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## Priority 1 – Confident and informed investors and financial consumers



### Engagement with stakeholders

Our stakeholders in the Investors and Financial Consumers area are diverse, and this is reflected in the number and range of meetings and events we held in 2012–13. These ranged from a series of national roadshows on financial education for young people to briefings on the implementation of the Future of Financial Advice (FOFA) and Stronger Super reforms. Teams in the Investors and Financial Consumers cluster held a total of 281 meetings with industry groups, ranging from the Financial Services Council and Financial Planning Association to the Property Council of Australia.

In 2012–13 ASIC released 18 consultation papers relating to Priority 1. These covered topics such as managed discretionary accounts, risk management systems of responsible entities, strengthening arrangements for holding of scheme property and other assets, and review of the National Financial Literacy Strategy.

### Financial advisers

#### Taking the lead on FOFA reforms

The FOFA reforms aim to tackle conflicts of interest that have threatened the quality of financial advice. The FOFA reforms include the introduction of a best interests duty, a ban on conflicted forms of remuneration, an opt-in requirement for ongoing fee arrangements, and changes to ASIC's licensing and banning powers. Some elements of the reforms came into force on 1 July 2012 and compliance is mandatory from 1 July 2013.

ASIC took a lead role in informing stakeholders about the FOFA reforms, hosting roadshows during February and March 2013 in Brisbane, Sydney, Melbourne, Adelaide and Perth. The roadshows, hosted in conjunction with the Financial Services Institute of Australia, were well attended, with over 1,200 industry participants.

Senior ASIC staff outlined the FOFA regulatory requirements and also resolved some common misconceptions, working through the top 10 FOFA 'myths'. The roadshows included a panel session with industry leaders and participants discussing implementation issues arising from the reforms.

#### Financial adviser training and assessment

ASIC's ongoing work to improve the competence of financial advisers continues. In 2012–13 we worked on enhancing the minimum training standards for advisers. In June 2013 we released a consultation paper with recommendations such as improving generic and specialist knowledge requirements for financial planning, securities and superannuation, skill requirements for personal advice, and education level requirements for all advisers. ASIC also sought feedback on the timetable to implement the new standards and the appropriate training standards for providers of personal sickness and accident insurance and consumer credit insurance.

ASIC strongly supports the introduction of a national examination for financial advisers; however, in April 2013 we announced the decision to defer implementation of the proposed national examination. This decision was made to allow appropriate time for other reforms, such as the FOFA reforms, to be implemented effectively.



### Engagement with new advisers

In 2012–13, 97 new AFS licences were issued with an authorisation to provide personal financial advice to retail clients. With a view to educating and informing advisers from the outset, ASIC visited 24 of these new licensees to build relationships and to help them understand and meet their obligations. During the visits, we asked questions about the AFS licensees' general business model, advice processes and their approach to risk and compliance. There was considerable discussion about the FOFA reforms. Given the positive feedback received, we propose to conduct similar visits during the next financial year.

### Trans-Tasman mutual recognition

ASIC and New Zealand's Financial Markets Authority announced mutual recognition arrangements for Australian and New Zealand financial advisers in July 2012. The recognition arrangements mean individual financial advisers will be able to provide services in both countries. The agreement is a further step towards a more dynamic single economic market between Australia and New Zealand.

The Stronger Super reforms aim to create a new simple, low-cost default superannuation product

### Investment managers and superannuation

#### Working collaboratively on Stronger Super

The Stronger Super reforms aim to create a new simple, low-cost default superannuation product, make the processing of everyday transactions easier, cheaper and faster, and strengthen the governance and integrity of the superannuation system. ASIC has engaged with the industry to facilitate the orderly introduction of the Stronger Super reforms. Our engagement with key stakeholders included:

- ♦ regular liaison meetings with industry to identify emerging issues, as well as roundtable meetings with industry in November 2012
- ♦ participation in a national roadshow in October 2012 to explain the new disclosure requirements, including the requirements of the new product dashboard for consumers.

ASIC issued regulatory guidance to help SMSF auditors through the registration process that started on 31 January 2013 and set ongoing competency standards. By 30 June 2013 we had registered 5,935 SMSF auditors.

With the assistance of industry representatives, we developed a competency exam, to be taken by all auditors registering after 1 July 2013. The exam is available at locations across Australia.

ASIC's continued work on Stronger Super also involves providing specialist policy advice to Treasury, and working closely with our co-regulators in superannuation, APRA and the ATO.

# Priority 1 – Confident and informed investors and financial consumers *continued*

## Promoting an efficient AQUA market

ASIC continued its engagement with the ASX and industry to promote a robust, orderly and efficient AQUA market, the ASX market for the quotation of managed funds and structured products. We reviewed a number of product disclosure statements and granted relief to issuers to facilitate quotation of exchange-traded funds (ETFs) on the AQUA market. In December 2012 we issued a consultation paper on streamlining the class relief to quote ETFs on AQUA. We also continued discussions with ASX and industry on potential enhancements to AQUA rules, to ensure the suitability of products admitted to quotation on AQUA and ongoing disclosure in respect of those products.

## Deposit-takers, credit and insurers

ASIC continued to work closely with Treasury on the development of the national consumer credit regime, and to assist industry with the implementation of new obligations. Following the introduction of new requirements for lenders responding to financial difficulty experienced by their customers, we consulted on appropriate requirements for 'simple' hardship arrangements.

## Investment banks

ASIC's Investment Banks team launched a new initiative, the Business Liaison and Engagement Program, intended to establish and maintain a proactive engagement with the investment banks' senior business decision-makers and responsible managers.

The program is designed to ensure that ASIC is well-informed on material business changes and culture across the investment banking sector and can identify emerging risks to the fair and efficient operation of the Australian financial markets. Since the program commenced in September 2012 the Investment Banks team has undertaken 42 meetings across 18 investment banks.

## Other engagement – granting relief

ASIC seeks to facilitate business transactions by granting relief from the Corporations Act and National Credit Act where there is a net regulatory benefit, or any regulatory detriment is minimal and is outweighed by the commercial benefit. We received 1,071 applications for relief in 2012–13 relating to Priority 1.

Of these, 616 have been approved, 172 refused, 81 withdrawn and 202 are under consideration.

## Surveillance

As part of our pro-active approach, ASIC undertakes extensive surveillance to monitor the activities of individuals and entities within the populations we regulate (see pages 16–17).

We take a risk-based approach, identifying significant and strategically important key industry participants or 'gatekeepers' to analyse and directing surveillance resources toward the risks that pose the greatest threat.

## Financial advisers

ASIC's proactive, risk-based approach to surveillance of financial advice continued in 2012–13, this year focusing on SMSFs, capital guaranteed products and completing Phase 2 of our review of financial advice industry practice (focusing on the top 21–50 advice licensees). ASIC also continued reactive surveillance work, primarily as a result of reports of alleged misconduct provided by the general public, breach reports from licensees and auditors, and statutory reports from liquidators, administrators and receivers.

As a result of this work ASIC:

- ♦ reviewed 521 pieces of financial advice
- ♦ cancelled six AFS licences for failure to comply with the obligations of a financial advice business
- ♦ accepted an enforceable undertaking from Macquarie Equities Limited, following our identification of recurring compliance deficiencies (see also p. 33)
- ♦ banned four advisers
- ♦ imposed licence conditions on two AFS licensees
- ♦ contacted financial advice licensees who had failed to lodge annual financial statements and audit reports by the due date, resulting in compliance from 29 AFS licensees and cancellation of 14 AFS licences at the request of the licensee.

## Investment managers and superannuation

ASIC's proactive risk-based surveillance focused on responsible entities and superannuation trustees and their compliance with their AFS licence obligations, a review of compliance with new financial resource requirements and reviews of product disclosure statements (PDSs), notably agribusiness disclosure as well as the new shorter PDS requirements. The outcomes of these reviews have included changes to disclosure and compliance practices for trustees and responsible entities.

ASIC also monitored the advertising of responsible entities and super trustees. We obtained corrective disclosure, for example, where risks were not clear, or where messages were unbalanced and too heavily in favour of benefits.

In July 2012 ASIC released a report on custodial and depository services in Australia following a review of the industry. In September 2012 ASIC released a report on our proactive surveillance of the adequacy of risk management systems of responsible entities, and in December 2012 we released a report on our proactive review of managed investment schemes that are money market funds.

We also undertook a review of disclosure made by defined benefit fund trustees. In January 2013 we issued an advisory to the industry suggesting that trustees could provide members with further information about the financial position of funds.

ASIC undertook reactive surveillance including of managed investment schemes in stress (e.g. frozen funds or entities in administration). This surveillance work led to a number of enforcement outcomes, including 10 licence cancellations, six licence suspensions, one banning, improvements in disclosure to investors and rectification of a number of significant breaches.

As part of an international effort coordinated by IOSCO, ASIC undertook a systemic risk survey of its 16 largest hedge fund managers. The aggregated results were used by IOSCO in their global analysis of the sector's potential systemic risk. A report of these global findings is expected to be presented to the Financial Stability Board in late 2013.

## Deposit-takers, credit and insurance

In the third year of the consumer credit regime, ASIC continued its focus on ensuring that consumers could commit to and use credit with confidence.

### Credit providers

In September 2012 ASIC launched a targeted surveillance campaign to identify entities engaging in consumer credit activities without a licence. In three months ASIC checked 90 unlicensed entities who appeared to be engaging in activities that require an Australian credit licence. One person was convicted of unlicensed trading. This initiative raised awareness for those in the industry of the requirement to hold a credit licence.

By checking that credit licensees submit true and complete annual compliance certificates, ASIC can identify any false statements and determine whether enforcement action is required. In the period from 1 March to 30 June 2013, ASIC conducted surveillance activities on annual compliance certificates lodged by 53 credit licensees.

### Responsible lending – a focus on mortgage brokers

In March 2013 ASIC released a review of licensed credit assistance providers' monitoring and supervision of credit representatives. The review, which covered 18 credit licensees responsible for over 60% of mortgage broker representatives, prompted significant improvements to credit licensees' controls to ensure their representatives comply with national responsible lending laws. Our work saw improvements such as licensees commencing regular formal reviews of their representatives' compliance, upgrading IT systems to better track credit and ensuring direct access to representatives' assessments of whether a credit contract would be unsuitable.

# Priority 1 – Confident and informed investors and financial consumers *continued*

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## **Funeral insurance**

Research commissioned by ASIC found that consumers did not understand some of the key features of funeral insurance, including age-based increases in premiums, total cost when compared to the real cost of a funeral, and the result of missing payments. In response to these concerns, ASIC reviewed funeral insurance advertising and took action against a leading insurer.

## **Comparison website review**

ASIC has continued its focus on reviewing those financial product comparison websites that only compare a limited number of providers without disclosing this to consumers.

ASIC focused particularly on insurance comparison websites that were operated by entities related to some of the insurance brands being compared, without disclosing that fact clearly. Those operators have improved the disclosure on their websites. In response to ASIC's concerns, one operator (JustEzi Pty Ltd) removed its online material.

## **Advertising credit products**

ASIC paid close attention to how financial products and credit were advertised during the year, to help ensure consumers could make informed financial decisions based on sound information.

ASIC's action during the year resulted in over 120 advertisements for credit, insurance and deposit products being withdrawn or amended. A particular focus was on advertising by payday lenders that does not accurately represent the cost of credit. We will also be targeting misleading advertising and sales practices by product issuers, in order to protect consumers searching for yield from the dangers associated with higher-risk products.

**ASIC's action resulted in over 120 advertisements for credit, insurance and deposit products being withdrawn or amended**

## **Investment banks**

ASIC completed the review of eight investment banks out of the 24 identified in our current stakeholder population. These included reviews of the investment banks' compliance and corporate governance frameworks, new product approval processes, and controls for managing conflicts of interest and confidential information. ASIC also completed targeted reviews focusing on governance and supervisory frameworks for outsourced arrangements that may materially impact compliance with an AFS licensee's obligations.

The investment banks generally accepted our observations on areas that could be improved and took appropriate remedial action.

## **Other surveillance**


In addition to establishing our Complex Products Working Group, aimed at reducing the risk of unsuitable products being mis-sold to investors, we undertook targeted surveillance on a range of complex products currently offered in the Australian market.

## **Hybrid products**

Offers of hybrid securities raised more than \$10 billion in 2012–13. ASIC continued its response to the increased issuance and popularity of hybrids by working with issuers and their advisers to improve prospectus disclosure and ensure selling messages are not misleading, and by providing investor warnings and education through the media and on our MoneySmart website.

## **'Capital protected' and 'capital guaranteed' products**

In May 2013 ASIC released a 'health check' report on the market for unlisted and unquoted 'capital protected' and 'capital guaranteed' retail structured products. The report found that, in some cases, the labelling and description of certain structured products as 'capital protected' could create a perception of safety that is inconsistent with the products' risks. It also found that the use of phrases such as 'conditional capital protection' or 'contingent protection' may be misleading for certain investments where capital is at risk.



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Since the report's publication, ASIC has seen changes from a number of product issuers and advice providers in the promotion of structured products.

### **Issuers of CFDs and FX contracts**

ASIC completed its review of the client money handling and reconciliation practices of 40 issuers of CFDs and FX contracts. The review identified a number of weaknesses, including 18 issuers who failed to properly designate client accounts as trust accounts, 11 issuers who failed to move money into a client money account within one business day of receiving it and 19 issuers with no formal escalation process for resolving variances in reconciliation. In April 2013, ASIC accepted an enforceable undertaking from City Index Pty Ltd relating to deficiencies in its client money handling practices (see also p. 34).

### **OTC derivative issuers**

In July 2012, ASIC announced changes to the financial requirements for licensees who issue over-the-counter (OTC) derivatives to retail clients, including CFDs and FX contracts, to help ensure that they have the resources to manage operational risks and compliance obligations.

The changes aim to ensure these AFS licensees have adequate financial resources to operate their business in compliance with the Corporations Act and manage operational risks. They were introduced after an ASIC review of this sector found that poorly resourced issuers of retail OTC derivatives are less likely to carry out adequate supervisory arrangements and are more likely to encounter compliance breaches. Under the new requirements issuers are required to hold net tangible assets of the greater of \$500,000 or 5% of average revenue, rising to \$1 million or 10% of average revenue from 31 January 2014.

The increase to the minimum financial requirements for retail OTC derivative issuers also brings Australia in line with comparable jurisdictions, such as the United Kingdom and Singapore.

During 2012–13 we reviewed 42 issuers' compliance with the enhanced financial requirements, in the process improving nine issuers' deficient financial calculation, forecasting or risk management practices.

## **Guidance – setting rules, standards and expectations**

### **Financial advisers**

#### **FOFA reforms**

To help industry comply with the new requirements of the FOFA reforms, during 2012–13 ASIC released a suite of both new and updated regulatory guides. The regulatory guides cover complying with the best interests duty, understanding the various obligations in relation to giving information, general advice and scaled advice, understanding the practical operation of the ban on conflicted remuneration, guidance on how ASIC will apply its existing code approval guidelines to codes that remove the need for compliance with the opt-in requirement, and the fee disclosure statement obligations that will apply to AFS licensees and their representatives under the FOFA reforms.

### **Investment managers and superannuation**

#### **Stronger Super**

For the MySuper and disclosure aspects of the Stronger Super reforms, we have issued information sheets in relation to intra-fund advice, disclosure of transfers to the new MySuper default fund arrangements, new obligations for trustees to distribute consistent information about their funds, as well as refreshing some existing guidance on transfers without consent. We have also created a dedicated webpage to answer frequently asked questions about Stronger Super, including MySuper, product dashboard and portfolio holdings disclosure requirements.

# Priority 1 – Confident and informed investors and financial consumers *continued*

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## **Self-managed super**

ASIC has focused on providing guidance in relation to SMSFs, because of the rapid growth in this sector and the importance of ensuring that consumers are financially secure in retirement. In April 2013 ASIC released a report with practical tips to improve the quality of advice given to investors. The practical tips guide was developed after seeing improvements that could be made following the surveillance of 18 entities providing a financial service involving SMSFs and a review of over 100 investor files.

We also produced a consumer information brochure for distribution to members who request a rollover to an SMSF.

## **Hedge funds – ‘if not, why not’ benchmarks**

ASIC issued a regulatory guide in September 2012 which sets out a number of ‘if not, why not’ benchmarks and principles on disclosures that hedge fund managers should make to their investors, given the more complex nature and higher risks posed to investors.

## **Investment platforms**

Following a review of the investment platform sector, ASIC issued updated guidance and new class orders in June 2013 to strengthen disclosure requirements.

Platforms can assist retail investors to manage their investment portfolios, including through their advisers. Platform operators now have around \$90 billion in funds under management.

ASIC has moved to require platform operators to explain how they choose the different products on offer to investors through their platforms and made changes so that investors who invest through a platform are adequately protected compared with direct investors.

## **Custodial or depository service providers**

ASIC also strengthened the financial requirements for custodial or depository service (custody) providers. As at December 2012, approximately \$2.065 trillion of assets of Australian investors were held in custody. Under the changes, custodians will be required to hold net tangible assets amounting to the greater of \$10 million or 10% of average revenue.

## **Deposit-takers, credit and insurance**

Clear, accurate and balanced advertising is key to ensuring investors and financial consumers are confident and informed. In November 2012 ASIC expanded its regulatory guidance on advertising financial products and services to include guidance and best-practice examples relating specifically to credit products and services. The guidance is intended to help industry participants avoid engaging in misleading or deceptive conduct.

## **Education**

ASIC hosted a National Financial Literacy Forum in April 2013, attended by 140 stakeholders from the business, community, education and government sectors, as the first stage of consultation on a new National Financial Literacy Strategy for 2014–16.

## **MoneySmart Teaching**

ASIC’s MoneySmart Teaching team spent much of the year implementing the trial phase of MoneySmart Teaching under the Helping Our Kids Understand Finances initiative. The trial phase finished on 30 June 2013 and work has now begun to expand MoneySmart Teaching over the next four years.

During this year, over 90 MoneySmart schools across Australia trialled the MoneySmart Teaching Primary and Secondary professional learning packages. Approximately 8,000 teachers received professional learning, well exceeding the target of 6,000 teachers.

The MoneySmart Teaching website is resource-rich for educators and parents. It is aligned to the Australian Curriculum, with resources including professional learning packages, digital activities and videos.

# MoneySmart Teaching



Over 90 schools across Australia trialled the MoneySmart Teaching Primary and Secondary materials in 2012–13



## Priority 1 – Confident and informed investors and financial consumers *continued*

### MoneySmart Rookie

Following the major success of the MoneySmart website, in June 2013 ASIC launched MoneySmart Rookie, ASIC's flagship financial education program for young people (16–25 year olds). Its aim is to help young people transition to financial independence and to understand the importance of making smart financial decisions.

ASIC took MoneySmart Rookie on the road, running 293 education and training sessions about money management, attended by over 12,000 community workers and consumers. ASIC also participated in 265 regional activities with communities throughout Australia.

The MoneySmart Rookie suite of resources includes educational videos, teacher lesson plans and interactive web content on topics such as first jobs, online transactions, car ownership, mobile phones and moving out of home.

### MoneySmart website

ASIC's MoneySmart website remains a plank of Australia's National Financial Literacy Strategy – and its popularity, use and reputation continues to grow.

The website has had over 5 million visitors since its launch in March 2011. To June 2013, the website has helped around 420,000 Australians each month make smarter money decisions. Over 13,000 websites link to MoneySmart, which has reached over 8% of Australian adult internet users.

Our research shows that 89% of users rate the site useful and 90% said they had taken specific action as a result of visiting the site. In July 2012 MoneySmart was named 'Best in Class' at the 2012 Interactive Media Awards in two categories: 'Government' and 'Financial information'.

In October 2012 ASIC released the TrackMySpend app, which has been downloaded by 186,000 people to help keep track of their incidental and day-to-day spending. ASIC also launched the interactive Money Health Check, which helps people identify and address areas where their finances are not in order.



ASIC Indigenous Outreach Program team members with MoneySmart Rookie video presenter Aldi Godjali (centre) at the project launch on 18 June 2013.

## Superannuation

Accurate and balanced information about superannuation options is a key ingredient in people's retirement planning. In 2012–13 we posted new content on our consumer website, MoneySmart, to reflect changes stemming from the Stronger Super reforms, particularly the introduction of the new default fund arrangements with MySuper. MoneySmart also sets out the issues to be considered when setting up a self-managed super fund. In future MoneySmart will make available data about superannuation funds to enable consumers to compare funds quickly and easily.

## Indigenous financial consumers

ASIC's Indigenous Outreach Program assists Aboriginal and Torres Strait Islander consumers to be confident and informed when making financial decisions. This includes resources for Indigenous consumers and the organisations and professionals that support them.

The Indigenous Outreach team delivered workshops and training in over 30 urban, regional and remote locations during the year. The team responded to complaints from consumers about credit, banking and insurance, working with businesses or referring the matters to ASIC's enforcement teams for investigation.

We revised and updated all our Indigenous consumer publications and, for those who prefer receiving information in non-text forms, we produced four videos on key consumer issues, featuring popular Indigenous performers Last Kinection. We ran a radio campaign promoting ASIC's Money Talks series and, in conjunction with the Territory Insurance Office, we launched audio posters with messages about ATM fees in 12 Indigenous languages, for display in remote stores throughout the Northern Territory.

In April 2013 ASIC hosted a forum, supported by key industry bodies, to discuss superannuation issues for Indigenous consumers. The forum addressed issues Indigenous consumers face, such as difficulties with identification requirements, geographic isolation and, often, speaking English as a second language.

## International financial literacy education

ASIC represents Australia on two expert groups sponsored by the Organization for Economic Cooperation and Development (OECD): the International Network for Financial Education (INFE) and the Programme for International Student Assessment (PISA).

This year ASIC helped develop the 2012 international PISA financial literacy testing of students worldwide, in which Australian students took part.



*(L to R) ASIC's Indigenous Outreach Program manager Robynne Quiggin; Rod Little, Director, National Congress of Australia's First Peoples; Kate Rich, Financial Counsellor, Tangentyere Council and Sarah Bassiuouni, Solicitor, Public Interest Advocacy Centre, at the forum on superannuation for Indigenous consumers, held in April 2013.*

# Priority 1 – Confident and informed investors and financial consumers *continued*

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## Enforcement

Gatekeepers have a vital role in ensuring a well-functioning financial services industry, one which meets the community's expectations of honesty, diligence and competence. ASIC has continued to take strong enforcement action to maintain the confidence of investors and financial consumers throughout 2012–13.

In relation to Priority 1, in 2012–13 we completed 111 litigation and administrative actions, 92 investigations and 12 criminal proceedings. We secured 12 criminal convictions and seven imprisonments.

## Honesty

Ensuring consumers and investors are confident and informed depends on gatekeepers not using their position to deceive, mislead, abuse or exploit the trust of clients and the investing public.

## Trio Capital

Eugene Liu, a former director and chief investment strategist of Astarra Asset Management Pty Ltd (AAM), was permanently banned by ASIC in March 2013 from providing financial services.

AAM was appointed by Trio Capital Ltd (Trio) as the investment manager of the assets of Astarra Strategic Fund (ASF), a fund of hedge funds whose responsible entity was Trio. ASIC made findings that Mr Liu engaged in dishonest and misleading conduct while a director of AAM. Mr Liu has appealed to the Administrative Appeals Tribunal.

## Investment scams

ASIC brought numerous civil proceedings to freeze funds and wind up companies involved in highly organised and sophisticated scams that target Australian residents using fraudulent financial services businesses. The scams used a combination of cold-calling and websites to convince investors they were legitimate entities.

In April 2013, ASIC obtained orders winding up three Gold Coast-based companies involved in a fraudulent financial services business. ASIC had previously frozen \$283,000 before obtaining the orders appointing a liquidator to the companies to redistribute these funds back to investors.

## Unregistered offshore managed investment schemes

David Hobbs was ordered to pay a record penalty of \$500,000 and permanently banned from managing companies and providing financial services by the Supreme Court of New South Wales in February 2013.

Mr Hobbs led the operation of 14 unregistered offshore managed investment funds, including a \$30 million ponzi scheme, which targeted Australian investors and SMSFs. More than \$55 million was invested in the offshore schemes operated by Mr Hobbs and 12 others, including his wife, Jacqueline Hobbs.

## Financial services

- ◆ Craig Gerard Dangar, a former self-managed superannuation adviser, was sentenced to concurrent suspended sentences of 18 months imprisonment after pleading guilty to two charges of obtaining financial advantage by deception. Mr Dangar pleaded guilty to obtaining a total financial advantage of \$250,000 by recommending two clients purchase a portion of his shares in a company while misrepresenting the true owner of the shares.
- ◆ Trevor Carll, a former South Australian financial planner, was sentenced to two years imprisonment after pleading guilty to one count of deception and two counts of dishonest dealings with documents.
- ◆ Susan Heathwood, a Sydney-based former financial adviser, was sentenced to 41 months in prison after pleading guilty to two counts of dishonest conduct in relation to financial services. The sentence was suspended on Ms Heathwood entering into a two-year good behaviour bond.

## Consumer credit

ASIC's focus on the *National Consumer Credit Protection Act 2009* (National Credit Act) has resulted in its first conviction under that Act.

Daniel Nguyen, a former NSW-based mortgage broker, was convicted in January 2013 of 10 offences under the National Credit Act, with the court imposing a two-year good behaviour bond. Mr Nguyen pleaded guilty to nine offences of providing false information and documents to banks to secure approvals for home loans totalling more than \$3 million over five months, and to one offence relating to responsible lending.

## ACM Group

ACM Group, one of Australia's largest debt collection companies, was found to have harassed and coerced eight debtors between November 2008 and June 2010, and also to have engaged in widespread and systemic misleading and deceptive conduct when recovering money.

After hearing 96 phone calls, mostly between ACM debt collectors and the debtors, and after viewing the ACM debt collector training manual, the Federal Court of Australia made findings in October 2012 of undue harassment or coercion.

## Diligence

Gatekeepers must exercise their duties with proper care and attentiveness.

## Storm Financial – compensation for investors

ASIC is pursuing compensation for investors affected by the collapse of Storm Financial and achieved some significant outcomes in 2012–13.

- ♦ The Commonwealth Bank of Australia (CBA) agreed to make up to \$136 million available to compensate losses suffered by many CBA customers who borrowed from the bank to invest through Storm. This was in addition to payments already made by the CBA of approximately \$132 million and other benefits paid to Storm investors under its CBA Resolution Scheme.
- ♦ ASIC settled its proceedings on behalf of Barry and Deanna Doyle in late May 2013, with Macquarie Bank and the Bank of Queensland agreeing to pay, without admission of liability, \$1.1 million to fully compensate the Doyles for their financial loss arising from their Storm investments.

## Macquarie Equities Limited

In January 2013, ASIC accepted an enforceable undertaking from Macquarie Equities Limited (MEL) to rectify risk management and compliance deficiencies, following a surveillance that found recurring deficiencies by, and in the supervision of, MEL's advisers. An independent expert will also oversee this process.

ASIC identified the following deficiencies:

- ♦ client files not containing Statements of Advice
- ♦ advisers failing to demonstrate a reasonable basis for advice provided to clients
- ♦ poor client records and lack of detail in advice documents
- ♦ lack of supporting documentation on file to determine whether there was a reasonable basis for advice provided to the client
- ♦ failing to provide sufficient evidence clients were sophisticated investors.

# Priority 1 – Confident and informed investors and financial consumers *continued*

## Responsible lending obligations

- ♦ ASIC cancelled the credit licences of Zaam Rentals Pty Ltd and Mobile Rentals Pty Ltd, both Victoria-based household goods rental companies. ASIC found both companies failed to comply with the responsible lending obligations set out in the National Credit Act.
- ♦ ASIC cancelled the credit licence of Money Choice Pty Ltd and banned its director, Matthew George, after finding failures to comply with credit laws, responsible lending shortfalls and instances of unlicensed SMSF advice. Mr George was banned from engaging in credit activities for eight years and from providing financial services for three years.

## New infringement notice powers

- ♦ City Index Australia Pty Ltd paid a total of \$13,200 in penalties under two infringement notices issued by ASIC for misleading representations made on its website and in an electronic newsletter. These were the first infringement notices to be issued under the Australian Consumer Law provisions in the ASIC Act.
- ♦ ASIC accepted an enforceable undertaking from Graham Rendell, the owner and operator of Perth-based lender Key Credit, following concerns regarding underlying weaknesses in Key Credit's compliance processes. Infringement notices issued to Key Credit were the first paid under the National Credit Act.<sup>1</sup>

## Competence

All AFS licensees and credit licensees must meet legislative and regulatory requirements for licensing and training.

ASIC may take administrative action to cancel or suspend a licensee's credit licence where, for example, a licensee has requested a suspension or cancellation, no longer engages in credit activity, or is insolvent.

During 2012–13 ASIC banned three persons from engaging in credit activities after they breached their licensee general conduct obligations.

## Civil penalty proceedings under the National Credit Act

Nathan Elali, the director of EasyChoice Home Loans Pty Ltd, was ordered to pay a penalty of \$7,500 after the Federal Court in Sydney found in September 2012 that EasyChoice had advertised that it could provide credit, despite being unlicensed, in breach of s30 of the National Credit Act. This was ASIC's first civil penalty proceeding under the National Credit Act.

## Independence

AFS licensees and credit licensees must have adequate arrangements in place for managing conflicts of interest.

## Addwealth Financial Services

ASIC imposed additional conditions on the AFS licence of Addwealth Financial Services Pty Ltd after conducting a surveillance of its advice business. There were concerns that Addwealth Financial Services did not have adequate arrangements in place to manage conflicts of interest and may have failed to provide advice that was appropriate to clients' circumstances.

## Failure to disclose

Jeremy Michael Reid entered into an ASIC enforceable undertaking under which he agreed not to provide financial services, not hold an AFS licence and not be employed by a financial services provider for two years.

The enforceable undertaking followed an investigation into his conduct between December 2007 and June 2008 as a director and CEO of Everest Capital Ltd, which was then the responsible entity of a number of managed investment schemes, including the Everest Babcock & Brown Income Fund. Mr Reid acknowledged ASIC's concerns including that he failed to disclose to other Everest directors that Everest had received redemption inquiries around the same time as parties related to Mr Reid had also submitted redemption requests.

1. Compliance with an infringement notice is not an admission of guilt or liability; and the recipient is not taken to have contravened the relevant legislative provisions.

## Policy advice and implementation

ASIC has taken a very active role in policy advice and implementation in 2012–13, both domestically and internationally.

### Domestic policy work

Major work undertaken includes our engagement with Treasury and APRA on the drafting of legislation to introduce the Stronger Super reforms (see page 23), and with Treasury on the FOFA reforms (see page 22) and the development of the national consumer credit regime (see page 24).

### International regulation and cooperation

ASIC has played a particularly active role in the development of international regulatory policy this year. ASIC Chairman Greg Medcraft was appointed as Chair of the IOSCO Board in March 2013 and as IOSCO Board Chair also sits on the Financial Stability Board's Plenary and Steering Committee, the International Financial Reporting Standards Monitoring Board and is co-chair of the Committee on Payment and Settlement Systems–IOSCO Screening Group. ASIC will use these key positions to advance work in a number of areas, as detailed below and on page 45.

ASIC has drafted mandates to create a new IOSCO policy committee on retail investors and a new IOSCO taskforce on cross-border regulation. The Committee on Retail Investors has a primary mandate to conduct IOSCO's policy work on retail investor education and financial literacy, and a secondary mandate to advise the IOSCO Board on emerging retail invest or protection matters and conduct investor protection policy work as directed by the IOSCO Board. The Task Force on Cross-border Regulation will identify and consider cross-border regulatory tools and, if appropriate, develop guidance about how the tools could be used by IOSCO members.

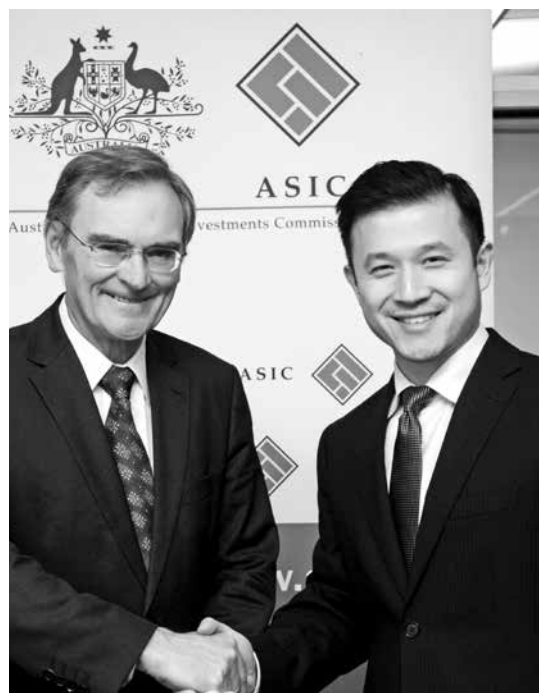
ASIC continues to work closely with international financial regulators and other law enforcement agencies in relation to all its activities. ASIC makes and receives international requests in relation to investigations, compliance and surveillance (enforcement), policy research, general referrals, delegations and licensing or due diligence requests.

There has been an increase in all types of requests made by ASIC to its international counterparts, particularly in enforcement requests (from 167 in 2011–12 to 271 in 2012–13).

Requests received by ASIC to brief foreign regulator delegations have almost doubled (to 57), reflecting both the ASIC Chairman's involvement in international forums and the international interest in learning about how the Australian financial regulatory system coped during and in the aftermath of the global financial crisis. Popular topics for discussion included the regulation of markets, FOFA reforms and financial literacy.

### International cooperation requests

Year	Requests by ASIC	Requests to ASIC
2010–11	297	507
2011–12	251	429
2012–13	408	481



*Greg Medcraft congratulating ASIC lawyer Davis Zhang, who began a three-month secondment to the China Securities Regulatory Commission in June 2013*

## Priority 2 – Fair and efficient financial markets



### Engagement with industry and stakeholders

The markets cluster has a well-developed relationship with industry, and held a total of 345 meetings with industry groups in 2012–13. The topics of discussion include emerging market issues such as high-frequency trading and dark liquidity, ASIC's new surveillance system, cost recovery of ASIC's market supervision expenditure, takeovers and continuous disclosure.

In 2012–13 we met with a broad range of stakeholders, including the Stockbrokers Association of Australia, Chartered Secretaries Australia, the Law Council of Australia, the Australian Institute of Company Directors, the Australian Financial Markets Association, the Financial Services Council, the Australian Council of Superannuation Investors and the Business Council of Australia.

### Financial market infrastructure

#### ASIC taskforces on dark liquidity and high-frequency trading

In mid-2012, ASIC set up two internal taskforces to consider the impact of dark liquidity and high-frequency trading on the integrity of Australia's financial markets. Our focus was on the interests of listed companies, fundamental investors and Australia's competitiveness as a regional financial centre. A key aspect of the taskforces' work was consultation with industry, with over 100 meetings and workshops held to gather information and to discuss themes identified and the findings of the taskforces.

### Corporations

In 2012–13 we again held bi-annual corporate finance liaison meetings in five states to communicate with stakeholders concerning issues and initiatives relating to fundraising, mergers and acquisitions and corporate governance.

We also held a series of industry meetings in November 2012 on takeovers law reform, in conjunction with Treasury and the Takeovers Panel.

### Banksia taskforce and debentures reform

ASIC set up a taskforce in October 2012 following the appointment of receivers and managers to Banksia Securities Ltd. The taskforce, led by Commissioner John Price, reviewed Banksia's collapse and the regulation of the Australian unlisted debentures sector.

The taskforce is working closely on an ongoing basis with Banksia receivers and managers in a bid to get the best result for Banksia investors and retail clients.

In December 2012, the Government announced that ASIC and APRA would consult on reforms to regulate the debentures market.

In February 2013 ASIC published a consultation paper that sets out to strengthen debentures regulation. We received 24 formal responses and met with industry bodies, trustees, auditors, and Australian and foreign regulators about future regulation of the sector. We are working with Treasury and other relevant agencies to determine improvements to the regulatory regime, with the benefit of this consultation process.



## Other engagement – granting relief

We received 2,023 applications for relief in 2012–13 relating to Priority 2. Of these, 1,431 have been approved, 186 refused, 237 withdrawn and 169 are under consideration.

## Surveillance

### Financial market infrastructure

#### Market assessment reports

Under the Corporations Act, ASIC must assess, at least once a year, whether a market licensee has adequate arrangements to operate its market and/or clearing and settlement facility.

During 2012–13 we conducted assessments and published reports on 31 market and clearing and settlement facility operators.

In May 2013, ASIC released its assessment report for the ASX Group covering the period 1 November 2011 to 30 June 2012. This report also assessed the outage in ASX Group's market announcements on 9 October 2012. Our report concluded ASX Group had met its statutory obligations; however, it also outlined seven areas for improvement or attention the ASX Group has agreed to address.

These areas relate to its technology and its arrangements for monitoring and enforcing compliance with its operating rules. The ASX Group also agreed to review its communication procedures, including the timing of future communications about system issues to market participants, improve its processes for monitoring its listing rules and to increase transparency to the market about its monitoring of long-term suspended entities. It also agreed to change its processes for reviewing prospectuses.

In November 2012, ASIC published its first annual assessment of Chi-X Australia, covering the period 4 May 2011 to 31 March 2012, which found Chi-X met its statutory obligations during its first year of operation. The report outlined nine areas for attention Chi-X has agreed to address. These relate to the sufficiency of its human and technological resources, monitoring and enforcing compliance with its operating rules and handling conflicts. Chi-X agreed to a number of changes including publishing its arrangements for managing conflicts on its website and improving its participant admission process.

## Priority 2 – Fair and efficient financial markets *continued*

### Market and participant supervision

Fair and efficient markets require market infrastructure that is robust, where the trading, clearing and settlement is orderly and efficient, and where market misconduct is minimised.

#### New market surveillance system

In 2012–13 ASIC continued to work towards rolling out our new real-time integrated market surveillance system. The Flexible Advanced Surveillance Technologies program will allow ASIC to adapt to a greatly increased message traffic, new technologies and trading techniques.

The introduction of the system by the end of 2013 will give ASIC enhanced surveillance tools, including better data analytics to identify suspicious trading by connecting patterns and relationships. The new system will also help ASIC handle the continued increase in trading messages generated by high-frequency and algorithmic trading.

#### Market participant supervision

ASIC's risk-based surveillance of stockbrokers and securities dealers continued this year. We conducted 64 assessment visits and 44 surveillances of equity trading market participants.

Our surveillances included reviews of market participants' compliance with market integrity rules and their representatives' compliance with client advice obligations, responses to breach reports and surveillance of high-risk activities.

#### Public reporting of market and participant supervision

As part of ASIC's commitment to transparency and accountability, we publish bi-annual reports on our supervision of financial markets and market participants.

We have published the fifth and sixth reports on our supervision of Australian financial markets and market participants, to report on our achievement of key regulatory and enforcement outcomes. These reports show that, in the period July 2012 to June 2013, there were 180 trading matters requiring further consideration, with 52 referred to ASIC's enforcement team for investigation.

We achieved nine enforcement outcomes for insider trading, one for market manipulation, one for continuous disclosure breaches, and there were nine infringement notices issued by the Markets Disciplinary Panel (MDP).

### Corporations

#### Monitoring takeovers

ASIC continued its focus on takeovers this year, monitoring each of the 46 new takeover bids during 2012–13. Where necessary, ASIC intervened to seek further disclosure or other changes to ensure transactions abided by the rules and fundamental principles of takeovers law.

We also took action in the Takeovers Panel. We made a successful application to require shareholder approval for an underwriting arrangement under which the Chairman of Laneway Resources Limited, Stephen Bizzell, could potentially acquire up to 86% of the company by, in effect, converting debt to equity. We also participated in each of the 19 other applications made to the Takeovers Panel, making submissions in each case where the Panel conducted proceedings.

This year we also assessed the disclosure and terms of 32 new proposed acquisitions under court-approved schemes of arrangement, and seven associated options schemes, nine schemes to effect restructures and four creditor's schemes.

#### Improving prospectus disclosure

A significant structural shift is occurring towards market-based financing, that is, debt and capital markets as opposed to traditional bank lending. Good quality prospectuses are essential to ensure these markets operate fairly and efficiently.

This year ASIC either stopped, or improved disclosure on, 111 prospectuses. This involved extending the exposure period on 54 prospectuses. We also issued stop orders to prevent fundraising where we had concerns about the disclosure to investors. ASIC issued 16 interim stop orders and 17 final stop orders during 2012–13.

## Financial reporting and audit

### Reviews of financial reports

ASIC reviewed 450 financial reports of listed and unlisted entities, and also reviewed the financial reports of 300 proprietary companies. We released the findings and suggested areas directors and auditors should focus on for coming reporting seasons. These include large impairment write downs of goodwill and other assets, consolidating arrangements previously off-balance sheet, and disclosure of information that is useful and meaningful for investors and other users of financial reports on matters such as going concern.

### Audit firm inspections

Auditors, as gatekeepers, play a vital role in ensuring investors remain confident and informed. During the year ASIC inspected 16 audit firms, focusing on audit engagement file reviews and quality control systems. ASIC also conducted surveillance of individual audits and auditors, based on market intelligence and other information.

ASIC's most recent public audit inspection report was issued in December 2012 and covered inspections of audit firms completed in the 18 months to 30 June 2012. We were disappointed there had not been an improvement in audit quality since our last report. We observed an increase in instances where auditors did not perform all of the work necessary to obtain reasonable assurance that the financial report was free of material misstatement. ASIC identified three broad areas for improvement:

- ♦ the sufficiency and appropriateness of audit evidence obtained
- ♦ the level of professional scepticism exercised
- ♦ the extent of reliance that can be placed on the work of other auditors and experts.

In response to our request, Australia's six largest auditing firms prepared action plans to improve audit quality.

## Insolvency practitioners

### Overview of liquidators registration

In May 2013, ASIC published its second annual overview of its regulation of registered liquidators. The report outlined the supervisory, enforcement and educative work of ASIC throughout 2012 and focused on three main themes: competence, independence and inappropriate gain, which includes excessive remuneration and drawing remuneration before obtaining appropriate approval.

### Surveillance of registered liquidators

ASIC initiated seven proactive reviews this year, finalised a further 18 activities and escalated two activities for enforcement action.

In our remuneration monitoring work, we completed 30 reviews resulting in better disclosure to creditors, registered liquidators agreeing to reduce their fees, and registered liquidators adjourning meetings of creditors to provide further information to all creditors.

The law requires certain external administrators to prepare declarations about relationships and indemnities to fully inform creditors about their independence. During the year, we completed 31 activities that involved reviewing the adequacy of their declarations. In 61 % of cases, we found the declarations were inadequate, requiring registered liquidators to issue replacement declarations. Our work to educate the insolvency profession and improve standards in this area will continue in 2013–14.

**Auditors, as gatekeepers,  
play a vital role in ensuring  
investors remain confident  
and informed**

## Priority 2 – Fair and efficient financial markets *continued*

### Guidance – setting rules, standards and expectations

#### Financial market infrastructure

##### Dark liquidity and high-frequency trading

In March 2013, ASIC released a report and a consultation paper examining the impact of dark liquidity and high-frequency trading on Australia's financial markets.

The work was run by two internal ASIC taskforces: one assessing dark liquidity in response to concerns about its impact on market integrity; the second on high-frequency trading addressing concerns about disorderliness and unfairness.

Some of the common negative perceptions about high-frequency traders (e.g. they create excessive price volatility, have high order-to-trade ratios and short resting times) were not supported by our analysis. ASIC's view was that most issues could be dealt with by existing regulations.

However, on dark liquidity, ASIC found there had been a change in the nature and use of dark liquidity. We found that broker-crossing systems (i.e. dark pools) are becoming more market-like and there are gaps in their regulation. In August 2013 we made a number of new market integrity rules to address these gaps.

Both taskforces referred a number of potential rule breaches to ASIC's Enforcement team for investigation. ASIC's evidence-based approach has been praised here and abroad, and we have already seen a change in trading behaviour as a result of our inquiries.



*Media conference for dark liquidity and high-frequency trading report, March 2013.*

### New market rules responding to changing financial markets

In July 2012 ASIC released new market integrity rules for market participants requiring reporting to ASIC of suspicious activity and tagging orders and trades where the market participant is short.

In November 2012, ASIC released rules that are being implemented in stages until May 2014, to enhance:

- ♦ market participant controls for automated trading (e.g. a 'kill switch' to immediately suspend orders) and for extreme price movements (e.g. automating 'circuit breakers')
- ♦ data provided to ASIC for surveillance purposes (e.g. identifying client accounts and whether a participant is acting for itself or on behalf of a client)
- ♦ price formation by requiring non-pre-trade transparent trades to be done with meaningful price improvement, which encourages more trading to occur on public markets.

### ASX trading of government bonds

From May 2013, Australian government bonds became available for trading on the ASX for the first time. In preparation for the change, ASIC put in place the regulatory framework, market integrity rules and guidance, ASX operating rule changes and investor education tools needed to prepare the market and retail investors for retail trading in these bonds.

### Licensing of carbon market participants

In July 2012, emission units recognised under the carbon pricing mechanism were acknowledged as financial products under the Corporations Act and any traders in emissions units needed to apply for an AFS licence.

To help new and existing entrants to the carbon markets, ASIC developed a range of resources, including guidance on applying for or varying an AFS licence, general guidance on how the financial services regime applies to emissions units and carbon markets and a dedicated carbon emissions unit webpage on

[www.asic.gov.au](http://www.asic.gov.au).

## Corporations

### Consolidating takeovers guidance

In June 2013, ASIC released four comprehensive regulatory guides updating and consolidating our policies on takeovers, previously in 17 different guides. The guidance covers takeover bids, substantial holdings, compulsory acquisition and buy-outs. The guides consolidate the bulk of ASIC's policies covering Chapters 6–6C of the Corporations Act.

### Making annual reports more useful to investors

In March 2013, ASIC released a regulatory guide to improve the disclosure in listed entities' annual reports. The guidance aims to encourage insightful, clear communication rather than increase the quantity of disclosure.

The operating and financial review (OFR) forms part of a listed entity's annual report and contains information about the entity's operations, financial position, business strategies and future prospects.

### Winding up abandoned companies and helping employees access entitlements

In November 2012, ASIC released guidance on ASIC's power to wind up an abandoned company under new powers in the Corporations Act.

The guidance also outlines ASIC's approach to assisting employees to access the Government's General Employee Entitlements Redundancy Scheme after an abandoned company has been wound up.

## Emerging mining and resources companies

### Improving reporting in the exploration and mining sector

ASIC worked with the resources industry – the Joint Ore Reserves Committee (JORC), the Australian Industry Group and the AIG and Australasian Institute of Mining and Metallurgy), the equivalent professional organisations in Canada and South Africa, leading mining companies (BHP and Rio Tinto), small exploration and mining companies – and the ASX on the recent updates to the ASX Listing Rules and the JORC Code. ASIC identified improvements to be made in existing disclosure (and valuation

practices). The updates have strengthened reporting on reserves and resources in the mining, oil and gas industries.

## Financial reporting and audit

### Auditor registration, resignations, removal and replacements

ASIC released a suite of reports, regulatory guides and a consultation paper relating to auditors. The consultation paper seeks views on whether ASIC should fundamentally change its approach to consenting to the resignation, removal and replacement of auditors.

ASIC released a further two regulatory guides – the first on an auditor's obligation in reporting to ASIC; the second an updated guide to auditor registration, taking into account the *Trans-Tasman Mutual Recognition Act 1997*.

### Funding liquidator actions

In November 2012, ASIC updated its guidance on ASIC's approach to funding liquidator investigations, reports and actions from the Assetless Administration Fund (AA Fund). It includes details on how to apply for funding, ASIC's approach to funding liquidator investigations, reports and actions and the liquidator's rights to request a review of our funding decision.



*ASIC's Emerging Mining and Resources team, shown here on a visit to a training underground mine at Perth Technical College, includes a geologist and other staff with the specialist skills needed to undertake regulation of this sector.*

## Priority 2 – Fair and efficient financial markets *continued*

### Enforcement

Directors, company officers, auditors, insolvency practitioners and other market participants play a key role in ensuring Australia's financial markets are fair and efficient. ASIC will take enforcement action against these gatekeepers where they fail to perform their duties with sufficient honesty, diligence, competence or independence.

In relation to Priority 2, in 2012–13 we completed 33 litigation and administrative actions, 94 investigations and 13 criminal proceedings, and secured 10 criminal convictions and two imprisonments.

In addition, we prosecuted 528 individuals in relation to 966 offences relating to failure to provide assistance to an external administrator.

### Honesty

The fairness and efficiency of financial markets depends on gatekeepers not using their positions to gain an improper advantage. ASIC enforcement actions in 2012–13 included actions against insider trading and making false statements.

#### Insider trading

Insider trading has been a strong focus for ASIC over the last few years and enforcement action this year has resulted in eight convictions. The more notable outcomes are:

- ♦ Bo Shi Zhu, also known as Calvin Zhu, the former Hanlong Mining Investment Pty Ltd vice-president who pleaded guilty to three counts of insider trading, was sentenced in February 2013 to two years and three months jail, with a minimum sentence of 15 months
- ♦ Ulf Ronnie Lindskog was sentenced on 14 March 2013 in the County Court of Victoria after being convicted of four insider trading charges. Mr Lindskog had purchased shares in Spotless Group Ltd while possessing inside information regarding proposed takeover bids for Spotless. He was sentenced to 12 months imprisonment, wholly suspended, and fined \$15,000.
- ♦ Norman John Graham, the former head of stockbroking firm Lonsec, was convicted in May 2013 on two charges of insider trading and fined \$30,000. Mr Graham had sold shares in the listed fishery company, Clean Seas Tuna, knowing the company was set to announce a

loss of more than \$10 million for the six months to December 2010.

The court may also recognise a person's attempts to cooperate when deciding on an appropriate sentence. In 2012–13, a number of persons convicted of insider trading received discounts off their sentences for cooperating with ASIC and pleading guilty at the earliest opportunity.

#### Making false or misleading statements

- ♦ Peter Couper, the former CFO of Bill Express Limited's parent company, was jailed following an ASIC appeal against a suspended jail sentence imposed on him over his role in the collapse of the payments processor. In April 2013 Mr Couper was sentenced to 22 months in jail, to be released after 60 days, and fined \$10,000. The charges related to falsified books of Bill Express, providing misleading information to Bill Express's auditor, and providing false or misleading information to ASIC.
- ♦ In September 2012, ASIC warned consumers under its new Australian Consumer Law public warning notice power about activities of Robert George McClelland regarding his promotion of Roadships Holdings, Inc. and Cycclone Magnetic Engines. ASIC was concerned he had influenced investors by suggesting the share price would increase substantially once they were listed on the US NASDAQ exchange or the German DAX index, despite no reasonable basis for the statements.

### Competence

Auditors, liquidators, directors and other office holders have a responsibility to carry out their duties in a timely manner and are expected to have the skills and knowledge to carry out their duties competently.

#### Wickham auditor

Brian Patrick Kingston was the auditor of Wickham Securities Limited, a property lender which collapsed in December 2012 with debts of \$30 million. Three months earlier, Mr Kingston had issued an unqualified audit opinion on the company's financial report.

ASIC cancelled Mr Kingston's registration and he agreed to an enforceable undertaking to never reapply for registration or act as an auditor.

## Registered liquidators

- ♦ Paul Anthony Pattison was disqualified in January 2013 from managing corporations for four years following ASIC inquiries into three failed companies of which he was the sole director. Mr Pattison's registration as a registered liquidator was cancelled in a separate decision in February 2013. Mr Pattison has applied to the Administrative Appeals Tribunal for a review of this decision.
- ♦ ASIC's proactive liquidator compliance program has identified a number of registered liquidators that in ASIC's view had failed to properly carry out their duties. In 2012–13 we have accepted enforceable undertakings from:
  - ♦ Geoffrey Stewart Turner, in October 2012, preventing him from practising as a registered liquidator for life
  - ♦ Arthur John Forrest, in November 2012, who agreed to voluntarily cancel his registration
  - ♦ Ian Lawrence Struthers, in February 2013, who agreed to the cancellation of his registration as a liquidator for a minimum of three years.
- ♦ Peter Roger Grealish's registration as a registered liquidator and as an official liquidator was cancelled following his conviction on charges relating to honesty and sentencing by the District Court of New South Wales, in April 2013, to 12 months jail.
- ♦ ASIC referred four confidential matters to the Companies Auditors and Liquidators Disciplinary Board (CALDB) in 2012–13. The CALDB has the power to cancel or suspend the registration of a liquidator or auditor.

## Diligence

Gatekeepers such as directors, liquidators, external administrators and auditors must exercise their duties with proper care and attentiveness.

## Centro auditor

ASIC accepted an enforceable undertaking in November 2012 from former Centro auditor, Stephen John Cogle, a Melbourne partner of PricewaterhouseCoopers, preventing Mr Cogle from practising as a registered auditor until 30 June 2015.

Mr Cogle was the lead auditor for Centro Properties Group and Centro Retail Group for the 2006–07 financial year. In the case of Centro Properties, the financial report failed to properly classify A\$1.514 billion of interest-bearing liabilities as 'current' liabilities, and failed to disclose substantial guarantees to lenders, totalling in excess of US\$2.8 billion, given after the balance date. The Centro Retail financial report failed to properly classify approximately A\$600 million of interest-bearing liabilities as current liabilities.

## ABC Learning auditor

ASIC accepted an enforceable undertaking in August 2012 from Pitcher Partners auditor Simon Green following an investigation into Mr Green's 2007 audit of ABC Learning Centres Limited.

Under the enforceable undertaking, Mr Green is prevented from practising as a registered auditor for five years.

## Liquidator Assistance Program

External administrators are entitled to a failed company's books, records, reports and assistance from officeholders and related individuals. In 2012–13 ASIC received 1,484 requests from external administrators for help in obtaining these entitlements. We received 1,410 such requests in 2011–12.

ASIC seeks compliance from, and may prosecute, individuals who have not provided the required information or help to external administrators. In 2012–13, 502 individuals complied, a compliance rate of 45% (up from 44% in 2011–12 and 40% in 2010–11).

In the same period, 528 individuals (126 more than in 2011–12) were prosecuted in relation to 966 offences relating to failure to provide assistance to an external administrator. These prosecutions resulted in approximately \$1.15 million in fines and costs.

## Priority 2 – Fair and efficient financial markets *continued*

### Director disqualifications

ASIC may also administratively disqualify individuals who have been directors of at least two failed companies over the previous seven years, where the liquidator has reported that unsecured creditors will receive less than 50 cents in the dollar.

In 2012–13, 57 directors were disqualified from managing corporations. Of those, 74% were facilitated by liquidator's reports funded by the Assetless Administration Fund. This fund is administered by ASIC and functions to assist liquidators to conduct preliminary investigations of companies that have few or no assets.

### James Hardie

In November 2012 the NSW Court of Appeal imposed pecuniary penalties from \$20,000 to \$25,000 and disqualification from acting as company directors for periods of 26 to 37 months on the non-executive directors of James Hardie. The court also re-imposed the \$75,000 fine and seven-year disqualification on Peter Shafron, the company secretary and general counsel.

These outcomes follow a decision of the High Court to uphold findings of the trial judge that the directors of James Hardie did approve the draft ASX announcement made by the company and, in doing so, breached their duty to the company. The High Court also upheld the finding that Mr Shafron had failed to discharge his duties as an officer of James Hardie.

### Failure to lodge annual reports

ASIC monitors the lodgement of annual reports by companies, registered schemes and disclosing entities that are required to report.

In 2012–13 ASIC obtained 26 civil orders to enforce notices, issued by ASIC, requiring compliance with annual reporting obligations. In addition, 49 companies complied with their lodgement requirements following ASIC intervention.

ASIC may prosecute companies that do not lodge their annual or half-yearly reports. In 2012–13, 13 companies were convicted of 46 counts of failing to comply with their reporting obligations and were fined a total of \$146,625.

### Markets Disciplinary Panel infringement notices

The Markets Disciplinary Panel (MDP) is a peer review body that exercises ASIC's power to issue infringement notices and accept enforceable undertakings in relation to alleged breaches of the market integrity rules. The market integrity rules are made by ASIC and apply to market operators and market participants.

The MDP issued nine infringement notices in 2012–13, all of which were complied with.<sup>1</sup>

These included infringement notices issued to:

- ♦ Merrill Lynch Equities (Australia) Limited, for not ensuring it had in place: organisational and technical resources for its automated order processing system, including appropriate automated filters; and processes to record any changes to the filters to enable automated orders to be submitted into the ASX's trading facility, without interfering with the efficiency and integrity of ASX's market or the proper functioning of that facility. Merrill Lynch paid a \$120,000 penalty.
- ♦ Barclays Bank PLC, for erroneously withdrawing \$AUD 13.8 million of client money from the Barclays' Client Segregated Account instead of its own account, without authorisation, and failing to return the client money for five business days. Barclays paid an \$80,000 penalty.

1. Compliance is not an admission of guilt or liability; and the recipient is not taken to have contravened subsection 798H(1) of the Corporations Act.

## Policy advice and implementation

### Leading takeover law reform

ASIC raised with Treasury a number of takeover law reform proposals relating to creep provisions, the use and disclosure of equity derivatives, and the rules on the announcement of takeover proposals.

In November 2012 ASIC and industry participated in roundtable discussions hosted by Treasury on takeover law reform.

### International regulation and cooperation

ASIC has continued its work with international regulators and is heavily involved in key IOSCO reform work streams relevant to ASIC's fair and efficient markets priority. ASIC's work has ranged from input into the final report on global developments in securitisation regulation to work on progressing OTC derivative reforms and developing principles for the regulation of exchange-traded funds.

ASIC is also working within IOSCO on retail structured products, analysing trends and developments, regulatory issues and responses concerning these products. A consultation report was published in April 2013 and a final report will be published by the end of 2013.

ASIC is the Chair of the IOSCO Assessment Committee monitoring policy implementation, notably on systemic risk identification and mitigation and reviewing regulatory boundaries. The Committee aims to publish its first thematic review report on the implementation of Principles 6 and 7 of the IOSCO Objectives and Principles of Securities Regulation later in 2013. The Assessment Committee continued to progress its Country Review program and detailed discussions with Trinidad and Tobago and Pakistan.

ASIC has also worked with the European Securities and Markets Authority (ESMA) to finalise a memorandum of understanding (MOU) between ASIC and European Union (EU) regulators, allowing Australian fund managers to access EU markets under the Alternative Investment Fund Managers Directive. ASIC

has also finalised an MOU with the French regulator Autorité des marchés financiers (AMF), on mutual assistance and information exchange on enforcement and supervision of cross-border regulated entities.

On 5 October 2012, the European Commission decided the Australian legal and supervisory framework for credit rating agencies should be considered equivalent to the legal and supervisory framework of the European Parliament and of the European Council on credit rating agencies.

### Implementing G20 commitments to reform OTC derivative markets

An ASIC-wide team has worked with the Council of Financial Regulators (CFR) agencies in 2012–13 to implement Australia's G20 commitments to reform OTC derivatives markets.

Under the G20 commitments, all OTC derivatives transactions should be reported to trade repositories, and all standardised OTC derivatives transactions should be centrally cleared and, where appropriate, traded on exchanges or trading platforms.

The Australian laws to implement these reforms came into force in January 2013. During the year, ASIC has:

- ♦ finalised a regulatory regime for licensed derivative trade repositories
- ♦ finalised a rules regime for mandatory derivative trade reporting
- ♦ worked with the CFR agencies on two reports on the Australian OTC derivatives market, which included recommendations on mandatory clearing and mandatory trade reporting and platform trading
- ♦ liaised with foreign regulators on cross-border implementation of OTC derivatives reform.

### OTC clearing

In line with the G20 commitments and developments in financial market infrastructure, services for clearing of OTC derivatives were established in Australia this year. Both ASX and LCH (the world's biggest OTC clearing facility) received authorisation for these services here. ASIC worked closely with the RBA and Government to support these important initiatives.

## Priority 3 – Efficient registration and licensing



ASIC's third priority focuses on the effectiveness of Australia's business registration and licensing regimes. This includes overseeing company registration and notifications, the Australian financial services (AFS) licensing and credit licensing regimes, business names registration, and SMSF auditor and liquidator registration.

In 2012–13 ASIC implemented a small business engagement strategy to raise awareness of licensing and compliance obligations. We also made substantial progress towards more efficient registration and licensing, using technology to cut costs and provide improved services, including a new online SMSF auditor register and improved national Business Names Register.

### Engagement with small business

ASIC's small business team conducted over 45 meetings with industry representatives, Commonwealth and state government agencies, business advisers and small businesses in 2012–13, to discuss regulatory initiatives, ASIC's role, and the assistance available to help small business understand and comply with the law.

ASIC also conducted an online survey seeking feedback from small businesses regarding ASIC's engagement with the sector and how ASIC can keep small businesses better informed. More than 1,500 small businesses took part. Based on the survey findings, ASIC has developed a strategy which focuses on engagement, assistance and regulatory initiatives to raise awareness, enhance compliance and target illegal phoenix activity.

The survey results revealed that small business operators rank accountants as their primary and preferred source of information about their business and compliance obligations. Accordingly, the small business engagement team conducted a national roadshow, in partnership with the ACCC and ATO, for members of the Institute of Public Accountants and CPA Australia, on the obligations of small businesses and illegal phoenix activity.

### Doing more business online

One of ASIC's priorities is to increase the proportion of business done online. This reflects ASIC's view that online transactions are easier and cheaper for business. In 2012–13, 83.8% of the 2.4 million forms lodged with ASIC were submitted online, up from 75.5% last year. New services, such as the national Business Names Register, have substantially cut the cost of doing business.

These new services are accessed via the **[www.asic.gov.au](http://www.asic.gov.au)** website, and traffic to the site increased from an average of 297,480 visits per week in June 2012 (the month after the launch of the online Business Names Register, on 28 May 2012) to an average of 344,263 visits per week in June 2013, an increase of 15%.

ASIC consulted with its Registry and Licensing Business Advisory Committee (see page 146) and held focus groups seeking customer input to help design new and improved online services for ASIC Connect.



### **Social media and online help**

ASIC continues to use Facebook, Twitter and YouTube social media channels to raise awareness of our registry services and directly connect with customers. In 2012–13, ASIC Connect's Facebook following increased to almost 1,500 people. We published 139 posts and responded to 1,151 customer comments.

We also increased our following on ASIC Connect's Twitter feed to 4,400 people, publishing 223 tweets and responding to 579 comments during the year.

We published two new instructional videos on YouTube – one on how to renew business name registration, and another on how to update a business name address. Our five instructional videos were viewed a total of 36,000 times in 2012–13.

ASIC also published 13 new easy-to-understand online user guides for business names and SMSF auditors, which were downloaded an average of 18,500 times each month.

### **Companies register**

During 2012–13 the number of companies registered with ASIC grew to 2.0 million – the highest number ever recorded.

The number of new companies that registered with ASIC in 2012–13 totalled 192,211. This was an increase of 9.1% compared to the previous year. There has been a steady increase in the number of company registrations each year since 2008–09.

The rate of company deregistration also continues to increase, with 105,627 companies deregistered during 2012–13, a jump of 8.7% from 2011–12.

The number of companies entering external administration remained steady: A total of 10,746 companies entered external administration during 2012–13 and 10,757 did so in 2011–12.

### **ASIC Connect**

ASIC's new online user interface, ASIC Connect, was launched in March 2012, and 2012–13 was its first full year of operation. ASIC Connect allows customers to conduct ASIC registry searches online via ASIC's website and pay search fees by credit card.

Over 28.3 million free searches and 250,700 paid searches were conducted through ASIC Connect in 2012–13. The paid searches generated over \$3.7 million in revenue.

A total of 4.4 million searches were conducted through information brokers, a 2% increase over the 2011–12 year.

The availability of the ASIC Connect online search has seen a 56% decrease in paper searches conducted directly with ASIC (on paper and over the counter). These fell from 27,492 in 2011–12 to 12,028 in 2012–13.

### **Australian Charities and Not-for-profits Commission (ACNC)**

ASIC and the ACNC have signed a memorandum of understanding (MOU) to consolidate and strengthen the working relationship between the two agencies. The MOU will help deliver streamlined regulation for registered charities that are also registered with ASIC as companies.

## Priority 3 – Efficient registration and licensing *continued*

### National Business Names Register

ASIC launched the new national Business Names Register on 28 May 2012 and 2012–13 was the first full year of operation.

The Business Names Register replaces the eight previous state and territory services, so that businesses only need to register their name once to be registered throughout Australia. The national Business Names Register is also cheaper, especially for customers with multiple business names. At its one-year anniversary, the national Business Names Register had saved business \$34 million in reduced fees to register or renew a name.

This year ASIC bedded down and significantly improved key services introduced at the launch of the Business Names Register, including:

- ♦ finalising the transition from 'smart forms' for some transactions to ASIC Connect online services
- ♦ completing data migration of records from states and territories, and significantly changing how joint-venture partnerships are recorded on the ASIC register
- ♦ commencing to issue business name renewal notices and associated renewal processes
- ♦ launching the new joint registration service enabling customers to register an Australian Business Number (ABN) and apply for a business name via the Australian Business Register (ABR)
- ♦ updating our cancellation and transfer processes for business name holders closing or selling their business
- ♦ systems enhancements, website content updates, and new and improved communication products to improve services and the register, based on known defects and customer feedback
- ♦ internal changes to improve the efficiency of back-office processing and inquiry management.



ASIC is a founding member of the Corporate Registers Forum, which brings together organisations that manage company and corporate registers in 38 countries. At the 10th annual Forum, held in New Zealand in April 2013, ASIC received special recognition for its work in assisting other countries as they work to bring their registry services online.

## National Business Names Register – key statistics

Measure	2012–13	28 May to 30 June 2012	Notes
Business names registered on the national Business Names Register at 30 June	1,740,780	1,488,898	
Business names newly registered with ASIC	274,349	19,131	38% were 1 year registrations, 62% were 3 year registrations. Over 25% of registrations are done after 5 pm
Business names registration requests received via ABR joint service	18,583	0	This is 5.7% of total registrations in 2012–13
Business names cancelled	39,921	1,684	100% were customer-initiated cancellations. An ASIC-initiated cancellations program is expected to commence in 2013–14
Business Name Register updates	91,210	9,098	
Business name renewal notices issued by ASIC	593,168	0	As part of our transitional strategy, issue of renewal notices commenced in October 2012
Business names renewed	282,697	0	Customers may choose not to renew if, for example, they no longer require the business name
Business name registrations received online (%)	99.99%	100%	Prior to commencement of the national Business Names Register, online registration was only available in two of the states and territories
Business names registered by next business day	87%	71.4% <sup>1</sup>	From the date ASIC receives the application
Searches of the national Business Names Register	16.0m	2.1m	Of the 16m searches in 2012–13, 15.4m (or 97%) were free (no fee required)
Access to Business Names Register	99.49%	98.2% <sup>2</sup>	The percentage of time – between the hours of 8.30 am and 7 pm AEST, Monday to Friday – that the Business Names Register was available to search
Cost to register a business name – 1 year	\$30	\$30 <sup>1</sup>	Fees increased to \$33 and \$76 on 1 July 2013. Prior to the implementation of the Business Names Register, registration of a single business name in every state and territory for three years cost more than \$1,000 in total.
Cost to register a business name – 3 years	\$70	\$70 <sup>1</sup>	

1. From 28 May 2012, the date on which the national Business Names Register was launched.

2. From 4 June 2012, the date on which the ASIC Connect business names registration service was introduced.

## Priority 3 – Efficient registration and licensing continued

### Establishing the SMSF auditors register

ASIC's new register of self-managed super fund (SMSF) auditors went live on 31 January 2013, allowing auditors doing SMSF audits to apply for registration online using ASIC Connect.

The new register is part of the Government's Stronger Super reforms. ASIC has worked closely with Government and industry on measures, including the register, to improve integrity and community confidence in the sector.

From the launch of the auditors register to 30 June 2013, SMSF auditors could apply for registration under transitional arrangements, which may exempt them from some registration requirements. Under these arrangements, registered company auditors are not required to undertake a competency exam, nor are they required to complete 300 hours of work auditing SMSFs. From 1 July 2013, however, registration is mandatory.

### SMSF auditor register – key statistics

2012–13	
SMSF auditors registered at 30 June	5,935
Refusals	1 <sup>1</sup>
Applications for SMSF auditor registration received by ASIC at 30 June	7,194
Applications received online	100%
Searches of SMSF auditor register	42,444
Searches conducted online	100%
Applications registered within 28 days of receipt of full application	98%
Cost to register as an SMSF auditor	\$100

1. A further 159 applications were rejected as incomplete, or withdrawn voluntarily by the applicant prior to ASIC decision.

### New website for insolvency and other notices

On 1 July 2012, ASIC launched a stand-alone website for publishing notices on insolvency. The website provides a single point for searching almost all notices on external administration and company deregistration. These notices had previously been published in the print media. In the first year of operation, 3,382 registered users published 29,709 notices and ASIC published 112,942 notices of intention to deregister a company. From 1 July 2013, the cost to publish a notice on the website changed. The vast majority of notices that previously attracted a fee of \$400 now cost only \$145.

### Insolvency notices website – key statistics

2012–13	
Number of registered users	3,382
Notices published by registered users	29,709
Notices of intention to deregister published by ASIC	112,942
Visits to the website	430,495

## Client Contact Centre

The Client Contact Centre handled 716,382 calls in 2012–13, 19% more than in 2011–12. Over 80% of calls were answered on the spot and 19.5% were referred to specialist staff.

Over 75% of inquiries submitted via the website were answered within two business days. The majority of inquiries dealt with by the Client Contact Centre related to business names (45%) and companies (37%), as outlined in the table below.



*Laura Lewis and Steven Scott at work in ASIC's Client Contact Centre.*

Topic	Number of inquiries	Percentage of all inquiries dealt with by Client Contact Centre
Business names	389,099	45%
Companies <sup>1</sup>	319,574	37%
General issues <sup>2</sup>	118,187	14%
Infoline	10,800	1%
Online complaints	7,467	1%
Financial services	7,258	1%
Credit	5,817	1%
SMSF	2,800	< 1%
Auditor	2,087	< 1%
Liquidator	759	< 1%
Managed investment schemes	591	< 1%

1. All company-related inquiries including registration, renewal, forms lodgement, fee payments, changes to officers.

2. General issues includes all other call types not included in the table, including calls about unclaimed money and about matters that do not relate to ASIC.

ASIC is committed to ensuring that its business customers receive an efficient and effective service from the Client Contact Centre. Given increased call volumes and handling times, ASIC acted to alleviate call congestion, establishing an additional 150 telephone lines over the course of the year. ASIC also appointed 17 new Client Contact Centre staff, an increase of 19% in staffing.

The Government announced in its May 2013 budget that ASIC would be provided with an additional \$7.8 million over two years to improve our Client Contact Centre service levels to support the online business names registration service. The increased funding will be used for more staff to answer the phones and an improved technology platform.

## Priority 3 – Efficient registration and licensing continued

### Unclaimed money

ASIC maintains a register of unclaimed money from banks, credit unions, building societies, life insurance companies and friendly societies, as well as shares that have not been collected from companies. ASIC's register can be searched by the public and claims can be made to ASIC's Unclaimed Money team.

In December 2012 the Commonwealth laws that govern unclaimed money were amended to:

- ♦ change the period when money in inactive bank accounts and matured life insurance policies becomes unclaimed from seven to three years (exemptions include children's accounts)
- ♦ require the Commonwealth to pay interest on claims for unclaimed money from 1 July 2013
- ♦ remove the Companies and Unclaimed Moneys Special Account, so money received by ASIC under the Corporations Act is transferred directly to the Consolidated Revenue Fund.

In 2012–13, ASIC received about \$641 million in unclaimed money. This was substantially more than the \$108 million received in 2011–12 and reflects legislative changes in December 2012 that reduced the period for money in active accounts to be deemed unclaimed from seven to three years. A total of \$72.6 million was paid out in claims in 2012–13, compared with \$56 million in the previous year.

ASIC continues to actively reunite owners of unclaimed money with their funds by finding and writing to 12,616 potential owners. A media campaign in November 2012 contributed to an increased number of claimants being able to locate and claim money themselves.

The following tables show the total claims by type of unclaimed money and the number of claims (and value) where owners were reunited with previously unclaimed money.

### Amount paid to owners of unclaimed money, 2012–13

Claims by type	2012–13 (\$)	2011–12 (\$)
Company	27,600,678 <sup>1</sup>	19,329,228
Banking	40,479,162	32,768,797
Life insurance	4,466,125	4,602,327
Deregistered company trust money	31,868	129,807
<b>Total</b>	<b>72,577,833</b>	<b>56,830,159</b>

1. In December 2012 the Government changed the administrative arrangements that apply to unclaimed money under the Corporations Act. The \$27.601 million represents total Company claims for 2012–13 which are disclosed in ASIC's financial statements as payments from the Companies and Unclaimed Moneys Special Account or an expense in the Schedule of Administered Items.

### Company unclaimed money<sup>1</sup> – number of claims and amounts paid to owners, 2012–13

Source	2012–13		2011–12	
	No. of claims	\$ value	No. of claims	\$ value
Money recovery agency	1,592	6,324,791	1,521	6,624,423
ASIC reuniting	367	889,522	1,102	3,796,478
Other <sup>2</sup>	6,874	20,386,365	2,600	8,907,327
<b>Total</b>	<b>8,833</b>	<b>27,600,678</b>	<b>5,223</b>	<b>19,329,228</b>

1. Company unclaimed money is paid to ASIC in accordance with the provisions of the Corporations Act.

2. Where a claimant has become aware of the unclaimed money through means other than a money recovery agency or ASIC's active reuniting work, including their own search of the MoneySmart website.

## Managing property vested in ASIC

ASIC administers the property of deregistered companies. This property remains vested in ASIC, or in ASIC on behalf of the Commonwealth in relation to trust property, until it is lawfully dealt with (e.g. it is purchased by another party or transferred to another party), or evidence is provided that the property no longer vests in ASIC for some other reason (e.g. the company has been reinstated).

In 2012–13 ASIC continued a more proactive approach to administering vested property, including encouraging parties to apply to ASIC to purchase that property where appropriate.

ASIC's website was updated with detailed information about how to make an application to ASIC to deal with such property.

ASIC accounts for any proceeds on realisation of the property in accordance with its statutory duties by transferring the proceeds into the Official Public Account. These proceeds are treated like any other unclaimed money for which ASIC is responsible.

The number of new matters received in 2012–13 decreased to 1,317 and the number of matters finalised rose to 1,478. The following table shows vested properties of deregistered companies by number of cases.

### Vested properties of deregistered companies (by number of cases)

	2012–13	2011–12
<b>Total new matters</b>	<b>1,317</b>	<b>1,552</b>
<b>Total finalised matters</b>	<b>1,478</b>	<b>1,390</b>
Property disposals		
Transferred	201	289
Sold	15	19
No longer vested <sup>1</sup>	609	505
Other <sup>2</sup>	72	120
<b>Total property disposals</b>	<b>897</b>	<b>933</b>

1. Property is removed from ASIC's records when the company is reinstated, a third party lawfully deals with the asset or evidence is provided that the property no longer vests in ASIC.

2. Includes where the vested property interest has been discharged, released, surrendered, withdrawn or has lapsed.

## Assessing misconduct and other reports

### Misconduct reports from the public

ASIC encourages members of the public with concerns about financial services misconduct to report these concerns to us.

We record and assess every report of alleged misconduct that ASIC receives and aim to acknowledge receipt of every report within three business days. We make a range of preliminary inquiries and conduct an initial assessment to see if the misconduct alleged suggests a breach of a law that we administer has been broken.

In many cases, there may be insufficient evidence (or likelihood of such evidence ever being obtainable) to warrant ASIC commencing a formal investigation or surveillance. In that circumstance, we contact the person who reported the matter to ASIC and tell them (to the extent possible) why ASIC has come to that decision. We retain the information reported to us on our databases, for review if further reports are made or additional information or evidence becomes available.

ASIC is less likely to take action where the substance of the matter would be better addressed by another agency or by private dispute resolution between those involved. In many cases, ASIC may also decide that it is more effective to deal with a concern through engaging with stakeholders, issuing guidance to the market or using another one of our regulatory tools, rather than by conducting a surveillance or investigation.

Since 2010, we have been working to improve public understanding of our jurisdiction and the matters that ASIC can and cannot deal with, to simplify reporting processes, and to ensure we respond promptly and consistently to those who lodge reports with us.

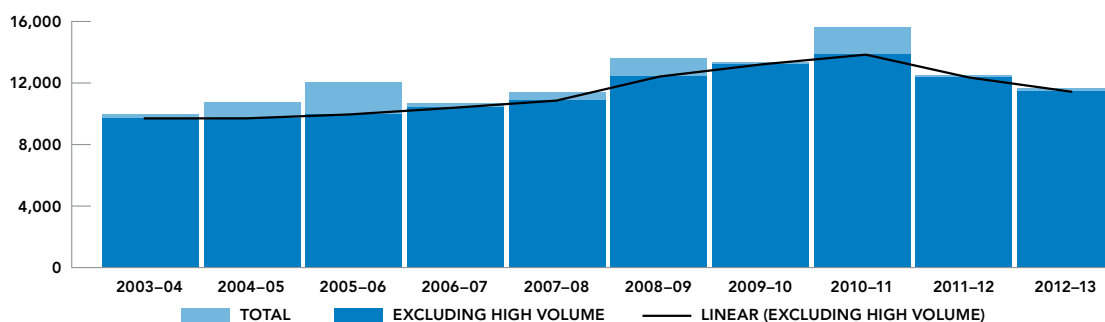
In October 2012, we published one information sheet that clearly explains how we deal with reports of misconduct and four others that explain ASIC's role in relation to specific concerns that are frequently reported to us – frozen funds and hardship payments, disputes about employee entitlements, disputes about goods and non-financial services and disputes between officeholders and/or members of small proprietary companies.

These information sheets assist us in providing timely and consistent responses to the misconduct reports we receive. We have also updated the [www.asic.gov.au](http://www.asic.gov.au) website to more clearly explain what matters ASIC deals with.

In 2012–13 we finalised 76% of misconduct report assessments in 28 days, an improvement on the 72% in 2011–12 and ahead of our target of 70%.

The following chart shows the total number of reports finalised each year together with the underlying trend after high-volume matters have been removed. High-volume matters are those where ASIC has received 100 or more reports of misconduct about the same entity and the same issue.

### Misconduct reports – by trend



In 2012–13 ASIC dealt with 11,682 reports of alleged misconduct, 7% fewer than in 2011–12.

The decline in misconduct reports since 2010–11 has largely occurred in the area of corporate governance – insolvent trading – accompanied by a decline in statutory reports lodged by external administrators. As has been reported in other media, there appears to have been an increased tolerance by creditors of payment delays by small companies. Further, the

continued high level of insolvency appointments, following the global financial crisis, may indicate that directors are prepared to arrange for a more orderly winding-down of company affairs and that creditors have a greater acceptance that company failures are the result of economic circumstances.

There was little change from the previous year in the relative proportions of matters by category reported to ASIC.

### Misconduct reports – by category

Category	2012–13	2011–12
<b>Corporations and corporate governance</b>		
Failure to provide books and records or a report as to affairs to an insolvency practitioner	11%	10%
Insolvency matters	6%	8%
Contractual issues (includes concerns about non-provision of goods and services, quality of goods and services)	5%	6%
Insolvent trading – unlisted	4%	6%
Insolvency practitioner misconduct	3%	3%
Other (e.g. directors' duties, contractual issues, internal disputes)	12%	11%
<b>Subtotal</b>	<b>41%</b>	<b>44%</b>
<b>Financial services and retail investors</b>		
Credit	16%	16%
Operating an unregistered managed investment scheme or providing financial services without an AFS licence	5%	4%
Managed investment schemes	3%	4%
Potential scam	2%	4%
Other (e.g. superannuation, insurance, advice, breach of licence conditions, misleading or deceptive conduct, unconscionable conduct)	16%	15%
<b>Subtotal</b>	<b>42%</b>	<b>43%</b>
Market integrity – including insider trading, continuous disclosure, misleading statements, market manipulation	6%	6%
Registry integrity – including incorrect address recorded on ASIC's register or lodging false documents with ASIC	9%	5%
Other issues	2%	2%
<b>Total</b>	<b>100%</b>	<b>100%</b>

## Assessing misconduct and other reports continued

### Misconduct reports – by outcome

	2012–13	2011–12
Total misconduct reports finalised	11,682	12,516
<b>Outcome</b>		
Referred for compliance, surveillance or investigation <sup>1</sup>	27%	26%
Resolved <sup>2</sup>	19%	21%
Analysed and assessed for no further action <sup>3</sup>	35%	33%
No jurisdiction <sup>4</sup>	14%	15%
No breach or offences	5%	5%
<b>Total</b>	<b>100%</b>	<b>100%</b>

1. The matters ASIC takes into account in deciding whether or not to commence a formal investigation are set out in more detail in Information Sheet 151 *ASIC's approach to enforcement*.

2. This can involve referral to an external dispute resolution scheme, ASIC issuing a warning letter to the party that may be in breach of the Corporations Act, ASIC providing assistance to the reporter in the form of guidance and information about how best to resolve the matter themselves or ASIC taking action to achieve compliance.

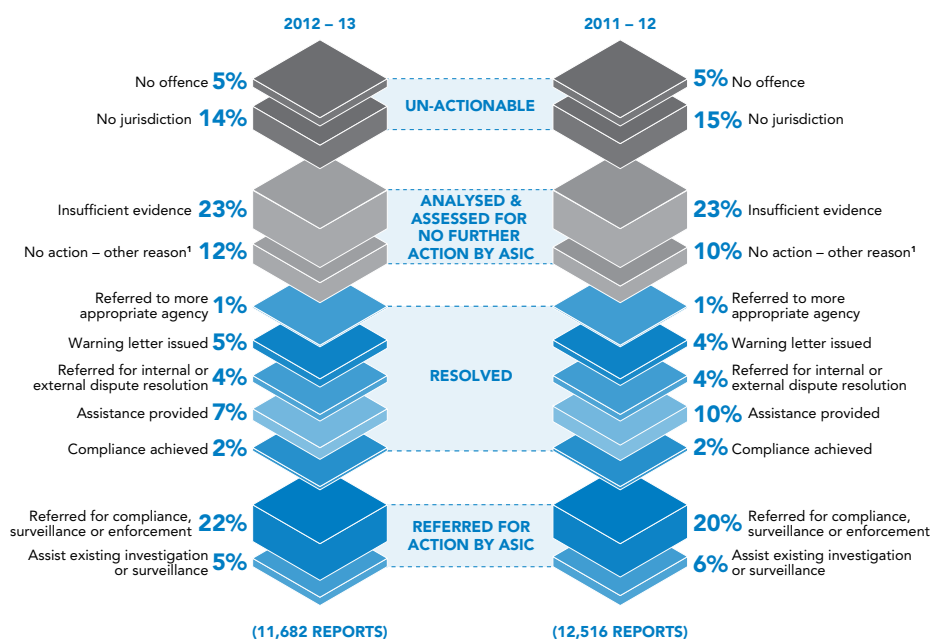
3. Preliminary inquiries made and information provided analysed and assessed for no further action by ASIC, due to insufficient evidence or other reason e.g. another agency or law enforcement body or third party (e.g. a liquidator) is better placed to appropriately deal with the underlying issues or is already taking action.

4. Where relevant, ASIC directs reporter to appropriate agency or solution.

NOTE: Where ASIC receives reports about the same entity and issue we merge these matters.

The following figure provides a more detailed view of how we handle the reports of misconduct we receive.

### Misconduct reports – by outcome



1. Reasons for decision to take no further action include that another agency, law enforcement body or third party is better placed to action, or is already taking action.

## Breach reports from licensees and auditors

The Corporations Act requires AFS licensees to tell ASIC in writing within 10 business days about any significant breach (or likely breach) of their obligations. Failure to report a significant breach (or likely breach) in itself is a significant breach.

AFS licensees must have clear and well understood processes for identifying and reporting breaches. Responsible entities of managed investment schemes are also subject to specific breach reporting requirements.<sup>1</sup>

As part of their breach report, licensees advise how they identified the breach, how long it lasted, what steps they have taken to rectify the breach and what steps they have taken or will take to ensure compliance in the future.

As part of our assessment of the breach report we will consider the steps the licensee has taken and may decide that no action on our part is required.

ASIC also receives breach reports from auditors, where (among other things) they have reasonable grounds to suspect a breach of the Corporations Act in relation to the company to which they are appointed.<sup>2</sup>

In 2012–13 we dealt with slightly fewer auditor breach reports and breach reports relating to managed investment schemes and AFS licensees than in 2011–12. In 2012–13 more than half of the reports were finalised by being referred for specialist review within ASIC.

## Breach reports – by type and outcome

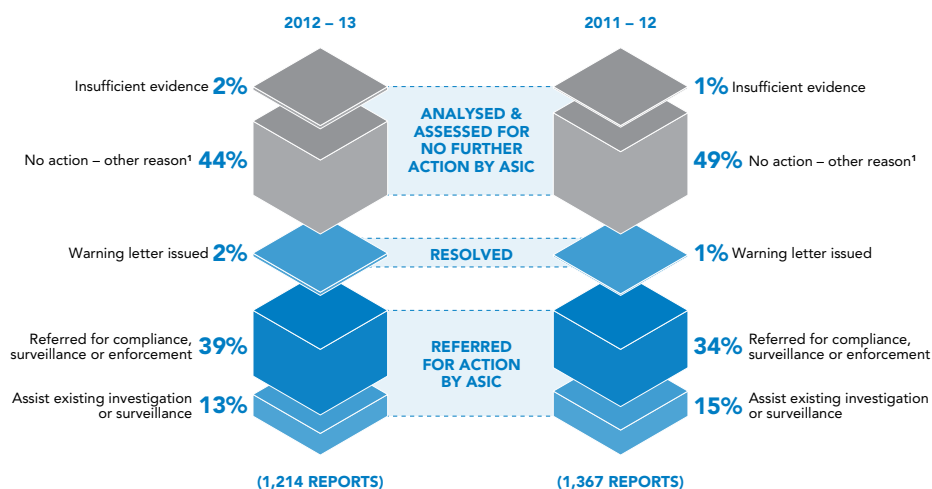
	2012–13	2011–12
<b>Type</b>		
Auditor breach reports	314	350
Breach reports related to AFS licensees and registered entities of managed investment schemes	900	1,017
<b>Total breach reports finalised</b>	<b>1,214</b>	<b>1,367</b>
<b>Outcome</b>		
Referred for compliance, investigation or surveillance	52%	49%
Resolved	2%	1%
Analysed and assessed for no further action	46%	50%
<b>Total</b>	<b>100%</b>	<b>100%</b>

1. For more information about breach reporting by AFS licensees see ASIC Regulatory Guide 78.

2. For more information about the matters that require an auditor to report a breach of the law to ASIC, see section 311 of the Corporations Act 2001.

# Assessing misconduct and other reports continued

## Breach reports – by outcome



1. As part of their breach report, licensees advise what steps they have taken to rectify the breach and to ensure compliance in future. ASIC considers the steps taken and may decide that no action by ASIC is required.

## Statutory reports from liquidators, administrators and receivers

Liquidators, administrators and receivers (external administrators) are required to report to ASIC if they suspect that company officers have been guilty of an offence or, in the case of liquidators, if the return to unsecured creditors may be less than 50 cents in the dollar. An initial report is generally lodged electronically under Schedule B of Regulatory Guide 16 *External administrators: Reporting and lodging*. Many of these initial reports do not report misconduct and are not assessed further.

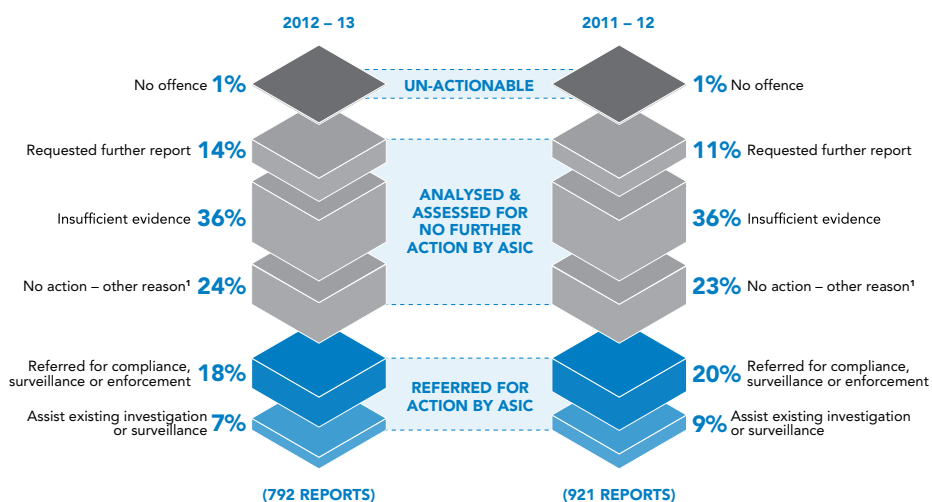
Where misconduct is reported, ASIC will determine whether to request a supplementary report. Supplementary reports are typically detailed free-format reports setting out the results of the external administrator's inquiries and the evidence to support the alleged offences. Generally, ASIC can determine whether to commence a formal investigation on the basis of a supplementary report. External administrators can submit a supplementary report at any time.

The number of reports received has decreased in 2012–13, despite the number of insolvencies remaining at the same level as the previous year. In 2012–13, a total of 25% of these reports were referred for compliance, investigation or surveillance, compared with 29% in 2011–12. In more than half of the cases identified as 'Analysed, assessed and recorded', ASIC determined, after conducting preliminary inquiries, that there was insufficient evidence to warrant commencing a formal investigation. In another fifth of these cases, ASIC requested a further report from the external administrator.

## Statutory reports – by type and outcome

	2012–13	2011–12
<b>Initial reports from liquidators, administrators and receivers</b>		
Reports alleging misconduct	6,985	7,607
Reports not alleging misconduct	2,467	2,876
<b>Initial reports – outcomes</b>		
Supplementary reports requested	10%	10%
Analysed and assessed for no further action	90%	90%
<b>Total</b>	<b>100%</b>	<b>100%</b>
<b>Supplementary reports received by ASIC</b>		
Supplementary reports alleging misconduct	792	921
<b>Supplementary reports – outcomes</b>		
Referred for compliance, investigation or surveillance	25%	29%
Analysed and assessed for no further action	74%	70%
Identified no offences	1%	1%
<b>Total</b>	<b>100%</b>	<b>100%</b>
<b>Total statutory reports received (initial + supplementary)</b>	<b>10,244</b>	<b>11,404</b>

## Supplementary statutory reports – by outcome



1. Reasons for decision to take no further action include that another agency, law enforcement body or third party is better placed to take action, or is already taking action.

## Performance against Service Charter

### ASIC Service Charter results

The ASIC Service Charter covers the most common interactions between ASIC and its stakeholders and sets performance targets for each. The following table sets out our performance against the key measures outlined in the Service Charter.

#### ASIC Service Charter performance

Service	Service Charter target	2012–13	2011–12
General phone queries	We aim to answer your telephone queries on the spot	80.5% of calls answered on the spot (576,513 of 716,382) 19.5% (139,869) referred to specialist staff	87% of calls answered on the spot (525,741 of 600,889) 13% (75,148) referred to specialist staff
General email queries	We aim to reply to email queries <sup>1</sup> within two business days	77% replied to in two business days (111,399 of 144,204)	73% replied to within two business days (17,611 of 24,224)
General correspondence about our public database and registers, including fee waivers	We aim to acknowledge receipt within 14 days of receiving it, with full response within 28 days	85% replied to in 28 business days (17,387 of 20,478)	91% replied to within 28 business days (18,719 of 20,629)
Registering a company	We aim to complete company registrations within one business day <sup>2</sup>	98% completed in one business day (200,326 of 204,035 ) 97% of paper forms completed in one day (17,753 of 18,217) 98% of electronic forms completed in one day (182,573 of 185,818)	98% completed within one business day (182,503 of 185,559) 97% of paper forms completed within one day (18,357 of 18,905) 98% of electronic forms completed within one day (164,146 of 166,654)
Updating company information and status	We aim to enter critical changes to company information in the corporate register within two business days	98% entered within two business days (995,676 of 1,013,048) 91% of paper forms entered in two business days (105,997 of 116,733) 99% of electronic forms entered in two business days (889,679 of 896,315)	98% entered within two business days (1,053,821 of 1,075,984) 91% of paper forms entered within two business days (153,631 of 169,142) 99% of electronic forms entered within two business days (900,190 of 906,842)

1. Email queries lodged via the 'Ask us a question' webmail facility on ASIC's website.

2. Includes all applications received, regardless of whether applications approved or a company registered.

Service	Service Charter target	2012–13	2011–12
Registering as an auditor	We aim to decide whether to register an auditor within 28 days of receiving a complete application	92% registered within 28 days (123 individual applications and 16 authorised audit companies)	91% registered within 28 days (98 individual applications and 15 authorised audit companies)
Registering as a liquidator	We aim to decide whether to register a liquidator or official liquidator within 28 days <sup>3</sup>	100% of liquidator applications decided within 28 days (37 of 37 applications) 98% for official liquidators (44 of 45 applications)	92% of liquidator applications decided within 28 days (34 of 37 applications) 95% for official liquidators (35 of 37 applications)
Applying for or varying an AFS licence	We aim to decide whether to grant or vary an AFS licence within 28 days <sup>3</sup>	79% of licences granted within 28 days (374 of applications 472) 83% of licence variations decided in 28 days (649 of 784 applications) <sup>4</sup>	85% of licences granted within 28 days (357 of 420 applications) 88% of licence variations decided within 28 days (803 of 917 applications) <sup>4</sup>
Registering a managed investment scheme	By law we must register a managed investment scheme within 14 days of receiving a complete application	100% registered in 14 days (205 of 205)	100% registered within 14 days (191 of 191)
Applying for or varying a credit licence	We aim to decide whether to grant or vary a credit licence within 28 days <sup>3</sup>	83% of all licence applications decided within 28 days (313 of 375) 91% of licence variations decided in 28 days (160 of 175)	90% of all licence applications decided within 28 days (350 of 391) 94% of licence variations decided within 28 days (149 of 159)
Applying for relief from the Corporations Act or National Credit Act	For applications that do not raise new policy issues, we aim to give an in-principle decision within 21 days of receiving all necessary information and fees (target: 70%)	71% of in-principle decisions made within 21 days (1,935 of 2,744 applications) <sup>4</sup>	73% of in-principle decisions made within 21 days (1,897 of 2,594 applications) <sup>4</sup>
Complaints about misconduct by a company or individual	If someone reports alleged misconduct by a company or an individual, we aim to respond within 28 days of receiving all relevant information (target: 70%) <sup>5</sup>	76% finalised within 28 days (8,828 of 11,682)	72% finalised within 28 days (8,954 of 12,516)

3. Applications taking more than 28 days are generally complex ones, requiring, for example, additional policy work or legal review.

4. Includes all applications, including those where we did not initially receive all the information needed to make a decision.

5. Reports taking more than 28 days are generally complex ones or ones requiring considerable additional work.

## Regional activities

### Regional Commissioners



**Peter Cuzner**  
Australian  
Capital Territory



**Chris Van Homrigh**  
New South Wales



**Duncan Poulson**  
Northern  
Territory



**Brett Bassett**  
Queensland



**Mark Bielecki**  
South Australia



**Julie Read**  
Tasmania



**Warren Day**  
Victoria



**Bruce Dodd**  
Western Australia

In 2012–13 ASIC's regional commissioners led a range of initiatives in each state and territory. The regional commissioners act as ASIC's local ambassadors, engaging with business and local communities, including through regular stakeholder liaison meetings, and promoting ASIC initiatives. This year the regional commissioners played a major role in the rollout of the MoneySmart Teaching program and the delivery of FOFA and Stronger Super roadshows.

### Australian Capital Territory

- ♦ ASIC promoted the MoneySmart consumer and MoneySmart Teaching websites and resources at the ACT Multicultural Festival.
- ♦ ASIC's Outreach Education team worked extensively with more than 20 ACT-based organisations in the community and education sectors.

### New South Wales

- ♦ ASIC presented to the Brazilian Institute of Corporate Governance international study tour, hosted by The Australian Institute of Company Directors.
- ♦ ASIC promoted consumer rights information to seniors at the Royal Easter Show, in partnership with other state and federal government organisations.

### Northern Territory

- ♦ ASIC delivered a keynote presentation on Minimising Risk at an NT Chamber of Commerce event in Alice Springs, as part of ongoing work to help small businesses in the Northern Territory better understand their obligations and responsibilities.
- ♦ ASIC hosted a one-day workshop for stakeholders, 'Increasing the Commercial Capacity of Indigenous Organisations'.
- ♦ ASIC worked with Yolgnu Radio to raise awareness of unclaimed money belonging to residents and organisations in Arnhem Land.
- ♦ Audio posters produced by ASIC, with messages about ATM fees in 12 Indigenous languages, were distributed nationally as part of the Government's fee-free ATM trial.

## Queensland

- ♦ ASIC hosted regional meetings with Certified Practising Accountants, the Institute of Chartered Accountants and the local business community in Townsville.
- ♦ ASIC made presentations on its services to the Association of Certified Fraud Examiners, Australasian Compliance Institute and the Small Enterprise Association of Australia and New Zealand.
- ♦ ASIC continued its involvement in the Queensland Regulators and Consumers Forum, with three meetings held to exchange views and promote the discussion of emerging trends and local intelligence.
- ♦ ASIC hosted public education sessions and made presentations at schools focused on MoneySmart financial literacy resources.

## South Australia

- ♦ ASIC attended the Lucindale Field Days to provide information for business people and consumers about ASIC and on topics such as managing money, credit, superannuation, investing and scams.
- ♦ The national launches of MoneySmart Teaching for primary and secondary schools were both held in Adelaide, with teachers from selected schools all over Australia attending a two-day conference.
- ♦ Throughout the year ASIC liaised with local business groups in the financial services sector including bankers, financial advisers, accountants and insolvency practitioners.

## Tasmania

- ♦ ASIC's Financial Literacy Outreach Team established a Tasmanian Consumer Law Consultative Forum, with two meetings held in the first year. The forum attracted a wide range of participants from both Government and the private sector.
- ♦ ASIC hosted bi-monthly insolvency discussions with the Insolvency and Trustee Service Australia, the Australian Tax Office and local insolvency practitioners and lawyers.
- ♦ ASIC's MoneySmart team gave presentations on financial literacy to a variety of community and government stakeholders.

## Victoria

- ♦ ASIC's work to promote MoneySmart and registry programs in regional areas included a MoneySmart stand at the Elmore Field Day. ASIC staff, including graduates, engaged with the local community about making wise financial decisions and promoted our financial literacy resources.
- ♦ This year we also conducted a number of presentations to young professional groups, including Leo Cussen Graduates, to raise awareness of ASIC's role, powers and priorities among young professionals intending to practise law and other professions.
- ♦ ASIC made connections with agencies whose work intersects with ASIC's, including the Victorian Commission for Gambling and Liquor Regulation and the Victoria Police. In May, ASIC signed a Memorandum of Understanding with Victoria Police, to facilitate communication, and referral of matters where appropriate. The document was developed by ASIC as a potential blueprint for similar arrangements with other state police agencies across Australia.

## Western Australia

- ♦ ASIC visited Geraldton, Bunbury and Albany to present on a range of issues to local businesses. Our presentations covered the national Business Names Register, FOFA and credit practices. These sessions were held with assistance from the local Chambers of Commerce and Industry.
- ♦ Throughout the year ASIC delivered presentations or took part in panel discussions with a wide range of key stakeholders, including the Institute of Chartered Accountants, the Australian Government Solicitor, the University of Western Australia, the Law Society of WA and the WA Chamber of Minerals and Energy.

## Regional activities continued



*Brock Collins, Tien Hoang, Joshua Fisher and Asher Brooks, members of ASIC's 2012 graduate program, working at the ASIC stall at the Elmore Field Day in October 2012.*



*ASIC's regional commissioner for the Northern Territory, Duncan Poulson (left), and senior teacher Jo Masters, showcasing MoneySmart Teaching materials in Darwin.*



*ASIC's regional commissioner for South Australia, Mark Bielecki, discussing investment matters with visitors to the Lucindale Field Day, March 2013.*



*2012 Graduate Tien Hoang at the Elmore Field Day.*