

LEGISLATIVE ASSEMBLY



WESTERN AUSTRALIA

1999

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**STANDING COMMITTEE ON
UNIFORM LEGISLATION AND
INTERGOVERNMENTAL AGREEMENTS**

**FINANCIAL SYSTEM REFORM
REPORT**

Twenty-Third Report

May 1999

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UNIFORM LEGISLATION AND
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**FINANCIAL SYSTEM REFORM
REPORT**

Twenty-Third Report

Presented by:

Hon. K.J. Minson, MLA

Laid on the Table of the Legislative Assembly
on the 13 May 1999

ORDERED TO BE PRINTED

Report of the Standing Committee on

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Terms of Reference

On Wednesday, 4 August 1993 the Legislative Assembly established the Standing Committee on Uniform Legislation and Intergovernmental Agreements.

On Tuesday, 18 March 1997 the Legislative Assembly re-established the Standing Committee on Uniform Legislation and Intergovernmental Agreements with the following terms of reference -

- (1) That a Standing Committee be established for the duration of the 35th Parliament to inquire into, consider and report on matters relating to proposed or current intergovernmental agreements and uniform legislative schemes involving the Commonwealth, States and Territories, or any combination of States and Territories without the participation of the Commonwealth.
- (2) When considering draft agreements and legislation, the Committee shall use its best endeavours to meet any time limits notified to the Committee by the responsible Minister.
- (3) The Committee shall consider and, if the Committee considers a report is required, report on any matter within three months; but if it is unable to report in three months, it shall report its reasons to the Assembly.
- (4) Each member, while otherwise qualified, shall continue in office until discharged, notwithstanding any prorogation of the Parliament.
- (5) No member may be appointed or continue as a member of the Committee if that member is a Presiding Officer or a Minister of the Crown.
- (6) When a vacancy occurs on the Committee during a recess or a period of adjournment in excess of 2 weeks the Speaker may appoint a member to fill the vacancy until an appointment can be made by the Assembly.
- (7) The Committee has power to send for persons and papers, to sit on days over which the House stands adjourned, to move from place to place, to report from time to time, and to confer with any committee of the Legislative Council which is considering similar matters.
- (8) If the Assembly is not sitting, a report may be presented to the Clerk of the Legislative Assembly who shall thereupon take such steps as are necessary and appropriate to publish the report.
- (9) In respect of any matter not provided for in this resolution, the Standing Orders and practices of the Legislative Assembly relating to Select Committees shall apply.

Chairman's Foreword

This is the twenty-third report of the Standing Committee on Uniform Legislation and Intergovernmental Agreements.

The Terms of Reference of the Standing Committee allow the Committee to inquire into, consider and report to the Legislative Assembly on matters relating to proposed or current intergovernmental agreements and uniform legislative schemes.

This report is a response to the notification to this Standing Committee by the Treasurer of Western Australia of an Intergovernmental Agreement between the Commonwealth, States and Territories to transfer the supervisory and regulatory responsibility of credit unions, building societies and friendly societies from the States and Territories to the Commonwealth. Giving effect to the agreement will require some legislative amendments which are expected to be introduced into the Western Australian Parliament in the first half of the Autumn sitting of Parliament.

This report provides members with an outline of the Intergovernmental Agreement and the background the Agreement and its implications for the financial system in Australia.

On behalf of the Standing Committee I wish to thank the Treasurer for recognizing the work of this Standing Committee and submitting the proposed Intergovernmental Agreement to this Committee for comment.

Finally, I thank my fellow Committee members for their individual and collective contributions to this report and commend the Legal/Research Officer, Melina Newnan, the Clerk to the Committee, Peter Frantom and our Secretary/Stenographer, Pat Roach, for their hard work.

HON. K.J. MINSON, MLA
CHAIRMAN

Executive Summary

This, the twenty-third report of the Standing Committee on Uniform Legislation and Intergovernmental Agreements, considers financial system reform and the proposed Intergovernmental Agreement on the transfer of regulatory responsibility for credit unions, building societies and friendly societies from the States and Territories to the Commonwealth. This report is a response to the notification to this Standing Committee by the Treasurer of Western Australia of an Intergovernmental Agreement between the Commonwealth, States and Territories to transfer the supervisory and regulatory responsibility of credit unions, building societies and friendly societies from the States and Territories to the Commonwealth. Giving effect to the Agreement will require some legislative amendments which are expected to be introduced into the Western Australian Parliament in the first half of the Autumn sitting of Parliament.

The purpose of the Intergovernmental Agreement and the proposed legislative amendments is part of the legislative process required to provide national uniform regulation of the financial sector and bring credit unions, building societies and friendly societies within the national regulatory framework.

The current proposed reforms and agreements build on changes that had occurred in the non-bank financial institutions sector and culminated with the review of the whole financial sector in the Financial System Inquiry 1997 (Wallis Inquiry) which recommended changes to regulatory reform of the Australian financial system.

A national prudential regulatory system for all financial institutions was agreed to by all Australian governments. The implementation of the arrangements requires legislative amendments by the Commonwealth, States and Territories.

This report examines the background to changes to the Australian financial system and the need for harmonisation of prudential standards and uniformity of regulatory requirements in the financial industry.

Recommendation

The Standing Committee in accordance with its brief to provide Parliament with an effective mechanism to scrutinise intergovernmental agreements and legislative schemes and after considering the Intergovernmental Agreement and purpose of the Agreement which is to achieve greater efficiency, competitive neutrality and competition in the financial services markets has made the following recommendation -

Recommendation

That appropriate legislative amendments be enacted for the purposes of achieving the arrangements for the transfer of regulatory responsibility for certain financial institutions from Western Australia to the Commonwealth.

1.1 Introduction

The deregulation of the Australian financial sector in the 1980s has resulted in changes in the Australian financial system. The Australian financial system has been subject to reform to enable it to be globally competitive. The changes have been driven by the need to ensure that the financial system keeps pace with rapid technological innovation, increasing globalisation, changing business strategies and consumer needs.

The financial sector has been subject to changes and it was against this background of technological change and globalisation that the Financial System Inquiry 1997 (Wallis Inquiry) was commissioned by the Commonwealth.

As a result of that inquiry, regulatory arrangements were considered inadequate. They did not treat the new market structures and activities equally. A national prudential regulatory system for all financial institutions was recommended and agreed to by all Australian governments. Such an arrangement requires legislative amendments by the Commonwealth, States and Territories.

1.2 Background

The forces for change of the Australian financial system have been driven over the years because of changing customer needs, technological change, the liberalisation of trade and capital markets, globalisation of commerce and other changes in superannuation and taxation.

The need for increased co-ordination of prudential standards of building societies, credit unions and friendly societies was identified by the State registrars of these institutions in the 1980s. The collapse of a number of such institutions lends greater urgency to the need for uniformity of standards.

Changes in the structure of the financial sector has over a number of years involved the drive for national uniformity in legislative and regulatory requirements.

At the Special Premiers' Conference held in Brisbane on 30-31 October 1990, agreement was reached on the reform of State legislation for the supervisions of State-based financial institutions in the context of the stability of the financial system as a whole. A working group of Commonwealth and State officials and the Reserve Bank in consultation with industry reported on proposals for a supervisory structure.

The Premiers' Conference in May 1991 agreed to implement a system of State-based prudential supervision of permanent building societies and credit unions by means of uniform legislation. An Intergovernmental Agreement, the Financial Institutions Agreement was signed on 22 November 1991. Uniformity would be achieved by the passing of "template" legislation by Queensland and the other States adopting the legislation for implementation of the scheme on 1 July 1992.¹

The application of laws legislation in Western Australia was comprised in three Acts -

¹

Financial Institutions (Queensland) Act 1992; and Australian Financial Institutions Commission Act 1992.

- *Financial Institutions (Western Australia) Act 1992*;
- *Western Australian Financial Institutions Authority Act 1992*; and
- *Financial Institutions (Taxing) Act 1992*.

Concerns about the process used in the Western Australian Parliament to enact legislation relating to the supervision of non-bank financial institutions and general questions about Parliamentary scrutiny of uniform legislation and intergovernmental agreements resulted in the establishment of the Select Committee on Parliamentary Procedures for Uniform Legislative Agreements which reported in 1992.²

It was a recommendation of the Select Committee on Parliamentary Procedures for Uniform Legislation Agreements³ which led to the establishment of the Standing Committee on Uniform Legislation and Intergovernmental Agreements to inquire into and report on matters relating to proposed or current intergovernmental agreements and uniform legislative schemes. The aim of the Standing Committee is to provide Parliament with a mechanism to scrutinise structures of intergovernmental agreements or legislative schemes.⁴

1.3 Non-Bank Financial Institutions

The prudential standards under which the financial industry operates was created and administered by the Australian Financial Institutions Commission (AFIC). AFIC was created by the *Australian Financial Institutions Commission Act 1992*.

Each State and Territory also created a State Supervisory Authority (SSA) that provided day-to-day supervision of permanent building societies and credit unions in their jurisdictions. The SSA in Western Australia is the Western Australian Financial Institutions Authority (WAFIA) created under the *Western Australian Financial Institutions Authority Act 1992*.

In 1994 the Attorneys General of all the States resolved to create a uniform scheme for friendly societies. They also resolved that the proposed new scheme be integrated into existing financial institutions' schemes covering permanent building societies and credit unions. The scheme was based on "template" legislation (the *Financial Institutions (Queensland) Act 1992*) enacted by the Queensland Parliament. All other States had adopted the Queensland legislation as laws of the States.

The uniform legislation for friendly societies was hosted by Victoria under the *Friendly Societies (Victoria) Act 1996*. The *Friendly Societies (Western Australia) Act 1998* was passed by both Houses of the Western Australian Parliament.

² In late May 1992 the Western Australian Parliament was asked to adopt the Queensland "template" legislation, although the legislation had not been sighted by the Western Australian Parliament. The proposed law was not even attached to the Western Australian Adoption Bill.

³ Western Australia, Legislative Assembly, Select Committee on Parliamentary Procedures for Union Legislative Agreements Report, 1992.

⁴ Western Australia, Legislative Assembly, Standing Committee on Uniform Legislation and Intergovernmental Agreements, *Establishment and Analysis: Establishment of the Standing Committee and Analysis of the Recommendations of the Select Committee*, First Report, 1994.

1.4 Financial System Reform

The Financial System Inquiry 1997 (Wallis Inquiry) considered and made a number of recommendations for the reform of the Australian financial system, which the Commonwealth Government endorsed. The reforms would create a uniform prudential environment with greater certainty for financial consumers. A number of those recommendations related to the transfer of regulatory responsibility for permanent building societies, credit unions and friendly societies, under the Financial Institutions Scheme, from the States to the Commonwealth.

As part of the implementation of reforms to the financial system, the Commonwealth established two new regulatory bodies. The Australian Securities and Investments Commission (ASIC) and the Australian Prudential Regulation Authority (APRA). These bodies will regulate market integrity and some consumer protection functions. ASIC is based on the Australian Securities Commission with additional functions relating to insurance and superannuation transferred from the Insurance and Superannuation Commission. Consumer protection functions related to financial products will be transferred to ASIC from the Australian Competition and Consumer Commission (ACCC).

The Australian Prudential Regulation Authority (APRA) was established to provide prudential supervision of the Australian financial system. APRA is based on the supervisory framework of the Reserve Bank of Australia and will be responsible for the supervision of all authorised deposit taking institutions. The supervision of the financial system will now include financial institutions such as permanent building societies, credit unions and friendly societies as well as banks.

1.5 Regulation

Responsibility for the supervision and regulation of institutions such as, building societies and credit unions is currently with State supervisory authorities, under the State Financial Institutions Scheme (1992) legislation. Responsibility for regulation and supervision of friendly societies under the *Friendly Societies (Western Australia) Act 1998*, will be transferred to the new national regulatory authority.

1.6 Transfer of Legislative Responsibility

Although the system created under the Financial Institutions Scheme in 1992 did create a uniform regulatory system for building societies and credit unions throughout Australia, rapid technological and other changes in the financial industry have driven the need for a restructure of the industry.

The credits unions and permanent building societies have been urging the transfer of legislative responsibility to the Commonwealth as soon as possible to remove any competitive disadvantage they have, relative to banks.

Effective transfer of responsibility to the Commonwealth is sought to be effective by 1 July 1999 to minimise the uncertainty associated with the reform of the financial system.

In order to effect transfer of responsibility legislation must be passed in each jurisdiction.

1.7 Intergovernmental Agreement

To enable the inclusion of financial institutions such as building societies, credit unions and friendly societies in the Commonwealth's single regulatory and supervisory regime, an agreement was required by all jurisdictions to transfer them to the Commonwealth. The Intergovernmental Agreement⁵ aims to ensure that local knowledge and expertise in relation to Western Australia's permanent building societies, credit unions and friendly societies is retained. It also preserves the State's representation on the supervisory authority. This is achieved through the transfer of staff from the State Supervisory Authority (the Western Australian Financial Institutions Authority) to APRA and retaining those staff in a regional office of APRA in Perth until 30 June 2000. After that date, APRA will maintain a permanent regional office in all major capital cities provided it is consistent with the provision of effective prudential regulation.

1.8 Australian Financial Systems Reform Agreement

The Agreement on the transfer of regulatory responsibility to the Commonwealth from the States and Territories has been agreed to between the Commonwealth and the States and Territories. The Agreement provides for the transfer to the Commonwealth responsibility for the regulation of certain financial institutions for the purpose of achieving greater efficiency, competitive neutrality and competition in financial services markets, while maintaining standards of financial safety and prudence.

The Agreement outlines arrangements including -

- legislative measures to give effect to the transfer of responsibilities;
- transitional measures to be adopted; and
- mechanisms for the transfer of staff and other resources of the existing State Supervisory Authorities and the Australian Financial Institutions Commission.

1.9 Parties to the Agreement

A party to the Agreement means the Commonwealth, a State or Territory that is a party to the Agreement.

The parties agree to co-operate to give effect to the transfer of regulatory responsibility for certain financial institutions from the States and Territories to the Commonwealth.

1.10 Amendments to Existing Agreements

The Corporations Agreement and the Financial Institutions Agreement are to be amended by the parties to the extent necessary to give effect to the Australian Financial Systems Reform Agreement.

1.11 Commonwealth Legislation

⁵

See Draft Agreement - Appendix 3.

To effect the transfer, a package of Commonwealth legislation was introduced into the Commonwealth Parliament. Some of the Commonwealth legislation enacted will provide for prudential supervision for credit unions and building societies. The legislation subjects credit unions and building societies to the *Corporations Law*. The initial package of legislation established two new financial system regulators, the Australian Prudential Regulation Authority (APRA) and the Australian Securities and Investments Commission (ASIC). The amendments in the legislation ensure that other Commonwealth legislation and the *Corporations Law* is consistent with the new regulatory arrangements.

Commonwealth legislation already enacted includes, the *Financial Sector Reform (Amendments and Transitional Provisions) Act 1998* and the *Financial Sector Reform (Consequential Amendments Act) 1998* which put in place a new regulatory structure to improve the efficiency and competitiveness of the financial system. The legislation implemented the recommendations of the 1997 Financial System Inquiry (Wallis Inquiry).

The *Australian Prudential Regulations Authority Act 1998*, came into operation 1 July 1998. Other Commonwealth legislation which has been introduced into the Commonwealth Parliament includes the *Financial Sector (Transfers of Business) Bill 1999* and the *Financial Sector Reform (Amendments and Transitional Provisions) Bill (No 1) 1999*. Subject to the passage of legislation, the transfer will take place on 1 July 1999.

1.12 Proposed State Legislation

The States and Territories will introduce complementary legislation to facilitate the changes. State and Territory legislative amendments will be introduced to give effect to the transfer of responsibility for the regulation of building societies, credit unions and friendly societies to the Commonwealth. It is intended that “template” legislation being prepared in Queensland and Victoria will be adopted by all jurisdictions and passed in all State and Territory Parliaments.

1.13 Financial System Regulation

The Australian Securities and Investments Commission (ASIC) and the Australian Prudential Regulation Authority (APRA) commenced operations on 1 July 1998, following the overhaul of Australia’s regulatory framework for the financial sector.

ASIC will have the responsibility for market integrity and consumer protection across the financial system, including investment, insurance and superannuation products. APRA will provide prudential regulation of superannuation, insurance and deposit taking institutions on 1 July 1999.

Building societies, credit unions and friendly societies will join the ASIC and APRA regulatory regime later this year once Commonwealth and State and Territory legislation has been enacted.

1.14 Conclusions

The Standing Committee after examining the background history of the financial industry and the previous work of the Standing Committee with non-bank financial institutions, believes that it is in the best interest of Western Australia to be part of a national regulatory regime for the effective and efficient operation, supervision and administration of the financial industry.

The Standing Committee took into account the changes that have occurred with the deregulation of the financial sector and the changing nature of, and the blurring of distinctions between banks and other non-bank financial institutions and the need to ensure consumer and industry effective regulation.

Appendix 1

Glossary

Throughout this report the following terminology has been used:

“Select Committee”	means the Western Australian Select Committee on Parliamentary Procedures for Uniform Legislation Agreements established by the Legislative Assembly of the Western Australian Parliament on the 4 June 1992.
“Standing Committee”	means the Standing Committee on Uniform Legislation and Intergovernmental Agreements established by the Legislative Assembly of the Western Australian Parliament on 4 August 1993 and re-established on 18 March 1997.
“Wallis Inquiry”	means the Financial System Inquiry 1997.

Abbreviations

“ACCC”	Australian Competition and Consumer Commission.
“AFIC”	Australian Financial Institutions Commission.
“APRA”	Australian Prudential Regulation Authority.
“ASIC”	Australian Securities and Investments Commission.
“SSA”	State Supervisory Authority.
“WAFIA”	Western Australian Financial Institutions Authority.

Appendix 2

Legislation

Australian Financial Institutions Commission Act 1992.

Australian Prudential Regulations Authority Act 1998.

Corporations Law.

Financial Institutions (Western Australia) Act 1992.

Financial Institutions (Taxing) Act 1992 (Western Australia).

Financial Institutions (Queensland) Act 1992.

Financial Sector Reform (Amendments and Transitional Provisions) Act 1998 (Commonwealth).

Financial Sector Reform (Consequential Amendments) Act 1998 (Commonwealth).

Financial Sector (Transfers of Business) Bill 1999 (Commonwealth).

Financial Sector Reform (Amendments and Transitional Provisions) Bill (No. 1) 1999 (Commonwealth).

Friendly Societies (Victoria) Act 1996.

Friendly Societies (Western Australia) Act 1998.

Western Australian Financial Institutions Authority Act 1992.

Appendix 3

Draft

AUSTRALIAN FINANCIAL SYSTEM REFORM

**AGREEMENT ON THE TRANSFER OF REGULATORY RESPONSIBILITY TO
THE COMMONWEALTH FROM THE STATES AND TERRITORIES**

An agreement made the [date 1998] between the following parties -

THE COMMONWEALTH OF AUSTRALIA
THE STATE OF NEW SOUTH WALES
THE STATE OF VICTORIA
THE STATE OF QUEENSLAND
THE STATE OF WESTERN AUSTRALIA
THE STATE OF SOUTH AUSTRALIA
THE STATE OF TASMANIA
THE NORTHERN TERRITORY OF AUSTRALIA
THE AUSTRALIAN CAPITAL TERRITORY

Preamble

Heads of Government have agreed *in principle* to transfer to the Commonwealth responsibility for the regulation of certain financial institutions pursuant to the objectives of achieving greater efficiency, competitive neutrality and competition in financial services markets, while maintaining standards of financial safety and prudence.

The purpose of this Agreement is to outline the arrangements for the transfer of regulatory responsibility for certain financial institutions from the States and Territories to the Commonwealth, including:

- (a) the legislative measures that will be introduced by the Commonwealth and the States and Territories to give effect to the transfer of responsibilities;
- (b) the transitional policies to be adopted by the Commonwealth during the period immediately after the transfer of responsibilities; and
- (c) the mechanisms for the transfer of staff and other resources of the existing State Supervisory Authorities and the Australian Financial Institutions Commission.

Agreement

Parties agree to cooperate to give effect to the transfer of regulatory responsibility for certain financial institutions from the States and Territories to the Commonwealth. Subject to parliamentary processes, the parties will endeavour to achieve a transfer on 1 July 1999

PART 1: PRELIMINARY

Citation

- 1.01 The Agreement may be referred to as the Financial Sector Regulation Transfer Agreement (FSRTA).

Definitions

- 1.02 In this Agreement, unless the contrary appears:
- <AFIC' means Australian Financial Institutions Commission;
 - <AFIC Code' means the Australian Financial Institutions Commission Code;
 - <APRA' means Australian Prudential Regulation Authority;
 - <ASIC' means Australian Securities and Investments Commission;
 - <Enact' legislation includes the making or approving of subordinate legislation;
 - <FI Agreement' means Financial Institutions Agreement;
 - <FI Code' means the Financial Institutions Code;
 - <FI Scheme <means the Financial Institutions Scheme as defined in section 6 of the AFIC Code;
 - <FS Code' means the Friendly Societies Code.
 - <Minister' means a Minister of State for the Commonwealth or a Minister of the Crown for a State or Territory;
 - <Party' means a part to this agreement as set out above;
 - <SSA' means State Supervisory Authority, including those which may be established in the Territories, established to administer the FI and FS Codes;
 - <Special services providers' is defined as per the AFIC Code; and
 - <Transfer date' means the date agreed by Ministers on which the transfer of regulatory responsibility takes place, being the first day that Commonwealth regulatory responsibility applies to the transferring entities.

Commencement

- 1.03 This Agreement comes into operation when it has been executed by or on behalf of all of the parties.

Formalities

- 1.04 The parties recognise that this Agreement does not affect the powers of the Parliament of the Commonwealth or of any State or Territory.

Obligations

- 1.05 Where this Agreement is expressed to impose an obligation on an officer or authority of a party it is the responsibility of the party to take such steps as are appropriate to ensure that the officer or authority complies with the obligation.

PART 2: AMENDMENTS TO EXISTING AGREEMENTS**Corporations Agreement**

- 2.01 The Corporations Agreement will be amended by the parties to that agreement to the extent necessary to give effect to this Agreement. The operation of the Corporations Agreement is not otherwise affected by this Agreement.

Financial Institutions Agreement

- 2.02 The FI Agreement will be amended by the States and Territories to the extent necessary to give effect to this Agreement.

PART 3: PROPOSED LEGISLATION**Transfer of entities to the Corporations Law and ASIC**

- 3.01 Legislation will be enacted to provide for the registration, at the transfer date, of entities registered under the FI Code, the FS Code and the AFIC Code as companies under the Corporations Law in the jurisdiction where they were registered immediately prior to transfer.

Transfer of building societies and credit unions to the Banking Act and APRA

- 3.02 Provision has been made in the *Banking Act 1959* and other relevant legislation for the Commonwealth to prudentially regulate deposit-taking institutions including building societies, credit unions and special services providers. This will also include provisions for unclaimed moneys and bank holidays to encompass these institutions.

Transfer of friendly societies to the Life Insurance Act and APRA

- 3.03 With effect from the transfer date, provision will be made for friendly societies with benefit funds (except friendly societies with only health insurance benefit funds) to be authorised to carry out life insurance business and to cease to be subject to prudential regulation under the FS Code. The Commonwealth will amend the *Life Insurance Act 1995* to accommodate the authorisation of these friendly societies and recognise key features of friendly society structures and operations, such as benefit funds. Consequential changes will also be made to the unclaimed moneys provisions and other legislation as appropriate.

- 3.04 The *Income Tax Assessment Acts 1936 and 1997* will be amended as necessary to preserve, without prejudice to future taxation reform, the income taxation treatment of friendly societies and their financial products applying at the transfer date.

Transfers of engagements provisions

- 3.05 Provisions for transfers of engagements similar to those applying under the FI and FS Codes will be included in the Commonwealth regime. These provisions will apply to authorised deposit-taking institutions and to life insurance companies (including prudentially regulated friendly societies) and will not interfere with State and Territory arrangements for collecting stamp duty in respect of relevant transactions.

Transfers of staff and resources

- 3.06 Provision will be made, subject to paragraph 3.07 below, for the transfer at the transfer date, or where appropriate by that date, from AFIC and the SSAs to APRA and ASIC, as appropriate, of:
- (a) existing staff of the SSAs and AFIC, such that the transferred employees will be offered employment -
 - (i) on terms and conditions relating to the total value of their remuneration package (having regard to benefits such as superannuation and motor vehicles) which overall are no less favourable than those that applied to the person immediately before the transfer date; and
 - (ii) with maintenance and full recognition by APRA and ASIC of employee entitlements that had accrued to the person in respect of length of service with AFIC or an SSA, including prior service where currently recognised, up to the transfer date;
 - (b) the records and data relating to the staff, assets, liabilities and regulatory responsibility of AFIC and SSA; and
 - (c) assets and liabilities essential to the transfer of responsibilities, including funds for unconditional, conditional or pre-conditional employee entitlements calculated in accordance with Accounting Standards, but not including any surpluses or unallocated funds held by the authorities.
- 3.07 With respect to paragraph 3.06(a) above, on an agreed date prior to the transfer, the existing State and Territory employers will provide to their employees and to ASIC or APRA as appropriate a written statement setting out the particulars of the remuneration, service and accrued benefits relating to each employee.
- 3.08 The staff, records and data, and assets and liabilities to be the subject of the transfer, referred to in paragraph 3.06, and the entities to which they will transfer, will be those agreed in writing by the responsible Ministers of the Commonwealth and each State and Territory, or delegates nominated by them.

State and Territory legislation

- 3.09 State and Territory legislative amendments consequential to or necessary to give effect to the transfer of responsibility will be enacted.

PART 4: INTERIM ARRANGEMENTS

- 4.01 Before the transfer date, APRA, ASIC, AFIC and the SSAs will work to harmonise prudential, corporate and consumer regulatory practices with the goal of smoothing the transfer of responsibilities for the entities and staff of the regulators.
- 4.02 APRA and ASIC will also consider the effects on the operation of the FI Scheme when engaging former AFIC or SSA staff, if any, in advance of the transfer date.
- 4.03 The parties will consult on the terms of draft legislation referred to in Part 3 of this Agreement.

PART 5: ADMINISTRATIVE PROCESSES

Granting of authorities

- 5.01 With effect from the transfer date, an authority under Section 9 of the *Banking Act 1959* will be granted to building societies, credit unions and special services providers, which immediately before the transfer date were incorporated under the FI and AFIC Codes and these entities will cease to be prudentially regulated under the FI and AFIC Codes.
- 5.02 With effect from the transfer date, an authority under the *Life Insurance Act 1995* will be granted to friendly societies with benefit funds (except those only with health insurance benefit funds) which immediately before the transfer date were regulated under the FS Code. These entities will cease to be prudentially regulated under the FS Code.

Consumer protection regulation

- 5.03 The Commonwealth, States and Territories, assisted by their respective consumer protection agencies, will, where appropriate, reach agreement about the handling of consumer complaints in the financial system.

Continuation of provision of regulatory services

- 5.04 For a transitional period up to 30 June 2000, APRA will retain a regional office in the State capital cities, retaining in those offices staff previously engaged in those locations by AFIC or the SSAs in the prudential regulation of building societies, credit unions, friendly societies and special services providers. APRA is also expected to maintain a substantial presence in Canberra for some time. Staff may be engaged in any of the operations of APRA during the transitional period.
- 5.05 Subsequent to the completion of the transitional period, APRA will maintain a permanent regional office in the major capital cities provided that this is consistent with the provision of effective and flexible prudential regulation that is also cost-effective and responsive to industry developments and trends. APRA will explore on an ongoing basis possibilities for decentralisation and to the fullest extent practicable implement them. APRA will also maintain local knowledge and experience, and ensure its supervisory role is no less effective than the role provided by the SSAs and AFIC.
- 5.06 The Commonwealth will obtain a written undertaking from APRA committing it to the administrative processes outlined in paragraphs 5.04 and 5.05 above and will ensure that the undertaking is implemented.

PART 6: RESPONSIBILITIES OF APRA AND ASIC

- 6.01 APRA will have comprehensive powers to prudentially regulate deposit taking institutions (including building societies, credit unions and special services providers), life insurance companies (including those friendly societies referred to in paragraph 5.02), general insurance companies and superannuation funds. However, the Commonwealth has announced that on 1 July 1999, the regulation of self-managed superannuation funds will be transferred to the Australian Taxation Office.
- 6.02 ASIC will have comprehensive responsibilities for market integrity and consumer protection functions across the financial system, including:
- corporate regulation, the regulation of corporate takeovers and fundraising, and the regulation of financial markets;
 - market integrity and consumer protection functions in connection with banks, finance companies, merchant banks, building societies, credit unions, friendly societies, superannuation interests, retirement savings accounts, and general and life insurance products (but not including State and Territory consumer credit functions);
 - oversight of industry initiatives for consumer protection relating to new technology in the financial sector.

PART 7: TRUSTEE COMPANIES AND COOPERATIVE HOUSING SOCIETIES

- 7.01 Regulation of trustee companies and cooperative housing societies (and any associated government guarantees) will continue to be the responsibility of the States and Territories. The Commonwealth will amend the *Australian Prudential Regulation Authority Act 1998* to enable APRA to enter into bilateral contracts, subject to the approval of the Treasurer, from the States and Territories to provide (on a fee for service basis) prudential supervision services in relation to contracts on a mutually acceptable basis, including to enable contracts to commence on the transfer date if requested. The risk borne by the Commonwealth (and APRA) in participating in the prudential supervision of these entities will be appropriately restricted to fulfilling the terms of the contract.
- 7.02 Contracts in relation to cooperative housing societies may be negotiated to commence on or after the transfer date. Contracts in relation to trustee companies will not commence before the commencement of uniform trustee company State and Territory legislation, although contracts relating to advice on the development of appropriate prudential standards may commence on or after the transfer date.

Appendix 4

Previously Identified Structures for Uniform Legislation

The Standing Committee has so far identified and classified eight legislative structures relevant to the issue of uniformity in legislation. A brief description of each is provided below. (A fuller account of these models can be found in Annexure 1 to the Standing Committee's Censorship Bill Report, tabled 28 November 1995).

Structure 1: *Complementary Commonwealth-State or Co-operative Legislation.* The Commonwealth passes legislation, and each State or Territory passes legislation which interlocks with it and which is restricted in its operation to matters not falling within the Commonwealth's Constitutional powers.

Structure 2: *Complementary or Mirror Legislation.* For matters which involve dual, overlapping, or uncertain division, of constitutional powers, essentially identical legislation is passed in each jurisdiction.

Structure 3: *Template, Co-operative, Applied or Adopted Complementary Legislation.* Here a jurisdiction enacts the main piece of legislation, with the others passing Acts which do not replicate, but merely adopt that Act, and subsequent amendments, as their own.

Structure 4: *Referral of Power.* The Commonwealth enacts national legislation following a referral of relevant State power to it under section 51(xxxvii) of the Australian Constitution.

Structure 5: *Alternative Consistent Legislation.* Host legislation in one jurisdiction is utilised by other jurisdictions which pass legislation stating that certain matters will be lawful in their own jurisdictions if they would be lawful in the host jurisdiction. The non-host jurisdictions cleanse their own statute books of provisions inconsistent with the pertinent host legislation.

Structure 6: *Mutual Recognition.* For example, where goods or services comply with the legislation in their jurisdiction of origin they need not comply with inconsistent requirements otherwise operable in a second jurisdiction, into which they are imported or sold.

Structure 7: *Unilateralism.* Each jurisdiction goes its own way. In effect, this is the antithesis of uniformity.

Structure 8: *Non-Binding National Standards Model.* Each jurisdiction passes its own legislation but a national authority is appointed to make decisions under that legislation. Such decisions are, however, variable by the respective State or Territory Ministers.

Structure 9: *Adoptive Recognition.* Where one jurisdiction may choose to recognise the decision making process of another jurisdiction as meeting the requirements of its own legislation regardless of whether this recognition is mutual.