



ASIC

Australian Securities & Investments Commission

Parliamentary Joint Committee – Corporations & Financial Services, ASIC Chairman Opening Statement

*A statement by Greg Medcraft, Chairman,
Australian Securities and Investments Commission*

Parliamentary Joint Committee, Corporations & Financial Services

11 August 2017

Good morning chair.

I am pleased to appear before the committee today.

With me are deputy chairman Peter Kell and commissioners:

- Cathie Armour, and
- John Price.

Also appearing are Senior Executive Leaders:

- Sharon Concisom;
- Warren Day;
- Gerard Fitzpatrick;
- Greg Kirk;
- Tim Mullaly;
- Louise Macaulay; and
- Michael Saadat.

Chair, I have a brief opening statement.

Last week, Australia's financial intelligence and regulatory agency, AUSTRAC, initiated civil penalty proceedings in the Federal Court against the Commonwealth Bank of Australia for non-compliance with the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*.

This action follows an AUSTRAC investigation into CBA's compliance, particularly regarding its use of intelligent deposit machines.

Given AUSTRAC's matter is before the courts, I cannot comment on the specifics of that matter.

However Chairman, I wanted to inform the committee that ASIC has commenced inquiries into this matter and any consequences this matter has for the laws we administer.

The areas we will be looking at specifically are:

1. whether officers and directors complied with their duties under the Corporations Act;
2. whether CBA complied with its continuous disclosure obligations;
3. whether they complied with their licensing obligations, including their obligations to act efficiently, honestly and fairly; and
4. whether they have complied with their financial reporting obligations, including reporting contingent liabilities.

I do however want to note that the Corporations Act does not require licensees to report to ASIC breaches of financial services laws in the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*.

But more broadly – and here I am not referring specifically to CBA – I wanted to reiterate some of my messages about the importance of culture in financial services firms and what it means for customers and stakeholders.

As I have discussed before this committee, our view is that culture is a set of shared values and assumptions within an organisation:

- It reflects the underlying 'mindset of an organisation', the 'unwritten rules' for how things really work.
- It works silently in the background to direct how an organisation and its staff think, make decisions and actually behave.

And in this time of rapid technological changes, culture – or cultural failure – is enormously critical.

If organisations are not behaving in the right way, the crowd will let them know, if not the headlines – often with damaging effects on their brand and reputation.

Creating a sustainable business today is not only about the quality of the product or service that is delivered. It is also about the quality of a firm's conduct, both internally and externally.

If the culture and values of a business are not aligned with customer outcomes, it is easy to see how a **trust deficit** will emerge, and this will impact its long-term sustainability.

The judgment in ASIC's successful 2016 directors duties court case against Storm founders Emmanuel and Julie Cassimatis, has some insightful commentary on culture and conduct.

In this case, his honour Justice Edelman – who is now on the High Court – observed that directors in discharging their duties, must think beyond financial consequences of their companies' decisions, to include considerations of potential breaches of the law and reputational harm.

He said:

Mr and Mr Cassimatis' duty [as directors] to consider Storm's interests when managing the corporation does not require a narrow construction of Storm's interests which is limited only to the interests of its shareholders...

A corporation has a real and substantial interest in the lawful or legitimate conduct of its activity independently of whether the illegitimacy of that conduct will be detected or would cause loss.

One reason for that interest is the corporation's reputation. Corporations have reputations, independently of any financial concerns, just as individuals do.

And in discharging their duties regarding financial statements, the **Centro** case set out four key messages for directors:

1. directors need to bring **professional scepticism** in exercising their role;
2. they need should have a **degree of financial and accounting literacy** to understand financial statements of the company;
3. they should ensure the effectiveness of **risk management systems and internal controls** for the resources of the company;
4. And while directors can **delegate**, this does not remove their **accountability**.

At ASIC, we are currently running **two pilot projects** to implement our approach to culture.

One relates to the **sale of direct life insurance**, and the second to **breach reporting practices**:

- In both we are considering whether the firm has stated values that focus on delivering good consumer outcomes and supporting strong compliance – for example 'doing the right' thing by their customers, as well as accountability, integrity, and honesty.
- We will then consider how these values are embedded in policies and processes of the organisation.
- And we will consider how they translate into actual behaviour 'on the ground' and identify whether there are inconsistencies with their stated values.

At ASIC we also see the culture of organisations reflected in the way they interact with us during surveillance, investigations and enforcement.

I'm afraid that we routinely encounter a culture of seeking to delay and frustrate our surveillance, investigation and enforcement work.

Our experience is that while the tone from the top might have been positive, this goodwill often seems to not translate to executives and other staff at the coalface.

We do want to see open and timely cooperation when we are investigating and taking enforcement action.

This all comes down to trust.

Trust is a critical strategic asset of a business. I think it is critical for businesses to reflect on how they build and maintain this trust.

Chair, we are now happy to take your questions.