



ASIC

Australian Securities & Investments Commission

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

*Opening statement from Greg Medcraft, Chairman,
Australian Securities and Investments Commission*

10 April 2014

CHECK AGAINST DELIVERY

Good afternoon, Chairman.

Thank you for this opportunity to once again address the Committee.

With me are all of ASIC's Commissioners. They are:

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

Also with me are Senior Executive Leaders:

- Joanna Bird
- Adrian Brown
- Warren Day
- Greg Kirk
- Tim Mullaly, and
- Chris Savundra.

I have a detailed opening statement, which I shall not read, but which I will lodge with the Committee.

This detailed statement covers six issues, which are:

1. how ASIC identifies emerging risks
2. the timeliness of our enforcement work
3. misperceptions that we only take on either small entities or the big end of town
4. the high quality of our staff
5. an update on Commonwealth Financial Planning bannings – there are now eight following the banning of Mr Zaicew last week, and
6. the initiatives we have put in place to improve our processes and services in response to this Inquiry.

Testimony by Mr James Wheeldon

Chairman, the issue I want to address here is the testimony last week by Mr James Wheeldon.

Mr Wheeldon made serious allegations in front of this Committee about ASIC relief granted in 2005 in relation to superannuation calculators.

He alleged that the process ‘was tainted with corruption’ and named a number of current and former ASIC staff, particularly our Senior Executive Leader Mr Mark Adams.

Chairman, let me be clear: ASIC completely rejects Mr Wheeldon’s allegations.

Online superannuation fund calculators have long been a popular tool ordinary Australian superannuation fund members use to get an indication of the money they will have on retirement.

Without the legal relief granted by ASIC there was a significant risk that superannuation funds – including both retail funds and industry funds – would have been unable to provide this useful tool to ordinary Australians.

This was the unintended result of broader reforms to the financial services law implemented in 2002. These reforms meant that generic superannuation calculators could be caught under the personal advice requirements.

So, instead of being free and easily accessible, consumers wanting to use these online calculators would have to see a financial planner for personal advice. This can, of course, be expensive and time consuming. Clearly, it was not a sensible or desirable situation.

ASIC initially provided public guidance to the industry in May 2004 to help with the provision of these calculators.

However, significant uncertainty remained. The Government at that time publicly recognised this in its 2005 consultation paper on *Refinements to Financial Services Regulation*. The Government noted that ASIC would provide guidance or legal relief for those who provide online calculators to ‘promote their use’.

In May 2005, ASIC announced it would grant legal relief to the whole industry – what we call ‘class order relief’.

And, in June that year, we issued this relief for superannuation calculators following consultation with a range of superannuation industry bodies.

We extended this relief to other investment calculators later that year following further public consultation.

Chairman, there was no special treatment for any parties involved in this matter.

I cannot emphasise strongly enough that every single superannuation fund – irrespective of which industry association their trustee belongs to –

irrespective of whether they are big or small – can use this legal relief to provide these calculators to members.

Furthermore, the conditions we attached to this relief apply to all funds in exactly the same way.

These conditions are designed to ensure online calculators benefit consumers. They include a requirement that:

- the assumptions underpinning the calculators are reasonable, and
- the limitations of the calculators are spelt out.

The conditions also mean that online calculators cannot be used as marketing devices for financial products.

I also note that there is no legal relief for superannuation funds from the law against misleading conduct.

ASIC has taken action and will take action if we see misleading online calculators.

In other words, ASIC made a relief decision that was completely proper, in response to unintended consequences arising from changes to the law. These are the sorts of decisions we make on a regular basis.

No fee was required to be paid in this case as the relief we provided was class order relief applying to all online calculators. Fees are only payable where an individual firm applies to have the law modified for their particular circumstances.

Our decision showed no favouritism, and it was very clearly in the public interest.

ASIC did have a person involved in the relief team that was on secondment from a financial services firm, but that person was not a decision-maker. They were only involved in assisting policy work that concerned the industry as a whole, rather than considering matters involving individual firms.

ASIC has robust procedures for managing conflicts and these procedures were applied in the case of this secondee.

More broadly, we stand 100 per cent by our decision on granting relief in 2005 for online superannuation calculators. If we had our time again, I have no doubt that we would make the same decision.

For the record, Mr Wheeldon was a junior lawyer who worked for ASIC for just nine months in 2004–2005.

Our Senior Executive Leader Mr Mark Adams is a long standing ASIC officer who has been involved in some of our organisation's major projects over the past two decades.

He is well respected internationally, having recently returned from a secondment at the senior executive level to the Ontario Securities Commission.

Mr Adams is a hard-working and diligent public servant of the utmost integrity.

Mr Wheeldon's attack on ASIC staff and Mr Adams has no foundation.

The decision he criticises was one that applied equally to all industry participants, and it was properly made.

Most importantly, ASIC's decision was unambiguously positive for millions of ordinary Australian superannuation fund members. As a result of the decision, they can access free, simple online superannuation and investment calculators.

Chairman, as I said at our last hearing, we have welcomed the Inquiry into ASIC's performance.

This has been a rigorous inquiry which has allowed many Australians to have their say.

It is an inquiry which ASIC has taken very seriously and to which we have devoted substantial resources.

We are grateful to the many people who have provided submissions to the Inquiry.

And we have closely considered all of the submissions in an effort to learn as much as we can from them.

Mr Chairman, thank you for your time today. We are now happy to take questions.