



Australian Government

Australian Government response to the
Joint Committee Corporations and Financial Services
report:

Statutory inquiry into ASIC, the Takeovers Panel, and the
corporations legislation, 'Competition in clearing and
settlement and the ASX CHES Replacement Project:
The CHES Replacement Project is too important to fail'

February 2025



Introduction

Following its statutory inquiry into the Australian Securities and Investments Corporation (ASIC), the Takeovers Panel, and the corporations legislation, the Parliamentary Joint Committee on Corporations and Financial Services published its report, *Competition in clearing and settlement and the ASX CHES Replacement Project: The CHES Replacement Project is too important to fail* in April 2024.

The Report made twelve recommendations seeking to strengthen the oversight and regulation of Australia's financial market infrastructure.

The Australian Government thanks the Committee for its work on these complex and important issues, as well as all those who made submissions and appeared before the Committee.

The Government welcomes the report and is pleased to provide its response to the recommendations below. The Government would also like to thank ASIC and the Reserve Bank of Australia (RBA) for their input to this response.

Response to the recommendations

Recommendation 1

The Committee recommends that the Minister proceed as quickly as practical to implement the ministerial determinations to empower the Australian Securities and Investments Commission to make rules to facilitate competition or fair provision of monopoly clearing and settlement services in line with the Council of Financial Regulators' recommendations.

Australian Government response

The Government has **actioned** this recommendation.

Following the passage of the *Treasury Laws Amendment (2023 Measures No.3) Act 2023 (No.75, 2023)* (competition in clearing and settlement) by the Parliament in 2023, the Government moved swiftly to draft and implement these ministerial determinations to give effect to the Australian Securities and Investments Corporation's (ASIC's) rule-making powers.

The Government consulted on a draft ministerial instrument from 15 January to 1 March 2024, and the Assistant Treasurer made the *Corporations and Competition (CS Services) Instrument 2024*, which entered into force on 14 May 2024. This Instrument specifies the classes of Clearing and Settlement (CS) services in relation to which ASIC may impose requirements under the CS services rules, and the declared CS services to which access may be the subject of the Australian Competition and Consumer Commission's (ACCC's) arbitration powers.

Recommendation 2

The Committee recommends that the Australian Securities and Investments Commission proceed as quickly as practical to make rules to facilitate competition or fair provision of monopoly clearing and settlement services in line with the Council of Financial Regulators' recommendations.

Australian Government response

The Government **notes** this recommendation, which is directed to ASIC.

The *Corporations and Competition (CS Services) Instrument* entered into force on 14 May 2024. ASIC then worked promptly to develop draft CS services rules, with the rules released for industry consultation on 30 July 2024 and registered in February 2025.

In drafting the rules, ASIC was guided by the high-level policy outcomes that underpinned the *Regulatory Expectations for Conduct in Operating Cash Equity Clearing and Settlement Services in Australia*, namely supporting the long-term interests of the Australian market by delivering outcomes that are consistent with those that might be expected in a competitive market.

The rules also address obligations not expressly covered in the Regulatory Expectations that speak to concerns raised throughout the CHES replacement project and in the Report, such as interoperability.

Recommendation 3

The Committee recommends that the Government progress the Financial Market Infrastructure reforms as soon as practical.

Australian Government response

The Government has **actioned** this recommendation.

The Parliament passed the *Treasury Laws Amendment (Financial Market Infrastructure and Other Measures) Bill 2024* in September 2024.

Recommendation 4

The Committee recommends that the Australian Securities and Investments Commission and the Reserve Bank of Australia make interoperability a focus of their monitoring of the Australian Securities Exchange (ASX) Clearing House Electronic Subregister System (CHES) Replacement Project

Australian Government response

The Government **notes** this recommendation, which is directed to ASIC and the RBA.

ASIC and the RBA have confirmed that interoperability will be a focus of their supervision of ASX's implementation of the CHES Replacement Project, including how ASX proposes to provide the technical foundations for interoperability and engages with its stakeholders on this approach.

Recommendation 5

The Committee recommends that in order to promote competition in clearing and settlement before the new Clearing House Electronic Subregister System (CHES) will be available, the Council of Financial Regulators should explore options for addressing the interoperability barrier.

Australian Government response

The Government **supports** this recommendation.

Interoperability is and will continue to be a key focus of ASIC and the RBA's regulatory monitoring of the current CHES.

ASIC's CS services rules, along with ASIC and the RBA's monitoring of the CHES Replacement Project, explicitly address interoperability barriers. The Council of Financial Regulators should continue to monitor this issue and seek stakeholder feedback as to whether further barriers to interoperability remain even after ASIC's CS services rules are in force.

Recommendation 6

The Committee recommends that the new competition in clearing and settlement legislation and subsequent actions by the Minister, Treasury and regulators be independently reviewed in the second half of 2026.

Australian Government response

The Government **supports in principle** this recommendation.

The Government agrees that an independent review should be conducted within three years following the commencement and initial operation of the legislation, with a particular focus on the ongoing operation of ASIC's CS services rules and the ACCC's arbitration regime.

Recommendation 7

The Committee recommends that if there is no significant movement by most major brokers by mid-2024 on making Clearing House Electronic Subregister System (CHES) holding statements available to any investors that want them, Treasury should investigate the matter to identify and resolve any remaining impediments.

Australian Government response

The Government **supports in principle** this recommendation.

The Government supports greater electronic communications between corporate entities, their members and others. For example, the *Treasury Laws Amendment (Modernising Business Communications and Other Measures) Act 2023* contained reforms that commenced on 14 September 2023 that allow more use of technology in business communications while also providing the public with greater discretion over how that may occur. Proposals to mandate more electronic communication of personal information between investors, brokers and the ASX/CHES must be carefully considered and acknowledge the commercial and other relationships between the parties. The Government will examine this in due course.

Recommendation 8

The Committee recommends that the Australian Securities and Investments Commission and the Reserve Bank of Australia update their self-assessment against the regulator's responsibilities under the Principles for Financial Market Infrastructures (PFMIs).

Australian Government response

The Government **notes** this recommendation, which is directed to ASIC and the RBA.

The Government notes that both ASIC and the RBA are due to conduct self-assessments against the PFMIs and this should occur within the 2024-25 financial year.

Recommendation 9

The Committee recommends that the Australian Securities and Investments Commission and the Reserve Bank of Australia adopt a three-year interval to update their self-assessment against the regulator's responsibilities under the Principles for Financial Market Infrastructures (PFMIs).

Australian Government response

The Government **notes** this recommendation, which is directed to ASIC and the RBA.

The Government encourages ASIC and the RBA to consider whether a shorter period between assessments is appropriate in the next self-assessment against the PFMIs, which should occur within the 2024-25 financial year.

Recommendation 10

The Committee recommends that the Australian Securities and Investments Commission and the Reserve Bank of Australia regularly conduct joint assessments of clearing and settlement facilities against the Principles for Financial Market Infrastructures (PFMIs).

Australian Government response

The Government **notes** this recommendation, which is directed to ASIC and the RBA.

The Government supports robust monitoring of domestic clearing and settlement facilities, and as such, ASIC and the RBA should consider this recommendation, particularly in light of financial market infrastructure reforms now in force.

The Government notes the RBA already undertakes annual assessments of the ASX against the Financial Stability Standards, which give effect to the PFMIs as appropriate in the Australian market context. It is not clear that additional assessment of the ASX against the PFMIs will be valuable.

ASIC and RBA will consider this recommendation alongside Recommendation 9.

Recommendation 11

The Committee recommends that the Australian Securities and Investments Commission, the Reserve Bank of Australia, and Treasury:

- enhance their skills, experience, and processes at the most senior levels for monitoring and supervising strategic technology benefits and risks in financial services and market infrastructure; and
- through the Council of Financial Regulators:
 - conduct an audit of critical financial services technology platforms and infrastructure that the government relies on or has regulatory responsibility for; and
 - create an ongoing regular status report on critical financial services technology platforms and infrastructure to ensure early alerts and responses to strategic technology risks and other problems.

Australian Government response

The Government **supports in principle** this recommendation.

The Government agrees that it is critical that the regulators and Treasury have the appropriate skills, experiences, and processes for monitoring and supervising financial market risks. The Government and agencies recognise the importance of their capabilities keeping pace with market and technological developments.

However, the Government view is that the best way to enhance these capabilities is to upskill at the officer level, and with technological skills concentrated among the regulators, given that the day-to-day monitoring and supervision of financial markets occurs at this level. ASIC and the RBA will consider options to uplift technological capabilities more broadly across their supervisory staff.

The Government agrees with the Report's recommendations to conduct an audit of critical financial services technology platforms. The Council of Financial Regulators should progress this work through its Cyber and Operational Resilience Working Group and should explore options for ongoing monitoring.

Recommendation 12

The Committee recommends that the Council of Financial Regulators amends the 2017 regulatory expectations for Conduct in Operating Cash Equity Clearing and Settlement Services in Australia so that technology, governance, and delivery issues such as those that occurred for the CHES Replacement Project are within the scope for the annual external audit of the ASX's compliance with the ASX Cash Equities Clearing and Settlement Code of Practice.

Australian Government response

The Government **notes** this recommendation.

The Government notes that ASIC has made its CS services rules and these aim to address industry concerns about the ASX's handling of technology, governance, and delivery issues relating to CHES Replacement, insofar as these pertain to competition or user access to CHES systems. The Government also notes that these matters may be considered further by ASIC and the RBA, now that the financial market infrastructure reforms are in force.

ASIC's CS services rules, which were registered in February 2025, seek to implement the Regulatory Expectations in an enforceable manner. As such, the Government's view is that there is no need to amend the Regulatory Expectations provided that the CS services rules appropriately regulate ASX's conduct and governance. This should include obligations related to the annual external audit of the ASX.

Furthermore, the Government expects that an independent review of the competition in clearing and settlement legislation as proposed by the Committee in Recommendation 6 will consider these issues and whether they have been appropriately addressed by the CS services rules.
