15 September 2025

Productivity Commission
Level 8, Two Melbourne Quarter
697 Collins Street
Docklands VIC 3008

Submitted online

Interim Report Pillar 1: Creating a more dynamic and resilient economy

The Australian Financial Markets Association (AFMA) is pleased to respond to the Productivity Commission's interim report on creating a more dynamic and resilient economy. The timing of this report is particularly pertinent in light of the Reserve Bank of Australia's recent decision to downgrade the economy's medium-term growth potential and again cut expected productivity growth, which has been relatively stagnant since 2016.

AFMA supports the regulatory related recommendations made by the Commission and agrees with the key issues identified. AFMA expands on these themes below and provides specific recommendations to address these issues, which would boost productivity, growth, and business dynamism, as it relates to the financial services sector.

AFMA is the peak industry body for Australia's financial markets industry. We represent over 130 key financial market participants including all major Australian banks, regional Australian banks, leading international banks, global brokers, all government treasury corporations, Australian superannuation funds, asset managers, large energy firms, carbon market participants and critical legal and market infrastructure providers. AFMA stands for efficiency, integrity, and professionalism.

At their core, financial markets contribute to increased productivity and economic growth across the Australian economy in two key ways:

- providing high quality, innovative and cost-effective funding, financial intermediation and risk management and investment services to Australian businesses; and
- enhancing the attractiveness of Australia as an international financial centre, by providing services to overseas clients, investment opportunities in Australia, and generating employment, investment, and tax revenue in Australia.

AFMA provides key examples, observations, and proposals to boost national productivity, dynamism, and growth. Our proposals are simple in nature – low to no cost, targeted, easily actionable, and directly deliver productivity lifts for Australia. Simple and measured productivity gains like these are essential to reverse Australia's dwindling productivity and growth arising from a myriad of increasing and inefficient regulation, costly measures, and resource intensive requirements. Returning pragmatism and holistic engagement to the policy and regulatory process must be a key part of reshaping the Australian economy to drive increased output. Australia is perceived as an expensive and challenging place to do business and our reputation is falling relative to peers. The cost savings and benefits arising from our suggestions should not be underestimated.

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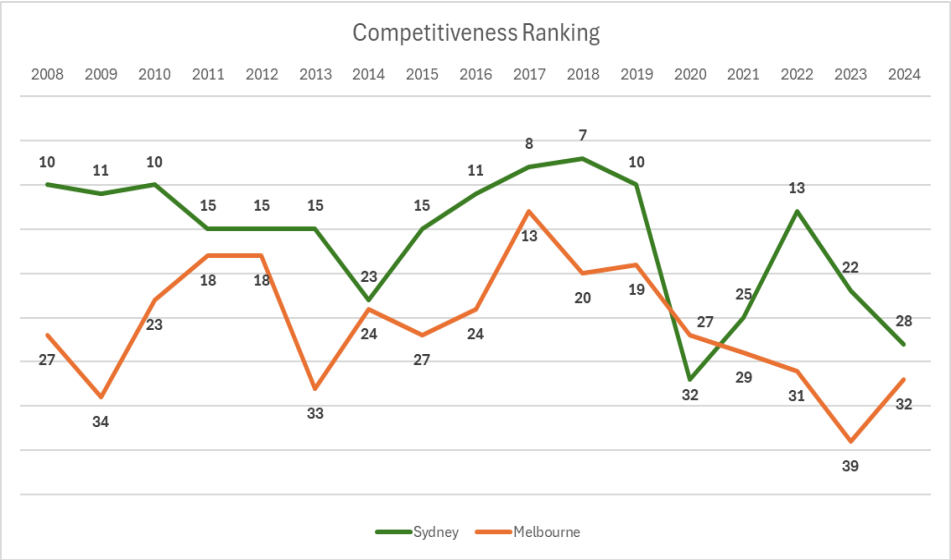
Impact of regulation on business dynamism in the financial services sector

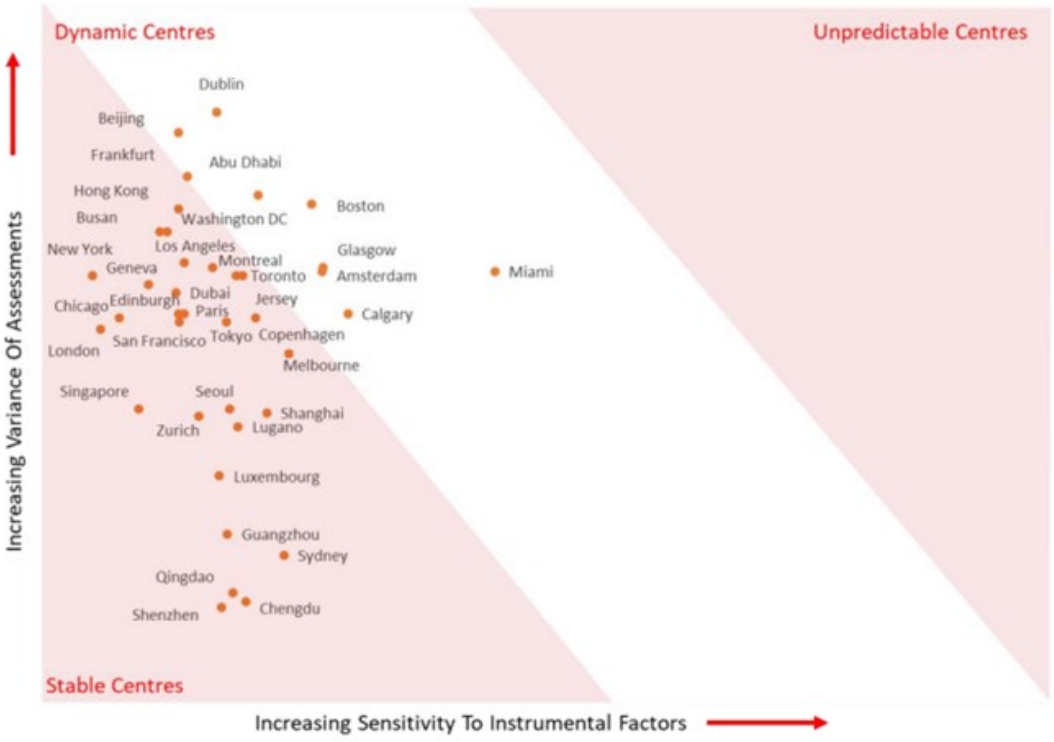
The Global Financial Centre Index (GFCI) assesses and ranks the competitiveness of every financial centre globally on a bi-annual basis. As evidenced below, Sydney ranks 28th globally, while Melbourne is ranked 32nd. The objective evidence below highlights that the relative attractiveness of Australia as a financial centre has been in decline. Both centres have fallen materially in perception of competitiveness over the last five years, as evidenced in the below graph.



Graph 1

It is AFMA's view the graph highlights that the perception of Australia as a competitive place to conduct business dropped and has consistently remained lower since the Hayne Royal Commission, and the perception of Australia as a dynamic location for capital did not recover from the pandemic. It is AFMA's assessment that in responding to the Commission's review and implementing its recommendations, adequate weight was not given as to the resulting impact on Australia as a place to do business and as a destination for capital. Business dynamism cannot be achieved without efficient and right-sized regulation, which comes from an appropriate balance of safeguards and protections with ambition for competition and economic growth. It is AFMA's experience that it has become harder and more costly to do business in Australia. While other jurisdictions have sought to attract capital to their cities by creating a pro-investment environment, Australia did not follow suit.

As shown below in the September 2024 GFCI graph, Sydney and Melbourne's longstanding reputations as stable operating environments remain. However, our dynamism is significantly out of pace with other centres. AFMA regards that the current operational and regulatory environment are barriers to enhancing our economic dynamism.



Graph 2

1. **Corporate tax reform to spur business investment**

Draft Recommendations 1.2 & 1.3

AFMA notes Draft Recommendations 1.2 & 1.3 in the interim report, namely to "lower the headline company tax rate to 20%" and "increase a net cashflow tax of 5%." We provide our comments in relation to these draft recommendations below.

Lower the headline company tax rate to 20%

This otherwise laudable aspiration comes with a significant caveat, being that the company tax rate for Australia's largest companies with turnover above $1 billion, would remain at 30%. Coupled with the proposed imposition of a cashflow tax under draft recommendation 1.3, this would effectively lift the effective tax rate for such companies to approximately 35%.

AFMA's primary objection with Australia's currently uncompetitive headline company tax rate of 30% is that it hinders Australia's ability to attract foreign investment. It follows that the companies most able to attract foreign capital are those established companies with scale, such as those with turnover of over $1 billion. As such, increasing the tax rate for such companies would be a severely retrograde step in terms of Australia's attractiveness as a destination for capital, as well as Australia's productivity and wages. It would send a clear message that Australia is not a jurisdiction that rewards aspiration and is not a place where businesses can be built with scale.

In addition, using turnover to determine companies for which there would not be a company tax rate reduction is a crude metric, one which applies inappropriately for banks and other participants in the financial services sector, given the low-margin, high -volume businesses they operate. A review of the 2022/23 tax transparency data highlights a significant number of foreign bank branches that have turnover in excess of $1billion, none of which would be considered to be "large" and all of which would

have a strong incentive to reduce the amount of business undertaken in Australia, given the ability to provide services to Australian customers outside Australia.

Increase a net cashflow tax of 5%

While AFMA understands the rationale for the net cashflow tax, insofar as it spurs investment and expenditure on capital items given the immediate tax benefit arising from such investment, our primary concern is that the bespoke nature of the cashflow tax would render any tax as ineligible for relief under a Double Taxation Agreement.

Generally, Double Tax Agreements will articulate "covered taxes" which are the taxes for which relief is provided through either exemptions or availability of foreign tax credits. Taking the Australia/US Double Taxation Agreement as an example, Article 2 states that, in Australia, the covered tax is the Australian income tax and that the Agreement will apply to "any identical or substantially similar taxes." Given the design of the cashflow tax, by providing tax deductibility for capital expenditure and exempting interest income and expense, it is AFMA's view that the cashflow tax would not be a covered tax and hence not eligible for relief under the Double Taxation Agreement.

AFMA also notes, with concern, the comments that interest payments and receipts will be excluded from the net cashflow tax, ostensibly to reduce the bias towards debt funding. Putting aside that Australia already has robust thin capitalisation rules that limit the availability of debt and deductions arising, it is clear that the Commission has no understanding as to how to apply the net cashflow tax to financial services firms. Noting the Commission's assumption that the cashflow tax would give rise to a corporate tax deduction as opposed to a franking credit (noting that the basis for this assumption is not articulated), the proposal for financial services firms of levying additional company income tax would create distortions and an unlevel playing field.

2. Regulating to promote business dynamism

Information request 2.1.

AFMA agrees with the impacts caused by the current inefficient regulatory system as identified by the Productivity Commission. In particular, the financial services sector concurs with the detrimental impacts identified in the Commission's Box 2.1. which are having a continuing and worsening impact on the sector. We believe the outcomes of this are seen in Graph 2 above.

Specific examples

As expressed in AFMA's previous submission, AFMA has developed an initial list of regulations currently managed by ASIC and associated regulatory processes that we believe could be easily fixed by ASIC if directed by government, as part of ASIC's simplification project. These are provided in the appendix, and we encourage government to address these as part of their simplification project.

Tasks and targets from government

Wholesale markets service a separate cohort and sophistication of clients than retail and consumer markets. Much of current legislation and regulation is unwieldy and costly, as it often conflates retail and wholesale issues. To unlock business dynamism this needs to end. This was an issue recently identified by the UK Government who have expressly tasked their financial markets regulators with assessing the impact of the 'Consumer Duty' and whether it unduly complicates wholesale regulation. We recommend that the Government likewise give this task to Australian regulators.

Information request 2.1. recommendations:

- ASIC to amend inefficient regulations as part of its simplification project
- Direct regulators to assess the impacts of the 'Consumer Duty'

Information request 2.2.

AFMA and our peer associations were key supporters of the Regulatory Initiatives Gird [the grid], a useful tool which provides a holistic overview of the wide range and volume of regulation heading to institutions. While a promising initiative, the Grid is in its early days and many forthcoming initiatives are yet to make it onto the grid. For the grid to operate most productively it is important that all initiatives are on the grid. At the same time, we encourage the next step to be removal from the pipeline, rules and regulations which add to costs and burden for no real benefit. We believe close monitoring and discussion of items on the grid, as well as due consideration as to their impact and material need, would be a useful tool in measuring the quality and burden of financial services regulation.

International first approach

A key issue that creates significant burden, costs and challenge for the financial services sector specifically is the lack of alignment or recognition of comparable pre-existing international standards. Therefore, as expressed on pages 34-35 under the proposal *'Set a clear reform agenda by developing a whole-of-government statement on regulation',* AFMA strongly supports the sentiment and intent to include *"an additional principle specifying that regulators and policymakers should, as a default, rely on trusted processes from other regulators in Australia and overseas, and only develop bespoke rules where there is a clear need to do so. What is good enough for Canada or the European Union should in nearly all cases be good enough for Australia."* We believe this principle should be included in all relevant policy and consultation guidance documents and be standard practice, including in the early initial policy formation period, such as the '7 Impact Analysis Questions' under the guide to Policy Impact Analysis.

Information request 2.2. recommendations:

- Ensure all regulatory initiatives are on the Regulatory Initiatives Grid
- Remove from the Grid any upcoming rules and regulations which add to costs and burden for no real benefit
- Adopt an international first approach

Information request 2.3.

As expressed above and in our response to information request 2.1, we believe the financial services sector is in immediate need of regulatory review and simplification. This sentiment was reinforced by the Australian Law Reform Commission [ALRC's] findings.

Taskforce to drive and oversee the required changes to legislation

While progressing the suggestions made in our appendix would be a welcome start, this does not go far enough to address the breadth and depth of regulatory and legislative challenges in the financial services sector. As identified by the Australian Law Reform Commission [ALRC], the current state of the Corporations Act makes business operations complex, costly, and challenging for both industry

and regulators alike. AFMA agrees that reform of the *Corporations Act 2001* [Corps Act] is necessary if we are to unwind the challenging business operational environment that has been created. Over a year on from the ALRC's report to Government, we are yet to see a pathway for reform, including in the recently published Regulatory Initiatives Grid. The need to refresh the Corporations Act was also noted in recent comments by the ASIC Chair.

Of the ALRC's recommendations, most notably, AFMA strongly support the ALRC's recommendation to establish a taskforce to carry forward the recommended reforms. The formation of such a small group to drive and oversee the required changes to legislation would be the most efficient path to reform. The same taskforce would also be well placed to provide Government advice in relation to the regulation, oversight, and policy formation process of retail [consumer protection] and wholesale [market conduct] legislation, as it relates to challenging legislation that is beyond the Corps Act but has emulated its inefficiencies. Creation of a taskforce was also suggested by the ASIC Chair.

Improving consultation practices

As raised throughout the interim report, the Government already has a number of documents and procedures at its disposal to support good policy formation and consultation practices, managed and overseen by the Office of Impact Analysis in the Department of Prime Minister and Cabinet. However, in AFMA's experience, there have been a number of negative unintended consequences for industry that have increased cost, decreased productivity, and dynamism, and negatively impacted Australia's perception as a place to do business that could have been avoided by better co-ordination between government, authorities, and industry. We agree with the sentiment in the report 'Australia's regulatory policy is better on paper than in practice'.

AFMA strongly believes that higher quality collaboration will lead to materially better policy and regulatory outcomes for all. Government and regulators should not underestimate the waste and unnecessary costs arising from poor engagement and consultation processes that require industry to respond to proposals that are not well conceived or developed. While fostering a more collaborative and communicative culture and approach to consultation more broadly is important, AFMA believes that the Office of Impact Analysis should more closely oversee and monitor consultation practices and there could be a case for refreshing or reviewing relevant documents such as the Best Practice Consultation Guidelines and Guide to Policy Impact Analysis.

At the same time, we strongly agree with the findings that the Regulatory Impact Analysis is an important tool, but that Australia is not using it well. AFMA has found that the impact, both in terms of resourcing, burden, and broader challenges, are consistently underestimated. To address this issue, AFMA recommends industry be asked to provide their views and estimations on impact to help formulate a more realistic view.

Furthermore, while a highly important regulatory tool, Post Implementation Reviews are rarely carried out. They should be conducted for material legislative or regulatory change and the reviews should be independent, and the findings of the reviews should be disclosed. This must happen to embed a culture of improvement and learning inside the regulators.

Information request 2.3. recommendations:

- More greatly utilise the Regulatory Initiatives Grid to remove from the pipeline, regulations which serve no material benefit and/or add unnecessary cost to industry
- Establish a taskforce to reform the Corporations Act and provide advice to government on policy to aid the policy and regulatory formation process

- Substantially improve the consultation and policy formation process
- Regulatory Impact Analysis is often inaccurate and must be improved with input from the impacted industry
- Independent Post Implementation Reviews or new regulatory initiatives should be carried out more frequently

Information request 2.4.

Statements of Expectations

AFMA agrees that Statements of Expectations for regulators are a critical tool to enact change in approaches to regulation and supervision by additionally proscribing the need for consideration of productivity, global competitiveness, and economic growth. It is important that regulators be required to consider the best interests of the Australian economy. A better focused approach to regulation and enforcement would boost industry's ability to target growth, realign with other global regulators and foster a shared ambition between government, regulators, and industry.

AFMA believes it important for a government to set out its expectations every new Parliamentary term to ensure that the regulators are performing in line with the objectives of government.

Legislated objectives and targets

While Statements of Expectation and guidance are useful tools, we encourage the Government to set out specific growth, competition and productivity objectives for regulators and government agencies. This has been successful in the UK for example, where the Financial Services and Markets Act 2023 legally reformed the regulators' objectives which gave regulators a new secondary objective for them to advance the growth and international competitiveness of the UK's economy and financial services sector when discharging their duties. We would encourage the Australian government to do likewise.

In another recent example, the UK- the Government considered and identified key areas of financial services where the regulatory burden and requirements were causing delays and slowing the desired rate of authorisations and approval. In response, they set the regulators a mix of targets for rates of approval and authorisation, including statutory ones.

Restore appropriate independent accountability and oversight

The Financial Regulator Assessment Authority (FRAA), an independent expert panel, was established and mandated to carry out independent biennial reviews on the effectiveness and capabilities of Australia's financial services regulators. Despite the modest cost of maintaining the Royal Commission mandated biennial review cycle, ever-growing regulatory priorities of regulators and changing nature of finance globally, the reviews were reduced to five yearly at the 2023-24 Federal Budget. We believe a five yearly review cycle is ineffective and out of pace with the rate of change in the sector. Such a cycle also effectively dismantles the FRAA structure, as FRAA panellists would have little incentive to remain for many years given the time between reviews – this has borne out in practice through the resignation of each FRAA panellist since the initial Government announcement to reduce review frequency. AFMA strongly recommends the reinstalment of the biennial review cycle.

Furthermore, reviews into Australian organisations' frameworks and practices in relation to governance, capability, and accountability are commonplace and carried out by regulators. We believe it only reasonable that regulators are held to the same standards and believe the FRAA could play a

similar role in considering and reviewing whether organisational and cultural drivers have contributed to a regulators' way of operation, as happens with industry reviews.

Information request 2.4. recommendations:

- Redefine the Statement of Expectations for ASIC, APRA, AUSTRAC, ACCC, AER, CER, and AEMC to include the objectives of improving productivity, competition, and economic growth
- Legislate consideration of growth and competitiveness targets for regulators
- Actions and approaches taken by regulators should be measured against these new additional goals
- Reinstate the Financial Regulator Assessment Authority's biennial review cycle

AFMA would welcome the opportunity to discuss this submission further and would be pleased to provide further information or clarity as required. Please contact Brett Harper via bharper@afma.com.au or 02 9776 7977.

Yours sincerely,

Brett Harper

Chief Executive Officer

Appendix- AFMA's specific examples provided to the ASIC simplification initiative

2. Communication and Consistency	
2.1.	ASIC should maintain a holistic view of the volume of Notices received by an organisation from across all teams within ASIC to ensure undue burden is not being placed on an organisation.
2.2.	Explain the rationale for making information requests, distinguishing between routine versus targeted investigations.
2.3.	Internal coordination within ASIC between teams to avoid overloading a firm with concurrent requests.
2.4.	Transparent approach taken to providing indicative timelines and when matters are concluded.
3. Coherent Guidance and Consultation	
3.1.	Regulatory Guides ('RGs') should be the one authoritative source for ASIC regulatory guidance.
3.2.	RGs should not purport to modify or extend the statutory law.
3.3.	ASIC's current statements on the consultation and RG preparation process should be adhered to.
3.4.	RGs should describe how the statutory law works and provide examples of the law working in practice.
3.5.	Industry guidance should be explicitly identified if relevant and if there is an expectation that it should be followed.
3.6.	RGs should include practical examples and case studies.
3.7.	Create a comprehensive source guide for OTC / FICC markets.
3.8.	Revisit regulatory settings for simple and low risk OTC products.
3.9.	While RGs can collate sources for the part of the law being guided on, they do not need to restate the law.
3.10.	Articulate the scope for deviating from the guidance depending on circumstances.
3.11.	Due process to be followed in modifying an RGs.
3.12.	Guidance needs to be machine accessible and logically presented for AI use.
3.13.	RGs should be kept up to date and reflect current law as it develops, as well as disciplinary matters.
4. Cross-border Exchange of Information and Data Sharing	
4.1.	ASIC to explore the possibility of establishing exchange of information and data sharing arrangements with other global regulators for OTC derivatives.
5. Licensing	
5.1.	License variation applications should only require information to be submitted concerning the service being varied.

5.2.	For licence variations, ASIC should refer to its internal existing information on the applicant to inform staff about the business.
5.3.	For licence variations, assessment and processing should be quick.
5.4.	Licensing requirements for platform and infrastructure providers need to be further clarified.
5.5.	Consolidation of the AFSL and ACL regimes – Rationalisation of the requirements for the AFSL and ACL and steps should be taken to better consolidate these requirements to assist dual licensees manage their compliance obligations more effectively.
6. Market Integrity Rules (MIRs)	
6.1.	Commerciality and practicality as a focus of amendments to MIRs.
6.2.	Ensuring changes to the Corporations Act and governing legislation are also reflected in the MIRs.
6.3.	Alignment between APRA CPS 230 and the MIRs regarding Third-Party Service Providers to assist with the overlap/duplication for an organisation having to comply/manage both regulatory requirements.
6.4.	Introduce greater flexibility and clarity into the way in which AISC regulates technological and operational resilience of exchange market participants.
6.5.	Amend the Rule 5.11.2 regarding suspicious activity reporting to ASIC to align it more closely with the AML CTF regime on tipping-off.
7. Reportable Situations / Breach Reporting	
7.1.	There should be more materiality thresholds for licensees to consider, having regard to other "low level" breaches beyond misleading and deceptive conduct provisions and certain contraventions of civil penalty provisions, such as: ○ The breach can be rectified within 30 days from when the licensee knows (or should know of) the breach, not within 30 days of its occurrence; and ○ the number of impacted consumers that suffer no financial loss or damage should not be capped; and ○ it is available when there is a single report made under the grouping provisions (and not limited to a single reportable situation).
7.2.	Introduce some flexibility by applying a monetary cap on total financial loss.
7.3.	Improve the reporting portal by providing links to relevant RG 78 guidance to facilitate ease of use and consistency in reporting.
7.4.	There should be no word limit on the "description" field so that updates can be included without removing historical entries. This will allow longtail and complex breaches to record full updates in the latest update.
7.5.	Carve out from misleading and deceptive conduct (MDC) reportable breaches — breaches that have no financial impact and have a higher financial threshold for wholesale and sophisticated investors (typically payments and therefore likely errors for products provided to larger more sophisticated customers would be larger making low thresholds meaningless in an Institutional and corporate banking context). For example, currently, an error that has remained undetected for a time even where the error resulted in an undercharge is reported as an MDC.

7.6.	Provide prescriptive factors or guidance on what a licensees should consider when assessing "if a conduct led, or would have likely led, the client into error" for purposes of MDC. For example, perhaps include an outcome element (e.g. the client would have made a different decision). The factors should also provide for the type of client that is the subject of the potential MDC.
7.7.	Extend the period of reportable investigations from 30 days to 60 or 90 days for breaches impacting a volume of customers or complex provisions that would expectedly require long investigations (e.g. market related core obligation like insider trading and market manipulation).
7.8.	Develop an up-to-date core obligation register that is searchable so all licensees can determine if a potential breach is a "deemed core obligation" breach or if "significant assessment" is necessary under s912D(5). This will promote consistent application and ease cost on firms engaging lawyers or compliance specialist to keep the register updated yearly.
7.9.	Provide guidance on when conduct is "provided in connection with" the provision of financial services (e.g. will the engagement by potential customers on the licensee's online platform or channels be caught), and when it would not, or when the provision of financial services begins (e.g. does it begin when staff responds to a customer enquiry into its financial services).
7.10.	Provide more clarity on APRA and ASIC reportability overlap.
7.11.	Provide guidance on whether investigations of events needing assessment of significance under s912D(5) are reportable.
7.12.	Provide guidance on what is "material" loss or damage.
7.13.	Provide guidance on section 912D9(5) factors (similar to RG 251 guidance).
7.14.	The requirement to remediate any affected clients within 30 days of the investigation concluding in institutional markets needs to be rethought as its remediation of wholesale clients depends on the nature of the issue.
7.15.	ASIC should grant relief from breach reporting where acknowledgement has been received that no market misconduct is involved.
7.16.	Inadvertent wash trades – better consistency between the Futures MIRs and ASIC's approach to wash trading and more explicit regulatory guidance on ASIC's expectations including around associated breach reporting.
8. Industry Funding Levy Reforms	
8.1.	ASIC should change the manner in which it makes industry funding assessments to a go forward basis, which will allow financial services businesses to properly allocate funding and manage their expenses.
8.2.	Review the funding levy model so that it aligns with the principle that those entities in sub-sectors who cause the need for ASIC's regulatory effort should be charged for it.
9. OTC Derivative Reporting Materiality Thresholds	
9.1.	Allow reporting entities to make minor amendments or corrections to certain parts of the reports that are immaterial without the need to notify ASIC.
10. Insider Trading – Pre-Hedging	

10.1.	ASIC to provide clarity on its guidance on the application of the own-intentions carve-out to insider trading.
10.2.	ASIC to consider if it could provide no-action relief to amend section 1042A as it applies to the OTC markets.
11. Equity Capital Market Efficiencies	
11.1.	Disclosure Documents – Prospectuses and Product Disclosure Statements: ○ Unified disclosure regime for all listed financial products in Ch 6D. ○ Reduction in the length and complexity of disclosure documents, with a view to producing clear, concise and effective disclosure for retail investors.
11.2.	Greater regulatory consistency across listed securities – Alignment of regulatory requirements for all listed securities.
11.3.	More efficient exposure periods – Shorter exposure periods to improve IPO timetable certainty.
11.4.	Post-offer market stabilisation – Make Greenshoe authorisations easier to obtain and make the conditions less stringent based on the examples of other jurisdictions.
11.5.	Reform of the Sell-Side Research Guidance RG 264 – ○ Make research guidance less prescriptive and comparable to existing regimes in other leading jurisdictions which allow for the preparation and distribution of Pre-Deal Investor Education ("PDIE"). ○ ASIC to review RG 264 to help target the types of research intended to be captured for FICC markets.
11.6.	Placement restrictions – Increase placement capacity to 25% and increase share purchase plan capacity above $30,000.
11.7.	Rule 10b5-1 equivalent trading plans – Allow for an equivalent to this US rule to allow corporates, executives, sponsors, founders and other investors to manage insider trading.
12. Co-location Restrictions	
12.1.	ASIC to expound on its concerns around potential conflicts with regard to co-location of staff.
13. Online Tools and Portals	
13.1.	Overhaul of the regulatory and licensee portal to ensure that forms and other features are more accessible and efficient.
13.2.	Remove overlaps and align lodgement timeframes.
13.3.	Address technical shortcomings.
13.4.	Holistic "dashboard" for market participants that displays resources and tools in a one place.
14. Entity Liaison Officer	
14.1.	There should be one ASIC liaison officer for an entity.
15. Regulatory Grid Coordination	
15.1.	ASIC to include regulatory change initiatives in the pipeline (even minor ones) for a financial year in the Regulatory Grid.