

**During ASIC appearance before the Committee, there was a lengthy discussion on the issue of property investments seminars (E21 — 43). The following additional information is provided by way of further assistance to the Committee in consideration of the issues raised.**

Under the current legislative and regulatory framework it is apparent that ASIC has clear jurisdiction over real property advice matters in only a very limited range of situations, and that the particular facts and circumstances of each case would be critical. Nevertheless, in recent years ASIC has taken enforcement action against persons providing real estate investment advice in cases that fall within ASIC's current jurisdiction.

The suggestion that ASIC has been inactive on this issue is unjustified and is not supported by the action taken by the agency in relation to wealth creation and illegal schemes. For instance in the 2002/2003 financial year, ASIC acted against 43 illegal schemes involving more than \$200 million. During the current financial year, ASIC has over 30 current investigations in relation to such schemes.

As an example of such enforcement action ASIC has recently taken action against a company trading as 'Break Free Events' which provided seminars in relation to option trading and at which one of the guest speakers was Mr Robert Allen, who was described in brochures for the seminar as author of a New York Times best seller entitled *The Minute Millionaire*.

At the Senate Committee hearing Mr Allen was mentioned by Senator Conroy who asked why ASIC had taken no action against him. It is noted that ASIC commenced proceedings against the company on 15 April 2004 and on 4 June 2004 obtained interim court undertakings pending the final hearing.

The actions taken by ASIC to date invariably involve complex and resource-intensive investigation, and in many cases, vigorously defended litigation through the civil courts. Notwithstanding this, in the last five months, ASIC has successfully obtained court orders or undertakings against 14 wealth creation and illegal schemes.

Over the past 18 months ASIC has also taken four separate court proceedings in relation to Mr Henry Kaye. On 4 March 2003, ASIC commenced proceedings against Mr Kaye and companies associated with him in relation to wealth creation seminars promoted by him. Those proceedings were resolved in July 2003 through a court ordered mediation, with court orders and enforceable undertakings.

In addition, ASIC commenced new proceedings in early October 2003 in relation to alleged breaches of the enforceable undertaking and interim court undertakings were obtained at that time. ASIC commenced further investigations on 20 October 2003, which led to the commencement of proceedings on 2 December 2003 for the appointment of a receiver or trustee to Henry Kaye and related companies.

A number of the Henry Kaye companies entered into external administration in late November 2003. Between December 2003 and March 2004, ASIC was involved in numerous court applications and formal interventions to ensure creditors' interests were protected.

Ten companies formerly controlled by or associated with Henry Kaye are now in liquidation and, as a result of ASIC's intervention, a further company controlled by Henry Kaye, Property Corporate Services Pty Limited, was wound up on 12 March 2004.

On any objective analysis, ASIC has been extremely active in taking action in this field by moving against misleading and deceptive conduct affecting consumers.

In recent times ASIC has, within the limits of its jurisdiction, also been actively taking consumer protection action and has issued numerous consumer alerts as well as urging potential investors and seminar attendees to exercise caution. There is also a dedicated section on FIDO, the ASIC consumer website, which deals exclusively with Get Rich Quick Investment Seminars and which aims to alert potential investors and attendees to the risks of these schemes and seminars.

It should also be noted that in August 2003 the Ministerial Council on Consumer Affairs (MCCA) established a working party to consider the future regulation of property based investment schemes. The working party's terms of reference are to:

- assess the extent and nature of the provision of property investment advice in Australia;
- assess the adequacy of current State/Territory and Commonwealth regulation;
- identify possible and/or actual consumer detriment resulting from the provision of property investment advice and assess what aspects of the provision of property investment advice cause consumer detriment;
- examine whether further regulation of the provision of property investment advice is required; and if so, what form such regulation should take; and
- examine the options for introducing a new national or state regulatory scheme and the costs and benefits associated with each option.

Conscious of the need for potential law reform as a way of dealing with any existing regulatory gaps, ASIC has been an active participant in this process. The MCCA working party has been developing a consultative discussion paper on the options for national regulation of property investment advice. It is understood that the discussion paper may be released in July 2004 and will be followed by a six-week consultation period.