



**Joint Parliamentary Committee Corporations and Financial Services  
Report on Statutory Oversight of the Australian Securities and Investment  
Commission**

**House of Representatives**

17 September 2009

Sharon Grierson MP

**Ms Grierson:** (Newcastle) (11:10 AM) —As a member of the Parliamentary Joint Committee on Corporations and Financial Services, I rise to speak on the report Statutory oversight of the Australian Securities and Investment Commission of September 2009.

Hindsight is a wonderful thing. I have to say that I am quite surprised to learn that members on the other side do not seem to understand that for 12 years when they were in government ASIC was under-resourced and did not have the legislative power of enforcement and prudential regulation that people thought it had. Why did you not realise that it never had the capacity to do the things that the Australian public, including us, thought it did? I can only say that the committee deserves great praise. ASIC also deserves praise for the way it is now asserting the important role it can play. This government has recognised that and is changing the regulations and is changing ASIC's role. ASIC is stepping up. We will be watching it very closely, as we should. That is why these hearings are terribly important.

We did undertake this last oversight hearing with ASIC within a framework of controversy—areas of loss to every one of our constituents, areas where banks did behave badly, areas where financial advisers did behave badly and areas where people who thought they could trust banks, government regulation, financial advice and accountants found that they could not and that a limited level of obligation was being fulfilled, that a limited level of disclosure was being made to them and that there was a limit to that reliability of advice. We have to remember that. We all do forget. When good times come again—and they will come—that is when things become a little unhinged. Let us hope that does not happen again.

I am not a person who supports over-regulation. You do not want to stop the opportunities for people to invest and take a certain amount of risk. You just want it to be reasonable, I suppose. As I have said before, not many people take their lump sum and invest it on a horse. They know the risks are high. They think we are different. They think investment share markets, stock exchanges and all those things

are different. Whether it is agribusiness or whatever, they think that the risks are lower. They had a false expectation. However, I have digressed.

Our public hearing dealt with quite a few important matters that were controversial and remain so: short selling, market integrity, recent corporate collapses, BrisConnections, mortgage fund and cash management trust redemptions, professional indemnity insurance, ASIC structure and budget, and investor education. Some interesting discussions have been held. The committee welcomes ASIC's decision to lift the ban on covered short-selling sales of financial stocks. The committee considers that covered short selling contributes to market liquidity and price discovery and is a valid feature of the Australian market. But the committee intends to continue monitoring the performance and effective reporting arrangements for covered short sales, particularly when the arrangements to be determined by regulation replace the existing interim arrangements. The committee considers that transparency needs to be a key feature of these arrangements in order to maximise information available to the market and to assist the regulator, ASIC, in identifying false market rumours without the need to resort to future bans. With regard to market integrity, the committee questioned ASIC about the effectiveness of Project Mint, established to investigate instances of rumourtrage—that is the practice of spreading false or misleading rumours.

It is important to note that, now that ASIC will have a greater role in the Australian Stock Exchange, I think there is going to be a need for more resources, when you look at the information online and the impact that rumours et cetera can have on behaviour. They are perhaps going to have to consider electronic surveillance powers in terms of the potential to cause great damage to the stock market itself.

The committee also looked at corporate collapses. As members will know, the committee are currently involved in an inquiry into Storm Financial and Opes Prime, and my colleague the member for Parramatta has been very active in that committee inquiry as well. The stories are more than sad; they are tragic. The committee received more than 400 written submissions about those financial products and services, and the majority of those submissions related to the collapse of Storm Financial. Our report will be tabled later this year.

So we are working very closely with ASIC, and it is good to see all our regulators doing the same. They have all admitted they did not work as closely together as they should have. Now that they realise that the territorial turf is no longer as important as they thought it was, APRA, ASIC and Tax all have to work together. They cannot just operate separately, and there are signs that that is happening.

I will skip the MIS inquiry, because that report has come down today. With regard to BrisConnections, the committee welcomed ASIC's move to ensure that the ASX obtains a signed acknowledgement from investors in partly paid shares. This is what we hope will help future investors avoid the situation that some BrisConnections shareholders found themselves in—that is, being unable to recover the liabilities of the shares they had purchased. The committee remains deeply concerned about some of the other governance and disclosure issues allegedly surrounding

BrisConnections and urges ASIC to take any relevant action in a timely fashion. The committee of course will be getting regular updates on that.

In terms of mortgage fund and cash management trust redemption, we welcomed ASIC 's announcement that it has now expanded relief for hardship withdrawals from frozen funds. We really need to realise that people have been seriously caught out, often at a time in their lives when they have no other resources and nowhere to turn. So ASIC has lifted the cap on hardship withdrawals to \$100,000 each calendar year, increased to four the number of hardship withdrawals that can be made each year and extended the list of recognised hardship grounds. These steps should assist individuals who were affected by the fund freezes.

We also looked at credit-rating agencies. We looked at ASIC 's structure and budget. I remain a person who says that we have to resource this properly if we expect the job to be done in the way that we want it to be done. If we want consumer protection there, we will have to resource that. We also looked at the failings of professional indemnity insurance. It does not provide much comfort to many people. People think that that insurance will help them, but that is not generally the case. It does not flow through.

Finally, we also looked at investor education and, having attended the hearing last night, I do think we have to use all the creative ability of the people within ASIC and people outside ASIC to think of ways to warn people. I have said to them that when people are looking up their superannuation fund online and seeing how much they have got, or what they should do with their lump sum or how much it is going to be, there should be a pop-up message with an ASIC brand on it that says, 'You could lose the lot.' When people get a payout or redundancy, there should be a mandatory requirement to provide an information sheet, or one session with an independent adviser, from a regulatory regime such as ASIC.

So I do think we have let people down and I do think we have to redress that and avoid it happening again. And the most vulnerable people are the people who do not have superannuation in retirement, like our farmers et cetera, who have been caught up in the MISs; people who take a lump sum package at retirement; and people who get a redundancy package, cash in the hand. These are the most vulnerable times for them and they should be advised more carefully—and ASIC in particular has a role to play in that. I recommend the report to the House.