



**ASIC**

Australian Securities & Investments Commission

**REPORT 561**

# **Regulator Performance Framework: ASIC self-assessment 2016–17**

December 2017

## **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 in 2016–17.

### 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.

### Previous self-assessment reports against the Regulator Performance Framework

Report number	Report date
<a href="#">REP 511</a>	December 2016 (released January 2017)

# Contents

<b>A</b>	<b>Introduction .....</b>	<b>4</b>
	About the Regulator Performance Framework .....	4
	Evaluating our performance.....	5
	Stakeholder feedback .....	6
<b>B</b>	<b>ASIC self-assessment .....</b>	<b>7</b>
	KPI 1 and KPI 6 .....	7
	KPI 2 and KPI 5 .....	16
	KPI 3 and KPI 4 .....	26
<b>C</b>	<b>Summary of feedback from consultation.....</b>	<b>33</b>
	Responses to consultation.....	33
	General feedback .....	33
	Feedback on specific KPIs .....	34
	<b>Appendix: List of non-confidential respondents .....</b>	<b>39</b>

## 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 to regulation, efficient and coordinated monitoring, transparency, and continuous improvement of regulatory frameworks.

The Framework is just one component of ASIC's suite of performance reporting tools, which include our annual report, our service charter, and reports on enforcement, market integrity and applications for relief.

### 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 to regulation, efficient and coordinated monitoring, transparency, and continuous improvement of regulatory frameworks.
- 4 In October 2017, we published a revised [Regulator Performance Framework: ASIC evidence metrics](#), a set of evidence metrics to support the KPIs. Detailed results of our achievements against the evidence metrics are set out in Section B of this report.
- 5 Under these revised metrics, to improve clarity and reduce repetition of relevant evidence metrics in our self-assessment, we decided to group KPIs together where we consider there is overlap in the nature and purpose of those KPIs. We set out these grouped KPIs in 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 13–62
KPI 6: Regulators actively contribute to continuous improvement of regulatory frameworks	
KPI 2: Communication with regulated entities is clear, targeted and effective	See paragraphs 64–117
KPI 5: Regulators are open and transparent in their dealings with regulated entities	
KPI 3: Actions undertaken by regulators are proportionate to the regulatory risk being managed	See paragraphs 119–161
KPI 4: Compliance and monitoring approaches are streamlined and coordinated	

## Evaluating our performance

- 6 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*, each year our corporate plan sets out our performance evaluation framework by which we measure our performance.
- 7 We use a range of qualitative and quantitative measures to assess and report on our performance, to tell a cohesive 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.
- 8 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 <a href="#">ASIC service charter</a> 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 inquiries.
Enforcement report	The <a href="#">enforcement report</a> is part of our commitment to transparency about our enforcement work. It provides a high-level overview of our enforcement priorities and highlights some important cases and decisions during the period.

Tool	Description
Market integrity report	The market integrity report highlights our achievements in market surveillance and market integrity enforcement during the period, as well as outlining out key short-term priorities. In addition, we publish quarterly data on market characteristics (including volatility), measures of market concentration and measures of market efficiency.
Reports on relief applications	The <a href="#">relief report</a> summarises examples of situations where we have exercised, or refused to exercise, ASIC's exemption and modification powers.
Cost Recovery Implementation Statement (CRIS)	The <a href="#">CRIS</a> is one of a number of key accountability and transparency measures incorporated into the ASIC industry funding model. It explains how we expect to spend our regulatory resources for the financial year by activity, industry sector and subsector, and how levies under the model will be calculated.

## Stakeholder feedback

- 9 We value stakeholder feedback as a means of helping us to communicate and maintain regulatory standards and identify issues in the market.
- 10 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 2016–17 against the published evidence metrics for each group of KPIs.

### KPI 1 and KPI 6

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

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

- 11 We consider that KPIs 1 and 6 are complementary. KPI 1 relates to how we administer the regulatory framework to minimise any unnecessary regulatory burden. KPI 6 relates to how we contribute to the process of improving the regulatory framework itself, such as by providing policy advice to government. Both of these KPIs contribute to ensuring that our stakeholders are subject to efficient and appropriate regulation that minimises regulatory costs.
- 12 We assess our performance against these KPIs based on how we:
- (a) demonstrate an understanding of the markets in which our regulated population operate, and best practice regulatory approaches in those markets;
  - (b) promote public discussion of market and regulatory developments by engaging with stakeholders through regular meetings, external committees and panels, and hosting the ASIC Annual Forum;
  - (c) make it easier for regulated entities to do business, including by:
    - (i) implementing measures to reduce red tape and the compliance burden on business (including for innovative business models); and
    - (ii) effectively and efficiently considering applications by regulated entities for relief from the law; and
  - (d) contribute to continuous improvement of regulatory frameworks by providing advice to government, and identifying where reform to existing regulatory frameworks may be required.

## ASIC assessment

- 13 We have demonstrated our strong commitment to meeting these KPIs in 2016–17. We have continued to focus on administering the law efficiently and proportionately, and on engaging with the sectors we regulate. We have used ASIC’s powers to provide relief from requirements, where appropriate, to minimise costs to business. We have provided policy advice to the Australian Government and helped implement key regulatory reforms to optimise the regulatory framework for all stakeholders. We have also reviewed how our external panels operate and made positive changes to ensure we are making the best use of their expertise and perspectives.

### Understanding the market

- 14 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.
- 15 One way we demonstrate and improve our understanding of the market is through our stakeholder panels, including the External Advisory Panel, Director Advisory Panel, Markets Advisory Panel, Consumer Advisory Panel, and Registry and Licensing Business Advisory Committee.
- 16 In the second half of 2016, we consulted with these panels to identify ways to improve their effectiveness. The feedback we received was that the panels were operating well and fulfilling their roles. However, we implemented some changes to ensure that the panels focus on forward-looking, strategic discussions.
- 17 These panels meet regularly and provide advice on a wide range of issues. In addition, the Commission has maintained our enhanced engagement program to ensure they meet regularly with the boards and senior executives of the largest financial institutions and key industry associations. Commissioners hold over 50 meetings each year, in addition to meetings arising in the ordinary course of business, to discuss particular issues.
- 18 Additionally, in March 2017 we established the Office of Small Business, which aims to support the small business sector to succeed as a key driver of the Australian economy. We do this by:
- (a) engaging with small business and government bodies, to understand and respond to the challenges and opportunities faced by small business;
  - (b) assisting small business through our registry services and by providing information and guidance; and
  - (c) helping protect small business by working to level the playing field through surveillance, enforcement and policy work.



### **Making it easier for business**

- 19 We continue to reduce red tape and lower compliance costs by working closely with Treasury, the Office of Best Practice Regulation (OBPR) and the Australian Government.
- 20 In 2016–17, ongoing compliance costs increased by \$27.8 million after the introduction of the revised regulatory framework for charitable investment funds. However, since September 2013, we have reduced ongoing annual compliance costs by almost \$455.7 million.
- 21 A significant component of our approach to reducing red tape is by using ASIC’s relief powers to set aside certain legal obligations where the compliance cost savings outweigh the regulatory risks to investors and consumers.
- 22 In 2016–17, we received 1,818 applications for individual relief. Of these, we granted relief in response to 1,129 applications (62%).

### **Continuous improvement of regulatory frameworks**

- 23 We continue to actively identify, report on and address a range of significant market and conduct problems in the sectors we regulate.
- 24 We regularly review and update our regulatory guides and information sheets to ensure that they remain relevant and appropriate to the issues they address.
- 25 Our regulatory guides give guidance to regulated entities by explaining when and how we will exercise specific powers under legislation (primarily the *Corporations Act 2001* (Corporations Act)), explaining how we interpret the law, describing the principles underlying our approach, and giving practical guidance. Information sheets provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.
- 26 During 2016–17 we contributed to continuous improvement of regulatory frameworks by providing advice to the Australian Government, including submissions to parliamentary inquiries, on a variety of issues.

## **Supporting evidence**

### **1.1 Understanding the market**

*1.1.1 ASIC publishes an environmental scan and risk outlook as part of its corporate plan.*

- 27 Our environmental scan provides a snapshot of the broad external economic and financial environment, as well as demographic and behavioural factors affecting our remit and regulated populations.

28 The scan highlights key trends, developments, risks, challenges and opportunities impacting the consumers, investors and regulated entities. This information is available in [ASIC’s Corporate Plan 2016–17 to 2019–2020: Focus 2016–17](#) (Corporate Plan 2016–17), which was published on 31 August 2016.

*1.1.2 ASIC seeks regular feedback from stakeholders to measure perceptions of trust and confidence and market integrity.*

29 We are committed to better understanding investors’ and consumers’ perceptions of trust and confidence in the sectors we regulate. We do this by maintaining open working relationships with our regulated entities.

30 In our [Corporate Plan 2016–17](#), we highlighted that we were exploring options to refine our approach to measuring stakeholder trust and confidence in industry sectors. We have continued to do this and have identified the following sources that will form part of our performance reporting:

- (a) indicators of perceptions of trust and confidence in sectors we regulate, based on published surveys;
- (b) findings from ASIC reports and reviews, where these are relevant to investor and consumer trust and confidence and the performance of markets; and
- (c) measures of the cleanliness of the Australian listed equity market, by analysing price movements or shifts in trading behaviour before company announcements.

31 As part of our Australian Financial Attitudes and Behaviour Tracker research, we found that 19% of Australians reported a negative experience with financial service providers, including banks, financial advisers, mortgage brokers, insurance companies and superannuation providers (see the [ASIC Annual Report 2016–17](#) for more information on perceptions of trust and confidence of investors and consumers).

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

32 One of the ways we promote investor and consumer trust and confidence is by engaging key stakeholders through regular meetings. These meetings help us to communicate expectations and maintain regulatory standards, and identify issues in the market.

33 In 2016–17, we held 1,928 meetings with a number of key external stakeholders across our regulated sectors, including lenders, mortgage brokers, insurers, financial advisers, responsible entities, superannuation trustees, companies, auditors, liquidators, market operators, market intermediaries, peer regulators and industry bodies.

#### 1.1.4 Stakeholder panels meet regularly.

- 34 Regular engagement with our stakeholder panels is one of the ways in which we keep up to date with trends and issues in the market.
- 35 The External Advisory Panel helps ASIC gain a deeper understanding of developments and systemic risks within the financial services industry. In 2016–17, the panel met four times and provided advice and feedback on a wide range of matters, including the impact of political events on the financial sector and challenges in the housing market. The panel also discussed our work in the areas of superannuation and corporations, reform proposals affecting ASIC, and the ASIC Capability Review.
- 36 The Director Advisory Panel channels senior-level advice from company directors of listed entities so that we can gain a deeper understanding of developments and systemic risks in the corporate sector. Members of the panel are drawn from entities of various sizes, representing different sectors and locations in order to provide us with views from a broad spectrum of Australian listed entities.
- 37 Other panels established to provide ASIC with advice and guidance include the Consumer Advisory Panel, Markets Advisory Panel, Digital Finance Advisory Committee, Financial Advisers Consultative Committee and the Registry and Licensing Business Advisory Committee.
- 38 [Information about our external committees and panels](#), including the purpose of each committee, membership and a summary of issues the panels have considered, is available on our website and in the [ASIC Annual Report 2016–17](#).

#### 1.1.5 ASIC holds an Annual Forum.

- 39 ASIC's Annual Forum was held on 20–21 March 2017 in Sydney. The theme of the 2017 forum was 'Future Focus', exploring the balance between innovation and stability in the rapidly transforming global financial system. A total of 613 delegates attended the 2017 forum, an increase from 586 in 2016.

## 1.2 Making it easier for business

#### 1.2.1 ASIC complies with Office of Best Practice Regulation requirements, including preparing cost–benefit analyses in Regulation Impact Statements for significant regulatory changes.

- 40 OBPR has confirmed that we fully complied with the requirement to prepare a Regulation Impact Statement (RIS) for all relevant regulatory proposals in 2016–17. Additionally, all required RISs were found to be consistent with best practice.

- 41 In 2016–17, we prepared RISs for two proposals:
- (a) charitable investment fundraisers; and
  - (b) risk management systems for responsible entities.

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

- 42 We have provided reasonable transition periods where possible. For example, we released [Regulatory Guide 259 Risk management systems of responsible entities](#) (RG 259), which set out additional good practice guidance to responsible entities on our expectations for compliance with their existing obligation under the Corporations Act. As part of this guidance, we indicated that we will be taking a constructive and facilitative approach to any failures to implement the guidance for a period of 12 months, until 27 March 2018, provided a responsible entity can show it is taking steps to bring its risk management systems in line with the guidance.

*1.2.3 ASIC regularly publishes a report summarising examples of situations where it has exercised, or refused to exercise, exemption and modification powers in response to applications for relief from the law.*

- 43 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 Consumer Credit Protection Act 2009* (National Credit Act).

- 44 Our 2016–17 relief reports are:
- (a) [Report 530 Overview of decisions on relief applications \(October 2016 to March 2016\)](#) (REP 530), published on 20 June 2017; and
  - (b) [Report 506 Overview of decisions on relief applications \(April to September 2016\)](#) (REP 506), published on 12 December 2016.

*1.2.4 ASIC publishes service standards for making decisions about applications for relief and reports annually on its performance.*

- 45 Under [our service charter](#), we aim to make a 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 make a decision within 90 days on 90% of these applications.

- 46 In 2016–17, we made a relief decision on 77% of the relief applications within 28 days, and on 95% of applications within 90 days.

### 1.3 Continuous improvement of regulatory frameworks

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

- 47 In 2016–17, we made submissions to Senate and Parliamentary Joint Committee (PJC) inquiries and appeared when required.
- 48 In April 2016, the Australian Government announced that an independent panel, chaired by Professor Ian Ramsay, would review the financial system’s external dispute resolution (EDR) and complaints framework. On 9 May 2017, the Government announced that a new single EDR scheme, the Australian Financial Complaints Authority (AFCA) will replace the two ASIC-approved EDR schemes (Financial Ombudsman Service and Credit and Investment Ombudsman) and the statutory Superannuation Complaints Tribunal (SCT). We support reform of the EDR sector to improve consumer outcomes, reduce industry and regulatory costs and create a more sustainable framework in the future. We are working with the Government and all stakeholders to achieve this.
- 49 In October 2016, the Australian Government announced a taskforce to review ASIC’s enforcement regime. We have a number of priorities in this review, including addressing the type, level and consistency of penalties available to ASIC, enhancing the breach reporting regime and introducing a power that allows us to ban managers of financial services firms that breach their obligations. We welcome the ASIC Enforcement Review and will work with the Government when the findings are released.
- 50 In January 2017, we made a submission to the PJC inquiry into the life insurance industry. In our submission, we identified areas for further reform and improved oversight, including strengthening the dispute resolution framework for claims handling, implementing public reporting of life insurance claims data and strengthening our enforcement regime (in this context, enabling ASIC to seek civil penalties where insurers have breached the *Insurance Contracts Act 1984*).
- 51 In February 2017, we made a submission to the Senate inquiry into Australia’s general insurance industry. Our submission focused on:
- (a) competition and transparency in the home, strata and car insurance industries;
  - (b) independent comparison services on home, strata and car insurance cover costs in other jurisdictions; and
  - (c) other legislative reforms to establish an independent home, strata and car insurance comparison service in Australia.

- 52 In February 2017, we also made a submission to the PJC inquiry into whistleblower protections in the corporate, public and not-for-profit sectors. Our submission supported the Australian Government’s work to encourage reporting of corporate wrongdoing and better protection for whistleblowers in Australia. We recommended the introduction of a comprehensive corporate sector whistleblowing regime in Australia.
- 53 In March 2017, we made a submission to the Senate inquiry into the regulatory framework for protecting consumers in the banking, insurance and financial services sector. Our submission highlighted our work in identifying, reporting on and seeking to address significant market and conduct problems in banking, credit, financial services and insurance.
- 54 In March 2017, we made a submission on Treasury’s proposals paper [\*Design and distribution obligations and product intervention power\*](#), published in December 2016. Our submission was supportive of the Government’s initiative to strengthen consumer protection in the financial services sector by introducing a proposed product intervention power, which would enable ASIC to:
- (a) respond to market problems in a flexible, timely, effective and targeted way; and
  - (b) establish product distribution obligations for industry to foster a customer-focused culture.

*1.3.2 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.*

- 55 We contribute to international regulatory policy and standard setting through International Organization of Securities Commissions (IOSCO) committees, taskforces and various other projects and activities. In 2016–17, this included:
- (a) revising the IOSCO Objectives and Principles of Securities Regulation;
  - (b) revising the Methodology for Assessing Implementation of the IOSCO Objectives and Principles of Securities Regulation;
  - (c) participating in IOSCO’s Market Conduct Task Force, which examined the approaches and tools used by regulators to address misconduct in wholesale markets;
  - (d) contributing to a roundtable convened by IOSCO and the Financial Stability Board (FSB) on compensation practices;
  - (e) contributing as a member of IOSCO’s Committee on Investment Management, and as a member of the FSB’s Workstream 3 (which

develops policy proposals on topics such as liquidity risk management in managed investment schemes); and

- (f) acting as Deputy Chair of the Joint Committee for the Asia Region Funds Passport.

56 We are a member of the IOSCO Board and sit on a number of its policy committees and taskforces—including as Chair of the IOSCO Assessment Committee in 2016, and as Vice-Chair of the IOSCO Committee on Regulation of Market Intermediaries and Committee on Retail Investors in 2017.

57 In 2016, we led a review assessing the regulatory frameworks for capital markets in Sri Lanka through IOSCO’s Assessment Committee. This review included examining the operational efficiency of the Securities and Exchange Commission of Sri Lanka.

*1.3.3 ASIC publicly reports peer review results against relevant international practices and standards when peer review is undertaken.*

58 No peer review from a relevant body (i.e. IOSCO or the International Monetary Fund (IMF)) was undertaken in 2016–17.

59 The next IMF Financial Sector Assessment Program for Australia is scheduled for late 2018.

*1.3.4 ASIC provides advice to the Minister and Treasury concerning possible improvements to the regulatory framework that it identifies in performing its functions.*

60 Under ASIC’s [July 2014 Statement of Intent](#), we committed to copy information to the Secretary to 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.

61 ASIC–Treasury liaison meetings occur once every three months, and are attended by the Chairman of ASIC and the Deputy Secretary of the Treasury Markets Group. Other Commissioners and senior executives also attend, depending on the items being discussed.

62 The purpose of the meeting is to ensure that, when necessary, current key issues that impact ASIC and Treasury are brought to and discussed at a senior level. These meetings complement the specific assistance we provide on key law reform matters: see evidence metric 1.3.1 at paragraphs 47–54.

## KPI 2 and KPI 5

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

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

- 63 We consider that KPIs 2 and 5 primarily concern how effectively we communicate our expectations around the behaviour of our regulated population. We assess our performance against these KPIs based on how we:
- (a) manage interactions with regulated entities in an efficient manner;
  - (b) 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:
    - (i) our corporate plan;
    - (ii) guidance we provide about our regulatory expectations;
    - (iii) our approach to enforcement; and
    - (iv) our decisions on applications for relief;
  - (c) consult with our regulated population on policy proposals that affect them; and
  - (d) report to stakeholders on our performance.

### ASIC assessment

- 64 We have demonstrated ongoing commitment to achieving these KPIs. We remain committed to providing clear guidance to our stakeholders about how we expect them to comply with the law. We have also developed a new communications strategy, which is aligned with and emphasises communication of ASIC's strategic priorities. We continue to publish clear guidance on our expectations around the behaviour of our regulated entities.

### Interacting with ASIC

- 65 The [ASIC service charter](#) covers the most common interactions between ASIC and our stakeholders and sets performance targets for each.
- 66 Our Customer Contact Centre (CCC) also provides a valuable service to Australians, as the main point of contact for their inquiries. In 2016–17, we responded to 818,928 telephone and online inquiries. Approximately 91% of these inquiries were answered on the spot, and we responded to 95.7% of general email inquiries within three business days.



### **Communicating ASIC's expectations**

67 Communication is a key priority for ASIC. In last year's self-assessment, we noted that we were developing a new ASIC-wide communications strategy. We have since finalised that strategy, which is aligned with and emphasises communication of ASIC's strategic priorities.

68 The overarching objective of our new communications strategy is to clearly and consistently communicate ASIC's priorities, expectations and, where appropriate, risk tolerances.

69 We will continue to regularly review and assess our communications strategy so that our messages clearly explain our role and how we use our regulatory tools to achieve our vision.

### **Consulting with stakeholders**

70 We follow the [Australian Government Guide to Regulation](#) when developing policy proposals for consultation. This includes being clear about the problems to be addressed, such as market failure, regulatory failure or an unacceptable hazard or risk.

### **Performance measurement**

71 We are committed to evaluating our performance; as such, we have a performance evaluation framework that sets out how we will measure and evaluate our performance.

72 Our performance measures are based on:

- (a) better market outcomes, which are indicators of perceived and actual behaviours that demonstrate trust and confidence in the financial system; and
- (b) regulatory outcomes, which reflect what we do using our regulatory tools.

73 Stakeholder perceptions of ASIC have also been examined in recent years through a number of mechanisms, including the ASIC Capability Review, the ASIC Enforcement Review, the Senate inquiry into the performance of ASIC, and the Financial System Inquiry.

## Supporting evidence

### 2.1 Interacting with ASIC

*2.1.1 ASIC publishes service standards for registering business names, managed investment schemes, auditors and liquidators, and reports annually on its performance.*

- 74 One of ASIC's core objectives is to provide efficient registration services. We do this through the ASIC Registry, and our delivery of this priority is measured by the:
- (a) number of:
    - (i) total companies registered;
    - (ii) new companies registered;
    - (iii) total business names registered; and
    - (iv) new business names registered;
  - (b) estimated savings in fees to register or renew business names;
  - (c) number of calls and online inquiries responded to;
  - (d) percentage of forms lodged online;
  - (e) number of searches on ASIC registers; and
  - (f) our performance against the [\*ASIC service charter\*](#).
- 75 We aim to register 90% of business names within seven business days of receiving a complete application. We exceeded our target in 2016–17, and registered 100% of business names within this timeframe.
- 76 We aim to register 80% auditors or liquidators within 28 days of receiving a complete application. We exceeded our target in 2016–17, and registered 89% of liquidators and 94% of official liquidators within 28 days. Due to resourcing issues, and an increase in Australian financial services (AFS) licence applications as a result of the expiry of the transition period for accountants' limited licences in June 2016, we registered 67% of auditors within 28 days of receiving an application.
- 77 We registered 100% of managed investment schemes within 14 days of receiving a complete application in 2016–17.
- 2.1.2 ASIC publishes service standards for licensing financial services and credit businesses and reports annually on its performance.*
- 78 Our service charter target is to finalise 70% of applications for an AFS licence, a credit licence, or a variation to a licence within 60 days, and 90% within 120 days.

- 79 We exceeded our service charter targets for credit licences in 2016–17, finalising 77% of new applications for a credit licence within 60 days and 91% within 90 days. We finalised 82% of credit licence variation applications within 60 days, and 90% within 120 days.
- 80 Our performance against our service charter target for AFS licences fell short this year, due to resourcing issues and a greater focus on regulatory concerns in assessing applications. In 2016–17, our performance was also affected by the increase in licence applications we received following the expiry in June 2016 of the transition period for accountants' limited licences. We continue to review our service charter to ensure target levels are sustainable with current resources. In 2016–17, we finalised 21% of new applications for an AFS licence within 60 days, and 28% within 120 days. We finalised 51% of AFS licence variation applications within 60 days and 73% within 120 days.

*2.1.3 ASIC publishes complaint guidelines and keeps them up to date.*

- 81 ASIC's Complaint Management Framework was introduced in September 2015, 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. See our [Complaint management policy](#) (PDF 180 KB) for more information on how to submit a complaint to ASIC and what to expect when a complaint is lodged.

*2.1.4 ASIC addresses complaints in accordance with complaint guidelines*

- 82 Our service charter target is to resolve 70% of all complaints within 28 days of receiving all relevant information. In 2016–17, we met our target.
- 83 We finalised 767 complaints through the year (including some that remained outstanding as at 30 June 2016):
- (a) In 205 cases (27% of complaints finalised), we resolved the complaint by, for example, correcting information on our website, waiving a fee, updating information on our registers or changing an earlier decision, where appropriate.
  - (b) In 445 cases (58% of complaints finalised), after further investigation, we found the complaint was unsubstantiated. Unsubstantiated complaints are complaints where:
    - (i) our original decision to not take action following a report of misconduct or refusal to waive or refund a fee was confirmed after the review; or
    - (ii) our review found that the relevant legislation or policy had been correctly applied when making our original decision.

- (c) In 115 cases (15% of complaints finalised) we were unable to take further action, either because the complainant withdrew the complaint, the complainant did not respond to a request for further information, or the matter was outside ASIC’s jurisdiction.

*2.1.5 ASIC publishes policies and procedures about rights of review.*

84 [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.

85 INFO 9 was last updated in July 2016.

*2.1.6 ASIC seeks feedback on its level of openness and transparency in dealing with regulated entities.*

86 Transparent communication is a key priority for ASIC. We seek feedback through open working relationships with our regulated entities. This is done through regular meetings with industry stakeholders (see evidence metric 1.1.3 at paragraphs 32–33) and regular engagement through our external committees and panels (see evidence metric 1.1.4 at paragraphs 34–38).

87 To increase transparency in our dealings with our regulated entities, we publish:

- (a) industry reports—highlighting how we respond to key trends in the industry sectors; and
- (b) relief reports—summarising examples of situations where we have exercised, or refused to exercise, ASIC’s exemption and modification powers from the provisions of the Corporations Act and the National Credit Act.

88 We have reported on the relief reports we published in 2016–17 under evidence metric 1.2.3 (at paragraphs 43–46), and the corporate finance reports and market integrity reports under evidence metric 2.2.3 (at paragraph 94).

## **2.2 Communicating ASIC’s expectations**

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

89 In recent years we have taken a number of measures to increase our focus on transparency, including revamping our website, using new media channels and developing portals for direct communication with market participants that will be expanded to cover other regulated populations over time.

90 We will continue to assess the most appropriate delivery tools and channels, and are ready to adopt new tools and technology. Swift response to demands from the media and government is a given; at the same time we will continue to work to proactively shape the debate in line with our strategic priorities.

91 ASIC's [MoneySmart website](#) is a central source for trusted and impartial financial guidance and tools for more than 7 million users; 89% of users reported that they took action on their finances after visiting the website. In 2016–17, the website attracted over 890,400 sessions a month.

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

92 All our regulatory guidance publications, and extensive information on ASIC's role, functions and services, are available on the [ASIC website](#), which received 16.2 million views in 2016–17.

93 As at 30 June 2017, there are 260 regulatory guides and 224 information sheets published on our website. In 2016–17, we published 27 new or revised regulatory guides and 22 new or revised information sheets relating to our regulatory responsibilities.

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

94 In 2016–17, we published 60 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 2016 and February 2017, highlighting key statistical information about corporate finance regulation for the half year: see [Report 489](#) *ASIC regulation of corporate finance: January to June 2016* (REP 489) and [Report 512](#) *ASIC regulation of corporate finance: July to December 2016* (REP 512). These reports aim to provide greater transparency around ASIC's role in the regulation of corporations in Australia. They address observations on key trends and detail our work on the regulation of fundraising, mergers and acquisitions, corporate governance, and other general corporate finance areas.
- (b) We published two market integrity reports, in November 2016 and April 2017, providing an overview of the work of ASIC's Market Integrity Group for the half year: see [Report 501](#) *Market integrity report: January to August 2016* (REP 501) and [Report 524](#) *Market integrity report: July to December 2016* (REP 524). The reports focus on deterrence, setting standards, education, and behavioural change.
- (c) In August 2016 we published [Report 487](#) *Review of Australian equity market cleanliness* (REP 487), which found an overall improvement in the measures of cleanliness in the Australian listed equity market over the past decade. REP 487 looked at possible insider trading and

information leakage ahead of material, price-sensitive announcements by analysing price movements or shifts in trading behaviour before these announcements. The results of the review suggest that insider information and the loss of confidentiality ahead of material announcements have declined over the period.

- (d) In October 2016 we released [Report 498](#) *Life insurance claims: An industry review* (REP 498), which found that, while life insurers are paying the considerable majority of claims, there are significant shortcomings in a number of areas of life insurance claims handling. There is a clear need for public reporting on life insurance claims outcomes at an industry and individual insurer level. We reviewed 15 insurers (covering 90% of the market) and analysed three years of data on the four major life insurance policy types—term life cover, total and permanent disability cover, trauma cover, and income protection.
- (e) In the same month we issued [Report 499](#) *Financial advice: Fees for no service* (REP 499), which provided an update on our work to address financial institutions’ and advisers’ systemic failures (over a number of years) to provide ongoing advice services to customers who paid fees to receive those services. The report is part of ASIC’s Wealth Management Project, which is focusing on the conduct of the largest financial advice firms—including the advice arms of AMP Limited, Australia and New Zealand Banking Group Limited, the Commonwealth Bank of Australia, National Australian Bank Group of Companies and Westpac Banking Corporation.

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

- 95 The [ASIC website](#) is designed to be accessible and easy to use. This includes:
  - (a) designing pages so they can be read easily;
  - (b) inserting a ‘skip to content’ link at the top of the page, which allows 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.
- 96 In 2016–17, our online search service—for searching company, business names or other data online—was available 99.6% of the time during standard business hours. This exceeds our service charter target of 99.5%.
- 97 In 2016–17, our online lodgement service—for lodging company, business name or other data online—was available 99.4% of the time during standard business hours. This was just below our service charter target of 99.5%.

*2.2.5 ASIC regularly reviews and updates resources in the Customer Contact Centre and makes them available for staff to use for routine inquiries.*

- 98 Our CCC provides a valuable service to Australians, as the main point of contact for their inquiries. In 2016–17, we responded to 818,928 calls and online inquiries.
- 99 We regularly review and update resources (including call centre scripts) in the CCC 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 that the CCC can respond to customer inquiries efficiently when there is activity in the market place.

## **2.3 Consulting with stakeholders**

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

- 100 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 an unacceptable hazard or risk.

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

- 101 In 2016–17, we published nine consultation papers on major new policy. Consultation was open for at least eight weeks for three of these papers, and half of the consultation papers were open for at least six weeks.
- 102 [Consultation Paper 276](#) *Registered liquidators: Registration, disciplinary actions and insurance requirements* (CP 276) was released in January 2017 and was open for three weeks, allowing for industry to comment on our proposals to issue guidance on changes enacted by the *Insolvency Law Reform Act 2016* (passed through Parliament in February 2016) and the related *Insolvency Practice Rules (Corporations) 2016* (registered in December 2016). We issued our guidance—[Regulatory Guide 258](#) *Registered liquidators: Registration, disciplinary actions and insurance requirements* (RG 258) on 1 March 2017, the same day these reforms came into effect.
- 103 We also incorporated user testing as a component of policy development in some matters. For example, we user tested our example Statement of Advice with a small group of financial advisers before we consulted on it as part of [Consultation Paper 284](#) *Example Statement of Advice for life insurance: Update to RG 90* (CP 284).

*2.3.3 Feedback is published following 100% of formal consultation processes.*

- 104 We published 29 consultation papers, including 20 papers related to the repeal or remaking of sunseting legislative instruments. These sunseting papers were open for consultation for at least four weeks.
- 105 We published 100% of the non-confidential submissions we receive in response to our consultation papers. These can be found in our media releases and on our website. At times, we may incorporate any comments or suggestions made by the industry in response to our proposals into our final guidance or legislative instruments. Where this is the case, the responses will be released at the same time we issue our new or revised regulatory guides, or when we have remade our legislative instruments.
- 106 As at 30 June 2017, we were still finalising our guidance and/or legislative instruments in light of the feedback we received for 10 of the consultation papers. We did not receive any response to three of our consultation papers.
- 107 Six consultation papers closed after 30 June 2017. We will be publishing the non-confidential submissions in 2017–18 with our final guidance and/or legislative instruments.

*2.3.4 ASIC seeks stakeholder feedback on the use and value of ASIC guidance and ASIC's responsiveness.*

- 108 In addition to consulting on major new policies and draft guidance, we seek feedback through open working relationships with our regulated entities. This is done through regular meetings with industry stakeholders (see evidence metric 1.1.3 at paragraphs 32–33) and regular engagement through our external committees and panels (see evidence metric 1.1.4 at paragraphs 34–38), as well as through our Annual Forum. Stakeholders are able to provide their views on the use and value of ASIC guidance and our responsiveness through these channels.

**2.4 Performance measurement and reporting***2.4.1 ASIC's corporate plan is published annually.*

- 109 Our [Corporate Plan 2016–17](#) was published on 31 August 2016. In 2016–17, we outlined our view of 'what good looks like' for gatekeepers across the sectors we regulate.
- 110 We published our latest corporate plan, [ASIC's Corporate Plan 2017–18 to 2020–21: Focus 2017–18](#) (Corporate Plan 2017–18) on 31 August 2017. Corporate Plan 2017–18 explains the long-term challenges to our vision and the risks that warrant our attention in 2017–18. Our strategy for achieving our vision includes:



- (a) our ‘detect, understand and respond’ approach for identifying and addressing misconduct;
- (b) how we will continue to strengthen our capabilities;
- (c) our actions to address long-term challenges and risks—that is, the areas to which we will pay particular attention over the four-year period and the areas on which we will focus in 2017–18; and
- (d) how we will measure and evaluate our performance.

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

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

112 The Treasurer issued a Statement of Expectations to ASIC in April 2014. We  
responded with a [Statement of Intent](#) in July 2014.

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

113 As previously mentioned, the [ASIC service charter](#) covers the most common  
interactions between ASIC and our stakeholders and sets performance  
targets for these.

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

*2.4.4 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.*

115 The [ASIC Annual Report 2016–17](#) was published on 26 October 2017.

116 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 report against a range of qualitative and  
quantitative measures to assess our performance and 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.

*2.4.5 ASIC publishes its self-assessment report and external validation of the Regulator Performance Framework annually.*

117 This self-assessment, including a summary of stakeholder feedback on the  
draft self-assessment, was completed in December 2017.

## KPI 3 and KPI 4

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

KPI 4: Compliance and monitoring approaches are streamlined and coordinated

- 118 We consider that KPIs 3 and 4 primarily concern the effectiveness and efficiency of our approach to detecting, understanding and responding to regulatory risks and breaches, principally through surveillance and enforcement. We assess our performance against these KPIs based on how we:
- (a) take a risk-based approach to our surveillance activities;
  - (b) adopt 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;
  - (c) minimise the impact on the regulated population of complying with requests for information, including improving our data management and analytics; and
  - (d) cooperate and coordinate with other regulators when undertaking relevant surveillance activities.

### ASIC assessment

- 119 We have demonstrated ongoing commitment to achieving these KPIs, in particular through our risk-based surveillance tool, which guides our surveillance activities, and our published approach to enforcement.
- 120 We have invested in the development and application of big-data regulatory technology analytics and are executing our One ASIC infrastructure overhaul program. The additional funding support from the Australian Government has enabled us to establish our Chief Data Office, Data Governance Council and Data and Information Governance Framework.
- 121 Our Chief Data Office has implemented a data strategy that is aimed at improving our data management and analytics capabilities, and reducing the impact on the regulated population of complying with formal requests for information.

### Risk-based surveillance

- 122 As a law enforcement agency, we devote about 70% of our regulatory resources to surveillance and enforcement. In 2016–17, we conducted around 1,440 high-intensity surveillances and around 160 investigations across the sectors we regulate. Further information on our surveillance activities can be found in our annual report and [Corporate Plan 2017–18](#).

- 123 Taking a risk-based approach to surveillance activities ensures we are more likely to take action that is proportionate to the risk being managed. This approach directs scarce surveillance resources towards the entities, products and transactions within our regulated population that pose the greatest threats to consumer and investor trust and confidence and fair and efficient markets.
- 124 An internal guide is available to ASIC staff that explains our ‘best practice’ risk-based surveillance. The guide enables our stakeholder teams to tailor their risk-based surveillance approaches to their particular regulated population while ensuring consistency of processes across the organisation.
- 125 We conduct proactive and reactive surveillances. Both proactive and reactive surveillances can be risk-based. 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.

#### **Enforcement and transparency**

- 126 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. Our decision is influenced by the evidence and information gathered during our investigations.
- 127 We publish our approach to enforcement—see [Information Sheet 151](#) *ASIC’s approach to enforcement* (INFO 151)—so that the public can assess whether we seek to apply, and do apply, proportionate enforcement actions.

#### **Information requests**

- 128 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 make an application for a search warrant, ASIC’s powers to access telecommunication records, and ASIC’s power to make an application for a stored communications warrant.
- 129 We use these investigative powers to discover whether a suspected contravention has, in fact, occurred.
- 130 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 and we have safeguards in place to ensure that they are not misused.

131 We detail our use of ASIC’s significant compulsory information-gathering powers in our annual report.

### **Cooperation with other regulators**

132 We have 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.

133 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.

134 Through various activities and projects, we have demonstrated a strong commitment to supporting the international regulatory agenda and ensuring that Australian influence is applied to international policy setting. 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**

### **3.1 Risk-based surveillance**

*3.1.1 ASIC undertakes a strategic risk assessment annually, which is published as part of its corporate plan.*

135 Each year, we undertake an assessment to identify externally focused risks that can pose a threat to investor and consumer trust and confidence and fair and efficient markets.

136 Strategic risks are the foundation of ASIC’s corporate plan and business planning process. The corporate plan communicates our view of these risks, providing context from the macroeconomic perspective, as well as demographic trends and industry trends.

137 We detail our long-term challenges and the strategic risks that flow on from these challenges each year in our corporate plan. An updated list of our strategic risks for 2017–18 and beyond can be found in [Corporate Plan 2017–18](#).

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

138 As mentioned in paragraph 124, we have established an internal guide 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.

139 In addition, our Regulatory Transformation Program is delivering enhanced and standardised regulatory processes, a single technology platform and common language for regulatory activities, including surveillance.

140 This is an element of our One ASIC infrastructure program, a suite of initiatives about better ‘connecting the dots’ to achieve more regulatory outcomes faster. It is about working together seamlessly to use our data, resources and regulatory tools in the most effective way possible across our organisation.

*3.1.3 ASIC trains relevant staff—including relevant new staff—in risk management policies, processes and procedures.*

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

142 We recently revised the framework and it now includes a development capability plan for relevant staff to develop their foundational (core) and role-based (applied) capabilities. For example, relevant resources are allocated to develop the foundational skills relevant to all of our regulatory practice staff, such as identifying key regulatory risks faced by each staff member’s team and developing solutions to address those risks. An example of a role-based capability would be to analyse indicators of compliance culture, or to develop and apply effective surveillance strategies.

143 In 2016–17, we prepared to launch Learnhub, a new learning management system for ASIC. It is designed to be a more flexible, on-demand and resource-based system than our previous one. Learnhub was officially launched in September 2017.

144 Our Emerging Risk Committee and Operational Risk Committee assist, on an ongoing basis, in the effective management of our emerging, strategic, operational and fraud risks across all areas of its business activity. [Further information on ASIC’s internal governance](#) is published on our website.

145 Our risk management framework aligns with [International Standard ISO 31000 Risk management](#) and with the [Commonwealth Risk Management Policy](#).

146 The Operational Risk Committee makes recommendations to our Commission on improvements to ASIC’s risk management framework and practices.

### **3.2 Enforcement and transparency**

*3.2.1 ASIC publishes its approach to enforcement, which includes options for a graduated approach to compliance and enforcement.*

147 [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 such as 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 the benefits of cooperating with ASIC.

*3.2.2 ASIC regularly publishes a report about its enforcement actions.*

148 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. Our published reports covering 2016–17 were:

- (a) [Report 513](#) *ASIC enforcement outcomes: July to December 2016* (REP 513), published 8 March 2017; and
- (b) [Report 536](#) *ASIC enforcement outcomes: January to June 2017* (REP 536), published 22 August 2017.

149 As stated in the [ASIC Annual Report 2016–17](#), our overall enforcement outcomes included 10 criminal convictions, five people jailed, \$3.9 million awarded in civil penalties, 220 people or companies banned from providing financial services or credit services, seven enforceable undertakings secured, \$844.7 million in compensation and remediation for investors and consumers, and 60 infringement notices issued (with a value of \$1.9 million).

### 3.3 Information requests

*3.3.1 Formal information requests to regulated entities are targeted and take into account other formal requests for information.*

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

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

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

152 We publish statistics on the use of ASIC's most significant compulsory information-gathering powers in our annual report.

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

154 Additionally, our Chief Data Office helps ASIC keep track of and coordinate formal information requests, to limit the burden and intrusion on our regulated entities.

*3.3.2 Formal sign-off, including senior staff and legal officers, precedes all formal requests for information.*

155 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 and we have safeguards in place to ensure that they are not misused.

*3.3.3 ASIC uses data from other sources where appropriate.*

156 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 by educating stakeholders, disrupting harmful behaviour, taking enforcement action, communicating the actions we take, engaging with industry and stakeholders, and providing guidance and policy advice.

### 3.4 Cooperation with other regulators

*3.4.1 ASIC establishes coordinated approaches with peer regulators, including publishing memoranda of understanding and undertaking joint surveillance where appropriate.*

157 In addition to our membership of CFR, as mentioned in paragraph 132, we also maintain an operational and policy relationship with other Australian Government agencies, including:

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

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

159 We also 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.

160 In 2016–17, we made 330 international cooperation requests and received 405 requests from international financial regulators and other law enforcement agencies. We met with 23 delegations, including from emerging markets, to discuss consumer protection and market regulation.

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



## C Summary of feedback from consultation

### Key points

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

This section highlights the key issues that arose out of the feedback 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

- 162 We received four responses from the 20 organisations we approached for comment. We are grateful to these respondents for taking the time to send us their comments.
- 163 Two of the respondents stated that they broadly agreed with ASIC's self-assessment. There were a variety of observations from respondents on various aspects of ASIC's performance.
- 164 For a list of the non-confidential respondents, see the appendix.

### General feedback

- 165 As noted above, some respondents broadly endorsed our self-assessment for 2016–17. One respondent commented that our performance metrics could be improved by including more quantifiable measures.

#### *ASIC's response*

We amended our evidence metrics under the Framework in October 2017 to make them more flexible and clear. Our evidence metrics cover the processes and regulatory approaches we use across ASIC. We have set a range of quantitative and qualitative metrics at the whole-of-organisation level, and report our performance against these metrics.

Quantitative measures are included in our service charter, as referred to under evidence metrics 2.1.1 and 2.1.2. The [ASIC service charter](#) sets out target response timeframes for our common interactions with stakeholders, such as registration services and licensing applications, as well as measures for

responding to phone and email inquiries. The results of our performance against the service charter are reported annually in our annual report, our website and under paragraphs 74–83 of this self-assessment.

We note that measuring effectiveness beyond activity metrics (for example, the number of surveillances completed) is an ongoing challenge for regulators around the world. We continue to explore options to refine our approach to outcomes-based performance measures and more sector-specific metrics.

In 2016, we undertook an exercise comparing evidence metrics employed by various domestic and overseas regulators against the ones we use to measure our performance. We will continue to review the performance reporting of equivalent regulators to identify best practice.

In June 2017, we consulted with industry about amending some of our evidence metrics so that they are adaptable to changes in ASIC's business processes over time. Service charter targets were removed from the evidence metrics and incorporated by reference into the service charter instead.

## Feedback on specific KPIs

### KPI 1 and KPI 6

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

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

### Making it easier for business

- 166 Some respondents welcomed our continued, demonstrated understanding of current and emerging market issues in the financial sector and our commitment to helping ensure that our activities do not unnecessarily impede the efficient operation of regulated businesses. One respondent recommended that we collaborate with the private sector and Treasury and establish an expert body to provide independent advice on corporate law reform given the cessation of the Corporations and Markets Advisory Committee (CAMAC).
- 167 One respondent, the Australian Restructuring and Insolvency Turnaround Association (ARITA), was of the view that we did not provide necessary support to the insolvency sector when we consult on and implement new policy and law reforms, specifically recent insolvency reforms.

168 However, another respondent took the opposite view and found ASIC to be effective in contributing to the continued improvement of relevant regulatory frameworks.

*ASIC's response*

We work closely with Treasury and OBPR to reduce red tape and lower compliance costs. Our regulatory guides give guidance to regulated entities by explaining when and how we will exercise specific powers under legislation, explaining how we interpret the law, describing the principles underlying our approach and giving practical guidance.

Specifically concerning insolvency, in order to support the sector, we issued new and updated guidance on registration, the disciplinary regime and insurance requirements for registered liquidators on the same day the *Insolvency Law Reform Act 2016* commenced.

We are in the process of preparing further guidance for the sector on the insolvency reforms.

## Understanding the market

169 One respondent acknowledged that we have genuinely engaged with stakeholders on matters of policy and that we have continued to demonstrate understanding of the current and emerging market issues in the financial sector. Further, this respondent recognised that we have demonstrated a commitment to helping ensure that our activities do not unnecessarily impede the efficient operation of regulated entities. However, the respondent suggested that we consider implementing a mechanism for obtaining regular feedback, such as a stakeholder survey, to enable ASIC to periodically consider and report on feedback on matters such as our approach to commercial sensitivity and our application of the law in our regulatory work.

*ASIC's response*

As detailed in [Report 548](#) *Response to submissions on amendments to ASIC's Regulatory Performance Framework evidence metrics* (REP 548), we did not conduct a stakeholder survey in 2016–17. This was because stakeholder perceptions of ASIC have been considered in numerous contexts in recent years, including the ASIC Capability Review, the Senate inquiry into the performance of ASIC and the Financial System Inquiry.

Instead, we seek stakeholder feedback in a number of alternative ways. For example, our Australian Financial Attitudes and Behaviour Tracker research (wave 5) tracks a number of financial attitudes and behaviours among adult Australians, including perceptions of trust and confidence in the sectors we regulate.

We included a discussion of the results around trust and confidence in our annual report.

We also undertake a wide range of stakeholder engagement activities—both at the Commission and stakeholder team levels—that enable stakeholders to provide feedback to ASIC directly.

Further, our understanding of the market is informed and guided by the various external stakeholder and advisory panels that we have established. Members of these panels are drawn from entities of various sizes, different sectors and locations.

## KPI 2 and KPI 5

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

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

## Communicating ASIC's expectations

170 One respondent found that ASIC's communication with industry has been generally clear, targeted and effective. Stakeholders found ASIC to be approachable and available when contacted directly or through an industry body.

### *ASIC's response*

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

## Consulting with stakeholders

171 We received mixed feedback regarding whether we provide sufficient time for proper consultation on important initiatives. ARITA stated that we often do not take into account changes suggested by stakeholders during consultation; that the consultation process appears to be process driven; and that we do not always allow sufficient time for consultation.

### *ASIC's response*

As stated in paragraph 101, we endeavour to give our stakeholders eight weeks to provide us with feedback on major policy proposals. Sometimes our consultation periods are shorter due to the circumstances of the initiative we are consulting on. An example of this is CP 276 when ASIC proposed to issue guidance on changes enacted by the *Insolvency Law Reform Act 2016* and the *Insolvency Practice Rules (Corporations) 2016*, which were only registered in December 2016. We had limited time to make proposed changes, consult with industry and issue guidance on

the changes before the reforms came into effect on 1 March 2017: see paragraph 102.

We will continue to examine ways to ensure that we give adequate time for consultation on all major policy proposals.

Further, while we always genuinely consider suggestions from individual stakeholders, our final guidance or legislative instruments need to take into account feedback from all stakeholders, and must adhere to the regulatory requirements and intended policy. We cannot always reflect individual suggestions in the final outcomes. Our regulatory guides are usually published alongside a report setting out the feedback we received during our formal consultation process and our responses.

- 172 ARITA also stated that, while ASIC frequently released reports, many of the reports were unhelpful to stakeholders and contained only generic information.

*ASIC's response*

We acknowledge this feedback. We try to ensure that our reports are meaningful and contain useful information for our stakeholders, including in the insolvency sector.

We continue to seek ways to improve our reporting to ensure it is meaningful and presents information in the most effective and useful way. For example, we are currently considering how the information in our regular *Insolvency statistics: External administrators' reports* could be more efficiently provided to the public.

### KPI 3 and KPI 4

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

KPI 4: Compliance and monitoring approaches are streamlined and coordinated

### Enforcement and transparency and risk-based surveillance

- 173 ARITA submitted that ASIC takes a 'statistical' approach to regulation, focusing on minor infractions, rather than serious breaches. In addition, ARITA also suggested that there was a lack of transparency around our enforcement processes.

*ASIC's response*

We take, and will continue to take, a risk-based approach to surveillance and enforcement activities across all the sectors we

regulate, as set out in [our corporate plan and our summary business plans](#) for the sectors we regulate (which are published on our website).

As stated in paragraph 147, [INFO 151](#) explains how we approach our enforcement role and why we respond to particular types of breaches of the law in different ways.

We also consider that, in some circumstances, failure to comply with simple obligations can suggest broader and more significant compliance weaknesses across particular firms or sectors.

We continue to seek ways to improve public reporting on our activities and enforcement outcomes. For example, we publish regular [enforcement reports](#) as part of our commitment to transparency about our enforcement activities.

## Cooperation with other regulators

174 Another respondent noted that there are significant opportunities for ASIC to work more closely with industry, other financial regulators and stakeholders to reduce the cost of compliance, particularly given the broad adaptation to more innovative and efficient technologies.

### *ASIC's response*

We acknowledge this feedback. We have strong working relationships with the RBA, APRA and Treasury on a multilateral basis through our shared membership of the Council of Financial Regulators (CFR). Beyond the members of the CFR, we actively engage with a range of other domestic bodies. These relationships seek to ensure streamlined and coordinated approaches.

We will continue to examine ways to improve coordination with other regulators, including through better use of technology.

## Appendix: List of non-confidential respondents

- 
- Australian Institute of Company Directors
  - Australian Restructuring Insolvency and Turnaround Association
  - Institute of Public Accountants
  - Insurance Council of Australia
-