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JOINT COMMITTEE ON CORPORATIONS AND FINANCIAL SERVICES

Reference: Oversight of the Australian Securities and Investments Commission

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JOINT STATUTORY COMMITTEE

ON CORPORATIONS AND FINANCIAL SERVICES

Wednesday, 18 June 2008

Members: Mr Ripoll (*Chair*), Senator Chapman (*Deputy Chair*), Senators Boyce, Kirk, Murray and Webber and Ms Grierson, Mr Keenan, Ms Owens and Mr Robert

Members in attendance: Senators Boyce, Chapman and Murray and Mr Keenan, Ms Owens and Mr Ripoll

Terms of reference for the inquiry:

To inquire into and report on:

Operation of the Australian Securities and Investments Commission

WITNESSES

COOPER, Mr Jeremy Ross, Deputy Chairman, Australian Securities and Investments Commission
D'ALOISIO, Mr Tony, Chairman, Australian Securities and Investments Commission1
GIBSON, Ms Belinda Gai, Commissioner, Australian Securities and Investments Commission1

Committee met at 5.13 pm

COOPER, Mr Jeremy Ross, Deputy Chairman, Australian Securities and Investments Commission

D'ALOISIO, Mr Tony, Chairman, Australian Securities and Investments Commission

GIBSON, Ms Belinda Gai, Commissioner, Australian Securities and Investments Commission

CHAIR (Mr Ripoll)—I declare open this public hearing of the Parliamentary Joint Committee on Corporations and Financial Services. Today the committee is conducting a hearing into the Australian Securities and Investments Commission under section 243 of the Australian Securities and Investments Commission Act 2001. The Joint Committee on Corporations and Financial Services is required to oversee the functioning of ASIC. This hearing is part of that oversight.

I welcome to the hearing Mr Tony D'Aloisio, Mr Jeremy Cooper, Ms Belinda Gibson and other observers from ASIC, as well as the committee members themselves. I remind all witnesses that in giving evidence to the committee they are protected by parliamentary privilege. This gives special rights and immunities to people who appear before committees. People must be able to give evidence without prejudice to themselves. Any act that disadvantages a witness as a result of the evidence given to a committee may be treated by the Senate as a contempt. It is also a contempt to give false and misleading evidence to a committee.

The Senate has resolved that an officer of the department of the Commonwealth shall not be asked to give opinions on matters of policy and shall be given reasonable opportunity to refer questions asked of the officer to superior officers or to a minister. This resolution prohibits only questions asking for opinions on matters of policy. It does not preclude questions asking for explanations of policies or factual questions about when and how policies were adopted. If a witness objects to answering a question, the witness should state the ground upon which the objection is taken and the committee will determine whether it will insist on an answer having regard to the ground claimed. If the committee determines to insist on an answer, a witness may request that the answer be given in camera. Such a request may of course be made at any other time. Would you like to make an opening statement?

Mr D'Aloisio—I would like to make an opening statement, if I may. I am joined today by our Deputy Chairman, Jerry Cooper, whom you know, and Commissioner Belinda Gibson, who joined ASIC in November 2007. ASIC appeared before the Joint Standing Committee on Corporations and Financial Services as part of the ASIC oversight process on 12 June last year. At that hearing we made the committee aware of six priorities that ASIC would be pursuing in the following 12 months. It has now been 12 months since that time and we feel that it is timely to provide a report to the committee of our achievements against those priorities. What we have done to assist the committee is prepare a summary of those achievements for the last 12 months, which I would like to hand up. With your leave, I would like to list and go through some of the highlights in that report for you.

Senator MURRAY—I move that this be accepted by the committee.

Senator CHAPMAN—Seconded.

CHAIR—Carried.

Mr D'Aloisio—Thank you. I would like to take you through some of the highlights in that report. I would then like to cover some matters raised by the committee last year and then be available for questions. In terms of highlights, firstly, I point to our work during the recent market volatility. On page 7 we cover our work on that volatility. You will see that we have worked with the ASX to speed up the notification of referrals and to minimise the gap of time between alleged misconduct and action. Between January and May this year the ASX has referred some 40 matters to us on possible insider trading and market manipulation. We are investigating 11 of those for possible civil criminal administrative proceedings. Fourteen are under surveillance and 11 have been referred to our licensing unit. Only four have been closed for insufficient evidence. In addition, we have one insider trading matter before the courts at present, six matters with the Commonwealth Director of Public Prosecutions, two on insider trading, and two market manipulation matters are also with the CDPP.

On 6 March 2008 we published a warning about the use of false and misleading rumours in relation to share trading which could contravene the Corporations Act where they are published without properly investigating their truth, and we established a team to investigate and pursue those inquiries. We have issued some 70 first-round notices, 32 second-round notices, and a further 31 third-round notices to market participants and we are analysing scrip ledger information from major broking firms.

On 29 February we published a media release reminding the market of disclosure obligations under the continuous disclosure regime, and margin loans of directors. We also requested the ASX Corporate Governance Council to consider adopting a recommendation that listed entities have a policy on when it is appropriate to have margin loans. On covered short selling we joined with ASX and Treasury to recommend improved disclosure to government, which government has accepted, for the so-called covered short selling. We are investigating the failure of Opes Prime and whether the extension of the stock lending model that Opes Prime used, which is traditionally a model that is in the wholesale and institution level of the market, into the retail sector may have breached the Corporations Act. That is the work we have been doing during what we call the market volatility.

Secondly, we have our work on major enforcement cases. On page 11 of what I have handed up, you will see that we update the committee on our major enforcement cases. We currently have some 312 matters under investigation. In addition, we have 54 civil proceedings under way, which involve 187 individuals or entities. We have 77 criminal proceedings before the courts, involving 195 individuals, and we have 59 administrative briefs proceedings through the hearing process.

We extensively investigated the collapse of Westpoint. That investigation is coming to an end. As to things emerging from that, we have frozen assets of around \$50 million. The Westpoint promoter, Mr Burnard, has been convicted by a jury on nine criminal charges in relation to raising funds from investors and is awaiting sentencing. We have banned 13 advisers in Westpoint for between three months and life. We have five criminal briefs relating to unlicensed financial advice with the CDPP, and three criminal briefs relating to former directors and officers

are also with the CDPP. Importantly, we have commenced extensive civil proceedings to recover compensation for the investors in Westpoint, involving financial advisers, directors and a trustee company. The total amount claimed in relation to those proceedings is in excess of \$300 million, but of course that will be subject to the availability of assets in relation to our winning those cases and also the availability of assets that would be available to satisfy any judgments that the court may give.

Similarly with major cases, as I said earlier, we have commenced investigations in relation to Opes Prime. That investigation is continuing. As I said earlier, that involves the taking of what is traditionally a wholesale lending product into the retail market. In April 2008 we commenced investigations in relation to Chartwell Enterprises. Chartwell owes about \$80 million to between 60 and 200 investors.

Senator BOYCE—Is that mentioned here?

Mr D'Aloisio—It should be in that brief. I apologise if it has dropped out of that draft and is still in my speaking notes.

Senator BOYCE—Could you just repeat what you said?

Mr D'Aloisio—In April 2008 we commenced formal investigations into Chartwell Enterprises Pty Ltd. Chartwell owes some \$80 million to between 60 and 200 investors and it is in voluntary administration. It involves a number of investors in the Geelong area. Information for investors on the progress of that investigation will be posted on our website shortly. We have a number of significant matters in litigation, such as AWB, James Hardie, HIH and Fortescue Metals.

Thirdly, in addition to enforcement work, our work on protecting retail investors has been extensive. On page 3 of what I have handed up to the committee we cover our work on retail investors. Importantly here we initiated a three-point plan in relation to unlicensed and unlisted debentures in the property area and have introduced a new disclosure regime, new advertising guidelines and a much improved report to investors. That sector of the market is about \$8 billion and it involves some 80 issues of debentures and all of them we have required to report to their investors on an if not why not basis against eight benchmarks that we put in our regulatory guide.

We have assisted retail investors to recover funds from illegal operations. Last year we took action against 105 schemes, involving 2,550 investors and investments of about \$200 million. This year we have acted against 35 schemes involving 800 investors and \$91 million. Still in the area of retail investors, we implemented insurance and compensation arrangements for retail investors who deal with financial service providers, and we have issued a range of reports to better educate retail investors, and they are on our website.

Fourthly, we have done work on international capital flows. On page 5 of the document we outline our work in improving regulation of international capital flows into Australia. Our objective in this area is to use our connections with other regulators to see what we can do to assist with freer flow of capital, consistent with protecting Australian investors. This is important from an Australian context as Australia, of course, is part of the global financial markets. Our

major focus has been in working with Treasury to come up with new mutual recognition arrangements with the United States. Similar work has gone on in relation to New Zealand, and the minister announced those agreements over the weekend at an Australia and New Zealand leadership forum.

More recently we formalised an agreement that will allow greater investment from China into Australia's capital markets. ASIC and the China Banking Regulatory Commission, which is ASIC's equivalent, have accepted letters that recognise Australia as an improved investment destination under the Chinese Qualified Domestic Institutional Investor scheme, known as QDII. Essentially that agreement will lead to Australia being recognised as a destination for China's capital, leading to more liquidity in the Australian stock market and new investment opportunities for Chinese institutions and investors. The prime beneficiaries of that will be the Australian stock market and the Australian fund management industry.

We continue to make progress with Hong Kong on mutual recognition in relation to collective investment schemes, and we recently published with Treasury a paper on cross-border recognition and looking at ways of reassessing how we approach mutual recognition and unilateral recognition in terms of policy. That consultation paper was published last week. We are currently in dialogue with Singapore to recognise Australia's managed investments regime. Recently we recognised Singapore's managed investment regime in Australia. Effectively it means that fund managers or funds operating out of Singapore can operate and offer products in Australia without necessarily going through registration and licensing, but of course there are a number of safeguards built into our conditions to protect our investors.

While talking about international ASIC work, I should point out that ASIC is regarded internationally by its peer groups as a top regulator. While we have conducted a strategic review to improve what we do in Australia, internationally we match up very well with our peer group. At the recent IOSCO yearly international meeting ASIC was re-elected to that body's executive committee, as well as ASIC continuing to be on the main technical committee. The executive committee is made up, in addition to us, of countries such as the US, the UK, China, Japan, Germany, France and Italy. It is important for us to be part of that in terms of picking up what developments and so on occur internationally between regulators.

Fifthly, we highlight our strategic review of ASIC, which we have completed this year. Details of that are on page 8, where we outline the benefits of that review. We said that our sixth priority last year was to conduct an extensive strategic review of ASIC with external stakeholder input. We have completed that. The stakeholder input included a very extensive survey of all our stakeholders and the results of that survey have been put on our website. The major changes that have come out of that review have been essentially to restructure ASIC into what we call stakeholder teams or teams that are more focussed directly into the market, and we have also added an external advisory panel to advise us and work with us on market developments and more systemic issues. As part of that review ASIC is reducing two layers of management, executive directors and directors, into one. That move has led to reducing the number of senior positions from 54 to 41. We announced a two-stage process. All those positions were spilled, if you like, or made vacant, and we are in the process of reappointing. We have completed the first round of reappointments of internal candidates and we are now looking at both internal and external candidates. They are the highlights of what we have achieved. The report or the material I have handed to you provides other examples in perhaps more detail than what I have outlined.

In terms of the next 12 months, our priorities will remain very much the same priorities as those that I outlined to this committee in June last year. The nature of those priorities is such that they will probably remain our focus for the next two or three years. Most notably, what those priorities are about are improving disclosure to and protection of retail investors and financial consumers, stamping out insider trading and market manipulation, facilitating capital flows in and out of Australia and reducing compliance costs or, if you like, cutting red tape. Over the next 12 months, in addition to pursuing those priorities, ASIC will also be implementing the recommendations that have come out of its strategic review and will be adding resources to implement the matters that government refers to us. The new government has referred to us a range of matters such as mortgage exit and entry fees, superannuation fund reporting, financial literacy foundation and, more recently, an examination of credit rating agencies and research houses. We have also been involved in a financial services working group on shortening disclosure documents.

More recently the government in its green paper has announced a range of measures that would see additional responsibilities being given to ASIC in relation to mortgage credit, margin loan lending, non-deposit taking institutions and trustee companies. The Minister for Superannuation and Corporate Law has advised that it would be unreasonable to expect us to take those responsibilities on without adjustments or additions to ASIC's current budget. What I have said in Senate estimates is that we are comfortable that we can work within our existing budgets in terms of the responsibilities that we have for this financial year and for 2008-09, but are proceeding on the basis that if these additional responsibilities are given to us then we would approach government for additional resources. The minister has indicated that it would not be unreasonable to expect an increase in ASIC's budget to meet those additional responsibilities.

Finally, last year there was a range of issues that the committee raised in its oversight report in relation to ASIC. The attachment to the document I have given you is a document that we forwarded to the chairman of this committee last week. It summarised what those matters were and how we have handled them in the last 12 months. The first of those was superannuation advice and shadow shopping. There was a formal recommendation from this committee that ASIC should consider consulting a shadow shopping exercise. We have assessed that and we think that probably the next shadow shopping exercise for us would be in the 2009-10 financial year.

Secondly, the committee said that ASIC's past action in property and investment scheme collapses was not adequate. ASIC responded to the collapses of property related schemes by initiating, as I said earlier, a three-point plan in respect of the problems that were identified in the unlisted-unrated debenture sector. We believe our performance in this area has improved significantly and, as I said earlier, we have implemented a new disclosure regime, produced and implemented an advertising guide, provided reports on that new disclosure regime and provided a guide to help investors to understand debentures. We also, importantly, commenced compensation proceedings under section 50 of the ASIC Act to seek to recover compensation for the investors that lost money.

Thirdly, the committee said that ASIC should have been more forceful in pressing government to lift the \$50,000 threshold applying to promissory notes. ASIC advised the committee that we wrote to Treasury on 24 May 2007 and since then we have conducted a number of meetings with

Treasury. Treasury has announced changes to that regime as part of the green paper that I referred to earlier.

Fourthly, the committee said that ASIC should investigate bank conduct and dispute resolution procedures. We investigated 11 complaints and three additional complaints that we had identified and reported to the committee late in 2007.

Fifthly, the committee raised issues about professional indemnity insurance in relation to financial advisers. As I said earlier, we introduced a two-stage policy approach to the implementation of financial service compensation to apply from 1 July this year. Stage 1 requires financial service licensees to have PI insurance based on what is commercially available in the market. Under stage 2, after two years ASIC expects licensees to have a high standard of PI insurance. We have worked closely with industry during the policy formation process, and we continue to do that to ensure that there is a smooth transition to the new regime. New applicants for licenses who have been required to take out PI insurance do not appear to be having difficulty obtaining PI insurance. That was one of the concerns that the industry had.

Finally, the committee drew our attention to the ANAO report of ASIC's investigation procedures. We have provided in the material that you have an extensive report. There were five recommendations that the ANAO, the Australian National Audit Office, had made. We have actioned all of those and where we are in relation to those is set out in the document that I referred to.

That is a summary of the highlights of our achievements against the priorities, what we intend to do in the next 12 months and how we have responded to the matters that your predecessor committee raised with us in June of last year. Thank you for the opportunity to make a very lengthy opening statement. We are happy to take your questions and to go through the report or deal with whatever issues you would like to raise with us.

CHAIR—I have two broad questions. One is themed around the timing of this particular oversight meeting and whether in your view it is a good time to do this, having just been through the Senate's estimates process. Would it be more appropriate to give ASIC the opportunity to deal with any issues arising out of Senate estimates and then for us to have an opportunity to review questions and issues raised there and then come back to this committee oversight hearing?

Mr D'Aloisio—We are in the hands of the committees. From our point of view, the timing in one sense suits because the preparation time for both committees would be at the same time, being honest about it. The answer would be that we are entirely in your hands as to whether you feel that we could have this meeting a bit later or whether we should space them. From our point of view, we are telling you in effect what we are doing. We are relaxed about this.

CHAIR—Can you give the committee a briefing on the strategic review that you have gone through, in order to give us a better understanding of how that went and what your expectations are out of that?

Senator CHAPMAN—In that process, could you indicate those aspects of the review that you have already implemented and those that are still to be implemented?

Mr D'Aloisio—The answer to the second part of the question is that the move to the new structure and the changes that we are talking about will be on 1 September. We are now in what we would call a transition process. That transition process essentially involves three steps. The first, having set the direction where we want to go as an organisation, is to appoint the senior leaders, which is the key, and that is happening this month and next month. The stage after that is for them to appoint the next level of management and for the existing staff to be put into those teams. That will occur in late July/August and the transition will then be in September. We set a reasonably short period for the transition and in the meantime, until that transition occurs, it is business as usual. We are very heartened by the fact that we have very strong support from within ASIC for the review and for the process. As a commission we are confident that we can manage the risks in any transition of work slowing down and so on. That is the transition and moving to the new arrangements from 1 September.

Stepping back as to why we did it and what has come out of it, as we looked at this—and that was the advantage with the new chairman, a new commission and then Ms Gibson joining as well—we took the opportunity to have a look at ASIC with a fresh set of eyes. It also had not been subjected to a significant strategic review for the 15 years of its existence. We felt that, given the changes that had occurred in the market, the build-up in the capital markets and the investments in the retail area and so on, it was timely to do that review. We felt that we needed to conduct the review in a way that brought the organisation along, so we used external assistance. At the end of the day what has really come out of it is a lot of finetuning and reallocation of resources. Essentially, what we are seeking to have is an organisation that is positioned closer to the stakeholders and the people it regulates, so that it better understands its markets. It about taking on initiatives that are more forward looking than perhaps we may have in the past. We are very good at coming in and cleaning some up. The question is whether we can also work harder at trying to see where markets are headed and what issues are likely to arise.

An example of that is Westpoint. In some ways with the Westpoint property collapse we tended to approach it by looking at what had happened and clean it up. In actual fact when we looked at it and looked at it forward, it was really about maintaining confidence in that sector of the market. It required us to be much more proactive in understanding all those debenture issuers and issues that were out in the market that could have been causing concern to retail investors who had seen what may have happened to Westpoint, ACR and Fincorp. That gave us a good indicator of a forward-looking program, which we have then built into the strategic review.

We also feel that we needed to really be an organisation that is clearer about issues that will occur over the horizon. So it is about not only being forward looking but really looking beyond. Here the key reform was to put in internally chief economists and a very extensive research capability in understanding markets. In addition, we are looking at an external advisory panel drawn from across all sectors to really advise the commission on issues that could be systemic in going forward.

They are the sorts of changes and positioning. We are also not forgetting, importantly, where we are spending our money in terms of enforcement matters, which is clearly a critical part and will always be a critical part of ASIC; that we are actually picking the right cases and picking cases that send a clear message to the sort of improved behaviour that we want from the market in terms of confidence in the integrity of our markets.

As you can see from the way I am describing it, you might say, 'Well, you should have been doing all those things and they are all things that we expect', but it is really about having a much more heightened appreciation of those issues and setting priorities.

To achieve those objectives we felt that we needed to change the structure from the four-silo structure that we had to 18 stakeholder teams, such as investment banks, financial advisers, fund managers, retail investors and financial advisers, so that those teams are clearly focused on the areas that matter in the financial economy. In addition to that we saw the need to have not just one enforcement group but six very strong what we call deterrence teams. But they are effectively enforcement teams. One will be primarily on insider trading/market manipulation. That is an area of focus for us. It will always be an area of focus. The skill set that is required there to be more effective in getting results we feel would be better in one group, and Ms Gibson heads that. We then have major cases in terms of deterrence and three or four other teams.

So far I have talked about structure and objectives. At the end of the day what will really matter in our achieving the change and the improvement will be the people and their training and the way we develop them. In relation to that, we have put a lot of thought into the leadership, training and development of people within ASIC, using also secondments and other things we can use to bring people from the outside and exchange to try to keep us right up to date with what is happening in the market.

As part of it we have also reassessed the role of the regional commissioners. We feel that probably as an organisation we may have moved too quickly nationally so we are looking at the regional commissioner roles and having a real market focused role in each of the eight locations that we operate from. For example, for Perth we want regional commissioners that understand what is happening in that market, and similarly in Brisbane. Brisbane and Perth being two significant growth markets for us, we need to put more resources in those markets.

I am sorry this is such a lengthy discussion, but it has been something where we have worked very hard to try to achieve improvement. From the response we have had with staff and the way that we are now filling the senior positions, we remain confident that we will attract the talent to add to the talent that we have and that we will see improvements in ASIC in areas of enforcement and in the way we deal with issues that arise in the market, whether it be in the stock market or whether it would be with retail investors. I mentioned Ms Gibson heading capital markets. Mr Cooper heads the retail investor area, and certainly in that area over the last 12 months, whether it is superannuation or debenture issues, we have been making some significant improvements for the retail investor. That is what the strategic review is about.

CHAIR—As to the strategic review, you mentioned earlier about not requiring additional funding. Could you further explain that in terms of the extra responsibilities that might come from government through the green paper and financial services—in particular, whether there are any efficiency gains and how you intend to deal with a whole range of issues, given that you have not asked for extra funding?

Mr D'Aloisio—The strategic review goes back to May/June of last year. At that time we looked quite carefully at whether this was an issue of needing more resources or better using the resources that we had. We felt that, by driving efficiencies and productivity in what we had and

what we wanted to achieve, as a first step we could work within the existing budget for 2007-08 and 2008-09.

The work that we have done on the strategic review and how we are reorganising priorities and so on has confirmed that we think we are right; we can do that and maintain a complement roughly of the same number of staff—1,500. Beyond 2009-10 we will need to talk to government about additional funds, irrespective of whether we have received any other responsibilities.

In relation to the additional responsibilities that we have received with the new government, we have absorbed some of the more minor matters that I have talked about and also absorbed the Financial Literacy Foundation, which is significant. But there is clearly a recognition within government and certainly a recognition within ASIC that, if the matters that are in the green paper come to ASIC, then there will be a need for increase in the size of our budget and our allocation. I should mention part of what we are doing in driving efficiencies. We are undertaking a very significant computer technology refresh and upgrade program.

CHAIR—That is my next question.

Mr D'Aloisio—That is a very extensive program and clearly we want to drive a lot of efficiency out of that, including for the end users, the small to medium companies who deal with us. Ideally for us at the end of the day we would like the small to medium companies to have their own ASIC part of the website, and so for mum and dad running a newsagency, in half an hour at night once a year or whatever they can update their records and do it electronically. That is our vision. The technology, capability and skill sets we are bringing can deliver benefits to the 1.3 million companies that we register, for example, and so on.

In additional, fundamentally we want to see that technology refresh and upgrade, in terms of know-how, sharing of information and the way we run, drive productivity and efficiency improvements so that we can reallocate resources that we release into other areas.

CHAIR—Just to clarify that, as part of this new IT upgrade you are also implementing a new share trading surveillance system within that system?

Mr D'Aloisio—That is a small cost component of it in the sense that initially we are looking at just what is required for us and then what is required through what the ASX does in terms of market surveillance. Yes, there is a component of that. If that component does grow, we may need additional funds. That is not within the existing framework. Other than an amount set aside for more investigation, looking and trialling, we have not committed a specific part of the budget beyond that.

CHAIR—Senator Murray?

Senator MURRAY—My question is on the same topic. I have two issues that I want to ask you about. One of the difficulties with change, of course, is realising your ambitions and then measuring them. How are you going to measure your effectiveness in realising your ambitions?

Mr D'Aloisio—That is a very good question. At the end of the day you have to deliver outcomes and measure them. Certainly, what we are looking at as part of the business planning that will go on over the next months as we transition is how we can put measures in place against which we can see the progress of a particular outcome. That is always quite difficult. If we take our work, as you would know, in the enforcement area, you would say that deterrence is something you would use to change behaviour or stop what would otherwise be people cutting corners. That is very hard to measure. It is much more qualitative. You can measure the number of cases, but the number of cases may not have necessarily led to a change in behaviour. On the other hand, if you have an insider trading case, which is major and you achieve incarceration, you know that, even though you cannot measure it, it will have a deterrent effect.

There will be things that we will assess more subjectively with some data. There will be things that we can measure. The efficiency cost cuts, efficiency gains for small business and saving of costs can be measured and we can deliver against those. The deterrent ones are more difficult. For example, if we take the work that we have done on the unlisted/unrated area and we look at the guidelines and things that have been issued, you can start to measure the disclosure there and what is happening by the actions that companies are now not taking or the way that they are disclosing. Again, you can see that you are achieving results.

Senator MURRAY—The government has rightly emphasised that it wants to put more attention on individuals with respect to KPIs and on units or organisational systems with respect to benchmarks, all forms of measurement, and that obviously requires input from your IT systems and customer survey systems. What you have developed is less generalised. You have gone from what you described as your four silos to these 18 market units. I cannot remember how you exactly described them. That implies more targeted measurement. I would suggest that it also implies more costly measurement.

Mr D'Aloisio—If you look at what we have done, if we take the stakeholder survey and the internal staff surveys, they are good measures in what you are achieving, because there is quite direct feedback from the stakeholders about how you are viewed. If you get a chance have a look at that on our website. We will run those as well to give us a feel for what is happening with stakeholders and staff.

I guess I am for objective measures and having systems that deliver that, but I do have a worry that people become focussed on numbers and statistics. For example, you say that every complaint that comes into ASIC 90 per cent of the time has to be dealt with in a minute, for example. That is a great statistic, but the difficulty with that is that, if you are pressuring your people to achieve that statistic, are you actually delivering a quality service to that complainant? You have to watch the behaviour. I am more for having indicators from the systems and processes, sitting down and working out with people whether, if we have an issue in the market that we have resolved—whether it is margin lending or whatever—have we satisfied ourselves that the market thinks that we have resolved that issue and what did we do to contribute to getting market confidence back on that issue. It is using the data. Yes, you need some objective data depending on what you are doing, but I am seeking to push the qualitative assessment and the discussion and assessment of what we achieve.

Senator MURRAY—I appreciate and support the nature of your response. I think you have to be selective about these things. But it seems to me the whole of government are engaged in

upgrading this area, and that is based on my discussions with various departments, agencies and so on. It would be foolish to reinvent the wheel. I wonder how much interchange you have on this front with, for instance, people who need that sort of feedback and measurement themselves. For instance, the ATO does very careful assessment of its impact. Do you talk to APRA?

Mr D'Aloisio—Yes, we do.

Senator MURRAY—There is a proper interchange of systems now?

Mr D'Aloisio—Yes.

Senator MURRAY—I am pleased to hear that. The other issue that I wanted to briefly ask you about does have the ATO example in mind. The ATO many years ago now discovered it was trying to be all things to all men and women in every state. They realised they could not do that and decided to put specialist units which were for the whole country in each tax office. Hobart would have a specialist unit and so on. You mentioned your 18. Are any of them housed elsewhere than in Melbourne or are they all in Melbourne? Where are you placing the development of the expertise?

Mr D'Aloisio—The rule we are using first and foremost is merit. We are selecting people on merit. Given our organisation size and the officers we have—we are recruiting in all cities—we expect that the way it will fall out is that we will have Sydney, Melbourne and most of the other centres with very senior leaders. Indeed, if we do not, we will have to look as to whether we should create positions to do that. ASIC has what I would call local and national responsibility. Given the way corporations work, we always need to have a sizeable and skilled presence in every state, in understanding and territory. We expect our leaders to be across the organisation. But statistically, in terms of size of population, a lot will fall in Sydney and in Melbourne.

The regional commissioners are a very senior appointment in each place—again, very much to keep us in touch with the markets. Specialists units may well operate, and do now. For example, we have a specialist unit in Adelaide dealing with Project Wickenby matters. We have specialist units in Brisbane. There will be specialist units located in the different offices. You do that because you are very mindful of the fact that you want to grow and have talented people right across the whole of Australia. We are looking for opportunities to put specialist teams in all offices and to ensure that we have leaders in all offices.

Senator MURRAY—The money man in me says that you can best use scarce resources and save money by locating a national team for the whole country just in one city, such as Brisbane, because in some areas you generally are in the highly competitive market. You do not have to replicate it in Perth or anywhere else. Are you going that route or will this 18 be replicated in every single major city?

Mr D'Aloisio—No. Each of the 18 is national in the sense that there is only one stakeholder team that will be national.

Senator MURRAY—Is it located in just one office?

Mr D'Aloisio—They can be located in any city.

Senator MURRAY—Is it just in one city?

Mr D'Aloisio—No. The leader is located in one city. The people could be located across Australia. It depends on the work that they do. For example, you might have a team in the retail investor areas in relation to illegal schemes. You need that expertise. Because they tend to be small schemes that might be on the Gold Coast or in southern Western Australia, you need skill sets that are not just in one place. You will have a leader based in Sydney, Melbourne or wherever, but his or her team may well be in different states. In some cases it might be in one or two offices, in other cases it might be in all offices, and there may be situations that it is in one office.

Senator MURRAY—That is all I have. I know where you are going now.

Mr D'Aloisio—You are not going to have 18 in every city. It is using the resources, but at the same time building teams on quality so that we have always got quality people all over Australia.

CHAIR—Can you clarify the number of stakeholder teams and the number of deterrent teams for me?

Mr D'Aloisio—There would be 12 what we would we call stakeholder teams and six deterrent teams. That makes 18.

Senator BOYCE—Going back to the restructure, you have 13 fewer senior managers in the new system. What are your staff levels pre- and post restructure?

Mr D'Aloisio—Pre- and post restructure we have around 1,500 to 1,550.

Senator BOYCE—Is that full time?

Mr D'Aloisio—I can get you more precise numbers and that will not change.

Senator BOYCE—Your staff numbers do not change?

Mr D'Aloisio—No. What happens in that structure is that some positions may no longer be needed and resources reallocated. Yes, there will be changes of people but not in overall number, because we feel we need the 1,500 to 1,600 that we have to do what we need to do.

Senator BOYCE—I am still puzzled. How are you not needing more money to take on more work, restructure, refresh the website and not decrease staff?

Mr D'Aloisio—I would like to be careful here.

Senator BOYCE—You said you have not asked.

Mr D'Aloisio—We set ourselves the task of working within the existing budgets and driving all the efficiencies we can, and we think we are doing that in this financial year and next. As I have said, we are foreshadowing that we probably will need more money beyond that period and certainly for additional projects. One of the things that was behind the restructure has been that

we felt we needed to improve efficiency and productivity as part of where ASIC was at, so we did set ourselves the task of achieving that and really driving that efficiency and productivity as best we could. At the end of the next 12 months we will be in a much better position to be able to say to government that we have given it our best shot in getting this, but we have found that we might need additional resources in these areas. We would be coming to government with a track record of really trying to run the organisation as efficiently as possible.

Senator BOYCE—Could you give us some examples of how you are proposing to drive down costs or behave more efficiently?

Mr D'Aloisio—First and foremost, it will be prioritising what we do. For example, if we do 100 illegal schemes in a year, we might look at that and say that we can do less of those given the conduct we want to push into the market, and use some of the resources to perhaps do more on insider trading. In other words, we need to be much clearer about what we are going to concentrate on. Any organisation in the end needs to prioritise. We cannot chase every single matter that may arise in the market. It is just not feasible.

Senator BOYCE—Do you mean every single issue and not every single matter?

Mr D'Aloisio—Every single issue, yes. There will be prioritisation and focusing on the things that really matter. There will be some areas where we will be able to reallocate. Certainly the resources that we have had have enabled us to work with what has been on our plate, and we are maintaining those. It is reallocation of priorities and pushing productivity as much as we can.

Senator BOYCE—I must admit I am still struggling to understand. You are speaking, for instance, about developing where ASIC is going so that you can deal with issues that are likely to arise as well as issues that have now arisen.

Mr D'Aloisio—Another example is in the four-silo structure that we had within each of the structures there were duplicate services.

Senator BOYCE—Do you mean back office type stuff?

Mr D'Aloisio—And some front office stuff in terms of policy and so on. Again, we are streamlining that in what we are doing. It is not an issue of us not wanting or being denied resources. It is really as we build the business plans and as we move into this next phase in the next financial year that there will be the proof of the concept that we are talking about. Clearly, if we find that we have undershot the resources that we need and we are not achieving the efficiencies—removing duplication and focusing on key areas and reallocating resources—then we would have no problems in going to government and saying that we have given it a good shot.

Senator BOYCE—My concerns were not so much about whether you were being starved; rather, they were about how you were going to achieve more with basically fewer resources when your staffing is not going to be decreasing. There have been media reports recently about some significant resignations from ASIC. Is there anything that you can tell us from the exit interviews as to why this happened?

Mr D'Aloisio—All the senior positions at the executive director and director level became vacant as part of the restructure, and as part of that process that gives the organisation the opportunity to assess the reappointment, and it gives the individuals the opportunity to reassess their careers in terms of where they would like to go and so on. We were quite mindful of the fact when we did this that we could have individuals who felt that they might want to take it as an opportunity to go elsewhere, and we also see it as an opportunity for people who are elsewhere to come into ASIC. It is not something that has just emerged. We were conscious that that could happen. We do not like losing good people, but we totally respect decisions that they may have made in not applying for reappointment.

Senator BOYCE—What would you see as being the overall result of the change of personnel at that senior management level?

Mr D'Aloisio—We expect that we will have a lot more quality people. Instead of running the organisation with five or six executive directors with the interface with the market we will have 18, and we think that will add a lot of firepower to us in being able to deal with the complex issues.

Senator BOYCE—How many of those 18 would have worked for ASIC for more than two years?

Mr D'Aloisio—It depends on the reappointments. So far we have appointed about half of those.

Senator BOYCE—Do you have nine appointed?

Mr D'Aloisio—We are talking about 51 positions being reduced to 42. We have appointed about 19 of the positions that were vacant from internally. I do not have the numbers of the average seniority and position of those people, but they would be well in excess of five, eight or 10 years. I can get that information for you.

Senator BOYCE—You have no concern about that?

Mr D'Aloisio—No. I always have concerns about losing good people.

Senator BOYCE—Yes, but this is about corporate memory.

Mr D'Aloisio—This is very much about the organisation saying: 'We are going to reduce two levels to one. We are going to open up the positions to internal applicants, because we see that the benefit of that for the organisation long term would be better.' The other side of that is that individuals are entitled to make an assessment of what they would like to do. We are very encouraged by the fact that we have talent in the way that we are filling the positions. We have a lot of internal applicants that have already been appointed. We are going through a round over the next four to six weeks where internal people will again have the opportunity to apply, as will external people.

Senator BOYCE—Each advertising round will be available to internal people?

Mr D'Aloisio—Advertisements will appear on Friday in the national media and we are using an external search firm and appointment agency to assist us with that stage of the recruitment.

Senator BOYCE—I would like to get the figures for the number of internal versus external appointments for those 42 positions, and also perhaps something that says how many have had more than two or three years service with ASIC.

Mr D'Aloisio—I am very happy to do that. We can give you that in relation to the existing appointments that have been made, and we can build on that as the appointments proceed over the next month or so.

Ms OWENS—I would like to ask a couple of questions about the external advisory panel. What is the likely makeup and how does it relate to the organisation? This seems to be a very interesting time to be chair, and I mean that in a good way. When the organisation opens up it will actually move a little over time. How might the advisory panel also move?

Mr D'Aloisio—The idea behind the advisory panel has probably come out of some similar panels that are overseas with the FSA and SEC. Essentially, as a commission we feel that when a subprime crisis occurs, for example, out ability to get that information and to see how it could likely fall out is extremely important because that will determine the regulatory response. For us, we have to make a judgment about how heavy-handed our response might be or what we need to do, always mindful of the market impact. In terms of our handling those issues, we made two changes. One was to upgrade and appoint a chief economist to help us do the research around those sorts of issues. We felt that as a commission we would benefit by having an advisory board drawn from our major stakeholders and chaired by someone independent. We would take the work on a subprime issue and debate it with them about what they see as the implications for the market and what are the implications for ASIC as a regulator. It is an advisory panel. It would not have access to any confidential or other information in terms of ASIC, and we would, as a commission, form our own view on whether or not we accepted that advice.

We would have no problem with that advice being more public, in the sense that there was transparency about the way it operated. We think that we need to appoint a chairman to that role who is well respected and regarded in terms of being able to assess markets and their impact, and then with that chairman build a panel. It could be eight, 10 or 15 depending on the skill sets that we are looking for and that would meet three or four times a year or, if there was a crisis, probably more than that. We are experimenting with it. The agency has had business consultative panels. It has consumer protection panels. It has a number of panels that it works with and some of those will continue. We have had some experience with working with external panels, but this is trying to take it to a different level, a very strategic, over the horizon look to the longer term to help us assess what is a systemic issue and what is just an issue that we probably need to deal with. The idea very much came out of our trying to grapple with the aftermath from a regulatory point of view of something like a subprime crisis where you did not have a lot of transparency about what was happening overseas. Having that ability to discuss those issues with more experienced people in the market seems to us to be important.

Ms OWENS—Are you looking for flexibility in expertise in that panel?

Mr D'Aloisio—Yes. The chairman would draw it together. You might have 25, for example, but on particular issues it may only be three or four that you would want to get together. If it is a specific issue about an investment bank issue where something may have happened, you may only need three or four to come together and handle that issue. The fact that you have access to that broader panel is important in getting the skills. It would extend also to consumers. It needs to be across-the-board.

I accept that a lot of questions will occur to you about how you structure it and how it meets. We have those, too. It is new, but we think that we can make use of it. Indeed, if the end it does not work or we cannot make use of it, clearly we are not going to waste their time. These are important men and women who are going to give their time, so we have to make their time commitment meaningful. If we cannot do that, I do not think anybody would have a problem with just letting it go. But we think it will work and will help us tremendously in our work.

Senator BOYCE—When do you see the panel starting?

Mr D'Aloisio—The trouble with talking about reviews is you have got to deliver.

Senator BOYCE—That is right.

Mr D'Aloisio—At the moment we are looking at appointing the chair. Obviously, we have names of people, who we are talking to, and we hope to have a chairman in place over the next two months and then we would start appointing from then.

Senator BOYCE—Would there be a chair in place by the end of August or September?

Mr D'Aloisio—Yes. We have set ourselves an earlier date, but realistically this is quite difficult.

Senator BOYCE—Would the chair then find the panel members? Have you decided on a process for that?

Mr D'Aloisio—We will talk to the chair about the process for that. We would expect that the chair would primarily make the running on that issue.

Senator BOYCE—You mentioned that there would be people with expertise and consumers.

Mr D'Aloisio—Business, investment banks, fund managers; there would be a range of skills.

Senator BOYCE—What about financial literacy and the delivery of financial literacy?

Mr D'Aloisio—Financial literacy has a foundation and it has a board. At the moment we are in the process of taking that over. We will probably continue with that panel. Paul Clitheroe chairs that. The extent to which one of their members may need to be on that advisory panel, may be something we could look at. At the moment there is a financial literacy panel for us already, but that is something that we could take on and have a look at.

CHAIR—We might move to a slightly different area. I am interested in how you deal with your workloads at times of high volatility with market issues, short selling, and all the issues that we have been seeing in recent times compared with other times when the market and everything seems to be on the way up. How do you differentiate between how ASIC operates and deals with its workloads between bull and bear markets, for example?

Mr D'Aloisio—We never have spare resources.

CHAIR—It is sort of a spare resource question.

Mr D'Aloisio—I will ask Ms Gibson to talk about how she has put teams together and dealt with the more recent market volatility issues to give you a bit of a feel for how we approach that, and then perhaps Mr Cooper can talk about how he has approached retail investor issues.

Ms Gibson—Where there has been a specific problem we have got teams together from the various divisions. We have people who are really just taken out of their day job and focused on that for the time necessary. It is fair to say there are not nearly as many takeovers happening right now and there is not much capital raising, so the truth is that the people who would ordinarily be processing those documents can come back in and look at some of the policy issues around short selling and stock lending. We have done a lot of work looking at what people do in other countries and working out how they are responding in order to participate in Treasury's consultation.

We have had to prioritise. In the enforcement area some cases have been pushed to the top more quickly than others in order to progress them. One thing that has taken a lot of our resources is the market integrity review that we said that we were doing into 'rumourtrage'. We have picked a number of people out and given them the commitment to get that going, and others have just filled in.

Having recently started at ASIC, I think it would be fair to say that I have been very pleasantly surprised as to the commitment and the knowledge of the people in ASIC at all levels. They have all pitched in for the late hours—not the hours that we were talking about in that other place earlier—but people have worked harder where required.

Mr Cooper—I have much the same picture to report. It is definitely a matter of prioritising between business as usual type work and the important issues as they arise. Similarly, talented people get very excited about working on things which they can see are meaningful and current. They like to be engaged and it is remarkable how quickly and willingly we can get these things done.

CHAIR—In following those thoughts about market volatility and looking at breaches by individuals, companies and directors and the penalties attached to certain breaches, is it your view that the penalties in place could be stronger or a better deterrent in certain areas? Are there areas for improvement in the penalties area?

Mr D'Aloisio—The area of corporate sanctions is something that Treasury and the government are consulting on and reviewing. It is really a policy matter for government. What we do and the way we approach it as a commission is that we obviously look at the impact that

we want with a particular case. If we are talking about insider trading, what are the penalties we would look at? We would look primarily at probably criminal sanctions and at incarceration. In some of the commercial matters that can be to get an enforceable undertaking to have a company change its behaviour.

I do not think we have been constrained by not having a penalty or a criminal sanction or a sanction available to us in taking conduct. Issues of whether or not penalties should be increased are really matters for government and we would leave that as a policy matter. Courts also play a role in penalties, of course. Part of what we want to do more with the way we run insider trading and some of the criminal cases is to really push as hard as we can for significant incarceration penalties, and that requires us to also convince courts to impose those penalties, particularly in relation to suspended sentences and so on.

CHAIR—I should rephrase my question a little bit. My question was more directed to deterrent powers and the ability to follow through, take to prosecution and apply the penalties, rather than the penalties themselves being so much greater. It is more looking at ways that ASIC can better deal with using the penalty system in place today as a stronger deterrent. It is more about the application and the pursuit of particular types of behaviour.

Ms Gibson—We have identified a few things that we need to do. We are talking with the DPP, the judiciary and the community about understanding that market integrity offences are not victimless crimes, that there is a real cost to the community, and perhaps getting some symmetry across the states.

Senator BOYCE—What do you mean by talking to the judiciary?

Ms Gibson—In public fora and so on, which the judiciary attend those as much as anyone else, we need to make clear that there is economic and social evidence that this matters. In Australia perhaps there has not been the focus in recent years on the importance of integrity and why the importance of integrity. Within ASIC we have also identified that we can be more aggressive in banning market participants, brokers and so on. We have a banning power. In some instances we could perhaps be a bit more proactive in the use of the powers to ban directors.

Senator BOYCE—I have a couple of questions out of the information that you gave us earlier relating to that. You spoke about how ASX was notifying you faster relating to insider trading and market manipulation. Can you talk about the numbers of cases that you have? Are there more or fewer and what has changed about those figures based on what you were doing?

Ms Gibson—From the start of this year the number of referrals from the ASX has significantly increased.

Senator BOYCE—You had 40 between January and May. What would you normally get between January and May?

Ms Gibson—My recollection is that we were not at 40 for the 2007 year or we were at about 40 for the 2007 year.

Senator BOYCE—In a couple of months you have had the same as the whole of last year?

Ms Gibson—Yes. In response to this everyone is increasing. When I came on board we brought in direct to me the market watch team, which is a group that looks at those referrals in the first instance. In the past, if it was—pardon the colloquial—smelly enough to send to enforcement, then that is where it would go and there would be some duplication and some assessment. Now both of those teams are back with me in one and talking to each other a lot more.

Senator BOYCE—It only gets looked at once.

Ms Gibson—It is looked at once with slightly different people. As you go further down the odour trail you put more lawyers on it and fewer analysts. I suppose that would be the difference.

Senator BOYCE—There has been a big increase there in the amount of work that you have done. You were talking about the assessments. Does that mean it is getting into the next phase faster? Is that what is happening?

Ms Gibson—Yes. We are still not talking enormous implications, which is positive for where the Australian market is at; there is more going to enforcement more quickly and as part of the specialisation of resources there are more resources being given to these market integrity cases.

Senator BOYCE—Can you talk about the outcomes of that speeding up?

Ms Gibson—It is a very slow process, unfortunately. Once it gets to enforcement you prepare the papers, and it is a criminal matter.

Senator BOYCE—And then you wait?

Ms Gibson—It is a criminal matter so you then pack them up and send them to the DPP. We are also talking a lot more to the DPP early about the quality of what we provide and working together to assess that. The DPP needs to get counsel, and charges are laid. These cases are extraordinarily complex. With insider trading and market manipulation there is a lot of expert evidence required. These ones that we are talking about now, if we go to a contested trial, will not come to trial before probably the middle of next year at the very earliest. You would be hoping that charges would be laid by the end of this year. It is an extremely slow process, so we have to make it clear to the market that we are on this.

Senator BOYCE—Is that the 11 you have referred to your licensing unit? This is on page 7 of your report.

Ms Gibson—I would prefer not to go into the detail.

Senator BOYCE—I was not wanting specific detail. You mentioned that they are very complex. Are you talking about just the insider trading one or the ones that are currently with the Commonwealth DPP?

Ms Gibson—All of the ones that are with the Commonwealth DPP are complex, because they are insider trading and market manipulation.

Senator BOYCE—We have nine there.

Mr D'Aloisio—We are very conscious of the fact, particularly with insider trading and market manipulation—this is where Ms Gibson's work has given us a clear focus on it—that we need to try to speed up the referral, looking at it, getting it to the DPP and getting it into court. We are concerned that three or four years down the track when the case comes to trial and there is a judgment given, who will remember? In other words, we want to hit the deterrence effect that we are talking about as early as we possibly can.

What Ms Gibson is saying—and I agree with this—is that we are in a system where we have to balance that speed with fairness and proper deliberations on issues, as do the DPP and the court system. In that balance at the moment we are really moving to try to reduce the time. We are not really able to set ourselves KPIs in terms of being able to say we can cut the time by X or Y. This is not to avoid your question. This is something that we have discussed and we have obviously looked at it, but just in our system of justice it is not possible to do that.

Senator BOYCE—I was interested in how you were measuring the success or otherwise of the changes that you had made, given that as you said it is long time till you can tick off that one as having gone to jail or been fined a lot of money.

Ms Gibson—We are monitoring the time for processing assessments. In these cases of the ASX referrals less than half would go to enforcement, in the sense that ASX would say, 'This looks like a suspicious transaction.' We have to find whether in fact people had the knowledge that might be thought to be held. In market manipulation you have to show a course of trading and strategy as to why people would be doing that, if you like, a motive. That involves a lot of interviews and a lot of discussions and you cannot run things that you do not have evidence for.

At the early stage it is a time thing to make sure people address the matters quickly and address those that look more troublesome more quickly than the others. There is a prioritisation. Part of the strategic review task is a bit more case management about which ones you push hard and fast and which ones you get to—

Senator BOYCE—The bang for the buck?

Ms Gibson—Yes.

Senator BOYCE—I have one more question on prosecutions and stats. On page 4 you talk about the illegal managed investment schemes that you took action on. Can you tell us why the figure has dropped substantially from 2006-07 to 2007-08?

Mr D'Aloisio—I could say that people were more honest.

Senator BOYCE—I am waiting for you to say you have been fantastically successful in scaring them out of it or they have just gotten more clever.

Mr D'Aloisio—Again, this is an example of the stats that I talked about earlier; that you could draw too much from it. What you need to do is go behind some of those. There might be fewer of those, but they may have been much more complex in the sorts of behaviour changes that we

were seeking to push, and it has taken us time. My guess is those figures are also not totally up to date in the sense that we have got the 2007-08 year, which is incomplete. I will take that on notice as well and have a look behind those stats for you.

Senator BOYCE—I am interested in whether what you have done previously has meant that to an extent you have cleaned out the market. I imagine people are endlessly inventive in this part of the sector.

Mr D'Aloisio—I do not think so. What we will find is that we have kept the same resources but probably fewer cases will be explicable by the complexity of them and what they have involved, but we will confirm that for you and have a look at it.

Clearly, the cumulative effect of the actions we have taken on the illegal schemes is impacting in the market. There is no doubt. People do know that we are very vigilant about illegal schemes and we will pursue them. We will pursue them heavily. We will pursue them overseas and we will bring them back. That is helping and building the integrity in the market. Whether we can say that that is translated into there being a whole lot less and that is why we have got less this year, I do not think so. I will take that on notice and have a good look at it for you.

Senator MURRAY—Ms Gibson, I have a question briefly on the deterrence front and your remarks with respect to the judiciary and magistracy. As I understand it, when you ban a director or say they cannot manage a corporation for five years or whatever, that is a court enforced order, is it not?

Ms Gibson—It is. There are some that happen by a conviction, but otherwise the court must make the order.

Senator MURRAY—I will take you down the path I want to go and then I want to ask you what your reaction is to it. If there is a court order and you breach it, you are in contempt of court. As I understand it in some jurisdictions that is an open ended kind of transgression. You can end up in theory with 20 years jail. In other words, the breach has a very serious punishment attached to it.

There are two aspects to my question. One is that I think a certain class of white-collar miscreants, shall we call them, do not think much about being banned. They just go back and do whatever it is. I do not think they are conscious of the point that I have just made, that a breach is serious. The other point is that I have seen no sign—and you are better informed than I am—that judges or magistrates take the breach all that seriously. I would have thought part of the education of the judiciary, in terms of the important economics and social cost, is not just in the primary deterrent, which might be the fine or the jail term, but in the secondary deterrent, which is for a breach of an order. I have not seen ASIC or anyone else making that case. The law does not have to be changed for that to happen. You actually change judicial behaviour and change advocacy on your part. How do you react to that proposition I have put to you? Is it a reasonable point I make?

Ms Gibson—It is not just contempt of court. To manage a company while you are barred is itself a separate offence. The judiciary's view, frankly, varies in different states as to how seriously these things should be treated. It is very hard, after a decision is made that we can be

extremely disappointed with, to be critical for obvious reasons of respect for the court and so on. We cannot be very targeted in how we do that in response to specific items. Certainly, we need to work with the DPP in putting the case from time to time about what a particular sentence should be.

Senator MURRAY—I want to put this proposition to you. I sense that probably ASIC has not thought that much about this area before. As you know, there is a whole advocacy in the parliament and outside of the parliament with respect to deterrence, which is often about heavier incarceration regimes or fines, and that is appropriate. But there are ways to use the existing law, in other words applying the deterrents already in there which are not fully enough exercised. Could I ask you, on behalf of the committee, whether perhaps next time you are in front of the committee you can give us a more considered view of that and whether the proposition I am putting to you is a real observation or just my view. Secondly, in a more formal sense, can you indicate how the Commonwealth, through you or on its own basis through the chief law officer in the land, could get a clearer view in the judiciary about how these matters should be approached?

Mr D'Aloisio—Thank you. We will do that.

CHAIR—Thank you. We will break for approximately 10 minutes.

Proceedings suspended from 6.30 pm to 6.57 pm

CHAIR—I reopen the oversight hearing and again thank ASIC for appearing. I turn briefly to the issue of financial planners and consumer protection and ask Mr D'Aloisio to give us a quick update as to some of the actions that ASIC have been dealing with in terms of insurance, financial planners and some regulation in that area.

Mr D'Aloisio—In terms of the insurance issues I will take you to page 6 of the attachment that I handed up. The attachment is headed 'Professional Indemnity Insurance for Planners'. You will recall that the financial service regulation compensation regime was introduced and ASIC's aim in administering that regime was to introduce professional indemnity insurance arrangements that financial planners need to have so that if they give bad advice, for example, retail investors can recover. We have implemented a two-stage approach for financial planners being required to carry PI insurance. The first stage is to get insurance that the market will offer them and then for us to work with the industry to see if we can get increased insurance coverage. The initial working of that model is indicating that financial planners are able to get insurance. The industry itself is working hard with the insurance industry to have insurance available. We think that to be able to give retail investors some recourse in the event, for example, that there is bad advice we want to get professional indemnity insurance to work. I am sure government has an open mind as to whether it will be in the end totally effective and whether it needs to be reviewed, but our feeling is to give it two years to see how we go and then review it at the end of that time. I think from the retail investor point of view in addition to having recourse through insurance, of course, the various alternative dispute resolution processes that FICS and others administer is a way also for them to have recourse, subject to the monetary limits of those schemes.

Mr Cooper—In terms of a general update on the financial planning landscape, I think the actions ASIC is taking in relation to the Westpoint collapse and the specific proceedings against financial advisers is probably the signature piece of work that is going on at the moment. I would not want to go into the details of that specific one but that is a big piece of work and it will also set some very important benchmarks on adviser behaviour such as what the standards of care are that an adviser has to take in first introducing a product into the dealer group, as they call them in the industry, and how much understanding the group and individual advisers have to have about product. There are a lot of issues that are likely to come out of that work.

We have also been looking into some of the more recent issues in the stock lending/margin lending problems as to whether advisers were involved in those losses and to what extent ASIC intervention is needed there. We have been doing all of the routine work. We talked about bannings before. ASIC has the ability to ban financial advisers and we have been continuing to work in that area. The chairman mentioned before that we have also been helping three EDR, external dispute resolution, schemes to converge into one new one, called the Financial Ombudsman Service, which I think will considerably increase in the economies of scale of those three schemes. It will be easier for consumers to understand. There are currently seven schemes. The three big ones are converging into one and so there will be much less confusion and a much higher profile for that scheme so that when consumers do run into problems with financial advice they will more readily know where to go. We are a little bit out of cycle.

Typically, what happens with financial advisers and financial planners is that we do what we call now in the trade a shadow shopping exercise, which is quite an expensive and time-consuming process. When that is concluded a number of issues come out of the shadow shopping report which we then interact with industry about, sometimes taking enforcement action, sometimes enforceable undertakings and other times we just have discussions with industry. We are a little bit out of cycle on that in the sense that we did the last shadow shop in 2005 and reported on it in 2006 and then continued to do work after that. As the chairman mentioned, we will do another one of those in 2009-10. That is really a summary of the current level of activity with financial planners.

CHAIR—I know we are reviewing it in 2010 but do you believe that there will be adequate liability insurance to cover that period?

Mr D'Aloisio—I guess there are two issues there—

CHAIR—Or enough supplies of—

Mr D'Aloisio—Yes, there are two issues. One is availability and then there is the uptake in terms of being able to get it. All we can go on are the initial indications. The initial indications are that, yes, certainly for new licensees that have been applying they have not had a problem. The backdrop to it is that the professional indemnity insurance, as we are advised, is very competitive. In other words, they are looking for the demand side. They are looking for customers and in a sense a compulsory regulatory scheme does produce a lot of customers here. If our advice is correct that it is very competitive—and, as I said, the initial evidence is that those advisers, new licensees, are not finding it difficult—that gives us comfort that we are heading in the right direction. Whether it will be the complete answer to losses that may be incurred where there has been bad advice, for example, we do not know at this stage. We think that it is going to

take a while for us to be able to assess that, but we are certainly onto it in terms of trying to assess it as we go.

Mr KEENAN—I apologise to the committee and to Mr D'Aloisio and his staff for being late. Since that is the case, if I happen to go over ground that has been covered previously I am very happy to be pulled up on that. You may choose to humour me, but I will leave that up to you—

Mr D'Aloisio—I will leave that to the Chairman.

Mr KEENAN—When the new government came to power they had a plan to cut your budget. I am just wondering, when a new government comes in and they have these plans to cut budgets, as the head of an agency what sort of contingency plans do you make for that eventuality?

Mr D'Aloisio—There was not in this case a need for us to do that because leading up to the election the only indications we had had were a couple of interviews from the then opposition in terms of potentially cutting our enforcement special accounts. But once the government came into power and we had discussions with them, the government announced fairly quickly that in fact it would not cut ASIC's budget and would not cut the enforcement special account and would indeed confirm that. Subsequent to that, in terms of new initiatives, they have indicated that if as a result of the green paper we get additional responsibility they would look at funding that as additional funding for ASIC. In the run-up to the election we obviously kept an eye on the statements that were being made but it did not come through as an issue that pushed us into saying, 'Gee, we had better start doing some contingency planning here,' because we felt ASIC as an organisation overall has a very strong case to be properly funded for what it does simply because it is needed in the work we do in corporate Australia. Indeed, the volatility and turmoil you saw in the market demonstrated the need for an effective regulator. In our thinking we did not have a contingency plan.

Mr KEENAN—Could you remind me: how long did it take for the government to say that they were not going to implement that cut?

Mr D'Aloisio—I could take that on notice. I cannot recall. I thought it was fairly soon after, probably January or February I think. We can check that for you. I think that might be the best.

Mr KEENAN—I understand you might not have made specific contingency plans but my understanding was that agencies do these things in preparing for a change of government. But I am interested in what it might do for staff morale, for instance. People wake up the day after the election and a new government has won and this government says that they are going to come in and cut their budget. Does that make your job more difficult in retaining good staff?

Mr D'Aloisio—Other than being in the public service when I started out about 30 or 40 years ago, I have been in the role since May last year so I have not really been able to test that with successive governments and changes. I think speaking for ASIC post the change of government here I did not sense, nor did Mr Cooper or Ms Gibson, any apprehension in the change of government and what the implications might have been for ASIC. I think our people were very focused on getting on with the job. Indeed, we were also in the middle of a strategic review of the organisation, so the organisation was undergoing change and getting ready for change in any

event and the change of government was just another thing that came along the way. That is my assessment of where we are at as an agency, so I cannot comment more broadly on your question.

Mr KEENAN—I suppose I could imagine if I were working in ASIC and the new government was elected and they had said they were going to cut my budget I would personally be quite apprehensive about that because—

CHAIR—You could be the only one though. No-one else seems to have been, anyway.

Mr D'Aloisio—I think, as I say, also the budget cut itself was in the context of a forward estimate in relation to enforcement spending so it was not an immediate cut. Of course, in a complete answer, the efficiency dividend does apply to us as well.

Mr KEENAN—This is the two per cent?

Mr D'Aloisio—Yes.

Mr KEENAN—How do you plan to accommodate that?

Mr D'Aloisio—We are looking at that and we are planning through that at the moment and we will advise government on whether we can meet it. We will see what their decision is and what they want to do, but we have not formed a final view on that.

Mr KEENAN—How does that process work? Does the government just essentially write to you and say, 'You need to find two per cent savings,' and then you decide where you think it is appropriate to find those savings and write back to the government and let them know; is that right?

Mr D'Aloisio—If we can. I have not been through it as yet but I am told that there is a negotiation process.

Mr KEENAN—Given that the budget was not cut, I think the government sensibly reversed the policy they had prior to the election, do you feel that your level of resourcing is adequate given that there has been substantial amount of volatility—

Senator MURRAY—I am sorry; we have been through this previously.

CHAIR—We have covered this extensively. I am happy if ASIC want to answer in any particular way, please do.

Mr KEENAN—Or you could humour me very quickly if other committee members do not mind.

Senator MURRAY—I am just concerned we might run out of time to ask other questions.

Mr KEENAN—I will be very brief, as ever.

Mr D'Aloisio—I am sorry, what was the question?

Mr KEENAN—I suppose it relates to resourcing. And I definitely do not want to go over old ground. I will be very happy to consult the *Hansard* of these proceedings.

Mr D'Aloisio—In essential respects what I said to the committee is that the position in our budget is that we have said that we can work within our current budget for the 2007-08 and the 2008-09 years and we have done a lot of work in being able to do that. Clearly we will look at whether we need additional funding beyond that as part of the process, but the government recognises, and we would also see, that if we get additional responsibility out of the green paper, for example, we would ask government for additional funding and government has indicated that—I think the words were—'It would not be unreasonable to provide ASIC with further funding to meet those obligations.' As a commission, we are comfortable, based on what the government has said and also the money that we have for the balance of this financial year and the 2008-09 year, but we do recognise that we will need to do a very thorough review at the end of the 2008-09 year for what we need beyond that.

Mr KEENAN—The reason I am interested in this issue of resourcing and staff morale is that there have been media reports about the loss of senior staff. I am certainly not taking that as evidence that it has occurred, but would you like to comment on those media reports?

CHAIR—We have already covered that as well.

Mr KEENAN—Okay—just briefly, if you don't mind humouring me.

CHAIR—We can double up but it will be in the *Hansard* record.

Mr D'Aloisio—I am willing to answer.

CHAIR—Please answer it again.

Mr D'Aloisio—There is no cause and effect between the staff and budgets. What I have said to the committee is that we, as part of the strategic review, flattened the structure of our management from two levels, executive directors and directors, into one. As a consequence of doing that we declared vacant all the new senior positions and have gone through an external appointment process. Just as we having reached that I think staff have also made assessments about whether they would apply for the new positions or whether they would take it as an opportunity to do other things. We respect that and we respect their judgement in doing that and taking that action. We do not like to lose good people, no-one does, but we were very deliberate in the process that we set and we are very confident in the way that people we are appointing and new people that we will appoint we will have the quality that will enable us to do what we need to do.

Mr KEENAN—Given that a lot of this has been covered, I am very happy to consult the *Hansard* record and get some further answers.

Senator MURRAY—Do you recall at previous oversight's discussions and estimates discussions there have been concerns about complaints procedures at large—bodies such as

FICS—and really an inadequate architecture in that area. The government has announced—and it is occurring or has occurred; I have lost track of exactly where it is—the amalgamation of a number of bodies, which strikes me as sensible. It provides better focus; I suppose that would be the term. But there is then the question of implementation, updating and modernisation of the systems, improvement of the paperwork and easier and more facilitative processes and procedures for customers. Frankly, having had a dip into it myself, it is an area I am critical of. For Australians who have complaints it is far too bureaucratic and difficult. What I would like you to do is give the committee your view as to where this is going and how much better the complaints procedures will be for Australians who find difficulty with financial products.

Mr Cooper—I think it is a steady, but perhaps not perfect, incremental progress. The convergence of the three schemes will, we believe, bring improvements. This commission has—

Senator MURRAY—Just remind the committee of the three schemes?

Mr Cooper—It is currently the FICS, the Banking and Financial Ombudsman and the Insurance Ombudsman. They are the three main schemes that most consumers would seek to interact with which have all been put into one. As I said before, that brings economies of scale. Rather than having three separate service functions, and so on, it has collapsed into one. But that is really not going to produce a nirvana; it is just an incremental journey towards a better scheme. As I was saying, this commission has made it very clear, and I am happy to make it clear again, that the original limit of \$100,000 for FICS, being the major scheme that we are concerned with because that deals with investment products, has been increased to \$150,000. This commission has made it plain that that is not enough and that it should be \$280,000 to line it up. There is no particular magic with \$280,000. It is just that the other schemes have been at that level and that is where we believe the new scheme which is called FOS, or the Financial Ombudsman Service, should be.

Senator MURRAY—May I say to you I still think that is miles too low.

Mr Cooper—It possibly is but, as I say, this is incremental. It really is ultimately a matter of policy for the government if they want to impose some new limit. We are really working with industry at the moment—

Senator MURRAY—ASIC could give government policy advice on this matter, couldn't you? It helps if you hear from us that a \$280,000 insurance policy, quite frankly, these days is not worth much. Most people will have a bigger one.

Mr Cooper—I guess we are getting into policy territory. We think it is a worthwhile venture to seek to convince the industry that \$280,000 is the right limit, but there are obviously arguments that it ought to be higher. For example, the average self-managed super fund these days has \$800,000 worth of value in it. You might argue that when that fund goes and seeks advice that \$100,000, \$150,000 or \$280,000 are all too low, but then there are other arguments that average superannuation savings are much, much lower and they are more likely to be in the \$40,000 to \$50,000 limit. So there are many, many arguments and we are looking forward to having discussions with industry with a view to increasing it to \$280,000. But that is only one element—

Senator MURRAY—It is. The purpose of me pushing this at you is that I know the committee has had a long history of concern in this area, of it being an inadequately managed and serviced area—without pointing a finger at individuals who have tried very hard. It is just that it was badly structured. We are now in a new scene and essentially ASIC is the go-to body, I think, to provide advice to the government—more than Treasury's markets division or anyone else. So, unless you really get into it, I cannot see much more happening than a rationalisation. It needs an uplift and an upgrade. What I am looking for in the answers to my questions is a sense that you absorb that sense of need and are reacting to it.

Mr Cooper—We are. And I think the next big piece of work is what they call the terms of reference, which is what FOS's limits, including the monetary limit, will cover. I guess our path at the moment is to work ourselves through that and then see whether we are satisfied with the ultimate outcome, which will include convergence and new terms of reference and I guess, most importantly, the monetary limit. We are sticking on that course for the moment. But, no doubt, if the government sought out policy advice about all this we would be more than happy to give it.

Senator MURRAY—Despite its length, I am fan of Mr D'Aloisio's opening statement. Perhaps I could ask through the chair that you update the committee the next time they meet on this area because it is breaking new ground really for the Australians who want to complain in the financial products area. If no-one wants to follow that up I have got another area I want to deal with briefly. The other topic I want to deal with is in your paper you have given us today and is covered in some detail in your press release of Monday, 16 June, which is a joint Treasury and ASIC consultation on cross-border recognition of financial regulation. I got a mixed message out of it, which might just mean I am confused, but you are not—

Mr Cooper—I hope you are right.

Senator MURRAY—It refers to facilitating access to overseas markets. I thought, 'Great! This is a market measure which will increase opportunities for Australia.' Then, as I read through it, it began to seem more and more like a bit of a bureaucratic regulatory recognition mechanism. I ask questions about this because I have a particular insight which emerged as a result of a parliamentary delegation I went on and, with the chair's permission, I will briefly describe it. We went to Malta and worked out that Malta is the only English-speaking Commonwealth country in the Mediterranean with a British administration system, the Euro, a gateway to Europe, connected back into North Africa, a fantastic container port, modern IT systems and a very good financial services regulatory access. So if you were an Australian company I would have thought that is an alternative to going through England, or even Ireland, which has been the traditional route. Does this sort of initiative of yours affect the ability of the Australian investment and financial services community to interact better into Europe and North Africa through a place like Malta or does it have nothing to do with it?

Mr D'Aloisio—I think the short answer in relation to the country you talked about is probably not. If I can just step back a bit, when you look at our system and you look at our capital flows, what we have said is in those places where investment is made from into Australia or from Australia into those countries, let us have a look at the flow of that investment to see if in fact we can remove some of the regulatory restraints to enable the investment to flow more freely. Australia, as you know, is an importer of capital so a unilateral recognition of some system such as, for example, what we did with Singapore in relation to allow their collective investment

schemes to run in Australia with a more limited control from ASIC enabled them to come in and offer products more freely than if they had to go through a second licensing and registration system in addition to their own country.

In other places such as the United States, New Zealand and Hong Kong we are looking more at mutual recognition in the sense of if we reduce restrictions to allow a freer flow of capital in you will also reduce restrictions to allow a freer flow of capital out. The thing that is driving ASIC, and I think Treasury, in the consultation is to look for ways of freeing things up—consistent always with needing still to protect our investors that are going out or that are investing in products that may be coming in—to see if we can reduce some of the regulatory hurdles that organisations need to go into. But the commercial decision as to which country you go into and why would remain primarily the investment decision of a particular industry. But by looking at where the major flows of capital are from Australia, or into Australia, we thought we could actually do some work to try to free up the in-flow and out-flow. I think that the work we do with the United States, with Treasury and the government, particularly if we can get recognition of being able to trade on the ASX and NYC, for example, from Australia and from overseas into Australia, I think will be a very important indicator of this ability of trying to free up more of the flow of capital.

Senator MURRAY—The reason I raise this with you is that this is a new market access opportunity. The Chairman knows all about it as well because he happened to be on that parliamentary delegation. The President of the Senate led that delegation and sent a letter through to the Treasurer on behalf of the delegation saying, 'Look, here is a real market opportunity,' for some of the reasons I have just outlined. What it requires, of course, is ASIC to recognise and get a proper relationship going with the Maltese financial services regulators, so that is what is lying behind my question.

Mr D'Aloisio—What I am saying in relation to that is that it is a matter of if the demand is there. In other words, at the moment when we look at the flow of investment, the demand in terms of the United States, New Zealand, Hong Kong and countries we are looking at, there is industry demand for that, so we are responding and looking at our rules and working with them. In relation to Malta, for example, certainly in my time I have not had that come through from the industry as being something they want us to do.

Senator MURRAY—No. There is no demand; that is the point.

Mr D'Aloisio—But certainly if the funds management industry, for example, IFSA or one of those organisations says, 'We think there is a demand here that they see as a destination—Malta as an example—then I think we would apply unilateral and multilateral recognition with Treasury in the same way as we have done for New Zealand and for Singapore and we are doing for Hong Kong and the United States. We would see it really as a demand driven issue from the industry. I do not think ASIC can actually anticipate—

Senator MURRAY—You are not seeing it as a new market issue.

Mr D'Aloisio—We are not seeing it. The reverse can be the case. For example, with the work we have done with Treasury in relation to China, the demand for that has come from China wanting to see Australia as a destination for an in-flow of investment. That demand is coming

from offshore but we still responded to it on the basis that it was good for Australia because it would increase the liquidity of investments in Australia, so we work with Treasury on that issue. That is an example of demand coming externally. Demand in relation to some of the other countries has probably come more from the Australian industry wanting to invest offshore.

Senator MURRAY—Let me ask you one more question and then I will leave the topic alone. These are new market opportunities and I am into that sort of thing for Australia. We have just agreed to a free trade agreement with Chile, so one arm of government is busy working out new market opportunities through that device. Does ASIC follow on and say, 'Yes, we are going to go and see the regulator and make sure that we have got regulatory ease and interaction going on'?

Mr D'Aloisio—I think you need to look at it obviously by country and also the extent to which we are talking about the real economy export/import. It depends what the relationship between Australia and that country is. Where there are strong capital flows—what I said earlier about the United States and so on, for example—ASIC is looking at that and we are following the free trade agreements, if you like, with the US and with Singapore, but in relation to the flow of capital and financial economy, in relation to a country such as Chile, yes, we would have an interest in seeing where the regulatory framework is at and have a corresponding relationship with them, or we might even have a memorandum of understanding with a counterpart. I do not know about Chile but I know we have got about 40 or 50 of those with other countries so, yes, we would take an interest. But the thing that would really get us more involved with Treasury would be around where there is the flow of investment because that is what could affect investors, consumers in Australia, in terms of protecting them if they are investing offshore or indeed if they are receiving products from offshore. It would really be focused around the financial economy and the flow of capital. We will go in where we see that but in the more traditional export/import businesses, those areas have probably less of a role for us other than just knowing what that system is and understanding it and having relationships with our counterpart. For example, cooperating on enforcement matters, we might exchange information or work with each other if an enforcement issue arose between the two countries. But on the flow of capital—mutual recognition, unilateral recognition—it tends to be with countries where there is a sizeable inflow or outflow of funds to or from Australia.

Senator BOYCE—In relation to complaints or warnings to ASIC, not necessarily in the banking or financial sector, I notice that during the estimates hearing you mentioned that you had had one anonymous complaint regarding Chartwell. Would you know when that was?

Mr D'Aloisio—There was an anonymous complaint. I will have to take that on notice. We received an anonymous complaint in April 2006 about a scheme that they were conducting and how it was operating. Because it was anonymous our compliance and surveillance team were not really able to follow it up and decided not to take any action at that point in relation to it. Then there was a further complaint earlier this year around February to April, in that period, that then was actioned and then the company went into voluntary administration and we are now running a full investigation.

Senator BOYCE—I have an email here from a Mr Jonathon Sear, who is a Melbourne accountant, saying that he telephoned ASIC on 14 September 2007 and alerted them to his concerns regarding Chartwell. He was told there was no adverse information regarding Chartwell and that his comments would be passed on to the ASIC intelligence unit, so that

suggests that there has been another complaint. What I want to know now is what is the ASIC intelligence unit? What happens to these complaints? How do you get to the situation where, as you said before, you know about issues that are likely to arise?

Mr D'Aloisio—We receive some 10,000-plus complaints a year—

Senator BOYCE—Complaints of this type that are warning you that perhaps—

Mr D'Aloisio—and we have a very large team that receives and assesses those complaints. They can go in a number of ways.

Senator BOYCE—They are logged?

Mr D'Aloisio—Yes, they are logged and, indeed, we have taken note of that one you have referred to and I will check that through as well. It can go a number of ways. The matter can be looked at initially, calls would be made and it would be sorted out and a letter would go back saying how it has been actioned. It may develop into a full investigation, enforcement and action being taken. It can go a range of ways and it could also go to insufficient evidence to take it any further and the matter is not taken any further.

Senator BOYCE—Mr Sear also advises me that he has had no contact from ASIC whatsoever since he made this phone call.

Mr D'Aloisio—I would like to take that on notice and come back to you and the committee specifically.

Senator BOYCE—It just raises concerns about how you collate the information that is there. Is someone, for instance, going to alert you when there are 100 complaints or warnings about a particular system?

Mr D'Aloisio—Yes.

Senator BOYCE—How does that work?

Mr D'Aloisio—We can actually give the committee a full working of our complaints, but there is not one model. It will depend on the complaint, the investigation and the review of how it should be progressed. But if, for example, you saw four or five complaints, or eight or 10, in relation to an area that would clearly alert us in terms of its significance. A team would be formed. That team would investigate the matter and decisions would be made. These complaints can take many different twists and turns and some of them can actually go for years and there can be extensive correspondence. I am sure you will have examples of those as well as we do, but it is a very large, serious unit within ASIC that runs the complaints. They are not dismissed. The complaints are often, as you say, an indicator of some deeper problem, but it does not mean from that that every anonymous complaint or every single issue would be analysed to death and resources put into it. We just cannot do that.

Senator BOYCE—I would not imagine that it would be—

Mr D'Aloisio—And we review the complaints and the statistics and what they action on a very regular basis, because they are a very important alert system. A lot of the work that Ms Gibson does in markets information can actually come out of anonymous or other calls that can occur about suspicious share trading. The market watch team would pick that up and run with it and have a look at it. But of that 10,000, what is the sort of strike rate to something more significant, I do not know, but it would be low because of the way that it would unfold.

Senator BOYCE—Would you be, for instance, able to give us, without taking too much time and effort, a list of the number of early complaints you had regarding the companies or the matters that you list in the report that you have given us—One.Tel et cetera?

Mr D'Aloisio—We could do that, for example, with Westpoint, ACR and Fincorp. We could pick some clear examples and indicate what the range of complaints was, when we acted, what we did and so on. We will try to give you a snapshot of that and we will also put into that a clearer picture of how we analyse and where they go in the steps, because there are flowcharts that indicate what happens to complaints and, if they pass certain gates, where they go to next in the organisation. We can give the committee that—

Senator BOYCE—It would be good to hear what transpired in terms of this particular phone complaint.

Mr D'Aloisio—and we will look more specifically at the one you have raised.

CHAIR—I might just draw your attention to the banking and credit regulation issues. The government's green paper on financial services and credit regulation has outlined a number of options for a federal takeover of consumer credit regulations. Some of those options include things such as regulation of all credit products, perhaps regulating mortgages only, leaving other consumer products to the states, or even maintaining the status quo. What implications would it have for ASIC if there were a federal takeover of consumer credit regulation and, in particular, what sort of possible mix of those products or matters would best suit you in terms of your role? What do you think would be the optimum mix that ASIC might deal with?

Mr Cooper—If I could attempt to answer that, I think the most important point to make at the outset is that the green paper is very much a series of options. It does not present a particular finality to which we could then respond and say that we have these comments about that particular state of affairs and we think it would cost X million dollars to do. The understanding that the commission has is that additional responsibilities that flow out of this green paper will be appropriately funded, but it all depends on what the ultimate proposals are. If you just take credit, for example, there are a number of scenarios put forward: a total transfer of all state credit jurisdictions or something less than that only focusing on mortgage lending. And then when you look at that there are various roles that we could be asked to play. We could focus more fully on mortgage brokers, which are currently largely unregulated even at state level, but then there would be a question as to what we would actually do with those mortgage brokers. Would we look at a registration system? Would we look at licensing? Would we seek to mirror what chapter seven currently does? There are myriad different models that could be presented and each one would have resourcing and skills and all sorts of implications for us. It is a fairly high level policy document—

CHAIR—It may be a bit early to—

Mr Cooper—Yes, it is a bit early. I am sure it will be something that comes up at future committee meetings and other forums like this but really it is only at the ideas stage at the moment.

CHAIR—Given that COAG is considering that, there will be a lot of interest from this committee as to that process, what might come out of it and how it is dealt with as well as, of course, ASIC's role in oversighting those areas. Can I also just ask you about reverse mortgages and what you have picked up in terms of the market and the regulation of reverse mortgages as to positives, negatives or deficiencies? Are you aware of where that is currently sitting in the market?

Mr D'Aloisio—This is an area that we talked earlier about being proactive and forward looking in terms of issues. I think ASIC should get the credit for picking up issues around reverse mortgages quite some time ago. ASIC alerted people via our website as to when they are going into a reverse mortgage, what the risks, what the questions are to ask and so on. It has done some very good work in that and I think it has brought the issue to the attention of government. Government has picked that up and has made it part of the green paper to look at whether there would be broader regulation on that issue. I think that is an area that is quite positive. At the end of the day with reverse mortgages there are assumptions about growth in interest rates and about growth or non-growth in asset prices. When you have those variables over a long period of time you can get them out of kilter. Those that would tend to be more elderly that take the reverse mortgages may see some difficulties down the track. The green paper, the government and ASIC's work has been alive to that. Probably the next step is to see what comes out of the green paper as to what the government's policy is. ASIC will continue its work of seeking to protect the financial consumer.

CHAIR—Are reverse mortgages the subject of many complaints to ASIC?

Mr D'Aloisio—We could take that on notice. I am not sure.

CHAIR—If you could take it on notice, I would be interested just to see a little bit of a brief in terms of complaints, the types of issues and perhaps how that product works for people in terms of the complaints you receive.

Mr D'Aloisio—Our interest in the area would have been developed around the complexity of the product, given the financial consumers who would use it, because we have had a growth market in asset prices and low interest rates. We will look at it and get that data for you, but I think it would not have been an area that would have been driven by complaints; it would have been more to foresee the issues that could occur where you get interest rates rising and asset prices dipping—what has happened to that equity, have you still got equity, and what is happening also to the compounding of the interest on the loan? I think our work on it has been more about trying to foresee where there could be problems in changed market circumstances rather than responding to complaints as such.

I think the industry and those involved in the industry from our experience have been responsible in trying to foresee the sorts of issues that can arise. But at the base of release equity

products, or reverse mortgages, is the fundamentals of a market and getting supply and demand right and interest rates right. They are quite difficult issues. It is not a similar example but it is an example to illustrate the point. We had margin lending in a growth market and margin lending worked extremely well in a bull market against your shares. But when the bull market stopped and asset prices dropped the margin calls that came in and the interest rate rises at the same time caused some difficulties for margin loan holders. It is a different product. I do not want to suggest that reverse mortgages are in that category—

CHAIR—We would like any information that ASIC has got in terms of information that has come to it, be they complaints or any other information, just to give the committee a better scope. And if you would take on notice too whether the ombudsman might have been the office that took more complaints, but we might pursue that in another forum.

Senator CHAPMAN—I was a bit concerned to note recently the downgrading of the credit rating of Members Equity Bank. Is any aspect of that an area that comes under your jurisdiction or is that all APRA's?

Mr D'Aloisio—I think that is an APRA matter. Our work in relation to credit rating agencies is very much the licensing framework and compliance with the IOSCA code of conduct. The government has asked us to review those arrangements and we are engaged in a process with Treasury doing that, but the specific issue you are referring to is better directed to APRA.

Senator CHAPMAN—There are no sort of flow-on issues that would impact on super funds or anything?

Mr D'Aloisio—Not from what I know of the issue, but I am happy to take it on board further and have a look at it.

Senator CHAPMAN—You referred to the issue of margin lending. Can I ask what your view is of margin lending to shares that a person might have in what, for want of a better description, is their own company; in other words, a company in which they are a substantial shareholder, whether that be a minority shareholding or majority shareholding, but a substantial shareholding as against margin lending to buy shares in BHP as an external investor, if you like. What are the relative risks of each type of that margin lending and should something be done about the first type to make it more restrictive or ban it?

Ms Gibson—When it became clear that a number of margin loans over those types of shareholdings were being sold down we made an announcement to the exchange that said that companies that know that this is the position should be disclosing to the market that that is happening. We took the view, and take the view, that disclosure is probably a better course than outright prohibition, simply because people then find ways to get around prohibition. When we said that some of that should be disclosed there were a number of disclosures about the existence of margin loans, or in some cases the fact that they were not disclosed. The disclosure would be under the continuous disclosure rules of the stock exchange.

Senator CHAPMAN—Are you saying that they should be disclosed in advance, not just the sell-down but the margin loan itself?

Ms Gibson—Yes. Where there is a significant shareholding—I think the usual view we took was a five per cent shareholding as the level—the entry into those loans where there are directors involved should be disclosed. We said we would expect them to be disclosed with a significant shareholding. The shareholdings, once you are over five per cent, should be disclosed in substantial shareholding arrangements also.

Senator CHAPMAN—Are you satisfied that that is now occurring?

Mr D'Aloisio—I think we have had good response. I think that this is an issue that, I think as Ms Gibson says, is really a response that this is what chairmen and boards are for. It is part of their responsibilities. At the end of the day there is a responsibility in running companies and one of them needs to be that if there are disclosures that are important because they could impact on the shares of the company then they should be disclosed. Boards, in response to looking at the issue, have been taking action that we are aware of on these issues. We have also referred the matter to the ASX Corporate Governance Council as part of the corporate governance principles that they look at to build it in as a principle, that proper board governance should contain recommendations or principles around what you do with margin loans over substantial shareholdings of that company where there could be a material impact on those shares once a margin call may be made.

I think you raised a second category of margin loan, the more traditional category. In relation to that, as part of that and what the government has put in the green paper, what we have seen also are issues of whether or not a margin loan is explained in such a way that the investor, the borrowers, actually understand how it works, how the mortgage arrangement works, how calls can be made, how you have to meet the calls or the shares will be sold, how shares can be taken out of a portfolio and you would be given a margin call. We think that the disclosure around that to the investors can be improved and I think the government has picked that up as part of its green paper as to whether, for example, margin loans should be subjected to the same product disclosure statements that other forms of investments are subject to. That is a matter now for government.

We need to be careful of the margin loan industry. Its part of margining of shares is something that was there in the Great Depression. It was there in 1987. It was there today as well. So, it is not a new phenomenon that has emerged in our markets. Margin loans in a bull market do play a role. People do leverage up their equity and indeed are able to increase the profits they could otherwise make, and the trading then that occurs on the exchange adds to liquidity, so we just need to look at the balance of these two things. But ultimately as with any security, or any assets you have that is leveraged, in a market downturn that leverage is going to come under stress.

Mr KEENAN—Just following on from Senator Chapman's question about the downgrade for Members Equity, I understand you do not have primary responsibility for prudential regulation, but would you be informed as chairman if a financial institution does have their credit rating downgraded? Is there a process that would automatically inform you of that?

Mr D'Aloisio—We have a very good relationship with APRA and we monitor the market, so we would pick it up in our market monitoring as opposed to there being an obligation on someone to inform us in relation to it.

Mr KEENAN—You are obviously looking at this sort of regulation in a number of areas such as mortgage brokers and what have you. When the government does that they go through a regulation impact statement that lists the costs of that regulation to the industry. Does ASIC have a similar sort of process?

Mr D'Aloisio—In any policy issue that comes within our jurisdiction we would subject it to a cost-benefit analysis and also—and I think the chairman might help me here—there is a government agency that—

Mr Cooper—It is the Office of Best Practice Regulation with which we are in very regular contact. As the chairman says, it goes this far, even where we are exercising our power to give relief, in other words to loosen regulation, that still has to be analysed as to whether it does in fact have that result. Certainly, the RIS, or the risk impact statement, is very much part of our culture of regulation.

CHAIR—Senator Boyce?

Senator BOYCE—I am happy to put questions on notice.

CHAIR—Yes, otherwise we will run out of time and there are two other matters. You have matters of question on notice?

Senator BOYCE—I was hoping I could just write them out.

CHAIR—That is fine. We will accept that.

Senator BOYCE—They relate to the franchise industry and the High Court in terms of the 'issues that are likely to arise' approach. I was wondering where ASIC was heading with that.

CHAIR—To finalise proceedings, I just want to raise two cases, one with which ASIC is very familiar, the Vink case. This case has been the subject of quite a bit of correspondence and work, but the new bit of information actually relates to perhaps a failing of the Corporations Act and a matter of principle in terms of the case. Perhaps if ASIC could just deal with that in the correspondence they would have received from Mr Vink that would be helpful. The other one which I have not—

Mr D'Aloisio—I will take it on notice. How recent is that, do you know?

CHAIR—The date is 7 May 2008.

Mr D'Aloisio—I will take that on notice. I was not aware of that.

CHAIR—Take that one on notice and the committee can provide you with a copy of correspondence and other information. The other one which was not listed but which I will raise—and again please take this on notice—is the case of Mr Dodrill in relation to JMD Queensland, the Irish Restaurant and Bar Company Pty Ltd and American Pie Restaurant Pty Ltd. This has been the subject of a number of pieces of correspondence between the complainant, ASIC and me as a member of parliament and also a number of court cases, all of

which have been won by the complainant. I am seeking your review of that. If you could take that on notice and get back to us, that would be appreciated.

Mr D'Aloisio—Yes.

CHAIR—As there are no further questions, I thank Mr D'Aloisio, Mr Cooper and Ms Gibson for their attendance and other officers of ASIC. I thank Hansard, the committee and the committee secretariat. I declare the meeting adjourned.

Committee adjourned at 7.56 pm