

ASIC to flag its actions for openness' sake

Patrick Durkin

The corporate regulator plans to warn companies, boards and their advisers when it intends to take enforcement action, in response to recent court losses and criticism that it is too opaque.

The move is part of a commitment by the new head of the Australian Securities and Investments Commission, Greg Medcraft, for the regulator to be more open and transparent in the way it polices business.

"We need to think about where we can disclose more about what we are doing. We sometimes are very frustrated that we can't tell the media about bad things we are investigating," Mr Medcraft said recently.

The *Australian Financial Review* understands the ASIC enforcement policy will comprise a two-part document. The first will spell out how and in what circumstances the regulator would take legal or enforcement action, akin to the signs warning drivers where speed cameras might be located. The second will be a deterrence report to be issued periodically, detailing recent ASIC investigations.

Calls for the guidelines came out of a recent stakeholder survey and will bring ASIC into line with other regulators such as the Australian Taxation Office and the competition regulator.

The move is a departure from the policy of former chairman Tony D'Aloisio, who maintained that such an approach limited flexibility.

"ASIC is looking at corporate issues from the extreme criminal right down to whether a licence or banning should occur, so it is difficult to distil all that into some statements of policy because inevitably what will happen is that as soon as you have got them, there will be exceptions," Mr D'Aloisio said earlier this year.

The managing director of litigation funder IMF and a long-time crown prosecutor, Hugh McLernon, shared Mr D'Aloisio's concerns, warning that such rules tended to be problematic for a bold and fearless regulator.

"People [within the regulator] become scared that when they have that one spectacular failure, the rules will not have been fully followed," Mr

KEY POINTS

- New ASIC head Greg Medcraft has committed the regulator to work in a more transparent manner.
- Critics say this is a PR exercise which could fetter the watchdog in its day-to-day operations.

McLernon said. "And Murphy's law says that it always happens in the most spectacular case."

Such rules could fetter a regulator or prosecutor's discretion. "The policy will be used against ASIC in court and against them in the court of public opinion as well. I think it is more a PR exercise than a useful litigation tool."

But Melbourne University corporate law professor Ian Ramsay backed the Medcraft policy. "It is because of its broad powers that I think it is incumbent on ASIC to give guidance to advisers and market participants," he said.

"If it is a well-crafted document it should achieve a good balance between not being too abstract but not covering off on every possibility."

ASIC came under concerted pressure to release formal litigation guidelines last year after a string of court losses, including the One.Tel hearing, in which the judge questioned whether the case should have been brought.

Blake Dawson litigation partner Andrew Carter said: "There is a question whether it is appropriate to subject anyone, especially an individual, to prohibitively expensive litigation so as to clarify the law."

"One.Tel shows just how costly this kind of litigation can be. ASIC was ordered to repay [former One.Tel chief executive] Jodee Rich nearly \$15 million in costs, including interest."

Mr Carter said an enforcement policy could reduce uncertainty.

"Many directors and others in the market are concerned about their exposure to regulatory action," he said.

"Much of the concern arises because even if they act honestly and genuinely try to do their best, they may still face ASIC action."

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Greener pastures . . . Jim's Mowing has 'such a flood of work coming in right now, it's embarrassing'. Photo: ERIN JONASSON

Saved on the shopping? Spend it on a service

Jason Murphy

The household savings rate may be at a 25-year high but gardeners, cleaners and others in the household services business reckon there's still some money being spent.

"We go to people's houses to do gardening, and all the services are there: there's people washing the cars, there's people washing the windows, there's cleaners inside cleaning, they're cleaning the pool, they're doing everything," says Colleen Sheehan, founder of Perth-based gardener Weeding Women.

"In this day and age, people are time poor."

Services spending grew 3.8 per cent over the past year, while spending on goods such as clothing, food and furniture managed only a 2.6 per cent rise.

Sheehan says her company is expanding, with a sale process for 16 franchises just under way. She says families benefiting from Perth's strong economy are happy to keep their gardens looking sharp.

"These people have never employed a regular gardening service in their life," she says.

Suddenly, we're doing regular work for them."

Jim Penman, founder of Jim's Mowing, couldn't agree more. "We have such a flood of work coming in right now, it's embarrassing."

He measures business success by the number of inquiries he cannot service. There are 38,800 in the

There's people washing the cars, there's people washing the windows, there's cleaners inside cleaning.

Colleen Sheehan, Weeding Women

system now, up from 24,000 this time last year. "What's really horrifying about this is the busy time of year is still to come."

He is training 60 new franchisees, and would like more.

"We can't find enough people to cope with the flood of work coming through," Penman says. "We are trying to encourage our guys to take on workers themselves, but not everybody can do that."

At Absolute Domestics, a cleaning franchise based in

Brisbane which has 6000 employees, owner Joy Vess is a little less upbeat. She sailed through the financial crisis, but growth has stalled.

"In one family, they are working longer and harder so they will hire home help," she says.

"Then in another family one might have lost their job so they will cancel the service. We are still getting a really nice balance. Our business remains level."

While people are still spending on services including hair care, recreation and education, spending on goods is lacklustre. Expenditure on clothing and food has grown about 2 per cent while recreation spending has surged by about 7 per cent. Restaurant sales grew 9.2 per cent over the year to April, according to ANZ Banking Group.

Melbourne finance industry worker Richard Gittins and his wife Nicole employ a cleaning lady after they received glowing references from friends and colleagues.

"Nicole and I had a discussion about things we would cut back on," he says. "The cleaning lady was at the bottom of the list."

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