The Banking Regulation Review

Seventh Edition

Editor
Jan Putnis

Law Business Research

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This article was first published in The Banking Regulation Review, 7th edition
(published in May 2016 – editor Jan Putnis).

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Law Business Research Ltd

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Published in the United Kingdom
by Law Business Research Ltd, London
87 Lancaster Road, London, W11 1QQ, UK

www.TheLawReviews.co.uk

ISBN 978-1-909830-94-3

Printed in Great Britain by
Encompass Print Solutions, Derbyshire
Tel: 0844 2480 112

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ACKNOWLEDGEMENTS

The publisher acknowledges and thanks the following law firms for their learned assistance throughout the preparation of this book:

ADNAN SUNDRA & LOW

ADVOKATFIRMAET BA-HR DA

ADVOKATFIRMAN VINGE

AFRIDI & ANGELL

ALI BUDIARDJO, NUGROHO, REKSODIPUTRO

ALLEN & GLEDHILL LLP

ANDERSON MŌRI & TOMOTSUNE

AROSEMENA NORIEGA & CONTRERAS

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GORRISSEN FEDERSPIEL

HENGELER MUELLER PARTNERSCHAFT VON RECHTSANWÄLTEN MBB

HOGAN LOVELLS BSTL, SC

LAKATOS, KÖVES AND PARTNERS

LAW FIRM ROJS, PELJHAN, PRELESNIK & PARTNERS, O.P., D.O.O.

LENZ & STAEHELIN

MARVAL, O'FARRELL & MAIRAL

NAUTADUTILH

PINHEIRO NETO ADVOGADOS

RUSSELL MCVEAGH

SKUDRA & ŪDRIS

SLAUGHTER AND MAY

SYCIP SALAZAR HERNANDEZ & GATMAITAN

T STUDNICKI, K PŁESZKA, Z ĆWIĄKALSKI, J GÓRSKI SPK

URÍA MENÉNDEZ

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CONTENTS

EDITOR'S PREFACE

Nearly eight years after the collapse of Lehman Brothers it might have been expected that fundamental questions about the business models, governance and territorial scope of large banks would have been answered clearly, but that is not yet truly the case. Debates rage on in many countries about 'too big to fail', management accountability in banks, resolution planning and conduct issues in the banking sector. What is the 'safest' form of international banking and what might shareholders in banks reasonably expect as a long-term rate of return on their investment? When is all this uncertainty going to end? Perhaps it never will for so long as large banks remain as important to the global economy as they are and the political classes throughout the world remain divided on whether this is a good thing. It is also worth remembering that the reform agenda that was born in the financial crisis of 2007–2009 established a very long implementation period – to 2019 and beyond – for many of the regulatory changes agreed upon by the G20 and the Basel Committee. So we are still in the midst of what will no doubt be seen in decades to come as the 'post-crisis' period in banking regulation.

Looking forward then, what can we see beyond the implementation of the post-crisis reforms? That depends, of course, in part on whether there is another cross-border banking crisis. It is worth noting in this context that localised banking failures remain commonplace, and with more countries around the world introducing specialised bank resolution regimes there will be further opportunities to test the uses and pitfalls of bail-in and other resolution powers.

The continuing debate about the impact of technology on banks has increased significantly in volume in much of the world in the past year. Forecasts of the eventual eclipse of banks by technology firms seem wide of the mark in the short to medium term, although there is clearly an 'adapt or die' threat to many banks in the longer term. One adaptation of sorts that we may well see more of in the next few years is banks acquiring technology firms (or otherwise entering into strategic partnerships with them).

The most obvious benefits of new technology in the banking sector concern the customer interface and market infrastructure. However, some important but less immediately obvious ways in which technology will continue to revolutionise banking arise in the context of the safety and soundness of banks. For example, some banks are looking at how innovative uses of technology can improve their risk management, and ultimately the credibility of their recovery and resolution plans through, for example, more precise classification and management of derivative positions and counterparty relationships.

Many of the largest cross-border regulatory investigations into past conduct in the banking sector have drawn to a close over the past year. While for some that signalled the close of a painful and costly chapter in the post-crisis development of the banking sector, it remains difficult to conclude that the threat of further such investigations has gone away.

As an English lawyer it would be odd if I did not mention the June 2016 referendum in the UK on membership of the European Union, parochial though that may seem to some readers outside Europe. The legal and regulatory regime that will apply to business that banks undertake in and from London is, however, of global interest, and the result of the referendum, and its aftermath, will therefore be of very considerable importance to all large banks and many smaller ones.

This seventh edition of *The Banking Regulation Review* contains chapters provided by authors in 39 countries and territories in March and April 2016, as well as chapters on International Initiatives and the European Union. My sincere thanks, as in previous years, go to the authors who have made time to contribute their chapters despite their heavy workload.

The team at Law Business Research have, once again, tolerated the hectic schedules and frequent absences on business of many of the authors, and I would like to thank them for doing so with such good humour and understanding. Thank you also to the partners and staff of Slaughter and May in London and Hong Kong for continuing to encourage projects such as this book, and in particular to Ben Kingsley, Peter Lake, Nick Bonsall, Edward Burrows, Tim Fosh, Kristina Locmele and Helen McGrath.

Jan Putnis
Slaughter and May
London
May 2016

Chapter 3

AUSTRALIA

Hanh Chau, Adam D'Andreti, Peter Feros, Paula Gilardoni, Deborah Johns, Louise McCoach, Duncan McGrath and Peter Reeves[1]

I INTRODUCTION

Australia has a sophisticated and stable banking industry, which provides a full range of banking and financial services products.

The banking market is dominated by four major Australian banks, measured by market capitalisation: Australia and New Zealand Banking Group Limited, Commonwealth Bank of Australia, National Australia Bank Limited and Westpac Banking Corporation.[2]

Subject to limited exceptions,[3] only banks authorised by the Australian Prudential Regulation Authority (APRA) as an authorised deposit-taking institution (ADI) may carry on a banking business in Australia. As at February 2016, the Australian banking sector comprised 160 ADIs.[4] Of these, 27 are Australian-owned, seven are foreign subsidiaries, 41 are branches of foreign banks, five are building societies and 71 are credit unions. There are nine ADIs that do not fall within any of these categories.

In addition, two entities are authorised to be non-operating holding companies (NOHCs). NOHCs are holding companies of ADIs, which have authority from APRA under

1 Hanh Chau, Adam D'Andreti, Peter Feros, Paula Gilardoni, Deborah Johns, and Duncan McGrath are partners at Gilbert + Tobin. Peter Reeves is a special counsel and Louise McCoach is a consultant. The authors would like to acknowledge the contributions of Madeleine Brett-Williams, Michael Burnett, Rianne Chen, Dominic Ho, Grace Ho, Alexandra Lazar, Oscar Monaghan, Mack Wan, and Georgina Willcock. The authors also acknowledge Oscar Monaghan for coordinating the preparation of this chapter.

2 Australian bankers' Association Inc, 'History of Banks' at www.bankers.asn.au/Banks-in-Australia/History-of-Banks.

3 Banking Act 1959 (Cth), Section 11.

4 APRA, list of Authorised Deposit-Taking Institutions at www.apra.gov.au/adi/pages/adilist.aspx.

Section 11AA of the Banking Act 1959 (Cth) (the Banking Act). When a body corporate seeks authority to be an ADI, APRA's permission may be conditional upon the applicant's holding company obtaining authority to be an NOHC.[5]

II THE REGULATORY REGIME APPLICABLE TO BANKS

The regulatory regime applicable to the banking sector in Australia follows a generally decentralised approach, with a division of functional regulation between two key organisations, as well as a range of other regulators and government bodies.

i Regulators

The key regulators of the banking system are:

a APRA, which specialises in the prudential management of financial institutions, regulating banks, insurance companies, building societies, credit unions and superannuation funds. APRA is an independent body free from government intervention, although it is subject to ministerial direction on its policies and priorities at a general level;

b the Australian Securities and Investments Commission (ASIC), which regulates financial market conduct, and credit and market integrity more generally. It also regulates consumer protection as it relates to financial products and instruments; and

c the Reserve Bank of Australia (RBA), which is Australia's central bank and is responsible for the stability of the Australian currency and financial system. It does not have a direct role in the prudential supervision of ADIs, but conducts monetary policy and provides selected banking and registry services to a range of Australian and overseas government agencies and institutions.

Other regulatory bodies responsible for aspects of the banking system include:

a the Australian Competition and Consumer Commission (ACCC), which monitors competition, fair trading and consumer protection (in areas other than financial services);

b the Australian Securities Exchange (ASX), which regulates equities, derivatives and enterprise trading markets, and ensures compliance with disclosure and market awareness obligations; and

c the Australian Treasury, which is responsible for advising the government on the stability of the financial system, and on legislative and regulatory matters regarding financial system infrastructure.

ii Inter-governmental cooperation

Since the global financial crisis, substantial regulatory change has resulted from international developments and decisions made offshore. Australia adopts a cooperative approach with its regional and global neighbours. In particular Australia continues to advocate greater harmonisation in regulatory standards for financial institutions in the Asia-Pacific region. Australia has a close relationship with regulators in New Zealand and the United

5 Banking Act, Section 11AA.

Kingdom, where the bulk of Australian banks' overseas operations are based. Memoranda of understanding have also been entered into with other regulators, including those in Hong Kong, China and Malaysia, to establish cross-border cooperation in relation to global financial services.

III PRUDENTIAL REGULATION

i Relationship with the prudential regulator

Any entity that wishes to carry on a banking business in Australia is required to be authorised by APRA as an ADI unless it has the benefit of an exemption.[6] There are three options for ADI authorisation available: a body corporate incorporated in Australia can apply for Australian ADI status; a non-operating holding company of a group of companies that includes one or more ADIs can apply for NOHC status; and a foreign body corporate can apply for foreign ADI status (and, if authorised, will be required to register in Australia as a foreign company under the Corporations Act 2001 (Cth) (the Corporations Act).

Prudential supervision

APRA has the power to establish and enforce prudential standards[7] for ADIs, NOHCs, life insurance companies, general insurance companies and superannuation funds.[8] Prudential standards have the force of law, and an ADI or authorised NOHC must comply with them.[9]

Prudential standards cover a broad range of topics including capital adequacy, funds management and securitisation, liquidity management, large exposures, equity associations, credit quality, corporate governance and outsourcing. APRA may determine whether a prudential standard applies to all ADIs or NOHCs or to specified ADIs or NOHCs.[10]

The bodies to which APRA's prudential standards apply are responsible for compliance with these standards, including implementation and monitoring. Failure by an ADI (or any of its group members) to report a breach carries a penalty of 200 penalty units, with criminal liability for officers in extreme circumstances.[11]

If APRA has reason to believe that an ADI or NOHC has contravened or is likely to contravene a prudential standard, APRA has the power to issue directions requiring the ADI or NOHC to undertake (or not undertake) certain actions, including requiring compliance with the relevant prudential standard, removing a director or senior manager, or requiring an

6 Banking Act, Sections 8, 9 and 11.

7 Copies of APRA's prudential standards are available at www.apra.gov.au/adi/PrudentialFramework/Pages/prudential-standards-and-guidance-notes-for-adis.aspx.

8 Banking Act, Section 11AF; Insurance Act 1973 (Cth), Section 32; Life Insurance Act 1995 (Cth), Section 230A; and Superannuation Industry (Supervision) Act 1993 (Cth), Section 34C.

9 Prudential standards can be made under Section 11AF of the Banking Act. An instrument made under Section 11AF of the Banking Act is a legislative instrument (Section 11AF(7B)). See Sections 5 and 6 of the Legislative Instruments Act 2003 (Cth) for the effect of instruments declared to be legislative instruments.

10 Banking Act, Section 11AF.

11 Banking Act, Section 62A(1B). Under the Crimes Act 1914 (Cth), Section 4AA, one penalty unit currently equates to A$180.

audit. Non-compliance with such a direction carries a penalty of 50 penalty units[12] and gives APRA power to revoke authorisation.[13] A responsible officer who fails to take reasonable steps to ensure compliance with such a direction will be guilty of an offence.[14]

Consequences of an ADI failure

An Australian ADI is guilty of an offence if it does not hold assets (excluding goodwill, and any assets or other amount excluded by APRA's prudential standards) in Australia of a value greater than or equal to the total amount of its deposit liabilities in Australia, unless APRA has authorised the ADI to hold assets of a lesser value.[15]

In the case of an Australian ADI failure, APRA has broad powers, acting on its own or through the appointment of an administrator, to investigate such ADI's affairs or take control of its business.[16] There have not been any ADI failures in Australia in recent history.

It is an offence if an Australian ADI does not immediately inform APRA if it considers that it is likely to become unable to meet its obligations, or that it is about to suspend payment.[17]

Where an ADI statutory manager (being either APRA or an administrator of an ADI's business appointed by APRA)[18] is in control of an Australian ADI's business, and APRA considers that the ADI is insolvent and cannot be restored to solvency within a reasonable period, APRA may apply to the Federal Court of Australia for an order that the ADI be wound up.[19]

If an Australian ADI becomes unable to meet its obligations or suspends payment, Section 13A(3) of the Banking Act sets out priorities for the application of the Australian assets of that ADI: first to APRA for the recovery of monies paid and costs incurred by APRA under the Financial Claims Scheme (FCS), then to account holders with protected accounts, then to the RBA, then to the providers of emergency financial support certified by APRA, and finally to other liabilities (if any) in the order of their priority apart from the operation of the Banking Act.

Foreign ADIs

APRA's powers under the Banking Act to investigate, take control of or apply for the winding up of an ADI do not extend to foreign ADIs.[20]

Section 11F of the Banking Act requires that the assets in Australia of foreign ADIs be available to meet liabilities in Australia in priority to other liabilities of that ADI.

12 Banking Act, Section 11CG(1).

13 Banking Act, Sections 9A and 11AB(2)(a).

14 Banking Act, Section 11CG(2).

15 Banking Act, Section 13A(4).

16 Banking Act, Section 13A(1).

17 Banking Act, Section 13.

18 Banking Act, Section 13A(2).

19 Banking Act, Section 14F.

20 Banking Act, Section 11E.

ii Management of banks

Management of banks is governed by prudential standards set by APRA as well as by the Corporations Act.

APRA imposes a wide range of detailed governance requirements, captured in its Prudential Standard CPS 510. CPS 510 was recently revised to make governance requirements even more robust, and higher standards have been in effect as of 1 January 2015. Foreign ADIs only have to comply with some provisions of CPS 510.

Board requirements

CPS 510 states that the board of directors bears ultimate responsibility for governance of an ADI. An APRA-regulated body needs to have at least five directors at all times (the Corporations Act requires a minimum of three, with at least two in Australia at all times). The majority of the directors are required to be independent.[21]

Management duties

Under the Corporations Act, executive and non-executive directors are subject to statutory duties of care, diligence and good faith. Duties are owed to the corporate entity, but a constitution can stipulate that a wholly-owned subsidiary's directors must act in the interests of its holding company.[22]

CPS 520 requires individuals with positions of responsibility in APRA-regulated institutions to maintain minimum levels of fitness and propriety. It is the responsibility of the board to ensure that such persons meet these minimum levels and to set a policy to that effect.

Prudential Standard CPS 220 came into effect on 1 January 2015, and requires APRA-regulated companies to take a very active role in dealing with risks and building appropriate systems. The board of such a body is held responsible for having 'a risk management framework that is appropriate to the size, business mix and complexity' of the institution or group it heads.[23]

Listing Rules

If listed on the ASX, an ADI must comply with the ASX Listing Rules, which require each listed entity to publish an annual report that indicates whether the entity has complied with the guidelines set out in the ASX Corporate Governance Council's Corporate Governance Principles and Recommendations and, if it has not complied, why not.

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21 CPS 510, paragraph 29.

22 Corporations Act, Section 187.

23 CPS 220, Objectives and Key Requirements.

iii Regulatory capital and liquidity

Regulatory capital

The prudential standards relating to regulatory capital are found in Prudential Standards APS 110 to 117. They are based on the standards set out in the Basel III[24] framework and aim, *inter alia*, to ensure that Australian ADIs maintain adequate capital, on both an individual and group basis, to act as a buffer against the risks associated with their activities.[25]

The prudential standards relating to regulatory capital do not apply to foreign ADIs, which are expected to meet comparable capital adequacy standards in their home jurisdictions.[26]

Consistency with the Basel III framework

Since the release of the Basel III consultation package in December 2010,[27] APRA has been actively involved in implementing a series of updates to its prudential standards to ensure consistency with the capital requirements of the Basel III framework. Under revised standards, new capital requirements took effect in Australia on an accelerated basis from 1 January 2013, subject to certain transitional arrangements.

Prudential Standard CPS 220 and the revised CPS 510 prescribe an APRA-regulated body's approach to risk management, as described above. On 17 March 2014, the Basel Committee concluded that APRA's revised capital prudential standards were overall compliant with the Basel III capital framework, notwithstanding that two of the 14 components reviewed – aspects of APRA's implementation of the definition of capital and the internal ratings-based approach for credit risk – were assessed as falling short of full compliance.[28]

In a number of other areas, APRA's prudential standards go beyond the minimum Basel III capital requirements.[29] For example, in exercising its discretion in relation to the definition and measurement of capital, APRA's prudential standards in these areas have resulted in a more conservative capital adequacy regime for Australia than is required under Basel III. APRA has also implemented some aspects of the Basel III framework ahead of the agreed timeline, and does not draw a distinction between internationally active and internationally non-active ADIs.

24 Basel III is a global non-binding regulatory framework, developed by the Basel Committee on Banking Supervision, to strengthen the regulation, supervision and risk management of the banking sector.

25 APS 110.

26 APS 110, paragraph 3.

27 The consultation package included Basel Committee on Banking Supervision, 'Basel III: A global regulatory framework for more resilient banks and banking systems', December 2010: www.bis.org/publ/bcbs189.pdf; and Basel Committee on Banking Supervision, 'Basel III: International framework for liquidity risk measurement, standards and monitoring', December 2010: www.bis.org/publ/bcbs188.pdf.

28 Basel Committee on Banking Supervision, 'Regulatory Consistency Assessment Programme (RCAP) Assessment of Basel III regulations Australia', March 2014: www.bis.org/bcbs/implementation/l2_au.pdf.

29 See Annex 10 of the above for a listing of such requirements.

Minimum capital requirements
The amount of Tier 1 and Tier 2 capital to be included in an Australian ADI's capital base for capital adequacy purposes, net of all required deductions as described below, is subject to the following minimum capital requirements:[30] a common equity Tier 1 capital ratio of 4.5 per cent; a Tier 1 capital ratio of 6.0 per cent; and a total capital ratio of 8.0 per cent.

New capital buffers
In line with the Basel III framework, the minimum capital requirements will be supplemented by the introduction of new capital conservation and countercyclical buffers. The capital conservation buffer will require Australian ADIs to set aside an additional amount of common equity Tier 1 capital equal to 2.5 per cent of their total risk-weighted assets unless determined otherwise by APRA.[31] The countercyclical buffer will require Australian ADIs to hold additional common equity Tier 1 capital of between zero and 2.5 per cent (as determined by APRA) of their total risk-weighted assets.[32] As of 1 January 2016, capital conservation buffers apply in Australia in full.[33] APRA has the ability to impose the new countercyclical buffers from that date.[34]

IV CONDUCT OF BUSINESS

i Consumer protection

The Australian Securities and Investments Commission Act 2001 (Cth) contains specific prohibitions covering unconscionable conduct, misleading and deceptive conduct, false or misleading representations and unfair contracts in relation to financial services and financial products.

Equivalent prohibitions of general applicability regarding consumer protection are contained in the Australian Consumer Law, a schedule to the Competition and Consumer Act 2010 (Cth). These general prohibitions have broad applicability in the banking sector, for example, in relation to market disclosures and company conduct, where the supply of a financial service or product need not be central to the conduct.

This general consumer protection function is regulated by the ACCC, with the specific consumer protection function as it applies to financial services and products regulated by ASIC. However, there is precedent for ASIC delegating its specific consumer protection function to the ACCC, in light of the ACCC's more general experience and greater resources.

ii Privacy

The handling of personal information by private sector organisations in Australia, including banks and other financial institutions, is regulated by the Australian Privacy Principles

30 APS 110, paragraph 22.
31 APS 110, paragraph 25.
32 APS 110, paragraph 29.
33 APS 110, paragraph 24.
34 APS 110, paragraph 29.

(APPs), which comprise Schedule 1 to the Privacy Act 1988 (Cth) (the Privacy Act). The APPs regulate all handling of personal information, as defined in the Privacy Act, including in relation to the collection, use and disclosure of personal information.

Additionally, Part IIIA of the Privacy Act comprehensively regulates the conduct of credit providers, credit reporting bodies, and certain other entities, in relation to the handling of individuals' credit information. *Inter alia*, Part IIIA regulates the collection, use and disclosure of credit information by credit-reporting bodies and credit providers, and provides customers with access and correction rights in respect of their credit information (subject to certain exceptions). The legally binding Privacy (Credit Reporting) Code 2014 (Version 1.2) supplements the provisions of Part IIIA of the Privacy Act by imposing additional procedural requirements on credit providers and credit reporting bodies.

iii Anti-money laundering and counter-terrorism financing

The Australian Transaction Reports and Analysis Centre (AUSTRAC) is Australia's anti-money laundering regulator and specialist financial intelligence unit (FIU). Its role is to oversee compliance with anti-money laundering legislation by a wide range of financial service providers including all ADIs. AUSTRAC was established in 1989 under the Financial Transactions Reports Act 1988 (the FTR Act), initially as an FIU. Its role was expanded under the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (the AML/CTF Act). In its role as AML/CTF regulator, AUSTRAC supervises regulated entities' compliance with customer identification, reporting, record keeping and other requirements under the AML/CTF Act and the FTR Act.

The AML/CTF Act and its associated rules and regulations seek to reduce the risk that transactions involve money laundering or financing of terrorism. Obligations arising under the AML/CTF Act apply to entities (referred to as reporting entities) that provide designated services, as defined in that Act. Designated services include providing account and deposit-taking services. Reporting entities have obligations to enrol with AUSTRAC, adopt and maintain an anti-money laundering and counter-terrorism financing programme (AML/CTF Program), report certain matters to AUSTRAC and keep records of certain matters. A reporting entity's AML/CTF Program includes customer identification and verification procedures that require the reporting entity to collect and verify information relating to the identity of customers and beneficial owners of customers and a process to determine whether customer or beneficial owner is a politically exposed person, being someone entrusted with a prominent public function, prior to providing a designated service to the customer. Different identification and verification requirements apply depending upon the level of the money laundering and terrorism financing risk associated with the customer. Additional obligations apply to providers of remittance services.

iv Australian financial services licence (AFSL)

Subject to limited exceptions, a person who carries on a 'financial services business' in Australia must hold an AFSL covering the provision of those financial services.[35]

35 Corporations Act, Section 911A(1).

'Financial service' includes the provision of financial product advice, dealing in a financial product and making a market for a financial product, where 'financial product advice', 'dealing' and 'making a market' are widely defined to include many banking products and services.[36]

An exemption from the need to hold an AFSL in respect of the provision of a financial service is available to an APRA-regulated body where the service is one in relation to which APRA has regulatory or supervisory responsibilities and the service is provided only to wholesale clients.[37] A body regulated by APRA includes an ADI and an NOHC.[38] The distinction between a wholesale client (in respect of whom the exemption applies) and a non-wholesale (or retail) client is therefore determinative as to whether an ADI is required to hold an AFSL. Moreover, this distinction may differ depending on the particular class of product or service being provided and the source of funds being applied by the client in relation to the service. For products other than general insurance products, superannuation products and retirement savings account products, a wholesale client will include 'sophisticated clients', 'professional investors' and persons certified as having a gross income of A$250,000 for each of the last two financial years or net assets of A$2.5 million. However, the most commonly used test as to wholesale client status is the A$500,000 test – persons who invest more than A$500,000 in respect of a financial product (other than general insurance products, superannuation products and retirement savings account products) will be considered wholesale for that investment and any financial services which relate to that investment.[39]

The provision of financial products and services by an ADI to a non-wholesale (or retail) client generally requires an AFSL.

An application for an AFSL is made to ASIC and involves an applicant providing ASIC with detailed information in relation to the experience and qualifications of certain personnel, its operations and other information demonstrating its ability to satisfy its obligation to comply with financial services laws. As an AFSL holder, an ADI will be required to comply with statutory obligations imposed on all AFSL holders under the Corporations Act and other legislation relating to the provision of financial services and the specific conditions of its AFSL. AFSL holders are required to report instances of significant non-compliance to ASIC.[40]

The Corporations Act also imposes onerous disclosure requirements in relation to the provision of financial services to retail clients (although there is some relief in relation to basic deposit products[41]) and in some instances product registration requirements.

v Derivatives

Australian on-exchange and over-the-counter (OTC) derivatives markets are regulated through a framework of licensing and disclosure requirements applicable to all financial

36 Corporations Act, Sections 766B, 766C, 766D.
37 Corporations Act, Section 911A(2)(g).
38 Australian Prudential Regulation Authority Act 1998 (Cth), Section 3(2).
39 Corporations Act, Sections 761G and 761GA.
40 Corporations Act, Section 912D.
41 Corporations Act, Section 1012D.

products, including derivatives. In recent years, OTC derivatives regulation has been the subject of significant reform, aimed primarily at implementing G20 commitments made by Australia at the 2009 Pittsburgh summit.[42]

The first phase of Australia's G20 commitments was implemented in 2013 when the Corporation Legislation (Derivative Transactions) Act 2012 (Cth) came into effect, introducing a new Part 7.5A into the Corporations Act. The new Part 7.5A creates a flexible framework for regulating Australia's OTC derivatives markets under which the Minister is empowered to prescribe a class of derivatives as subject to one or more of the following mandatory obligations:

a trade reporting;
b central clearing; or
c trade execution.

Once a class of derivatives is prescribed by the Minister, ASIC may, with the Minister's consent,[43] make derivative transaction rules (DTRs) imposing mandatory trade reporting, central clearing or trade execution obligations in respect of the prescribed class of derivatives.[44] The DTRs are intended to be detailed rules regarding the scope, duration, applicability and consequences for non-compliance with the relevant mandatory obligation(s). All DTRs must be approved by the Minister and the Minister may pass regulations limiting the classes of persons and transactions to which the DTRs apply.

To date ASIC has made DTRs imposing mandatory trade reporting and clearing obligations on Australian market participants both in and outside Australia.

The mandatory reporting obligations are imposed under the ASIC Derivative Transaction Rules (Reporting) 2013 (the Reporting DTRs). The Reporting DTRs require certain reporting entities (including some foreign entities) to report to licensed or prescribed trade repositories, transaction and position information in relation to OTC derivatives in one of the prescribed classes. The classes of derivatives prescribed by the Minister for the purposes of the reporting obligations are limited to interest rate, credit, equity, foreign exchange and commodity (other than electricity) derivatives.[45]

Reporting entities are defined broadly to include all Australian entities, as well as certain other foreign entities to the extent their derivatives activity satisfies prescribed nexus tests.[46] Foreign reporting entities may also rely on alternative reporting to the extent they

42 Specifically that: 'All standardized OTC derivative contracts should be traded on exchanges or electronic trading platforms, where appropriate, and cleared through central counterparties by end-2012 at the latest. OTC derivate contracts should be reported to trade repositories. Non-centrally cleared contracts should be subject to higher capital requirements.'

43 Corporations Act, Section 901K.

44 Corporations Act, Section 901A.

45 Corporations (Derivatives) Determination 2013.

46 Reporting DTRs, Rule 1.2.5.

report to a prescribed repository under a substantially equivalent foreign regime and satisfy a number of other conditions.[47] Supplementary regulations limit the scope of the reporting mandate so that non-financial end users will not be affected.[48]

The reporting mandate has been phased in for different classes of reporting entities over time and is now fully in force for all reporting entities other than the last phase (called 'Phase 3B'). Phase 3B entities are smaller market participants holding total gross notional outstanding positions of less than A$5 billion as at 20 June 2014. Although Phase 3B entities commenced trade reporting in October 2015, their position reporting obligations do not commence until April 2016.

Australia's reporting regime is 'double-sided' (i.e., both parties report), subject to limited single-sided reporting relief. Single-sided reporting relief is available to Phase 3B entities subject to certain conditions being met.[49] In addition, delegated reporting rules allow a reporting entity to be taken to have complied with its reporting obligations if it has appointed in writing another person to report on its behalf and conducted a reasonable level of inquiry to determine whether the reporting is taking place.[50]

Mandatory clearing obligations will commence in April 2016 under the ASIC Derivative Transaction Rules (Clearing) 2015 (the Clearing DTRs). The Clearing DTRs require derivatives in one of the prescribed classes between two 'clearing entities,' or between a 'clearing entity' and a 'foreign internationally-active dealer' to be centrally cleared.[51]

The classes of derivatives prescribed by the Minister for the purposes of the clearing obligations are limited to interest rate derivatives denominated in Australian dollars, US dollars, euros, British pounds and Japanese yen.[52] Supplementary regulations limit the practical effect of the central clearing mandate to a small number of major domestic and foreign banks that act as dealers in the Australian OTC derivatives market.[53]

Australian regulators are currently assessing the case for imposing mandatory trade execution requirements and there may be further developments in this area over the course of 2016/2017.[54]

APRA has also commenced public consultation in relation to proposals to implement margin requirements and risk mitigation standards for non-centrally cleared OTC derivatives entered into by APRA-regulated entities. The proposals are set out in a draft Prudential

47 Reporting DTRs, Subrule 2.2.1(3).

48 Corporations Laws Amendment (2014 Measures No. 3) Regulation 2014, Schedule 2 – Central clearing and trade reporting; Corporations Amendment (Derivatives Transactions) Regulation 2013, Schedule 1 Amendments; Corporations Act Regulation 7.5A.50.

49 Corporations Amendment (Central Clearing and Single-Sided Reporting) Regulation 2015, Part 2 – Amendments commencing 1 October 2015; Corporations Act Regulation 7.5A.71.

50 ASIC Derivative Transaction Rules (Reporting) Amendment 2015 (No. 1); Reporting DTRs, Rule 2.2.7; Corporations Act Regulation 7.5A.72.

51 Clearing DTRs, Rules 1.2.3, 1.2.4, 1.2.5 and 2.1.1.

52 Corporations (Derivatives) Amendment Determination 2015 (No. 1), Schedule 1 – Amendments; Corporations (Derivatives) Determination 2013.

53 Corporations Amendment (Central Clearing and Single-Sided Reporting) Regulation 2015; Corporations Act Regulation 7.5A.64.

54 Council of Financial Regulators Report on the Australian OTC Derivatives Market – November 2015, page 2.

Standard CPS 226 Margining and risk mitigation for non-centrally cleared derivatives (draft CPS 226).[55] Under the current proposals, variation margin requirements are proposed to be phased in from 1 September 2016 to 1 September 2017,[56] and initial margin requirements from 1 September 2016 to 1 September 2020.[57] An APRA-regulated institution will only be subject to margin requirements where its consolidated group's notional amount of non-centrally cleared derivatives exceeds the relevant minimum qualifying level. The margin requirements apply only to transactions with counterparties that also have consolidated group-level activity in excess of the relevant qualifying level. In September 2016, these qualifying levels will be set at A$4.5 trillion for both variation and initial margin requirements. The qualifying levels will progressively reduce over the phase-in period. From September 2017, variation margin will be required for APRA-regulated institutions that are in a margining group with non-centrally cleared derivative activity that exceeds A$3 billion. From September 2020, initial margin will be required for APRA-regulated institutions that are in a margining group with non-centrally cleared derivative activity that exceeds the minimum qualifying level of A$12 billion.

APRA expects the margin requirements to commence for the largest domestically headquartered APRA-regulated institutions from March 2017, at which time the minimum qualifying level will be A$12 billion for variation margin.[58] The risk mitigation requirements are proposed to take effect from 1 September 2016.[59]

vi Personal property reform

On 14 December 2009, the Personal Property Securities Act 2009 (Cth) (PPSA) was passed to harmonise the law and practice on personal property securities through a single federal act supported by a single online register. For the purpose of the PPSA, personal property includes all forms of tangible property (e.g., goods) and intangible property (e.g., trademarks and licences), and excludes land and certain prescribed statutory rights and licences (e.g., water rights and gambling licences). On 4 April 2014, the Attorney-General announced a review of the PPSA. The Review of the Personal Property Securities Act 2009 – Interim Report was submitted to the government on 31 July 2014 and made publicly available on 15 August 2014. The Report considered issues concerning small businesses, and a key recommendation was that a multi-faceted education and awareness-raising campaign be implemented to aid small businesses in relation to the PPSA. The Review of the Personal Property Securities Act 2009 – Final Report was tabled before the Parliament on 18 March 2015. This Report contains 394 recommendations on how to improve the PPSA, with a particular focus upon its simplification.

55 Draft CPS 226; APRA Discussion Paper 'Margining and risk mitigation for non-centrally cleared derivatives' 25 February 2016.

56 Draft CPS 226, paragraph 13.

57 Draft CPS 226, paragraph 19.

58 APRA Media Release, www.apra.gov.au/MediaReleases/Pages/16_08.aspx, accessed 12 March 2016.

59 Draft CPS 226, paragraph 7.

While the government has not released an official response to the Review, deregulatory measures came into effect in 2015, simplifying the PPSA's application to short-term leases of serial numbered goods[60] and clarifying the situation for international financiers of mobile equipment such as aircraft objects.[61]

vii Consumer credit

The National Consumer Credit Protection Act 2009 (Cth) (the NCCP Act) regulates the provision of consumer credit in Australia and is designed to protect consumers' interests. The NCCP Act includes the National Credit Code (NCC) as a schedule. ASIC is responsible for administering the NCCP Act. The NCC applies to persons and entities that engage in credit activities (e.g., providing credit under a credit contract or consumer lease, or benefiting from a mortgage or guarantee relating to a credit contract) provided to an individual or strata corporation wholly or predominantly for personal, domestic or household purposes or to purchase, renovate or improve residential property for investment purposes, or a consumer lease. Any person who engages in such credit activities is required to hold an Australian credit licence (ACL) or be entitled to rely on an exemption from the requirement. ACL holders are subject to general conduct obligations, including to engage in credit activities efficiently, honestly and fairly. ACL holders are also required to comply with responsible lending obligations that require the licensee to make reasonable enquiries about the consumer's requirements and objectives, take reasonable steps to verify the consumer's financial situation and undertake an assessment as to whether the proposed credit contract will be unsuitable for the consumer before entering into the credit contract. The NCC imposes prescriptive disclosure obligations relating to the entry and ongoing conduct of consumer credit and consumer lease transactions and provides consumers with rights to challenge unjust transactions or unconscionable interest or charges or to apply for variations on the grounds of hardship.

V FUNDING

i Funding sources

Australian ADIs primarily source their funds from customer deposits and (domestic and international) wholesale markets. Under APS 210, ADIs are required to maintain an annual funding strategy, as well as a contingency funding plan.

ii Liquidity standards

APRA sets liquidity requirements and guidelines for Australian ADIs through prudential standard APS 210 and the Prudential Practice Guide on Liquidity.

60 Personal property Securities (Amendment) (Deregulatory Measures) Act 2015 (Cth).

61 International Interests in Mobile Equipment (Cape Town Convention) (Consequential Amendments) Act 2013 (Cth).

APS 210 requires an ADI[62] to 'maintain an adequate level of liquidity to meet its obligations as they fall due across a wide range of operating circumstances'.[63] It vests an ADI's board and management with the responsibility to maintain an appropriate liquidity management strategy,[64] which must be regularly reviewed by the ADI.[65]

Banks with relatively straightforward business models are subject to a minimum liquidity holding regime,[66] which specifies a level of eligible liquid assets (as a percentage of liabilities) that must be held, determined on a case-by-case basis, taking into account any off-balance sheet commitments. Larger ADIs with a more complex liquidity risk are classified as 'LCR banks', and are required to apply various scenario analyses to test their position and set their liquidity requirements.

As of 1 January 2015, LCR banks are also required to satisfy an extra test requiring them to maintain adequate high-quality liquid assets as determined by their liquidity coverage ratio.[67] The aim is to promote short-term resilience in an acute short-term (30 day) stress scenario by maintaining a risk profile with quality assets. These requirements are in line with Basel III recommendations.

iii Recovery and resolution

RBA as lender of last resort

If an ADI is unable to meet its obligations or is likely to suspend payments, the RBA has discretion to act as a lender of last resort.[68] This discretion allows the RBA to lend monies to any Australian or foreign ADI, although the RBA has indicated that it would only act if the Australian financial system were compromised. Since Australia's federation in 1901, last-resort support has been provided sparingly by the RBA.

Claims scheme and government guarantee scheme for large deposits and wholesale funding

The global financial crisis prompted the government to establish two schemes under which it guaranteed certain obligations of ADIs. The FCS was established to effect a government guarantee of deposits of up to A$1 million with Australian ADIs. The Guarantee Scheme for Large Deposits and Wholesale Funding (Guarantee Scheme) was established to effect a government guarantee of larger deposit balances with ADIs and certain ADI wholesale funding liabilities.

Under the FCS, the government guarantees certain 'protected accounts'[69] held at an Australian ADI in the event that the ADI becomes a 'declared ADI'.[70] This will occur if APRA

62 APS 210 in some respects applies differently to different categories of ADIs, including foreign-owned subsidiaries.

63 APS 210, paragraph 1.

64 APS 210, paragraph 4; in relation to a foreign ADI, the responsibilities of the Board in APS 210 are to be fulfilled by the senior officer outside Australia.

65 APS 210, paragraph 10.

66 APS 210, paragraphs 60 to 62 and APS 210, paragraph 135.

67 APS 210, paragraph 52.

68 Reserve Bank Act 1959 (Cth), Sections 8 and 26.

69 Banking Act, Sections 5(4), (5), (6) and (7).

70 Banking Act, see Section 5 for the definition of 'declared ADI' and Section I6AF.

has applied to the Federal Court of Australia to wind up that ADI, and the Finance Minister has made a declaration under Section 16AD of the Banking Act.[71] 'Protected accounts' are now protected up to a cap of A$250,000 per account holder per ADI.[72]

Customers with deposit balances above the level covered by the FCS could still take advantage of a government guarantee under the Guarantee Scheme, although the Guarantee Scheme closed to new liabilities on 31 March 2010.[73]

iv Tax

Generally, Australian resident taxpayers are assessed on their worldwide income, while non-resident taxpayers are only taxed on income derived from Australian sources. Non-residents are not typically subject to capital gains tax, except where the gains relate to Australian land, interests in Australian land, or shares or rights in land-rich entities, or where the gains relate to an asset of an Australian permanent establishment.

Australian subsidiaries of a foreign company would typically be taxed on their worldwide income at the current corporate rate of 30 per cent, while a foreign company would generally only be taxed on income or gains derived from Australian sources (subject to the comments below on double tax agreements (DTAs)).

Tax treaty network

Australia has a highly developed network of DTAs, the main function of which is to avoid the double taxation of income. New treaties are regularly renegotiated with major trading partners to reflect modern treaty practices. These agreements generally prevail over the domestic tax legislation, to the extent that they are inconsistent. Under a DTA, the business profits of a foreign bank would generally not be taxed in Australia unless the foreign bank operates in Australia via a permanent establishment.

Withholding tax

Australian income tax law has a series of withholding events for various payment types. Relevantly, amounts paid by an Australian resident entity to a non-resident as a dividend, royalty or interest will generally be subject to withholding tax. The basic rate of withholding is 30 per cent for dividends and royalties, and 10 per cent for interest, although it will often be less under a relevant DTA or an exemption under Australian domestic law. For interest payments, foreign banks resident in the United States, United Kingdom, Norway, Finland, Japan, France, South Africa, Switzerland or New Zealand that satisfy relevant conditions may access the 'treaty lender concession' contained in the relevant DTA, which reduces the rate of interest withholding tax to nil (subject to integrity provisions, including the use of back-to-back loan arrangements to fall within the concessions). Foreign banks resident in Germany are also expected to enjoy the lender treaty concession subject to the recently signed DTA coming into force.

71 Banking Act, Sections 14F and 16AD.

72 See APRA, 'Financial Claims Scheme technical Frequently Asked Questions for ADIs': www.apra.gov.au/CrossIndustry/FCS/Pages/fcs-faq.aspx.

73 Australian Treasury media release, Government Withdraws Bank Funding Guarantee and State Guarantee', 7 February 2010: http://ministers.treasury.gov.au/DisplayDocs.aspx?doc=pressreleases/2010/013.htm.

Australian domestic law also contains a 'public offer' exemption that applies to arrangements involving lenders in any foreign country where the debt is publicly offered for participation. This exemption is subject to a set of prescriptive requirements.

In the case of dividends, a withholding tax exemption exists to the extent the profits from which the dividend is sourced have already been taxed at the corporate level ('franked dividends') or represent income derived from foreign business operations ('conduit foreign income'). More recent treaties with major trading partners allow for the dividend withholding tax rate to be reduced to nil in certain circumstances.

Taxation of financial arrangements (TOFA)

The TOFA regime contains rules relating to the tax treatment of gains and losses from 'financial arrangements', and in particular codifies the timing of bringing gains and losses to account for income tax purposes. Where the TOFA regime applies, *prima facie*, taxpayers are required to bring sufficiently certain gains or losses to account on an accrual basis, and insufficiently certain gains or losses to account on a realisation basis. Where certain conditions are satisfied, taxpayers may elect to apply one or more of four alternative methods (hedging financial arrangements, financial reports, fair value and foreign exchange retranslation methods) of bringing gains and losses to account, typically enabling taxpayers to more closely align their accounting and tax outcomes.

Thin capitalisation

Australian thin capitalisation rules apply to restrict the deductibility of debt deductions claimed by Australian entities when the debt borrowed by the entity to fund the Australian assets exceeds certain limits. These rules are intended to prevent multinational enterprises shifting profits out of Australia by funding their Australian operations with excess debt in order to reduce their Australian taxable income. In determining what is debt and equity, Australian tax law contain rules that adopt a 'substance over form' approach.

There are a number of different methods for calculating the maximum debts permitted under the thin capitalisation rules. These include the 'safe harbour' limit, the 'arm's-length' limit and the 'worldwide gearing limit'. The calculation of the debt limits varies depending on the kind of entity. Entities can elect the method for calculating maximum debt that achieves the highest deduction and is the easiest to administer.

Transfer pricing

Australia has a transfer pricing regime aimed at ensuring that cross-border transactions are based on an arm's-length price. The arm's-length principle uses the behaviour of independent parties as a benchmark for determining the appropriate income and expense that is allocated between the cross-border parties.

Under a recent reform of the transfer pricing rules, the arm's-length principle will be determined consistently with the OECD guidance and will operate on a self-assessment basis. Entities are also now required to have transfer pricing documentation prepared to support their self-assessed position prior to the lodgement of their income tax return. Further, these new rules will enable the Commissioner of Taxation to have the power to reconstruct (and not just question) cross-border transactions for Australian tax purposes, where the Commissioner of Taxation determines that parties have not entered into a transaction at arm's length.

Legislation has recently passed in Australia giving effect to the OECD's new transfer pricing standards as part of Action Item 13 of the OECD Base Erosion and Profit Shifting Action Plan. These new measures will require entities with annual global income of A$1 billion or more, to provide annual information to the Australian Taxation Office (ATO) about specific information on the global activities of the entity which includes location of its income and taxes paid ('country-by-country report'), an overview of an entity's global business, its organisational structure and transfer pricing policies, and the local entity's intercompany transactions. The Australian government has recently signed multilateral agreements which will facilitate the exchange of country-by-country reports between tax authorities of the 31 countries signatory to that agreement.

The US Foreign Accounts Tax Compliance Act (FATCA)

FATCA is a US regime that was introduced in 2010 to combat offshore tax evasion by US persons. The rules operate by imposing due diligence and reporting obligations on offshore accounts held by US persons with non-US financial institutions (foreign financial institutions). On 28 April 2014, the Australian and US governments signed an intergovernmental agreement (IGA) intended to reduce the compliance burden on Australian banks. Under the IGA, Australian financial institutions may satisfy their US reporting requirements by reporting information to the ATO, which then coordinates the sharing of information with its US counterpart. The IGA also improves existing tax information-sharing arrangements between Australia and the US for the purpose of preventing tax evasion.

Domestic legislation has been passed in Australia that gives effect to the IGA.

v Stamp duty

New South Wales is the only jurisdiction that continues to impose stamp duty on a mortgage, charge or other lien that encumbers property located in New South Wales, and that secures repayment obligations in respect of a loan or certain other types of financial accommodation (advances). This head of stamp duty, known as 'mortgage duty', is calculated at an approximate rate of 0.4 per cent of the amount of the advances that is represented by the proportion of the value of the encumbered property located in New South Wales compared with the value of all the encumbered property, wherever located. However, mortgage duty is currently scheduled to be abolished from 1 July 2016.

vi Goods and services tax

Australia has a consumption tax known as the 'goods and services tax' (GST), which is imposed at a current rate of 10 per cent on the taxable supply of goods and services in Australia. The supply of most banking and financial services is not subject to GST because it is an input-taxed financial supply. However, parties to an input taxed financial supply may not be entitled to a refund of the GST cost of their acquisitions that relate to that supply. This unrecoverable GST cost will not be an issue if the goods or services are exported such that they are not subject to GST because they are GST-free.

VI CONTROL OF BANKS AND TRANSFERS OF BANKING BUSINESS

The following restrictions on changes in ownership apply to Australian ADIs:

Legislation	*Restriction*
Corporations Act	An acquirer may not acquire an interest (broadly defined) of more than 20 per cent in an Australian ADI that has more than 50 shareholders or that is listed on the ASX, except by complying with the takeovers provisions in Chapter 6 of the Corporations Act. These provisions require that the acquirer makes the terms of the offer available to all shareholders unless an exception applies.
Australia's foreign investment framework	Under Australia's foreign investment rules, the Treasurer has the power to block or unwind the following transactions if he or she finds that they are contrary to the national interest: *a* an acquisition by a foreign person of 20 per cent or more of an Australian ADI where the gross assets of the target are in excess of, or the consideration values the target at more than, A$252 million (indexed annually); *b* an acquisition by a foreign person (including an offshore takeover) if it would result in a change of control of an Australian ADI where the gross assets of the target are in excess of, or the consideration values the target at more than, A$252 million (indexed annually); or *c* an acquisition by a foreign government investor of 10per cent or more (and in some cases less than 10per cent) of an Australian ADI, regardless of the value of the target. Higher thresholds may apply in relation to (a) and (b) under Australia's network of free trade agreements. Any of the above acquirers should apply for and obtain a statement of no objection from the Treasurer before proceeding with any of the above acquisitions.
Financial Sector (Shareholdings) Act 1998 (Cth) (FSSA)	A person may only acquire more than 15 per cent of a financial sector company (as defined in the FSSA) if the acquisition is approved by the Treasurer (even where the 15 per cent shareholding limit is not exceeded, the Treasurer may declare that a person has 'practical control'). The Treasurer may approve an application to hold a stake in a particular financial sector company of more than 15 per cent if it is in the national interest.
Financial Sector (Business Transfer and Group Restructure) Act 1999 (Cth) (the FS Act)	The FS Act regulates a transfer of the business of an ADI. Two ADIs may apply to APRA for the transfer of business from one ADI to the other. In order to grant approval, APRA must be satisfied that the transfer should be approved, having regard to the interests of the depositors of the transferring body when viewed as a group, the interests of the depositors of the receiving body when viewed as a group and the interests of the financial sector as a whole, and any other matters that APRA considers relevant. APRA must consult with the ACCC, ASIC and the Commissioner of Taxation in deciding on the application.
* The specific requirements of the application process are outlined in the APRA, Transfer Rules No. 1 of 2015.	

VII THE YEAR IN REVIEW

During 2015, the Australian financial sector was stable and healthy. The banking industry maintained its strong profitability, with an average return on equity (RoE) of around 15 per cent, a slight increase of 1 per cent on the average RoE for the previous decade,[74] but a slight decrease from 15.5 per cent from the previous year.[75] This is despite continued demands on the Australian banking industry to absorb ongoing regulatory reform, in line with the trend towards greater, more prescriptive regulation of banking globally.

Although Australian banks continued to be managed well with robust capital levels through 2015, the year saw significant regulatory attention devoted to bank exposure to risks in the housing market represented by high house prices, increasing household debt, muted income growth, interest rates at historic lows and rising unemployment.[76] Regulatory responses included increased data collection endeavours for risk assessment purposes, the targeting of specific ADIs that exhibited indications of higher risk activities for additional supervisory oversight and issuing prudential practice guidelines for residential mortgage lending.[77] Regulatory scrutiny of residential lending practices is expected to continue in 2016.

VIII OUTLOOK AND CONCLUSIONS

Despite the ongoing stability of the Australian financial sector, the further strengthening of APRA-regulated entities is likely to remain on the Australian regulatory agenda.[78]

The low interest rate environment poses a challenge for Australian banks, impacting profit margins and heightening risks in the housing market.[79] Accordingly, the sector's resilience may be tested in 2016, as the residential housing market begins to show signs of slowing growth.[80]

In late 2015 the Australian government released its response to the Financial Systems Inquiry's (FSI) Final Report.[81] The FSI was tasked with making recommendations that would ensure the strength, stability and growth of Australia's financial system. The Australian government's response to the recommendations suggests its 2016/2017 reform agenda may include measures to introduce greater powers for Australian regulators, further refinements to ADI capital requirements, increases to risk-weights for ADI mortgage exposures and a prudential focus on the total loss-absorbing capacities and leverage ratios of ADIs.

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74 APRA, Annual Report 2015, page 19.

75 KPMG, Major Australian Banks: Full Year Results 2015 at www.kpmg.com/AU/en/IssuesAndInsights/ArticlesPublications/Financial-Institutions-Peformance-Survey/Major-Banks/Documents/major-australian-banks-full-year-results-2015.pdf.

76 APRA, Annual Report 2015, page 7; APRA Submission Inquiry into home ownership (26 June 2015), 2–3 at www.apra.gov.au/Submissions/Documents/Inquiry-into-home-ownership-Jun2015.pdf.

77 APRA, Annual Report 2015, page 28.

78 APRA, Annual Report 2015, page 19.

79 APRA, Annual Report 2015, page 17.

80 ANZ/Property Council Survey, March Quarter 2016, page 1 at www.propertycouncil.com.au/Web/EventsServices/ResearchData/Sentiment__Survey/Web/Events___Services/Research_Services/ANZ_Survey.aspx.

81 Government Response to the Financial System Inquiry: Improving Australia's Financial System at http://treasury.gov.au/PublicationsAndMedia/Publications/2015/Govt-response-to-the-FSI/html.

The 2016/2017 reform agenda may also include domestic reforms in taxation and superannuation, as well as the domestic implementation of continuing international reforms under the Basel framework. There will also be a number of consultations, including in relation to new enforcement tools for ASIC, proposed changes to the AML/CTF regime and proposals for recapitalisation frameworks and other Basel-related reforms.[82]

Regulators are also closely monitoring the implications of nascent distributed ledger technology and considering possible regulatory responses.[83]

82 Randall Mikkelsen and Alexander Robson (eds.), 'State of Regulatory Reform 2016: A Special Report,' 31 at https://risk.thomsonreuters.com/sites/default/files/S028577.pdf.

83 Greg Medcraft, 'Op-ed: Blockchain' (26 October 2015) at http://asic.gov.au/about-asic/media-centre/asic-responds/op-ed-blockchain/.

Appendix 1

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Hanh Chau is a partner in Gilbert + Tobin's Tax group specialising in goods and services tax and stamp duty in each Australian jurisdiction. She has advised on the indirect tax consequences of a wide range of transactions such as infrastructure projects, asset and business sales, internal corporate reorganisations, takeovers and initial public offers, and major financing structures. She has also advised numerous clients across a range of industries on acquisition and disposal structures. Ms Chau holds a bachelor of commerce and law (honours) and a master of laws from the University of Sydney.

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Peter Feros is a partner in Gilbert + Tobin's tax group. Prior to joining Gilbert + Tobin, he was a tax partner in a Big Four accountancy practice. He has over 19 years' experience advising Australian listed and foreign multinational companies, including banks, on Australian corporate taxation. He provides advice in relation to mergers and acquisitions, due diligence and structuring of corporate and collective investment vehicle investments. He also has extensive experience in dealing with the Australian Taxation Office (ATO), and has advised many clients in connection with ATO audits and disputes. He also has extensive experience in advising on the income tax consequences of inbound and outbound investment, particularly in relation to financing transactions. Some recent examples of his work include advising issuers, dealers and investors in relation to the income tax-related aspects of debenture issues and syndicated loan facilities, including advice in connection with the public offer exemption; advising various local and international companies on the income tax aspects of M&A; and advising various local and international private equity funds in relation to Australian income tax consequences. Mr Feros is a ranked lawyer in *Chambers Asia-Pacific 2016*.

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