

# Opening Statement – Senate Estimates

## Greg Medcraft, ASIC Chairman

03 June 2015

850 words (8 minutes)

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- Good morning, Chairman.
- Thank you for this opportunity to address the Committee.
- Representing ASIC today are all of our Commissioners –
  - Deputy Chairman **Peter Kell**; and
  - Commissioners:
    - **Cathie Armour**;
    - **John Price**; and
    - **Greg Tanzer**.
- Supporting the Commission are Senior Executive Leaders:
  - Joanna Bird;
  - Greg Kirk;
  - Warren Day;
  - Chris Savundra; and
  - Tim Mullaly.

Senate Economics Legislation Committee  
Budget Estimates 2015-16, 1-4 June 2015

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By: ASIC, Mr Greg Medcraft, Chair,  
Date: 3/6/15

## PAUSE

- Chairman, I would like to bring to the Committee's attention some work ASIC is doing around the issue of culture.
- ASIC is concerned about culture because it is a big driver of conduct in the financial industry.
- It is a sad fact that bad culture leads to bad conduct and this inevitably leads to poor outcomes for consumers.
- Given there is a strong connection between poor culture and poor conduct, ASIC thinks culture is a major risk to:
  - investor and consumer trust and confidence; and
  - the fair, orderly and transparent operation of our markets.

## PAUSE

- ASIC is planning to incorporate culture into our role as a conduct regulator.
- Areas we are planning to target are those where poor practices may increase the potential for poor conduct, and therefore increase the risk to investor and consumer trust and confidence.

- We intend to:
  1. **first**, incorporate culture into our risk-based surveillance reviews;
  2. **second**, use the surveillance findings to better understand how culture is driving conduct among those we regulate; and
  3. **third**, communicate to industry and firms where we have a problem with their culture and conduct.
- Recently, we also announced the '3 Cs' framework on conduct risk for firms, which cover: **communication, challenge, and complacency**.

## PAUSE

- Chairman, where there is a problem with conduct in a particular firm, ASIC can take administrative enforcement action.
- For example, ASIC can seek to remove the firm's licence on the basis that it's not providing its services efficiently, honestly and fairly.
- **But there are only limited ways to address** culture directly in the laws ASIC administers.

- For instance, it is addressed in some parts of the Corporations Law and particularly in the Commonwealth Criminal Code.
- Under s12.2 of the Commonwealth Criminal Code, a company can be responsible for a breach of certain commonwealth laws if the company's culture encouraged or tolerated the breach.
- The Code defines culture as an attitude, policy, rule, course of conduct or practice.
- We think that when an officer breaches a law ASIC administers - and culture is responsible - then the officers and the firm should be responsible.
- We think the officer and the firm should be subject to **civil** penalties and administrative sanctions, as accessories.
- We think the same offence should be able to be actioned by ASIC in the civil courts just like we can do now for other market misconduct.
- The standard of proof for criminal and civil matters are different.
  - For a criminal action the standard is beyond reasonable doubt.
  - For a civil action, the standard is the balance of probabilities.

- In response to ASIC's calls, the Financial System Inquiry recommended a broad review of penalties, and this would be an opportune time to consider these issues.
- Of course, this in no way suggests ASIC is turning away from criminal prosecution on culture. ASIC is still very focused and very determined on taking criminal action.

## PAUSE

- Chairman, when I talk about poor outcomes for customers, this is a polite way of saying people are getting fleeced.
- And sadly those who get fleeced are usually not necessarily the country's wealthy, but everyday Australians, who might have no more than their house and their super and perhaps a nest egg.
- That is, those affected by poor culture are usually those who can least afford it.
  - Of course, when culture is poor and investors are inappropriately sold investments that become worthless, the situation will – eventually – right itself.
- **But this is the thing: markets can recover, but often people do not.**
- People are often left with a loss they cannot afford.

- And that is why cleaning up culture is crucial. That is why restoring trust and confidence is crucial.

## PAUSE

- On the topic of culture, I am pleased to announce Dr Simon Longstaff, executive director of the St James Ethics Centre, has agreed to join ASIC's External Advisory Panel.
- This is an excellent appointment for ASIC, as Dr Longstaff has led the centre since 1991 and has advised many significant organisations on culture and ethics.

## PAUSE

- Mr Chairman, finally, I wanted to bring to the committee's attention a paper I gave to the Davos Forum in Queensland last weekend.
- At this forum I discussed two topics:
  - the opportunities for capital markets or markets-based financing to fund economic growth; and
  - the challenges the infrastructure and small-to-medium enterprise (SME) sectors are facing in accessing finance through capital markets.

- These are important topics for ASIC and my paper is available on the ASIC website.
- Thank you Chairman. We are now happy to take questions.

**ENDS**

