



ASIC

Australian Securities & Investments Commission

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The Hon Peter Costello MP
Treasurer
Parliament House
CANBERRA ACT 2600

Dear Treasurer

ASIC STATEMENT OF INTENT

Thank you for your letter of 20 February providing the Government's Statement of Expectations for the Australian Securities And Investments Commission (ASIC).

On ASIC's behalf, I am pleased to respond with ASIC's Statement of Intent.

We note the context in which the Statement of Expectations has been issued, namely as a way of implementing the Government's responses to the *Review of Corporate Governance of Statutory Authorities and Office Holders* and to the report of the *Taskforce on Reducing Regulatory Burdens on Business* (the Banks Report).

We welcome the comments made in the Statement of Expectations about ASIC's performance to date.

We also welcome that the Government has taken into account ASIC's independence and its view, which we share, that ASIC continues to act independently and objectively in the exercise of its powers.

ASIC has, for the 2007/08 financial year, announced 6 key priorities for its work at the Senate Standing Committee on Economics hearing on 30 May 2007.

It will, in its Annual Report, provide outcomes against those priorities and will seek, each financial year, to set and announce priorities prior to commencement of that financial year.



Role and responsibilities of ASIC

ASIC is responsible for a broad set of functions under the legislation it administers, notably the *Corporations Act 2001*. Among other things, it is responsible for:

- registering corporations, keeping up-to-date information about them and making that information available to the public;
- regulating conduct and disclosure by corporations and their officers;
- regulating corporate fundraising, mergers and acquisitions, and insolvencies; and
- regulating financial services, financial products and financial markets.

ASIC recognises the importance for the economy as a whole of effectively delivering on these responsibilities. Corporations play an important role in the economy, and ASIC's role is to provide reliable, efficient infrastructure for their formation and operation. ASIC's role as a conduct and disclosure regulator in capital markets and financial products and services is vital for the confident and informed participation of investors and consumers in the financial system, and for maintaining Australian markets' reputation for integrity. An example is the priority we have announced on our work in the retail market for financial products and services.

The *Australian Securities and Investments Commission Act 2001* sets out the objectives ASIC should strive for in performing its functions and exercising its powers. The Statement of Expectations notes that there is scope for tension between some of these objectives, for example between business facilitation versus consumer protection.

ASIC's Better Regulation program, announced in 2006, commits ASIC to systematic improvement in the way it delivers on its regulatory responsibilities, and especially to exploring ways to enhance efficiencies and reducing the regulatory burden on business. ASIC remains committed to the priorities set out in our Better Regulation agenda, and will continue with initiatives to deliver on those priorities. An example is the priority we have given to using technology to improve systems and processes (and reduce costs) for those dealing with ASIC's public registers.

ASIC agrees on the need for efficient and cost-effective administration of the regulatory framework for which it is responsible, and on the need to strike an appropriate balance between protection objectives and business facilitation objectives.

We will continue to comply with the Government's policy on best practice regulation and in particular the requirements administered by the Office of Best Practice Regulation. We will progress the initiatives announced as part



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of the Better Regulation program designed to enhance our understanding of the business costs and impacts of our regulatory decisions.

In its guidance and regulatory work, ASIC shares the Government's preference for regulation to focus on outcomes, rather than prescription of the means by which those outcomes are to be achieved. In its compliance and enforcement functions, ASIC will continue to maintain the integrity of the market by working closely with regulated entities to encourage compliance with the legislation, and acting vigorously against those who breach it. Effective enforcement not only protects those directly affected by illegal conduct, but acts as an incentive for others to comply. An example is the priority we have placed on insider trading and market manipulation.

ASIC guidance

The guidance ASIC provides to regulated entities facilitates compliance by helping them to understand what is required of them; and it helps make ASIC's interactions with them more transparent and predictable. Effective guidance assists entities manage the costs of complying with regulatory requirements.

ASIC will continue to strive to ensure its guidance meets the highest standards of usefulness and effectiveness. We aim for our guidance to:

- meet the real needs of industry participants;
- be issued only after:
 - effective consultation with stakeholders affected by it;
 - detailed examination of cost and other impacts;
 - consideration of options, including for industry based solutions.
- focus on outcomes and maximise opportunities for industry choice and innovation in how outcomes are to be achieved;
- be clear and readily accessible.

Key performance indicators

ASIC acknowledges the need (identified in the Banks report) for more comprehensive performance indicators covering all its statutory objectives, including efficiency and business costs. The breadth and complexity of ASIC's responsibilities make this a particularly challenging task, and we expect that it will take some time to achieve in full.

We have been examining ways to provide a fuller and more comprehensive account of our performance, including by looking at how peer agencies in Australia and internationally approach this task. As a starting point, we plan to undertake a stakeholder survey in the near future. This survey will also form the basis of a broader review of ASIC's strategies for the next 3 to 5 years.



We look forward to working with Treasury in this area, especially on the indicators noted as initial priorities in the Statement of Expectations.

ASIC's relationships with the Government

Relationship with Minister

ASIC's effectiveness as a regulator derives in part from its ability to exercise its own judgment about how to apply the regulatory framework, including its formal evidence gathering and enforcement powers. This principle is underpinned by the statutory framework that ASIC operates within, which makes it substantially independent from direction by Government in relation to specific matters. ASIC welcomes the acknowledgment in the Statement of Expectations of the Government's continuing respect for these arrangements, and the importance the Government attaches to protecting ASIC's independence, both real and perceived.

Equally, ASIC fully respects the Government's legitimate interest in ASIC's activities. As a public agency, ASIC accepts the need for it to have regard to the agenda and policy objectives of the Government of the day, to give effect to them as it carries out its functions under the ASIC Act, and to be accountable for its actions in this regard.

In turn, and as contemplated by the ASIC Act, ASIC continues to play a role in assisting the Government's thinking and policy making on issues arising from our practical experience in administering the legislation. We do this by:

- providing advice to the Minister on law reform that might be required to overcome problems ASIC encounters in administering or enforcing the legislation, or as a response to changes in financial markets;
- keeping the Treasurer and other Treasury portfolio Ministers informed of significant issues that have arisen in ASIC's areas of responsibility, as contemplated by the Statement of Expectations.

Relationship with Treasury

ASIC recognises Treasury's role in supporting and advising the Treasurer and other Treasury portfolio Ministers. We will continue to work closely with Treasury, at both senior and officer levels, and keep Treasury informed of ASIC's interactions with Government Ministers and other key policy figures. We will continue to consult with Treasury as we develop substantive operational policies to ensure alignment between those policies and legislative policy and objectives.

ASIC will provide information to the Secretary of Treasury in parallel to that information being provided to Ministers. ASIC will copy Treasury on briefings, releases to and meetings with Ministers. ASIC notes that this is to ensure that Treasury continues to be able to fulfil its role as a principal



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source of advice on corporate and policy matters. This undertaking is, of course, subject to ASIC's position as an independent agency and other legislative requirements which may limit ASIC's ability to provide such information to Treasury.

Regulatory cooperation

ASIC appreciates that it is one of a network of agencies promoting systemic integrity and well functioning markets, and that its policies and operations should to the greatest extent possible align with the broader environment in which it operates.

In the course of carrying out its responsibilities, ASIC has numerous interactions with other Government agencies, especially those with economic regulation responsibilities. These interactions are supported by Memoranda of Understanding that create a framework for interagency co-operation in areas of common interest. We have sound and effective relationships with the Australian Prudential Regulatory Authority, the Australian Competition and Consumer Commission, the Commonwealth Department of Public Prosecutions, and other agencies both at Commonwealth and State level. We are committed to maintaining and enhancing the effectiveness of these arrangements.

ASIC will continue to participate actively in the Council of Financial Regulators as a further means of maximising cross-agency collaboration on system-wide issues.

Transparency and accountability

ASIC appreciates that the importance of openness and transparency for its effectiveness as a regulator. ASIC's Better Regulation program places particular emphasis on enhancing transparency, and improving our engagement with stakeholders.

ASIC will continue to build on initiatives already undertaken to ensure open consultation and sound working relationships with industry, such as the Business Consultative Panel and the Financial Services Consultative Committee.

In line with the recommendation in the Banks Report noted in the Statement of Expectations, ASIC and APRA have jointly approached the Finance Industry Council of Australia (FICA) to arrange regular meetings between the ASIC and APRA Commissions to discuss industry and regulatory issues, emerging trends, and other matters of concern to the financial services sector. FICA is a body bringing together representatives of the banking, insurance, funds management, capital markets and financial planning sectors. Representatives of other industry sectors will also participate as required.



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ASIC will also continue the series of transparency initiatives it has started as part of the Better Regulation Program. As well as the description of overall ASIC functions already made available in *ASIC: a guide to how we work*, we will issue more detailed guides to the approaches ASIC takes to its regulatory, compliance and enforcement work.

Service charter

As the Statement of Expectations notes, ASIC published a Service Charter in 2006 detailing the service standards it strives to maintain for those who deal with us. We will release regular public reports on the extent to which we are meeting those standards.

We will also keep the content of the Service Charter under review to make sure it remains relevant and useful for ASIC's stakeholders.

Operational issues

ASIC is committed to ensuring all its staff, whether employed under the *Public Service Act 1999* or otherwise, uphold the APS values and adhere to the APS Code of Conduct.

ASIC is to become an agency solely under the *Financial Management and Accountability Act 1997* from 1 July 2007. Under that framework, ASIC will continue the efforts it has made under the current arrangements to achieve outcomes as cost effectively as possible.

Conclusion

ASIC looks forward to continuing to contribute to economic growth and the wellbeing of the Australian community by delivering effectively on its responsibilities.

I have copied this letter to the Prime Minister and the Minister for Finance and Administration for their information.

Yours sincerely

Tony D'Aloisio
Chairman

cc The Hon John Howard, MP, Prime Minister
Senator the Hon. Nick Minchin, Minister for Finance and Administration