



Peter Wood, Executive Director, appointed 2001, previously Victorian Solicitor for Public Prosecutions and Jan Redfern, Deputy Executive Director, appointed 2001, previously ASIC's NSW Regional Counsel.

## In this section:

- overview
- criminal matters
- civil action and compensation
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- outlook

## Overview

336 enforcement staff investigated suspected breaches of the law and:

- had 29 criminals jailed as part of 43 people convicted from briefs prosecuted by the Commonwealth Director of Public Prosecutions
- took 67 civil proceedings, resulting in orders against 151 people or companies, \$121 million in recoveries and compensation orders and \$2 million frozen
- fined or banned 16 people from directing companies, and 39 people from offering financial services, and
- disciplined 8 company auditors and liquidators for misconduct.

## Key results

Issue	Result
Investment frauds	10 investment fraudsters jailed. Acted against 43 illegal schemes involving more than \$200 million.
Insider trading	Stockbroker and adviser Rene Rivkin* and former investment banker Simon Hannes jailed.
Insolvent trading	Waterwheel Chairman William Harrison, CEO Bernard Plymin*, and director John Elliott* banned as directors for letting the company trade while insolvent.
Directors duties	One.Tel Ltd's director Bradley Keeling banned for 10 years for failing to apprise himself of its true financial position.
Continuous disclosure	AMP settled proceedings by paying \$100,000 for training in corporate governance. We commenced civil action against Southcorp Ltd for alleged breach of the continuous disclosure provisions.

\*subject to appeal

ASIC enforcement staff set their sights on fighting fraud and misconduct, making an impact on standards of corporate governance and ensuring the integrity of Australia's financial markets. We also assisted the HIH Royal Commission extensively.

We conducted numerous criminal, civil and administrative proceedings where ASIC judged that a meaningful impact could be achieved.

Main activities	This year	Last year	% change
Litigation concluded	222	205	8%
General investigations commenced	302	n/a	–
Complex investigations commenced	40	n/a	–
General investigations completed within 12 months	236	205	15%
Complex investigations completed within 12 months	27	included above	–
% general investigations completed within 12 months	85%	83%	–
% complex investigations completed within 12 months	42%	included above	–

## Criminal matters

We had 29 criminals jailed as part of 43 people convicted from briefs prosecuted by the Director of Public Prosecutions (DPP). Staff investigated and obtained evidence for the DPP, which then decided and prosecuted all indictable matters. We involved DPP officers in considering evidence on potentially serious criminal investigations at an early stage.

### 29 criminals jailed

What they did	Names and details of crime	Sentence
<b>Investment fraudsters</b>	Director Anthony Eustace Senese stole \$5.4 million and falsely accounted for money from a company managing superannuation funds.	7 years, with a minimum of 5
	Director James Gordon Kearns defrauded investors in Nambucca Investments.	6 years, with a minimum of 4 years 6 months
<b>Financial advisers who cheated their clients</b>	Michael Frank Simich promoted a Ponzi style fraud involving \$31 million.	6 years, with a minimum of 4
	John Melville McKenney, CEO of an investment company, for dishonesty involving more than \$5 million.	4 years 6 months, with a minimum of 3 years
	John Lloyd Caust, employee of an investment company, made improper and dishonest use of his position.	2 years 6 months, with a minimum of 18 months
	Director Graeme Geoffrey Milner for dishonesty and illegal fundraising.	2 years, with a minimum of 6 months
	Director Terrence John Hunter for dishonesty and illegal fundraising.	2 years, with a minimum of 6 months
	Paul Grant Stuart defrauded 2 investors of \$35,500 promising shares in return for their investment – they received nothing.	1 year
	Stephen John Taylor took \$535,000 from an investor for property projects without a prospectus.	1 year, with a minimum of 6 months
	Hans Jakob Jost for contempt of a Court order restraining him from contacting investors.	1 month
	Joachim Prehn, financial and insurance adviser, misappropriated \$1.7 million from clients.	6 years, with a minimum of 4
	Douglas Gordon Johnston, accountant, misappropriated or intended to misappropriate \$1.1 million from clients.	4 years 9 months with a minimum of 3 years 6 months
	Daryl John McGuire fraudulently induced dealings in securities worth \$200,000.	3 years, with a minimum of 1 year

What they did	Names and details of crime	Sentence
	Laurence John Tobin, investment adviser, defrauded clients of \$314,000.	2 years 6 months, with a minimum of 12 months
	David Paul Mudge withdrew almost \$200,000 from an elderly client's account for himself.	2 years 3 months, with a minimum of 1 year
	Joseph Francis McNeany for theft of \$78,260 in insurance premiums.	3 years, with a minimum of 1
	John Charles Freeman, financial adviser, used \$174,000 of client funds for himself.	2 years, with a minimum of 9 months
	Peter Robert Neilson, insurance broker, received but failed to pass on clients' premiums.	15 months, with a minimum of 10
<b>Dishonest company directors and officers</b>	Hiroimi (Henry) Kawada, company officer, misappropriated funds involving \$27 million.	10 years, with a minimum of 3 years and 4 months
	Harunobu Fukusato, company officer, forged documents with intent to deceive a creditor.	4 years, with a minimum of 1
	Philip James Davies for giving false information to a creditor about debts of \$2.86 million.	2 years 6 months, with a minimum of 12 months
	Sebastian Mark Tomarchio, company director, created false invoices worth \$1.3 million.	2 years 6 months, with a minimum of 8 months
	<small>Editor's note: This text has been edited in accordance with the spent convictions scheme.</small>	
	John Phillip Gorcilov, company director, for false pretences in relation to \$144,000.	2 years, with a minimum of 15 months
	Michael Roussi (Misagh Roussi), company officer, defrauded the company of \$991,000.	3 months periodic detention
	[Text deleted in accordance with ASIC policy - see INFO 152.]	
	Brian Patrick Khan, company director, dishonestly obtained \$282,000 without authorisation.	12 months, with a minimum of 6
<b>Insider trading</b>	Simon Gautier Hannes, merchant banker, for insider trading and related offences	2 years 6 months, with a minimum of 10 months
	Rene Rivkin for insider trading in Qantas Ltd shares	9 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	5	18	10	7	19	59

Briefs concerned 73 potential defendants. The DPP accepted handover of a brief for prosecution once it decided that the evidence was sufficient to support a conviction and warranted prosecution. In many cases, charges were laid within 3 months of handover being accepted by the DPP.

## Civil action and compensation

We took 67 civil proceedings resulting in orders against 151 people or companies. Courts ordered \$121 million in compensation and froze \$2 million for investors and creditors, and wound up illegal schemes. We also took proceedings for civil penalties against directors, company officers and others who failed in their duties.

Major matters are listed below.

Respondents	Results	Amount
Bradley Keeling	Liable for compensation to One.Tel Ltd creditors.	\$92 million
Karl and Vivian Suleman	Compensation to a company for the benefit of creditors.	\$20 million
John McKenney and John Caust	Compensation for investors in the Lifestyle group of companies.	\$5 million
Coogi group of companies	Employee entitlements to be paid.	\$2.5 million

We saved investors from potentially losing at least another \$390 million by stopping investment offers that inadequately disclosed material information and unlawful investment schemes.

## Bannings, fines and disciplinary proceedings

To protect the public, we banned, or obtained Court orders banning, 16 people from directing companies, 39 people from offering financial services, and disciplined or deregistered 8 company auditors and liquidators for misconduct through the Courts, administratively, or through enforceable undertakings.

### 16 company directors and officers banned

Name	What they did	Period of banning
Ian Francis Cole	Operated an unregistered managed investment scheme.	Permanently
James Stanley Phillips	Operated an unregistered managed investment scheme.	Permanently
Charles Edward Platcher	Growthcorp. Found to be not competent, with serious and recurrent breaches.	25 years
Vivian Suleman	Operated an unregistered managed investment scheme, while unlicensed.	25 years
Allan Endresz	CTC Resources NL. Breached his duties through various payments and loan approvals.	16 years
Bernard Plymin	Waterwheel Holdings Ltd CEO let company trade while insolvent.	10 years, fined and to pay compensation
Bradley Keeling	One.Tel Ltd. Failed to take reasonable steps to apprise himself of its true financial position.	10 years
Josef Endresz	CTC Resources NL. Breached his duties through various payments and loan approvals.	8 years
Dawn Endresz	CTC Resources NL. Breached her duties through various payments and loan approvals.	8 years
William Forge	CTC Resources NL. Breached his duties through various payments and loan approvals.	8 years
William Harrison	Waterwheel Holdings Ltd Chairman let company trade while insolvent.	7 years and to pay compensation
John Elliott	Waterwheel Holdings Ltd director let company trade while insolvent.	4 years, fined and to pay compensation
Gerald Leonard Parker	Failed to exercise care and diligence as director of superannuation trustee company.	4 years
Alan David Doyle	Chile Minera NL. Improperly used his position.	2 years, stayed awaiting appeal
Derek William Satterthwaite	Chile Minera NL. Failed to act with care and diligence.	2 years, stayed awaiting appeal
Peter Rocky Errichetti	Cabcar and Swan River Timber Co director.	1 year

In addition, a further 40 people were automatically disqualified from managing corporations for 5 years from the date of conviction (or release from prison) as a result of convictions ASIC obtained.

### 39 banned from financial advice

To protect the public, 20 people were permanently banned, and another 19 advisers were banned or undertook to stay out of the industry for shorter periods of time.

Permanently banned	What they did
Michael Andrew Smith	Lost \$400,000 of client money. Failed to fully disclose commission.
Timothy Myles Austin, undertook never to advise or deal	Transferred \$1 million of clients' money without authority. Issued incorrect client statements.
[Text has been deleted.]	[Text has been deleted in accordance with the spent convictions scheme in Part VIIC of the Crimes Act 1914.]
Ian Thomas Campbell Westcott	Jailed director of Lateral Trading Ltd, misused \$1.5 million.
James Bernard McDonnell	Jailed director of Lateral Trading Ltd, misused \$1.5 million.
Arif Fareed, undertook never to advise or deal	Made unauthorised recommendations, failed to disclose fees and commissions.
Danh Van	Misappropriated \$885,000 of clients' money.
Janice Lee Lewinski	Received clients' insurance premiums but failed to pass them on to insurers.
Leslie Reginald Nelson	Misled and deceived investors in a unit trust.
Kevin Alan Trezona	Misled and deceived clients by failing to disclose benefits to himself and making recommendations without a reasonable basis.
Stefan Capo	Unauthorised trading and breached ASX Business Rules.
Michelle Louise Eggmosselle	Put client money into her own account for her own benefit.
Robert Huston Reynolds	Convicted and jailed for serious fraud.
Robert Andrew Street, undertook never to advise or deal	Lost \$700,000 of clients' money, including to entities overseas suspected of running a 'Nigerian letter' scam.
John Michael Higgins	Misappropriated \$2 million from clients.
Robert Keith Ridley, undertook never to advise	Operated an unregistered general insurance brokerage.
David Paul Mudge	Also jailed, see page 26.
Robert Thomas Lister	Stole money from employer for gambling. (Jailed in July 2003.)
Vittorio Ziegelaar	Failed to pass on insurance premiums and superannuation payments.

## 8 company auditors and liquidators disciplined or surrendered registration

Name	What they did	Orders made
Ian Melville West, liquidator	Deficiencies in his liquidation of 8 companies.	Cancelled by consent
John Greer, auditor and liquidator	Failed to carry out his duties properly.	Suspended for 4 years
Paul Mervyn Meldrum, auditor	Failed to carry out his duties properly in relation to Clifford Corporation Ltd.	Suspended for 4 years
Linden John Gulson, auditor	Failed to qualify Holyman Ltd half year accounts concerning shares issued and overstated profit.	Suspended for 60 days
John William Bye, auditor	Owed more than \$5,000 to company he audited.	Reprimanded
Dennis Ronald Beed, auditor	Failed to meet audit standards and other requirements.	Voluntarily surrendered registration
Michael John Sanders	ASIC expressed concern over conduct of audits.	Voluntarily surrendered registration
John Desmond Taubman, auditor	Failed to qualify financial statements.	Voluntarily surrendered registration

## 6 financial services licences revoked

Company	Reason
ARG Finance Group Ltd	Placed in liquidation following concerns as to solvency.
Entitle Ltd	Failed to exercise care and diligence as manager of investment schemes.
Landmark Property Securities Ltd, voluntarily surrendered	Material omissions and false and misleading statements in a prospectus.
Landy DFK Securities Ltd, voluntarily surrendered	Mismanaged and operated unregistered managed investment schemes.
NKH Securities Ltd	Failed to comply with obligations as manager of investment schemes.
Worldstocks.Com	Breached licence condition and ceased business.



#### 4 insurance brokers deregistered or restrained

Name	What they did	Result
Colin Fisher & Associates Pty Ltd	Failed to exercise reasonable care in running the business.	Refused renewal of registration.
Blundell & Associates Pty Ltd	Carried on business without required insurance.	Permanently restrained from conducting business in contravention of the law.
Hedley Goodridge Insurance Agencies Pty Ltd	May have continued operating without registration.	Permanent undertaking not to carry on business, or apply for a licence.
AC Insurance Brokers (SA) Pty Ltd	Significant deficiency in insurance broking account.	Liquidator appointed. Refused renewal of registration.

Three insurance agents were prosecuted under the Insurance (Agents and Brokers) Act: 2 were convicted, and one is still before the courts.

#### 31 Court enforceable undertakings

ASIC accepted 31 enforceable undertakings to obtain more wide ranging remedies, and often on behalf of more people, than can usually be obtained in Court proceedings. For example, Retireinvest Pty Ltd undertook to improve compliance standards and give redress to clients who had been affected by the company's poor compliance standards.

### Outlook

The HIH Royal Commission referred various matters arising from its inquiries for possible enforcement action. Our special taskforce will face a challenging task to deal with these matters swiftly and effectively.

Several high profile matters in which we have succeeded are now subject to appeal. We will also face challenges in enforcing laws relating to corporate reporting and disclosure.

Our broader objectives are to:

- manage our high profile investigations to achieve timely and successful results
- seek Government and Parliamentary support for more flexible enforcement powers and remedies
- act against misleading and deceptive conduct affecting consumers, and
- promote public awareness about scams and fraud as part of our consumer education strategy.

*'We devoted significant resources to guide the industry.'*

## In this section:

- overview
- licensing and financial services reform
- regulatory operations
- legal and technical
- outlook

## Overview

178 financial services regulation staff:

- licensed 604 financial services advisers and product issuers
- conducted 803 compliance checks of financial advisers and financial product issuers to test compliance with legal requirements, and obtained significant corrective or enforcement action
- approved 514 applications for relief from the law concerning licensing, disclosure, managed investments and related provisions
- achieved additional disclosure in 143 financial product disclosure statements and prospectuses, and
- registered 497 managed investment schemes.



Ian Johnston, Executive Director, appointed 2000, previously served in senior roles within ASIC and the financial services industry.

## Key results

Issue	Result
Implementing financial services reform	Significant resources devoted to guiding industry. 604 new licences issued.
Raising industry standards	Increased compliance checks resulting in significant corrective action. Targeted action on tax driven and wealth creation schemes.
Fees and charges	Worked with industry to rationalise presentation of fees and charges in offer documents.

Main activities	This year	Last year	% change
Australian financial services licences issued*	604	35	*
Compliance reviews	803	570†	40%†
Corrective disclosure achieved in prospectuses and product disclosure statements	139	130	10%
Managed investment schemes registered	497	600	-17%
Commercial relief applications approved	514	380	35%

\* First issued from 11 March 2002, subject to a 2 year transition period.

† Estimated, because legal nature of some activities changed.

### Transition to financial services reform

The financial services industry made limited progress in changing over to new financial services licences, with 604 new licences issued.

To licence or re-licence an expected 7,000 applicants by 10 March 2004, we also devoted significant resources to guide and encourage the industry. We:

- met more than 100 times with industry associations, gave 170 presentations to industry conferences, and conducted a national seminar series attended by 1,732 people
- answered more than 9,000 specific questions and 36 frequently asked questions, placed 20 articles in industry magazines, and issued regular FSR updates to 4,570 subscribers
- wrote specialised industry guides ranging from financial advisers and superannuation trustees, to insurance multi-agents, as well as licensing brochures and a mail out to existing licensees, insurance brokers and superannuation trustees
- registered approved training courses, and
- upgraded the online licence application and licensing kit.

### **Raising standards**

We completed 803 compliance checks on market participants. In most cases, these checks resulted in significant corrective action. For example, we asked 79 insurance brokers to detail their professional indemnity arrangements and took enforcement action against those that breached legal requirements. To check how investment banks managed conflicts of interest and maintained the integrity of their research analysts, we reviewed the practices of 8 investment banks and have recommended relevant law reform.

Staff also registered managed investment schemes, auditors and liquidators; maintained insurance broker registrations; and granted variations to licences still held under old law. Four insolvencies by insurance intermediaries came to ASIC's notice: AC Insurance Brokers, Blundell & Associates, Investment Taxation Specialists Limited and Stockford Financial Services Ltd.

### **Agricultural schemes**

We examined the correlation between high commissions for financial advisers and the provision of inappropriate or misleading advice to encourage investors to invest in such schemes. We found that there was often poor disclosure of commissions and poor advice given to enter the scheme. We have investigated a number of suspected breaches of the law and taken enforcement action as appropriate.

### **'Wealth creation' seminars examined**

We conducted surveillances of 8 promoters of wealth creation seminars to check if they were complying with laws for which ASIC is

responsible. As a result, ASIC began proceedings alleging misleading and deceptive conduct against Henry Kaye and Alan Meagher, National Investment Institute Pty Ltd and Novasource Consulting Pty Ltd. (In July 2003, these entities agreed to an enforceable undertaking requiring significant changes to their seminars.) Others matters are under consideration. Schemes that specialise in real estate lay mostly outside ASIC's jurisdiction.

### **Financial product offer documents**

We intervened to obtain corrective disclosure in 88 matters involving managed funds prospectuses, and in 51 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. Unlike equity prospectuses, managed funds and other financial products usually set no particular amount of capital to be raised, because they are open-ended offers. For that reason, it has not been possible to quantify the funds at risk from poor disclosure.

### **Fees, charges and good disclosure**

To help consumers understand fees and charges for investment related products, we worked with industry to rationalise and improve the presentation of fees and charges in offer documents, aiming for a common format using standard terminology. (A template and best practice discussion paper were released in July 2003.) We also assisted industry associations to develop a model product disclosure statement for managed funds, and best practice disclosure guidelines for superannuation.

### Policy work to protect investors

The more significant policy initiatives to maintain investor protection included:

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

### Relief granted

We considered 679 applications for relief, and approved 514 to facilitate commercial activities and transactions that would otherwise not have been possible due to the application of certain provisions of the law. The diversity and complexity of relief applications presented unique challenges, which have been partly addressed by the creation of specialist teams.

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

### Outlook

With most of the financial services industry still to apply for licences under the financial services legislation before the announced cut off date of March 2004, the task of smooth transition may prove very challenging. We nonetheless remain committed to raising standards in the industry. We will increase our presence in superannuation and insurance, where consumers have a weak understanding of the system.

Our main objectives are to:

- provide as much assistance as possible to industry to transition to the Financial Services Reform Act in the most efficient manner
- raise financial services industry standards through regulatory operations, and
- enhance our capacity in superannuation and insurance to increase consumer confidence and participation in these markets.

# Markets regulation and policy

*'To check accounting abuses, we reviewed annual financial statements of listed companies.'*

## In this section:

- overview
- corporate finance
- authorised financial markets
- policy development
- outlook

## Overview

125 staff in markets, corporate finance and policy:

- regulated corporate finance, covering 888 equity fundraisings, 55 takeovers, 45 schemes of arrangement, financial reporting and market disclosure
- achieved 51 additional disclosures to the market from listed companies
- obtained 121 additional disclosures in prospectuses
- regulated Australia's 5 authorised financial markets, and
- issued 25 guidance documents (13 new or updated policies, 5 guidance and 7 consultation papers) to regulate or guide industry and professionals.



Malcolm Rodgers, Executive Director, appointed 2001, previously ASIC Director, Regulatory Policy.

## Key results

Issue	Result
Potential accounting abuses	1,225 company financial statements reviewed showing no reason to believe Australia faced a material risk.
Market supervision	Inspected 5 authorised markets and 3 clearing houses, and reported to the Minister.
Guidance to industry	Financial services reform, cross border regulation, and updates on corporate finance.

Main activities	This year	Last year	% change
Additional disclosures to the market obtained	51	n/a	n/a
Corrective disclosure achieved in prospectuses	121	n/a	n/a
Authorised financial markets regulated	5	5	Nil
Equity prospectuses lodged	888	941	-6%
Takeovers received	55	67	-18%
Schemes of arrangement	45	32	41%
Commercial relief applications approved	936	1198	-22%
New regulatory policies issued	13	9	33%

### Potential accounting abuses checked

To check if accounting abuses like those emerging overseas posed a material risk in Australia, we reviewed 1,225 annual financial statements of listed companies with balance dates between 30 June 2002 and 29 June 2003. The review focused on capitalised and deferred expenses, recognition of revenue, and recognition of controlled entities and assets.

We found no reason to believe Australia faced a material risk. However, we did find particular accounting issues of concern that we followed up with companies involved

and their auditors. Seven companies changed accounting policies, and enquiries are continuing with another 15 companies. We sought a supplementary prospectus from Flight Centre Ltd to deal with our concerns about how the company recognised revenue.

### Late lodgement of listed company accounts

We also followed up non-lodgement of accounts by listed companies. Some 221 late lodging companies lodged their accounts, most following ASIC inquiries. ASIC made 91 orders prohibiting companies from raising capital by short form prospectus because they had not lodged their accounts on time.

### Continuous disclosure to the market

We also took action, in cooperation with ASX, to obtain 51 additional disclosures from listed companies. More prominent examples included Tower Ltd, Federation Group Ltd, Powerlan Ltd, Redflex Ltd and Ainsworth Game Technology Ltd.

### Corporate governance in Coles Myer Ltd

We monitored the proxy battle for the election of directors to this company in late 2002. ASIC urged shareholders to participate in the election and encouraged the parties involved to provide shareholders with as much information as possible. To assist Coles Myer process proxies at the AGM in an orderly way, ASIC requested and Solomon Lew agreed to provide the algorithm underlying the barcodes to his proxy forms.

### Facilitating corporate transactions

Promina Ltd was reported as the largest float in the world for the first few months of 2003. To assist, we gave a no action letter for potential market stabilisation following the float and relief for pre-lodgement advertising and secondary trading. We also facilitated major schemes of arrangement including CSR Ltd, Mayne Group Ltd, MIM Holdings Ltd and BRL Hardy Limited.

### Prospectuses reviewed

Of 888 prospectuses lodged for company securities, we reviewed 175 and obtained additional disclosure in 121 cases, primarily through the use of our stop order powers. During the year, we issued 72 interim and 17 final stop orders on 80 prospectuses.

The value of funds protected was at least \$383 million, exceeding last year's figure despite an overall drop in funds being sought. A higher proportion of prospectuses were issued by smaller companies, and those prospectuses tended to be of lower average quality. Significant matters included:

Company	Action we took
AMP Ltd	Additional information released to the market about the company's exposure to regulatory capital issues in the UK.
TelEurope Ltd	Stop orders by consent on a debenture prospectus that insufficiently disclosed the value of TelEurope's main asset.
Child Care Centres Australia Ltd	Following a significant profit downgrade, granted relief to allow investors to withdraw funds subscribed under a recent prospectus.



## Takeovers

There were 55 takeovers, an 18% drop in market and off-market bids from last year.

Company	Action we took
Online Advantage Ltd	Successfully applied to Takeovers Panel to have a matter heard where the original applicant had withdrawn its request for a declaration of unacceptable circumstances.
Cobra Resources Ltd	Successfully applied to Takeovers Panel to prevent substantial disclosure and procedural breaches in a purported bid for the company.

In the cases of Anaconda Nickel Ltd and Flinders Diamonds Ltd, we were authorised to conduct sales of shares vested in ASIC by the Takeovers Panel and the South Australian Supreme Court respectively.

## Markets supervision assessed

Under the Financial Services Reform Act, ASIC must inspect and report to the Minister each year on supervisory arrangements, including arrangements for handling conflicts of interest, for all licensed markets and licensed clearing and settlement facilities.

ASIC inspected 5 market operators and 3 clearing and settlement facilities, including reviews of ASX, ASX Futures, Sydney Futures Exchange, Bendigo Stock Exchange and Newcastle Stock Exchange. On the basis of those assessments, we believe that Australia's major exchanges do 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 clearing and settlement

ASIC worked closely with ASX, Treasury and the Reserve Bank on the first stage of regulatory approvals needed for ASX to restructure its clearing and settlement arrangements and to provide a single central counterparty for clearing across all ASX markets. These changes are expected to ultimately improve ASX's international competitiveness and enhance the management of systemic risk across ASX's market.

## 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. No trading halts were required this year.

## Guidance on financial services reform

Most of our policy work focused on financial services reform, concentrating on 3 areas:

- consulting on and finalising new guidance, for example, guidance on advisers' conduct and disclosure obligations
- updates to take into account financial services reform regulations, and
- assisting Treasury to develop regulations and proposed legislative amendments to clarify the law.

### **New policies for cross border regulation**

We released new policy and new proposals to recognise cross border regulation. Our 'Principles for cross border regulation' set out the broad framework for recognising regulation of financial services offered across international borders. We also released policy proposals on cross border matters dealing with:

- foreign financial services providers,
- foreign collective investment schemes, and
- Australian market licenses: overseas operators.

### **Corporate finance policies updated**

These publications included 'truth in takeovers'; disclosure and secondary sales of securities; and compliance with financial reporting and annual general meeting obligations (including by companies in external administration). We also updated our policies on share purchase plans and employee share schemes.

## **Outlook**

Following public concern over corporate collapses and shortcomings in disclosure, the Government announced important changes to boost continuous disclosure, and rebuild market and public confidence in financial reporting, audit, corporate governance, and disclosure. We will need to implement many of these reforms, if enacted.

Our broader objectives are to:

- make a greater impact, especially on the directors and auditors of Australia's listed public companies
- maintain the relevance and credibility of Australia's markets in a global context, and
- develop our role in regulating and reporting on how market operators have fulfilled their licence obligations.

# Consumer protection

Peter Kell, Executive Director, also NSW Regional Commissioner; and Delia Rickard, Deputy Executive Director appointed 2001, previously co-directors of ASIC's Office of Consumer Protection.



## In this section:

- what we did
- compliance and campaigns
- policy and education
- research and analysis
- outlook
- Consumer Advisory Panel report

## Overview

25 consumer protection staff:

- identified compliance issues affecting consumers and worked with enforcement and regulatory staff
- carried out consumer policy and education projects, and
- researched and analysed consumer issues and risks.

## Key results

Issue	Result
Survey of financial planners	Expert assessment of consumers' financial plans issued a wake up call to the industry.
Mortgage brokers	Our report on the industry triggered action to better protect consumers.
Consumer education	875,000 visits to our consumer website FIDO, up 79%. 270,000 consumer publications distributed. Higher media profile.

### **Financial planning survey challenges the industry**

ASIC and the Australian Consumers' Association had genuine consumers obtain 124 financial plans from licensed advisers, and then had industry experts assess the plans against legal and good practice standards. One quarter of the plans failed, another quarter was borderline. The results demonstrated to the industry the need to improve standards and address conflicts of interest.

To rectify weaknesses and reinforce legal standards, ASIC met all licensees who had a plan score of 'very poor', and required some to certify their compliance with relevant legal obligations. We have targeted problem areas in the industry, and begun work with the Financial Planning Association to raise standards.

### **Mortgage broking report triggers action**

Mortgage brokers now source around one third of all home loans. A report we commissioned from the Consumer Credit Legal Centre (NSW) found no clear minimum competency or training standards. Other problems included inconsistent documentation, inadequate disclosure of fees and commissions, poor advice, and a small number of fraudulent activities. The report also helped ASIC identify matters for possible enforcement action.

Following the report, State governments, who primarily regulate credit, began discussing possible reforms. The Mortgage Industry Association of Australasia announced it would seek ASIC approval for its external dispute resolution scheme.

### **New investment advertising guidelines**

Past performance has been used to advertise many investments, especially when recent returns looked good. However, academic research that ASIC commissioned indicated that past performance is a weak and unreliable predictor of future performance over the medium to long term.

To improve information for retail investors, we developed new guidelines about advertising past performance (released in July 2003). Most importantly, advertisements should include a 5 year return figure, and balance information about returns with information about risks. The guidelines also promote more consistent and transparent use of performance information.

### **Protecting retail shareholders**

Unlicensed and licensed companies under the name 'National Exchange' mailed offers to purchase shares at prices well below market value. Targeting companies with numerous small shareholders, these offers appeared to take advantage of vulnerable people.

ASIC issued warnings in the media and helped companies communicate with shareholders. We assisted Treasury to prepare regulations that require unlicensed entities to disclose the market value at the date of an offer, and we imposed similar conditions on the licensed National Exchange Corporation Pty Ltd.

### **More effective consumer education**

ASIC markedly increased the distribution of its consumer information. Visits to FIDO, ASIC's consumer website, jumped 79% to

875,000. New material included online searching for unclaimed money, a new managed fund fee calculator, and information about credit and money management. *FIDO News*, our free electronic newsletter, reached 8,350 members, up from 5,500.

We increased our profile on consumer issues through media releases, interviews and articles contributed to newspapers, and distributed 270,000 consumer publications including:

- 127,000 *Super decisions: understanding and making superannuation choices*, in English, Chinese, Vietnamese and Arabic
- 112,000 *Don't kiss your money goodbye*, and
- 30,000 *You can complain*, in English, Chinese, Vietnamese and Arabic.

### Raising financial literacy

ASIC released a major discussion paper, 'Financial literacy in schools', that examined existing financial literacy teaching in Australian secondary schools and presented options for improvement. The paper proposed establishing a financial literacy organisation, representing the financial services industry, government, and the education and community sectors, to strengthen and embed financial literacy education in our secondary schools.

The discussion paper followed Australia's first research study, commissioned by ANZ Bank and assisted by ASIC, into financial literacy in Australia.

### Credit card surcharging

To promote good disclosure to consumers where merchants decide to impose a

surcharge on credit card transactions, ASIC worked with industry and the Australian Competition and Consumer Commission to:

- distribute some 400,000 brochures directly to retailers
- alert consumers to good practice, and
- assist banks and credit card providers.

### Detecting early warning signs

ASIC further developed its capacity to detect and act on early warning signs of misconduct. Research staff established a framework to identify, assess and report key issues to ASIC's Executive Committee, which endorsed most issues as high priorities, either for further analysis or operational response.

Specific research projects included financial planners, hedge funds, managed discretionary accounts, mortgage brokers and external issues affecting ASIC's strategic plan. ASIC increased staff analytical skills and awareness through a training program with the University of New South Wales, seminars and internal publications.

### Consumer complaint resolution schemes

We approved the Insurance Brokers Disputes scheme covering general and life insurance brokers, and 2 schemes in the credit union sector, one of which also covers some building societies. As part of the approval process, all 3 schemes were required to make significant changes to ensure independence, accessibility and effectiveness. We received applications for approval from schemes covering the mortgage industry, as well as timeshare operators, which we are processing.

### Codes of practice monitored

ASIC reported that compliance with the payments system codes of practice and the EFT Code of Conduct remained high during 2001–02. The overall incidence of complaints remained low, with some decline in complaints about unauthorised EFT transactions, but an increase in complaints about system malfunctions.

### Consumer Advisory Panel

See next column for the Panel's report and page 22 for its role.

### Outlook

Uncertainty and poor returns continue to affect most investment markets and hence consumer confidence in corporations, financial advisers and financial institutions. Many consumers lack the funds to access professional financial advice, and consumer financial literacy is increasingly important. We plan to increase assistance to consumers and work with industry to improve standards.

Our main objectives are to:

- establish and support an independent, cross sector financial literacy organisation
- increase our emphasis on combating scams and alerting consumers to financial fraud
- target misleading or deceptive advertising of loans and credit, and
- work with industry to improve standards.

### Consumer Advisory Panel report

This is my first report as Chair, since joining the Panel in July 2002. To allow a range of consumer organisations to participate, ASIC changed the Panel's membership significantly, with 7 new members and 3 continuing members. The Panel met 4 times.

The Panel recommended ASIC funding for projects, including:

- a research report on mortgage brokers that stimulated public debate about this rapidly growing industry, see page 42
- translation of ASIC's *Super decisions* brochure into Arabic, Chinese and Vietnamese, after requests from ethnic communities for this information, and
- items for radio in Arabic about financial services, supported by an evaluation report and 'how to' kit for community groups.

The Panel enabled consumer representatives to discuss grass roots financial problems, in particular those affecting disadvantaged consumers, with ASIC and each other. This prompted ASIC action, for example, in the area of unsolicited offers for shares, debt collection and unfair contracts. To increase understanding, we heard presentations on ASIC's activities during working lunches.

I am very grateful for the constructive contribution from all members and for the tremendous support from ASIC staff.

**John Wood,**  
Chair, Consumer Advisory Panel



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

## Members

John Wood, (Chair) former Deputy Commonwealth Ombudsman 1994–2000, head of the Federal Bureau of Consumer Affairs 1987–1994, President Society of Consumer Affairs Officials in Business (SOCAP) 1999–2000

Bob Andrew, Australian Investors' Association

Carolyn Bond, Consumer Credit Legal Service Victoria

Chris Connolly, Financial Services Consumer Policy Centre

David Jackson, Australian Shareholders' Association

Su Mahalingham, lawyer and consumer advocate

Jan Pentland, financial counsellor

Anna Stewart, Consumer Law Centre, Victoria

David Tennant, consumer advocate and lawyer, current Chair of the Consumers' Federation of Australia

Catherine Wolthuizen, Australian Consumers Association

# International relations and regional coordination

*'Our relationships with regulators abroad supported important investigations.'*

## In this section:

- overview
- international law enforcement
- international regulation
- regional coordination
- outlook

## Overview

12 international and regional coordination staff:

- managed 333 requests for assistance
- led ASIC's contribution to international regulation
- managed 938 applications about property of deregistered companies, and
- coordinated ASIC's 8 Regional Commissioners to maintain service levels.

## Key results

Issue	Result
Global law enforcement	International relationships assisted important investigations into HIH and One.Tel. We signed international agreements on exchanging law enforcement information.
Financial stability	Contributed to global principles to strengthen company disclosure and audit.

Main activities	This year	Last year	% change
ASIC requested overseas assistance	102	95	7%
Other regulators requested our assistance	231	209	11%
Visits to ASIC from foreign regulators	46	42	10%





Greg Tanzer, Executive Director, appointed 2000, also Queensland Regional Commissioner, experienced in corporate law and regulation.

### Global enforcement

Our relationships with fellow regulators abroad supported important investigations. For ASIC's inquiries into HIH Insurance, the UK Financial Services Authority and the US Securities and Exchange Commission obtained testimony in their countries. The latter testimony also assisted the HIH Royal Commission. The UK Department of Trade and Industry helped obtain statements for ASIC's investigation into One.Tel Ltd. National and international agencies helped extradite Gold Coast fugitive, Lakhmi Daswani, from Hawaii.

To improve enforcement cooperation, ASIC was among the first 9 signatories to a multilateral memorandum of understanding initiated through IOSCO.

### Australian cold caller convicted

To protect New Zealand investors, ASIC successfully had Alan Goldman of Mauer-Swisse Securities Ltd convicted on 4 counts of providing a financial service in Australia while unlicensed. Goldman was cold calling New Zealanders offering securities. The New Zealand Securities Commission and New Zealand Companies Office provided information leading to Goldman's conviction. ASIC maintained its public black list of organisations involved in unlawful cold calling to warn investors on our FIDO website.

### Global disclosure and audit strengthened

To strengthen regulatory measures against unexpected major corporate collapses, the Financial Stability Forum (comprising national financial authorities, international financial institutions and regulators) accepted

principles drafted by IOSCO's Technical Committee, chaired by ASIC Chairman David Knott. The principles covered:

- ongoing disclosure by listed entities
- auditor independence, and
- auditor oversight.

The Forum urged their speedy implementation by national authorities.

### International accounting standards

The Commonwealth Government has committed Australia to adopting international accounting standards by 1 January 2005. ASIC has also been active in promoting universal adoption of these standards and in ensuring the content of the proposed standards is suitable, through its involvement in IOSCO and other international forums.

### Indonesian regulators trained

ASIC hosted several training programs for representatives of Indonesian securities and futures regulators as part of the APEC Government Sector Linkages Program, funded by AusAid. Training covered accounting and auditing standards, enforcement practices and markets regulation. As part of this program, 2 representatives of each regulator also attended the 2003 ASIC Summer School.

### Hong Kong and ASIC assist regulated managed funds

Australian and Hong Kong took an important step towards regulatory reciprocity, which is expected to open new marketing opportunities for Australian fund managers without the need to meet licensing requirements in Hong Kong.

ASIC and the Hong Kong Securities and Futures Commission (SFC) signed a Declaration on Cooperation and Supervision of Cross-Border Investment Management Activity. This lays the groundwork for the SFC to recognise Australia as an Acceptable Inspection Regime (AIR) under its Code on Unit Trusts and Mutual Funds.

ASIC and the SFC agreed to exchange information and to assist each other concerning the activities of fund managers licensed in one jurisdiction that operate in the other jurisdiction. This regulatory cooperation will help ASIC supervise and inspect fund managers licensed by the SFC that also operate managed investment schemes in Australia.

### Regional coordination maintained service levels

Service levels were maintained in each State and Territory. Regional Liaison Committees representing the business community met about 4 times each year, received information on our performance and service, and offered ideas.

ASIC's Regional Commissioners all played national roles as part of our new structure, see page 61. They represented the organisation and reported on ASIC's activities and performance to State and Territory Ministers.

## Outlook

The key issues ahead are to:

- coordinate increasing requests for international investigative assistance and legal advice
- contribute to coordinated action and regulatory cooperation especially within the Asia–Pacific region
- contribute to international work on audit, financial disclosure, clearing and settlement, risk assessment of managed fund operators, and simplified prospectuses for collective investment schemes, and
- maintain service levels in all States and Territories.



Standing left to right: Michael Gething, Mark Drysdale, Ron Ladlay, Simon Dwyer and Greg Tanzer; seated: Anthony Beven, Peter Kell and Julie Read.

# Public and commercial services

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



## In this section:

- overview
- company database
- complaints and reports of misconduct
- telephone inquiry services
- electronic services
- commercial services
- outlook

## Overview

366 public and commercial services staff:

- maintained Australia's public database of 1.3 million companies and prosecuted 4,217 charges of failing to lodge company annual returns
- assessed 9,292 complaints from the public about misconduct, and resolved 66% of them through information and assistance
- targeted company insolvency, assisted company administrators, and prosecuted 392 people for insolvency related breaches
- answered 672,000 telephone inquiries
- developed new electronic services for the public and people we regulate, and
- sold high volume document imaging services on commercial terms.

## Key results

Issue	Result
Company law reform	Implemented law reform (commenced on 1 July 2003) creating an easier way for companies to lodge information and pay fees.
New initiatives targeting insolvency	Extra funding to intervene in troubled companies, and 392 prosecutions for obstructing creditors and liquidators.
Company information	A record 11 million searches of our databases, up 20%.
Rising public complaints about corporate misconduct	Resolved 66% of public complaints, up from 50% last year.

Main activities	This year	Last year	% change
Fees collected for the Government	\$405 million	\$379 million	7%
Company data lodged on time	93%	93%	nil
New companies incorporated	107,917	90,175	18%
% public availability of our databases	99.9%	99.9%	nil
% documents lodged electronically	66%	63%	4%
% paid searches done online	97.5%	97.1%	nil
Public complaints about misconduct	9,292	7,827	19%
Telephone inquiries	672,000	710,000	-7%

### Easier, more secure lodging and payment

A major project is underway to implement legislative reforms that reduced the compliance burden on companies.

From July 2003, companies simply review their company details against information ASIC sends to them. If there are no changes to this information, companies no longer have to lodge an annual return. If there are changes, companies lodge a newly designed online or paper form that replaces a number of existing company forms.

Our new online lodgement systems also deliver improved security of company records, through ASIC's 'Corporate Key', which offers greater security in authenticating and verifying companies and individual company office holders.

A company annual review fee replaced the annual return fee, and ASIC has introduced more payment options, including payment over the counter at Australia Post offices, BPAY, as well as Electronic Funds Transfer (EFT).

### **New initiatives targeted insolvency**

In a pilot program to intervene early where companies are suspected of being in financial difficulty, we targeted 219 companies, ranging from small proprietary companies to listed entities.

We aimed to avoid insolvent trading by making company directors aware of their company's financial position, address problems, seek advice from professionals and, where necessary, appoint voluntary administrators or liquidators. The Government has approved extra funding to develop this initiative across Australia.

Linked to this initiative, we also prosecuted people who breached the law to avoid claims by employees, other creditors and liquidators. For example, some people have claimed to operate a company when they did not, thus denying creditors a real entity against which they could pursue legal claims. When companies failed, some directors obstructed liquidators by unlawfully failing to assist them.

ASIC has first warned each non-complying person, achieving compliance in 57% of cases. We prosecuted 392 people who still failed to comply, resulting in some \$400,000 in fines and costs awarded against them.

### **Rising use of database**

People conducted a total 10,997,500 million free and paid searches of our databases. There were 7.6 million free internet searches of company names, numbers and document lists, up 25%, 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.

### **More new companies formed**

The total number of companies registered in Australia increased 3.8% to 1,299,985. The number of new companies increased by almost 20%. Electronic company registration now accounts for 71% of new companies formed.

### **Data lodgement**

About 93% of companies lodged their information with us on time, the same as last year. Some 8% of documents lodged with us required us to requisition further details before being entered. More companies updated and lodged data with us electronically, which helped make this information available quickly and reduced errors on our database. Some 67% of annual returns were lodged electronically, up 1%.

### **Action to require compliance**

ASIC warned, and where necessary, prosecuted people who lodged false information, or who failed to lodge important company and financial information. For example, we issued 72,466 warning letters to companies, and successfully prosecuted 4,127 company directors for failing to lodge their annual return. We also issued 6,029 warning letters and began legal proceedings against 70 companies for not lodging their financial accounts.

### **Greater assistance to liquidators**

We extended the number of documents liquidators can lodge electronically, saving time and creditors' money. About 45% of 2,292 documents were lodged electronically.

## Complaints and reports of misconduct

Staff analysed and assessed:

- 9,292 complaints from the public about breaches of the law, up 19%, and
- 5,268 reports from company liquidators, administrators and receivers, up 30%.

We resolved 66% of public complaints, up from 50% last year. We:

- gave 6,781 people information about how to resolve their problem
- issued 1,368 warning letters, and

- made 275 visits to, or contacts with, alleged offenders.

This encouraged compliance and resolved problems, particularly among small to medium sized entities.

Most complaints came from company external administrators, then from investors or shareholders. The most common complaints concerned company officers failing to assist external administrators and acting fraudulently or negligently.

## Complaints statistics

	2002–03	2001–02
<b>Public complaints</b>		
Total public complaints	9,292	7,827
Complaints outside ASIC's jurisdiction	584	673
Net public complaints	8,708	7,154
<b>Action taken on public complaints</b>		
Investigation	2%	2%
Surveillance	3%	5%
Resolved by information provided/negotiation	66%	52%
Analysed, assessed and recorded	29%	41%
<b>Statutory reports from external administrators</b>		
Total reports received	6,176	4,070
No offences reported	925	128
Net statutory reports	5,251	3,942
<b>Action taken on statutory reports</b>		
Investigation	0.5%	0.3%
Resolved by information provided/negotiation	6.9%	6.3%
Analysed, assessed and recorded	93%	93%

### Telephone inquiry services

ASIC's Client Contact Centre handled more than 672,000 calls from the public:

- 530,000 calls on routine company housekeeping matters and company searches, and
- 142,000 calls to Infoline on our regulatory and enforcement activities.

Routine company administration calls fell again this year, continuing the trend from previous years of increased use of online facilities and speedier processing of documents and cheques.

Infoline calls also fell this year as technology improvements reduced double handling and rework. Infoline staff assisted 96% of callers on the spot. Where another staff member had to ring the caller back, we averaged 67% of call backs within 24 hours, down from 76%.

### 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, and

- document management services in litigation and public inquiries.

Customers included a range of government and private sector organisations.

### Outlook

From 1 July 2003, the Government's CLERP 7 law reforms have significantly changed how companies update their information, since they no longer lodge a company annual return. Public use of our electronic and internet services is expected to grow. In receiving complaints from the public about breaches of the law, we must strengthen our ability to detect and act on emerging issues and risks.

Our objectives are to:

- implement new company reporting reforms
- extend our work on corporate insolvency
- expand analysis and reporting about public complaints
- extend our electronic interfaces, and improve the maintenance and security of Australia's corporate database, and
- streamline ASIC back office processes.

# Infrastructure

*'We reviewed our operating costs and identified a number of savings.'*

## In this section:

- overview
- information technology and knowledge management
- human resources (for general staff issues, see page 58)
- finance
- business management
- outlook

## Overview

285\* infrastructure staff delivered services covering:

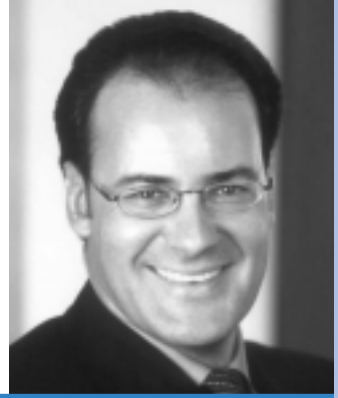
- information technology and knowledge management
- human resources
- finance, and
- business management.

\* Includes 21 full time graduates working for other directorates

## Key results

Issue	Result
ASIC funding	Government agreed to \$24.6 million extra over next 4 years in special purpose funding. Operational costs reviewed.
Unclaimed money	A new online search facility reunited more people with money from dormant or lost accounts.
Sharing information	Launched a major internal program to boost sharing of information, supported by a new Certified Agreement with staff.





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

### Operational costs reviewed

To ensure that our operations are conducted efficiently, we reviewed our overall operating costs. We found that ASIC's support processes and activities are generally very efficient by comparison with a range of national and international public sector standards. Nevertheless, a number of operational savings were identified and will be realised in the 2003–04 financial year.

### Unclaimed monies reclaimed

With support from specialist staff from across the organisation, ASIC finance staff developed a new search engine that allows the public to search for unclaimed money that ASIC administers from bank accounts, life insurance policies and company share sales.

Launched through the media in September 2002, when some \$200 million was unclaimed, the searches proved a resounding public success. On several days, more than 75,000 searches were conducted. More than 7,000 people were reunited with \$16 million, a 48% increase in successful claims on the previous year. At 30 June, the total payout of monies had reached \$23 million.

### Faster access to company documents

For many years, ASIC has stored images of documents that companies lodged with us on Docimage, a system based on what had become outdated optical disk technology. This year, IT staff converted Docimage to current technology DVD media. This resulted in significant cost savings, and enhanced the responsiveness and reliability of the system for both internal and external users. Response times are now one fifth of what they were under the old system.

### Key new IT applications

User group	What the application delivered
Public	Fees calculator — allowed members of the public to calculate fees for managed investments online.
Insolvency administrators	Enhancements to allow insolvency practitioners and external administrators to lodge their reports with ASIC electronically.
Management	A recruitment database to better manage and record the recruitment process from beginning to end.
Staff	Enhancements to complaints management system to help staff undertake and manage summary prosecutions.

### Sharing information at work

To build a framework, system and culture of sharing information, upon which ASIC depends, we launched the first stages of an internal change program called 'Infoshare'.

Five 'communities of practice' have been set up, bringing together staff with expertise and interest across the organisation on issues such as insurance and superannuation. These communities will foster strategic learning, problem solving, knowledge transfer and creation, mentoring/upskilling, developing leading practice and helping to minimise risk. A new staff intranet was developed and launched that allows staff to share information using standard appearance, navigation and operating environment.

### New Certified Agreement negotiated

ASIC negotiated a new Certified Agreement with union and staff representatives. Staff began voting on the new agreement in late June 2003. (A majority of staff accepted it in early July). The agreement offered salary increases in return for a commitment from all staff to contribute through performance agreements to our Infoshare program, and a range of other matters that will make the organisation more effective and efficient.

### Strengthening leadership and skills

Our human resources staff coordinated a range of programs to further develop staff, especially those who may have the potential to step into leadership roles. We recruited 18 new graduates at the start of 2003. We commenced the third intake of staff for the Graduate Certificate component of the ASIC Leadership and Management Program at Mt Eliza. In 2003, 38 staff completed the Graduate Certificate, and we have supported those who progressed to study for the Graduate Diploma.

### Recruitment database developed

A recruitment database has been developed to manage the recruitment process. It also provides the facility for online applications through the ASIC intranet and internet sites, enhancing efficiency and security.

### Environment: reducing our impact

To reduce our impact on the environment, we have targeted energy consumption, procurement and accreditation of our environmental management systems.

Energy consumption per person fell again this year, and we have met the 2003 target set by the Government for all Commonwealth agencies for 'office tenant light and power' consumption.

Year	MJ per person
2002-03	9,134
2001-02	10,431
2000-01	10,974

At our Traralgon site, we completed an energy audit, and subsequently installed metering and equipment to reduce energy use.

Our contracts and procurement policy required staff making purchases to consider the environmental impact of all goods, services and suppliers. For example, we changed our vehicle fleet policy to better the target set by the Australian Greenhouse Office. All our offices recycled waste paper.

ASIC joined the Australian Greenhouse Challenge, and began work to have our Sydney site accredited to international standards for environmental management systems by 31 December 2003, and 2 other large sites by 31 December 2004. ASIC operations have no implications for ecologically sustainable development.

### **Efficient accommodation and services**

Staff numbers in enforcement and financial services regulation increased. However, we have fitted out additional workspaces within our existing accommodation, thus increasing floor space efficiency by some 10%. More flexible leasing arrangements have also been successfully negotiated in 5 locations, saving costs.

We have implemented national contracts to improve service and achieve cost efficiencies, for example, with travel and stationery supplies.

### **Financial policies**

We updated ASIC's financial and procurement policies, and published them as web friendly documents for staff access, to ensure that we obtain best value for money and meet Government and audit guidelines.

### **Outlook**

ASIC requires a framework, system and culture of sharing information. We also must strengthen the skills of our staff and develop the next generation of leaders and senior managers. Finally, we must use our funding wisely and increase internal efficiencies and accountability for costs.

Our key objectives are to:

- promote ASIC's information sharing initiatives throughout the organisation
- develop IT systems for corporate law reforms, if enacted, and develop other critical applications
- implement our human resources capability framework and succession planning to better target the development of future managers and leaders
- improve our understanding of core and non-core cost drivers and give operational directorates greater control over their infrastructure costs, and
- manage and monitor our operational risks.

*'To ensure staff have the right skills, ASIC doubled funding for staff development.'*

## In this section:

- staff and basis of employment (for human resources operations, see page 56)
- work environment
- senior management
- outlook

We employed 1,396 full time equivalent staff over the year, comprising:

- investigators, lawyers, accountants, and analysts
- information processing and customer service staff, and
- infrastructure staff, and information technology, human resources, financial, and communication specialists.

## Location and profile of staff

The location and profile of staff remained largely unchanged, except for a fall in the number of contractors, agency staff and consultants.

We employed 605 staff in Victoria, 487 in New South Wales, 119 in Queensland, 90 in Western Australia, 51 in South Australia, 20 in the Australian Capital Territory, 16 in Tasmania and 8 in the Northern Territory (calculated as average full time equivalents). Major offices are located in State and Territory capitals and in Traralgon in Victoria. Smaller service centres are located in Geelong, Gold Coast, Townsville and Newcastle.

Staff (average full time equivalents)	This year	Last year
Operational and support (ASIC 1–4)	810	766
Senior operational staff (EL1 and EL2)	455	369
Senior executive service	31	31
Others (contractors, agency staff, consultants)	97	115
Commissioners	3	3
Total	1,396	1,284

### Merit and equal opportunity

ASIC policy required that all staff be appointed strictly on merit. We refined recruitment, induction and exit interview processes to ensure that recruitment was conducted on merit and to increase the consistency of good quality recruitment outcomes.

ASIC is an equal opportunity employer. At 30 June 2003, women made up 58% of our workforce. Women made up 41% of our executives and senior executives.

A national Women's Network was established to support women in the workplace and to enhance the profile of women staff in ASIC. We also participated in the Commonwealth strategy to ensure access to recruitment, training and grievance procedures for people with disabilities, see page 64.

### More staff for special projects

The Government granted us additional specific purpose funding for a limited period, primarily to implement the transitional phase of financial services reform. Non-ongoing staff helped us meet this extra transitional workload, as well as seasonal peak workloads in document processing.

Basis of employment	This year	Last year
Public Service Act, ongoing	952	976
Public Service Act, temporary, most often for peak company annual return processing	322	195
ASIC Act consultants, for essential specialist services including investigatory, legal, corporate regulatory and accounting functions	54	47
Contractors, mainly in information technology	65	63
Commissioners	3	3
Total (average FTE over the year)	1,396	1,284

### **Funding doubled for staff development**

To ensure staff have the skills to meet future needs, ASIC doubled funding for staff development to more than \$1.5 million, focusing on leadership development as well as technical skills. We have developed a capability framework to target these funds to the requirements of our work.

We have also identified as one of our key needs the task of developing the next generation of ASIC leaders. Through Mt Eliza Business School, we offered managers a Graduate Certificate in Business Administration (Executive) and progress to a Graduate Diploma. Four staff members undertook secondments to private sector organisations or international regulators, and several staff members from other organisations have joined ASIC on secondment. We also operated a program that recruited 18 new graduates.

### **Performance management**

All staff participated in a formal performance management process that assessed performance and provided a framework for rewarding high performing staff and managing underperformance. Based on performance assessment, staff and managers completed development planners to meet agreed development needs in the coming year. Formal processes have been developed to identify the capabilities ASIC requires to undertake our work.

### **Staff remuneration**

Most staff received remuneration under our Certified Agreement, and at 30 June 2003, 452 senior staff under individual Australian Workplace Agreements. 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.

### **Occupational health and safety (OHS)**

ASIC required every manager to take responsibility for ensuring a safe workplace for their staff and the public. Specialist OHS staff and national and local OHS Committees assisted management.

Some 27 workplace injuries occurred, mainly 'sprains/strains' and 'falls at the same level', although workplace related stress and anxiety illness also emerged as an issue. The average time incapacitated per injury was 1.27 weeks, lower than the 2.24 weeks average for all Commonwealth Government agencies.

To improve safety, we have, among other things, carried out:

- changes to our OHS and workers' compensation management system to better measure and investigate incidents and manage risks
- quarterly OHS risk assessments at all sites, and 17 OHS training sessions attended by 485 staff, and
- ergonomic assessments, 180 screen based eye tests, and other protective measures.

### **Industrial and workplace relations**

Staff may be represented either through their union or staff representatives. ASIC permitted staff reasonable time in working

hours to participate in industrial representation, and maintained a National Consultative Committee that met regularly about workplace issues.

ASIC also maintained formal procedures for staff to raise grievances. Only one formal application for review of management actions under the *Public Service Act 1999* was received. The formal review enabled the issue to be resolved satisfactorily.

### Senior management

Our Commissioners are full time executives, see pages 16 and 18. Executive Directors lead 7 national directorates; see directorate sections.

Regional Commissioners represented ASIC in each State and Territory and also undertook national roles. They bring a range of qualifications including law and accounting and experience in regulation, government and consumer affairs.

Chief Accountant is Gregory Pound, previously Assistant Auditor-General, Accounting and Auditing Policy in the Victorian Auditor-General's office. General Counsel is Brendan Byrne.

### Outlook

The key staffing need that we plan to deal with over the next 3 years is to increase the skills and training of our staff to deal with the diverse range of financial markets and services we regulate. We will also develop succession plans and develop the next generation of leaders and managers.

We will need to harness staff and management support to share information effectively right across the organisation, a task that underpins our knowledge management strategy.

Regional Commissioner	State or Territory	National role	Term
Anthony Beven	Northern Territory	Consumer Protection Adviser	September 2005
Mark Drysdale	Victoria	Executive Director	December 2004
Simon Dwyer	South Australia	Enforcement Adviser	July 2005
Michael Gething	Western Australia	Markets and Policy Adviser	June 2004
Peter Kell	New South Wales	Executive Director	July 2004
Ron Ladlay	Australian Capital Territory	Enforcement Adviser	March 2006
Julie Read	Tasmania	Enforcement Adviser	September 2005
Greg Tanzer	Queensland	Executive Director	March 2005

# ASIC Audit Committee and audit services

The ASIC Audit Committee assisted the Commissioners with financial reporting and overseeing the effectiveness and integrity of internal controls and ASIC's audit processes.

The Committee examined ASIC's 2001–02 financial statements, issues concerning the future preparation of 2002–03 financial statements, and internal and external audit matters, risk assessment, and fraud control planning.

Internal audits conducted during the year included reviews of: IT Security Arrangements, Corporate Card Compliance, Litigation Support System, Security Deposits of Securities Advisers and Investment Advisers, Network Operating System, CLERP 7 Implementation, Project Management, Accounts Payable, Payroll Processing, Contract Administration, Corporations Act Revenue Collection & Debt Management and Petty Cash.

Of the Audit Committee's 5 members, 3 (including the Chair and Deputy Chair) are suitably qualified persons appointed from outside ASIC. Chair Merran Kelsall, BCom (Hons), FCA, MBA, is a Chartered Accountant, Consultant and Company Director. Deputy Chair Robert Savage, BCom, FCA, is a Chartered Accountant and Company Director. The other independent

member is Bob Lynn, FCA and Chartered Accountant. The internal appointments comprise one Commissioner and one Regional Commissioner.

The Committee met 5 times during the year.

Members	Meetings attended
Merran Kelsall (Chair, appointed 29 January 1998)	5
Robert Savage (Deputy Chair, appointed 1 March 2000)	5
Bob Lynn (appointed 1 March 2002)	5
Berna Collier (appointed 1 March 2002) ASIC Commissioner	5
Simon Dwyer (appointed 5 April 2001) SA Regional Commissioner	5

The financial statement sub-committee met twice during the year.

The Australian National Audit Office provided external audit services, Chartered Accountants Ernst & Young and KPMG provided internal audit services, and Brendan Dwyer held the position of National Manager, Audit. Both external and internal audit representatives attended Audit Committee meetings.

**Merran Kelsall,  
Chair, ASIC Audit Committee, July 2003**



## In this section:

- publications
- freedom of information
- Electoral Act disclosure

## Publications

We published the following free publications:

- electronic newsletters: *FIDO News* (financial tips and safety checks), *Financial Services News* (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), and
- 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*, *ASIC Policy Alert*.

## Freedom of Information Act

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 go to [www.asic.gov.au](http://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 this Act, you may inspect and purchase by subscription documents from the Centre for Professional

Development, telephone 03 9205 0600, including the *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.

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

## Commonwealth Disability Strategy Report

As a regulator, ASIC published all its publicly available information on regulations, quasi-regulations and compliance reporting in formats accessible for people with disabilities. This occurred through our website on the day materials were released, and in hard copy through our commercial publisher and on request from our Infoline. A disability expert has reviewed our website and found that our regulatory and compliance materials were accessible. Some suggested improvements were implemented, and others are still being attended to.

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 on our website, by email or posted out in hard copy on request within 24 hours. A new

recruitment database was developed that allows electronic applications to be lodged via the ASIC internet and intranet sites. No requests were received for recruitment information in 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), and
- information on disability issues was included in training programs as appropriate.

ASIC also has internal and external grievances procedures, including review of actions under the Public Service Act and appeals to the Australian Public Service Commission. Staff also had access to an Employee Assistance Program. We received no complaints regarding disability issues during 2002–03.

## Disclosure under Commonwealth Electoral Act

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

- polling organisations, advertising agencies and media advertising organisations: Starcom Worldwide Australia Pty Ltd \$116,924
- market research organisations: Chant Link & Associates \$47,487, DeXX&R \$7,780, and
- direct mail organisations: City Mail Room \$41,628 and Security Mailing Services \$57,146.

## Financial comparisons: Corporations Act and financial services functions

The Ministerial Council for Corporations asked ASIC to disclose a comparison of costs and revenue attributable to the financial services functions for deposit taking, superannuation, life and general insurance that we received on 1 July 1998, compared with our previous Corporations Act functions.

	Operating revenue 2002–03 \$m	Operating expenses 2002–03 \$m	Operating revenue 2001–02 \$m	Operating expenses 2001–02 \$m
National corporations scheme	161.9	159.7	143.7	148.3
Financial services functions	10.6	12.9	10.6	11.6
<b>Total</b>	<b>172.5</b>	<b>172.6</b>	<b>154.3</b>	<b>159.9</b>

The breakdown in the cost of discharging our responsibilities for the financial services functions is as follows:

Activity	\$m
Consumer protection and policy formulation	4.3
Investigation and enforcement	5.5
<b>ASIC sub-total</b>	<b>9.8</b>
Superannuation Complaints Tribunal	3.1
<b>Grand total</b>	<b>12.9</b>

See page 41 for our consumer protection activities and page 23 for our enforcement activities.

# Six year summary

	2002-03	2001-02	2000-01	1999-2000	1998-99	1997-98
<b>Business data</b>						
Companies (total)	1,299,985	1,251,237	1,224,207	1,195,851	1,149,297	1,088,192
New companies incorporated	107,917	90,175	76,103	105,472	98,038	97,031
Australian financial services licensees*	626	35	n/a	n/a	n/a	n/a
Securities dealers*	1880	2302	2,250	2,081	1833	1547
Investment advisers*	194	223	224	224	231	227
Futures brokers*	95	119	121	120	108	99
Futures advisers*	63	74	70	65	64	40
General insurance brokers*	800	977	975	1,043	n/a	N/a
Life insurance brokers*	228	293	263	225	n/a	n/a
Foreign insurance agents*	13	17	14	12	n/a	n/a
Registered managed investment schemes	3,487	3,265	2,778	2,512	428	n/a
Prospectuses lodged†	1,658	2,089	2,744	1,033	707	683
Product disclosure 'in use' notices‡	579	n/a	n/a	n/a	n/a	n/a
Takeovers lodged	55	67	81	81	73	76
<b>ASIC performance data</b>						
Criminals jailed	29	19	25	25	22	26
\$ millions protected, frozen, and compensation orders	506	401	530	n/a	n/a	n/a
% successful litigation††	94%	92%	71%	75%	89%	90%
Litigation concluded	222	205	150	173	154	199
Total searches of ASIC databases	10,997,500	9,095,600	7,260,700	5,702,200	4,057,000	3,094,000
% company data lodged on time	93%	93%	93%	94%	93%	94%
<b>Financial summary (\$m)</b>						
<i>Operations</i>						
Total operating expenses	172.6	159.9	143.3	143.0	145.2	134.6
Total operating revenue	172.5	154.3	144.2	140.2	146.7	130.8
Revenue transferred to Commonwealth Consolidated Revenue Fund	405	383	348	361	332	326
<i>Financial position</i>						
Current assets	15.6	20.5	15.1	12.2	12.1	10.4
Non-current assets	33.2	27.1	22.1	24.9	25.6	25.6
Current liabilities	29.0	27.3	18.6	21.7	17.1	15.6
Non-current liabilities	20.9	21.2	16.4	16.6	18.9	19.6
Total equity	(1.0)	(0.9)	2.2	(1.1)	1.7	0.8

\* From 11 March 2002, AFS licences began replacing all other asterisked licences and registrations, which ceased being issued after that date.

† From 11 March 2002, product disclosure statements began replacing prospectuses for managed funds. After 11 March 2004, prospectuses will be 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.