

Australia's "Company Law Watchdog": ASIC and corporate regulation

Vicky Comino, *Australia's "Company Law Watchdog": ASIC and Corporate Regulation*, 2015, Lawbook Co. Thomson Reuters. [Click here to find out more about this book.](#)



This is a terrific book. Drawing on work done as part of a doctoral thesis, the author has identified some of the factors that nobbled the Australian Securities & Investments Commission (ASIC) when it dealt with corporate misconduct, particularly in the last decade. The author uses high profile cases and an analysis of regulatory theory to examine why ASIC appears to be an ineffective watchdog. The focus is very much on why ASIC is losing so many cases.

In addition to the author's insights, this book covers the history of the national scheme of regulation and examines the main theories of regulation including risk based, regulatory craft and responsive approaches. Of particular interest is her consideration of Malcolm Sparrow's regulatory craft approach with its central thesis to identify important problems and fix them.

This work also covers a number of studies on crime and deterrence and notes that there are sociological factors that have a much greater influence on behaviour than a regulator's conduct.

In explaining why ASIC does not use the full range of remedies at its disposal, in particular its use of civil penalty actions rather than criminal actions for culpable behaviour, the author notes the problems of ASIC's joint jurisdiction with other regulators. There is a strong view that it is not working. The high watermark for this failure was the Steve Vizard insider trading case where the Treasurer at the time took the unprecedented step of releasing the Commonwealth DPP's reasons for not prosecuting Mr Vizard even though there was strong circumstantial evidence.

There is also a detailed discussion on how the failure of the civil penalty regime to act as a real sanction can be attributed to courts effectively applying a criminal standard of proof rather than the intended lower civil threshold.

The book concludes by suggesting how ASIC might be a more effective regulator with changes to its structure and operations using the various regulatory models as illustrations.

It is fair to say anything important in corporate and financial services law in recent times is in this book and the analysis of civil and criminal ASIC action leaves no stone unturned. I strongly recommend reading this powerful work.

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