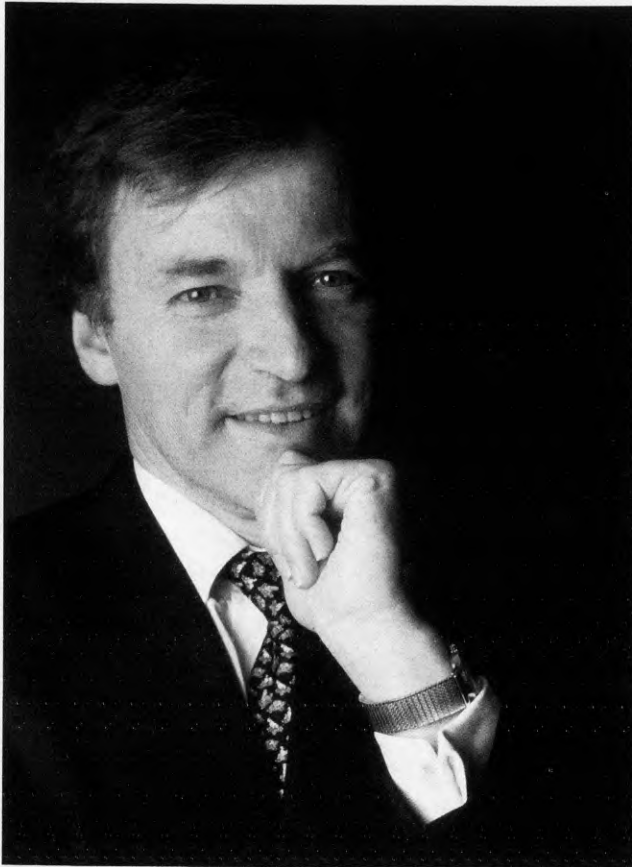


Strong alliance between Securities Commission and AFP in enforcing corporate law



ASC Chairman Alan Cameron

The Australian Securities Commission is an independent government body which administers the Corporations Law throughout Australia.

It aims to protect the interests of companies and investors, to ensure fair play in business, prevent corporate crime, and help Australia's business reputation abroad.

The ASC and AFP continue to forge a close working relationship and are working together increasingly on a growing number of agreements and joint task forces – the latest joint effort being in conjunction with the ASC's Victorian Regional Office on the EC Consolidated Capital Ltd investigation.

On the following pages, ASC Chairman Alan Cameron, outlines the implications for the commission of the recommendations of the Financial System Inquiry Report, or as it is commonly referred to, the 'Wallis' Report (named after the Chairman of the Inquiry, Stan Wallis), handed down in March this year, but first looks at where the ASC is heading with its enforcement program. Following Mr Cameron's article, our feature on law enforcement in the financial sector continues with an article on the art of 'hiding' assets and concealing wealth.

Alan Cameron is a lawyer. He was appointed Chairman of the ASC for five years from January 1993. Previously he was Commonwealth and Defence Force Ombudsman, and national executive partner of Blake Dawson Waldron, solicitors. He has held a range of other appointments.

Mr Cameron is ex-officio Member of the Companies and Securities Advisory Committee, and the Council of Financial Supervisors. From 1994 to 1996, he was Chairman of the Executive Committee of the International Organisation of Securities Commissions.

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While the Australian Securities Commission has undergone a very significant restructuring exercise to meet funding reductions of the kind the AFP is also familiar with, it is important for our stakeholders, like the AFP to understand that our focus on enforcement is as strong as ever.

Both of our organisations must continue to send a strong regulatory message to the market in the hope of discouraging those who may, through intention or lack of knowledge, breach the Corporations Law.

This can be done through education and taking action against offenders when they are in breach of the law.

For a start we expect company officers to comply with the law.

Compliance is one of those words that takes on almost a different meaning according to its context, and certainly even if the meaning doesn't change, I think people's attitudes to compliance depends substantially on the context in which the word is being used.

Everyone would be clear about the context of the expression when it comes to an issue like outright stealing. But it may be somewhat less clear in the context of tax minimisation or avoidance, and the dichotomy between these two words shows up some of the difficulty with the use of the word 'compliance'. The difficulty is also reflected in the case of strict liability provisions relating to misleading advertising or pure food requirements.

It is even less clear what the context is when the requirement in question is purely formal, such as an obligation not only to keep records in certain circumstances but to keep them in a certain form.

The ASC encourages compliance in three ways:

- by providing information about companies;
- by helping businesses to interpret the law; and
- by taking action against offenders.

The ASC's principal statutory objective is to maintain and improve the performance of

Australia's companies and securities markets.

There is not a contradiction in regulating markets and encouraging them to conform to the law, and at the same time aiming to help them take risks and improve their performance. The ASC believes that a well performing company will also be complying with the relevant rules and regulations.

Some of the challenges facing the ASC on the domestic scene will be well known to the AFP.

We are now in the second half of the 1990s and yet we are still reminded most recently by the conviction of Brian Quinn of Coles Myer and the conviction of Alan Bond, of the excesses of the 80s, and the dubious ethical standards which set the scene for the decade.

The ASC faces new challenges all the time with people trying to find new ways of beating the system. So it's worth pointing out that since its inception six years ago, the ASC has now jailed 104 people for their misdeeds, the hundredth person being Peter Mitchell for his involvement with Bond Corporation.

The ASC's guiding principle is 'honesty and fairness in business' which reflects our concern that integrity is the key element in an efficient market. The ASC believes that regulatory structures need to have effective enforcement remedies available to them to ensure proper conduct by market participants. Without this effective enforcement capacity (that is like a police officer on the street corner), it is not possible to maintain and improve investor confidence in the integrity of the financial system.

In the context of the excesses of the 1980s, we have been faced with insider trading – a phenomenon that just won't go away. I was reminded also on a recent overseas trip that the same phenomenon still occurs in the United States. When people complain here about the continuation of insider trading, it is worth remembering that the world's most effective and certainly highest regarded securities regulator, the US Securities and Exchange Commission, confronts exactly the same continuing problem of insider trading or apparent insider trading at about the time of company announcements that we have here in Australia.

“The SEC can’t stamp out the appearance of insider trading and neither can we...”

Part of the reason for that seems to me that those who write about insider trading in our journals fail to understand the basic nature of the market. By that, I mean that what market operators believe and practice is that you buy on a rumour and you sell on a fact.

So anybody who points out that you can see these inevitable jumps in prices about the time of announcements, and assumes that they are all insider trading, is overlooking the fact that one person may have got hold of a rumour and has bought on that, and somebody else has noticed that; which in turn has caused two other people to notice that; which in turn is noticed etc etc – and that is what can cause, or magnify dramatically, the blips.

Exactly the same phenomena occur in the United States. The SEC can’t stamp out the appearance of insider trading and neither can we, but to a large extent that is because there is an element of simple market behaviour going on. It should be pointed out that we recently obtained our first insider trading conviction this decade. The case concerned a public relations consultant who took instructions to draft an announcement with respect to market sensitive information and then promptly went out and bought his shares before putting pen to paper. He was eventually caught. The irony about him was that he wasn’t the target of our initial investigation at all, but because his trading stood out prominently, he was the one who was eventually convicted.

Several other cases are pending. A major investigation relating to the trading of options trading immediately before the announcement of a takeover, has already led to the charges of concealment of cash transactions in circumstances which seem to point to insider trading. Insider trading charges also have now been added and Simon Hannes, the former Macquarie Bank executive who was accused of insider trading on TNT options just before the takeover of TNT by a Dutch company, has been committed for trial on all these charges.

Our modern markets do not always provide adequate protection to shareholders and creditors from corporate officers who don’t carry out their duties or are simply dishonest. Events of the past decade have focussed the community’s attention on the need for increased investor protection from this unprincipled conduct, the most notable

recently being EC Consolidated Capital Ltd. As an inevitable consequence there are calls in some cases for more regulation to ensure that appropriate standards of ethical conduct are observed.

Wallis recommendations

Following the recommendations of the Wallis Inquiry, the ASC is looking forward to consumer protection in the finance sector becoming an increasing focus of the organisation. While much of this focus will be centred on educative measures, a great deal will be on practical measures which we will take to ensure that businesses comply with the law and that measures are put in place which will inherently protect consumers.

In many cases the ASC and the AFP will find themselves working together on high profile cases aimed at protecting the small investor and the small shareholder. It is important to realise that while most of the publicity surrounding the ASC and the Wallis Report has concentrated mainly on this consumer protection angle, the ASC’s role in regulating companies and the market will be as important as ever.

The Wallis Report recommends that a single commission, the ASC, under its new name – the Australian Corporations and Financial Services Commission – is to be responsible for all licensing of the financial sector. That means that we will get some consistency in the way in which the rules apply.

The Wallis Report proposals provide a sound regulatory structure for the financial system, particularly for cost-effective and rigorous regulation to preserve and enhance market integrity and to protect and promote the interests of consumers and investors.

The ASC is looking forward to the challenge of taking on responsibility for consumer protection regulation throughout the financial sector, as well as its current responsibilities for regulating corporations, licensing participants in the securities and futures markets, and enforcing the laws relating to disclosure about public offers of securities and derivatives.

The opportunity presented by the Wallis Report is one which the ASC has welcomed. It does not represent a change in direction for the ASC, rather an expansion of the role we already play.

It may well present opportunities for the ASC and the AFP to work more closely together for the benefit of the business and retail communities including investors and consumers in the financial sector.

