

REGULATION POST FINANCIAL CRISIS

Australia
Legal Briefings

The regulatory landscape has changed significantly following the financial crisis, both domestically and globally.

The compliance burden on financial services providers has proliferated and regulators have become increasingly active. While a sound regulatory framework is necessary for good business practice, it is important to ensure regulation responds to legitimate needs and is not merely knee-jerk. In this context there are a number of difficult issues we anticipate the FSI will need to address.

International regulation: Financial institutions are increasingly subject to regulation from a number of jurisdictions. The growth in the extra-territoriality of regulation means that compliance obligations may overlap or conflict. The impact of the global OTC derivatives reforms is a prime example. We have also seen instances of international standards being implemented domestically ahead of international timetables, and with 'gold plating' to the required standard, such as in APRA's implementation of Basel III, potentially damaging international competitiveness. The FSI should support domestic regulators in doing everything they can to minimise regulatory burden resulting from the internationalisation of financial regulation, whether by effective co-operation arrangements with overseas counterparts or by considered and balanced implementation of international norms.

The interaction between regulators: It is common for those in the financial services sector to be subject to regulation from all of ASIC, APRA, ACCC, RBA, ATO and AUSTRAC. Coordination in creating regulations, supervising compliance and enforcing suspected contraventions should be a goal of Australian regulators. Not only does it increase certainty and ease the compliance burden for the regulated population, it improves regulatory outcomes and frees up regulatory resources. The challenge for the FSI is how best to address the task of coordination.

Compliance burden: Regulation can have a detrimental effect on market efficiency and innovation. It consumes resources and management attention. Whilst regulation is necessary for a functioning market for financial services and products, over regulation can undermine Australia's competitiveness internationally. Regulation itself has the potential to distort incentives and create systemic risks. It also has the potential to simply prompt the shift of financial activity to another jurisdiction or to the less regulated corners of the market, as has occurred globally with the rise of shadow banking. The FSI should address these issues through the lens of market efficiency, looking at easing the compliance burdens Australian banks are facing.

Requests for more powers: Requests by regulators for ever-increasing powers and remedies should be rigorously tested against the demonstrated need for these. Improving the performance of regulatory action should be preferred as a first step. Any request for more power by regulators should be reviewed against the reasons why existing powers are insufficient, and in cases where regulators have not adequately used existing powers, requests for more should be strongly resisted.

Cyber security: A relatively recent topic in the financial services sphere, how to regulate cyber security standards is a difficult issue. ASIC Chairman. Greg Medcraft, predicts that cybercrime will be 'the next black swan event'. He considers that regulators need to 'start thinking about how to address the risks to the financial system that cybercrime poses', in particular ensuring key participants in financial markets have 'adequate risk management ... to ensure they are cyber-attack resilient'. With major financial centres already taking this threat seriously and a number of submissions addressing the topic, the FSI should consider how Australia should minimise systemic vulnerabilities to cyber-crime in our financial system through appropriate regulation.

KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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