

# ENFORCEMENT

## Overview

420 staff investigated suspected breaches of the law:

- had 27 criminals jailed for more than 96 years and 23 others convicted
- commenced 215 criminal, civil and administrative proceedings, involving 300 people or companies
- \$119 million in recoveries, costs, compensation and fines with more than \$5 million in assets frozen
- banned 58 people from managing corporations or offering financial services
- disciplined 12 company auditors and liquidators for misconduct
- wound up 60 companies.

## KEY RESULTS

### Issue

### Result

HIH Insurance\*

Jail for former director Rodney Adler, former CEO Ray Williams and former Australian managing director Terrence Cassidy. Four others before the courts

Superannuation: suspect illegal access schemes

2 scheme promoters jailed, 5 suspect schemes halted involving at least \$14 million

'Get rich quick', 'wealth creation' and illegal fundraising schemes

76 schemes closed down involving 2,150 investors and \$220 million

Insider trading and market manipulation

5 criminal convictions, 2 civil penalty orders imposed

\* Results for 2004–05 only.

## Main activities

	This year	Last year	% change
Criminals jailed	27	28	steady
Civil orders against people or companies	121	118	steady
People removed from directing companies	33	22	+50%
People banned from financial services	25	42	–40%
Auditors and liquidators disciplined for misconduct	12	13	steady

## Criminal matters

We had 49 criminals convicted from briefs prosecuted by the Commonwealth Director of Public Prosecutions (DPP). Staff investigated and obtained evidence for the DPP, who then decided to bring, and prosecuted, all indictable and some summary matters.

Jan Redfern, Executive Director, a lawyer with extensive public and private sector experience appointed 2003, with Deputy Executive Directors Allen Turton and Mark Steward



## 27 criminals jailed

Jail sentences were handed down for serious fraud or dishonesty:

What they did	Names and details of crime	Sentence
Investment fraudsters	Donna Tung Sing Ho and Mark Andrew Sweeney dishonestly used \$1.5 million of investors' money on the pretext of investing in China	9 years, with a minimum of 3 for Ho, 8 years 6 months for Sweeney
	William Frederick Harmer, finance broker, made misleading statements in prospectus	2 years, with a minimum of 12 months
	Haydn James Dodge, defrauded investors in solicitors mortgage fund	2 years, with a minimum of 12 months
	Andrzej Michalik and Martin Michalik, operated an early release of superannuation scheme. Contempt of court	18 months, with a minimum of 12, fined \$200,000
Financial services professionals who cheated clients	John Michael Higgins, financial adviser, defrauded his clients of \$1.7 million	8 years, with a minimum of 5
	Robert Geoffrey Walker, former managing director of FOGI, deceived investors costing them around \$11 million	7 years, with a minimum of 4 years 6 months
	Robert Andrew Street deceived clients involving more than \$1 million, and used money in a Nigerian advance fee fraud	5 years 3 months, with a minimum of 4 years
	Michael Andrew Smith, financial adviser, misappropriated client funds	3 years 6 months, with a minimum of 18 months
	Mervyn Alexander Roach, securities representative, misappropriated client funds	2 years, with a minimum of 14 months
Dishonest company directors and officers	Ray Williams, former CEO of HIH Insurance Ltd, for failing in his duties	4 years 6 months, with a minimum of 2 years 9 months
	Rodney Stephen Adler, former director of HIH Insurance Ltd, for dishonesty	4 years 6 months, with a minimum of 2 years 6 months
	Terry Cassidy, former managing director Australia, HIH Insurance, for making false statements	18 months, with a minimum of 10
	Gregory Joseph Fisher, director of the Satellite group of companies made improper use of his position	2 years 6 months, with a minimum of 6 months
	Luke Duffy, former head of the National Australia Bank's foreign currency options desk for dishonestly using his position	29 months, with a minimum of 16



What they did	Names and details of crime	Sentence
Dishonest company directors and officers <a href="#">continued</a>	Andrew James McKenzie, undischarged bankrupt, dishonestly applying funds and misusing his position as director	4 years, with a minimum of 16 months
	Gregory John Waring, falsified company accounts	2 years 10 months, with a minimum of 4 months
	Marcus Anthony, operated as an unlicensed insurance broker and misappropriated client funds	6 months and fined \$500
	John Phillip Gorcilov, director used false identity to defraud others of \$8 million	5 years, with a minimum of 3
	John Robert Forwood, company director, submitted false invoices for \$3.9 million	3 years 9 months, with a minimum of 18 months
	John Thomas McMunn, director provided false information to investors	5 years 4 months, with a minimum of 4 years
	Stephen John Riddell, acted as a director whilst disqualified, lodged false documents	2 years, with a minimum of 16 months
	Peter Puhakka, provided false information to ASIC	8 months, with a minimum of 3
Market manipulation	Upul Samantha Anthony, former securities lending dealer, manipulated various share prices of two shares, also other offences	4 years 6 months, with a minimum of 2 years and 9 months
Insider trading	Maxwell John Sweetman, insider trading in Harts Australasia Ltd shares	18 months, with a minimum of 6
	Richard James Frawley, insider trading in JNA Telecommunication shares	2 years 6 months periodic detention

## 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	7	16	11	8	22	64

Briefs concerned 80 potential defendants. The DPP accepted handover of these briefs for prosecution after 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 93 civil proceedings to stop misconduct, protect assets or obtain remedial or protective orders and fines. We also obtained orders against 121 people or companies to freeze assets, get compensation, wind up illegal schemes and get bans or penalties against directors, company officers and others who failed in their duties.

Court orders, enforceable undertakings or recoveries were obtained for compensation, refunds, fines and costs of \$119 million. Assets worth over \$5 million were frozen for investors and creditors. Matters of interest are set out below.

Entity or person	Results
AXA Staff Superannuation Pty Ltd	Undertaking by the trustee to restore around \$10 million in benefits to 2,000 current and former fund members
National Exchange	Court orders allowing shareholders with a total shareholding value of \$4.2 million to withdraw their acceptances of National Exchange's purchase offer
Ludgates	Settlement of proceedings following breaches of an enforceable undertaking relating to the provision of improper financial advice. Ten year banning from securities industry and orders to pay compensation of nearly \$400,000
Kingsley Brown Holdings Pty Ltd	Winding up of companies associated with property development to protect investors in the sum of approximately \$2.5 million

We successfully applied to the courts to wind up 60 companies, including Radisson Maine Group (Australia) Pty Ltd, International Finance Corporation Ltd, Global SDR Technologies Pty Ltd and the Commercial IBT group of companies.

We accepted 28 enforceable undertakings affecting 37 entities (including National Australia Bank, Zurich and Colonial Mutual) to get more wide-ranging remedies, and often on behalf of more people, than can usually be obtained in court proceedings.

### Bannings, fines and disciplinary proceedings

To protect the public, we banned (or obtained orders or undertakings that banned) 33 people from managing companies, and 25 people from offering financial services. We also disciplined or deregistered 12 company auditors and liquidators for misconduct.

#### 33 company directors and officers banned

Targeted action was taken that banned 2 directors permanently and 31 for periods exceeding 140 years. As a result of convictions ASIC obtained this year, a further 50 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
Barrie Loiterton, Ian Robert Hall and Ian Sapier	Directors of Clifford Corporation Ltd, which collapsed with a deficiency of \$90 million, contravened the Corporations Act, including for acts of dishonesty. Also ordered to pay pecuniary penalties and part of ASIC's costs	17, 14 and 8 years respectively
Santo Rapisarda	Director of 15 companies placed into liquidation within the last seven years owing more than \$3.6 million	5 years
John Greaves	Former chairman of One.Tel admitted to contraventions of the Corporations Law. Also found liable for \$20 million compensation, and ordered to pay ASIC's costs	4 years

## 25 banned from financial services

To protect the public, 15 people were permanently banned and another 10 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
Neville John Kakoschke	Former stockbroker operated client accounts without consent, exposing them to risk and financial losses	Permanent
Alexander Carrick Ross	Former stockbroker misled clients, failed to disclose his interest in investments he recommended, and lost more than \$400,000	Permanent
Piet Cornelius Walthers	Operated an \$8 million illegal investment scheme, deceiving 118 investors that he had the authority of ABN AMRO Morgans	Permanent
Neville Martin Dunn	Unlicensed adviser who recommended options trading without adequate information about his clients	5 years

## Action against company auditors and liquidators

ASIC took criminal, civil and disciplinary proceedings. Matters of interest are listed below.

Name	What they did	Orders made
Alan Mitchell Bates, auditor (PH Cary)	Prosecuted for failing to comply with audit independence requirements	Convicted with \$1,000 fine and costs
John Henderson Jackson, liquidator	Fraudulently converted funds of company while receiver and manager	3 years, suspended with 2 year good behaviour bond
KordaMentha, liquidators	ASIC successfully challenged remuneration practices, highlighting important issues of disclosure to creditors (Stockford Ltd)	Remedial disclosure to creditors
Ralph David Goodman (BDO), auditor	Inadequate review work on half-year accounts of the Satellite Group	12 month suspension
Neil John Cameron Smith (KPMG), auditor	Failed to qualify his audit opinion on EDGE Group as a going concern, and failed to get sufficient evidence to support audit opinion	6 month suspension, with limits on audit practice for a further 12 months

Some 10 auditors and 2 liquidators were disciplined or surrendered registration for misconduct, with another 4 disciplined for not complying with administrative requirements.

## Outlook

Effective enforcement remains essential to ensuring confidence in our markets, companies and financial services businesses.

We will:

- deal effectively with high-interest enforcement actions, including investigations into HIH Insurance, James Hardie, One.Tel and Offset Alpine
- target misconduct in high priority areas, including issues arising from superannuation choice, corporate disclosure, financial reporting and audit.

# CONSUMER PROTECTION

## Overview

100 staff:

- dealt with 10,752 reports of crime and misconduct
- tackled issues affecting consumers through compliance, policy and educational work
- managed 724 international requests for assistance and led ASIC's contribution to international regulation
- coordinated ASIC's 8 regional offices to maintain service levels
- managed 1,455 applications about property of deregistered companies.

## KEY RESULTS

### Issue

### Result

Superannuation choice	Prepared <i>Super Choices</i> booklet: more than 1 million distributed. Acted against misleading claims, contributed to community education
More action on reports of crime and misconduct	8% increase in reports of crime and misconduct. 57% of matters resolved through action and assistance
Misleading loan calculators	Closed down misleading loan calculators on more than 100 websites
International cooperation	Built stronger links and offered training for Asian and Pacific regulators



Greg Tanzer, Executive Director, also Queensland Regional Commissioner, a lawyer, appointed 2004, with Deputy Executive Director Delia Rickard, also ACT Regional Commissioner

## Main activities

	This year	Last year	% change
Reports of crime and misconduct finalised	10,752	9,970	+8%
Consumer publications distributed	5 million	684,000	830%
Visits to our consumer website FIDO	*615,000	1,196,000	not comparable
ASIC requested overseas assistance	203	206	steady
Other regulators requested our assistance	521	366	+42%

\* New software allows us to exclude web spiders.

## Superannuation choice

From 1 July 2005, new laws allowed millions more employees to choose their own super fund. To help consumers, we prepared the government's booklet *Super Choices*. More than 1 million have been distributed, including in six languages other than English. We contributed extensively to the government advertising campaign, super choice website, consumer information on the standard choice forms, and to training call centre staff.

To deter misselling of superannuation products and services, we acted against misleading and deceptive advertising, prepared guidelines for financial advisers when they recommend switching funds, and helped with enforcement action against misconduct.

## More action on reported crime and misconduct

ASIC encouraged the public to report suspected corporate and financial

services misconduct, and we dealt with 10,752 complaints, up 8%. Even with this increase, we resolved 57% of matters, compared with 44% last year, primarily through helping people with the information they needed or by getting companies or company officers to comply.

We sent 1,222 warning letters, achieving compliance in 81% of those cases. Another 478 company officers were prosecuted for 905 offences, most commonly aimed at thwarting creditors. Penalties included 1 jail term, 30 good behaviour bonds, 7 disqualifications from company management, and total fines and costs of \$989,000.

Liquidators, administrators and receivers lodged a further 6,878 reports about suspected misconduct, down 1%. We made inquiries in 12% of matters, resolved 7%, and referred another 1% for more action or investigation.





### Misleading loan calculators closed down

ASIC closed down loan calculators on more than 100 websites of Australian financial institutions, including banks, credit unions, other lenders and finance brokers.

The calculators suggested that using a line of credit will result in the consumer paying off their home loan more quickly. Most lines of credit charge higher interest rates than standard home loans, so it was extraordinary to suggest that paying higher interest could pay off a loan sooner.

The calculators assumed that extra repayments would be credited to the line of credit but not to the standard loan, and that the line of credit was at the same interest rate as the home loan. These assumptions were made clear to the consumer.

### Boost to consumer education on super and money

We boosted our consumer education in print and online. We distributed more than 5 million hard copy publications, including *Super Choices*, 3 million leaflets about illegal early access to super, and our new booklet *Your Money*. *Your Money* which helps consumers plan their finances, was published in the *Sydney Daily Telegraph* and *Melbourne Herald Sun*, and won Australian and international awards for effective communication.

FIDO, ASIC's consumer website, launched a superannuation calculator. All super funds must refer to that calculator in their product disclosure statements from 1 July 2005. We also launched a managed funds calculator, which funds must refer to from 1 July 2006. We issued public warnings on current financial scams, illegal investment offers and risks in low-deposit loans and high-yield debentures.

We delivered free training sessions to financial counsellors and Centrelink Financial Information Service officers, and spoke at selected consumer events across Australia.

### Acting on debt collection

Vulnerable and disadvantaged consumers have been subjected to unacceptable treatment by debt collection agencies. To raise standards in this industry, ASIC and the Australian Competition and Consumer Commission (ACCC) released a joint draft debt collection guideline for public consultation. It explains and reinforces prohibitions against misleading and deceptive conduct, harassment and coercion, and unconscionable conduct in the debt collection industry.

### Stronger international cooperation

International requests for enforcement and other assistance between regulators grew strongly.

As an active member of the International Organization of Securities Commissions, we worked to strengthen cross-border standards and cooperation. ASIC's Chairman visited Indonesia to strengthen relations between the regulators. We helped the Sri Lanka Securities and Exchange Commission assess its compliance with the International Principles of Securities Regulation, and helped Hong Kong Securities and Futures Commission make their first assessment of the Hong Kong Exchange.

ASIC staff trained Thai and Indonesian regulators at a week-long program in Bangkok. We also hosted staff from the Indonesian, Vanuatu and Fiji securities regulators at our Summer School and for a week's secondment at ASIC.

ASIC advised the Treasury and Department of Foreign Affairs and Trade on the negotiation of the financial services chapter of the Australia-US free trade agreement.

Some Australian companies must meet strict financial reporting-related requirements under the US Sarbanes-Oxley Act as well as the requirements of Australia's Corporations Act. The US Public Company Accounting Oversight Board will periodically inspect the work of those companies' auditors. To reduce costs for Australian business, we are exploring cooperative arrangements with the Board for inspecting auditors subject to both US and Australian requirements.

(Opposite page) Our Consumer Advisory Panel; standing: left to right: David Tennant, Catherine Wolthuizen, Basil La Brooy, Nicola Howell, Leigh Shacklady, Jan Pentland; seated: Carolyn Bond, Fiona Guthrie, David Jackson; Absent: Bob Andrew

## 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 protecting consumers exercising their right to choose a superannuation fund
- educate consumers about financial issues, their rights and

their responsibilities and support a vigorous consumer movement

- manage the increasing breadth of international issues affecting our domestic activities
- maintain service levels in all States and Territories.

# CONSUMER ADVISORY PANEL REPORT

In July 2004, I took up the role of Chair of ASIC's Consumer Advisory Panel.

The Panel advised on emerging consumer issues. In turn, ASIC responded to particular issues as needed and kept the Panel informed of its work in consumer protection.

The Panel met four times. Members raised a broad range of issues including debt agreements, licensing of financial advisors, share buybacks, timeshare, finance brokers, debt collection, credit reporting, reverse mortgages and super choice.

Panel members also commented on ASIC's policies for codes approvals and dollar disclosure.

The Panel made recommendations to ASIC about the funding of research and submissions for consumer protection.

Three projects were funded:

- a qualitative research project into the experience of consumers who establish and operate a self managed super fund (SMSF) – this research will offer insights into why consumers set up SMSFs and whether their expectations are met
- a survey of consumers who re-finance their personal and household finance – why and how they did this and the perceived outcomes of the strategy
- a joint consumer submission in response to the ASIC and ACCC discussion paper on debt collection.

**Fiona Guthrie, July 2005**

Chair, Consumer Advisory Panel

## Members

Fiona Guthrie (Chair)

Bob Andrew, Australian Investors' Association

Carolyn Bond, Consumer Credit Legal Service (Vic)

David Jackson, Australian Shareholders' Association

Nicola Howell, Centre for Credit and Consumer Law

Basil La Brooy, National Information Centre on Retirement Investments

Jan Pentland, financial counsellor and Chair, Australian Financial Counselling and Credit Reform Association

Leigh Shacklady, financial counsellor Tangentyere Council, Alice Springs

David Tennant, consumer advocate and lawyer and director, CARE Financial Counselling Service (ACT)

Catherine Wolthuizen, Australian Consumers Association



# COMPLIANCE

## Overview

157 staff:

- monitored corporations for compliance with financial reporting, audit, disclosure and market conduct
- achieved additional disclosure in 90 prospectuses and financial product disclosure statements
- conducted 703 compliance checks of financial advisers and financial product issuers and obtained significant corrective or enforcement action
- strengthened 111 scheme compliance plans.



Jennifer O'Donnell, Executive Director, appointed 2005, also NSW Regional Commissioner. She has previously held senior ASIC regulatory roles.



## KEY RESULTS

### Issue

Superannuation

### Result

Deterred illegal schemes to access super and prepared the industry for superannuation choice

High-yield debentures

Stopped misleading advertising and achieved better disclosure for investors

Company fundraising

Obtained additional disclosure for the public affecting \$6 billion in capital raisings

### Main activities

Additional disclosures to the market obtained

**This year**

**Last year**

**% change**

71

95

-22%

Corrective disclosure achieved in prospectuses

72

67

+7%

Corrective disclosure achieved in product disclosure statements

18

50

-64%

On-site compliance reviews of licensees

703

1,186

-41%

Compliance plans of responsible entities upgraded after ASIC intervention

111

65

+71%

### Protecting superannuation

We campaigned against schemes promoting illegal early access to superannuation. Staff examined 56 schemes promising people access to their super to pay off debts or meet daily living expenses. We stopped 15 misleading advertisements, and alerted 26 publishers and media organisations to their liability for knowingly publishing misleading advertisements about illegal super schemes. We briefed fund trustees and advisers on risks and fraud management, and with their co-operation, alerted 2.9 million super fund members to these risks.

To prepare for greater employee choice of super fund, we worked to ensure that financial advisers avoid encouraging people to switch funds simply to earn commission. We obtained client files from licensed advisers that recommended switching super funds (and will do so during 2005–06) to see that advisers comply with their obligations.

### High-yield debentures

We reviewed prospectuses issued for high-yield debentures to see if they told investors about the additional risks of these types of investments.

We found evidence of aggressive or misleading advertising, poor disclosure about property developments and related-party transactions, and insufficient disclosure of bad and doubtful debts.

We stopped two misleading advertising campaigns, and required companies to improve the information provided to investors in two other cases. In one case, we permanently stopped the offer from proceeding.

### Company fundraising and disclosure

Corporate fundraising continued at record levels, with numerous initial public offerings including listed investment companies. We required directors to disclose more information about fundraisings worth \$6.1 billion, including the major \$1 billion offer for Babcock & Brown Capital Ltd and the \$300 million public offer for Seek Ltd.

We successfully encouraged smaller companies to get their fundraising disclosure right the first time, and produced a noticeable improvement in information given to shareholders when considering related-party transactions.

### Auditor compliance

Auditors must now comply with additional legal requirements designed to raise the standards of financial reporting and disclosure. We established a specialist team to monitor the profession. Initial work focused on auditor independence and involved on-site inspections of audit practices. We will follow up by reviewing audit methodologies and compliance with auditing standards.

### Raising standards in financial services

Across Australia, we made 703 on-site visits to licensees, including visits to more than 300 licensees in regional Australia, where we checked breach notification and complaints handling. We also examined compliance and advice to retail investors in selected stockbroking firms.

To nip in the bud potential problems with managed investments schemes, we checked auditors' comments about scheme operators. Auditors raised issues of concern in 64% of schemes they reviewed. In all but 6% of those schemes, operators took early steps to rectify problems. The remainder addressed the issues after discussion with ASIC.

To stop unlicensed businesses from offering financial services, staff contacted various people or companies and secured compliance with the law.

### Insurance broker remuneration

After investigations in the United States into abuses and rigging bids for insurance, we examined broker practices in Australia.

We did not find any instances of bid-rigging or other systemic abuses. Some insurance brokers had not properly understood their obligations to disclose and manage conflicts of interest, or had not been diligent in complying with them. These matters are being dealt with.

### Tackling unit pricing errors

ASIC and APRA (the prudential regulator) jointly conducted a review of how life companies, superannuation trustees and fund managers priced investors' units in their funds. This review followed a number of significant pricing errors. In December, both agencies released proposed guidance for good practice in unit pricing for industry comment. When finalised, this guidance will help industry participants to meet their unit pricing obligations in a consistent manner.

### Financial product disclosure documents

We reviewed defective documents brought to our attention, with corrective disclosure obtained in 18 product disclosure statements. We also aimed to ensure that product issuers disclose information in at least a broadly similar way for similar products.

## Outlook

All over the world, corporations, directors and officers and financial services businesses face close attention on the quality and reliability of their reporting, disclosure and conduct.

We will:

- maintain constructive pressure on the financial services industry to raise standards
- help company directors and officers achieve a noticeable improvement in corporate compliance
- ensure effective regulation of company auditors
- target areas of particular risk, including superannuation advice, small and medium managed investment schemes, and product disclosure statements.





# REGULATION

Malcolm Rodgers,  
Executive Director, a  
lawyer with extensive  
regulatory experience,  
appointed 2001,  
previously ASIC Director  
Regulatory Policy

## Overview

163 staff, including the Office of Chief Accountant:

- regulated company fundraising, restructures, financial reporting and market disclosure
- regulated Australia's 13 licensed financial markets and 4 clearing and settlement facilities
- issued 29 guidance documents to regulate or guide industry and professionals, including guidance about new laws on audit and company disclosure
- licensed 401 new financial services businesses and registered 590 managed investment schemes
- approved 2,993 applications for relief from the law involving licensing, disclosure, managed investments and related provisions.



## KEY RESULTS

### Issue

Corporate takeovers and restructures

### Result

Assisted business transactions worth at least \$41 billion to proceed more efficiently and fairly

Financial services

Offered extra guidance to bring greater commercial certainty

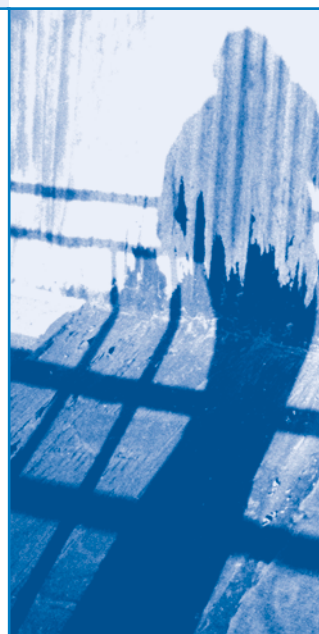
Market supervision

Advised the Minister about 5 new authorised markets

### Main activities

	This year	Last year	% change
Authorised financial markets regulated	13	8	+63%
Commercial relief applications approved	2,993	2,007	+49%
Takeovers received	68	67	steady
Schemes of arrangement	39	53	–26%
Policies and guidance documents issued	29	27	steady
Australian financial services licences issued	399	*3,227	–87%
Managed investment schemes registered	590	524	+13%

\* Last year was a peak caused by the transition to a wholly new licensing regime.





Assisted \$41 billion corporate transactions

Corporate mergers, acquisitions and restructures involved some of Australia's largest companies. ASIC dealt with a record number of applications for relief from strict compliance with the law, so these transactions could proceed efficiently but fairly for all parties involved.

Major transactions included News Ltd's change of domicile to the USA, BHP Billiton's acquiring WMC Resources, Foster's acquiring Southcorp, and contested transactions involving Australia's oldest property trust GPT and retail giants bidding for Australian Liquor and Hospitality.

We worked to promote independent, high-quality experts' reports, used to inform directors and shareholders. We also streamlined and updated our regulation of managed investments.

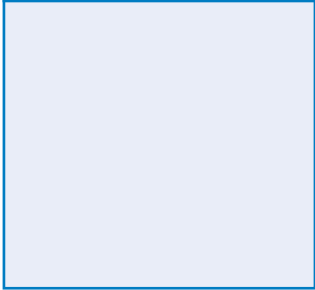
Extra guidance for financial services

Australia's new financial services laws set higher and more consistent standards of conduct and disclosure across all financial products and services.

Transition to these new laws posed some challenges for ASIC and for industry, and gave rise to many applications for relief and requests for guidance. We approved 2,993 applications and published key decisions on applications. New guidance included these matters.

Conflicts of interest	How to manage conflicts of interest, and a guide to help research report providers (including research analysts) manage conflicts of interest
Dollar disclosure	How to disclose various fees, charges, expenses, benefits and interests in dollar amounts in disclosure documents, and relief to ensure that the obligation to disclose these fees, expenses benefits and interests in dollar amounts does not operate in a way that is unreasonably burdensome or not in the interests of clients
Statements of additional advice	Relief to allow advisers to avoid duplicating information already given to clients and to provide shorter disclosure documents to clients

We also worked with the Treasury and the Parliamentary Secretary on proposed refinements to financial services regulation. ASIC agreed to lead 8 of the 25 relevant projects. We have already issued relief for providers of superannuation calculators. We aim to complete the projects or public consultation (where required) by September 2005.



## Assessing more authorised markets

The number of authorised financial markets on which Australians can now invest and trade increased from 8 to 13. On advice from ASIC, the Minister granted five new markets licences, including Reuters, EBS (one of the largest foreign exchange platforms in the world) and APX, an equities and listed property trust market operating out of Melbourne.

For each market and for the four licensed clearing and settlement facilities, ASIC staff inspected and reported to the Minister on supervisory arrangements, including arrangements for handling conflicts of interest. 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.

## New financial reporting standards

New international financial reporting standards came into effect from 1 January 2005. To promote a smooth transition, we worked closely with government, standard setters and industry.

We tracked companies' progress in implementing the new standards and reviewed their compliance. We had earlier encouraged those preparing financial reports to identify and disclose the significant matters facing their companies. Internationally, ASIC chaired a working group to encourage consistent regulation and enforcement of international financial reporting standards for those countries introducing them.

## Removal of company directors

ASIC intervened to ensure market understanding that it is the prerogative of shareholders, not directors, to remove directors from office. We expressed concern about agreements or arrangements by directors to remove another director from office, or to compel another director to resign. We noted publicly that such agreements are ineffective at law and that if a company presented an agreement as if it were binding, there is a real risk shareholders would be misinformed.

## 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.

## Financial services licensing

We checked 69 licensed businesses to verify compliance, resulting in 30 changes in procedures and 6 referrals for further action. We also successfully piloted a new program for checking the compliance and risk management arrangements of licensees.

We licensed a further 401 licensees and approved variations of 684 existing licences. Applications from responsible entities, financial planners, insurance brokers and derivative and foreign exchange dealers grew strongly.

## Outlook

Effective regulation can maintain standards and protect Australians, while being compatible with overseas regulation.

We will:

- oversee introduction of international financial reporting standards
- work actively on refinements to financial services reform
- maintain credible regulation of corporate finance
- strive for greater transparency and clear, effective communication of our regulatory and policy stances.

# OPERATIONS AND STAFFING

## Overview

535\* staff:

- deterred insolvent company trading
- maintained Australia's public database of 1.4 million companies
- managed information technology, human resources, planning and project services
- answered 784,000 telephone inquiries
- provided high volume document imaging services on commercial terms.

\*Includes 29 full-time graduates working for other directorates.



Mark Drysdale, Chief Operating Officer, appointed 2005, and Victorian Regional Commissioner, experienced in corporate management and regulation, with Deputy Executive Director Jeremy McNeice

## KEY RESULTS

### Issue

### Result

Organisational performance	Strengthened organisational development and performance review systems
Insolvent trading	488 companies visited. Corrective action taken to avoid insolvent trading
Database usage	More than 13.4 million free and paid searches. New business advisory committee established
More support for online business	Online business supported by new mainframe and upgraded IT systems

### Main activities

	This year	Last year	% change
Fees and charges raised for the Commonwealth	\$531 million	\$457 million	+16%
Company data lodged on time	94%	92%	+2%
New companies registered	121,463	122,441	steady
% documents lodged electronically	69%	69%	steady
% paid searches done online	99%	98.1%	+1%
Telephone inquiries	784,000	863,000	-9%



### Strengthening organisational performance

Our first staff survey highlighted the importance of effective rewards for good performance and better management of underperformance.

We reviewed our performance management system, and discussed proposed changes with staff and union representatives as part of negotiating a new certified agreement. We expect the new agreement, replacing the one that expires in August 2005, will deliver significant improvements in individual and organisational performance.

As part of a review of staff development priorities, we increased emphasis on training managers and team leaders by offering 3 new management development programs. We also worked to make ASIC's \$1 million annual investment in staff development more cost-effective.

Career and succession planning also helped improve personal capabilities and staff development, and better manage the risk of vacancies in key roles. We also upgraded staff induction arrangements. Some 17 new graduates will participate in a 12-month rotation program.

### Deterring insolvent trading

To help companies deal promptly with financial difficulties, staff visited 488 potentially troubled companies to assess their solvency. We encouraged directors to seek professional advice to turn the company around or to appoint a voluntary administrator.

After these visits from our insolvency specialists, many companies restructured, refinanced, or introduced turnaround strategies with professional advice. Some 63 companies had a voluntary administrator appointed after our visits, including Henry Walker Eltin Ltd, Collins Booksellers Pty Ltd, and Sams Seafoods Holdings Ltd.

### More use of online public information

The total number of companies registered in Australia increased 5% to 1,427,573, although the number of new companies formed was steady compared with last year.

People conducted 13.7 million free and paid searches of our databases, up marginally, including 9.9 million free internet searches of company names, numbers and document lists.

Use of electronic service channels for paid searches increased to 99%, and electronic company registrations accounted for more than 78% of new companies formed. This further reduced workloads in our service centres, and we announced the proposed closure of four regional service centres from 29 July 2005.

### Maintaining quality data

To maintain quality data, 14,686 companies were targeted to ensure compliance with the law. Some 405 civil actions were undertaken to ensure lodgement of financial reports by large proprietary companies, managed investment schemes, foreign companies, and unlisted public companies. We also acted to require companies to appoint at least the minimum number of officeholders and to remove bankrupt officeholders. We began deregistration of 22,094 companies that failed to pay their annual review fee.

### More telephone inquiries

Our Client Contact Centre handled more than 784,000 calls from the public. Some 154,000 calls raised regulatory, enforcement and consumer protection issues, up more than 40%. These calls related to matters such as fundraising and takeovers, financial services, licensing, managed investments, unclaimed money, and various searches and licence checks.

The remaining 630,000 calls dealt with more routine company housekeeping matters such as company incorporation, deregistration, annual statements, form and invoice inquiries, charges, and external administrations and liquidations.

Staff answered 94% of all calls connected, and answered 76% of these calls within two minutes.

## New services and greater business input

When companies make critical changes to their records, we now give them an electronic confirmation to reduce the risk of error or false lodgements. We also increased electronic services for liquidators who lodge documents with ASIC.

To advise us about operations and future directions for public information, we set up a business advisory committee. We also strengthened international links, hosting the first meeting of the international Corporate Registers Forum, representing government registries in 13 countries. ASIC was elected Chair of the Executive Committee.

## 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 for litigation and public inquiries.

Customers included a range of government and private sector organisations.

## Information technology upgraded to meet demand

Electronic business transactions have replaced many over-the-counter services. To meet this demand, we successfully installed a new mainframe, replaced servers throughout the organisation, and upgraded IT systems nationally. A new national phone system was also installed.

Staff developed new applications to support corporate law reforms and delivered 24 significant projects. To update our overall IT management, we also documented:

- software development methodologies
- enterprise architecture management
- details of core systems.

## Improved safety at work

ASIC improved its already sound record on occupational health and safety with a well-established OHS framework and a focus on the rehabilitation of injured employees. The rate of time away from work by injured employees is well below targets set by our insurer, Comcare. We also won an award for rehabilitation strategies, see back cover.

Some 13 incidents were reported, generally involving minor injury, 35% fewer than last year. Claims for workers compensation fell by 32%.

To improve safety, we also carried out:

- quarterly OHS risk assessments at all sites
- ergonomic assessments, screen-based eye tests, and other protective measures
- OHS awareness programs, including articles in internal publications and poster displays.

ASIC required every manager to take responsibility for ensuring a safe workplace for their staff and the public, supported by human resources staff and OHS committees that met quarterly in each location to address local issues.

## 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 maintained procedures and mandatory staff training to ensure these obligations were met.

ASIC is an equal opportunity employer. At 30 June 2005, women made up 57% of our workforce and 39% of our executives and senior executives. Under a joint Women in Law Enforcement Strategy, four female ASIC staff joined a one-year mentoring program with mentors from other agencies, and four ASIC senior managers acted as mentors to women from other agencies.

We participated in the Commonwealth strategy to ensure access to recruitment, training and grievance procedures for people with disabilities, see page 56.

### Staff numbers stable

Staff numbers stabilised at 1,570 full-time equivalents, comprising investigators, lawyers, accountants, and analysts; information processing and customer service staff; information technology, human resources, financial, business management and communication specialists.

Staff (average full-time equivalents)	This year	Last year
Operational and support (ASIC 1–4)	852	878
Senior operational staff (EL1 and EL2)	571	534
Senior Executive Service	34	29
Others (contractors, agency staff, consultants)	110	87
Commissioners	3	3
Total	1,570	1,531

### Basis of staff employment

Most staff are ongoing employees under the Public Service Act. Non-ongoing staff generally helped us complete special projects or filled peak workloads in document processing.

Basis of employment	This year	Last year
Public Service Act, ongoing	1,171	1,015
Public Service Act, temporary, most often for peak company data processing	262	400
ASIC Act consultants, for essential specialist services including investigatory, legal, corporate regulatory and accounting functions	43	49
Contractors, mainly in information technology	91	64
Commissioners	3	3
Total (average FTE over the year)	1,570	1,531

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 91.

## 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. We received four formal applications for review of management actions under the Public Service Act.

## Location of staff

State or Territory	This year	Last year
Victoria	676	663
New South Wales	603	547
Queensland	131	131
Western Australia	74	93
South Australia	50	58
Australian Capital Territory	15	16
Tasmania	13	16
Northern Territory	8	7
Total	1,570	1,531

## Outlook

To ensure that ASIC can meet future challenges, we must strengthen the effectiveness and efficiency of our operations.

We will:

- maintain our commitment to deter insolvent trading
- offer new services that help more fully realise the economic and regulatory value of Australia's corporate database
- continue major reforms to our information technology
- strengthen leadership and management development and training, performance management, and workforce planning, recruitment and selection.







### Overview

122 staff delivered the following services to all ASIC offices:

- finance
- corporate services
- risk management
- knowledge management.

## KEY RESULTS

### Issue

ASIC funding

### Result

Received additional funding for 2004–05 for ongoing operations and auditor surveillance

Cost of services

Reduced cost of office services by 4% while maintaining service levels

Environmental management

Energy use better than target, paper use cut 15% in Sydney site, stronger environmental management systems

### **Additional funding from government**

In the May 2005 budget, the government granted ASIC an additional appropriation of \$2.1 million for the ASIC-US audit regulation program, \$3.4 million for the James Hardie matter and \$3.9 million for the One.Tel and Offset Alpine matters.

### **Service expenses further reduced**

Site service expenses have been reduced by a further 3.9% nationally over the savings delivered in the 2003–04 financial year, including significant cost reductions ranging from 10% to 14% in stationery, printing, photocopy charges and fleet expenses.

### **Improved environmental performance**

Under our environmental policy, we have committed ourselves to continuously improving ASIC's environmental performance.

Carlos Iglesias, Executive Director, appointed 2005, an accountant, with experience in corporate management and information technology.



Key environmental results

Energy consumption	Use per person of 9,079 MJ, better than target of 10,000 MJ. Pulse meter energy monitoring reporting allows us to identify and rectify unwanted consumption increases
Paper consumption	Reduced paper consumption in our Sydney site by around 15%. Printers set to default duplex printing
Recycling	Introduced recycling of aluminium, plastics, mobile phones and batteries. Extended paper recycling to non-confidential materials such as newspapers. All recycling programs monitored and volumes recorded
Motor vehicles	38% of fleet vehicles and 42% of our senior executive service fleet have a 'Green Vehicle Guide' rating of 10.5 or better. Our new fleet management booking system enabled us to reduce our fleet in several sites

ASIC's Sydney office, our largest, was certified to International Standard ISO 14001:1996 *Environmental Management Systems* in May. Many of the Sydney initiatives will be implemented nationally in 2005–06, and targets set for further consumption reduction and increased recycling. Our operations have no implications for ecologically sustainable development.

Knowledge management

More than 600 ASIC staff were involved in communities of practice, a focus for our knowledge management program. These staff networks share and learn together in areas of strategically important knowledge such as insurance, superannuation, managed investments, derivatives and retail advice, as well as compliance and markets regulation.

Many of our communities heard from industry specialists to understand the issues and challenges facing industry, and to strengthen our capacity to educate and protect consumers and investors.



## International financial reporting standards

The transition to new financial reporting standards was successfully completed. ASIC restated its statement of financial position as at 1 July 2004 and recalculated the 2004–05 financial results to comply with the Australian Equivalents to the International Financial Reporting Standards and with the 2004–05 Finance Minister's orders.

Property, plant and equipment was also revalued and restated at fair value as at 30 June 2005.

## Unclaimed money

Unclaimed monies collected from banks, life insurance companies and approved deposit-taking institutions increased with \$53 million collected in 2004–05. We actively promoted public awareness of unclaimed monies through the media and on the internet. As a result, \$22 million was refunded to claimants during the year.

## Invoice payment efficiency

ASIC's creditors continued to be paid in a timely fashion with 85% of all invoices paid by electronic funds transfer. This reduced our suppliers' administrative costs as well as our own processing costs.

## More accurate recording of intangible assets

Finance and IT staff implemented a new time recording system to better manage and record the costs of developing software in-house. This enabled a more accurate presentation of intangible assets in ASIC's statement of financial position.

## Free trade agreements and procurement

ASIC's contracts and procurement manual and procedures were updated to comply with Commonwealth Procurement Guidelines to take into account the free trade agreements with

the United States, New Zealand, Singapore and Thailand.

## Office space

In early August 2005, we will surrender leases for the four regional service centres that close on 29 July, and in September we will terminate a lease for a large storage facility in Traralgon. This will result in a 3.6% reduction in ASIC's portfolio of leased space. We continue to explore alternatives to our current accommodation to minimise the cost of our leased space portfolio.

## Outlook

To develop a more flexible organisation, we will:

- develop a funding base that allows us to move resources more freely to meet public needs
- capture greater internal efficiencies, including activity costing and time recording.