



ANNUAL REPORT **2011–12**

- ♦ confident and informed investors and financial consumers
- ♦ fair and efficient financial markets
- ♦ efficient registration and licensing



ASIC

Australian Securities & Investments Commission

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ASIC

Australian Securities & Investments Commission

GREG MEDCRAFT

Chairman

100 Market Street, Sydney
GPO Box 9827 Sydney NSW 2001
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10 October 2012

The Hon Bernie Ripoll, MP
Parliamentary Secretary to the Treasurer
Parliament House
CANBERRA ACT 2600

Dear Mr Ripoll

I am pleased to give you the annual report of the Australian Securities and Investments Commission for the year ended 30 June 2012.

The report has been prepared in accordance with section 136 of the *Australian Securities and Investments Commission Act 2001* and the 'Requirements for Annual Reports' guide, approved by the Joint Committee of Public Accounts and Audit, and published by the Department of the Prime Minister and Cabinet on 28 June 2012.

I note that you are required under section 136 to cause the report to be tabled in each House within 15 sitting days of receiving it.

Yours sincerely

Greg Medcraft
Chairman

Chairman's report

In 2011–12, ASIC continued to focus on our strategic priorities, aligning the organisation and our performance management framework with these priorities, and increasing our transparency so that Australians know what they can expect from us.

Commission changes

The substantially new Commission brings deep knowledge of markets and consumer issues when leading their clusters. We welcomed new Commissioners Peter Kell, Greg Tanzer and John Price following the departures of Dr Peter Boxall and Shane Tregillis who took up new positions outside ASIC. We were deeply saddened by the passing of former Commissioner Michael Dwyer. Each Commissioner made a tremendous contribution and, on behalf of ASIC, I would like to acknowledge their service.

Strategic priorities

I place great emphasis on having the community understand what ASIC is doing and why. There should be no surprises for the regulated population when ASIC takes action because everything we do is premised on the following three priorities that were laid out in ASIC's Strategic Framework document in August 2011:

- Priority 1:** Confident and informed investors and financial consumers
- Priority 2:** Fair and efficient financial markets
- Priority 3:** Efficient registration and licensing.

ASIC is outcomes-focused. We have a number of tools available to achieve the desired outcomes. These are:

- ♦ engagement with industry and stakeholders
- ♦ surveillance
- ♦ guidance
- ♦ education
- ♦ enforcement
- ♦ policy advice.

Structure

We have aligned our corporate structure into three clusters to better reflect our priorities. The Investors and Financial Consumers cluster focuses on Priority 1 and is led by Commissioners Peter Kell and Greg Tanzer. The Markets cluster deals primarily with Priority 2 and is led by Deputy Chairman Belinda Gibson and Commissioner John Price. The Registry and Licensing cluster, with a focus on small business, is led by Commissioner Tanzer.

Transparency

We have improved the transparency and accountability of our enforcement work, by publishing information sheets that describe how, when and why we take enforcement action and the circumstances in which we may make public comment on it, by publishing bi-annual reports on enforcement action outcomes, and by reporting on the use of our compulsory information-gathering powers in the Annual Report (see page 150).

Business plans

We have also aligned our business plans with the strategic priorities. Our senior leaders are required to set out in detail how they will meet ASIC's priorities, which tools they will use to achieve this, and outcomes they will achieve. The organisation as a whole is expected to meet its business plans or be held accountable if it does not.

ASIC values and behaviours

We have refreshed our ASIC values which are now: Accountability, Professionalism and Teamwork – APT for short. The intent behind the values is that they will create a dynamic and supportive environment for achieving our strategic priorities. These values will permeate actions and business decisions, and they are part of every individual's performance agreement where we describe our personal commitment to living the values.

Employer value proposition

ASIC's employer value proposition, 'For Good Reason', was launched in May 2012 to support our goal of attracting, inspiring and retaining talented and committed staff. It recognises the critical role that our staff play in achieving our strategic priorities. We emphasise this message by placing it on our key materials as part of our employment initiative to attract the best and brightest.

Resources

A key challenge for ASIC as a regulator is how to allocate the resources that are available to us to best fulfil our mandate. In setting our priorities, we consider the following:

- ♦ our legislative responsibilities
- ♦ government policy
- ♦ systemic and regulatory risk
- ♦ stakeholder expectations.

We have established an Emerging Risk Committee to analyse risks that are on the horizon that might pose a threat to markets and consumers and to put in place appropriate strategies to monitor and mitigate them.

Engagement

It is critical for the regulator to keep its finger on the pulse and one way we do this is through our external committees and panels. The External Advisory Panel membership ranges from the head of Google Australia, Nick Leeder, to Jenni Mack, Chair of CHOICE. The membership provides a breadth and depth of knowledge that helps ASIC keep abreast of developments and systemic risks within industry and markets.



Greg Medcraft, Chairman

Highlights 2011–12

Confident and informed investors and financial consumers

Major outcomes in 2011–12 included:

Engagement with industry and stakeholders

- ♦ The Investors and Financial Consumers cluster held over 200 meetings with industry associations. Topics discussed ranged from the Future of Financial Advice to advertising.
- ♦ We consulted on topics such as good practice guidance on advertising credit products and credit services; a review of the external dispute resolution jurisdiction over consumer complaints in cases where members have commenced legal proceedings to recover debts from consumers; and improving disclosure for retail investors considering unlisted property schemes.

Surveillance

- ♦ ASIC conducted over 750 high-intensity surveillances of its regulated population including risk-based reviews of investment banks and major exchange traded fund issuers, and shadow shops of financial advisers.
- ♦ We also reviewed the sales practices of 15 authorised deposit-taking institutions (ADIs) that sold consumer credit insurance for home loans, personal loans and credit cards. From this work we identified problems such as a high proportion of related insurance claims being denied.

Guidance

- ♦ We released 19 new or revised regulatory guides relating to Priority 1. These included best practice guidance on advertising financial products, disclosure standards for unlisted property schemes, financial resource requirements for responsible entities, and guidance on the shorter product disclosure regime.
- ♦ In September 2011, we released the ePayments Code, a best-practice consumer protection regime for electronic payment facilities.

Highlights 2011–12 continued

Education

- ♦ ASIC's MoneySmart website was expanded and now underpins financial literacy activities, including school and Indigenous programs. It received 1.9 million unique visits and was rated Best Government Website at the 2011 Australian Web Awards and Best Service Delivery Website at the 2012 Excellence in e-Government Awards. In an April 2012 survey of MoneySmart users, 89% of respondents reported taking specific action as a result of visiting the site.
- ♦ The Helping Our Kids Understand Finance initiative has delivered a national learning package for primary schools to engage students, and we have a dedicated teaching website that is being trialled in 90 schools throughout Australia.
- ♦ We have produced financial education resources to assist newly-arrived Australians, including online content in 26 languages.
- ♦ ASIC's Indigenous Outreach Program provides Aboriginal and Torres Strait Islanders with tools to make decisions about all financial services. As well as producing targeted publications, we've visited over 30 Indigenous communities throughout Australia, promoting financial literacy, and following up complaints about financial services providers.

Enforcement

- ♦ Under this Priority, we completed 133 civil litigation actions, 118 investigations, 14 criminal proceedings, and secured 13 criminal convictions and 10 imprisonments.
- ♦ As a result of work done throughout the year we recently reached a settlement agreement with the Commonwealth Bank of Australia on the Storm Financial matter bringing the total compensation made available by the bank to approximately \$268 million.
- ♦ Through Operation Ark, ASIC took action to combat organised crime targeting unsuspecting and inexperienced Australian investors through online scams.

Policy advice and implementation

- ♦ ASIC contributed to the Government's Future of Financial Advice and Stronger Super reforms.
- ♦ ASIC made four public and two confidential policy submissions to the Government relating to Priority 1. The public policy submissions related to inquiries into the collapse of Trio Capital, the operation of the insurance industry, and the Future of Financial Advice reforms.

Fair and efficient financial markets

Major outcomes in 2011–12 included:

Engagement with industry and stakeholders

- ♦ The Markets cluster attended over 200 meetings and conferences with industry associations on topics ranging from market supervision cost recovery to insolvency law reform.
- ♦ We consulted on topics such as the proposed regulatory guidance on high-frequency automated trading, dark pools and further proposals on the Australian equity market structure.
- ♦ Leading up to the launch of Chi-X, ASIC worked closely with market operators, participants, vendors, the Market Supervision Advisory Panel, Treasury and third-party experts. Following the launch we conducted more than 50 meetings with stakeholders and held information sessions for industry bodies to ensure we issued workable rules and guidance.

Surveillance

- ♦ ASIC conducted over 700 high-intensity surveillances of its regulated population including listed entities engaging in control transactions, risk-based reviews of audit firms and market participants, practice reviews of liquidators, and annual assessments of market operators. We also reviewed financial reports of listed entities and prospectuses, intervening on 125 prospectuses and issuing 21 interim and 13 final stop orders.
- ♦ Through our real-time supervision of the Australian financial markets, ASIC identified over 20,000 trading alerts in the second half of 2011, with 131 matters requiring further inquiry.
- ♦ We made submissions on nine matters considered by the Takeovers Panel.

Guidance

- ♦ ASIC issued 10 new or updated regulatory guides relating to Priority 2.
- ♦ We issued new competition market integrity rules, which establish common standards for market operators; guidance clarifying ASIC's expectations on trading system controls; and recommended a number of improvements to ASX Group systems and processes
- ♦ Guidance for companies included guidance on preparing better prospectuses and on reporting and voting on remuneration for key management personnel.

Enforcement

- ♦ ASIC conducted enforcement actions on market manipulation, false or misleading statements, insider trading and other breaches of the *Corporations Act 2001* (Corporations Act). We completed 46 civil litigation actions, 65 investigations, 14 criminal proceedings, and secured 14 criminal convictions and 10 imprisonments.
- ♦ Decisions handed down in the Centro and James Hardie cases gave the Australian community greater certainty about what is expected of company directors. The Federal Court in Centro set a clear standard of care and diligence for directors when approving financial reports. The decision in James Hardie reinforced the proposition that directors have responsibility for the content of market announcements they approve.

Policy advice and implementation

- ♦ ASIC helped develop domestic and international policy. This included implementing the Group of Twenty (G20) Leaders' commitments on over-the-counter derivatives markets, including standards on data reporting and proposed margining requirements for non-cleared transactions.
- ♦ ASIC also made one public and eight confidential policy submissions to the Government relating to Priority 2. The public policy submission related to an inquiry into the post-global financial crisis banking sector.

Efficient registration and licensing

Major outcomes in 2011–12 included:

Engagement with industry and stakeholders

- ♦ We conducted 20 roadshows to introduce the national Business Names Register to industry and stakeholders.
- ♦ As part of improving how we deal with the public, we launched the ASIC Connect user interface which allows customers to conduct registry searches online more easily and cheaply. We saw significant growth in online interactions, including 20% more visits to the ASIC website.

Surveillance

- ♦ ASIC conducted desktop reviews and onsite audits of 32 credit licensees to confirm the information in their annual compliance certificates under the national consumer credit laws.
- ♦ ASIC also investigated 116 entities to determine if they were engaged in unlicensed credit activities.

Guidance

- ♦ ASIC issued 11 new or updated regulatory guides relating to Priority 3. These included guidance on how to apply for an Australian financial services (AFS) licence, and principles for cross-border financial regulation.
- ♦ ASIC developed guidance to prepare the financial services industry for emissions trading, including when an AFS licence will be required and details of which emissions units are financial products.

Enforcement

- ♦ ASIC disqualified or removed 84 directors from managing corporations as a result of being involved in two or more companies that have been placed into liquidation within seven years.

Policy advice and implementation

- ♦ We launched the national Business Names Register on 28 May 2012 to replace the eight previous state and territory services. More than 1.4 million active business names were transferred to the new register.
- ♦ ASIC transferred more than 1.5 million company charges to the Personal Property Securities Register which was implemented on 30 January 2012.

Chairman's report continued

Outlook

As I stated in my opening address at the 2012 ASIC Summer School, our annual industry conference, there are three key challenges facing ASIC over the next decade to build resilience in the Australian financial system. These are:

- ♦ the growing regulatory perimeter, particularly with the exponential growth in superannuation – more products, more investors and greater investment funds increases risk in the financial system;
- ♦ the increasing complexity of the financial system – products, methods of distribution, information channels and financial markets are increasing in complexity which again increases risk in the system; and
- ♦ leveraging ASIC's resources to be proactive, because it is through proactive regulation that you build resilience. Stakeholder engagement, surveillance, education and guidance are central to maintaining confidence in Australia's financial system.

To address these challenges we will continue to focus on our three priorities and make the most of the tools at our disposal. We are also consulting closely with relevant industry parties and working with other regulators in Australia and overseas regulators through the International Organization of Securities Commissions (IOSCO).

Our people

On behalf of the Commission, I would like to thank all of ASIC's staff members for the exceptional contribution they made over the past year.

Spread across nine offices in Australia, ASIC staff played a key role in enabling us to support and improve the nation's business and economic environment. Their dedication was central to the successful completion of the many initiatives outlined above and in this report, many of which represent an expansion of ASIC's traditional responsibilities.

Our team is also generous. Over the year, ASIC staff donated \$134,965 to not-for-profit organisations. We have one of the largest workplace-giving programs in the Australian Public Service. ASIC also supported the community as volunteers and helped ensure the success of a range of ASIC's environmental efficiency initiatives.

The priorities on which all our work is based are supported by the pledge that we will continue to take on the big and difficult cases, no matter where they are or who they involve. ASIC staff and the Commission know that the Australian public would expect nothing less and this annual report shows the strides we have made to meet that pledge.



Greg Medcraft
Chairman

TRIBUTE TO MICHAEL DWYER

Michael Dwyer was appointed as an ASIC Commissioner in 2009 and completed his three-year term on 11 December 2011. He passed away in March 2012. Michael was a valued friend and colleague who made an important and lasting contribution to Australia's corporate governance framework. His experience – especially in the insolvency, accounting and financial reporting areas – was significant and of tremendous benefit to ASIC, particularly through periods of parliamentary scrutiny and the challenges of the global financial crisis.



Commissioners

Greg Medcraft

Chairman, BComm

Greg Medcraft was appointed ASIC Chairman on 13 May 2011 for a five-year term.



Greg joined as ASIC Commissioner in February 2009. Prior to ASIC, Greg was Chief Executive Officer and Executive Director at the Australian Securitisation Forum (ASF).

Greg spent nearly 30 years in investment banking at Société Générale in Australia, Asia, Europe and the Americas. More recently, he was the Managing Director and Global Head of Securitisation, based in New York.

In 2002, Greg co-founded the American Securitization Forum and was its Chairman from 2005 until 2007 when he returned to Australia. The American Securitization Forum is an industry group representing some 350 member institutions comprising all major stakeholders in the US\$1 trillion US securitisation market. In January 2008, he was appointed Chairman Emeritus of the Forum.

Greg is the Chair elect of the International Organization of Securities Commissions (IOSCO) with his term due to commence in March 2013.

Belinda Gibson

Deputy Chairman, BEc, LLB (Hons), LLM (Hons)

Belinda Gibson joined ASIC as a Commissioner on 5 November 2007 and was appointed Deputy Chairman on 7 May 2010.



She is a member of the Financial Reporting Council and, until recently, the Corporations and Markets Advisory Committee.

Before joining ASIC, Belinda was a partner at the law firm Mallesons Stephen Jaques from 1987 to 2007, specialising in corporate and securities law and transactional advice. She was partner in charge of the Sydney office from 2000 to 2003. She was a director of Airservices Australia

(Australia's air traffic control authority) from 2000 to 2004, and of the charitable body, the Menzies Foundation, from 1990 to 2007.

Belinda currently has responsibility within the Commission for overseeing capital markets, including exchange traded markets and broker supervision functions and associated enforcement teams. This group recently managed the introduction of market services competition in Australia.

Belinda also oversees the team supervising insolvency practitioners. The Insolvency Practitioners team has recently been given powers to wind up companies, and their annual publication of corporate insolvencies provides detailed statistics to help consumers with matters such as identifying causes of failure and likely dividends to unsecured creditors.

Peter Kell

BA (Hons)

Peter Kell commenced as an ASIC Commissioner on 7 November 2011.



From August 2008, Peter was Deputy Chair of the Australian Competition and Consumer Commission (ACCC). He was President of the International Consumer Protection Enforcement Network in 2009–10, and also served on the Consumer Policy Committee of the Organisation for Economic Co-operation and Development (OECD). Peter has been on the Australian Government Financial Literacy Board since its establishment, and is a member of the Commonwealth Consumer Affairs Advisory Committee.

Before joining the ACCC, Peter was Chief Executive of CHOICE (formerly the Australian Consumers Association) and a board member of the global consumer organisation Consumers International.

Between 1998 and 2004, he was ASIC's Executive Director of Consumer Protection and its New South Wales Regional Commissioner.

Commissioners *continued*

John Price

BA, LLB (Hons)

John Price commenced as an ASIC Commissioner on 21 March 2012.

Since joining ASIC in 1999, John has held a number of senior roles including, most recently, as Senior Executive Leader, Strategy and Policy. His previous roles at ASIC include Senior Executive Leader, Corporations; Acting Executive Director, Regulation; and Director, Applications and Licensing.

In these roles, John has been closely involved in developing and implementing regulatory policy and the regulatory aspects of major transactions, as well as identifying and developing regulatory responses to emerging issues and risks. His regulatory experience includes matters relating to fundraising, mergers and acquisitions, financial services, and accounting and audit.

Prior to joining ASIC, John worked in the Gold Coast and Brisbane offices of Corrs Chambers Westgarth, a national law firm.



Greg Tanzer

BEd, LLB (Hons)

Greg Tanzer commenced as an ASIC Commissioner on 5 March 2012.

He served as Secretary General of IOSCO from 2008 until early 2012.

Greg was previously Executive Director, Consumer Protection and International at ASIC, where he worked in various senior positions from 1992 to 2008.

Before joining ASIC, Greg worked in the Australian Government Attorney-General's Department and the Department of Finance.



ASIC Commissioners, June 2012