



ASIC

Australian Securities & Investments Commission

Senate inquiry into consumer protection in the banking, insurance and financial sector

Submission by the Australian Securities and Investments Commission

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Overview

- 1 ASIC makes this submission to assist the Senate Economics Reference Committee with its inquiry into consumer protection in the banking, insurance and financial services sector.

ASIC's role in the financial system

- 2 As Australia's corporate, markets, financial services and consumer credit regulator, ASIC strives to ensure that Australia's financial markets are fair and transparent and supported by confident and informed investors and financial consumers.
- 3 The *Australian Securities and Investments Commission Act 2001* (ASIC Act) requires ASIC to:
 - (a) maintain, facilitate and improve the performance of the financial system and entities in it;
 - (b) promote confident and informed participation by investors and financial consumers in the financial system;
 - (c) administer the law effectively and with minimal procedural requirements;
 - (d) enforce and give effect to the law;
 - (e) receive, process and store, efficiently and quickly, information that is given to us; and
 - (f) make information about companies and other bodies available to the public as soon as practicable.
- 4 We use a range of regulatory tools to enforce and promote compliance with the laws that we administer, and improve consumer understanding and decision making. The regulatory tools available to us include:
 - (a) Education—undertaking educational activities, including financial literacy work.
 - (b) Guidance—providing guidance to industry about how we will administer the law to provide clarity to industry participants about their obligations under the law. We achieve this by issuing regulatory guides, consultation papers, reports and information sheets.
 - (c) Surveillance— gathering and analysing information on a specific entity or range of entities, a transaction, a specific product or issue of concern in the market to test compliance with the laws we administer and look at consumer and investor outcomes. After a surveillance, we may publish our findings to inform the market or take further action, such as

commencing an investigation with a view to carrying out enforcement action.

- (d) Negotiated outcomes—these may arise from surveillances or from investigations, and include enforceable undertakings. An enforceable undertaking is a written undertaking given to us that an entity or person will operate in a certain way. It is a flexible and effective remedy in improving compliance with the law and may be enforced through the courts.
- (e) Enforcement action—we undertake investigations, which may lead to enforcement action such as:
 - (i) criminal action;
 - (ii) civil action, such as civil penalty proceedings (e.g. for breach of directors’ duties), corrective action (e.g. to correct misleading disclosure) and compensatory action (to recover compensation on behalf of consumers); and
 - (iii) administrative action (e.g. banning or disqualifying persons from the financial services industry).

See [Information Sheet 151](#) *ASIC’s approach to enforcement* (INFO 151) for further information.

- 5 Our vision is to allow markets to fund the economy and in turn, economic growth in order to contribute to the financial wellbeing of all Australians. We do this by:
 - (a) promoting investor and consumer trust and confidence;
 - (b) ensuring fair and efficient markets; and
 - (c) providing efficient registration services.
- 6 Understanding the behaviour of investors, consumers and gatekeepers is central to our approach. Financial decisions can be influenced by people’s level of financial literacy and behavioural biases while culture, incentives and deterrence are some of the key factors driving individual and firm behaviours within the sectors we regulate.
- 7 Gatekeepers play a crucial role in the overall health of the financial system. Their conduct influences the level of trust and confidence that investors and consumers can have in the financial system.
- 8 One of the ways in which we work to address the potential impact on consumers of misconduct in the financial services sector is to equip them with the knowledge and skills to make informed choices and avoid financial traps and pitfalls.
- 9 Building Australians’ financial capability plays a vital role in promoting greater economic participation and supports ASIC’s strategic priority of

building investor and financial consumer trust and confidence. ASIC is the Australian Government agency responsible for financial literacy and in that role, leads and coordinates the National Financial Literacy Strategy (NFLS), in line with international best practice.

ASIC's areas of focus

- 10 This submission provides a summary of our recent work identifying, reporting on and seeking to address a range of significant market and conduct problems in banking, credit, financial services and insurance. ASIC has and continues to be very active in these areas.
- 11 Our capacity to address problems has been enhanced by recent reforms such as the Future of Financial Advice (FOFA) reforms and will be further strengthened by the wide range of reforms currently in train.
- 12 As outlined in our [Corporate Plan 2016–17 to 2019–20](#) (Corporate Plan 2016–17), we have identified our long-term challenges as: balancing a free market-based system with investor and financial consumer protection; digital disruption; structural change; financial innovation-driven complexity; and globalisation. We also recognise a number of key risks that flow from these challenges, including: gatekeeper conduct; misalignment of retail product design and distribution with consumer understanding; and cross-border businesses, services and transactions.
- 13 Our Corporate Plan 2016–17 also outlines our view of 'what good looks like' for the various sectors we regulate: see Appendix 6. A key theme that underpins our view for each sector is the importance of organisational culture and collective industry norms and practices on the behaviour and conduct of the firms we regulate and the individuals that work within these firms.
- 14 Complexity driven by financial innovation is one of our long term challenges. Over the next four years, we will focus on products, services and distribution models that pose the highest risks to investors and consumers.
- 15 In addition, we will focus on:
- (a) behavioural insights—by identifying opportunities to apply decision sciences across our regulatory work;
 - (b) financial capability—by overseeing the NFLS; through the formal education sector; increasing the use of free impartial information, tools and guidance; and strengthening partnerships; and
 - (c) government reforms—by supporting initiatives relating to the Financial System Inquiry (FSI).

- 16 Our work in the financial advice sector centres on improving the quality of financial advice. Poor financial advice can undermine investor and consumer trust and confidence in the financial system. We work to improve the quality of financial advice by addressing conflicted advice, misaligned incentives and inadequate risk management, removing ‘bad apple’ advisers and taking other regulatory action where advice is not in the client’s best interests.
- 17 ASIC’s work in the deposit-takers, credit and insurers sector addresses conduct by credit licensees (lenders and intermediaries) and insurance providers and intermediaries. Our work promotes responsible lending practices and addresses the sale of inappropriate products to consumers. It is critical that lenders and insurers do not sell consumers unsuitable products that could put them at risk of experiencing substantial financial hardship.
- 18 Our work in the managed funds and superannuation sector focuses on conduct by responsible entities and superannuation trustees. Investor and consumer trust and confidence in our financial system is undermined when poor gatekeeper culture and incentives lead to investors being treated unfairly. This can result in significant losses for investors, particularly of retirement savings in the funds management sector. Our work focuses on preventing wrongdoing in this area.

Importance of current law reform processes

- 19 There are currently a number of law reform processes and reviews underway in relation to the regulatory framework for protecting consumers and small businesses in the banking, insurance and financial services sector.
- 20 Current reform processes include:
- (a) creating product design and distribution obligations for product issuers and distributors, and product intervention powers to provide ASIC with a more flexible regulatory toolkit;
 - (b) enhancing ASIC’s licensing powers, including the ability to ban individuals from managing a licensee;
 - (c) reviewing our enforcement regime, including penalties and the financial services licensing breach notification framework;
 - (d) including competition in ASIC’s mandate;
 - (e) introducing new professional, education and training standards for financial advisers;
 - (f) better aligning the interests of financial advice providers in the life insurance sector with those of consumers; and

- (g) further reforms in relation to small amount (payday) lending contracts.

A more complete list of current reforms is attached at Appendix 2.

- 21 In addition, there are a number of significant reviews underway, including the review of the financial system external dispute resolution framework (EDR Review) which will also consider the merits of a last resort compensation scheme and the Productivity Commission's work on superannuation and, in the future on competition in banking and financial services. A full list of current reviews is attached at Appendix 3.
- 22 We consider it important that these reviews proceed and law reform processes are implemented expeditiously to ensure the framework and regulatory settings are right and that ASIC has the tools we need to regulate a financial system that is fair, efficient and resilient.
- 23 Significantly, the additional funding support for ASIC announced by the Government in April 2016 will support us to deter misconduct through more proactive surveillances that target poor practices—at the individual firm and industry level – within the financial advice, superannuation and managed funds, credit and insurance sectors.
- Note: See the Hon Scott Morrison MP, Treasurer of the Commonwealth of Australia and the Hon. Kelly O'Dwyer MP Minister for Small Business and Assistant Treasurer, [Turnbull Government bolsters ASIC to protect Australian consumers](#), media release, 20 April 2016.
- 24 We will work closely with the Government on the key areas of law reform from the FSI, including financial product intervention powers and design and distribution obligations; banning of individuals from managing financial firms; and strengthening our licensing and enforcement regimes.

Outline of submission

- 25 This submission sets out:
- (a) failures in current laws, regulatory framework and enforcement in the banking, insurance and financial services sector (Part A);
 - (b) impact of misconduct in the sector on victims and consumers (Part B);
 - (c) impact of remuneration, incentive-based commission structures, and fee-for-no-service or recurring fee structures on consumers (Part C);
 - (d) culture and chain of responsibility in relation to misconduct (Part D);
 - (e) redress, compensation and legal advice available to victims of misconduct (Part E);
 - (f) social impacts of consumer protection failures in the sector (Part F); and

- (g) options to support the prioritisation of consumer protection within the sector (Part G).

26 Appendices are also attached to this submission setting out:

- (a) ASIC surveillance projects in the sector (Appendix 1);
- (b) significant law reform processes currently underway (Appendix 2);
- (c) recent and current government reviews in the banking, insurance and financial services sector (Appendix 3);
- (d) banking industry initiatives and change processes to improve consumer outcomes (Appendix 4);
- (e) ASIC's 2016-17 business plan summaries of the financial advice, deposit takers, credit and insurance, and superannuation and managed funds stakeholder teams (Appendix 5); and
- (f) an outline of 'what good looks like' for the sectors we regulate (Appendix 6).

A Failures in current laws, regulatory framework and enforcement

Key points

In this section we outline:

- recommendations from the FSI and key areas for reform;
- our work to address issues in the financial services sector, namely in relation to financial advice, life insurance, general insurance, consumer credit, small business, non-cash payments, superannuation and funds management;
- external dispute resolution (EDR) framework; and
- enforcement and ASIC's regulatory toolkit

Recommendations of the Financial System Inquiry

- 27 We proposed several key areas for reform in our submissions to the FSI, the overall aim of which was to ensure that ASIC can more effectively contribute to a financial system that meets the needs of Australian households and businesses into the future. This is consistent with our vision.
- 28 The FSI made recommendations consistent with our proposals for these key areas for reform, and the Government subsequently responded positively to those recommendations, including:
- (a) creating product design and distribution obligations for product issuers and distributors, and product intervention powers to provide ASIC with a more flexible regulatory toolkit;
 - (b) enhancing ASIC's licensing powers, including the ability to ban individuals from managing a licensee;
 - (c) reviewing ASIC's enforcement regime, including penalties and the financial services licensing breach notification framework;
 - (d) including competition in ASIC's mandate; and
 - (e) implementing an industry funding model for ASIC and the removal of ASIC from the *Public Service Act 1999*.
- 29 Below we outline some of the reform issues we raised in our submissions to the FSI.

More flexible regulatory toolkit

- 30 The FSI highlighted past instances where ASIC lacked a broad toolkit to respond effectively and in a timely way to an emerging risk of significant consumer detriment. A more flexible regulatory toolkit for ASIC will ensure better market outcomes with less cost for industry. This could be accompanied by a reduction in some current disclosure requirements that are less effective.
- 31 The FSI recommended the introduction of:
- (a) a product intervention power for ASIC—to enable us to respond to market problems in a flexible, targeted, effective and timely way; and
 - (b) product design and distribution obligations—effectively a ‘product governance’ framework to strengthen issuer and distributor accountability for ensuring that products are designed with consumer needs in mind and are marketed at appropriate sections of the population.
- 32 Current reforms to implement these recommendations represent a fundamental shift away from relying solely on disclosure to drive good consumer outcomes, and are directed at achieving the FSI’s fairness objective for the financial system.
- 33 The new power will enhance ASIC’s regulatory toolkit and enable us to take direct action to deal with significant shortcomings in products or conduct that result in consumer detriment. In addition, the new obligations will enhance accountability for issuers and distributors of financial products (including banks and insurers) and reduce the number of consumers who are sold products that do not meet their needs or are otherwise inappropriate. The obligations will also compel financial services firms to be more customer-focused when designing and distributing products.
- 34 The reforms will significantly impact both industry and ASIC. Consultation will ensure that the product intervention power is clearly defined and appropriately targeted. We would also provide guidance on the intervention power and the obligations.
- 35 We welcome these reforms; however, we consider that the measures suggested in the proposals paper could go further to achieving the FSI’s objective of fairness for consumers. In our submission to a proposals paper on implementation of the reforms, we suggested that the product intervention power should:
- (a) cover all financial products as defined in Div 2 of Pt 2 of the ASIC Act, being the full range of financial and credit products within ASIC’s regulatory remit, rather than the narrower suggested scope of financial products regulated under the *Corporations Act 2001*(Corporations Act)

and credit products regulated under the *National Consumer Credit Protection Act 2009* (National Credit Act);

- (b) be broad enough to allow interventions to be tailored to the specific circumstances of different market problems—such as the remuneration of distributors, training obligations and dispute resolution—rather than the narrower range of interventions suggested which excludes certain types of interventions that are not linked to a product feature. In particular, the proposals paper excludes interventions relating to conflicting remuneration arrangements and the need for staff training, issues which have been central to many of the worst problems in the sector in recent years; and
- (c) be flexible enough to implement longer-term solutions (where necessary) to facilitate changes to address market problems, rather than the approach suggested for all interventions to lapse after 18 months with no ability to be extended, regardless of the circumstances.

36 In relation to the product governance aspect of the reforms, the proposals paper suggests that only products regulated under the Corporations Act (other than ordinary shares) would be subject to these obligations. We have outlined our support for a broad application of the design and distribution obligations to all ASIC Act products (other than ordinary shares), including credit products under the National Credit Act. In suggesting this, we acknowledge that the content of the obligations may differ where other regulations, such as responsible lending obligations, are in place.

Inclusion of competition in ASIC's mandate

37 The FSI recommended periodic reviews by the Productivity Commission of competition in the financial system and consideration of competition in our mandate. In response, the Government agreed to strengthen the focus on competition in the financial system by explicitly including consideration of competition in ASIC's mandate.

38 Requiring us to formally consider the effect of our decision making on competition would drive a greater focus on the long-term benefits for the end users of the financial system. While including this mandate would not make ASIC a competition regulator, it would help ensure that our approach to regulation considered market-wide effects more explicitly.

39 We are currently working with the Council of Financial Regulators (CoFR) to better consider competition issues in the financial system, and are also liaising with the Government on the development of a competition mandate.

40 How ASIC implements a competition mandate will depend on the mandate's scope and form. We support a mandate that enables us, in the long-term interests of consumers or end users, to:

- (a) promote competition in regulated financial markets and services, including factoring competition into our regulatory decision making; and
- (b) use our existing functions and powers (including information-gathering powers) to consider whether competition is working effectively in the markets we regulate.

41 To the extent possible, we currently consider competition when carrying out our work. For example, our '[Innovation Hub](#)' helps support start-ups with innovative new business models for providing financial products and services navigate our regulatory system.

42 We also support the FSI recommendation for the Productivity Commission to review competition in the financial system. We note that in the superannuation area, the Productivity Commission is reviewing [alternative models](#) for allocating default fund members to products and will commence a general review of competition in superannuation in the second half of 2017.

Product intervention powers and competition in financial services

43 There is a close link between competition considerations and a product intervention power for ASIC. Providing us with a competition mandate and product intervention powers will enable us to be a more proactive and effective regulator. A competition mandate would allow us to consider and address consumer detriment more broadly—we would not need to rely on specific concerns in relation to legislative compliance to consider market failures causing poor conduct and consumer detriment. We would be able to use the proposed product intervention powers to directly address such market failures.

44 Product intervention powers are intended to allow us to intervene to address market failure. That is where, due to the way the market is operating, a particular product or service produces consistently poor consumer outcomes. This market failure is despite formal compliance with applicable laws (e.g. such as being licensed, providing compliant disclosure, etc.).

45 Often the market failure will be related to competition working ineffectively or negatively, such as due to supply side competition. For instance, flex commissions on car finance arranged through car yards and commissions paid to sellers of consumer credit insurance (CCI) to small business are excessively high. In both instances the need to compete compels product providers to pay commissions in a form or size with which they are uncomfortable, and which result in very poor consumer outcomes (e.g. car finance at higher interest rates than the lender was actually willing to provide, or inflated premiums on CCI).

- 46 There are generally two issues preventing industry from taking the initiative to solve the problem:
- (a) first mover disadvantage—for instance, if one entity ceased to pay flex commissions, it would lose market share to other entities who continued to pay them because, whilst not in the consumers’ interests, flex commissions are in the interest of the intermediary and the intermediary distributes the product; and
 - (b) rules against anti-competitive behaviour often mitigate against industry getting together to agree not to engage in the conduct involved.
- 47 The best interventions will promote competition in the interests of the end users of the products and services. The current absence of competition considerations from our mandate limits our ability to take competition impacts into account across our work.
- 48 Therefore, ASIC having a mandate that includes competition considerations in the range of factors we need to take into account is very closely aligned with the proposed product intervention power.

Improving standards in financial advice

- 49 With compulsory superannuation, there is a critical need for accessible and sound financial advice. During the FSI, we proposed a package of reforms that include a consistent minimum competency standard for advisers, a comprehensive national register of advisers, and the ability for the regulator to ban managers of advice businesses that cause consumers major harm.
- 50 The FSI recommended the Government should continue to raise the minimum competency standards for financial advisers and introduce an enhanced register of advisers.
- 51 On 9 February 2017, the Corporations Amendment (Professional Standards of Financial Advisers) Bill 2016 was passed unanimously by both houses of Parliament. The Act introduces new professional, education and training standards for financial advisers providing personal advice on more complex financial products. Refer to paragraphs 99–105 for further information.
- 52 ASIC launched the [Financial advisers register](#) on the MoneySmart website on 31 March 2015. We see this register as an important reform. See paragraphs 107–110.
- 53 The current review of ASIC’s enforcement regime is considering extending our banning power to ban individuals from managing the provision of financial services. Refer to paragraphs 388–397 for more details on the ASIC Enforcement Review.

Ensuring the superannuation system better meets the needs of the retirement phase

- 54 As the Australian population ages, better products are needed to help people manage their retirement savings during the retirement phase. There is also a greater need for good quality retirement advice. We proposed during the FSI that options should be explored to encourage product providers to increase the choice of products available that cater to the retirement phase, to increase consumer demand for these products, and to improve the quality of advice.
- 55 The FSI recommended that the Government require superannuation fund trustees to pre-select a comprehensive income product for members' retirement.
- 56 The Government has starting consulting on key issues in developing a framework for the retirement phase of the superannuation system, by facilitating trustees offering Comprehensive Income Products for Retirement (CIPR) to their members. The Government proposes to call these products 'MyRetirement products' and states that this reform is critical for lifting the living standards and choices of Australians, and ensuring that that the policy settings are right for a mature superannuation system of the future.

Note: Treasury, [Development of the framework for Comprehensive Income Products for Retirement](#) (PDF 580KB), discussion paper, 15 December 2016.

Penalties that provide the incentive for better conduct

- 57 Effective and credible enforcement of the laws governing the finance sector is critical to enhancing the level of trust and confidence in the system. Without effective enforcement, non-compliant firms can capture market share at the expense of compliant firms. We proposed that a review of penalties under ASIC-administered legislation would help establish whether such penalties currently provide the right incentives for better market behaviour.
- 58 The FSI recommended that penalties for contravening ASIC legislation should be substantially increased. For example, the maximum civil penalties available to us are significantly lower than those available to overseas regulators and are fixed amounts, not multiples of the financial benefits obtained from the wrongdoing.
- 59 On 19 October 2016, the Government announced a taskforce to review ASIC's enforcement regime. The review's terms of reference are very broad and include consideration of a range of changes and improvements that are central to ensuring ASIC has the toolkit to do our job effectively.

Note 2: See the Hon. Kelly O'Dwyer MP Minister for Revenue and Financial Services, [ASIC Enforcement Review Taskforce](#), media release, 19 October 2016.

60 Increased penalties is one of ASIC's main priorities in the ASIC Enforcement Review. Penalties set at an appropriate level are critical and need to be available to give market participants the right incentive to comply with the law. They should aim to deter contraventions and promote greater compliance, resulting in a more resilient financial system.

Note: See paragraphs 388–397 for further information on ASIC's Enforcement Review.

A better funding model for ASIC

61 We proposed that a user pays (cost recovery) funding model that better reflects the costs associated with market regulation can drive economic efficiencies and can also provide better incentives for industries to improve their own standards and practices.

62 The FSI recommended an industry funding model for ASIC and, on 20 April 2016, the Government committed to introducing an industry funding model for ASIC to commence in the second half of 2017.

Note: See [Media Release \(16-379MR\)](#) *ASIC welcomes industry funding consultation* (8 November 2016).

63 An industry funding model will provide greater stability and certainty in ASIC's funding and ensure we are adequately resourced to carry out our regulatory mandate. The model is aimed at ensuring the costs of our regulatory activities are borne by those who create the need for regulation, and providing the economic incentives to drive the Government's desired regulatory outcomes for the financial system.

64 The model will include measures to support ASIC becoming a stronger regulator, through increased accountability, transparency and engagement with consumers and our regulated entities. By increasing the transparency of our regulatory costs, industry will be in a better position to hold ASIC accountable for our regulatory activities and outcomes.

Funding support for ASIC to better protect investors and consumers

65 In April 2016, the Government announced a \$127.2 million reform package to equip ASIC with stronger powers and funding to enhance surveillance capabilities. The reform measures comprise the Government's response to the ASIC Capability Review in 2015.

Note: See the Hon Scott Morrison MP, Treasurer of the Commonwealth of Australia and the Hon. Kelly O'Dwyer MP Minister for Small Business and Assistant Treasurer, [Turnbull Government bolsters ASIC to protect Australian consumers](#), media release, 20 April 2016.

66 The funding was provided to ASIC in November 2016.

- 67 Of this funding, approximately \$61 million will enhance our data analytics and surveillance capabilities and improve our data management systems. This will equip ASIC with improved information management systems and ensure we have best practice analytical techniques to detect misconduct in the financial sector.
- 68 Around \$9 million will be made available to ASIC and Treasury to implement appropriate law and regulatory reform.
- 69 We are using \$57 million to increase ongoing surveillance and enforcement in the areas of financial advice, responsible lending, life insurance and breach reporting. See Appendix 1 for a list of surveillance projects.
- 70 We will act through our ‘detect, understand and respond’ approach and use our regulatory toolkit to achieve our vision. That is, we will:
- (a) detect wrongdoing through surveillance, breach reports, and reports from the public and whistleblowers;
 - (b) understand our environment by continually scanning it to identify issues and manage risks; and
 - (c) respond to wrongdoing—or the risk of wrongdoing—using a number of tools, including education, guidance, enforcement and policy advice to government.

Our work to address issues in the financial services sector

- 71 Below we outline how we have addressed issues and the further work we will undertake in the financial advice, insurance, credit, and managed funds and superannuation sectors. We support the recent and current law reform processes and recognise that further reform and oversight is required in some instances.

Note: Appendix 5 contains summaries of the 2016–17 ASIC business plans for the financial advice; deposit takers, credit and insurers; and superannuation and managed funds teams. These plans detail key projects we will complete this financial year to further improve consumer outcomes.

Financial advice

- 72 We want to see a financial advice sector that delivers accessible, high-quality advice in which consumers and financial investors can have trust and confidence. Many financial advisers do provide such advice; however, in our experience, there is still an unacceptable level of poor-quality advice in Australia.

ASIC's work to address concerns in the financial advice industry

- 73 We have long been concerned about the quality of financial advice provided to consumers. Our concerns arose as a result of our monitoring and surveillance work, reports of misconduct, and market intelligence, and were strongly reinforced by the results of our shadow shopping surveillances in 1998, 2003, 2006 and 2011 which were completed before the FOFA reforms.
- 74 We sought to identify and understand the nature and size of the problems through both our shadow shopping surveillances and our more traditional surveillance work.
- 75 The results of our shadow shopping surveillances consistently showed:
- (a) inadequate consideration of clients' needs;
 - (b) inadequate justification or lack of credible reasons for recommending clients switch products; and
 - (c) the impact of conflicted remuneration structures on the quality of advice.
- 76 Given the widespread nature of our concerns, we undertook substantial work before the FOFA reforms to try to achieve change in the industry. This involved:
- (a) liaison with and provision of guidance to industry;
 - (b) risk-based surveillance with targeted work on individual firms;
 - (c) enforcement action, including administrative bannings and negotiated settlements such as major long-term enforceable undertakings; and
 - (d) providing information for the users of financial advice.
- 77 One element of our approach involved focusing on the larger players in the industry that had the greatest number of authorised representatives. In our view, if their practices and culture could be improved, it would benefit the large number of investors obtaining advice through them.
- 78 We undertook significant amount of work to better understand the financial advice industry and the drivers of poor advice, and worked with industry to try to improve the quality of advice provided to consumers. Some examples of this work include [Report 17](#) *Compliance with advice and disclosure obligations: Report on primary production schemes* (REP 17) (released in February 2003); [Report 50](#) *Superannuation switching surveillance* (REP 50) (released in August 2005); and [Report 224](#) *Access to financial advice in Australia* (REP 224) (released in December 2010).
- 79 We also released two further public reports, [Report 251](#) *Review of financial advice industry practice* (REP 251) and [Report 362](#) *Review of financial*

advice industry practice: Phase 2 (REP 362). To address issues we found through our surveillance, our reports made a number of recommendations.

80 The FOFA reforms sought to address the issues we identified.

81 Subsequent to the FOFA reforms, our surveillance work—much of which has necessarily involved addressing legacy issues from the pre-FOFA period—has reinforced our concerns about poor quality and inappropriate advice, and about the role of conflicts of interest in driving those problems. It has also confirmed our belief in the need to raise professional and training standards in the industry.

The FOFA reforms

82 The objectives of the FOFA reforms were to improve the trust and confidence of retail investors in the financial planning sector. They sought to achieve this by increasing the standard of financial advice and removing conflicts of interest, such as commissions.

83 The FOFA legislation was passed by the Parliament on 25 June 2012 and commenced on 1 July 2012. For the first 12 months, compliance with the reforms was optional, but has been mandatory since 1 July 2013.

84 Key elements of the FOFA reforms include:

- (a) amendments to the conduct obligations for financial advisers;
- (b) a prospective ban on conflicted remuneration structures, including commissions and volume-based payments;
- (c) a requirement to send an annual fee disclosure statement to clients with ongoing fee arrangements;
- (d) a requirement that advisers obtain their client's consent every two years to continue the ongoing fee arrangements ('opt-in'); and
- (e) enhanced licensing and banning powers for ASIC.

Best interests and related conduct obligations

85 Advisers who provide personal advice to retail clients must now:

- (a) act in the best interests of their client in relation to the advice;
- (b) give appropriate advice; and
- (c) prioritise the interests of clients when there is a conflict between the interests of the client and those of the adviser and various related parties (see Div 2 of Pt 7.7A).

86 These obligations are imposed on the individual advice provider.

87 ASIC has provided guidance on meeting the best interests duty and related obligations in [Regulatory Guide 175 Licensing: Financial product advisers—Conduct and disclosure](#) (RG 175).

88 Before the FOFA reforms, the provisions of the Corporations Act did not require a financial adviser to act in the best interests of their client or to prioritise the client’s interests when providing advice. As long as the advice met the lower standard of being ‘appropriate’, and the necessary disclosures had been made, the adviser was not prohibited from giving advice that benefited themselves rather than the client. Also, these obligations rested solely with the licensee or authorised representative, meaning there were no direct obligations on the individual advice provider to provide advice that was appropriate for the client.

Ban on conflicted remuneration

89 The FOFA reforms also implemented a prospective ban on conflicted remuneration structures relating to the distribution of, and advice about, a range of retail investment products.

90 ‘Conflicted remuneration’ is any benefit (monetary or non-monetary) given to an Australian financial services (AFS) licensee or its representative that could reasonably be expected to influence:

- (a) the choice of financial product recommended to clients; or
- (b) the financial product advice given to clients (s963A).

91 The ban does not apply to some products and advice services—for example, general insurance products, some life risk insurance products and basic banking products.

92 Additionally, the FOFA reforms allow a number of benefits to be ‘grandfathered’, so that the conflicted remuneration provisions do not apply to them. The effect of the grandfathering provisions is that the conflicted remuneration provisions do not apply in many situations where the client invested in the product or platform prior to 1 July 2014. Separate grandfathering rules apply to benefits given under an employee arrangement.

93 ASIC has provided guidance on how we will administer the ban on conflicted remuneration in [Regulatory Guide 246 Conflicted remuneration](#) (RG 246). Appendix 1 of RG 246 provides a detailed summary of benefits that are exempt from the ban on conflicted remuneration.

94 While licensees have been subject to a general conflicts management obligation since 1 January 2005 (s912A(1)(aa)), until the introduction of the FOFA reforms, the regulatory system contained no prohibition on advisers receiving conflicted remuneration.

Other FOFA reforms

95 The FOFA reforms also introduced:

- (a) a ban on asset-based fees charged on borrowed amounts; and
- (b) a ban on platform operators receiving volume-based shelf-space fees.

Implications of the FOFA reforms

96 As described above, the FOFA reforms are intended to improve the quality of financial advice, strengthen investor protection and improve trust and confidence in the financial advice industry. Measures such as the best interests duty and related obligations, the ban on conflicted remuneration, disclosure obligations aimed at fee transparency, and new civil penalty provisions are an important and welcome step towards achieving these objectives.

97 ASIC released [Report 407](#) *Review of the financial advice industry's implementation of the FOFA reforms* (REP 407) which sets out the findings from a review of the implementation of the FOFA reforms by a sample of 60 AFS licensees. The purpose of this work was to assess how the advice industry had adapted to the new requirements, to ensure industry was making necessary changes to their business practices, and to assist industry with areas of uncertainty.

98 This report did not evaluate the quality of the advice provided or the impact of the reforms on investor protection, but it did note efforts by AFS licensees to change their business and process operations to ensure compliance with the new regime. At this early stage of the regime it is too early to assess how quickly these efforts will yield the intended results.

Adviser professionalism and training

99 We have long advocated for stronger education standards for advisers. In our view, the competence and training of financial advisers still requires significant improvement. This was also a conclusion of the 2009 Parliamentary Joint Committee (PJC) Inquiry into Financial Products and Services in Australia (Ripoll Inquiry). Only well-trained, competent advisers can provide good quality advice.

Note: Ripoll Inquiry, [Inquiry into financial products and services in Australia](#), report, November 2009.

100 The Corporations Act requires AFS licensees to ensure that their representatives are adequately trained and are competent to provide financial services.

101 We provide guidance on our expectations regarding training standards in [Regulatory Guide 146](#) *Licensing: Training of financial product advisers*

(RG 146). The training standards in RG 146 are minimum standards and vary depending on the adviser's advice activities—that is, they vary depending on whether the adviser gives general or personal advice and what products they advise on. Advisers who provide advice on Tier 1 (broadly speaking, more complex) products must meet the standards at a different educational level from those who advise on Tier 2 products (simpler products).

102 However, our surveillances have in the past found that many advisers are not adequately trained or competent to deliver financial advice, which can lead to poor advice outcomes for investors. We observed in [Report 515 *Financial advice: Review of how large institutions oversee their advisers*](#) (REP 515) that in the period 1 January 2009–30 June 2015 advisers often failed to demonstrate compliance with the best interests duty and earlier related obligations. Inadequate education standards for advisers may be one of the causes of this non-compliance.

103 On 15 March 2017, the *Corporations Amendment (Professional Standards of Financial Advisers) Act 2017* commenced. The legislation seeks to raise the professional, ethical and education standards of financial advisers. We consider that the enhanced professional standards framework for financial advisers will assist in improving the quality of advice.

104 Key elements of the reforms include requiring advisers to hold a bachelor's degree or higher, pass an exam that will provide a common benchmark across the industry, undertake continuing professional development, and subscribe to a code of ethics. The Government will also establish an independent industry-funded body, recognised in legislation, to develop the new standards.

105 There is a transitional period which means that most of the new provisions relating to professional standards have staggered commencement dates from 1 January 2019. Existing advisers will have until 1 January 2021 to pass the exam, and until 1 January 2024 to reach degree-equivalent status.

106 ASIC strongly supports these reforms.

Financial adviser register

107 On 24 October 2014, the Government announced that it was delivering on its commitment to establish an enhanced, industry-wide public register of financial advisers.

108 The financial advisers register was launched on 31 March 2015 and it provides key information on all individuals who have, since that date, provided personal advice to retail clients on relevant financial products (i.e. all financial products other than basic banking products, general insurance products or CCI, or a combination of any of these products).

109 The register contains key information about each adviser, including:

- (a) name, registration number, status and experience;
- (b) the name of each AFS licensee who authorises the adviser;
- (c) details of their authorised representative, if applicable;
- (d) their recent advising history;
- (e) product areas they can provide advice on;
- (f) any bans, disqualifications or enforceable undertakings they have entered into; and
- (g) qualifications, training courses and any memberships of professional bodies.

110 The register is intended to improve transparency for consumers, allow ASIC to track and monitor financial advisers, and assist advice licensees to improve recruitment practices and manage risks.

111 The financial advisers register is proving to be a useful tool. As at 31 December 2016, more than 25,300 advisers were recorded on the register, and more than 1.5 million searches of the register had been undertaken since it was launched. We see the financial advisers register as a positive step towards a more transparent advice industry and a significant aid to ASIC in its regulatory work.

Remediation by advice licensees

112 A key part of an AFS licensee's obligations is remediating clients for losses suffered as a result of non-compliant advice, fraud or other breaches of the law. In September 2016 we released [Regulatory Guide 256](#) *Client review and remediation conducted by advice licensees* (RG 256).

113 Poor conduct by advice licensees undermines trust and confidence in the financial system and may result in significant investor and consumer losses, and could put retirement savings at risk.

114 It is therefore important that advice licensees proactively address systemic issues caused by misconduct or other compliance failures, and have robust review and remediation processes in place to protect and compensate clients for loss or detriment suffered as a result. Critically, this means allocating adequate resources to the review and remediation to ensure it is conducted in an efficient and timely way.

115 Review and remediation, which may be large or small scale, generally aims to place affected clients in the position they would have been in if the misconduct or other compliance failure had not occurred. Key considerations for advice licensees include: when to initiate the process of review and remediation; the scope of review and remediation; designing and

implementing a comprehensive and effective process for review and remediation; communicating effectively with clients; and ensuring access to external review.

Fee for no service

116 In October 2016, we released [Report 499](#) *Financial advice: Fees for no service* (REP 499). This report discusses the systemic failure by advice licensees to ensure that ongoing advice was provided to customers who paid fees to receive these services, and the failure of advisers to provide such services. It also discusses the systemic failure of product issuers to stop charging ongoing advice fees to customers who did not have a financial adviser.

Note: See paragraphs 447–462 for further details about the findings in [REP 499](#).

Review of how large institutions oversee their advisers

117 In March 2017, we released the findings of our review of how Australia’s largest financial advice firms have dealt with past poor advice and non-compliant advisers, and how these firms have dealt with affected customers. [REP 515](#) covers the key findings of this review and provides an update on our actions against the advisers who raise serious compliance concerns, as well as the institutions’ progress in developing review and remediation programs.

118 The review—which forms part of ASIC’s broader Wealth Management project—focused on the conduct of the financial advice arms of the following institutions:

- (a) AMP Limited;
- (b) Australia and New Zealand Banking Group;
- (c) Commonwealth Bank of Australia;
- (d) National Australia Bank Limited; and
- (e) Westpac Banking Corporation.

119 The review arose out of serious concerns about past adviser misconduct, and had the broad objective of lifting standards in major financial advice providers.

120 The review looked at:

- (a) how the firms identified and dealt with non-compliant conduct by their advisers between 1 January 2009 and 30 June 2015;
- (b) the development and implementation of large-scale review and remediation frameworks by the firms to remediate customers impacted by non-compliant advice; and

- (c) the processes used to monitor and supervise the firms' advisers, focusing on background and reference-checking, the adviser audit process and use of data analytics.

- 121 As at 31 December 2016, we had banned 26 advisers identified in this review who demonstrated serious compliance concerns, and we have ongoing investigations or surveillance activities in relation to many others.
- 122 Approximately \$30 million has been paid to 1,347 customers who suffered loss or detriment as a result of non-compliant conduct by advisers during the period of this review. This is in addition to the compensation being paid by the institutions as part of the 'fee for no service' compensation payments set out in [REP 499](#).
- 123 To improve trust and confidence in the financial advice industry, we consider it imperative that the institutions' work to address non-compliant advice is undertaken transparently and effectively. In addition, we want to ensure that insights gained from past experiences are applied by the institutions.
- 124 We are working with the institutions and other industry participants to rectify past problems and identify areas for improvement.
- 125 Our project did not draw conclusions on customer detriment. However, where we assessed that an adviser had failed to demonstrate compliance with the best interests duty and related obligations, we will meet with the licensees to discuss our findings.
- 126 The Australian Bankers' Association (ABA), and its members, is also concerned about the background and reference-checking processes in the financial services industry. The ABA has recently released its *Reference checking and information protocol* (ABA protocol), which sets out a standard for background and reference checking for advisers. This is part of a plan to address the issue more broadly for bank employees.
- 127 The ABA protocol is a positive initiative and helps to highlight the importance of reference checking. However, we note that the obligation to disclose information remains subject to exceptions. We will continue to liaise with the ABA on this important initiative as we wish to support effective reference checking in the financial advice industry.

Digital advice

- 128 ASIC supports digital advice (also commonly known as robo-advice). Digital advice has the potential to offer Australian consumers good quality, low-cost, financial advice. A key risk, however, is that a digital advice provider could potentially provide poor quality advice on a large scale to

Australian consumers. This would undermine consumer confidence in the advice sector, and, in particular, digital advice.

129 In August 2016, we released [Regulatory Guide 255](#) *Providing digital financial product advice to retail clients* (RG 255). This report brings together some of the issues that digital advice providers need to consider when operating in Australia—from the licensing stage through to the actual provision of advice. The guide also includes guidance on some issues that are unique to digital advice, such as how the organisational competence obligation applies to digital advice licensees and the ways in which digital advice licensees should monitor and test their algorithms.

Areas for improvement in the regulatory regime

130 The regulation of financial advice is aimed at ensuring consumers receive high-quality advice in circumstances where they are not well-placed to judge the quality of advice themselves before acting on that advice.

131 The FOFA reforms are an important step in moving the financial advice industry away from a commission-driven distribution network to a professional services industry. The legislation now imposes obligations on employed advisers, and not just the advice licensee or its authorised representatives.

132 However, we consider that there are still some areas of the broader regulatory regime that could be addressed to minimise misconduct and poor-quality advice in the future.

133 Additional reforms to enhance our powers to control licensee conduct and to give us more flexible enforcement options would assist us to minimise the risk of misconduct by, for example:

- (a) directing licensees to undertake compliance remediation and compensation actions;
- (b) banning individuals from managing or being involved in a financial services business; and
- (c) issuing infringement notices for less serious misconduct.

Distinction between wholesale and retail clients

134 The *Financial Services Reform Act 2001* created the distinction between wholesale clients and retail clients. The implications of this distinction became clear during the global financial crisis (GFC), which highlighted the need to identify those clients in need of regulatory protection while allowing certain clients to participate in wholesale markets and trade in more complex products with fewer applicable protections.

135 As part of the FOFA reforms, Treasury issued an options paper to consider the appropriateness of the distinction between wholesale and retail clients. This paper was driven by concerns that, during the GFC, clients who did not have the necessary experience were investing in complex products, which they could access through the wholesale market.

Note: Treasury, [Wholesale and Retail Clients Future of Financial Advice 2011](#) (PDF 257KB), options paper, January 2011.

136 The options paper considered the appropriateness of the distinction between wholesale and retail clients given the ease with which today's investors can satisfy the wealth tests, compared to when the tests were originally introduced. ASIC considers these issues remain valid. For example, we are concerned with how the retail client test applies in relation to self-managed superannuation funds.

Note: See [Media release \(14-191MR\)](#) *Statement on wholesale and retail investors and SMSFs* (8 August 2014) for an explanation of our concerns.

Senate inquiry into the Scrutiny of Financial Advice

137 On 4 September 2014, the Senate referred an inquiry into the Scrutiny of Financial Advice to the Senate Economics References Committee for inquiry. The committee is due to report by 30 June 2017.

138 In our submission to this inquiry, we welcomed the changes to the financial advice laws; however, we outlined more could be done to further enhance consumer protections.

Note: See Parliament of Australia, '[Scrutiny of financial advice](#)' webpage, www.aph.gov.au.

Life Insurance

139 Life insurance is an important risk management product for consumers, helping them to provide for themselves and their families in the event of death, illness, injury or disability. Life insurance products are vital for supporting many thousands of consumers and their families each year at times of significant financial stress.

140 ASIC is responsible for conduct and disclosure regulation in the life insurance sector. A well-functioning life insurance sector is one in which:

- (a) consumers can access life insurance products that meet their needs now and into the future;
- (b) life insurance is marketed and sold in a way that allows consumers to understand the features of the product and how they are covered;
- (c) consumers who want advice on life insurance can obtain good-quality financial advice that prioritises their needs;

- (d) claims are handled efficiently and fairly; and
- (e) consumers can access effective dispute resolution for complaints, and remediation is available if poor conduct has occurred.

141 Our regulatory work, as well as concerns raised more generally by consumers and other stakeholders, indicates that the life insurance sector falls short of these standards in various ways. We have publicly expressed concerns about practices in the sector for several years, including in relation to the provision of financial advice on the sale of life insurance products and, more recently, in relation to insurers' claims handling practices. Similarly, the Australian Prudential Regulation Authority (APRA) has also identified areas where the life insurance sector needs to improve.

142 We have recently undertaken substantial work in the life insurance area, resulting in reform actions by industry, ASIC and government. We have also identified areas for further reform. As most of these reforms are still to be put in place, we support a clear focus on their implementation.

143 We see a significant role for industry in making improvements, including insurers, superannuation funds and financial advisers.

144 We have taken—and will continue to take—regulatory and enforcement action against individuals and firms where we see misconduct in relation to life insurance. Outcomes to date have included the imposition of licence conditions, enforceable undertakings and bannings.

Life insurance advice

145 Our focus on life insurance advice is due to its critical importance to the long-term financial wellbeing of Australian consumers. Life insurance is a key product through which consumers manage risk for themselves and their families.

146 In October 2014, we released [Report 413](#) *Review of retail life insurance advice* (REP 413) which set out the findings of our review of personal advice about life insurance provided to retail clients. This review commenced following ASIC investigations and surveillances over many years, which showed poor advice about life insurance was being provided to consumers.

147 Specifically, in [REP 413](#) we found that 37% of the personal advice we reviewed failed to comply with the quality of advice conduct obligations in the Corporations Act. We also found that there was a positive correlation between high upfront commissions and poor-quality advice to consumers. We made a number of recommendations in this report, including that insurers change their remuneration arrangements and that advisers review their business models to address structural barriers to the provision of compliant life insurance advice.

- 148 Since the publication of [REP 413](#), the impetus to improve the quality of life insurance advice has gained momentum. The Government announced a reform package in November 2015 that included proposals to address conflicts of interest in remuneration structures by:
- (a) limiting the upfront and ongoing commissions paid to advisers;
 - (b) requiring the repayment of commissions to insurers by advisers over a two-year retention period if a policy lapses or a premium is reduced (subject to certain exceptions); and
 - (c) banning other forms of conflicted remuneration.
- 149 Legislation to give effect to these reforms was introduced into the Parliament on 12 October 2016 and passed both Houses in February 2017. The Government is also consulting on regulations to extend the application of the reform package to direct or non-advised sales of life insurance.
- 150 As part of the reform package, we have started to:
- (a) assist with implementing the reforms by preparing a legislative instrument to implement the reform package;
 - (b) consider the data we will collect for our review of the reforms in 2021;
 - (c) collect policy replacement data from life insurers to monitor unnecessary or excessive switching of client policies by advisers; and
 - (d) review Statements of Advice for the provision of advice on life insurance products.

Claims handling

- 151 In October 2016, we released [Report 498](#) *Life insurance claims: An industry review* (REP 498), which set out the results of our industry-wide review of life insurance claims practices and outcomes. While we did not find cross-industry misconduct, we did identify areas of concern in relation to declined claim rates and claims handling procedures for particular:
- (a) types of policies, notably total and permanent disability (TPD);
 - (b) insurers (typically for particular policy types); and
 - (c) causes of consumer disputes.
- 152 These concerns will be the subject of further surveillance work by ASIC. In addition, we have identified five other potential areas of action by industry, regulators and government that would improve claims handling outcomes for consumers:
- (a) establishing a new public reporting regime with APRA for life insurance industry claims data and outcomes;
 - (b) strengthening the legal framework for claims handling;

- (c) strengthening consumer dispute resolution for claims handling, so principles of fairness can be given more weight;

Note: See [ASIC's Supplementary Submission](#) to the Government's Review of the financial system external dispute resolution framework (EDR review).

- (d) undertaking a new major review of life insurance sold directly to consumers without personal advice; and
- (e) strengthening industry standards and practices, including through extension and enhancement of the new Life Insurance Code of Practice.

Insurance through superannuation

153 Millions of Australians have access to insurance coverage through their compulsory superannuation. We have been working with APRA and the insurance and superannuation sectors to consider how to improve the provision of insurance through superannuation.

154 This financial year, we are undertaking a new project looking specifically at insurance in superannuation, including issues around disclosure and complaints handling, as well as conflicts of interest and culture. Our work will focus on such areas as:

- (a) promoting consolidation of multiple accounts to avoid the erosion of superannuation benefits through insurance premiums and associated issues of claiming on multiple insurance policies;
- (b) increasing consumer awareness of insurance cover, which is connected to broader issues with vulnerable and/or disengaged consumers; and
- (c) highlighting the adequacy and/or appropriateness of insurance cover.

155 We are updating content on the [MoneySmart website](#) to include further information about insurance in superannuation. Our surveillance and review work will focus on ensuring that trustees meet their disclosure obligations to members and other consumers. We also support the industry in its development of a working group to look at developing a code of conduct for insurance in superannuation.

Life insurance add-on products through car dealerships

156 We have actively reviewed other practices in the life insurance industry, both on an industry-wide basis and through individual enforcement actions. In February 2016 we released a major review of the sale of life insurance products through car dealerships, providing cover to meet repayments under car loans should the consumer die: see [Report 471](#) *The sale of life insurance through car dealers: Taking consumers for a ride* (REP 471). The report used data from the major life insurers in this market, covering commissions, premiums and claims data over a five-year period (2010–14).

- 157 This report found systemic problems with the sale of life insurance through this channel, including:
- (a) low claim payouts relative to premiums—across all car yard life insurance products over the five-year period, the gross amount paid in claims was \$6 million, or only 6.6% of gross premiums of just over \$90 million; and
 - (b) higher commissions to car dealers and higher premiums for small business borrowers—small business insureds can pay up to 80% more for exactly the same cover from the same insurer.

158 As a result of our report, life insurers in the car dealer market agreed to abandon the practice of paying higher commissions to car dealers and charging a higher cost for small business borrowers. We continue to work with industry on a range of other reforms in this sector, relating to value, design of products and sales practices.

Review of direct insurance

159 Our additional funding will enable us to undertake additional surveillance and industry reviews in the life insurance sector, as well as ensuring that we can undertake the further work we have identified in [REP 498](#), and the additional surveillance and data-gathering we are conducting as part of the proposed life insurance advice reforms.

Further reform and improved oversight of the life insurance sector

160 Our powers to address poor practices in the life insurance sector are limited compared to our powers in relation to other financial products and services. For example, there are limitations in relation to claims handling, the duty of utmost good faith, the updating of policy definitions, and the application of unfair contract term provisions to insurance. These factors limit the role that ASIC, dispute resolution schemes and the courts may play in this sector.

161 These limitations, however, could be addressed by legislative and regulatory reforms. Below are some key areas of reform that are critical to improving consumer outcomes and industry practice.

162 Reforms that we could undertake in conjunction with other regulators, industry and/or external dispute resolution (EDR) schemes include:

- (a) strengthening the dispute resolution framework for claims handling, to enable better and more effective consideration of issues of fairness to supplement the existing jurisdiction, and to give better access and remedies to consumers with complaints about delays; and
- (b) implementing public reporting of life insurance claims data, with a view to improving public trust in claims processes and outcomes.

- 163 Reforms that would require legislative amendments include:
- (a) removing the exclusion relating to claims handling from the definition of a financial service in the Corporations Act, so that ASIC has an enhanced capacity to seek improvements in insurers' claims handling practices;
- Note 1: The Government has asked Treasury to consult on the recommendation made in our claims handling report that the exemption be removed.
- Note 2: See the Hon. Kelly O'Dwyer MP Minister for Revenue and Financial Services, Media Releases, [Release of ASIC report on claims handling in life insurance industry](#) (12 October 2016) and [ASIC Enforcement Review Taskforce](#) (19 October 2016).
- (b) strengthening ASIC's enforcement regime, which could, for example, enable us to seek civil penalties where insurers have breached the duty of utmost good faith under the *Insurance Contracts Act 1984*;
- Note 1: Currently ASIC cannot seek penalties for such breaches.
- Note 2: See the Hon. Kelly O'Dwyer MP Minister for Revenue and Financial Services, Media Releases, [Release of ASIC report on claims handling in life insurance industry](#) (12 October 2016) and [ASIC Enforcement Review Taskforce](#) (19 October 2016).
- (c) amending the ASIC Act so that insurance contracts are no longer excluded from the unfair contract terms provisions; and
- Note: This is currently being considered as part of the review of the Australian Consumer Law. The review's Interim Report was released on 14 October 2016.
- (d) facilitating the rationalisation of legacy products in the life insurance and managed funds sectors (which could involve legislative reform as well as industry's own proactive changes to systems).
- 164 The introduction of the broader reforms (which would cover financial services more generally) that are currently being consulted on, such as the proposed product intervention power, would also help us take action in this area.
- 165 In the area of life insurance advice, legislation to give effect to key aspects of the Government's reform package has been introduced into Parliament. We will monitor the effect of these reforms and, as requested by the Government, will review the effectiveness of the reforms in 2021. The Government has foreshadowed that it will move to a level commission model, as recommended by the FSI and by John Trowbridge in his industry-commissioned report, if the 2021 ASIC review shows that advice for the sale of life insurance has not improved.
- Note: See FSI, ['Financial System Inquiry: Final report'](#), webpage, www.fsi.gov.au, and J. Trowbridge, [Review of retail life insurance advice](#) (PDF 1.21MB), Financial Services Council, March 2015.
- 166 In addition, the new Life Insurance Code of Practice, which was launched in October 2016 and will become effective from 1 July 2017, contains

provisions which set minimum standards for insurers on such matters as policy terms and disclosure, claims handling, sales practices and internal complaints and dispute processes. The code also provides for periodic reviews of policy definitions to identify if they require updating. We expect that insurers will implement a number of steps to ensure compliance with the code, which should improve industry outcomes.

167 We expect that the Life Insurance Code of Practice will be further enhanced to address issues that have been identified, and that industry will seek our approval of the code. We support the life insurance industry's commitment to further enhancing the code, and will continue to work with industry, including in the event that ASIC approval of the code is sought.

168 We have a voluntary power to approve codes of conduct. Our approval of an industry code would be a signal to consumers that it is a code they can have trust in, and that it meets the standards set out in [Regulatory Guide 183](#) *Approval of financial services sector codes of conduct* (RG 183).

169 As part of the ASIC Enforcement Review Taskforce, the Minister has announced, that the terms of reference will:

allow for a thorough but targeted examination of the adequacy of ASIC's enforcement regime, including in relation to industry Codes of Conduct, to deter misconduct and foster consumer confidence in the financial system.

Note 1: See the Hon. Kelly O'Dwyer MP Minister for Revenue and Financial Services, Media Releases, [Release of ASIC report on claims handling in life insurance industry](#) (12 October 2016) and [ASIC Enforcement Review Taskforce](#) (19 October 2016).

Note 2: See the Joint Media Release: [Insurance in Superannuation Industry Working Group](#), 2 November 2016 from the Association of Superannuation Funds Australia, Financial Services Council, Australian Institute of Superannuation Trustees, Industry Funds Forum and Industry Super Australia.

170 The Productivity Commission is currently considering the competitiveness and efficiency of superannuation. In its issues paper on alternative default models in superannuation, released in September 2016, the Productivity Commission queried what the advantages and disadvantages are of allocating insurance through a separate competitive process (as well as what the key features of this default insurance product might be). The review by the Productivity Commission may result in changes to the offering of group insurance in superannuation.

Senate inquiry into the life insurance industry

171 On 14 September 2016, the Senate referred an inquiry into the life insurance industry to the PJC on Corporations and Financial Services, to be reported by 30 June 2017.

172 We made a submission to this inquiry in January 2017, outlining the importance of life insurance for consumers, and our role in ensuring a well-

functioning life insurance industry. Our submission called for further regulatory and legislative reform in order for us to better regulate the industry, especially with regard to claims handling following [REP 498](#).

173 Some reforms we called for in the submission include: strengthening the dispute resolution framework for claims handling; removing the exclusion for claims handling from the definition of a financial service in the Corporations Act to enhance our capacity to seek improvements in insurers' claims handling processes; and strengthening our enforcement regime so that we can seek civil penalties where insurers have breached the duty of utmost good faith.

Insurance

174 Over recent years we have undertaken a number of reviews into the general insurance industry. Our work includes reviews of the sale of home building insurance, car insurance automatic renewals and no-discount schemes, the sale of add-on insurance through car yards, and funeral insurance (which is a form of life insurance).

175 We will proactively assess current issues in the general insurance industry and look back at previous work we have conducted to ensure industry has taken action to address our concerns.

176 While our review into life insurance claims handling practices was specific to life insurance, a number of findings, recommendations and follow up work are relevant to general insurers. Issues including consumer understanding of coverage, concerns about whether claim denials are fair, and effective dispute resolution, are common across life and general insurance.

177 In relation to public data reporting, whilst some public reporting for the general insurance sector exists in the form of the Code Governance Committee's annual public reports, as the life insurance data framework develops, general insurers should seek to improve their own reporting frameworks to keep up to date with evolving standards, particularly around consistency and comparability.

178 Importantly, we reiterate the need for reforms outlined in relation to life insurance at paragraphs 160–173. These reforms also apply to general insurance and include: strengthening the dispute resolution framework for claims handling; removing the exclusion for claims handling from the definition of a financial service in the Corporations Act to enhance ASIC's capacity to seek improvements in insurers' claims handling processes; and strengthening our enforcement regime so that we can seek civil penalties where insurers have breached the duty of utmost good faith.

179 We will also be making a submission the Insurance Council of Australia's
(ICA) 2017 targeted review of the General Insurance Code of Practice. We
consider the review of this code to be an opportunity for industry to give
serious consideration to the findings and recommendations arising from our
work.

Disclosure in insurance

180 ASIC has undertaken substantial work on disclosure in insurance to help
ensure that the disclosure provided to consumers is effective, and to identify
any areas for improvement.

181 The FSI recommended improved consumer guidance and disclosure for
general insurance (including tools and calculators), including improving
disclosure in insurance product disclosure statements (PDS) and providing
information at the appropriate point in the sales process.

182 The FSI also recommended removing regulatory impediments to innovative
product disclosure and communication with customers, and improving the
way risks and fees are communicated to consumers. The FSI recognised the
importance of current understanding about consumer behavioural insights in
developing policy and regulation.

183 In July 2015, ASIC granted relief and provided guidance to facilitate more
innovative disclosure. We are continuing to explore ways to address some of
the problems with disclosure documents, including their length and
complexity, and to promote investor engagement with and understanding of
disclosure.

184 To help improve consumer outcomes, we encourage insurers to develop and
test innovative and effective disclosure. We note that the ICA recently
released a report on disclosure and look forward to working with insurers on
initiatives flowing from that review. We consider that facilitating electronic
disclosure in insurance would assist with this work.

Home insurance

185 We undertook a review of the sale of home building insurance in 2015: see
[Report 415](#) *Review of the sale of home insurance* (REP 415). The purpose of
this review was to understand what information consumers currently receive
about home insurance at the point of sale and encourage insurers to adopt
practices that reduce the risk of consumers buying insurance products that do
not meet their needs.

Note: [REP 415](#) furthers the work of two previous reports on home building
underinsurance in 2005 and 2007: see [Report 54](#) *Getting home insurance right: ASIC's
report on home building underinsurance* (REP 54) and [Report 89](#) *Making home
insurance better* (REP 89).

- 186 Our review was also an opportunity for us to:
- (a) take a closer look at concerns raised with us by consumer groups (and also made in various submissions to formal government inquiries in response to the Queensland floods of 2011);
 - (b) build on our previous work on underinsurance and, where possible, make suggestions to insurers that identify the factors that cause underinsurance and opportunities to overcome these factors;
 - (c) better understand consumer behaviour and biases and the heuristics that are relevant when making decisions about home insurance and, where appropriate, make suggestions about how they might be managed or offset; and
 - (d) suggest ways insurers can narrow the gap between a consumer's understanding of what is covered by the home insurance and what is actually covered.
- 187 [REP 415](#) reviewed the sales practices of 13 insurers who sell home insurance across Australia. The report made findings in relation to the sale of home building insurance through telephone sales, online sales, online calculators; advertising and promotional materials; and staff training and monitoring.
- 188 The report found that for sum insured policies, it is important to help consumers to set an appropriate sum insured amount, so that they are adequately insured in the event of a total loss.
- 189 We also found that online and telephone sales processes are generally designed around insurers' need to understand certain risk or underwriting criteria about consumers so that they can sell home insurance quickly and efficiently, rather than as a way to improve a consumer's understanding of the product they are inquiring about or purchasing. Instead, this is seen by insurers as the role of the PDS and other important policy documents, such as the certificate of insurance.
- 190 At around the same time as we conducted our review, we commissioned research into consumer behaviour when purchasing insurance: see [Report 416](#) *Insuring your home: Consumers' experiences buying home insurance* (REP 416). In this report, we note the findings of an online survey which asked consumers if they read or looked at the PDS when buying home building insurance.
- 191 This survey found that two in every 10 consumers (20%) who took out new insurance or considered switching read the PDS. However the qualitative research undertaken as part of our review found that 'reading' the PDS generally meant reading selected pages, not all of it.
- 192 These findings suggest that consumers know very little about the details of their home insurance policy. Some consumers did not know that policies

differed, as they assumed all home insurance policies were the same. They therefore asked insurers few questions about their policy and did not think it necessary to read the PDS. Unless their insurer specifically told them otherwise, these consumers did not know that policies can differ in their caps, limits and definitions of covered events.

193 The findings in [REP 415](#) and [REP 416](#) highlight the limitations of disclosure. The rationale for relying on disclosure to protect and empower consumers assumes that consumers are rational decision makers who, when given information about a financial product, will be able to read it, and as a result of doing so, understand the product. However, consumer research, psychology and behavioural economics indicate that a consumer's decision making is affected by behavioural biases.

Note: See paragraphs 416–428 for more information on behavioural biases.

194 We therefore consider that further work is needed to examine how behavioural insights can be used to experiment with different options to help 'nudge' consumers toward better understanding the insurance they are purchasing so that it meets their needs.

195 In response to ASIC's recommendations in [REP 415](#), insurers made a range of improvements, including:

- (a) incorporating a sum insured calculator into the point of sale processes and providing better access to online calculators; and
- (b) training staff so that information provided to consumers about the sum insured, and the maximum amount paid by the insurer, is clear and in plain English.

Note: See [Media Release \(16-053MR\)](#) *ASIC calls for further improvements from home insurers* (1 March 2016).

196 We will continue to monitor insurance providers to ensure they comply with their obligations to provide consumers with accurate information.

197 We will also continue our work with the insurance industry to further enhance the sector's ability to assist consumers in purchasing home insurance that better meets their needs.

Car insurance

No-claims discount schemes

198 As part of our ongoing work reviewing disclosure and transparency in the general insurance market, we undertook a review of no-claims discount schemes for car insurance policies in 2015 and found that they do not operate in the way consumers might reasonably expect: see [Report 424](#) *Review of no-claims discount schemes* (REP 424).

199 This report furthers the work of a previous report we published in relation to claims handling and internal dispute resolution in motor vehicle insurance, where we identified some issues concerning the accuracy and clarity of disclosure in relation to no-claims discount schemes: see [Report 245](#) *Review of general insurance claims handling and internal dispute resolution procedures* (REP 245).

200 In particular, in [REP 424](#) we found that insurers did not clearly disclose whether claims affected the underlying premium independently of any effect on the no-claims discount rating. We are currently conducting a health check of the industry to see how insurers have responded to the recommendations in our review.

Automatic renewal practices

201 We have also undertaken work in relation to car insurers' automatic renewal practices: see [Media release \(15-345MR\)](#) *ASIC drives better disclosure of automatic renewal of car insurance* (19 November 2015). This review addressed the issue of transparency for consumers in automatic renewals, due to the risk of doubling up on insurance cover, and the benefits of shopping around at renewal time.

202 This review highlighted that consumers were not always clearly informed by insurers when first purchasing the policy that it would automatically renew unless the consumer advised otherwise. In most cases, consumers were only informed about the automatic renewal practice in the PDS and renewal notice. This review also confirms our advice to consumers to shop around when insurance is due for renewal to ensure the cover selected is appropriate, both in terms of price and features.

203 Following this review, insurers agreed to better inform consumers about their car insurance renewal when first purchasing insurance to reduce the risk of consumers being unaware that their insurance would automatically renew. This included updating telephone sales scripts and having clearer and more prominent messaging on their websites.

The sale of add-on insurance through car dealerships

204 In 2016 we reviewed the sale of add-on insurance policies through car dealerships and found that the market is failing consumers. The findings of our review were released in the following reports:

- (a) [Report 470](#) *Buying add-on insurance in car yards: Why it can be hard to say no* (REP 470);
- (b) [Report 471](#) *The sale of life insurance through car dealers: Taking consumers for a ride* (REP 471); and

- (c) [Report 492](#) *A market that is failing consumers: The sale of add-on insurance through car dealers* (REP 492).

205 We reviewed five add-on insurance products that are commonly sold by car dealers:

- (a) Consumer credit insurance (CCI)—insures a consumer’s capacity to make repayments under a credit contract, including insurance against sickness, injury, disability, death or unemployment;
- (b) Loan termination insurance or ‘walkaway’ insurance—similar to CCI, but more restrictive, as the main benefit is payable only if the consumer returns the car to the dealer, which means the insurance does not help the consumer keep the car if they become disabled or sick;
- (c) Gap insurance—covers the difference between what a consumer owes on their car loan and the market value paid out under their comprehensive car insurance, if they write off their car;
- (d) Tyre and rim insurance—covers the cost of repairing or replacing tyres and rims if they are damaged as a result of blowouts, punctures or other road damage; and
- (e) Mechanical breakdown insurance—often referred to as an ‘extended warranty’, this typically covers the cost of repairing or replacing parts of the car as a result of mechanical failures after the manufacturer’s or dealer’s warranty has expired.

206 The reports outline our findings that consumers are being sold expensive, poor value products that give them very little to no benefit, in a sales environment with pressure selling, high commissions and conflicts of interest.

207 Additionally, the reports demonstrate how a lack of transparency in the sales environment hinders a consumer’s ability to make informed decisions, and can result in a market failure. This market failure is associated with a form of ‘reverse competition’, where insurers compete on the remuneration paid to car dealers in commissions to buy access to distribution channels, which increases the cost to consumers and decreases consumer-driven competition.

208 If a consumer could easily access information about the cost of a range of similar products, this would encourage insurers to compete on price. However, selling insurance through the car dealer distribution channel reduces this transparency because consumers are typically unaware of the cost of, or value provided by, add-on insurance products. Coupled with the high-pressure sales tactics often used, the ability of consumers to make an informed decision or take action to drive down prices is reduced.

209 In our view, a range of changes are required to resolve transparency issues in this channel. In [REP 470](#), we found that most consumers who had bought

add-on insurance through a car dealer had given little if any consideration to insurance before entering the dealership. They are therefore unlikely to have researched product choices, compared options, or even read available disclosure materials before entering into the insurance contract.

210 In a sales environment such as this, it is likely that a significant change to the sales process is needed in order for consumers to be able to make a genuinely informed decision.

211 After the publication of [REP 492](#) in September 2016, insurers started to respond ASIC's concerns, although inconsistently and, in some cases, slowly.

212 As part of their reform proposals, some insurers (ICA members) were parties to a recent application to the Australian Competition and Consumer Commission (ACCC) seeking approval for a 20% cap to be imposed on commissions. On 9 March 2017, the ACCC issued a determination rejecting the authorisation, as the public benefit was not demonstrated.

213 ASIC's view, as set out in a submission of 14 February 2017 to the ACCC, is that comprehensive changes in this market are needed, and that an effective cap on commissions could still be considered as part of a broader package of reforms. We intend to consult on possible reforms in April and May 2017, and seek stakeholder views on the advantages and disadvantages of a number of options, including a deferred sales model.

214 By way of example, in the United Kingdom, a deferred sales mechanism has been introduced so that certain add-on insurance products cannot be sold at the point of sale of the underlying products (i.e. the car and the car finance). Rather, consumers are provided with the relevant disclosures at the point of sale and only contacted after they leave. This gives them time to consider whether they need the products being offered, and to compare the products and prices offered by other insurers.

Note: See Competition Commission, [Market investigation into payment protection insurance](#) (PDF 2.56MB), p. 9.

215 Other work currently being undertaken in the add-on insurance market includes:

- (a) developing proposals to improve product design and distribution—a working group of insurers, car dealers and consumer groups has been established (meeting multiple times in early 2017); and
- (b) remediation for past unfair sales—we are approaching insurers individually and asking them to develop a refund program for unfair sales (e.g. sales of CCI cover to consumers who are ineligible to claim).

216 Our work is ongoing, and we are taking action to ensure improvements for consumers, including consideration of enforcement and other regulatory action.

Funeral insurance

217 Funeral insurance is sold to consumers to cover the cost of funerals. It is a form of life insurance and, in common with other types of life insurance, the premiums are ongoing and often stepped—that is, they increase as the consumer ages. Even so-called ‘fixed’ premiums will increase (along with the benefit payable) under ‘inflation protection’ measures.

218 Significant issues of concern with the design and sale of funeral insurance have been identified in Australia in recent years. For example:

- (a) In its 2013 annual report, APRA reported that it was closely monitoring the prudential implications of developments in directly marketed life insurance products, noting that insurers need to fully understand the reputational risks they face from customers subject to substantial premium increases as they age and who may pay more in premiums than they receive in benefits.
- (b) In 2013, a coalition of consumer and older-Australian advocacy groups released a strategy paper on funeral insurance in response to concerns raised about the cost and value of funeral insurance, and the ways in which it is marketed and promoted, including to particular communities such as the elderly and Indigenous consumers.
- (c) In 2012, we published findings from research into consumer awareness of different ways to pay for a funeral which found that participants rarely shopped around for the funeral product that best suited them and did not understand the full range of options available to save and pay for a funeral.

219 In October 2015, we released [Report 454](#) *Funeral insurance: A snapshot* (REP 454). The report provides an overview of the funeral insurance market in Australia, based on data collected in 2013 and 2014. It describes common features of policies and provides data about sales, claims and cancellations to better understand the benefits and risks associated with these products. It also includes recommendations for improving the features of funeral insurance products to potentially address issues raised in this report and elsewhere.

220 During and since the period of our review, some insurers have introduced more flexible features into their funeral insurance products.

221 Our recommendations, especially as they relate to product design, were made in the context of our current powers (although Treasury is currently consulting on a product intervention power). While we can and do take

action regarding misleading conduct, if conduct is not misleading we do not have powers to prevent funeral insurance products creating situations where consumers may:

- (a) pay more in insurance premiums (over a long period) than the benefit that will be available under the policy; or
- (b) have to cancel a policy due to unaffordable premiums, despite having paid premiums over a long period (and potentially in excess of the benefit available under the policy).

222 Our focus has been on ensuring that consumers are not misled by advertising or disclosure, and on providing financial education resources to help consumers make informed financial decisions.

223 We note that more insurers have begun offering improved features in new funeral insurance products introduced during, and since, the period of our review, including flat or level premiums for the life of the policy and capped premiums (where premiums cease to be payable once the benefit amount is reached).

224 It will take some time to see the impact of these new policy features, particularly as consumers with existing funeral insurance policies will retain their existing product unless they decide to switch—and lose the benefit of premiums already paid. We intend to monitor the impact of innovations in the market, including on the currently very high cancellation rates. We will also continue to monitor advertising and sales of funeral insurance to ensure consumers are not misled about the benefits and risks of these products.

Comparison websites

225 In November 2016, the Senate agreed to conduct an inquiry into Australia's general insurance industry that will specifically look at the case for establishing a comprehensive, independent comparison service to help consumers find better value cover for car, home and strata insurance. The Senate referred this matter to the Senate Economics References Committee for inquiry and report by 22 June 2017.

Note: Parliament of Australia, '[Australia's general insurance industry](#)', webpage, www.aph.gov.au.

226 [Regulatory Guide 234](#) *Advertising financial products and services including credit: Good practice guidance* (RG 234) assists promoters of financial services to comply with their legal obligations to ensure they do not make false or misleading statements or engage in misleading or deceptive conduct. It also helps ensure transparency, fairness and reliability of information in the financial services market. RG 234 includes guidance relating to the promotion and provision of financial products through comparison websites: see RG 234.207–RG 234.211.

- 227 Over the last ten years, there has been an increase in the promotion and availability of financial product comparison websites for consumers. In response, we have focused on ensuring they provide accurate and reliable information and do not mislead consumers.
- 228 In 2011, we undertook a review of comparison websites: see [Media Release \(12-304MR\)](#) *ASIC warns comparison websites* (5 December 2012). Our work identified the following concerns about commercial comparison websites:
- (a) many do not cover the full market for the relevant product and do not sufficiently disclose this limitation to consumers;
 - (b) there is often an insufficient distinction between insurers and insurance brands, which can create the impression that a broader range of the market is covered by the comparison than is actually the case;
 - (c) many seem to over-emphasise the price of the policies being compared, to the exclusion of other relevant considerations; and
 - (d) there is a potential for bias if there are ratings or awards attached to different products on the website based on different commissions, paid advertising or other conflicts of interest (e.g. ownership of brands) that are not apparent to consumers.
- 229 Our focus on insurance-specific comparison websites found that, where the website operators were related to the insurer that issued the insurance brands being compared, there tended to be insufficient disclosure of this to consumers. Comparisons were provided on the basis of price without any warning that different products may have different features and levels of coverage.
- 230 We will continue to target this area of the market and will take regulatory action where necessary to ensure that operators of financial product comparison websites comply with the law.
- North Queensland home insurance*
- 231 On 9 May 2014, the Government released the discussion paper, [Addressing the high cost of home and strata title insurance in North Queensland](#). This paper raised options to address the affordability of home building insurance and home contents insurance in North Queensland.
- 232 On 23 October 2014, the Government announced the development of a comparison website to help consumers to compare home building and home contents insurance for properties located in North Queensland.
- 233 The website was specific to North Queensland because of the region's susceptibility (compared to other regions in Australia) to more damaging weather events that more significantly impact on home insurance premiums,

as noted by the Australian Government Actuary in its [Report on home and contents insurance prices in North Queensland](#) in 2014.

234 ASIC was subsequently tasked with establishing the [North Queensland home insurance website](#) according to the Government's requirements, and it was launched on 31 March 2015 following an expedited development process.

General Insurance Code of Practice

235 In February 2017, the ICA launched a targeted review of the General Insurance Code of Practice. The ICA identified a need for the review arising from recent developments affecting the general insurance industry, including ASIC reports on add-on insurance, our proposed new product intervention powers, and the Senate inquiries into insurance and consumer protection.

236 The review will be conducted internally and we encourage the ICA to consider how best to ensure that it remains focused on consumer outcomes. Broad consultation will be critical.

237 We welcome the opportunity to liaise with industry on this review. It is important that industry develops clear and strong standards for the future to help consumers get value from the products they purchase, and help ensure the industry is one in which consumers can have trust and confidence.

238 ASIC supports the inclusion in the code of measures that meet the needs of consumers who may require additional support, such as older people, consumers with a disability, culturally and linguistically diverse consumers, and Indigenous consumers. ASIC supports the inclusion of measures substantively similar to those in section 7 of the Life Insurance Code of Practice to provide additional assistance for these consumers in their interactions with insurance products and providers, including from the initial sales conversation, policy renewal, claims lodgement, and when making complaints—both formally and informally—and, in particular, through the dispute resolution process

Consumer credit

Responsible lending obligations

239 The National Credit Act, including Sch 1 to the Act (National Credit Code), commenced in July 2010 and features a number of measures to improve protections for consumers who borrow money for personal, domestic or household needs and to deter predatory lending practices.

240 These measures include the requirement that credit providers:

- (a) hold an Australian credit licence (credit licence);

- (b) develop policies and procedures to help them comply with their obligations under the law; and
- (c) provide consumers with access to a no-cost forum for resolving complaints through internal dispute resolution (IDR) processes and membership of an ASIC-approved EDR scheme.

241 The National Credit Act contains responsible lending obligations for credit licensees. These conduct obligations apply to credit providers (i.e. lenders, such as banks, credit unions, small amount lenders and finance companies), lessors under consumer leases and credit assistance providers (e.g. mortgage and finance brokers).

242 The objective of the responsible lending obligations is to ensure that credit licensees do not suggest, assist with, or provide a credit contract or consumer lease to a consumer that is unsuitable for the consumer. According to the Explanatory Memorandum to the National Consumer Credit Protection Bill 2009, the responsible lending provisions are intended to:

- (a) introduce standards of conduct to encourage prudent lending and leasing, and impose sanctions in relation to irresponsible lending and leasing; and
- (b) curtail undesirable market practices, particularly where intermediaries are involved in lending.

Impact of the credit reforms

243 The credit reforms have gone a long way towards addressing many of the issues that were prevalent throughout the credit industry before 2010.

244 The reforms have imposed minimum competency and honesty standards on credit providers, mortgage brokers and other industry participants. These standards apply consistently across all Australian jurisdictions and include a number of areas not adequately covered by previous state-based and territory-based regulation, such as mortgage brokers and loans to invest in real property.

245 Many of the obligations imposed by the National Credit Act are a departure from traditional disclosure-based regulation.

246 We consider that the obligations imposed by the National Credit Act have been generally successful at addressing the regulatory gaps and market problems prevalent before 2010. These reforms provide an example of how regulatory tools that are not based purely on disclosure can address significant market problems.

247 Because the responsible lending obligations have been in place for some time—and in light of our guidance, reviews and published reports—our expectations for compliance are now higher. The responsible lending

obligations are a central element of the national consumer credit legislation, and ensuring industry compliance with these obligations is a key part of ASIC's strategic objective to ensure confident and informed financial consumers. If we identify non-compliance in the future, we will consider enforcement action.

Home lending

248 ASIC and other regulators have a strong interest in home lending practices and any potential increase in higher-risk lending. A focus on the responsible lending obligations in home lending assists in avoiding excessive risks in the home lending market, and in improving consumer outcomes in the consumer credit industry more broadly. Industry compliance with these obligations is therefore a key part of our strategic objective to ensure confident and informed financial consumers.

249 For many Australians, their home is their most significant asset. For this reason, lending practices in the home finance sector are critical to the financial wellbeing of Australian consumers.

250 Since assuming responsibility for the regulation of consumer credit, we have completed a considerable amount of work in relation to home lending and mortgage brokers. Recently, we have published a number of reports, following industry reviews of how lenders and brokers provide interest-only home loans, to ensure that consumers are not being placed into unsuitable loans and loans they cannot afford.

251 Our reports have resulted in industry participants making changes to their processes, to raise home lending standards and ensure consumers are provided with suitable loans.

252 We have also taken significant action in relation to loan fraud, where brokers and the staff employed by lenders have been found to falsify documents when arranging loans for consumers.

253 Despite the improvement in practices identified since the introduction of the National Credit Act and our various reviews, we will continue to monitor the home lending industry's compliance with the responsible lending obligations. This will remain a key focus of our work—given that such a focus assists in avoiding excessive risks in the home lending market, and in improving consumer outcomes in the consumer credit industry more broadly.

'Low doc' home lending

254 In September 2014, we released [Report 410](#) *Review of 'low doc' home lending following the introduction of the responsible lending obligations* (REP 410). We reviewed how lenders that provide 'low doc' home loans are

complying with their responsible lending obligations. The report presented the findings of our targeted review and identifies a number of examples of how credit licensees can reduce the risk of non-compliance. The review followed on from the reviews in [Report 262](#) *Review of credit assistance providers' responsible lending conduct, focusing on 'low doc' home loans* (REP 262) and [Report 330](#) *Review of licensed credit assistance providers' monitoring and supervision of credit representatives* (REP 330).

255 The credit reforms arising from the National Credit Act increased the level of regulatory protection for borrowers and led to improvements in industry practice. 'Low doc' loans in the sense previously common in the market—where the lender does not verify the consumer's financial situation—are now prohibited and there are significant civil and criminal penalties for breaches of the responsible lending obligations.

256 The level of activity in 'low doc' loans has decreased significantly since the commencement of the National Credit Act. In addition, consumer groups have noted that, since the commencement of the responsible lending obligations in the National Credit Act, there has been a noticeable tightening of lending procedures in residential lending and they are not seeing the same type of problems in this sector as they previously did.

Interest-only home loans

257 In December 2014 we announced that, in light of growth in the total value of new interest-only home loans, we would review interest-only home loans as part of a broader review by the Council of Financial Regulators into home lending standards: see [Media Release \(14-329MR\)](#) *ASIC to investigate interest-only loans* (9 December 2014).

258 In August 2015, we released [Report 445](#) *Review of interest-only home loans* (REP 445), which summarised findings from our review of lenders' practices when providing interest-only home loans. This review found that:

- (a) only a few lenders had procedures to consistently identify and record consumers' requirements and objectives; and
- (b) even where a consumer's requirements and objectives were recorded, the stated analysis could be inadequate to explain why a loan on the terms provided was suitable for the consumer.

259 In this report we also found that a greater proportion of interest-only home loans were arranged through the mortgage broker channel than direct channels (i.e. lenders). More than 50% of consumers use mortgage brokers to assist in securing credit more generally.

260 Mortgage brokers are well placed to assist consumers find products that meet their requirements. For these benefits to be realised, it is important that

consumers have confidence in mortgage brokers, including their compliance with obligations under the National Credit Act.

- 261 In light of these factors and the findings in [REP 445](#), we reviewed how 11 large mortgage brokers inquire into, and record, consumers' requirements and objectives for the purpose of assessing whether an interest-only home loan meets their requirements.
- 262 In September 2016, we released [Report 493](#) *Review of interest-only home loans: Mortgage brokers' inquiries into consumers' requirements and objectives* (REP 493). Our review found that:
- (a) all mortgage brokers provided their representatives with inquiry tools (such as a fact find or needs analysis) to assist them in inquiring into, and recording, consumers' requirements and objectives; and
 - (b) a statement summarising how the interest-only feature specifically met the consumer's requirements and objectives was identified on just under 80% of applications reviewed. (This is compared with the findings in [REP 445](#), where in more than 30% of applications reviewed, we found no evidence that the lender had considered whether the interest-only loan met the consumer's requirements).
- 263 In our review of mortgage brokers, we tracked trends in the home lending industry since the publication of [REP 445](#), including how changes recommended for lenders in that report had flowed through to mortgage brokers and the home lending industry more generally.
- 264 In REP 445 we observed that most lenders were moving to reduce the maximum interest-only period available to owner-occupiers to five years. For those mortgage brokers who provided information on the length of interest-only terms on new home loans, the percentage of home loans with an interest-only period greater than five years had fallen from approximately 11% of all such loans in the first half of 2015 to just over 5% in the December 2015 quarter.
- 265 All lenders in the lenders interest-only review were using, or were going to change their procedures to use, the residual-term method to assess consumers' ability to meet their financial obligations for interest-only loans.
- Mortgage broker remuneration review*
- 266 In 2016 we conducted an industry-wide review into mortgage broker remuneration. This review was undertaken at the Government's request, as part of its response to the FSI. In particular, we were asked to review the mortgage broking market to determine the effect of current remuneration structures on the quality of consumer outcomes.

Note: See the Hon. Kelly O'Dwyer MP Minister for Revenue and Financial Services, [Government releases ASIC's review of mortgage broker remuneration for public consultation](#), media release, 16 March 2017.

267 The Government released ASIC's [Report 516](#) *Review of mortgage broker remuneration* (REP 516) on 16 March 2017.

268 Proposals arising from the review include:

- (a) improving the standard commission model for mortgage brokers;
- (b) moving away from bonus commissions and soft-dollar benefits;
- (c) clearer disclosure of ownership structures;
- (d) establishing a new public reporting regime; and
- (e) improving governance and oversight.

269 The Government has invited all interested parties to make a submission on the proposals outlined in [REP 516](#).

270 Refer to paragraphs 490–501 for details on REP 516.

Margin lending

271 A margin loan lets an investor borrow money to invest in shares or managed funds. Double geared margin loans are where a consumer borrows money, using another asset as security (e.g. the family home) to purchase shares, and then obtains a margin loan on these shares to purchase additional shares. Double gearing can further increase returns; however, it can also amplify losses. Given there are extra risks associated with double gearing, the law requires margin lenders to meet responsible lending obligations.

272 Our review of the lending practices of six margin lenders in 2015–16 (covering 90% of the market) found these could be improved to better manage the different levels of risk present for double geared consumers as part of assessing whether the loan is suitable.

273 In response to our review, margin lenders moved to better address the different levels of risk for investors. Of the five lenders who approved double geared loans, one ceased offering these. The remaining four lenders committed to reducing risks, including ensuring that their policies have, or continue to have, extra buffers to allow for interest rate rises and/or changes in expenses, lower maximum allowable loan amounts and lower loan-to-value ratios for double geared borrowers.

Note: See [Media Release \(16-010MR\)](#) *Margin lenders improve lending standards following ASIC review* (21 January 2016).

Consumer leases

- 274 We are responsible for regulating consumer leases under the National Credit Act. A consumer lease is a contract for the hire of goods for a fixed term of more than four months, where the consumer has no contractual right or obligation to purchase the goods at the end of the lease term. If there is a right or obligation to purchase the goods at the end of the lease term (e.g. a sale of goods by instalments arrangement), the contract is considered a credit contract.
- 275 Although under a consumer lease a consumer does not have a contractual right or obligation to purchase the goods at the end the lease, in practice most lessors allow the consumer to either retain the goods (or similar goods) at the end of the contract or gift the goods to a third party, nominated by the consumer.
- 276 Under a consumer lease, consumers make rental payments to the lessor, usually on a fortnightly basis, over a fixed term (typically of between 12 and 48 months). Even where the fortnightly payments are relatively low, we found that, over the term of the lease, the consumer will pay significantly more than the retail price of the goods and be charged more than a lender is permitted to charge under a small amount credit contract (also known as a payday loan).
- 277 Despite taking multiple enforcement actions, we have continuing concerns about the conduct of lessors, including targeting financially vulnerable consumers (such as those in regional communities) with limited access to alternative forms of finance. We are concerned about the risk of this conduct continuing to occur, given high usage of leases by financially vulnerable consumers, such as those who receive Centrelink payments.
- 278 In September 2015, we released [Report 447](#) *Cost of consumer leases for household goods* (REP 447) which sets out our findings about the costs charged by regulated providers of consumer leases. Two key findings are that:
- (a) different lessors charged significantly different amounts for the same goods (known as price dispersion); and
 - (b) the same lessor would charge significantly different amounts for the same goods for different customer segments (known as price discrimination).
- 279 In both instances, the consumers that are more likely to pay the higher amounts are Centrelink recipients, despite having lower incomes as a class and therefore being more financially vulnerable.
- 280 Our previous experience with small amount credit contracts suggests that the high costs charged by lessors is driven both by lessors maximising the return

on transactions and the inability of consumers to exert competitive pressure on lessors to reduce prices.

281 We are currently reviewing specific lessors for compliance with the responsible lending obligations under the National Credit Act.

Payday lending

282 The Government has identified small amount or payday loans as a product that holds specific risks of financial detriment or harm to vulnerable consumers.

283 Historically, the cost of small amount loans was very high and well above mainstream consumer lending rates. Consumers of payday loans were charged costs that, given their financial position, put them at risk of an ongoing cycle of disadvantage that reduced the potential for financial and social inclusion.

284 Prior to 2013, laws imposing a cap on the cost of payday loans had operated in some states and territories with mixed success. In 2013, the small amount lending provisions of the *Consumer Credit Legislation Amendment (Enhancements) Act 2012* (Enhancements Act) commenced, which were designed to address particular risks associated with small amount lending, including the risk to consumers of falling into a debt spiral through the repeated or continued use of high-cost small amount credit contracts.

285 In enforcing the National Credit Act and the specific payday lending regulations, we aim to ensure that consumers are not trapped in a cycle of disadvantage and that vulnerable consumers are protected from practices that reduce financial and social inclusion.

286 The small amount lending provisions introduced additional obligations for small amount loans. These additional requirements have been imposed because of the particular risks to consumers that can result from using these kinds of credit contracts. In particular, there are risks that the repeated or continued use of credit provided through this form of credit contract will result in consumers entering into multiple contracts where the overall level of indebtedness increases over time so that:

- (a) an increasing proportion of their income will need to be used to meet the repayments; and
- (b) their capacity to use the credit to improve their standard of living is diminished.

Our work on payday lending

287 Payday lending has been a strong focus for ASIC since the commencement of the National Credit Act.

288 In 2011, [Report 264](#) *Review of micro lenders' responsible lending and disclosure obligations* (REP 264) found that payday lenders were at risk of not meeting their responsible lending obligations. We were particularly concerned that payday lenders were not clarifying conflicting information, were not keeping adequate records and were not making sufficient inquiries or sufficiently verifying consumers' financial expenses.

289 In March 2015, we released [Report 426](#) *Payday lenders and the new small amount lending provisions* (REP 426). This report sets out the findings of a review of the payday lending industry and its response to the additional protections for vulnerable consumers contained in the small amount lending provisions of the Enhancements Act.

290 We have also taken significant regulatory action against non-compliance with the National Credit Act by targeting lenders who have:

- (a) overcharged consumers;
- (b) attempted to avoid the National Credit Act; and
- (c) breached the responsible lending obligations.

291 We continue to target avoidance models and take action where we are concerned lenders are attempting to avoid obligations imposed by the consumer credit legislation.

Recent enforcement action on payday lenders

292 We have achieved 17 enforcement outcomes in the payday lending sector to date. In March 2017, following ASIC action the Federal Court fined payday lenders the Fast Access Finance Pty entities (the FAF Companies) a total of \$730,000 for breaching consumer credit laws by engaging in credit activities without holding a credit licence: see [Media Release \(17-060MR\)](#) *Payday lenders fined \$760,000 for diamond trading 'sham'* (10 March 2017).

293 The FAF Companies operated under a business model where consumers seeking small value loans (generally ranging from \$500 to \$2,000) were required to sign documents which purported to be for the purchase and sale of diamonds in order to obtain a loan.

294 We alleged that the purchase and sale of diamonds was a pretence because there were no diamonds involved in the transaction and consumers had no intention of buying or selling diamonds. Rather, the diamond purchase and sale contracts were designed to camouflage what, in reality, were loan transactions to which the National Credit Act applied. The underlying reason for the concealment was to circumvent the limit upon the rate of interest which was 48%.

295 In another example, we investigated payday lender Cash Converters as a result of concerns that it had failed to make reasonable inquiries into

consumers' income and expenses when processing small amount credit contracts through its website, particularly when the loan was unsuitable under the National Credit Act: see [Media Release \(16-380MR\)](#) *Cash Converters to pay over \$12m following ASIC probe* (9 November 2016).

296 We were also concerned that Cash Converters did not take reasonable steps to verify consumers' expenses in accordance with its responsible lending obligations, instead merely applying an internally generated benchmark with no relationship to the actual expenses of individual consumers.

297 Cash Converters paid infringement notice penalties of \$1.35 million for this conduct. Additionally, we accepted an enforceable undertaking which requires Cash Converts to:

- (a) refund eligible consumers fees totalling \$10.8 million through a consumer remediation program overseen by an independent expert; and
- (b) engage the independent expert to review its current business operations and compliance with the consumer credit regime and report to us.

298 We also successfully took civil penalty action against The Cash Store Pty Ltd and Assistive Finance Australia Pty Ltd for wholesale responsible lending failures and engaging in unconscionable conduct: see [Media Release \(15-032MR\)](#) *Federal Court orders record penalty* (19 February 2015).

299 We held the view that The Cash Store provided unaffordable loans to a large number of their customers who were on low incomes or receiving Centrelink benefits. In addition, the company acted unconscionably and unfairly in selling insurance for these loans to these customers when it was unlikely that they could ever make a claim on that insurance.

300 The court upheld our view and found systemic and gross failures by both The Cash Store and Assistive Finance in complying with their legislative requirements, and a wholesale failure of process. The court awarded record penalties totalling \$18.975 million against The Cash Store and Assistive Finance.

Further reforms in consumer leases and payday lending

301 In April 2016, the Government released the [Final Report of the independent Review of Small Amount Credit Contracts](#) for consultation. The report made 24 recommendations relating to the small amount credit contract and consumer leasing laws. In November 2016, the Government responded to the recommendations, accepting most of these in full or in part. ASIC made two submissions to the review, which generally supported the recommendations and provided feedback on how they may be implemented. We also provided a [submission](#) to the Government's consultation on the recommendations of the review.

Small business unfair contract term protections

302 The small business unfair contract term protections legislation, which amended the ASIC Act and *Competition and Consumer Act 2010* to extend the unfair contract term protections to small business, came into effect on 12 November 2016.

303 The unfair contract term protections will apply to all standard form contracts entered into or renewed on or after 12 November 2016, where, at the time of entering into the contract:

- (a) at least one party to the contract is a business employing less than 20 people; and
- (b) the contract is worth up to \$300,000 in a single year or \$1 million if the contract runs for more than a year.

The new protections also apply to any term of a standard form contract, which is varied on or after 12 November 2016.

304 Our guidance on unfair contract terms in small business contracts can be found in [Information Sheet 211](#) *Unfair contract term protections for small businesses* (INFO 211).

305 We expect businesses to have reviewed standard form contracts to remove any potentially problematic terms. Our review of small business lending contracts has identified potential unfair contract terms and, although some have been removed or amended by lenders, we are continuing to liaise with lenders about terms that may potentially be unfair.

306 We are also working with the Australian Small Business Family Enterprise Ombudsman (ASBFEO) to ensure compliance with the unfair contract terms laws: see [Media Release \(17-056\)](#) *ASIC and ASBFEO join forces to ensure bank lenders meet unfair contract laws* (9 March 2017).

307 In February 2017, the final report of the Inquiry into small business loans was released. The report made a number of recommendations for industry and also recommended that ASIC establish a Small Business Commissioner.

Note: ASBFEO, [Inquiry into small business loans](#) (PDF 3.1MB), report, 12 December 2016.

308 In response to these recommendations, we have established the Office of Small Business coordinate our efforts to listen to, promote, protect and regulate small businesses.

309 The [independent review of the Code of Banking Practice](#) also made recommendations that would enhance protections for small business. ASIC welcomes these recommendations.

Non-cash payments

310 The FSI recommended graduating retail payments regulation and making the ePayments Code mandatory.

311 The Government agreed that a graduated regulatory regime will support innovation and committed to mandating the ePayments Code. The Government said that it will clarify laws around powers held by ASIC and the Reserve Bank of Australia (RBA) to ensure that regulators have the power to regulate new payment systems in a graduated way, such as digital currencies (e.g. Bitcoin) and other payment systems as they emerge. The Government also seeks to ensure that minimum acceptable practices consistently apply to the payments industry in the interests of consumers.

Note: Treasury, '[Government response to the Financial System Inquiry](#)', webpage, www.treasury.gov.au.

312 APRA, ASIC and RBA will review the framework for payments system regulation and develop clear guidance.

Superannuation and managed funds

313 The managed funds sector has become an increasingly important part of Australia's financial system and broader economy. Underpinned by a compulsory, government-mandated superannuation scheme, Australia's managed funds sector is rapidly becoming one of the largest and fastest growing in the world. Superannuation funds, life insurance offices and retail investors (investing through unit trusts and cash management accounts) account for the main sources of funds flowing to managed investments.

Superannuation

314 As the conduct and disclosure regulator, our primary role largely concerns the relationship between trustees and individual consumers. Co-regulators of the superannuation industry are APRA and the Australian Taxation Office (ATO), with ASIC and APRA being principally responsible for supervising compliance with the Corporations Act and the *Superannuation Industry (Supervision) Act 1993* respectively. The ATO has a regulatory role in relation to self-managed superannuation funds (SMSFs). Superannuation funds also have reporting and administrative obligations to the ATO.

315 The focus of public discussion and awareness of superannuation revolves around the pre-retirement phase, which has resulted in positive developments to address shortfalls in investor engagement, such as the MySuper reforms.

Stronger Super: Setting defaults

316 Following the Stronger Super reforms in 2012, some superannuation funds now offer a new, simple and cost-effective superannuation account called MySuper. MySuper product dashboards have been in place since 31 December 2013.

317 MySuper accounts offer:

- (a) lower fees (and restrictions on the type of fees that can be charged);
- (b) simple features, so members do not pay for services they do not need; and
- (c) options for investing at different stages of life.

Retail, industry and corporate funds can all offer MySuper accounts.

318 MySuper products recognise that many people will not exercise any choice over the fund into which their superannuation guarantee contributions are made, due to factors such as inertia and procrastination. MySuper products minimise the risk of adverse consequences from such inaction (e.g. by not switching out of a fund that charges high fees).

319 We continue to contribute to law reform initiatives in superannuation, including aspects of the Stronger Super reforms, such as portfolio holdings disclosure and the product dashboard. In December 2015, we released the results of consumer testing undertaken in relation to the choice product dashboard to coincide with Treasury's consultation on the proposed dashboard legislation.

320 We have also made a number of submissions on the objectives of superannuation, and contributed a submission to the Productivity Commission on the competitiveness and efficiency of superannuation.

Supporting Australians into retirement

321 Inevitably, as more Australians move into retirement, superannuation funds and financial advisers will adapt their business models and products to the retirement phase (e.g. by building and deepening their professional skill-base, adjusting their product offerings and streamlining their services from accumulation through old age). However, this process of adaptation has progressed slowly; currently there are limited product offerings and significant deficiencies in retirement advice.

322 The FSI recommended that the Government require superannuation fund trustees to pre-select an option for members to receive their superannuation benefits in retirement, and that the pre-selected option should be a CIPR that includes a regular and stable income stream, longevity risk management and flexibility.

323 Accordingly, the Government has announced it will develop legislation to allow fund trustees to provide pre-selected retirement income products to help guide members at retirement and improve outcomes for retirees, including through increased private retirement incomes, increased consumer choice and better protection against longevity and other risks. In December 2016, the Government released for public consultation a discussion paper that explores the key issues in developing the framework for CIPR. Submissions are due by 28 April 2017.

Note: See Treasury, [Development of the framework for Comprehensive Income Products for Retirement](#) (PDF 579.1KB), discussion paper, 15 December 2016.

Employers in super

324 As the compulsory superannuation system has high numbers of disengaged consumers, the influence of employers is significant.

325 In January 2017, the Government announced the establishment of a new multi-agency working group—which includes ASIC—to investigate and develop practical recommendations to deal with superannuation guarantee non-compliance by employers. The working group will identify the drivers of non-compliance, and develop ways to improve compliance and policy options to ensure the law remains fit for purpose for Australia’s superannuation system.

Note: See the Hon. Kelly O’Dwyer MP Minister for Revenue and Financial Services, [Government acting on Super Guarantee non-compliance](#), media release, 25 January 2017.

326 We are also currently undertaking a project that looks specifically at the interactions between superannuation trustees and employers, and considers issues of advice, disclosure and inducements. This project will also review the role of employers in the superannuation process and determine the impact they have on the retirement outcomes of their employees.

Member Experience project and Effective Disclosure project

327 We will soon release a report on our work on two key superannuation projects: the Member Experience project and the Effective Disclosure project.

328 The report will provide feedback on some key disclosures in the superannuation industry based on our findings, with a view to improving the clarity of the messages in these documents and enhancing members’ experience of and engagement with their superannuation.

329 This report will also explore some of the barriers to engagement that exist in the superannuation system, and considers what steps industry and ASIC can take to assist consumers to better engage with their superannuation.

Managed investment schemes

330 The term ‘managed investments schemes’ is used to describe investment funds, managed funds, and collective investments. It encompasses most arrangements in which passive investors contribute money (or money’s worth, such as land) to be pooled to produce a financial or property-related benefit to the contributors.

331 The primary regulation governing managed investment schemes is contained within Chs 5C and 7 of the Corporations Act, supplemented by policies and guidance released by ASIC. While the legislation does not distinguish between types of managed investment schemes (e.g. equity funds, property trusts and mortgage schemes), we have issued specific regulatory guides and class orders to provide added guidance and flexibility to ensure effective regulation of the broad classes of products available.

Legislative framework: Reviews and inquiries

332 In addition to the Senate inquiry into forestry managed investment schemes (see paragraphs 339–388), the legislative framework for managed funds has undergone numerous reviews and inquiries, including:

- (a) a review of the *Managed Investments Act 1998*, commissioned by the Government in 2001;
- (b) the 2009 Ripoll Inquiry, which covered managed investment schemes among other matters;
- (c) the 2009 PJC inquiry into agribusiness managed investment schemes;
- (d) the 2011–12 PJC inquiry into the collapse of Trio Capital; and
- (e) the Corporations and Markets Advisory Committee’s 2012 report, *Managed investment schemes*.

333 Some of the issues raised by these reviews and inquiries include the limitations in governance requirements in relation to compliance committees and standards for compliance plans, and the difficulties in replacing responsible entities.

334 However, despite these reviews and a significant amount of work in developing potential refinements to the legislative framework for managed investment schemes, it has remained largely unchanged.

Agribusiness schemes

335 In agribusiness managed investment schemes (agribusiness schemes), investors’ money (or money’s worth) is either pooled or contributed towards a common enterprise. The ‘common enterprise’ structure is more typical, where members’ contributions are used towards a common enterprise,

without being pooled together under the scheme (except on harvest, where the harvest is typically pooled for marketing).

336 The risks of investing in agribusiness schemes were highlighted during 2009 and 2010 with the collapse of several operators of large agribusiness schemes, causing significant losses to investors. These failed schemes included Environinvest Limited, Timbercorp Securities Limited, Great Southern Managers Australia Limited, FEA Plantations Limited, Rewards Project Limited and Willmott Forests Limited.

337 Since these collapses, we have worked to ensure that the interests of retail investors in failed managed investment schemes are preserved, notwithstanding difficult commercial situations. Alongside this work, and following consultation with industry, we released further regulatory guidance with new disclosure benchmarks and principles for agribusiness schemes to improve investor awareness of the risks associated with these products: see [Regulatory Guide 232](#) *Agribusiness managed investment schemes: Improving disclosure for retail investors* (RG 232).

338 These benchmarks are designed to assist retail investors and their advisers to make informed investment decisions. The benchmark disclosure regime highlights key risks of agribusiness scheme investments and requires prominent and clear disclosure about how a responsible entity proposes to manage those risks. It is intended that the benchmarks will illuminate the positive and negative aspects of commercial structures chosen by agribusiness scheme operators when they offer investments to retail investors.

Forestry managed investment schemes

339 A 'forestry scheme' is a type of agribusiness scheme operated for investment in forestry.

340 In recent years there has been a significant decrease in the number of forestry schemes being operated and promoted to investors, and in the number of responsible entities operating these schemes.

341 The collapse of a number of responsible entities of forestry schemes has highlighted issues with this type of investment and the way forestry schemes were promoted. While a small number of responsible entities still operate in this space, they do not appear to rely on the sale of managed investment schemes to fund their business operations in the same way as responsible entities such as Timbercorp Securities Limited and others whose collapse cost investors large sums of money.

342 We see the effect of such losses firsthand, and we understand how such losses can affect the economic wellbeing and confidence of Australians. That

is why a key focus of our regulatory activity is minimising the risk of loss for investors and financial consumers.

343 We have responded to the issues arising out of the collapse of a number of responsible entities of forestry schemes through regulatory interventions, such as:

- (a) increasing surveillance of the sector, including ongoing engagement with external administrators of responsible entities;
- (b) introducing disclosure guidance for issuers of interests in agribusiness schemes and issuing guidance about these schemes for investors; and
- (c) revising the land holding AFS licence condition applied to responsible entities of agribusiness schemes.

344 However, our regulatory role does not involve preventing all consumer losses or ensuring compensation for consumers in all instances where losses arise. Our statutory objectives, regulatory tools and resources are not intended to prevent many of the losses that investors and financial consumers will experience. This is true of every financial market regulator.

345 In September 2014, we made a submission to the Senate inquiry into forestry managed investment schemes. In March 2016, the inquiry released its final report.

Note: See Parliament of Australia, '[Forestry managed investment schemes](http://www.aph.gov.au)', webpage, www.aph.gov.au

346 In our submission, we indicated that we see some merit in considering potential reforms; however, any such reforms should be considered within the broader work that has been done to develop potential refinements to the regime as a whole. As a result, we identified some potential areas for reform that relate to the specific business model of common enterprise schemes, and forestry schemes in particular, as well as potential areas for reform across the broader managed investment scheme sector.

Fee and cost disclosure

347 Issuers of superannuation and managed investment products need to include prescribed information about the fees and costs charged to consumers in their PDS. Accurate and consistent disclosure of fees and costs is important to help consumers make informed decisions about their investments and to compare available products on the market.

348 In July 2014, we released [Report 398](#) *Fee and cost disclosure: Superannuation and managed investment products* (REP 398), which examines the industry practices of superannuation and managed investment product issuers in relation to fee and cost disclosure. It also looks at any

potential inconsistencies that reduce the benefit of fee and cost disclosure for investors.

349 This report identified a number of problems in disclosure practices that lead to inaccuracies and inconsistency in fees and costs disclosure. One of the key problems identified was under-disclosure of costs associated with investing indirectly through interposed vehicles, such as a unit trust or life company. Inconsistent and inaccurate fee and cost disclosure can be harmful to competition between funds, as it can give an unfair competitive advantage to those who disclose lower fees and costs than are actually charged, which can ultimately harm consumers.

350 To help address the problems we identified in [REP 398](#), ASIC issued a class order clarifying the regulatory requirements for fees and costs. We also updated our guidance to help industry better understand the requirements. The class order was first issued in December 2014 with further amendment made to it in November 2015, at which time updated guidance was published.

351 The class order and guidance were published after extensive industry consultation. Industry and consumer groups were very supportive of ASIC's work in the area as they saw the potential benefits to consumers and industry more generally. In response to industry associations' relief application, in November 2016 ASIC extended the transition period to 29 September 2017 to give industry more time to implement the updated requirements on a more consistent basis. The extension is conditional on superannuation trustees or responsible entities seeking the extension.

ASIC Innovation Hub

352 We recognise the vital role that fintechs play in financial services. In addition to developing regulatory guidance about how these new developments fit into our regulatory framework, we have launched an [Innovation Hub](#) to help fintechs navigate our regulatory system without compromising investor and financial consumer trust and confidence.

353 In December 2016, we released [Regulatory Guide 257](#) *Testing fintech products and services without holding an AFS or credit licence* (RG 257), which contains information about Australia's 'regulatory sandbox' framework.

354 An important part of our work in this space is collaborating with other regulators to understand developments. We have signed Memorandums of Understandings with the Monetary Authority of Singapore, the Financial Conduct Authority (FCA) in the United Kingdom and Canada's Ontario Securities Commission.

External dispute resolution

- 355 Having a fair, efficient and effective dispute resolution framework is integral to our strategic objective of promoting investor and consumer trust and confidence in the Australian financial services system.
- 356 In our view, mandating membership of an ASIC-approved EDR scheme was one of the most successful of the recommendations of the Financial System Inquiry of 1997 (Wallis Inquiry) that preceded the implementation of the financial services reforms in 2003. The dispute resolution framework is a critically important part of the broader financial services industry.
- 357 Australia's financial services dispute resolution framework currently comprises two ASIC approved industry-based ombudsman schemes—the Credit and Investments Ombudsman (CIO) and the Financial Services Ombudsman (FOS)—and the statutory Superannuation Complaints Tribunal (SCT). Together, these dispute bodies deal with around 40,000 consumer and small business disputes each year across a broad suite of products and services, including payment systems, credit, banking, general and life insurance, superannuation, investment and advice.
- 358 We have played a key role in establishing and shaping the financial services dispute resolution system. In taking account of the strengths and weaknesses of the current framework, it is also timely to consider a preferred state for a sustainable dispute resolution framework that delivers good outcomes for current and future users.

ASIC oversight of EDR schemes

- 359 [Regulatory Guide 139](#) *Approval and oversight of external complaints resolution schemes* (RG 139) explains how EDR schemes can obtain initial approval from ASIC to operate in the Australian financial system.

Note: Our oversight does not extend to the SCT.

- 360 Our operational oversight of the EDR schemes focuses on ensuring the schemes meet the approval criteria. That is, that they operate in accordance with the principles of independence, fairness, efficiency, effectiveness, and accountability. Our oversight does not extend to reviewing individual cases or scheme decisions, or dealing with appeals from scheme decisions.
- 361 We hold quarterly meetings with the approved schemes, and receive quarterly statistical and systemic issues and serious misconduct reports. These reports are anonymised, however we can—and do—use our statutory notice powers to obtain more information about specific reports or cases files where this is necessary. This information supports our regulatory efforts to help identify industry trends or potential red flags across firms or industry sectors. ASIC staff across stakeholder and internal complaints teams also

liaise with scheme staff about particular matters on an as needs basis. We monitor and register complaints made to us by consumers and industry members about the schemes.

362 We also meet regularly with the SCT, although there is no ongoing requirement that the Tribunal provide regular operational and disputes data to us.

363 Dissatisfaction with a scheme decision is typically the most common type of complaint made to ASIC and, while we do not intervene in or review the independent decision making of EDR schemes, the intelligence we receive in these complaints can be a useful barometer of broader scheme performance, including about delays.

EDR review

364 On 20 April 2016, the Government announced the establishment of an independent panel (the Panel) to lead a review into the financial system's external dispute resolution system and complaints framework (EDR review). The Panel was charged with reviewing the role, powers, governance and accountability of the existing framework.

Note: Treasury, '[Review into dispute resolution and complaints framework: Terms of reference](http://www.treasury.gov.au)', webpage, www.treasury.gov.au.

365 We consider that this review represents an important opportunity to design a framework that best meets the needs of all users.

366 On 9 September 2016, the Panel released an [issues paper](#).

367 ASIC has made three public submissions to the EDR review, including a [supplementary submission](#) in November 2016, following the release of [REP 498](#). In responding to the Panel, ASIC's priority has been to consider what framework delivers the best outcomes for consumers and small businesses who have suffered loss, now and into the future. Treating these consumers fairly and quickly also gives industry the best opportunity to build and preserve trusted relationships with their customers.

368 On 6 December 2016, the Panel published an Interim Report with draft recommendations. The Panel will provide a final report to Government by the end of March 2017.

Note: See Treasury, '[Release of the external dispute resolution review interim report](#)', media release, 6 December 2016.

369 The recommendations outlined in the Interim Report would profoundly change the financial services EDR sector. If these are adopted in a final report, legislative amendment, public consultation, amendments to RG 139,

and careful consideration of transitional and implementation issues would be required.

370 In February 2017, the Government extended the Panel's terms of reference to make recommendations about the establishment, merits and potential design of a compensation scheme of last resort; and consider the merits and issues involved in providing access to redress for past disputes. The Panel will provide its report to Government on these latter issues in June 2017.

Note: See Treasury, [Amendment to terms of reference of the external dispute resolution review](#), media release, 3 February 2017.

371 We are committed to working on any changes arising from the EDR review to ensure the framework effectively meets the needs of scheme users into the future.

Debt management firms and EDR schemes

372 In January 2016, we issued [Report 465](#) *Paying to get out of debt or clear your record: The promise of debt management firms* (REP 465), which included the following key findings:

- (a) the growth of the debt management sector has coincided with significant change to the regulation of consumer credit and credit reporting in Australia;
- (b) debt management firms typically offer a range of credit repair, budgeting and debt negotiation services;
- (c) fees and costs are often high, heavily 'front loaded' and opaque to consumers;
- (d) sales techniques may create a high pressure sales environment; and
- (e) firms rarely refer consumers in financial hardship direct to free, alternative sources of help (including ombudsman schemes).

373 ASIC's view is that the financial harm caused by these entities is likely to increase as lenders increasingly move towards rating for risk pricing models, and the state of a consumer's credit report has a greater impact on the cost of credit.

374 We agree with and support the EDR Review Panel's draft recommendation that debt management firms be required to join an approved EDR scheme, as this would give consumers a means of having complaints heard without incurring the costs of litigation.

375 However, there are some complex issues in relation to how membership of an EDR scheme would be enforced, including whether licensing is the appropriate vehicle.

- 376 Any enforcement mechanism would need to be simple and efficient for ASIC to take action. This would likely mean infringement notices and the capacity to take action against the directors or individuals running the business.
- 377 The services offered by debt management firms are different from those provided by entities that are required to hold either a credit licence or an AFS licence. It would therefore be likely that new conduct obligations would need to be introduced under any licensing regime, rather than simply extending the existing obligations under either the Corporations Act or the National Credit Act. Experience suggests that the Australian Consumer Law has not been adequate to address some of the issues raised.
- 378 By comparison, the FCA regulates debt management services in the United Kingdom, and applies obligations that are based on the firm's particular business model. Firms must receive authorisation from the FCA to provide debt administration services and are required to meet such obligations as: providing suitable advice; ensuring fees are fair and transparent; and, in their first communication with customers, informing them about free debt services.
- 379 In the absence of obligations such as those adopted in the United Kingdom, it is not apparent to ASIC that requiring debt management firms to be members of an EDR scheme would comprehensively address the range of problems identified in [REP 465](#).
- 380 Our view is that, if the need for greater regulation of debt management firms is accepted, then new and additional conduct obligations should be introduced to address the specific problems created by these entities.

Enforcement

- 381 Breaches of the law can have a significant and detrimental impact on investors and financial consumers. In the context of a corporate collapse, large numbers of investors are often affected. The nature of the conduct involved can range from serious conduct that is intentional, dishonest or highly reckless to systemic compliance failures within an organisation.
- 382 In response to a potential breach of the law, we may undertake an investigation that may lead to enforcement action. We can pursue a variety of types of enforcement action, falling into the broad categories of criminal, civil and administrative action.

ASIC's regulatory toolkit

- 383 We have a range of regulatory and enforcement sanctions and remedies available to us, including punitive, protective, preservative, corrective or compensatory actions, or otherwise resolving matters through negotiation or issuing infringement notices: see [INFO 151](#). [Regulatory Guide 100 Enforceable undertakings](#) (RG 100) provides more information on our approach to enforceable undertakings.
- 384 In cases where investors or consumers have suffered loss, we carefully consider whether any action we can take may result in compensation being paid. Ordinarily, recovery of compensation is left to private litigation and class actions. However, we sometimes obtain compensation for investors by:
- (a) conducting a group proceeding under s50 of the ASIC Act to obtain compensation for investors who suffered loss from the same type of misconduct, if we believe it is in the public interest to do so; and
 - (b) pursuing negotiated outcomes where we can achieve quick and efficient outcomes. This may arise from surveillances, investigations or after we have commenced a proceeding. Often (but not always) this will result in an enforceable undertaking, which is a written undertaking given to us that an entity or person will operate in a certain way. It is a flexible and effective remedy in improving compliance with the law and may be enforced through the courts.
- 385 We will continue to focus on enforcing higher standards in the financial services industry this year, paying particular attention to:
- (a) responsible lending practices in the credit industry, including an emphasis on systemic breaches by licensees;
 - (b) financial advisers' compliance with their best interests duty and obligation to provide appropriate advice to clients;
 - (c) licensees' failure to deliver ongoing advice services to financial advice customers who are paying fees to receive those services; and
- Note: For more information, see [REP 499](#).
- (d) instances where licensees claim to provide general advice to retail clients during the sale of financial products (and therefore do not need to comply with the best interests duty and related obligations), but are actually providing personal advice.
- 386 Our Wealth Management project will continue to be a focus for our enforcement activity. The project seeks to improve the standards of major financial advice providers in terms of quality of advice and remediation. We intend to build on the significant number of investigations and surveillances we have undertaken as part of this project in the last six months, which have resulted in a number of key outcomes.

387 We publish six-monthly [enforcement reports](#), which outline our enforcement
388 outcomes. These reports identify the categories of gatekeeper against whom
enforcement action was taken and highlight examples of conduct targeted
during the relevant period.

ASIC Enforcement Review

388 In October 2016, the Government announced that it would set up the ASIC
Enforcement Review Taskforce to assess the suitability of the existing
regulatory tools that are available to us to perform our functions adequately.

Note: See paragraph 169 for more information about the ASIC Enforcement Review.

389 The terms of reference for the ASIC Enforcement Review allow for a
thorough but targeted examination of the adequacy of our enforcement
regime—including in relation to industry codes of conduct—to deter
misconduct and foster consumer confidence in the financial system.

390 We welcome and support the Enforcement Review and will continue to
provide advice and support to the Government and Treasury. In order to
effectively carry out our role, we need a broad and effective enforcement
toolkit.

391 An overarching priority for ASIC is to ensure that the enforcement regime
provides adequate incentives for cooperation with the regulator, whether as a
deterrent to misconduct or as an incentive for cooperation after misconduct
has occurred (e.g. breach reporting and remediation).

392 Effective regulation depends on achieving enforcement outcomes that act as
a genuine deterrent to misconduct. The public expects us to take strong
action against corporate wrongdoers. Effective enforcement is therefore
critical for us to pursue our strategic objectives of promoting investor and
consumer trust and confidence and ensuring fair and efficient markets.

393 Central to effective enforcement is the setting of penalties at appropriate
levels, and having a range of penalties available for particular breaches of
the law. Having a range of penalties allows us to calibrate our response with
sanctions of greater or lesser severity commensurate with the misconduct.
This aims to deter other contraventions, and promote greater compliance,
resulting in a more resilient financial system.

394 [Report 387](#) *Penalties for corporate wrongdoing* (REP 387) outlines the
penalties available for a range of corporate wrongdoing under legislation we
administer, and considers whether these are proportionate and consistent
with those for comparable wrongdoing:

- (a) in overseas jurisdictions (i.e. Canada (Ontario), Hong Kong, the United Kingdom and the United States); and

(b) within the Australian context (i.e. across other domestic regulators and legislation administered by ASIC).

395 We found that penalties in the legislation we administer have been in place for extended periods, and either not reviewed at all since they were enacted, or reviewed only in a piecemeal way. This has led to shortcomings in the consistency or size of penalties, which creates gaps between community expectations of the appropriate regulatory response to a particular instance of misconduct and what we can do in practice. We also identified areas where the penalties available to us are out of step with those available to other international and domestic regulators.

396 We also support an extension of the existing infringement notice regime, extension of civil penalties and broadening our information gathering powers—including search warrant and telephone intercept powers to allow us to collect information that could ultimately be used as evidence in any of the types of enforcement action we may take.

397 Table 1 outlines our key priorities within the ASIC Enforcement Review.

Table 1: Key ASIC priorities within the ASIC Enforcement Review

Key priority	Description
Increased penalties	<p>The FSI recommended that the penalties for contravening ASIC legislation should be substantially increased.</p> <p>Penalties set at an appropriate level are critical and need to be available to give market participants the right incentive to comply with the law. They should aim to deter contraventions and promote greater compliance, resulting in a more resilient financial system.</p>
Breach reporting	<p>Breach reporting is an important part of the regulatory framework. Problems with the existing regime have been flagged in the course of various financial services-related inquiries, revealing inconsistent approaches being taken by licensees.</p> <p>There is a clear expectation in the financial services regime that participating firms will play a role in identifying and reporting market problems.</p>
A directions power	<p>A directions power for ASIC can be used to order financial services and credit licensees to undertake remediation programs or to undergo an independent compliance review, among other actions.</p> <p>This will allow more effective regulation of our stakeholders, and promote investor and consumer trust and confidence. The public expects us to take such actions however at present we can only achieve them through an agreed enforceable undertaking.</p>

Key priority	Description
A power to ban individuals from managing financial services firms	<p>The FSI recommended that, in addition to the power to ban persons from providing financial services, ASIC should also be provided with an enhanced power to ban individuals involved in financial services misconduct from managing a financial services firm.</p> <p>Our current licensing powers allow us to suspend or cancel a licence, or ban an individual from providing financial services. Our powers do not extend to banning individuals from having an integral role in managing a financial services business.</p> <p>We support the review into the adequacy of our power to ban an individual because this would allow us to more effectively target those who set the compliance culture within a business and impose greater accountability on managers.</p>
Licensing, extending the infringement notice regime and broadening ASIC's information gathering powers	<p>The current licensing provisions should be amended to ensure more effective regulation of controllers of licensees, greater accountability of licensees for the conduct of their representatives and ensuring consistency between the financial services and credit licensing regimes.</p>

Senate inquiry into white collar crime

- 398 On 25 November 2015, the Senate referred an inquiry into the inconsistencies and inadequacies of current criminal, civil and administrative penalties for corporate and financial misconduct, or white-collar crime, to the Senate Economics References Committee. The terms of reference include:
- (a) the value of fines and other monetary penalties, particularly in proportion to the amount of wrongful gains;
 - (b) the availability and use of mechanisms to recover wrongful gains;
 - (c) penalties used in other countries, particularly members of the Organisation for Economic Co-operation and Development (OECD); and
 - (d) the use and duration of custodial sentences.
- 399 Submissions to the inquiry were made in early 2016 and a hearing was held on 6 December 2016.
- Note: See Parliament of Australia, '[Penalties for white collar crime](http://www.aph.gov.au)', webpage, www.aph.gov.au
- 400 In our submission to this inquiry, we stated that we support a review of penalties for white-collar crime to provide the right incentives for better market behaviour. In particular, we support a review to address:
- (a) inconsistencies in criminal penalties for comparable offences;

- (b) the availability and level of civil penalties (including the potential use of multiples of any benefit obtained through the wrongdoing), and the inconsistency of civil penalties under the Corporations Act with other civil penalties or non-criminal monetary penalties for corporate and financial misconduct;
- (c) whether infringement notices should be available for a broader range of breaches;
- (d) making available disgorgement proceedings to enhance regulators' ability to deter and respond to wrongful profit; and
- (e) clarifying the practical application of civil penalty processes compared with criminal processes.

401 On 23 March 2017, the committee released its report [*'Lifting the fear and suppressing the greed': Penalties for white-collar crime and corporate and financial misconduct in Australia*](#) (PDF 594KB).

402 The report made a number of recommendations which ASIC proposed, including that the government:

- (a) consider making infringement notices available to ASIC to respond to breaches of the financial services and managed investments provisions of the Corporations Act;
- (b) amend the Corporations Act to increase the current level of civil penalties, both for individuals and bodies corporate, and that in doing so it should have regard to non-criminal penalty settings for similar offences in other jurisdictions;
- (c) provide for civil penalties in respect of white-collar offences to be set as a multiple of the benefit gained or loss avoided; and
- (d) introduce disgorgement powers for ASIC in relation to non-criminal matters.

B Impact of misconduct on victims and consumers

Key points

Australians are being asked to make more financial decisions than ever before, in an environment that is becoming increasingly complex. Insights from behavioural research show that consumers are subject to biases in decision making.

Building Australians' financial capability plays a vital role in promoting greater economic participation and supports ASIC's strategic objective of building investor and consumer trust and confidence.

The impact of losses can cause very significant hardship for investors and consumers directly affected. We see the effect of such losses first hand, which is why a key component of our regulatory activity involves minimising the risk of loss for investors and consumers.

The oversight of consumer remediation processes is increasingly common in the course of ASIC's regulatory supervision.

Investor and financial consumer losses

- 403 Retail financial products and services support the financial wellbeing of millions of Australians and their families. Nearly all adult Australians are investors and financial consumers. This means that more Australians are being asked to make more financial decisions than ever before, in an environment that is becoming increasingly complex.
- 404 Building Australians' financial capability plays a vital role in promoting greater economic participation and supports our strategic objective of building investor and consumer trust and confidence.
- 405 However, more than any other aspect of our role, our performance as the enforcer of Australia's corporate and securities laws attracts attention when people lose money in the financial system.
- 406 In designing the current regulatory architecture, it was never the intention of the Wallis Inquiry that regulation should aim to prevent all institutional collapses or financial losses. Rather, this was accepted as an inevitable aspect of the way markets function.
- 407 Consequently, our regulatory role does not involve preventing all consumer losses or ensuring full compensation for consumers in all instances where losses arise.

- 408 This is a very important issue that goes to the heart of what financial market regulation is intended to achieve, and thus to expectations about ASIC's performance.
- 409 Nevertheless, it must be recognised that the impact of collapses or losses can be deep and cause significant hardship for those investors and financial consumers directly affected. ASIC sees the effect of such losses first hand, and we understand how such losses can affect the economic wellbeing and confidence of Australians. That is why a key component of our regulatory activity involves minimising the risk of loss for investors and financial consumers.
- 410 In 2010, ASIC's Consumer Advisory Panel commissioned Susan Bell Research to conduct limited research into the social impacts of investors suffering financial losses due to their managed investment scheme or financial planner. The research findings were published in [Report 240](#) *Compensation for retail investors: The social impact of monetary loss* (REP 240).

Consumer remediation processes

- 411 The oversight of consumer remediation processes is increasingly common in the course of ASIC's regulatory supervision. For example, in the 2015–16 financial year, we secured over \$200 million in compensation and remediation for financial consumers and investors across the areas it regulates.
- 412 [RG 256](#) establishes key principles for advice licensees about setting up and running consumer remediation programs. These principles are relevant for other licensees when providing remediation to their customers.
- 413 Remediation processes interact closely with the IDR and EDR framework as clients must have access to an EDR scheme if they are not satisfied with the remediation decision made. EDR schemes encourage firms to engage early with them on issues such as arrangements for documentation, timelines and jurisdictional issues, as appropriate.
- 414 Table 2 outlines avenues for consumers who wish to resolve a complaint.

Table 2: Avenues for consumers wishing to resolve a complaint

Avenue	Process
IDR	Investors and financial consumers can approach the financial services provider or credit service provider directly to seek a resolution.
ASIC-approved EDR schemes and the SCT	<p>Where a complaint is not resolved at IDR, the consumer may approach:</p> <ul style="list-style-type: none"> • <i>An ASIC-approved EDR scheme:</i> There are currently two ASIC-approved EDR schemes—the Financial Ombudsman Services (FOS) and the Credit and Investments Ombudsman (CIO). Investors and financial consumers can make a complaint free of charge to either scheme, although monetary caps and limits apply. Currently, both FOS and CIO can make maximum monetary awards of up to \$280,000 for most banking, insurance and advice-related complaints. Whether an investor or financial consumer can complain to either FOS or CIO depends on which scheme the financial services provider or credit service provider has joined. • <i>SCT:</i> Superannuation fund members can complain to the SCT—a statutory body established under the <i>Superannuation (Resolution of Complaints) Act 1993</i>. The SCT can review decisions and the conduct of superannuation providers, including trustees of regulated superannuation funds and approved deposit funds, retirement savings account providers and life companies providing annuity policies. Members can make a complaint free of charge to the SCT and there is no limit on the monetary value of any claim.
Self-initiated private action	The investor or financial consumer can sue the financial services provider or credit service provider in court or attempt to obtain an outcome through private negotiation, mediation or arbitration.
External administration of a financial services provider (administrator/liquidator)	<p>Where a company may no longer be a viable business and may be or may become insolvent, the company may enter a form of insolvency administration, including receivership, voluntary administration and/or liquidation.</p> <p>The administrator or liquidator will generally assess the liabilities/debt, assets and income of the company to work out whether the company can recover, should be sold or needs to be wound up.</p> <p>If the company is wound up, the administrator or liquidator will decide which creditors are paid out of the remaining assets or funds. Creditors with secured interests (such as banks) will usually have first priority in being paid out.</p>
ASIC action	<p>ASIC can take action through:</p> <ul style="list-style-type: none"> • negotiations with an AFS licensee; • legal action or other enforcement action; or • a s50 ASIC Act class action—where ASIC runs a group action to obtain compensation for investors or financial consumers who suffered loss from the same type of misconduct. ASIC has to consider whether it is in the ‘public interest’ to do so.

Barriers to making good financial decisions

- 415 When making decisions about products and services, investors and financial consumers face a number of related barriers, including:
- (a) behavioural biases;

- (b) low levels of financial literacy;
- (c) lack of access to good quality financial advice and factual information;
- (d) information and choice overload; and
- (e) length and complexity of disclosure.

Behavioural biases

- 416 Research from psychology indicates that the ‘rational’ investor that underpins traditional economic theory does not exist. Instead, people’s decisions are motivated and influenced by a complex mix of cognitive, social and emotional factors.
- 417 Many decision-making biases have been identified in behavioural studies, and may be grouped as:
- (a) preferences—for example, immediate gratification is often valued over future gain, and choices can be made simply to avoid negative emotions, such as stress, or to promote positive emotions, such as security;
 - (b) beliefs—for example, by over-extrapolating a small number of observations, or being over-confident about the likelihood of certain events occurring; and
 - (c) decision-making shortcuts—for example, unconscious rules of thumb, which may lead people to choose options that appear familiar or unambiguous without weighing up all the options.

Effect of behavioural biases on financial decisions

- 418 Our regulatory experience and consumer and investor research, as well as established empirical evidence in the field of behavioural insights, tells us that effective consumer decision making about financial products and services is particularly challenging. Financial products are often inherently complex, decisions typically require an assessment of risk and uncertainty, and many products tend to be purchased infrequently (e.g. post-retirement products).
- 419 These conditions exacerbate inherent, widespread limitations in people’s ability to process and respond to information—which often leads to reliance on beliefs and preferences when making decisions. It may also mean that people will not read mandated disclosure documents, or inadequately understand or even misunderstand those documents.

Consumers’ varied needs and experience

- 420 Designing optimal disclosure documents is made more difficult by the fact that there is no ‘average’ consumer—people have different and changing

needs, preferences and confidence levels. Financial decisions are influenced by a range of shifting and sometimes conflicting factors, including the consumer's life stage and past experiences, psychological, social and cultural factors, and other external environmental factors.

421 Table 3 lists behavioural biases that have been found to influence decision making in retail financial markets.

Table 3: Ten behavioural biases and effects in retail financial markets

Preferences that are influenced by emotions and psychological experiences	Rules of thumb that can lead to incorrect beliefs	Decision-making shortcuts used when assessing available information
<ul style="list-style-type: none"> • Present bias—Example: spending on a credit card for immediate gratification • Reference dependence and loss aversion—Example: believing that insurance added on to a base product is cheap because the base price is much higher • Regret and other emotions—Example: buying insurance for peace of mind 	<ul style="list-style-type: none"> • Over-confidence—Example: excessive belief in one's ability to pick winning shares • Over-extrapolation—Example: extrapolating from just a few years of investment returns to the future • Projection bias—Example: taking out a payday loan without considering payment difficulties that may arise in the future 	<ul style="list-style-type: none"> • Framing, salience and limited attention—Example: overestimating the value of a packaged bank account because it is presented in a particularly attractive way • Mental accounting and narrow framing—Example: investment decisions may be made asset-by-asset rather than considering the whole investment portfolio • Decision-making rules of thumb—Example: investments may be split equally across all funds in a pension scheme, rather than making a careful allocation decision • Persuasion and social influence—Example: following financial advice because an adviser is likeable

Source: K Erta, S Hunt, Z Iscenko and W Brambley, *Applying behavioural economics at the Financial Conduct Authority*, Occasional Paper No. 1, FCA, April 2013, p. 6.

422 Specific attributes of financial and credit products—such as their complexity, risk, uncertainty and long-term nature—can accentuate people's natural inclination to avoid difficult reasoning and fall back on these behavioural biases. There is potential for effective marketing to target and, in some cases, exploit these biases. As a consequence, there is a risk that investors and financial consumers will acquire products and services that are not aligned with their financial situation, risk profile, objectives and needs.

Note: See Financial Services Authority, [Product intervention](#) (PDF 587KB), discussion paper, January 2011.

Access to good quality financial advice and information

423 Access to good quality financial advice helps investors and financial consumers make good financial decisions. However, less than 40% of the Australian adult population has used a financial planner.

Note: See [Report 224](#) *Access to financial advice in Australia* (REP 224).

424 Accessing personal and general financial advice, as well as factual information, can be beneficial to investors and financial consumers. It can lead to:

- (a) individual financial gains—including increased savings, reduced expenses through faster debt reduction, or higher investment returns;
- (b) individual psychological benefits; and
- (c) economy-wide fiscal and competitive improvements.

Behavioural insights and financial services complaints

425 Making decisions about financial products and services is inherently complex and typically doesn't permit ready learning or feedback to inform future decisions. Although consumers may have repeat experience of purchasing products such as motor vehicle insurance, mortgages, personal loans or credit cards, the features and costs of these products often vary significantly in form and presentation.

426 Among many other findings, insights from behavioural research show that consumers are subject to biases in decision making that can impact on:

- (a) product purchase decisions (which are themselves influenced by the way that information, choices and processes are framed and presented); and
- (b) help-seeking behaviours including pursuing a complaints process when a product has failed or failed to meet expectations.

427 Further, the process of IDR followed by independent EDR can be lengthy and complex to navigate and, for most consumers, pursuing a complaint will be an unfamiliar or novel process.

428 Complex processes, such as dispute resolution, can cause 'cognitive load' in the same way that complex information, choices and concepts can. Cognitive load slows down people's ability to process choices and act appropriately. Reducing 'friction' in processes (i.e. making it easier for people to do the thing they need to do) can be a way to alleviate cognitive load.

Addressing potential impact of misconduct

Financial capability

429 One of the ways in which we work to address the potential impact on consumers of misconduct in the financial services sector is to equip

consumers with the knowledge and skills to make informed choices and avoid financial traps and pitfalls.

430 Our financial literacy program aims to improve the financial capability of all Australians and provide consumers with impartial information to inform their financial decision making. Our tools and resources aim to build Australian consumers' knowledge, skills, attitudes and behaviours to help them manage money day-to-day, plan for the future and make informed choices. This work responds to the misalignment of financial products and services with consumer understanding of the risks of those products. For example, [ASIC's MoneySmart Cars](#) app allows consumers to see the real cost of a car and provides information on how to avoid car yard traps such as add-on insurance.

431 Growing Australians' financial capability is a long-term proposition and we are laying the foundations for behavioural change over time. Our work specifically addresses vulnerable and disadvantaged consumers, including regional and remote communities, people from culturally and linguistically diverse backgrounds, and Indigenous Australians.

432 Financial literacy is the application of knowledge, understandings, skills and values in consumer and financial contexts and the related decisions that have an impact on the individual, others, the community and the environment.

Note: Ministerial Council for Education, Early Childhood Development and Youth Affairs, *National consumer and financial literacy framework*, revised 2009, Canberra, p. 1.

433 For individual investors and financial consumers, knowing how to make sound money decisions is a crucial skill in today's world, regardless of age. It is a 'core life skill for participating in modern society'. It affects quality of life, opportunities people can pursue, their sense of security and the overall economic health of society.

Note 1: OECD, '[Financial education in schools](#)', webpage.

Note 2: See [Report 229](#) *National financial literacy strategy* (REP 229).

434 Financial literacy allows people to have more informed interactions with industry and with product providers, and be more confident engaging with financial products and services. It is in the interests of industry, regulators and government to have effective financial education programs.

ASIC's role

435 ASIC is the Commonwealth agency with overall responsibility for financial literacy. We develop and deliver financial literacy programs with the business, community, government and education sectors and have overall responsibility for developing the NFLS.

436 Under the broad framework set out by the NFLS, ASIC's financial literacy work seeks to help people make informed decisions about their money by providing information, tools and resources through a range of different channels designed to appeal to different audiences, ranging from the general public to specific groups within the Australian community.

437 We are updating the NFLS during 2017, for commencement in 2018. Amongst other aspects, we are considering whether we should change the strategic focus and associated language from 'financial literacy' to 'financial capability', which is a more accurate description of our work and is in line with international developments, e.g. in the UK and New Zealand. This process will also allow for exploration of the links between financial literacy or capability and related concepts such as financial independence, financial inclusion or financial wellbeing.

ASIC's MoneySmart website

438 One major channel through which ASIC delivers our financial literacy resources is our [MoneySmart website](#).

439 Dedicated to issues for investors and financial consumers, MoneySmart features over 950 webpages of information, 39 interactive calculators and tools and six mobile apps, and helps around 600,000 Australians each month make better decisions with their money. Our research suggests that the majority of users take specific action in relation to their finances as a result of visiting MoneySmart.

440 Popular resources on the website include the mortgage calculator, budget planner, retirement planner, *Managing your money* booklet and the TrackMySpend app. MoneySmart also has resources for Indigenous Australians about topics such as managing money, banking and credit, insurance, superannuation and scams, and material for vulnerable and disadvantaged consumers and the intermediaries who work with them, including translated money management resources and information about debt management, financial counselling, hardship and practical help with money problems.

Indigenous Outreach Program

441 We have a dedicated Indigenous outreach program, which supports Indigenous people to understand and make decisions about financial services. This team liaises with Australia's Indigenous community, looks into their complaints about financial services issues and promotes resources about such topics as managing money, banking and credit, insurance, superannuation and scams.

442 The team's work in remote communities has identified problems and
conduct that have resulted in a number of ASIC enforcement outcomes.

443 In a recent example of such enforcement action, in November 2016 the
Federal Court found that Mr Lindsay Gordon Kobelt, owner and operator of
Nobby's Mintabie General Store (Nobby's) in the Anangu Pitjantjatjara
Yankunytjatjara Lands (APY Lands) in remote South Australia, had engaged
in unconscionable and unlicensed conduct:

Note: See [Media Release \(16-383MR\)](#) *Federal Court finds book up practices in South
Australian Indigenous community unconscionable* (10 November 2016).

444 ASIC took this action because the practices of Nobby's are indicative of the
serious detriment that poor book up practices and systems can cause to
consumers. The taking of cards and PINs from consumers and using these to
drain consumers' funds is exploitative of often vulnerable consumers and
creates a cycle of dependency and debt. We want to ensure that book up
practices improve and that fair systems are in place.

C Impact of remuneration, incentive based commission structures, and fee-for-no service or recurring fee structures

Key points

In this section we outline our work to address:

- fee-for-no service or recurring fee structures in the financial advice sector;
- commission structures in the life insurance, add-on insurance and home lending sectors; and
- conflicts management in funds management

445 As stated in our Corporate Plan 2016–17, we will focus on culture and incentives resulting in poor financial advice, irresponsible lending and mis-selling to retail investors and consumers that can undermine trust and confidence in the financial system.

446 We have released a number of reports and continue to work to address problems with remuneration, incentive-based commission structures and fee-for-no service structures in the financial services and credit industries.

Fee for no service or recurring fee structures

Financial advice

447 In October 2016, we released [REP 499](#) in relation to fee-for-no service structures. In this report, we confirmed that systemic failures had affected 21 AFS licensees that were part of the banking and financial services institutions in ASIC's Wealth Management Project in the period from 1 July 2008 to 30 June 2015. These licensees included both advice licensees and the issuers of financial products such as superannuation.

448 The systemic failures related to instances where customers were charged a fee to receive an ongoing advice service, but had not been provided with this service because:

- (a) they did not have an adviser allocated to them; or
- (b) their allocated adviser failed to deliver on their obligation to provide the ongoing advice service, and the advice licensee failed to ensure that the service was provided.

- 449 Our work involved:
- (a) ensuring that customers affected by any known failures would be identified and compensated by AFS licensees in an efficient, honest and fair manner;
 - (b) monitoring wider reviews—instigated by AFS licensees at our request—to determine whether the licensees had further ongoing advice service failures; and
 - (c) monitoring the changes made by AFS licensees to their systems and processes to prevent such failures from recurring in the future.
- 450 A prevalent form of adviser remuneration in the financial advice industry is based on automatic deductions and payments—traditionally for sales commissions, but also for other payments such as adviser service fees based on the value of customers’ assets.
- 451 There is generally no specific service connected to the payment of commissions and, in many cases, the licensees have found that they and their advisers did not provide specific services that fee-paying customers were entitled to.
- 452 The FOFA reforms in 2013 banned certain commissions for new advice, and required increased transparency around fees charged and services provided through fee disclosure statements and opt-in renewal notices. However, industry (including licensees and advisers) may still have a culture of reliance on ongoing trail revenue (through commissions and fees) for a portion of their income, without necessarily providing advice to customers in return.
- 453 ASIC considers that the fee-for-no service failures in the period 1 July 2008 to 30 June 2015 show that AFS licensees and advisers prioritised revenue and fee generation over the delivery of advice and services paid for by their customers. For example, we identified that:
- (a) licensees did not have systems in place to ensure that services were being provided in return for the fees being charged. By contrast, the licensees had much more effective systems for recording incoming revenue;
 - (b) advisers were allowed to have many more ongoing advice customers on their books than they would have been able to monitor or advise on an annual basis. For example, some advisers had many hundreds of customers—often having ‘inherited’ these customers, and the stream of fee revenue, from other advisers who had departed from the licensee; and
 - (c) some licensees charged fees for services that, arguably, had limited value for customers.

454 These observations indicate that advice licensees did not adequately monitor and supervise their representatives, or have had adequate business systems and practices.

455 During the period covered by the project, the financial advice industry still had a culture of reliance on automatic periodic payments, such as sales commissions and adviser service fees. These cultural factors may have contributed to the systemic failures we observed. Further, on some occasions advice licensees proposed review and remediation processes that were legalistic and did not prioritise the interests of customers.

Positive impact of FOFA reforms

456 Most of the systemic failures we identified in [REP 499](#) occurred before the FOFA reforms, which became mandatory on 1 July 2013.

457 ASIC supported the introduction of the FOFA reforms, which have helped to address systemic problems in the financial advice industry, including conflicted remuneration and the lack of transparency of advice services and advice fees.

458 The changes made under the FOFA reforms—in particular, the requirement that customers opt in to receiving ongoing advice services, and the introduction of fee disclosure statements—contributed to some AFS licensees identifying the fee-for-no service failures.

459 In addition, these provisions, and the system changes they have required, substantially reduce the likelihood that the type of systemic failures described in [REP 499](#) will recur.

Compensation

460 As at 31 August 2016, compensation arising from the fee-for-service failures that were reported to ASIC was approximately \$23.7 million in total. This was paid, or agreed to be paid, to over 27,000 customers.

Note: As at 31 August 2016, some of these AFS licensees were still in the process of communicating with and compensating affected customers.

461 We expect these compensation figures to increase substantially in the coming months as the process of identifying and compensating affected customers continues. Our current estimate is that compensation may increase by approximately \$154 million plus interest to over 176,000 further customers, meaning that total compensation for related failures could be over \$178 million. We stress that these figures are estimates based on information reported to us by the AFS licensees in October 2016. We will report on updated compensation figures in the coming months.

462 Because of the extent of the specific failures identified by the advice
licensees, we requested that each of the six banking and financial services
institutions conduct further large-scale reviews of their advice licensees to
determine whether there were any additional fee-for-no service failures.

Commission structures

Life Insurance

463 For life insurance distributed under personal advice models, advisers are
typically paid under commission arrangements.

464 Typically, advisers who are paid by commission choose which commission
model they wish to be paid under in the insurance application form, and the
commission is paid when the policy is in force.

Note: The following labels are commonly understood and applied to remuneration
arrangements in the life insurance industry: upfront commission; hybrid commission;
level commission; no commission and salaried employee.

465 Commission remuneration arrangements pay advisers for product sales
(upfront) and ongoing commissions on receipt of each year's annual
premium. Commission remuneration arrangements mean that the advice cost
is built into the product (described as a commission).

466 Under commission arrangements, there is no necessary relationship between
the cost or complexity of the advice and the remuneration received by the
adviser.

467 Along with policy terms and claims experience, the remuneration
arrangements offered by different insurers can have a significant bearing on
which insurer a given adviser may be more likely to recommend to their
clients.

468 In [REP 413](#) we outlined that findings from our surveillance suggested that
dependence on upfront commission remuneration arrangements has a
material effect on the type of advice a licensee's business will give, and
increases the possibility that the business may give advice that does not
comply with the law.

469 Where culture, incentive structures and systems are poor or misaligned, the
conduct of gatekeepers we regulate can conflict with clients' interests and
can lead to unfair outcomes.

470 We found that the way an adviser was paid (e.g. under an upfront
commission model compared to a hybrid, level or no commission model)

had a statistically significant bearing on the likelihood of their client receiving advice that did not comply with the law.

471 We found significant room for improvement among the advice we reviewed, and we continue to actively work with the advice industry to lift the standard of life insurance advice.

472 Our findings in this review indicate that the impact of adviser conflicts of interest on the quality of life insurance advice is an industry-wide problem. Addressing this problem requires an industry-wide response. This is because an individual insurer may change its remuneration arrangements to mitigate the effect of conflicts of interest among advisers selling their policies, but is likely to lose business to competitors. This is commonly referred to as the ‘first mover’ problem where the first mover is disadvantaged relative to their industry peers who pick up the business they lose by being the first to change their practices.

Sales practices

473 [REP 413](#) identifies different ways in which advisers are remunerated by life insurers and shows that high upfront commissions influence the provision of advice for the sale of life insurance products. The reforms under the Corporations Amendment (Life Insurance Remuneration Arrangements) Bill 2016, which was introduced into Parliament on 12 October 2016, are intended to reduce the incentive for advisers to write new business that is not in their clients’ best interests.

474 We have considered the use of approved product lists by advisers, but cannot mandate the composition of these. We acknowledge the basis for the proposal to mandate wider approved product lists, and agree that this could help to improve competition; however, an expansion of insurance products on approved product lists will not, on its own, address the risks of poor quality life insurance advice.

475 We note the Government’s announcement that its proposed reforms on commissions will also now apply to direct or non-advised life insurance sales. This may also address some of the potential issues we identified in [REP 498](#) about the sale of these policies.

Note: See the [exposure draft](#), which was released for public consultation on 19 October 2016.

476 While the focus of [REP 498](#) was on life insurance claims, we identified potential issues in sales practices for direct or non-advised policies. This distribution channel had the highest average declined claim rates (compared to retail and group policies) and generally higher lapse rates, which may indicate that inappropriate sales tactics are being used to sell these products to consumers.

477 We have recommended that insurers:

- (a) address misaligned incentives in their distribution channels;
- (b) address lapse rates on an industry-wide and insurer-by-insurer basis (e.g. by considering measures to encourage product retention); and
- (c) review remuneration arrangements to ensure that they support good-quality outcomes for consumers and better manage the conflicts of interest within those arrangements.

478 We have recommended that AFS licensees:

- (a) ensure remuneration structures support good-quality advice that prioritises the needs of the client;
- (b) review their business models to provide incentives for strategic life insurance advice;
- (c) review the training and competency of advisers giving life insurance advice; and
- (d) increase their monitoring and supervision of advisers with a view to building ‘warning signs’ into file reviews and create incentives to reward quality, compliant advice.

479 As part of our ongoing work, we will conduct a thematic industry review of life insurance sales practices, focusing on direct or non-advised policy sales.

480 As referred to in paragraph 165, the 2021 ASIC review will also consider whether the life insurance advice reforms have been effective in improving the quality of advice about life insurance.

Add-on insurance

481 We analysed qualitative research on consumers’ experiences of buying add-on insurance through car dealers in [REP 470](#). We identified a number of reasons why consumers bought these products, even when they had a poor understanding of the cover offered.

Note: Refer to paragraphs 204–216 for more information on our work in add-on insurance.

482 In [REP 471](#), we reviewed five insurers selling life insurance under CCI policies through car dealers. We found that this cover could be very expensive (e.g. some small businesses were charged up to 80% more than consumers offered the same product) and was sold to consumers who did not need it (e.g. to young people with no dependents).

483 In [REP 492](#), which presents our findings on the sale of add-on insurance through car dealers, we found that consumers receive much less in claims than dealers receive in commissions. Across all add-on insurance products over the three years, insurers paid \$602.2 million in commissions to car

dealers (with some commissions as high as 79% of the premium) and only \$144 million to consumers in claims. This means that car dealers earned *four times more* in commissions from these policies than consumers received in claims.

484 While [REP 492](#) focused on concerns with the car dealer distribution channel, many of our findings have a broader application to add-on insurance products sold through other channels.

485 High commissions paid to car dealers combined with low claim payments for consumers means that car dealers receive a substantially higher financial benefit from the sale of these products than consumers. This reinforces the conflict of interest that high commissions create, and the potential for consumers to be subject to pressure-selling tactics.

486 After the release of these reports, we called for insurers to review and substantially improve the design and distribution of these products. In particular, we asked them to address high costs, poor value and poor claims outcomes, and the level of supervision of authorised representatives, to ensure these products deliver value to consumers and are sold appropriately.

487 Our actions have already produced positive results for consumers with insurers agreeing to remove an unfair pricing practice where business consumers were charged more for an identical product as a result of higher commissions paid to sell these products.

488 As part of our ongoing work, we will continue to conduct detailed reviews of practices we have identified as being problematic.

489 As mentioned in paragraphs 212–213 of our submission, in relation to industry’s reform proposals, including a 20% cap on commissions, ASIC considers these proposals are not adequate and that there is a need for comprehensive change in the market which requires a broader package of reforms. We intend to consult on possible reforms, including a deferred sales model, in April and May 2017.

Mortgage broker remuneration review

490 As referred to in paragraphs 266–270, the Government released [REP 516](#) on 16 March 2017.

Standard commission model

491 Our review found that loans provided through the broker channel are larger and have a higher loan-to-valuation ratio than loans provided directly through lenders.

492 Brokers almost universally receive commissions paid by the ‘supply side’ of the market (i.e. the lender or aggregator), rather than by the consumer. Our review identified significant variability and complexity in remuneration structures between industry participants. The common element across all remuneration structures for brokers, however, was a standard commission model made up of an upfront and a trail commission.

493 This standard model of upfront and trail commissions creates conflicts of interest for the broker, which may become evident if they recommend a loan:

- (a) that is larger than what the consumer needs or can afford in order to maximise their commission payment. This may also involve recommending a particular product or strategy to maximise the amount the consumer can borrow (e.g. by choosing an interest-only loan). We refer to this as a ‘product strategy conflict’; or
- (b) from a particular lender because they will receive a higher commission, even though that loan may not be the best loan for the consumer. We refer to this as a ‘lender choice conflict’.

494 We found that commissions may be paid in a way that could result in product strategy conflict because, in general, commissions are linked to the size of the loan, so the more money a consumer borrows, the more the broker will be paid. In practice, we found it common for remuneration structures to pay commission on the total amount of borrowing approved, rather than the amount of funds actually drawn down.

495 We also found that the standard commission structures are likely to result in a higher level of lender choice conflict as there is significant variability in the value of commissions paid by different lenders. Even when limiting our review to the commission rates paid only by authorised deposit-taking institutions, the differences in rates of upfront commission paid to individual broker businesses tended to vary between lenders by at least 0.10%, while variations of up to 0.30% were not uncommon.

496 We consider that changes could be made to the standard commission model to reduce the risk of brokers seeking to inappropriately maximise their commissions. We recommend that a further review be conducted in three to four years to determine whether further—and more fundamental—changes to the standard model are required.

Bonus commissions

497 In addition to receiving upfront and trail commissions for each individual loan they arrange, aggregators also receive bonus commissions from lenders, which can be passed on to brokers. The two main types of bonus commissions are volume-based commissions and campaign-based commissions.

498 Bonus commission and bonus payments supplement the standard incentives that are in place, including by strengthening the incentives to place consumers in larger loans. Given the additional conflicts of interest created by bonus commissions and bonus payments, we are concerned that they may lead to some of the poor consumer outcomes described in our report.

499 To reduce conflicts of interest and the risk of poor consumer outcomes, we propose that the industry moves away from bonus commissions and bonus payments.

500 In addition to monetary commissions, brokers also receive soft dollar benefits from lenders and aggregators. The main types of soft dollar benefits are loyalty programs and travel and hospitality-related benefits.

501 As with bonus commissions, we consider that the provision of soft dollar benefits is likely to be a significant motivator for brokers to send loans to a lender in order to qualify for those benefits—even where the choice of lender may not be in the consumer’s interest (i.e. lender choice conflict). This may include placing consumers in larger loans (i.e. product strategy conflict) and lead to poor consumer outcomes described in our report.

Flex commissions

502 Flex commissions are common in car finance but not generally found in other markets. They allow car dealers to arrange car loans at a higher interest rate than the lowest available rate (700 basis points higher, or more), and thereby earn a much higher commission. As a result, some consumers can end up paying thousands of dollars more in interest charges over the life of the car loan.

503 Because of these poor outcomes for consumers, and because flex commissions operate in a way that is unfair under the National Credit Act, in March 2017, we announced we would prohibit ‘flex commissions’ in the car finance market. The prohibition will still allow lenders to pay other types of commissions to car dealers.

Note: See [Media Release \(17-049MR\)](#) ASIC acts to address unfair outcomes from flex commissions in car finance market (3 March 2017).

504 We conducted two rounds of written consultations with targeted stakeholders, including industry bodies, lenders, car dealers and their associations and consumer groups on various options to respond to the harm caused by flex commissions. Based on this consultation, we have decided on a prohibition as a comprehensive, industry-wide solution that will deliver broad changes for the benefit of consumers.

505 We propose to use our statutory power to modify provisions of the National Credit Act to prohibit the use of flex commissions so that the amount paid in

commissions is not linked to the interest rate, and therefore the lender has responsibility for determining the interest rate that applies to a particular loan.

- 506 We believe this prohibition will benefit consumers by removing incentives that increase the interest rates they are charged. We consider that average interest rates on car loans will fall as a result of more efficient pricing models and lower losses through defaults. We expect lenders will work with car dealers in moving to fairer and more sustainable models.

Conflicts of interest in funds management

- 507 In March 2016, we released [Report 474](#) *Culture, conduct and conflicts of interest in vertically integrated businesses in the funds-management industry* (REP 474). This report highlights the key issues we identified in our review of management of conflicts of interest in these businesses, and outlines our responses to these issues.

Benefits and remuneration

- 508 Incentives can exacerbate underlying conflicts of interest—for example, by rewarding business development strategies that focus on short-term sales targets or imposing implicit or explicit pressure on the salesforce to promote particular products.
- 509 At an organisational level, conflicts of interest can arise if the licensee receives and is able to retain soft commissions, benefits or fees for services provided or products manufactured by related entities, but such monetary or other benefits are not received for services or products from unrelated entities.
- 510 At the employee level, a conflict of interest could also arise when similar incentives or an inappropriate remuneration structure encourages the employee to prioritise the promotion of group-manufactured products or platform products over a third party's products, which may not be in the best interests of the client.
- 511 Better design and alignment of remuneration and transparency that facilitates more rigorous scrutiny by investors, auditors and regulators can mitigate the behaviours and processes that allow a failure to manage these conflicts of interest to become profitable for the licensee or representative and costly for consumers.

Performance rating and remuneration of staff

- 512 While our review did not specifically focus on remuneration policies and practices, it did indicate that there was limited evidence that remuneration structures adequately consider conduct, compliance training and behaviour as a determinant of remuneration, bonuses, salary advancement or other reward.
- 513 We consider that compliant behaviour is a key aspect of performance. We will continue to conduct further reviews of remuneration practices in the financial services industry.
- 514 We recommended that in relation to remuneration and benefits, licensees review their remuneration and benefits structure regularly to ensure they do not provide incentives for the employee of the organisation to favour a related party.

D Culture and chain of responsibility in relation to misconduct

Key points

Culture is a key driver of conduct, and is an issue we have highlighted for the banking, insurance and financial sector.

We continue to see poor culture and incentive structures driving misconduct and resulting in poor investor and consumer outcomes across our regulated population.

We will continue to focus on mitigating the risks arising from poor gatekeeper culture driving poor conduct through new and continuing surveillance projects.

Culture and conduct

- 515 Culture is a set of shared values or assumptions. Values are what an organisation chooses to prioritise, and these can shape and influence staff and management's behaviour and attitudes towards, for example, the treatment of customers and compliance.
- 516 Firm and industry-wide culture is complex, multi-layered, fluid and difficult to influence. It cannot simply be set from the top but needs to be coordinated to encompass all levels of staff and management.
- 517 Culture is a key driver of conduct, and is an issue we have highlighted for the financial services and credit industries in general—not just for large banking and financial services institutions. A key theme that underpins our view is the importance of organisational culture and collective industry norms and practices on behaviour and conduct—both of the firms we regulate and the individuals who work within those firms. A positive culture, driving good conduct, is central to investor and consumer trust and confidence, market integrity, and growth.
- 518 Our Corporate Plan 2016–17 outlines the key challenges to our vision and the risks we have identified that flow from those challenges. Key among these are the risks arising when poor gatekeeper culture drives poor conduct within the financial advice, credit, insurance, superannuation and managed funds sectors. We continue to focus on mitigating these risks through new and continuing surveillance projects.
- 519 Gatekeepers play a crucial role in the overall health of the financial system. Where culture, incentive structures and systems are poor or misaligned, the

conduct of gatekeepers we regulate can conflict with the interests of investors and consumers, and can lead to unfair outcomes.

520 We continue to see poor culture and incentive structures and systems driving misconduct and resulting in poor investor and consumer outcomes across our regulated population. For example, poor culture and conduct within firms—and embedded in some industry practices—means that investors and consumers are still being sold products that do not meet their needs or expectations. This can put their investments and retirement savings at risk, increase their credit burden, or affect their ability to claim on their insurance policy.

521 While we have noticed some progress in the financial services and credit industries in their engagement with the importance of improved culture, there is room for significant ongoing cultural change at all levels.

522 In relation to management accountability, the FSI concluded that changes are required to the culture and conduct of financial firms' management, which needs to focus on consumer interests and outcomes.

523 The FSI recommended:

an enhanced banning power should improve professional behaviour, management accountability and the culture of firms, by removing certain individuals from the industry and preventing them from managing a financial firm.

We support the recommendation and such a power for ASIC is currently being considered under the ASIC Enforcement Review.

Note: FSI, '[Final report](#)', webpage, www.fsi.gov.au.

Our work on culture and conduct

524 We have commented on culture in recent public reports. For example we:

- (a) identified concerns about conduct risk in [REP 474](#);
- (b) raised some culture and remuneration concerns in the context of fee-for-service failures in [REP 499](#); and
- (c) considered how the culture of an institution can influence the effectiveness of its processes for monitoring and supervising its advisers in [REP 515](#).

Conduct risk

525 We have expressed concern about the risk of inappropriate, unethical or unlawful behaviour by an organisation's management or employees, characterised as 'conduct risk'. We articulate the elements of conduct risk management as the 'Four Cs':

- (a) Communication—expectations around conduct need to be clearly, proactively and regularly reiterated across all levels of the organisation to ensure it is ‘front of mind’.
- (b) Challenge—existing practices should be continually challenged to determine whether conduct and behaviours are appropriate.
- (c) Complacency—organisations should not be complacent and think that, because something has not happened yet, it won’t happen.
- (d) Consequences—consequences of non-adherence to an institution’s code of conduct, policy and procedures need to be clear, and staff should see these being enforced. Conversely, staff who demonstrate good conduct or are culture role models need to be rewarded, and other staff should see this.

526 In [REP 474](#) we said that how an organisation identifies and manages conflicts of interest is one way of gauging that organisation’s culture.

527 By emphasising cultural improvements in the firms and industries we regulate, we expect to disrupt the kinds of systemic conduct that is driven by poor culture.

Role of culture in fee-for-no service failures

528 The information we gathered for [REP 499](#) suggests that cultural factors in the banking and financial services institutions and advice licensees covered by the project—in particular, those where multiple advisers and a large number of customers were involved—contributed to the systemic failures we observed. These systemic failures directly impacted on customer outcomes, such as when:

- (a) financial advisers failed to provide ongoing advice services to customers who paid ongoing service fees; and
- (b) licensees’ staff and management failed to put in place systems (e.g. for data, compliance and record keeping) to ensure services paid for by customers were provided.

Note: See paragraphs 447–462 for further details about the findings in [REP 499](#).

529 We encouraged the institutions reviewed in our report to consider how their culture may have supported these systemic failures, and why their stated commitment to providing excellent service to customers did not translate into good outcomes for customers in the many instances we identified.

Role of culture in effective supervision of financial advisers

530 In [REP 515](#) we considered a number of key indicators of culture to determine whether the interests of customers were being prioritised. These indicators include how an institution:

- (a) deals with advisers whose conduct has been identified as non-compliant;
- (b) remediates customers who have been adversely affected by receiving non-compliant advice; and
- (c) monitors and supervises advisers to identify non-compliance.

531 Where there are systemic failures in an organisation, the culture of that organisation is very likely to have been a contributing factor. The information we gathered for the report suggests that cultural factors in the institutions contributed to the failures we observed.

532 Many of the failings we identified led, or had the potential to lead, to poor outcomes for customers. For example, we observed inadequacies in:

- (a) information sharing—when advice licensees became aware of serious non-compliance by an adviser, they often failed to protect future customers by adequately notifying us or the recruiting licensee;
- (b) background and reference-checking processes—failing to make comprehensive background-checking inquiries when recruiting enabled advisers with a poor compliance record to circulate undetected within the financial services industry, increasing the risk that new customers would receive non-compliant advice; and
- (c) audit processes—failure to properly assess whether advisers demonstrated compliance with the best interests duty and other related obligations. As a result, customers who potentially received non-compliant advice were not always identified or properly remediated, where necessary, and advisers providing non-compliant advice remained undetected.

Note: See paragraph 117 for more information about REP 515.

533 Since publishing [REP 515](#), our broader engagement with the institutions covered by this report indicates they are now more engaged with the issue of culture. They are increasingly using technology to improve staff oversight and to identify issues that may lead to, or indicate the presence of, poor culture. The institutions have also recognised that background and reference-checking processes need to be improved.

534 We recognise that there is no single measure or action that will raise standards and improve culture across the financial advice industry. Rather, a combination of broad industry reforms and the work within advice firms will improve consumer trust and confidence. We encourage institutions to consider how improvements to their remuneration structures, professional standards, reference checking and record keeping can strengthen a customer-focused culture.

Breach reporting to ASIC

- 535 We understand that breaches will occur in businesses, and we have provided guidance to AFS licensees about how to comply with breach reporting obligations in [Regulatory Guide 78](#) *Breach reporting by AFS licensees* (RG 78).
- 536 We consider that a licensee's system and practices for identifying, escalating, and reporting breaches to us is likely to be an important indicator of their culture.
- 537 Breach reports are an important source of intelligence to help us understand current conduct in the market. Given the importance of the breach reporting regime, we are seeking to better understand how AFS licensees—and the big banks in particular—comply with their breach reporting obligations.
- 538 As announced in our Corporate Plan 2016–17, we are commencing a cross-team project to review how AFS licensees discharge their breach reporting obligations.

Whistleblower policies

- 539 We consider transparent internal whistleblower policies and processes to be essential to good corporate culture. We value the information we receive from whistleblowers as it helps expose misconduct that may otherwise go undetected for long periods of time and cause serious harm to consumers and investors.
- 540 We have established an Office of the Whistleblower, and enhanced our internal process for dealing with whistleblower reports. In addition, we have developed targeted information to ensure whistleblowers understand our role, and are aware of the protections that may apply to them.
- 541 In the 2016–17 Federal Budget, the Government announced the introduction of new tax whistleblower protections. The Open Government National Action Plan also committed to ensuring appropriate protections for people who report wrongdoing.
- 542 In December 2016, Treasury issued its [consultation paper](#) to seek comments on the adequacy of existing corporate sector whistleblower protections and the introduction of protections for tax whistleblowers. We provided input into the development of this paper and have also made a submission in response to it.
- 543 We support the Government's work to encourage reporting of corporate wrongdoing and better protection for whistleblowers in Australia.

544 We also note that a PJC on Corporations and Financial Services Inquiry into whistleblower protections has recently been established and is due to report by 30 June 2017.

Note: Parliament of Australia, '[Whistleblower protections in the corporate, public and not-for-profit sectors](http://www.aph.gov.au)', webpage, www.aph.gov.au.

E Redress, compensation and legal advice for victims of misconduct

Key points

Consumer trust and confidence in the financial services sector relies on effective dispute resolution and supporting compensation mechanisms.

The whole financial services system bears the risk of adverse consumer outcomes and a lack of trust and confidence in the event of a significant product or licensee failure. In the absence of a last resort compensation scheme, uncompensated losses within the EDR framework will continue to occur.

545 When investors or consumers have suffered loss, we carefully consider whether any action we can take may result in compensation being paid. As explained in paragraph 384, while recovery of compensation is ordinarily left to private litigation and class actions we sometimes obtain compensation for investors by conducting a group proceeding under s50 of the ASIC Act or pursuing negotiated outcomes.

Note: Refer to paragraph 387 and [INFO 151](#) for our approach to enforcement and compensation action.

546 However, any legal action we take may not involve investigating all past transactions to determine whether compensation is warranted and then obtaining the compensation. We do not have the legal powers or resources to do this. The regime reflects this by providing EDR access to facilitate remedies for all individual consumers and investors.

Compensation arrangements under the AFS licensing regime

547 In Australia, all AFS licensees, credit licensees and trustee companies must have:

- (a) a dispute resolution system, which includes an IDR procedure and membership of an ASIC-approved EDR scheme; and
- (b) arrangements for compensating retail clients and consumers for loss or damage due to breaches of the financial services or credit laws. Unless the licensee is exempt (i.e. because they are prudentially regulated) they must generally hold adequate professional indemnity (PI) insurance cover.

548 As well as being adequate for their business, a licensee's PI insurance must also cover EDR scheme awards.

- 549 PI insurance is designed to protect licensees against business risk, and not to provide compensation directly to investors and financial consumers. While it reduces the risk that a licensee will be unable to pay claims because of insufficient financial resources, it has some significant limitations, including where there are insolvency issues or multiple claims against a single licensee.
- 550 Refer to paragraphs 411–414 which outline consumer remediation processes.

Uncompensated consumer losses

- 551 Consumer trust and confidence in the financial services sector relies on effective dispute resolution and supporting compensation mechanisms. Ensuring determinations are complied with goes to the heart of that confidence.
- 552 The following commentary was provided in the EDR Review Interim Report:
- According to FOS, more than \$17 million in determinations it has made in favour of complainants has not been paid (as at 1 November 2016) as the financial firm lacks the financial resources to pay the determinations. Similarly, CIO has unpaid determinations worth approximately \$414,443 (as at 1 November 2016). However, this might be treated as a minimum given the difficulties with quantifying losses suffered by those who have not lodged a dispute and those whose disputes were closed early as there was no reasonable prospect of any compensation order being satisfied.
- Note: Treasury, [Interim Report of the Review of the financial system external dispute resolution and complaints framework](#) (PDF 3MB), December 2016, p. 114.
- 553 It is noted that these figures only relate to unpaid determinations from Ombudsman disputes. The figures do not include consumers who have not taken disputes to Ombudsman on the basis that their dispute is above the monetary limits of the schemes, or consumers who have pursued disputes through Courts, or those who have not pursued any disputes because the entities they have dealt with are now insolvent.
- 554 The reason that uncompensated losses have arisen in the financial services dispute resolution sector is not merely because some licensees refuse to comply with scheme decisions. Losses may have resulted from either a product failure or insolvency, where a firm has no financial resources available to meet claims and, typically, where any PI policy also fails to meet claims. It is far less likely, for example, that a prudentially regulated firm such as a superannuation trustee will fail to comply, than it is for a small-to-medium advice firm relying on PI insurance.
- 555 We have publicly raised our concerns about uncompensated losses in a number of Government inquiries and reviews. The limitations of PI have

been canvassed in these submissions, so we will not repeat that analysis here.

- 556 In Australia, there is no comprehensive compensation mechanism in circumstances of last resort where a financial services firm has failed or is insolvent.
- 557 Public reports of the volume of uncompensated losses by the FOS and CIO should be treated as a minimum. The schemes are unable to quantify losses suffered by investors or consumers who did not lodge disputes, or whose disputes were closed early in the process because there was no reasonable prospect of any order for compensation being met.
- 558 The current concentration of unpaid determinations is in the small to medium sized advisory services sector. Consumers and investors may not generally appreciate that, in the event of a product failure or insolvency, there are fundamental differences in their access to compensation depending on the nature and size of the entity with whom they deal.
- 559 The whole financial services system bears the risk of adverse consumer outcomes and a lack of trust and confidence in the event of a significant product or licensee failure. In the absence of a last resort compensation scheme (LRCS), uncompensated losses within the EDR framework will continue to occur.

Last resort compensation scheme

- 560 The EDR review Panel noted in its Interim Report that it ‘received a large number of submissions which supported establishing an industry-funded compensation scheme of last resort, although there were some differences around the scheme’s design details’.
- Note: EDR Review, [Review of the financial system external dispute resolution and complaints framework](#) (PDF 3MB), interim report, 6 December 2016, p. 167.
- 561 On page 26 of the Interim Report, the Panel observed that ‘there is considerable merit in introducing an industry-funded compensation scheme of last resort’.
- 562 As noted in paragraph 370, in February 2017 the Government extended the terms of reference for the EDR review, asking the Panel to make recommendations, rather than observations on a LRCS. The Panel will report to Government by 30 June 2017.
- 563 We believe that, despite there being different views about the details of a LRCS, it is possible to design a model that will ultimately benefit funding

industry members, appropriately compensate consumers, and increase consumer and investor trust and confidence.

564 We support a broad-based LRCS that covers uncompensated losses arising across the financial services dispute resolution jurisdiction, including credit.

565 If there is industry support to implement and fund a more targeted scheme as a first step (for example, one that focuses on advice-related losses) this could address the current acute area of uncompensated EDR loss. However, it would still need to be sufficiently comprehensive and consistent to support consumer trust and confidence. A principle should be that the scheme covers the same advice activity regardless of who provides it.

566 We welcome the further consideration of this issue by the EDR review and will continue to work with Panel and stakeholders on this issue.

Legal advice for victims of misconduct

567 We acknowledge the important work of consumer advocates, community legal centres and financial counsellors for consumers and victims of misconduct. Financial counselling and consumer casework services are particularly important for ASIC, as they:

- (a) identify trends or problems in the market;
- (b) bring complaints to us directly or to EDR schemes;
- (c) contribute to law reform and policy development initiatives; and
- (d) actively engage with our stakeholder teams directly and through their participation on the Consumer Advisory Panel.

568 As the use of financial products and services becomes even more central to people's lives, the demand on these services has increased.

F Social impacts of consumer protection failures in the sector

569 This term of reference is addressed in Parts B and E of this submission.

G Prioritising consumer protection

Key points

This section outlines the following reform processes that aim to address poor conduct and structural problems in the banking, insurance and financial services sectors:

- law reform processes;
- reviews to improve consumer protection;
- banking industry reform package initiatives; and
- ASIC surveillance projects.

570 There are currently a number of law reform processes, reviews and banking industry initiatives underway concerning the regulatory framework for protecting consumers and small businesses in the banking, insurance and financial services sectors.

571 We consider it important that these reforms are implemented expeditiously to ensure ASIC has the tools we need to ensure a fair, efficient and resilient financial system.

572 Most reforms are phased in over time, as they generally require very significant industry change. However, together, these reforms will raise standards and reduce misconduct in the financial services and credit industries.

Law reform

573 We support the Government's current implementation of significant law reform, including:

- (a) product design and distribution obligations for product issuers (see paragraphs 30–36);
- (b) changing ASIC's mandate to include competition (see paragraphs 37–48);
- (c) improved competency for financial advisers (see paragraphs 49–53); and
- (d) an industry funding model (see paragraphs 61–64).

574 Examples of recently passed significant law reform include: the FOFA reforms (see paragraphs 82–98) and reducing the incentives for life insurance products to be inappropriately replaced (see paragraphs 139–150).

575 Please refer to Appendix 2 for a list of further reform processes.

Current reviews to improve consumer protection

576 Many of the current significant reviews underway follow the Government's response to the FSI and the ASIC Capability Review.

Note: The ASIC Capability Review formed part of the Australian Government's response to the Financial System Inquiry, which recommended periodic reviews of the capabilities of financial and prudential regulators. The ASIC Capability Review Expert Panel presented its recommendations to the Assistant Treasurer, the Hon. Kelly O'Dwyer MP, on 4 December 2015.

577 Examples of these reviews include the:

- (a) ASIC Enforcement Review;
- (b) EDR Review and related reviews into the FOS's small business lending jurisdiction and the ASBFEO's Small Business Loans Inquiry;
- (c) Productivity Commission's Inquiry into data availability and use, which will consider options to improve individuals' access to data held by private institutions including banks; and
- (d) Australian Consumer Law Review, which includes consideration of consumer protections in the ASIC Act.

578 We also note the Government's agenda to strengthen Australia's financial system and ensure fairer outcomes and better protections for Australian consumers, including the House Economic Standing Committee's review of the four major banks.

579 Please refer to Appendix 3 for a list of further current reviews.

Banking industry reform

580 We welcome and support the banking industry's reform initiatives to improve consumer outcomes. We note the progress of the various initiatives, including the ABA's introduction of the:

- (a) Guiding Principles for industry's protection of whistleblowers on 21 December 2016; and
- (b) 'Conduct Background Check Protocol' for bank employees and the 'Reference Checking and Information Sharing Protocol' for financial advisers. However, we also note each protocol's limitations.

Note: Please refer to Appendix 4 for a list of the banking industry's reform initiatives.

581 We also broadly support the recommendations in the final report on the independent review of the Code of Banking Practice, released on 20 February 2017.

582 We consider that effective codes of practice play an important role in setting and improving industry standards across the financial services system. ASIC has a voluntary power to approve codes of conduct, and have set out guidance about this power in [RG 183](#).

ASIC surveillance projects

583 Since receiving the additional funding that was announced by the Government in April 2016, we have been implementing the measures set out in the Government announcement: see paragraph 65.

584 Many of these initiatives were already underway and are being strengthened or continued. In particular we are:

- (a) enhancing our data analytics and surveillance capabilities and improving our data management systems;
- (b) undertaking a number of proactive surveillance projects that target poor practices at the individual firm and industry level in the financial advice, credit and insurance, and superannuation and managed funds sectors; and
- (c) working closely with Treasury to support implementation of the reforms from the FSI, including: product intervention powers, product distribution obligations, the review of ASIC's enforcement regime and strengthening of consumer protections in the ePayments Code.

Note: See Appendix 5 for relevant business plan summaries. These are published on ASIC's website and our Corporate Plan 2016–17

585 Refer to Appendix 1 for further details on our surveillances in the financial advice; deposit-takers, credit and insurers; and investment managers and superannuation sectors.

Appendix 1: ASIC surveillance projects

Table 4: Surveillance projects

Sector	Key project	Project status	Focus
Financial advice	Accountants – limited licence	New	Accountants that have recently entered the financial advice industry and unlicensed financial advice by accountants; anticipated to continue into 2017–18
Financial advice	Insurance churn by advisers	New	Life insurance advisers who are engaging in high levels of insurance churn (i.e. advising clients to switch policies to generate additional commission income)
Financial advice	Life insurance statement of advice	Continuing from 2015–16	Life insurance statement of advice, including providing guidance to industry on improving the communication of information to consumers; anticipated to continue into 2017–18
Superannuation and managed funds	Employers and super	New	Reviewing the advice, disclosure and inducements provided to employers –as part of our overall surveillance program of responsible entities and superannuation entities
Superannuation and managed funds	Disclosure of fees and costs	New	Industry compliance with the revised fee disclosure requirements; anticipated to continue into 2017–18
Superannuation and managed funds	Disclosure of performance information	New	Accuracy and consistency of fund performance calculations
Superannuation and managed funds	ETFs	New	ETF issuer's liquidity at or near net asset value, and compliance with other requirements; anticipated to continue into 2017–18
Superannuation and managed funds	Insurance in superannuation	New	Disclosure practices, premiums charged and complaints handling; anticipated to continue into 2017–18
Superannuation and managed funds	Integrity of licensing system for wholesale licensees	New	Compliance of wholesale licensees offering services that target retail investors in Australia and overseas; anticipated to continue into 2017–18
Credit	Credit card issuers	New	Marketing practices and compliance with issuer obligations; anticipated to continue into 2017–18

Sector	Key project	Project status	Focus
Credit	Loan fraud	New	Concerns relating to loan fraud, particularly in the home loan market; anticipated to continue into 2017–18
Credit	Breach reporting practices within large banks	New	How the big four banks discharge their breach reporting obligations
Credit	Mortgage broker remuneration structure	Continuing from 2015–16 (expanded scope)	The effect of mortgage broker remuneration on the quality of consumer outcomes. In 2016–17, we will provide a report to Government on our findings. We may undertake follow-up work in 2017–18
Insurance	Direct sale of life insurance	New	Sale and distribution practices; anticipated to continue into 2017–18
Insurance	Life insurance industry claims handling practices	Continuing from 2015–16 (expanded scope)	Finalising our review and publishing our report; future follow up work anticipated to 2019–20
Insurance	Add-on products	Continuing from 2015–2016 (expanded scope)	Sale of low-value financial products (such as insurance or warranties) as an ‘add-on’ to another purchase, with the sales process inhibiting informed consumer decision making; anticipated to continue into 2017–2018

Source: ASIC Corporate Plan 2016–17

Appendix 2: Law reform and change processes

The following tables outline some of the significant law reform processes currently underway.

Table 5: Law reform—FSI recommendations

Initiative	Brief description
Product intervention power & design and distribution obligation	<p>Reforms to introduce a product intervention power and issuer and distributor obligations to help establish a financial system that yields fairer outcomes for consumers and is sound and flexible ahead of any future challenges.</p> <p>The Government is consulting on the implementation of the reforms to ensure they are clearly defined and appropriately targeted. Submissions to a Proposals Paper released by Treasury were due 15 March 2017.</p>
ASIC Enforcement Review	<p>Review to assess the suitability of the existing regulatory tools available to ASIC to perform our functions adequately, including the adequacy of civil and criminal penalties.</p> <p>Other FSI recommendations considered in this review, include:</p> <ul style="list-style-type: none"> • review of the financial services licensing breach notification framework; and • the power to ban individuals from managing financial services firms <p>The ASIC Enforcement Review is being undertaken by Treasury. The Government announced the Taskforce members on 19 October 2016.</p>
ASIC's competition mandate	<p>Reform to include a reference to competition in ASIC's mandate.</p> <p>The Government will develop legislation to introduce an explicit reference to consideration of competition in ASIC's mandate.</p>
Industry funding model	<p>Reform to introduce an industry funding model for ASIC.</p> <p>The Government is consulting on the implementation of the model. Consultation on draft legislation closed on 10 March 2017.</p>
ePayments Code	<p>Reforms to strengthen consumer protections in the ePayments Code, which regulates consumer electronic payments and includes a number of consumer protections, to ensure it keeps pace with emerging technologies.</p> <p>The Government agrees with the FSI's recommendations and has announced the implementation plans.</p>

Table 6: Law reform—Insurance

Initiative	Brief description
Life insurance reforms	<p>Reform package to better align the interests of providers of financial advice in the life insurance sector with those of consumers.</p> <p>Legislation passed both Houses of Parliament in February 2017. ASIC will make a legislative instrument setting caps and clawback arrangements. Reforms commence 1 January 2018.</p>

Table 7: Law reform—Financial advice

Initiative	Brief description
Financial advice professional standards	<p>Reforms to introduce new professional, education and training standards for financial advisers who provide personal advice on more complex financial products. The Government has also agreed to establish an independent body, recognised in legislation, to set details of the new standards.</p> <p>Legislation passed both Houses of Parliament in February 2017. Phased commencement will start 1 January 2019.</p>
Renaming general advice and disclosing adviser and mortgage broker ownership	<p>FSI recommendations to improve consumer outcomes.</p> <p>The Government has agreed to both reforms and indicated it will consult on their implementation.</p>

Table 8: Law reform—Credit

Initiative	Brief description
Small amount credit contracts and consumer leases	<p>Reform of small amount credit contract laws.</p> <p>Government response to the final report of the independent Review of the small amount credit contract laws was released on 28 November 2016.</p>

Table 9: Law reform—Superannuation and managed investment schemes

Initiative	Brief description
Stronger Super reforms	<p>There are a number of law reform initiatives in superannuation that ASIC is involved in, or is assisting with:</p> <ul style="list-style-type: none"> • tax measures from the budget relating to super; • Productivity Commission on superannuation efficiency and competitiveness; • implementing FSI recommendations supported by Government relating to retirement products, including comprehensive income product for retirement; and • finalisation of Stronger Super reforms.

Initiative	Brief description
Superannuation efficiency and competitiveness	<p>In February 2016, terms of reference were given to the Productivity Commission by the Government, requesting that the Commission conduct a study to develop criteria to assess the efficiency and competitiveness of the superannuation system; and an inquiry to develop alternative models for a formal competitive process for allocating default fund members to products.</p> <p>We provided our submissions in May and November 2016.</p>
Comprehensive income product for retirement (CIPR)	<p>FSI recommended reform to encourage the development of comprehensive income products for retirement to improve outcomes for retirees.</p> <p>The Government is consulting on the key issues in developing the framework for comprehensive income products for retirement, proposed to be labelled 'MyRetirement products'. Submissions close 28 April 2017.</p> <p>Innovative Retirement Products</p> <p>In response to FSI recommendation 11, the Government is looking to establish a one-stop shop for any issuer looking to develop new retirement income products (particularly once budget changes to tax treatment of these products go through).</p>
Superannuation choice dashboards and portfolio holdings disclosure	<p>Reform to increase the quality of information available to superannuation fund members and others while ensuring that the current obligations in the Corporations Act in relation to choice product dashboards and portfolio holdings disclosure are workable for industry.</p> <p>In the absence of regulations or amending legislation to fully implement the Stronger Super reforms, we have made a legislative instrument to delay the commencement of the requirements until 1 July 2017.</p>
Asia Region Funds Passport	<p>Reform to provide a multilaterally agreed framework to facilitate the cross-border marketing of managed funds across participating economies in the Asia region.</p> <p>On 28 April 2016, the Government signed a Memorandum of Cooperation with Japan, Korea and New Zealand which sets out the internationally agreed rules and cooperation mechanisms of the Passport.</p>
Collective Investment Vehicles	<p>Reform to introduce collective investment vehicles as a tax-effective alternative to current Australian pooled investment trust to ensure that the Australian funds management sector is internationally competitive.</p> <p>The Government's public consultation on policy proposals closed on 2 December 2016.</p>

Table 10: Law reform—other reforms

Initiative	Brief description
Client monies	<p>Reform to better protect retail investors in over-the-counter derivatives products, by removing the current exemption that permits the use of retail client money paid for derivatives transactions.</p> <p>The Government announced on 8 November 2016 that it would proceed with reforms, following public consultation on draft legislation and regulation.</p> <p>ASIC has welcomed the passage of the reforms contained in the <i>Treasury Laws Amendment (Measures No. 1) Bill 2016</i>.</p>
Insolvency reforms	<p>Reform to establish practitioner registration and discipline provisions, enhance ASIC's powers, and improve insolvency administration processes.</p> <p>Insolvency Law Reform Act received Royal Assent in February 2016.</p> <p>The practitioner registration and discipline provisions, and enhancements to ASIC's powers commenced on 1 March 2017.</p> <p>The reforms to insolvency administration processes, to enhance efficiency, improve communication and increase competition, are scheduled to commence on 1 September 2017.</p>
Whistleblowing	<p>Reform of whistleblower protections in the corporate and taxation areas.</p> <p>The Government consulted on the introduction of appropriate protections for tax whistleblowers and the adequacy of existing whistleblower protections in the corporate sector. Submissions closed 10 February 2017.</p>

Appendix 3: Government reviews and inquiries

The following table outlines some recent and current government reviews in the banking, insurance and financial services sectors.

Table 11: Government reviews and inquiries

Initiative	Brief description
Inquiry into consumer protection in the banking, insurance and financial sector	On 29 November 2016, the Senate referred an inquiry to the Senate Economics References Committee for inquiry and report by the last sitting day of the autumn sittings of 2018.
Financial system external resolution framework Review (EDR Review)	<p>Review of the financial system's EDR and complaints framework to ensure it meets the needs of users of the financial system. An expert panel chaired by Professor Ian Ramsay is undertaking the review.</p> <p>Interim Report released 6 December 2016. Final report expected by 31 March 2017.</p> <p><u>Consultation on extending the jurisdiction of FOS to small business</u></p> <p>Review led by the FOS to consider extending the jurisdiction of FOS to cover disputes involving small business.</p> <p>We are contributing to this review, which is related to the EDR review process.</p>
ASIC Enforcement Review	<p>The ASIC Enforcement Review is being undertaken by Treasury.</p> <p>Refer to Table 5 of Appendix 2</p>
Criminal, civil and administrative penalties for corporate and financial misconduct or white-collar crime inquiry	<p>On 25 November 2015, the Senate referred an inquiry into the inconsistencies and inadequacies of current criminal, civil and administrative penalties for the corporate and financial misconduct or white-collar crime to the Senate Economics References Committee.</p> <p>The inquiry lapsed at the end of the 44th Parliament.</p> <p>On 11 October 2016, the Senate agreed with the committee's recommendation that the inquiry be re-adopted in the 45th Parliament. The committee published its report on 23 March 2017.</p>
Australian Consumer Law Review	<p>Chartered Accountants Australia & New Zealand is conducting a five-year review of the Australian consumer law.</p> <p>Interim Report released 14 October 2016. Final report expected March 2017.</p> <p>The Productivity Commission released a draft report on the study of the enforcement and administration arrangements underpinning the Australian Consumer Law on 8 December 2016. Research report expected March 2017.</p>

Initiative	Brief description
Small Business Loans Inquiry	<p>Government requested examination of case studies identified by the PJC on Corporations and Financial Services in its report, <i>Impairment of Customer Loans</i>. Inquiry conducted by the ASBFEO.</p> <p>Findings to inform the EDR review.</p> <p>Final report released 3 February 2017. The report made 15 recommendations, which include that ASIC establish a small business commissioner.</p> <p>In response, we have established the Office of Small Business to coordinate our efforts in listening to, promoting, protecting and regulating Australian small businesses.</p>
Inquiry into data availability and use	<p>The Productivity Commission is conducting an inquiry into public and private sector data availability and use.</p> <p>Draft report released 3 November 2016. Final report expected March 2017.</p>
Scrutiny of Financial Advice	<p>On 4 September 2014, the Senate referred an inquiry into the scrutiny of financial advice reforms to the Senate Economics References Committee. Due to the lapse of the 44th Parliament, the Committee was only able to publish Part 1 of the Report, released on 24 February 2016. The inquiry was re-adopted in the 45th Parliament, with the final report to be published by 30 June 2017.</p> <p>Due to a number of inquiries that commenced after July 2016, this inquiry will no longer look into whistleblowing and the life insurance industry.</p> <p>Our initial submission stated that we have long been concerned about the quality of financial advice provided to consumers.</p>
Life insurance industry review	<p>On 14 September 2016, the Senate referred an inquiry into the life insurance industry to the PJC on Corporations and Financial Services for report by 30 June 2017.</p> <p>We have made a submission outlining the importance of life insurance for consumers and our role in ensuring a well-functioning life insurance industry. We called for further regulatory and legislative reform so that we can better regulate the industry, especially with regard to claims handling.</p>
General insurance industry review (comparison services)	<p>On 22 November 2016, the Senate referred an inquiry into the general insurance industry to the Senate Economics References Committee. The inquiry will look at the case for establishing a comprehensive, independent comparison service to help consumers find better value for car, home and strata insurance.</p> <p>Report is due to be published by the Committee by 22 June 2017.</p>

Initiative	Brief description
Review of mortgage broker remuneration structures	<p>As part of the Government's response to the FSI, on 11 November 2015, the Government requested ASIC to review the mortgage broking market to determine the effect of current remuneration structures on the quality of consumer outcomes.</p> <p>ASIC's report was released on 16 March 2017. The Government will consider our findings as a first step before any potential change in remuneration structures for the mortgage broking industry.</p> <p>The Government has invited all interested parties to make a submission on the proposals outlined in our report.</p>
Inquiry into credit card interest rates	<p>On 24 June 2015, the Senate referred an inquiry to the Senate Economics References Committee into credit card interest rates.</p> <p>In December 2015, the Committee released a report containing recommendations, including improved disclosure about the cost of credit cards and measures to reduce the risk of long periods of minimum repayments.</p> <p>The Government published a consultation paper in response, which included proposed measures to respond to the recommendations raised in the Report. ASIC provided a submission to this paper.</p>
Superannuation (Competitiveness and Efficiency & Alternate Default models)	<p>Productivity Commission review into the efficiency and competitiveness of the entire superannuation system.</p> <p>Final report to develop criteria to assess the efficiency and competitiveness of the superannuation system was released 25 November 2016.</p> <p>Alternative models for allocating default fund members to products to be developed by August 2017.</p>
Superannuation Guarantee non-payment inquiry	<p>On 1 December 2016, the Senate referred an inquiry to the Economics References Committee on the impact of non-payment of the Superannuation Guarantee.</p> <p>The Committee is due to publish its report by 22 March 2017.</p>
Select Committee on Lending to Primary Production Customers	<p>On 16 February 2017, the Senate established the Select Committee on Lending to Primary Production Customers to inquire and report on the regulation and practices of financial institutions in relation to primary production industries, including agriculture, fisheries and forestry.</p> <p>The Committee is to report by 18 October 2017.</p>

Appendix 4: Banking industry initiatives

The following table outlines some industry initiatives and change processes to improve consumer outcomes.

Table 12: Banking initiatives and change processes

Initiative	Brief description
ABA initiatives	<p>Industry-led initiatives introduced to protect consumer interests, increase transparency and accountability and build trust and confidence in banks, including:</p> <ul style="list-style-type: none"> • reviewing sales commissions • making it easier for customers when things go wrong • reaffirming support for employees who 'blow the whistle' on inappropriate conduct • removing individuals from the industry for poor conduct • strengthening commitment to customers in the Code of Banking Practice • supporting ASIC as a strong regulator <p>Package of initiatives announced on 21 April 2016.</p> <p>Third quarterly report on implementation released 20 January 2017.</p>
Review of product sales commissions	<p>An independent review led by Stephen Sedgwick of product sales commissions and product-based payments with a view to removing or changing them where they could lead to poor outcomes, including extending FOFA reforms to retail banking products. This is intended to strengthen the alignment of remuneration and incentives and customer outcomes.</p> <p>An issues paper was released on 17 January 2017 which identified some practices that have a high risk of incentivising poor selling practices leading to poor consumer outcomes. Review is due to be completed by the end of March 2017.</p>
Review of the Code of Banking Practice	<p>An independent review led by Phil Khoury of the Code of Banking Practice to ensure it adequately covers the expected standards for banks and their relationship with customers.</p> <p>Report released 20 February 2017, including 99 recommendations relating to the Code of Banking practice. The recommendations include drafting an entirely new Code to be submitted to ASIC for approval.</p>

Table 13: Industry codes

Initiative	Brief description
Life Insurance Code of Practice	<p>Voluntarily developed by the life insurance industry through the Financial Services Council (FSC). The Code sets out the life insurance industry's key commitments and obligations to customers on standards of practice, disclosure and principles of conduct for their life insurance services, such as being open, fair and honest.</p> <p>The Code was released 11 October 2016. The Code is mandatory for all FSC members and will commence on 1 July 2017.</p>
Code of Practice/Conduct for Life Insurance in Superannuation	<p>The Insurance in Superannuation Industry Working Group has been established by representatives from funds, consumer groups, and industry bodies to develop leadership on insurance in super and a code of practice/conduct.</p> <p>The Working Group was established 2 November 2016.</p> <p>The Code is expected to be finalised by the end of 2017. Improvements to industry practice are proposed to be progressively delivered throughout 2017.</p>
General Insurance Code of Practice	<p>Covers all general insurance products and applies to all industry participants who voluntarily adopt it. ICA members who offer general insurance products must adopt the Code.</p> <p>The ICA announced a targeted review of the General Insurance Code of Practice on 17 February 2017. ASIC has made a submission.</p>

Appendix 5: 2016–17 ASIC business plan summaries

Below are summaries of the 2016–17 business plans for our financial advice; deposit takers, credit and insurance; and superannuation and managed funds teams.

Table 14: 2016–17 ASIC business plan summary—Financial advice

Category	Key project	Project status	Focus
Stakeholder engagement	Adviser Board	New	Establishing a representative Adviser Board to advise on key industry issues.
Education	Financial literacy and consumer education	Ongoing	<ul style="list-style-type: none"> Utilising financial literacy expertise and behavioural economics insights to develop targeted consumer education messages, campaigns and resources. Launching the new 'financial advice companion' online tool.
Guidance	Life insurance statement of advice	Continuing from 2015–16	Life insurance statement of advice, including providing guidance to industry on improving the communication of information to consumers; anticipated to continue into 2017–18.
Guidance	Facilitating emerging business models, while maintaining protections for investors in innovative products and services	Ongoing	<ul style="list-style-type: none"> Contributing to the work of the Innovation Hub, including assisting new businesses to navigate the regulatory framework, with a focus on digital financial advice. Publishing a regulatory guide on providing digital financial advice to retail clients. <p>Note: Regulatory Guide 255 <i>Providing digital financial product advice to retail clients</i> (RG 255) was published in August 2016.</p>
Guidance	Messages to industry about compliance with obligations and/or to clarify expectations and standards	Ongoing	<ul style="list-style-type: none"> Publishing public reports or media releases to detail the key findings from our surveillance projects e.g. advice compliance at the big five financial advice firms; conflicted advice at the big five financial advice firms; fee-for-no-service; quality of advice (see: Surveillance below). Publishing an information sheet to explain how the law applies to accountants offering financial advice.

Category	Key project	Project status	Focus
Guidance	Consumer remediation	Ongoing	<ul style="list-style-type: none"> Working with licensees to develop appropriate plans for remediating consumers who have suffered loss as a result of breaches identified during our surveillances (e.g. advice compliance at the big five financial advice firms; fee-for-no-service). Monitoring established remediation plans to ensure clients are appropriately remediated.
Surveillance	Advice compliance at the big five financial advice firms	Continuing from 2015–16	How the big five financial advice firms identify and deal with misconduct by advisers. In 2016–17, we will publish a report and provide individual feedback to licensees on our findings. We plan to follow-up in 2016 to 2018 with a program of bannings for individual advisers and monitoring of remediation by licensees.
Surveillance	Conflicted advice at the big five financial advice firms	Continuing from 2015–16	The impact of conflicts of interest on the quality of advice in large vertically integrated businesses (e.g. banks). In 2016–17, we will publish a report and provide individual feedback to licensees on our findings.
Surveillance	Fee-for-no-service	Continuing from 2015–16	Clients that are paying fees every year for services they are not receiving. Covers breaches by large institutions and their current systems for detecting and preventing future breaches. We will communicate our findings to industry in 2016–17. We published an interim report in October 2016, and intend to publish a follow-up report in mid-2017.
Surveillance	Quality of financial advice	New	Assessing the quality of advice provided to consumers, in light of the FOFA reforms having been in place for three years. We will release a report on our findings in 2017–18.
Surveillance	Accountants – limited licence	New	Accountants that have recently entered the financial advice industry and unlicensed financial advice by accountants; anticipated to continue into 2017–18.
Surveillance	Professional indemnity insurance held by smaller licensees	New	Examining professional indemnity insurance arrangements, including coverage.

Category	Key project	Project status	Focus
Surveillance	Unnecessary or excessive switching of client policies by advisers	New	Life insurance advisers who are engaging in high levels of unnecessary or excessive switching of clients between policies to maximise commission income, with a failure to consider or recommend insurance that is reasonably correlated to clients' personal circumstances or objectives.
Enforcement	Investigate and where appropriate take administrative, civil, criminal or other action	Ongoing	Investigating and taking action against entities and individual advisers in relation to misconduct identified through surveillances and in response to reports of misconduct, including those relating to: <ul style="list-style-type: none"> • compliance with financial services law obligations (e.g. advice compliance at the big five financial advice firms; conflicted advice at the big five financial advice firms); • compliance with FOFA obligations; • misconduct by accountants who provide financial advice outside the terms of their licence and unlicensed financial advice by accountants; and • misconduct by life insurance advisers, including unnecessary or excessive switching of client policies by advisers.
Policy advice	Support development and implementation of key Government law reforms and initiatives	Ongoing	Financial and insurance adviser professionalism: contributing to the Government's proposed reforms to raise advisers' education, training and ethical standards, including updating guidance for Tier 2 (i.e. simpler products) and general advice and providing guidance on the Codes of Ethics once the reforms have been implemented.

Table 15: 2016–17 ASIC business plan summary—Deposit takers, credit and insurance

Category	Key project	Project status	Focus
Stakeholder engagement	Indigenous Outreach Program	Ongoing	Working with industry to promote access to appropriate products and services for Indigenous Australians through targeted outreach work.
Stakeholder engagement	Stakeholder liaison and engagement	Ongoing	<ul style="list-style-type: none"> • Initiatives that seek to improve standards or encourage the adoption of best practice requirements within an industry or market sector. This would arise from much of the work discussed below, including, for example, improvements to address the risk of mis-selling, loan fraud, and irresponsible lending. • Engaging regularly with consumer groups to identify and address exploitative practices.
Guidance	Facilitating emerging business models, while maintaining protections for investors in innovative products and services	Ongoing	Contributing to the work of the Innovation Hub, including assisting new businesses (such as marketplace lenders and non-cash payment providers) to navigate the regulatory framework.
Guidance	Messages to industry about compliance with obligations	Ongoing	<ul style="list-style-type: none"> • Updating regulatory guidance and publishing reports on surveillance outcomes and thematic reviews to articulate standards and expectations. • Developing messages for industry regarding compliance with obligations that have been the focus of surveillance, including ongoing issues or areas of concern for ASIC (e.g. through press and industry articles). This could include guidance for industry arising from current law reform processes in relation to payday loans and consumer leases, and credit cards.
Education	Financial literacy and consumer education	Ongoing	<ul style="list-style-type: none"> • Utilising financial literacy expertise and behavioural economics insights to develop consumer education messages, campaigns and resources. • New resources for Indigenous Australians using appropriate communication and delivery channels (e.g. the 'Take a minute with your money' videos for Indigenous Australians in relation to buying a car and renting household goods that were released on ASIC's MoneySmart website in August 2016).

Category	Key project	Project status	Focus
Surveillance	Interest only loans	Continuing from 2015–16	Responsible lending practices among brokers and lenders; follow-up work with lenders and brokers to ensure ASIC's concerns with responsible lending practices identified in ASIC reports have been addressed.
Surveillance	High risk lending products	Continuing from 2015–16	Responsible lending practices for payday loans and consumer leases.
Surveillance	Credit card issuers	New project	Marketing practices and compliance with responsible lending obligations; anticipated to continue into 2017–18.
Surveillance	Loan fraud	New project	Concerns relating to loan fraud, particularly in the home loan market; anticipated to continue into 2017–18.
Surveillance	Flex-commissions in the car finance market	Continuing from 2015–16	Review of commission arrangements with unfair outcomes for consumers in the car finance market.
Surveillance	Mortgage broker remuneration structures	Continuing from 2015–16 (expanded scope)	The effect of mortgage broker remuneration structures on the quality of consumer outcomes. In 2016–17, we will provide a report to Government on our findings. We may undertake follow-up work in 2017–18
Surveillance	Mis-selling to vulnerable consumers	Continuing projects from 2015–16	<ul style="list-style-type: none"> • Sale of consumer leases and sale of goods by instalments to indigenous communities. • Inappropriate sale of funeral and life insurance products to indigenous communities.
Surveillance	Add-on products	Continuing from 2015–16 (expanded scope)	Improvements to consumer outcomes in the market for add-on insurance products sold through car dealerships; follow up work to Report 470 <i>Buying add-on insurance in car yards: Why it can be hard to say no</i> , Report 471 <i>The sale of life insurance through car dealers: Taking consumers for a ride</i> , and Report 492 <i>A market that is failing consumers: The sale of add-on insurance through car dealers</i> . Project anticipated to continue into 2017–18.

Category	Key project	Project status	Focus
Surveillance	Life insurance industry claims handling practices	Continuing from 2015–16 (expanded scope)	Report 498 <i>Life insurance claims: An industry review</i> was published in October 2016; follow-up work from Report 498 will continue in 2016–20, including our work on life insurance sold without personal advice (i.e. 'direct' life insurance).
Surveillance	Direct sale of life insurance	New	Product development, sale and distribution and claims handling practices; anticipated to continue into 2017–18.
Surveillance	Breach reporting practices within financial services providers	New	Reviewing current practices and compliance with financial services breach reporting obligations; this is a cross-team project within ASIC.
Surveillance	Monitoring industry trends and developments	Ongoing	<ul style="list-style-type: none"> • Monitor how industry is using new and emerging technologies to assist with responsible lending compliance and pricing. • Monitor emerging promotional methods, delivery channels and business models (e.g. the use of social media for advertising, group buying sites, comparison websites and peer to peer business models).
Enforcement	Investigate and where appropriate take administrative, civil, criminal or other action	Ongoing	<p>Investigating and taking action in relation to misconduct identified through surveillances and in response to reports of misconduct, including those relating to:</p> <ul style="list-style-type: none"> • failure to comply with responsible lending obligations e.g. interest only loans and payday loans; • sale of inappropriate products to consumers; • loan fraud; and • poor insurance claims handling practices.

Category	Key project	Project status	Focus
Policy advice	Support development and implementation of key Government law reforms, and provide input to Government inquiries	Ongoing	<p>Contributing to key reforms and Government initiatives, including:</p> <ul style="list-style-type: none"> • FSI recommendations: <ul style="list-style-type: none"> – product and distribution obligations; – non-cash payment facilities, including the mandating of the ePayments Code; and – ASIC powers and penalties; • regulation of consumer leases and payday loans; • dispute resolution and small business lending; • review of the Australian Consumer Law; and • initiatives arising from Report 498 on life insurance claims handling.

Table 16: 2016–17 ASIC business plan summary—Superannuation and managed funds

Category	Key projects	Project status	Focus
Stakeholder engagement	Applications for relief from and modifications to the law	Ongoing	Consideration and exercise of ASIC's powers in response to applications for relief or modification to the law.
Stakeholder engagement	Stakeholder liaison and engagement	Ongoing	<ul style="list-style-type: none"> • Stakeholder liaison and engagement as per annual liaison plan. • Providing support for ASIC's obligations under the Memorandum of Understanding with the New Zealand Financial Markets Authority for disclosure documents being issued by Australian entities.
Education	Financial literacy and consumer education	Ongoing	Utilising financial literacy resources and behavioural economics insights to develop consumer education messages, campaigns and resources e.g. relating to issues arising from innovative products and services that may increase potential for investor detriment.

Category	Key projects	Project status	Focus
Guidance	Facilitating emerging business models, while maintaining protections for investors in innovative products and services	Ongoing	<ul style="list-style-type: none"> Contributing to the work of the Innovation Hub, including assisting new businesses to navigate the regulatory framework, with a focus on: <ul style="list-style-type: none"> crowd-sourced funding; and marketplace lending. Conducting a marketplace lending survey, which was foreshadowed as part of the guidance released last year, including releasing the survey results to the market and providing feedback to industry on the results.
Guidance	Messages to industry about compliance with obligations	Ongoing	Publishing messages for industry regarding compliance with obligations that have been the focus of surveillance, including ongoing issues or areas of concern for ASIC.
Guidance	Sunsetting class orders	Ongoing	<p>Issuing revised regulatory guidance and legislative instruments to refresh class order relief following consultation with industry, including for example:</p> <ul style="list-style-type: none"> Time-sharing schemes: [CO 00/2460], [CO 02/315], [CO 03/104], [CO 02/237], and revision of RG 160 <i>Time sharing schemes</i>; Mortgage schemes - Ch.5C and disclosure relief: [CO 02/238] and revision of RG 144 <i>Mortgage investment schemes</i>; Nominee and custody services: [CO 02/295]; Differential fees: [CO 03/217]; Managed investment schemes - interest not for money: [CO 02/211] Interests in film and theatrical ventures: [CO 02/210]; Film investment schemes: [CO 02/236]; Share and interest sale facilities: [CO 08/10] and RG 101 <i>On-market buy-backs by ASX listed schemes</i>; Relief for providers of retirement estimates: [CO 11/1227] and RG 229 <i>Superannuation forecasts</i>; RG 136 <i>Managed investments: Discretionary powers and closely related schemes</i>; and RG 87 <i>Charities</i>.

Category	Key projects	Project status	Focus
Guidance	Risk management within the MIS sector	Continuing from 2015–16	Providing regulatory guidance to industry about risk management arrangements within responsible entities, including arrangements for managing conflicts, liquidity risk and leverage; we will release a regulatory guide on risk management, as follow up to our work in 2015–16.
Surveillance	Member experience for disengaged members	Continuing project from 2015–16	Practices in superannuation that deliver good outcomes for disengaged members, or conversely exploit consumer passivity and inertia; anticipated to continue into 2017–18.
Surveillance	Effectiveness of disclosure	Continuing project from 2015–16	New (e.g. MySuper product dashboards) and existing (e.g. significant event notices) requirements.
Surveillance	Employers and super	New project	Reviewing the advice, disclosure and inducements provided to employers—as part of our overall surveillance program of superannuation entities.
Surveillance	Insurance in superannuation	New project	Disclosure practices, premiums charged and complaints handling; anticipated to continue into 2017–18.
Surveillance	Disclosure of fees and costs	New project	Industry compliance with the revised fee disclosure requirements; anticipated to continue into 2017–18.
Surveillance	Disclosure of performance information	New project	Accuracy and consistency of fund performance calculations.
Surveillance	ETFs	New project	Compliance of ETF issuers with important consumer protection requirements such as disclosure, provision of liquidity at or near net asset value (NAV) to meet liquidity expectations and correct calculation of any indicative NAV; anticipated to continue into 2017–18.
Surveillance	Compliance with custody requirements	New project	Industry compliance with the revised requirements introduced in 2013.
Surveillance	Integrity of licensing system for wholesale licensees*	New project	Non-compliance of wholesale licensees offering services that target retail investors in Australia and overseas; anticipated to continue into 2017–18.

Category	Key projects	Project status	Focus
Enforcement	Investigate and where appropriate take administrative, civil, criminal or other action	Ongoing	<p>Investigating and taking action against licensed and unlicensed entities in the superannuation and managed funds sector identified through our proactive risk-based surveillance programs and in response to reports of misconduct including:</p> <ul style="list-style-type: none"> effectiveness of superannuation disclosure; trustee advice, disclosure and inducements to employers; insurance practices in superannuation; failures by responsible entities to comply with their duties; non-compliance with licence conditions; misleading or deceptive disclosure; inadequate compliance frameworks; poor gatekeeper culture and incentives.
Policy advice	Support development and implementation of key Government law reforms	Ongoing	<ul style="list-style-type: none"> Contributing to key reforms and proposals, including: <ul style="list-style-type: none"> Stronger Super: remaining disclosure initiatives introduced as part of these reforms; Retirement issues and products: issues relating to disclosure and product design; Crowd funding: development and implementation of the regulatory framework, as well as development of regulatory guidance for crowd-sourced funding intermediaries; Collective Investment Vehicle (CIV): development of the framework and implementation of CIV initiatives; and Asia Region Funds Passport: development of the framework and implementation of initiative. Contributing to responses to recommendations arising from inquiries and Government initiatives, including the Senate inquiry into forestry managed investment schemes. Providing support for requests from Government, including through Commission correspondence.

Category	Key projects	Project status	Focus
Policy advice	Facilitating the development and application of consistent standards and requirements across borders	Ongoing	<ul style="list-style-type: none"> • Working closely with the Financial Stability Board and IOSCO on the proposed recommendations to address structural vulnerabilities from asset management activities, particularly relating to liquidity risk and leverage. • Working with IOSCO on development of global standards in the funds management sector. • Engaging with international regulators on cross-border arrangements, including for example the Asia Region Funds Passport.

Appendix 6: What good looks like for the sectors we regulate

The conduct, product and disclosure practices within each sector should promote investor and consumer trust and confidence and market integrity



Financial advice

Financial advisers:

- act professionally, avoid conflicts of interest and treat consumers fairly
- deliver strategic financial advice that is aligned with consumer needs and preferences
- ensure that consumers are fully compensated when losses result from poor conduct.



Superannuation and managed funds

Funds management and superannuation providers:

- treat fund members and investors fairly
- deliver financial products and services that are transparent, fit-for-purpose, and aligned with consumer needs and preferences
- strike the right balance between innovation and risk to meet fund objectives
- ensure that investors are fully compensated when losses result from poor conduct.



Deposit takers, credit and insurance

Banking, credit, insurance and electronic payments providers:

- act professionally and treat consumers fairly
- provide good quality products and services that are developed, marketed and managed in a way that serves customers well
- ensure that consumers are fully compensated when losses result from poor conduct.



Market intermediaries

Market intermediaries:

- ensure their conduct and behaviour support the integrity of Australia's retail and wholesale markets
- act professionally and treat investors fairly, including by managing confidential information and conflicts of interest appropriately
- have effective risk management and internal supervision
- ensure that investors are fully compensated when losses result from poor conduct.



Corporations

Australian public companies:

- treat investors fairly, including when undertaking fund raising and change of control transactions
- are accountable to investors, by ensuring disclosure is accurate, complete and timely
- adopt sound corporate governance practices that support market integrity and good investor outcomes.



Financial reporting and audit

Accountants and auditors:

- deliver professional, high quality financial reporting and audits through:
 - experience and expertise
 - effective internal supervision and review
 - robust accountability mechanisms.



Market infrastructure

Australia's financial markets are trusted and internationally competitive, and facilitate efficient capital raising.

Australian market infrastructure providers:

- ensure retail and wholesale markets are fair and efficient, characterised by reliable and effective price discovery and robust and efficient post-trade systems
- provide a diverse and competitive range of services and products that meet different investor needs
- strike the right balance between innovation and risk to fair and efficient markets.



Insolvency practitioners

Registered liquidators:

- direct their actions to ensuring cost-effective, timely and appropriate outcomes for creditors
- act independently and competently
- perform their role in accordance with proper standards of professional conduct.

Key terms

Term	Meaning in this document
13-010MR (for example)	An ASIC media release (in this example numbered 13-010 MR)
ABA	Australian Bankers' Association
agribusiness scheme	A managed investment scheme that engages in primary production activities
AFS licence	An Australian financial services licence under s913B of the Corporations Act that authorises a person who carries on a financial services business to provide financial services Note: This is a definition contained in s761A.
AFS licensee	A person who holds an AFS licence under s913B of the Corporations Act Note: This is a definition contained in s761A.
aggregator	A business which provides aggregation services to a broker business or broker and with which a lender has a direct contractual relationship. It does not include a broker business or broker which does not provide aggregation services, even if there is a direct contractual relationship with the lender. If a lender has a contractual arrangement with an entity for aggregation services and a related party of that entity provides the aggregation services to a broker business or broker, then the two entities are treated as one aggregator
APRA	Australian Prudential Regulation Authority
ASBFEO	Australian Small Business Family Enterprise Ombudsman
ASIC-approved EDR scheme; EDR scheme or scheme	An external dispute resolution scheme approved by ASIC under RG 139
ASIC Act	<i>Australian Securities and Investments Commission Act 2001</i>
Authorised deposit-taking institution	Has the meaning given in s5 of the National Credit Act
best interests duty	The duty to act in the best interests of the client when giving personal advice to a client as set out in s961B(1) of the Corporations Act
CCI	Consumer credit insurance

Term	Meaning in this document
Ch 7 (for example)	A chapter of the Corporations Act (in this example numbered 7), unless otherwise specified
CIO	Credit and Investments Ombudsman—an ASIC-approved EDR scheme
CIPR	Comprehensive income product for retirement
client	A retail client as defined in s761G of the Corporations Act and Div 2 of Pt 7.1 of Ch7 of the Corporations Regulations
conflicted remuneration	<p>A benefit given to an AFS licensee, or a representative of an AFS licensee, who provides financial product advice to clients that, because of the nature of the benefit or the circumstances in which it is given:</p> <ul style="list-style-type: none"> • could reasonably be expected to influence the choice of financial product recommended by the licensee or representative to clients; or • could reasonably be expected to influence the financial product advice given to clients by the licensee or representative. <p>In addition, the benefit must not be excluded from being conflicted remuneration by the Corporations Act or Corporations Regulations</p>
consumer	<p>A natural person or strata corporation</p> <p>Note: See s5 of the National Credit Act</p>
Corporations Act	<i>Corporations Act</i> 2001, including regulations made for the purposes of that Act
Corporations Regulations	Corporations Regulations 2001
CP 209 (for example)	An ASIC consultation paper (in this example numbered 209)
credit	<p>Credit to which the National Credit Code applies</p> <p>Note: See s3 and 5–6 of the National Credit Code</p>
credit licence	An Australian credit licence under s35 of the National Credit Act that authorises a licensee to engage in particular credit activities
credit licensee	A person who holds a credit licence under s35 of the National Credit Act
credit provider	Has the meaning given in s5 of the National Credit Act
debt management firm	A firm that charges fees for services to consumers in financial hardship or with listings on their credit reports

Term	Meaning in this document
digital advice	Also known as 'robo-advice' or 'automated advice'. The provision of automated financial product advice using algorithms and technology and without the direct involvement of a human adviser
EDR	External dispute resolution
EDR scheme (or scheme)	An external dispute resolution scheme approved by ASIC under the Corporations Act (see s912A(2)(b) and 1017G(2)(b)) and/or the National Credit Act (see s11(1)(a)) in accordance with our requirements in RG 139
Enhancements Act	<i>Consumer Credit Legislation Amendment (Enhancements) Act 2012</i>
ePayments Code	The ePayments Code regulates consumer electronic payment transactions, including ATM, EFTPOS and credit card transactions, online payments, internet and mobile banking, and BPAY
FCA	Financial Conduct Authority (United Kingdom)
financial adviser	<p>A natural person who provides financial product advice to a retail client and is:</p> <ul style="list-style-type: none"> • an AFS licensee; or • a representative of an AFS licensee <p>Note: This is the person to whom the obligations in Div 2 of Pt 7.7A of the Corporations Act apply:</p>
financial product	<p>A facility through which, or through the acquisition of which, a person does one or more of the following:</p> <ul style="list-style-type: none"> • makes a financial investment (see s763B); • manages financial risk (see s763C); and • makes non-cash payments (see s763D) <p>Note: This is a definition contained in s763A of the Corporations Act: see also s763B-765A.</p>
financial product advice	<p>A recommendation or a statement of opinion, or a report of either of those things, that:</p> <ul style="list-style-type: none"> • is intended to influence a person or persons in making a decision in relation to a particular financial product or class of financial products, or an interest in a particular financial product or class of financial products; or • could reasonably be regarded as being intended to have such an influence. <p>This does not include anything in an exempt document.</p> <p>Note: This is a definition contained in s766B(1) of the Corporations Act.</p>
financial service	Has the meaning given in Div 4 of Pt 7.1 of the Corporations Act

Term	Meaning in this document
fintech	Financial technology
FOFA	Future of Financial Advice
forestry scheme	An agribusiness scheme involved in forestry
FOS	Financial Ombudsman Service—an ASIC-approved EDR scheme
FSI	Financial Systems Inquiry
Future of Financial Advice (FOFA)	The Future of Financial Advice reforms introduced by the Australian Government in response to the recommendations of the Ripoll Inquiry and implemented by the <i>Corporations Amendment (Future of Financial Advice) Act 2012</i> and the <i>Corporations Amendment (Further Future of Financial Advice) Act 2012</i>
general advice	Financial product advice that is not personal advice. Note: This is a definition contained in s766B(4) of the Corporations Act.
General Insurance Code of Practice	Sets out the standards that general insurers must meet when providing services to their customers, such as being open, fair and honest
ICA	Insurance Council of Australia
IDR	Internal dispute resolution
INFO 151 (for example)	An ASIC information sheet (in this example numbered 153)
investor	In relation to an AFS licensee, includes an existing, potential or prospective client
IOSCO	International Organization of Securities Commissions
Life Insurance Code of Practice	An industry code that sets out the minimum standards for insurers on matters including policy terms and disclosure, claims handling, sales practices and internal complaints and dispute processes
LRCS	Last resort compensation scheme
managed investment scheme	A managed investment scheme that is registered under s601EB of the Corporations Act
MoneySmart	ASIC's website for consumers and investors (www.moneysmart.gov.au)
National Credit Act	<i>National Consumer Credit Protection Act 2009</i>
National Credit Code	Sch 1 to the National Credit Act

Term	Meaning in this document
National Financial Literacy Strategy	A strategy published by ASIC in 2011 to promote a national approach to improving the financial wellbeing and literacy of all Australians
NFLS	National Financial Literacy Strategy
payday loan	Has the meaning given to 'small amount credit contract' in Sch 3 to the Enhancements Act
PDS	Product Disclosure Statement
personal advice	<p>Financial product advice given or directed to a person (including by electronic means) in circumstances where:</p> <ul style="list-style-type: none"> the person giving the advice has considered one or more of the client's objectives, financial situation and needs; or a reasonable person might expect the person giving the advice to have considered one or more of these matters <p>Note: This is a definition contained in s766B(3) of the Corporations Act</p>
PI insurance	Professional indemnity insurance
PJC	Parliamentary Joint Committee
Product Disclosure Statement (PDS)	<p>A document that must be given to a retail client in relation to the offer or issue of a financial product in accordance with Div 2 of Pt 7.9 of the Corporations Act.</p> <p>Note: See s761A for the exact definition</p>
Pt 9.4AAA (for example)	A part of the Corporations Act (in this example numbered 9.4AAA), unless otherwise specified
reg 7.6.02 (for example)	A regulation of the Corporations Regulations (in this example numbered 7.6.02), unless otherwise specified
REP 240 (for example)	An ASIC report (in this example numbered 240)
representative of an AFS licensee	<p>Means:</p> <ul style="list-style-type: none"> an authorised representative of the licensee; an employee or director of the licensee; an employee or director of a related body corporate of the licensee; or any other person acting on behalf of the licensee <p>Note: This is a definition contained in s910A of the Corporations Act.</p>

Term	Meaning in this document
responsible lending obligations	<p>Obligations that apply to credit to ensure that credit licensees do not suggest, assist with or provide a credit contract or consumer lease that is unsuitable for the consumer.</p> <p>Note: See Explanatory Memorandum to the National Consumer Credit Protection Bill 2009.</p>
retail client	A client as defined in s761G of the Corporations Act and associated Corporations Regulations
RG 148 (for example)	An ASIC regulatory guide (in this example numbered 148)
s961B (for example)	A section of the Corporations Act (in this example numbered 961B), unless otherwise specified
safe harbour for the best interests duty	The steps set out in s961B(2) of the Corporations Act. If an advice provider proves they have taken these steps, they are considered to have met their obligation to act in the best interests of their client
SCT	Superannuation Complaints Tribunal, established under the <i>Superannuation (Resolution of Complaints) Act 1993</i>
small business	A small business as defined in s761G of the Corporations Act
SMSF	Self-managed superannuation fund
SMSF auditor	The auditor of an SMSF responsible for the financial and compliance audit of the fund's operation
Statement of Advice (SOA)	<p>A document that must be given to a retail client for the provision of personal advice under Subdivs C and D of Div 3 of Pt 7.7 of the Corporations Act</p> <p>Note: See s761A for the exact definition.</p>

Term	Meaning in this document
Stronger Super Reforms	<p>Reforms implemented in response to the Super System Review and contained in the following Acts (and associated regulations):</p> <ul style="list-style-type: none"> • Superannuation Auditor Registration Imposition Act 2012 • Superannuation Laws Amendment (Capital Gains Tax Relief and Other Efficiency Measures) Act 2012 • Superannuation Legislation Amendment (Further MySuper and Transparency Measures) Act 2012 • Superannuation Legislation Amendment (MySuper Core Provisions) Act 2012 • Superannuation Legislation Amendment (Service Providers and Other Governance Measures) Act 2013 • Superannuation Legislation Amendment (Stronger Super) Act 2012 • Superannuation Legislation Amendment (Trustee Obligations and Prudential Standards) Act 2012 • Superannuation Supervisory Levy Imposition Amendment Act 2012
Tier 1 products	<p>All financial products except those defined in RG 146 as Tier 2 products</p> <p>Note: See RG 146 for more details</p>
Tier 2 products	<p>General insurance products, except for personal sickness and accident (as defined in reg 7.1.14); consumer credit insurance (as defined in reg 7.1.15); basic deposit products; non-cash payment products; and First Home Saver Account deposit accounts</p>
whistleblower	<p>A person who qualifies for the protections available in Pt 9.4AAA of the Corporations Act</p>