



# 2

## ANNUAL PERFORMANCE STATEMENT

Introductory statement	28
2.1 Investor and consumer trust and confidence	30
2.2 Fair and efficient markets	36
2.3 Efficient registration services	42
2.4 Banking Act, Life Insurance Act, unclaimed money and special accounts	44

---

## Introductory statement

---

### Chairman's statement

I, Greg Medcraft, as the accountable authority of ASIC, present the 2016–17 annual performance statement of ASIC, as required under paragraph 39(1)(a) of the PGPA Act. In my opinion, the annual performance statement is based on properly maintained records, accurately reflects the performance of the entity, and complies with subsection 39(2) of the PGPA Act.

### ASIC's purpose

ASIC's vision is to allow markets to fund the real economy and, in turn, economic growth. In doing so, we contribute to the wellbeing of all Australians. We do this by:

1. promoting investor and consumer trust and confidence
2. ensuring fair and efficient markets
3. providing efficient registration services.

### Portfolio Budget Statement performance outcomes

*Outcome 1: To allow markets to fund the real economy by promoting investor and consumer trust and confidence, facilitating fair and efficient markets and delivering efficient registration.*

### Program 1.1: Australian Securities and Investments Commission

Program 1.1 contributes to our purpose by improving industry behaviour through our 'detect, understand and respond' approach where investor and consumer trust and confidence and fair, orderly and transparent markets are most at risk.

Through this approach, we:

1. **detect** misconduct or the risk of misconduct through surveillance, breach reporting, reports from whistleblowers and the public, data gathering and matching
2. **understand** and analyse the intelligence we receive
3. **respond** to misconduct or the risk of misconduct through education, disrupting harmful behaviour, enforcement, communicating the actions we take, engaging with industry and stakeholders, and providing guidance and policy advice.

This program also seeks to improve our registry services and reduce costs for businesses and consumers.

Sections 2.1–2.3 of the annual performance statement provide an overview of our performance against these program deliverables and key performance indicators.

Our analysis is supported by sections 3.1–3.3 of this annual report, which set out our performance in more detail.



*ASIC Chairman Greg Medcraft and members of the Women in ASIC Committee, shown here with Juanita Philips, ABC broadcaster and keynote speaker at ASIC's International Women's Day event in March 2017.*



*Kim Heras, Partner at 25Fifteen, presenting at ASIC's inaugural regtech roundtable, February 2017.*



*Each year, ASIC recruits talented graduates with a diverse range of skills and backgrounds. The 2017 graduates are shown here in ASIC's Sydney office.*



*Delta Society therapy dogs visited ASIC's Sydney office for ASIC's International Day for People with Disability event in December 2016.*



*ASIC Chairman Greg Medcraft and Ranjit Ajit Singh, Chairman of Malaysia's Securities Commission, with the fintech cooperation agreement signed in June 2017.*

## 2.1 Investor and consumer trust and confidence

### Performance objective

To promote investor and consumer trust and confidence.

### Source

This performance objective is set out in:

1. ASIC's Portfolio Budget Statement 2016–17 (at page 140)
2. ASIC's Corporate Plan 2016–17 to 2019–20 (at page 33–34).

### Targets

ASIC will promote investor and consumer trust and confidence through stakeholder engagement, education, guidance, surveillance, enforcement and policy advice.

Our 2016–17 targets are set out in the Portfolio Budget Statement (at pages 140–141) and ASIC's Corporate Plan 2016–17 to 2019–20 (at page 34).

### Key results: Investor and consumer trust and confidence

Outcome	2016–17	2015–16	2014–15	2013–14
<b>Stakeholder engagement</b>				
Meetings with industry groups and other stakeholders <sup>1</sup>	797	799	627	685
Consultation papers published	19	16	6	5
Industry reports published	31	18	10	14
<b>Education</b>				
Unique visits to ASIC's MoneySmart website	7m	6.1m	5.4m	4.7m
Users who reported taking action on their finances after visiting MoneySmart	89% <sup>2</sup>	90%	89%	86%
Number of unique school interactions with MoneySmart Teaching	5,856	5,079	3,185	396
<b>Guidance</b>				
New or revised regulatory guides published	20	17	9	10
New or revised information sheets	6	9	13	18
Legislative instruments made, amended and repealed	72 <sup>3</sup>	48	19	17
Relief applications received <sup>4</sup>	438	451	581	816 <sup>5</sup>
Approved <sup>4</sup>	250	300	409	518
Refused <sup>4</sup>	20	24	41	48

1. Data reflects reporting in given years on the basis of corporate structure and methodology at that time. In 2013–14, there was a change in methodology. As a result, meetings involving multiple ASIC teams have been counted against each team involved. Data does not include meetings held by Commissioners.
2. *Awareness and usage of ASIC's MoneySmart website, Wave 12: February 2017*, ASIC, page 12.
3. Data includes legislative instruments that provide relief from, or modify, provisions of the Corporations Act relating to various types of managed investment schemes, such as time sharing and strata schemes.
4. Data reflects point-in-time reporting in given years. A breakdown of withdrawn and in-progress applications is not available for 2013–14.
5. In 2013–14, ASIC received a greater number of relief applications from entities seeking relief from the managed investment scheme provisions in Chapter 5C of the Corporations Act. During that year, there was a comparatively higher level of reconstruction work in managed investment schemes requiring relief or modification of the Act, as well as applications for relief linked to Exchange Traded Funds, which was subsequently addressed through a class order.

Outcome	2016–17	2015–16	2014–15	2013–14
Withdrawn <sup>4</sup>	92	61	59	250
In progress <sup>4</sup>	76	66	72	
Surveillance				
High-intensity surveillances completed	557 <sup>6</sup>	461	557	860 <sup>7</sup>
Instances of potentially misleading or deceptive promotional material withdrawn or amended	55	45	54	127
Enforcement				
Investigations				
Investigations commenced	68	93	77	97
Investigations completed	75	79	88	113 <sup>8</sup>
Criminal actions				
Criminal litigation completed <sup>9</sup>	10	7	7	16
Criminal litigation completed successfully <sup>9</sup>	90%	100%	86%	94%
New criminal litigation commenced <sup>9</sup>	5	13	11	13
Number of people convicted	10	7	6	15
Custodial sentences (including fully suspended)	6	3	5	13
Non-custodial sentences/fines	4	4	1	2
Total dollar value of fines	\$6,000	\$8,500	\$10,000	\$5,000
Civil actions				
Civil litigation completed	55	36	43	12
Civil litigation completed successfully	91%	94%	86%	100%
New civil litigation commenced	81	44	20	31
Total dollar value of civil penalties	\$3.9m <sup>10</sup>	\$1.27m	\$18.97m <sup>11</sup>	\$1.5m

6. In 2016–17, this figure included 36 high-intensity surveillances completed by the Small Business Compliance and Deterrence (SBC&D) team, which is not reported elsewhere in this annual report.
7. A high-intensity surveillance includes desk-based and onsite reviews, and generally takes more than two days of effort to complete. In 2014–15, there was a change in methodology for how we recorded high-intensity surveillances. As a result, we only counted those high-intensity surveillances that we closed on our databases during the year. In addition, there were 147 high-intensity surveillances undertaken by the Investment Banks (IB) team. The IB team has since been merged into our Market Infrastructure and Market Supervision teams.
8. Of the 113 investigations completed in 2013–14, 22 investigations related to alleged false or misleading statements and representations, 20 related to alleged dishonest conduct and 15 related to alleged misleading and deceptive conduct. In 2013–14, our key areas of focus included addressing misleading advertising of products and services and taking action against credit providers for misleading consumers and loan fraud.
9. Excludes summary prosecutions for strict liability offences.
10. The total dollar value of civil penalties included \$1.89 million in penalties against directors of MFS Investment Management Limited. Significant penalties against Channic Pty Ltd (\$776,000) and Fast Access Finance Pty Ltd (\$730,000) were also handed down.
11. The civil penalty amount of \$18,975,000 in 2014–15 related to The Cash Store Pty Ltd matter.

## 2.1 Investor and consumer trust and confidence continued

Outcome	2016–17	2015–16	2014–15	2013–14
<b>Administrative actions<sup>12</sup></b>				
Administrative actions completed	85	74	64	67
New administrative actions commenced	53	51	74	60
People/companies banned from financial services	100 <sup>13</sup>	81	53	63
People/companies banned from credit services	108 <sup>13</sup>	55	39	46
<b>Enforceable undertakings</b>				
Enforceable undertakings accepted	7	13	10	18
<b>Infringement notices</b>				
Number of infringement notices issued – ASIC Act	6	9	32	16
Dollar value of infringement notices – ASIC Act	\$64,800	\$93,600	\$319,400	\$163,200
Number of infringement notices issued – National Credit Act	54 <sup>14</sup>	87 <sup>14</sup>	38	4
Dollar value of infringement notices – National Credit Act	\$1.8m <sup>14</sup>	\$1.13m <sup>14</sup>	\$391,000	\$77,000
<b>Compensation</b>				
Compensation or remediation	\$837.7m <sup>15</sup>	\$210.5m <sup>15</sup>	\$35.2m	\$172.6m
Community benefit payments	\$5.1m <sup>16</sup>	\$2.05m <sup>16</sup>	\$110,000	\$250,000

12. An administrative action is a decision by a delegate of ASIC to exercise a statutory protective power. Examples of an administrative action are a decision to disqualify a person from managing corporations, prohibit a person from providing financial services or engaging in credit activities, cancel or suspend an AFS licence or Australian credit licence (credit licence), or impose additional conditions on an AFS licence or credit licence. The number of people or companies banned from financial services includes instances where conditions were placed on an AFS licensee.

13. The number of bannings in 2016–17 includes instances where conditions were placed on an AFS licensee. For financial services, there was a 12% increase in bannings by the Financial Advisers team, including five bannings under the Wealth Management Project. For credit, there was a 187% increase in bannings by the SBC&D team as a result of two surveillance campaigns on non-compliant entities who failed to lodge Annual Compliance Certificates or maintain EDR scheme membership.

14. In 2016–17, there were 30 infringement notices issued to Cash Converters under the National Credit Act. In 2015–16, two entities were issued 22 and 58 infringement notices respectively under the National Credit Act.

15. In 2016–17, an amount of \$617.2 million was awarded against MFS Investment Management Ltd by the Supreme Court (Qld). In 2015–16, there were six matters that comprised 79% (\$165.5 million) of the total figure for compensation or remediation.

16. In 2016–17, BMW Australia Finance Limited agreed to pay a \$5 million community benefit as part of its enforceable undertaking with ASIC. In 2015–16, ACE Insurance Limited/Combined Insurance Company agreed to pay a \$1 million community benefit as part of its enforceable undertaking with ASIC. The purpose of these community benefit payments is to contribute to consumer advocacy and financial literacy initiatives.

## Analysis of our performance

Ensuring investors and financial consumers have trust and confidence in the Australian financial system is at the heart of everything we do at ASIC.

### Stakeholder engagement

Engaging with key stakeholders through regular meetings helps us achieve our vision. It helps us to communicate and maintain regulatory standards, and identify issues in the market.

In 2016–17, we held 797 meetings with a number of key external stakeholders, including lenders, mortgage brokers, insurers, financial advisers, responsible entities, superannuation trustees, peer regulators and industry bodies.

For example, we continued to engage with industry on issues such as life insurance reforms, professionalism standards for financial advisers and risk management for responsible entities.

### Perceptions of trust and confidence

ASIC seeks to better understand perceptions of trust and confidence of investors and consumers in the sectors we regulate. Our Australian Financial Attitudes and Behaviour Tracker research (Wave 5)<sup>1</sup> tracks a number of financial attitudes and behaviours among adult Australians. It also helps to highlight those areas where perceptions of trust and confidence could be improved.

By engaging the broader community through our survey, we found that approximately 81% of Australians did not report having a bad experience or feeling unfairly treated by their financial services providers during the period between September 2016 and February 2017.<sup>2</sup>

However, of those 19% of Australians who stated that they had a negative experience with their financial services providers (including banks,

mortgage brokers and insurance companies) during this six month period, they reported instances of:

- ♦ poor customer service
- ♦ overcharged or unexpected fees
- ♦ being told something incorrect or untrue by their financial services provider
- ♦ financial services providers not taking the time to understand their needs.

We take these perception measures into account when we consider and track 'what good looks like' for the sectors and markets that we regulate.

### Education and guidance

ASIC's education initiatives help build the financial capabilities of Australian consumers and investors.

ASIC's MoneySmart website is a central source for trusted and impartial financial guidance and tools. Over 7 million people visited MoneySmart in 2016–17. The website attracts over 890,400 sessions a month. 89% of users reported that they took action on their finances after visiting the website.

Our financial capability program is informed by research, education and behavioural insights to reflect an understanding of how investors and consumers make decisions.

The recent Australian Financial Attitudes and Behaviour Tracker research found that the majority of Australians (58%) continue to feel confident about managing their money, but a larger proportion (36%) than in previous years say dealing with money is stressful and overwhelming.

In 2016–17, we developed tools and resources to help consumers and investors feel more confident when managing their money. These included our new Financial Advice Toolkit and Simple Money Manager tool for culturally and linguistically diverse Australians.

1. The Australian Financial Attitudes and Behaviour Tracker, Wave 5, was conducted in February and March 2017. The total sample size of 1,375 adult Australians has a maximum margin error of  $\pm 2.6\%$  at the 95% level of confidence. This means ASIC can be 95% confident that the survey estimates will reflect the real world to within  $\pm 2.6\%$ .
2. Wave 5 of the Australian Financial Attitudes and Behaviour Tracker is the first time that ASIC incorporated a question about investors' and consumers' experience of the Australian financial system. Respondents were asked to answer questions in the context of their own financial situation.

## 2.1 Investor and consumer trust and confidence *continued*

We provide guidance to industry aimed at enhancing industry participants' understanding of their legal obligations and how we administer the law. We published 20 regulatory guides and six information sheets in 2016–17 on topics such as digital advice, remediation by advice licensees and risk management by responsible entities.

### Surveillance

Gatekeepers play a crucial role in the overall health of the financial system. Their conduct influences the level of trust and confidence that consumers and investors can have in the financial system.

In 2016–17, we completed 557 high-intensity surveillances in the deposit-taking and credit, financial advice, investment management and superannuation sectors to ensure that financial services providers complied with their conduct obligations.

Our surveillances focused on areas such as mortgage broker remuneration, life insurance, financial advice, superannuation trustees and custodians.

We published a report in March 2017 on our review of how effectively Australia's largest banking and financial services institutions oversee their financial advisers. Our review identified a number of areas of concern where further improvements are needed. For example, we found that the background and reference checking on new financial advisers was inadequate.

We also published a report in June 2017 of how responsible entities complied with their obligations under the law. Our review found that there were some areas where our expectations of 'what good looks like' were not met. This included managing conflicts of interest, breach reporting, custody arrangements and risk management systems.

### Enforcement


Where we detected a failure, or failures, to comply with conduct obligations through our surveillance activities, we responded by taking action to hold these financial service gatekeepers to account.

During 2016–17, there were over 270 surveillances where we responded to failures to comply with conduct obligations. For example, we:

- ♦ banned 100 people or companies from providing financial services
- ♦ banned 108 people or companies from providing credit services for failing to comply with their responsible lending obligations or engaging in unlicensed credit activity
- ♦ took action where credit licensees, superannuation trustees and responsible entities made misleading statements to consumers and investors. There were 55 instances of potentially misleading or deceptive promotional material withdrawn or amended in 2016–17.

Our activities also resulted in improvements to some entities' business practices or processes. For example, in December 2016, some of Australia's largest timeshare operators, ULTIQA Lifestyle Points Limited and ULTIQA Lifestyle Promotions Limited, agreed to significantly change their operations, including revising their sales and supervision processes.

When consumers suffered loss due to an organisation's failures, we took action in an effort to ensure that these consumers were appropriately compensated. Our actions contributed to \$837.7 million of compensation and remediation paid, or ordered to be paid, to consumers in 2016–17. This included a Supreme Court (Qld) order for \$617.2 million in compensation against four former officers of MFS Investment Management Limited.



---

We are also establishing the ASIC Financial Services and Credit Panel, after this proposal was supported by the majority of respondents to our April 2017 consultation. The Panel will add a strong element of peer review to sit alongside our current process for taking administrative action against participants in the financial services and credit industries. The Panel will consist of financial services and credit industry participants and at least one ASIC staff member. In 2017–18, we will officially launch the Panel and seek expressions of interest from individuals with relevant experience to become members of the Panel.

## Policy advice

In 2016–17, ASIC met with Treasury and provided policy advice in such areas as the Australian Consumer Law, reforms to the professional standards of financial advisers and implementation of the crowd-sourced funding regime and Asia Region Funds Passport.

We also provided input to Treasury on the life insurance remuneration reforms, including providing feedback on draft legislation. The *Corporations Amendment (Life Insurance Remuneration Arrangements) Act 2017*, passed in February 2017, removes the exemption for life insurance from the ban on conflicted remuneration. This means that benefits, such as commissions paid for life insurance products, will generally be considered conflicted remuneration and will be prohibited.

## Licensing

ASIC assesses applications for AFS licences and credit licences. We also maintain a number of professional registers, including registers of liquidators, registered company auditors and self-managed superannuation funds (SMSF) auditors.

This licensing function is an important element of our regulatory framework. The assessment of applications is not an automatic process. We subject each application to a detailed and rigorous assessment.

This is to ensure that only suitable persons and organisations are licensed or registered and that applicants are only licensed to provide financial and credit services and products that they are competent to provide.

In 2016–17, we assessed over 3,000 applications for AFS licences and credit licences. We approved 1,159 AFS licences and 406 credit licences:

- ♦ of the number of new AFS licences approved, we granted 512 limited licences for SMSF advice, 142 licences to insurance dealers and 13 licences to insurance brokers
- ♦ of the new credit licences approved, we granted 231 licences to mortgage and finance brokers.

We refused six applications and over 650 licence applications were withdrawn or not accepted for assessment because of material deficiencies in the information provided.

We also assessed over 350 applications for registration as liquidators (including official liquidators) and auditors (including company auditors and SMSF auditors). Of these applications, we approved 64 liquidator registrations and 178 auditor registrations.

ASIC will consider any necessary changes to our Service Charter standards and targets based on current resourcing and as a result of applying a more rigorous approach to assessing licence applications.

## 2.2 Fair and efficient markets

### Performance objective

To ensure fair and efficient markets.

### Source

This performance objective is set out in:

1. ASIC's Portfolio Budget Statement 2016–17 (at page 140)
2. ASIC's Corporate Plan 2016–17 to 2019–20 (at pages 33–34).

### Targets

ASIC will ensure fair and efficient markets through stakeholder engagement, education, guidance, surveillance, enforcement and policy advice.

Our 2016–17 targets are set out in the Portfolio Budget Statement (at pages 140–141) and ASIC's Corporate Plan 2016–17 to 2019–20 (at page 34).

### Key results: Fair and efficient markets

Outcome	2016–17	2015–16	2014–15	2013–14
<b>Stakeholder engagement</b>				
Meetings with industry groups and other stakeholders <sup>1</sup>	1,131	903	876	487
Consultation papers published	12	12	7	4
Industry reports published	29 <sup>2</sup>	11	4	4
<b>Guidance</b>				
New or revised regulatory guides published	7	14	13	13
New or revised information sheets	16 <sup>3</sup>	7	10	29
Legislative instruments made, amended and repealed	52	65	20	24
Relief applications received <sup>4</sup>	1,380	1,531	1,576	1,913
Approved <sup>4</sup>	879	951	1,064	1,528
Refused <sup>4</sup>	59	56	106	85
Withdrawn <sup>4</sup>	289	346	268	300
In progress <sup>4</sup>	153	178	138	

1. Data reflects reporting in given years on the basis of corporate structure and methodology at that time. In 2013–14, there was a change in methodology. As a result, meetings involving multiple ASIC teams have been counted against each team involved. Data does not include meetings held by Commissioners.
2. In 2016–17, we published six feedback reports in response to consultation on remaking ASIC's legislative instruments, as part of our sunseting work. This year was a peak period for our sunseting work. A number of major industry reviews were completed in 2016–17, including reviews of market practices in relation to initial public offerings, emerging market issuers and sell-side research. These reports are in addition to those published regularly by ASIC, such as the biannual market integrity and corporate finance reports.
3. In June 2017, ASIC published six new or updated information sheets on audit quality and financial reporting.
4. Data reflects point-in-time reporting in given years. A breakdown of withdrawn and in-progress applications is not available for 2013–14.

Outcome	2016–17	2015–16	2014–15	2013–14
<b>Surveillance</b>				
High-intensity surveillances completed	880 <sup>5</sup>	980 <sup>5</sup>	459 <sup>6</sup>	907
Trading alerts produced as part of our real-time supervision of financial markets	40,488	44,224	37,763	36,346
Number of matters further inquiries were made into as a result of trading alerts	142	206	214	224
Instances of potentially misleading or deceptive promotional material withdrawn or amended	11 <sup>7</sup>	–	–	–
<b>Enforcement</b>				
<b>Investigations</b>				
Investigations commenced	95	113	152	127
Investigations completed	82	96	143	125
<b>Criminal actions</b>				
Criminal litigation completed <sup>8</sup>	13	18	18	16
Criminal litigation completed successfully <sup>8</sup>	92%	94%	94%	88%
New criminal litigation commenced <sup>8</sup>	6	6	17	17
Number of people convicted	10	15	17	15
Custodial sentences (including fully suspended)	7	15	13	10
Non-custodial sentences/fines	3	0	4	5
Total dollar value of fines	\$34,500	\$115,000	\$40,000	\$80,000
<b>Civil actions</b>				
Civil litigation completed	23	18	11	16
Civil litigation completed successfully	87%	100%	55% <sup>9</sup>	81%
New civil litigation commenced	31	30	14	21
Total dollar value of civil penalties	\$1.3m <sup>10</sup>	–	–	\$1.2m

5. Due to a change in methodology in 2015–16, additional surveillance activities, such as inquiries into potential market misconduct, are now included.
6. In 2014–15, the figure for high-intensity surveillances did not include the number of document reviews completed (e.g. reviews of prospectuses and offer documents) due to a change in methodology.
7. In 2016–17, there were eight instances of potentially misleading or deceptive promotional material withdrawn or amended by the Market Supervision team and three instances by the Corporations team.
8. Excludes summary prosecutions for strict liability offences.
9. Of the 11 proceedings completed in this category in 2014–15, four of the five unsuccessful actions against individual subjects related to the matter of Mariner Corporation Limited, which involved litigation on an untested provision of the Corporations Act.
10. In 2016–17, the total dollar value of civil penalties included \$800,000 in penalties against Sino Australia Oil and Gas Limited, and \$400,000 in penalties against Hochtief AG.

## 2.2 Fair and efficient markets continued

Outcome	2016–17	2015–16	2014–15	2013–14
<b>Administrative actions<sup>11</sup></b>				
Administrative actions completed	34	28	24	22
New administrative actions commenced	20	19	30	21
People disqualified or removed from directing companies	51	39	40	62
Action taking against auditors and liquidators	29	24	6	13
<b>Enforceable undertakings</b>				
Enforceable undertakings accepted	9	9	10	8
<b>Infringement notices</b>				
Number of infringement notices issued – Market integrity rules	12	9	9	12
Dollar value of infringement notices – Market integrity rules	\$2.29m	\$984,000 <sup>12</sup>	\$541,000 <sup>12</sup>	\$1.02m
Number of infringement notices issued – ASIC derivative transaction rules	1	–	–	–
Dollar value of infringement notices – ASIC derivative transaction rules	\$127,500 <sup>13</sup>	–	–	–
Number of infringement notices issued – Continuous disclosure	1	4	4	6
Dollar value of infringement notices – Continuous disclosure	\$33,000	\$132,000	\$132,000	\$198,000
<b>Summary prosecutions</b>				
Summary prosecutions for strict liability offences	438	410	355	314
<b>Compensation</b>				
Compensation or remediation	–	–	\$943,418	\$2.7m
Community benefit payments	\$13.7m <sup>14</sup>	\$160,000	\$1.7m	\$4.0m

11. An administrative action is a decision by a delegate of ASIC or the Companies Auditors Disciplinary Board to exercise a statutory protective power. Examples of an administrative action are a decision to disqualify a person from managing corporations, prohibit a person from providing financial services, cancel or suspend an AFS licence, impose additional conditions on an AFS licence or cancel the registration of a person as an auditor or a liquidator.

12. The number of infringement notices issued in 2014–15 and 2015–16 did not change. In 2015–16, the average value of the infringement notices issued was significantly higher (\$109,333) compared to 2014–15 (\$60,111).

13. In 2016–17, Westpac paid an infringement notice penalty of \$127,500 for an alleged breach of the ASIC Derivative Transaction Rules (Reporting) 2013. This was the first infringement notice issued by ASIC under the Derivative Transaction Rules.

14. In 2016–17, Westpac, ANZ, Commonwealth Bank of Australia, National Australia Bank and Macquarie Bank agreed to pay community benefits of \$3 million, \$3 million, \$2.5 million, \$2.5 million and \$2 million respectively as part of their individual enforceable undertakings with ASIC. ASIC accepted these enforceable undertakings in relation to the banks' wholesale foreign exchange businesses.

## Analysis of our performance

ASIC's focus is on ensuring that Australia's financial markets are fair and efficient. Culture and incentives that drive poor conduct by gatekeepers, including directors and market participants, can undermine investor trust and confidence in our markets.

### Stakeholder engagement

Engaging with key stakeholders through regular meetings helps us achieve our vision. It helps us to set and maintain regulatory standards, and identify issues in the market.

In 2016–17, we held 1,131 meetings with a number of key external stakeholders, including companies, auditors, liquidators, market operators, market intermediaries, peer regulators and industry bodies.

For example, we continued to engage with industry on:

- ♦ cyber preparedness and best practice standards for the marketplace
- ♦ the handling of confidential information, managing conflicts of interest and sound remuneration practices.

### Education and guidance

In supporting fair and efficient markets, we provided guidance to industry aimed at improving standards and enhancing industry participants' understanding of their legal obligations.

We published seven regulatory guides and 16 information sheets in 2016–17. For example, we published:

- ♦ guidance on distributed ledger technology, also known as blockchain technology, and our approach to assessing its use in the provision of financial, credit and market services
- ♦ guidance to industry about the insolvency law reforms, including the new registration and insurance requirements for registered liquidators.

## Surveillance

Market integrity is fundamental to a well-functioning financial system. Measuring and monitoring market cleanliness provides an overview of market integrity to better inform our regulatory work. Our review into market cleanliness, published in August 2016, found that market integrity had improved over the past 10 years.

The review also found that there has been a decline in anomalous trading activity ahead of material price-sensitive announcements over the relevant period, indicating an improvement in market integrity.

In 2016–17, we completed 880 high-intensity surveillances in the corporations, market infrastructure and intermediaries sectors. Our surveillances focused on areas such as handling confidential information, managing conflicts of interest, improving fundraising disclosure and financial reporting.

Our report on sell-side research and corporate advisory services in August 2016 found that some licensees did not have appropriate arrangements in place to manage material, non-public information or conflicts involving sell-side research. In June 2017, we consulted on new guidance for industry on dealing with these issues.

Our surveillance of financial market infrastructure in 2016–17 focused on thematic reviews of technology and risk management, and adherence to appropriate standards of fairness, integrity and efficiency.

We completed an extensive review in response to the ASX outage of 19 September 2016, which affected the operation of the Australian equity market. Our report in December 2016 included recommendations for ASX and market participants that were designed to improve the resilience and robustness of the wider market, and promote confidence that any future incidents will be managed as effectively as possible.

## 2.2 Fair and efficient markets *continued*

We also completed our assessment of Sydney Stock Exchange Limited (SSX), which continued our work ensuring that Australian listing markets operate in a way that supports market integrity and investor confidence. We published our report and imposed additional licence conditions on SSX, targeting improved conflict handling arrangements.

We completed our investigations into the wholesale spot FX market and released a report in May 2017 setting out some key observations and good practice principles to manage behavioural drivers of conduct.

### Enforcement

Poor conduct by gatekeepers, such as directors and market intermediaries and market infrastructure providers, can undermine good governance practices and risk management systems, with impacts on retail investors and the overall health of the financial system.

Where we detected failures to comply with conduct obligations through our surveillance activities, we responded by taking action to hold these gatekeepers to account.

During 2016–17, there were over 600 surveillances where we responded to failures to comply with conduct obligations. For example, we:

- ♦ acted when directors and other senior officers failed to comply with their continuous disclosure obligations. For example, in August 2016, the directors of Padbury Mining Limited breached their duties and were disqualified from managing corporations for three years
- ♦ acted where disclosure in prospectuses and offer documents was potentially misleading, including by issuing final stop orders where we had concerns about the disclosure
- ♦ acted to ensure that 11 entities recognised asset impairments and other write-downs, totalling \$937 million, following our reviews of more than 320 financial reports of listed entities and other public interest entities
- ♦ investigated and successfully prosecuted three individuals for insider trading. For example, in December 2016, we obtained declarations from the Federal Court that Hochtief AG had engaged in insider trading. Hochtief AG was fined \$400,000.

Additionally, the Markets Disciplinary Panel issued 12 infringement notices, imposing a total of \$2,288,750 in penalties for breaches of ASIC's market integrity rules.

We took action against auditors for breaching the Corporations Act and Australian auditing standards. In 2016–17, we removed 487 SMSF auditors from the SMSF auditor register, which included 287 auditors who failed to lodge annual statements.

We also took action to ensure that liquidators meet their obligations to creditors. For example, in June 2017, we accepted an enforceable undertaking from Raymond Anthony Sutcliffe, a registered liquidator from Victoria. Our investigation into 43 of Mr Sutcliffe's external administrations found that he had not adequately discharged his duties as a liquidator. Mr Sutcliffe requested a cancellation of his registration and, under the enforceable undertaking, he agreed not to re-apply for registration for three years.

### Policy advice

In 2016–17, ASIC met with Treasury and provided policy advice in such areas as employee share schemes, insolvency law reforms, reforms to financial benchmarks and the markets licensing regime.

We also continued to engage and provide policy advice to international regulators, such as the European Commission and the US Commodity Futures Trading Commission, to support their decisions on the equivalence of the Australian regulatory framework. This work enabled Australian businesses to operate globally based on their Australian regulatory authorisations, saving them millions of dollars in additional compliance costs.

We also worked with the International Forum of Independent Audit Regulators on initiatives, such as improved information sharing, improved auditing and ethical standards, and information sharing on enforcement approaches.

## Timeliness of enforcement actions

ASIC recognises the importance of delivering timely enforcement actions to deter wrongdoing and promote investor and consumer trust and confidence in the financial system.

To support our commitment to transparency, we report on the average time taken to:

1. complete the investigation phase of our enforcement activities
2. achieve a criminal, civil or administrative decision each year.

We measure the length of our criminal investigations from the date matters are first drawn to our attention to the date they are referred to the Commonwealth Director of Public Prosecutions.

We measure the length of civil and administrative investigations from the date matters are first drawn to our attention to

the date proceedings are filed or matters are referred to an ASIC delegate or the Companies Auditors Disciplinary Board.

The average time taken to achieve criminal, civil and administrative decisions is measured from the date the investigation phase is finalised and is impacted by matters that are subject to an appeal of the decision.

The time involved in achieving enforcement outcomes can be affected by many factors. As enforcement actions tend to run over several years, care needs to be taken when comparing one year to another. The average time taken to receive a court decision for criminal and civil matters has increased in 2016–17 due to a number of complex matters being contested by defendants.

We are exploring ways to improve the efficiency and timeliness of our enforcement processes, such as using e-surveillance, e-investigation and e-discovery to expedite investigation and discovery.

### Timeliness of enforcement actions (in months)

Outcome	2016–17	2015–16	2014–15	2013–14
<b>Criminal actions</b>				
Average time to complete an investigation	22	24	16	18
Average time to a criminal court decision	44	31	29	22
<b>Total</b>	<b>66</b>	<b>55</b>	<b>45</b>	<b>40</b>
<b>Civil actions</b>				
Average time to complete an investigation	24	12	28	20
Average time to a civil court decision	27	10	25	15
<b>Total</b>	<b>51</b>	<b>22</b>	<b>53</b>	<b>35</b>
<b>Administrative actions</b>				
Average time to complete an investigation	19	20	32	33
Average time to an administrative decision	6	6	13	13
<b>Total</b>	<b>25</b>	<b>26</b>	<b>45</b>	<b>46</b>

## 2.3 Efficient registration services

### Performance objective

To provide efficient registration services.

### Source

This performance objective is set out in:

1. ASIC's Portfolio Budget Statement 2016–17 (at page 140)
2. ASIC's Corporate Plan 2016–17 to 2019–20 (at page 38).

### Targets

ASIC's delivery of efficient registration is measured by:

- ♦ total companies registered
- ♦ new companies registered
- ♦ total business names registered
- ♦ new business names registered
- ♦ estimated savings in fees to register or renew business names
- ♦ number of calls and online inquiries responded to
- ♦ percentage of forms lodged online
- ♦ number of searches on ASIC registers
- ♦ performance against ASIC's service charter.

Our 2016–17 targets are set out in the Portfolio Budget Statement (at pages 140–141) and ASIC's Corporate Plan 2016–17 to 2019–20 (at page 38).

### Key results: Efficient registration services

Results against our performance	2016–17	2015–16	2014–15	2013–14
Total companies registered	2.50m	2.37m	2.25m	2.12m
New companies registered	249,394	246,051	235,182	212,573
Total business names registered	2.19m	2.07m	2.15m	1.99m
New business names registered	348,268	337,413	327,687	299,988
Estimated savings in fees to register or renew business names	\$47.4m	\$41.7m	\$41.4m	\$40.2m
Calls and online inquiries responded to by our Customer Contact Centre	818,928	861,767	888,843	1,080,690
Registry lodgements	2.9m	2.8m	2.7m	2.4m
Percentage of registry lodgements online	91%	90%	87%	86.1%
Number of searches of ASIC registers	90.6m	90.7m	86.2m	76.2m



---

## Analysis of our performance

The ASIC Registry is a critical part of Australia's economic infrastructure. The ASIC Registry:

1. maintains various public registers, including registers of companies, business names and professionals
2. makes information on our online registers accessible to all Australians
3. collects fees and charges that contribute around \$920 million to Commonwealth revenue annually.

Our registry services are accessible, easy to use, and require minimal paperwork. This allows our customers to run their businesses without unnecessary red tape.

### Maintaining our registers

ASIC's registers are the official source of information about the business names, companies and financial professionals that are registered or licensed to operate in the Australian economy.

Our work helps ensure that information on our registers remains current, and helps our customers meet their compliance obligations.

The two largest registers – the companies register and Business Names Register – contain the details of more than 2.5 million companies and 2.19 million business names. In 2016–17, 97.3% of companies and business names were registered within one business day of ASIC receiving a complete application.

Because we aim to provide customers with simple, online services that add value to the Australian economy, many of our registers are fully online. In 2016–17, 91% of all 2.9 million registry lodgements were completed online. There were also 90.6 million searches of ASIC registers in 2016–17, 99.9% of which were conducted online.

The companies register (54.6 million searches), and the Business Names Register (32.2 million searches) were the two most-searched ASIC registers.

We estimate that the Business Names Register saved businesses \$47.4 million in reduced fees to register or renew business names in 2016–17. Businesses have saved a total of \$209.8 million since the register commenced in May 2012.

### Supporting our customers

We offer customers the choice of contacting us by telephone, via our website, through social media or by mail.

Our Customer Contact Centre provides front-line support for customers. In 2016–17, we responded to 818,928 (answered) calls and online inquiries. Approximately 91% of these inquiries were answered immediately. We also responded to 95.7% of general email inquiries within three business days.

Our social media presence increased significantly in 2016–17. We had 8,350 ASIC Connect Facebook followers and 16,735 ASIC Connect Twitter followers at 30 June 2017, an increase of 30% and 27% respectively from 2015–16.

In 2016–17, we worked to tailor our messaging to the needs of our customers. For example, our social media and website content aimed to raise awareness of new issues impacting our customers, such as malicious scam emails.

---

## 2.4 Banking Act, Life Insurance Act, unclaimed money and special accounts

---

### Performance objective

To ensure that:

1. refunds of unclaimed money are paid to successful claimants promptly
2. payments of money from special accounts are made promptly in accordance with the specified purposes or appropriate legislation.

### Source

This performance objective is set out in ASIC's Portfolio Budget Statement 2016–17 (page 142).

### Targets

ASIC will process claims within 28 days of receiving all necessary claim documentation.

### Analysis of our performance

ASIC reunites people with their unclaimed money. We maintain a register of unclaimed money from banks, credit unions, building societies, life insurance companies and friendly societies, as well as shares that have not been collected from companies.

In 2016–17, we successfully processed 100% of claims for unclaimed money (including special accounts) within 28 days.

We received \$79 million in unclaimed money, considerably more than the \$46.4 million we received in 2015–16.

We paid out a total of \$82 million in claims in 2016–17, compared with the \$124.4 million in the previous year. We also paid claimants interest of \$3.7 million on the total amount of claims paid.