

enforcement



Jan Redfern (centre), Executive Director, a lawyer with extensive public and private sector experience appointed 2003, previously Deputy Executive Director, with Deputy Executive Directors Allen Turton, (left) and Mark Steward (right).

Overview

385 enforcement staff investigated suspected breaches of the law:

- had 28 criminals jailed for more than 90 years as part of 67 people convicted from briefs prosecuted by the Commonwealth Director of Public Prosecutions
- commenced 51 civil proceedings, resulting in orders against 118 people or companies, \$101 million in recoveries, compensation and fines and \$11 million frozen
- banned or obtained undertakings removing 22 people from directing companies, and 42 people from offering financial services
- disciplined 13 company auditors and liquidators for misconduct.

In this section:

- criminal matters
- civil action and compensation
- banning and disciplinary proceedings
- outlook

key results

Issue	Result
Directors duties	Jailed 15 directors and officers. Chairman of Harris Scarfe Ltd charged. Civil penalties in Waterwheel insolvent trading case upheld. Successful civil penalty actions against 3 former directors of Clifford Corporation.
'Get rich quick' schemes and illegal fundraising	Action against property spruiker Henry Kaye and other 'get rich quick' schemes, with 60 illegal investment schemes shut down, involving about 5,000 investors and \$110 million.
HIH Insurance*	One HIH officer sentenced, 5 others charged, involving 17 charges. Compensation of \$27 million to FAI creditors, and 4 General Cologne Re company officers sanctioned.*
Continuous disclosure	Southcorp Ltd paid \$100,000 penalty for breach of the continuous disclosure provisions. Announced procedures for new administrative fines for lesser breaches.
Superannuation	Jailed 4 superannuation fraudsters, and acted against 10 illegal early access to superannuation schemes involving \$18 million.

* Results for 2003–04 only, not including previous action against Rodney Adler, Ray Williams and Dominic Fodera.

Main activities	This year	Last year	% change
Litigation concluded	220	222	steady
Investigations commenced	347	342	steady
Investigations completed within 12 months	265	263	steady
% investigations completed within 12 months	82%	85%	-3%

Criminal matters

We had 28 criminals jailed as part of 67 people convicted from briefs prosecuted by the Director of Public Prosecutions (DPP). Staff investigated and obtained evidence for the DPP, who then brought and prosecuted, all indictable matters.

28 criminals jailed

What they did	Names and details of crime	Sentence
Investment fraudsters	Andrew John Smith dishonestly obtained over \$190,000 for bank debenture trading and other schemes.	5 years, with a minimum of 20 months
	Terence Eric Loveday operated an unregistered managed investment scheme.	20 months, with a minimum of 6 months
	Colin Roderick McAskill unlawfully induced investors to deal in securities involving a failed ostrich scheme.	6 months, with a minimum of 2 months
Financial services professionals who cheated clients	Hamish Boyd McLachlan diverted trading losses from his own and other accounts to those of RetireInvest clients.	9 years, with a minimum of 5 years
	Mervyn William Mitchell defrauded his clients of superannuation and retirement funds.	7 years, with a minimum of 4 years
	Peter Lyle Sharp improperly used his position at Tietyens Investments Pty Ltd to gain advantage for himself.	5 years, with a minimum of 3 years
	Terrance Robert James improperly gained advantages for himself through the corporate trustee of the Employees Productivity Award Superannuation Fund.	3 years, with a minimum of 18 months
	John Kenneth Shields used his position as a corporate trustee of a superannuation fund to gain an advantage for himself.	3 years, with a minimum of 12 months
	Amber Joy Phelps dishonestly misused \$80,000 belonging to clients.	3 years, with a minimum of 6 months
	Harold Frederick Moses cheated clients of his superannuation intermediary business of more than \$339,000.	2 years and 10 months, with a minimum of 15 months
	Mervyn Alexander Roach obtained property and financial advantage by deception.	2 years 6 months, with a minimum of 18 months
	Robert Thomas Lister, back office manager of an advisory business, used more than \$415,000 for gambling.	2 years 6 months, with a minimum of 6 months
	Vittorio Anthony Herbert Ziegelaar, former insurance agent, stole insurance premiums.	2 years, with a minimum of 12 months

What they did	Names and details of crime	Sentence
Dishonest company directors and officers	Lakhmi Gulabrai Daswani, or Lux Daswani, for fraud in connection with a \$30 million corporate collapse.	12 years with a minimum of 4 years 3 months
	Robert Gary Johnstone of Financial Options Group Incorporated made false statements to investors. More than 35 investors lost over \$10 million.	4 years, with a minimum of 2 years 6 months
	Cameron John Watt dishonestly used his position for his own advantage.	4 years, with a minimum of 2 years and 6 months
	Pauline Dorothy Weir for fraud and dishonestly obtaining credit.	3 years
	Mark Anthony Johnstone for fraud.	3 years, with a minimum of 18 months
	Christopher Beresford James used his position to gain an unlawful advantage.	2 years 6 months, with a minimum of 6 months
	Charles James Andronicus managed a company while an undischarged bankrupt and obtained money by deception.	2 years 6 months, with a minimum of 6 months
	William Forge for resolutions to remove cash from Hallmark Gold NL.	2 years 6 months, with a minimum of 12 months
	Karl Suleman, promoter of the Froggy unregistered investments scheme, for fraud.	21 months, with a minimum of 12 months
	Trevor Gregory Smith made improper use of his position to indirectly gain an advantage for himself.	18 months, with a minimum of 6 months
	Kean Henry Flanagan made misleading statements.	18 months periodic detention
	Peter Clark for resolutions to remove cash from Hallmark Gold NL.	18 months, with a minimum of 9 months
	Richard Charles Salisbury lodged false company documents and attempted to deceive over unclaimed money.	18 months, with a minimum of 6 months
	Timothy Rhys Hawker Williams for insolvent trading and fraudulent conduct.	15 months, with a minimum of 6 months
Andrew Geoffrey Thomson made false and misleading statements in a prospectus.	1 year, with a minimum of 3 months	

Referrals to the DPP

When we conclude a criminal investigation, the briefs of evidence are referred to the DPP.

Months between resourcing investigation and requesting handover

Months	0–3	3–6	6–9	9–12	12+	Total
Number of briefs	4	10	19	5	10	48

Briefs concerned 73 potential defendants. The DPP accepted handover of these briefs for prosecution once it decided that the evidence was sufficient to support a conviction and warranted prosecution. In many cases, charges were laid within three months of handover being accepted by the DPP.

Civil action and compensation

ASIC took 51 civil proceedings resulting in orders against 118 people or companies to freeze assets, obtain compensation, wind up illegal schemes and for civil penalties against directors, company officers and others who failed in their duties. We also accepted enforceable undertakings from 44 entities to obtain more wide-ranging remedies, and often on behalf of more people, than can usually be obtained in court proceedings.

Court orders or enforceable undertakings were obtained for recoveries, compensation and fines of \$101 million, and assets worth \$11 million were frozen, for investors and creditors. Major matters are listed below.

Respondents	Results	Amount
National Australia Financial Management Ltd, National Australia Superannuation Pty Ltd and MLC Nominees Pty Ltd	Compensation for 235,000 investors in 21 superannuation and life insurance products arising from merger of superannuation funds.	\$67 million
General Re Australia Ltd	Funds recovered for creditors of FAI General Insurance Company Ltd, arising from matters referred to ASIC by the HIH Royal Commission..	\$27 million
Tower Australia Ltd	Compensation for members of personal superannuation plans whose accounts contained incorrect withdrawal amounts.	\$5 million

Bannings, fines and disciplinary proceedings

To protect the public, we banned or obtained orders or undertakings that banned 22 people from directing companies, and 42 people from offering financial services. We also disciplined or deregistered 13 company auditors and liquidators for misconduct.

22 company directors and officers banned

Targeted action was taken that banned 3 directors permanently, and 19 for periods exceeding 111 years. In addition, as a result of convictions ASIC obtained this year, a further 68 people were automatically disqualified from managing corporations for 5 years from the date of their conviction or release from prison.

These matters were of particular public or regulatory interest:

Name	What they did	Period of banning
Richard Clayton Jackson Sharland (also known as Richard Clayton Jackson Stagg and Clayton Michael Richards)	Promoted an illegal early release of superannuation scheme, involving 61 people and more than \$1 million in superannuation, for a supposed joint venture in the Commonwealth of Dominica. No venture has been found and the funds appear lost.	20 years
David Smith Alan Rich	Mismanaged Lifetrack Management Ltd, a corporate trustee of a pooled superannuation trust.	10 years
Robert John Orehek	Involved in an insolvent fundraising scheme for a Sydney residential property development, that raised about \$10–15 million from investors.	8 years

42 banned from financial services

To protect the public, 19 people were banned permanently (including 3 insurance brokers) and another 26 advisers were banned or undertook to stay out of the industry for shorter periods of time. These matters were of particular public or regulatory interest:

Name	What they did	Period of banning
Robert Andrew Street	Professional adviser obtained financial advantage by deception. ASIC alleges that he transferred money to various foreign countries after receiving a proposal from a person claiming to represent a Nigerian government committee.	Permanently
Andrew Skinner, Carl Hanich and Ross Honeyman	Former directors of Commercial Nominees and involved in the Confidens Investment Trust, the members of which lost more than \$2 million.	3–5 years, subject to conditions
Ronald Moore	Professional adviser purchased shares on behalf of 32 clients in overseas companies through an unlicensed Philippines stockbroker, subsequently identified as a boiler room.	3 years
Rene Walter Rivkin	Stockbroker whose medical condition made him not capable of performing his duties. Proceedings to review his licence after his conviction for insider trading have been stayed until his medical condition allows.	6 months

Action against company auditors and liquidators

Some 4 auditors and 6 liquidators were disciplined or surrendered registration for misconduct. Another 3 were disciplined for failure to comply with administrative requirements. Matters of interest included:

Name	What they did	Orders made
Helena Rule	Auditor convicted of offences involving dishonesty under the Financial Transactions Reporting Act.	Cancelled registration
David Lockwood	Melbourne liquidator removed from 111 assignments for being an insolvent under administration.	Court order, subsequently surrendered registration
Gregory Stephen Lourey	Former National Textiles auditor failed to properly document the audit evidence that he used to form his opinion that National Textiles was a going concern.	Reprimanded

outlook

We will face additional responsibilities to enforce stricter laws relating to corporate reporting and disclosure.

We will:

- make further progress in dealing with matters referred by the HIH Royal Commission
- enforce the law against fraud and misconduct, including misleading and deceptive conduct affecting consumers
- promote public awareness about current scams and fraud.

financial services



Ian Johnston (left), Executive Director, appointed 2000, previously served in senior roles within ASIC and the financial services industry, with Deputy Executive Director Pam McAlister.



regulation

Overview

219 financial services regulation staff:

- licensed 3,227 financial services businesses to implement financial services reform
- conducted 509 compliance checks of financial advisers and financial product issuers and obtained significant corrective or enforcement action
- approved 1,176 applications for relief from the law concerning licensing, disclosure, managed investments and related provisions
- achieved additional disclosure in 61 financial product disclosure statements and prospectuses
- registered 524 managed investment schemes and strengthened 65 scheme compliance plans.

In this section

- key results
- financial services reform
- compliance and supervision
- policy and technical work
- outlook

key results

Issue	Result
Implementing financial services reform	Achieved a successful transition, with 3,227 licences issued and more than 25,000 inquiries answered.
Raising industry standards	Checked new licensees, improved superannuation complaints handling and reviewed adviser remuneration and fund manager investment practices.
Fees and charges	Issued guidelines to simplify presentation of fees and charges in investment offer documents.

Main activities	This year	Last year	% change
Australian financial services licences issued*	3,227	604	530%
Compliance reviews	509	803	-37%
Corrective disclosure achieved in prospectuses and product disclosure statements†	61	139	-66%
Compliance plans of responsible entities upgraded after ASIC intervention	65	n/a	n/a
Managed investment schemes registered	524	497	5%
Commercial relief applications approved	1,176	514	229%

* Final year of transition for entire industry.

† From 11 March no further prospectuses issued for managed funds.

Successful transition to financial services reform

By March, the whole financial services industry had successfully changed over to the new regulatory system under the Financial Services Reform Act. ASIC estimates that general insurance, financial advice and managed funds make up about 60% of the industry. NSW and Victoria alone have more than 70% of licensees. See pie charts on page 23.

Staff issued 3,227 Australian financial services (AFS) licences, making a total of 3,853 licensed businesses. Staff consulted with industry, answered more than 25,000 inquiries, gave more than 200 presentations, considered more than 1,000 applications for relief from the law and issued some 80 class orders that enabled the new system to apply appropriately and sensibly.

Checking new licensees

We also conducted 284 checks on AFS licensees, to verify compliance with the new law. These checks resulted in 128 changes to procedures and 24 referrals for further action. Problems included inadequate compliance procedures, risk management plans, dispute resolution procedures and inadequate professional indemnity insurance.

Staff conducted 509 general compliance checks, fewer than last year so we could give priority to licensing. Compliance checks will be increased next year. No insolvencies of insurance intermediaries came to ASIC's notice.

'Australian financial products and services compare strongly with major overseas markets.'

Superannuation complaints handling

All superannuation trustees must disclose how they handle complaints. Staff examined compliance, and compared inquiry and complaints handling practices against industry 'best practice' standards. Overall, trustees fell short in meeting mandatory requirements, although all trustees did have some process for considering and dealing with complaints. We recommended various improvements to documentation about handling inquiries and complaints.

Preferential remuneration for advisers

Major financial institutions, who own much of the financial planning industry, pay preferential remuneration to advisers if they recommend in-house products.

We reviewed the disclosure practices of 8 institutions, whose financial planning groups sold products to consumers. We found that financial advisers did not always disclose adequate information about preferential remuneration, about commissions paid, or how this may have affected the advice given. Following this review, several institutions have reviewed their remuneration practices.

Fund manager investment practices

Late trading and market timing issues arising in the USA prompted an investigation into Australian practices. We examined a large portion of the industry to establish what practices existed and tested industry responses by visiting a selection of companies. The information we collected indicated that abusive practices found in the USA were not evident in the Australian funds management industry.

Good practice in disclosing fees

Consumers require clear, effective and concise information about fees for investment products. ASIC published a revised model for good practice that requires:

- all fees to be stated in dollars or translated into dollar terms
- a single table identifying all direct and indirect fees and costs
- simpler and more consistent terminology.

ASIC will test this model with consumers.

To help reduce the length and complexity of disclosure documents, we issued a release on 'clear, concise and effective' disclosure, and granted relief on statements of additional advice.

Real estate investment advice

Real estate is primarily regulated under State, not Commonwealth, laws. This limits the action ASIC can take against real estate property spruikers and seminar providers. However, based on information obtained in 2003 about selected 'wealth creation' seminars, we were able to take enforcement action against some property investment seminar providers.

Financial product offer documents

We obtained corrective disclosure in 11 matters involving managed funds prospectuses and in 50 matters involving product disclosure statements. Corrective disclosure resulted in supplementary and replacement offer documents or a final stop order preventing the offer from being made.

Policy and technical work

Significant policy initiatives included:

- insurance: regulation of mutual risk providers
- financial advice: approval of excesses on professional indemnity insurance, pending release of FSR compensation arrangements
- managed funds: differential fees, rights offerings, and protection of land underlying primary production schemes
- law reform proposals: managed investments and financial services reform.

ASIC made no instruments under Part 29 of the Superannuation Industry Supervision Act or Part 15 of the Retirement Savings Accounts Act.

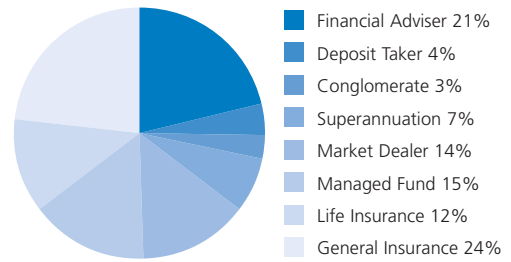
outlook

The next two years represent a real opportunity to shape the conduct of the financial services sector.

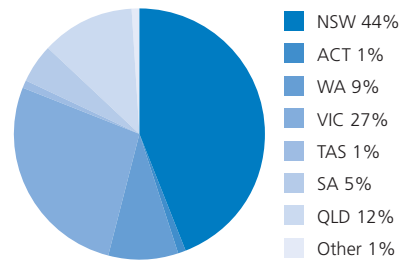
We will:

- increase resources devoted to compliance and supervision of the industry
- lift standards of compliance across the industry by offering input and guidance
- target areas of particular risk, including schemes promoting illegal early access to superannuation, small and medium managed investment schemes, and product disclosure statements.

Industry distribution of AFS Licence holders 30 June 2004



State distribution of AFS Licence holders 30 June 2004



markets regulation



Malcolm Rodgers (right), Executive Director, a lawyer with extensive regulatory experience appointed 2001, previously ASIC Director Regulatory Policy, with Deputy Executive Director Jennifer O'Donnell.



and policy

Overview

124 staff in markets, corporate finance, the Office of Chief Accountant and policy:

- regulated company fundraising, restructures, financial reporting and market disclosure, required additional disclosure for more than \$4 billion in capital raisings and assisted in corporate transactions valued at \$45 billion
- regulated Australia's 8 licensed financial markets and 4 clearing and settlement facilities
- issued 32 guidance documents to regulate or guide industry and professionals, including guidance about new laws on audit and company disclosure.

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- corporate finance
- markets supervision
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- outlook

key results

Issue	Result
Prospectuses	Record \$4.1 billion in capital raisings requiring additional disclosure.
Market supervision	Inspected 5 licensed markets and 3 clearing houses and reported to the Minister.
Guidance to industry	Issued policy and guidance about new laws on audit and corporate disclosure (CLERP 9).

Main activities	This year	Last year	% change
Additional disclosures to the market obtained	95	51	86%
Corrective disclosure achieved in prospectuses	56	121	-54%
Authorised financial markets regulated	8	5	60%
Equity prospectuses lodged	1081	888	22%
Takeovers received	67	55	22%
Schemes of arrangement	53	45	18%
Commercial relief applications approved	831	936	-11%
Policies and guidance documents issued	32	*30	7%

*Restated to include comparable documents

Record \$4.1 billion in funds affected

ASIC acted against prospectuses that fell short of required standards of disclosure, affecting more than \$4.1 billion in capital raisings.

We targeted offerings with the greatest potential impact on retail investors. Of this all-time record, \$1.8 billion was for debenture prospectuses, where ASIC paid special attention to the quality of disclosure involving higher-yield, higher-risk fundraising. Debenture offers targeted many investors looking for more secure returns, usually associated with fixed interest investments. To assist investors and issuers, we issued public statements about common defects in some offer documents.

Initial public offerings increased this year. Of \$2.3 billion in these capital raisings where ASIC required additional disclosure, the largest matter was the \$1.3 billion Zinifex Ltd float.

Of 1,081 prospectuses lodged for company securities, we obtained additional disclosure in 56 cases, through stop orders or through obtaining additional disclosure during the 'exposure period' (the time between the issue of a prospectus and when securities may be allotted).

'Confidence in Australian financial markets has allowed our companies to raise capital competitively.'

\$45 billion in corporate transactions assisted

Major corporate restructures and initial public offerings involving an estimated \$45 billion could not have proceeded without ASIC assistance. Complex corporate restructures affected AMP, Westfield, Challenger and Australand. Public floats included Pacific Brands, Virgin Blue and Just Group.

Where adequate safeguards otherwise existed to protect investors' interests, ASIC granted relief from the strict requirements of the law.

There were 67 takeovers, reflecting increased activity from last year.

Company financial reports reviewed

Listed companies were also checked to see if they had properly reported on options for directors and company officers. Out of 1,298 companies reviewed, 27 made further announcements or lodged amended directors' reports to disclose information about options.

Staff reviewed the financial statements of 459 companies to check compliance with accounting standards on issues of potential risk, finding a high overall level of compliance. A number of companies including Stockland Group, China West, Childcare Centres, Kaz, OPSM, Tempo and Newhaven made corrections through disclosure to the market, and re-lodged their financial statements or adjusted them in a subsequent financial report.

One company changed its accounting treatment of defined benefit superannuation entitlements following ASIC inquiries.

Conflict of interests monitored

We reviewed documents issued to shareholders where the directors may have had a conflict of interest, and required corrective disclosure. ASIC also found that related party documents commonly fail to place a value on options being issued to directors and other related parties.

Markets regulation

Market operators and clearing and settlement facilities were required to transfer across to new licences and authorisations under financial services reform legislation. ASIC gave recommendations to the Minister about applicants, who were subsequently licensed before the March 2004 deadline.

Four new markets were licensed to operate in Australia: the Chicago Mercantile Exchange, Eurex, Intercapital (a market for forward [interest] rate agreements) and Yieldbroker (a market in bonds). We published a new policy about approval of overseas market operators and facilitated the entry of the three international markets into Australia.

On our recommendation, the Minister issued a low-volume markets exemption to facilitate buying and selling of holdings in unlisted entities, subject to a range of conditions.

Markets assessed

As required by law, we inspected and reported to the Minister on supervisory arrangements, including arrangements for handling conflicts of interest, for the licensed markets and licensed clearing and settlement facilities. We completed our second round of assessments of market licensees, and further improved our processes.

Based on those assessments, we found that Australia's major exchanges did have appropriate supervision structures and procedures in place. There can be a high degree of confidence in their ability to operate their markets in a fair, orderly and transparent manner.

ASX share trading and compliance

ASX shares trade on its own market. To avoid conflicts of interest, ASIC directly monitored daily trading and compliance by ASX with its listing rules in much the same way as ASX oversees other listed entities.

Guidance on financial services reform

Our financial services reform policy work supported a smooth transition to the new regulatory regime. This included:

- assisting Treasury on the development of further amendments to the financial services regime (including additional regulations)
- finalising policy on foreign market operators, foreign financial service providers and managed discretionary accounts
- refining existing policy and assisting staff with internal technical advice.

Audit and corporate disclosure reforms (CLERP 9)

Under the *Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Act 2004*, commonly called 'CLERP 9', ASIC will be responsible for administering tighter controls and standards on audit and company disclosure. We will administer new rules affecting the auditing profession, and will monitor tighter rules about compliance with accounting standards and disclosure of corporate information to the market.

ASIC's Chief Accountant contributed to the strengthening of financial reporting standards through his participation in the Financial Reporting Council and specialist advice on complex accounting issues.

We issued policies and policy proposals about implementing the CLERP 9 legislation. These publications broadly dealt with:

- audit registration and conduct requirements
- amendments to the securities and financial product disclosure regimes, and
- the obligation of financial service licensees to manage conflicts of interest.

The Act also gives ASIC a limited power to fine companies for breaches of continuous disclosure rules. We issued guidance on how we intend to use this power.

outlook

We will be administering new legislation designed to raise standards and increase investor confidence in companies and markets.

We will:

- implement new powers to enforce continuous disclosure, regulate auditors, refer financial reporting problems to a new Panel and introduce international financial reporting standards
- increase scrutiny of over-the-counter and off-market trading, particularly where there is material retail participation, and
- complete outstanding policy work on financial services reform.

consumer protection and



Greg Tanzer (left), Executive Director, also Queensland Regional Commissioner, appointed 2004, previously Executive Director, International Relations and Regional Coordination; with Deputy Executive Director Delia Rickard.

international relations

Overview

33 consumer protection and international relations staff:

- identified compliance issues affecting consumers and worked with enforcement and regulatory staff
- carried out consumer policy and education projects
- managed 572 international requests for assistance and led ASIC's contribution to international regulation
- managed 1,166 applications concerning property of deregistered companies
- coordinated ASIC's 8 regional offices to maintain service levels.

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key results

Issue	Result
Mortgage brokers	Acted against misleading claims, approved more effective complaints handling, supported stronger regulation.
Soft dollar benefits for financial planners	Researched industry practice, and required better disclosure to consumers.
Consumer education	1.2 million visits to our consumer website FIDO, up 37%. Distributed 684,000 consumer publications, up 153%.
Thai-based cold callers convicted	7 defendants convicted by Thai courts. ASIC helped Thai authorities collect evidence.

Main activities	This year	Last year	% change
Consumer publications distributed	684,000	270,000	153%
Visits to our consumer website FIDO	1,196,000	875,000	37%
ASIC requested overseas assistance	206	102	102%
Other regulators requested our assistance	366	231	58%
Visits to ASIC from foreign regulators	60	46	30%

Action on mortgage brokers

Using our powers against misleading and deceptive conduct, we stopped misleading advertising claims made by Mortgage Choice (one of the largest mortgage brokers) and Fintrack that they were independent and impartial. We also acted against Express Loans' advertising and sales practices. The company had prepared deposit bond applications overstating the loan amount for which clients had received approval.

We also negotiated a more effective system for handling consumer complaints. To gain ASIC approval, the Credit Ombudsman (previously the Mortgage Industry Ombudsman Scheme) significantly increased its independence and accessibility. It now covers all credit products and services, not just residential mortgages, and non-credit products provided as part of a loan package.

Future regulation of mortgage brokers

Mortgage brokers that sell and advise about loans and mortgages do not require an ASIC licence, and so fall primarily under State, not Commonwealth, law. ASIC contributed to a State and Commonwealth working party on possible future regulation of the industry.

Real estate investing

The State, Territory and Commonwealth governments have been considering how to improve the regulation of property investments and ASIC actively participated in the working group.

'We significantly increased the reach of our consumer education and consumer protection work.'

Soft dollar benefits in financial planning

ASIC published a report on soft dollar benefits in the financial planning industry. (These are benefits other than standard commission payments.) The report revealed a wide range of soft dollar benefits, potentially worth millions of dollars each year to the larger firms.

Because these benefits can influence advice, advisers must clearly disclose them. A number of firms did clearly explain soft dollar benefits in consumer-friendly language. Other firms left their clients in the dark, with disclosure that was vague or, in extreme cases, non-existent. ASIC has asked affected firms to review their documents and make the necessary changes. (In July 2004, industry bodies announced a new code of conduct on this issue.)

Increased consumer education

Visits to FIDO, ASIC's consumer website, increased 37% to 1.2 million. Through FIDO, we launched one of Australia's most powerful consumer superannuation calculators. We also issued public warnings on current financial scams, illegal investment offers and risks in low-deposit loans and higher yielding debentures.

We distributed 684,000 consumer publications, up 153%, including: *Moola Talk* for indigenous Australians and *To the Max!* for young people. We issued:

- 99,000 copies of *Super decisions: understanding and making superannuation choices*, in English, Chinese, Vietnamese and Arabic.
- 50,000 copies of *To the MAX!*
- 47,000 copies of *Don't kiss your money goodbye*
- 45,000 copies of *Moola talk*
- 43,000 copies of *You can complain* in English, Chinese, Vietnamese and Arabic
- 400,000 one-page flyers about superannuation death benefits.

We also delivered free superannuation training sessions to financial counsellors in New South Wales and Victoria, and attended investment expos across Australia.

Financial literacy

Following the release last year of ASIC's discussion paper on financial literacy, the Government established a financial literacy taskforce of which ASIC Commissioner Berna Collier is a member. ASIC also contributed staff to the taskforce secretariat.

Thai-based cold callers convicted

ASIC first alerted and then provided information and assistance to the Thai Securities and Exchange Commission and Royal Thai Police in relation to cold calling by persons located in Thailand. In June 2004, 7 defendants connected with a number of cold calling firms and charged under the Thai Securities and Exchange Act were found guilty, convicted and fined.

Staff also updated ASIC's public black list of organisations involved in unlawful cold calling to warn investors on our FIDO website.

International Organization of Securities Commissions (IOSCO)

ASIC became one of the nine elected members of IOSCO's Executive Committee in May. We helped draft IOSCO principles for client identification and beneficial ownership of securities.

We participated actively in the five IOSCO standing committees, covering all key aspects of securities regulation including enforcement. Projects undertaken by these committees contributed to stronger cross-border standards and co-operation.

Together with the Hong Kong Securities and Futures Commission, we assisted the Thai SEC to assess its compliance with the International Principles of Securities Regulation.

IOSCO's multilateral Memorandum of Understanding, which strengthens international co-operation in enforcement, now has 26 members. Under this MoU, ASIC obtained documents and information from 21 jurisdictions to assist enforcement action. In turn, ASIC assisted 2 other international regulators with the 5 requests they made.

Assisting vulnerable super members

Members who become 'lost' to their fund, or who have not made decisions about where they want their superannuation monies to be transferred, can be transferred from their current fund without their knowledge into an eligible rollover fund (ERF). Following an ASIC review, disclosure standards have now improved, and ERF trustees have also revisited compliance procedures for identifying 'lost' members.

Guidelines for radio advertising

We assisted Commercial Radio Australia, the association of commercial radio broadcasters, to prepare member guidelines to avoid misleading and deceptive advertising of financial products and services, and inadvertent advertising of unlicensed financial products.

Consumer Advisory Panel

See page 32 for the Panel's report and page 54 for its role.

outlook

We aim to further raise ASIC's profile as an effective protector of consumers and to maintain our strong standing among global regulators.

We will:

- focus on retirement incomes, debt reduction, and misleading and deceptive financial product advertising
- increase our consumer education activities, including for vulnerable groups of consumers, such as indigenous consumers, retirees and youth
- manage the increasing breadth of international issues affecting our domestic activities
- maintain service levels in all States and Territories.

consumer advisory panel report

Our Chairman John Wood resigned in February 2004, so the Panel has asked me to step in and approve this report. (Our new Chair, Fiona Guthrie, takes up her position in July 2004.)

The Panel met four times. It recommended ASIC fund a range of projects, including:

- qualitative research into consumer decision making about what they did with their superannuation benefit at retirement
- preparation of a consumer submission to a review of the Insurance Contracts Act
- a national education kit on car finance and insurance for young people, based on an existing successful program run in Sydney
- a collection of case studies and identification of consumer issues arising from debt reduction schemes.

In addition to advising ASIC about current issues faced by consumers in the finance industry, we helped ASIC in important areas such as credit reporting, debt reduction schemes, mortgage brokers and debt collection.

The Panel enabled us to stay up to date with financial regulation, explore issues such as grass roots financial

problems affecting disadvantaged consumers, and exchange ideas. We heard presentations on ASIC's projects and campaigns during working lunches.

Carolyn Bond, July 2004

On behalf of Consumer Advisory Panel

Members

John Wood, (Chair) former Deputy Commonwealth Ombudsman 1994–2000, resigned February 2004

Bob Andrew, Australian Investors' Association

Carolyn Bond, Consumer Credit Legal Service (Vic)

Chris Connolly, Financial Services Consumer Policy Centre

David Jackson, Australian Shareholders' Association

Su Mahalingham, Consumer Credit Legal Service (WA)

Jan Pentland, financial counsellor

Anna Stewart, Consumer Law Centre (Vic)

David Tennant, consumer advocate and lawyer.

Catherine Wolthuizen, Australian Consumers Association



Standing left to right: Carolyn Bond, Bob Andrew, Jan Pentland, Anna Stewart; seated: Catherine Wolthuizen, David Jackson, David Tennant; Absent: Chris Connolly, Su Mahalingham.

public and commercial



Mark Drysdale,
Executive Director,
appointed 2000, and
Victorian Regional
Commissioner, with
experience in corporate
management and
regulation.



services

Overview

408 public and commercial services staff:

- maintained Australia's public database of 1.36 million companies
- assessed 9,970 complaints from the public about misconduct, and resolved or acted on 83%
- targeted company insolvency, assisted company administrators and prosecuted 702 insolvency related breaches
- answered 863,000 telephone inquiries
- provided high volume document imaging services on commercial terms.

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- company insolvency
- complaints about misconduct
- public information about companies
- outlook

key results

Issue	Result
Insolvent trading	649 companies visited. Corrective action taken to avoid insolvent trading.
Database usage	Public use of ASIC databases surged ahead. More than 13.4 million free and paid searches.
Complaints about corporate misconduct	Complaints increased. Action taken to secure compliance, including 894 offences prosecuted.

Main activities	This year	Last year	% change
Fees and charges raised for the Commonwealth	\$457 million	\$405 million	13%
Company data lodged on time	92%	93%	-1%
New companies incorporated	122,441	107,917	13%
% documents lodged electronically	69%	66%	3%
% paid searches done online	98.1%	97.5%	1%
Public complaints about misconduct	9,970	9,292	7%
Telephone inquiries	863,000	672,000	28%

Targeting insolvent trading

To reduce insolvent trading, staff visited 649 companies, ranging from small proprietary companies to listed entities. Our visits helped identify financial stress early enough to allow company directors to seek professional advice on restructuring, refinancing, preparing proper management accounts or addressing loss making activities.

We encouraged directors to seek professional advice, and if appropriate, appoint a voluntary administrator or liquidator. After our involvement, 71 companies went into voluntary administration or liquidation.

Removing bankrupts from company office

Bankrupts are disqualified from holding company office. ASIC matched data with the Insolvency and Trustee Service of Australia (ITSA) to identify bankrupts listed on ITSA's database who also appear to be company officeholders. This enabled us to require companies to appoint new officeholders and update the public register.

Public use of database up

People conducted a total 13,437,000 free and paid searches of our databases. Free internet searches of company names, numbers and document lists jumped 28% to 9.7 million, making this the most popular service offered through ASIC's website. The total number of information broker searches rose 10% to 3.1 million, with 98% of full company searches occurring online, the highest number ever. Over the counter searches in our Service Centres continued their downward trend.

Acting on public complaints about misconduct

ASIC encouraged the public to report suspected corporate and financial services misconduct, and we received 9,970 complaints, up 7%.

Public complaints

	This year	Last year
Public complaints	9,970	9,292
Outside ASIC's jurisdiction	7%	7%
No offences identified	13%	14%

Action taken

Resolved	44%	52%
Compliance action taken	14%	9%
Referred for investigation or surveillance	5%	4%
Analysed, assessed and recorded	17%	14%

Our complaints staff sought compliance where action could be taken quickly, for example:

- requiring directors of failed companies to assist liquidators
- helping to locate companies that had moved but had not updated their information
- ensuring that disqualified persons were not involved in managing corporations
- stopping companies avoiding their creditors by voluntarily deregistering themselves illegally.

Highlights included:

- 1,390 warning letters, achieving compliance in 75% of those cases
- 53 criminal charges referred to the Commonwealth Director of Public Prosecutions, 27 of which are currently before courts
- 469 people prosecuted for 894 offences with penalties including 1 jail term, 1 community service order, 5 good behaviour bonds and total fines and costs of \$735,000, with a further 277 matters currently before courts.

Reports from liquidators

Liquidators, administrators and receivers reported suspected misconduct found in the course of their administrations. Although these reports increased 12%, the number actually reporting alleged offences rose only 1%.

Statutory reports

	This year	Last year
Total statutory reports received	6,946	6,176
Reports where no offences reported	1,625	925
Net statutory reports	5,321	5,251

Action taken

Resolved	10%	8%
Compliance, investigation or surveillance	2%	2%
Analysed, assessed and recorded	88%	90%

More new companies formed

The total number of companies registered in Australia increased 4.5% to 1,359,305. The number of new companies increased by 13%. Electronic company registration now accounts for 75% of new companies formed.

'Public use of ASIC services increased, with database searches up 23% and reports of suspected misconduct up 7%.'

'Corporate Key' safeguards company data

To allow companies to safeguard their information on the public register against unauthorised changes, we introduced a 'corporate key' in July, now issued to 750,000 companies. The key allows companies to check and change information online. In March, we extended the concept so that companies could guard against unauthorised changes lodged in paper format.

Annual returns abolished

From 1 July 2003, companies no longer had to lodge compulsory annual returns if their company details remained unchanged, reducing an administrative burden. The reforms also improved public access to details of company share structure and members.

The changes were introduced progressively and involved quality work by a number of company administration software providers. ASIC took a facilitative approach to company requests during the transition period, including waiving late lodgement fees.

Ensuring companies lodge information

About 92% of companies lodged their information with us on time, almost the same as last year. Only 4% of documents lodged with us required us to requisition further details before being entered, an improvement over last year. Some 69% of company documents were lodged electronically, making this information available more quickly and reducing errors.

To keep important company information up to date, ASIC warned and took legal action against officeholders failing to lodge information or lodging false information. We issued:

- 12,494 warning letters and 3,417 notices, and began legal proceedings against 429 companies for not lodging financial reports
- 2,225 warning letters for not lodging company documents other than financial reports.

More telephone inquiries

ASIC's Client Contact Centre handled more than 863,000 calls from the public. We handled 755,000 calls on routine company housekeeping matters and company searches, up 42%, as we helped companies with inquiries about CLERP 7 reforms.

Infoline staff dealt with 108,000 calls on regulatory, enforcement and consumer protection issues, down 24% as a result of a full year's operation of technology improvements that reduced double handling of calls. Infoline staff assisted 97% of callers on the spot. Where another staff member had to ring the caller back, we averaged 64% of call-backs within 24 hours, down from 67%.

Commercial services

Our commercial activities complied with competitive neutrality principles. Within that framework, we specialised in:

- high volume scanning services for organisations that wish to 'back capture' data
- document management services in litigation and public inquiries.

Customers included a range of government and private sector organisations.

outlook

Over the next year, we expect public demand for our services to keep on growing, challenging us to maintain efficient and effective service.

We will:

- maintain our commitment to deter insolvent trading
- contribute to law and policy reform in corporate insolvency
- increase summary prosecution action arising from public complaints
- extend our electronic interfaces, particularly for companies updating data, and improve the maintenance and security of Australia's corporate database.

infrastructure and staff



Carlos Iglesias, Executive Director, appointed 2001, previously ASIC Director, Information Technology and Knowledge Management.



Overview

297* infrastructure staff delivered services to 1,531 staff throughout ASIC's offices:

- information technology and knowledge management
- human resources
- finance
- business management.

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

In this section

- key results
- our staff
- financial and business management
- information technology
- outlook

key results

Issue	Result
Our staff	Increased staff to meet added demands and redressed staff remuneration to move towards parity with other Treasury portfolio agencies.
ASIC funding	Received additional funding for 2004–05 for ongoing operations and auditor surveillance.
Cost of services	Reduced cost of office services by 4.5% while maintaining service levels.

Increased staff to meet demand

Staff numbers increased 10% to 1,531 full-time equivalents, comprising investigators, lawyers, accountants, and analysts; information processing and customer service staff; infrastructure staff, information technology, human resources, financial, and communication specialists.

Staff (average full-time equivalents)

	This year	Last year
Operational and support (ASIC 1–4)	878	810
Senior operational staff (EL1 and EL2)	534	455
Senior Executive Service	29	31
Others (contractors, agency staff, consultants)	87	97
Commissioners	3	3
Total	1531	1396

Redressed staff remuneration

The Commission offered all staff a 4% increase in pay under a single purpose Australian Workplace Agreement (AWA), to better reflect pay levels at comparable Treasury portfolio agencies.

ASIC contributed to superannuation through Commonwealth government schemes, State government schemes for staff who transferred to ASIC in 1991, and private sector schemes for consultants or contractors. See also the financial statements on page 90.

A safe workplace

Some 20 workplace injuries occurred, fewer than last year, mainly 'sprains/strains' and 'falls at the same level'. We reduced the incidence of lumbar injuries by conducting manual handling training and workshops at all sites.

To improve safety, we also carried out:

- quarterly OH&S risk assessments at all sites
- 35 OH&S training sessions attended by 607 staff
- ergonomic assessments, screen-based eye tests, and other protective measures
- OH&S awareness programs including articles in internal publications and poster displays.

ASIC maintained its sound record on occupational health and safety, with an average time incapacitated per injury of 2.69 weeks, compared with 2.72 weeks for all Commonwealth government agencies.

ASIC required every manager to take responsibility for ensuring a safe workplace for their staff and the public. Specialist OH&S staff and national and local OH&S committees assisted.

Funding for staff development

To ensure staff have the skills to meet future needs, ASIC spent more than \$1.4 million on staff development, focusing on leadership development as well as technical skills. Our capability framework targeted these funds to the requirements of our work.

Some 8 staff members undertook secondments to private sector organisations or international regulators and 34 staff members from other organisations joined ASIC on secondment.

Leadership development

To develop ASIC leaders, an additional 26 staff commenced the Graduate Certificate Mt Eliza senior management development program. Some 23 staff completed the Mt Eliza Graduate Diploma in Business Management (Executive), and a number of these will go on to complete the MBA component of the program. We also recruited 22 new graduates who will participate in a 12-month rotation program through the agency.

Merit and equal opportunity

ASIC required that all staff engagements and promotions be conducted in accordance with the merit principle and the APS values.

We reviewed our recruitment procedures and developed new publications, training and advice to assist those involved in selection processes. We conducted mandatory training for all staff to maintain and reinforce respect for the variety of backgrounds, experiences and perspectives of staff in our workplaces.

ASIC is an equal opportunity employer. At 30 June 2004, women made up 58% of our workforce and 41% of our executives and senior executives. Under a joint Women in Law Enforcement Strategy, 3 female ASIC staff joined a 1-year mentoring program with mentors from other agencies, and 3 ASIC senior managers acted as mentors to women from other agencies.

We also participated in the Commonwealth strategy to ensure access to recruitment, training and grievance procedures for people with disabilities, see page 58.

Basis of staff employment

Most staff are ongoing employees under the Public Service Act. Non-ongoing staff helped us complete special projects as well as seasonal peak workloads in document processing.

Basis of employment

	This year	Last year
Public Service Act, ongoing	1,015	952
Public Service Act, temporary, most often for peak company data processing	400	322
ASIC Act consultants, for essential specialist services including investigatory, legal, corporate regulatory and accounting functions	49	54
Contractors, mainly in information technology	64	65
Commissioners	3	3
Total (average FTE over the year)	1,531	1,396

Industrial and workplace relations

Staff were represented either through their union or staff representatives. ASIC maintained a National Consultative Committee that met regularly about workplace issues.

ASIC also maintained formal procedures for staff to raise grievances. Two formal applications for review of management actions under the Public Service Act were received.

Performance management

All staff participated in a formal performance management process, that enabled management to reward high performing staff, manage underperformance and to identify staff development needs.

Location of staff

State or Territory	This year	Last year
Victoria	663	605
New South Wales	547	487
Queensland	131	119
Western Australia	93	90
South Australia	58	51
Australian Capital Territory	16	20
Tasmania	16	16
Northern Territory	7	8
Total	1,531	1,396

Additional funding from government

In the May budget, the Government granted ASIC an additional appropriation of \$13.5 million, being \$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 address accumulated past losses to restore ASIC's balance sheet to positive equity. This equity funding may not be spent on ASIC operations.

'Credit for the highlights and achievements of the organisation go to our 1,531 staff.'

Service expenses reduced, expectations met

We reduced total site service expenses nationally by 4.5%, including significant cost reductions in stationery, freight, travel services and fleet ranging from 11% to 30%. To control ongoing costs, staff identified capital equipment needs for the next five years and introduced electronic desktop booking systems for facilities and fleet needs. National contracts, streamlined processes and close liaison with operational staff enabled us to meet rising service expectations while reducing costs.

Office space used efficiently

ASIC leased all its office accommodation and made efficient use of rented space. We remained in the top quartile for average office space per full-time equivalent staff among Australian Public Service decentralised agencies. We accommodated more staff within our current tenancies, and upgraded systems to manage and report on our 16 leases, leasehold improvements and new office accommodation projects.

Improved financial management

New systems and procedures improved turnaround times for developing internal budgets and enabled better reporting of year-end forecasts of revenues and expenses. They also allowed us to complete our financial statements ahead of reporting deadlines. Planning began to comply with international financial reporting standards in 2004–05, and ASIC's audit committee has been kept up to date.

To enable ASIC's suppliers to receive cleared funds earlier, we increased the percentage of EFT payments being processed from 49% to 85% of invoices by value.

Reducing environmental impact

ASIC cut power consumption and achieved the Government's 10,000 MJ per person target, set for all Commonwealth agencies, for reducing office tenant light and power.

Year	MJ per person
2003–04	8,980
2002–03	9,134
2001–02	10,431

This year's decrease in energy consumption per person occurred despite including our Traralgon site in the national figures for the first time, following installation of pulse metering equipment to let us measure and manage power consumption at that site.

As part of the Australian Greenhouse Challenge, we worked on an extensive process to accredit our largest site, in Sydney, to International Standard *ISO:14001 Environmental Management Systems*. Completion is expected by the end of 2004, and then we aim to implement relevant improvements at all our sites. ASIC operations have no implications for ecologically sustainable development.

Better managing knowledge

To share information and knowledge within the organisation more effectively, we completed four important projects:

- a law reform registry, with information and comment on changes to existing law or new law reform initiatives
- a legal opinions and advice database on various issues and sections of the laws ASIC administers
- an upgraded intranet covering content, navigation, authoring and design
- a high level information map that provides an overview of all ASIC systems.

We supported 13 'communities of practice', comprising staff who share a practice domain and meet regularly to share knowledge and experience, and began an information audit project.

IT reform program

ASIC began a major information technology reform program to upgrade the IT services we offer to the public, and the systems and services which support our regulatory and enforcement responsibilities. A new role of Chief Information Officer was created (and filled in July 2004), and a new IT strategic plan, including an enterprise IT architecture, is being developed.

Staff successfully upgraded our data communications infrastructure, as well as increasing its capacity, and replaced and consolidated our fleet of applications file servers.

Unclaimed monies

Public searches for unclaimed banking, insurance and company monies remained one of our most popular and successful internet services. This year more than 10,000 people were reunited with \$22 million in unclaimed monies.

Key new IT applications

User Group	What the application delivered
Phone callers	Began implementing a new national telecommunications infrastructure that replaced ASIC's aged system with more modern technology. This will increase the reliability of ASIC's phone system.
Applicants for Australian Financial Services licences	Systems to support the licensing process, including systems to apply and lodge licence applications online.
Operational staff	New workflow systems to boost efficiency, including systems for staff in corporate finance and enforcement.
Staff and management	A completely new version of our HR information and payroll system that is easier to use, offers more information and improves reporting.

outlook

We will:

- implement and develop strategies to strengthen staff skills and recruit and retain capable and committed people.
- develop new systems and applications to manage and share information.
- accelerate our IT reform program and develop systems for corporate law reforms
- increase internal efficiencies.

where ASIC fits in the regulatory picture

Who does ASIC regulation protect?

Consumers, investors and creditors of corporations, including an estimated*

- 15.5 million people with a deposit account
- 10.2 million investing through superannuation or annuities
- 9.7 million with credit or charge cards, including debit only
- 6.3 million with a home, personal or investment loan
- 4.1 million directly owning shares
- 2.1 million having invested through a financial adviser, and
- 1.2 million investing in managed funds.

*Roy Morgan Research, 12 months to March 2004, people aged 14+

Who we regulate

How we regulate them

1.36 million companies	Register each company with a unique number, and record the number, name, directors and other information on a public register. Investigate and act against misconduct by company directors and officers. Grant or refuse requests for relief from the law. Receive prospectuses before money is raised. Uphold the law on financial reporting and company mergers and acquisitions.
6,529 company auditors, 758 registered liquidators and 356 official liquidators	Register them before they start operating. Investigate and act against misconduct.
8 financial markets and 4 clearing and settlement facilities licensed by the Minister, including: <ul style="list-style-type: none">• Australian Stock Exchange Ltd• Sydney Futures Exchange Ltd	Investigate and act against misconduct by listed companies, brokers and traders. Assess and report to the Minister on market supervisory arrangements. Advise the Minister about rule changes and whether to approve new markets. Monitor what ASX Ltd does as a listed company, and trading in its shares.
3,853 financial services businesses, regulated by ASIC including: <ul style="list-style-type: none">• fund managers• stockbrokers• financial advisers• insurance brokers	License them before they start operating. Set standards for education, training and operations. Investigate and act against misconduct. Record their details and their authorised representatives on a public register.
3,765 managed investment schemes, registered by ASIC	Register them before they start operating. Investigate and act against misconduct. Record their details on a public register.
APRA-regulated financial services businesses, including: <ul style="list-style-type: none">• banks and deposit-taking institutions• superannuation funds• life and general insurance companies	Investigate and act against misconduct affecting consumers or misconduct as corporations. Cooperate with APRA. Approve consumer complaint resolution schemes. Report on how they comply with codes of practice.
Credit providers operating under State and Territory laws	Investigate and act against misleading and deceptive conduct affecting consumers. Cooperate with State and Territory regulators.

ASIC's statutory aims

In brief, section 1(2) of the ASIC Act requires us to:

- uphold the law uniformly, effectively, and quickly
- promote confident and informed participation by investors and consumers in the financial system
- make information about companies and other bodies available to the public
- improve the performance of the financial system and entities within it.

ASIC's legislation

ASIC regulates companies and financial services, and promotes investor, creditor and consumer protection under the *Australian Securities and Investments Commission Act 2001*; *Corporations Act 2001*; *Insurance Act 1973*; *Insurance Contracts Act 1984*; *Superannuation (Resolution of Complaints) Act 1993*; *Life Insurance Act 1995*; *Retirement Savings Accounts Act 1997*; and the *Superannuation Industry (Supervision) Act 1993*. (Until 11 March 2004 ASIC also administered the *Insurance (Agents and Brokers) Act 1984*, now repealed.)

Other financial regulators

The Australian Prudential Regulation Authority (APRA) regulates prudential standards for deposit-taking institutions, insurance companies, and larger superannuation funds designed to ensure, under all reasonable circumstances, that they meet their financial promises.

State and Territory fair trading or consumer affairs agencies regulate consumer credit under the Uniform Consumer Credit Code.

The Reserve Bank of Australia (RBA) regulates monetary policy and the stability of the financial system.

ASIC cooperated with these bodies through consultation at senior level and regular contact by operational and policy staff.

commissioners



Jeffrey Lucy, AM

FCA, FAICD

Chairman from May 2004, for a three-year term. Previously ASIC Deputy Chairman from February 2003.

Jeffrey Lucy is a Chartered Accountant and a Fellow of the Institute of Chartered Accountants in Australia, the National Institute of Accountants, and the Australian Institute of Company Directors. He was most recently the Chairman of the Financial Reporting Council and head of Lucy Consulting.

He is a former member of the Business Regulation Advisory Group, a former National President of the Institute of Chartered Accountants in Australia, and a former Managing Partner of PricewaterhouseCoopers, Adelaide. He was made a Member of the Order of Australia for his contribution to the accounting profession and to the business sector as an adviser on corporate and taxation reform.



Jeremy Cooper

LLB (Hons) U. Melb, ASIA

(Incoming Deputy Chairman from July 2004 for a five-year term).

Jeremy Cooper is a lawyer and former partner of Blake Dawson Waldron, having worked with the firm in the corporate area for more than 19 years. He has been involved in many major transactions, including takeovers, reconstructions, ASX listings and capital raisings, as well as advising on Corporations Act and securities market issues. He has been a member of the Corporations Committee of the Business Law Section of the Law Council since 1995 and is a regular speaker on corporate law issues.

commissioners continued



Berna Collier

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

ASIC Commissioner from November 2001 (re-appointed from 15 July 2004 for a four-year term).

Professor Berna Collier is a lawyer and a member of the Insolvency, the Company Law and the Banking and Finance Committees of the Law Council of Australia. She serves on the Advisory Board of Axiss Australia.

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



David Knott

LLB

ASIC Chairman from November 2000 until his resignation in December 2003.

David Knott is a lawyer and Fellow of the Australian Institute of Company Directors. Previously he was ASIC Deputy Chairman from July 1999. His career covers 13 years in private legal practice, specialising in company and commercial law, 10 years in senior roles in investment banking, and 10 years in the public sector.



Carlos Iglesias

BEd (ANU), FCPA

Acting Commissioner from December 2003 until May 2004.

Carlos Iglesias is ASIC's Executive Director, Infrastructure. He previously served as Director of ASIC's Information Technology Services Branch. The Treasurer appointed him as Acting Commissioner until the formal appointment of Chairman Jeffrey Lucy in May 2004.



Malcolm Rodgers

BA (Hons), LLB

Acting Commissioner from May until July 2004.

Malcolm Rodgers is ASIC's Executive Director, Policy and Markets Regulation. He previously served as Director of ASIC's Regulatory Policy Branch. In May 2004, the Treasurer appointed him as Acting Commissioner pending the appointment of a new Deputy Chairman.

ASIC governance

Three full-time Commissioners directed ASIC's affairs. Full-time membership let Commissioners monitor and direct ASIC's complex and wide-ranging activities, and avoided conflicts of interest that might otherwise affect part-time Commissioners still active in business, law or accounting.

Commissioners reviewed ASIC's strategic plan (page 8), set national priorities and approved business plans for each directorate. In addition to day-to-day contact, the Commission received written monthly and quarterly reports from executives on operational performance, finance, human resources and information technology. The Commission also considered Audit Committee reports, governance and delegations.

Independent legal and accounting experts advised on specific matters. ASIC's Office of General Counsel reports directly and independently to the Commission, and gave legal counsel to Commissioners on ASIC operations and administration. Where necessary, an individual Commissioner may obtain independent legal advice at ASIC expense.

The Commission held 18 formal meetings.

Commissioner	Eligible to attend	Attended
Jeffrey Lucy	18	17
Berna Collier	18	18
Carlos Iglesias (Acting)	5	5
Malcolm Rodgers (Acting)	3	3
David Knott	7	6

Executive Directors of our six operating Directorates also attended Commission meetings. In 2004, the Commission decided to replace separate meetings of its Executive Committee (Commissioners and Executive Directors) with more frequent, formal Commission meetings, to bring about uniformity and certainty as to the process and conduct of such meetings.

Commissioners and relevant senior executives also made decisions and set priorities in major enforcement and regulatory matters through our National Enforcement Conference and Regulatory Policy Group.

Commissioners' appointment and remuneration

The Governor-General, on the nomination of the Treasurer, appointed Chairman Jeffrey Lucy in May 2004 to replace Mr David Knott who resigned in December 2003. (The Treasurer had appointed Mr Lucy as Acting Chairman until May.) (In July 2004, Jeremy Cooper was appointed Deputy Chairman and Commissioner Berna Collier's term was extended for four years.) The Treasurer appointed Carlos Iglesias and then Malcolm Rodgers as Acting Commissioners.

Commissioners are appointed on fixed terms that may be terminated earlier only for reasons set out in section 111 of the ASIC Act. The Treasurer may nominate as Commissioners only people who are qualified by knowledge or experience in business, administration of companies, financial markets, financial products and financial services, law, economics or accounting. The Remuneration Tribunal set Commissioners' remuneration; see also page 101.

Reporting to Parliament

ASIC appeared before Commonwealth Parliamentary Committees on 10 occasions: Parliamentary Joint Committee on Corporations & Financial Services (4), Parliamentary Joint Committee on the Australian Crime Commission (1), Senate Economics Legislation Committee (4) and House of Representatives Standing Committee on Economics, Finance & Public Administration (1).

ASIC also submitted an annual report, and replied to Parliamentary questions and inquiries on behalf of constituents.

Role of the responsible Minister

The Ministers responsible for ASIC are the Treasurer, the Hon Peter Costello MP and, in matters determined by him, the Parliamentary Secretary to the Treasurer, the Hon Ross Cameron, MP (from October 2003), and previously Senator the Hon Ian Campbell. Under the ASIC Act, the Minister nominates Commission members for appointment by the Governor-General.

Commissioners reported formally to the Minister through their annual report of operations, briefings, submissions and meetings with the Treasurer or Parliamentary Secretary. ASIC also briefed the Treasury about current issues and proposed changes to the law.

ASIC's legislation permits the Minister to direct ASIC in specific circumstances. Consistent with Ministerial practice across most statutory authorities, such powers have been exercised rarely.

Under section 12 of the ASIC Act, the Minister may direct ASIC about policies and priorities in using our powers or performing our functions, but may not direct us about a particular case. Only one such general direction has been given, in September 1992, about collaboration and consultation between ASIC and the Director of Public Prosecutions in the investigation and prosecution of serious corporate wrongdoing.

Under section 137, the Minister must approve contracts exceeding \$1 million and leases of land exceeding 10 years.

Under section 28 of the Commonwealth Authorities and Companies Act, the Minister may also notify Commissioners in writing of general policies of the Commonwealth Government that will apply to ASIC. Two such notifications have been received:

- one dealing with cost recovery for services provided, received in July 2003
- one dealing with the National Code of Practice for the Construction Industry, received in June 2004.

ASIC applied these policies from the date of notification.

In addition, Commonwealth Ministers and Departmental Secretaries from time to time asked ASIC, along with other agencies, to conform to Government policies affecting our general administration, for example, use of the Commonwealth coat of arms in logos.

Relationship with the States

The Commonwealth assumed responsibility for corporate regulation from the States in 1991, subject to arrangements between the Commonwealth, States and Northern Territory under the Corporations Agreement 2002.

That Agreement requires the Commonwealth to consult the Ministerial Council for Corporations (MINCO), comprising Commonwealth, State and Northern Territory Ministers, in appointing ASIC Commissioners, and requires ASIC to:

- consult the relevant State or Northern Territory Minister in appointing Regional Commissioners
- maintain certain minimum service levels in each State and the Northern Territory
- maintain offices in each State capital and Darwin, and
- maintain regional liaison committees in each State and the Northern Territory to consult the local business community, and use our best endeavours to have a Commission member present at those meetings, see page 54.

ASIC attended MINCO to observe and answer questions about the administration of the corporations legislation. We also attended the Ministerial Council on Consumer Affairs as part of our role in protecting consumers in credit, a jurisdiction shared with the States and Territories.

managing risk

Managing operational risk is essential to good governance. The Commission and Executive Directors regularly reviewed key risks and our practices for managing them. In late 2003, Comcover, the government fund for insurable risks, recognised our approach as exceptional and awarded ASIC its inaugural 'Award for Excellence in Risk Management'.

Staff ethics

All ASIC staff must adhere to the Australian Public Service values and code of conduct under the *Public Service Act 1999*. The values and code require impartiality, honesty, diligence and service, and all staff are required to attend training to learn about and apply the values and code.

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

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

Staff were required to keep registers of interests that supervisors may inspect at any time, and senior executives were required to submit statements of interests to the Chairman. Commissioners appointed senior disclosure officers to advise managers and staff on how to handle possible conflicts.

Complaints about staff

We maintained internal procedures for investigating complaints about how our staff carry out their significant public responsibilities, which include formal inquiry and disciplinary procedures under the Public Service Act.

Complaints about the way in which ASIC administers its powers may also be made to, and investigated by, the Commonwealth Ombudsman.

Confidentiality and security

ASIC receives extensive information that it must protect from unauthorised disclosure. All staff, immediately on joining, must sign confidentiality undertakings, and, if they occupy positions of trust, must undergo a security assessment. ASIC also maintained various other security systems and procedures designed to safeguard confidential information. External government experts and external and internal auditors regularly reviewed our general and IT security arrangements, disaster recovery systems and procedures.

Fraud control

ASIC reviewed its fraud risks and implemented the strategies outlined in its 2001–03 fraud control plan. The plan outlines strategies and processes to avoid, detect, investigate and minimise the effects of fraud. We maintained reporting and data collection mechanisms that met our needs and complied with Commonwealth Fraud Control Guidelines. A new fraud control plan is being developed.

Audit

The Commission appointed an internal audit manager who reported to the Commission's Audit Committee.

The Audit Committee examined internal and external audit matters and risk assessment, see page 56. The majority of members are independent of ASIC, including the Chair, Ms Merran Kelsall, who is a senior chartered accountant and company director in private practice. The Committee's charter conforms with Australian National Audit Office and Australian Institute of Company Directors guidelines.

The Commonwealth Auditor-General audited ASIC's financial statements, see page 62.

Disclosure

To operate transparently, while protecting confidential information, ASIC:

- observed the requirements of the *Freedom of Information Act 1982*, see page 57
- met high standards of disclosure through its Annual Report, see page 2
- published up-to-date information on our websites, and through the *ASIC Digest* and other publications, see page 57
- issued media releases, subject to written guidelines, about enforcement and regulatory issues, while respecting the rights of people subject to investigation or administrative action.

Insurance and indemnities

Consistently with the Commonwealth Authorities and Companies Act, ASIC:

- paid a premium of \$62,073 for Directors and Officers' insurance (including employment practices insurance) which covered all current and former Commission members and ASIC staff members for liabilities, including legal costs, incurred by them in the performance of their duties
- provided indemnities to Commission members for liabilities, including legal costs, incurred by them in the course of their duties
- reimbursed former Chairman David Knott, \$27,643.70 for legal and other costs he incurred in respect of allegations made against him during his term as Chairman
- reimbursed Executive Director, Financial Services Regulation, Ian Johnston, \$7642.81 for legal costs he incurred in respect of a claim brought against ASIC and Mr Johnston.

community and regional involvement

Reaching out to schools

On the back cover of this annual report is the prize winning poster from our Northern Territory schools competition. All year 9 and 10 students in the Territory stood the chance of winning \$200 for themselves and \$1,000 for their school by participating. Students were asked to design a poster with a slogan about looking after money or ways to avoid being ripped off by a financial scam.

Keeping stakeholders in the picture

Senior ASIC staff gave more than 250 presentations to an estimated 15,000 people from the markets, financial services industry, companies, government agencies and consumer groups about how to comply with the law and how the law protects users of financial markets, products and advice.

Supporting a consumer voice

We funded a 10-member Consumer Advisory Panel, including consumer and investor advocates experienced in financial services and an independent Chair. It recommended research, alerted us to issues and commented on policy affecting investors and consumers. Read the Panel's report on page 32. We also consulted other investor and consumer organisations.

Building relationships

To build support for compliance and good practice, we met regularly with some 18 peak industry and professional associations, and consulted other organisations, companies and professionals on proposed policies. We helped thousands of company office holders and professionals over the phone.

ASIC's 10th Summer School brought together 24 speakers and 115 participants from overseas and Australia, selected from industry, the professions, government, regulators and our own staff. The theme, 'Decent or Indecent Disclosure – The role of disclosure in achieving accountability in the Australian financial system', was chosen to discuss recent Australian and international developments.

Supporting professional standards

To encourage professional education in the financial industry, we sponsored prizes for two Securities Institute courses (*Securities Industry Law and Ethics* and *Managed Investment Principles*), the Australian Securities and Investments Commission Prize for Proficiency in Corporate Law at the University of Sydney and the ASIC prize in Corporate Law at the University of Wollongong.

Serving Australia's regions

ASIC's Regional Commissioners are responsible for ensuring that we understand specific needs of, and maintain service levels in, all the States and Territories. They represented the organisation and reported on ASIC's activities and performance to State and Territory Ministers. They bring a range of qualifications including law and accounting and experience in regulation, government and consumer affairs.

Regional Liaison Committees representing the business community met about four times each year, received information on our performance and service, and offered ideas. A Commissioner usually attended these meetings.

ASIC's Regional Commissioners also played national roles.

Regional Commissioner	State or Territory	National role
Anthony Beven	Northern Territory	Consumer Protection National Adviser
Mark Drysdale	Victoria	Executive Director (see page 33)
Simon Dwyer	South Australia	Director, Information and Systems
Michael Gething	Western Australia	Markets and Policy National Adviser
Jennifer O'Donnell	New South Wales	Deputy Executive Director, Markets Regulation and Policy
Julie Read	Tasmania	Director, Enforcement
Delia Rickard	Australian Capital Territory	Deputy Executive Director, Consumer Protection and International Relations
Greg Tanzer	Queensland	Executive Director (see page 28)



Standing left to right: Anthony Beven, Linda Dean (Acting ACT Regional Commissioner) Simon Dwyer, Jennifer O'Donnell, and Greg Tanzer; seated: Mark Drysdale, Michael Gething and Julie Read. Absent: Delia Rickard.

ASIC audit committee and audit services

The Audit Committee assisted the Commissioners and senior managers to identify, monitor and review the effectiveness and integrity of ASIC's internal controls, in conjunction with internal and external audit.

The Committee examined and provided assurance to the Commission on the soundness and integrity of ASIC's financial statements. It also considered issues concerning preparation of future financial statements, which must comply with International Financial Reporting Standards.

Key internal audit reviews included ASIC's disaster recovery plan, project management arrangements for investigations, trust account funds administered by ASIC and monthly financial reporting. Internal audit also reviewed compliance with ASIC policies, including IT security arrangements, travel and corporate credit cards, contract and procurement, and financial delegations.

The Audit Committee had five members. Three external members, including the Chair and Deputy Chair, have significant financial and business experience. Merran Kelsall, BCom (Hons), FCA, MBA, is a Chartered Accountant, consultant and company director, Robert Savage, BCom, FCA, is a Chartered Accountant and company director, and Bob Lynn, FCA, is a Chartered Accountant. The two internal members were Commissioner Berna Collier, and Executive Director Greg Tanzer, who replaced Regional Commissioner Simon Dwyer in January.

The Committee met four times.

Members	Eligible to attend	Meetings attended
Merran Kelsall, Chair, appointed January 1998	4	4
Robert Savage, Deputy Chair, appointed March 2000	4	4
Berna Collier, ASIC Commissioner, appointed March 2002	4	4
Simon Dwyer, South Australian Regional Commissioner, appointed April 2001 until December 2003	2	2
Bob Lynn, appointed March 2002	4	4
Greg Tanzer, Executive Director Consumer Protection and International Relations, appointed January 2004	2	2

The financial statement sub-committee, comprising only external members of the Audit Committee, met once during the year.

The Australian National Audit Office provided external audit services, KPMG Assurance and Advisory provided internal audit services. Des Samuels replaced Brendan Dwyer as National Manager, Audit in December. Both external and internal audit representatives attended Audit Committee meetings.

Merran Kelsall,
Chair, ASIC Audit Committee, July 2004

appendices

In this section

- publications
- freedom of information
- disability strategy report
- Electoral Act disclosure

Publications

We published the following free publications:

- Electronic newsletters only: *FIDO News* (financial tips and safety checks) *Financial Services Update* (financial services reform). Printed newsletters: *ASIC News* (regulation and enforcement), *InFocus* (company information)
- Brochures: *Don't kiss your money goodbye*, *Super decisions*, *You can complain* (last two also in Arabic, Chinese and Vietnamese).
- Comics: *Moola Talk*, *To the Max!*
- Annual report, occasional reports, papers and information sheets on a wide range of topics accessible through our website or Infoline.

We published for sale *ASIC Digest*, *ASIC Working Guide for Accountants*, *ASIC Working Guide for Company Secretaries*, *ASIC Financial Services Policy Handbook*, *ASIC Forms on CD-ROM*, *ASIC Managed Investments Handbook*, and *ASIC Policy Alert*.

Freedom of Information Act 1982

You have a right to apply to ASIC for access to documents in ASIC's possession under the *Freedom of Information Act 1982* (Cth) (FOI Act). You must apply in writing, stating which documents you want to obtain. Requests should be directed to the Administrative Law Coordinator in your State or Territory or to the Manager, Administrative Law, in Sydney. (For further information on how to apply visit www.asic.gov.au).

Categories of documents in ASIC's possession relate to matters including:

- operational matters such as:
 - licence and professional registration applications
 - applications from businesses, correspondence, internal working papers, policy proposals and submissions, and
 - administrative, civil and criminal enforcement matters, including documents obtained under ASIC's compulsory powers
- law reform, including submissions and proposal papers
- correspondence with members of the public, government entities, Parliamentary committees, business entities and other bodies

- administration, including accommodation, accounts, expenditure, invoices, audit, human resources, recruitment and staff management, delegation and authorisation
- reference materials, including those contained in the library, handbooks, guidelines, manuals, policy statements, practice notes, media releases, information releases, pamphlets and annual reports, and
- other documents held as public database information (ASCOT).

As required by section 9 of the FOI Act, we note that you may inspect and purchase by subscription the following documents from Thomson-CPD, phone 1800 036 186.

- *ASIC Digest* – which contains, among other things, policy statements, practice notes, information brochures, media releases, information releases, summaries of most ASIC instruments, class orders, and pro-formas for various types of standard relief.

Note: Documents available to the public through ASIC's website (www.asic.gov.au), ASCOT or the *ASIC Digest* and library material maintained for reference purposes are not available under the FOI Act.

Commonwealth Disability Strategy Report

As a regulator, ASIC published in formats accessible for people with disabilities, all its publicly available information on regulations, quasi-regulations and compliance reporting. This occurred through our website on the day materials were released, and in hard copy through our commercial publisher and on request through ASIC's Infoline. After further work, our website now substantially complies with accessibility guidelines, within the limits of the technology at our disposal.

As an employer, ASIC incorporated the requirements of the *Disability Discrimination Act 1992* when developing and reviewing employment policies, procedures and guidelines.

- Recruitment information was released in accessible electronic format, within 24 hours, or posted out in hard copy on request within 24 hours. No requests were received for other formats.
- Human Resources staff advised managers and recruiters on reasonable adjustments required for job applicants and staff with disabilities (including staff access to training).
- Information on disability issues was included in training programs as appropriate.
- ASIC also has internal and external grievance procedures, including review of actions under the Public Service Act and appeals to the Australian Public Service Commission. Grievance provisions have been included in the ASIC certified agreement. Staff also had access to an Employee Assistance Program. ASIC received no complaints about disability issues during 2003–04.

Disclosure under Commonwealth Electoral Act 1918

Section 311A of this Act requires us to report for the financial year payments made by us or on our behalf to:

- polling organisations, advertising agencies and media advertising organisations: Nil
- market research organisations: Chant Link & Associates \$61,781
- direct mail organisations: CMR Direct \$41,160 for mailing *ASIC News*, BluePrint Instant Printing Pty Ltd \$22,327 and Chandler \$47,732 for printing and mailing *InFocus*, Canprint Communications Pty Ltd \$6,713 for printing and mailing the *Business Gazette*, Hermes Precisa Pty Ltd \$584,112 for printing and mailing Annual Review Statement Packs and invoices.

Finance sector levy

Some \$11.8 million of our appropriation was levied by the government on deposit taking, superannuation, retirement savings and insurance organisations. This table shows how that levy was used for consumer protection, regulatory and enforcement activities relating to the products and services these organisations offer, and for the Superannuation Complaints Tribunal.

Activity	This year \$m	Last year \$m
Consumer protection and policy formulation	4.1	4.3
Investigation and enforcement	7.3	5.5
ASIC sub-total	11.4	9.8
Superannuation Complaints Tribunal	3.3	3.1
Grand total	14.7	12.9

See page 28 for our consumer protection activities and page 14 for our enforcement activities.

six year summary

	2003-04	2002-03	2001-02	2000-01	1999-2000	1998-99
Business data						
Companies (total)	1,359,305	1,299,985	1,251,237	1,224,207	1,195,851	1,149,297
New companies incorporated	122,441	107,917	90,175	76,103	105,472	98,038
Australian Financial Services licensees*	3,853	626	35	n/a	n/a	n/a
Securities dealers*	309	1,880	2,302	2,250	2,081	1,833
Investment advisers*	82	194	223	224	224	231
Futures brokers*	22	95	119	121	120	108
Futures advisers*	39	63	74	70	65	64
General insurance brokers*	88	800	977	975	1,043	n/a
Life insurance brokers*	19	228	293	263	225	n/a
Foreign insurance agents*	1	13	17	14	12	n/a
Registered managed investment schemes	3,765	3,487	3,265	2,778	2,512	428
Prospectuses lodged†	1,148	1,658	2,089	2,744	1,033	707
Product disclosure 'in use' notices lodged‡	7,563	579	n/a	n/a	n/a	n/a
Takeovers lodged	67	55	67	81	81	73
ASIC performance data						
Criminals jailed	28	29	19	25	25	22
\$ millions in capital raisings requiring additional disclosure, compensation orders or assets frozen	4,216	506	401	530	n/a	n/a
% successful litigation††	93%	94%	92%	71%	75%	89%
Litigation concluded	220	222	205	150	173	154
Total searches of ASIC databases	13,437,405	10,997,500	9,095,600	7,260,700	5,702,200	4,057,000
% company data lodged on time	92%	93%	93%	93%	94%	93%
Financial summary (\$m)						
<i>Operations</i>						
Total operating expenses	196.2	172.6	159.9	143.3	143.0	145.2
Total operating revenue	191.3	172.5	154.3	144.2	140.2	146.7
Fees and charges raised for the Commonwealth	457.0	405	379	363	360	339
<i>Financial position</i>						
Current assets	23.0	15.6	20.5	15.1	12.2	12.1
Non-current assets	35.1	33.2	27.1	22.1	24.9	25.6
Current liabilities	42.9	29.0	27.3	18.6	21.7	17.1
Non-current liabilities	20.2	20.9	21.2	16.4	16.6	18.9
Total equity	(4.9)	(1.0)	(0.9)	2.2	(1.1)	1.7

* AFS licences are now the only valid licence for financial services businesses, replacing all other asterisked categories (which were counted at 10 March 2004, their last day of validity).

† From 11 March 2002 'product disclosure statements' replaced 'prospectuses' for managed funds. After 11 March 2004 prospectuses were used only for company securities.

‡ Financial product issuers notify ASIC about the 'product disclosure statement' issued for each financial product.

†† 1999-2000 and 1998-99 may understate success rate.