



ANNUAL REPORT **2010–11**

- ◆ **confident and informed investors and financial consumers**
- ◆ **fair and efficient financial markets**
- ◆ **efficient registration and licensing**



ASIC

Australian Securities & Investments Commission

Contents

Chairman's report	2	Appendices	67
Commission members at 30 June 2011	7	– The role of Commissioners	68
Corporate structure at 30 June 2011	8	– ASIC's role as a regulator	69
Regulated populations and key responsibilities	10	– Audit Committee and audit, assurance and compliance services	70
Regional activities	13	– External committees and panels	71
Major outcomes: Financial market integrity and protection of investors and consumers	16	– Outcomes: Portfolio Budget Statements	74
Major outcomes: Real Economy	20	– Six-year summary of key stakeholder data	80
Outcomes: Financial summary and expenditure	22	– Reports required under statute and other requirements	81
Outcomes: Financial market integrity and protection of investors and consumers	24	– Consultancies and expenditure on advertising	83
Outcomes: Real Economy	44	– Significant compulsory information-gathering powers	85
ASIC staff: Highlights	54	– Major deterrence outcomes	87
ASIC in the community: Highlights	60	Financial statements	88
Economic overview and outlook	62	Glossary	149
		Index	151
		ASIC: The first 20 years 1991–2011	154
		Contact details	Back cover



ASIC

Australian Securities & Investments Commission

GREG MEDCRAFT

Chairman

100 Market Street, Sydney
GPO Box 9827 Sydney NSW 2001
DX 653 Sydney

10 October 2011

The Hon David Bradbury, MP
Parliamentary Secretary to the Treasurer
Parliament House
CANBERRA ACT 2600

Dear Mr Bradbury

In accordance with subsection 136(1) of the *Australian Securities and Investments Commission Act 2001*, I am pleased to present you with the annual report of the Australian Securities and Investments Commission for the year ended 30 June 2011.

The report has been prepared in accordance with section 136 of the ASIC Act, and in accordance with the 'Requirements for Annual Reports' guide, approved by the Joint Committee of Public Accounts and Audit, and published by the Department of the Prime Minister and Cabinet on 8 July 2011.

I note that subsection 136(3) of the ASIC Act requires the Minister to cause the annual report to be tabled in each House within 15 sitting days of the Minister's receiving the report.

Yours sincerely

A handwritten signature in black ink, appearing to read 'G. Medcraft', with a long horizontal line extending to the right.

Greg Medcraft
Chairman

Chairman's report

Recognising the contribution of Tony D'Aloisio

In beginning this report, I would like to acknowledge the leadership provided to ASIC by Tony D'Aloisio in his four years as Chairman. Tony's appointment ended in May 2011, at which time I was appointed Chairman. Much of the work covered in this year's annual report was initiated under Tony.

I inherited from Tony a Commission that is organised around clear priorities and responsibilities, and which also reflects a firm understanding of its regulatory and policy roles. Tony's legacy is an agency that is recognised for its understanding of the markets and as having an agenda that anticipates the future.

I would also like to acknowledge the support of the Deputy Chairman, Belinda Gibson, and Commissioners, Peter Boxall, Michael Dwyer and Shane Tregillis. They, along with the staff of ASIC, have been outstanding colleagues in the transition between chairmen.

I'd also like to note the contribution of Mr Tregillis, who is standing down as a Commissioner to join the Financial Ombudsman Service as Chief Ombudsman. Over the last year, Shane has skilfully steered a large share of ASIC's most challenging work in the transition to competition in exchange markets.

Major changes affecting ASIC's work

The 2010–11 year was marked by:

- ♦ a substantial shift in the environment in securities markets, with the Government licensing a new provider (Chi-X Australia), ASIC assuming responsibilities for the real-time supervision of securities and equities markets, and ASIC publishing comprehensive new market integrity rules that accommodate the competition that has been heralded by the licensing of Chi-X
- ♦ emerging major policy changes as the Government advances reforms aimed at improving the quality of financial advice that Australians enjoy, and widening access to that advice (the Future of Financial Advice [FoFA] reforms), and reforms in superannuation reflecting the results of the *Review into the governance, efficiency, structure and operation*



Greg Medcraft, Chairman

of Australia's superannuation system (the Cooper Review of Superannuation). Both of these reforms will bring extended responsibilities for ASIC

- ♦ progress in improving financial literacy among retail consumers and investors, and extending consumers' access to impartial information on financial services and products, especially using online and digital delivery of information for consumers
- ♦ new responsibilities as ASIC's new statutory duties, in licensing and regulating consumer credit and in regulating margin lending providers, took full effect
- ♦ progress in improving ASIC's services for businesses, as ASIC processed more transactions online, laid the groundwork for new easy-to-use online access to our public registers from late 2011, and prepared for the new National Business Names register
- ♦ contributions to international cooperation and policy via the International Organization of Securities Commissions (IOSCO), including contributing to major reports aimed at assisting regulators in addressing the role of dark liquidity, direct access to electronic markets, and a report sought by G20 leaders on the impact of technology on market integrity and efficiency.

Setting priorities

From the beginning of the 2011–12 financial year, ASIC has been organised around three priorities, which are:

- ◆ confident and informed investors and financial consumers
- ◆ fair and efficient financial markets
- ◆ efficient registration and licensing.

ASIC's six major means of delivering these outcomes – effectively the tools the agency uses – are:

- ◆ engagement with industry and stakeholders, including when ASIC provides regulatory relief and when ASIC proposes change that will affect businesses
- ◆ surveillance, which is ASIC's principal means of remaining vigilant to potential problems among licensees or businesses that ASIC regulates
- ◆ guidance, which is the means by which ASIC sets expectations as to how businesses, licensees, directors and company officers will meet their statutory and regulatory obligations
- ◆ education, which is ASIC's means of improving financial literacy among consumers, and also improving understanding of the obligations on businesses, licensees, directors and company officers
- ◆ deterrence, where ASIC takes action, under statute or regulation, when it believes businesses, licensees, directors or company officers have not met their obligations
- ◆ policy advice, where ASIC provides Ministers with advice on matters where ASIC has responsibilities, and including ASIC's role in international cooperation.

“The 2010–11 year was marked by ... progress in improving ASIC's services for businesses.”

Delivery mode – ASIC's major tools



1. Engagement – with industry and stakeholders



2. Surveillance – remaining vigilant



3. Guidance – setting standards and expectations



4. Education – providing independent information



5. Deterrence – taking action under statute or regulation



6. Policy advice to Ministers and Government, and implementation

Chairman's report continued

Confident and informed investors and financial consumers

Major outcomes in 2010–11 included:

- ♦ launching the MoneySmart website, one of the most extensive consumer education and information websites, along with the inauguration of the National Financial Literacy Strategy under the auspices of the Australian Government Financial Literacy Board. In its first four months, MoneySmart had 335,000 unique visitors, and more than 25,000 people downloaded the mobile calculator application
- ♦ setting out a new approach to training and assessment for financial advisers in anticipation of the FoFA reforms. ASIC aims to improve outcomes for consumers by raising the standard of training among advisers and ensuring standards are uniform across the sector
- ♦ completing licensing of more than 6,000 consumer credit providers, and beginning surveillance under the new national consumer credit regime, in order to achieve better outcomes for consumers and businesses in the consumer credit industry. ASIC also provided extensive guidance for businesses on their obligations under the regime
- ♦ providing comprehensive guidance for firms that are selling contracts for difference (CFDs), a high-risk type of product that few consumers fully understand



ASIC's MoneySmart website was launched in March and since then has generated more than 100,000 hits per month. ASIC staff have actively promoted the site, especially among regional communities. Pictured is ASIC officer – and 20-year veteran – Rohan Kulatunga, at a 'Know Your Rights' expo in Darwin this year.

- ♦ contributing to financial literacy and educational resources for teachers, as part of the Government's planned national school curriculum, and piloting a financial literacy program aimed at Indigenous Australians in schools in Queensland, the Northern Territory and Western Australia
- ♦ as a result of the global financial crisis (GFC), issuing or consulting on disclosure guides with respect to mortgage, property, infrastructure and hedge funds
- ♦ planning to publish guidance on agribusiness managed investment schemes (MISs), with the aim of improving the quality of information and disclosure for investors
- ♦ successful criminal prosecutions regarding Chartwell Enterprises (in liquidation), Trio Capital (in liquidation) and Fincorp (in liquidation). (The successful prosecution regarding Fincorp is under appeal.)

Fair and efficient financial markets

Major outcomes in 2010–11 included:

- ♦ assuming responsibility for day-to-day, real-time market supervision of the ASX and five other markets, including establishing surveillance and providing guidance to ensure market discipline, and to address instances of misconduct where they occur
- ♦ developing new market integrity rules that accommodate competition in exchanges – following the Government's decision to license Chi-X Australia – and also recognise the impact of technology, including high-frequency trading and the application of algorithmic trading.

A major area of ASIC's work is in ensuring high standards of conduct among public companies, directors and company officers, and among MISs. In particular, companies are the basis of the vast majority of Australia's commercial enterprise. Initiatives aimed at public companies included:

- ♦ releasing guidance that aims to improve the way public companies (and MISs) conduct related party transactions which, by definition, often involve the potential for conflicts of interest
- ♦ releasing proposals that will see an overhaul of prospectuses – including those for initial public offerings and for firms that propose to list – to make them easier to use for retail investors and other parties.

In major civil litigation:

- ♦ the Federal Court found in ASIC's favour in directors' duties cases against seven directors and one officer of Centro Properties Group
- ♦ the Full Court of the Federal Court upheld an appeal by ASIC, finding that Fortescue Metals Group's conduct in certain company announcements in 2004 and 2005 was misleading and deceptive under s1041H of the *Corporations Act 2001* (Corporations Act), and that the chief executive, Andrew Forrest, breached his directors' duties in his role in the announcements.¹

In criminal prosecutions, sentences were imposed in six insider trading or market manipulation cases.

As part of its engagement and education program with directors, company officers and professionals – including lawyers, liquidators, accountants and auditors – ASIC hosted:

- ♦ more than 850 people in capital city forums in May 2011 in order to improve the level of education on company disclosure obligations and ASIC's guidance
- ♦ its annual Summer School in Sydney, in February 2011, focusing on the new regulatory landscape, with 314 delegates attending.

ASIC has responsibilities to ensure that accountants and auditors meet their obligations in order to promote confidence in company reports. In 2010–11, ASIC reviewed:

- ♦ 500 financial reports – of listed entities and some larger, unlisted entities – as part of surveillances. ASIC reported publicly on areas for potential improvement for boards, preparers of financial reports and auditors
- ♦ 131 audit engagements and reported publicly on potential improvements in audit practices, including in audit evidence, professional scepticism and quality control reviews.

ASIC has responsibilities in monitoring standards among registered liquidators, ensuring improvements in liquidators' practices, and taking action against registered liquidators where it believes it is required. Deterrence outcomes in 2010–11 included:

- ♦ laying fraud and other charges against registered liquidator Stuart Ariff (in late September 2011, Mr Ariff was found guilty by a jury in the NSW District Court on all 19 criminal charges)

¹ In September 2011 the High Court granted leave to Fortescue Metals Group and Mr Forrest to appeal the Full Federal Court's decision.

- ♦ following proceedings commenced by ASIC, the resignation of a liquidator from 104 appointments and his agreement to not accept any new liquidator appointments
- ♦ supporting a successful application to the Federal Court for orders removing an administrator to the responsible entity of a large MIS because of various concerns, including about whether the administrator had sufficient resources to conduct large and complex administrations.

In September 2010, a Senate committee inquiry into the role of liquidators and administrators reported its findings. The committee said it believed ASIC was slow in responding to complaints about liquidators and administrators, and that ASIC did not have sufficient resources to monitor insolvency practices.

The committee recommended transferring ASIC's oversight of corporate insolvency to the Insolvency and Trustee Service Australia (ITSA). The Government has declined to take up that recommendation. However, in June the Government published a consultation paper outlining wide-ranging reforms of the framework for personal and corporate insolvency. Consultation on those proposals is continuing.

Efficient registration and licensing

Major outcomes in 2010–11 included:

- ♦ licensing more than 6,000 people or businesses under the national consumer credit regime, with the vast majority of the process conducted online
- ♦ approving 868 Australian financial services (AFS) licence applications for margin lending facilities financial product authorisations (for existing AFS licence holders)
- ♦ processing 15,634 reports of alleged misconduct among businesses and licensees. This was a 17% increase on the previous year; 28% of misconduct reports were escalated for compliance, investigation or surveillance
- ♦ returning approximately \$3.4 million in unclaimed money to 1,198 claimants as part of an active program of reuniting people with unclaimed money
- ♦ finalising 24% more vested property cases, to reach 1,270 completed cases in 2010–11. ASIC administers properties that belong to deregistered companies and – in a proactive approach – ASIC is aiming to settle more such property cases, including attracting parties to make applications to purchase properties where that is appropriate.

Chairman's report continued

Further initiatives that ASIC has underway – in registration and licensing – include:

- ♦ launching a service in 2011–12 that allows online searches of ASIC's registers, with quicker delivery of information to clients and the capacity to accept credit card payments for associated fees
- ♦ beginning the transition, in 2012, to a single National Business Names register, which will bring together registers that are currently spread across the states and territories, under ASIC's responsibility.

Recognising the contribution of ASIC staff

I would like to acknowledge the contribution of the staff of ASIC. Every day, across Australia, they remain committed to the task of improving the business and economic environment in Australia, and taking action against people and firms that fail to comply with the law.

Often they do these jobs in circumstances that are personally and professionally challenging. The results reported here – which show a year of major achievements and smoothly implemented change – are a testament to the commitment of the people who work at ASIC.

Finally, over more than ten years, Rob Savage served on ASIC's Audit Committee, including serving as chairman of the committee. Rob stood down from the committee this year; ASIC is indebted to Rob for his dedication. I am grateful that Byram Johnston has taken on the role of chairman.



Greg Medcraft
Chairman

“The results reported here – which show a year of major achievements and smoothly implemented change – are a testament to the commitment of the people who work at ASIC.”

Commission members at 30 June 2011

Greg Medcraft – Chairman BComm

Mr Medcraft was appointed Chairman, effective 13 May 2011. He was appointed a Commissioner in 2009. Prior to joining ASIC, Mr Medcraft was chief executive at the Australian Securitisation Forum. He spent nearly 30 years in investment banking at Société Générale (SG) in Australia and internationally. Mr Medcraft has also served as Mayor of Woollahra and as Mayor of Box Hill. He has been a director and deputy chairman of KU Children's Services Pty Ltd and director of the American Australian Association.



from the University of Chicago. He commenced his career at the Reserve Bank of Australia, then spent seven years at the International Monetary Fund in the US. He was senior economic adviser to the Leader and Deputy Leader of the Opposition in the late 1980s and early 1990s. He was Secretary of the Department of Treasury and Finance, South Australia, then principal adviser to the then Treasurer, the Hon Peter Costello MP. He was made an Officer of the Order of Australia (AO) for services to economic and financial policy reform.

Belinda Gibson – Deputy Chairman BEc, LLB (Hons), LLM (Hons)

Ms Gibson was appointed Deputy Chairman on 6 May 2010, having been appointed a Commissioner in 2007. Prior to her appointment, Ms Gibson was a Partner at Mallesons Stephen Jaques where she specialised in transactional advice, and in corporate and securities law. Ms Gibson was partner-in-charge in Sydney for Mallesons from 2000 to 2003. She was a director of Air Services Australia from 2001 to 2004, and a charitable body, the Sir Robert Menzies Memorial Foundation, from 1990 to 2007.



Michael Dwyer MBA, FCA

Mr Dwyer was appointed a Commissioner in 2009. He has extensive experience as a chartered accountant and an insolvency practitioner, including a term as national president of the Insolvency Practitioners' Association of Australia. He also held positions as the national chairman of the business recovery group at Howarth Australia Ltd and as partner-in-charge of corporate recovery practice at KPMG in Adelaide.



Dr Peter J. Boxall AO BEc (Hons), MEd, PhD

Dr Boxall was appointed a Commissioner in 2009. Previously, he was Secretary of the Department of Resources, Energy and Tourism, following six years as Secretary of the Department of Employment and Workplace Relations, and five years as Secretary of Finance and Administration with the Australian Government. He is an economist with a doctorate



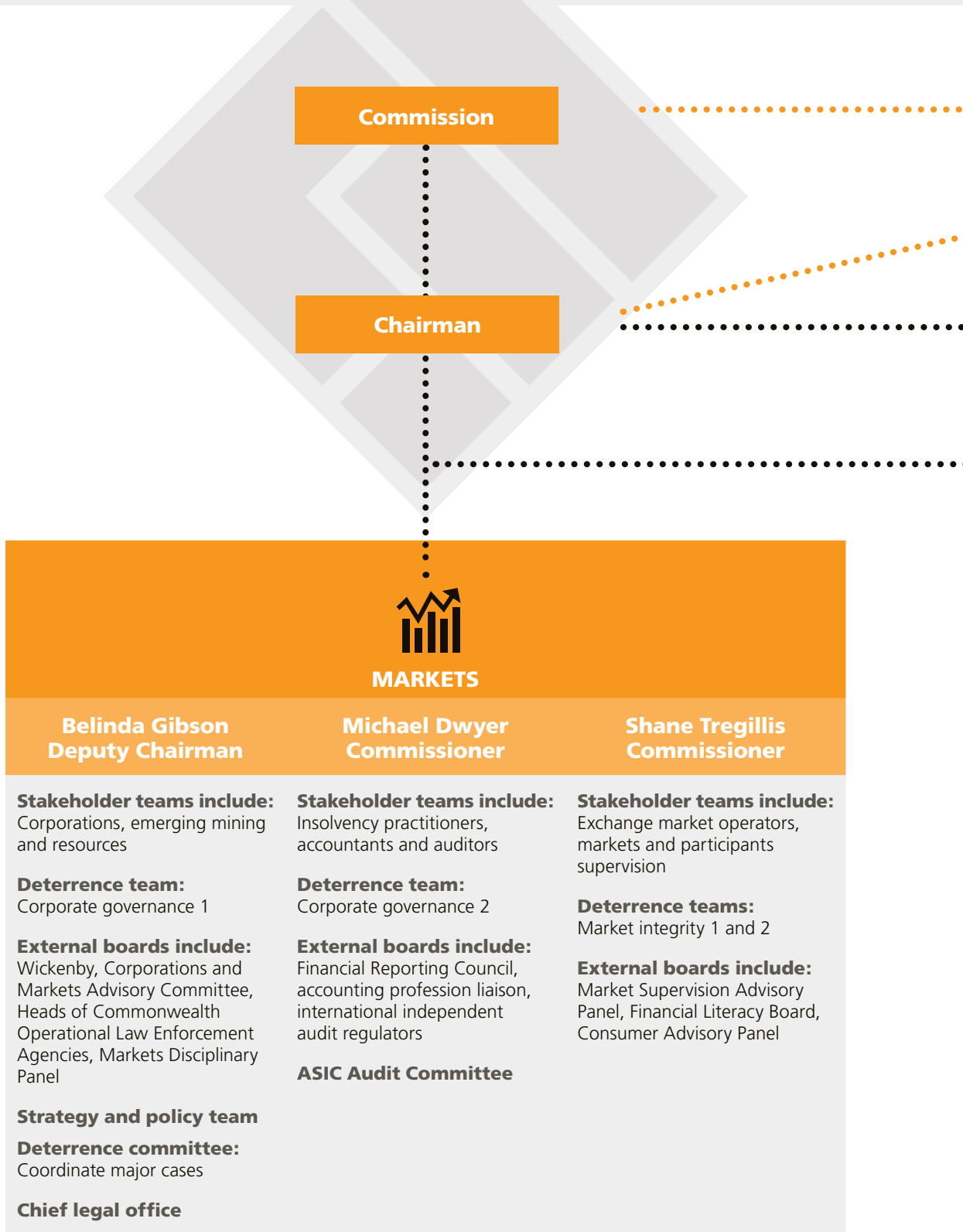
Shane Tregillis¹ BComm, LLB, MComm

Mr Tregillis was appointed a Commissioner in 2010. Prior to his appointment, Mr Tregillis was deputy managing director of the Monetary Authority of Singapore, where he was responsible for capital market and business conduct regulation. He was also chair of the Financial Education Steering Committee. Earlier, Mr Tregillis held senior executive positions at ASIC, with a range of regulatory and management responsibilities covering major market, clearing and settlement reforms, and implementation of the managed investments regime.



¹ Resigned effective August 2011 to join the Financial Ombudsman Service as Chief Ombudsman.

Corporate structure AT 30 JUNE 2011



EXTERNAL ADVISORY PANEL

AUDIT COMMITTEE

Regional commissioners

Chief legal officer

Corporate affairs

People and development



INVESTORS AND FINANCIAL CONSUMERS

**Greg Medcraft
Chairman**

**Peter Boxall
Commissioner**

Stakeholder teams include: Investment banks, investment managers and superannuation, consumers and retail investors

Deterrence team:
Financial services 2

External boards include: Financial Literacy Board, Consumer Advisory Panel, Advisory Panel on Financial Advice and Professional Standards

Stakeholder team: Deposit takers and insurers and credit services (combined)

Deterrence team:
Financial services 1

Regulatory Policy Group



REAL ECONOMY

**Peter Boxall
Commissioner**

Real Economy team: Registry and licensing, stakeholder services (misconduct and breach reporting, Client Contact Centre), compliance and deterrence

Shared services: Chief information officer, chief financial officer, corporate services, specialist services, risk and security, Technology Governance Board and Property Board

External boards include: Business Advisory Committee (for Real Economy)

Regulated populations and key responsibilities

MARKETS

Corporations (including emerging mining & resources companies)

1.84 million registered companies, of which 2,200 are listed entities (including registered schemes & foreign companies)

ASIC staff: 58

- ◆ Improving market integrity by influencing fair & transparent behaviour by companies in fundraising, mergers & acquisitions, & other key transactions, focusing on large & complex transactions by listed entities
- ◆ Promoting confident & informed market participation by ensuring appropriate disclosure for investors

Exchange market operators

*17 authorised financial markets;
5 licensed clearing & settlement facilities*

ASIC staff: 28

- ◆ Promoting fair, orderly and transparent financial markets & fair & effective clearing & settlement facilities, by supervising and annually assessing market operators for compliance with statutory obligations
- ◆ Advising the Minister on applications for market licences, market licence exemptions and operating rules

Insolvency practitioners

670 registered liquidators; 9,500 companies entering external administration per annum

ASIC staff: 28

- ◆ Ensuring that practitioners comply with the law & meet their obligations
- ◆ Administering the Assetless Administration Fund

Accountants & auditors

5,120 registered company auditors

ASIC staff: 33

- ◆ Ensuring that accountants & auditors comply with the law & meet their obligations to promote confidence in the use of financial reports

Market participants

105 market participants; 800 indirect participants; supervision of 6 markets

ASIC staff: 54 (includes market supervision)

- ◆ Ensuring that market participants & indirect participants comply with the law & meet their obligations as AFS licensees & under the market integrity rules (for participants)
- ◆ Supervising equities & derivatives traded markets & in-depth analysis of suspected market misconduct, to identify market manipulation, insider trading & algorithmic trading that disrupts market integrity

Deterrence

Market integrity & corporate governance

ASIC staff: 194¹

- ◆ Investigating suspected misconduct & taking enforcement action to achieve criminal convictions (via Commonwealth Director of Public Prosecutions [CDPP]), civil penalties or administrative sanctions.
- ◆ Corporate governance: investigating misconduct by company officers, advisers, liquidators & auditors
- ◆ Market integrity: focus on alleged insider trading, market manipulation, continuous disclosure, making of false and/or misleading statements, contraventions of market integrity rules



INVESTORS & FINANCIAL CONSUMERS

Deposit-takers, consumer credit & insurers

180 authorised deposit-takers; 6,081 credit providers (Australian credit licensees); 24,000 credit representatives; \$68 billion in insurance premiums

ASIC staff: 64 (includes credit reform)

- ◆ Ensuring deposit-takers, credit providers, intermediaries & trustee companies are complying with the law & meeting their obligations to consumers & retail investors
- ◆ Implementing national consumer credit reforms

Investment managers & superannuation

More than \$1.0 trillion funds under management; 230 super fund trustees; 585 responsible entities; 4,500 registered MISs; 560 foreign financial service providers; 680 custodial service providers

ASIC staff: 44

- ◆ Ensuring that responsible entities, superannuation trustees & custodians comply with the law & meet their obligations
- ◆ Regulation and registration of collective investment vehicles (MISs), including managed funds, listed & unlisted property trusts, mortgage funds, infrastructure schemes & agribusiness MISs
- ◆ Managing implications of frozen funds
- ◆ Regulating exempted foreign financial service providers and foreign collective investment schemes and operators

Deterrence

Financial services (includes consumer credit)

ASIC staff: 128¹

- ◆ Financial services: investigating suspected misconduct & taking enforcement action to achieve criminal convictions (via CDPP) or civil penalties, administrative sanctions. Focus on financial & credit products
- ◆

REGISTRY & LICENSING

Consumers & retail investors

Approximately 18 million financial services consumers; approximately 750 adviser groups;² 11.6 million superannuation investors³

ASIC staff: 62 (includes credit reform)

- ◆ Leading financial literacy strategy, supporting the Financial Literacy Board
- ◆ Providing consumer & retail investor advice, information & education
- ◆ Advising on & developing industry standards for advisers & planners
- ◆ Credit outreach program
- ◆ Maintaining the ePayments Code (formerly the EFT Code)
- ◆ Advising on & developing standards for internal/external dispute resolution schemes

Investment banks

25 investment banks; 500–600 hedge funds; 1,160 OTC derivative providers; 25 credit rating agencies & research houses

ASIC staff: 26

- ◆ Ensuring that investment banks, hedge funds, private equity providers, OTC derivative providers, credit rating agencies & research houses comply with the law
- ◆ Monitoring disclosure for complex products

Registry & licensing

1.0 million public contacts per annum; 15,640 reports of misconduct or statutory breaches. Licensing and registration for AFS and credit licensees, auditors, liquidators, MISs, companies

ASIC staff: 430 (includes registry, licensing, misconduct & statutory breach assessments & referrals, Client Contact Centre, property law, unclaimed money)

- ◆ Providing registry services for companies, MISs, AFS & credit licensees, liquidators & auditors, personal property securities
- ◆ Providing public & non-public access to registry information
- ◆ Providing Client Contact Centre for public, consumers, regulated populations
- ◆ Assessing reports of misconduct & statutory breaches
- ◆ Administering property of deregistered companies, resolving cases
- ◆ Administering unclaimed money
- ◆ Establishing the National Business Names register

Deterrence & compliance

Registration & licensing (includes consumer credit)

ASIC staff: 33¹

- ◆ Investigating alleged misconduct & failure to meet statutory requirements in licensing & registration by licensees, companies, other entities, directors & company officers

¹ Plus 140 staff providing deterrence support services, legal counsel.

² Rainmaker Information, 'The Australian Financial Planning Report', 2009.

³ ABS, 2009.

Data is indicative. See relevant sections of annual report for 2010–11 data. All staff are FTE and represent staff dedicated to respective populations. Excludes strategy, shared services, people & development, and statutory bodies.

Regional activities



Australian Capital Territory

- ♦ Canberra – monthly hosting of Commonwealth Government agencies and others involved in work for ASIC’s financial literacy community of practice
- ♦ Canberra, October 2010 and July 2011 – regional liaison committee meetings
- ♦ Canberra, June 2011 – ‘Investing Between the Flags’ seminars held in conjunction with the Financial Information Service for people interested in learning the basics of safer investing



New South Wales

- ♦ Sydney, July 2010 – official opening of ASIC’s Market Street office, attended by the Minister for Financial Services, Superannuation and Corporate Law, the Hon Chris Bowen MP
- ♦ Sydney, July 2010 – ASIC market supervision roadshow discussing ASIC’s approach to market supervision, new operational structure and future developments
- ♦ Sydney, November 2010 – liaison meeting for insolvency practitioners, and liaison meeting for investment banks and market intermediaries
- ♦ Sydney, February 2011 – ASIC Summer School, attended by 314 delegates; 20th anniversary of ASIC
- ♦ Sydney, March 2011 – liaison meeting for investment banks and market intermediaries
- ♦ Sydney, May 2011 – ASIC at the 2011 annual stockbrokers’ conference, highlighting significant market changes that are likely to affect industry participants



Northern Territory

- ♦ Darwin – On-going financial literacy program for Australian Defence Force personnel, with seminars held throughout the year
- ♦ Darwin, August 2010 – ASIC Commissioners meet with Indigenous stakeholders at a dinner event in Darwin. Keynote address delivered by Kim Hill, CEO of the Northern Land Council
- ♦ Darwin, August 2010 – ASIC and the Office of the Registrar of Indigenous Corporations (ORIC) sign a memorandum of understanding to consolidate and strengthen working relationship
- ♦ Darwin, October 2010 – ASIC and CPA Australia host financial well-being seminar and forum
- ♦ Alice Springs, Darwin, Gunbalanya and Tennant Creek, February to June 2011 – school-based trialling of Milba Djunga (‘Smart Money’), an online financial literacy program to help Indigenous students learn about money and business
- ♦ Darwin, June 2011 – ASIC hosts meeting between NT Government and major banks to discuss access to finance on Aboriginal lands

Across Australia

- ◆ National Credit Outreach Program introduces ASIC as the national consumer credit regulator, reaches more than 600 financial counsellors and consumer credit intermediaries, plus other key parties, at events held in all states and territories.
- ◆ Northern Territory, Queensland, South Australia, Western Australia – radio advertising campaign raises awareness of obligations on book-up providers under the new national credit law from mid-2010.



Queensland

- ◆ Brisbane, July 2010 – market supervision roadshow discussing ASIC's approach to market supervision, new operational structure and future developments
- ◆ Brisbane, October 2010 – commencement speech by regional commissioner; Women in Technology Board readiness program
- ◆ Brisbane, November 2010 – liaison meeting for insolvency practitioners; liaison meeting for accountants, auditors and regional liaison committee
- ◆ January 2011 – ASIC announces assistance for businesses and individuals in flood-affected communities along the Fitzroy, Burnett, Condamine, Ballone and Mary Rivers, in Toowoomba, Brisbane and the Lockyer Valley. Similar assistance offered to people in Tully, Mission Beach, Innisfail and Cardwell hit by Cyclone Yasi
- ◆ Brisbane, March 2011 – regional liaison committee meeting
- ◆ Brisbane, May 2011 – liaison meeting for accountants and auditors
- ◆ Brisbane, June 2011 – corporate finance liaison meeting; stakeholder presentation on new ASIC online searching facility



South Australia

- ◆ Victor Harbor, July 2010 – presentation, Association of Independent Retirees
- ◆ Adelaide, July 2010 – South Australia Connect
- ◆ September 2010 – workshop, Chartered Secretaries Association
- ◆ Campelltown, March 2011 – presentation, Rotary Club
- ◆ Adelaide, March 2011 – World Consumer Day, joint agency information booth
- ◆ Flinders University, March 2011 – presentation at Law School
- ◆ Adelaide University, May 2011 – presentation to Masters students
- ◆ Murray Bridge, May 2011 – presentation, Probus Club



Tasmania

- ◆ Hobart – ongoing hosting of bi-monthly insolvency discussion group involving local insolvency practitioners and lawyers
- ◆ Hobart, September 2010 and May 2011 – regional liaison committee meetings
- ◆ Hobart, December 2010 and March 2011 – hosted a consumer credit presentation for the Hobart Community Legal Service, and Consumer Affairs and Fair Trading Tasmania
- ◆ Hobart and Launceston, February 2011 – meetings with community organisations to provide updates on the national credit law and presentations to those working in the linguistically diverse community sector. Also, meeting with community organisations working with older people
- ◆ Launceston, May 2011 – Regional Commissioner Tasmania and Commissioner Michael Dwyer presented a small business briefing, northern Tasmania

- ◆ Indigenous Outreach Program – 11 trips in urban, rural and remote New South Wales, Tasmania, Western Australia, South Australia and Northern Territory, meeting stakeholders, providing information and advice, gathering information, taking complaints, including on alleged misleading and deceptive conduct, and raising awareness of national credit compliance.
- ◆ ‘Disclosure and Beyond’ – forums in Sydney, Brisbane, Melbourne, Perth in May 2011, aimed at directors, company secretaries, senior company directors and advisers. Included information on continuous disclosure, prospectuses, related party transactions. More than 850 people attended.



Victoria

- ◆ Melbourne, September 2010 – regional liaison committee meeting
- ◆ Melbourne, October 2010 – Leo Cussen Institute, in-house counsel conference, ASIC update
- ◆ Melbourne, November 2010 – Provic annual general meeting
- ◆ Melbourne, November 2010 – regional liaison committee meeting
- ◆ Melbourne, March 2011 – regional liaison committee meeting
- ◆ Melbourne, June 2011 – presentation for the State Revenue Office



Western Australia

- ◆ Perth, October 2010 – regional liaison and financial services consultative committee meetings
- ◆ Perth, November 2010 – credit liaison, insolvency liaison, corporate financial liaison, and accountants and auditors liaison committee meetings, presentations to Law Society of WA and at Unfair Contract Terms seminar (hosted jointly with Department of Commerce and ACCC)
- ◆ Perth, March 2011 – regional liaison, credit liaison and corporate financial liaison committee meetings
- ◆ Perth, May 2011 – accountants and auditors liaison committee meeting, presentation to Chartered Secretaries Australia
- ◆ Perth, June 2011 – corporate financial liaison committee meeting, presentation to Australasian Dealers Association

Regional Commissioners



Delia Rickard
Australian Capital Territory



Greg Yanco
New South Wales



Duncan Poulson
Northern Territory



Dr Pamela Hanrahan
Queensland



Mark Bielecki
South Australia



Julie Read
Tasmania



Warren Day
Victoria



Bruce Dodd
Western Australia

Major outcomes: Financial market integrity and protection of investors and consumers



Priority 1: Assist and protect retail investors and consumers in the financial economy

- ◆ Concluded various criminal prosecutions in cases, including in relation to the following companies: Chartwell Enterprises (in liquidation), Fincorp (in liquidation), Opes Prime Stockbroking (in liquidation), Trio Capital (in liquidation) and Westpoint (in liquidation). Criminal prosecution continues regarding Opes Prime and Sonray (in liquidation). (The prosecution regarding Fincorp is under appeal.)
- ◆ Began civil proceedings over the collapse of Storm Financial (in liquidation) (receiver and manager appointed).
- ◆ Reported potential improvements for superannuation managers in providing product disclosure for consumers.
- ◆ Consulted on proposed training and assessment of financial advisers.
- ◆ Laid the groundwork for improvements in disclosure to consumers in high-risk products, notably CFDs.
- ◆ Launched a financial literacy strategy and a new consumer information website, MoneySmart.
- ◆ Took action against websites purporting to offer financial advice and took action to prevent 'low ball' share offers that use data from company registers.
- ◆ Licensed more than 6,000 consumer credit people or businesses, and completed the transition of the consumer credit industry to new national standards.



Priority 2: Build confidence in the integrity of Australia's capital markets

- ◆ Assumed real-time market supervision responsibilities for the ASX.
- ◆ Made a successful transition to a competitive environment for securities trading, publishing comprehensive new market integrity rules. Chi-X Australia was licensed to operate a new securities exchange.
- ◆ Published guidance on related party transactions and expert reports in order to improve the quality of information for investors.
- ◆ Completed consultation on the overhaul of prospectuses in order to raise standards of disclosure for investors.
- ◆ Published findings from a review of 500 financial reports of listed entities, and set out potential areas for improvement in reporting for boards, auditors and other parties.
- ◆ One registered liquidator charged with and committed to stand trial for fraud. One registered liquidator voluntarily resigned his appointments and ASIC obtained orders by consent appointing new liquidators or deed administrators to 80 companies that he formerly administered.
- ◆ Reviewed 96 transactions to assess insolvency practitioner conduct.
- ◆ Six people sentenced to terms of imprisonment on insider trading and market manipulation charges.
- ◆ Federal Court decisions in ASIC's favour in two directors' duties cases.



Priority 3: Facilitate international capital flows and international cooperation

- ◆ Contributed to IOSCO reports on emerging regulatory issues, including principles to help regulators respond to the expanding use of dark liquidity, principles to guide intermediaries and regulators in responding to direct electronic access to markets, and guidance on the role of securities regulators in mitigating systemic risk.
- ◆ Contributed to the IOSCO consultation on regulatory issues raised by the impact of technology on market integrity and efficiency, including high-frequency trading, in response to a mandate set down by the Group of Twenty (G20) Finance Ministers and Central Bank Governors at their Seoul summit in 2010.
- ◆ Advanced work to enable Australian companies to use Australian credit ratings when issuing debt in the European Union.
- ◆ Contributed to the inter-agency project to reform over-the-counter (OTC) derivatives, in Australia, as part of a G20 initiative.
- ◆ Continued to chair the international Joint Forum of financial supervisors.
- ◆ Took a leading role on the new IOSCO standing committee that will focus on systemic risk.



Priority 4: Manage the domestic and international implications of the GFC

- ◆ Laid the groundwork for new guidance on agribusiness MISs – following consultation in 2010 – in order to improve the quality of information and disclosure for investors.
- ◆ Contributed to IOSCO initiatives to encourage consistent implementation of guidance developed by IOSCO in response to the GFC.
- ◆ As a result of the GFC, issuing or consulting on disclosure guides with respect to mortgage, property, infrastructure and hedge funds.

Major outcomes: Financial market integrity and protection of investors and consumers continued

Major substantive cases 2010–11

Below are major cases where there has been a substantive outcome or where ASIC has secured compensation. These cases mark major findings at law, new law that has been implemented, actions that have provided protection for consumers and investors, actions that have provided compensation, or where custodial sentences have been handed down. See pages 34–41 for details of other deterrence actions and cases that remain underway.



Actions on behalf of investors

- ♦ **Chartwell Enterprises** (in liquidation): The former director Graeme Hoy was sentenced to 13 years and nine months imprisonment following the collapse of Chartwell Enterprises (in liquidation). He pleaded guilty to 44 deception charges regarding almost \$22 million, and three charges under the Corporations Act. The former company secretary Ian Rau was sentenced to two years and seven months imprisonment on eight charges.
- ♦ **Fincorp Properties** (in liquidation): The former chairman and chief executive Eric Krecichwost of Fincorp (in liquidation) was sentenced to three years and six months imprisonment after being found guilty on three criminal charges concerning dishonest use of his position to benefit from payments totalling approximately \$2.8 million. Mr Krecichwost is appealing against the conviction and sentence.
- ♦ **Firepower**: The Federal Court made orders declaring that Axis International Management, Owston Nominees No. 2 (in liquidation) (receiver and manager appointed) and director of Axis, Quentin Ward, contravened s727(1) regarding several offers made to investors for the sale of Firepower BVI shares.
- ♦ **Hassle Free Shares**: The Federal Court granted five-year injunctions preventing Hassle Free Share Sales Pty Ltd and the firm's director, Suzanne Lee Forster, from making unsolicited offers to NIB shareholders to purchase their shares off market. The offers investigated by ASIC were being made at approximately 60% discount to the prevailing market rate. The injunctions follow an amendment to the Corporations Act that prevents a firm's share register being used to make certain types of unsolicited offers – a practice that ASIC seeks to stop.
- ♦ **Christopher Koch**: Mr Koch was sentenced to 13 years and two months imprisonment. He was convicted on charges relating to an investment scheme he promoted between 1996 and 1999. Mr Koch has appealed against the conviction and sentence.
- ♦ **Trio Capital (also known as Astarra Capital)** (in liquidation): The former director Shawn Richard pleaded guilty to two charges of dishonest conduct in the course of carrying on financial services and admitted a third charge of making misleading statements in relation to a financial product. He also entered into an enforceable undertaking banning him for life from providing financial services in Australia.
- ♦ **Westpoint** (in liquidation): The former chief financial officer Graeme Rundle was found guilty of two criminal offences of making false statements to obtain a financial advantage. ASIC also settled compensation proceedings against KPMG, the former auditor of certain Westpoint companies, and certain individuals who were, or were alleged to be, directors of Westpoint companies. ASIC also succeeded in reaching a settlement for clients who invested in certain Westpoint products on the advice of Barzen Pty Ltd (formerly Dukes Financial Services) and Joseph Dukes. Another financial advice firm, Power Financial Planning, was convicted of carrying on a business without a licence and fined \$33,000, and its director, Stephen McArdle, was sentenced to 12 months imprisonment. The Court also ordered that \$10.3 million be paid by Power Financial Planning and Mr McArdle as compensation to investors. The total amount recovered as a result of ASIC's Westpoint compensation litigation is up to \$92.95 million.



People or companies banned from providing financial services or consumer credit

The number of banned licensees rose by 56% to 64, compared with 2009–10. The thematic types of conduct resulting in these outcomes included:

- ◆ instances of authorised representatives dishonestly taking advantage of their client relationships by conduct such as unauthorised discretionary trading, falsification of trading results, falsification of documents and misappropriation of client funds
- ◆ licensed financial advisers failing to take their clients' personal circumstances into account in recommending products, failing to have a reasonable basis for the financial advice, failing to provide statements of advice, and inducing clients to invest on the basis of misleading representations
- ◆ cancellation of licences due to a failure to maintain membership of external dispute resolution schemes
- ◆ engaging in credit activities while being neither registered with nor licensed by ASIC under its new credit licensing regime.



Market integrity

Six people were sentenced to terms of imprisonment on insider trading or market manipulation charges. They were:

- ◆ Jeffrey Bateson was sentenced to two years imprisonment, to be served as an intensive correction order, and fined \$70,000 (one charge)
- ◆ Newton Chan was sentenced to 20 months imprisonment, and ordered to serve four months, before being released on a recognisance order (nine charges)
- ◆ Andrew Dalzell was sentenced to two years imprisonment, to be served as an intensive correction order (one charge)
- ◆ Oswyn de Silva was sentenced to two years and six months imprisonment with a minimum term of 18 months (single charge covering 12 sets of transactions)
- ◆ John Hartman was sentenced to four years and six months imprisonment, with a minimum term of three years (25 charges) (he also forfeited \$1.57 million to the Commonwealth under the *Proceeds of Crime Act 2002*)¹
- ◆ Tamara Newing was sentenced to 21 months, and released immediately on a recognisance order (10 charges).



Directors' duties

- ◆ **Centro Properties Group:** The Federal Court found that seven directors of Centro Properties Group (CNP) and Centro Retail Group (CER) breached their duties when they approved financial reports that failed to disclose significant matters. The Court found that in the case of CNP, the report failed to disclose some \$1.5 billion of short-term liabilities by classifying them as non-current liabilities, and failed to disclose guarantees of short-term liabilities of an associated company of about US\$1.75 billion that had been given after the balance date. In the case of CER, the Court found that the reports failed to disclose some \$598 million of short-term liabilities that had been classified as non-current. The Court also found that the chief financial officer failed to fulfil his duties of due care and diligence.
- ◆ **Fortescue Metals Group:** The Full Court of the Federal Court upheld an appeal regarding Fortescue Metals and the chief executive Andrew Forrest. The Court found that Fortescue Metals' actions were misleading or deceptive – under s1041H of the Corporations Act – when the company made certain announcements in 2004 and 2005. The Court found that, in failing to correct the announcements, Fortescue Metals thus breached s674(2). The Court found Mr Forrest breached his duties as a director in his role in the announcements.²
- ◆ **James Hardie:** The NSW Court of Appeal upheld an appeal by seven former non-executive directors and two former officers of James Hardie Industries Limited. The directors and officers appealed a Supreme Court finding that they had breached their duties when the company made statements about its asbestos compensation fund. The Court of Appeal also partly upheld an appeal by the officers in relation to other contraventions regarding the establishment of the compensation fund.³

¹ Mr Hartman is appealing the sentence.

² In September 2011 the High Court granted leave to Fortescue Metals Group and Mr Forrest to appeal the Full Federal Court's decision.

³ ASIC has been granted leave to appeal to the High Court insofar as the decision concerns the non-executive directors and the company secretary/general counsel.

Major outcomes: Real Economy



Priority 5: Lift operational effectiveness and service levels for all ASIC stakeholders

- ◆ Completed national credit licensing – licensing 6,081 providers. Extensive guidance provided for businesses in transition to the new national consumer credit regime.
- ◆ Continued steady increase in the proportion of online filing in order to make business easier – 73% of forms filed online.
- ◆ Registered more than 163,000 new companies – 3.6% more new registrations than last year.
- ◆ Returned approximately \$3.4 million in unclaimed money to 1,198 people as part of an active program.
- ◆ Assessed 17% more reports of alleged misconduct or breaches in financial services or company conduct, with reports for the year totalling 15,634.
- ◆ Completed and published the results of a comprehensive stakeholder survey testing views on ASIC's performance.



Priority 6: Improve services and reduce costs with new technologies and processes

- ◆ Laid the groundwork for the National Business Names register, which will provide a new single national business names source, reducing transaction costs for businesses.
- ◆ Prepared for the launch of a service providing online searches of registers, with quicker delivery of information and the capacity to accept fees using a credit card.
- ◆ Deployed a new Ringtail evidence management system, which brings considerable advantages in managing cases with high document loads.
- ◆ Progressed a technology transformation project that supports further online services provided by ASIC.



Commissioner Peter Boxall addressing the 2011 Summer School.



Adelaide staff at this year's Biggest Morning Tea fundraising event. Pictured (L-R) are Stephanie Forde, Sarah Flavel and Selina Folland.



Melbourne staffers celebrate ASIC's 20th anniversary. Pictured (L-R) are Mirna Kairouz, Lauren Coate, Katie Stansen, Grace Gagliano, Sandy Stogiannou, Lisa Sapardanis and Jenna Koochew.