



“Australia needs strong, independent and accountable regulators to help maintain trust and confidence in the financial system. This is critically important for attracting investment and supporting growth.” (*Financial System Inquiry Final Report, page 233*)

“Appropriate firm culture is critical, but needs to be supported by proactive regulators, with the right skills, culture, powers and funding.” (*Financial System Inquiry Final Report, page 233*)

“Against the background of developments overseas, the Inquiry has considered whether Australia should change its institutional arrangements for making and implementing financial stability policy. However, the Inquiry does not see a strong case for change in this area.” (*Financial System Inquiry Final Report, page 234*)

“Although there is no need for major change to the responsibilities of the regulators, the Inquiry has identified some weaknesses in how financial regulation is implemented and believes there is scope to improve regulatory processes.” (*Financial System Inquiry Final Report, page 235*)

**Table 1: Regulatory system recommendations**

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Source: Derived from *Financial System Inquiry Final Report, page xxvi*

**Regulator accountability**

“Australia needs a better mechanism to allow Government to assess the performance of financial regulators.” (*Financial System Inquiry Final Report, page 235*)

“The main problem with the current arrangements is Government lacks a regular mechanism to assess the overall performance of its financial regulators. Parliament has mechanisms to do this... However, parliamentary scrutiny tends to be episodic and focus on particular issues or decisions.” (*Financial System Inquiry Final Report, page 241*)

The Inquiry has made the following recommendation:

**“Create a new Financial Regulator Assessment Board to advise Government annually on how financial regulators have implemented their mandates.**

**Provide clearer guidance to regulators in Statements of Expectation and increase the use of performance indicators for regulator performance.”**

*(Recommendation 27) (Financial System Inquiry Final Report, page 239)*

This recommendation seeks to:

- “Create a formal mechanism for Government to receive annual independent advice on regulator performance.
- “Strengthen the accountability framework governing Australia’s financial sector regulators.”

*(Financial System Inquiry Final Report, page 240)*

“The Inquiry believes that creating a new Assessment Board to review regulator performance is the best way to address the gap it has identified in the current accountability framework. This option would facilitate improved scrutiny of regulator performance without creating new agencies or compromising existing accountability relationships.” *(Financial System Inquiry Final Report, page 244)*

“There appears to be widespread support for improving Statements of Expectation and Statements of Intent, and increasing the use of performance indicators as a means of enhancing regulator accountability.” *(Financial System Inquiry Final Report, page 243)*

### **Execution of mandate**

“The emergence of new technology is placing demands on regulators to be more flexible, and raising issues relating to identity, privacy and cyber security. Australia’s regulators need the funding and skills to meet these challenges into the future, including encouraging innovation through appropriately graduated approaches.” *(Financial System Inquiry Final Report, page 236)*

“Current funding arrangements do not promote regulator independence and accountability.” *(Financial System Inquiry Final Report, page 248)*

The Inquiry has made the following recommendation:

**“Provide regulators with more stable funding by adopting a three-year funding model based on periodic funding reviews, increase their capacity to pay competitive remuneration, boost flexibility in respect of staffing and funding, and require them to undertake periodic capability reviews.”**

*(Recommendation 28) (Financial System Inquiry Final Report, page 246)*

This recommendation seeks to “ensure Australia’s regulators are fit for purpose and have the funding, staff and regulatory tools to deliver effectively on their mandates” (*Financial System Inquiry Final Report, page 247*). In particular:

- “Regulator funding should be set by Government based on the recommendation of three-yearly funding reviews. These reviews should include consultation with industry and consumer stakeholders.” (*Financial System Inquiry Final Report, page 246*)
- “Regulators should be funded at a level that enables them to offer remuneration that is competitive with the private sector.” (*Financial System Inquiry Final Report, page 246*)
- “APRA and ASIC should be able to opt out of public sector-wide employment, staffing, and other whole-of-Government policies and procedures that unnecessarily constrain their flexibility to deliver their regulatory mandate.” (*Financial System Inquiry Final Report, page 247*)
- “APRA, ASIC and the payments system function of the RBA should each conduct six-yearly forward-looking capability reviews to ensure they remain fit for purpose and have the capabilities to address future regulatory challenges.” (*Financial System Inquiry Final Report, page 247*)

“Periodic funding reviews would allow Government to determine whether the regulators have sufficient funding to execute their mandates.” (*Financial System Inquiry Final Report, page 248*)

“Given the extent of the changes the Inquiry has proposed for ASIC in this report, ASIC should be the first to undergo a capability review in 2015. This would help to ensure it has the skills and culture to carry out its enhanced role effectively.” (*Financial System Inquiry Final Report, page 249*)

### **Strengthening ASIC’s funding and powers**

“The Inquiry has also recommended changes in how ASIC approaches its consumer protection role. In particular, the Inquiry considers that ASIC should devote more attention to industry supervision, including more proactively identifying and weeding-out misconduct.” (*Financial System Inquiry Final Report, page 236*)

The Inquiry has made the following recommendation:

**“Introduce an industry funding model for Australian Securities and Investments Commission (ASIC) and provide ASIC with stronger regulatory tools.”**

*(Recommendation 29) (Financial System Inquiry Final Report, page 250)*

This recommendation seeks to “ensure ASIC has adequate funding and regulatory tools to deliver effectively on its mandate” (*Financial System Inquiry Final Report, page 250*). To achieve this:

- “Government should recover the cost of ASIC’s regulatory activities directly from industry participants through fees and levies calibrated to reflect the cost of regulating different industry sectors.
- “Government should strengthen the Australian Credit Licence (ACL) and Australian Financial Services Licence (AFSL) regimes so ASIC can deal more effectively with poor behaviour and misconduct.
- “The maximum civil and criminal penalties for contravening ASIC legislation should be substantially increased to act as a credible deterrent for large firms. ASIC should also be able to seek disgorgement of profits earned as a result of contravening conduct.” (*Financial System Inquiry Final Report, page 250*)

“At present, Government only recovers a small proportion of ASIC’s costs directly from industry participants, through the Financial Institutions Supervisory Levies, application fees and fees for market supervision. The absence of industry funding means ASIC costs are not transparent to regulated industry participants.” (*Financial System Inquiry Final Report, page 250*)

“The main benefit of industry funding is its potential to give ASIC more predictable funding as well as strengthen engagement between ASIC and industry on the costs of conduct and market regulation. It would also have some potential costs. Depending on how they are designed, fees and levies have the potential to increase barriers to entry and potentially limit competition.” (*Financial System Inquiry Final Report, page 253*)

“While the Inquiry recommends substantially higher penalties, it does not believe that Australia should introduce the extremely high penalties for financial firms recently seen in some overseas jurisdictions. This practice risks creating inappropriate incentives for government and regulators unless revenue is separated and used for social or public purposes.” (*Financial System Inquiry Final Report, page 252*)

### **Strengthening the focus on competition in the financial system**

“While competition is generally adequate in the financial system at present, the high concentration and steadily increasing vertical integration in some sectors has the potential to limit the benefits of competition in the future.” (*Financial System Inquiry Final Report, page 255*)

“It is not always clear how APRA and ASIC balance their core regulatory objectives against the need to maintain competition. Policy makers and regulators need to take increased account of competition when making regulatory decisions, while ASIC should be given an explicit competition mandate.” (*Financial System Inquiry Final Report, page 237*)

The Inquiry has made the following recommendation:

**“Review the state of competition in the sector every three years, improve reporting of how regulators balance competition against their core objectives, identify barriers to cross-border provision of financial services and include consideration of competition in the Australian Securities and Investments Commission’s mandate.”**

*(Recommendation 30) (Financial System Inquiry Final Report, page 254)*

This recommendation seeks to:

- “Increase the focus on competition in the financial sector.
- “Deliver more explicit reporting about the competition implications of regulatory decisions.
- “Highlight areas where there may be opportunities to strengthen competition”.  
*(Financial System Inquiry Final Report, Page 255)*

“The recommendation would deliver a stronger focus on competition in the financial system. In the absence of change, there is a risk that regulators and policy makers will not place sufficient emphasis on competition when making decisions.” *(Financial System Inquiry Final Report, page 256)*