



ASIC

Australian Securities & Investments Commission

ASIC issues: an update on the last 12 months

An address by Jillian Segal, ASIC Commissioner to the Insurance Council of Australia, 10 August 2000

1 Introductory Remarks and Overview

Thank you for the opportunity to address you this afternoon on “ASIC Issues”. I should note that I am addressing you one year after Alan Cameron spoke at the last ICA Canberra Conference.

Whilst many of the issues he spoke about are still on our mutual agendas - the landscape, on a number of fronts including the markets, the products and the regulatory framework - has moved on considerably.

Against this backdrop I would like to speak to you today about a number of issues in the last 12 months including very briefly ecommerce, our approach to our insurance regulatory and enforcement activities and, going forward, some

of the issues we expect to be working on such as preparing for implementation of the FSR Bill.

There are many issues I don't have time to deal with, which have been mentioned by others today, for example; constitutional issues, our competencies policy (information about which is on our website) and the work of IOSCO. I should just mention that, of course, ASIC is a very active participant in the work of IOSCO and recently hosted, in Sydney, the annual IOSCO conference. It was at this conference that IOSCO agreed to recommend to its constituent organisations that the IASC international accounting standards be adopted for cross-border listings and offerings.

I would like to begin by addressing some brief general remarks in response to two issues covered by previous speakers namely the "global village" and e-commerce and, in particular, what they imply for consultation and communication with your industry.

2 Globalisation and E-commerce

Change is now our norm and to meet the demands made on a modern regulator we need to be in touch and in tune with what is happening in the commercial world more than ever. We have always placed great importance on an open and constructive dialogue with your industry.

We have in the last 12 months continued to work hard in establishing dialogue with the ICA and its members. The Commission as a whole met with a number of the ICA Board last September, and in August and December last

year and March this year, I met with members of the ICA Executive and Board.

We have also had extensive contact and discussions with the ICA and the IEC about the approval of the General Insurance Code and the IEC Scheme.

Our regional offices have attended a number of conferences organised by the ICA State divisions. I am also pleased to note that the ICA is widely represented through our regional office liaison groups.

From a regulator's perspective, these are interesting times. It is no longer simply about regulating an industry under traditional legislative boundaries, it is about providing consistent regulation of like products and distribution channels in a fast moving market. The conference today, and Alan Mason's address, certainly illustrates the complex agenda you are dealing with.

Given this dynamic environment, what is the best way for us to communicate with the industry and its members about important regulatory issues? A necessary step is that we have to think of those with whom we communicate as operating beyond the traditional industry groupings such as "general insurers" or "funds managers", or as belonging to one association and not another.

After all, a number of you offer an incredibly diverse range of financial products and you may belong to more than one industry association. Those associations might have quite different views about particular policy issues because they are approaching issues from a different perspective.

Indeed, I refer to when Alan Mason spoke about the diversity of products offered by the ICA membership in an interview with the Insurance Broker in May last year when he said:

“Many of our member companies are in banking, investment, superannuation and a whole range of other activities apart from general insurance.”

This is what the Wallis Inquiry really brought to the fore. Three years ago as a Regulator we didn't deal with insurers as holders of a Banking licence, nor did we think necessarily about our Banks as offering insurance products.

In my view this points to the fact that we need to talk directly to many of you , to those of you competing internationally, to our fellow regulators both here and overseas in order to be aware of how consumers and customers interact with your businesses and new issues we need to consider, for example, issues arising from offering products over the internet.

Indeed, in the online world that we are rapidly becoming a part of, I wonder if next year Alan, your speakers will be speaking via live web broadcast to your members!

We have also been forward looking in our policy development and industry communication. In particular, as an organisation, I believe we have been very proactive in responding to the challenges of e-commerce and cyberspace.

We have an e- commerce co-ordination group which I chair. This deals with policy issues and enforcement. An example is our current work on facilitating the offer of life insurance products on-line. We will be releasing a policy for

consultation on this issue quite soon. We have also granted some specific relief to allow applications for some life products to be made electronically, subject to satisfactory disclosure conditions.

As part of our proactive approach to e-commerce, we are also delighted to be hosting a full day conference - *E-Commerce: The Future for Financial Services - Insights for Business and Consumers* on 15 August. Rod Atfield will be speaking on particular insurance issues.

Full details are available on our website: www.asic.gov.au.

(3) Our approach to regulation

As the changes I have outlined make clear, we all face a challenging market environment. One of the key messages I would like to leave with you today is how we approach our regulatory work in this environment, especially in the context of limited resources.

In short, ASIC must take a 'risk-based' approach to regulation. That is, we are seeking to be a regulator who can identify risks and address industry issues before they become major problems. We do not want to be a regulator that simply cleans the mess after it has occurred. Effective risk identification and assessment is therefore a key challenge for ASIC, but we believe that this approach will deliver better regulation and higher levels of consumer and industry confidence. This approach requires good communication with industry members (something I touched on earlier), with alternative dispute resolution schemes and with consumers in the finance sector.

Such an approach also requires an understanding that we have a range of tools in our regulatory toolkit. We will use the right tool to achieve the best outcome. This may include criminal prosecutions, civil applications and administrative banning, which are part of ASIC's set of enforcement options, but it may also include other tools which we think may be equally effective, in the right circumstances. In particular, it seems to me that a pro-active stance to prevent misconduct or breaches of legislation, by education and consumer alerts, may sometimes be more effective and reach a wider audience more cheaply and effectively, than a conviction or civil order.

At the same time, I want to make it crystal clear that we will take strong and decisive action to enforce the law when we need to.

We have taken action against both intermediaries and insurance companies where warranted. For example, in the case of intermediaries, we have cancelled the registration of three brokers over the past year (although some of those are now challenging our decision in the AAT). These are the first cancellations ever under the relevant legislation since 1984, although ASIC only acquired jurisdiction in 1998.

We have also obtained an enforceable undertaking in one instance, requiring a broker to rectify his broking account deficiency. Recently, we also secured the first gaol sentence against a broker under the Insurance (Agents and Brokers) Act 1984. In that instance, the broker had not passed on premium moneys to insurers.

In the last year we have also taken action against insurance companies in relation to matters such as:

- misleading definitions of key terms in customer information brochures for policies covering death, total and permanent disability and salary continuance;
- the unconscionable and misleading marketing of policies in remote Aboriginal communities.

I don't mention these instances for any other reason than to point out that we are an active regulator committed to strong enforcement action when required.

We receive a significant number of complaints in relation to insurance. In general insurance, most of the complaints received by the Commission relate to domestic and motor vehicle policies, while in the life area, complaints against disability products predominate. I will comment shortly about our campaign in this area.

The importance of the complaints we receive - whether that be by number or type - is that they may indicate systemic issues. We will typically leave individual matters to be dealt with by industry dispute resolution schemes, unless they are particularly serious. Instead we believe that a focus on systemic issues will ensure more effective regulatory outcomes.

We think that further useful information about such issues can be gleaned from the types of matters handled by the dispute resolution schemes. We know that the IEC receives more than 50,000 enquiries a year, and that out of

these it deals with several thousand disputes. That material, combined with complaints we receive directly, the matters you in industry tell us are problem areas, and with the feedback we receive from consumer organisations, helps the Commission form a more complete picture of the possible regulatory issues in the industry.

I would note here that the issues I am talking about are not just compliance matters, but also include areas where industry see difficulties with current law or ASIC policy.

One of the ways we are working on to ensure that we use our regulatory dollar as effectively as possible, is by way of what we call national projects or campaigns. These projects are national because they reflect our work right across the Commission, rather than being concentrated on one particular problem in one particular state region. With these projects we seek to adopt a more consultative and educative approach to correcting behaviour, although we will take regulatory action if necessary.

I would now like to detail how we have made this work in practice with our campaign based approach over the last two years.

(4) Our first two years in insurance some highlights

(a) *Flood insurance*

As you will know, last month we released our report on this topic, as well as a consumer education brochure.

ASIC reviewed the adequacy of:

- disclosure in policy documents regarding flood cover and exclusions; and
- claims handling processes adopted by insurers arising from flood claims.

This project entailed a review of standard insuring clauses and exclusions in insurance policies relating to flood and water damage and encompassed a review of claims complaints we received relating to flood cover issues.

The project entailed an extensive and rigorous process of consultation and information gathering by the Commission. In particular, we targeted those areas where there had been recent large floods including Western Australia, the Northern Territory, Queensland, New South Wales and Victoria. That process included:

- discussions with insurers affected by risks in flood-prone areas;
- meetings with local authorities in those regions;
- consultation with consumer representatives affected by flood losses;
- reviewing 14 domestic policy wordings; and
- analysis of Insurance Enquiries and Complaints (IEC) determinations and consultation with IEC panel members.

Although our review found room for improvement, the Commission was pleased to note that it was not required to take any regulatory action. Indeed, prior to our report, many industry participants had already commenced work on addressing some of ASIC's concerns, including the introduction of simpler terminology in policy documentation.

Our report recommended that:

- insurers should prompt consumers to consider whether flood is an appreciable risk against which they should insure, prior to inception of the policy,
- both the language and format of domestic property and contents insurance wordings should be simplified,
- sales staff should be able to explain in clear language not only the availability of flood cover, but also the extent and type of coverage offered, and
- consumers should receive appropriate explanations of decisions and the claims process, following a claim for indemnity arising from flood.

Our consumer education brochure is designed to provide prompts and tips to assist consumers to ascertain whether they live in a flood-prone area, and what to look for when purchasing a house and contents policy.

We see the flood project as an example of our good working relationship with the industry and representative bodies in addressing disclosure and claims handling issues. The Commission is also pleased to note that industry has begun to respond to this issue in a more coordinated manner, notably through the establishment of the Insurance Disaster Response Organisation.

(b) Insurance Brokers

(i) The Insurance Brokers Campaign

Last year Alan Cameron spoke to you about our Insurance Brokers campaign. Through that campaign ASIC identified entities which were advertising as brokers as against our records of registration. Our Report concluded that a substantial number of entities which were not registered in our system were advertising in the Yellow Pages.

In March last year we made contact with those entities who had been identified as not complying with the Insurance Agents and Brokers Act seeking an explanation and in addition we conducted approximately 120 surveillance visits.

One of the outcomes of the campaign was that this was obviously an area where registration requirements were not well enough understood. We have now issued PS 161 which addresses when ASIC expects a representative of a broker to become registered. Our policy gives specific assistance to parties who are unsure whether or not the nature of their business, and their arrangements with a principal require them to be separately registered.

(ii) Conditions of Broker Registration Mk 1 — The approved auditor campaign

In March this year, we identified 106 registered insurance brokers who had not appointed an “approved auditor”, as required by IABA.

An approved auditor is one who is a registered company auditor and who is independent of the broker. Rather than prosecute each broker for their breach (as ASIC was entitled to do), we wrote to the brokers, pointing out what our records revealed, and giving them an opportunity to take prompt corrective action by appointing an approved auditor.

I am pleased to say that, after just eight weeks, we have not needed to prosecute and all of the brokers we identified have now complied, either by appointing an approved auditor, informing us of the correct details of their auditor or providing some other satisfactory reason.

(iii) Conditions of Broker Registration Mk 2 - membership of the Insurance Brokers Dispute Facility (IBDF)

The following month, we identified 90 insurance brokers who were not members of the IBDF, a requisite for registration with ASIC in relation to general brokers writing domestic lines.

Again, rather than prosecute the breach, we wrote to those we identified, offering them the opportunity to renew their membership with the IBDF. Those brokers who remained in breach were offered an internal hearing to

make submissions prior to cancellation or suspension of their registration. IABA requires ASIC to afford that procedural fairness, prior to making an adverse decision against a broker.

(ci) *Disability Insurance*

What are we currently working on in this area? As many of you will already be aware, ASIC is engaged in a national consumer compliance campaign with two parallel lines of inquiry in the area of disability insurance. The first involves reviewing supervision and training by life companies of agents selling these products in compliance with the Life Code of Practice and other relevant legislation such as the ASIC Act.

The second involves reviewing client files and agent sales and disclosure practices in relation to disability insurance. ASIC reviewed training and supervision methodologies of selected insurers writing those lines of business to ensure adequate consumer protection, ASIC has recently completed a nationwide series of visits to insurance agents, to conduct the sales practice review.

ASIC has been pleased with the level of cooperation it has received so far, and I expect a report on our findings will be released later this year.

Our decision to look at disability insurance arose from an assessment of the market and consumer risks in this area, based on information from a variety of sources. This included industry analysis of problematic market conditions, individual discussions with industry participants, rising complaints trends in the

relevant dispute resolution schemes and consumer problems raised directly with ASIC.

All of this illustrates my main point. As a flexible regulator we can and do achieve highly effective outcomes using a variety of tools. Furthermore, we are increasingly seeking to take a pro-active approach to regulation, rather than simply responding to the problem of the day.

(4) General Insurance Code and the IEC Scheme

I would like to touch on the issue of self-regulation, which is an issue that is important for your industry. ASIC appreciates the role that effective self-regulation can play in the overall regulatory spectrum.

As you may know, ASIC has recently approved both the General Insurance Code of Practice and the IEC industry dispute resolution scheme. I recognise the importance of these self-regulatory mechanisms in the general insurance industry. I was therefore pleased to be able to announce these approvals, and I welcome the industry's commitment to ongoing reform of both the code and the IEC. I would also like to acknowledge the efforts of ICA and IEC representatives and other industry stakeholders who participated in the approval process and contributed to an outcome that is positive for both industry and consumers.

(5) Looking forward – the FSR Bill and our future work program

Finally, I would like to comment on the key legislative reforms on the near horizon. As you are aware, the FSR Bill (FSRB) is the final phase of the Government's financial sector reform program which seeks to harmonise regulation of the financial services industry in Australia.

ASIC strongly supports the fundamental direction of the changes in the Bill, which proposes a single licensing framework for financial services, minimum standards of conduct for intermediaries, consistent disclosure obligations and greater flexibility.

ASIC has made a submission on the FSRB which covered a number of practical administrative and implementation issues which we believe should be addressed in the final legislation. The changes we suggested are all designed to assist ASIC more effectively to implement and administer the Government's proposed reforms as set out in the draft Bill.

I thought it might be useful today to talk to you about how we are going about ensuring that when the FSRB is enacted we are ready to implement it.

As you may be aware there remains some uncertainty over the timing of the release of the next stage of the draft legislation. The Minister has however announced that he remains committed to having the legislation commence in early 2001. This means that ASIC has to commence preparing now so that we can be ready to administer the legislation when it is Law.

I spoke earlier about our commitment to a national approach to projects. Our FSRB implementation will be run as a single national implementation project. Given however the breadth of regulatory changes to be brought about by the Bill, we have divided the project into four sub projects - licensing, disclosure, markets, and finally codes, dispute resolution and credit. Many of the staff who are working on the project will be familiar to you, so it will really be a question

of dealing with some old faces in their new roles.

It is very important to us that we develop our systems and policies in a way which works on the ground for you as our stakeholders. To support this approach, we are also ensuring that our operational staff are closely involved in working with our policy staff on all the key projects.

We want to communicate with you about priorities, issues and implementation details and seek widespread industry views on practical implementation issues. To do so we will be using our website www.asic.gov.au. Our approach in this area is consistent with our aim to use the new technology to further better, more efficient communication on regulatory issues that affect you.

To help you stay in touch, we will be setting up on our website a news page and information pages with timetables and how we plan to implement FSR. You can also register your email address to receive e-mail alerts from us about our FSR updates, proposals and news.

(6) Conclusion

It has been a busy and challenging 12 months marked by some significant highlights such as the approval of the ICA Code and our work with you on Flood Insurance. The next 12 months will be just as demanding as we move forward with your help and assistance into implementation of the FSR Bill.

Thank you for your time today.