

Speech Notes
ASIC Chairman, Alan Cameron AM
Media Conference 6 January 2000

Good afternoon ladies and gentlemen, thank you for coming.

Today we are here to announce that the Commonwealth Director of Public Prosecutions has informed ASIC that he does not intend to lay any charges against anyone connected with the Yannon transaction or any of its associated issues.

The DPP informed ASIC of his decision after reviewing more than 100 folders of analysis, summaries and evidence collected by ASIC during a comprehensive investigation.

I would like to thank the DPP and his staff, who were extensively consulted on this matter, for their dedication and commitment in achieving this resolution.

ASIC's investigation focussed on whether there were any breaches of duty by any person involved in the transaction.

The size of the investigation is often underestimated by outside observers because of the focus on the so-called Yannon transaction itself. It is worth pointing out that the investigation involved a wide range of events and issues which occurred over more than six years from 1 April 1989 until 31 July 1995.

While the investigation focussed upon Yannon's purchase of shares in Premier Investments Ltd, the events leading up to that transaction and its consequences were also important and required equal attention from ASIC.

During the investigation ASIC:

- Collected more than 253,500 pages of documents, having served 435 notices on many different parties to produce them.
- Examined 93 people over 214 sitting days. The transcript of the evidence obtained exceeds 12,500 pages.

ASIC is pleased the investigation is finished and is satisfied that the DPP has properly considered all of the material gathered by ASIC.

I know some of you in this room have been critical of the time it has taken to investigate this matter.

The Yannon investigation took longer than ASIC expected it to. But, at the same time, investigations such as the Yannon matter often take longer than expected. A quicker result does not necessarily produce a fairer or more just result.

You need to understand that it was important for us to pursue every avenue of investigation in the interests of Coles Myer shareholders and public confidence generally in our market place. Coles Myer has of course received a civil recovery in respect of its losses and ASIC helped to bring this about.

There were a number of reasons why the investigation was a long and difficult one:

- The matter was not brought to ASIC's attention until five years after the transaction, which meant that relevant information was more difficult to obtain and required lengthier searches, questioning and examination.
- The transaction involved a series of complicated proposals before culminating in what became known as the Yannon Transaction
- There were seven separate legal proceedings during the course of the investigation in which ASIC was involved.
- The investigation involved more than one "live", listed, operating public company and the individuals involved in them.
- The investigation involved a number of difficult, complex questions of law concerning the availability of important, and in several respects, crucial information.
- The Chairman and Chief Executive of Coles Myer at the time of the Yannon transaction faced other criminal charges while the investigation was underway and was convicted and gaoled.
- The question of ASIC's access, and a prosecutor's access to witnesses and evidence which were made more difficult with the age of the transaction. The time which had transpired since the transaction obviously presented problems for witnesses who were examined by ASIC.

Most witnesses, understandably, found the experience of recollecting events which occurred more than five years earlier to be extremely difficult. Often recollections changed. Often recollections from highly credible people did not match contemporaneous documents or the recollections of other highly credible people. Often recollections were vague or imprecise. One or two witnesses had no recollection at all !

This made ASIC's job more difficult. The fact the transaction was more than five years old at the start of the investigation meant the capture of relevant, cogent and reliable evidence was more difficult than is normally the case in ASIC investigations.

Timeliness often depends upon the cooperation of others. Most of the people and companies dealt with during the investigation were cooperative with ASIC most of the time. However, there were difficulties (as there always are) in this respect. For example of the 93 people examined by ASIC, only 22 witnesses were prepared to give ASIC a voluntary statement. And while ASIC could have sought to insist on interviews

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at times of its choosing, some interviewees found these times inconvenient and on occasion went to court to challenge even the timing of interviews.

This was an unusual investigation in the amount of time it took to complete. This investigation was one of a kind in that it is unlikely that ASIC will again have to investigate a matter that is already five years old. It takes very special circumstances for ASIC to look at such matters let alone devote significant resources to them.

As a point of comparison the average length of time taken to complete investigations commenced this year is 5 ½ months. While that figure represents the average and the length of some investigations will exceed that, it demonstrates how different the Yannon matter was to any other investigation conducted by ASIC in the past few years.

An independent DPP is there to protect the rights of the individual.

ASIC has wide powers of compulsion to obtain documents and to question people, the necessary counterbalance to that is that we do not make the final decision on whether to prosecute.

The implications of proof beyond reasonable doubt are not well understood. Many people have formed views about this transaction which may be based on material which, if admissible in evidence at all, would only be admissible against the person proven to be the author.

For example, a diary may not be admissible at all, but if admissible may only be evidence against the person who kept the diary. A letter is only evidence against the person proved to have been the author. And an opinion (sometimes referred to as a report) by an eminent lawyer, now a judge, obtained by the company years after the event, is not evidence of the facts by itself.

At this point I would like to express my gratitude to the ASIC investigators, lawyers, staff and consultants most of whom are now working on other matters, but who have worked long and hard on this.

ASIC's job was to investigate. We have done that job. Yannon is now finished.
