

ENFORCEMENT During the year, three Administrative Appeals Tribunal cases (one a *Freedom of Information Act* matter and two relating to matters arising under the *Superannuation Industry (Supervision) Act*) were decided. Of the three applications under the *Administrative Decisions (Judicial Review) Act* in the Federal Court, two were settled in the applicants' favour and one was dismissed. APRA achieved an important result in this dismissed application that confirmed the legality of the former ISC's decision to reject annual returns not lodged in the approved form.

In addition, four trustees were removed and four replacement auditors appointed. In two cases, concern about the financial position of funds led to the freezing of fund assets until we had a clearer understanding of the situation. Concern about the competency of



fund auditors led to the disqualification of three auditors and, in four instances, referral of auditors to their professional body. Finally, 24 funds out of approximately 185,000 were made non-complying, with resultant loss of their concessional tax status.

APRA also made a significant contribution to the legal/policy aspects of proposed enforcement-related amendments to the *Superannuation Industry (Supervision) Act 1993* and provided extensive comments to Treasury in relation to the proposed harmonisation of APRA's enforcement powers.

In December 1998, APRA initiated civil penalty proceedings in the Federal Court in Adelaide against an accountant for alleged attempted avoidance of the in-house asset rules for superannuation. APRA alleged that in 32 instances involving 19 superannuation funds, the accountant advised clients to channel funds from an employer sponsor to an excluded superannuation fund, then to a nominally independent unit trust and thence back to the employer sponsor. The matter was heard by Mansfield J over some 16 days – from April to June 1999. At the time of writing, judgement has been reserved.

We have asked the trustees of the relevant funds to show cause why administrative action should not be taken against the funds for their participation in the scheme and other breaches of the SIS legislation.

In addition, a businessman was convicted in August 1999 of eight charges of forging and uttering documents relating to an application to APRA for the early release of superannuation benefits for a client.

His conviction gave APRA the opportunity to warn the public that it is not necessary for people facing exceptional circumstances to pay fees to an intermediary to apply for the early release of superannuation benefits.