



## PRIORITY 1

# ASSIST AND PROTECT RETAIL INVESTORS AND FINANCIAL CONSUMERS

The financial year 2008–09 was the most difficult year in more than a decade for retail investors and consumers. ASIC has seen the impact of the global financial crisis on Australian markets with share prices falling by 26% over the course of the financial year. And between September 2007 and March 2009 the value of superannuation assets fell by 13%, on paper at least.

As a result, investor confidence has suffered with some retreating from the market.

ASIC has focused its consumer and investor work on:

1. recovering funds associated with several failed investments
2. improving product disclosure and
3. supporting financial literacy in the community

## 1. RECOVERY ACTIONS AND RECENT COLLAPSES

ASIC acted vigorously to enforce the law and seek compensation for retail investors involved in failed investments associated with the Westpoint Group and Opes Prime.

ASIC is using its power under s50 of the ASIC Act to conduct civil proceedings for damages for investors in cases where it considers that such proceedings are in the public interest.

ASIC is also actively examining recent collapses involving retail investors in organisations such as Storm Financial, Great Southern and Timbercorp.

... investor confidence has suffered with some retreating from the market.

## Opes Prime

On 6 March 2009, ASIC agreed to provide the necessary releases to allow a settlement offer to be put to Opes Prime clients. Under the terms of the mediated settlement (initiated by ASIC) it agreed not to pursue certain actions against ANZ and Merrill Lynch, on the condition that the offer was approved by Opes Prime's creditors and the Court. This was achieved following the end of the financial year when the creditors of Opes Prime voted in favour of the settlement, which is by way of schemes of arrangement, on 24 July 2009 and the Court approved the schemes on 4 August 2009. The settlement is expected to deliver a sum of \$253 million into the schemes, resulting in a return of around 37 cents in the dollar to creditors of Opes Prime, which includes the clients. ASIC's major objective in encouraging the mediation was to recover compensation for investors without the need for costly litigation and multiple actions.

ASIC has also put in place an enforceable undertaking from the ANZ in relation to its investigation into the ANZ Custodial Services. The undertaking requires ANZ to complete a program to remedy deficiencies in operational procedures across the ANZ Custodial Services business, including its securities lending operations.

ASIC's investigations arising from the collapse of Opes Prime are ongoing. These investigations include consideration of the conduct of directors and officers of Opes Prime, both in relation to the operation of the business and in the period immediately before the collapse.

ASIC is considering whether any parties may have engaged in market misconduct, either at the time of the Opes Prime collapse or when the company was placed into liquidation.

## Westpoint

ASIC has continued its comprehensive efforts to recover compensation for the benefit of Westpoint investors who sustained losses in excess of \$300 million following the collapse of Westpoint.

A settlement was reached in the class action brought by ASIC against Masu Financial Management Pty Ltd on behalf of 85 investors who were sold financial products in the Westpoint Group. This class action is the first of those proceedings to be resolved.

ASIC commenced action in the Supreme Court of Victoria against accountancy firm KPMG over its auditing of companies in the Westpoint Group. The claims are for negligent conduct by KPMG and are in the order of \$200 million.

ASIC is also conducting Federal Court proceedings against individuals who were appointed as, or are alleged to have been, directors of nine Westpoint mezzanine finance companies. The claims relate to the way in which they handled money invested in the Westpoint mezzanine companies.

ASIC has continued to carry on class actions against a number of financial planners in the Federal Court. The crux of ASIC's claims is that the financial planners were negligent and breached the conditions of their AFS licences when recommending and selling Westpoint investments.

ASIC is also conducting an action on behalf of investors in the Federal Court against State Trustees Limited. These proceedings commenced in March 2008. The action claims that State Trustees Limited breached its duties to the holders of mezzanine notes and its obligations under the Act and seeks to recover \$17.9 million for investors.

ASIC has also:

- ♦ obtained court orders for a global mediation of all remaining compensation actions.



Westpoint investors are kept informed of how the legal actions taken by ASIC to retrieve funds might personally have an effect. Their site is accessible from [www.asic.gov.au/westpoint](http://www.asic.gov.au/westpoint)

The mediation commenced in June 2009 and the appointed mediator is the Hon. Ian Callinan AC QC

- ♦ banned a further 16 licensed financial advisers who recommended Westpoint products, including one corporation banning, and
- ♦ obtained a criminal conviction on charges it brought against Mr Keith Rowntree, an unlicensed adviser.

The NSW Criminal Court of Appeal upheld the conviction of Mr Neil Burnard in relation to obtaining financial advantage by raising Westpoint funds. ASIC's appeal regarding the leniency of Mr Burnard's 12 month fully suspended sentence and \$50,000 fine was dismissed.

To assist investors, ASIC:

- ♦ launched, in December 2008, a new investors only website containing personalised information for them about each of their investments. This website keeps them up to date on how ASIC's legal actions to retrieve funds might personally affect them. This personalised website is an extension of the information on the Westpoint investor website open to public access, which launched in October 2008: [www.asic.gov.au/westpoint](http://www.asic.gov.au/westpoint)
- ♦ appointed a dedicated Westpoint liaison officer to help investors with any queries they have about ASIC's actions or other issues about the Westpoint collapse.

## Better access to dispute resolution schemes

In May 2009, ASIC improved consumer access to dispute resolution schemes so that disputes can be resolved more quickly and efficiently, saving time and money for industry and consumers.

From 1 January 2010, all schemes will be required to deal with claims worth up to \$500,000 and from 1 January 2012, the claims limit (cap) for the maximum amount payable will be a minimum of \$280,000. External dispute resolution schemes will also be able to award interest in addition to compensation awards.

The increase in claims limits and compensation caps in these schemes will ensure that many more consumers and retail investors will be able to bring their claims to these schemes, avoiding the expense of litigation.



Money shows are an opportunity for consumers and investors to ask ASIC staff questions. They can also pick up a FIDO showbag containing booklets on such topics as superannuation, getting financial advice, complaining and managing their money.

## 2. IMPROVING PRODUCT DISCLOSURE AND ACCESS TO ADVICE

ASIC has extended its work on unlisted and unrated debentures by producing companion investor guides for the unlisted mortgage scheme and unlisted property fund sectors. The investor companion guides are aimed at improving disclosure to retail investors so they are:

- ♦ better informed about the nature of these products, and
- ♦ able to compare the relative risk and return of unlisted mortgage and property funds.

A benchmark-based disclosure model, reflecting the different risk profile and legal structures, has been introduced for unlisted mortgage schemes. As with unlisted and unrated debentures, unlisted mortgage scheme issuers need to disclose against the benchmarks on an 'if not, why not' basis. Eight disclosure principles now need to be prominently disclosed to existing and potential retail unlisted property trust investors.

## Superannuation

ASIC has a number of programs dedicated to building confidence in superannuation. At their heart, these programs promote the confident and informed participation by members.

Industry input is essential to achieving this and ASIC is working with stakeholders as the superannuation landscape rapidly evolves.

## Shorter PDS disclosure for superannuation

The Government has identified a range of priority areas for reform in superannuation, including shorter disclosure.

ASIC believes disclosure documents should be effective tools in communicating with investors and should deliver clear and concise information to them. It is important that consumers are able to use these documents to easily compare products so they can make better decisions about which products best suit their needs.

ASIC is working with the Financial Services Working Group (FSWG) to achieve clear, simple and readable disclosure documents that assist investors in making informed investment decisions. The FSWG has members drawn from ASIC, Treasury and the Department of Finance and Deregulation.

## Agricultural MIS

In the area of agricultural managed investment schemes (MIS), ASIC acted to help retail investors better understand the risk and rewards being offered.

ASIC successfully requested improved disclosure for 12 managed schemes operated by the 7 largest participants in the sector. Better disclosure was required to address the risk that investments might be adversely affected if the responsible entity encounters financial difficulty; the risk associated with the MIS operator's reliance on annual MIS sales to provide working capital; and information about historic yields from other similar MIS projects run by the operator.

In agreeing to provide updated disclosure, MIS operators were required to give previous applicants the opportunity to withdraw their applications.

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## Improving access and quality of advice

In the past financial year financial advisers lost approximately 215,000 clients, mainly due to poor performance of their investments and perceived lack of quality advice. ASIC's dual objective is to promote the acquisition of financial advice by consumers (that is to increase access to advice) and drive improvements in the quality of advice. In turn this will promote rational and informed financial choices by investors and consumers, which will contribute to improved confidence in the advice industry.

To achieve this, ASIC is researching the quality of advice given to retail clients and the factors that affect this so it can find out how to improve advice. It also has a major project to consider ways of improving access to advice. In addition, ASIC has worked closely with the Financial Planning Association on their sample Statement of Advice to assist financial advisers to understand how to give advice in a way that enables clients to understand advice in a simplified format while also ensuring that it is appropriate to them.

## Improved banking services

Switching bank accounts to get a better deal was made easier after a new account switching service started on November 1. The new service is embedded in the EFT Code of Conduct, which ASIC administers, and is expected to promote competition in banking services. The service encourages consumers to shop around for the transaction account that offers the best value for money and could mean switching to a transaction account that offers lower fees or even no fees.

Between June 2007 and December 2008, term deposits in ADIs grew by 50% and is now over \$500 billion, making them one of the most widely used investments in Australia. This growth has been driven mainly by investors reassessing risk-reward premiums in favour of ADI-backed deposits.

It prompted ASIC to release a term deposit guide which reminds investors and consumers of issues to consider when investing in term deposits. It also commits ASIC to undertake a 'health check' of marketing and disclosure around term deposits in 2009.

## 3. SUPPORTING FINANCIAL LITERACY IN THE COMMUNITY

ASIC assumed responsibility for promoting financial literacy at the Commonwealth level on 1 July 2008. This brought together the work done by ASIC and the Financial Literacy Foundation to improve the financial literacy and financial decision making of all Australians.

As part of this work, ASIC hopes to embed the quality teaching of financial literacy in schools and increase the take-up of financial literacy options in further education and workplace learning programs, including small business offerings.

ASIC has developed resources for school students such as *Your money starter*, an interactive educational resource that gives young Australians an understanding of how to save for retirement through superannuation and protect their assets using insurance.

To better co-ordinate the delivery of effective programs across different sectors, ASIC has established a cross-sectoral Financial Literacy Community of Practice for stakeholders.

## Regulating credit

In July 2008, the Council of Australian Governments recommended the Commonwealth take over responsibility for regulating consumer credit. The draft *National Consumer Credit Protection Bill*, proposes that home loans, personal loans, credit cards, overdrafts, line of credit accounts and various other credit products and services, will be regulated under Commonwealth legislation and administered by ASIC.

ASIC is well advanced in preparing for its new responsibility. Immediate focus is on the processes and capabilities needed to register,

license and regulate the credit businesses that are expected to move to the new regime from 1 November 2009.

ASIC has consulted closely with Treasury and the state administrations in developing the policy and legislation and is consulting with industry, consumers and other stakeholders through that process.

An education plan has been developed and resources are being created to educate the broader Australian community, especially in regional areas.

## Indigenous Outreach Program

ASIC works closely with Indigenous communities to help empower Indigenous consumers to make informed decisions. Together with the National Indigenous Radio Services, ASIC develops and distributes radio programs such as *Money Talks* – a series of short radio segments about making sound decisions about money. ASIC also continues to promote and refresh its publications for Indigenous consumers such as *Super and us mob* and in the past year, published a new guide *Paying for funerals: Tips for Indigenous consumers*.

ASIC also runs financial education workshops in remote communities including Galiwinku, Nguuu, Katherine and Kalkarindji in the Northern Territory.

It has recently committed to an expansion of its Indigenous Outreach Program.

**ASIC assumed responsibility for promoting financial literacy at the Commonwealth level on 1 July 2008**

## Professional learning for teachers

Since ASIC took over responsibility for financial literacy on 1 July 2008, over 2000 teachers have participated in professional learning to learn how to educate students on financial issues. This has been informed by a National Framework for Consumer and Financial Literacy, developed in 2005, that has guided curriculum officers in each state to integrate consumer and financial literacy into their curriculum.

All states and territories have provided professional learning for teachers using curriculum officers, whole school initiatives,

## Investing between the flags

In 2009, ASIC launched, for testing, its 'Investing between the flags' campaign to equip retail investors, in particular retirees, with tools to enable them to protect their savings, understand the basics of risk and return and make informed financial decisions. With Centrelink's Financial Information Service we ran a pilot program of face-to-face education seminars on investing basics, targeted at baby boomers.



A Centrelink Financial Information Service officer presents ASIC's 'Investing between the flags' program.

professional associations, facilitators, conferences, web gateways, seminars and workshops.

The program has seen government and non-government schools working together.

Over 2200 support DVDs have been distributed to teachers across all states and territories since January 2009. At the same time, 500 facilitator guides with 12,500 supporting teacher guides have been distributed to teachers nationally.

## Working with defence force personnel

ASIC helps the Australian Defence Force Financial Services Consumer Council develop financial literacy resources to use at every stage of an ADF member's career, including recruitment, pre-deployment, return and retirement. In the past financial year, ASIC conducted financial education seminars for around 1300 Australian soldiers returning from Iraq and Afghanistan.

## ASIC moved quickly to help on disaster relief

ASIC moved quickly to respond to the 2009 Victorian bushfires and the Queensland floods. On the first working day after the fires, ASIC's FIDO website published information for victims. Topics included:

- ◆ how to claim on insurance
- ◆ what to do if ongoing commitments could not be met, for example, mortgage payments
- ◆ information from banks about arrangements to temporarily suspend loan repayments and waive some fees
- ◆ access to superannuation and life insurance, and
- ◆ links to additional sources of help, for example, the Financial Ombudsman Service, flood and bushfire hotlines, counselling services, the Australian Government Disaster Recovery Payment and the Insurance Council of Australia.

ASIC also published its approach to enquiries from victims who were unable to pay Corporations Act fees on time, or indeed at all. Requests for fee relief are considered on a case-by-case basis.

ASIC's liquidators and insolvency practitioners team gathered the support of Victorian-based insolvency professionals who were available, on a pro bono basis, to discuss issues with business owners and directors affected by the bushfires.

## FIDO

ASIC's dedicated website for consumers and investors, FIDO ([www.fido.gov.au](http://www.fido.gov.au)), continued to be a popular source of independent information about finance and investor matters, receiving almost 1.5 million visits in the past year. New content added to the site included a reverse mortgages calculator, a first home saver account calculator, financial survival guides offering practical tips to help those in a difficult financial position, and a dedicated section for young people.

## Equity release guidance

ASIC launched a guide to reverse mortgages and other equity release products. *Thinking of using the equity in your home?* educates people on the risks and benefits of these products and what to think about before investing in them.

## Debt collection phone-in day

In July 2008, ASIC together with the Australian Competition and Consumer Commission held a phone-in day dedicated to debt collection issues. The joint initiative assisted consumers who had experienced problems with debt collectors or creditors. As more consumers felt the impact of the global financial crisis on household balance sheets, ASIC and the ACCC reminded businesses that while they are entitled to recover debts owed to them, they must conduct all collection practices in a proper and professional manner.

## Insolvency: Assisting stakeholders affected by the GFC

In response to the global financial crisis, ASIC launched a new online portal specifically designed to meet the needs of stakeholders likely to be affected by corporate insolvency. Five stakeholder groups can access information at [www.asic.gov.au/insolvency](http://www.asic.gov.au/insolvency) to help make decisions when dealing with insolvency and external administrations (e.g. voluntary administrations, liquidations, receiverships).

ASIC launched a new online portal specifically designed to meet the needs of stakeholders likely to be affected by corporate insolvency.

ASIC increased its focus on the need for company directors to comply with their obligations to prevent insolvent trading. It encouraged them to seek appropriate advice early about the financial position of their companies and, if necessary, to act on that advice by taking steps to minimise losses to creditors and investors. This is especially important because of the pressure companies are under due to the global financial crisis, and the increase in the number of companies being placed into insolvent administration (e.g. liquidation).

## Consumer Advisory Panel

The Consumer Advisory Panel (CAP) continued to meet quarterly and play an important role in ASIC's consumer protection activities by significantly contributing to its understanding of consumer and investor issues. It advised ASIC on issues affecting consumers and retail investors of financial products and services, including:

- ◆ equity release products
- ◆ consumer credit and debt collection/harassment
- ◆ instalment units purchased through online brokers
- ◆ adviser remuneration models and conflict of interest issues, and
- ◆ issues affecting remote Indigenous consumers.

CAP members also gave input to ASIC's consumer protection policies and contributed to interactive discussion workshops on Indigenous issues, financial planning issues and consumer credit.

CAP membership is drawn from a diverse range of consumer and investor organisations and individual consumer advocates. It has an independent chair, Jenni Mack. Other members are:

- ◆ Australian Consumers' Association (Elissa Freeman)
- ◆ Australian Council on the Ageing (Ian Yates)
- ◆ Australian Financial Counselling and Credit Reform Association (Tricia Ross)
- ◆ Australian Shareholders' Association (Stuart Wilson)
- ◆ Consumer Action Law Centre (Vic.) (Carolyn Bond)
- ◆ Legal Aid Commission of NSW (David McMillan)
- ◆ National Information Centre on Retirement Investments (Wendy Schilg), and
- ◆ Financial Counsellor, Tangentyere Council (NT) (Leigh Shacklady).

ASIC would like to express its appreciation for the extraordinary contribution of Jan Pentland, who was a member of ASIC's Consumer Advisory Panel for many years, and more recently a member of the Australian Government Financial Literacy Board. Her guidance, advice and championing of the issues that impacted vulnerable financial consumers were invaluable as were her tireless efforts on behalf of financial counselling in Australia. Jan has sadly recently passed away and will be greatly missed.





## PRIORITY 2

# BUILD CONFIDENCE IN THE INTEGRITY OF AUSTRALIA'S CAPITAL MARKETS

It has been a volatile time for Australia's financial markets in 2008–09 and restoring confidence in our markets – facilitating capital raisings, encouraging investment and supporting our economic recovery – is a key priority for ASIC going forward. In the past year, ASIC has taken strong action to improve market integrity by targeting insider trading and market manipulation. And it has demanded a more transparent market by implementing short selling disclosure, enforcing continuous disclosure requirements in the listed and unlisted sectors and reinforcing the importance of reliable financial reporting. ASIC is working with the RBA and APRA to enhance the operational efficiency of Australia's over-the-counter markets.

**Responding to false market rumours became an important element of ASIC's work during the financial year**

### Former gas company secretary guilty of insider trading

On 27 April 2009, former Queensland Gas executive and company secretary, Mukesh Panchal, was sentenced to two years in jail after pleading guilty to four insider trading charges. The charges followed an ASIC investigation into Mr Panchal's purchase of more than 400,000 Queensland Gas shares valued at over \$1.3 million in early 2008. Mr Panchal bought the shares while in possession of inside information about an alliance with British-based BG Group Plc that would have had a material effect on the price or value of Queensland Gas shares, had it been publicly available. Under the Proceeds of Crime Act, Mr Panchal was also required to pay \$322,155.50 to the Commonwealth, being an estimate of his gain in this transaction.

### Insider trading and market manipulation

In the past year, ASIC has significantly increased its investigative work to pursue market manipulation and insider trading. It has increased resources and improved its detection, investigation and prosecution processes in this area.

It has also improved its dialogue with the ASX and the CDPP.

ASIC is now starting to see the results of this work. During the financial year ASIC:

- ◆ achieved one conviction for insider trading
- ◆ achieved two convictions for market manipulation
- ◆ laid two charges for insider trading against two persons
- ◆ laid four charges for market manipulation against four persons
- ◆ commenced a civil penalty action for market manipulation
- ◆ referred six new cases of insider trading to the CDPP for potential prosecution and referred three new cases of market manipulation to the CDPP for potential prosecution, and
- ◆ banned two brokers from the financial services business for insider trading; banned three brokers for market manipulation; and banned one for false representation (rumours). Three of these are under appeal.

The ASX conducts extensive market surveillance and refers suspicious conduct to ASIC. Our Marketwatch team will look for evidence to warrant formal investigation, and refer applicable cases to deterrence teams. Marketwatch also initiates its own inquiries.

Over the financial year, ASIC considered:

- ◆ 49 referrals for insider trading (of which 12 have been referred on for investigation already)

- ◆ 18 for market manipulation (10 referred on for investigation), and
- ◆ 26 for continuous disclosure (three referred on for investigation).

In addition, the Misconduct and Breach Reporting team followed up 901 complaints about markets issues during the financial year resulting in:

- ◆ 19 referrals for investigation, and
- ◆ over 60 referrals for specialist review within ASIC.

## Rumourtrage

Responding to false market rumours became an important element of ASIC's work during the financial year. In falling markets, there is always a concern that short sellers will spread false rumours and then trade on the associated share price movement.

Through Project Mint, commenced in March 2008, ASIC has taken a broad approach to dealing with rumourtrage. It:

- ◆ conducted an extensive inquiry into numerous purported instances of rumourtrage, seeking trading records and email correspondence from many brokers
- ◆ initiated formal investigations of some conduct
- ◆ made detailed submission to the Government's Corporations and Markets Advisory Committee (CAMAC) seeking law reform, many points of which have been adopted in the formal CAMAC *Aspects of Market Integrity* Report of June 2009, and
- ◆ discussed, with listed entities, the management of confidential information.

During the year, ASIC started developing a set of guidelines for market participants handling of rumours. It will be issuing a consultation paper in the next financial year.

Restoring confidence in our markets – facilitating capital raisings, encouraging investment and supporting our economic recovery – is a key priority for ASIC

## Improving market disclosure

ASIC expects all disclosing entities to meet their obligations to keep the market and investors informed. Keeping markets properly informed underpins confidence in the integrity of our markets and in doing so, assists in keeping the cost of capital low. ASIC made various statements in the year giving guidance on good disclosure – with particular focus on the theme of 'clear, complete and accurate'.

In June 2009, ASIC announced new measures to clarify how unlisted entities should continuously disclose information to investors. Its *Continuous disclosing entities* guide sets out good practice guidelines for website publication, including ensuring such information is easily posted as soon as practicable after it comes to the relevant entity's attention. The guide recognises that websites are often a very effective tool for communicating with investors.

In April 2009, ASIC's case against Fortescue Metals Group Ltd (FMG) for failure to comply with continuous disclosure obligations and engaging in misleading conduct, and against its CEO Andrew Forrest for his involvement in those contraventions, was heard in the Federal Court. ASIC claims the conduct of FMG and Mr Forrest resulted in the market being seriously misled from August 2004 to March 2005 about the nature and effect of 'Framework Agreements' with three state owned Chinese companies.

The court's decision in this matter is awaited.

### Corporate governance

ASIC is in regular dialogue with the business community about issues of corporate governance. Particular stakeholders are the ASX Corporate Governance Council, Australian Institute of Company Directors, Chartered Secretaries of Australia and the Australian Shareholders Association.

ASIC has continued to pursue some significant litigation that will establish the obligations of corporate officers, and support its dialogue with the market.

#### James Hardie

On 23 April 2009, the New South Wales Supreme Court handed down its decision on ASIC's civil penalty proceedings against seven former non-executive directors and three former executives of James Hardie and against James Hardie Industries NV (JHINV, based in the Netherlands) and James Hardie Industries Limited (JHIL, the former Australian listed entity).

The Court's decision provides boardrooms with important guidance and direction on:

- ♦ the practical application of the scope and content of the duties of executives (chief executives, company secretaries and chief financial officers) when taking important matters to the board and disclosing those matters to the market; and
- ♦ the responsibilities of non-executive directors of public companies when asked by management to consider strategic matters and to approve disclosure to the market of the board's decisions.

### Financial reporting and audit quality

Clear reporting by listed entities is a critical contributor to market and investor confidence. This year, ASIC continued its regular reviews of financial reports, and provided guidance about the statements of results and specific focus areas, that would be most affected by the economic conditions, such as going concern and valuation of assets.

ASIC's reviews of financial reports focused on areas impacted by the global financial crisis, including:

- ♦ going concern assessments
- ♦ impairment of assets
- ♦ fair value determination
- ♦ off-balance sheet arrangements, and
- ♦ financial instrument risk disclosures.

ASIC reviewed the financial reports of over 100 listed entities and announced that its next review will cover the financial reports of around 350 listed and unlisted entities.

Audit quality is an important contributor to quality financial reporting and market confidence. ASIC continued its program of inspecting firms that audit listed entities. The reviews focused on quality control and auditor independence. Working papers are reviewed for selected audits.

ASIC participates in IOSCO Standing Committee No. 1 on Multinational Accounting and Disclosure, and the International Forum of Independent Audit Regulators. Among their many activities, these groups are fora to exchange information on financial reporting and audit regulatory developments, including matters relevant to reporting and audit in the global financial crisis.

## Assetless Administration Fund

The fund is a grant scheme that funds liquidators of companies that have little or no assets to investigate and report potential breaches of the law. During a year of economic downturn, applications to the fund increased by 40% over the previous year.

ASIC paid over \$2.8 million to liquidators for reports received during the financial year, and committed \$0.5 million for reports to be received in 2009–10.

Information on grants awarded by ASIC under the Assetless Administration Fund is available at [www.asic.gov.au/aaf](http://www.asic.gov.au/aaf). Significant funded matters include Storm Financial, Chartwell Enterprises and Firepower Operations.

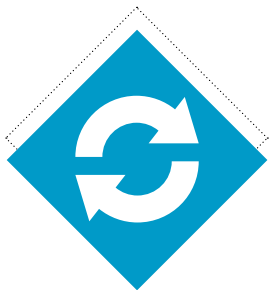
**Over 100 listed entities reviewed and announced that next review will cover the financial reports of around 350 listed and unlisted entities.**

## Maintaining confidence in the insolvency system

A well functioning economy that encourages cross border investment in Australia relies on a strong system to enable investors and creditors to recover funds in the event of business failure.

ASIC has worked closely with insolvency practitioners involved in major corporate failures such as Allco Finance Group Ltd, ABC Learning Centres Ltd, Babcock & Brown Limited, Timbercorp Limited and Great Southern Limited. This close engagement has assisted insolvency practitioners deal with these complex engagements including the early reporting of alleged misconduct in specific circumstances. ASIC has intervened in a number of large corporate failures such as Lehman Brothers Australia Limited and Storm Financial Limited to assist policy and law clarification and to ensure the insolvency system operates appropriately.

ASIC is assessing compliance with the new insolvency laws and the quality and extent of disclosure that may impact on an insolvency practitioner's independence, which is critical to the integrity of the insolvency system. This is a national project involving the review of approximately 240 insolvency appointments. It commenced between 1 July 2008 and 31 January 2009 and spans 77 insolvency firms. It is expected that the findings will result in improved guidance for practitioners.



## PRIORITY 3

# FACILITATING INTERNATIONAL CAPITAL FLOWS AND INTERNATIONAL ENFORCEMENT

ASIC is working to reduce impediments to, and encourage capital flows into and out of Australia, while protecting Australian investors. By increasing access to international capital and investment opportunities, liquidity in Australian markets will be boosted, generating more competition, diversification and better overall returns for Australian investors. In the last 12 months, ASIC has worked with Singapore, the US, New Zealand and Hong Kong.

## Australia-US Mutual Recognition

The Australian Government, ASIC and the US Securities and Exchange Commission (SEC) entered into a mutual recognition agreement on 25 August 2008. The agreement provides a framework for all three parties to consider regulatory exemptions that would permit eligible US and Australian stock exchanges and broker-dealers to operate in both jurisdictions, without the need for these entities to be separately regulated in both countries.

This is the first arrangement of its type that the US has entered into and will, over time, translate into increased liquidity, lower transaction costs, more competition and increased transaction efficiencies for companies in each of these markets.

A major benefit for Australia is that dealers in the US will be able to arrange trades by US retail investors in Australian stocks – currently such trades are confined to dual-listed companies.

The arrangement has the potential to give investors in both countries a broader range of options, at lower cost, and with the security of comparable protections.

The arrangement is a framework through which the SEC and ASIC can cooperate in supervising entities operating across borders. Further work is required to fully implement the arrangement. There have been delays during this financial year, because of changes in US administration and the global financial crisis. ASIC is continuing to advance this work with the SEC despite these delays.

## Trans-Tasman Mutual Recognition

The New Zealand Securities Commission and ASIC continue to cooperate on cross-border securities issues including streamlining trans-Tasman capital raisings, assisting on enforcement, accounting and consumer literacy matters and participating in regional capacity building initiatives.

This year, the Trans-Tasman Mutual Recognition of Securities Offerings (MRSO) arrangement took effect. This arrangement allows issuers of securities to use one prospectus to offer shares, debentures or managed or collective investment schemes to investors on both sides of the Tasman. It has been used 182 times in Australia (by 44 Australian institutions) and 7 times in New Zealand by 7 New Zealand issuers. Managed investment schemes and issuers seeking to raise capital have made use of the arrangement.

Building on these achievements, ASIC and the NZSC have agreed to develop a work plan for the next three years focusing on:

- ♦ improving the operation of the MRSO
- ♦ developing a regulatory framework for the mutual recognition of advisers across the Tasman
- ♦ sharing information on stock exchange surveillance, and
- ♦ exploring joint ventures to support education and financial literacy.

## Cooperation with international regulators

ASIC continued to work with the Indonesian capital markets supervisory agency, Bapepam-LK, to build and strengthen their regulatory capability. A senior ASIC staff member was again deployed to Jakarta during the financial year to work directly with the Indonesian regulator.

ASIC's regulatory surveillance and deterrence work increasingly requires information and evidence to be obtained from overseas. ASIC also assists foreign regulators by obtaining information and evidence in Australia for their investigations. ASIC's enforcement and surveillance requests to foreign regulators increased by 13% to 181.

ASIC remains committed to the International Organization of Securities Commissions (IOSCO). This year, ASIC made a significant contribution to IOSCO through its work on the Executive and Technical Committees, the Asia Pacific Regional Committee and by chairing the Taskforce on Unregulated Products and Markets (for further information, see Strategic Priority 4 on page 37).

## Enhancing capital flows report

ASIC released its report, *Enhancing capital flows into and out of Australia*, on 31 July 2008. The report emphasises the importance of the free

flow of capital in providing wider investment opportunities for Australians, and minimising the cost of capital for domestic businesses.

It also details ASIC's mutual recognition work with some of the world's most significant markets and identifies three key areas where ASIC could most contribute to increasing investment into and out of Australia:

- ♦ maximising the use of recognition arrangements
- ♦ maximising and enhancing international cooperation arrangements, and
- ♦ facilitating cross-border financial services businesses.

In preparing the report, ASIC discussed impediments to international capital flows with leading financial stakeholders, including commercial and investment banks, asset consultants and fund managers.



About 50% of ASIC staff across Australia attended one of the 30 discussion sessions held with Tony D'Aloisio. These were a good opportunity for ASIC's Chairman and staff to talk in an informal atmosphere about some of the important issues facing ASIC. His presentation was framed around five themes: the Commission, operational issues, people and development, shared services and communication. After presenting each theme, questions and comments were invited with the last 30 or so minutes left for questions.



## PRIORITY 4

# MANAGE THE DOMESTIC AND INTERNATIONAL IMPLICATIONS OF THE GLOBAL FINANCIAL TURMOIL

Both international and domestic markets have continued to feel the impact of the global financial crisis (see page 12 for a description of economic and market developments in 2008–09).

Much of ASIC's work this financial year has focused on restoring market confidence by addressing the changes to our markets as a result of the global financial crisis, such as enhancing operational guidelines for over-the-counter derivative products.

**In October 2008, ASIC announced measures to allow operators of frozen mortgage funds to allow early withdrawal for members when they are facing financial hardship.**

In our capital markets, ASIC has targeted insider trading and market manipulation and demanded that companies meet their continuous disclosure obligations in an effort to improve trust, integrity and ultimately liquidity in the market. ASIC has also issued new measures and used its relief powers to facilitate capital raisings in these difficult times.

The downturn has left many retail investors exposed to lower household financial asset balances, including reduced balances for superannuation portfolios. ASIC has assisted investors facing financial hardship and has provided tools to help consumers manage credit in a downturn.

## Short selling

ASIC's work on short selling is another example of ASIC taking decisive action to maintain the integrity of Australian financial markets.

In March and April of 2008, following a drop in the stock market, higher funding costs and an increase in margin calls on directors' shares, there was considerable pressure for ASIC to take action. ASIC examined the market and was satisfied that, at the time, the benefits of short selling, such as price discovery and market efficiency, outweighed any possible systemic issues. ASIC did not impose a ban, but together with the ASX, called for a short selling disclosure regime. The Government agreed.

In September and October of last year, the state of the international financial markets combined with continuing rumourage and a loss of confidence in our own markets, meant that a 'circuit breaker' was needed. We banned naked and covered short selling when similar international bans intensified the risks to the Australian market from potential predatory behaviour.

Covered short selling for non-financials re-opened from 19 November 2008. The interim daily gross short sales disclosure regime that ASIC developed with the ASX in September became operative.

But because of the potential systemic issues, covered short selling for financials remained closed until 24 May 2009 when ASIC lifted the ban. In ASIC's view, the balance had shifted back in favour of the enhanced price discovery and liquidity that comes with short selling.

ASIC has been assisted in exercising these powers with the recent Government legislation and by working more closely with APRA, the RBA and the ASX.

## Superannuation 'no action' position

In November 2008, in response to the market downturn, ASIC wrote to industry associations to inform them that it will give 'no action' relief on application to super fund trustees to enable them to give limited guidance to members about switching between fund options. This temporary relief has largely been superseded by ASIC's long term initiatives around intrafund advice, which includes giving conditional relief from the suitability requirements in s945A to trustees that wish to give certain advice to their members about their existing interest in their super fund.

## Responding to illegal early release activity in super

ASIC has also been alert to any increase in illegal early release activity and any possible slippage in employer compliance with superannuation obligations following the market downturn. Messages encouraging vigilance and early reporting of illegal early access schemes have been given to industry associations and the Superannuation team supports referrals to ASIC's deterrence teams when illegal early access schemes are identified.

In addition, the Superannuation team has been actively monitoring disclosure by trustees when underlying funds invested in by super trustees are frozen, affecting the solvency of defined benefit funds.

Much of ASIC's work this year has focused on restoring market confidence by addressing the changes to our markets as a result of the global financial crisis.

## Helping investors facing financial hardship

In October 2008, ASIC announced measures to allow operators of frozen mortgage funds to allow early withdrawal for members when they are facing financial hardship.

Mortgage funds, along with other forms of unlisted investments such as unlisted property trusts, are an important source of investment capital to the economy. The risks and returns of some of these products were adversely affected by turbulent market conditions and a number of mortgage trusts 'froze' redemptions for a time.

ASIC used its relief powers to allow withdrawals from these funds if investors were facing financial hardship, including when they were unable to meet family living expenses, on compassionate grounds or in cases of permanent incapacity. This has highlighted the difficulty of balancing the interests of those with hardship against maintaining integrity of funds for all those who cannot withdraw.



## PRIORITY 4 (CONTINUED)

### Managing credit in a downturn

On 7 May 2009, ASIC, in conjunction with Consumer Affairs Victoria, released a report examining how lenders and mortgage brokers respond to borrowers experiencing financial difficulties.

The report, *Helping home borrowers in financial hardship* found that while some lenders are responding well to the needs of their customers, there is generally room for improvement. It also guides industry on how to improve practices.

The report examined industry practices in late 2008 and noted that there are already signs that some sectors are improving. On 5 April 2009, the Treasurer announced an agreement with four major banks in which they committed to assist borrowers who are experiencing financial difficulty as a result of the global recession. ASIC is confident that industry will welcome the guidance in the report and will continue to work with them to promote better outcomes for borrowers.

The report also sets out guidance on what borrowers can do to manage any financial difficulties they might be experiencing. This is supported by important information on borrowers' right and responsibilities on the FIDO website.

The new equity raising policies streamline the fundraising process and make it easier to include retail investor participation in fundraisings.

### Facilitating equity raisings

In June 2009, ASIC introduced new measures to help facilitate capital raisings for firms in this turbulent market.

The new equity raising policies streamline the fundraising process and make it easier to include retail investor participation in fundraisings by expanding situations when a full prospectus or product disclosure statement is not required.

The policies allow listed companies, and managed investment schemes engaging in equity raisings, increased scope to update the market through continuous disclosure obligations and a 'cleansing notice' instead of the currently required prospectus or PDS.

ASIC adapted the law to allow:

- ♦ existing shareholders or unitholders to purchase further shares or units worth up to \$15,000 through share purchase plans without a prospectus or PDS
- ♦ listed managed investment schemes to make placements at a discount of more than 10% to the current unit price without member approval

- ◆ more rights issues and placements using a cleansing notice instead of a prospectus or PDS, even if a listed entity has been suspended for more than the current five day maximum period
- ◆ members to participate in accelerated rights issues and rights issue shortfall facilities even if they exceed the 20% takeover threshold by doing so, and
- ◆ a person to underwrite a dividend reinvestment plan even if they exceed the 20% takeover threshold by doing so.

## International collaboration on GFC issues

ASIC has been active in all of the IOSCO committees and task forces established in late 2008 to address issues arising from the financial crisis. ASIC has worked towards outcomes that are measured, appropriate and contribute to restoring confidence in financial markets, while allowing Australia appropriate flexibility to develop responses for our markets.

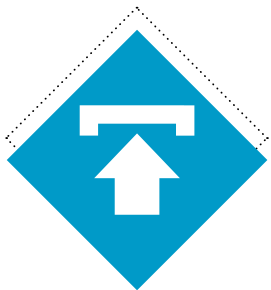
IOSCO has approved and published principles, based on the work of these task forces, to guide regulation of short selling and hedge funds.

ASIC co-chaired the IOSCO task force established to address regulation of key financial markets that are either unregulated or lightly regulated (specifically credit default swaps and securitisation). The task force's report will be published shortly and sets out guiding principles for regulating both of these sectors.

ASIC has also participated in IOSCO's task force on credit rating agencies (CRAs). In the last 12 months, the task force has reviewed the CRAs' code of conduct and developed a framework for international cooperation in supervising them. Together with the Australian Government, ASIC has used this to design and implement the local regulatory regime for CRAs, that takes effect shortly.

ASIC is also participating in a task force to develop principles to guide cooperation between regulators in supervising cross border activity.

Domestically, ASIC is working with Treasury and other agencies through the G20 Reform Implementation Committee to develop Australia's responses to these issues.



## PRIORITY 5

# LIFT OPERATIONAL EFFECTIVENESS AND SERVICE LEVELS FOR ALL ASIC STAKEHOLDERS

ASIC is focused on ensuring the efficient and cost-effective administration of the regulatory framework for which it is responsible. This includes:

- ◆ improving internal operations delivery
- ◆ simplifying interactions with stakeholders, and
- ◆ promoting the use of its ever-expanding online services.

ASIC is committed to international and domestic comparison and benchmarking of its activities because interactivity is rapidly increasing between regulators and government agencies.

## The effects of the global financial turmoil have been reflected in the changing workload of ASIC's Real Economy team.

- ◆ Although our corporate register rose to over 1,700,000 registered companies for the first time, there were 8.7% fewer new companies registered this financial year compared to the previous year. ASIC also registered fewer notifications of charges over company assets (14.6% fewer this financial year). Registered companies lodged 4.1% fewer forms to notify changes to key company details.
- ◆ ASIC noted a marked increase in requests by company officeholders to suppress their residential addresses from the public's view on our registers (16% up on last year). ASIC also received more requests to waive fees arising from lodgement of a form, or payment of a fee outside of the timeframes prescribed by the legislation it administers. There were, however, 10% more applications received for voluntary deregistration of a company.
- ◆ There was a 17% increase in misconduct and breach reports received from the public and industry compared to last year with 15,366 reports received compared to 13,106 for 2007–08. In finalising over 14,800 reports, this represents an 18% productivity gain compared to last financial year.
- ◆ This financial year, 10,005 companies entered external administration for the first time, a 26.5% increase (7,907 in 2007–08). Although ASIC is yet to feel the full impact of this increase, external administrators lodged 4.7% more statutory reports this year, however a lower proportion alleged misconduct or suspicious activity (69% this financial year compared to 80% in the previous financial year).
- ◆ Despite a reduction in the number of applications for new Australian Financial Services Licences, there was a 22% increase in requests to cancel or suspend a current licence, a 17% increase in requests to vary a licence, as well as a 2.6% increase in the number of changes to responsible managers.
- ◆ ASIC saw a 5% increase in the number of applications for relief with financial reporting relief the major category of relief sought.
- ◆ There were 30% fewer fundraising-related documents lodged, 58% fewer takeover documents lodged and 43% fewer applications to register a managed investment scheme.

## Project Unite

On February 27 2009, ASIC published records of \$668 compulsory acquisition of unclaimed money to the value of \$34 million. Since January 2009, ASIC has increased the amount of money reunited with the public as a result of Project Unite paying out \$2.12 million in successful claims – nearly doubling last year’s figures.

Over the financial year a total of \$161 million in unclaimed money was received and over \$55.23 million was reunited.

## Client Contact Centre

ASIC experienced a 12% increase in calls to Infoline this financial year with average handling time for calls increasing by two minutes to an average of eight minute calls. To some extent this reflects the higher number of financial distress and public assistance calls emerging from the global financial crisis.

There was a significant shift in the level and type of calls ASIC received about its registry services. For example, there was a 5.9% decrease in registry-related calls compared to last year, enabling the centre to apply its resources to other priorities. Most registry-related calls now focus on forms. Before ASIC’s initiatives to improve fees collection, including the move to open-item invoicing in 2008, the most common registry call was about ASIC invoices.

ASIC has also doubled the number of training hours completed by its Client Contact Centre staff this financial year. In September 2008, the target grade of service in the call centre was increased to 90% of calls answered in 60 seconds, up from 80%, and this target was achieved over the remainder of the year.

## Increasing satisfaction of registry services and licensing stakeholders

ASIC has been talking to its stakeholders:

- ♦ holding biannual meetings with its Business Advisory Committee, the key external stakeholder consultation group that provides input on its operational strategy and priorities
- ♦ seeking feedback from over 120 registry stakeholders, 20 financial services licensees and their agents on how to improve its services, and
- ♦ listening to stakeholders and implemented a range of service improvements to increase satisfaction.

ASIC improved services by:

- ♦ reengineering its processes to retain an electronic image of paper forms before returning them to clients (because they are incomplete). This has improved services when handling related telephone enquiries
- ♦ designing new online receipts for online lodgements
- ♦ introducing a new telephone service to reset passwords to access its online systems (previously a paper and mail based process)
- ♦ improving the content and structure of its website, such as locating highly accessed services on the home page,
- ♦ notating potentially incorrect addresses on its public register to alert the searching public to its concerns, and
- ♦ redesigning its fees invoicing so that: payments can be made against specific invoice statements and items; and making it clearer when fees must be paid.

ASIC’s communications with clients have also improved because it is now:

- ♦ contacting clients by phone to manage lodgement-related issues (previously by mail)

## PRIORITY 5 (CONTINUED)

- ♦ giving key licensing stakeholders their own nominated client managers. This is in addition to the 200-plus registry stakeholders with a nominated client manager, and
- ♦ keeping licensing applicants better informed on the status of their applications.

### Project Synchronise

ASIC introduced a new keyword categorisation for complaints and breach reports in January 2009 to enable better risk and trend reporting and better target surveillance and deterrence activities.

### Public complaints

ASIC encourages people to report suspected misconduct, and it dealt with 13,633 complaints, up 19%. In line with its target, 70% were finalised in 28 days.

	2008–09	2007–08
Complaints finalised	13,633	11,436
Referred for compliance, investigation or surveillance	18%	22%
Resolved	26%	34%
No jurisdiction	9%	6%
No breach/no offences*	11%	11%
Analysed, assessed and recorded	36%	27%

\* In previous years, these have been reported together. However, following ASIC's strategic review in 2008, it reviewed the outcome codes to align to its new structure and to better differentiate matters falling outside of its jurisdiction. As a result, some matters previously recorded as 'Resolved' are now recorded as being outside ASIC's jurisdiction. However, ASIC still attempts to help these complainants.

**ASIC successfully prosecuted 724 company officers for 1125 contraventions, slightly less than last year's figures of 752 company officers and 1455 contraventions.**

ASIC generally seeks to obtain compliance before initiating prosecution action. In direct response to complaints, it sent 1465 warning letters to company directors seeking their compliance with the law in lodging documents or giving information to company members.

ASIC banned 44 company directors from managing companies (32 based on reports from liquidators who received Assetless Administration funding).

ASIC successfully prosecuted 724 company officers for 1125 contraventions, slightly less than last year's figures of 752 company officers and 1455 contraventions. Penalties included 69 good behaviour bonds and total fines and costs of \$1.03million. Overall, ASIC achieved a compliance rate of 42%.

### Statutory Reports

Liquidators, administrators and receivers (external administrators) are required to report to ASIC if they suspect that company officers have been guilty of an offence or, in the case of liquidators, if the return to unsecured creditors may be less than 50 cents in the dollar.

## Statutory Reports

	2008 -09	2007 -08	2006 -07
<b>Total reports received</b>	<b>8,986</b>	8,579	8,335
Reports assessed alleging misconduct or suspicious activity	<b>6,228</b>	6,886	6,862
<b>Initial reports*</b>			
Reports assessed alleging suspicious activity	<b>5,656</b>	5,835	5,717
Supplementary reports requested	<b>11%</b>	17%	17%
Analysed, assessed and recorded	<b>89%</b>	83%	83%
<b>Supplementary reports†</b>			
Supplementary reports assessed alleging misconduct	<b>572</b>	1,051	1,145
Referred for compliance, investigation or surveillance	<b>20%</b>	10%	16%
Referred to assist existing investigation or surveillance	<b>4%</b>	7%	% not captured
Analysed, assessed and recorded	<b>75%</b>	79%	81%
Identified no offences	<b>1%</b>	4%	3%

\* Initial reports are electronic reports lodged under Schedule B of RG16. Generally, ASIC will determine whether to request a supplementary report on the basis of an initial report.

† Supplementary reports are typically detailed free-format reports, which detail the results of the external administrator's inquiries and the evidence to support the alleged offences. Generally, ASIC can determine whether to commence a formal investigation on the basis of a supplementary report.

**ASIC encourages people to report suspected misconduct, and it dealt with 13,633 complaints, up 19%.**

ASIC conducted a review of Regulatory Guide 16, *External Administrator: Reporting and lodging*, in early 2008, republishing the Guide on 1 July.

As a result of this review, initial reports now request more specific detail from external administrators about alleged offences and the documentary evidence that may exist to support their allegations. This is helping ASIC to better target matters warranting further inquiry and reducing the number of supplementary reports requested.

The improved quality of information from practitioners has led to a greater proportion of supplementary reports being referred for compliance, investigation or surveillance or to assist an existing investigation or surveillance (24%) and fewer reports being received which fail to identify any offences.

## PRIORITY 5 (CONTINUED)

### ASIC Service Charter

The ASIC Service Charter sets out what standards of service industry and consumers who deal with ASIC can expect; and our performance against those standards. The results for 2008–09 compared to the previous year follow.

### ASIC Service Charter results

Service	Service Charter target	2008–09 performance	2007–08 performance
General phone queries	We aim to answer your telephone queries on the spot	94% of calls answered on the spot (608,294 of 644,919)  6% (36,625 calls) referred to specialist staff	95% of calls answered on the spot (627,351 of 657,067)  5% (29,716 calls) referred to specialist staff
General email queries	We aim to reply within 48 hours to email queries	99% replied to in 2 business days (54,635 of 55,127)	98% replied to in 2 business days (51,272 of 52,185)
General correspondence about our public database and registers including fee waivers	We aim to acknowledge receipt within 14 days of receiving it, with full response within 28 days	93% fully responded to within 28 days (44,059 of 47,446)	90% fully responded to within 28 days (45,823 of 50,723)
	Correspondence received by our Correspondence Control Unit	100% acknowledged within 14 days (621 of 621 letters)  75% responded to within 28 days (464 of 621 letters)	100% acknowledged within 14 days (540 letters)  77% responded to within 28 days (444 of 574 letters)
Registering a company	We aim to complete company incorporations within 1 business day of receiving a complete application	99% in total (141,392 of 142,613)  99% of paper forms completed in 1 day (19,986 of 20,269)  99% of electronic forms completed in 1 day (121,406 of 122,344)	98% in total (150,078 of 153,172)  97% of paper forms completed in 1 day (21,363 of 22,114)  98% of electronic forms completed in 1 day (126,715 of 131,058)

Service	Service Charter target	2008–09 performance	2007–08 performance
Updating company information and status	We aim to enter critical changes to company information in the corporate register within 2 business days	<p>98% in total (1,032,278 of 1,048,462)</p> <p>95% of paper forms entered in 2 business days (223,087 of 235,524)</p> <p>100% of electronic forms entered in 2 business days (809,191 of 812,938)</p>	<p>95% in total (1,034,726 of 1,085,602)</p> <p>84% of paper forms entered in 2 business days (245,675 of 291,084)</p> <p>99% of electronic forms entered in 2 business days (789,051 of 794,518)</p>
Registering as an auditor	We aim to decide whether to register an auditor within 28 days of receiving a complete application	100% registered within 28 days (97 individual applications and 22 authorised audit companies)	100% registered within 28 days (112 individual applications and 18 authorised audit companies)
Registering as a liquidator	We aim to decide whether to register a liquidator or official liquidator within 28 days of receiving a complete application	<p>88% of liquidators' applications decided within 28 days (22 of 25 applications)</p> <p>88% for official liquidators (30 of 34 applications)</p>	<p>73% of liquidators' applications decided within 28 days (16 of 22 applications)</p> <p>89% for official liquidators (25 of 28 applications)</p>



## PRIORITY 5 (CONTINUED)

Service	Service Charter target	2008–09 performance	2007–08 performance
Registering a managed investment scheme	By law, we must register a managed investment scheme within 14 days of receiving a complete application	100% registered in 14 days (297 of 298)	99% registered in 14 days (512 of 519)
Applying for or varying an AFS licence	We aim to decide whether to grant or vary an Australian financial services licence within 28 days of receiving a complete application	<p>Granting a licence: 72% decided in 28 days (234 of 323 applications)</p> <p>Varying a licence: 84% decided in 28 days (863 of 1,023 applications)</p> <p><i>This result is for all applications, including those where we did not initially receive all the information we needed to make a decision</i></p>	<p>Granting a licence: 67% decided in 28 days (272 of 404 applications)</p> <p>Varying a licence: 75% decided in 28 days (654 of 874 applications)</p> <p><i>This result is for all applications, including those where we did not initially receive all the information we needed to make a decision</i></p>
Applying for an Australian market licence	We aim to give the Minister our recommendation about simple applications to operate financial markets within 12 weeks of receiving an application	Not applicable (no recommendation to the Minister made in this period)	Not applicable (no recommendation to the Minister made in this period)
Applying for relief	If you lodge an application for relief from the Corporations Act that does not raise new policy issues, we aim to give you an in-principle decision within 21 days of receiving all necessary information and fees	<p>71% of in-principle decisions made within 21 days (2,080 of 2,935 applications)</p> <p><i>This result is for all applications, including those where we did not initially receive all the information we needed to make a decision</i></p>	<p>71% of in-principle decisions made within 21 days (2,188 of 3,101 applications)</p> <p><i>This result is for all applications, including those where we did not initially receive all the information we needed to make a decision</i></p>

Service	Service Charter target	2008–09 performance	2007–08 performance
Complaints about misconduct by a company or individual	If you make a complaint about the activities of a company or individual, we aim to respond to you within 28 days of receiving all relevant information	70% finalised within 28 days (9,602 of 13,633)	78% finalised within 28 days (8,880 of 11,436)



ASIC staff from Traralgon contributed to National Tree Day by planting trees at Eel hole Creek.

The ASIC Service Charter sets out what standards of service industry and consumers who deal with ASIC can expect; and our performance against those standards.



## PRIORITY 6

# IMPROVE SERVICES AND REDUCE COSTS BY USING NEW TECHNOLOGIES AND PROCESSES

## More initiatives to reduce costs and improve services

In response to last year's stakeholder survey, which identified what ASIC did well and where improvement was needed, it developed key service objectives:

1. Reduce ASIC-generated costs of compliance by defining stakeholder's cost of compliance and how ASIC contributes to it, identifying how they can be reduced and setting reduction targets.
2. Increase online interaction through new online services:
  - ◆ new service for the online lodgement of e-product disclosure statement services; 98% lodged online since introduction in January 2009
  - ◆ new service for the online lodgement of applications to register a managed investment scheme; 11% lodged online since service introduced in March 2009
  - ◆ new service for the online submission of fee waiver requests
  - ◆ new service allowing for structured client enquiries via email (helping ASIC to improve its responses)
  - ◆ new service for the online lodgement of financial accounts
  - ◆ new service for the online submission of applications to voluntarily deregister a company, and
  - ◆ new service for the online submission of applications to change a company name.
3. Major service reform initiatives.

Working with Government and ASIC stakeholders on the design, development, planning and promotion of Government reforms to ensure the implementation results in improved services and satisfaction for ASIC stakeholders.

The attractiveness of ASIC's online services continues to rise. ASIC has brought several key forms online in the last financial year.

The proportion of all forms lodged online over the 2008–09 financial year is 66.4% an increase of 3.7% over 2007–08.

Over 80% of ASIC's e-enabled forms are now lodged online and 81.1% of its highest volume forms (484 change of company details) are lodged online.

## More clients online

ASIC lodgers continue to move away from paper channels, in favour of its online lodgement services. There has been an increase in online lodgement via portals on its website of 4.7% since last year, a 3.1% decrease in paper lodgements and a 1.7% decrease in EDGE (3rd party proprietary software). Currently, paper lodgers account for 25.5% of lodgements, Easylodge 31.2% and EDGE 43.2%.

The percentage of electronically enabled documents that were lodged online rose by 0.6% to 71.1% this year. Discounting its new services, ASIC saw a 3.1% increase in online lodgements of its mature online forms to 74.5%.

Notably, we have seen a 14.3% increase in the volume of financial services forms lodged online since last year.

## Better Regulation program

Work continued this year on ASIC's Better Regulation program, which was launched in 2006. The program aims at making ASIC more transparent and accessible while reducing duplication and paperwork for the benefit of business, consumers and others.

## ASIC has designed a new electronic tool to sweep its registers to detect director candidates for disqualification

### New Zealand liaison

ASIC is liaising with the New Zealand Companies Office on:

- ◆ sharing, by ASIC, of information on director cessation updates
- ◆ actioning new legislation so that New Zealand directors disqualified by court orders are banned from managing a company in Australia, and
- ◆ exchanging information about New Zealand based companies that failed to submit financial reports and were to be targeted as part of ASIC's compliance campaign.

### Information technology upgrade: STAR Program

ASIC is upgrading its information technology infrastructure. The upgrade will deliver improved access to ASIC's public information and better support to its people through flexible systems that meet legislative and business requirements.

### Record Service Charter results

The ASIC Service Charter sets out the most common interactions it has with stakeholders and how quickly stakeholders can expect it to respond to phone calls, complaints, requests or applications. ASIC's performance for 2008–09 improved or remained steady in 15 of the 21 areas measured. See Priority 5 for full results.

ASIC's Registry Services and Licensing team achieved many record results including:

- ◆ 98.5% of all key documents processed within two business days. ASIC's goal is 90% and this is its highest ever result.
- ◆ 94.7% of key paper documents were processed within two business days. ASIC's goal is 90%. This was up 10.3% and the highest ever result.
- ◆ 99.1% of companies were registered within one day. This was an increase of over 1.1% since last year and ASIC's best ever result.

### New probity policy

ASIC introduced a new process to more efficiently assist overseas regulators conduct probity (due diligence) checks of persons as part of their financial services licensing or registration processes. ASIC took action on 398 requests from overseas regulators, a sharp decline on the 712 requests received in 2007–08 due to the receipt of only 117 probity checks in 2008–09 (465 in 2007–08). Under ASIC's probity policy, overseas regulators were given clear instructions on how to access publicly available information on companies and persons licensed or working in the Australian financial services industry. They were also given clear guidelines on what confidential information ASIC would release in response to a request.

### Improved director banning targeted

ASIC has designed a new electronic tool to sweep its registers to detect director candidates for disqualification under s206F of the Corporations Act. This tool was deployed on 1 July 2009 and will assist in improving public confidence that ASIC is playing an effective role in detecting and disqualifying company directors who are unfit to manage corporations.