



ASIC

Australian Securities & Investments Commission

REPORT 511

Regulator Performance Framework: ASIC self- assessment 2015–16

December 2016

About this report

The Regulator Performance Framework (Framework) provides a set of six common key performance indicators (KPIs) for Australian Government regulators.

This report sets out our self-assessment of ASIC's performance against the KPIs.

About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

Consultation papers: seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

Regulatory guides: give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

Information sheets: provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

Reports: describe ASIC compliance or relief activity or the results of a research project.

Disclaimer

This report does not constitute legal advice. We encourage you to seek your own professional advice to find out how the Corporations Act and other applicable laws apply to you, as it is your responsibility to determine your obligations.

Examples in this report are purely for illustration; they are not exhaustive and are not intended to impose or imply particular rules or requirements.

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A Introduction

Key points

The Regulator Performance Framework (Framework) provides a set of six common key performance indicators (KPIs) for Australian Government regulators. These KPIs cover reducing regulatory burden, communication, risk-based and proportionate approaches, transparency, and continuous improvement of regulatory frameworks.

The Framework is just one component of ASIC's suite of performance reporting tools, including our annual report, service charter, and reports on enforcement, market integrity and regulatory reform.

About the Regulator Performance Framework

- 1 The Framework provides common performance measures to assess how Australian Government regulators operate. The Framework is designed to assess one aspect of a regulator's performance—the extent to which it minimises regulatory burden in the course of fulfilling its other activities. It should be seen as one component of evaluating the broader performance of regulators.
- 2 The Framework is not intended to reduce regulation, or diminish regulatory outcomes; rather, it aims to achieve the same regulatory outcomes with lower regulatory burden.
- 3 There are six mandated common outcomes-based KPIs that cover reducing regulatory burden, communication, risk-based and proportionate approaches, transparency, and continuous improvement of regulatory frameworks.
- 4 In July 2015 we published [Regulator Performance Framework: ASIC evidence metrics](#) (PDF 116 KB), a set of evidence metrics to support the KPIs. Detailed results of our achievement against the evidence metrics are set out in Section B of this report: see Table 1.

Table 1: Framework KPIs

KPI	ASIC's self-assessment
KPI 1: Regulators do not unnecessarily impede the efficient operation of regulated entities	See paragraphs 9–38
KPI 2: Communication with regulated entities is clear, targeted and effective	See paragraphs 39–71

KPI	ASIC's self-assessment
KPI 3: Actions undertaken by regulators are proportionate to the regulatory risk being managed	See paragraphs 72–98
KPI 4: Compliance and monitoring approaches are streamlined and coordinated	See paragraphs 99–134
KPI 5: Regulators are open and transparent in their dealings with regulated entities	See paragraphs 135–164
KPI 6: Regulators actively contribute to continuous improvement of regulatory frameworks	See paragraphs 165–189

Evaluating our performance

- 5 The Framework is just one component of ASIC's suite of performance reporting tools. In accordance with the Commonwealth Performance Framework under the *Public Governance, Performance and Accountability Act 2013*, our corporate plan sets out our performance evaluation framework by which we measure our performance. We use a range of qualitative and quantitative measures to assess and report on our performance, in order to tell a cohesive performance story that reflects our performance over time, in the context of the environment in which we operate. The performance results are published in our annual report.
- 6 We also use a range of more specific tools to evaluate our performance and communicate with our stakeholders. These are set out in Table 2.

Table 2: Tools to evaluate our performance and communicate with stakeholders

Tool	Description
Service Charter	The ASIC service charter covers our most common interactions with stakeholders, such as applications for licences, applications for relief from the law, registering a company or business name, and how we respond to reports of alleged misconduct by companies or individuals. Service charter measures include expected timeframes for our response on these interactions, as well as timeliness measures for responding to phone and email queries.
Enforcement report	The enforcement report, published every six months, is part of our commitment to transparency about our enforcement work. It provides a high-level overview of some of our enforcement priorities and highlights some important cases and decisions during the period.
Market integrity report	The market integrity report, published every six months, highlights our achievements in market surveillance and market integrity enforcement during the period, as well as outlining our key short-term priorities. In addition, we publish quarterly data on market characteristics (including volatility), measures of market concentration and measures of market efficiency.

Tool	Description
Regulatory reform	We report regularly on our work to minimise the burden of regulation, including reporting on the total compliance cost savings we have achieved. We also publish a report summarising examples of situations where ASIC has exercised, or refused to exercise, ASIC's exemption and modification powers under the <i>Corporations Act 2001</i> (Corporations Act).

Stakeholder feedback

- 7 We value stakeholder feedback as a means of helping us understand the market in which our regulated population operates.
- 8 We seek feedback through a range of venues, including regular industry liaison, external panels and committees, and the ASIC Annual Forum.

B ASIC self-assessment

Key points

Overall, our performance against the KPIs demonstrated a strong commitment to achieving the objectives of the Framework. Nevertheless, there are some areas for improvement on which we will continue to focus.

Our self-assessment is based on a review of our activities during 2015–16 against the published evidence metrics for each KPI.

KPI 1: Regulators do not unnecessarily impede the efficient operation of regulated entities

- 9 We consider that KPI 1 primarily concerns reducing the unnecessary cost burden of regulation. We assess our performance against this KPI based on whether we:
- (a) demonstrate an understanding of the markets in which our regulated population operate and best practice regulation in those areas;
 - (b) take actions that reduce red tape and the compliance burden on business (including for innovative business models); and
 - (c) have an effective and efficient process for considering applications from regulated entities for relief from the law.

ASIC assessment

- 10 We have demonstrated a strong commitment to achieving this KPI, in particular by making it easier for our regulated entities to carry out their business by implementing measures to reduce ongoing compliance costs and facilitating relief from the law where appropriate. Nevertheless, we note the recommendation of the ASIC Capability Review that, to understand the market, we should introduce a more outcomes-focused and dynamic use of advisory panels. We are taking steps to address this by consulting with our panels on ways to use their expertise even more effectively.

Understanding the market

- 11 Where we have a strong understanding of current and emerging issues or developments in the financial sector, we are more likely to make decisions that do not unnecessarily impede the efficient operation of our regulated entities. One way we demonstrate and improve our understanding of the market is through our stakeholder panels, including the External Advisory Panel, Directors' Advisory Panel, Markets Advisory Panel, Consumer

Advisory Panel, and Registry and Licensing Business Advisory Committee. These panels meet regularly and provide advice on a wide range of issues. In addition, the Commission has instituted an enhanced engagement program to ensure they meet regularly with the boards and senior executives of the largest financial institutions and key industry associations. Commissioners will hold over 50 meetings each year, in addition to meetings arising in the ordinary course of business, to discuss particular issues.

- 12 The ASIC Capability Review recommended that we introduce a more outcomes-focused and dynamic use of advisory panels, to ensure these forums have more direct input into strategic management. In response to this, we are consulting with our panels to examine ways to use their expertise even more effectively. We will implement any new initiatives that arise out of this consultation. The review also recommended that we introduce a broader public consultation element into the strategy setting process. As a result, we consulted with our External Advisory Panel and Consumer Advisory Panel on key regulatory risks for 2016–17.
- 13 We also use a number of other mechanisms to stay up to date on market developments, including liaising and cooperating with international regulators, and consulting with regulated entities.

Making it easier for business

- 14 We continue to reduce red tape and lower compliance costs by working closely with Treasury, the Office of Best Practice Regulation and the Government.
- 15 In 2015–16, measures implemented by ASIC reduced ongoing annual compliance costs for business by \$309 million, a significant contribution to the 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

- 16 A significant component of our approach to reducing red tape is by using ASIC’s relief powers to set aside certain requirements of the law where there are compliance cost savings that outweigh regulatory risk.
- 17 In 2015–16, we received 1,982 applications for relief. Of those, we made 1,251 decisions to cut red tape by granting relief.

Supporting evidence

Understanding the market

ASIC evidence metric

ASIC's corporate plan, including environmental scan, is published annually.

18 ASIC's corporate plan communicates our current thoughts on how our long-term strategic priorities and challenges are shaping our strategy and responses over a four-year period.

19 *ASIC's Corporate Plan 2015–16 to 2018–19* was published in August 2015.

20 [ASIC's Corporate Plan 2016–17 to 2019–20](#) was published on 31 August 2016. For this purpose, we consulted with our External Advisory Panel to help understand the key strategic risks facing the market for 2016–17 and beyond.

ASIC evidence metric

Stakeholder surveys are targeted and conducted regularly, and the results and ASIC's response are published.

21 See our supporting evidence for KPI 5 at paragraph 156.

ASIC evidence metric

Stakeholder panels—including the External Advisory Panel, Directors' Advisory Panel, Markets Advisory Panel, Consumer Advisory Panel, and Registry and Licensing Business Advisory Committee—meet regularly.

22 These panels met regularly. [Information about our external committees and panels](#), including the purpose of each committee, membership and a summary of issues considered, is available on our website and in the [ASIC Annual Report 2015–16](#).

23 The External Advisory Panel provided advice and feedback during 2015–16 on a wide range of matters, including building sustainable liquidity in markets, the ASIC Capability Review, the regulation of the financial technology (fintech) sector (including distributed ledger and digital advice), our review of mortgage broking, our strategic risks and corporate culture.

24 The Consumer Advisory Panel continued its focus in 2015–16 on credit and insurance issues, particularly life insurance, add-on insurance products, consumer leases and small amount credit contracts. Superannuation, including self-managed superannuation funds (SMSFs), financial advice and markets issues, was a focus of the panel's investor members.

ASIC evidence metric

ASIC attends relevant international meetings and participates in relevant committees to promote better coordination of regulatory activities

internationally, participate in standard setting, and to learn from peer experiences and share best practice.

25 ASIC is a member of the International Organization of Securities Commissions (IOSCO) Board and a number of its policy committees and taskforces. ASIC Chairman, Greg Medcraft, was the Chair of the IOSCO Board from March 2013 to May 2016. ASIC is also the inaugural Chair of the IOSCO Assessment Committee.

26 Through various activities and projects, we have demonstrated an important commitment to supporting the international regulatory agenda and ensuring that Australian influence is applied to international policy setting.

ASIC evidence metric

Peer review results are publicly reported against relevant international practices and standards when peer review is undertaken.

27 No peer review from a relevant body (i.e. IOSCO or the International Monetary Fund (IMF)) was undertaken in 2015–16.

28 The next IMF Financial Sector Assessment Program assessment for Australia is expected to be completed in 2018.

ASIC evidence metric

Feedback is published following 100% of formal consultation processes.

29 Consultation is a key process by which we understand and take account of the views of our regulated population on major new proposals.

30 We published 28 consultation papers in 2015–16, including 21 papers on sunseting of legislative instruments.

31 Feedback was published following 11 consultations. The other 17 papers were still open as at 30 June 2016 while we assess submissions and other information before finalising our position on the issues raised in the paper.

32 In addition, we published feedback reports in 2015–16 on nine consultation papers that were released in previous years.

Making it easier for business

ASIC evidence metric

ASIC complies with Office of Best Practice Regulation requirements, including preparing cost-benefit analysis in Regulation Impact Statements for significant regulatory changes.

33 The Office of Best Practice Regulation has confirmed that ASIC fully complied with the requirement to prepare a Regulation Impact Statement

(RIS) for all relevant regulatory proposals in 2015–16. Additionally, all required RISs were found to be consistent with best practice.

34 In 2015–16, we prepared RISs for two proposals:

- (a) [facilitating digital financial services disclosure](#); and
- (b) [mandatory central clearing of over the counter \(OTC\) interest rate derivative transactions](#).

Providing relief

ASIC evidence metric

A relief report is published every quarter on decisions about applications for relief.

35 We publish regular reports on relief applications summarising examples of situations where we have exercised, or refused to exercise, our exemption and modification powers from the financial reporting, managed investment, takeovers, fundraising or financial services provisions of the Corporations Act and the *National Consumer Credit Protection Act 2009* (National Credit Act).

36 Our 2015–16 relief reports include:

- (a) [Report 483](#) *Overview of decisions on relief applications (October 2015 to March 2016)* (REP 483), published 23 June 2016; and
- (b) [Report 467](#) *Overview of decisions on relief applications (June to September 2015)* (REP 467), published 11 February 2016.

ASIC evidence metric

Relief is granted in response to applications where warranted to facilitate business, with 70% of applications for relief responded to within 21 days of receiving a complete application.

Note: Subsequent to our publication of these evidence metrics, our service charter standard for timeliness of relief decisions was changed from 21 days (target: 70%) to 28 days (target: 70%) and 90 days (target: 90%).

37 Under our service charter, we aim to give an in-principle decision within 28 days (of receiving all necessary information and fees) on 70% of applications for relief from the Corporations Act that do not raise new policy issues, and within 90 days for 90% of such applications.

38 In 2015–16, 78% of relief applications received an in-principle decision within 28 days and 94% of applications within 90 days.

KPI 2: Communication with regulated entities is clear, targeted and effective

- 39 We consider that KPI 2 primarily concerns the effectiveness of our communication of expectations for the behaviour of our regulated population. We assess our performance against this KPI based on an assessment of:
- (a) the guidance we provide about our regulatory expectations and ASIC's priorities, and
 - (b) how we manage interactions with regulated entities.

ASIC assessment

- 40 We have demonstrated an ongoing commitment to achieving this KPI—for example, in our work on clear guidance about what regulated entities have to do to comply with the law. Nevertheless, as noted in our response to the ASIC Capability Review, we are developing a new ASIC-wide communications strategy, which will be linked to and emphasise communication of ASIC's priorities.

Regulatory guidance

- 41 Our regulatory guides give guidance to regulated entities by explaining when and how we will exercise specific powers under legislation (primarily the Corporations Act), explaining how we interpret the law, describing the principles underlying our approach, and giving practical guidance (e.g. describing the steps of a process, such as applying for a licence, or giving practical examples of how regulated entities may decide to meet their obligations).
- 42 Information sheets provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.
- 43 All ASIC regulatory guidance publications, and extensive information on ASIC's role, functions and services, are available on the [ASIC website](http://www.asic.gov.au) (www.asic.gov.au).
- 44 We regularly review and update our regulatory guides and information sheets to ensure that they remain relevant and appropriate to the issues they address. In 2015–16, we published 31 new or revised regulatory guides and 16 new or revised information sheets relating to our regulatory responsibilities. As at 30 June 2016, there are 244 regulatory guides and 169 information sheets published on our website.
- 45 In 2015–16, we published 29 industry reports promoting changes in industry behaviour and informing government policy and law reform. These include regular reports (such as our reports on enforcement outcomes and decisions

on relief applications) and sector-specific reports (such as our reports on corporate finance and our audit inspection program). We also published a number of reports to provide a summary of our surveillance activity on particular issues.

Communication of ASIC's priorities

46 Communication is a key priority for ASIC. In recent years we have initiated a number of measures to increase our focus on transparency, including revamping our website, adopting new media and developing portals for direct communication with market participants.

47 As noted in our response to the ASIC Capability Review, we are developing a new ASIC-wide communications strategy, which will be linked to and emphasise communication of ASIC's strategic priorities.

48 Our new communications strategy will emphasise the importance of clearly and consistently communicating ASIC's priorities, expectations and—where appropriate—risk tolerances. We will do so in a greater range of documents, using a wider range of communication channels. Our communication task will be assisted by enhancements to the Statement of Expectations and Statement of Intent process.

49 We will ensure that our communications clearly explain our role and all the regulatory tools that we use to carry out our mandate. We will also do more work explaining our proactive surveillance and enforcement to influence behaviour across industry.

50 We have also begun a program of consultation with our external panels, to examine ways to use their expertise even more effectively.

Interacting with ASIC

51 The *ASIC service charter* covers the most common interactions between ASIC and our stakeholders and sets performance targets for each.

52 In 2015–16 our registry business met all service standard targets under the service charter. Full results of our performance against the service charter are reported annually in our annual report and on our website.

53 The ASIC website is the primary source of information for ASIC's registry customers. Our website makes it easier for customers to access commonly used transactions and information about our registers. In 2015–16 there were over 16 million visits to the ASIC website.

54 Our Customer Contact Centre (CCC) also provides a valuable service to Australians, as we respond to their inquiries. In 2015–16, we responded to 861,767 calls and online inquiries. Over half (51%) of all inquiries to the CCC were about companies and a third (33%) were about business names.

- 55 In 2015–16 we enhanced our support for new registry customers interacting online, particularly for customers who need additional support to register or lodge online. We have also strengthened the link between our social media and CCC officers to enhance consistency in the experience our customers receive across the service channels we offer.

Supporting evidence

Regulatory guidance

ASIC evidence metric

Extensive guidance and information is available on ASIC's website.

- 56 All ASIC regulatory guidance publications, and extensive information on ASIC's role, functions and services, are available on [ASIC's corporate website](#), which received 16.2 million visits in 2015-16.

ASIC evidence metric

ASIC engages with industry, professional body representatives and consumer advocates to accurately target and extend communication efforts.

- 57 Stakeholder engagement continues to be a key regulatory tool through which we communicate our expectations.
- 58 In 2015–16, we held 1,702 meetings with stakeholders across the full range of industry and consumer sectors covered by ASIC.

ASIC evidence metric

Stakeholder surveys are targeted and conducted regularly, and the results and ASIC's response are published.

The stakeholder survey specifically seeks feedback on the use and value of ASIC guidance and ASIC's responsiveness.

- 59 See our supporting evidence for KPI 5 at paragraph 156.

Interacting with ASIC

ASIC evidence metric

Regulated entities are able to access the information they need on ASIC's website; this information is available in accordance with government accessibility guidelines.

- 60 ASIC's website is designed to be accessible and easy to use. This includes:
- (a) designing pages so that they can easily be read by screen readers;
 - (b) inserting a 'skip to content' link at the top of the page, which allows screen readers to skip navigational elements and go straight to the text;

- (c) providing text equivalents ('alt tags') for images; and
- (d) providing transcripts or captions for video files.

61 In 2015–16, our online search service—for searching company, business name or other data online—was available 99.9% of the time during standard business hours. This exceeds our service charter target of 99.5%.

62 In 2015–16, our online lodgement service—for lodging company, business name or other data online—was available 99.9% of the time during standard business hours. This exceeds our service charter target of 99.5%.

ASIC evidence metric

Call centre scripts are available for staff use for routine inquiries.

63 Our CCC provides a valuable service to Australians, as we respond to their inquiries. In 2015–16, we responded to 861,767 calls and online inquiries. Over half (51%) of all inquiries to the CCC were about companies and a third (33%) were about business names.

64 Knowledge resources (including call centre scripts) in the CCC are regularly reviewed and updated to ensure staff have access to up-to-date information. There is regular engagement between the CCC and ASIC's regulatory teams to ensure staff are notified of pending website publications and media releases. This ensures the CCC can respond to customer inquiries efficiently when there is activity in the market place. For example, in 2015–16 our knowledge resources enabled us to quickly respond to customer inquiries with accurate and consistent information about the company administration of Dick Smith Holdings.

ASIC evidence metric

ASIC publishes a service charter and reports against it, including explanations where standards are not met.

65 The *ASIC service charter* covers the most common interactions between ASIC and our stakeholders and sets performance targets for each.

66 [Results of our performance against the service charter](#) are reported annually in our annual report and on our website.

ASIC evidence metric

Policies and procedures about rights of review are published.

67 [Information Sheet 9](#) *ASIC decisions: Your rights* (INFO 9) sets out an overview of a person's rights when we make a decision about corporations, securities or financial products and services that might affect the person, and how the person can exercise those rights.

ASIC evidence metric

Complaint guidelines are published and kept up to date.

68 In September 2015, we implemented a new Complaint Management Framework which allows us to effectively manage complaints about our services, actions, decisions or staff. We value the public’s right to complain and are committed to treating complaints seriously, promptly, fairly and genuinely.

69 Our [Complaint Management Policy](#) (PDF 276 KB) is published on the ASIC website, along with instructions on how to submit a complaint to ASIC and what to expect when you lodge a complaint. A dedicated 1300 telephone line has also been established to assist customers.

ASIC evidence metric

Complaints are addressed in accordance with complaint guidelines.

70 Our service charter measure is to resolve 70% of all complaints within 28 days. In 2015–16, we resolved 92% of complaints in 28 days.

71 We finalised 537 complaints in 2015–16:

- (a) In 192 cases (36% of complaints finalised), we resolved the complaint by, for example, amending incorrect information on our website, waiving an incorrectly charged fee, updating information on our registers and providing further information to the complainant. We also changed our previous decisions—for example, decisions about fee waivers and refunds, business name registrations and cancellations, and applications for unclaimed money. Where we identified instances of poor or inappropriate service by ASIC staff, we have provided feedback and training, including reinforcing adherence to ASIC’s policies and procedures, to the staff member.
- (b) In 248 cases (46% of complaints finalised), the complaint was unsubstantiated or our decision was confirmed. These were about, for example:
 - (i) allegations of ASIC officer misconduct, or of poor service or long wait times, which were found after further investigation to be not proven;
 - (ii) an alleged breach of privacy, about information such as name and date of birth, which ASIC is required by law to disclose in relevant circumstances; or
 - (iii) decisions where we found that we had followed the relevant legislation or ASIC policy.

- (c) In 97 cases (18% of complaints finalised), we were unable to take further action. This may have been for a number of reasons, including where the complaint was withdrawn by the complainant, the complainant did not respond to a request for further information, the matter did not involve a complaint about ASIC or the matter was outside ASIC's jurisdiction.

KPI 3: Actions undertaken by regulators are proportionate to the regulatory risk being managed

72 We consider that KPI 3 primarily concerns our approach to detecting, understanding and responding to regulatory risk, principally through surveillance and enforcement. We assess our performance against the KPI based on whether we demonstrate:

- (a) an understanding of the markets in which our regulated populations operate and best practice regulation in those areas;
- (b) a risk-based approach to surveillance activities; and
- (c) a proportionate approach to enforcement (including being transparent about how we approach our enforcement role and why we respond to particular types of breaches of the law in different ways).

ASIC assessment

73 We have demonstrated an ongoing commitment to achieving this KPI, in particular through our risk-based surveillance tool, which guides our surveillance activities and our published approach to enforcement. We note the ASIC Capability Review's finding that our work in market supervision and consumer education is in line with, or at the forefront of, global best practice.

Understanding the market

74 Where we have a strong understanding of the current and emerging issues and developments in the financial sector, we are more likely to take action proportionate to the regulatory risk being managed. One way we demonstrate our understanding of our regulated population is through our corporate plan.

75 We use a number of mechanisms to stay up to date on market developments, including through stakeholder panels and committees, liaising and cooperating with international regulators, and consulting with regulated entities.

Risk-based approach to surveillance

76 If we take a risk-based approach to surveillance activities we are more likely to take action that is proportionate to the risk being managed.

77 We conduct proactive and reactive surveillances. Proactive surveillances are the result of ASIC scanning the regulatory environment for possible problems. These may relate to particular industries, conduct or entities. Reactive surveillances are prompted by a specific complaint, breach report or tip-off concerning the subject of the surveillance.

78 Proactive and reactive surveillances can be risk based. Risk-based surveillance aims to direct scarce surveillance resources towards the entities, products and transactions within our regulated population that pose the greatest threats to ASIC’s strategic priorities.

Enforcement and transparency

79 When potential breaches of the law come to our attention, we carefully consider and assess each matter and determine which, if any, of our regulatory tools—education, guidance, surveillance, enforcement, or negotiated outcomes—to use. This decision is influenced by the evidence and information gathered during our investigations.

80 Publication of our approach to enforcement and our enforcement activities allows external assessment of whether we seek to apply, and do apply, proportionate enforcement actions: see [Information Sheet 151](#) *ASIC’s approach to enforcement* (INFO 151).

Supporting evidence

Understanding the market

ASIC evidence metric

ASIC’s corporate plan, including a summary of risk oversight and management systems, is published annually.

81 See our supporting evidence for KPI 1 at paragraphs 18–20.

ASIC evidence metric

Stakeholder panels—including the External Advisory Panel, Directors’ Advisory Panel, Markets Advisory Panel, Consumer Advisory Panel, and Registry and Licensing Business Advisory Committee—meet regularly.

82 See our supporting evidence for KPI 1 at paragraphs 22–24.

ASIC evidence metric

Stakeholder surveys are targeted and conducted regularly, and the results and ASIC’s response are published.

83 See our supporting evidence for KPI 5 at paragraph 156.

ASIC evidence metric

ASIC complies with Office of Best Practice Regulation requirements, including preparing cost-benefit analysis in Regulation Impact Statements for significant regulatory changes.

84 See our supporting evidence for KPI 1 at paragraphs 33–34.

Risk-based approach to surveillance

ASIC evidence metric

ASIC publishes a Statement of Intent and a Statement of Expectations.

85 Publishing the Statement of Expectations from the Government and our responding Statement of Intent is important for transparency of the expectations on, and the intention of, ASIC in undertaking our role.

86 The Treasurer issued a Statement of Expectations to ASIC in April 2014, which we responded to with a Statement of Intent in July 2014.

87 The Financial System Inquiry recommended that Government should also set out more clearly in the Statements of Expectations how regulators should interpret their mandates, including:

- (a) a statement of the strategic direction Government expects regulators to take, including in response to changing circumstances; and
- (b) a broad outline of Government's tolerance for financial sector risk.

In its response, the Government agreed to update regulators' Statements of Expectations.

88 We will respond with a Statement of Intent following completion of the Government's updated Statement of Expectations.

ASIC evidence metric

A documented, risk-based surveillance approach is available for staff use, with surveillances—including high-intensity surveillances—conducted using this approach.

89 We have established an internal tool to help teams undertake 'best practice' risk-based surveillance, which sets out some common high-level risk-based surveillance processes, language, and templates for documenting decisions and outcomes.

90 We conduct proactive and reactive surveillances. Proactive surveillances are the result of ASIC scanning the regulatory environment for possible problems. These may relate to particular industries, conduct or entities. Reactive surveillances are prompted by a specific complaint, breach report or tip-off concerning the subject of the surveillance.

91 Proactive and reactive surveillances can be risk based. Risk-based surveillance aims to direct scarce surveillance resources towards the entities, products and transactions within our regulated population that pose the greatest threats to ASIC's strategic priorities.

ASIC evidence metric

Consultation papers are clear about where market failures are or may be.

- 92 Where we have detected risks that may require changes to current regulatory settings, consultation is an important tool for testing the extent of those risks and the potential impacts on our regulated population. Our consultation papers in 2015–16 addressed a range of issues, including facilitating innovation in financial services, improving disclosure of historical financial information in prospectuses, regulating digital financial advice, and client review and remediation programs.
- 93 We follow the [Australian Government Guide to Regulation](#) when developing policy proposals for consultation. This includes being clear about the problem to be addressed, such as market failure, regulatory failure, or unacceptable hazard or risk.

ASIC evidence metric

Relevant staff—including relevant new staff—are trained in risk management policies, processes and procedures.

- 94 We have established a regulatory practice learning framework to build our capabilities. A number of resources aligned to the framework have been made available to staff, including training on understanding the fundamentals of regulation, applying regulatory strategies and tools, using data in analysing regulatory problems, and understanding how behavioural economics applies to financial services and regulation.

Enforcement and transparency*ASIC evidence metric*

ASIC's approach to enforcement is published, which includes options for a graduated approach to compliance and enforcement.

- 95 INFO 151 explains how we approach our enforcement role and why we respond to particular types of breaches of the law in different ways. It covers topics including ASIC's regulatory powers, how we select matters for formal investigation, what enforcement tools are available to ASIC, how we decide which enforcement tools to use, how we interact with people during investigations and enforcement actions, and cooperating with ASIC.

ASIC evidence metric

ASIC publishes an enforcement report every six months about enforcement actions.

- 96 We publish regular enforcement reports as part of our commitment to transparency about our enforcement work. The reports provide a high-level overview of some of our enforcement priorities and highlight some

important cases and decisions. Our published reports covering 2015–16 were:

- (a) [Report 476](#) *ASIC enforcement outcomes: July to December 2015* (REP 476), published 30 March 2016; and
- (b) [Report 485](#) *ASIC enforcement outcomes: January to June 2016* (REP 485), published 8 August 2016.

97 As stated in the *ASIC Annual Report 2015–16*, our overall enforcement outcomes included 22 criminal convictions, 13 people jailed, \$1.3 million in civil penalties, 136 people or companies removed or restricted from providing financial services or credit, 39 people disqualified or removed from directing companies, 24 successful actions taken against auditors and liquidators, 22 enforceable undertakings secured, \$210.5 million in compensation and remediation for investors and consumers, 109 infringement notices issued (with a value of \$2.3 million).

ASIC evidence metric

ASIC regularly publishes reports to inform regulated entities of ASIC's approach and expectations.

98 In 2015–16, we published 29 industry reports promoting changes in industry behaviour and informing government policy and law reform. For example:

- (a) We published two corporate finance reports in August 2015 and February 2016 highlighting key statistical information about corporate finance regulation for the half year: see [Report 446](#) *ASIC regulation of corporate finance: January to June 2015* (REP 446) and [Report 469](#) *ASIC regulation of corporate finance: July to December 2015* (REP 469). The reports aim to provide greater transparency of ASIC's role in the regulation of corporations in Australia. They address observations on key trends and detail our work in the regulation of fundraising, mergers and acquisitions, corporate governance, and other general corporate finance areas.
- (b) In August 2015, we released [Report 445](#) *Review of interest-only home loans* (REP 445), which found that lenders providing interest-only home loans need to lift their standards to meet their responsible lending obligations. We reviewed more than 140 consumer loan files from bank and non-bank lenders and made a number of recommendations to lenders and brokers to help them comply with their responsible lending obligations. Following our review, all 11 lenders reviewed either changed their practices or committed to implementing necessary changes in 2015–16.
- (c) In March 2016, we released [Report 474](#) *Culture, conduct and conflicts of interest in vertically integrated businesses in the funds-management industry* (REP 474), outlining findings of an extensive review. Our review found that many organisations appear to take their conflicts

management obligations seriously, with detailed and tailored policies that are on paper embedded in business practices from boards and senior management, cascading down to business units. However, in some organisations reviewed, it appeared that the conflicts policy is one of many policies that have been prepared to satisfy a regulatory requirement rather than seeking to properly identify and address conflicts and embed requirements to address conflicts into business practices. We will factor our findings into future risk-based assessments.

KPI 4: Compliance and monitoring approaches are streamlined and coordinated

- 99 We consider that KPI 4 primarily concerns the effectiveness and efficiency of our surveillance of the regulated population. We measure our performance against this KPI based on whether we demonstrate:
- (a) a risk-based approach to surveillance;
 - (b) an approach that minimises the impact on the regulated population of complying with requests for information, including improving our data management and analytics; and
 - (c) cooperation and coordination with other regulators when undertaking relevant surveillance activities.

ASIC assessment

- 100 We have demonstrated strong commitment to achieving this KPI, in particular through our cooperation with other regulators, both domestically and internationally, to achieve coordinated surveillance and regulatory policy outcomes.
- 101 Nevertheless, we note the ASIC Capability Review’s recommendation that we invest in the development and application of big-data regulatory technology (regtech) analytics and execute our OneASIC (FAST 2) infrastructure overhaul program. We share the review’s view that enhanced data management and analysis capabilities will enable ASIC to further develop as a regulator. Additional funding support announced by the Government will allow us to extend our data platform across our regulatory business to better capture and use data, and develop our data analytics capabilities.

Risk-based surveillance

- 102 Where we take a risk-based approach to surveillance, these activities are more likely to be targeted and streamlined.

Information requests

- 103 When we commence an investigation, we use various investigative powers, including ASIC’s compulsory information-gathering powers, ASIC’s power to make an application for a search warrant, ASIC’s power to access telecommunications records, and ASIC’s power to make an application for a stored communications warrant.
- 104 We use these investigative powers to find out whether there is evidence that a suspected contravention has occurred.

105 We must use ASIC’s compulsory powers for a proper purpose. This means that the use of a power must be designed to advance our inquiry. We recognise that we must use these powers responsibly; accordingly, we have safeguards in place to ensure these powers are not misused.

106 Details of our use of ASIC’s significant compulsory information-gathering powers are reported annually in our annual report.

Data management and analytics

107 We have a strong focus on how developments in technology can improve how we undertake our work, across management information systems, big data and analytics, and new regtech approaches. Additional funding will allow us to extend our data platform across our regulatory business to better capture, share and use data and develop our data analytics capabilities to better identify, monitor and respond to risks. This is also consistent with the ASIC Capability Review’s recommendations that we invest in the development and application of big-data regtech analytics and execute our FAST 2 infrastructure overhaul program.

Cooperation with other regulators

108 ASIC has strong working relationships with Australia’s key financial regulation agencies, the Reserve Bank of Australia (RBA) and the Australian Prudential Regulation Authority (APRA). We also maintain a close and cooperative relationship with Treasury. The four agencies cooperate on a multilateral basis through their shared membership of the Council of Financial Regulators (CFR). We also work together with other agencies on issues where our responsibilities overlap. For example, we worked closely with APRA in examining the life insurance sector’s handling of claims and on our focus on culture in the financial industry.

109 Beyond the members of the CFR, we also actively engage with a range of other domestic bodies. These relationships seek to ensure streamlined and coordinated approaches.

110 Through various activities and projects, we have demonstrated an important commitment to supporting the international regulatory agenda and ensuring that Australian influence is applied to international policy setting. In all our activities, we work closely with a range of international organisations, foreign regulators and law enforcement agencies. We make and receive international requests regarding investigations, compliance and surveillance, policy research, delegations, licensing and due diligence, and general referrals.

Supporting evidence

Risk-based surveillance

ASIC evidence metric

A documented, risk-based surveillance approach is available for staff use, with surveillances—including high-intensity surveillances—conducted using this approach.

111 See our supporting evidence for KPI 3 at paragraphs 89–91.

ASIC evidence metric

ASIC's published approach to enforcement includes a graduated approach to compliance and enforcement.

112 See our supporting evidence for KPI 3 at paragraph 95.

Information requests

ASIC evidence metric

Formal information requests to regulated entities are targeted and have regard to other formal requests for information.

113 [Information Sheet 145](#) ASIC's compulsory information-gathering powers (INFO 145) sets out how we exercise ASIC's compulsory information-gathering powers.

114 Our approach to using ASIC's powers is to:

- (a) limit the burden and intrusion;
- (b) be accountable and transparent; and
- (c) protect confidentiality.

115 We publish statistics on the use of our most significant compulsory information-gathering powers in our annual report.

116 Our internal fortnightly reporting process ensures awareness of compliance, monitoring and engagement plans among teams.

ASIC evidence metric

Formal sign-off, involving senior staff and legal officers, precedes all formal requests.

117 As stated in INFO 145, we must use ASIC's compulsory powers for a proper purpose. This means that the use of a power must be designed to advance our inquiry. We recognise that we must use these powers responsibly; accordingly, we have safeguards in place to ensure these powers are not misused.

Data management and analytics

ASIC evidence metric

ASIC uses data from other sources where appropriate by reference to a case study.

118 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:

- (a) \$61.1 million will enable ASIC to increase our data analytics, update our data management system and increase surveillance capabilities;
- (b) \$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; and
- (c) \$3.2 million will enable ASIC to facilitate the accelerated implementation of key Financial System Inquiry recommendations.

119 In 2015–16, our data management and analytics work included:

Use of data from other sources

120 We subscribe to a range of external information resources, including MorningstarDirect, Plan for Life, and consumer research databases. We use these sources, combined with data obtained through our regulatory activities, to help us:

- (a) detect misconduct;
- (b) understand financial markets, products, and consumer and investor behaviour; and
- (c) respond through education, disrupting harmful behaviour, enforcement, communicating the actions we take, engaging with industry and stakeholders, guidance, and policy advice.

121 For example, we undertook risk profiling to determine which of the nearly 4,000 managed investment schemes (schemes) we would choose for proactive surveillance. To identify the schemes at highest risk of non-compliance, we used a combination of metrics that may indicate a scheme's compliance. This included using:

- (a) information already provided to ASIC as part of a scheme's or responsible entity's general obligations;
- (b) historical information captured by ASIC about the conduct or operation of a scheme or responsible entity; and
- (c) third-party information on scheme performance.

122 By using information already collected by ASIC or available from third-party providers, we applied a risk-based approach to identify approximately 100 schemes operated by around 30 responsible entities for their proactive surveillance, while reducing any unnecessary regulatory burden on the broader regulated population.

Market Analysis Intelligence (MAI) system

123 In 2015–16, we undertook work to further develop our regtech analytics capability, particularly in the market supervision area, where our MAI system gives ASIC the ability to analyse trade data for patterns and relationships. We are building on this through a pilot project to incorporate trade reporting data into the MAI system.

124 The MAI system enables the analysis of large volumes of data captured from multiple sources. This will allow ASIC to intervene earlier in matters, with the objective of preventing more serious, widespread misconduct.

125 Over time we will extend these types of approaches across all areas of our regulatory work. We will also investigate and learn from the use of regtech data analytics by peer domestic and international regulators.

FAST 2

126 Our FAST 2 program is our key investment in enhancing data management and analysis capabilities. FAST 2 will deliver:

- (a) standard regulatory business processes supported by workflows that will be consistent across all ASIC regulatory teams, providing a coherent view of those teams' work;
- (b) a review of the business processes of each team, as part of the delivery of common workflows, to ensure that they represent best practice;
- (c) portals to make compliance and interaction with ASIC easier and faster for those we regulate and to improve the quality of the data we receive;
- (d) a single repository of regulatory information that will make it easy to find and use information that we produce, receive and have available to us; and
- (e) an integrated platform on which further programs or applications can be built as we obtain resources for their development and identify gaps and future needs.

127 FAST 2 will also deliver benefits to our regulated population and to investors and financial consumers more generally. For example:

- (a) it will allow ASIC to identify risks earlier as regulatory information will be easier to find; and

- (b) stakeholders will be able to view their current and historical dealings with ASIC. This will simplify the process for interacting with ASIC and also promote compliance.

Cooperation with other agencies

ASIC evidence metric

Memoranda of understanding with peer regulators, detailing coordination approach, are published where appropriate.

ASIC undertakes joint surveillance where appropriate by reference to a case study.

Domestic

128 ASIC is a member of the CFR, the coordinating body for Australia's main financial regulatory agencies. Other members are APRA, Treasury and the RBA.

129 We also maintain an operational and policy relationship with other Government agencies, including:

- (a) Treasury;
- (b) the Attorney-General's Department;
- (c) the Australian Competition and Consumer Commission;
- (d) the Australian Crime Commission;
- (e) the Australian Federal Police;
- (f) APRA;
- (g) the Australian Taxation Office;
- (h) the Australian Transaction Reports and Analysis Centre;
- (i) the Commonwealth Director of Public Prosecutions;
- (j) the Commonwealth Ombudsman;
- (k) the Fair Work Ombudsman; and
- (l) the RBA.

130 [Information about our memoranda of understanding with other domestic regulators](#) is available on our website.

International

131 In all our activities we work closely with a range of international organisations, foreign regulators and law enforcement agencies. We make and receive international requests regarding investigations, compliance and surveillance, policy research, delegations, licensing and due diligence, and general referrals.

132 In 2015–16, we made 362 international cooperation requests and received 398 requests from international financial regulators and other law enforcement agencies.

133 [Information about our international regulatory and enforcement cooperation](#), including memoranda of understanding, is available on our website.

ASIC evidence metric

Stakeholder surveys are targeted and conducted regularly, and the results and ASIC's response are published.

134 See our supporting evidence for KPI 5 at paragraph 156.

KPI 5: Regulators are open and transparent in their dealings with regulated entities

- 135 We consider that KPI 5 is primarily concerned with our understanding of, and communication with, our regulated population. We measure our performance against this KPI based on whether we:
- (a) communicate with stakeholders on issues that affect our regulated population, such as our assessment of the key risks and long-term challenges facing our regulated population through our corporate plan, our approach to enforcement and our decisions on applications for relief;
 - (b) seek stakeholder feedback on our performance and publishing our performance results;
 - (c) consult with our regulated population on policy proposals that affect them.

ASIC assessment

- 136 We have demonstrated an ongoing commitment to achieving this KPI, in particular by publishing a range of tools—including the service charter standards, enforcement report, market integrity report and report on our work to reduce red tape—to evaluate our performance and communicate with our stakeholders.

Stakeholder communication

- 137 We have published a corporate plan to inform stakeholders of the key risks and long-term challenges facing our regulated population. During 2015–16 we also published information to help stakeholders understand our approach to regulatory issues, such as our approach to enforcement and our decisions on applications for relief.

- 138 As noted in our response to the ASIC Capability Review, we are developing a new ASIC-wide communications strategy, which will be linked to and emphasise communication of ASIC’s strategic priorities: see our assessment of our performance against KPI 2 at paragraphs 46–50.

Performance measurement and reporting

- 139 We actively seek stakeholder feedback on our performance. Stakeholder perceptions of ASIC have been analysed in numerous contexts in recent years, including the ASIC Capability Review, the Senate inquiry into the performance of ASIC, and the Financial System Inquiry.

140 We are currently considering options for a targeted approach to evaluating stakeholder perceptions, focusing on specific sectors to respond to key risks and emerging issues across the next few years.

Consultation

141 We follow the Australian Government Guide to Regulation when developing policy proposals for consultation. This includes being clear about the problem to be addressed, such as market failure, regulatory failure, or unacceptable hazard or risk.

Supporting evidence

Stakeholder communication

ASIC evidence metric

ASIC's corporate plan is published annually.

142 *ASIC's Corporate Plan 2015–16 to 2018–19* was published in August 2015.

143 The corporate plan covers the period from 2015–16 to 2018–19. It communicates our current thoughts on how our long-term strategic priorities and challenges are shaping our strategy and responses over this period. It identifies a number of key focuses where we see particular concerns that flow from the long-term challenges we face, as well as covering how we will evaluate our performance over time as an integrated corporate, markets, financial services and consumer credit regulator, as well as our capabilities to meet future regulatory challenges.

144 Consistent with the principles on which our regulatory system is based, we work to achieve the best level of financial resilience we can with the resources we have. We cannot eliminate market risk, prevent all wrongdoing, or ensure compensation for investors who lose money as a result of misconduct.

145 A revised corporate plan, covering the period 2016–17 to 2019–20, was published on 31 August 2016.

ASIC evidence metric

ASIC's approach to enforcement is published.

146 See our supporting evidence for KPI 3 at paragraph 95.

ASIC evidence metric

ASIC publishes an enforcement report every six months about enforcement actions.

147 See our supporting evidence for KPI 3 at paragraphs 96–97.

ASIC evidence metric

Extensive guidance and information is available on ASIC's website.

148 All ASIC regulatory guidance publications, and extensive information on ASIC's role, functions and services, are available on the ASIC website, which received 16.2 million visits in 2015-16.

149 As at 30 June 2016, there are 244 regulatory guides and 169 information sheets published on our website. In 2015–16, we published 31 new or revised regulatory guides and 16 new or revised information sheets relating to our regulatory responsibilities.

Performance measurement and reporting**ASIC evidence metric**

ASIC's annual report is published and includes reporting against the corporate plan and service charter, including explanations where outcomes or standards are not met.

150 The *ASIC Annual Report 2015–16* was published on 31 October 2016.

151 In accordance with the Commonwealth Performance Framework under the *Public Governance, Performance and Accountability Act 2013*, our corporate plan sets out our performance evaluation framework by which we measure our performance. We use a range of qualitative and quantitative measures to assess and report on our performance, in order to tell a cohesive performance story that reflects our performance over time, in the context of the environment which we operate. The performance results are published in our annual report.

152 We also use a range of more specific tools to evaluate our performance and communicate with our stakeholders. These include:

- (a) *Service charter*—Our service charter covers our most common interactions with stakeholders, such as applications for licences or relief from the law and how we respond to reports of alleged misconduct by companies or individuals, including expected timeframes for our response.
- (b) *Enforcement report*—The enforcement report, published every six months, provides a high-level overview of some of our enforcement priorities and highlights some important cases and decisions during the period.

- (c) *Market integrity report*—The market integrity report, published every six months, highlights our achievements in market surveillance and market integrity enforcement during the period, as well as outlining our key short-term priorities. In addition, we publish quarterly data on market characteristics (including volatility), measures of market concentration and measures of market efficiency.
- (d) *Regulatory reform*—We report regularly on our work to minimise the burden of regulation, including reporting on the total compliance cost savings we have achieved. We also publish a report summarising examples of situations where we have exercised, or refused to exercise, ASIC’s exemption and modification powers under the Corporations Act.

ASIC evidence metric

ASIC’s self-assessment report and external validation of the Regulator Performance Framework are published annually.

- 153 This self-assessment, together with a summary of stakeholder feedback, was completed in December 2016.

ASIC evidence metric

ASIC publishes a relief report every four months on decisions about applications for relief.

- 154 We publish regular reports on relief applications summarising examples of situations where we have exercised, or refused to exercise, ASIC’s exemption and modification powers from the financial reporting, managed investment, takeovers, fundraising or financial services provisions of the Corporations Act and the National Credit Act.

- 155 Our 2015–16 relief reports include:

- (a) REP 483, published 23 June 2016; and
- (b) REP 467, published 11 February 2016.

ASIC evidence metric

Stakeholder surveys are targeted and conducted regularly, and the results and ASIC’s response are published.

The stakeholder survey specifically seeks feedback on openness and transparency in dealing with regulated entities.

- 156 We did not conduct a stakeholder survey in 2015–16. This was because stakeholder perceptions of ASIC have been analysed in numerous contexts in recent years, including the ASIC Capability Review, the Senate inquiry into the performance of ASIC, and the Financial System Inquiry.

Consultation

ASIC evidence metric

Consultation papers are published for major new policy, with clarity about where market failures are or may be.

157 We follow the Australian Government Guide to Regulation when developing policy proposals for consultation. This includes being clear about the problem to be addressed, such as market failure, regulatory failure, or unacceptable hazard or risk.

ASIC evidence metric

Consultations are open for at least eight weeks for major new policy where possible, with user testing of proposals where appropriate.

158 We published seven consultation papers on major new policy in 2015–16. Consultation was open for at least eight weeks for four of these papers.

159 In addition, ASIC published 21 minor consultation papers related to the repeal or remaking of legislative instruments that were due to sunset. All these papers were open for consultation for at least four weeks.

160 We also incorporated user testing as a component of policy development in some matters. For example, user testing of the superannuation product dashboard and redesign of [Form 507 Report as to affairs](#).

ASIC evidence metric

Feedback is published following 100% of formal consultation processes.

161 We published 28 consultation papers in 2015–16, including 21 papers related to sunseting of legislative instruments.

162 Of the 11 consultation papers that were finalised in 2015–16, feedback was published following all 11 consultations. The other 17 papers remain open while we assess submissions and other information before finalising our position on the issues raised in the papers.

163 In addition, we published feedback reports in 2015–16 on nine consultation papers that were released in previous years.

ASIC evidence metric

New or revised ASIC guidance provides for reasonable transition periods where possible.

164 We have provided reasonable transition periods where possible. For example:

- (a) The limited Australian financial services (AFS) licence regime for giving advice about SMSFs had a three-year period where applicants whose responsible managers are recognised accountants and who

applied between 1 July 2013 and 30 June 2016 were able to take advantage of the transitional arrangements for entry into the AFS licensing regime. During this period, we issued several communications to advise industry about the need to lodge licence applications with sufficient time before the end of the transition period.

- (b) We granted relief to responsible entities of registered schemes to allow them to make changes to their constitutions without holding a members' meeting. The aim of this relief was to help them smoothly implement the new tax system for managed investment trusts, should they make the choice to do so.

KPI 6: Regulators actively contribute to continuous improvement of regulatory frameworks

- 165 We consider that KPI 6 is primarily concerned with the effectiveness of regulatory frameworks administered by ASIC. We measure our performance against this KPI based on whether we:
- (a) promote public discussion of market and regulatory developments, including innovative business models, and appropriate regulatory settings. This also includes engaging with stakeholders through regular meetings and external committees and panels, and hosting the ASIC Annual Forum to identify and assess regulatory reform proposals; and
 - (b) contribute to continuous improvement of regulatory frameworks by providing advice to Government identifying where reform to existing regulatory frameworks may be required.

ASIC assessment

- 166 We have demonstrated strong commitment to continuous improvement of regulatory frameworks through stakeholder engagement and advice to Government.

Stakeholder engagement

- 167 Stakeholder engagement continues to be a key regulatory tool through which we detect wrongdoing and understand our environment.
- 168 In 2015–16, we held 1,702 meetings with stakeholders across the full range of industry and consumer sectors covered by ASIC.
- 169 As noted in our implementation plan in response to the ASIC Capability Review, we are consulting with our panels to examine ways to use their expertise even more effectively. We will also consult across our stakeholders to understand their varying needs and expectations, and the best model to address any deficiencies.

Continuous improvement of regulatory frameworks

- 170 During 2015–16 we contributed to continuous improvement of regulatory frameworks by providing advice to Government, including submissions to parliamentary inquiries, on a variety of issues.

Supporting evidence

Stakeholder engagement

ASIC evidence metric

ASIC uses a variety of media and direct channels to convey information to all stakeholders.

- 171 Transparent communication is a key priority for ASIC. In recent years we have initiated a number of measures to increase focus on transparency, including revamping our website, adopting new media, and developing portals for direct communication with market participants that will be expanded to cover other regulated populations over time.
- 172 As noted in our response to the ASIC Capability Review, we are developing a new ASIC-wide communications strategy, which will be linked to and emphasise communication of ASIC’s strategic priorities.
- 173 Our new communications strategy will emphasise the importance of clearly and consistently communicating ASIC’s strategic priorities, expectations and—where appropriate—risk tolerances. We will do so in a greater range of documents, using a wider range of communication channels. Our communication task will be assisted by enhancements to the Statement of Expectations and Statement of Intent process.
- 174 We will ensure that our communications clearly explain our role and all the regulatory tools that we use to carry out our mandate. We will also do more work explaining our proactive surveillance and enforcement to influence behaviour across industry.
- 175 We expect to finalise our communications strategy in late 2016.

ASIC evidence metric

ASIC holds regular meetings with key stakeholders, including industry, professional body representatives, consumer advocates and small business, through internal contact points.

- 176 Stakeholder engagement continues to be a key regulatory tool through which we assess the effectiveness of our regulatory settings.
- 177 In 2015–16, we held 1,702 meetings with stakeholders across the full range of industry and consumer sectors covered by ASIC.

ASIC evidence metric

ASIC holds an Annual Forum.

- 178 ASIC’s Annual Forum was held on 21–22 March 2016 in Sydney. The theme of the 2016 forum was ‘culture shock’—the role of culture in driving conduct and what this means for how we adapt to changes like digital

disruption and globalisation. A total of 586 delegates attended the 2016 forum, an increase from 481 in 2015.

Continuous improvement of regulatory frameworks

ASIC evidence metric

ASIC seeks input on and delivers measures to improve the administration of the regulatory framework.

179 Throughout 2015–16, we have regularly sought feedback on the administration of the regulatory framework through external committees and panels, as well as ongoing engagement with stakeholders. We have sought to improve the administration of the regulatory framework by providing clear and accessible guidance: see our assessment of our performance against KPI 2 at paragraphs 41–45.

ASIC evidence metric

Where appropriate, ASIC identifies and proposes opportunities to improve the regulatory framework, including as a result of any post-implementation reviews.

180 In 2015–16, we 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 submissions to inquiries into credit card interest rates, forestry schemes, foreign bribery, and co-operative, mutual and member-owned firms.

181 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 when a consumer defaults on their loans, the appointment and role of insolvency practitioners in the impairment of customer loans, and the obligations of receivers in circumstances of forced sales.

182 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. We made a submission in April 2016, supporting a review of penalties for white-collar crime to provide the right incentives for better market behaviour.

183 In September 2014, the Senate announced an inquiry into the scrutiny of financial advice. In March 2016, the Senate referred additional matters regarding 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 on the life insurance industry.

184 We contributed to the Senate Economics Reference Committee’s inquiry into the structure and development of forestry managed investment schemes. The Committee published its final report on 14 March 2016.

185 As noted in our implementation plan in response to the ASIC Capability Review, we are committed to developing co-regulatory approaches, where the necessary pre-conditions for successful co-regulation are met and we are confident that this approach will not be more burdensome or less likely to promote competition than government regulation. Factors that will influence the success or otherwise of co-regulation are the nature of the relevant industry, the type of regulatory problem to be addressed by self-regulation or co-regulation and the level of risk to consumers if the regulation fails.

ASIC evidence metric

ASIC provides advice to the Minister and to Treasury concurrently.

186 Under ASIC’s July 2014 Statement of Intent, we committed to copy information to the Secretary of the Treasury in parallel to that information being provided to Ministers. This is subject to ASIC’s position as an independent agency and any legislative requirements that may limit our ability to provide such information to Treasury.

ASIC evidence metric

ASIC formally meets with Treasury (ASIC–Treasury liaison) regularly.

187 Treasury liaison meetings occur once every three months, and are attended by ASIC’s Chairman and the Deputy Secretary of Treasury. Other commissioners and senior executives also attend, depending on the items being discussed.

188 The purpose of the meeting is to ensure that, when necessary, current key issues that impact ASIC and Treasury can be discussed at a senior level.

189 The agenda changes according to what strategic matters require attention, but generally covers issues such as strategic discussions, significant implementation items and key policy initiatives.

C Summary of feedback from consultation

Key points

We undertook a consultation on a draft version of this self-assessment against the Regulator Performance Framework. We consulted with industry, professional and consumer groups representing the sectors that we regulate.

This section highlights the key issues that arose out of the submissions received and our responses to those issues. It is not meant to be a comprehensive summary of all responses received. We have limited this section to the key issues.

Responses to consultation

- 190 We received five responses from the 20 organisations we approached. We are grateful to respondents for taking the time to send us their comments.
- 191 Overall, respondents considered that ASIC's self-assessment was reasonable and objective. Nevertheless, there are a variety of observations from our stakeholders on specific aspects of ASIC's performance.
- 192 For a list of the non-confidential respondents, see the appendix.

General feedback

- 193 Some respondents commented that ASIC's evidence metrics were too process oriented and should be more outcomes focused. They felt that the metrics were too specific and narrow, and failed to take into account the bigger picture.
- 194 Another respondent commented that they were concerned that the Framework places an undue focus on the costs of regulation to business rather than assessing the benefits of regulation more broadly.

ASIC's response

We acknowledge that the Framework is designed to assess one aspect of a regulator's performance—the extent to which it minimises regulatory burden in the course of fulfilling its other activities. It should be seen as one component of evaluating the broader performance of regulators.

We will continue to report on our performance against our objectives—promoting investor and consumer trust and

confidence, ensuring fair and efficient markets, and providing efficient registration services—through, for example, the annual performance statement as part of our annual report.

Feedback on KPIs

KPI 1: Regulators do not unnecessarily impede the efficient operation of regulated entities

- 195 One respondent was concerned about regulators’ understanding of the time needed for stakeholders to implement new regulatory requirements. In particular, this respondent commented on one matter where they thought that ASIC guidance was delivered at various stages throughout the transition period (of over 12 months), so that all stakeholders did not necessarily have sufficient clarity around the interpretation and operation of those requirements before commencing implementation.
- 196 This respondent also identified instances where it considered that we had required financial product issuers use specific wording in their communication with customers, which the respondent considered to be overly legalistic and difficult to understand. They felt that this caused confusion and uncertainty for consumers and additional work for business to provide additional explanation and to re-engage the consumer.

ASIC’s response

Even where an adequate transition period is provided, we will continue to be available to address any questions from an early stage, to enable regulated persons to check their understanding of regulatory requirements. In addition to the many regulatory guides and information sheets that we have published, we will publish questions and answers where it is helpful. We will continue to be conscious of the need to provide adequate lead time and engage proactively with industry, including encouraging industry to identify issues of concern at an early stage to ensure we maintain our understanding of the market.

One of ASIC’s regulatory objectives is promoting investor and consumer trust and confidence. We have established processes to improve our understanding of consumer behaviour, including using behavioural economics to study how people make decisions. We support the use of plain English while retaining legal accuracy in our communications with consumers and encourage regulated entities to take the same approach. We also consider the way in which the information is likely to be accessed and the broad range of audiences, which can include people other than consumers and a variety of consumers with different levels of understanding.

KPI 2: Communication with regulated entities is clear, targeted and effective

197 One respondent had concerns about the recent redesign of the ASIC website and the difficulty navigating and locating materials, as well as the lack of a website notification service to alert users to the publication of new material.

ASIC's response

We acknowledge this feedback. We note that our website was recently redesigned to introduce features to make the site easier to use—for example, responsive design so the site is easier to view on mobile devices, a redesigned homepage with direct links to high-traffic tasks and content, fewer tabs on the home page, drop-down menus designed to help users quickly find relevant content, an improved internal search function, and the ability to search lists of forms and documents by topic. We will continue to monitor the operation of our website and make improvements where there are opportunities.

We also provide an email subscription service to alert stakeholders to media releases, as well as publishing information through various social media channels.

KPI 3: Actions undertaken by regulators are proportionate to the regulatory risk being managed

198 One respondent, the Australian Restructuring Insolvency and Turnaround Association (ARITA), expressed the view that we have not met KPI 3 regarding registered liquidators. They commented that we are too focused on compliance and administrative issues and not sufficiently focused on substantive misconduct in this sector. In particular, ARITA commented that the extent of our resources directed at monitoring registered liquidators' compliance with statutory lodgements and publication requirements is inappropriate and would be better spent on other issues facing the industry (such as pre-insolvency advice, director compliance, illegal phoenix activity, asset stripping, and failure to provide books and records to liquidators). They felt that we are not taking action proportionate to the regulatory risk in their industry sector.

199 ARITA also commented that we are not demonstrating transparency in our regulation of their sector—for example, lack of substantive detail in published enforcement outcomes, lack of consistency of penalties and too much focus on obtaining publicly reportable outcomes.

ASIC's response

We take, and will continue to take, a risk-based approach across all the sectors we regulate, as set out in our corporate plan and sectoral business plan summaries.

We have undertaken significant work on a range of matters relating to registered liquidators, including pre-insolvency advice and conduct that facilitates illegal phoenix activity, as well as our important work of building confidence in the insolvency market through compliance with reporting and publishing requirements. Lodged documents and published notices are important in allowing stakeholders to participate in the insolvency process (e.g. by alerting creditors to meetings and proving their debts). Lack of compliance can suggest more serious issues with a firm's culture and practices.

We continue to seek ways to improve public reporting on our activities and enforcement outcomes. For example, we publish six-monthly reports outlining enforcement outcomes achieved by ASIC. These reports provide an overview of some of our enforcement priorities and highlight some important cases and decisions during the period. We also published our fifth annual report on our supervision of registered liquidators, [Report 479 ASIC regulation of registered liquidators: January to December 2015 \(REP 479\)](#), in June 2016. This report details our enforcement actions in response to more serious misconduct as well as less egregious, but still important, compliance issues.

KPI 4: Compliance and monitoring approaches are streamlined and coordinated

200 One respondent noted that there has been a slight improvement in cooperation between regulators, but considered there was still room for improvement—for example, multiple touch points and multiple data requests from different regulators remain an issue, and could be better coordinated in terms of content and timing.

ASIC's response

We acknowledge this feedback. As noted at paragraph 108, ASIC is a member of the CFR, the coordinating body for Australia's main financial regulatory agencies. We also maintain an operational and policy relationship with other Government agencies, including secondments. We will continue to examine ways to improve coordination with other regulators.

KPI 5: Regulators are open and transparent in their dealings with regulated entities

201 One respondent appreciated the publication of feedback received in response to consultation, as it provides useful insight into our deliberations. This respondent welcomed our use of consumer testing to ensure that regulatory measures are fit for purpose, and noted that we should make outcomes of consumer testing available to stakeholders, as this information is important to guiding their implementation of regulatory requirements.

ASIC's response

We acknowledge this feedback. We will continue to examine ways to ensure that we provide relevant information to regulated entities.

KPI 6: Regulators actively contribute to continuous improvement of regulatory frameworks

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One respondent welcomed our extensive efforts towards stakeholder engagement, especially the ability to directly contact key ASIC staff in the team responsible for their sector. However, the respondent noted that our responsiveness is impeded by the heavy workload borne by a few key staff members.

ASIC's response

We acknowledge this feedback. We will continue to promote stakeholder engagement as a means of helping us better understand the markets we regulate. As part of our response to the ASIC Capability Review, we are consulting with stakeholder groups on engagement with them to understand their varying needs and expectations, and the best model to address any deficiencies.

Appendix: List of non-confidential respondents

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- Australian Financial Management Association
 - Australian Restructuring Insolvency and Turnaround Association
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 - Insurance Council of Australia
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