



ASIC

Australian Securities & Investments Commission

Senate inquiry into the performance of the Australian Securities and Investments Commission— Opening statement

*Speaking notes from Greg Medcraft, Chairman,
Australian Securities and Investments Commission*

19 February 2014

CHECK AGAINST DELIVERY

Introduction

Good morning, Chairman.

Thank you for this opportunity to address the Committee.

Representing ASIC today are all of our Commissioners:

- Deputy Chairman Peter Kell
- Commissioners:
 - Greg Tanzer
 - John Price
 - Cathie Armour.

Supporting the Commission are Senior Executive Leaders:

- Greg Kirk
- Warren Day
- Tim Mullaly
- Chris Savundra
- Adrian Brown
- Louise Macaulay
- Joanna Bird
- Andrew Fawcett.

We welcome the inquiry into ASIC's performance and are grateful to all the people who have taken the time and effort to provide submissions.

We have considered all submissions in an effort to learn as much as we can from them – and, also, to enable ASIC to do a better job.

To help the Committee in its task, we are open to providing further information to help your understanding of matters raised in submissions, or during the hearings.

Submissions to the inquiry

ASIC recognises a number of submissions were from people who have incurred significant monetary loss and suffered serious financial hardship.

We appreciate the difficult circumstances these people face and the trauma that it can bring – and we thank them for their contribution to the inquiry.

Individual losses are distressing. However, the settings established by Parliament for our financial system are such that no financial regulator can prevent all losses from occurring.

Our system is designed this way because:

- removing losses would substantially reduce economic growth, individual choice and returns to investors
- preventing all potential losses from poor products, misconduct or criminal activity would involve highly expensive and intrusive regulatory intervention.

Other financial systems around the world are designed in a similar way.

While loss can never be entirely removed from financial markets, we work hard to enforce the law and deal with misconduct that puts investors at risk.

We also work hard to help consumers and investors make appropriate choices in their dealings with financial services providers.

ASIC's responsiveness to early warnings of market problems

We work proactively to identify potential market problems.

We do this in a number of ways, including:

- gathering and using industry intelligence
- considering every complaint made to ASIC to identify issues we need to act on
- using formal sources of intelligence to detect individual misconduct and trends
- conducting surveillances and proactive sectoral 'health checks'.

ASIC's record on enforcement

ASIC has a strong record on enforcement.

In the last three years, our success rate in enforcement has been over 90%.

In 2012–13, we were successful in 100% of civil cases, and 85% of criminal cases.

Achieving our enforcement outcomes

Court-based enforcement action is only one of several regulatory tools we use to achieve compliance with the law and positive outcomes for consumers.

In all cases, we need to weigh up the cost versus the regulatory benefit of taking a particular course of action.

In many cases, we use a combination of regulatory tools to achieve outcomes.

ASIC's staff

Chairman, one disappointing thing about some of the submissions was the inflammatory tone of criticisms made – particularly about ASIC staff.

ASIC has exceptional employees.

They are men and women who work at ASIC for good reason. This is because they believe in the public interest.

They are skilled and committed to their work.

Considering the difficult job they do, they should receive appropriate respect.

Our people have diverse backgrounds – they have experience in law, accounting and financial services.

Many have invaluable industry or consumer advocacy experience. This means they understand how markets work and the issues facing investors, consumers and the wider industry.

ASIC employees also undertake ongoing internal training and have access to industry secondment programs, which further develop their skills.

All of these things make our people highly sought after by the private sector and internationally by other regulators.

Better communication

We recognise that an underlying theme of submissions has been the need for ASIC to improve the transparency of its communications in all areas.

It is not enough for us to simply continue to improve the way we work and the results we achieve.

We also need to ensure we communicate these things to the people we deal with.

In my term as Chair of ASIC we have taken significant steps to improve transparency and communication.

We have undertaken initiatives like:

- the publication of our Enforcement Policy
- the introduction of bi-annual public Enforcement Reports
- our increased commitment to publicising non-enforcement outcomes
- new processes for consumers and investors reporting misconduct to us
- use of new media like Twitter, YouTube and Facebook.

These initiatives make ASIC more transparent and open than ever before.

Despite all of this, we have heard the clear message from submissions that we need to communicate more – and we need to communicate more effectively about our work and decisions.

This is an ongoing goal of this Commission. In particular, I would like to discuss some of our additional plans in dealing with whistleblowers.

Whistleblowers

We are working on improving our dealings with whistleblowers.

The changes we are implementing include:

- establishing Whistleblower Liaison Officers within all relevant ASIC teams – staff from our Misconduct and Breach Reporting team and the Whistleblower Liaison Officers will soon receive new training on awareness of whistleblower protections and handling whistleblower complaints
- providing better, clearer and more regular communication to whistleblowers during investigations
- conducting a stocktake of matters involving whistleblowers, to ensure these are being given appropriate priority.

ASIC's submissions to the inquiry

We have made four public submissions to the inquiry.

These cover the full width of the terms of reference, including focusing on the issue that led to the inquiry – our handling of misconduct at Commonwealth Financial Planning Limited (CFPL).

Our submissions also consider an issue that has been common in many submissions – problems arising from low doc and other mortgage lending prior to the global financial crisis.

We have made recommendations for policy reform in four key areas:

- 1 better regulating the financial advice industry, including:
 - raising financial adviser competence through a national exam
 - extending the public register to cover employee financial advisers, which will help remove ‘bad apple’ advisers from the industry
- 2 enhancing whistleblower protections
- 3 strengthening ASIC’s licensing powers – including providing ASIC with the ability to ban a person from managing a financial services business
- 4 strengthening ASIC’s investigation and enforcement powers, including:
 - streamlining search warrant powers
 - reviewing the level, consistency and availability of penalties.

On the topic of penalties, I would like to say a little more.

There is an expectation among the public that we will take strong action against wrongdoers – and doing this will send a message that shapes future behaviour.

However, one of the barriers we face to achieving this is the inadequacy of penalties.

We have outlined some of these inadequacies in our main submission. They include the fact that:

- some comparable criminal offences currently attract inconsistent penalties
- civil penalties:
 - are currently set too low
 - are not available for a sufficiently wide range of misconduct
- lastly, we require a more graduated set of penalties to provide an effective enforcement response in a wider range of cases.

We consider that this includes the greater availability of infringement notice powers.

It is frustrating – both for us and the public – when the penalty available to respond to misconduct is much less than the profit someone made in the process.

If this is so, then rational players in the market will routinely take that risk.

If the thinking of law-breakers is a tussle between fear versus greed, then we need penalties that amplify the fear and smother the greed.

We need penalties that create a fear that overcomes any desire to take risks and break the law.

Chairman, thank you for your time this morning. We are very happy to discuss any aspect of our submissions in more detail with you and the Committee.