Parliamentary Joint Committee on Corporations and Financial Services

Statutory Oversight of Australian Securities and Investments Commission

November 2011

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Duties of the Committee

Section 243 of the *Australian Securities and Investments Commission Act 2001* sets out the Parliamentary Committee's duties as follows:

(a) to inquire into, and report to both Houses on:

(i) activities of ASIC or the Panel, or matters connected with such activities, to which, in the Parliamentary Committee's opinion, the Parliament's attention should be directed; or

(ii) the operation of the corporations legislation (other than the excluded provisions), or of any other law of the Commonwealth, of a State or Territory or of a foreign country that appears to the Parliamentary Committee to affect significantly the operation of the corporations legislation (other than the excluded provisions); and

(b) to examine each annual report that is prepared by a body established by this Act and of which a copy has been laid before a House, and to report to both Houses on matters that appear in, or arise out of, that annual report and to which, in the Parliamentary Committee's opinion, the Parliament's attention should be directed; and

(c) to inquire into any question in connection with its duties that is referred to it by a House, and to report to that House on that question.

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Abbreviations

ABN	Australian Business Number
AFSL	Australian Financial Services Licence
APRA	Australian Prudential Regulation Authority
ASIC	Australian Securities and Investments Commission
ASIC Act	*Australian Securities and Investments Commission Act 2001*
ASX	Australian Securities Exchange
IOSCO	International Organization of Securities Commissions
FSA	Financial Services Authority (UK)

Chapter 1

Statutory oversight

1.1 The Parliamentary Joint Committee on Corporations and Financial Services was established by the *Australian Securities and Investments Commission Act 2001* (the ASIC Act). Section 243 of the ASIC Act specifies the committee's duties, which include:

> (a) to inquire into, and report to both Houses on:
>
> > (i) the activities of the Australian Securities and Investments Commission (ASIC) … or matters connected with such activities, to which, in the Parliamentary Committee's opinion, the Parliament's attention should be directed …

1.2 This report is presented in execution of the committee's duty under paragraph 243(a)(i).

1.3 As the regulator of Australia's corporate sector, markets and financial services, ASIC is responsible for monitoring the integrity of Australia's financial system. Areas within the Commission's purview include regulation of corporations, financial advisers and consumer credit providers, and supervision of trading on Australia's licensed equity, derivatives and futures markets. The Commission may also advise the Minister about changes required to address concerns with the operation of the corporations legislation or the financial products or financial services industry, or to improve the efficiency of the financial markets.[1]

1.4 In inquiring into ASIC's activities, the committee has sought to determine whether ASIC is fulfilling its statutory responsibilities as the corporate, markets and financial services regulator. Recent oversight investigations have taken a dual focus taking into consideration reports from ASIC and evidence of independent experts in these fields. The purpose of taking evidence from other sources has been to gain perspectives by which the total regulatory context may be understood and by which ASIC's performance may be measured.

1.5 Other inquiries undertaken by this committee have directed its attention to significant matters in which ASIC is a key player. The most recent of these has been an inquiry into the collapse of Trio Capital and other related matters which have included extensive investigation of the management of self-managed superannuation funds. It is noted that content related to this will be covered by that inquiry's report and therefore is not dealt with in this ASIC oversight report.

1.6 In its Annual Report 2011–12, ASIC noted two major outcomes which it is required to achieve:

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1 *Australian Securities and Investments Commission Act 2001*, para 11(2)(b); ss.11(3).

- improved confidence in financial market integrity and protection of investors and consumers through research, policy, education, compliance and deterrence that mitigates emerging risks;
- streamlined and cost-effective interaction and access to information for business and the public through registry, licensing and business facilitation services.[2]

1.7 Consistent with the first of these, the most recent hearing concentrated on furthering understanding of the regulatory context and of expectations by stakeholders in respect to this. The committee also maintained its interest in the self-reporting by ASIC of its activities and particularly in how it has fulfilled recommendations raised in previous hearings.

Gathering evidence

1.8 This report reflects evidence taken at a public hearing on 12 October 2011 at which both ASIC representatives and Mr Michael Chaaya, a partner at Corrs Chambers Westgarth, gave evidence. Mr Chaaya is a specialist in superannuation, funds management and insurance within the areas of wealth management and corporate governance. The committee thanks him for his contribution to the oversight process. The committee also thanks ASIC for its attendance and ongoing cooperation.

1.9 All witnesses who gave evidence are listed in Appendix 1. Copies of the Hansard transcripts from the hearings have been tabled for the information of the Parliament, and are available on the committee's website.[3]

Additional information

1.10 A number of questions were placed on notice at the hearings. Those questions, and responses to them, are published in Appendix 2.

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2 ASIC, *Annual report 2010 – 2011*, October, 2011, p. 23 http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/annual-report-2010-11.pdf/$file/annual-report-2010-11.pdf (accessed 8 Nov 2011).

3 www.aph.gov.au/Senate/committee/corporations_ctte/asic/index.htm .

Chapter 2

Matters considered at oversight hearing

The regulatory context

The twin peaks model

2.1 The Australian regulatory framework is among a very few which operates according to a 'twin peaks' model, established following the *Financial Services Reform Act 2001* (Cth). Apart from the Netherlands, other countries use a single regulatory body.[1] What this means is that in Australia there are two peak statutory authorities established by Acts of Parliament that are responsible for different aspects of regulation. The two bodies are the Australian Prudential Regulation Authority (APRA) and the Australian Securities and Investments Commission (ASIC).[2]

2.2 Mr Michael Chaaya elucidated the different focuses of the two authorities in his evidence to the committee and in a paper presented in May which also informed the committee's understanding.[3] Each authority has a different focus and responsibility. APRA represents prudential regulation while ASIC is responsible for market supervision.[4] APRA is required to enforce prudential regulations while ASIC is charged with promoting market integrity and confidence. APRA is concerned with maintaining good financial entities while ASIC is concerned with sanctions against those who offend.[5]

2.3 Mr Chaaya advised that according to this model, also known as the two-pillar form of functional regulation, division of interest is objective-based to reflect these different regulatory objectives. By contrast, the older model of dividing regulation according to business type has become increasingly difficult, as many large entities offer services within different market segments.[6]

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1 Mr Michael Chaaya, *The regulation of trustee governance in Australia: Time for a rethink?* IPEBLA 13th International Conference, Berlin, Germany, 23 May 2011, pp 2 & 7.

2 Mr Michael Chaaya, *The regulation of trustee governance in Australia: Time for a rethink?* IPEBLA 13th International Conference, Berlin, Germany, 23 May 2011, p. 2.

3 Mr Michael Chaaya, *The regulation of trustee governance in Australia: Time for a rethink?* IPEBLA 13th International Conference, Berlin, Germany, 23 May 2011.

4 Mr Michael Chaaya, *Committee Hansard*, 12 October 2011, p. 1.

5 Mr Michael Chaaya, *The regulation of trustee governance in Australia: Time for a rethink?* IPEBLA 13th International Conference, Berlin, Germany, 23 May 2011, p. 6.

6 Mr Michael Chaaya, *The regulation of trustee governance in Australia: Time for a rethink?* IPEBLA 13th International Conference, Berlin, Germany, 23 May 2011, p. 15; Mr Michael Chaaya, *Committee Hansard*, 12 October 2011, p. 9.

2.4 Mr Chaaya argued that the model has some inherent problems. The major one in terms of effective regulation in the Australian context is that bodies operating under this regime feel burdened by an often unmanageable volume of regulation, some of which is straight duplication and some of which is potentially conflicting.[7] Complying with the two sets of regulations is expensive in time and money and may lead to merely nominal compliance which in turn can lead to a spiral of further regulation.[8]

2.5 In the case of superannuation funds, costs are ultimately passed to the investor.[9] Mr Chaaya pointed out that the majority of superannuation funds, because their trustees are corporate entities, must fulfil the registration requirements for holding an Australian Financial Services Licence as required by ASIC and a further set of requirements to hold a Registrable Superannuation Entity licence for the prudential purposes of APRA. Moreover, for large corporations with different business types, there may be different sets of regulations for each section. These examples were provided as illustrative of the administrative burden of a dual compliance regime.[10]

2.6 The committee was interested in the effect of duplication in pursuing breaches of regulatory requirements. It noted Mr Chaaya's description of doubling up in following licensing requirements for both regulators causing onerous administrative activity.

2.7 However over-regulation is not limited to the twin peaks model. In response to committee questioning, Mr Chaaya noted that 'every nation suffers the same criticisms that we do in terms of the volume of regulation.'[11] It is due as much to the numerical expansion of financial products and to the complexity of market systems since deregulation, as to legislative over-enthusiasm.[12]

2.8 The twin peaks model has some strengths and Mr Chaaya observed that the United Kingdom's Financial Services Authority (FSA) has been moving towards dividing its unitary operations.[13] Positives are, first, that a twin peaks model has a built in capacity to respond to the tension between securities regulation and prudential regulation. Second, the two entities possess high levels of autonomy in pursuing their

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7 Mr Michael Chaaya, *The regulation of trustee governance in Australia: Time for a rethink?* IPEBLA 13th International Conference, Berlin, Germany, 23 May 2011, pp 6–7.

8 Mr Michael Chaaya, *The regulation of trustee governance in Australia: Time for a rethink?* IPEBLA 13th International Conference, Berlin, Germany, 23 May 2011, pp 3–4.

9 Mr Michael Chaaya, *Committee Hansard*, 12 October 2011, p. 2, 9.

10 Mr Michael Chaaya, *Committee Hansard*, 12 October 2011, p. 9.

11 Mr Michael Chaaya, *Committee Hansard*, 12 October 2011, p. 7.

12 Mr Michael Chaaya, *Committee Hansard*, 12 October 2011, p. 7.

13 Mr Michael Chaaya, *Committee Hansard*, 12 October 2011, p. 6.

different mandates. Third, each entity can fine tune its expertise in its field which, fourth, increases accountability.[14]

2.9 The committee was informed that in many ways the Australian model is seen by others as best practice in the financial industry and the success of Australia's response to the Global Financial Crisis is illustrative of it working well.[15] Mr Chaaya advised that the problems within the twin peak model would be reduced were there to be better communication between the regulators. One initial strategy would be to provide structures by which information relevant to both entities could be submitted simultaneously.

Some principles for future action: better regulation, not more regulation

2.10 The complexity of the financial environment was noted and the difficulty of providing workable legislation to deal with it.[16] Mr Chaaya was clear in stressing that *better* regulation, not more regulation, should be the operating principle. He used the example of the Future of Financial Advice reforms as to how this may be achieved through involving all stakeholders in a carefully considered process with the aim of producing legislation that is balanced and well-integrated.[17] The committee was advised that clarity about the differences between regulatory failure, market failure and supervisory failure is also needed. Recognition of the interdependent nature of regulation and supervision is also essential if market stability and integrity is to be achieved.[18]

2.11 Instances where ASIC has been effective in its supervisory role through successful prosecutions, such as James Hardie or Centro, are highly significant because these events also have a ripple down effect on the non-ASX listed entities which are reminded of their responsibilities and possible penalties for ignoring these.[19]

Committee view

2.12 The committee is of the opinion that further work needs to be done on structures which promote transparency. The committee approves Mr Chaaya's suggestion that there may be ways by which the two regulators could improve the exchange of information in a transparent fashion.[20]

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14 Mr Michael Chaaya, *The regulation of trustee governance in Australia: Time for a rethink?* IPEBLA 13th International Conference, Berlin, Germany, 23 May 2011, p. 7.

15 Mr Michael Chaaya, *Committee Hansard*, 12 October 2011, p. 4, 6–7.

16 Mr Michael Chaaya, *Committee Hansard*, 12 October 2011, p. 3.

17 Mr Michael Chaaya, *Committee Hansard*, 12 October 2011, p. 4.

18 Mr Michael Chaaya, *Committee Hansard*, 12 October 2011, p. 4.

19 Mr Michael Chaaya, *Committee Hansard*, 12 October 2011, p. 5.

20 Mr Michael Chaaya, *Committee Hansard*, 12 October 2011, p. 9.

2.13 The committee endorses those moves towards better communication between the regulators which have already occurred.[21] The committee also encourages more holistic mapping of regulatory overlaps and conflicts, which so far has been quite piecemeal.[22] It also suggests that ASIC be proactive in developing strategies to co-operate in information sharing with APRA and to look for ways to reduce unnecessary duplication where APRA-based and ASIC-based regulations essentially cover the same field. In making such moves the committee recognises that there will always be some areas where the different focus of each regulator will require different documentation and action.

2.14 The committee also notes Mr Chaaya's observation of the exponential rise in operating costs for ASIC because of its increased responsibilities in administering new regulations as well as its assumption of responsibility for supervision of real-time trading during 2010.[23] If improvements such as those above are to be pursued and if the reforms in actual regulation are to be implemented effectively, then ASIC needs increased resourcing.[24] The committee reiterates the view expressed in previous reports that ASIC be properly resourced for its functions.[25]

ASIC's response to matters raised previously

2.15 In their input to the hearing ASIC representatives covered three broad areas:

(a) most recent actions undertaken to deliver on the strategic framework previously outlined;

(b) processes to ensure the integrity of licences and adequate surveillance mechanisms to minimise possibilities for fraud; and

(c) further information on frozen funds and on the classes of people using searches of ASIC databases.

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21 Mr Michael Chaaya, *Committee Hansard*, 12 October 2011, p. 5; Mr Michael Chaaya, *The regulation of trustee governance in Australia: Time for a rethink?* IPEBLA 13th International Conference, Berlin, Germany, 23 May 2011, p. 14.

22 Mr Michael Chaaya, *Committee Hansard*, 12 October 2011, p. 8.

23 Mr Michael Chaaya, *Committee Hansard*, 12 October 2011, p. 3.

24 Mr Michael Chaaya, *Committee Hansard*, 12 October 2011, pp 3, 8–9.

25 Parliamentary Joint Committee on Corporations and Financial Services, *Statutory oversight of the Australian Securities and Investments Commission*, February 2011, p. 7; Parliamentary Joint Committee on Corporations and Financial Services, *Statutory oversight of the Australian Securities and Investments Commission*, May 2011, p. 18.

Achievements towards strategic framework priorities

2.16 Mr Medcraft, Chair of ASIC, reviewed what ASIC had done to further the objectives outlined in the strategic framework which he had explained in the previous oversight hearing in June 2011.[26]

> I would like to give you an outline of how we are going against the outcomes [of our strategic framework] that we targeted... They are: confident and informed investors and financial consumers; fair and efficient financial markets; and efficient registry and licensing.[27]

2.17 Under the first category, 'confident and informed investors and financial consumers', the committee heard that:

(a) the Mortgage Health Campaign had successfully commenced in September 2011 with the aim of 'ensuring that people are managing their mortgage and finances effectively.'[28] It had received positive media publicity.

(b) a new retirement guide was ready to be released. This is a manual in hard copy and electronic form available to supplement retirement seminars run by ASIC. It provides information on matters such as 'how much you need to retire, entitlements and Centrelink, super withdrawals, estate planning, and investments to avoid.'[29]

(c) there had been a focus on proper use and understanding of Australian Financial Services Licences (AFSL).

(i) ASIC had taken up the recommendation of the Committe's August 2011 oversight report to amend the ASIC website to explain the use of AFSLs.[30] Mr Medcraft stressed that:

> It now spells out exactly what a AFSL does mean, but also what it does not mean in that we do not endorse a company and that it does not mean working with an AFSL holder means that you cannot lose money.[31]

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26 Parliamentary Joint Committee on Corporations and Financial Services, *Statutory oversight of the Australian Securities and Investments Commission,* August 2011, p. 3.

27 Mr Greg Medcraft, Chair, ASIC, *Committee Hansard,* 12 October 2011, p. 11.

28 Mr Greg Medcraft, Chair, ASIC, *Committee Hansard,* 12 October 2011, p. 11.

29 Mr Greg Medcraft, Chair, ASIC, *Committee Hansard,* 12 October 2011, p. 11, 18.

30 Parliamentary Joint Committee on Corporations and Financial Services, *Statutory oversight of the Australian Securities and Investments Commission,* August 2011, p. ix.

31 Mr Greg Medcraft, Chair, ASIC, *Committee Hansard,* 12 October 2011, p. 11.

(ii) As a result of discussions with the committee ASIC has taken steps to ensure that product issuers are not 'using the existence of an AFSL as some form of guarantee or endorsement.'[32]

(d) Mr Medcraft explained that the Centro case pursued by ASIC resulted in decisions with key implications for directors. Directors need to be 'sceptical'; they need basic understanding of accounting and they must recognise that ultimately they are responsible and so must exercise effective control.[33]

(e) On 31 August 2011 ASIC issued a consultation paper on advertising which asked that advertisements be accurate, targeted at how consumers make decisions and reflect both the positive aspects and risks of any financial product.[34]

2.18 Under the category of fair and efficient financial markets the committee heard from ASIC that:

(a) on 30 September it had issued its first infringement notice from the Markets Disciplinary Panel to Pattersons and;

(b) it was monitoring very closely high-frequency trading which is a matter of major global interest. Mr Medcraft had attended a recent meeting of the International Organization of Securities Commissions (IOSCO) in Madrid and is involved in continuing discussions about high-frequency trading. ASIC is also working closely with Chi-X on this.[35]

2.19 Under the category of efficient registry and licensing, it was reported that:

(a) the online lodgement system was being streamlined to facilitate lodgement;

(b) ASIC free database searches were being upgraded to allow access to all databases in one simple search;

(c) ASIC was in the process of providing a 'paid search' facility which would allow people to search without using a broker as intermediary. Ms Bell gave figures showing a very high level of usage of ASIC databases. She said that the new system would be particularly helpful for smaller business users:

32 Mr Greg Medcraft, Chair, ASIC, *Committee Hansard,* 12 October 2011, p. 11.

33 Mr Greg Medcraft, Chair, ASIC, *Committee Hansard,* 12 October 2011, p. 12.

34 Mr Greg Medcraft, Chair, ASIC, *Committee Hansard,* 12 October 2011, p. 12.

35 Mr Greg Medcraft, Chair, ASIC, *Committee Hansard,* 12 October 2011, p. 12.

the people who perhaps want to sit at home at night, log on and do a quick search of ASIC's website—people who may otherwise think again if they want to use a third party.[36]

The ability to search firsthand was seen as a major advantage of both these developments in the search facility and it is expected that usage would further increase as a result.[37]

(d) ASIC was working on a process by which a single application could be made for both a business name and an Australian Business Number (ABN). It is anticipated that this would be operating from early 2012.

Committee view

2.20 The committee notes with approval ASIC's responses to concerns raised in previous hearings. It is pleased with the initiatives to improve financial literacy through the Mortgage Health Campaign, the retirement guide and better communication about AFSLs. It especially endorses actions to make clear explanations to users of financial products of the risks involved and to avoid any misapprehension that an AFSL is an automatic endorsement of the business. It urges ASIC to maintain best practice with such strategies.

2.21 The committee approves the focus on high-frequency trading and will question ASIC further on this as ASIC continues to monitor this matter.

2.22 Especially in view of Mr Chaaya's remarks, the committee is pleased at those processes for registration of businesses and for unmediated data-base searches which simplify administration and information handling for financial services users. It will be interested to hear in the future about the uptake of new systems and the categories of those who use them.

Integrity of licences and surveillance mechanisms

2.23 Committee questioning of ASIC representatives focused on strategies to detect deliberate or inadvertent misinformation by businesses and the degree to which current mechanisms provided for substantial information about a business and its activities as part of the licensing process. This was in response both to concerns raised in previous hearings[38] and weaknesses in the system illustrated by the collapse of Trio Capital. ASIC representatives identified several key areas in respect to licensing where alerts may be sounded: professional indemnity insurance, the 'key person requirement', financial statements and explanations of the substantive nature of

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36 Ms Rosanne Bell, Senior Executive Leader, ASIC, *Committee Hansard*, 12 October 2011, p. 18.

37 Ms Rosanne Bell, Senior Executive Leader, ASIC, *Committee Hansard*, 12 October 2011, p. 18.

38 Parliamentary Joint Committee on Corporations and Financial Services, *Statutory oversight of the Australian Securities and Investments Commission*, August 2011, p. 11.

the business. The point was reiterated by Mr Medcraft that ASIC has only limited powers to reject licence applications. The committee was informed that ASIC does encourage businesses to modify or improve applications for licences.[39] ASIC has provided the proportion of AFSL licences approved or modified. Between 7%–8% of licence applications in 2010–11 were not approved in their original form.[40]

2.24 Material discussed during this part of the hearing is directly relevant to the Inquiry into Trio Capital to which ASIC has contributed and much fuller analysis will be included in that report.

Committee view

2.25 The committee was appreciative of the explanation of processes used by ASIC to identify potential trouble spots and acknowledges its submission and verbal evidence tendered in the Trio Inquiry.

2.26 The committee notes ASIC's heightened awareness of matters of licensing and will be making suggestions for ongoing improvements when it concludes its inquiry into Trio. Whilst ASIC should never be put in a position of determining the viability of a business, the committee endorses the view that there is room for legislation that allows for more power to refuse AFSL licences where the complete integrity of the business may be questionable. The licensing process is a key area of interest to the committee which members will pursue further.

Frozen funds

2.27 Following on from the committee's August 2011 ASIC oversight report,[41] ASIC was asked for an update on the information available on frozen funds. Mr Medcraft explained that when funds were first frozen in November 2008, this involved $23.3 billion and 87 funds. By the end of June the amount of money frozen had reduced to $17.2 billion of which approximately $5.2 billion had been restructured with member approval. Mr Medcraft explained that this means that they are 'delivering perhaps partial repayments or they are being wound up.'[42]

2.28 Money from prime mortgage funds is coming in gradually according to the maturity or liquidity of the underlying assets. Mr Medcraft was of the view that those 'prime mortgage funds that are invested in normal, commercial mortgages have been returning pretty well 100 cents in the dollar over time' but the release of money may

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39 Mr John Price, Senior Executive Leader, ASIC, *Committee Hansard*, 12 October 2011, p. 13-14.

40 ASIC, answer to question on notice, 12 October 2011 (received 5 November 2011).

41 Parliamentary Joint Committee on Corporations and Financial Services, *Statutory oversight of the Australian Securities and Investments Commission*, August 2011, p. 13.

42 Mr Greg Medcraft, Chair, ASIC, *Committee Hansard*, 12 October 2011, p. 17.

be quarterly, monthly or 'whenever cash comes in.'[43] Others are dependent on the nature and management of the underlying assets. Mr Dwyer suggested that a continuing stable economy was important for the returns on investment.[44]

2.29 Mr Medcraft emphasised that as a result of the Global Financial Crisis, ASIC now makes plain to investors considering mortgage trusts that such funds are not liquid funds like deposits are.

Committee view

2.30 The committee approves actions taken to better educate users of financial products in response to suggestions in the previous oversight round. The committee is appreciative of ASIC's continuing monitoring of the situation with respect to frozen funds and reiterates its concern that there may be need for improvements in the Corporations Act. This is a matter that the committee will raise with ASIC at future oversight hearings.

Mr Bernie Ripoll MP

Chair

43 Mr Greg Medcraft, Chair, ASIC, *Committee Hansard*, 12 October 2011, p. 17.

44 Mr Michael Dwyer, Commissioner, ASIC, *Committee Hansard*, 12 October 2011, p. 17.

Appendix 1

Public Hearings

Wednesday 12 October 2011

Expert Witness

Mr Michael Chaaya, Corporate Governance and Financial Services, Corrs Chambers Westgarth

ASIC Representatives

Mr Greg Medcraft, Chair

Ms Rosanne Bell, Senior Executive Leader

Mr Michael Dwyer, Commissioner

Mr John Price, Senior Executive Leader

Appendix 2

Answers to questions on notice

ASIC Oversight hearing, 15 June 2011

Questions on notice to ASIC

Question on Notice, 1 (Hansard, pp 12–13)

Topic: Breakdown of the 1.8 million companies ASIC regulates

CHAIRMAN: Thank you very much, Mr Medcraft, for your opening comments and also for the submission you have given us. One of the questions I asked the previous witness, Mr Chaaya, was about this issue of information. We understand there are 1.7 million corporations and organisations under the responsibility of ASIC. It is an enormous number. I cannot imagine that every single one of those is a fully functioning business, and I would be very interested to hear your response in terms of the breakdown—even rough numbers—of how many are properly recognised businesses, corporations and organisations and how many are just people holding an ABN for work purposes. ... ASIC obviously relies heavily on information provided to it through forms that are filled out to apply for licensing, particularly in terms of an AFSL or other licences. I would have to assume that it is based almost completely on trust ... So my question is around that information, the integrity of that information and how ASIC can work towards, or is working towards, following through on early detection of people who might either inadvertently or deliberately mislead ASIC in the information they provide.

Mr Medcraft: Rosanne, would you like to respond to that question?

Ms Bell: To start with the one about the company population, we do have approximately 1.8 million companies.

CHAIRMAN: It has gone up. That is all right. It was 1.7 million this morning.

Ms Bell: It is rough, but it is growing. It grows annually on a net basis. We know whether those companies are public companies or proprietary companies. We know that there are very few public companies—maybe 20,000 out of the 1.8 million—so we know that the remaining companies are proprietary companies. We could provide you with a more detailed breakdown at another time of the different subsets in that. The third point I would make is that one of the requirements for holding a licence is that the entity has, generally speaking, obtained professional indemnity insurance. In my experience the professional indemnity insurance industry is very, very good at assessing where risk is. Obviously where there are concerns there is also that overlay

whereby if someone cannot get insurance for the business they want to carry out then you might start asking yourself why that is the case.

Response

The attached report from the companies database shows that, as at 30 June 2011, there were 21,223 public companies from 1,839,772 in total. ASIC is not able to discern the nature of a business, or whether a business simply holds an ABN alone. ASIC is undertaking work with the Australian Business Register towards the objective of providing a common platform for ABN, company and business name registration, which will assist future analysis.

Total Proprietary and Public Companies 1,839,772

Net Growth (average per annum, past 5 years)	**4.4%**
Incorporations (average per annum, past 5 years)	**152,639**

Australian Proprietary Company	**1,818,549**
Net Growth (average per annum, past 5 years)	4.5%
Breakdown by Status	
Registered	1,775,278
Under External Administration and/or Controller Appointed	24,743
Strike-Off Action in Progress	18,223
Non-Active	305
Directors (average per/company)	1.7
Secretaries (average per/company)	0.9
Lodgements received in 2010-2011 Financial Year	
Lodgements to change company details by prorietary companies	723,176
Lodgements of financial accounts by prorietary companies	9,708

Australian Public Company	**21,223**
Net Growth (average per annum, past 5 years)	1.1%
Breakdown by Status	
Registered	20,290
Under External Administration and/or Controller Appointed	769
Strike-Off Action in Progress	153
Non-Active	11
Public Companies with less than 3 Directors	2.7%
Public Companies with between 3 & 6 Directors	63.6%
Public Companies with greater that 6 Directors	33.7%
Lodgements received in 2010-2011 Financial Year	
Lodgements to change company details by public companies	40,662
Lodgements of financial accounts by public companies	12,259

Note - figures are current as at 30th June 2011 .

Question on Notice, 2 (Hansard, p. 14)

Topic: Refusals or withdrawals of applications for AFSLs

Mr Medcraft: One of the things we have pointed out previously is that, despite all the things Mr Price has said, we basically must grant a licence at the end of the day, so we do all that assessment but it is quite hard to refuse a licence unless we think that a potential applicant will breach the law. What Mr Price says is quite correct and we will do that assessment, but it is a matter of what happens then.

Mr FLETCHER: In what proportion of cases have you refused to grant a licence?

Mr Price: It is a fairly low proportion but I would have to take that on notice. I think an equally valid consideration is in what proportion of cases did we amend the licence conditions or require extra things to occur. It is not unusual in the process of dealing with a licence applicant for us to say that we think they need more experience in a particular area and they need to go away and find someone else who is going to work with them to provide that experience.

Ms Bell: Another common outcome will be a withdrawal of an application, so if someone can see a refusal coming they will choose to withdraw the application or amend the application or do something else to avoid that official rejection.

Response

See tables on following pages.

Proportion of AFSL applications that are not approved

2010/2011		
Applications for AFS Licence		
Applications Lodged		**475**
Applications Finalised:		
Licensed	328	
Rejected/Withdrawn at prelodgement	159	
Withdrawn	39	
Withdrawn after hearing	1	
Refused after hearing	2	**529**
% of applications approved	62.00%	
% of applications rejected/wihdrawn prior to assessment	30.06%	
% of applications withdrawn/refused during assessment	7.94%	
Applications variation of AFS Licence		
Applications Lodged		**922**
Applications Finalised:		
Licensed	1410	
Rejected/Withdrawn at prelodgement	119	
Withdrawn	106	
Refused	16	**1651**
% of applications approved	85.40%	
% of applications rejected/wihdrawn prior to assessment	7.21%	
% of applications withdrawn/refused during assessment	7.39%	

Notes

I. An explanation for the significant difference between applications lodged and those finalised is that ASIC had a significant number of applications on hand as at 30 June 2010. ASIC had received significant volumes of Licence and Variation Applications prior to 30 June 2010 from those industry participants requesting Margin Lending Authorisations due to the implementation of the Corporations Legislation Amendment (Financial Services Modernisation) Act 2009. The on hand applications (a smaller volume) as at 30 June 2011 also contribute to the difference between the lodged and finalised figures.

II. The numbers in the table provided vary slightly from those produced in the ASIC 2010-11 Annual Report. The Annual Report figures are based on ASIC Key Performance Indicators which calculate applications upon which a decision is made within 28 days.

The figures provided in the attached table are based on results for all finalised applications, including those finalised outside of the 28 day KPI.