

# Senate Select Committee on Superannuation and Financial Services

## Main Inquiry Reference (a)

**Submission No. 11**

**Submittor:** Mr David Knott  
Australian Securities and  
Investment Commission (ASIC)  
PO BOX 9827  
CANBERRA ACT 2601  
 - (02) 6250 3800  
 - (02) 6250 3811



**ASIC**

Australian Securities & Investments Commission

Regional Office - Australian Capital Territory  
6<sup>th</sup> Floor, 15 London Circuit, Canberra  
GPO Box 9827 Canberra ACT 2601  
DX 5696 Canberra

Telephone: (02) 6250 3800  
Facsimile: (02) 6250 3811

Our Reference:  
Your Reference:

21 January 2000

Mr Frank Nugent  
Secretary  
Senate Superannuation and Financial Services Select Committee  
Parliament House  
CANBERRA ACT 2600

Dear Mr Nugent

### **INQUIRY INTO SUPERANNUATION AND FINANCIAL SERVICES**

I refer to the inquiry into Superannuation and Financial Services by the Senate Superannuation and Financial Services Select Committee.

I have pleasure in enclosing a submission from the Australian Securities and Investments Commission (ASIC) in respect of the first of the Committee's terms of reference: "prudential supervision and consumer protection for superannuation, banking and financial services".

ASIC would be pleased to provide the Committee with further assistance with its inquiry should it so request. In the mean time, please do not hesitate to contact Delia Rickard, Director, Office of Consumer Protection on phone (02) 6250 3801 or email [delia.rickard@asic.gov.au](mailto:delia.rickard@asic.gov.au) should you have any queries in respect of this submission.

Yours sincerely

for David Knott  
Acting Chairman.



**ASIC**

Australian Securities & Investments Commission

---

# **ASIC's submission to the Senate Select Committee on Superannuation and Financial Services**

**Inquiry into  
Superannuation and  
Financial Services**

**January 2000**

# Contents

<b>OVERVIEW.....</b>	<b>3</b>
<b>EXECUTIVE SUMMARY.....</b>	<b>4</b>
<b>PART 1</b>	
<b>ASIC and its consumer protection role.....</b>	<b>8</b>
<b>PART 2</b>	
<b>Adopting a risk based integrated compliance approach .....</b>	<b>14</b>
<b>PART 3</b>	
<b>Engaging in collaborative partnerships .....</b>	<b>20</b>
<b>PART 4</b>	
<b>Focusing on results.....</b>	<b>31</b>
<b>PART 5</b>	
<b>Appendixes</b>	
A    ASIC's consumer role by regulatory mechanism.....	64
B    Members of the Consumer Advisory Panel.....	67
C    ASIC's work in the superannuation area .....	68
D    Graphs: categories of complaints .....	75
E    ASIC's electronic commerce principles.....	78

# OVERVIEW

This submission deals with the Committee's first term of reference about consumer protection for superannuation, banking and financial services.<sup>1</sup>

ASIC became responsible for consumer protection in these fields only 18 months ago. In that time, we have made plans and taken steps to increase the knowledge and confidence of consumers and strengthen the integrity of the market and financial service providers.

Our submission notes that the financial sector reforms initiated by the Government remain only partially implemented. The proposed CLERP 6 reforms that will complete the reforms are expected to deal with:

- more consistent laws and regulation so that consumers can more easily compare financial products and services and enjoy broadly similar protection; and
- greater legislative support for enforcing the law, by introducing a single set of investigative powers and remedies.

Our unfinished work as regulators lies in plans that are still to bear fruit and in the need to increase our knowledge of important consumer protection risks. Our approach will develop and mature over the next few years. We will remain vigilant to emerging risks and we will develop integrated strategies to deal with them.

---

<sup>1</sup> This submission addresses the consumer protection aspects of the first of the Committee's three terms of reference: "prudential supervision and consumer protection for superannuation, banking and financial services."

This submission does not describe all our consumer protection initiatives. However, it gives the flavour of our work to date and indicates future work directions in this area and ways in which we believe Australia's consumer protection regime can be improved.

# EXECUTIVE SUMMARY

---

## Planning effective consumer protection

When we took on our new consumer protection role eighteen months ago, we went to great pains to:

- understand the legislation and how the financial services industries operate;
- identify the most important needs, problems and risks consumers face;
- train and equip our staff so they could act effectively; and to
- build collaborative relationships with the main consumer, industry and government representatives so we could work together to fulfil our consumer protection role.

Resulting from this work, we have integrated our enforcement and compliance activities. Strong and effective enforcement means we are able to deliver results. By itself, however, enforcement will not help us decide where it is important to act. Nor is enforcement the only correct response to non-compliance. Our enforcement and regulatory staff work together to analyse and assess significant regulatory risks and to identify and respond to issues, emerging problems and patterns of non-compliance. They also work together to make sure that educational and regulatory strategies are used to increase public awareness and to raise overall standards.

---

## Significant results to date

### Promoting superannuation disclosure and knowledge

We have already surveyed consumers' knowledge of their superannuation savings and their understanding of disclosure documents. On the important issue of disclosure to consumers we:

- have surveyed disclosure documents to see how they comply with legal requirements; and
- are supporting a disclosure regime which will enhance appropriate comparability and reduce the opportunity for churning and mis-selling.

We are discussing a project with ASFA on simplified superannuation disclosure.

We are continuing to enforce the law against those fraudulently dealing with consumers' superannuation contributions or to protect superannuation entitlements where companies are in financial trouble.

We are educating consumers and industry about superannuation issues and our role.

## **Supporting self regulation**

We have:

- put in place our policy for approving external dispute resolution schemes. This policy is lifting standards for such schemes.
- We have released two drafts for public comment on an extended Electronic Funds Transfer Code of Conduct. The code is being extended to cover all forms of electronic funds transfers, including telephone and Internet banking and stored value products.

In addition to assisting with formulating and reviewing numerous industry codes and dispute resolution schemes, we are also addressing the issues of the multiplicity of self-regulatory initiatives and gaps and overlaps in the current arrangements.

## **Enforcing consumer protection laws**

In the 1998-99 financial year alone we:

- jailed 22 people for cheating superannuants, investors and creditors; and
- banned 17 people from giving investment advice.

In the last financial year we recovered \$4.7 million that Australians would have lost in offshore scams, using our relationships with overseas authorities.

We have also accepted enforceable undertakings from Westpac (for inadequately disclosing its advisers' remuneration) and the Suncorp Metway group of companies (for problems with financial advice given) and have taken other actions against companies, principals and intermediaries.

Examples of these other actions include:

- an action against the Aboriginal Community Benefit Fund (ACBF) for misleading, deceptive and unconscionable conduct in the sale of funeral funds and life insurance products to remote Aboriginal communities; and
- actions to prevent the giving of unlicensed financial advice on the Internet or to prevent illegal fundraising on the net.

## **Surveying compliance**

Our role as exclusive financial services regulator enables us to proactively conduct compliance surveys of the laws we administer and codes of conduct we are responsible for. Surveys to-date have looked at (or are currently looking at) compliance with:

- superannuation membership disclosure rules and how to make disclosure more effective;
- life insurance conduct and disclosure requirements; and
- the registration requirements for insurance brokers.

We are also looking at the extent to which Internet banking sites comply with the law and meet appropriate consumer protection standards.

## Educating consumers

Education of consumers is a central part of our consumer protection functions. We have:

- undertaken a stocktake of consumer education materials presently available for the financial sector and identified gaps. As a result, we are now developing an online data base of consumer education materials. This will form the basis for the consumer education strategy we are currently developing.
- conducted educational campaigns to alert consumers to current problems, such as the potential for fraud on the Internet.

We produce a range of publications, for example to assist consumers select a financial adviser or help them to make their superannuation choices.

We also talk directly with consumers in a number of fora to help them with their financial services problems.

---

## Unfinished work

The creation of ASIC was part of the reforms proposed by the Financial System Inquiry (the Wallis report). Although the structural changes endorsed by the Government have occurred, the substantive changes to the laws we administer are still in the pipeline. To increase protection for Australian consumers:

- we particularly want to see a consistent disclosure regime for financial services and products so that consumers can compare products and services and make better choices. This was part of the Wallis agenda, and is in the Government's CLERP 6 reforms.
- we seek consistent investigative powers to support our regulatory and enforcement activities. At present, we have separate investigative powers under each of the statutes we administer. This fragmentation slows and complicates enforcement action we take.
- we seek appropriate streamlining of the self-regulatory systems in financial services. There are currently a considerable number of dispute resolution schemes and codes of conduct. The overlaps and gaps that exist between them can confuse consumers and compromise the effectiveness of self-regulation.
- we seek strong three-way relationships between government, industry and an adequately resourced consumer movement. Good consumer protection, whether legislated or self-regulatory, depends each of these parties being prepared to listen to the views of others and able to effectively put their own views and influence each other.



---

## Funding

As we are still settling into our new consumer protection role, it is too early to comment on the adequacy of the funding we have been provided for those activities we perform ourselves. However, as discussed below, the Superannuation Complaints Tribunal is currently costing more to operate than was provided to ASIC by way of budgetary allocation as part of the restructuring of financial regulators in July 1998.

On the issue of funding for our other, traditional corporate and securities regulatory functions, ASIC's annual report this year noted that:

The extra funding we received this year of some \$18 million was for our new work only. Achieving timely enforcement has put unacceptable pressure on our staff, to which they have responded very well. But, we may now have too few staff on the ground to achieve the outcomes we and the government want.

ASIC is now discussing its funding requirements for the next year, with Government.

---

## Conclusion

Effective consumer protection work in the finance sector is vital for the health of the economy and ASIC is pleased to be carrying out this role. We are proud of our work to date in our new areas of responsibility. We recognise that we must be continually vigilant to ensure that we are identifying the important consumer protection risks and developing the appropriate strategies to deal with them.

# Part 1

## **ASIC and its consumer protection role**

About ASIC.....	9
Where ASIC fits in the regulatory picture.....	9
Background to ASIC's consumer protection role.....	10
ASIC's approach to its new functions .....	12

## About ASIC

The Australian Securities and Investments Commission (ASIC) is an independent Commonwealth government body established by the *Australian Securities and Investments Commission Act 1989* (ASIC Act). Our statutory objectives include to:

- maintain, facilitate and improve the performance of the financial system and the entities within that system in the interests of commercial certainty, reducing business costs, and the efficiency and development of the economy; and
- promote the confident and informed participation of investors and consumers in the financial system.

(s1(2) The Australian Securities and Investments Act 1989)

We regulate and enforce laws that promote honesty and fairness in:

- investments, superannuation, insurance, deposit taking and financial advice to Australian consumers
- buying and selling shares, debentures, options, futures contracts, managed investments and other securities in Australian markets;
- directing and managing companies, company financial reports, raising money from investors and takeovers.

We also maintain a public database on Australia's 1.1 million companies to provide certainty in dealing with companies.

We report to the Commonwealth Parliament directly and through the Treasurer, the Hon Peter Costello, MP and the Minister for Financial Services and Regulation, the Hon Joe Hockey, MP.

We began operating on 1 January 1991 as the Australian Securities Commission, dealing only with the Corporations Law, but on 1 July 1998 we took on extra responsibilities (see next section, "Background to ASIC's Consumer Protection Role"), more staff and our current name.

1,257.2 full-time equivalent staff work around Australia, under the direction of three full-time Commissioners appointed by the Governor-General on the nomination of the Treasurer.

We work with other financial, consumer and law enforcement bodies in Australia and internationally.

---

## Where ASIC fits in the regulatory picture

We are one of four Commonwealth government bodies that regulate financial services. We protect markets and consumers from manipulation, deception and unfair practices.

The Australian Prudential Regulation Authority (APRA) is responsible for promoting the safety and soundness of deposit taking institutions, life and general insurance companies and larger superannuation funds.

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

The Australian Taxation Office (ATO) is responsible for taxation aspects of superannuation, including compliance with the superannuation guarantee, regulation of self-managed funds, administration of the lost members register and education about superannuation choice.

---

## Background to ASIC's consumer protection role

Before 1 July 1998 responsibility for consumer protection and financial services was spread across a number of different Commonwealth, State and Territory agencies including:

- the Insurance and Superannuation Commission;
- the Reserve Bank and Australian Payments System Council;
- the Australian Competition and Consumer Commission; and
- state and territory regulators including the Australian Financial Institutions Commission and the state and territory fair trading agencies.

In March 1997 the report of the Financial System Inquiry (the Wallis report) was released. This was a major inquiry into the regulation of Australia's financial system. It recognised that the financial system is undergoing continuous and rapid change, involving, amongst other things, convergence, disintermediation, increased competition and globalisation. These changes are primarily driven by three interlinked forces:

- changing customer needs;
- new technologies and skills; and
- changes to regulation across a broad spectrum. (Wallis p.75)

The report concluded that:

In the financial system, specialised regulation is required to ensure that market participants act with integrity and that consumers are protected. The financial system warrants specialised regulation due to the complexity of financial products, the adverse consequences of breaching financial promises and the need for low-cost means to resolve disputes. (Wallis p.175)

The Government accepted this view. In its response to the Wallis report it stated that there were a number of disadvantages to having a variety of regulatory agencies responsible for consumer protection, including that :

- regulation was inconsistent across the range of competing financial products;
- financial services providers faced a range of different regulatory rules that raised the complexity and cost of compliance; and
- consumers faced inconsistent rules resulting in difficulties in understanding and comparing competing products. (Costello, Sept 1997, p. 6)

Such reasons led the Government to establish a single consumer protection regulator for the financial services sector — the Australian Securities and Investments Commission.

ASIC was formed out of the Australian Securities Commission and commenced operations on 1 July 1998.

To equip us for our new functions we were given some additional resources and new legislative powers. The *Australian Securities and Investments Commission Act 1989* was amended to mirror the consumer protection provisions of the *Trade Practices Act 1974*. We also took over responsibility for existing legislation and codes of conduct covering general insurance, life insurance, superannuation and banking. That is, ASIC inherited a set of legislation covering the finance sector rather than gaining new legislative provisions and powers as envisaged by the Wallis Report — these new provisions are part of the CLERP reform process, in particular CLERP 6.

Table 1

<b>ASIC administers the regulatory system of consumer protection for:</b>
Deposit-taking activities
Futures contracts
General insurance
Life insurance
Retirement savings accounts
Securities (ie. shares, debentures and managed investments)
Superannuation

For a list of financial products that ASIC administers under the new system, see table 1.

Consumer protection regulation for these products includes:

- disclosure requirements that apply to product issuers; and
- regulation of persons providing financial services (such as advice and dealing services) to such products (ie intermediary regulation).

ASIC does not have responsibility for:

- credit, except to the extent it is dealt with in codes of conduct;
- the level of fees and charges (as distinct from disclosure of these fees and charges);
- foreign exchange dealings.

More information about the legislation administered by ASIC, as part of our consumer protection role, is set out in Appendix A.

---

## ASIC's approach to its new functions

An important part of our legislative objectives is to promote the confident and informed participation of consumers in the financial system. (s.1(2)(b) *ASIC Act*) We are striving to do this by:

- ensuring that consumers receive adequate and appropriate information to make informed decisions about financial products and services;
- maintaining a vigilant oversight of the marketplace to proactively identify, stop and deter misleading and fraudulent conduct;
- ensuring that consumers have access to appropriate redress systems when things do go wrong;
- adopting a flexible approach to regulation to ensure that unnecessary impediments to business are removed where consumer protection goals are not compromised; and
- applying the knowledge and experience we acquire as the regulator to consumer education initiatives and policy debates so as to improve the system of consumer protection across the regulatory spectrum - from self-regulation initiatives to legislation.

We recognise that to achieve these goals in the rapidly changing environment within which the financial services sector operates, ASIC must continue to develop an integrated risk based approach to compliance across all our jurisdiction with its focus on identifying and responding to emerging regulatory problems, patterns of conduct and financial services sector issues—underpinned by effective enforcement. This involves us increasingly in:

- ***adopting a risk based approach to compliance*** involving systemic identification of important regulatory risks (ie regulatory problems, patterns of non-compliance or emerging financial sector regulatory issues) and then putting in place regulatory responses designed to address the specific regulatory concern;
- ***engaging in collaborative partnerships*** with industry, consumers and their representatives, our staff, the media and other regulators to produce a shared sense of purpose through collaborative agenda setting; more effective interventions through engagement of multiple parties and optimal leveraging of scarce public resources; and

- *focusing on results*, persevering in the search for meaningful impact measures to complement other efficiency, output and outcome measures.

*(Sparrow 1996, pp.7&8)*

ASIC has spent much of our first eighteen months as the financial services regulator identifying the key risks, problems and needs we must address and building the necessary partnerships required to perform our role effectively.

In addition to internal and external discussion about how best to fulfil our new consumer protection role, we have undertaken numerous specific projects to provide the necessary foundations for our ongoing effectiveness as a regulator. We have also been active in the enforcement and compliance area.

# Part 2

## **Adopting a risk based integrated compliance approach**

Identifying problems, needs and risks.....	15
Surveying consumer issues .....	15
Taking a consumer education stocktake.....	16
Studying financial products and remuneration .....	17
Understanding the needs of vulnerable consumers.....	18
Finding out if consumers understand their superannuation .....	18
Using other risk identification techniques .....	18



---

## Identifying problems, needs and risks

The key to adopting a risk based regulatory approach is to identify important areas of regulatory risk. When ASIC acquired its consumer protection functions it did not inherit a blank slate. Our predecessors and consumer and industry stakeholders had identified areas of concern for consumers and proposed or initiated a range of projects to address these concerns. While we have continued with many of these projects, and initiated others, we have also been developing an overall plan to ensure that we are focussing our efforts on the right problems. We have therefore undertaken a number of specific research projects to better enable us to identify the risks and needs we must address and thus more effectively allocate our resources.

---

## Surveying consumer issues

Through ASIC's Consumer Advisory Panel (CAP, see below), we have commissioned Chant Link & Associates to identify, describe and rank the relative importance of consumer issues of concern within the financial products and services sector covered by ASIC's regulatory powers.

To the best of our knowledge this is the first time an Australian financial services regulator has undertaken such systematic research. The broad consultation involved acts as an important check on the perceptions of the regulator and the most vocal key stakeholders — the parties which traditionally help set the regulator's agenda.

The research involved three stages:

- face to face interviews with individuals from 10 organisations with insights into consumer issues;
- focus groups involving various age groups, geographical locations and levels of financial sophistication; and
- quantitative findings derived from a national sample of 85 financial counsellors and other impartial professionals.

Chant Link found that the issues affecting the low and very low income segments of the market are quite different from those affecting middle and higher income groups. Their issues are outlined in the report. The main issues for ASIC are presented in Table 2.

Table 2

---

**Main consumer issues for ASIC  
as identified by Chant Link research**

---

- 1 Super choice and consumer empowerment.

---

  - 2 Direct equities — with many new shareholders not understanding them.

---

  - 3 Banking (fees and charges disclosure and banking at the fringe — eg for fixed or low income earners).

---

  - 4 Financial advice from sources which are not truly independent.

---

  - 5 E-commerce.

---

  - 6 Direct selling (eg of general insurance and of bank products). The issue is mainly related to the training and calibre of sales staff in larger organisations.

---

  - 7 Insurance (education of general insurance consumers and disclosure relating to cover exclusions and the potential for under-insurance).

---

  - 8 Alternative dispute resolution schemes (and the need for better ADRs in some areas).

---

  - 9 Real estate investments, especially strata title schemes involving guaranteed rental yields for limited periods.
- 

We are already undertaking initiatives to address each of the problem issues identified (see below). However, the report is already proving useful in refining our future work priorities.

---

## **Taking a consumer education stocktake**

We see effective consumer education as an essential part of our regulatory toolkit. Good consumer education is a preventative tool which helps consumers choose the best products and services for their needs and avoid problems that can arise from bad advice or purchasing the wrong product.

Before developing our own consumer education strategy, we believed it was important to know just what consumer education materials were presently

available in Australia and who was doing what in this area. We also wanted to know where the gaps were. Therefore, again through CAP, we commissioned the first ever Australian stocktake of consumer financial services education material. The stocktake was undertaken by the Financial Services Consumer Policy Centre.

A wide variety of industry, community and government agencies were contacted as part of the stocktake project and an impressive set of consumer education material was collected. As a result of the project ASIC, in conjunction with the Securities Institute of Australia, is currently establishing Australia's first comprehensive online directory of consumer education material about financial products and services. We believe this is a world first for a finance sector regulator.

Also flowing from the project, we are developing our own comprehensive consumer and investor education strategy. The strategy will draw on the stocktake and Chant Link study, as well as our own inquiries and complaints experience and the work of our overseas counterparts. It will involve regulators, industry and community organisations working together to improve consumers' understanding of financial services. As part of the strategy we will be producing guidelines for effective consumer education. These will include such basic things as dating brochures.

---

## Studying financial products and remuneration

The consumer education stocktake was designed to identify consumer needs. As well as identifying needs, however, we strive to proactively identify the main risk areas for consumers. Then we can focus on them.

For example, in the financial services area a heavy emphasis on commission based remuneration structures for those selling or advising on financial products has at times created incentives for mis-selling.

We therefore commissioned a major piece of research from Phillips Fox Actuaries and Consultants and Rice Kachor Research to give us information on:

- all fees and charges on the financial services investment products regulated by ASIC;
- the commission structures in the market; and
- market trends and issues.

We have now received the report and are already feeding its results into our risk analysis work. It is helping us identify the classes of products and intermediaries we should be focussing our compliance, surveillance and enforcement efforts on.

---

## Understanding the needs of vulnerable consumers

We recognise that different consumer groups may have different needs and vulnerabilities and that we may need varied approaches when protecting these groups. In 2000 we will undertake research to identify the needs of disadvantaged and vulnerable consumers within our community.

---

## Finding out if consumers understand their superannuation

We commissioned an independent survey to find out how consumers saw their own knowledge of their superannuation savings. The survey interviewed 1200 respondents aged 18 and over:

- 70% of respondents with superannuation were aware of their fund's performance.
- 77% said that they had read their last member statement.
- 60% had a very good idea or knew approximately how much money they had in the fund.

On the other hand, there was a substantial lack of knowledge about savings levels and performance, particularly among younger respondents:

- Nearly 20% of respondents said they did not understand their annual statement.
- More than half the respondents who did not know how much money they had in the fund were aged below 34 years of age.

It would be dangerous to draw firm conclusions on the basis of this survey. However, it tends to support some existing perceptions that more educative initiatives, involving industry, regulators and Government, are needed, particularly directed towards younger age groups.

---

## Using other risk identification techniques

In addition to the projects just identified, we also use an evolving array of techniques to make sure that we are aware of current and emerging consumer protection risks. These techniques include:

- liaising (formally and informally) with consumer organisations, industry and relevant areas of government;
- frequently contacting our regulatory counterparts overseas;
- keeping up-to-date with the relevant literature and the media;

- regularly reviewing material coming out of financial services alternative dispute resolution schemes and our own complaints; and
- conducting ongoing surveillance of the marketplace.

We are also examining how ASIC can better extract information about market-wide regulatory risks from complaints and other information we receive or have access to. This project involves developing risk indicators based on the regulatory objectives for each stage of the financial product life cycle, and testing them against actual complaints received in the recent past. The focus of the project is on insurance policies, superannuation interests and related services such as financial advice.

## Engaging in collaborative partnerships

<b>Working with four groups.....</b>	<b>22</b>
<b>Working with consumer organisations to identify problems and address them.....</b>	<b>22</b>
<b>Our approach .....</b>	<b>22</b>
<b>Actions taken.....</b>	<b>22</b>
Establishing the Consumer Advisory Panel.....	22
Liaising formally and informally with consumer representatives.....	23
Conducting joint ventures with consumer organisations .....	23
<b>Working with industry to improve consumer protection .....</b>	<b>23</b>
<b>Our approach .....</b>	<b>23</b>
<b>Actions taken.....</b>	<b>24</b>
Maintaining a broad range of industry contact.....	24
Working with industry to achieve workable solutions to problems .....	24
Promoting consumer education through collaborative ventures .....	24
Undertaking initiatives to educate industry about consumer protection compliance issues .....	25
<b>Fostering partnerships between industry, consumers and government.....</b>	<b>25</b>
<b>Our approach .....</b>	<b>25</b>
<b>Actions taken.....</b>	<b>25</b>
Organising our Annual Stakeholder Forum .....	25
Organising our issue-specific stakeholder forums .....	25
<b>Developing cooperative relationships with other areas of government .....</b>	<b>26</b>
<b>Our approach .....</b>	<b>26</b>
<b>Actions taken.....</b>	<b>26</b>
Participating in the Council of Financial Regulators .....	26
Working closely with APRA.....	26
Working closely with the ACCC.....	26
Avoiding problems arising from jurisdictional overlap between the ACCC and ASIC .....	26
Working closely with State and Territory consumer affairs agencies .....	27

Working closely with overseas regulators and participating in international fora such as IOSCO and IAIS .....	27
<b>Cooperative relationships with the media .....</b>	<b>28</b>
<b>Our approach .....</b>	<b>28</b>
<b>Actions taken.....</b>	<b>28</b>
Improving links with the popular press.....	28
Successfully increasing coverage of consumer protection concerns in the media that is read by business .....	28
Increasing links with consumer journals .....	29
Developing guidelines for the media on advertising investments.....	29

## Working with four groups

We see collaborative partnerships as central to helping us set our priorities and develop and deliver effective solutions to problems or, better still, prevent problems emerging in the first place.

This part discusses how we are fostering ongoing collaborative partnerships. Examples of ASIC projects which involve collaborative partnerships appear later in this submission. The five main groups ASIC is fostering collaborative partnerships with are:

- consumer organisations;
- industry;
- government; and
- the media.

Many projects, of course, involve partnerships across these groupings.

---

## Working with consumer organisations to identify problems and address them

### Our approach

We are working with consumer organisations so that we can:

- develop a timely understanding of issues of concern to consumers and their views on how to address these problems;
- gain a better understanding of the concerns of low income consumers by liaising with caseworkers (such as financial counsellors and those working at consumer credit and community legal centres); and
- achieve our consumer protection goals.

### Actions taken

#### Establishing the Consumer Advisory Panel

We have established the Consumer Advisory Panel (CAP) to advise us on consumer protection issues. CAP consists of an independent Chair (Barbara Cail) and nine consumer representatives from key consumer groups. Appendix B lists CAP members.

CAP provides us with a formal source of advice about issues of concern to our various different consumer constituencies. It is also a source of advice on the consumer protection implications of work we are undertaking. CAP's input is important to our collaborative approach to agenda setting and problem solving.

CAP also undertakes research projects which have been agreed with ASIC.



## **Liaising formally and informally with consumer representatives**

In addition to CAP, we have a number of other formal consumer liaison mechanisms. There is also daily informal contact with consumer representatives. Both forms of liaison help to build the types of collaborative partnerships we consider to be essential to doing our job well.

At the formal end, we have recently established a system of Consumer Issues Groups to advise us on industry specific issues. The groups will cover:

- general insurance;
- markets and managed investments;
- superannuation and life insurance; and
- banking and e-commerce.

The general insurance group met for the first time in November 1999.

In addition, we hold issue-specific consultation processes and include consumer representatives on working parties.

At the regional level, each ASIC office has a regional liaison committee consisting of key stakeholders. The membership of these committees has now been expanded to include local consumer representatives.

## **Conducting joint ventures with consumer organisations**

From time to time we engage in joint ventures with consumer organisations which draw on the particular skills of each organisation. The first of these was a joint venture with the Australian Consumers' Association and involved a survey of financial advice. Ordinary consumers from both metropolitan and regional areas of Australia, who wanted advice on how to invest their own money, had 100 financial plans prepared. These plans were then assessed by a panel of experts.

We sent follow-up letter to those firms with plans which performed poorly and in particular did not meet the basic requirements. We also used the results of the survey for targeting surveillance and compliance monitoring activities.

---

# **Working with industry to improve consumer protection**

## **Our approach**

We are working with industry so that we can jointly:

- identify current and potential consumer protection issues;
- address consumer protection issues; and
- address consumer education needs.

Working with industry will also help industry participants to understand consumer protection compliance issues and our approach.

## Actions taken

### Maintaining a broad range of industry contact

We put a lot of effort into developing relationships with as broader range of industry members as possible. Regularly contacting industry members is one of the best ways of identifying current and potential consumer protection issues. Industry members are often keen to let us know about competitors who are breaching the rules or about to enter into practices which have the potential to damage the reputation of their industry.

### Working with industry to achieve workable solutions to problems

In the part of this submission, *Focusing on results*, we have listed the numerous projects in which we are working with industry to develop and improve self-regulatory solutions to problems. Examples include our work on standards for alternative dispute resolution schemes and the present review of the EFT Code (to expand its coverage to all forms of electronic funds transfers). We also maintain an ongoing dialogue with industry about our views on law reform matters. This ensures that we are putting forward workable solutions to problems.

### Promoting consumer education through collaborative ventures

We have long been aware that one of the greatest challenges of consumer education is getting the information to consumers at the time they most need it. To meet this challenge, and to help with the cost of projects, we have undertaken joint ventures with industry associations. In particular:

- We produce a booklet in conjunction with the Financial Planning Association (FPA) called *Don't Kiss Your Money Goodbye*. This is a step by step guide to choosing the right financial adviser. By working with the FPA and its members we have distributed 350,000 copies of this brochure in the last seven years at a time when consumers need it. We have had a lot of positive feedback about how useful consumers find the booklet.
- We have also recently produced *Super Decisions* with the Association of Superannuation Funds of Australia. *Super Decisions* helps address the problems which people may face when choosing a superannuation fund. By distributing it through ASFA we help ensure that the booklet gets into consumers' hands at the time they are considering their superannuation purchase.
- We have recently entered into a collaborative arrangement with the Securities Institute of Australia to provide Australia's first online directory of financial services consumer education material.

These partnerships provide valuable technical input, increase the distribution of the publications and enable reputable industry associations to support our messages about compliance. In every instance the publications have been written by our staff and the final contents reflects ASIC's views.

## **Undertaking initiatives to educate industry about consumer protection compliance issues**

We undertake a range of initiatives educating industry about consumer compliance issues. They include regional liaison meetings with industry representatives, articles on compliance in industry journals, regular Commission meetings with both industry associations and representatives of individual companies. For example, when ASIC recently became responsible for consumer protection and building societies, credit unions and friendly societies we held compliance seminars in all capital cities. We invited representatives from every one of the new organisations we were responsible for. The seminars were well attended throughout Australia.

---

## **Fostering partnerships between industry, consumers and government**

### **Our approach**

We consider it important that consumer, industry and government representatives working on the same project can effectively interact, share views on important issues and work together on joint approaches to important issues.

### **Actions taken**

#### **Organising our Annual Stakeholder Forum**

Each year we bring together key industry, consumer and government representatives in the financial services area to foster networking and thus facilitate problem resolution.

Our 1999 forum involved around 80 participants from around the country. At it we debated the separate consumer protection themes of disclosure and e-commerce. It included around 20 of the key consumer representatives in this area, with ASIC providing travel assistance to some interstate representatives. The feedback from the event each year is extremely positive with the networking opportunities it presents regularly listed as one of the chief attractions of the forum.

#### **Organising our issue-specific stakeholder forums**

Invariably when we confront a controversial policy issue we will bring the industry, consumer and government stakeholders together to debate the issue. Inevitably this helps bring the debate closer to a consensus position. Recent examples of such forums include those held on ASIC's dispute resolution schemes policy and forums associated with the EFT Code.

---

## Developing cooperative relationships with other areas of government

### Our approach

We believe that developing collaborative arrangements with other areas of government will foster information sharing, the efficient use of resources and cooperative approaches to problems solving.

We also want to make sure that any overlaps in jurisdiction between the ACCC and ASIC are handled cooperatively and that consumers are not disadvantaged.

### Actions taken

#### Participating in the Council of Financial Regulators

ASIC is a member of the Council of Financial Regulators. The other members are APRA and the Reserve Bank. This Council ensures that there is a coordinated approach to financial services regulation in Australia and that there are no jurisdictional issues which let problems fall through the cracks.

#### Working closely with APRA

The Chairman of ASIC is an ex-officio member of the board of APRA. We also have a memorandum of understanding (MOU) with APRA to foster information sharing and cooperation.

#### Working closely with the ACCC

We have an MOU in place with the ACCC and Commissioners and senior staff from the two organisations meet regularly. This is in addition to the ongoing staff contact. The ACCC assisted ASIC with the early stages of the ACBF investigation by sharing their experiences in dealing with similar matters in the early 1990s.

#### Avoiding problems arising from jurisdictional overlap between the ACCC and ASIC

Boundary issues which have arisen between ASIC and the ACCC's jurisdictions have been at the margins and have been dealt with by goodwill and administrative measures. Only a small number of issues have arisen.

- There have been complaints against a bank involving both credit and non-credit products. In that instance ASIC and the ACCC wrote a joint letter to the institution pursuing the complaints. Complaints involving a combination of credit and non-credit banking products is the area where overlap problems are most likely to appear.
- Another issue has been who should deal with complaints relating to financial services and the GST and issues associated with health. In both instances ASIC referred its powers to the ACCC.

- Finally, who has jurisdiction in matters involving real estate investments will depend on whether it is a “managed investment” or a direct property investment. Here coordinated steps have been taken to ensure that staff at both institutions understand the respective jurisdictions of each.

### **Working closely with State and Territory consumer affairs agencies**

There can also be jurisdictional overlaps and matters of common interest between ASIC and State and Territory consumer protection agencies. We have therefore undertaken a process to establish MOUs with these agencies covering such things as information sharing, resource sharing and jurisdictional issues. We now have several in place (eg in NSW, Qld and SA). In addition we have established a formal working relationship with the Ministerial Council of Consumer Affairs and its related subcommittees.

### **Working closely with overseas regulators and participating in international fora such as IOSCO and IAIS**

In dealing with matters, including consumer protection issues, with an international counterpart ASIC is able to obtain information and assistance from overseas regulators, and provides similar help to overseas regulators when required.

The Mutual Assistance in Business Regulation Act 1992 (Cth) allows ASIC to provide assistance (such as obtaining books and records, interviewing witnesses etc) to foreign business regulators. Many international regulators have similar powers which they will invoke in order to assist ASIC in carrying out our functions.

ASIC has signed Memoranda of Understanding (MOUs) with 22 overseas regulators (and is currently negotiating additional MOUs). These MOUs set out the frameworks under which the exchange of information and assistance occurs.

In addition to bilateral international cooperation, ASIC actively contributes to the International Organisation of Securities Commissions (IOSCO). IOSCO's Objectives and Principles of Securities Regulation are based on the objectives of :

- protecting investors
- ensuring markets are fair, efficient and transparent; and
- reducing systemic risk.

The work of IOSCO includes developing best practice regulatory standards, and promoting a coordinated and harmonised approach to achieving the objectives referred to above. Additionally, IOSCO cooperates closely with other international organisations including the International Association of Insurance Supervisors (IAIS), the Basle Committee on Banking Supervision and international financial institutions such as the IMF and the World Bank.

ASIC, through Peter Kell from the Office of Consumer Protection, participated in a workshop in Brussels in November 1998. The workshop dealt with developing a consumer protection regime for the South African finance sector. This was hosted by the South African Department of Trade and Industry.

---

# Cooperative relationships with the media

## Our approach

We believe that together with the media we can help educate consumers about financial services issues and industry about consumers' needs. Consumers and industry will be better informed, and more quickly informed, if the media:

- increases its coverage of financial services issues in the “popular” and consumer press. This will ensure that our consumer education messages reach their target audiences;
- thoroughly covers our compliance messages in the business and specialist press. This will ensure that industry is aware of these issues; and
- increases its emphasis on ASIC’s consumer protection work.

We also believe that by working with the media we can help prevent the promotion of illegal investment opportunities.

## Actions taken

### Improving links with the popular press

With our new responsibilities we have expanded the number of major media opinion leaders we deal with. We have worked hard to foster good relations with the popular media so that we can present ASIC both in the business pages and the front of the paper. These efforts have paid off.

Our appearances on current affairs programs like A Current Affair, the Today Show and Today Tonight have increased by about 25% over the past 12 months. There has also been a small increase in radio coverage involving ASIC, including new regular slots, although we were already scoring well on radio.

While a number of our consumer protection campaigns have received good front of the paper coverage, the Millennium Bug Insurance campaign was particularly successful with coverage on pages 2 or 3 of the main newspapers in most of the capital cities. Our cold calling campaign was also very successful in this respect.

We have also increased our efforts at placing material in regional and rural newspapers because these are often read by vulnerable consumers, especially retirees on the Gold Coast and in Northern NSW.

### Successfully increasing coverage of consumer protection concerns in the media that is read by business

We have concentrated a lot of effort on making sure the media that business reads carry our compliance messages. This has included making contact with, and writing regular consumer protection articles for, professional and trade magazines which write about ASIC’s new areas of responsibility. Some magazines, including *Risk Report* and *Super Review*, now take ASIC articles on a regular basis. This has been achieved while maintaining a high level of coverage for consumer protection issues

in the areas of the media ASIC traditionally deals with such as *Personal Investor*, the *Financial Planning Magazine* and the business sections of the major dailies.

### **Increasing links with consumer journals**

Regular articles discussing ASIC's work appear in the Australian Consumers' Association's *CHOICE Magazine* and *Investor Weekly*. We are also increasing our cooperation with the *Consumer Rights Journal*.

### **Developing guidelines for the media on advertising investments**

We are developing guidelines for media outlets on accepting advertising of investment opportunities. If we can work with media outlets to limit the promotion of scams and other illegal fundraising activities we may prevent many consumers being ripped off.

## Focusing on results

Our impact on the marketplace .....	33
ASIC's tools for results .....	33
The infrastructure to deliver results .....	34
Our approach .....	34
Actions taken.....	34
Adopting a learning and development strategy .....	34
Establishing specialist DISC teams .....	34
Establishing the Office of Consumer Protection (OCP) .....	35
Forming the National Compliance Unit (NCU) .....	35
Strategically enforcing ASIC's legislation with a strong deterrent impact .....	36
Our approach .....	36
Actions taken.....	36
Responding appropriately with enforcement .....	36
Targeting enforcement resources appropriately.....	37
Examples of successful enforcement actions taken .....	37
Taking advantage of successful enforcement results to increase their deterrent impact .....	41
Improving our investigative powers.....	41
Improving compliance with proactive compliance & surveillance campaigns.....	42
Our approach .....	42
Actions taken.....	42
Targeting compliance campaigns at ensuring effective superannuation membership disclosure documents.....	42
Seeking out people who are incorrectly holding themselves out to be registered insurance brokers.....	43
Avoiding the mis-selling of life insurance products (by ensuring compliance with life insurance conduct and disclosure requirements) .....	44
Undertaking a preliminary review of Internet banking sites .....	44
Ensuring that consumers have access to appropriate protections ..	44
Our approach .....	44
Actions taken.....	44



Taking appropriate action .....	44
Contributing to the CLERP 6 process .....	45
Improving protections for real estate investors .....	45
Protecting time-share purchasers.....	45
<b>Contributing to effective self-regulatory schemes .....</b>	<b>46</b>
<b>Our approach .....</b>	<b>46</b>
<b>Actions taken.....</b>	<b>46</b>
Producing a policy statement on our codes approval role .....	46
Exercising our codes approval role (in a manner which benefits consumers without imposing unnecessary costs on industry).....	47
Monitoring compliance with the Banking, Credit Union, Building Society and EFT Codes of Conduct.....	47
Contributing to reviews of the Banking, Credit Union and Building Society Codes of Conduct .....	47
Contributing to the Inquiry into Industry Self-regulation.....	47
Addressing issues about the proliferation of financial services codes and gaps and overlap issues.....	47
<b>Ensuring consumers have access to effective dispute resolution schemes .....</b>	<b>48</b>
<b>Our approach .....</b>	<b>48</b>
<b>Actions taken.....</b>	<b>48</b>
Releasing Policy Statement 139 on alternative resolution schemes .....	48
Establishing the Financial Complaints Referral Centre .....	49
Chairing the Complaints Schemes Roundtable.....	49
Working with the Superannuation Complaints Tribunal.....	49
Addressing issues about the proliferation of schemes and gaps and overlaps issues. ....	49
<b>Fostering effective and comparable disclosure regimes so that consumers can make informed choices .....</b>	<b>50</b>
<b>Our approach .....</b>	<b>50</b>
<b>Actions taken.....</b>	<b>50</b>
ASIC and ASFA Joint Project on Simplified Superannuation Disclosure.....	50
Contributing to formulation and drafting of CLERP 6.....	51
Improving disclosure in the general insurance industry (especially in problem areas such as flood insurance and consumer credit insurance).....	51
Facilitating debate about disclosing bank fees.....	51
<b>Identifying and addressing the particular needs of vulnerable consumers .....</b>	<b>52</b>
<b>Our approach .....</b>	<b>52</b>
<b>Actions taken.....</b>	<b>52</b>
Identifying the needs of vulnerable consumers.....	52
Addressing the needs of vulnerable consumers .....	52

Vigilantly enforcing ASIC laws where their breach impacts on vulnerable consumers .....	52
<b>Protecting consumers using new technologies .....</b>	<b>52</b>
<b>Our approach .....</b>	<b>52</b>
<b>Actions taken.....</b>	<b>53</b>
Coordinating e-commerce .....	53
Expanding the EFT Code.....	53
Studying online broking .....	53
Educating consumers.....	54
Establishing an Electronic Enforcement Unit .....	55
Working on Internet industry partnerships .....	56
Contributing to effective e-commerce standards.....	56
Developing guidelines for comparing shopping services .....	56
Reviewing ASIC policies to ensure they aren't unnecessarily paper based.....	57
<b>Better educated consumers .....</b>	<b>57</b>
<b>Our approach .....</b>	<b>57</b>
<b>Actions taken.....</b>	<b>57</b>
Developing a comprehensive consumer education strategy .....	57
Redeveloping ASIC's website to better cater to the needs of consumers.....	57
Developing online data base of consumer education material .....	58
Operating Infoline.....	58
Conducting investor forums.....	58
Making staff available for the public to talk with.....	58
Holding ad hoc public seminars .....	58
Issuing timely warning to consumers.....	58
Releasing publications addressing common consumer protection concerns.....	59
<b>Improving quality of advice .....</b>	<b>59</b>
<b>Our approach .....</b>	<b>59</b>
<b>Actions taken.....</b>	<b>59</b>
Promoting higher standards in investment advisory services .....	59
Setting minimum training standards for authorised representatives .....	59
<b>Promoting global consumer protection standards and cooperation .....</b>	<b>60</b>
<b>Our approach .....</b>	<b>60</b>
<b>Actions taken.....</b>	<b>60</b>
Contributing to the development of international standards.....	60
Providing mutual assistance to overseas regulators.....	60
Hosting the Directors of Enforcement Workshop.....	60
Assisting South Africa in developing its financial services consumer protection .....	61

---

## Our impact on the marketplace

ASIC seeks to assess our performance by considering our impact on the marketplace and our ability to stop and deter undesirable practices and promote practices which foster confident and informed consumers.

We have therefore outlined in this part of the submission the techniques we are using. Because many of our activities cut across a number of industry sectors, we have not grouped strategies by industry sectors. However, given the interest that the Committee has traditionally had in superannuation we have included in Appendix C a separate list of all superannuation initiatives.

---

## ASIC's tools for results

Focusing on results and adopting a problem-solving approach means developing an organisational capacity for designing and implementing effective, creative, tailor-made solutions for each identified problem. These solutions must utilise a broad range of tools for procuring compliance and eliminating risks. They must also recognise the need to retain and enhance the agency's enforcement "sting", while using enforcement actions economically and within the context of coherent compliance strategies. (Sparrow, 1996, p7)

There will thus never be a definitive list of ASIC's tools for results. Innovative tools such as the recent "Yellow Pages Campaign", discussed below, will continue to be developed. That said, effective tools which we frequently rely on are listed in table 3.

Table 3

---

### Effective tools which ASIC frequently relies on include:

- developing policy and guidance about the laws administered by ASIC
  - licensing participants in the financial system to protect the interests of consumers and ensure market integrity
  - monitoring compliance and undertaking surveillance and compliance campaigns
  - enforcing the laws administered by ASIC
  - educating consumers about their rights and how to avoid problems
  - educating industry about its obligations
  - working with industry, consumers and governments to develop effective self-regulatory codes of conduct and dispute resolution schemes
  - providing comprehensive and accurate information on companies and corporate activity
-

---

# The infrastructure to deliver results

## Our approach

If we want to be successful in protecting consumers we need:

- trained and motivated staff;
- resources dedicated to consumer protection throughout the organisation;
- an internal champion to promote consumer protection perspectives; and
- a proactive compliance/surveillance capacity.

## Actions taken

### Adopting a learning and development strategy

A learning and development strategy was developed to ensure that ASIC staff had the necessary knowledge and skills to effectively carry out our new responsibilities. An organisational skills analysis identified the specific skills and knowledge required by staff members to perform the new functions. As a result, a 5 stage training process was put in place with the level of technical detail involved increasing with each stage and the audience for each stage becoming increasingly targeted. The strategy has to date involved 112 workshops which were delivered to over 390 staff. The stages were:

1. ASIC Induction (June–July 1998) (very general aimed at large numbers of staff)
2. The Financial Services Industry in Perspective. This stage involved 78 three hour workshops delivered nationally and separately covering 6 topics, Superannuation, Life Insurance, General Insurance, Banking/Non-Banking Financial Institutions and Consumer Protection. Videos of the workshops were made for later staff use.
3. Inside the Financial Services Industry in Detail. This stage covered Superannuation, Life Insurance, General Insurance, Consumer Protection and Banking in greater detail and involved 32 one day workshops.
4. Inside the Market and Beyond. This stage focuses on the specific product and industry knowledge required for those staff involved in the national campaigns being driven by the National Compliance Unit.
5. On-going and Self Directed Learning. This stage focuses on the ongoing provision of on-line information, links with professional associations within each industry & learning and development sessions on a needs basis, within the existing systems.

### Establishing specialist DISC teams

Each ASIC Regional Office has established a team to deal with matters relating to Deposit taking institutions, Insurance, Superannuation and Consumers (DISC). Existing staff are supplemented with staff hired in a national recruitment drive

where we sought to recruit industry, consumer and legal specialists. To date this has been extremely successful with staff acquired from, amongst other places, industry, consumer legal services and previous regulators.

The DISC teams are focussing their efforts on risk based targeting of enforcement and regulatory activities. In practice this means that each region is tasked on a monthly basis to identify risks and trends in that particular region. These risks and trends are derived from the number and types of complaints received, the types of matters the teams are actioning and other information that is obtained from liaison initiatives with each of the industry sectors and consumer groups. For example, the Queensland office has been focussing on illegal fundraising schemes referred to as High Yield Promotional Enterprises because of the high number of such scams directed at Queensland's retirees. Our emphasis is on moving quickly to protect investors' funds which are at risk — a "seize and freeze" approach.

The monthly reports from each region are reviewed by a group of senior DISC team members, as well as one of the Directors of the Office of Consumer Protection. The aim of the review group is to discern systemic risks and particular risks or trends that affect consumers.

### **Establishing the Office of Consumer Protection (OCP)**

The Commission wants to ensure that a consumer protection perspective is incorporated into all its activities, be they enforcement, compliance, education or policy work. To help it achieve this goal it established the Office of Consumer Protection which reports directly to the Commission. The Office is headed by Peter Kell, who was formally the Australian Consumers' Association's Senior Policy Officer for Financial Services and Delia Rickard who previously ran the Australian Competition and Consumers Commission's consumer protection branch for 5 years.

OCP's functions include:

- providing advice on consumer protection issues within ASIC, including strategic consumer protection advice to the Commission;
- identifying current and future consumer protection risks and developing effective strategies to deal with them;
- ensuring effective links between ASIC and key consumer stakeholders;
- ensuring ASIC's communications strategies adequately address the needs of consumers and are appropriately targeted; and
- overseeing ASIC's involvement with industry self-regulation schemes including alternative dispute resolution schemes and codes of conduct.

### **Forming the National Compliance Unit (NCU)**

The NCU was formed in June 1999 as part of ASIC's long-range plan to develop nationally consistent policies in compliance and surveillance. It facilitates strategic, focussed compliance and surveillance activities on a national basis to determine levels of compliance with existing laws and regulations through campaign-style activity. Outcomes from the national campaigns will include industry and

consumer education, policy development and enforcement referrals in the event of material breaches. The NCU's primary focus for its first 12 to 18 months will be on the entities newly regulated by ASIC including: superannuation, insurance and deposit-taking institutions.

The NCU is also developing nationally consistent policies for use throughout ASIC relating to both campaign and surveillance activities. NCU personnel, who have extensive compliance related experience in the financial services industry, also serve as compliance experts to ASIC's national and regional business units.

---

## **Strategically enforcing ASIC's legislation with a strong deterrent impact**

### **Our approach**

We can have a strong deterrent impact if we strategically enforce the law. We can do this if we:

- address contravening conduct using a remedy which is appropriate to the nature of the conduct and its consequences, particularly to address loss caused to consumers;
- effectively use resources by using selection criteria which are linked to our risk based assessment approach;
- take advantage of the results of enforcement action to maximise its deterrent impact; and
- improve investigative powers.

### **Actions taken**

#### **Responding appropriately with enforcement**

ASIC matches the level of our response to the seriousness of the offence, the outcomes sought and the competing demands on resources. This means that we use a variety of tools to deal with complaints ranging from warning letters to enforceable undertakings to administrative banning actions in some instances and civil or criminal court actions in others, or a combination of these remedies. Our enforcement goals typically involve a combination of:

- stopping the illegal conduct;
- ensuring consumer redress;
- deterring others from engaging in similar conduct;
- punishing wrongdoing; and
- removing dishonest operators from the marketplace.

Between 1 July 1998 and 31 December 1999 ASIC received 3487 financial services consumer protection complaints. In dealing with these we used the full range of the enforcement response levels available to ASIC. Appendix D breaks down these complaints statistics.

## Targeting enforcement resources appropriately

In the first year of our new functions we reviewed the vast majority of financial services consumer protection complaints received. In the longer term, however, we don't have the resources to continue to do this and nor do we think it's an effective use of our resources to review all complaints.

As a general rule, ASIC won't resource a complaint which can be effectively dealt with by an external dispute resolution scheme unless it is part of a systemic problem.

Other factors relevant to determining the priority given to a complaint include:

- the seriousness of the conduct involved;
- the detriment caused to consumers;
- the prevalence of the conduct;
- whether the consumers affected by the conduct are at a particular disadvantage; and
- whether we are likely to be able to prove a contravention of one of the laws which ASIC is responsible for.

## Examples of successful enforcement actions taken

While it would be too space consuming to set out details of all of ASIC's consumer protection enforcement actions over the last 18 months, some of the highlights or typical cases are described below.

### *Actions to improve the quality of investment advice: Westpac*

ASIC accepted an enforceable undertaking from Westpac Banking Corporation following an ASIC surveillance. ASIC considered that in its Advisory Services Guide (ASG) Westpac did not make the level of disclosure to retail investment customers that is required by the Corporations Law. Although Westpac had legal advice to the contrary, ASIC was concerned that Westpac did not adequately describe the extent to which remuneration of advisers was based on the value of the products and services recommended.

Arising out of what ASIC considered to be deficiencies in Westpac's training and supervision of advisers and planners, some instances were identified in the review where products recommended by advisers appeared to be inappropriate.

In the enforceable undertaking, Westpac undertook to:

- amend a number of its consumer disclosure documents and have them reviewed by a consumer consultant, including having them consumer tested;
- upgrade its compliance and engage an external independent consultant to review and report to ASIC on its compliance and training programs in the following 18 months; and

- contact all of its financial advice customers and inform them of ASIC's concerns through an ASIC approved notice in its newsletter and tell them how to bring a complaint in relation to any recommendation they received while the previous ASG was in place.

ASIC believes the action against Westpac will have a strong compliance impact throughout the industry. When announcing the result, ASIC's Chairman stated that:

As the financial sector consumer regulator ASIC will continue to actively monitor the activities of licensed securities dealers and investment advisers to ensure they comply with the law and we will take action to protect investors and generally improve compliance standards across the industry.

ASIC surveillance activities will continue to focus on these broader industry compliance issues which are not unique to Westpac.

### *Suncorp Metway Group Companies*

This action also arose as part ASIC's ongoing program of surveillance of banks and other financial institutions offering retail investment products and advice. Our surveillance of two Suncorp Metway subsidiaries showed that they had failed to comply with the Corporations Law and regulation and license conditions. Matters of concern to arise out of the surveillance included:

- some client files contained insufficient information to show that clients' investment objectives and needs were properly considered by its representatives;
- representatives gave limited financial advice to clients who sought full advice;
- representatives failed to record that they had disclosed to their clients the fees and commissions that were being charged;
- compliance systems and procedures were inadequate to ensure ongoing compliance with the Corporations Law and Regulations and its licence conditions; and
- procedures were not sufficient to ensure that representatives were adequately trained and supervised in relation to their duties.

ASIC accepted enforceable undertakings from the two subsidiaries. While the details of the undertakings vary between the two organisations, they include a requirement to review, assess and report on the implementation of measures over the next 18 months to ensure:

- the adequacy of the training and supervision of representatives and para planners;
- the content and disclosures contained in the advisory services guide;
- procedures for ensuring compliance with the "know your client" and "know your product" obligations of the law; and
- the compliance systems and procedures to ensure that retail customers receive the appropriate level of advice sought.



Under the undertakings samples of 200 customer files, where limited advice was provided, will also be reviewed to ensure this was appropriate in the specific circumstances of each customer.

At the time of announcing the results, ASIC also warned other market participants to have compliance systems and procedures in place to meet their legal obligations. ASIC noted that we will continue to actively focus our surveillance activities in 2000 on compliance with disclosure and conduct obligations to retail customers under the Law.

*Actions to protect vulnerable consumers: Aboriginal Community  
Benefit Fund Pty Ltd*

This company offered funeral funds and life insurance products under the name ACBF to Aboriginal consumers in remote communities. ASIC alleged that the sales involved conduct which was misleading, deceptive and unconscionable. Our investigations found that:

- the use of the Aboriginal flag as part of ACBF's logo led many Aboriginal consumers to incorrectly assume that they were connected with the Government or Aboriginal organisations;
- that products weren't adequately explained to consumers;
- that many of the consumers did not understand the concept of insurance and thought they could withdraw premiums when needed; and
- adults were deceived into buying additional policies for their children, believing that they were just signing documents which would enable their children to benefit from their policy.

The Commission obtained consent orders in this matter from the Federal Court. Among other things the orders required ACBF to:

- advise clients that they aren't connected with or supported by a government or Aboriginal organisation;
- remove the Aboriginal flag and words from marketing material;
- offer refunds to Aboriginal consumers in certain communities;
- adhere to specific conditions governing entry onto Aboriginal land; and
- establish a compliance program with ASIC which will govern the manner in which they will carry out future marketing and promotional activities.

*Actions to prevent misleading statements and conduct*

An example of an action of this type is another **Suncorp Metway** case. In the general insurance area ASIC has accepted an enforceable undertaking from Suncorp Metway Insurance Limited in relation to small print disclaimers used in Suncorp's promotion of home and car insurance. We objected to a series of newspaper and billboard advertisements which we considered likely to mislead or deceive consumers. Suncorp's billboards carried the bold message "Save up to \$115 on your home and car insurance". Only a small print footnote explained that the savings were calculated on Suncorp Metway's own average premiums and that

to get the promoted savings consumers had to have at least three Suncorp Metway insurance covers. ASIC alleged that the footnotes on the billboard advertisements were too small to be read by the passing motorists at which the advertisements were aimed.

The use of small print conditions is a perennial problem in many areas of advertising. ASIC will take action to ensure that financial services advertising is not misleading because of its use of such tactics. We are presently preparing a guideline for industry on the use of small print in promotional material.

#### ***Stopping unlicensed investment advice on the Internet: Chimes***

ASIC is beginning to see many of its traditional problems reappear on the Internet. Two areas of particular concern include providing unlicensed investment advice on the net and undertaking illegal fundraising schemes on the net. We have been active in taking legal action to prevent both types of activity. For example, in February 1999 ASIC obtained injunctive relief against the publisher of an Internet site, The Chimes Index, to prevent investment advice being provided in breach of the Corporations Law. The publisher, Stephen Mathews, operated a 'chat room' on which he posted reports about securities and allowed others to publish reports about securities. As he wasn't licensed to provide investment advice, the publication of such advice on his site breached the Corporations Law. Later in the year, ASIC brought 2 successful contempt actions against Mr Mathews for breaching the injunction.

#### ***Stopping illegal Cyber investment offers***

ASIC has also taken a number of actions to prevent illegal fundraising actions on the net. The mass communication available through the Internet means that such illegal fundraising schemes can potentially reach many more investors and cause considerably more harm than their more traditional counterparts.

Typical of ASIC's actions in this area is the enforceable undertaking received from Martin Leigh Davies-Roundhill to cease promoting an investment offer that was sent through Internet news groups to approximately 25,000 email sites. He sought to raise \$10 million but had not incorporated or issued a prospectus and was thus in breach of the fundraising provisions of the Corporations Law.

#### ***Actions against insurance agents and brokers who misuse clients funds***

Over the last 18 months ASIC has taken a number of actions against insurance agents and brokers who have misused clients funds. The following examples are typical.

In May 1999 we obtained orders in the Federal Court under Part 2 of the ASIC Act to prohibit David Young from engaging in further misleading and deceptive conduct in connection with the provision of financial services and we had his funds frozen. We alleged that he had misappropriated clients' superannuation rollover amounts because he didn't forward them into the funds specified by the

clients but placed them in a fund which he controlled. All funds were reimbursed to the clients involved.

In November 1999 a 15 month prison sentence was imposed on an Adelaide woman, who was a former director of an insurance broker, for misuse of insurance premium money.

#### *Actions to recover consumers' funds*

Over the last 18 months ASIC's enforcement action has retrieved many millions of dollars for consumers. For example, in the last financial year we recovered \$4.7 million that Australians would have lost in offshore scams, using our relationships with overseas authorities. Protecting consumers' funds is always a priority in our enforcement actions. We presently have a number of class actions afoot which are designed to achieve redress for consumers. For example:

- we have recently commenced a class action on behalf of a large number of people who invested in a bluegum plantation. In total, investors paid out close to \$3.5 million to participate in the scheme. ASIC alleges that the promoters made significant misleading statements overstating the profitability of the project. On the evidence available to ASIC we expect investors to suffer significant losses. We are seeking to have the contracts set aside and damages awarded to compensate consumers.
- In November we took action which resulted in \$US1.8 million being returned to Australian investors from bank accounts in the Caribbean. The illegal fundraising followed an investment seminar on the Gold Coast.

#### **Taking advantage of successful enforcement results to increase their deterrent impact**

We have increased the consumer angle of our media releases and where possible endeavoured to explain what consumers can learn from our cases as well as the compliance lessons for industry. In the coming year we plan to have more integrated compliance campaigns where we will time consumer education and compliance activities to coincide with relevant enforcement actions.

#### **Improving our investigative powers**

The additional legislation that ASIC became responsible for on 1 July 1998 carries separate regimes of investigative powers for each statute. This has been a brake on the effectiveness of ASIC's enforcement of provisions of this legislation, both because of the additional administrative burdens caused by dealing with numerous investigative regimes, and the fact that in most cases the investigative powers are piecemeal, and do not promote effective information gathering.

ASIC has made submissions to Treasury about these issues, which it is anticipating will be addressed in the proposed CLERP 6 Bill. This will lead to a marked improvement in ASIC's investigative efficiency. The investigative powers which would apply to all ASIC's investigations would be substantially those currently in the ASIC Act.

---

# Improving compliance with proactive compliance & surveillance campaigns

## Our approach

We want to see better compliance with the legislation and codes we administer. One way of improving compliance is to find out the extent that different industries are complying. If we know the areas of high risk we can educate consumers about avoiding problems and industry about compliance issues. We can also focus our preventative action in areas of high risk.

## Actions taken

### Targeting compliance campaigns at ensuring effective superannuation membership disclosure documents

Ensuring that consumers understand their membership disclosure documents which trustees are required to issue has always been important. In an era, however, where consumers are likely to be offered greater choice of super schemes it becomes more important than ever. ASIC therefore ran a superannuation campaign which examined disclosure documents provided to continuing members. We approached the review in three ways:

1. by way of on-site visits where we reviewed the compliance procedures used in producing the documents and general compliance procedures for trustee oversight of the production and complaints handling processes;
2. by assessing the documents in relation to the statutory requirements; and
3. by providing a sample of disclosure documents for consumer testing to examine the effectiveness of the communication.

The campaign was conducted in every State and Territory in Australia from 27 October to 1 December 1999. Sixty-seven trustees managing 91 funds were inspected. The funds inspected held almost \$20 million in assets for approximately 1.5 million members.

We found that the majority of the industry are doing the right thing on disclosure. Ninety-seven per cent of annual reports complied with all the mandatory disclosure requirements. There were, however, some concerns about non-compliance with member statements.

A second key finding of the campaign was that 81% of the reviewed funds outsourced fund administration, including preparation of member documents, to external service providers. We have stressed that it is essential that trustees put in place adequate procedures to review documents prepared by their service providers. Our campaign indicates that a significant percentage either do not review compliance arrangements regularly or have no review process at all.

The external consumer testing, which was conducted by Chant Link by way of focus groups, revealed a number of things which consumers consider to be important in continuing disclosure documents. These included:

- member choice as to whether or not each individual transaction is set out in the report;
- plain English terminology;
- percentage rate of return of the fund to be displayed clearly;
- contact telephone number for the fund to appear on the statement;
- complaint officer contact point within the fund administrator to be provided; and
- reference to the independent dispute resolution scheme and how to access it should be provided.

### **Seeking out people who are incorrectly holding themselves out to be registered insurance brokers**

Insurance brokers who are not registered may not have professional indemnity insurance to cover defalcations by the broker, and may not be part of an complaints resolution scheme. Both these things can disadvantage consumers who deal with unregistered brokers. When we acquired responsibility for registering insurance brokers we decided to start out by checking that those presently claiming to be registered are in fact registered.

To do this we ran a computer comparison between our records of registered brokers and those parties advertising themselves as brokers in the Yellow Pages telephone directory. We found over 300 people who held themselves out to be brokers but weren't registered with ASIC. ASIC wrote to all of these people requesting that they either provide a suitable explanation for their actions or else take immediate action to become registered. Once the letters were sent we visited nearly 100 of the people throughout the country to review their operations and to confirm the accuracy of their responses.

We also undertook a media campaign warning people of the importance of dealing with a registered broker and noting that among the benefits for consumers are that registered brokers must carry professional indemnity insurance and belong to an approved complaint resolution scheme.

A number of legal actions also arose from the campaign. In particular we obtained orders from the Federal Court restraining the proprietors of "Dandenong Insurance Brokers" from deceiving and misleading members of the public. We also took legal action against a firm which illegally promoted franchises in its insurance broking operations. A positive outcome of the campaign was that we found that very few people identified by the research were intentionally breaching the law. ASIC has now received a significant increase in the number of people wanting to register as a broker.

## **Avoiding the mis-selling of life insurance products (by ensuring compliance with life insurance conduct and disclosure requirements)**

In Australia's recent past there have been problems with inappropriate sales of life insurance products. These were expounded upon in the then Trade Practices Commission's 1992 report, *Life Insurance and Superannuation*. A number of reforms occurred in the mid 1990s designed to improve practices in this area, including the development of the *Code of Practice for Advising, Selling and Complaints Handling in the Life Insurance Industry*. Complaints still occur, however, about the mis-selling of life insurance policies, particularly disability products.

We are currently considering options for looking at compliance issues in relation to conduct and disclosure matters in the life insurance industry.

## **Undertaking a preliminary review of Internet banking sites**

We have undertaken a preliminary review of Internet banking sites which sell banking and other financial services products. The review looked at the websites of banks, building societies and credit unions operating in Australia and focussed on:

- the financial services that are promoted or offered through the individual sites; and
- how promotion and delivery by the institutions measures up against consumer protection standards.

---

# **Ensuring that consumers have access to appropriate protections**

## **Our approach**

We are keen to see that there are appropriate protections in the market for consumers. We expect the CLERP 6 reforms will improve the consumer protection regime once they are in place.

We are also wanting to improve the protection available for investors in real estate who receive financial advice and those who purchase time share accommodation.

## **Actions taken**

### **Taking appropriate action**

ASIC uses a variety of mechanisms to ensure that consumers have access to appropriate protection. We work with industry so that they can introduce both informal and formal self-regulatory protections. These are discussed in the sections below on self-regulation and alternative dispute resolution schemes. We also contribute to law reform initiatives such as the current Corporate Law Economic Reform Process. Sometimes we are asked to undertake the research which will lead to consideration of law reform initiatives, as is the case with our current work on

financial advice provided by real estate agents. Finally, we constantly review the rules/standards which ASIC administers to ensure that they provide appropriate levels of consumer protection as we are currently doing in respect of the time share industry.

### **Contributing to the CLERP 6 process**

We see the formation of ASIC as being only one part of the consumer protection reforms recommended by the Wallis Inquiry. A major part of that reform package is still to be delivered, notably the reforms being considered by the Government in the context of CLERP 6. These reforms give recognition to the realities of convergence and will facilitate real competition between different types of investment instruments by having consistent disclosure requirements. (ASIC's views on disclosure are discussed below in the section dealing with "Fostering effective and comparable disclosure regimes"). CLERP 6 is also likely to ensure that for the first time financial services consumers all have access to appropriate dispute resolution schemes when things go wrong. ASIC believes that this is essential.

### **Improving protections for real estate investors**

ASIC is presently conducting a review of the adequacy of regulatory arrangements for real estate agents who give financial advice to people intending to buy real estate. We have now released an interim report. It suggests that real estate agents who appear to make recommendations about the suitability of particular real estate investments for a particular investor should comply with similar regulatory requirements as investment advisers who give personal securities recommendations. The latter must make recommendations according to the particular needs and circumstances of the consumer and must disclose any commission or other benefit they may receive by making the recommendation. We believe this would be an important reform for retail investors who do not regularly deal with property.

### **Protecting time-share purchasers**

The time share industry is one where there have traditionally been numerous consumer protection problems. ASIC has recently issued a policy proposal paper seeking public comment on its proposals for how time-share schemes should be regulated under the new Managed Investments Act. The paper tries to strike the appropriate balance between consumer protection and regulatory costs. It provides for mandatory cooling off notices which allow consumers to reconsider their purchase and obtain a full refund of any money paid to promoters.

---

# Contributing to effective self-regulatory schemes

## Our approach

We believe that it is important that when we exercise our codes approval power we make sure that consumers enjoy high levels of protection but that unnecessary costs are not imposed on business. We will seek public comment when we are developing our policy on how we will exercise this approval role.

We monitor compliance with the Banking, Credit Union, Building Societies' and EFT Codes of Practice and follow up with the institutions where any problems occur. This should result in improved levels of consumer protection.

We participate in the general debate about making self-regulation work successfully for consumers and industry.

## Actions taken

Self-regulation can have the advantages that it is flexible and able to adapt quickly to change. It can thus provide timely consumer protection. It gives industry a sense of ownership over its rules and it can sometimes be a cheaper alternative to legislation.

That said, self-regulation can at times be inappropriate either because it is over or under regulation. It can be done well and poorly. At present there is an issue about the proliferation of self-regulatory schemes - both codes of conduct and dispute resolution schemes. ASIC believes that it is time for some rationalisation, especially in the dispute resolution area. We also believe that attention needs to be paid to whether issues are best dealt with on a functional or industry basis and that present gaps and overlaps between financial services self-regulatory schemes need to be addressed.

ASIC is concerned to ensure that in the financial services sector self-regulation is used in appropriate instances, that consistent, though not identical, standards apply and that the issue of proliferation is addressed. We recognise, however, the importance of industry commitment to self-regulatory schemes for them to work properly.

## Producing a policy statement on our codes approval role

ASIC is in the process of producing a draft policy statement on how we will exercise our codes approval role. This draft will be the subject of public consultation. Our aim is to ensure consistent standards in the processes for developing, promoting, reviewing and monitoring financial services industry codes and codes which effectively address the main consumer protection problems associated with the various industry sectors. Our policy will draw upon other work previously done in this area. Consistent standards does not mean identical standards. The draft policy statement will be released in the first quarter of 2000.



## **Exercising our codes approval role (in a manner which benefits consumers without imposing unnecessary costs on industry)**

The first exercise of ASIC's codes approval policy has been the request from the Insurance Council of Australia to approve amendments to its code of conduct. These amendments had been made following an independent review of the code by George Pooley. At the time of writing, ASIC was talking with the ICA about some remaining concerns we want addressed in the Code. We hope to have the approval finalised early in 2000. ASIC is also working informally with a number of other industry associations which are developing self-regulatory codes and dispute resolution schemes. These include the Australian Friendly Societies Association and the Mortgage Industry Association of Australia.

## **Monitoring compliance with the Banking, Credit Union, Building Society and EFT Codes of Conduct**

ASIC inherited this monitoring function from the Australian Payments System Council. With our first monitoring exercise we adopted an identical approach to that taken by the APSC, however, we will be reviewing our approach in future years. The report on the first monitoring exercise was released in January 2000. Results of the EFT Code monitoring have been influential in the present review of the EFT Code.

## **Contributing to reviews of the Banking, Credit Union and Building Society Codes of Conduct**

All of these codes are now due for review. In 1999 ASIC was active in working with credit unions in the design of their review. We have also been talking with the ABA about their review. We are concerned to see that the reviews are transparent, independent and have sufficiently broad terms of reference to consider all major consumer protection concerns in these areas. In 2000 we will be putting considerable effort into ASIC's own submissions to these reviews.

## **Contributing to the Inquiry into Industry Self-regulation**

ASIC has made a submission to the Inquiry into Self-regulation and is a member of the Advisory Committee to the Inquiry. In our submission we have stressed the message that the best self-regulation initiatives involve a collaborative partnership between industry, consumers and government.

## **Addressing issues about the proliferation of financial services codes and gaps and overlap issues**

ASIC has concerns about both the growing number of financial services codes and gaps and overlap issues. In many instances, these are not easy problems to resolve if industry is to retain its commitment to the codes. We are looking at the issues involved in an ongoing way, including through our forthcoming policy proposal paper on our Codes approval role.

---

# Ensuring consumers have access to effective dispute resolution schemes

## Our approach

We believe that dispute resolution schemes are an essential part of our consumer protection regime. We will use our powers to approve schemes to promote accessible, independent, fair, accountable, efficient and effective dispute resolution schemes throughout the financial services sector. We will guide consumers to appropriate schemes. At the same time we will work with the schemes themselves to help them function more effectively.

Similarly we will promote the effective resolution of superannuation complaints.

## Actions taken

### Releasing Policy Statement 139 on alternative resolution schemes

Section 12FA (2) of the ASIC Act sets out guidelines which ASIC must consider before it can approve a dispute resolution scheme. To assist schemes to understand how we will interpret these guidelines, and to help ensure that consumers and industry have confidence in the decisions made by alternative dispute resolution (ADR) schemes, ASIC has issued a policy statement which sets out standards for ADR schemes in the financial sector. The guidelines cover basic consumer issues such as:

- the independence of schemes;
- wide coverage so that most consumer complaints can be heard by schemes;
- low cost access to schemes by consumers;
- effective reporting by schemes of complaints trends and problems;
- adequate public promotion of schemes; and
- regular independent reviews of how each scheme is operating.

The development of the guidelines involved several stages and intensive consultation with the ADR schemes, consumer groups, government and industry. The result, ASIC believes, is guidelines which will help ensure high quality consistent, though not identical, standards between schemes.

To date ASIC has approved:

- the Financial Industry Complaints Service (previously the Life Insurance Complaints Service); and
- the Financial Services Complaints Resolution Scheme.

These two schemes have now announced their intentions to merge.

We are presently considering a number of other applications.

## **Establishing the Financial Complaints Referral Centre**

The Wallis Inquiry expressed concerns that the proliferation of financial services alternative dispute resolution schemes could lead to confusion for consumers in identifying the correct scheme to complain to. To address this perceived problem ASIC, in conjunction with complaints resolution schemes for banking, life and general insurance, superannuation and investment advising established the Financial Complaints Referral Centre. The Centre is contactable nationally on a 1300 number for the cost of a local call. It refers consumers who do not know where to go to get a complaint resolved to the relevant complaints scheme. The trial of the service has been extended to February 2,000. Last financial year it received 5,739 calls compared with 1,642 from February to 30 June 1998. From 1 July to 31 of December 1999 it took 1888 calls.

## **Chairing the Complaints Schemes Roundtable**

ASIC chairs the quarterly Complaints Schemes Roundtable (CSR) which brings together the managers of all schemes and two consumer representatives. The aims of the Roundtable are to share knowledge and experience about how best to deliver effective and efficient ADR schemes and to consider common problems.

The members of the Complaints Scheme Roundtable are currently undertaking two projects, which will be coordinated by ASIC. The first is a comparative survey of the information collected by schemes about complaints and complainants, which will allow a better understanding of how such information can be most effectively gathered and used. The second, currently under development, is a comparative survey of the assistance that is provided to complainants by schemes, such as assistance provided to complainants with English as a second language.

## **Working with the Superannuation Complaints Tribunal**

ASIC has established a Memorandum of Understanding with the SCT, which includes arrangements for the referral of matters that may require ASIC to consider enforcement action. ASIC looks forward to continuing a productive relationship with the SCT under its new Chairperson.

ASIC has formal administrative responsibility for the SCT budget. The SCT is currently costing more to operate than was provided to ASIC by way of budgetary allocation as part of the restructuring of financial regulators in July 1998.

Due to the recent 1999 High Court decision, the SCT can again deal with the full range of superannuation disputes, and has a significant backlog of disputes to consider. This decision was a very positive outcome for superannuation fund members, but it has not surprisingly contributed to budgetary pressures at the SCT.

## **Addressing issues about the proliferation of schemes and gaps and overlaps issues.**

As part of our consumer protection regulatory role, ASIC will seek to ensure that the ADR sector works well for consumers and industry members. ASIC believes that the current proliferation of ADR schemes in the finance sector is not in the

interests of either industry or consumers. Sensible rationalisation will help to drive down overall costs for industry, improve scheme standards, facilitate the consistent treatment of similar products and services, reduce consumer confusion, and reduce regulator costs.

It should be pointed out that ASIC is not at this time advocating a single finance sector ombudsman or ADR scheme. There are several possible models for rationalisation in the ADR area, and we are seeking to encourage discussion of this issue without advocating a particular framework.

At a more practical level, wherever possible ASIC is also facilitating such rationalisation. ASIC welcomed the recently announced merger of the Financial Industry Complaints Scheme (FICS) and the Financial Services Complaints Resolution Scheme (FSCRS). In this case ASIC will assist the transition to a single scheme by, for example, providing relief to financial advisers who may still list the FSCRS in their printed advisory services guides as long as the FSCRS telephone number connects consumers to the merged scheme.

---

## **Fostering effective and comparable disclosure regimes so that consumers can make informed choices**

### **Our approach**

We want to see improved and simplified disclosure to consumers, particularly so that comparisons are possible between like products and so that more informed choices can be made. We note that the CLERP 6 reform process is looking at the issues of simplified disclosures, comprehensibility and comparability.

### **Actions taken**

#### **ASIC and ASFA Joint Project on Simplified Superannuation Disclosure**

ASIC is in the process of discussing with ASFA (the Association of Superannuation Funds of Australia) a proposal to investigate simplified disclosure for superannuation funds. Any eventual project would focus on improving disclosure in 4 key areas:

- fees and charges;
- risks;
- investment performance; and
- the nature of the product.

It would also involve consumer testing these elements of disclosure to determine effective communications methods. ASIC believes that the project would discern whether simplified disclosure in these key areas enables members to better understand their superannuation fund and to make a comparative choice between

superannuation funds. The ultimate regulatory impact of this project cannot be predicted with certainty at this stage as it will depend upon the progress of the current legislative reform program, including the CLERP and Choice of Fund reforms.

### **Contributing to formulation and drafting of CLERP 6**

In April 1999 ASIC made a comprehensive submission to Treasury in response to Treasury's Consultation Paper on "Implementing CLERP 6". A critical aspect of ASIC's submission is its call for the same disclosure regime to apply to superannuation, managed investments, and life insurance with an investment component. These three areas are functionally convergent and consumers particularly need to be able to make relevant comparisons between these types of products.

### **Improving disclosure in the general insurance industry (especially in problem areas such as flood insurance and consumer credit insurance)**

Consumer concerns have arisen with flood insurance because of problems with disclosure about the cover provided and excluded. Terminology used in insurance policies is not always consistent and the definitions themselves can be difficult for consumers to understand. While the industry itself is seeking to promote better consumer protection through plain language drafting, ASIC is also exploring initiatives to reduce the problems associated with flood insurance.

ASIC has recently completed a survey of insurers who underwrite consumer credit insurance to ascertain whether problems resulting from selling via distant agents are continuing to adversely affect consumers. Once the data is analysed, ASIC will, in consultation with the industry, consider the need to continue the survey and whether there is a need to address any continuing problems through improved disclosure and competency standards.

### **Facilitating debate about disclosing bank fees**

Disclosure of fees was the main area of complaints under both the Banking and Building Society Codes in last year of monitoring. The Chant Link research undertaken for ASIC, and discussed above, also raises fee disclosure as one of the main consumer protection issues in the financial services sector. To facilitate debate on the issue, ASIC is planning to hold a forum of interested parties, including consumer, industry and government representatives, in the first half of 2000, to discuss whether there is a need for improvements in fee disclosure and, if so, how this can be done incrementally.

---

## **Identifying and addressing the particular needs of vulnerable consumers**

### **Our approach**

We know that some consumers are particularly vulnerable to scams and other misleading, deceptive and fraudulent practices. Some consumers are also less well equipped to make even basic purchasing decisions about financial services. We are approaching this problem from several directions, such as enforcing the law against people who operate these practices and warning consumers at the same time. We are also conducting further research into the needs of these people. One expected outcome is improved educational resources for some vulnerable groups.

### **Actions taken**

#### **Identifying the needs of vulnerable consumers**

As noted, ASIC will be undertaking research in 2000 to identify the needs of particular groups of disadvantaged and vulnerable consumers.

#### **Addressing the needs of vulnerable consumers**

The nature of our projects will depend on the outcomes of our research into their needs

#### **Vigilantly enforcing ASIC laws where their breach impacts on vulnerable consumers**

Matters involving disadvantaged consumers are an important priority for ASIC. The Aboriginal Community Benefit Fund Pty Ltd matter (discussed above) is one example of an ASIC case which seeks to protect the interests of vulnerable consumers. Many of ASIC's more routine cases involving investment scams, dishonest insurance brokers or investment advisers are also important to protecting the needs of vulnerable consumers, particularly retirees.

---

## **Protecting consumers using new technologies**

### **Our approach**

Australian consumers and markets need a financial services e-commerce environment where consumers are confident using new technologies and taking advantage of the benefits they offer.

We are taking a coordinated approach in dealing with e-commerce matters. We are working with consumers and industry to develop new standards and codes which protect consumers but do not hinder the use of existing and future technology. At the same time we are educating consumers about the services available and telling

them how to avoid possible problems or unexpected results. We are taking advantage of new technology and working collaboratively with other organisations to develop and distribute our educational materials.

We are also developing a visible and effective enforcement presence.

## **Actions taken**

### **Coordinating e-commerce**

Coordination is essential in this rapidly evolving area if potential regulatory issues and solutions are to be identified in a timely way; duplication of effort avoided and a consistent approach taken across the organisation. To achieve this objective we have implemented a number of strategies:

- we have an e-commerce coordination group which meets bimonthly, is chaired by Commissioner Segal and involves senior staff from all areas within ASIC which deal with e-commerce matters
- we have established 7 principles to guide our e-commerce work. These principles are consistent with the Government's approach in this area and are set out in Appendix E. They include the principle that "ASIC will seek to ensure that consumers using electronic commerce have at least the same levels of protection as are provided by the laws and practices that apply to existing forms of commerce".
- We participate in a Government coordination group led by the Consumer Affairs Division in Treasury and involving NOIE, the ACCC, Treasury's Financial Markets Division and ourselves.

### **Expanding the EFT Code**

The EFT Code of Conduct is a voluntary self-regulatory Code which provides consumers undertaking ATM and EFTPOS transactions with important consumer protections. All Australian financial institutions that provide their customers with cards and pins for ATM and EFTPOS transactions are parties to the Code. The Treasurer asked ASIC to form a working group to look at expanding the Code to cover all forms of electronic funds transfers. ASIC has now established this group. It consists of industry, consumer, government and specialist members. The group has established in April 1999 and has now completed two discussion papers looking at how best to expand the code to cover all EFT transactions including Internet and telephone banking and stored value products. The Code covers such issues as liability for unauthorised transactions, disclosure, privacy and the right to redeem electronic value. It is hoped that the expanded code will be finalised in the first half of this year.

### **Studying online broking**

The past two years have seen extraordinary growth in the extent of online broking activity in Australia. This growth has primarily been fuelled by a substantial increase in the number of "retail" investors in Australia as a result of demutualisations and privatisations and public floats and the discounted broking

fees offered by some online brokers. To assess the implications of this trend for ASIC we are undertaking a major study on online broking.

We have also issued a “Consumer Alert” on online broking which aimed to educate consumers using these services about how they work and how to take basic steps to protect their interests. We have consumer education material on this topic available on our web site ([www.asic.gov.au](http://www.asic.gov.au)).

## **Educating consumers**

ASIC has undertaken a number of educational initiatives designed to:

- educate consumers about electronic commerce and how to take advantage of its benefits; and
- assist consumers avoid being ripped off by Internet based scams.

These initiatives include numerous public speaking engagements and media interviews. Among the more high profile of our initiatives have been:

### ***ASIC’s millennium bug insurance scam***

This project involved us in setting up a fake Internet site which claimed that people could triple their money in 15 months if they invested in Swiss Millennium Bug Insurance (SMBI). SMBI insured companies against losses caused by the millennium bug. Investors could invest in \$10,000 and \$50,000 packages. In developing the proposal we worked collaboratively with the Internet industry. At the time the site was revealed 233 investors had pledged \$4 million; there had been 10,200 visitors to the site; 1212 people asked for more information. Once it was revealed we sent emails to all those who asked for information or pledged funds explaining why we ran the scam and what steps investors can take to protect themselves from similar scams in the future. ASIC was awarded the Public Relations Institute of Australia “Golden Target Award” for the success of the campaign. As part of the campaign, we set up a new Web page telling people about our free Internet searches and how they can do the searches. We got 2,736 hits in two weeks. The goals of the project included:

- conducting an investor education campaign about investing on the Internet, warning people about possible fraud;
- telling consumers about the basic Internet safety checks they should do before investing, including free searches on our website;
- increasing investor awareness of the information offered on our website and that they can complain to ASIC if they know of financial scams on the Internet; and
- increasing investor awareness of the different ways people can lose their money through shonky Internet schemes.

### ***The Gull Awards***

We have also started a new page on our website called the Gull awards. It is a collection of true stories about outrageous financial scams. Each month the best



Gull wins a Gull of the month award. The monthly award helps us to get ongoing publicity to educate people about the scams which are around.

### *Consumer Alerts*

The Commission has a series of “Consumer Alerts” planned dealing with online consumer protection issues. In addition to the alert on online broking, which has already been issued, future alert topics will include warnings about spam scams, acting on chat room/bulletin board investment advice and an educational alert about your rights under the EFT Code.

### *New consumer website*

ASIC is currently planning a new consumer website. This is discussed below in “Better Educated Consumers” under the “Actions taken” subheading.

## **Establishing an Electronic Enforcement Unit**

The challenges posed by the Internet for ASIC and law enforcement generally are substantial. They include:

- the borderless global nature of transactions;
- the affordability and accessibility of the system;
- the anonymous nature of the technology;
- the use of cryptography;
- the immediacy with which transactions can be conducted; and
- the lack of collateral information (eg fingerprints or eye witness ID)

History has shown that criminals are early adopters of technology with law enforcement lagging behind. ASIC believes that regulators must harness new technologies themselves for use in detecting and prosecuting offenders. To assist us in doing this we have recently created an Electronic Enforcement Unit which will extend and develop the enforcement work that has previously been commenced. Staffed by technical, legal and investigative personnel the unit:

- has developed software to enable automation of Internet surveillance and has integrated this with ASIC’s information systems. The system can currently scan around 1 million .com.au web pages per night. Based on the profile for suspicious sites we have developed it usually turns up around 200 new sites per night which may require further investigation.
- is developing a comprehensive legal precedent package for electronic enforcement matters;
- supports the research being undertaken by the Heads of Commonwealth Law Enforcement Agencies (HOCOLEA);
- looks for collaborative partnerships with financial markets;
- provides a framework for forensic computing and e-enforcement within ASIC;

- trains other ASIC staff on the basics of Internet enforcement;
- conducts e-enforcement and litigation of significant matters on behalf of ASIC; and
- contributes to ASIC's broader consumer education efforts.

ASIC has already run a number of successful e-commerce enforcement actions dealing with providing unlicensed investment advice over the Internet and illegal fundraising over the net. Examples of these actions are discussed in the section above dealing with enforcement.

### **Working on Internet industry partnerships**

The Internet service provider (ISP) industry has grown extremely rapidly over the past few years. In August 1995 there were approximately 60 ISPs while there were over 700 in 1998. ASIC research has revealed the business and corporate inexperience of the fledging industry. Such inexperience has the potential to cause major consumer protection problems. ASIC has commenced working on partnership arrangements with the Internet Industry Association to assist the industry body to improve standards of corporate governance and conduct and ultimately assist in protecting consumers.

### **Contributing to effective e-commerce standards**

ASIC is participating in a number of exercises aimed at creating effective consumer protection standards for consumers using electronic commerce. In particular:

- Minister Hockey's Experts Group on E-commerce is developing a Best Practice Model for Business involved in e-commerce. ASIC is a member of the Advisory Group which is helping Treasury and the Experts group to develop the Best Practice Model.
- We also provided comments on a number of drafts of the OECD Guidelines on E-commerce.
- We are working with the Internet Industry Association (IIA) to help them develop a financial services module for their Internet Industry Code of Practice.

### **Developing guidelines for comparing shopping services**

More and more services are appearing on the Internet which enable consumers to compare the cost of various financial services. While we recognise the potential benefits of such services for consumers we are concerned that there is inadequate disclosure on many of these sites. For example, there is no requirement to compare all of the products available or to disclose the limits of the comparisons made. There are also no requirements to disclose links the service provider may have with the companies offering the products involved with the survey. In 2000, we aim to work with the industry to improve disclosure standards in this area.

## **Reviewing ASIC policies to ensure they aren't unnecessarily paper based**

We have recently granted relief from the paper based requirements under the life insurance disclosure regime to enable telemarketing and electronic completion of applications under alternative requirements that ensure the same level of consumer protection as provided through paper based requirements.

---

## **Better educated consumers**

### **Our approach**

We are adopting a comprehensive education strategy which addresses the different needs of consumers at various times. We want our advice to consumers to be easily accessible, particularly when they are making investment decisions and choosing services. As a priority we have developed material which help consumers choose a financial adviser and understand their superannuation investments. At a broader level all consumers need to be made aware of problems associated with the numerous scams that will be offered to them, often unexpectedly.

### **Actions taken**

#### **Developing a comprehensive consumer education strategy**

As noted above, we have now had conducted the basic research which tells us what consumer education materials are currently available in Australia, where the gaps are and what consumers want more information about. We are presently developing a comprehensive consumer education strategy based upon the findings of that research and other sources. The strategy will be particularly careful to ensure that any projects are appropriately targeted and delivered through the most appropriate affordable medium. Where desirable we will look at forming collaborative partnerships with industry, consumer organisations or other areas of government.

#### **Redeveloping ASIC's website to better cater to the needs of consumers**

A new separate website for consumers will be part of our upgraded Internet site to be launched next March. ASIC has undertaken research into what consumers want and need and hopes to meet some of those needs with a site which will, among other things, have tools to help consumers make better informed investment decisions.

We have also recently launched a new Internet service for consumers called "Listening to ASIC can save you money". This service brings together consumer alerts and tips about finance and investing. Topics covered on it include superannuation, shares, insurance, the Internet, managed investments, rural investment schemes, scams and illegal schemes.

## **Developing online data base of consumer education material**

As noted above, ASIC is presently developing an online data base which consumers will be able to access to tell them about what consumer education material is available throughout Australia on topics which they are interested in. We are doing this in conjunction with the Securities Institute of Australia. The data base will include educational material on banking, superannuation, life and general insurance, shares and other financial services topics.

## **Operating Infoline**

Infoline is our principal call centre for regulatory and enforcement activities. It received 104,000 calls in the 1998-99 financial year from consumers with inquiries and complaints and businesses. This was a 17% increase on the previous year with the major proportion of this increase due to managed investments and superannuation and insurance matters. 91% of calls were dealt with on the spot. This freed our enforcement and regulatory staff to deal with more complex matters. Infoline employs 13 staff.

## **Conducting investor forums**

Over the last 18 months ASIC's Chairman has held a series of public meetings around Australia. These meetings were promoted through the local media and anyone who was interested was invited to attend to hear the Chairman discussing basic advice for investing and common problems to avoid. At each of these meetings the audience also had the chance to ask questions. They were well attended and the feedback on them very positive.

## **Making staff available for the public to talk with**

In addition to the investor forums ASIC staff at the regional and national level regularly talk to community groups, groups of retirees and others about basic consumer protection issues associated with financial services. ASIC staff also do a large number of radio interviews, many of which involve talk-back.

## **Holding ad hoc public seminars**

A recent ASIC initiative has been a series of ad hoc public seminars, ASIC Speaks, which provide business with the information they want, including about consumer protection issues. In 2000 some seminars will also be targeted at consumer representatives.

## **Issuing timely warning to consumers**

ASIC has developed a number of mechanisms for delivering timely warnings to consumers about scams and other problems. These include:

- **consumer alerts** which we put out as press releases warning consumers about problems or educating them about commonly misunderstood areas. One recent alert dealt with margin lending. Alerts are sometimes

associated with broader campaigns such as ASIC's "cold calling campaign" in 1999 which warned consumers about unlicensed people "cold calling" from overseas offering often scam investment opportunities.

- **media releases** ASIC also provides warnings generally through its media releases. The monthly Gull awards discussed above receive wide coverage and act as a warning device about currently operating scams.

### **Releasing publications addressing common consumer protection concerns**

ASIC produces a range of consumer education publications. We have published a book, *Scams and Swindlers*, for consumers on how to avoid investment disasters. As discussed above, we have also recently published a consumer superannuation guide *Super decisions*, and a completely revised edition of *Don't Kiss your Money Goodbye* on how to choose a financial adviser.

---

## **Improving quality of advice**

### **Our approach**

Consumers get better quality advice when advisers.

- undertake needs analysis;
- meet disclosure requirements; and
- meet high competency and training levels.

### **Actions taken**

#### **Promoting higher standards in investment advisory services**

ASIC's Good Advice Project involved ASIC working extremely closely with industry and consumers to promote higher standards in investment advisory services. While the majority of work on the project occurred prior to July 1998, the regulations implementing some of the proposals didn't come into effect until August 1998. The project culminated in key consumer protection measures such as the Advisory Services Guide, warnings where general advice is given or where a full client's needs analysis is not undertaken and requirements for internal and external complaints resolution standards. The CLERP 6 proposals have now adopted these standards across the financial services industry.

#### **Setting minimum training standards for authorised representatives**

ASIC has released an Interim Policy Statement outlining minimum standards for the training of authorised representatives by licensees and principals. The policy will apply to securities and futures licensees currently regulated under the Corporations Law and to life insurance companies and life brokers regulated under the relevant insurance legislation and the Code of Practice for Advising, Selling and

Complaints Handling in the Life Insurance Industry (principals). It will also apply to other licensed persons if the CLERP 6 proposals are enacted.

The guidelines require representatives to possess knowledge, skills and integrity at an appropriate level. Various training programs have been assessed as meeting ASIC's requirements. The requirements also include a continuing education component. As licensees and principals upgrade their representatives' standard of training, consumers will be more confident that they will be provided with professional financial services by capable staff.

---

## **Promoting global consumer protection standards and cooperation**

### **Our approach**

We are cooperating with overseas regulators to ensure that jurisdictional issues don't enable misleading and fraudulent practices against consumers to flourish or crooks to go unstopped. We believe that by working with them we can help set appropriate and consistent international protections for consumers conducting transborder transactions. At the same time we are helping other nations to improve their consumer protection regimes.

### **Actions taken**

#### **Contributing to the development of international standards**

ASIC contributes to the development of relevant international standards where the opportunity arises. We have recently provided comments on the development of the OECD Guidelines for E-Commerce.

#### **Providing mutual assistance to overseas regulators**

As discussed above, in dealing with matters, including consumer protection issues, with an international counterpart, ASIC is able to obtain information and assistance for overseas regulators, and provides similar help to overseas regulators when required. The *Mutual Assistance in Business Regulation Act 1992* (Cth) allows ASIC to provide assistance to foreign business regulators. Many international regulators have similar powers which they will invoke in order to assist ASIC in carrying out our functions. We have also signed Memorandum of Understanding (MOUs) with 22 overseas regulators and we are currently negotiating additional MOUs, including in the consumer protection area.

#### **Hosting the Directors of Enforcement Workshop**

In December 1999 ASIC hosted a workshop for Directors of Enforcement Divisions of securities regulators. It was attended by representatives of securities regulators in the US, UK, Hong Kong, Singapore, Ontario, Malaysia and New

Zealand. The focus of the workshop was practical issues facing regulators in undertaking their enforcement activities. Discussions were held on a selection of matters for investigation, management of the enforcement process, enforcement of electronic activities and infrastructure issues such as document control.

### **Assisting South Africa in developing its financial services consumer protection**

Peter Kell from the Office of Consumer Protection attended a workshop in Brussels in November 1998 dealing with the development of a consumer protection regime for the South African finance sector. This was hosted by the South African Department of Trade and Industry.

# Contents

<b>OVERVIEW.....</b>	<b>3</b>
<b>EXECUTIVE SUMMARY .....</b>	<b>4</b>
<b>PART 1</b>	
<b>ASIC and its consumer protection role.....</b>	<b>8</b>
<b>PART 2</b>	
<b>Adopting a risk based integrated compliance approach .....</b>	<b>14</b>
<b>PART 3</b>	
<b>Engaging in collaborative partnerships .....</b>	<b>20</b>
<b>PART 4</b>	
<b>Focusing on results.....</b>	<b>30</b>
<b>PART 5</b>	
<b>Appendices</b>	
A    ASIC’s consumer role by regulatory mechanism.....	63
B    Members of the Consumer Advisory Panel.....	66
C    ASIC’s work in the superannuation area .....	67
D    Graphs: categories of complaints .....	74
E    ASIC’s electronic commerce principles.....	77



## Appendices

<b>APPENDIX A</b> .....	<b>63</b>
ASIC's consumer role by regulatory mechanism .....	63
<b>APPENDIX B</b> .....	<b>66</b>
Members of the Consumer Advisory Panel .....	66
<b>APPENDIX C</b> .....	<b>67</b>
ASIC's work in the superannuation area.....	67
Introduction.....	67
Compliance and enforcement .....	67
Superannuation fund disclosure.....	68
Securities licensing .....	70
Complaints resolution.....	71
Information dissemination .....	71
Learning from the UK experience.....	72
<b>APPENDIX D</b> .....	<b>74</b>
Graphs: categories of complaints .....	74
Graph 1 Top 8 complaint categories by quarter .....	74
Graph 2 New complaint categories .....	74
<b>APPENDIX E</b> .....	<b>77</b>
ASIC's electronic commerce principles .....	77
<b>REFERENCES</b> .....	<b>78</b>

# Appendix A

## ASIC's consumer role by regulatory mechanism

Regulatory mechanism	Financial product	Legislation/regulation code/policy/instrument
Product disclosure	Securities (shares, debentures and prescribed interests) and futures	Corporations Law: prospectus provisions, periodic and continuous reporting: Parts 3.6, 7.11 and 7.12); Chapter 8 for futures.
	Life and General Insurance	Life Insurance: ISC Circular G.I.1 (refer also to the Life Insurance Code of Practice, eg same day sales).
		Life and general insurance: Insurance Contracts Act and Regulations, eg consumers must be clearly informed about unusual contractual terms.
	Superannuation	Some provisions of the Superannuation Industry (Supervision) Act (and corresponding Regulations).
		The ISC Section 153 Determination ISC Circular G.I.1
	Retirement Savings Accounts	Some provisions of the retirement Savings Accounts Act (and corresponding Regulations).
	Deposit-taking activities	Code of Banking Practice, Credit Union Code of Practice, Building Society Code of Practice and Electronic Funds Transfer Code of Practice.
Interest in a friendly society benefit fund.	Corporations Law - Schedule 4 Part 6. Continued application of fundraising provisions of the Friendly Societies code and related AFIC standards (to be read in conjunction with ASIC relief)	
Intermediary	Securities (shares, debentures and prescribed interests) and futures	Licensing of principles; responsibility of principles for their representatives; various ongoing obligations on licensees and representatives: Parts 7.3 to 7.7; Good Advice Handbook; Chapter 8.
	Life and General Insurance	Registration of insurance brokers and foreign agents under the Insurance (Agents and Brokers) Act and Regulations; responsibility of insurers for their employees and agents.
	Superannuation	Corporations Law and Regulations (where superannuation interest does not arise out of a life policy).
		Insurance (Agents and Brokers) Act and Regulations (where superannuation interest arises out of a life policy).
Retirement Savings Accounts	Not applicable	

<b>Regulatory mechanism</b>	<b>Financial product</b>	<b>Legislation/regulation code/policy/instrument</b>
Intermediary (cont)	Deposit-taking activities	Not applicable
	Interest in a friendly society benefit fund	Corporations Regulation 7.3.13(3), 7.3.13A, 7.3.13B and 7.3.13C applying certain Corporations Law provisions in relation to representatives of friendly societies, to be read in conjunction with ASIC relief.
Conduct	Securities, futures, life and general insurance, superannuation, retirement savings accounts, deposit-taking activities and interests in a friendly society benefit fund.	ASIC Act - contains provisions modelled on the consumer protection and unconscionable conduct provisions of the Trade Practices Act - these apply in relation to the provision of financial services, ie the provision of financial products and the provision of services in relation to financial products
	Securities and futures	Corporations Law (various provisions, including section 995 - misleading or deceptive conduct and section 1078 - securities hawking)
	Life and General Insurance	Life companies and life brokers - ISC Circular G.II.1 (Life Insurance Code of Practice).
		Insurance (Agents and Brokers) Act.
		Various provisions of the Life Insurance Act (eg unclaimed monies).
		General Insurers: Section 113 of the Insurance Act (compliance with approved codes).  Note also the General Insurance Code of Practice and the General Insurance Brokers' Code of Practice.
	Superannuation	Some provisions of the Superannuation Industry (Supervision) Act (and corresponding Regulations).
		ISC Circular G.II.1 - The Life Insurance Code of Practice - Life companies and life brokers.
Retirement Savings Accounts	Some provisions of the Retirement Savings Accounts Act (and corresponding Regulations).	
Deposit-taking activities	Code of Banking Practice, Credit Union Code of Practice, Building Society Code of Practice and Electronic Funds Transfer Code of Practice.	
Interest in a friendly society benefit fund	Some provisions of the Corporations Law (pursuant to Corporations Regulation 7.3.13B)  A draft Code of Practice developed by the Australian Friendly Societies Association is being reviewed by ASIC.	
Investment Management	Securities (Prescribed Interests)	Corporations Law and Regulations: Division 5 of Part 7.12  Managed Investments legislation.

<b>Regulatory mechanism</b>	<b>Financial product</b>	<b>Legislation/regulation code/policy/instrument</b>
Investment Management (cont)	Interest in a friendly society benefit fund	Corporations Regulation 5C.11.01 exempts approved benefit funds from Managed Investments Legislation.
Complaints Resolution	Securities (shares, debentures and prescribed interests) and futures	Refer to ASIC Policy Statement 121 (note forthcoming amendments to the Corporations Regulations).
	Life and General Insurance	Life companies and life brokers: ISC Circular G.II.1 - Life Insurance Code of Practice.  General Insurers: Section 113 of the Insurance Act (note also the General Insurance Code of Practice).  General Insurance Brokers: Insurance (Agents and Brokers Act) (note also the General Insurance Brokers' Code of Practice).
	Superannuation	Superannuation (Resolution of Complaints) Act and Regulations.  Some provisions of the Superannuation Industry (Supervision) Act (and corresponding Regulations).
	Retirement Savings Accounts	Superannuation (Resolution of Complaints) Act and Regulations.  Some provisions of the Retirement Savings Accounts Act (and corresponding Regulations).
	Deposit-taking activities	Code of Banking Practice, Credit Union Code of Practice, Building Society Code of Practice and Electronic Funds Transfer Code of Practice.
	Interest in a friendly society benefit fund	The Australian Friendly Societies Association is presently discussing with ASIC whether to have its own complaints resolution scheme or to join an existing scheme.

# Appendix B

## Members of the Consumer Advisory Panel

<b>Name</b>	<b>Title</b>	<b>Organisation</b>
Barbara Cail AM	Chair	RALA Information Services
Ray Trestrail	National President	Association of Independent Retirees
Dan Coyne	Financial Services Policy Officer	Australian Consumers' Association
Ray Bricknell	National President	Australian Investors' Association
Gerard Thomas	Policy Officer	Australian Pensioners and Superannuants' Federation
Ted Rofe	Chairman	Australian Shareholders' Association
Cassandra Williams	Manager, Research Services	CANNEX
Jenni Mack		Consumers' Federation of Australia
Chris Connolly	Director	Financial Services Consumer Policy Centre
Gordon Renouf	Director	North Australian Aboriginal Legal Aid Service

# Appendix C

## ASIC's work in the superannuation area

### Introduction

1. The regulation of superannuation is split between ASIC and APRA:
  - ASIC is responsible for consumer protection and market integrity issues in relation to superannuation. ASIC's role relates to regulating the relationship between superannuation intermediaries (including the trustee) and consumers (ie superannuation fund members).
  - APRA is responsible for prudential regulation. APRA's role relates to regulating the management of the superannuation trust fund as a whole.
2. Our responsibilities in relation to superannuation encompass:
  - **Compliance and enforcement** - monitoring compliance and taking action in cases of fraud or contraventions of the law.
  - **Superannuation Fund Disclosure** - administering the law relating to the disclosure of information to superannuation scheme members and seeking to improve disclosure.
  - **Securities Licensing** - administering the licensing provisions of the Corporations Law - this includes licensing trustees of public offer funds.
  - **Complaints Resolution** - ensuring that superannuation intermediaries who provide investment advisory services are subject to an external complaints resolution scheme. It also involves providing administrative support to the Superannuation Complaints Tribunal.
  - **Information Dissemination** - providing information with a view to assisting consumers in making informed decisions about superannuation and to assist industry in complying with their legal responsibilities. The ATO has primary responsibility for educational issues dealing with Super Choice.

### Compliance and enforcement

3. We monitor compliance with:
  - those provisions of the SIS Act and the RSA Act that are within ASIC's responsibility (eg the conduct requirements in Part 19);
  - those provisions of the Corporations Law that impact on superannuation (eg the securities licensing provisions and company law requirements applying to all companies, including body corporate superannuation trustees);

- the consumer protection provisions of the ASIC Act (these are modelled on the consumer protection provisions of the Trade Practices Act).
4. ASIC has recently conducted a review of superannuation fund annual reports. The review was conducted so that ASIC could find out if superannuation funds are meeting their legislative requirements and whether members are able to understand the documents they are sent every year. The results of the review are discussed in the body of this submission.
  5. ASIC's enforcement activities since 1 July 1998 in relation to superannuation include:
    - Cyril John Pearson, former Brisbane company director, was gaoled for 5 years for fraudulently accounting money put into the Beneflex Retirement Plan. The money was contributed by members of the restaurant and catering industry in Queensland.
    - John Robert Houghton, former director of NSW company Houghton and Associates was gaoled for 2 years (with a minimum of 18 months) for fraudulently applying funds from wholesale superannuation investment pools for his own benefit totalling \$1.3 million. Joint efforts by ASIC, Prudential Corporation Australia Ltd. and Mercantile Mutual Life Insurance Limited ensured that investors did not lose their money as a result of the actions of Houghton and Associates.
    - Ross Patrick Zagari, a Melbourne based accountant, was arrested and charged on 23 September 1999 with making and issuing statements that he knew to be false and misleading with the intention of inducing a Superannuation Trustee to redeem all superannuation benefits of exiting members. These benefits totalled \$1,611,484.40. The charges relate to contraventions of s145(a) of the SIS Act.
    - ASIC recently negotiated undertakings from the directors of Asset Temporary Personnel Pty. Ltd., an employment agency operating in Sydney and Melbourne, to protect the superannuation entitlements of the company's employees.

## Superannuation fund disclosure

6. Our work here includes granting or refusing to grant applications for relief from the disclosure requirements applying to superannuation funds and undertaking projects designed to improve disclosure.
7. ***Applications for Relief:*** We receive numerous requests for relief from the disclosure requirements under SIS. These requirements are principally contained in Part 2 of the SIS regulations and the section 153 Determination (originally issued by the ISC). Our approach has been to apply pre-existing ISC policies except where we are satisfied that departure from that policy is warranted in the circumstances of the particular case. Over time ASIC will review and, where appropriate, vary ISC policy in light of our new financial-sector wide consumer role and in harmony with ongoing legislative processes, in particular, the CLERP law reform process.

8. Some examples of operational decisions made by ASIC are:
- An application under clause 40 of the section 153 Determination was granted to extend the life of a Key Features Statement (KFS) beyond 12 months by a further 3 months where the public offer superannuation fund invests mostly in a managed investment scheme. This was so that the rollover of disclosure documentation for the superannuation fund could be timed to coincide with the transition of the underlying managed investment scheme to the new regulatory regime.
  - An application was granted to allow the trustee of a public offer fund to continue to accept applications under the original KFS after the issuance of a replacement KFS on condition that applicants are notified of the changed information and are given the opportunity to redeem their investment.
  - “No action” relief was granted from the requirement for an RSA provider to disclose historical interest rate information about its variable “at call” deposits where the provider has obtained legal advice that to do so would be misleading
  - Several applications were granted to extend the reporting period for annual member statements and annual fund reports where the fund is to be wound up.

(Further examples of operational requests in relation to disclosure are described in the ASIC Information Release: “ASIC’s Approach to Operational Requests on Superannuation”).

9. **Survey:** An independent survey was conducted for ASIC which was designed to ascertain how consumers saw their own knowledge of their superannuation savings. The survey interviewed 1200 respondents aged 18 and over. 70% of respondents with superannuation were aware of their fund’s performance. 77% said that they had read their last member statement. 60% had a very good idea or knew approximately how much money they had in the fund. On the other hand, there was a substantial lack of knowledge about savings levels and performance, particularly amongst younger respondents. Nearly 20% of respondents said they did not understand their annual statement. More than half the respondents who did not know how much money they had in the fund were aged below 34 years of age.
10. While it would be dangerous to form firm conclusions on the basis of this survey, it tends to support some existing perceptions that more educative initiatives, involving industry, regulators and Government, are needed, particularly directed towards younger age groups.
11. **ASIC and ASFA Joint Project on Simplified Disclosure:** ASIC is in the process of discussing with ASFA (the Association of Superannuation Funds of Australia) a project to investigate simplified disclosure for superannuation



funds. The project would focus on improving disclosure in 4 key areas:

- fees and charges;
  - risks;
  - investment performance; and
  - the nature of the product.
12. ASIC and ASFA would consumer test these elements of disclosure to determine effective communication methods. ASIC believes that the project would discern whether simplified disclosure in these key areas enables members to better understand their superannuation fund and to make a comparative choice between superannuation funds. The ultimate regulatory impact of this project cannot be predicted with certainty at this stage as it will depend on the progress of the current legislative reform program, including the Corporate Law Economic Reform Program (CLERP) and Choice of Fund.

## Securities licensing

13. The licensing provisions of the Corporations Law (the Law) apply to superannuation. They regulate sales conduct and investment advice provided by superannuation trustees and intermediaries. The purpose of the Corporations Law licensing regime is to promote consumer protection and market integrity.
14. **Trustees of Public Offer Funds:** Trustees of public offer funds are required to obtain a licence where they provide investment advisory services. A licensee must comply with certain conduct requirements set out in the Law and the Regulations, and explained in ASIC's *Good Advice Handbook*.
15. A licence is not required, however, where a public offer fund trustee outsources all promotional and advisory activities to a separate licensee, such as a related-part licensee (ie a trustee does not need a licence where its only dealing activities relate to the internal management of the fund, such as the function of merely issuing or redeeming interests in such a fund or investing the fund in securities).
16. ASIC has sought to harmonise its licensing requirements with APRA requirements applying to Approved trustees. ASIC considers that the financial conditions imposed by APRA on Approved Trustees act as an adequate substitute for the standard surplus liquid funds (SLF) requirement which ASIC usually imposes on a dealers licence. Accordingly, ASIC has decided to grant relief from the standard SLF requirement to Approved Trustees of Superannuation Funds seeking a dealers licence under the Corporations Law on condition that the Approved Trustee complies with all the financial requirements imposed on such trustees by APRA. (Refer to the ASIC Information Release: *ASIC's Approach to Operational Requests on Superannuation* (11/1/99)).
17. **Non-public offer funds:** We do not insist that a licence be held by non-public offer fund trustees at this stage. This approach was adopted at the

request of the former ISC (refer to ASIC Policy Statement 123). It is important to note that this no action policy applies only to non public offer funds - for example, an industry fund which has even one non-standard employer-sponsored member is not a non-public offer fund. Further, this no action position is an interim policy only which will need to be reviewed in accordance with market developments. It may be that ASIC will need to apply the licensing provisions to non-public offer funds in future if the regulation of intermediary conduct becomes more important in relation to these funds, for example, if a choice of superannuation fund regime is introduced.

## Complaints resolution

18. Licensees who provide investment advisory services to retail clients are required to belong to an ASIC-approved external complaints resolution scheme (Corporations Regulation 7.3.02B). This will include trustees and other superannuation intermediaries providing investment advisory services in relation to superannuation. We have issued a policy statement explaining our policy on approving external complaints resolution schemes. ASIC has approved two schemes under Policy Statement 139: the Financial Industry Complaints Service and the Financial Services Complaints Resolution Scheme. They have now agreed to merge.
19. We have issued a no action position to trustees of superannuation funds who are subject to the jurisdiction of the SCT. This means that trustees who are subject to the SCT's jurisdiction will not need to also become a member of an ASIC-approved external complaints resolution scheme where the only investment advice they provide relates to interests in the fund for which the trustee is responsible. This is designed to avoid regulatory overlap. This no action position was issued in January 1999, before the High Court's decision in *Breckler* which restored the full powers of the SCT. In light of the High Court's decision, ASIC has continued this no action position.

## Information dissemination

20. ASIC has devoted considerable energy to explaining its superannuation role and to providing educational material to consumers and industry. Our website contains important information for industry and consumers. We also conduct free investor forums designed to provide information for consumers, including information about how to avoid getting inappropriate investment advice and how to keep track of superannuation entitlements. We operate an Infoline service to deal with public inquiries. Consumers who are not sure where to lodge a complaint can contact our Financial Complaints Referral Centre.
21. The attached table (Attachment A) sets out key documents which we have published that explain our role and our policies in relation to superannuation.

## **Learning from the UK experience**

22. In carrying out our responsibilities in the superannuation area, ASIC has attempted to learn the lessons of the UK pension mis-selling disaster. As increased consumer choice of funds becomes a reality, we are aiming to both:
- closely monitor market place practices to ensure that appropriate advice is given and that inappropriate churning does not occur; and
  - ensure that consumers have the information they need to make informed choices which best serve their interests.

## Attachment A to Appendix C

<b>Title</b>	<b>Objective</b>
ASIC Good Advice Handbook	To provide ASIC's views about licensing and investment advisory services. Refer especially to Policy Statement 123 regarding superannuation.
ASIC More than a Corporate Watchdog	To provide information about ASIC's new functions assumed from 1.7.98, including those relating to superannuation.
APRA/ASIC joint publication - A Guide for Trustees of Corporate Public Offer and Industry Superannuation Funds (November 1998)	To provide a practical guide to the roles of ASIC and APRA regarding superannuation.
Functions Transferred to ASIC from the ISC (Information Release 99/3: 13.1.99)	To list the legislative provisions, regulations, ISC Instruments and ISC Circulars which are now administered by ASIC in relation to insurance and superannuation
ASIC's Approach to Operational Requests on Superannuation (Information Release 99/2: 11.1.99)	To list the decisions made by ASIC when dealing with operational requests in relation to superannuation (including RSAs)
ASIC Responses to ASFA Questions	To clarify the application of the licensing provisions of the Corporations Law to superannuation, as requested by ASFA
Superannuation Complaints Tribunal (Information Release 99/6)	To ensure that superannuation providers subject to the jurisdiction of the SCT do not also have to belong to an ASIC approved complaints resolution scheme
Superannuation Unclaimed Monies & the Lost Member Register (Information Release 99/4)	To clarify that ATO and State/Territory Unclaimed Monies Authorities retains responsibility for superannuation unclaimed monies and lost member register
ASIC Investor Alert - Keep Track of your superannuation (10.5.99)	To alert consumers to the need to check and keep track of their superannuation fund statements.
Super Decisions (28.6.99)	To provide consumers with information to make decisions about superannuation.
Approval of Complaints Schemes (8.7.99)	To set out our policy for the approval of external complaints resolution schemes under Corporations Regulations 7.3.02B
A User's Guide to ASIC, Your Corporate and Financial Services Watchdog (September 1999)	To explain ASIC's regulatory role
Superannuation Documents Under Review - Media Release - 14.10.99	To announce a national review program by ASIC of superannuation fund annual reports.
ASIC and ASFA Undertake Joint Super Initiative (28.10.99)	To provide details of the Joint ASIC/ ASFA Disclosure project

# **Appendix D**

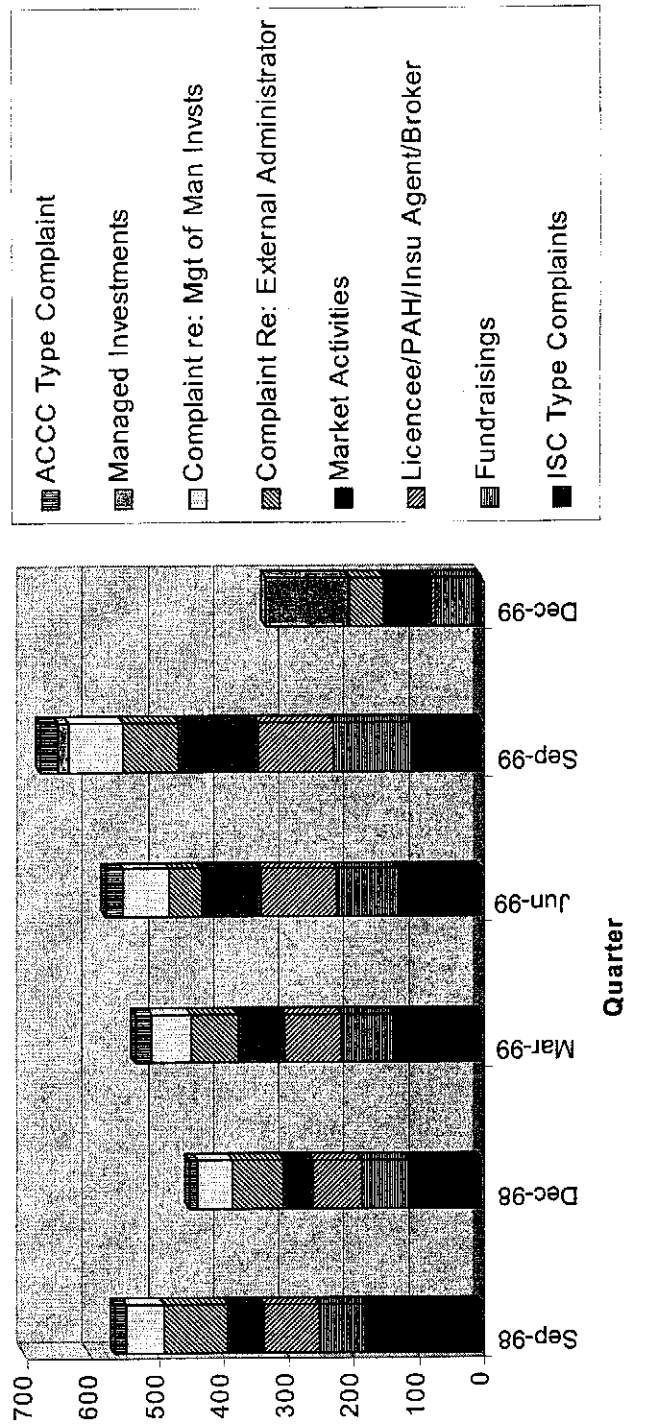
## **Graphs: categories of complaints**

**Graph 1 Top 8 complaint categories  
by quarter**

**Graph 2 New complaint categories**

**Graph 1**

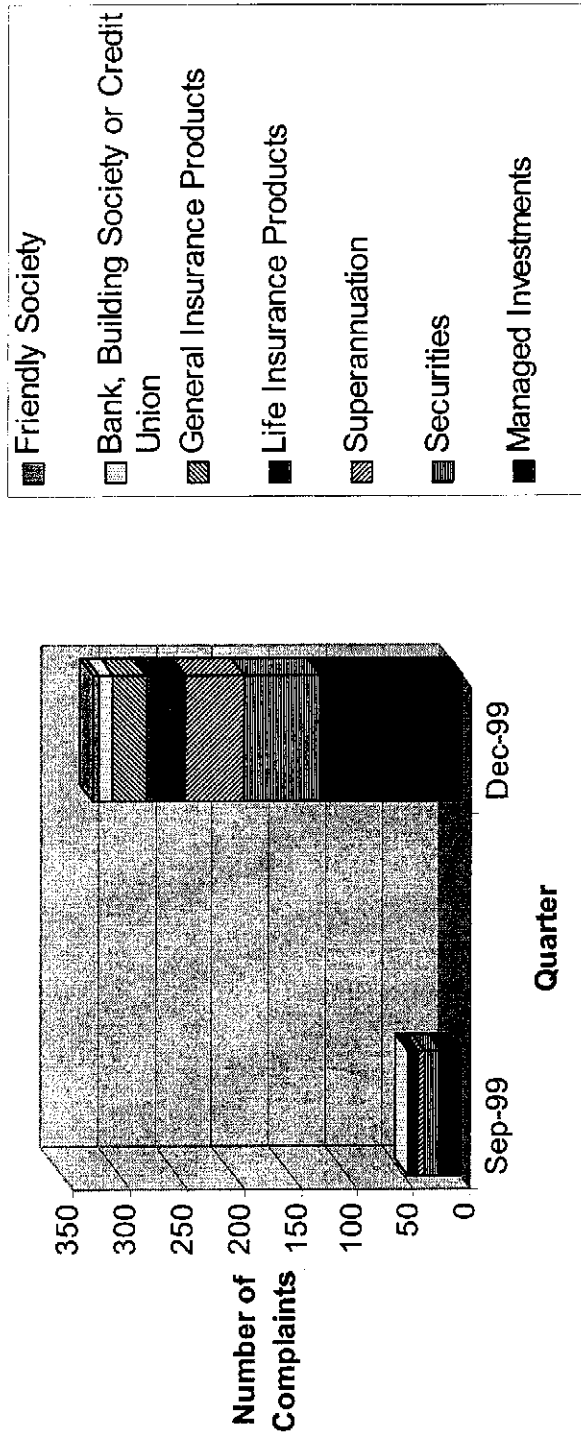
**Top 8 Complaint Categories by Quarter**  
 (1 July 1998 to 31 December 1999)



**Graph 2**

### New Complaint Categories

(from 1 September, 1999)



# Appendix E

## ASIC's electronic commerce principles

---

### Principles governing ASIC's e-commerce work are:

---

- 1 ASIC is concerned with achieving regulatory objectives rather than developing technological solutions.

---

  - 2 ASIC's policies aim to be technology neutral.

---

  - 3 ASIC will make sure that regulatory requirements for electronic commerce are no more onerous than those applying to traditional ways of doing business. ASIC will ensure this when it is consistent with good policy.

---

  - 4 ASIC will ensure that consumers using electronic commerce have at least the same levels of protection as they get from the laws and practices that apply to existing forms of commerce.

---

  - 5 ASIC will proactively assess the impact of technological developments on efficiency, safety and equity of the financial system. ASIC will seek input from industry where appropriate.
-



# References

Financial System Inquiry, 1997, *Financial System Inquiry: Final Report*, Australian Government Publishing Service

Sparrow, M.K. 1996, *Regulatory Reform: Lessons from the Innovations Awards Program*, John F. Kennedy School of Government, Harvard University. (Unpublished)