A lighter regulatory touch in 2006

The government has signalled that it has heard the calls from industry to reduce the compliance burden on financial service providers.

If significant law reform comes in cycles – from proposal to implementation (peak), review and tweaking (downward slope), then the finance sector can take a deep breath in 2006.

The new year will find most of the FSR refinements in place. Announcing the timeline for these changes in September, the Parliamentary Secretary to the Treasurer, Chris Pearce, explained how his consultations with industry have been guided by the need to "reduce the compliance burden on financial service providers – without in any way undermining the important consumer protections the legislation provides".

While the regulatory trough provides time for reflection, for 'bedding down' and 'taking stock', it also provides an opportunity for new ideas and formative proposals.

The importance of building and maintaining stakeholder and shareholder confidence in Australian financial markets is a responsibility for regulation, Pearce explained, "which extends to both government and industry". Perhaps in reference to the often-fractious debate between government and industry sectors over FSR implementation, Pearce reiterated his commitment to "light-touch, principles-based regulation, with a preference to substance over form".

To fulfil this contract between the regulator and the regulated, Pearce emphasised that the "business sector must apply a degree of interpretation to all legislative and regulatory instruments". Inevitably, he said, "Business must be prepared to accept some regulatory risk."

In the coming year, expect to see more emphasis on regulatory interpretation and collaboration between governments, the regulators and industry, rather than endgame struggles over specific parts of the legislation.

On another front, and in response to persuasive argument from the Business Council of Australia (BCA), the Prime Minister has established a special taskforce, chaired by Gary Banks (Chairman of the Productivity Commission), to reduce the 'regulatory burden on business'. The taskforce has a short timeframe to identify practical options for "removing unnecessarily burdensome, complex, redundant or duplicate regulations". The initial report will be released on 31 January 2006.

The scope of the review and the relevance to the financial services sector has yet to be determined. However, the taskforce discussion paper is likely to suggest further industry consultations and reviews throughout 2006.

Proposed tougher anti-money laundering regulations are the only foreseeable significant increase in compliance costs likely to occur in 2006. A recent review of Australia's laws to counter money laundering and terrorist funding by the international Financial Actions Task Force found that, despite our comprehensive system for reporting suspicious transactions, improvements are required. Legislation is expected within the next month to implement Australia's international obligations.

Moving to the regulators, the topic of ASIC's annual summer school (held in February 2006) echoes the theme of 'taking stock': "Maintaining consumer confidence: Regulation and its limits". Distinguished participants include the Hon Chris Pearce, Jane Diplock, Dr David Morgan, Tony D'Aloisio and consumer affairs spokespeople, Fiona Guthrie (Consumers Federation of Australia) and Peter Kell (CEO, Australian Consumer's Association), among many others. The forum will consider the appropriate mix of regulation, industry responsibility and media involvement.

Another regulator looking at reducing the amount of regulation is the ASX. It is understood that the ASX Corporate Governance Council is reviewing the 28 Best Practice Recommendations with a view to a reducing the number of reporting triggers.

2006 will be the mid-term in the election cycle and this presents a rare opportunity for open, honest debate. There are a number of important parliamentary committees that report in 2006 such as the Inquiry into Improving the Superannuation Savings of People under 40 and the Joint Committee on Corporate Social Responsibility. Finsia will contribute to both inquiries by providing fresh, independent research, consultation and a forum for leading experts to positively shape each debate.

In the background, but no less important, are the pressing concerns about an ageing workforce, and the need to improve financial literacy. Clearly, governments cannot hope to address all these social challenges. The ageing workforce, and the documented pressure this will have on the public purse, must focus attention on encouraging more Australians to take responsibility for their financial future.

Australia's growing dependence on capital markets for the stability of our retirement system will focus greater attention on sustainability risk and the need to promote good corporate governance. Ethical investing and corporate social responsibility will take a front seat as attention focuses on the governance responsibilities of trustees and the quality of good company reporting.

Compared with previous years, 2006 will focus attention on the big picture – better relationships between industry and the regulator, a tilt towards risk management, better governance and increased sustainability, and a comprehensive look at the ability of Australians to save for their retirement. J