

## **Chapter 7**

### **Conclusion: Recommendations for reform**

7.1 During the course of its inquiry, the committee has received and considered evidence from a broad range of sources, including investors (clients of financial advisers), banks and other financiers, individual advisers, advisory groups, product providers, industry bodies, consumer action groups, legal firms, regulatory bodies and government departments.

7.2 The committee's terms of reference for the inquiry identified the collapses of Storm Financial, Opes Prime and other similar collapses as being of particular concern, and many of the submissions made to the committee provided detailed information on the circumstances leading up to and after these collapses.

7.3 As expressed elsewhere in this report, it is important to emphasise that the committee is not a judicial body and has no power to make criminal findings or to make judgements in relation to individual claims that have been brought to its attention. It has also not been possible for the committee to resolve all the contradictions in the evidence put before it.

7.4 Furthermore, it should be noted that the committee's terms of reference focused on financial products and services. The committee's overall role, having regard to what it has learnt through the examination of these corporate collapses and all the other evidence put before it, is to make any necessary recommendations for legislative change or regulatory improvement to help guard against the occurrence of similar collapses in the future and improve the quality of financial advice Australian consumers receive. The committee's deliberations around the need for regulatory or legislative change in Australia's financial products and services sector have been discussed in detail in the preceding chapters of this report.

7.5 The committee acknowledges that it is not necessarily appropriate to recommend reform in response to a particular collapse or event. Isolated corporate failures are not necessarily indicative of, or caused by, regulatory failure. However, the committee believes that over the course of its inquiry it has collected sufficiently broad and consistent evidence to justify making a series of carefully considered recommendations which are designed to enhance professionalism within the financial advice sector and enhance consumer confidence and protection.

7.6 The committee notes that, during the course of its inquiry, some key legislation has been considered by the Australian Parliament. The expected passage of the National Consumer Credit Protection legislation will mean that, from 1 July 2010, consumer credit will be regulated under a single federal law for the first time. Under Financial Services Modernisation reforms that have already passed through the parliament, margin loans (and products with a similar character, including products like those sold to customers of Opes Prime) will be defined as financial products for

the purposes of Chapter 7 of the *Corporations Act 2001*. These legislative changes will provide important protections that purchasers of certain financial instruments have not had previously.

7.7 Also during the inquiry time frame, the government announced its intention to transfer responsibility for supervision of real-time trading on Australia's domestic licensed markets from the ASX to ASIC. Pending the passage of necessary legislation during the first part of 2010, ASIC will be responsible for both supervision and enforcement of the laws against misconduct on Australia's financial markets.

7.8 The committee believes that these reforms will have a substantial impact on many of the matters discussed in this report. In particular, there will be regulation in place to protect future purchasers of margin loan and securities lending facilities—protection that was not available to the clients of Opes Prime or Storm Financial.

7.9 The committee has resisted making further recommendations for change in this area until there has been an opportunity to examine the practical consequences of the new legislation. Through its regular oversight hearings with ASIC, the committee will monitor the implementation and success of this legislation and may revisit this subject at a later date.

7.10 Having regard to all the evidence put before it, the material discussed in previous chapters of this report, and the legislation discussed above, the committee therefore reiterates its eleven recommendations for reform in this sector. It is the view of the committee that, if implemented, these changes will act in synergy to provide better outcomes and protections for consumers of financial products and services.

### **Recommendation 1**

**The committee recommends that the Corporations Act be amended to explicitly include a fiduciary duty for financial advisers operating under an AFSL, requiring them to place their clients' interests ahead of their own.**

### **Recommendation 2**

**The committee recommends that the government ensure ASIC is appropriately resourced to perform effective risk-based surveillance of the advice provided by licensees and their authorised representatives. ASIC should also conduct financial advice shadow shopping exercises annually.**

### **Recommendation 3**

**The committee recommends that the Corporations Act be amended to require advisers to disclose more prominently in marketing material restrictions on the advice they are able to provide consumers and any potential conflicts of interest.**

**Recommendation 4**

**The committee recommends that the government consult with and support industry in developing the most appropriate mechanism by which to cease payments from product manufacturers to financial advisers.**

**Recommendation 5**

**The committee recommends that the government consider the implications of making the cost of financial advice tax deductible for consumers as part of its response to the Treasury review into the tax system.**

**Recommendation 6**

**The committee recommends that section 920A of the Corporations Act be amended to provide extended powers for ASIC to ban individuals from the financial services industry.**

**Recommendation 7**

**The committee recommends that, as part of their licence conditions, ASIC require agribusiness MIS licensees to demonstrate they have sufficient working capital to meet current obligations.**

**Recommendation 8**

**The committee recommends that sections 913B and 915C of the Corporations Act be amended to allow ASIC to deny an application, or suspend or cancel a licence, where there is a reasonable belief that the licensee 'may not comply' with their obligations under the licence.**

**Recommendation 9**

**The committee recommends that ASIC immediately begin consultation with the financial services industry on the establishment of an independent, industry-based professional standards board to oversee nomenclature, and competency and conduct standards for financial advisers.**

**Recommendation 10**

**The committee recommends that the government investigate the costs and benefits of different models of a statutory last resort compensation fund for investors.**

**Recommendation 11**

**The committee recommends that ASIC develop and deliver more effective education activities targeted to groups in the community who are likely to be seeking financial advice for the first time.**

**Mr Bernie Ripoll MP**

**Chairman**