Chapter 1

Statutory oversight

1.1 The Parliamentary Joint Committee on Corporations and Financial Services (the committee) was established by the *Australian Securities and Investments Commission Act 2001* (the ASIC Act). Under Section 243 of the Act, it is to inquire into the performance of the Australian Securities and Investments Commission (ASIC) and to evaluate the operations of the Corporations Act and any legislation impinging on it.

1.2 This report is presented in response to the first of these responsibilities. In 2011 the committee raised the level of its active oversight of ASIC through holding four hearings annually. The hearings require ASIC officers to give evidence about the commission's execution of its duties. The committee also decided to expand its understanding through the use of independent expert witnesses to complement information coming from ASIC. The intent was that these witnesses could elucidate the context in which ASIC operates and offer different perspectives on the issues with which ASIC deals.

1.3 ASIC is the regulator of Australia's corporate sector, markets and financial services and is responsible for monitoring the integrity of Australia's financial system. This includes the regulation of corporations, financial advisors and consumer credit providers, and supervision of trading on Australia's licensed equity, derivatives and futures markets. The commission may also advise the minister on 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.

1.4 The committee's key interest is whether ASIC is fulfilling its statutory responsibilities as the corporate, markets and financial services regulator. Section 1 of the ASIC Act directs ASIC to:

- maintain, facilitate and improve the performance of the financial system and the entities within that system in the interests of commercial certainty, reducing business costs, and the efficiency and development o the economy;
- promote the confident and informed participation of investors and consumers in the financial system;
- administer the laws that confer functions and powers on it effectively and with a minimum of procedural requirements;
- receive, process and store, efficiently and quickly, the information given to ASIC under the laws that confer functions and powers on it;
- ensure that information is available as soon as practicable for access by the public; and

- take whatever action it can take, and is necessary, in order to enforce and give effect to the laws of the Commonwealth that confer function and powers on it.

1.5 The committee's major concern is that investors have confidence in Australian financial markets so as to attract robust investment and creative economic activity from both large corporate players and the multitude of small businesses and private investors that underpin the sector.

1.6 For this inquiry, in addition to taking evidence from ASIC officers, the committee invited the Takeovers Panel to give evidence. Section 243 of the ASIC Act authorises the committee to oversee the activities of the Takeovers Panel in the same manner that the committee is authorised to oversee ASIC. This was the Takeovers Panel's first appearance at an ASIC oversight hearing. The committee thanks Panel members for their contribution.

1.7 The Takeovers Panel was established in 1991 by the ASIC Act and re-established in 2001 under Part 10 of the ASIC Act. The Panel is responsible for resolving disputes about a takeover bid until the bid period has ended.[1] The Panel's main functions are:

- making declarations of unacceptable circumstances under section 657A of the Corporations Act, and orders to remedy those circumstances; and
- reviewing decisions of ASIC to:
  - exempt a person from the requirements in the Corporations Act regarding takeover bids, or to modify the requirements; or
  - exempt a person from, or modify the operations of, the requirements in the Corporations Act regarding the provision of information about the ownership of listed companies or managed investment scheme.[2]

Mr Michael Dwyer

1.8 It was with great sadness that the committee heard of the passing of Mr Michael Dwyer, a former ASIC Commissioner, on 2 March 2012. Mr Dwyer's expertise in insolvency matters in particular was of significant benefit for both this committee and the Economics Legislation and References Committees. The committee extends its sympathies to Mr Dwyer's family and his colleagues at ASIC.

Gathering evidence

This report records evidence given by representatives of the Takeovers Panel and ASIC at a public hearing on 21 March 2012 in Canberra. All witnesses are listed in

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1 Takeovers Panel website 'About the Panel': http://www.takeovers.gov.au/content/DisplayDoc.aspx?doc=about/about_the_panel.htm (accessed 16 April 2012)

2 Takeovers Panel, *Annual report 2010-11*, p. 9

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

1.9 The committee placed a number of questions on notice at the public hearing. ASIC provided answers on 11 May 2012.