



## TREASURER

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Mr Jeffrey Lucy AM  
Chairman  
Australian Securities and Investments Commission  
1 Martin Place  
SYDNEY NSW 2001

Dear Mr Lucy

I am pleased to provide you with the Government's Statement of Expectations for the Australian Securities and Investments Commission (ASIC). This Statement forms part of the implementation of the Government's response to the *Review of Corporate Governance of Statutory Authorities and Office Holders*, which was conducted by Mr John Uhrig (the Uhrig Report). The Uhrig Report identified ways in which the governance of Commonwealth portfolio bodies may be improved and recommended options for increasing transparency and accountability and ensuring well-defined responsibilities and clear relationships between portfolio bodies and other arms of Government.

This Statement also forms part of the implementation of the Government's response to the Report of the *Taskforce on Reducing Regulatory Burden on Business* (the Banks Report). In particular, Recommendation 5.1 of the Banks Report proposed that the Government provide specific guidance to ASIC about the appropriate balance between pursuing safety and investor protection, and market efficiency. This Statement of Expectations provides guidance on this issue, consistent with ASIC's legislative framework. This Statement also encourages ASIC to implement some of the more specific recommendations of the Banks Report.

The Government is issuing a Statement of Expectations to portfolio bodies and requesting that portfolio bodies respond with a Statement of Intent. I look forward to receiving ASIC's Statement of Intent within three months from the date of this letter. In the interest of public accountability, both of these documents will be made public. It is my intention that this Statement will be reviewed as circumstances require.

This Statement of Expectations outlines the Government's current expectations with regards to the role and responsibilities of ASIC, ASIC's relationships with the Government, issues of transparency and accountability and operational issues. As recognised by the Uhrig Report, I have taken into account the nature of ASIC's

independence in making this Statement. It is imperative that ASIC continue to act independently and objectively in the exercise of its powers.

At the outset, I would like to make it clear that the Government is very pleased with the overall performance of ASIC as a key economic regulator. The Government has provided ASIC with significant funding increases in recent years, confirming its capability and capacity to carry out its statutory mandate. However, there is a need to continually reassess performance of regulatory institutions to ensure that they are continuing to meet community expectations and market developments.

## **The Role and Responsibilities of ASIC**

The effectiveness of economic regulation is a key contributor to strong economic growth and the wellbeing of the Australian people. The efficient operation of the Australian economy is supported by a combination of laws, institutions, regulatory policies and administrative practices. The Government is committed to ensuring a regulatory environment that fosters competition, promotes innovation and enterprise, promotes stability and provides appropriate safeguards for consumers. The Government's focus has been on reducing unnecessary complexity, minimising compliance costs, enhancing competition and better equipping consumers to benefit from competitive markets.

ASIC plays a key role in achieving a sound and effective corporate regulatory framework. The responsibilities of ASIC in performing its functions and exercising its powers are set out in the *Australian Securities and Investments Commission Act 2001* (ASIC Act), which provides that ASIC must strive to:

- maintain, facilitate and improve the performance of the financial system and the entities within that system in the interests of commercial certainty, reducing business costs, and the efficiency and development of the economy;
- promote the confident and informed participation of investors and consumers in the financial system;
- administer the laws that confer functions and powers on it effectively and with a minimum of procedural requirements;
- receive, process and store, efficiently and quickly, the information given to ASIC under the laws that confer functions and powers on it;
- ensure that information is available as soon as practicable for access by the public; and
- take whatever action it can take, and is necessary, in order to enforce and give effect to the laws of the Commonwealth that confer functions and powers on it.

In administering the corporations regulation regime, a key role for ASIC is to ensure the integrity of the market. By exercising sufficient vigilance and pursuing those companies and individuals that breach the law, ASIC will deter improper and illegal conduct. Enforcement outcomes should be leveraged to encourage market participants to comply with corporate law on a voluntary basis.

I note that there is some scope for tension between ASIC's statutory responsibilities. In particular, measures to promote informed and confident participation of investors and consumers may introduce significant costs for business and prevent the efficient allocation and management of commercial risk.

Due consideration of the direct and indirect economic costs of regulatory intervention in the market will assist in balancing these statutory responsibilities. The Government expects that ASIC will comply with the Government's policy on best practice regulation on all regulatory proposals before they are introduced. Within the context of government policy and legislation, priority should be given to initiatives which minimise procedural requirements and business costs and improve commercial certainty about the practical operation of the regulatory framework administered by ASIC.

The Government's preference is for regulation to identify the outcomes that are desired rather than prescribe how to achieve those outcomes. An outcomes-based approach avoids unnecessarily prescriptive regulation and allows regulated entities to determine the lowest cost way of meeting regulatory objectives.

The regulatory framework should accommodate structural change and not unduly constrain market participants from pursuing opportunities for competition and innovative development.

#### *Financial products and services*

The Government's financial services reforms broadened the scope of ASIC's role, with a view to facilitating the informed participation of consumers and investors in Australia's financial markets.

It is important that this regime be administered with due regard to minimising costs to business and without compromising commercial certainty. Consumers and investors must be encouraged to take an active role in seeking information about products and should also take ultimate responsibility for their financial decisions.

#### *Corporate financial reporting, disclosure and conduct*

The Government's Corporate Law Economic Reform Program (CLERP) has delivered a sound framework for corporate financial reporting, disclosure and conduct. It is important that this framework be administered with a view to improving standards of corporate conduct, whilst remaining sensitive to the costs of compliance. A greater use of risk analysis by ASIC to identify and address important problems, and the development of flexible structures to quickly move resources to identified priority areas, will assist the administration of this framework.

#### *Review of ASIC guidance*

Recommendation 5.5 of the Banks Report recommended that ASIC review its guidance material to ensure it provides effective guidance on good practice in meeting regulatory requirements and does not impose additional or inflexible regulatory requirements.

The Government acknowledges that ASIC is undertaking work in this area and encourages ASIC to implement this recommendation. I commend the announcement by ASIC in its April 2006 Better Regulation statement that it will rationalise and redesign its regulatory documents, make its regulatory documents easier to find, and refresh its website. I also welcome ASIC's announcement that it will develop greater expertise in analysing the impact of regulatory decisions on business, work with business to better understand the cost of compliance, and more explicitly incorporate this information in decision making. I note that on 15 November 2006 ASIC announced that it is also establishing partnership arrangements with key industry bodies to further analyse costs incurred as a result of regulatory activity in this area.

#### *Specific industry guidance*

Recommendation 5.15 of the Banks Report proposed that ASIC, in consultation with the Government and industry, examine options to provide more specific guidance on meeting regulatory obligations in areas where concerns have been raised. The Report recommended that the effectiveness of this guidance should be reviewed in two years.

The Government encourages ASIC to implement this recommendation. I have asked Treasury to work with ASIC during the implementation stage before consultation occurs more widely in the public arena. I welcome ASIC's announcement in the Better Regulation statement that it will provide example documents for industry and advisers.

#### *Key performance indicators*

Recommendation 5.2 of the Banks Report recommended that ASIC develop performance indicators in addition to existing safety measures, having regard to all of its statutory objectives, including efficiency and business costs. The Report recommended that any indicators should be reported in ASIC's annual report and should be accompanied by guidance in their interpretation, particularly where outcomes may be influenced by factors outside ASIC's control. The Report also recommended that the performance indicators and accompanying guidance should be developed in consultation with the Government.

The Government encourages ASIC to implement this recommendation, thus ensuring that ASIC continues to take a balanced approach to regulation. I have asked Treasury to work with ASIC during the implementation stage. As an initial priority, ASIC could develop reporting against the following indicators:

- costs for business of complying with ASIC's supervisory regimes;
- levels of stakeholder satisfaction with ASIC's services; and
- time taken for provision of guidance by ASIC about regulatory obligations in areas where concerns have been raised.

Indicators of the broader economic impact of ASIC's supervisory conduct may be developed over the longer term.

## **Relationship between ASIC and the Government**

The Government recognises and will continue to respect the statutory independence of ASIC. It is important for confidence in the regulatory framework that ASIC is, and is seen to be, exercising independent judgement about the application of the regulatory framework to individual circumstances.

Nevertheless, ASIC was established to administer regulatory frameworks which have been designed to implement government policies and priorities relating to business regulation generally and financial markets and investors in particular. The Government has a legitimate interest in ASIC's operations, its policies and the way they are applied given their potential impact on the economy and individuals' well-being.

### *Relationship with the Minister*

It is important that, in performing its statutory functions and powers, ASIC has regard to the Government's broader microeconomic reform objectives. Maintaining a high level of awareness of the Government's policy agenda will place ASIC in a position to fully respond to Government policy directions and objectives.

The Government has primary responsibility for setting corporate regulatory policy. ASIC plays an essential role in ensuring that the Government is well placed to respond promptly to issues that may arise in this area. Under subsection 11(2) of the ASIC Act, ASIC's functions include advising the Minister about changes to the corporations legislation that, in ASIC's opinion, are needed to overcome, or would assist in overcoming, any problems that ASIC has encountered in the course of performing or exercising any of its functions or powers.

Another key role of ASIC is to provide me, and other Treasury portfolio Ministers as appropriate, with accurate and timely advice on significant issues in its core area of business. Significant issues might include: matters for which the Government is likely to be accountable in Parliament; important ASIC operational or budgetary issues; and ASIC's decisions regarding the appropriate action for it to take following substantial problems or disruptions in the market, including a substantial breach of the corporate regulatory framework.

Under sections 12 and 14 of the ASIC Act, the Minister is able to direct ASIC about policies it should pursue and priorities it should follow but must not give a direction about a particular case, except to direct ASIC to investigate a particular matter where it is in the public interest to do so. This means that ASIC has complete independence in relation to the performance of its functions and exercise of its powers in relation to a specific matter. Given the importance the Government attaches to protecting ASIC's independence, both real and perceived, the use of the directions power would only be considered in rare and exceptional circumstances. The only time that a direction has been made was in 1992, when the Government gave a direction to ASIC regarding its relationship with the Commonwealth Director of Public Prosecutions.

### *Relationship with Treasury*

The role of Treasury is to support and advise me and the other Treasury Ministers in our responsibilities by being the principal source of advice on a wide range of issues including policy development and maintenance, and review of performance expectations and results. ASIC is primarily responsible for the administration of corporate law and conduct of corporate regulation.

To fulfil these respective roles in the area of corporate regulation, Treasury and ASIC maintain a close relationship. Treasury takes into account the views and experience of ASIC when considering and advising on changes to corporate policy and legislation. By advising Treasury on the operational implications of Government policy initiatives, ASIC contributes to policy development. It is also imperative that ASIC continues to consult with Treasury, in the development of substantive operational policies, to facilitate consistency between the objectives of legislation and its practical implementation.

The Government accepted the Uhrig Report recommendation that portfolio bodies should provide information to portfolio secretaries in parallel to that information being provided to Ministers. All information, briefing, press releases and correspondence provided to Ministers by ASIC should also be copied by ASIC to the Secretary to the Treasury. ASIC should also keep the Secretary to the Treasury appropriately informed of significant high level meetings between ASIC and Government Ministers and other key policy figures. This should ensure that Treasury continues to be placed in a good position to fulfil its role as the principal source of advice on corporate law and policy matters. The Chair and other Commissioners of ASIC remain responsible for the direct oversight of ASIC.

### *Regulatory cooperation*

Given the growing interdependence of markets, ASIC does not operate in isolation but rather as one link in a chain of economic regulators promoting systemic integrity. ASIC is dependent on the efforts of agencies such as the Australian Competition and Consumer Commission (ACCC) and the Australian Prudential Regulation Authority (APRA) to promote well functioning markets (and vice versa).

By taking a holistic approach to formulating and reviewing its policies and operations, ASIC will ensure that its supervisory activities coexist comfortably with the wider financial and economic environment.

This may be achieved by considering whether proposed new standards or practices have consequential changes for existing ASIC regulation. In addition, avoiding the duplication of the supervisory activities of other regulators, and considering whether outcomes could be achieved by utilising existing regulation administered by another regulator, would ensure an integrated regulatory framework. ASIC should also consider the outcomes or recommendations of relevant Government-established panels, reviews or inquiries.

It is also important that robust, effective and collaborative working partnerships be maintained between ASIC and other Commonwealth and State and Territory agencies, particularly APRA, the ACCC and the Commonwealth Director of Public

Prosecutions. The structure of Australia's regulatory framework is such that it depends on close cooperation and liaison between the regulators to manage areas where their responsibilities intersect. At an international level, ASIC should continue to develop and maintain strong working relationships with its counterpart regulators in overseas jurisdictions.

## **Transparency and Accountability**

ASIC was established as an independent body to administer the corporate regulatory framework. However, ASIC performs its statutory functions as part of the Australian Government and remains accountable to the Parliament, and ultimately to the public, through the Treasury Ministers, the Parliamentary Committee process and the tabling of its annual report.

Open consultation and a sound working relationship with the entities that it supervises helps to ensure that ASIC interacts with market participants and the community more generally in a transparent and accountable manner. It is important that industry participants are encouraged to communicate considered and candid views to ASIC. Engaging effectively with industry early in the development of corporate regulation can enhance the regulatory framework and outcomes.

In this regard, I commend the work of ASIC in establishing the Business Consultative Panel, with chapters in Sydney and Melbourne and involving senior business representatives. This should be supported by roundtable discussions with the Financial Services Consultative Committee and the introduction of standard liaison strategies for all stakeholders. I also welcome the release of the document *ASIC: A guide to how we work*, which explains ASIC's functions and how it approaches its work.

The overall objectives of stakeholder consultations are to ascertain the impact of regulation, enhance the efficiency and effectiveness with which regulatory objectives are achieved, increase understanding of the context of regulatory changes within the overall legislative and regulatory framework as well as increase understanding of the regulatory implications of structural changes and developments in the corporate and financial sector.

The Government has accepted a number of the recommendations of the Banks report, the speedy implementation of which will improve the transparency and accountability of ASIC's operations.

### *Joint industry consultative body*

Recommendation 5.12 of the Banks Report recommended that ASIC and APRA convene a joint industry consultative body, with membership drawn from the key sectors regulated by ASIC or APRA and the regulators themselves.

The Government encourages ASIC and APRA to cooperate and liaise with each other, and industry representatives, to identify and explore possible mechanisms to provide industry with the opportunity to raise issues about how regulatory coordination operates in practice. I note that ASIC's working group with APRA is continuing to review areas of regulatory overlap and duplication, including financial reports,

licensing requirements and breach notifications, and look forward to the issuing of a joint progress report in the near future.

#### *Service charter*

Recommendation 5.13 of the Banks Report recommended that ASIC, in consultation with Government and industry, develop an industry charter, setting out the key rights and responsibilities of ASIC and its regulated entities. The principal objective of the charter should be to clarify key expectations of both the regulated entity and the regulator, to enhance transparency and accountability.

In this regard, I note that the ASIC Service Charter was released in June 2006. The service charter sets out what market participants can expect when they deal with ASIC, particularly the time in which ASIC will respond to various requests. The Government encourages ASIC to regularly review the appropriateness of the targets set out in the charter, as well as its performance against the targets.

### **Operational Issues**

ASIC has capacity to employ staff under the *Public Service Act 1999* (PSA) as well as under the ASIC Act. Under the PSA, agencies are required to uphold and promote the APS Values. All APS employees are required to adhere to the APS Code of Conduct.

The requirements for ASIC's financial management are set out in the relevant legislation and the Finance Minister's Orders. ASIC is an agency under the *Financial Management and Accountability Act 1997* (FMA Act) to the extent that it handles public money. The *Commonwealth Authorities and Companies Act 1997* applies to ASIC to the extent that it handles non-public money. In this regard, I note that it is the intention of the Government to make ASIC an agency solely prescribed under the FMA Act as soon as practicable.

It is Government policy that all departments and portfolio bodies should continue efforts to secure improved efficiency in their operations and demonstrate value for money for the services that they deliver. I appreciate that ASIC continues to seek opportunities to achieve outcomes in a more cost effective manner.

### **Conclusion**

In conclusion, the Government's vision is that ASIC remain a high performing and responsive agency that administers a principles-based regulatory framework in a manner that minimises procedural requirements and business costs. The framework should continue to facilitate innovation and enterprise, contributing to economic efficiency and growth. I look forward to working with ASIC under a new era of enhanced governance arrangements.



I have copied this correspondence to the Prime Minister and the Minister for Finance and Administration.

Yours sincerely,



PETER COSTELLO