



Community and Public Sector Union
Alistair Waters – Deputy National President

Committee Secretary
Senate Standing Committee on Economics
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

21 October 2013

Dear Committee Secretary

Inquiry into the performance of the Australian Securities and Investments Commission (ASIC),

The Community and Public Sector Union (CPSU) is an active and progressive union committed to promoting a modern, efficient and responsive public sector delivering quality services and quality jobs. We represent around 60,000 members in the Australian Public Service (APS), other areas of Commonwealth Government employment, ACT Public Service, NT Public Service, ABC, SBS and CSIRO.

As the major union representing employees in ASIC, the CPSU and its members work to help ASIC continue to be an efficiently functioning and high performing agency. The CPSU welcomes the opportunity to make a submission to this inquiry into the performance of the ASIC. As this is a short submission, other than a few short statements at the end of the submission, the terms of reference will not be addressed separately.

Performing well but limited by allocation of resources

ASIC is an effective regulator that performs well in a complex environment. ASIC employees are highly skilled and take pride in their work. However there are a number of resourcing issues that prevent the agency from performing at an optimum level.

ASIC, like many agencies in the Australian Public Service, has suffered budgetary pressures from the cumulative effect of successive budget cuts from the efficiency dividend over more than two decades. These budgetary pressures adversely affect the ability of ASIC to attract, retain and train staff. Those pressures also reduce the ability of ASIC to source the best technology solutions for surveillance, enforcement and other critical activities. This has occurred in an environment with expanding ASIC responsibilities such as ASX regulation, national credit regulation and national business names registration.

Damage to enforcement

Adding to the resources challenge, has been the continuing changes and restructures of ASIC's enforcement and related support areas since 2008, under the former chairman Tony D'Aloisio. A review and restructure of ASIC in 2008 divided the single Enforcement Directorate with one senior executive into eight separate 'Deterrence' teams with eight senior executives. This restructure was purportedly intended to increase specialisation and bring ASIC "closer to the market". However, ASIC employees reported that this reduced the efficiency and cohesiveness of the enforcement area and created silos within the Agency.

In addition, external appointments were made and external contractors increasingly used, because Mr D'Aloisio did not appear to believe that ASIC staff were capable of performing senior roles. This led to further changes and realigning of responsibilities and reporting lines. ASIC became top heavy with management and a number of managers were appointed with little or no experience in enforcement matters.

In 2011, a further review was undertaken resulting in approximately 50 redundancies in enforcement and a further 30 in support areas. Since that time, CPSU members feel that enforcement has been overly stretched due to lack of staff numbers from both the redundancies as well as failure to fill vacant positions due to ongoing budget constraints.

A more proactive approach may assist media balance

The way that ASIC has been portrayed in the media and often perceived by the public is not reflective of its overall performance. ASIC successfully performs a great deal of noteworthy and important work including many favorable outcomes in the MoneySmart, Registry Services and Credit areas. However, these good news stories have not attracted media attention. Instead ASIC's media profile is associated with stories relating to enforcement issues instead of the many successes of the agency. A more proactive engagement with the media may improve the balance of media reporting on ASIC matters.

Positive recent changes

The current chairman, Mr Greg Medcraft, has taken a more positive approach to enforcement. ASIC has recently been rebuilding and strengthening its enforcement arm. Most of the discrete enforcement areas have now been remerged back into two specialist teams under two senior executive leaders and are again called 'enforcement' teams rather than 'deterrence'.

The new chairman has also responded to CPSU lobbying and taken steps to address an environment of bullying and harassment that had developed under the previous chairman. Staff have reported improvements in this area with ASIC management having agreed to run compulsory bullying and harassment training for all staff and Commissioners. Harmonious staff relations and a bullying free culture are crucial for the effective operation of an organisation.

Specific comments in relation to Terms of Reference

The CPSU also asked members for specific comments in relation to the terms of reference. The following briefly summarises the relevant comments that were received.

- a. *ASIC's enabling legislation, and whether there are any barriers preventing ASIC from fulfilling its legislative responsibilities and obligations;*

CPSU members noted that ASICs enforcement powers are not as robust as other regulators. In particular, members have suggested they would be better able to carry out their responsibilities if ASIC's enabling legislation provided telephone intercept powers and stronger powers to compel

witnesses to co-operate. They also suggested that legislation should enable better identity checks when people register a new business.

b. the workings of ASIC's collaboration, and working relationships, with other regulators and law enforcement bodies;

ASIC generally has good working relationships with other regulators and law enforcement bodies. However, the resourcing pressures and staff shortages at ASIC is making these good working relationships more difficult to maintain.

c. the protections afforded by ASIC to corporate and private whistleblowers; and

As a public sector union, the CPSU strongly supports a strong whistleblowing scheme that provides appropriate protection for private and corporate whistleblowers as well as protections for public sector workers who blow the whistle on issues of public interest. Members expressed some interest in schemes such as those provided in the US Dodd-Frank Act, which allows the payment of cash to individuals who report wrongdoing to the US Securities and Exchange Commission, being considered for Australia.

We support strong whistle blower protection not only because it is in the interests of public sector workers, but also because such schemes promote more open and transparent government and enhance public confidence in government administration.

If the Committee requires further information from the CPSU in relation to the matters raised in this submission please contact Aidan Nash on 03 8620 6329 or aidan.nash@cpsu.org.au.

Yours sincerely

Alistair Water
Deputy National President