

# ASIC Annual Report



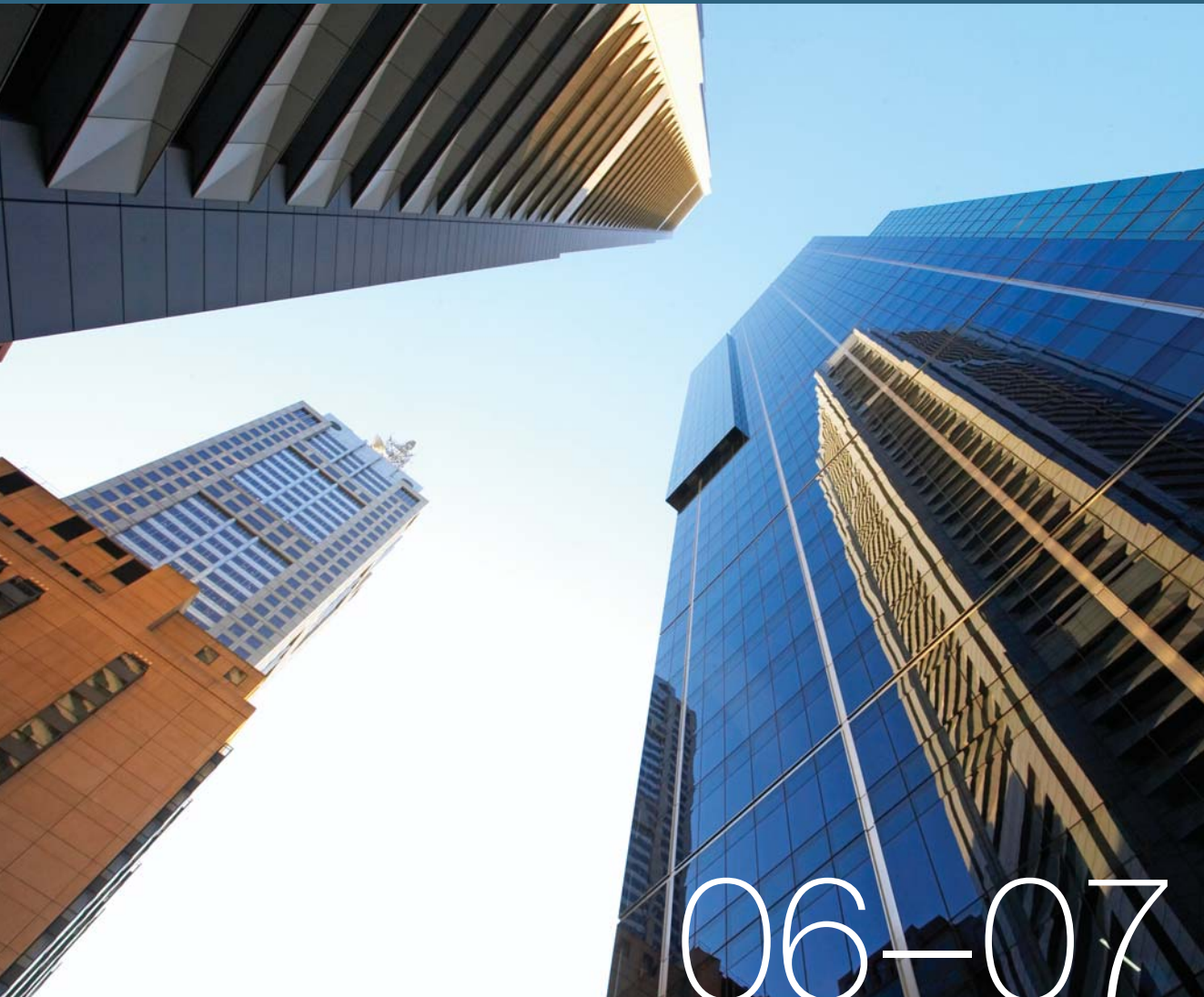
## Regulating in a Time of Growth

Markets, business, investors and consumers



ASIC

Australian Securities &  
Investments Commission



06-07

# About this report

ASIC aims for transparency and clear communication. Last year's annual report won our 8<sup>th</sup> consecutive Gold Award from the Australasian Reporting Awards Inc.

Under section 9 of the *Commonwealth Authorities and Companies Act 1997*, members of the Commission take responsibility for the preparation and content of this report of operations in accordance with the Finance Minister's Orders.

This is our 17<sup>th</sup> annual report. ASIC began operating in January 1991, then as the Australian Securities Commission.

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# ASIC at a glance

The Australian Securities and Investments Commission enforced and regulated company and financial services laws.

Our 2006–07 priorities | Highlights of the year, page 3.

**Main activities** | Regulated Australia's 1.6 million corporations, 4,625 financial services businesses and 17 financial markets.

Worked to improve Australia's financial system, covering superannuation, managed funds, insurance, credit, deposit-taking and financial advice.

Cooperated with Australian and international regulatory bodies, page 29.

**Vision** | Fair and efficient markets and confident, informed consumers.

For our plans, aims and outputs, see pages 4, 9, 10.

Delivered through six directorates, page 15.

**Values** | To be strong, fair and progressive, page 38.

**Finances** | Our work cost \$256 million, funded from the Commonwealth budget, page 10.

**Staff** | Employed 1,581 people around Australia (average full-time equivalents), page 13.

**Governance** | An independent Commonwealth government body, led by three full-time Commissioners, accountable to the Minister, Parliament and through administrative and judicial review, page 36.



# Highlights 2006–07

Completed our investigation into criminal offences involving the HIH companies: 4 convictions and 3 jail terms imposed this year, 9 convictions and 7 jail terms in all, and 4 people still before the courts.

Set up a special team, including outside experts, to implement a 3-point plan on unlisted and unrated securities, see page 5.

Completed 51 criminal and 76 civil proceedings in the courts, 97% successfully, pages 6 and 16.

Significantly increased the disqualification of directors of assetless and failed companies, up 250% to 81, through closer collaboration with company liquidators, page 19.

A record 55 million public requests for business information from our databases, and a record 1 million visits to our consumer website FIDO, pages 27 and 20.

# Chairman's report



Tony D'Aloisio, ASIC Chairman,  
see page 34 for biographical details.

This is my first report as incoming ASIC Chairman, having been appointed on 13 May 2007. I joined ASIC as a Commissioner on 22 November 2006. I look forward to working constructively with our stakeholders, including business and consumers, with business and consumer associations, and with governments and other agencies.

Former Chairman, Jeffrey Lucy, AM, will continue as a Commissioner based in Adelaide for another two years. Our Deputy Chairman, Jeremy Cooper, is based in Melbourne. Under Jeffrey's Chairmanship, ASIC continued to build on its developing reputation as one of the top regulators of corporations and financial markets in the world.

Over the next four years ASIC will seek to further improve business integrity in Australia. ASIC's vision is that through the combined efforts of business, consumer, government and other agencies, we will not only maintain but improve business integrity in Australia and when benchmarked against global best practice, Australia's position will be at the top.

Over the next 12 months, we will build on what ASIC has achieved to date through six priorities.

## **Lifting operational effectiveness**

The first priority is to continue with business as usual, with the key objective of lifting operational effectiveness and service levels for all stakeholders. This should translate into outcomes of improved and more cost-effective services for all stakeholders, including small and medium companies, who deal with ASIC.

## **Retail investors**

For retail investors, ASIC's priority is to assist them to better manage and protect their investments and wealth. The growth in direct retail investment has increased significantly and we are seeing more sophisticated products aimed at retail investors.

A taskforce will examine the risks for the retail investor, and respond with projects to help address these risks and to develop a more investment-wise retail sector, with better access to quality advice and better equipped to protect their wealth.

To deal with the particular issues of investors in unrated and unlisted securities, in June 2007, we set up a special team, including outside experts, to implement a 3-point plan covering (1) existing securities, (2) proposed issues of new securities and (3) both new and existing securities. Broadly, the plan is to assess current risks in these types of investments and examine options for additional investor protection and investor education programs.

### Capital markets

ASIC's third priority is to continue to maintain and improve confidence and integrity in Australia's capital markets.

While we have had successes in deterring insider trading and market manipulation, we intend to do more. A taskforce is being established to determine what additional actions ASIC, in cooperation with the Australian Securities Exchange (ASX), can take in the areas of continuous disclosure, market manipulation and insider trading. The team will cover both exchange-traded products and the over-the-counter market.

### Small and medium business

For small and medium businesses, ASIC is responsible for the legal 'infrastructure' that underpins the financial system and the wider economy. We will assess how ASIC can use new technology to improve existing services, add new services and reduce costs—that is, to reduce 'red tape' in providing this infrastructure. There are important benefits to unlock for small and medium businesses.

### Developing our capital markets

ASIC also needs to consider how it can better facilitate inward and outward investment in our capital markets. We want to ensure there are only the necessary minimum roadblocks to investment flows, commensurate with adequate protection.

This should facilitate both more liquid Australian markets and better access to offshore investment opportunities for Australia's investment pool, generating more competition, diversification and better overall returns for Australian investors.

### Strategic review

While these priorities are progressing, we are conducting an overall review of ASIC's strategies. The review is being conducted within the existing legislative framework and looks at where ASIC needs to be in three to five years. This strategic review will feature an extensive survey of external stakeholders to assist us to assess our priorities, what we do well and where we need to improve.

### Overall approach

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As incoming Chairman, my approach has been to identify the immediate priorities and pursue them and, while doing so, conduct a review of the organisation using a fresh set of eyes and develop scorecards to measure and report on outcomes achieved.

While there is much to be done, the Commission and I give full credit to our people for what has been achieved and for their focus on the priorities for the year ahead.

My report, and the rest of this annual report except for the financial statements, constitute ASIC's report of operations in accordance with a unanimous resolution of Commissioners made on 3 August 2007.



Tony D'Aloisio  
Chairman

### Upholding standards and enforcing the law

We completed our investigation into criminal offences involving directors and officers of the HIH group of companies. Four people were convicted this year and three given custodial sentences, making 9 convictions and 7 custodial sentences in all. Four former HIH directors and officers are still facing prosecution.

We entered into an enforceable undertaking with Multiplex Ltd for a \$32 million compensation fund for those investors affected by a failure of the Multiplex Group to meet its continuous disclosure obligations concerning a material change in profit on the Wembley National Stadium project in London. The undertaking accelerated payment to investors from an amount of \$50 million that Multiplex's major shareholders had agreed to provide.

We commenced civil penalty action against James Hardie companies and former executives and non-executive directors.

Through closer collaboration with company liquidators, and with additional funding from government, we vigorously pursued people who demonstrated their unsuitability to act as company directors, 81 as directors of assetless and failed companies. Another 29 directors were banned for other breaches of the law.

Our proceedings against Citigroup were not successful. The Court found on the two key issues that Citigroup had not engaged in insider trading and did not contravene the conflict of interest provisions of the Corporations Act while acting as adviser to Toll Holding's takeover bid for Patrick Corporation.

Overall, we were successful in 97% of our criminal and civil litigation.

### Unlisted, unrated securities for retail investors

A significant number of people face losses from investments in securities (debentures and unsecured notes) issued by property finance companies, including Westpoint, Fincorp and Australian Capital Reserve.

Criminal charges were laid against one of the promoters of the Westpoint property finance group, which was wound up in 2005. Our investigation is continuing.

Where ASIC detected inadequate disclosure and misleading and deceptive advertising, we took repeated action to ensure these and similar companies disclosed risks to potential investors. We also warned investors through the media and public statements about the risks in these types of securities. We have identified this area as a clear priority and outlined a three-point plan in our outlook and priorities.

### Better regulation

As part of our *Better regulation* initiative to cut 'red tape' and improve transparency, we published a new guide to ASIC's organisation and accountability, worked to reduce regulatory overlap and began simplifying the range of our regulatory documents.

The Sydney and Melbourne chapters of our new Business Consultative Panel, a group of senior business executives, met with Commissioners to help us promote closer interaction with business.

In our everyday work as a regulator, we continued to assist business, for example we processed a record 55 million public requests for business information from our databases, and granted relief from 2,359 provisions of the law that helped business transactions.

### International cooperation

We delivered a major program to strengthen the Indonesian capital markets supervisory agency, Bapepam-LK, in enforcement and surveillance. We helped develop proposals for Australia and New Zealand to recognise each other's regulatory requirements for offerors of securities and interests in managed investment schemes. We are working with US and Hong Kong regulators to establish similar arrangements.





Australia and the Indonesian financial markets regulator, Bapepam-LK continue to develop closer relationships under the Australian Government-funded 'Australia Indonesia Partnership for Reconstruction and Development Program'.

ASIC chaired the International Organization of Securities Commissions (IOSCO) taskforce into auditor independence in providing non-audit services. The International Forum of Independent Audit Regulators was formed with Commissioner Jeffrey Lucy, AM as its inaugural Chairman.

Our 2007 Summer School, the largest yet held, brought together more than 300 participants from Australia and overseas to examine *Global markets: regulating for economic growth*. ASIC thanks the Treasurer, Parliamentary Secretary to the Treasurer, and senior government and business leaders for their participation.

For more on international relationships, see page 29.

### ASIC funding and performance

In the May 2007 budget, the Government granted ASIC an extra \$116.7 million to upgrade our information technology, which will, when implemented, modernise our widely-used public database, as well as our internal systems.

The Australian National Audit Office audited our performance in receiving, and referring for investigation, statutory reports from insolvency practitioners of suspected breaches of the Corporations Act. ASIC accepted and has implemented changes in the way we record and report on these matters.

Key targets and measures of effectiveness in meeting the long term aims of the ASIC Act are reported on pages 9 and 15.



# Effectiveness

Key statistics about advancing the aims set out in our legislation\*

	2006–07	2005–06	2004–05
<b>Upholding the law uniformly, effectively and quickly</b>			
• % total litigation successful	97%	94%	94%
• % criminal litigation successful	88%	72%	87%
• % civil litigation successful†	98%	98%	95%
• Civil orders against people or companies	256	230	121
• Criminals jailed	21	17	27
• Additional disclosures achieved for investors	371	125	161
<b>Promoting confident and informed consumers</b>			
• Public complaints about misconduct assessed	10,681	12,075‡	10,752
• Visits to our consumer website FIDO	1,050,000	785,000	615,000
• People assisted through our call centre	707,000	770,000	784,000
• Recoveries, costs, compensation, fines and assets frozen (million)	\$140m	\$215m	\$123m
• Company fundraisings where ASIC achieved better disclosure for investors (billion)	\$17bn	\$10bn	\$6bn
<b>Making company information available quickly and efficiently</b>			
• Total requests (free and paid) from ASIC databases (million)	55m	45m	36m
• % company data lodged on time	95%	94%	94%
<b>Improving the performance of the financial system and the entities within it</b>			
• Applications granted that reduced costs to business	2,287	2,489	2,939
• Applications granted for innovative transactions or products	72	76	54
• New Australian financial services licences issued	369	428	401

\* Based on ASIC Act, see page 32.

† Civil litigation includes civil injunctions, freezing orders and civil penalty proceedings.

‡ Included 1,818 questionnaires ASIC sought from Westpoint investors.

**LEFT** In Brisbane, an ASIC team goes out to make inquiries about directors of a failed company, following up on important new information supplied by the company's liquidators through our assetless administration fund, see page 19.

# Financial summary

Using taxpayers' money for the outcome approved by Parliament

	2006-07	2005-06	2004-05
<b>Operating expenses</b>			
Total	\$256m	\$218m	\$208m
Annual change	+17%	+5%	+6%
<b>Fees and charges raised for the Commonwealth</b>			
Total	\$519m	\$543m	\$531m
Annual change	-4%	+2%	+16%

Parliament funds ASIC to achieve the outcome of 'a fair and efficient market characterised by integrity and transparency and supporting confident and informed participation of investors and consumers'. To achieve this outcome we delivered four outputs, with enforcement activity representing 53% of expenses.

ASIC outputs*	This year	Last year	Change
1. Policy and guidance about laws administered by ASIC, page 24. Increased expenditure on regulatory policy activities, including our <i>Better Regulation</i> initiatives.	\$16m	\$14m	+14%
2. Comprehensive and accurate information on companies and corporate activity, page 27. Decreased expenses from efficiencies through increased use of electronic services, lower depreciation expense and reduced rent.	\$45m	\$50m	-10%
3. Compliance monitoring and licensing of participants in the financial system to protect consumer interests and ensure market integrity, pages 20, 22 and 24. Allocation of additional resources, including enhancement of ASIC's surveillance capability.	\$60m	\$52m	+15%
4. Enforcement activity to give effect to the laws administered by ASIC, page 16. Higher expenses from undertaking increased enforcement actions involving a number of large enforcement matters.	\$135m	\$102m	+32%
<b>Total</b>	<b>\$256m</b>	<b>\$218m</b>	<b>+17%</b>

\* Internal service costs are apportioned to these outputs.

We raised \$519 million for the Commonwealth in fees and charges, down 4% reflecting a reduction in company registration fees approved by Parliament.

Our expenses of \$256 million increased, largely to sustain operations and to increase enforcement activities. Employee expenses, our largest outlay of \$148 million, increased 16%. Supplier expenses increased 21% to \$91 million, including increased litigation and forensic costs.

We received \$244 million in appropriations and \$13.8 million in revenue from the sale of services, interest and other sources, including \$2 million in recoveries for court and investigation costs. Our \$2 million surplus includes underspending against appropriations received for specific purposes. The unspent appropriation will be used in future financial periods to fund initiatives directly related to the purpose of the appropriation. See our financial statements on page 50.

Some \$15 million of our appropriation was levied by the Government on deposit-taking, superannuation and insurance organisations, used for the purposes shown on page 48.

## Financial outlook

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In the 2007–08 Federal Budget, the Treasurer announced additional funding of \$116.7 million over the next four years to upgrade our information technology infrastructure.

This funding will enable the implementation of an ASIC-wide content management system, and new electronic data warehouse capabilities to support analytics and business intelligence capabilities. It will also allow us to migrate our public information database, ASCOT, to more modern technologies.



# Our people: summary

Helping our people perform to their best

	2006–07	2005–06	2004–05
<b>Staff (full-time equivalents)</b>	1,610	1,471	1,570
Annual change	+9%	-6%	+3%

Staff numbers increased 7%, mainly in enforcement, compliance, and consumer protection, largely reflecting additional funding received from Government for specific projects.

The majority of staff are engaged under the Public Service Act. ASIC is the 23<sup>rd</sup> biggest employer of Commonwealth public servants, out of 91 Australian Government departments and agencies.

We are committed to equal opportunity, and the percentage of women in senior executive positions rose to 47%, up from 44%.

## Performance management

To encourage our people to perform to their best, all employees are required to have performance agreements, with a focus on managing outputs, interpersonal and personal skills. Managers were required to give continuous feedback throughout the year. Upward feedback from employees was implemented to strengthen our leadership skills. Eligible employees received performance bonuses if they were appraised as outstanding (up to 15% bonus), fully effective (6%) or satisfactory (3%).

## Workforce planning, recruitment and selection

Under our workforce planning strategy, we completed two bulk recruitment campaigns, appointing 67 external and internal candidates in priority areas. We also recruited 25 graduates, who participated in a 12-month rotation and structured development program.

ASIC offered its employees a high degree of internal mobility, reporting 133 promotions, 181 higher duties and 145 transfers at level.

## Workplace safety

Incident reports increased 56% to 100, as employees were encouraged to become more aware of safety issues. However because these incidents generally involved minor injury, claims fell by 18%, and associated costs and lost time were also reduced.

## Increased workplace satisfaction

In our third national staff survey, we recorded a further improvement in satisfaction. People thought the best things about working for ASIC were fellow employees, challenging work and doing work that is important to the public. We scored favourably on work-life balance. The survey indicated that ASIC could continue to improve in areas such as leadership and more effective communication skills.

## Developing employees and managers

ASIC invested \$1.7 million in staff development, with a renewed emphasis on technical development, with 6,744 attendances at professional and technical development programs. We continued to develop our managers and leaders, including 662 attendances at management development workshops. Some 54 high potential people attended the Mt Eliza executive development program. We maintained our graduate recruitment program with 25 new graduates participating in a 12-month rotation program.

## Outlook

In the coming year, we will:

- emphasise skills and coaching programs for people managers
- negotiate and implement a new collective agreement and Australian workplace agreements for relevant employees.

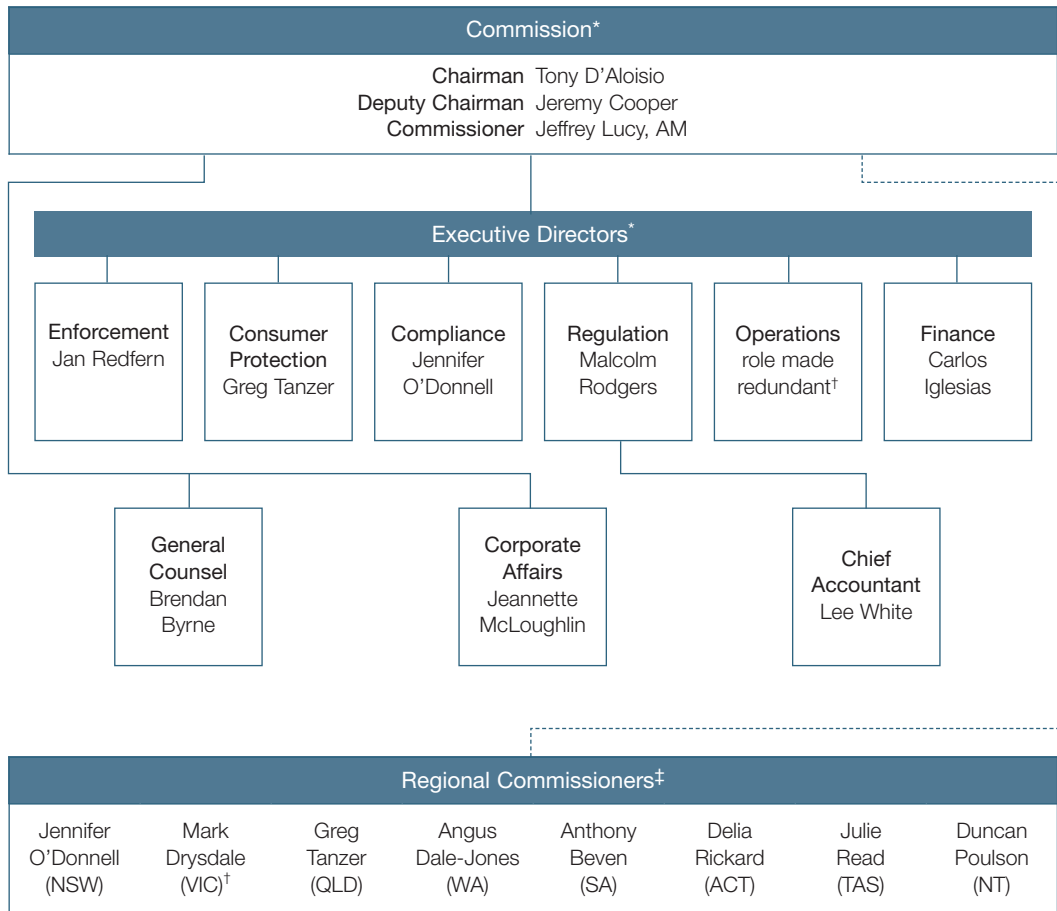
More about our people on pages 30 and 42.

**LEFT** Public information services staff at Traralgon, Victoria implemented a new electronic system for registering charges over company property, see page 27.

# Organisation

## Changes to Commission membership

Incoming Commissioner Tony D'Aloisio was appointed Chairman on 13 May 2007, and former Chairman Jeffrey Lucy was appointed as a Commissioner based in Adelaide. The senior management team remained largely unchanged.



\* Commissioners' biographies and Executive Directors' details, pages 34 and 35.

† Position of Chief Operating Officer previously occupied by Mark Drysdale was made redundant when he accepted a voluntary redundancy on 30 March 2007. On that date the position of Regional Commissioner, Victoria, became vacant.

‡ Regional Commissioners' details, see page 41.