

# PATROLLING A BROAD TERRITORY

ASIC Annual Report 2004–05



A suspicious investment scheme under investigation in Brisbane



**ASIC**

Australian Securities &  
Investments Commission

## About this report

This is our 15th annual report since we began operating in January 1991, at that time as the Australian Securities Commission. We strive to achieve excellence in reporting. Last year's report won ASIC's sixth consecutive Gold Award from the Australasian Reporting Awards Inc.

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.

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Front cover: ASIC enforcement staff left to right Mike Keily, Regina Walsh and Jan Speirs investigate one of 76 suspicious investment schemes closed down, see page 16.



# ASIC AT A GLANCE

To protect you, the Australian Securities and Investments Commission enforced and regulated company and financial services laws.

## What we did

Helped protect people in financial markets, companies, super, managed funds, insurance, credit, deposit-taking and seeking financial advice. See highlights of the year, page 2.

Enforced laws against crime and misconduct. Regulated Australia's 1.4 million corporations and 4,135 financial services businesses, and worked to improve Australia's financial system.

Met a broader span of responsibilities than comparable regulators around the world, page 44.

Worked with Australian and international financial and law enforcement agencies, page 4.

## Our vision

Fair and efficient markets and confident, informed consumers.

For our aims, strategies and outputs see pages 6, 8, 12. Delivered through six directorates, page 14.

## Values

To be strong, fair and progressive, page 50.

## Finances

Raised \$531 million in fees for the Commonwealth. Our work cost \$208 million, funded from the Commonwealth budget, page 12.

## Staff

Employed 1,570 people around Australia (average full-time equivalents), page 10.

## Governance

An independent Commonwealth government body, led by three full-time Commissioners, pages 46, 48.



## HIGHLIGHTS 2004–05

### 1. Brought wrongdoers to justice:

HIH directors Adler, Williams and Cassidy among  
**27 jailed** for more than 96 years (PAGES 18 AND 19)

### 2. Guarded superannuation from suspect schemes and misinformation and prepared for super choice:

**56 schemes checked,  
5 stopped, 4 million super  
publications distributed** (PAGES 16, 23 AND 28)

# PATROLLING A BROAD TERRITORY

3. Helped more people: 40% more action on reports of crime and misconduct, and answered 40% more phone calls on enforcement, consumer and regulatory issues (PAGES 22 AND 36)
4. Promoted stronger markets: got better disclosure for investors, assessed new financial markets, created more certainty for business (PAGES 15, 27 AND 33)
5. Assisted companies restructure or merge in transactions worth at least \$41 billion (PAGE 32)



# CHAIRMAN'S REPORT



## Patrolling a broad territory

**ASIC patrolled a territory broader than any comparable regulator in the world, but with a single aim: to promote confidence in Australia's financial markets, corporations and businesses.**

We investigated serious corporate crime and civil misconduct. We monitored 13 exchanges and financial markets, oversaw 4,135 licensed financial services businesses and acted against misleading and deceptive conduct in superannuation, insurance, managed funds, deposit accounts and credit. We managed a public database of 1.4 million corporations, and regulated company fundraising, restructures and wind-ups.

Effective enforcement and regulation helped people feel confident about using Australia's financial markets, products and services. Australia has remained prosperous and has outperformed most other economies.

## Bringing wrongdoers to justice

'ASIC has continued to enjoy stunning success in the courts...', (editorial from the respected *Company and Securities Law Journal*, June 2005).

The convictions and jailings of former HIH director Rodney Adler and CEO Ray Williams sent a powerful message to corporate Australia. We have brought to account 9 former executives on 31 charges.

Another 25 people were jailed on ASIC charges. We took civil

action for misconduct against 121 people or companies, and banned 58 people from managing companies or offering financial services. Financial and corporate crime and misconduct may never be eliminated, but ASIC can help suppress it through effective enforcement.

(In July 2005, ASIC took civil penalty proceedings against Stephen Vizard for misusing confidential information he obtained as a director of Telstra Corporation Ltd. This followed a decision by the Director of Public Prosecutions that the evidence was insufficient to bring criminal charges. Our successful civil proceedings saw Mr Vizard banned from managing any corporation in Australia for 10 years and ordered to pay pecuniary penalties of \$390,000. The Court set a new benchmark in accepting punishment and retribution as elements of sentencing in civil cases.)

## Guarding people's superannuation

Superannuation moved higher up on the public agenda with the introduction of choice of fund for millions more employees.

Responsibility for protecting super, often people's largest single asset outside their homes, has been shared among ASIC, the Australian Prudential Regulation Authority (APRA), the Australian Taxation Office (ATO) and the Treasury as policy adviser to government.

We prepared, in cooperation with all government agencies, the Australian Government's publication *Super Choices* about how to make

better super choices. Over 1 million copies were distributed.

We worked with the ATO to shut down and deter illegal schemes that wrongfully encouraged people to get their super before they were entitled to it. We worked with APRA to encourage high standards by super fund trustees and investment managers.

To meet our other responsibilities, we also worked closely with the Australian Competition and Consumer Commission, the Australian Stock Exchange, as well as the Australian Federal Police and Commonwealth Director of Public Prosecutions.

## Helping more people

As our responsibilities have broadened and the number of organisations we regulate has grown, more people have turned to ASIC for help.

Reports of crime and misconduct increased by 8%, and we have resolved almost 57% of these. Our Infoline staff answered 40% more calls about enforcement, regulation and consumer issues. Use of our company information was steady, but it has nearly doubled on five years ago.

Companies themselves needed our help to operate commercially. ASIC dealt with applications to assist businesses transactions worth at least \$41 billion, granting approval where it was in the public interest.

## International collaboration

Increasingly, our work has taken on an international character.



**LEFT:** Jeffrey Lucy AM, ASIC Chairman, see page 46 for biographical details.

**RIGHT:** In Canberra, agreeing to regulatory cooperation with Pakistan, left to right: President of Pakistan, HE General Pervez Musharraf, the High Commissioner for Pakistan, HE Mr Babar Malik, ASIC Chairman Jeffrey Lucy, the Prime Minister, the Hon John Howard, MP



We have been negotiating with US authorities about US financial reporting requirements affecting some of our major companies.

We have strengthened collaboration in regulation and enforcement, especially in our region, with new agreements signed with Pakistan, China and Thailand. I also visited Indonesia to strengthen relationships. We trained staff from regulators in Thailand, Indonesia, Vanuatu and Fiji.

We hosted four working party meetings of the International Organization of Securities Commissions, and contributed as a member to IOSCO's Executive and Technical Committees.

## Our staff

The broad scope of ASIC's work placed extensive demands on our 1,570 staff. The back cover of this report shows some of the ways in which the high-quality work of our staff was recognised this year.

I was pleased that the Treasurer, the Hon Peter Costello, MP, was able to speak to all staff on a national videoconference about his perspective on future regulatory issues.

The Commission is indebted to staff for their professionalism, knowledge and dedication. We drew on their talent to replenish our senior management team, and we are determined to ensure we recruit, develop and retain capable and enthusiastic people. See page 10 for a summary of our staffing strategies and results.

Our Executive Director Regulation, Malcolm Rodgers, was awarded a Public Service Medal.

Executive Director Financial Services Regulation, Ian Johnston, resigned to take up a senior role with the Hong Kong regulator, and Chief Accountant, Greg Pound, resigned to reduce his work commitments. Both Ian and Greg contributed enormously and we will miss their contributions.

## More flexible organisation

We reviewed the role of our small business centres in Geelong, Newcastle, Townsville and the Gold Coast. Across Australia, people have chosen to use the more efficient electronic service channels for company information. Due to declining demand for face-to-face services, these centres will close from 29 July 2005.

We altered the responsibilities of five directorates to achieve more consistent compliance and regulation and to streamline our operations and financial management.

## Challenges we face

Overall, people can invest and do business in Australia with confidence. However, this cannot be taken for granted.

Some consumers are disengaged, others are over-confident, leading to poor financial decisions or exposure to fraud and misconduct. Some company directors and officers still drag their feet in disclosing bad news and view compliance as a burden rather than a strength. Competitive pressures among our financial markets and exchanges could open gaps in the regulatory structure. The potential

economic and regulatory value of the information reported to ASIC is limited by imaged paper-based archives and associated technology.

## Outlook

To meet these challenges, we published a new *ASIC Strategic Plan 2005–10*, a strong public statement to guide ASIC's development, values and annual business planning.

Key tasks include:

- consolidating major financial services reforms so that consumers can make better financial decisions
- implementing corporate law reform to strengthen the integrity of Australian corporations
- sustaining confidence in our financial markets
- unlocking new value from public information about corporations and other businesses that report data to ASIC
- creating a more flexible organisation with more robust priority setting, IT, funding, staff and public support.

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 1 August 2005.

**Jeffrey Lucy, AM  
Chairman**

# EFFECTIVENESS

Achieving the aims set out in our legislation



## Measures of effectiveness in meeting our statutory aims

(based on the ASIC Act, see page 45)

	2004–05	2003–04	2002–03
<b>Upholding the law uniformly, effectively and quickly</b>			
• Criminals jailed	27	28	29
• Civil orders against people or companies	121	118	151
• % litigation successful	94%	93%	94%
• Additional disclosures achieved through ASIC intervention	161	212	311
<b>Promoting confident and informed consumers</b>			
• \$ million in company fundraisings where ASIC required additional disclosure	\$6,092m	\$4,094m	\$383m
• \$ million in recoveries, costs, compensation, fines and assets frozen	\$123m	\$122m	\$123m
• Public complaints about misconduct finalised	10,752	9,970	9,292
• Visits to our consumer website FIDO	*615,000	1,196,000	875,000
• Callers assisted through our Infoline	154,000	†108,000	†142,000
<b>Making company information available quickly and efficiently</b>			
• Total use of our databases (free and paid)	13,661,000	13,437,000	10,997,500
• Company data lodged on time	94%	92%	93%
<b>Improving the performance of the financial system and the entities within it</b>			
• Approvals of commercial transactions or products that reduced costs to business	2,939	1,916	1,360
• Approvals of innovative transactions or innovative financial products	54	91	90
• Australian financial services licences issued	401	‡3,227	604

\* With new software we are now able to exclude visits by web spiders.

† Calls fell because company document lodgement inquiries were re-routed.

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





Going through the evidence in a major case, left to right:  
Ivan Middleton, Aya Daniel, Glen Unicomb,  
Jennifer Balding and Margaret Fitzgerald

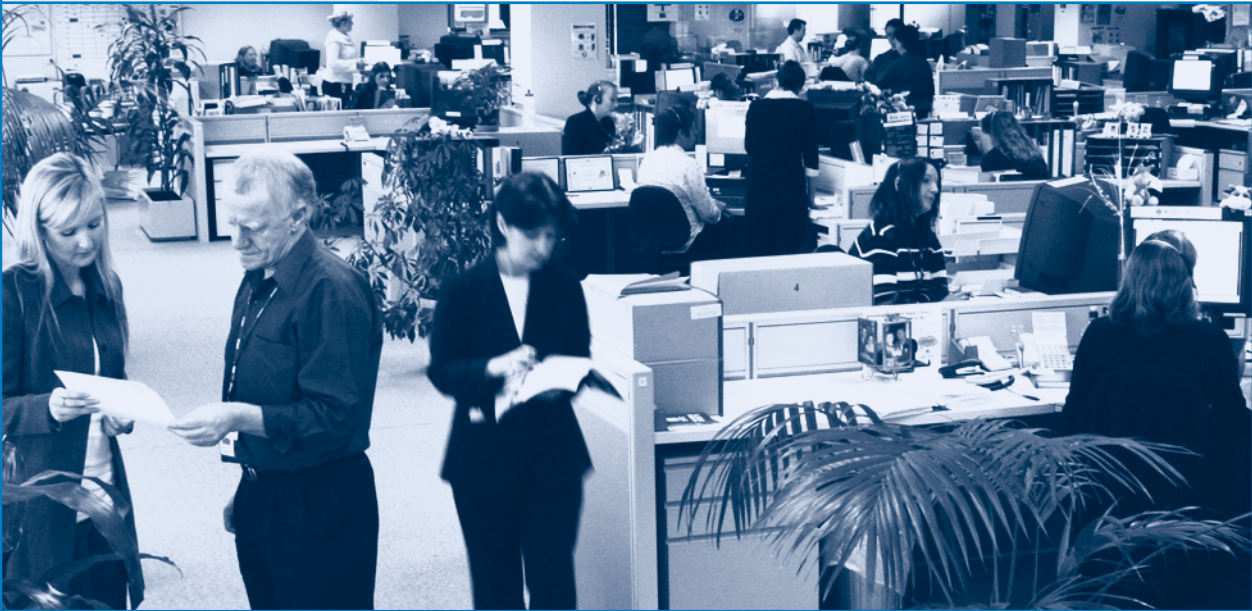
## Staff, expenses and revenue

	2004–05	2003–04	2002–03
<b>Staff (full-time equivalents) increased for enforcement and financial services reform</b>			
	1,570	1,531	1,396
Annual change	3%	10%	9%
<b>Operating expenses rose to pay for extra workload</b>			
\$ millions	\$208m	\$196m	\$173m
Annual change	6%	13%	8%
<b>Fees and charges raised for the Commonwealth up</b>			
\$ millions	\$531m	\$457m	\$405m
Annual change	16%	13%	7%

# STRATEGIES

Met the six key goals in our 2002–05 strategic plan

Key goal	Results in 2004–05
Fight fraud and misconduct	<p>This year, ASIC:</p> <ul style="list-style-type: none"><li>• succeeded in 94% of litigation, page 6</li><li>• maintained high levels of enforcement activity, pages 6, 16</li><li>• achieved an all-time high in distributing warnings to 2.9 million people, page 24</li></ul>
Raise standards in financial services	<p>This year, ASIC:</p> <ul style="list-style-type: none"><li>• checked, inspected and visited more than 703 licensees, page 26</li><li>• inspected market operators and clearing houses and reported to the Minister, page 33</li></ul>
Make a greater impact in the boardroom and improve the financial system	<p>This year, ASIC:</p> <ul style="list-style-type: none"><li>• required directors to improve disclosure in \$6 billion worth of fundraising, page 27</li><li>• acted to reduce insolvent trading, pages 35, 36</li><li>• acted against 405 companies for failing to lodge financial accounts, page 36</li></ul>



## Key goal

**Detect and act on early warning signs**

**Maintain optimal funding, relevance and efficiency**

**Strengthen the skills of our staff**

## Results in 2004–05

This year, ASIC:

- set new five-year and annual priorities based on risk analysis
- took more action to resolve public complaints at an early stage, page 23
- met with Chairs and CEOs of major corporates to gain insight into emerging issues

This year, ASIC:

- secured additional funding for major investigations and to monitor superannuation choice of fund, pages 12, 41
- restructured to increase operational effectiveness, page 13
- improved our environmental performance, page 42
- cut cost of office services by 4%, page 41

This year, ASIC:

- developed a new performance management system for staff, page 10
- completed a staff survey and acted on its findings, page 10
- invested in staff development, page 36

(Opposite page) Our Client Contact Centre in Traralgon answered calls about all our responsibilities, foreground: Belinda Daniel, John Hallyburton and Gayle Teuma

# STAFF

## Attracting and developing skilled and enthusiastic people

Our staff delivered strong results, thanks to their professionalism and commitment.

We have implemented strategies to attract and develop skilled and enthusiastic people, taking into account the competition we face from private sector financial and professional services businesses.

### A safer workplace

The Commonwealth Safety Rehabilitation and Compensation Commission named ASIC as a winner in its award for 'rehabilitation and return to work'. We made it a priority to manage safety at work and situations where staff suffered work-related injury or illness.

Injuries and claims decreased, thanks to ongoing strategies to prevent and manage injuries in the workplace, see page 37.

### Remuneration and managing performance

We successfully negotiated with staff and union representatives for a new certified agreement. (Staff voted overwhelmingly to support the agreement in July 2005.)

A new performance management system forms part of the new agreement. It aims to increase the pay staff can earn through high performance and to encourage continuous appraisal and feedback.

### Survey

We conducted our first national survey of staff opinion to identify strengths and opportunities to improve the organisation and working environment. The survey measured and prioritised the key issues staff believed should be addressed.

As a result, the Commission adopted more regular and systematic staff communication, and is dealing with remuneration and career path issues. We also increased the emphasis on management and leadership training.



## Numbers stabilised

Staff numbers remained much the same for most of the year, with an average 1,570 full-time equivalents. This helped meet the high demand for our services, including enforcement (the HIH taskforce and James Hardie investigation). Staff numbers declined towards the end of the year.

## Outlook

In the coming year, we expect staff levels to reduce slightly. We will implement strategies to:

- upgrade leadership and management development and training
- implement our new performance management system
- strengthen workforce planning, recruitment and selection.

For more information on staffing, see pages 38 and 39.

Melbourne graduates experiencing the full range of ASIC work, left to right: Kara Martini, Luke Hall, Thea Lavery talking to Regulation Director John Price, and Tim King



# FINANCIAL SUMMARY

## 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 achieve this outcome, we delivered four outputs (or services).

### Output\*

	This year	Last year	Change
1. Policy and guidance about laws administered by ASIC, pages 31 and 32.	\$10m	\$11m	steady
2. Comprehensive and accurate information on companies and corporate activity, page 34.  Increased expenses included acquiring a new mainframe and upgrading online business systems.	\$50m	\$45m	+11%
3. Compliance monitoring and licensing of participants in the financial system to protect consumer interests and ensure market integrity, pages 23, 28 and 33.  Lower expenses flowed from successfully completing the transition to new financial services laws.	\$51m	\$56m	−9%
4. Enforcement activity to give effect to the laws administered by ASIC, page 16.  Increased expenses included major matters including James Hardie, Offset Alpine Printing and One.Tel.	\$97m	\$84m	+15%
<b>Total</b>	<b>\$208m</b>	<b>\$196m</b>	<b>+6%</b>

\*Internal service costs are apportioned to these outputs.

We raised \$531 million for the Commonwealth in fees and charges.

We balanced revenue and expenses with a break-even result. We received \$199 million in appropriations and \$9 million in revenue from sale of services, interest and other sources, including \$2.6 million in recoveries for court and investigation costs.

Our expenses of \$208 million increased, largely to sustain ASIC operations and to increase enforcement activities and

surveillance of company auditors. Employee expenses, our largest outlay of \$125 million, increased as a result of an additional 39 full-time equivalent positions. Supplier expenses, excluding property costs, increased 4% to \$69 million, including increased litigation and forensic costs.

Some \$13.2 million of our appropriation was levied by the government on deposit taking, superannuation and insurance organisations, used for the purposes shown on page 57.

Our financial statements begin on page 60.

### Outlook

Under the government’s May 2005 budget, ASIC will receive \$214 million in 2005–06. All increases to our budget were tied to specific activities, such as enforcement activities (including One.Tel, Offset Alpine and James Hardie), consumer protection and monitoring superannuation choice. No additional money was provided for general operations.

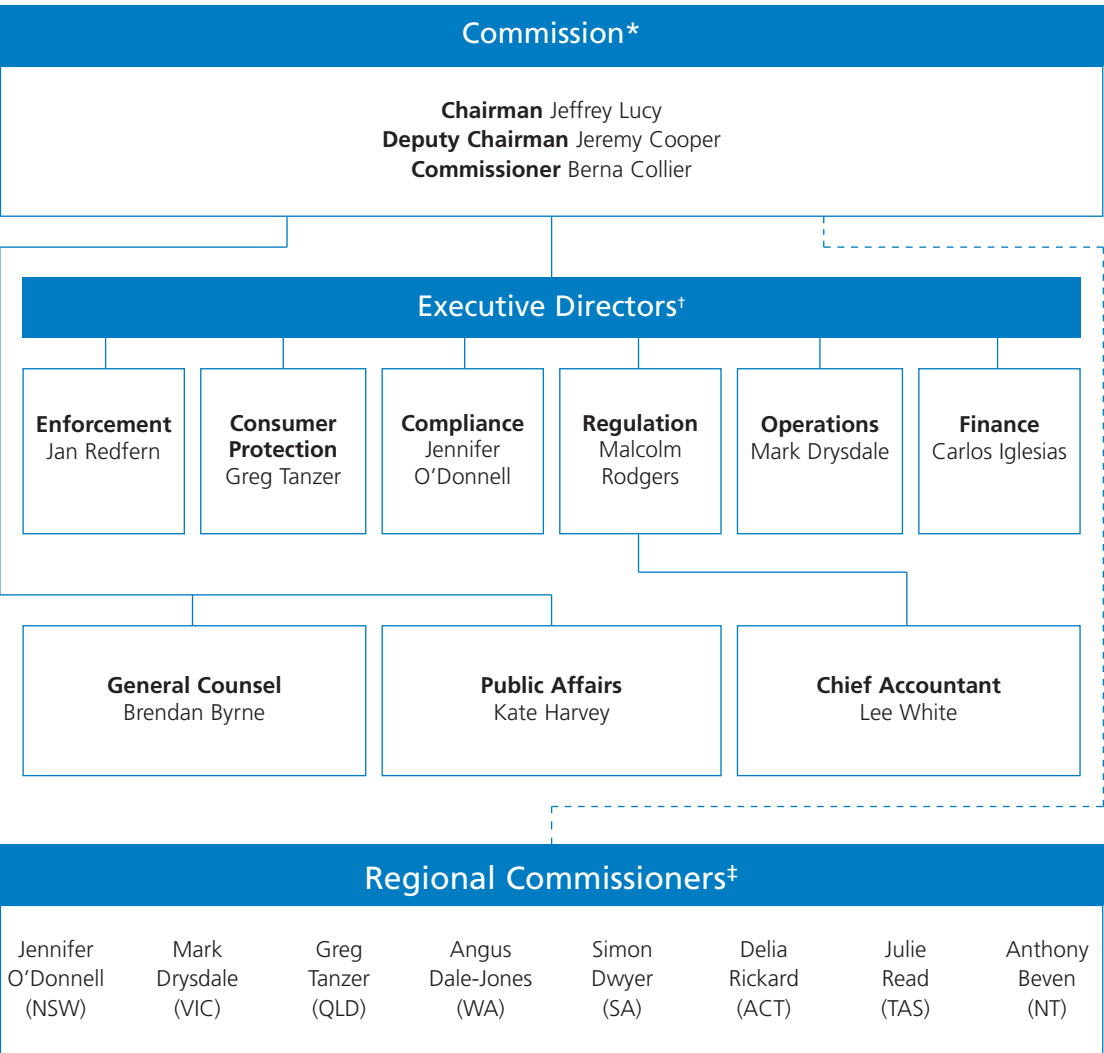


# ORGANISATION

## Key roles adjusted for a more flexible organisation

The Commission reorganised five of our operating directorates by:

- expanding Consumer Protection to assess and act on reports of misconduct
- creating the Compliance and Regulation directorates to replace the former Financial Services Regulation and Policy and Markets directorates
- creating a new Operations directorate and appointing the Executive Director as Chief Operating Officer
- creating a new Finance directorate.



\* Commissioners' biographies, see page 46.

† Executive Directors' details, see relevant directorate chapters.

‡ Regional Commissioners' details, see page 53.

# OPERATIONAL SUMMARY

## Specialist directorates contributed to common goals

	Enforcement	Consumer Protection	Compliance
Staff†	420 people	100 people	157 people
Role	Investigate and act against misconduct	Protect consumers, act on international issues	Ensure companies and licensees comply with the law
Key events	HIH directors Adler, Williams and Cassidy jailed	Employee choice of super fund announced	Government approved extra ASIC monitoring of advice on super
Results	<p>27 jailed, banned 33 directors and 25 people from financial services</p> <p>Acted against 5 suspect super schemes and 76 suspect investment schemes</p> <p>3 convictions, 2 civil penalty orders against insider trading</p>	<p>Prepared <i>Super Choices</i> booklet: more than 1 million distributed</p> <p>8% increase in reports of misconduct, 57% of matters resolved</p> <p>Built stronger links with Asian and Pacific regulators</p>	<p>Deterred illegal super schemes and prepared the industry for super choice</p> <p>Stopped misleading advertising of high-yield debentures</p> <p>Achieved better information about \$6 billion capital raisings</p>
Targets for next year	<p>Deal effectively with high-interest enforcement actions</p> <p>Target misconduct in high priority areas</p>	<p>Protect consumers during the introduction of choice of super fund</p> <p>Educate consumers about finance</p>	<p>Maintain pressure on financial services businesses to raise standards</p> <p>Ensure effective regulation of company auditors</p>
More information	Page 16	Page 22	Page 26



## Regulation

## Operations

## Finance

163 people

Set ASIC policy on regulating markets and business

Minister announced refinements to financial services laws

Helped \$41 billion in corporate transactions

Created greater commercial certainty for financial services

Advised the Minister about six new authorised markets

Oversee introduction of international financial reporting standards

Work on refinements to financial services regulation

Page 30

535 people†

Company data, insolvency, IT and HR

National business advisory committee established

Visited 488 companies to deter insolvent trading

40% increase in calls answered on consumer and regulatory matters

Online business supported by upgraded IT systems

Maintain our commitment to deter insolvent trading

Upgrade leadership and management development and training

Page 34

122 people

Finance, risk, knowledge management, corporate services

Federal budget allocated additional special purpose funding

Balanced revenue and expenses

Reduced internal services costs by 4% while maintaining service levels

Energy use better than target, stronger environmental management systems

Develop a funding base so resources can move more freely to meet public needs

Introduce activity costing and time recording

Page 40

† Full-time equivalents, not including 35 staff supporting the Commission, General Counsel, and 38 staff supporting the Superannuation Complaints Tribunal and other statutory bodies.

‡ Includes 29 full-time graduates working for other directorates.

(Opposite page) Looking after markets, companies and consumers in Perth, left to right: Margaret Pyrchla, James Rowe, WA Regional Commissioner Angus Dale-Jones and Melissa Trees