

Senate Estimates Hearing – 24 October 2018

Opening Statement - James Shipton, Chair

Check against delivery

Introduction

Thank you Chair.

Firstly, I would like to table my opening statement to the Parliamentary Joint Committee on Corporations and Financial Services last Friday, 19 October. That statement referenced two documents tabled at that Committee, namely ASIC's latest enforcement and compensation outcomes and the Terms of Reference of an internal review into our enforcement processes and procedures. With permission Chair, I seek to table these three documents today.

[PAUSE]

There are many important points that I raised last week.

Among them was our recognition of the Royal Commission's important work to date. I want to reiterate my acknowledgement of the seriousness of the observations made in the Royal Commission's Interim Report, including those made of ASIC.

Crucially, I want to underscore ASIC's long recognition of the **human impact** of misconduct in finance. Financial misconduct can and does have a devastating, at times catastrophic impact on individuals and families.

The Royal Commission has reinforced that this conduct has a real and enduring impact across the community, including on more financially vulnerable consumers. The Commission has also clearly reinforced that the financial industry has abandoned its core role of being custodians of *other peoples' money*.

[PAUSE]

Another point I referenced was an insightful observation by the Royal Commission in its Interim Report about the heightened role of Australia's financial regulators. The Interim Report observed that "*important deterrents to misconduct are... missing*", meaning market deterrents. Those missing market deterrents are:

- 1.the absence of meaningful competitive pressures;
- 2.the absence of a fear of failure or collapse of the institution; and
- 3.the absence of a fear of failure of individual financial transactions.

The absence of these particular deterrents in Australia's financial system means there are limited market-cleansing mechanisms to counter misconduct. This includes demand-side pressures – it is difficult for consumers to exert pressure on large financial institutions. The result is that the financial regulators need to step up where the market does not. To this end, the Interim Report importantly states that "*If competitive pressures are absent, if there is little or no threat of enterprise failure, and if the banks can and do mitigate the consequences of customers failing to meet obligations, **only the regulator can mark and enforce those bounds.***"

This a crucial observation. It is an observation that must be embraced at a policy level by policy makers, and in practice by ASIC.

We all have to be very aware that the particular structural characteristics of Australia's financial system have unintended consequences that require extra effort and attention by financial regulators.

This goes to the heart of the expectations conversation I started last week. ASIC's role is not just that of a 'usual' or 'standard' financial conduct regulator. Our role in this country is especially heightened because of the absence of market-cleansing mechanisms through competition.

I want ASIC to fill the vacuum left by the absence of these market forces. Leaning into this problem, with rigorous and frequent use of enforcement and other regulatory tools is one way of filling this vacuum.

With these important observations in the front of our minds, noting that the market is not going to help us in this challenge - what we now need is a constructive conversation about the **powers, positioning and right-sizing of ASIC.**

[PAUSE]

As I close I want to raise another important issue – that of regulatory capture or favouritism towards regulated entities. This has been the subject of much commentary as the Royal Commission has progressed. It is a subject that I am attuned and very alert to.

I will do everything in my power to not let this happen. I am a firm believer in the institutional credibility of a financial regulator – one that needs to live by and display absolute strength and robust independence.

Chair, be assured that no one is more motivated than I to maintain and enhance the institutional credibility of ASIC. Having worked in a range of other jurisdictions I know all too well the corrosive effects of the decline of institutional

credibility. Accordingly, my mission is to strengthen the agency and to strengthen its credibility.

As I said to the PJC last week, the men and women at ASIC value their independence and integrity. They are eager and dedicated to working towards a *fair, strong and efficient financial system for all Australians*. What they need is effective strategic guidance as to where their energy is best deployed, and my fellow Commissioners and I are firmly committed to giving them that strategic direction.

Chair, we are happy to take the Committee's questions.

[END]