



ANNUAL REPORT

2015–2016

- ◆ investor and consumer trust and confidence
- ◆ fair and efficient markets
- ◆ efficient registration services



ASIC

Australian Securities & Investments Commission

Contents

Chairman's report	2	3. PEOPLE, COMMUNITY AND THE ENVIRONMENT	103
Government priorities and parliamentary inquiries	5	3.1 ASIC's people	104
Commissioners	9	3.2 Diversity at ASIC	110
1. ABOUT ASIC	11	3.3 ASIC in the community	112
1.1 ASIC's role	12	3.4 Indigenous awareness and action at ASIC	114
1.2 Corporate structure at 30 June 2016	17	3.5 Ecologically sustainable development and environmental performance	116
1.3 ASIC and regulated populations	19	4. FINANCIAL STATEMENTS	119
1.4 ASIC's surveillance coverage of regulated populations	22	5. APPENDICES	175
1.5 ASIC for all Australians	24	5.1 The role of Commissioners	176
1.6 Financial summary and expenditure	26	5.2 Audit Committee and audit, assurance and compliance services	177
2. ANNUAL PERFORMANCE STATEMENT	27	5.3 External committees and panels	178
Introductory statement	28	5.4 Portfolio budget statement outcomes	184
2.1 Investor and consumer trust and confidence	30	5.5 Six-year summary of key stakeholder data	186
2.2 Fair and efficient markets	56	5.6 Reports required under statute and other reporting requirements	188
2.3 Efficient registration services	82	5.7 Consultancies and expenditure on advertising	191
2.4 Unclaimed money and managing property vested in ASIC	88	5.8 ASIC's use of its significant compulsory information-gathering powers	194
2.5 Assessing misconduct and other reports	90	5.9 Corporate Plan performance indicators	196
2.6 Performance against ASIC's service and operational standards	97	Glossary	207
2.7 Regional activities	101	Compliance index	209
		General index	215
		Contact details	inside back cover



ASIC

Australian Securities & Investments Commission

GREG MEDCRAFT

Chairman

100 Market Street, Sydney
GPO Box 9827 Sydney NSW 2001
DX 653 Sydney

14 October 2016

The Hon Scott Morrison MP
Treasurer
Parliament House
CANBERRA ACT 2600

Dear Minister

I am pleased to give you the annual report of the Australian Securities and Investments Commission for the year ended 30 June 2016.

The report has been prepared in accordance with section 136 of the *Australian Securities and Investments Commission Act 2001*, section 46 of the *Public Governance, Performance and Accountability Act 2013*, sections 17AA to 17AJ of the *Public Governance, Performance and Accountability Rule 2014* and the guidance in 'Resource Management Guide No.135: Annual reports for non-corporate Commonwealth entities' published by the Department of Finance in July 2016.

I note that you are required under section 136 of the ASIC Act to cause the report to be tabled in each House within 15 sitting days of receiving it.

Yours faithfully

A handwritten signature in black ink, appearing to read 'G. Medcraft', with a long horizontal line extending to the right.

Greg Medcraft
Chairman

Chairman's report

2015–16 has been a period of significant achievement for ASIC as we continued to work towards our vision.

ASIC's vision is to allow markets to fund the economy and, in turn, economic growth; in doing so, contributing to the financial well-being of all Australians. We do this by:

- ♦ promoting investor and consumer trust and confidence
- ♦ ensuring fair and efficient markets
- ♦ providing efficient registration services.

Long-term challenges

How we achieve our vision will be influenced by the key challenges we face. The five long-term challenges to our vision are:

- ♦ aligning conduct in a market-based system with investor and consumer trust and confidence
- ♦ digital disruption and cyber resilience in our financial services and markets
- ♦ structural change in our financial system through increasing market-based financing, led by the growth in superannuation
- ♦ complexity in financial markets and products, driven by innovation
- ♦ globalisation of financial markets, products and services.

Over 2015–16 we continued to use our 'detect, understand and respond' approach to meet the long-term challenges to our vision.

Key achievements 2015–16

Understanding how investors, consumers and gatekeepers make decisions is central to our approach. Investor and consumer decisions can be influenced by their financial literacy and by behavioural biases. Culture, incentives and deterrence are some of the key factors driving individual and firm conduct within the sectors we regulate.

Taking account of these drivers, we use our toolkit of stakeholder engagement, education, guidance, surveillance, enforcement and policy advice to achieve our vision.

We assist investors and consumers with financial education through multiple channels. This education is targeted at a wide cross section of demographics in our community, from primary, secondary and trade schools to people from non-English speaking backgrounds, Indigenous communities and military personnel.

Financial literacy is now embedded in the Australian Curriculum. ASIC's MoneySmart Teaching program supports the delivery of financial literacy in schools. Last year, more than 50% of Australian schools engaged with the program. To date more than 20,500 teachers have undertaken professional development in financial literacy since the program began in 2012. This contributes to better empowering tomorrow's adults when it comes to dealing with their finances.

ASIC's MoneySmart website – moneysmart.gov.au – has over 700 webpages of consumer information, and has been visited over 6.1 million times in the last year. This is a 15% increase on the year before.

To shape the conduct of our gatekeepers, we use our tools of guidance, surveillance and enforcement.

ASIC is a law enforcement agency. We devote around 70% of our regulatory resources to surveillance and enforcement. Importantly, where we detect instances of the law being broken, we make best use of our resources and powers to ensure there are meaningful consequences.

Over 2015–16 we completed 1,441 high-intensity surveillances and 175 investigations across the sectors we regulate. The outcomes of these surveillances and investigations are shown in our infographic.

ASIC surveillance and enforcement outcomes, 2015–16

1,441
HIGH-INTENSITY
SURVEILLANCES UNDERTAKEN

175
INVESTIGATIONS
COMPLETED



CRIMINAL ACTIONS

22 criminal convictions

13 people jailed



CIVIL ACTIONS

\$1.3m in civil penalties



BANNINGS, DISQUALIFICATIONS AND LICENCE CONDITIONS

136 people/companies removed
or restricted from providing
financial services or credit

39 people disqualified or
removed from directing companies

24 actions taken against auditors
and liquidators



ENFORCEABLE UNDERTAKINGS

22 enforceable undertakings
secured



COMPENSATION AND REMEDIATION

\$210.5m compensation
and remediation for investors
and consumers



INFRINGEMENT NOTICES

109 infringement notices issued

\$2.3m dollar value of
infringement notices



INDUSTRY REPORTS

29 industry reports promoting
changes in industry behaviour and
informing government policy and
law reform

In addition to these surveillance and enforcement results, ASIC has delivered a number of key initiatives and outcomes. For example, we:

- ◆ developed a new measure of market cleanliness (based on an analysis of anomalous trading ahead of material, price-sensitive announcements). This measure indicates that Australia's equities markets have shown a general increase in market cleanliness in the five years since the transfer of market supervision to ASIC in 2010
- ◆ developed new online tools to assist Australians to make better financial decisions – for example, the MoneySmart Cars app and the interest-only loan calculator
- ◆ continued to operate and develop our Innovation Hub that aims to help new, innovative businesses navigate the regulatory framework we administer (see page 80–81)
- ◆ registered over 240,000 new companies and over 330,000 new business names
- ◆ dealt with 146 disclosures by whistleblowers through our Office of the Whistleblower
- ◆ reviewed over 9,000 reports of misconduct from the public.

ASIC's capabilities

At ASIC we pride ourselves on our people and our culture. Our staff bring a range of experience and diversity of thought to what we do. Our people are highly skilled professionals. Our values – accountability, professionalism and teamwork – guide us in the way we work, the way we make decisions and how we interact with each other and our stakeholders.

Our Diversity Council provides leadership across ASIC on all diversity issues including driving the achievement of gender targets. In 2015–16 we progressed further against these targets, including increasing the previously static percentage of female senior executives to 40%.

We have undertaken a workforce planning review to determine the capabilities we will need over the next five years to meet our objectives and have embarked on a change agenda to improve our capabilities, based around enhancing our people, powers, processes and technology.

Outlook

ASIC continues to position itself to meet the opportunities and challenges that the longer term will bring. We are focused on identifying new trends or risks which may arise from a rapidly evolving digital environment.

We recently released our four-year Corporate Plan which sets out in detail the challenges and risks we will face and our strategy for meeting them. This year *ASIC's Corporate Plan 2016–17 to 2019–20* also outlines our view of 'what good looks like' for gatekeepers across the sectors we regulate.

Our work in 2016–17 will continue to focus on culture as a key driver of gatekeeper conduct. A positive culture – at both firm and industry level – is central to investor trust and confidence.

The additional funding support over the next four years announced by the Government will enable us to expand our abilities as a law enforcement agency to better detect, understand and respond to misconduct. It will allow us to extend our data platform across our regulatory business to better capture, share and use data, and to develop our data analytics capabilities to better identify, monitor and respond to risks. It will also allow us to take on more proactive surveillances at both the individual firm and industry level – within the financial advice, superannuation and managed funds, credit, and insurance sectors.

We will continue to work closely with Government on the key areas of law reform from the Financial System Inquiry, including product design and distribution obligations, product intervention powers, banning of individuals from managing financial firms, and strengthening our licensing and enforcement regimes.

Ensuring that Australians can have trust and confidence in the financial system, that markets are fair and efficient and providing efficient registration services, is at the heart of everything we do at ASIC.



Greg Medcraft
Chairman

Government priorities and parliamentary inquiries

In October 2015, the Government released its response to the Financial System Inquiry, accepting most of the recommendations. The inquiry examined how the financial system could best meet Australia's evolving needs and support economic growth. The final report made 44 recommendations across themes of efficiency, resilience and fairness. This included a recommendation that an industry funding model for ASIC be introduced, that ASIC be removed from the *Public Service Act 1999* and that ASIC be provided with stronger regulatory tools.

ASIC made two public submissions, one in the initial consultation phase and one responding to the Inquiry's interim report.

The Government's response to the Inquiry supported many of the changes ASIC recommended in our submissions. The Government's financial system reform agenda will be implemented in stages over the coming years. The Government has allocated \$9.2 million to Treasury and ASIC towards consideration and implementation of further reform measures recommended by the Financial System Inquiry. They include:

- ◆ a product intervention power to enable ASIC to respond to market problems in a flexible, timely, effective, and targeted way
- ◆ product distribution obligations for industry to foster a more customer-focused culture
- ◆ a review of ASIC's enforcement regime, including consideration of substantially increased penalties
- ◆ the strengthening of consumer protection in the ePayments Code to keep pace with emerging technologies.

ASIC Capability Review

The Financial System Inquiry recommended that financial regulators undergo periodic capability reviews to ensure they have the appropriate governance, capabilities and systems to meet their objectives and future regulatory challenges. In July 2015, ASIC became the first regulator to undergo a capability review.

The review report contained 34 recommendations. We support nearly all of the recommendations and have released our implementation plan, which sets out how we

are taking action to develop our capabilities in the six high-level priority areas raised by the Panel's recommendations:

- ◆ external governance and performance reporting
- ◆ internal governance
- ◆ Commission, workforce planning and culture
- ◆ strategic communication and stakeholder management
- ◆ organisation structure and regulatory toolkit
- ◆ data management.

Additional powers and funding for ASIC

The Government has committed an additional \$127.3 million in funding over the next four years to implement recommendations from the ASIC Capability Review and the Financial System Inquiry. Of this amount \$121.3 million has been allocated to ASIC:

- ◆ \$61.1 million will enable ASIC to increase our data analytics capabilities, including updating our data management system and increasing our surveillance capabilities
- ◆ \$57 million will enable ASIC to increase our enforcement and surveillance activities with a focus on financial advice, responsible lending, life insurance and breach reporting
- ◆ \$3.2 million will enable ASIC to facilitate the accelerated implementation of key Financial System Inquiry recommendations.

ASIC industry funding model

On 20 April 2016, the Government announced it will introduce an industry funding model for ASIC in response to a key recommendation of the Financial System Inquiry.

An industry funding model for ASIC will ensure there is greater alignment between the costs of ASIC's regulatory activities and those industry participants who create the need for, and engage in, these activities. It will also provide greater stability and certainty in ASIC's funding, ensuring we are adequately resourced to carry out our regulatory mandate.

ASIC will work closely with Treasury and industry in refining and settling the funding model prior to commencement.

ASIC registry tender

ASIC's registry business – the companies register, Business Names Register and other corporate and professional registers – forms a critical part of Australia's economic infrastructure and is essential to the efficient operation of Australia's economy.

In May 2015, following a scoping study, the Government announced a competitive tender process to test the capacity of a private sector operator to upgrade and operate the ASIC registry.

In 2015–16, the tender process progressed through a number of phases, led by the Department of Finance. Responses were received from a broad range of domestic and international businesses across sectors, including information technology, information management and financial investment.

On 29 April 2016, the Minister for Finance announced the final step in testing the private sector interest to upgrade, operate and add value to the registry functions of the ASIC registry, with final bids due from invited parties by 29 August 2016. The Government will make a decision on any further steps following evaluation of the final bids.

Making it easier for business

We are committed to continuing to streamline our processes and making it easier for business to interact with us. For example:

- ◆ In 2015–16, ASIC continued to help innovative start-ups and fintech businesses navigate the regulatory system we administer through our Innovation Hub. Since its launch in March 2015, we have provided informal assistance to 67 fintech start-ups. Of the licence applications received from innovative businesses, ASIC has approved 21 new licences or variations to existing licences. In June 2016, we also released a consultation paper on further measures to facilitate innovation in financial services, including a 'regulatory sandbox' licensing exemption (see pages 80–81).
- ◆ We estimate that ASIC's Business Names Register will save businesses over \$201.5 million in reduced fees to register or renew business names, in its first five years of operation (May 2012 to June 2017). The cost to register a business name in 2015–16 was \$34 for a one-year registration and \$79 for a three-year registration.
- ◆ In 2015–16, we began work on the streamlined business registration project which will make it easier for businesses to complete their company and business registrations using a single online portal. The portal for company and business registrations will be available on business.gov.au. It will connect the Australian Taxation Office and ASIC to allow businesses to register without having to contact the agencies separately.
- ◆ In July 2015, we rolled out our Market Entity Compliance System, an online regulatory compliance portal that provides market participants and market infrastructure providers with tools and information to assist them in complying with a number of their regulatory obligations.

ASIC continues to reduce red tape and lower compliance costs by working closely with Treasury, the Office of Best Practice Regulation and the Government.

In 2015–16, measures implemented by ASIC reduced ongoing annual compliance costs for business by \$309 million, a significant contribution to Government's annual red tape reduction target and exceeding the Government's target for ASIC. Since September 2013, we have reduced ongoing annual compliance costs for business by almost \$475 million.

Providing relief

Businesses frequently approach ASIC for help to make the law work better for them. To cut red tape, we may vary or set aside certain legal obligations where the compliance savings outweigh the regulatory risks to investors and consumers. We can provide these waivers to an individual business (individual relief) or class of businesses (legislative instrument).

Individual relief

In 2015–16, ASIC received 1,982 applications for individual relief. We granted relief in response to 1,251 applications, we refused 80 applications, 407 applications were withdrawn, and as at 30 June 2016 we were assessing the remaining 244 applications. To ensure transparency we release a report twice a year on our decisions to cut red tape.

Legislative instruments

At 30 June 2016, there are over 300 ASIC legislative instruments (class orders) in operation. Of these, 86 are due to sunset¹ in 2016, 132 in 2017, and 19 in 2018. To ensure transparency we generally publish a consultation paper prior to making, amending or repealing a legislative instrument. In 2015–16, we published 20 consultation papers on remaking 77 and repealing 12 legislative instruments.

Parliamentary inquiries

In 2015–16, ASIC made submissions to Senate and Parliamentary Joint Committee inquiries and appeared when required. These included appearances before the Senate Economics Committee inquiry into insolvency in the Australian construction industry, as well as matters relating to credit card interest rates, forestry managed investment schemes and foreign bribery and an inquiry regarding co-operative, mutual and member-owned firms.

PJC inquiry into the impairment of customer loans

In June 2015, the House of Representatives referred an inquiry into the impairment of customer loans.

We made a submission in August 2015 and provided details on the obligations of lenders in relation to defaults on loans, the appointment and role of insolvency practitioners in the impairment of customer loans, and the obligations of receivers in relation to forced sales.

The final report was tabled in May 2016 and made a number of recommendations. They include:

- ♦ new regulations to prevent banks from unduly profiting from defaulted or impaired loans
- ♦ revision of the banking codes of practice to improve customer protection
- ♦ extending the responsible lending provisions under the *National Consumer Credit Protection Act 2009* to small business loans
- ♦ additional powers for the Australian Small Business and Family Enterprise Ombudsman to enable it to mediate disputes between lenders and small businesses.

1. Under the *Legislative Instruments Act 2003*, all class orders 'sunset' or automatically lapse after a specified period (mostly 10 years) unless we take action to preserve them. Sunsetting supplements the ordinary processes we use to keep our legislative instruments up to date.

Senate inquiry into penalties for white-collar crime

In November 2015, the Senate announced an inquiry into the inconsistencies and potential inadequacies of current criminal, civil and administrative penalties for corporate and financial misconduct.

ASIC made a submission in April 2016, supporting a review of penalties for white-collar crime to provide the right incentives for better market behaviour. In particular, we supported a review to address:

- ◆ inconsistency of criminal penalties for comparable offences
- ◆ the availability and level of civil penalties, including the inconsistency of civil penalties under the *Corporations Act 2001* with other civil penalties or non-criminal monetary penalties for corporate and financial misconduct
- ◆ whether infringement notices should be available for a broader range of breaches
- ◆ making available disgorgement proceedings to enhance regulators' ability to deter and respond to wrongful profit
- ◆ the practical application of civil penalty processes compared with criminal processes.

In its response to the final report of the Financial System Inquiry, the Government noted it would review ASIC's enforcement regime (including penalties) in 2017.

Senate Inquiry into the scrutiny of financial advice

In September 2014, the Senate announced an inquiry into the scrutiny of financial advice. In March 2016, the Senate referred additional matters in regard to the life insurance industry.

Ensuring consumers have access to reliable financial advice is a priority for ASIC. We made a submission in December 2014, welcoming the recent changes to the financial advice laws, but noting that more could be done to increase competence and professional standards and enhance consumer protection. We made a further submission in April 2016 in regard to the life insurance industry.

Commissioners

Greg Medcraft

Chairman, BComm

Greg Medcraft was appointed ASIC Chairman on 13 May 2011 for a five-year term. His term was extended for a further 18 months from 13 May 2016.



Greg joined as ASIC Commissioner in February 2009. Prior to ASIC, Greg was Chief Executive Officer and Executive Director at the Australian Securitisation Forum (ASF).

Greg spent nearly 30 years in investment banking at Société Générale in Australia, Asia, Europe and the Americas. More recently, he was the Managing Director and Global Head of Securitisation, based in New York.

In 2002, Greg co-founded the American Securitization Forum and was its Chairman from 2005 until 2007 when he returned to Australia.

Before joining Société Générale, Greg worked as a Chartered Accountant with KPMG.

From March 2013 to May 2016, Greg was Chair of the International Organization of Securities Commissions Board and a member of the Financial Stability Board (FSB). Greg is currently a member of the Standing Committee on Supervisory and Regulatory Cooperation (SRC) of the FSB, which reports to the G20.

Peter Kell

Deputy Chairman, BA (Hons)

Peter Kell commenced as Deputy Chair on 6 May 2013. Prior to this appointment he was a Commissioner from 7 November 2011.



From August 2008, Peter was Deputy Chair of the Australian Competition and Consumer Commission (ACCC). He was President of the International Consumer Protection Enforcement Network in 2009–10, and also served on the Consumer Policy Committee of the Organisation for Economic Co-operation and Development (OECD). Peter has been on the Australian Government Financial Literacy Board since its establishment, and is a member of the Commonwealth Consumer Affairs Advisory Council.

Before joining the ACCC, Peter was Chief Executive of CHOICE (formerly the Australian Consumers Association) and a board member of the global consumer organisation Consumers International.

Between 1998 and 2004, he was ASIC's Executive Director of Consumer Protection and its New South Wales Regional Commissioner.

Commissioners continued

Cathie Armour

BEC, LLB (Hons), LLM

Cathie Armour commenced as an ASIC Commissioner on 3 June 2013.

Cathie has 18 years' experience in legal counsel leadership roles in international financial institutions. Most recently, she was General Counsel for Macquarie Capital and an Executive Director of Macquarie Group, advising on equity, debt and private capital markets, mergers and acquisitions, and financial investment transactions. She has also held senior compliance and operational risk positions at Macquarie Capital and at JP Morgan in Australia. Before she joined ASIC, Cathie was also a member of the ASX Tribunal.

Cathie previously worked in private legal practice for the forerunners of the firms King & Wood Mallesons and Allens in Sydney and for Milbank, Tweed, Hadley & McCloy in New York.



John Price

BA, LLB (Hons)

John Price commenced as an ASIC Commissioner on 21 March 2012. In March 2015, John was reappointed for a further 3 years to 20 March 2018.



He has over 15 years regulatory experience in a variety of regulatory roles at ASIC relating to policy making, fundraising, mergers and acquisitions, financial services and products, licensing, insolvency and financial reporting and audit.

John was previously a member of the Corporations and Markets Advisory Committee, an advisory body to Government on corporate and markets issues and also the Financial Reporting Council, a body providing broad oversight of various accounting and audit-related issues in Australia.

John is a current member of the Council of Financial Regulators, the coordinating body for Australia's main financial regulatory agencies.

Prior to joining ASIC, John worked in the Gold Coast and Brisbane offices of Corrs Chambers Westgarth, a national law firm.

Greg Tanzer

BEC, LLB (Hons)

Greg Tanzer commenced as an ASIC Commissioner on 5 March 2012. In December 2015, Greg's term was extended until 30 November 2016.

He served as Secretary General of the International Organization of Securities Commissions from 2008 until early 2012.

Greg was previously Executive Director, Consumer Protection and International at ASIC, and worked in various senior positions from 1992 to 2008.

Before joining ASIC, Greg worked in the Australian Government Attorney-General's Department and the Department of Finance. He is a qualified solicitor and barrister.

