasing out from 1 January 2003. Ceased 1 January 2004.

* QLD Stamp Duty reduced from 8.5% to 7.5% from 1 August 2004

NSW Stamp Duty increased from 5% to 9% from 1 September 2005

It is illegal under the Trade Practices Act for members and/or the ICA to reach agreements or understanding with respect to prices/premiums.

It is a matter for individual insurers as to how to price their product and the matters taken into account in setting a premium.

Insurers are encouraged to set their own premiums for the insurance products provided by them.

Appendix C (Cont) – Impact of Australian Government Taxes on Business Insurance Premium

METROPOLITAN AREA														
STATE	VIC	%	NSW	%	SA	%	WA	%	QLD	%	TAS	%	ACT	%
Basic Premium	\$ 100.00		\$ 100.00		\$ 100.00		\$ 100.00		\$ 100.00		\$ 100.00		\$ 100.00	
Plus Fire Levy	<u>\$ 40.00</u>	40%	<u>\$ 30.00</u>	30%	<u>\$ -</u>	0%	<u>\$ -</u>	0%	<u>\$ -</u>	0	<u>\$ 28.00</u>	28%	<u>-</u>	0%
	\$ 140.00		\$ 130.00		\$ 100.00		\$ 100.00	#	\$ 100.00		\$ 128.00		\$ 100.00	
Plus GST	<u>\$ 14.00</u>	10%	<u>\$ 13.00</u>	10%	<u>\$ 10.00</u>	10%	<u>\$ 10.00</u>	10%	<u>\$ 10.00</u>	10%	<u>\$ 12.80</u>	10%	<u>\$ 10.00</u>	10%
	\$ 154.00		\$ 143.00		\$ 110.00		\$ 110.00		\$ 110.00		\$ 140.80		\$ 110.00	
Plus Stamp Duty	<u>\$ 15.40</u>	10%	<u>\$ 12.87</u>	9%	<u>\$ 12.10</u>	11%	<u>\$ 11.00</u>	10%	<u>\$ 8.25</u>	7.5%	<u>\$ 11.26</u>	8%	<u>\$ 11.00</u>	10%
	\$ 169.40		\$ 155.87		\$ 122.10		\$ 121.00		\$ 118.25	*	\$ 152.06		\$ 121.00	
COUNTRY AREA														
STATE	VIC	%	NSW	%	SA	%	WA	%	QLD	%	TAS	%	ACT	%
Basic Premium	\$ 100.00		\$ 100.00		\$ 100.00		\$ 100.00		\$ 100.00		\$ 100.00		\$ 100.00	
Plus Fire Levy	<u>\$50.00</u>	50%	<u>\$ 30.00</u>	30%	<u>\$ -</u>	0%	<u>\$ -</u>	0%	<u>\$ -</u>	0	<u>\$ 28.00</u>	28%	<u>-</u>	0%
	\$ 150.00		\$ 130.00		\$ 100.00		\$ 100.00	#	\$ 100.00		\$ 128.00		\$ 100.00	
Plus GST	<u>\$ 15.00</u>	10%	<u>\$ 13.00</u>	10%	<u>\$ 10.00</u>	10%	<u>\$ 10.00</u>	10%	<u>\$ 10.00</u>	10%	<u>\$ 12.80</u>	10%	<u>\$ 10.00</u>	10%
	\$ 165.00		\$ 143.00		\$ 110.00		\$ 110.00		\$ 110.00		\$ 140.80		\$ 110.00	
Plus Stamp Duty	<u>\$ 16.50</u>	10%	<u>\$ 12.87</u>	9%	<u>\$ 12.10</u>	11%	<u>\$ 11.00</u>	10%	<u>\$ 8.25</u>	7.5%	<u>\$ 11.26</u>	8%	<u>\$ 11.00</u>	10%
	\$ 181.50		\$ 155.87		\$ 122.10		\$ 121.00		\$ 118.25	*	\$ 152.06		\$ 121.00	

WA FSL phased out from 1 January 2003. Ceased 1 January 2004.

* QLD Stamp Duty reduced from 8.5% to 7.5% from 1 August 2004

NSW Stamp Duty increased from 5% to 9% from 1 September 2005

It is illegal under the Trade Practices Act for members and/or the ICA to reach agreements or understanding with respect to prices/premiums. It is a matter for individual insurers as to how to price their product and the matters taken into account in setting a premium. Insurers are encouraged to set their own premiums for the insurance products provided by them.