



building confidence in financial markets

ASIC Annual Report 2003–04



ASIC

Australian Securities &
Investments Commission



ASIC at a glance

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

Role and structure An independent Commonwealth government body set up in 1991 to regulate financial markets, securities, futures and corporations.

Responsible for consumer protection in superannuation, insurance, and deposit taking from 1998, and credit from 2002.

For our statutory aims, and strategies for achieving them, page 6. Delivered through six directorates, page 12.

Worked with other financial and law enforcement agencies in Australia and internationally, page 46.

Outcome we seek Fair and efficient markets characterised by integrity and transparency, supporting confident and informed participation of investors and consumers. For our aims, plans and outputs, see pages 6, 8 and 10.

Values Australian Public Service values and code of conduct, page 52.

Staff 1,531 full-time equivalent staff around Australia, page 9.

Finance \$196 million in costs, funded from budget. \$457 million in fees and charges raised for the Commonwealth, page 10.

Leadership Three full-time Commissioners appointed by the Governor-General on the nomination of the Treasurer, pages 47 and 50.

building confidence in financial markets

highlights

- 1** A record \$4.2 billion in capital raisings requiring additional disclosure, compensation orders or assets preserved, pages 18 and 25.
- 2** Financial and corporate laws kept credible and respected: 28 jailed, 60 illegal schemes shut down, insolvent trading deterred, pages 15 and 34.
- 3** Higher, more consistent standards promoted in the financial services industry under 3,853 new licences, page 21.
- 4** Business costs reduced and innovative products assisted through 2,007 ASIC approvals, page 4.
- 5** Public use of ASIC services increased: consumer website visits up 37%, database searches up 23%, reports of misconduct up 7%, pages 29, 34 and 35.

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About this report

This report was produced under the *Commonwealth Authorities and Companies Act 1997*. The members of the Commission are responsible under section 9 of that Act for the preparation and content of the report of operations in accordance with the Finance Minister's orders.

To meet our high standards of disclosure, we used feedback from Parliamentarians and the public. Last year's report won ASIC's fifth consecutive Gold Award from the Australasian Reporting Awards Inc.

chairman's report



Jeffrey Lucy AM,
ASIC Chairman, see page 47 for
biographical details.



This is my first annual report as ASIC Chairman.

Let me begin by acknowledging the significant contribution of Mr David Knott who resigned as Chairman in December 2003. In farewelling him in Melbourne, the Treasurer said ASIC was 'a top four global regulator'. David Knott added greatly to ASIC's reputation as an effective law enforcement agency and brought about greater consistency and national perspective in decision making.

Building confidence

Confidence in Australian financial markets has allowed our companies to raise capital competitively, and allowed investors and consumers to buy financial products and services at a cost and quality that compares strongly with major overseas markets.

In globally competitive financial markets, ASIC's strong record in enforcement and regulation ensured support and cooperation from the regulators of the largest capital markets. In turn, this helped maintain global investors' confidence in Australia. Through action against poor disclosure alone, we improved the quality of information for investors in capital raisings amounting to \$4.1 billion.

In achieving the aims that Parliament set for ASIC in our legislation, we maintained positive trends on our measures of effectiveness and made sound progress on our 2003–05 strategic plan, see pages 6 and 8.

We contributed to building confidence in three important ways this year:

- enforcing the law
- improving the financial system, and
- contributing to consumer protection and financial literacy.

Enforcing the law

The community tends to judge ASIC by its enforcement record. We continued the high levels of activity and success of previous years.

We had 67 criminals successfully prosecuted, obtained civil orders against 118 companies or people to raise standards in corporations and financial services, and deterred insolvent trading, see pages 14 and 34.

Following the report of the Royal Commission into the collapse of the HIH group of insurance companies, our HIH taskforce continued its painstaking collection of evidence to put before the Director of Public Prosecutions. This year, one person has been convicted and sentenced, five others face criminal charges and further matters are in hand.

Although real estate investing and 'get rich quick' property investment seminars largely fall outside ASIC's jurisdiction, we tested the boundaries including action against misleading claims by property spruiker Mr Henry Kaye. We also shut down 60 illegal investment schemes.

Improving the financial system

We approved more than 2,007 applications for waivers of or modifications to the law that reduced business costs. As a result of ASIC approvals, more than \$45 billion in major corporate restructures and initial public offerings could proceed without additional cost.

ASIC's successful implementation of financial services reforms with the licensing of 3,853 businesses completed the transition to a new system of more consistent and efficient regulation for consumers and investors.

We published guidance on how we will implement law reform aimed at strengthening public confidence in corporate disclosure and audit (CLERP 9). To strengthen collaboration with other organisations, we signed new Memoranda of Understanding with ASX Ltd, the Australian Crime Commission, the Australian Prudential Regulation Authority and the Financial Reporting Council.

Contributing to consumer protection and financial literacy

ASIC undertook projects to encourage higher standards in financial planning and reduce misleading and deceptive conduct affecting consumers. We significantly increased the reach of our consumer education and consumer protection work, see pages 28–31. We published an important research report on disclosure of soft dollar commissions by financial advisers, and contributed to joint Commonwealth-State working parties on the regulation of real estate investment advice and mortgage brokers.

We worked actively to raise consumer financial literacy. Commissioner Berna Collier joined the Government's new financial literacy taskforce, and our staff supported the taskforce secretariat.

Our staff

Credit for the highlights and achievements of the organisation go to our 1,531 staff. On behalf of the Commission, I record my thanks and appreciation for their outstanding efforts this year. I am very pleased to report that ASIC's Director Corporate Finance, Richard Cockburn, was awarded a Public Service Medal.

The Commission is determined to ensure we recruit and retain committed and capable people. In this annual report, a summary of our staffing strategies and results stands on an equal footing with our financial strategies and results, see page 9.

The Commission

Commission membership changed significantly. On the departure of former Chairman David Knott, the Treasurer appointed me Acting Chairman in December 2003, and I was formally appointed Chairman by the Governor-General in May 2004.

Pending our new Deputy Chairman's appointment, Commissioner Berna Collier and I greatly appreciated the support and assistance of Acting Commissioners, Carlos Iglesias (Executive Director, Infrastructure) and Malcolm Rodgers (Executive Director, Markets Regulation and Policy). See also page 49.

In July 2004, Jeremy Cooper was appointed Deputy Chairman for a five year term, and Commissioner Collier's term was extended for four years. I warmly congratulate them both and look forward to their strong contributions to the work of the Commission.

outlook

Our enforcement and regulatory responsibilities will increase as a result of changes to the law affecting corporate disclosure and audit (CLERP 9). International issues will grow significantly; for example, international accounting standards will apply from 2005 and the US Sarbanes-Oxley Act will have an increasing impact on many of our larger companies.

From July 2005, new legislation will allow most superannuation fund members to choose their own fund. We will put extra effort into consumer protection and education and into raising standards in the financial services industry.

My report, and the rest of this annual report (except for the financial statements) constitutes ASIC's report of operations in accordance with a resolution of Commissioners made on 3 August 2004.



Jeffrey Lucy, AM
Chairman



ASIC Commissioners, see page 47.
Chairman Jeffrey Lucy, (standing), Deputy Chairman
Jeremy Cooper, appointed July 2004, (right),
Commissioner Berna Collier, (left).

effectiveness

Achieving the aims set out in our legislation

Measures of effectiveness in meeting our statutory aims

(based on the ASIC Act, see page 46)

	2003-04	2002-03	2001-02
Upholding the law uniformly, effectively and quickly			
• Criminals jailed	28	29	19
• Civil orders against people or companies	118	151	140
• % litigation successful (target 70%)	93%	94%	92%
• Additional disclosures achieved through ASIC intervention	212	311	n/a
Promoting confident and informed consumers			
• \$ millions in capital raisings requiring additional disclosure, compensation orders or assets frozen	\$4,216m	\$506m	\$401m
• Public complaints about misconduct finalised	9,970	9,292	7,827
• Use of our consumer website FIDO	1,196,000	875,000	488,000
• Callers assisted through our Infoline	†108,000	†142,000	161,000
Making company information available quickly and efficiently			
Total use of our databases (free and paid)	13,437,000	10,997,500	9,095,600
Company data lodged on time	92%	93%	93%
Improving the performance of the financial system and the entities within it			
Approvals of commercial transactions or products that reduced costs	1,916	1,360	n/a
Approvals of innovative transactions or innovative financial products	91	90	‡204
Australian financial services licences issued	‡3,227	604	35

† Calls fell because company document lodgement enquiries re-routed, see page 36.

‡ Financial services reform triggered an unusually high number of applications.

Staff, expenses and revenue

	2003-04	2002-03	2001-02
Staff (full-time equivalents) increased for enforcement and financial services reform	1,531	1,396	1,284
Annual change	10%	9%	5%
Operating expenses rose to pay for extra workload			
\$ millions	\$196m	\$173m	\$160m
Annual change	13%	8%	12%
Fees and charges raised for the Commonwealth up			
\$ millions	\$457m	\$405m	\$379m
Annual change	13%	7%	4%

strategies

Sustained progress on six key goals in our 2002–05 strategic plan

Direction and context

Results in 2003-04

Fight fraud and misconduct

The public rates enforcement as our highest priority.

This year, ASIC:

- succeeded in 93% of litigation, page 6
- maintained high levels of enforcement activity, pages 14, 34 and 35
- shut down 60 illegal investment schemes, involving about 5,000 investors and \$110 million, page 15
- increased publication and distribution of warnings, page 30

Raise standards in financial services and further build our expertise

Parliament has given us a major task to implement its financial services reforms smoothly.

This year, ASIC:

- successfully completed the transition to new licensing and conduct requirements for the whole financial services industry, page 21
- released model fee disclosure guidelines for investment products, a report on soft dollar commissions, pages 22 and 30
- inspected market operators and clearing houses and reported to the Minister, page 26

Make a greater impact in the boardroom and improve the financial system.

The market needs effective disclosure but some company boards and company auditors have not delivered.

This year, ASIC:

- was given power to fine companies for breaches of market disclosure rules, pages 15 and 27
- reviewed financial reports of 459 listed companies, page 26
- acted to reduce insolvent trading, page 34
- issued guidance for auditors and directors on higher standards to be imposed by law, page 27
- acted against 429 companies for failing to lodge financial reports, page 36

Detect and act on early warning signs

We have responded well to events but in the past some important issues have jumped out unexpectedly.

This year, ASIC:

- established a strategic analysis unit to research and analyse emerging issues and risks for markets and consumers
- set national regulatory priorities for 2004–05 based on risk analysis
- established new cross-disciplinary projects to mitigate key risks identified

Maintain optimal funding, relevance and efficiency

Our responsibilities and workload have increased significantly over the past few years.

This year, ASIC:

- secured an additional \$13.5 million for 2004–05 operations, auditor surveillance, page 10
- achieved government targets for reduced energy use, page 41
- cut cost of office services by 4.5%, and maintained efficient use of accommodation, page 41

Strengthen the skills of our staff

Our increased workload and responsibilities mean we must strengthen the skills within the organisation.

This year, ASIC:

- increased staff 10% to meet higher demand for services, page 9
- redressed staff remuneration to move closer to other Treasury portfolio agencies, page 9
- maintained strong commitment to staff development, page 9

staff

Strategies implemented to recruit and retain capable and committed people

Credit for ASIC's achievements goes to our 1,531 staff. Many people work for ASIC because they believe in what we do, and we value this commitment.

We have implemented strategies to recruit and retain capable and committed people, taking into account the strong competition for staff that we face from private sector financial and professional services businesses.

More staff to meet demanding workload

Staff increased 10% to 1,531 full-time equivalents to meet additional demand for our services, including enforcement (especially the HIH taskforce) and financial services regulation. We also recruited 22 new graduates who will participate in a 12-month rotation through the agency.

Redressing staff remuneration

Competitive remuneration of our staff is an ongoing challenge. In June 2004, the Commission offered all staff a one-off 4% salary increase in order to move towards parity with salary levels paid to staff in other agencies within the Treasury portfolio. The Commission was concerned that for some time ASIC salary levels had fallen behind other comparable agencies, adversely affecting our ability to attract and retain staff.

Funding for staff development

To build and renew our staff skills, we spent around \$1.4 million on staff development. On a dollar per head basis, this was a higher amount than average for the public service, reflecting the demands of our market-driven and changing regulatory responsibilities.

We have established processes to identify the skills, knowledge and abilities required for each job and to assess each staff member's development needs against those requirements. We created a national set of development programs, supported by 21 graduate recruitments, mid-level specialist and management training and 26 staff participants in the 2004 ASIC Summer School.

A safe workplace

We maintained a strong emphasis on safety at work and on actively managing situations where staff suffered work-related injury or illness. Injuries and claims decreased, thanks to ongoing strategies to manage the prevention of injuries in the workplace, see page 38.

A diverse, balanced team

ASIC has achieved a better balance of men and women and people of different backgrounds than in many parts of the corporate or financial services industry.

We strengthened procedures to ensure all staff appointments are made fairly on merit. We also conducted mandatory training for all staff to:

- raise awareness about and reinforce the importance of the public service values and code of conduct
- reinforce respect for the variety of backgrounds, experiences and perspectives of staff at work.

Outlook

ASIC is a demanding workplace. In the coming year, we will develop strategies to:

- encourage flexible work arrangements so we retain the right mix of experience and skills to operate effectively, for example by reviewing part-time work and looking at the impact on ASIC of an ageing workforce
- help staff achieve a reasonable work-life balance.

More information on staffing on page 37.

Increased outputs to achieve the outcome approved by Parliament

Parliament appropriated funds for ASIC in order to achieve the outcome of 'a fair and efficient market characterised by integrity and transparency and supporting confident and informed participation of investors and consumers'.

To do this, we delivered four outputs (or services) set out below.

Output*	This year	Last year	Change
1. Policy and guidance about laws administered by ASIC, pages 20 and 24	\$10.9m	\$9.7 m	12.4%
2. Comprehensive and accurate information on companies and corporate activity, page 33	\$45.4m	\$46.1m	-1.5%
3. Compliance monitoring and licensing of participants in the financial system to protect consumer interests and ensure market integrity, pages 20, 24 and 28	\$56.0m	\$47.7m	17.4%
4. Enforcement activity to give effect to the laws administered by ASIC, page 14	\$83.9m	\$69.0m	21.6%
Total	\$196.2m	\$172.6m	13.7%

*Infrastructure costs are apportioned to these outputs

Our increased costs of \$23.6 million were largely to implement:

- the Financial Services Reform Act
- the dedicated taskforce on matters referred by the HIH Royal Commission
- activities targeting insolvent trading by companies and company officers
- corporate law reform.

Additional funding was also provided to the Superannuation Complaints Tribunal to cover greater demand for its services.

Some \$11.8 million of our appropriation was levied by the government on deposit taking, superannuation, retirement savings and insurance organisations. See page 59 for a breakdown on how the levy was used for activities relating to the products and services these organisations offer, and for the Superannuation Complaints Tribunal.

We incurred an operating deficit of \$4.8 million. Employee expenses, our largest outlay, increased 20% for more staff to meet our additional responsibilities.

Suppliers expenses, excluding property costs, increased to \$62.8 million. Property expenses of \$3.2 million increased by only \$0.6 million, a cost kept under control by accommodating additional staff within existing premises.

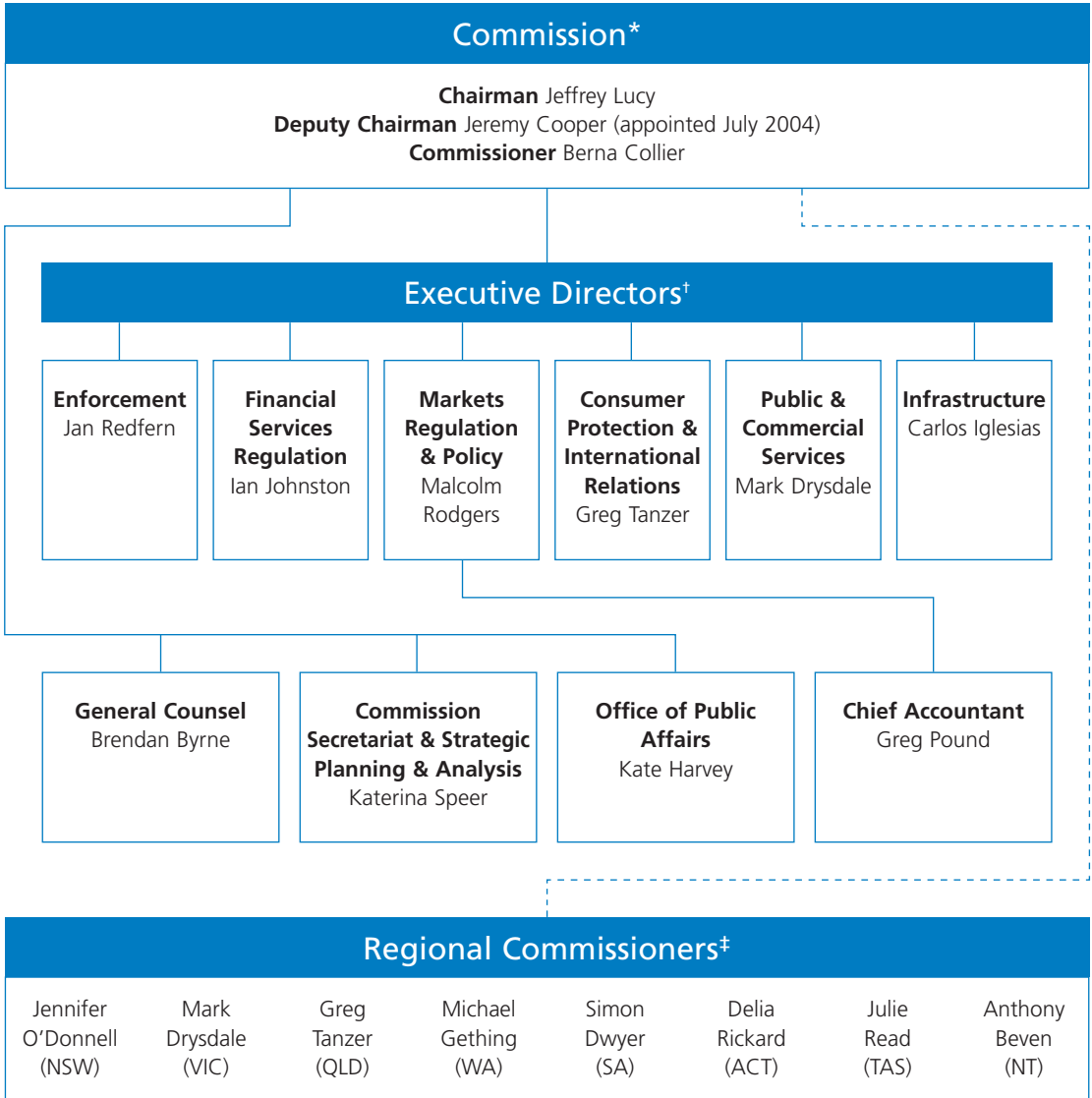
We received \$8.1 million in revenue from sale of services, interest and other sources, including \$1.9 million in recoveries for court and investigation costs. We also raised \$456.6 million for the Commonwealth in fees and charges.

Outlook

In 2004–05 we will receive an additional appropriation of \$13.5 million: \$11.7 million to sustain ASIC's operations and \$1.8 million for auditor surveillance as part of CLERP 9. We will also receive an equity injection of \$11.3 million to place ASIC's balance sheet in a positive equity position.

Our Financial Statements begin on page 61.

organisation



* Commissioners' biographies, see page 47.

† Executive Directors' details, see relevant directorate chapters.

‡ Regional Commissioners' details, see page 55.

operational summary

Directorate	Enforcement	Financial services regulation	Markets regulation and policy
Staff	385 staff	219 staff	124 staff
Role	Investigate and act against misconduct	Regulate financial services and financial products	Regulate markets, corporate finance and disclosure; develop policy
Key events	First conviction of HIH executive arising from HIH Royal Commission	Successful transition to financial services reform in March	Parliament enacted stricter rules for company directors and auditors
Results	<p>28 people jailed, banned 22 directors and 42 people from financial services</p> <p>1 sentenced, 5 people charged with criminal matters over HIH. Others in progress</p> <p>60 illegal investment schemes shut down, involving \$110 million.</p>	<p>Issued 3,227 financial services licences</p> <p>Checked new licensees, superannuation complaints handling, and adviser remuneration</p> <p>Published model for presenting fees in investment offer documents</p>	<p>A record \$4 billion in capital raisings requiring additional disclosure</p> <p>Inspected market operators and clearing houses and reported to the Minister</p> <p>Guided industry on financial services, corporate audit and disclosure</p>
Targets for next year	<p>Progress on matters referred by the HIH Royal Commission</p> <p>Act against fraud and misconduct, including that affecting consumers</p> <p>Promote public awareness about current scams and fraud</p>	<p>Increase compliance and supervision of the industry</p> <p>Lift standards of compliance by offering input and guidance</p> <p>Target risk areas, including illegal early access to superannuation</p>	<p>Implement new disclosure and audit laws</p> <p>Increase scrutiny of off-market trading affecting retail investors</p> <p>Complete outstanding policy work on financial services reform</p>

Consumer protection and international relations*

Public and commercial services

Infrastructure

33 staff	408 staff	297 staff‡
Act on consumer and international issues	Company data, corporate insolvency, complaints and inquiries	IT and knowledge management, HR, finance, management services
Released superannuation calculator and report on soft dollar commissions	Corporate law reforms abolished company annual returns	Federal Budget allocated \$13.5 million in additional funding for 2004–05
Acted on consumer complaints about mortgage brokers	Visited 649 companies to ensure they avoided insolvent trading	Increased staff numbers by 10% to meet rising public demand
Visits to our consumer website up 37%, consumer publications up 250%	Public use of our databases jumped 28% to 13.4 million searches	Reduced internal service costs across all sites by 4.5%
Helped collect evidence used by Thai authorities to convict seven cold callers	9,970 public complaints about misconduct, up 7%. Resolved or acted on 83%	Reduced energy use, maintained efficient use of office space
Focus on retirement incomes, and misleading and deceptive advertising	Maintain operations to deter insolvent trading	Retain and recruit capable and committed staff
Lift education activities, including for vulnerable consumers	Boost summary prosecution action taken about public complaints	Accelerate IT reform program and extend information sharing
Manage more international issues affecting our domestic activities	Extend our electronic interfaces to Australia's corporate database	Increase internal efficiencies and accountability for costs

* The work of this directorate received substantial support from other directorates.

† Full-time equivalents, not including 32 staff supporting the Commission and General Counsel, and 33 staff supporting the Superannuation Complaints Tribunal and other statutory bodies.

‡ Includes 21 full-time graduates working for other directorates.