



ASIC

Australian Securities & Investments Commission

Implications of a fast changing regulatory landscape

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Chairman

Australian Securities and Investments Commission

Australia–Israel Chamber of Commerce

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Implications of a fast changing regulatory landscape

- 1 Good afternoon, I am pleased to be here today in Brisbane to speak to you about the *'Implications of a fast changing regulatory landscape'*.
- 2 There certainly has been a lot of change arising out of Government policy, such as the transfer of surveillance from ASX to ASIC and from the global financial crisis, or GFC, which has led to changes in Australia, for example, for credit ratings agencies and short selling.
- 3 ASIC is also changing and growing as an organisation so I thought I would take this opportunity to make 7 points about what we are doing, provide you with some insights into our work, and discuss our approach to the current regulatory environment—here and overseas.
- 4 As a Federal election has been called, the convention is that the Government has assumed a 'caretaker role'. I will therefore avoid speaking on policy issues, as they are a matter for the in-coming Government once it takes office.

My first point:

ASIC is a regulatory oversight body and not a guarantor of last resort against risk and corporate failure.

- 5 ASIC is a national body and has a very wide mandate in securities and investments regulation and financial consumer protection. This wide mandate contrasts with the more limited mandates of other agencies (e.g. APRA with prudential regulation and ACCC with competition regulation).
- 6 We have offices in all Australian States and Territories and staff of just under 2,000 people—200 of those here in Brisbane. I'm pleased to say that our Brisbane office covers a wide range of work for ASIC and makes an outstanding contribution.
- 7 As I said, our role is to provide regulatory oversight not act as a guarantor. This is important because in our system of economic enterprise there can be losses from investments and losses from corporate failures without necessarily involving wrongdoing or oversight failure. They are a feature of our system and, when those losses or failures occur, absent any wrongdoing, the shareholders and creditors will generally wear those losses. That is the nature of the risk/reward premium that is part of investment.
- 8 It is often suggested that ASIC should prevent losses or failures. However, it's worth remembering that the *Corporations Act 2001*, the principal piece of regulation for which ASIC is responsible, arose out of the Campbell Committee and Wallis Inquiry. These committees were heavily influenced

by the so-called group of economic studies known as the ‘Efficient Markets Hypothesis’.

- 9 The underlying philosophy of these theories (and hence of the Act) is to allow markets to operate with a minimum of interference and to allow risk and to allow investors to price risk. Regulation is kept to a minimum and directed towards:
- using disclosure as the way to keep markets, investors and consumers informed, and
 - prohibiting certain types of misconduct (for instance, insider trading and market manipulation).
- 10 ASIC’s role in this regime (see section 1(2) ASIC Act) is limited and focused on oversight and enforcement of regulated conduct. I liken our role to a road traffic authority or police force. Basically, ASIC oversees and enforces the laws and couples that with extensive work to guide and educate those who travel on the roads.
- 11 Unfortunately, accidents still happen. When they do, we turn up at the scene, we clear the mess, we care for the injured and we punish wrongdoers. ASIC also examines the intersection and makes or recommends changes in width of road or safety barriers. We might decide to recommend an extra set of traffic lights, if necessary.
- 12 We also use our resources to proactively look for dangers—to look for roads where accidents can happen and try and fix them ahead of time. But it is simply not the intention of the Act, and consequently ASIC is not resourced to be on every road and at every intersection.
- 13 In the financial and business world, that translates to ‘we are not a guarantor of last resort’. In turn, stakeholders such as retail investors and financial consumers and creditors need to be careful and assess risk and make informed choices.¹

My second point:

In discharging this oversight function, ASIC has a clear direction and a clear set of priorities.

- 14 ASIC’s oversight function is defined in s1(2) of the ASIC Act which outlines 6 areas of responsibility. For convenience these can be grouped into two parts:

¹ Tony D’Aloisio, ‘How well should ASIC shelter retail investors?’, *The Age*, 29 June 2010. <<http://www.theage.com.au/business/how-well-should-asic-shelter-retail-investors-20100628-zf79.html>> Sets out the debate on whether certain products for retail investors should be proscribed.

- The first is real economy and financial markets infrastructure. This work refers to our role in registering companies, licensing businesses and a range of other information services we are required to provide. Our clear direction here is *‘to deliver outstanding and cost effective service’* and we have set 2 clear priorities:
 - to lift operational effectiveness, and
 - to reduce costs by making greater use of technology.
- The second is financial markets behaviour. Here our clear direction is *‘to exercise our powers to make a real (positive) difference in improving confidence in the integrity of our markets and protect investors and consumers’*.

15 To guide that work, we have 4 clear priorities:

- assist and protect retail investors and financial consumers
- build confidence in the integrity of our financial markets
- facilitate international capital flows in and out of Australia
- manage the domestic and international implications of the GFC.

16 In pursuing the priorities in financial markets, we use tools ranging from discussions, compliance and surveillance to enforcement and law reform. The tools we use will depend on the particular circumstances. Enforcement or deterrence work, however, does remain ASIC’s primary tool to deter illegal market behaviour and punish wrongdoing.

17 We developed our approach (clear direction and priorities) following an extensive review that was completed in 2008 with external assistance. We recently subjected the organisation to a further internal and external review (a ‘health check’ if you like), which has confirmed that the direction and priorities are relevant and correct for ASIC.

18 Our priorities will—and should—evolve and change as market conditions change. For example, as the financial crisis recedes, our priority in that area will become less relevant. In addition, we are assessing a potential new priority for ASIC around small and medium sized enterprises and what additional assistance and services ASIC can provide. Our aim will be to keep compliance costs low and assist small business as creditors of companies which fail.

My third point:**ASIC is achieving significant results in the work it is doing in relation to these priorities.**

19 The good work ASIC is doing across a range of priorities in its wide remit can get overshadowed in the media when ASIC loses a case or is criticised. Please let me give some examples of significant results that we have achieved so that you have a more balanced view of our performance.

Our deterrence and recovery work

20 We have 6 deterrence teams focused on enforcement work. As at 1 July 2010 they had on foot 296 investigations and 427 actions. This contrasts to 268 investigations and 398 actions a year earlier. We have, overall, a litigation success rate in excess of 90%.

21 Through our media releases, we make clear why we take on the cases we do. We will, no matter how hard the case, test the law where we need to. Similarly, if we feel it is in the public interest to seek alternate remedies, such as mediation, we will pursue those alternatives. Examples of these alternative approaches recently have been compensation claims in relation to Westpoint and Opes Prime and we are in confidential discussions in relation to Storm Financial.

22 Let me expand further:

- *Opes Prime*:² ASIC took swift action to investigate issues arising from the collapse of Opes Prime and ensure some \$250 million in compensation for Opes Prime creditors. Through ASIC-initiated mediation discussions, liquidators and clients of Opes Prime avoided costly litigation and clients will receive an estimated dividend of 37 cents in the dollar (with 35.5 cents paid to date).

Earlier this year, ASIC also brought criminal charges against the directors of Opes Prime Stockbroking for breaching their duties as directors. And we previously put in place an Enforceable Undertaking from the ANZ Bank which required it to complete a program to remedy deficiencies in operational procedures across ANZ Custodial Services securities lending operations. We took this strong deterrence action quickly while also pursuing compensation for investors, reinforcing our real commitment to assisting retail investors.

² ASIC Advisory (10-05AD) *ASIC brings charges against Opes Prime directors* (Monday 11 January 2010). <<http://www.asic.gov.au/asic/asic.nsf/byheadline/10-05AD+ASIC+brings+charges+against+Opes+Prime+directors?openDocument>>; ASIC Advisory (09-135AD), *Opes Prime schemes of arrangement approved* (Tuesday 4 August 2009). <<http://www.asic.gov.au/asic/asic.nsf/byheadline/AD+09-135+Opes+prime+schemes+of+arrangement+approved?openDocument>>

- *James Hardie*:³ We've also achieved strong results in the area of corporate governance by, for example, taking action against James Hardie (on appeal). This case provides important direction on the responsibilities and duties of executives and non-executive directors of public companies in making market announcements.

The findings in the case included: seven former non-executive directors and three former executives of James Hardie were found to have breached the Corporations Act in relation to statements by the company in 2001 concerning the adequacy of asbestos compensation funding. The non-executive directors and executives were disqualified from managing corporations for periods of 5 to 15 years and fined from \$30,000 to \$350,000.

Similarly we have been clear with the market why we are pursuing the Fortescue (on appeal) and AWB cases.

- *Insider trading and market manipulation*: Over the past 18 months, ASIC has put real resources into improving confidence in the integrity of our markets by targeting insider trading and market manipulation.

This is demonstrated by the fact that we currently have 69 enforcement matters relating to market integrity and, since 1 January 2009, we have had 20 significant outcomes:

- 4 outcomes (3 convictions and 1 guilty plea) for insider trading (Panchal, O'Reilly, Stephenson and Hartman)
- 5 outcomes (4 convictions and 1 civil penalty) for market manipulation (Wade, Musumeci, Newing, Soust and Chan)
- 3 outcomes for false and misleading statements to ASX (Roberts/Barnes of Chamelon Mining and Narain. Barnes has been set aside on appeal), and
- 8 brokers have been banned from providing financial services for market misconduct (McKensie, Macphillamy, Catena, Hebbard, Ho, Chan, Cameron and Henley).

23 We have a further 9 matters pending before the Court on criminal charges.

24 This is a significant improvement on previous outcomes. These results (since 1 January 2009) are better than the total for at least the previous 5 or so years.

Our compliance and surveillance work

25 Our oversight work, in the form of surveillance and compliance reviews is extensive. We have 11 industry teams covering the key players and gatekeepers in our financial markets. Accountants and auditors, investment

³ ASIC Advisory (09-152AD) *James Hardie civil penalty proceedings* (Thursday 20 August 2009).
<<http://www.asic.gov.au/asic/asic.nsf/byheadline/09-152+James+Hardie+civil+penalty+proceedings?openDocument>>

banks, investment managers, super funds, financial advisers, brokers and market operators to name the key ones. Our work is aimed at lifting standards and in doing so, maintaining and improving confidence in the operation of our financial markets. Why is this important? Confidence in the integrity of our share market, for example, is why it is attractive to investors (local and overseas).

26 Let me illustrate with some examples:

- *Oversight of auditors and accounting:* We have a systematic programme to review the financial reports of selected listed and unlisted companies. Earlier this month, we advised that we will review the 30 June 2010 financial reports of 350 entities identified for scrutiny, including 250 listed entities and 100 unlisted entities with large numbers of users.⁴

We also undertake inspections of audit firms with the objective of improving audit quality, which is important in the context of market confidence in financial reports.⁵

- *Active surveillance program:* ASIC's surveillance monitoring program also extends to financial advice. Appropriately, we take a risk-based approach to surveillance. That is, we will identify, analyse and evaluate the key risks in our regulated population and target our surveillance activities to those areas considered to be of highest risk. This proactive surveillance program sits alongside our ongoing reactive surveillance work, which is sourced directly from complaints or breach reports.

We complement our financial advice surveillance work with innovative surveys of the advice market from the consumers' perspective. ASIC has previously undertaken 2 rounds of shadow shopping using real consumers to monitor how well the advice market is meeting their needs. We plan to undertake another round of shadow shopping within the next 12 months.

Assisting and protecting retail investors

27 Our work in this area ranges from enforcement to financial literacy. We are focused on both deterring illegal behaviour and assisting retail investors and financial consumers to make informed choices. Informed choice is important where, as we have, ultimate risk lies with investors. We have extensive programs in this area (for example our FIDO website which received over 2 million visits in the past year).

⁴ Media Release (10-147MR) *ASIC focuses attention on 2010 financial reports* (Monday 5 July 2010).
<<http://www.asic.gov.au/asic/asic.nsf/byheadline/10-147MR+ASIC+focuses+attention+on+2010+financial+reports?openDocument>>

⁵ ASIC Advisory (10-46AD) *ASIC releases audit firm inspection report* (Thursday 11 March 2010).
<<http://www.asic.gov.au/asic/asic.nsf/byheadline/10-46AD+ASIC+releases+audit+firm+inspection+report?openDocument>>

- 28 Last year, we launched our *Investing between the flags* booklet to equip retail investors, particularly retirees, with information to protect their savings, understand the basics of risk and return and make informed financial decisions. We have since distributed over 37,000 copies of the booklet and received great feedback.⁶
- 29 This type of education work is coupled with, for instance, our health check of the contracts for difference, or CFD, market to ensure a multi-pronged approach to assisting and protecting financial consumers and investors.
- 30 Last week we issued a report⁷ on CFDs and retail investors. Our study found that issuers of CFDs need to do much more to ensure investors understand the significant risks in trading these complex financial products.
- 31 We will soon release a consultation paper on enhanced PDS disclosure benchmarks for over-the-counter CFD issuers with the aim of raising the quality of information provided to investors. And we will publish a consumer guide to help retail investors better understand these products.
- 32 Our work for retail investors extends to recovery of compensation (e.g. Westpoint and Storm Financial) as mentioned earlier.

Delivering service in the real economy

- 33 ASIC is focused on making it easier to start and do business in Australia as this is an important contribution we can make to Australia's real economy. We have made it a priority to improve the value we provide to the 1.7 million companies on our corporate registers and the 160,000 new companies that register with us each year.
- 34 Some examples of our work here include:
- *Efficient company registration system:* A lot of people take an efficiently operating national company registration system for granted. I'm pleased to say Australia is currently ranked no. 3 in the world by the World Bank for ease of starting a business in the World Bank's Doing Business 2010 Report. We are also the second fastest, at an average of 2 days and with no minimum paid-in capital requirements. Further, most companies are registered online with ASIC within minutes. In some countries it can take an average of 120 days, or 15 procedures to start a business.

⁶ In November 2009, ASIC released *Investing between the flags—A practical guide to investing* to help investors understand the basic principles of investing. <<http://www.fido.gov.au/fido/fido.nsf/byHeadline/Brochures>>

⁷ Media Release (10-153MR) *Providers need to do more to ensure investors understand the risks of CFD trading* (Monday 12 July 2010). <<http://www.asic.gov.au/asic/asic.nsf/byheadline/10-153MR+Providers+need+to+do+more+to+ensure+investors+understand+the+risks+of+CFD+trading?openDocument>>
See ASIC Report 205 *Contracts for difference and retail investors* (REP 205).

- *Improving online services:* We are working across the whole of government to dramatically lift the level of service we provide to start and maintain a business, focusing on removing unnecessary and bureaucratic red tape and reducing the overall costs of compliance. Our focus is to bring all of our services online; make them simple and more customer-centric. Currently 70% of all ASIC documents are lodged online, and we are working to make this 100%. We have redesigned our online services and over the next 12 months will release new direct-to-ASIC online searches of our entire registers; new company registration and simplified maintenance transactions—which apply a ‘tell once, apply across many’ principle—and move away from our traditional forms-based and legalistic approach.
- From 1 April 2011, ASIC will also be responsible for the national business names register, taking over this responsibility from the States and Territories. We are working hard, together with the ATO’s Australian Business Register, to make it simpler for people to register a new business name and register for tax in a single online transaction. A national regime will mean a reduction in red tape for businesses operating across State borders that currently have to register the same name in different States, and also in cost, with a single lower national fee.
- *Insolvent Trading and the Assetless Administration Fund:* A well functioning economy that encourages investment relies on a strong system to enable investors and creditors to recover funds in the event of business failure. ASIC has worked with insolvency practitioners involved in major corporate failures such as Allco Finance Group Ltd, ABC Learning Centres Ltd, Timbercorp Limited and Great Southern Limited.

In the last year we have also visited in excess of 150 companies as part of our National Insolvent Trading Program, which identifies companies nearing insolvency and encourages them to take early action.

ASIC also administers the Assetless Administration Fund which provides grants to liquidators of companies that have little or no assets to enable them to conduct detailed investigations and report officer misconduct. Through the fund, ASIC paid over \$3.4 million to liquidators this year. Significant funded matters in the past year included the Kleenmaid Group of companies, Storm Financial and Firepower.

Our policy and international work

35 ASIC as part of its regulatory remit has a small ‘p’ role in policy. Our role is primarily to focus on policy issues around our regulatory work (e.g. issuing regulatory guides and statutory relief) and to assist Treasury, which carries prime responsibility for the big ‘P’ policy of the Corporations Act. For the

most part we feed in our experience and practices in the market, acting as a valuable source of independent material for Treasury and the Government to assess. We also of course respond to Government Inquiries.

36 ASIC made substantial submissions to the Ripoll/PJC Inquiry into Financial Products and Services. We also appeared before and made a submission to the Senate Economics Committee as part of its Inquiry into Liquidators and Administrators.

37 Internationally, ASIC continues to play a key role in regulatory forums as they work to build a more resilient global financial system after the GFC.

38 We have, for instance, been very active in the work of the International Organisation of Securities Commissions ('IOSCO')—which is now seen as the global standards setter for securities regulation.

39 IOSCO's work in response to the crisis has focused primarily on providing guidance on how players and activities that were lightly regulated before the crisis should now be treated. Our contribution has been to co-lead work on the regulation of securitisation and CDS markets. We have also played an active role in shaping IOSCO's work on supervising hedge funds, regulating credit ratings agencies and cooperation between regulators in supervising cross-border activity.

40 The guidance IOSCO has developed in each of these areas is making a difference and being reflected in national regulatory approaches. Its recommendations on securitisation and hedge funds are seen in various initiatives being taken in the US, Europe and in Asia. IOSCO's work on credit ratings agencies has been endorsed by the G20 as the basis for regulatory standards for that industry.

41 In Australia, following IOSCO's work, we recommended amendments to the Corporations Act (which achieved a framework for a permanent disclosure regime, a general prohibition on naked short selling and clarification of ASIC's powers) in relation to short selling activity. These requirements are appropriate for Australia and consistent with both local market conditions and the IOSCO principles for regulation of short selling.

42 From 1 January 2010, we also required credit ratings agencies to hold an Australian Financial Services (AFS) licence. Licence conditions require ratings agencies to comply with the IOSCO Code of Conduct for CRAs (on an 'if not, why not' basis until 30 June 2010 and on a mandatory basis from 1 July 2010).

My fourth point:

ASIC's achievements in relation to these priorities are making a real and positive difference in delivering cost effective services and in maintaining confidence in the integrity of our financial markets. In doing so, it is providing the community with a real dividend from its investment into ASIC.

- 43 At the recent opening of our new Sydney office, our Minister, the Honourable Chris Bowen, stated that: 'Being a regulator will never be the most popular profession. You are sometimes criticised for doing too much; and sometimes too little'.⁸
- 44 ASIC's work does not lend itself to simple objective KPIs for measurement. A lot of our work is aimed at lifting standards of behaviour—something that is not easy to measure, let alone easily quantify our contribution.
- 45 Nevertheless, we conducted a base survey 2 or so years ago with our extensive range of stakeholders and we will run a similar survey later this year. In that way, we will get a measure from our stakeholders on how we are improving standards of behaviour in key areas.
- 46 At this stage let me share some anecdotal evidence.
- 47 First internationally: ASIC is perceived as a leader in its peer groups and its reputation has been enhanced with the way Australia responded to the GFC. Examples of ASIC's role is its position on IOSCO (on both major committees), it was asked to jointly chair the Taskforce on Unregulated Markets (key problems from the GFC) and it was asked to chair the Joint Forum (cross sectoral issues and gaps between securities, insurance and banking regulators).
- 48 Domestically, we stay close to the market and seek feedback. Recently we did a 'health check' on how we are faring and, as I said earlier, we will follow this up with a more extensive survey later this year.
- 49 Things that were seen to be working well included that ASIC had:
- a clear increase in external orientation and responsiveness
 - a stronger top team
 - unprecedented levels of access and engagement
 - substantive contributions both domestically and internationally, and
 - increased 'real economy' service standards.

⁸ The Hon. Chris Bowen MP, ASIC Sydney Office Opening Speech, 8 July 2010.
<[© Australian Securities and Investments Commission July 2010](http://mfsscl.treasurer.gov.au/DisplayDocs.aspx?doc=speeches/2010/015.htm&pageID=005&min=ceba&Year=&DocType=></p>
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- 50 I particularly noticed the quote from one respondent that: ‘ASIC does not often appreciate the impact of its actions—even if it loses a case, it spurs several Directors to take their education and responsibilities more seriously’. An important reminder.
- 51 In short, we are providing real value. While we are not yet getting 10 out of 10, there is significant confidence in ASIC across our many stakeholders and, internationally, we are becoming a benchmark regulator.

My fifth point:

This confidence is reflected in the additional responsibilities which ASIC has been given.

- 52 ASIC has recently been charged with additional and significant responsibilities. As Minister Bowen said at our office opening, this is the Government’s (and stakeholders’) vote of confidence in ASIC.⁹

Market Supervision

- 53 ASIC will assume responsibility from ASX for the supervision of trading on Australia’s licensed equity, derivatives and futures markets on 1 August 2010. This start date is not affected by the federal election.
- 54 We are well advanced in the transition process. Our objective has been to manage a seamless transition of supervision responsibilities, so as to minimise disruptions to participants’ daily operations.
- 55 We have an integrated market surveillance system in place and we have developed a streamlined markets analysis methodology and relationship management model. We have built and trained a quality Market & Participant Supervision team, consisting of ASIC talent and external people with specialist market experience. The team will be complemented by ASX surveillance staff that will transfer to ASIC on 1 August 2010.
- 56 We are currently engaging with market participants via a roadshow and through their industry associations to assure them that while the responsibility for supervising the rules is changing, their existing obligations will not change at this time. The market integrity rules are generally the same as those which exist currently and we intend to approach our supervision in a way which is consistent with the current approach.
- 57 In short, we are ready to assume this responsibility.

⁹ The Hon. Chris Bowen MP, ASIC Sydney Office Opening Speech, 8 July 2010.
<[© Australian Securities and Investments Commission July 2010](http://mfsscl.treasurer.gov.au/DisplayDocs.aspx?doc=speeches/2010/015.htm&pageID=005&min=ceba&Year=&DocType=></p></div><div data-bbox=)

Competition for Market Services

- 58 Prior to the election being called, the Government announced its support for competition between markets for trading in listed shares in Australia.
- 59 If this support is continued by the in-coming government,¹⁰ competition for trading services will create new challenges for ASIC. We are therefore giving much thought to how the Australian market might evolve and taken particular note of events such as the ‘flash crash’ that occurred in the US on 6 May. Wall Street’s sudden fall was a reminder of the speed markets can move and the need for operators and regulators to co-operate to deal with these movements.
- 60 If competition is pursued, our objective will be to consult with the market on the structure, technology and regulatory framework for effective competition. Our regulatory framework would need to consider, among other things, rules about best execution and pre- and post-trade transparency. If we are to proceed with implementing competition as part of a government’s policy, then we have a unique opportunity to position our markets from Day 1.

Regulation of Credit

- 61 On 1 July, ASIC became responsible for regulating consumer credit. In doing so, we became the national regulator for consumer credit and finance broking, taking over from the States and Territories. This means that home loans, personal loans, credit cards, consumer leases, pre-arranged overdrafts and line of credit accounts, among other products and services, are now regulated under Commonwealth legislation and administered by ASIC.
- 62 We have worked with industry and other stakeholders, sought feedback and engaged in discussions at various stages throughout the credit preparation process. Our ear has been to the ground and we have worked hard to make the system relevant and practical. This has included working with stakeholders to help them prepare for the new regime and conducting two national roadshows to all capitals and 24 regional centres.
- 63 We have issued 11 regulatory guides and 9 information sheets to help businesses understand their obligations and the credit licensing process.¹¹ We’ve also established an efficient, online and client-focused registration and licensing process which supports business to comply with their obligations. Over 14,700 credit businesses registered with ASIC prior to

¹⁰ As a Federal election has been called, the convention is that the Government has assumed a ‘caretaker role’. Matters that raise policy issues will be for the in-coming Government once it takes office.

¹¹ ASIC’s credit regulatory guides, information sheets and information on the licensing process can be found at <http://www.asic.gov.au/credit>

1 July and we received our first credit licence application within 45 minutes of opening our system at midnight on 1 July.

- 64 Registered consumer credit and credit assistance providers and intermediaries now have until 31 December 2010 to apply for an Australian credit licence or become an authorised representative of a licensee.
- 65 Further, ASIC has developed various educational resources for consumers about credit, to complement the information provided to industry. These include a comprehensive Credit Booklet as well as 15 fact sheets about various credit products and issues and new information on the FIDO website.¹²
- 66 We will also have a 14-person credit outreach team that will work with specific groups of citizens and, in particular, with consumer and community workers. They will deliver targeted education programs to those with the greatest need or on issues that are causing the greatest problems in our community such as mortgage stress.
- 67 As part of the new national consumer law, from 1 July ASIC also now administers new laws to deal with unfair terms in consumer contracts for financial products and financial services.

My sixth point:

In discharging these functions, ASIC has a forward program focused on its priorities and on improvements.

- 68 As you can see, ASIC has been busy and already made many changes. However, we are committed to continuing to improve.
- 69 We look for feedback through a wide range of consultations¹³ and have KPIs for our leaders to stay close to and understand their markets. To assist them, we have created an office of Chief Economist and expanded our research activities.
- 70 ASIC has listened and responded. Some examples include:
- *Major litigation:* we have reviewed our approach to major litigation and made changes (as part of the strategic review). These include improving

¹² ASIC Advisory (10-144AD) *ASIC helps consumers understand new credit laws* (Thursday 1 July 2010). <http://www.asic.gov.au/asic/asic.nsf/byheadline/10-144AD+ASIC+helps+consumers+understand+new+credit+laws?openDocument>

¹³ ASIC regularly consults and meets with industry and consumer groups and undertakes regional liaison meetings in every State and Territory. In addition, ASIC formally meets with the External Advisory Panel, Consumer Advisory Panel, Business Advisory Committee, the Australian Government Financial Literacy Board and Regional Liaison Meetings and participates in Joint ASIC/NZ Securities Commission meetings.

the way we run cases and explaining their strategic importance (win or lose) to the market.

- *Preventing problems*: as an oversight body we cannot be at every intersection. However, we do want to see if we can foresee issues or problems earlier through the better use of intelligence. Interestingly, the GFC illustrated the importance of this sort of intelligence to regulators overseas. And while our intelligence was better in Australia, we see this very much as an area for further improvement.
- We have also listened in relation to our new responsibilities (such as credit and surveillance). There is necessarily a degree of nervousness, with many people asking the question can ASIC really do this? I am confident we can and that the seamless delivery of surveillance and credit has been important in demonstrating our ability to handle these new responsibilities.

71 Earlier I mentioned feedback from the ‘health check’. We have analysed the less than positive comments and we are working on specific improvements. Areas of suggested improvement were for us to become less legal/enforcement centric, to be less conservative, and to improve online lodgement and even to be ‘more comfortable in blowing our own trumpet’.

My seventh and final point:

Credit for ASIC’s achievements should properly go to ASIC staff, Australia-wide, from our Brisbane to Traralgon offices and to larger offices like Sydney.

72 Next January, ASIC will turn 20. This is not a long time but enough time for successive generations of Commissioners and staff to have forged a unique ASIC culture. From what I have observed and assisted in developing since becoming Chairman, it is not in my experience a typical public service culture, nor is it a private enterprise (e.g. professional services firm) culture. It is very much an ASIC culture, underpinned by sound values and a sense of pride in wanting to make a real (and positive) difference or contribution to the markets we regulate. A real difference in the sense of providing better services and maintaining and improving confidence in the integrity of our markets—which are so important for investors and financial consumers.

73 Further, ASIC staff are talented and are highly sought after by industry. I believe we do well in retaining them, often at lower pay scales than the wider market, because of our culture and their commitment to our clear direction and priorities.

74 As with all organisations, development of a unique culture takes time. We have come far and we are proud of the organisation ASIC has become. But we have more progress to make and the feedback we receive is helpful.

Important in our improvement is the range of training programmes from on the job training to leadership courses run by external organisations.

Conclusion

Let me conclude by saying that what I have sought to do is to outline what we do and how we handle our existing and new regulatory responsibilities.

You, as one of our most important stakeholders, should feel confident that ASIC is handling the so-called ‘fast changing’ regulatory environment:

- with a clear direction and a clear set of priorities
- in a way which is delivering results
- in a way where its reputation as an efficient regulator is improving domestically and is well recognised internationally, and
- with a recognition and culture of continuous improvement.

Importantly, credit should go to ASIC staff as they build a unique ASIC culture aimed at making a real and positive difference to the regulation of the Australian securities and investments markets for the benefit of financial consumers and investors who participate in those markets.

Thank you.