



**ASIC**

Australian Securities & Investments Commission

# **Parliamentary Joint Committee on Corporations & Financial Services – Opening statement**

*A speech by Peter Kell, Deputy Chairman,  
Australian Securities and Investments Commission*

21 June 2013

## **CHECK AGAINST DELIVERY**

We are pleased to appear today.

Chairman Greg Medcraft is abroad chairing the IOSCO meeting in Canada, and sends his apologies.

With me are Commissioners Price, Tanzer and our new commissioner Cathie Armour who joined ASIC a fortnight ago. Also testifying are Senior Executive Leader Chris Savundra and senior managers Bronwyn Hill and Calissa Aldridge.

In my brief opening statement I'd like to address three issues.

### **Commonwealth Financial Planning**

The Senate yesterday voted to hold an inquiry into ASIC, in part prompted by commentary on our enforcement action against Commonwealth Financial Planning (CFP) several years ago.

ASIC welcomes the inquiry and looks forward to the opportunity of providing the inquiry with substantial information on what we do, what we have achieved and what we seek to achieve.

The media is right to shine a light on the conduct five years ago of CFP because it reminds the public how far we have come in changing financial planning.

There was unacceptable and unlawful conduct at CFP. Clients were given inappropriate advice and many suffered badly because of it.

And that is exactly why ASIC took serious enforcement action. Our actions:

- had seven advisers banned;
- set up a compensation system that will result in 1,127 customers receiving around \$50 million. There are around 37 cases yet to be resolved; and
- forced CFP into an enforceable undertaking that required the group to change completely the way it does business.

CFP was a complex matter and cases like this involve much background work before a public result is achieved. That is how law enforcement works. ASIC has to also carefully assess information presented to us and make judgments about what would stand up in court.

On the topic of whistleblowers, we cannot and will not discuss whistleblower involvement in any particular case. If ASIC revealed these details it would compromise the integrity of our whistleblower policy and deter people coming forward.

What person would approach ASIC if they suspected we might discuss their case with a newspaper reporter? In fact, we go out of our way to protect whistleblowers and several years ago successfully fought a case in the Federal Court to conceal someone's identity.

More broadly, and as this Committee knows more than most, there is major law reform underway for the financial planning industry, largely in response to major mis-selling episodes.

Conflicts of interest, arising from commission-based payments, were at the heart of the problems with CFP. The Future of Financial Advice reforms, which start in a few weeks, include a prohibition against commissions going forward and there will be a new duty to act in the client's best interest.

As I said, we look forward to discussing these matters further at any inquiry.

## Kagara

The Sydney Morning Herald–The AGE has published a number of articles on failed miner Kagara and ASIC's handling of a financial reporting 'waiver' request (or 'relief request') for the company.

I would note at the outset the handling of this application is a separate issue from the administration of Kagara itself.

The articles attacked ASIC and gratuitously named a number of ASIC staff listed in correspondence. ASIC was given no opportunity to comment on the articles before publication.

Among other things the articles imply that ASIC staff did a favour for a former employee who is now Kagara's administrator.

**I want to be absolutely clear:** ASIC does favours for no-one. Any suggestion otherwise is a serious smear on this organisation and its people. People work at ASIC because they believe in the public interest, and they are committed to the highest levels on integrity.

As an ASIC Commissioner or a Senior Executive, fronting up to criticism in the public arena is part and parcel of the job. For example, it is part of our role to appear at these committees and explain ourselves and what ASIC does. This is not the case for the other ASIC staff named in these articles.

More broadly, our published policy of many years is to allow companies under various forms of external administration to defer preparing accounts if they meet certain conditions.

We do this because of the substantial costs creditors may otherwise have to bear in preparing accounts for a company with an uncertain future.

This is the approach we adopted for Kagara. ASIC's normal conditions of relief, such as answering reasonable inquiries from company members free-of-charge, was applied to Kagara.

The Kagara matter was dealt with urgently because financial reports were shortly due and because of timing considerations of related court proceedings where ASIC was contesting orders requested by the administrators about financial reporting.

When the administrators understood ASIC was contesting the court orders they wanted, they decided to apply for more limited relief in accordance with ASIC's published policy instead.

ASIC understands Kagara's predicament is a serious matter which has had devastating consequences for creditors. But the public can be assured in this matter all procedures and processes continue to be properly carried out.

We will also table a more detailed background document regarding Kagara for the PJC. Commissioner Price is happy to answer any questions about ASIC's handling of the relief application.

## Unclaimed money

Finally, I'd like to briefly update the Committee on the Unclaimed Money program.

In December last year, the definition of unclaimed money changed from accounts not accessed in seven years to accounts not accessed in three years.

In April this year there was \$709 million already in unclaimed money across banking, life insurance and companies. As a result of the change there was a one-off increase at the end of May of \$471 million. This comprises \$450 million in bank accounts and \$21 million in life insurance.

The total amount of banking unclaimed money represents around 0.05% of all Australian bank deposits.

The new details for the additional accounts are being uploaded onto ASIC's free, searchable database as we speak. This is happening progressively and will be completed by 12 July.

ASIC will continue its program of reuniting consumers with their lost money. This includes promoting the ability for people to undertake free searches through our website, and we will also continue our program of writing to potential owners. Over the past five financial years (2007–08 to 2011–12) we returned just under \$250 million to the public.

Chair, I am happy to now take questions.