



# Annual Report 2001–02

**ASIC**

Australian Securities &  
Investments Commission

tackling **ethics** and **governance**

# ASIC's profile

The Australian Securities and Investments Commission enforces and regulates company and financial services laws to protect consumers, investors and creditors.

An independent Commonwealth government body, ASIC has regulated financial markets, securities, futures and corporations since January 1991. From 1998, we became responsible for consumer protection in superannuation, insurance, deposit taking and, from 2002, credit. ASIC works with other financial and law enforcement agencies in Australia and internationally. For where we fit in the regulatory picture, see page 12.

In 2001-02, ASIC

- employed 1,284 full time equivalent staff around Australia, see page 68.
- outputs cost \$160 million and we collected \$379 million in fees for the Commonwealth, see page 8.
- operated under three full time Commissioners appointed by the Governor-General on the nomination of the Treasurer, see page 16.

# tackling **ethics** and **governance** 2001-02

- 19 criminals jailed for terms totalling 74 years: 11 dishonest company officers and 8 others who cheated investors, page 26.
- \$401 million in funds protected, compensation orders or assets frozen for investors and creditors, page 28.
- Higher standards of competence, compliance and capacity set for financial services businesses. New licensing system delivered on time for financial services reform, page 36.
- Government increased our funding by \$90.8 million over four years to pay for financial services reform and enforcement, page 8.
- 13% increase in complaints to ASIC about corporate and financial misconduct. We extended more assistance and resolution, page 58.
- Public use of ASIC's corporate database up 32%, with a record 6.1 million enquiries, page 57.

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## About this report

This report was produced under the *Commonwealth Authorities and Companies Act 1997*. The members of the Commission are responsible under s9 of that Act for the preparation and content of the report of operations in accordance with the Finance Minister's Orders.

To meet high standards of disclosure, as well as legal requirements, we used feedback from Parliamentarians and the public. Last year's report won ASIC's third Gold Award from the Australasian Reporting Awards Inc.

# Results for 2001-02

## What we planned to do

## What we achieved

### Public impact

Uphold the law effectively and quickly

- 19 criminals jailed, 21 directors and 35 people banned from financial services, 10 auditors and liquidators disciplined.
- \$401 million in funds protected, assets frozen and compensation orders.
- Successful proceedings against directors and officers of HIH, and Harris Scarfe.

Promote confident and informed consumers and investors

- Consumer education strategy to promote financial literacy
- Resolved more than 50% of public complaints, up from 37%.
- Doubled visits to our consumer website to 488,000.
- 200+ organisations join our new Electronic Funds Transfer Code.

Make company information available quickly

- 6.1 million free internet searches, up 32%, paid online searches up 4% to 2.9 million.
- 141,000 searches of licensed and banned advisers, up 38%.

Improve performance of financial system and entities within it

- Financial services businesses guided by new ASIC policy and standards for competence, compliance and capacity.
- Championed auditor independence and proposed reforms.
- Comparable protection for Australian and Singaporean investors trading in each other's market.

### Operations

Fight fraud and misconduct

- 92% of cases against individuals and companies successful.
- 246 new investigations.
- Increased civil litigation to preserve assets.

Tackle patterns of misconduct

- Wound up failed solicitors mortgage schemes, 2 jail terms for fraud and reduced defaults.
- 96 stop orders on inadequate prospectuses, targeting unsubstantiated forecasts.
- Halted potentially misleading advertisements about performance of investment funds.

Build e-commerce capacities

- Delivered new online system for applicants for financial services licences on time.
- Electronic reporting system for insolvency practitioners.
- 71% of new companies registered electronically.

### Our staff

Lead, develop and challenge staff

- Initiated new skills and leadership programs.
- Approved a new 3 year strategic plan, see page 11.

### Finance

Control costs, increase efficiency and align with core business.

- \$90.8 million in extra funding over four years resulting from a full review of the cost of all ASIC's outputs.
- Expenditure reached \$160 million, as costs rose for enforcement and financial services reform, see page 8.
- Collected \$379 million in fees on behalf of the Commonwealth, up 4%.



David Knott,  
ASIC Chairman from November 2000 for a five year term.

## Chairman's report

In this section:

- tackling ethics and governance
- outcomes delivered in 2001–2002
- civil penalty and criminal remedies
- resources increased
- the Commission
- staff

*“Legislation focused on core objectives that facilitates prompt, effective intervention by the regulator will serve the public interest far better than voluminous rules and complicated procedures for sanction.”*

### Tackling ethics and governance

The theme of this annual report ‘Tackling Ethics and Governance’ encapsulates concerns that have gripped many developed economies during the past year. Major company failures in the USA have exposed a breakdown in corporate ethics and governance, corroded during a prolonged period of market prosperity.

In Australia we have not come out unscathed. However, with a few serious and troubling exceptions, we have avoided the worst excesses exposed by the failures in the USA. In part this is due to Government and regulatory responses to the crashes of the 1980s, which significantly enhanced our vigilance and caution. Moreover, in the main, Australian business leaders have acted with a degree of restraint and conservatism which compares well with their offshore counterparts. Domestic investor confidence, while unsettled, has not been threatened to the extent obvious in America.

During 2002-03, Australia will review the causes and appropriate responses to recent corporate failures. The Government's corporate law reform program will form the centrepiece of that review, but other contributions will be important.

The review will be informed by initiatives in the United States and by the work of key international forums, including the International Organisation of Securities Commissions and the Financial Stability Forum. Where relevant, our domestic responses should conform to international best practice, particularly in areas of accounting standards, audit and executive remuneration.

However, Australia's response to governance failures should also reflect our own experiences. We need to consider the long term effects of new policy initiatives. Legislation focused on core objectives that facilitates prompt, effective intervention by the regulator will serve the public interest far better than voluminous rules and complicated procedures for sanction. This will be ASIC's approach in our own submissions on domestic law reform and in our contributions to international standard setting.

In the meantime, the Australian regulatory system and the performance of its regulators will form part of the HIH Royal Commission's enquiries. Such accountability is appropriate, and ASIC will respond positively to recommendations that will improve our regulatory system or our own performance.



## Outcomes delivered in 2001–02

Impressive outcomes are again evident in this annual report. We have concluded another year of intense activity in which we have:

- successfully prosecuted 42 offenders (resulting in 19 custodial sentences)
- obtained substantial protective and compensation orders for investors
- commenced implementing the most ambitious reforms to financial services regulation ever attempted, and
- intervened as never before to improve standards of disclosure to investors.

Full details are set out elsewhere.

These outcomes have been attained at a time when demand for our services has never been greater.

Volatility in our markets, coupled with increased recognition of ASIC as an effective regulator, has resulted in a massive increase in public requests for our assistance.

We have responded by extending more assistance and by expanding our range of information and regulatory services. Our new national structure has increased our capacity to identify emerging risks and to allocate resources to them. We have overhauled our complaints processes to better correlate and assess information received from the public. We have embarked on strategies

which, over the next three years, will completely re-engineer how we access, analyse and share information across the organisation. All of these initiatives are improving ASIC's abilities to discharge our mandate.

We have also commenced a review of the methods by which we measure and report our regulatory outcomes. This involves a modernised system for tracking and reporting enforcement results, and performance measurements that are better correlated to our strategic and business plans. These initiatives will be reflected in next year's annual report.

## Civil penalty and criminal remedies

Over the past two years ASIC has successfully litigated against a number of company officers under the civil penalty provisions of the Corporations Act. In the past, ASIC has been criticised for infrequently using these powers. More recently, concerns have been expressed that their use may result in the decriminalisation of serious offences.

The civil penalty provisions were included in the Corporations Act as an express recognition that breaches of duties by directors and officers will not always be criminal. They enable serious breaches which might otherwise escape prosecution to be enforced by ASIC. They can be effective not only to establish breaches but also to disqualify offenders from participation in

# Chairman's report

# 1

company management, obtain compensation and impose financial penalties.

Prior to commencing civil penalty proceedings, ASIC invariably consults with the Director of Public Prosecutions to determine how his office assesses the prospects for criminal charges. If those prospects are sufficiently strong and a prosecution can commence within an acceptable timeframe, it is ASIC's policy to prefer the laying of criminal charges.

The importance of timing should not be underestimated. ASIC is committed to achieving enforcement results within the quickest possible timeframe, both in fairness to defendants but also to underscore confidence in the regulatory system. That is one of the considerations we take into account when considering how best to prosecute a matter.

It should also be noted that a civil penalty suit can be followed by subsequent criminal charges if the circumstances dictate. The two remedies are not necessarily mutually exclusive.

Finally, to put our civil penalty proceedings in context, we currently have 111 persons facing criminal charges compared to 20 civil penalty actions.

## Resources increased

Increased funding in this year's budget will enable us to implement licensing and regulatory responsibilities under the Financial Services Reform Act, and will

supplement our general enforcement resources. Part of that funding will be applied to increasing our regulatory support to administrators and liquidators of insolvent companies.

## The Commission

In November 2001 Professor Berna Collier was appointed to the Commission for a three year term. Professor Collier has brought significant experience and skills to the Commission and acts as ASIC's representative member on the Board of the Australian Prudential Regulation Authority. She is the first full-time Commission member resident in Brisbane.

Pending Professor Collier's appointment, Mr Ian Johnston (Executive Director, Financial Services Regulation) acted for extended periods as a Commission member. I extend my thanks for his considerable support and assistance.

I also acknowledge ASIC's gratitude to Jillian Segal who resigned as Deputy Chair on 30th June to take up a position as a member of the Committee of Inquiry into the competition provisions of the Trade Practices Act. I reiterate the tributes made to Jillian in last year's annual report and again thank her for five years of dedicated work as a member of the Commission.



## Staff

Like most public sector organisations ASIC suffers a remuneration disadvantage when competing for skilled staff. Despite that fact, we are served by officers whose professional competency and work ethic loses nothing in comparison to the private sector.

The Commission recognises the need to invest more in training and development opportunities for staff, and has approved new initiatives in this year's budget. In the meantime, on behalf of the Commission, I thank all of those who have worked beyond reasonable expectation over the past 12 months.

We have said goodbye to a number of senior officers whose services have been sought by international regulators, in particular, former NSW Regional Commissioner, Jane Diplock, appointed Chairman of the New Zealand Securities Commission; former head of Policy and Markets Regulation, Shane Tregillis, appointed Assistant Managing Director of the Monetary Authority of Singapore; and former Chief Accountant, Ian Mackintosh, appointed Regional Finance Manager of the World Bank.

Although it is always sad to farewell talented colleagues and friends, the seniority of their appointments reflects their outstanding credentials and the respect in which ASIC is regarded by other countries. I thank each of them and wish them well.

My report, and the rest of this annual report except for the financial statements, constitutes ASIC's report of operations in accordance with a resolution of Commissioners made on 13 August 2002.



David Knott  
Chairman

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## Financial report 2001–02

### In this section:

- costs of outputs
- expenses
- revenue collected

*“The results were very favourable, and confirmed that we have managed our resources efficiently.”*

ASIC’s financial performance reflected increased activities to implement financial services reform and to enforce the law. Our operating result produced a deficit of \$5.6 million, after the small surplus in 2000-01. This largely resulted from increased expenditure on goods and services related to investigations and litigation into high profile matters.

With the Department of Finance and Administration, we conducted an ‘Output Pricing Review’ that resulted in additional funding over the next four years for ASIC’s substantially increased workload in financial services reform and enforcement.

The Review also benchmarked our corporate services with public and private sectors. The results were very favourable, and confirmed that we have managed our resources efficiently. Our Financial Statements begin on page 79.

### Costs of outputs

The cost of ASIC’s outputs was \$159.8 million, up from \$143.3 million. We received an increased Parliamentary appropriation, with a special one-off funding of \$7.1 million relating to the HIH investigation and to the HIH Royal Commission. Of that, \$2.85 million represents unspent funding associated with the HIH Royal Commission. This has been disclosed as unearned revenue and deferred to 2002–03.

The costs of each ASIC output was:

Output*	Cost
1. Policy and guidance about laws administered by ASIC	\$9.0m
2. Comprehensive and accurate information on companies and corporate activity	\$42.7m
3. Compliance monitoring and licensing of participants in the financial system to protect consumer interests and ensure market integrity	\$44.2m
4. Enforcement activity to give effect to the laws administered by ASIC	\$63.9m
<b>Total</b>	<b>\$159.8m</b>

\*Infrastructure costs are apportioned to these outputs

### Expenses

Employee expenses, our major outlay, rose to \$85.2 million, up by 2.6%, reflecting increased staff in enforcement and financial services.

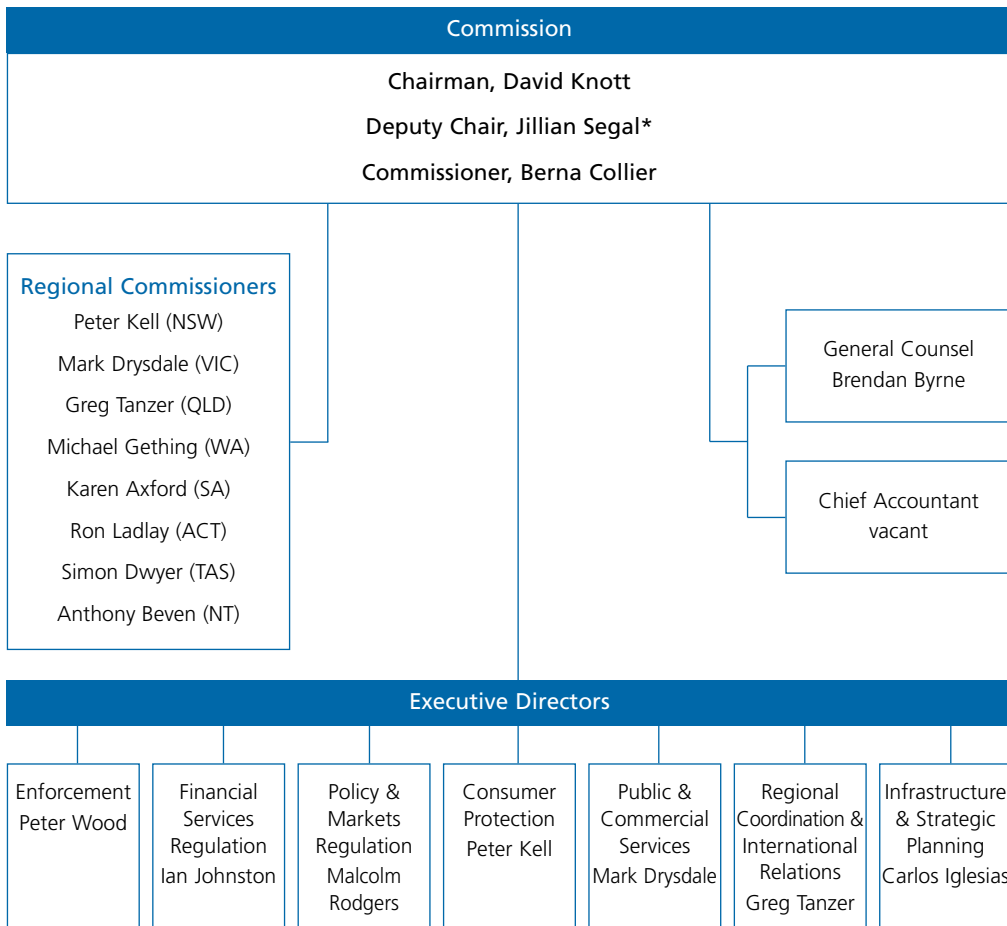
Goods and services (excluding property) increased to \$41.6 million reflecting increased expenditure on externally sourced legal, accounting and forensic expenses for major enforcement matters. Property expenses of \$19.8 million fell by \$0.3 million, a cost we are continuing to manage tightly as we recruit extra staff.

Cash used to purchase plant and equipment was \$8.4 million, more than half of which was in information technology assets.

### Revenue

Total Corporations Act fees and charges amounted to \$379 million.

# Organisational chart



\* Jillian Segal resigned in June 2002. (The Treasurer appointed Ian Johnston Acting Commissioner, see page 17.)

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## Three year perspective Results: 1999–2000 to 2001–02

Result	2001/02	2000/01	1999/00
<b>Staff (full time equivalents) increased for enforcement and financial services reform</b>			
Annual change	1,284 5%	1,221 -1%	1,234 2%
<b>Operating expenses rose to pay for extra workload</b>			
\$ millions	160	143	143
Annual change	12%	nil	-1%
<b>Revenue collected for the Commonwealth up</b>			
\$ millions	379	363	361
Annual change	4%	1%	9%
<b>Successful court results remained above 70% target*</b>			
Litigation concluded	205	150	173
% successful	92%	71%	75%
<b>More investigations</b>			
Annual change	246 15%	214 7%	200 -3%
<b>More dealers, advisers, fund managers, insurance brokers licensed</b>			
Total licences, registrations on issue	4,040	3,917	3,705
Annual change	3%	6%	9%
<b>More inadequate prospectuses stopped</b>			
Stop orders issued	96	81	n/a
Prospectuses and offer documents**	2,089	2,744	1,033
Annual change	-24%	166%	46%
<b>Complaints about financial and corporate misconduct up</b>			
Annual change	7,827 13%	6,946 26%	5,534 5%
<b>Use of our databases increased</b>			
Free website browses	6,135,856	4,626,700	3,214,852
Annual change	32%	44%	n/a
<b>ASIC websites used more often</b>			
Visits to www.asic.gov.au	3,365,000	2,366,000	1,777,000
Visits to our consumer site www.fido.asic.gov.au	488,000	241,000	58,000
<b>% company data lodged on time</b>			
Annual change	93% nil	93% -1%	94% 1%
<b>Infoline answered more phone calls</b>			
Annual change	161,000 30%	123,000 15%	107,000 3%

\* Prior year figures understated success rate, see page 25.

\*\* More than one prospectus can exist for the same product, for example 576 short form prospectuses received incorporated a long form prospectus for the same product.

*Three years' results and a summary of ASIC's new three year plan for 2002–05*

# Plan for 2002–05

Objectives	What we plan to deliver over next 3 years
<b>Fight fraud and misconduct.</b>	<ul style="list-style-type: none"><li>• Manage high profile investigations to achieve timely and successful results.</li><li>• Seek Government and Parliamentary support for more flexible enforcement remedies where appropriate.</li><li>• Act against misleading and deceptive conduct affecting consumers.</li><li>• Promote public awareness about scams and fraud as part of our consumer education strategy.</li></ul>
<b>Raise standards in financial services and further build our expertise.</b>	<ul style="list-style-type: none"><li>• Achieve consistent regulation and consumer protection by successfully implementing financial services reforms.</li><li>• Offer industry a smooth transition and adjust our policies if required.</li><li>• Raise standards through effective licence assessment, policy, surveillance, industry campaigns and targeted enforcement.</li><li>• Help consumers make more informed decisions about their superannuation.</li><li>• Maintain confidence in superannuation and insurance by improving sales and disclosure practices and by increasing our expertise.</li><li>• Enhance confidence in Australian financial markets through effective market regulation, transparency and accountability.</li></ul>
<b>Make a greater impact in the board room and improve the financial system.</b>	<ul style="list-style-type: none"><li>• Encourage a culture of disclosure and compliance by directors and others with financial reporting and audit obligations.</li><li>• Encourage improved corporate governance and greater compliance with Corporations Act.</li><li>• Contribute to better financial reporting and auditing by participating in international and domestic standard setting.</li><li>• Assist Australian market operators and financial service providers in global markets by effective cross border regulation.</li><li>• Maintain Australia's relevance as a capital market for our corporations by influencing global standards.</li><li>• Reduce compliance burden on companies by implementing law reform when enacted.</li><li>• Assist law reform proposals on corporate insolvency, and implement those reforms if enacted.</li><li>• Prepare and implement an ASIC-wide framework for knowledge management processes and technologies.</li></ul>
<b>Detect and act on early warning signs.</b>	<ul style="list-style-type: none"><li>• Reduce risk and protect the public by identifying systemic problems earlier and acting promptly.</li><li>• Conduct and publish research about markets and financial services to inform public debate and influence law reform.</li><li>• Advise Government on our responsibilities and funding.</li></ul>
<b>Maintain optimal funding, relevance and efficiency.</b>	<ul style="list-style-type: none"><li>• Improve our electronic interface with stakeholders.</li><li>• Improve access to and maintenance of Australia's corporate database through technology and streamlining back-office processes.</li><li>• Increase internal efficiencies, especially in infrastructure costs.</li></ul>



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## Where ASIC fits in the regulatory picture

In this section:

- who we regulate
- how we regulate them

ASIC regulates companies and financial services, and promotes investor, creditor and consumer protection under the *Australian Securities and Investments Commission Act 2001*; *Corporations Act 2001*; *Insurance Act 1973*; *Insurance (Agents and Brokers) Act 1984*; *Insurance Contracts Act 1984*; *Superannuation (Resolution of Complaints) Act 1993*; *Life Insurance Act 1995*; *Retirement Savings Accounts Act 1997*; and the *Superannuation Industry (Supervision) Act 1993*.

In summary, the ASIC Act requires us to:

- uphold the law uniformly, effectively, and quickly
- promote confident and informed participation by investors and consumers in the financial system

- make information about companies and other bodies available to the public
- improve the performance of the financial system and entities within it.

Two other Commonwealth government bodies regulate Australia's financial system:

- Australian Prudential Regulation Authority (APRA) regulates prudent management of deposit taking institutions, insurance companies, and larger superannuation funds.
- Reserve Bank of Australia (RBA) regulates monetary policy and the stability of the financial system.

*“ASIC regulates companies and financial services, and promotes investor, creditor and consumer protection”*



## Who we regulate    How we regulate them

---

<b>1.25 million companies</b>	<p>Investigate and act against misconduct by company directors and officers.</p> <p>Grant or refuse their requests for relief from the law.</p> <p>Receive prospectuses before money is raised.</p> <p>Uphold the law on financial reporting and company mergers and acquisitions.</p> <p>Register each company with a unique number, and record the number, name, directors and other information on a public register.</p>
<b>Australian Stock Exchange Ltd</b>	<p>Investigate and act against misconduct by listed companies, brokers and traders.</p>
<b>Sydney Futures Exchange</b>	<p>Advise the Minister about rule changes and whether to approve new markets.</p>
<b>Other financial markets authorised by the Minister</b>	<p>Monitor what ASX Ltd does as a listed company, and trading in its shares.</p>
<b>Financial services businesses, including fund managers, stockbrokers, financial advisers, insurance brokers</b>	<p>License them before they start operating.</p> <p>Set standards for education, training and operations.</p> <p>Investigate and act against misconduct.</p> <p>Record their details and their authorised representatives on a public register.</p>
<b>Superannuation funds</b>	<p>Report on how they comply with codes of practice.</p>
<b>Life and general insurance companies</b>	<p>Approve consumer complaint resolution schemes.</p>
<b>Deposit taking institutions</b>	<p>Investigate and act against misconduct.</p> <p>Co-operate with APRA.</p>
<b>Registered managed investment schemes</b>	<p>Register them before they start operating.</p> <p>Investigate and act against misconduct.</p> <p>Record their details and the names on a public register.</p>
<b>Credit providers</b>	<p>Investigate and act against misleading and deceptive conduct.</p> <p>Co-operate with State and Territory regulators.</p>
<b>Company auditors and liquidators</b>	<p>Register them before they start operating.</p> <p>Investigate and act against misconduct.</p>

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## Description of ASIC directorates

	Enforcement	Financial services regulation	Market regulation and policy
<b>Staff**</b>	318 staff	146 staff	109 staff
<b>Role</b>	Investigate and act against misconduct.	Regulate financial advice and retail financial products.	Regulate markets, fundraising, takeovers and financial reporting; develop policy.
<b>Key events</b>	Global markets shaken by failings in financial reporting and governance.	Financial Services Reform Act commenced March 2002.	Australian market performed well, compared with significant declines overseas.
<b>Results</b>	<p>19 people jailed for 74 years; 20 directors fined or banned; 35 banned from financial services.</p> <p>Successful court proceedings on HIH, Harris Scarfe, British Marine Bank scam, Yandal.</p> <p>15% increase in investigations, with numerous large matters on hand.</p>	<p>Financial services reform project delivered guidance, online licensing and advice on time.</p> <p>Wound up failed solicitors mortgage schemes, reduced defaults to manageable levels.</p> <p>Action on high commission advisers: licences revoked, 27 advisers inspected.</p>	<p>Stricter standards on forecasts in equity prospectuses resulting in 77 stop orders.</p> <p>Spoke out on audit independence and financial reporting.</p> <p>Developed 9 policy and guidance papers to implement financial services reform.</p>
<b>Targets for next 3 years</b>	<p>Manage high profile cases and achieve successful outcomes.</p> <p>Seek more flexible enforcement remedies.</p> <p>Act against misleading conduct affecting consumers.</p>	<p>Achieve consistent industry regulation and consumer protection.</p> <p>Offer a smooth transition for financial services reforms.</p> <p>Use licensing and surveillance to raise industry standards.</p>	<p>Encourage a culture of disclosure and strengthen corporate governance.</p> <p>Greater transparency and accountability in our markets.</p> <p>Influence global standards to maintain Australia's relevance as a capital market</p>

\* The work of these directorates received substantial support from other directorates.

\*\* Full time equivalents, not including 23 staff supporting the Commission, General Counsel, Chief Accountant and 32 supporting the Superannuation Complaints Tribunal and other statutory bodies.

\*\*\* Includes 16 full time graduates working for other Directorates

Consumer protection*	International & regional coordination*	Public and commercial services	Infrastructure and strategic planning
18 staff	11 staff	332 staff	295 staff***
Identify and act on consumer issues, approve complaints schemes, review codes of practice.	Coordinate international matters, State and Territory offices.	Maintain company database, assess public complaints, answer phone enquiries, sell imaging services.	IT and knowledge management, HR, finance, management services and strategic planning.
ASIC consumer education strategy launched to promote financial literacy.	Asian authorities acted on international cold calling investment scams.	Government announced further streamlining of company law.	Government reviewed and increased ASIC funding.
Corrected misleading past performance advertising and denial of travel insurance claims. Reported on combating international cold calling investment scams costing Australians about \$400 million. New Electronic Funds Transfer Code launched, increasing consumer protection.	Prompted action by overseas authorities against cold calling scams. Handled 304 requests for international assistance. Maintained regional service levels in all States and Territories.	Free internet searches increased by 32%  Assessed 7,827 public complaints about corporate misconduct, up 13%.  Increased help to those reporting misconduct: 50% resolved, up from 37% last year.	Managed \$160 million in expenditure and \$379 million in revenue.  Benchmarked costs and outputs with public, private and international counterparts.  Commission approved new 3 year Strategic Plan, and doubling funds for staff development.
Promote public awareness of domestic and international scams and fraud. Consumers make more informed decisions about superannuation. Reduce risk by identifying systemic problems, and acting promptly.	Work on international standards of disclosure, audit, clearing and settlement. Improve international enforcement capacity. Maintain regional service levels in all States and Territories.	Further improve access to, and maintenance of, Australia's corporate database. Implement new national structure for assessing rising numbers of public complaints. Implement law reform affecting small companies, if enacted.	Develop and implement knowledge management strategies. Extend our electronic interface with stakeholders. Increase internal efficiencies and accountability for costs.

## Commissioners



### David Knott

LLB

ASIC Chairman from November 2000 for a five year term.

David Knott is a lawyer and Fellow of the Australian Institute of Company Directors. In 2002 he was elected Chairman of the Technical Committee of the International Organisation of Securities Commissions. Member: Companies and Markets Advisory Committee, Council of Financial Regulators, Steering Committee to establish an Australian Crime Commission. Previously ASIC Deputy Chairman from July 1999.

His career covers 13 years in private legal practice, specialising in company and commercial law, 10 years in senior roles in investment banking, and nine years in the public sector. He has been a partner at Arthur Robinson and Co, Senior Executive Director Capel Court, Executive Director of the Australian Financial Institutions Commission, Chief Executive of Commonwealth Funds Management and Chief Operating Officer of APRA.



### Jillian Segal

BA, LLB, LLM (Harv.)

ASIC Deputy Chair from November 2000 until 28 June 2002.

Jillian Segal is a lawyer and Fellow of the Australian Institute of Company Directors. She was previously ASIC Commissioner from October 1997.

She has been Special Counsel at Dunhill Madden Butler advising on issues management, a partner and consultant to Allen, Allen and Hemsley, and a company director with particular experience in financial services. She was a Professorial Fellow in the Faculty of Law at the University of Wollongong, a member of the legal sub-committee of the Companies and Securities Advisory Committee and a member of the consultative committee for the Corporate Law Simplification project.



## Berna Collier

BA, LLB (Hons)(Qld), LLM (Melb)

ASIC Commissioner from November 2001 for a three year term.

Professor Berna Collier is a lawyer and a member of the Insolvency, the Company Law and the Banking and Finance Committees of the Law Council of Australia. She serves on the Advisory Board of Axiss Australia, and as ASIC's nominee on the board of the Australian Prudential Regulation Authority.

She has worked in and written extensively about commercial and insolvency law for 15 years, both in the professional and university environment. Professor Collier was most recently Professor of Commercial Law at the Queensland University of Technology and an educational consultant with CPA Australia. She previously practised law in Melbourne and Brisbane. During 1999 and 2000 Professor Collier chaired the federal government Taskforce on Industry Self-Regulation.



## Ian Johnston

Acting Commissioner from June to November 2001 (and from July 2002).

Ian Johnston is a lawyer and is ASIC Executive Director, Financial Services Regulation. He previously served in senior ASIC roles, and has been a company director in the financial services sector and CEO of a major trustee company. He served as Acting Commissioner until the appointment of Professor Collier. (In July 2002, the Treasurer appointed him to act until the appointment of a Deputy Chair.)



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## ASIC governance, ethics and audit

In this section:

- governance
- Commissioners' appointment and remuneration
- reporting to Parliament
- role of the responsible Minister
- role of State Ministers
- ethics
- fraud control
- investigating complaints about staff
- indemnity and insurance policies
- audit

*"ASIC staff are subject to the Values and Code of Conduct specified in the Public Service Act 1999."*

### Governance

Three full time Commissioners directed ASIC's affairs, making formal decisions at 17 Commission meetings.

Commissioner	Eligible to attend	Attended
David Knott	16	15
Jillian Segal	17	17
Berna Collier	11	11
Ian Johnston (acting)	5	5

Our operations are organised into seven directorates, managed by Executive Directors reporting to the Commission. Commissioners and Executive Directors together formed an Executive Committee that met fortnightly and identified and managed significant issues and risks.

Independent legal and accounting experts advised on specific matters. All Commissioners are legally qualified, but where necessary an individual Commissioner may obtain independent legal advice at ASIC expense.

### Commissioners' appointment and remuneration

The Governor-General, on the nomination of the Minister, appointed Chairman David Knott and Deputy Chair Jillian Segal in November 2000 and Professor Berna Collier in November 2001 on fixed terms that may be terminated earlier only for reasons set out in section 111 of the ASIC Act.

The Remuneration Tribunal set Commissioners' remuneration; see also page 107.

### Reporting to Parliament

Commissioners reported to Parliament and the responsible Minister on ASIC's performance.

We appeared six times before three Commonwealth Parliamentary Committees: the Parliamentary Joint Committee on Corporations and Financial Services twice, the Senate Economics Committee three times, and the Senate Select Committee on Superannuation and Financial Services once.

We submitted an annual report and responded to inquiries on behalf of constituents.

### Role of the responsible Minister

The Ministers responsible for ASIC are the Treasurer, the Hon Peter Costello MP and, in matters determined by him, the Parliamentary Secretary to the Treasurer, Senator the Hon Ian Campbell (from December 2001; previously the Hon Joe Hockey MP, Minister for Financial Services and Regulation).

Under section 12 of the ASIC Act, the responsible Minister may direct ASIC about policies and priorities in using our powers or performing our functions, but he must not direct us about a particular case.



Under section 14, he may direct us to investigate suspected contraventions or other particular matters. He gave no directions this year. Only one has ever been given, in September 1992, about collaboration, consultation and resolving issues between us and the Director of Public Prosecutions in the investigation and prosecution of serious corporate wrongdoing.

Under section 28 of the Commonwealth Authorities and Companies Act, the Minister may also notify Commissioners in writing of general policies of the Commonwealth Government that are to apply to ASIC. No such notifications were received. The Minister approved contracts exceeding \$250,000 as required by our legislation.

Commissioners met regularly with the Parliamentary Secretary. We also briefed the Treasury about current issues and proposed changes to the law.

## Role of State Ministers

Commissioners appointed Regional Commissioners in consultation with the relevant State and Territory Ministers, and submitted half yearly reports on our performance to those Ministers. We attended the Ministerial Council on Corporations, comprising Commonwealth, State and Territory Ministers, as an observer and to answer questions.

## Ethics

ASIC staff are subject to the APS Values and Code of Conduct specified in the *Public Service Act 1999*.

Formal procedures require disclosure of any real or apparent conflict of interest. Commissioners and staff are required to take no part in decisions where real or apparent conflicts of interest may arise. We set up special reporting and decision making procedures to maintain the integrity of our decisions.

The Chairman and Commissioners disclosed to the Minister all direct or indirect pecuniary interests in businesses, companies, or financial products regulated by ASIC.



# ASIC governance, ethics and audit

Staff were required to keep registers of interests at work that supervisors may inspect at any time.

Commissioners appointed senior disclosure officers to advise managers and staff on how to handle possible conflicts.

To safeguard confidential information, strict procedures reinforced the ASIC Act and the criminal law.

unsubstantiated, one complaint partially substantiated, two complaints were withdrawn and four complaints are still under investigation.

The partially substantiated complaint concerned poor service during a recruitment process. The staff involved have been counselled. Of the one matter under investigation at 30 June last year, the complaint was unsubstantiated. We informed complainants of the outcome.

## Fraud control

ASIC assessed the risks it faces from fraud and produced a fraud control plan for 2001-03. The Attorney-General's Department approved our software, risk assessment methodology and the fraud control plan.

The plan outlines the strategies and processes to avoid, detect, investigate and minimise the effects of fraud. We adopted reporting and data collection mechanisms that meet our needs and comply with Commonwealth Fraud Control Guidelines.

## Investigating complaints about staff

To maintain public confidence in our staff and how they used their powers, we maintained formal inquiry procedures to investigate serious complaints.

We received 14 complaints this year, seven more than last year. The majority of the complaints alleged professional misconduct. Seven complaints were found to be

## Indemnity and insurance policies

Consistent with the Commonwealth Authorities and Companies Act, ASIC

- entered into (a) indemnity agreements with Commission members for liabilities, including legal costs, incurred by them in the course of the conduct of their duties; and (b) indemnity agreements with former ASIC representatives on the APRA Board for their legal costs in respect of the HIH Royal Commission. ASIC paid \$20,483 under one of these latter agreements.
- paid a premium of \$30,400 for Directors and Officers' insurance and Employment Practices insurance, which covered all current and former Commission members and ASIC staff members for liabilities, including legal costs, incurred by them in the performance of their duties.

## Audit

The Commonwealth Auditor-General audited ASIC's financial statements, see page 80.

The Commission's Audit Committee examined internal and external audit matters and risk assessment, see page 72. The independent Chair, Ms Merran Kelsall, is a senior chartered accountant and company director in private practice. The Deputy Chair is also independent. The Committee's charter conforms with Australian National Audit Office and Australian Institute of Company Directors guidelines.

# 9

## Community involvement

In this section:

- supporting a consumer voice
- building relationships
- consulting regions and business
- meeting investors and consumers
- computers for schools
- supporting professional standards

*“More than 4,500 people attended ASIC Speaks seminars about implementing the Financial Services Reform Act.”*

### Supporting a consumer voice

We funded a 10 member Consumer Advisory Panel including consumer and investor advocates experienced in financial services and an independent Chair to recommend research, alert us to issues and comment on policy affecting investors and consumers. Read the Panel’s report on page 50. We also consulted other investor and consumer organisations.

### Building relationships

In November 2001, we organised a consumer–industry forum about consumer complaints handling in financial services. Representatives attended from about 50 organisations.

We ran our seventh Summer School on ‘Changes in the Financial Services Landscape: Improving Investor Confidence’, led by international and Australian experts. The five day School strengthened relationships between 95 local and overseas participants from the consumer movement, financial services organisations, government and our own staff.

### Consulting regions and business

To ensure that we understand specific needs in all the States and Territories, we convened seven Regional Liaison Committees representing the business community in each State and Territory. They met on average four times, received information on our performance and service, and offered ideas. A Commissioner usually attended these meetings.

We met regularly with about 18 peak industry and professional associations, and consulted other organisations, companies and professionals, and helped thousands of directors and professionals over the phone.

We invited comment on proposed policies. More than 4,500 people attended ASIC Speaks seminars about implementing the Financial Services Reform Act.

### Meeting investors and consumers

Our Regional Commissioners and Consumer Protection Directorate coordinated ASIC stalls at investment expos, and we ran a series of seminars in rural Western Australia with the Institute of Chartered Accountants.

## Computers for schools

Following a recent upgrade of ASIC's personal computers, we donated old PCs to primary schools, as part of an Australian Public Service initiative, to encourage students' computer skills.

## Supporting professional standards

To encourage professional education in the financial industry, we sponsored prizes for two Securities Institute courses: Financial Markets Law, Regulation and Compliance, Superannuation and Retirement Planning and the ASIC prize in Corporate Law at University of Wollongong.