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## ASIC's role

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# Chair's report

This is my first annual report as Chair of ASIC after commencing in the role on 1 February 2018. I am delighted to welcome you to this important document outlining ASIC's work and achievements in 2017–18.

I acknowledge the leadership of Greg Medcraft as Chair of ASIC until November 2017 and Peter Kell as acting Chair during the transition until February 2018. I am grateful to them both for their important contributions to financial regulation in Australia, and I am very pleased to be able to build on their work.

Many changes have taken place in the Australian financial system this year – for example, on 1 July 2017, an industry funding model for ASIC took effect. We have been working closely with the Treasury to implement other reforms recommended by the ASIC Enforcement Review Taskforce and the Financial System Inquiry.

Alongside this, the important work of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (the Royal Commission) has also been highlighting the misconduct that ASIC has been investigating and acting on for some time. The Royal Commission has shone a bright light on the consequences of financial services misconduct and of failing to abide by the standards of behaviour required by the community as a whole. We will continue to help and support the Royal Commission in its important work and will respond seriously to its recommendations.

## Our vision

In everything we do, we are guided by our recently adopted vision of a fair, strong and efficient financial system for all Australians.

## Our mission

To realise this vision, we will use our regulatory tools to:

- › change behaviours to drive good consumer and investor outcomes
- › act against misconduct to maintain trust and integrity in the financial system
- › promote strong and innovative development of the financial system
- › help Australians be in control of their financial lives.

Our registry business also plays a vital role in achieving this vision. It is dedicated to providing efficient and accessible business registers that make it easier to do business.

Our mission underpins our work and why we take the actions we do.

## Our achievements

**As an organisation, we strive to be strategic and agile as well as resolute so we can respond rapidly to challenges as they arise.**

This year, we have achieved many outcomes and delivered a number of initiatives.

Many instances of misconduct before the Royal Commission have been the subject of ASIC investigations and resulted in regulatory actions. During the year, we undertook over 1,200 surveillances and completed 124 formal investigations.

**Over 1,200**  
SURVEILLANCES  
UNDERTAKEN IN 2017–18



**CRIMINAL ACTIONS**

**22** criminal convictions  
**13** custodial sentences



**CIVIL ACTIONS**

**\$42.2m** in civil penalties



**BANNINGS, DISQUALIFICATIONS AND  
LICENCE CONDITIONS**

**133** people/companies removed,  
restricted or banned from providing  
financial services or credit

**50** people disqualified or removed from  
directing companies

**62** actions taken against auditors and  
liquidators

**124**  
INVESTIGATIONS  
COMPLETED IN 2017–18



**COURT ENFORCEABLE UNDERTAKINGS**

**27** enforceable undertakings accepted



**COMPENSATION AND REMEDIATION**

**\$351.6m** in compensation or  
remediation for investors and financial  
consumers



**INFRINGEMENT NOTICES**

**55** infringement notices issued

**\$2.02m** total value of infringement  
notices



**INDUSTRY REPORTS**

**45** industry reports published which  
promote changes in industry behaviour  
and inform government policy and law  
reform

Some of our key regulatory outcomes include securing admissions from three of Australia's big four banks over unconscionable conduct in respect of the bank bill swap rate (BBSW) and significant changes to practices in the add-on insurance sector, including the payment of over \$122 million in compensation to consumers.

Regulatory technology (regtech) has continued to be a focus for us, for the simple reason that it has enormous potential to improve compliance, highlight risks and learning opportunities and, ultimately, deliver better outcomes for consumers. We established the Regtech Liaison Forum in December 2017 to facilitate networking and stimulate discussion on regtech developments and opportunities that promote positive applications of regtech.

We continue our transformation into a data-driven and technologically adept regulator by investing in our data analytics capabilities, trialling new technologies and supporting the ASIC Chief Data Office.

ASIC's Office of Small Business was established in March 2017, and we launched our Small Business Strategy 2017–2020 in August 2017.

We continue to help consumers be in control of their financial lives through our financial capability work, including by developing the 2018 National Financial Capability Strategy.

We are also expanding our behavioural insights capabilities to improve our understanding of investors and consumers – in order to better inform our regulatory work and our financial capability initiatives, so that Australians can be in control of their financial lives.

We have continued to drive forward our Regulatory Transformation program, which will revolutionise how we work and will ensure our information systems are appropriate for a modern regulator. We are bringing our teams into the new system and creating a rich data source to support our analytics capabilities.

## Challenges confronting the financial system

**We need to recognise that every cent in the financial system is other people's money.**

Corporate Australia – and, in particular, the finance industry – is suffering from a deficit of trust.

Good conduct is pivotal to well-functioning financial markets and good consumer and investor outcomes. We want to determine how we can use the regulatory tools available to us to modify behaviours and improve professional standards, with the aim of rebuilding trust in the financial services sector.

We are focusing on identifying, diagnosing and then addressing the harms and behaviours that endanger trust and integrity in our financial markets. In addition, we will focus on enhancing professionalism and advocating why developing and maintaining a professional mindset is important.

We work to ensure that we use the right regulatory tools to address the harms we identify. In doing this, we must consider several objectives, including the strategic significance of the matter and the efficient use of our resources. We also consider the benefits of pursuing the incident of misconduct, including specific and general deterrence and protecting or obtaining compensation for consumers.

## Outlook – our strategic priorities

**Ensuring a fair, strong and efficient financial system for all Australians is our goal and is at the heart of everything we do at ASIC.**

We work on being future-ready and agile so that we can implement our vision and realise our mission.

As an organisation, we are working to achieve better regulatory outcomes for investors and consumers. Our new strategic initiatives are:

- › being a **strategic and agile organisation** through an enhanced:
  - › strategic planning framework to better focus on harms and risks to consumers, investors, and fair and efficient markets
  - › a revised internal governance framework to better support strategic decision making
- › **accelerating enforcement initiatives** and our capacity to pursue actions for serious misconduct, through greater use of external expertise and resources
- › adopting **new supervisory approaches**, including:
  - › frequent onsite visits by dedicated staff for extended periods within our largest financial institutions to monitor their governance and compliance actions
  - › a stronger supervision and enforcement focus for the superannuation sector
  - › enhanced cooperation with fellow regulators, particularly the Australian Prudential Regulation Authority (APRA)
  - › increased collaboration within ASIC through internal cross-team working groups on key issues such as corporate governance and conflicts of interest, with an intention to expand to other areas
- › **encouraging regtech adoption** by:
  - › promoting Australia as a world leader in the development and adoption of regtech solutions
  - › assisting and collaborating with the regtech industry – for example, by supporting trials and proofs of concept.

These strategic initiatives, and others, have been supported by \$70.1 million of additional funding for ASIC announced by the Government on 7 August 2018. This funding supports our efforts to be a more strategic, effective and agile regulator.

We recently released our four-year corporate plan, which explains how we will respond to future challenges; and our business plans, which detail how we will implement our vision and realise our mission.

As an organisation, we continually look for new ways to do our job and ensure we are responding to the harms and threats manifesting in Australia's financial system.



**James Shipton**  
Chair



*The Commission in June 2018. From left, Commissioner John Price, Chair James Shipton, Deputy Chair Peter Kell and Commissioner Cathie Armour*

# 1.1 ASIC's role and responsibilities

## Our regulatory approach

ASIC is Australia's integrated corporate, markets, financial services and consumer credit regulator.

We have a number of regulatory tools available to us to address the harms that threaten good investor and consumer outcomes. These tools include enforcement action, supervision and surveillance, engagement with industry and other stakeholders, guidance, education and policy advice.

For most of the issues in our remit, we use a number of these tools to achieve the best outcomes. This includes:

- › supervising entities on an ongoing basis
- › undertaking risk-based surveillances that target specific incidents or transactions
- › reviewing particular entities
- › undertaking thematic reviews that focus on issues across a particular sector
- › enforcing the law.

Our threat, harm and behaviour framework is a process that identifies and describes regulatory risks in the market to inform the strategic priorities in our corporate plan. This framework helps us to prioritise enforcement and other regulatory actions targeting particular harms to investors, consumers and markets.

When we identify a potential breach of the law or risk or cause of harm, we will determine what is the most appropriate response. Broadly, we consider the following factors in deciding which regulatory tool or tools we will use:

- › the matter's strategic significance (e.g. the seriousness of the misconduct or harm, the importance of deterrence, and taking into account our strategic priorities)

- › the likelihood of success of using one or more of the tools available to us
- › the issues specific to the case (e.g. availability of evidence)
- › the benefits of pursuing misconduct (e.g. the impact of remedies we may be able to obtain to deter misconduct and protect or compensate consumers)
- › the availability of resources.

We record and assess all breach notifications that we receive, make a range of initial inquiries and conduct preliminary assessments to consider whether further action should be taken.

## Our legislative responsibilities

The *Australian Securities and Investments Commission Act 2001* (ASIC Act) requires ASIC to strive to:

- › maintain, facilitate and improve the performance of the financial system and entities within it in the interests of commercial certainty, reducing business costs, and the efficiency and development of the economy
- › promote confident and informed participation by investors and consumers in the financial system
- › administer the law effectively and with minimal procedural requirements
- › receive, process and store – efficiently and quickly – the information we receive
- › make information about companies and other bodies available to the public as soon as practicable
- › take whatever action we can, and which is necessary, to enforce and give effect to the law.

We enforce the law and regulate companies, financial markets and financial services under the following key legislation:

- › *Australian Securities and Investments Commission Act 2001* (ASIC Act)
- › *Business Names Registration Act 2011*
- › *Corporations Act 2001* (Corporations Act)
- › *Insurance Contracts Act 1984*
- › *National Consumer Credit Protection Act 2009* (National Credit Act).

We also administer parts of the following legislation:

- › *Banking Act 1959*
- › *Life Insurance Act 1995*
- › *Medical Indemnity (Prudential Supervision and Product Standards) Act 2003*
- › *Retirement Savings Accounts Act 1997*
- › *Superannuation (Resolution of Complaints) Act 1993*
- › *Superannuation Industry (Supervision) Act 1993* (SIS Act).

## Oversight

### Responsible Ministers

At 30 June 2018, the Ministers responsible for ASIC were:

- › Treasurer, the Hon. Scott Morrison MP
- › Minister for Revenue and Financial Services, the Hon. Kelly O'Dwyer MP
- › Minister for Small Business, the Hon. Michael McCormack MP
- › Assistant Minister to the Treasurer, the Hon. Michael Sukkar MP.

### Parliamentary oversight

The Parliamentary Joint Committee on Corporations and Financial Services (PJC) provides parliamentary oversight of ASIC. We also appear before the Senate Standing Committee on Economics, the House of Representatives Standing Committee on Economics and other parliamentary committees and inquiries as required.

### Correspondence with members of Parliament

ASIC receives correspondence from members of Parliament both directly and indirectly through requests from the Treasury.

We aim to respond to 100% of correspondence within 28 days of receipt. In 2017–18, we responded to 161 letters and emails from members of Parliament. We responded to 96% of this correspondence within 14 days and 100% within 28 days.

### Financial and operational oversight

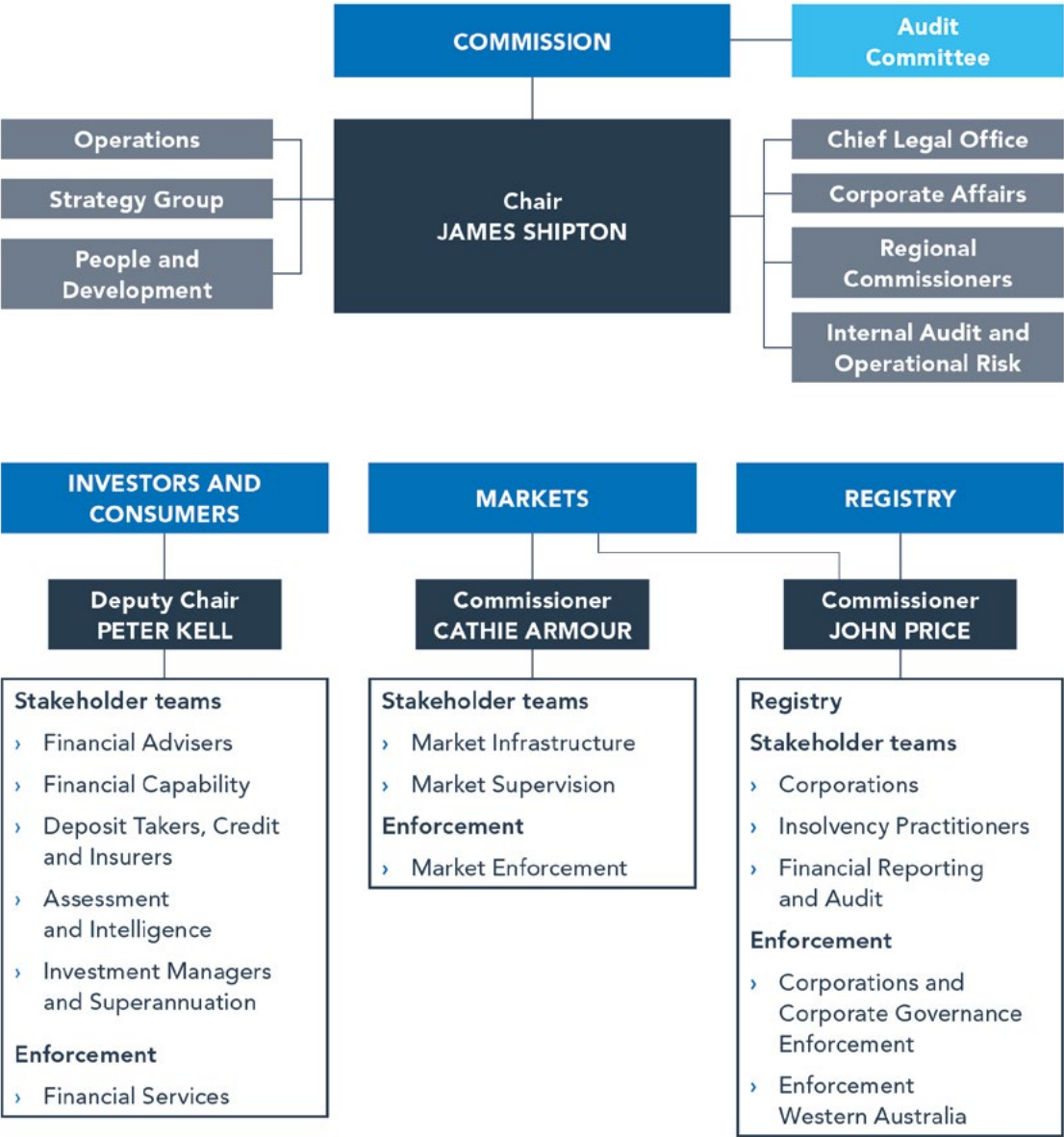
ASIC is a non-corporate Commonwealth entity under the *Public Governance, Performance and Accountability Act 2013* (PGPA Act), which primarily governs our use and management of public resources.

The PGPA Act also requires ASIC to prepare a corporate plan covering our purpose, environment, performance, capability, and risk oversight and management for the budget forward estimates period. *ASIC's Corporate Plan 2017–18 to 2020–21* was published on 31 August 2017. This year, we took steps to act in accordance with our rolling corporate plan.

The Auditor-General audits our annual financial statements on behalf of the Parliament.



# 1.2 Our structure and management<sup>1</sup>



<sup>1</sup> Commission membership of external and internal bodies is detailed in Section 1.3.



# 1.3 ASIC Commissioners and Regional Commissioners

## Commissioners

### James Shipton

**Chair, BA, LLB (Hons)**

James Shipton commenced as ASIC Chair on 1 February 2018.

External bodies: Australian Criminal Intelligence Commission; Australian Government Financial Literacy Board; Council of Financial Regulators; Criminal Justice and Law Enforcement Forum; International Organization of Securities Commissions.

Internal committees: Digital Governance Board; Enforcement Committee; Operational Risk Committee; Property and Environmental Management Board; Regulatory Policy Group.



### Peter Kell

**Deputy Chair, BA (Hons)**

Peter Kell commenced as Deputy Chair on 6 May 2013. Prior to this appointment he was a Commissioner from 7 November 2011. In March 2018, Peter was reappointed until May 2019.

External bodies: Australian Government Financial Literacy Board; Commonwealth Consumer Affairs Advisory Council; Consumer Advisory Panel.

Internal committees: Regulatory Policy Group.



### Cathie Armour

**BEc, LLB (Hons), LLM**

Cathie Armour commenced as an ASIC Commissioner on 3 June 2013. In May 2017, Cathie was reappointed for a further five years.

External bodies: Markets Advisory Panel.

Internal committees: Enforcement Committee; Regulatory Transformation Board.



### John Price

**BA, LLB (Hons)**

John Price commenced as an ASIC Commissioner on 21 March 2012. In March 2015, John was reappointed for a further three years to 20 March 2018. In March 2018, John was reappointed for a further two years until March 2020.

External bodies: Australian Business Register Advisory Board; Business Advisory Committee; Council of Financial Regulators; Digital Finance Advisory Committee; Director Advisory Panel; Standard Business Reporting.

Internal committees: ASIC Diversity Council; Audit Committee; Emerging Risk Committee; Innovation Hub.



***For more information on the activities of these external bodies, see Appendix 8.1.***

## Greg Medcraft

**BComm**

Greg Medcraft ceased to be Chair of ASIC on 12 November 2017.

Greg joined ASIC as a Commissioner in 2009 and was appointed Chair on 13 May 2011.



## Commissioners commencing after 30 June 2018

### Daniel Crennan QC

**BA, LLB (Hons), MAICD**

Daniel Crennan commenced as Deputy Chair on 16 July 2018.

### Danielle Press

**BEC (Hons)**

Danielle Press commenced as an ASIC Commissioner on 17 September 2018.

### Sean Hughes

**BA, LLB, LLM**

Sean Hughes commences as an ASIC Commissioner on 1 December 2018.

## Regional Commissioners

ASIC's Regional Commissioners are our local ambassadors, engaging with business and local communities through regular stakeholder liaison meetings and promoting ASIC initiatives.

*For more information on our regional actions, see Section 2.2.*

### Christian Mikula

BA, LLB (Hons)

Commenced as Regional Commissioner for the **Australian Capital Territory** in February 2016.



### Melissa Smith

LLB (Hons), BA(Juris), GDLP

Commenced as Regional Commissioner for **South Australia** in June 2015.



### Michael Saadat

BEC, LLB (Hons), LLM, EMBA

Commenced as Regional Commissioner for **New South Wales** in July 2016.



### Chris Green

LLB, GDipBA(Exec)

Commenced as Regional Commissioner for **Tasmania** in November 2013.



### Duncan Poulson

BA, LLB

Commenced as Regional Commissioner for the **Northern Territory** in February 2006.



### Warren Day

BBus(Acc), LLB (Hons), MProfAcc, LLM, MBus(InfoTech)

Commenced as Regional Commissioner for **Victoria** in October 2008.



### John Weaver

LLB, MSc (Fraud and Risk Management), FGIA

Commenced as Regional Commissioner for **Queensland** in June 2016.



### Natalie Dürr

LLB

Commenced as Regional Commissioner for **Western Australia** in July 2017.



# 1.4 ASIC's stakeholder teams and who they regulate

## INVESTORS AND CONSUMERS

### Deposit Takers, Credit and Insurers

ASIC staff: 81

**Michael Saadat –  
Senior Executive Leader**

Authorised deposit-taking institutions: 151

Australian credit licensees: 5,503

Credit representatives: 39,019

General insurers: 81

Life insurers: 29

Friendly societies: 12

Non-cash payment facility providers: 635

Trustee companies: 13



### Financial Capability

ASIC staff: 32

**Laura Higgins –  
Senior Executive Leader**



### Assessment and Intelligence

ASIC staff: 150

**Warren Day –  
Senior Executive Leader**



### Investment Managers and Superannuation

ASIC staff: 52

**Jane Eccleston –  
Senior Executive Leader**

Amount of funds under management: Around \$3.3 trillion

Superannuation trustees: 133

Responsible entities: 454

Registered managed investment schemes: 3,718

Wholesale trustees: 1,582

MDA operators: 193

IDPS operators: 91

Foreign financial services providers: 884

Custodial service providers: 1,002



## MARKETS

### Corporations

ASIC staff: 42

**Claire LaBouchardiere and  
Rachel Howitt –  
Senior Executive Leaders**

Public companies: 23,872

Listed entities (including registered schemes and foreign companies): Over 2,330



### Financial Advisers

ASIC staff: 47

**Joanna Bird and  
Louise Macaulay –  
Senior Executive Leaders**

Financial advisers: 24,933

AFS licensees licensed to provide personal advice: 4,231

AFS licensees licensed to provide general advice only: 1,674

AFS licensees licensed to deal in financial products only: 260



### Insolvency Practitioners

ASIC staff: 22

**Thea Eszenyi –  
Senior Executive Leader**

Registered liquidators: 663

Companies entering external administration: 7,747



### Financial Reporting and Audit

ASIC staff: 28

**Douglas Niven –  
Senior Executive Leader**

Registered company auditors: 4,226

Entities required to produce financial reports: 28,000

Registered SMSF auditors: 6,050



## Market Infrastructure

ASIC staff: 29

### **Oliver Harvey – Senior Executive Leader**

Licensed domestic and overseas  
financial markets: 23

Exempt markets: 26

Licensed domestic and overseas  
clearing and settlement facilities: 7

Exempt clearing and settlement facilities: 1

Derivative trade repositories: 2

Credit rating agencies: 6



## Market Enforcement

ASIC staff: 44

### **Sharon Concisom – Senior Executive Leader**



## Market Supervision

ASIC staff: 80

### **Greg Yanco – Senior Executive Leader**

Market participants: 121

Securities dealers: 882

Investment banks: 27

Retail OTC derivative  
providers: 68

Wholesale electricity  
providers: 48



## Corporations and Corporate Governance Enforcement

ASIC staff: 34

### **George Stogdale – Senior Executive**



## Enforcement Western Australia

ASIC staff: 35

### **Natalie Dürr – Senior Executive Leader**



## ENFORCEMENT<sup>1</sup>

### **Financial Services Enforcement**

ASIC staff: 77

### **Tim Mullaly – Senior Executive Leader and David McGuinness – Senior Executive**



## REGISTRY SERVICES

### **Registry Services and Customer Contact Centre**

ASIC staff: 184

### **Rosanne Bell – Senior Executive Leader**

Total companies

registered: 2,616,707

New companies registered: 244,510

Total business names registered: 2,246,283

New business names registered: 366,181

Number of searches of ASIC registers: 122.5m



<sup>1</sup> Plus 91 full-time equivalent (FTE) staff working on Enforcement Special Account matters, and an additional 80 FTE providing Enforcement support services and legal counsel.

## 1.5 Government priorities and parliamentary inquiries

### Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry

The Royal Commission was established on 14 December 2017.

The Royal Commission is examining whether there has been misconduct or conduct which falls below community expectations within the banking, superannuation and financial services industry.

ASIC is assisting the Royal Commission by providing detailed intelligence across different market sectors, witness statements and submissions, and appearing at public hearings. As at 30 June 2018, we had received 58 requests for documents, including 29 notices to produce, provided 7 witness statements and produced more than 26,000 documents (over 195,000 pages).

The Royal Commission issued its interim report on 28 September 2018 and is currently due to submit its final report to the Government by 1 February 2019.

### ASIC industry funding model

In 2017, the Government introduced new laws that change the way ASIC is funded. Under the new arrangements, regulated entities will receive an invoice for the regulatory services ASIC delivered in the preceding year. **For more information on industry funding and fees for service, see Section 4.**

### ASIC Enforcement Review

In October 2016, the Government announced a taskforce to review ASIC's enforcement regime. The ASIC Enforcement Review Taskforce considered the adequacy of this regime to deter misconduct and foster consumer confidence in the financial system.

In April 2018, the Government released the taskforce's final report and announced its response. The Government agreed, or agreed in principle, to all 50 recommendations of the taskforce and will prioritise the implementation of 30 of them.

These recommendations include significant enhancements to ASIC's enforcement toolkit, including:

- › stronger criminal and civil penalties for licensees, including a new penalty for a breach of the important 'efficiently, honestly and fairly' obligation by licensees, and a new ASIC power to seek additional remedies to strip wrongdoers of profits that have been illegally obtained
- › significantly stronger and clearer rules about the obligation of licensees to report breaches to ASIC honestly and in a timely manner, and civil penalties for not doing so
- › a stronger ability for ASIC to take regulatory action against senior managers or controllers of financial services businesses where they are found to be unfit, improper or incompetent
- › a stronger power to refuse, revoke or cancel financial services and credit licences where the licensee is not fit or proper
- › a power to direct licensees to take particular remedial actions, such as consumer compensation programs
- › enhanced search warrant powers, including the ability to use seized materials and telecommunications intercepted materials.

The Government deferred implementation of 20 recommendations, including those relating to the regime for self-reporting breaches by licensees and a new ASIC directions power, until after the Royal Commission is completed, to take into account any relevant findings made by the Royal Commission. **For more information on our regulatory approach, see Section 1.1.**

## Product intervention powers and design and distribution obligations

As part of the Government's response to the Financial System Inquiry, the Government accepted the Inquiry's recommendations to introduce:

- › a product intervention power for ASIC that would enable us to take direct action to deal with significant shortcomings in products or conduct where there is a risk of significant consumer detriment
- › design and distribution obligations that require issuers and distributors of financial products to establish processes and controls for ensuring that products are designed with consumer needs in mind and are targeted at appropriate sections of the population.

The product intervention power is intended to work together with the design and distribution obligations to ensure the regulatory framework delivers fairer outcomes for consumers.

In February 2018, ASIC made a submission in response to the Government's consultation on draft legislation for these measures.

We support the Government's work to strengthen consumer protection by introducing these important reforms, and we will work closely with stakeholders as we prepare guidance. **For more information on our policy advice, see Section 3.3.**

## Comprehensive credit reporting

On 2 November 2017, the Government announced the establishment of a mandatory comprehensive credit reporting regime, which applies from 1 July 2018.

The *Privacy Act 1988* (Privacy Act) permits sharing of 'positive' credit information, including about products held and repayment history. ASIC will be responsible for monitoring the supply of the information required. The existing framework in the Privacy Act will continue to be administered by the Office of the Australian Information Commissioner (OAIC).

We provided comments to the Treasury on the design of the regime and met with industry and other stakeholders to discuss the new requirements. **For more information on our policy advice, see Section 3.3.**

## Combating illegal phoenix activity

In September 2017, the Government announced a package of reforms to address illegal phoenix activity, building on, among other things, the work of the Phoenix Taskforce, of which we are a member. ASIC made a submission to the consultation process.

In the 2018–19 Budget, the Government announced its intention to reform the Corporations Act to include new phoenix offences, restrict related party voting rights, prevent misuse of backdating director appointments and change director resignation provisions. The significant reform to implement a Director Identification Number is being pursued via the Government's registry modernisation initiative. **For more information on our work on illegal phoenix activity, see Section 5.6.**



## Dispute resolution

A fair, efficient and effective dispute resolution framework is integral to consumer trust and confidence in the Australian financial system.

In 2017–18, the Financial Ombudsman Service (FOS) reported 123 definite systemic issues and 11 cases of serious misconduct to ASIC. The Credit and Investments Ombudsman (CIO) reported 38 definite systemic issues and 10 cases of serious misconduct. We assessed

these reports and, where appropriate, used the information to inform current or new investigations.

The past year has seen significant reform reshaping the dispute resolution framework that ASIC administers. These reforms apply to both internal dispute resolution (IDR) and external dispute resolution (EDR).

### Australian Financial Complaints Authority

On 9 May 2017, in response to the Review of the Financial System External Dispute Resolution and Complaints Framework, the Government announced it would establish a new one-stop shop for financial complaints: the Australian Financial Complaints Authority (AFCA). Legislation establishing AFCA passed Parliament in February 2018, and the Minister announced the authorisation of the operator of the scheme on 1 May 2018.

AFCA will deal with financial services and credit and superannuation complaints made by consumers, small businesses and primary producers. It replaces two ASIC-approved, industry-based schemes – the CIO and the FOS – as well as the statutory Superannuation Complaints Tribunal (SCT). Together, FOS, CIO and the SCT deal with more than 45,000 consumer and small business complaints each year.

Affected financial firms need to join AFCA by 21 September 2018, and the scheme will start providing access to effective EDR services from 1 November 2018.

AFCA has many key features of the existing EDR schemes. It will have an expanded small business and monetary jurisdiction and preserve the pre-existing access to EDR for superannuation fund members and beneficiaries under the SCT.

ASIC will oversee the operation of AFCA and receive reports, including about systemic issues and serious contraventions by financial

firms. We published RG 267 *Oversight of the AFCA* in June 2018, providing guidance about AFCA reporting to regulators and the new directions powers relating to AFCA performance.

In May 2018, ASIC gave financial firms, including superannuation trustees, transitional relief until 1 July 2019 to update mandatory disclosure documents with AFCA's contact details. Measures are in place to ensure that consumers are kept informed of how and where to pursue their complaints during the transition to AFCA commencement.

AFCA will retain the systemic issues reporting role of the FOS and CIO for as long as they continue to operate. The SCT will continue to operate to finalise the open complaints that were accepted by the SCT before AFCA commenced.

The legislation also enhances reporting and information provision to regulators by requiring reports of serious contraventions to regulators, including ASIC, APRA and the Australian Taxation Office (ATO).

We will continue to work with all stakeholders to ensure that the transition to AFCA is smooth and that consumer access to EDR is maintained throughout. After AFCA commences operations, ASIC will publicly consult on new standards for IDR and the new mandatory IDR reporting requirements contained in the legislation.

## Improving financial capability across Australia

We assisted the Government to establish a new body, announced by the Minister for Revenue and Financial Services in May 2018, to boost the advancement of financial capability across Australia.

The new body – a not-for-profit public company – will manage and distribute the \$55 million in community benefit payments, including those that form part of the settlement agreements between ASIC, the Australia and New Zealand Banking Group (ANZ), the Commonwealth Bank of Australia (CBA) and the National Australia Bank (NAB) relating to the manipulation of the BBSW and the \$10 million committed by the Government to developing women's financial capability in the federal Budget. **For more information on our work improving financial capability, see Section 3.3.**

## Registry modernisation

As part of the National Business Simplification Initiative, the Government has committed to modernising business registers to support businesses in an evolving digital economy. Registers currently administered by ASIC will form a key component of the upgrade.

The Government has decided that the modernised registers will be administered by the ATO. A detailed business case and options for streamlining registry functions and upgrading technology systems will be developed for consideration by the Government in 2019.

A modernised business registry system will help transform the way business interacts with government in Australia, making it simpler and faster to start and run a business. The changes will also provide better access to registry data, in line with the Government's open data policy. **For more information on our Registry, see Section 3.4.**

## Regulatory sandbox

Our 'regulatory sandbox' allows innovative businesses to develop and test their ideas through individual licensing exemptions to facilitate product or service testing. An enhanced regulatory sandbox put forward by a Bill to Parliament in October 2017 proposes to extend the scope of the ASIC sandbox. Legislation and regulations are intended to be enacted in 2018. ASIC has provided technical assistance throughout the consultation process. **For more information on our current regulatory sandbox, see Section 5.2.**

## Whistleblowers

ASIC supports the Government's work to reform Australia's corporate sector whistleblowing regime. These reforms encourage increased reporting of corporate wrongdoing and provide better protection for whistleblowers.

Our experience in assisting whistleblowers and dealing with the information they provide has led us to regularly review and enhance our own processes. It also provides us with practical insights while we support the Government's ongoing work to reform the whistleblowing regime.

Under the whistleblower reforms, ASIC is expected to receive any report from whistleblowers related to any misconduct or improper state of affairs in relation to a company. **For more information about our Office of the Whistleblower, see Section 5.5.**

## Open banking

In the 2017–18 Budget, the Government announced the creation of an open banking regime in Australia. The Government commissioned an independent review to recommend the best approach to implementing the open banking regime. We made several submissions to the review that covered:

- › the scope and coverage of the regime, including types of financial institutions, types of datasets and third-party providers
- › regulatory framework, rules and standards, and oversight
- › privacy and security
- › liability and redress
- › dispute resolution.

The introduction of an open banking regime has the potential to empower consumers in their decision making and stimulate competition and innovation in the financial services sector.

ASIC will continue to support the Australian Competition and Consumer Commission (ACCC) and the OAIC as they work to implement the regime from 1 July 2019.

## Other government inquiries

In 2017–18, ASIC made submissions to a number of parliamentary and government inquiries.

### Productivity Commission – competition in Australia’s financial system

On 28 March 2018, we responded to the Productivity Commission’s *Competition in the financial system: Draft report* with a submission focusing on the recommendations most relevant to ASIC.

We supported the Productivity Commission’s draft recommendations to:

- › strengthen standards in the mortgage-broking industry
- › move ahead with our proposal to mandate a deferred sales model for add-on insurance through car dealerships
- › increase consumers’ access to data.

We also commented on the Productivity Commission’s recommendations to relabel general advice, allow financial advisers to promote specific credit advice, and introduce a competition champion.

The final Productivity Commission report was published on 3 August 2018.

### Productivity Commission – review of superannuation efficiency and competitiveness

We made submissions to the Productivity Commission’s Review of the Competitiveness and Efficiency of the Australian Superannuation System.

In November 2017, we made a submission that highlighted our work in relation to conduct by trustees and others in engaging with employers, who make important decisions about default superannuation, and in the offering of insurance within superannuation.

The Productivity Commission released its draft report on 29 May 2018. ASIC made a submission on that report. The Productivity Commission expects to hand its final report to the Government in late December 2018.

## Parliamentary Joint Committee Inquiry into the Life Insurance Industry

In September 2017, we appeared before the PJC Inquiry into the Life Insurance Industry and made a submission highlighting our ongoing concerns about practices in the industry.

In March 2018, the inquiry report was released.

## Parliamentary Joint Committee Inquiry into the Impact of New and Emerging Information and Communications Technology

In January 2018, we made a submission to the PJC Inquiry into the Impact of New and Emerging Information and Communications Technology (ICT) on Australian law enforcement agencies. Our submission highlighted:

- › challenges facing ASIC arising from new and emerging ICT, with a focus on the dark web and digitisation
- › the work done by ASIC to respond to those challenges, including our investment in data analytical tools and law reform which would support ASIC
- › engagement with other law enforcement agencies on these issues.

## Senate Select Committee on Lending to Primary Production Customers

In February 2017, the Senate established the Select Committee on Lending to Primary Production Customers to inquire into, and report on, the regulation and practices of financial institutions in relation to primary production industries, including agriculture, fisheries and forestry. ASIC appeared at hearings, and our input was quoted in the Committee's report, released in December 2017.

## Legal and Constitutional Affairs Legislation Committee – the Bankruptcy Amendment (Enterprise Incentives) Bill 2017

In January 2018, we made a submission to the Legal and Constitutional Affairs Legislation Committee in relation to the Bankruptcy Amendment (Enterprise Incentives) Bill 2017 and attended a hearing of the Committee in March 2018.

Our submission related to the proposed reduction in the bankruptcy period from three years to one year. We highlighted our concerns in relation to investor protection, phoenix activity and encouragement of excessive risk-taking; and suggested safeguards which could be incorporated into the draft Bill to mitigate these concerns. ***For more information on our work on illegal phoenix activity, see Sections 4.6 and 5.6.***

# 1.6 Financial summary and expenditure

In 2017–18, Parliament funded ASIC to achieve the outcome of improved confidence in Australia’s financial markets through promoting informed investors and financial consumers, facilitating fair and efficient markets, and delivering efficient registry systems.

In 2017–18, ASIC raised \$1,227 million for the Commonwealth in fees, charges and supervisory cost recovery levies, an increase of 33% from 2016–17. The increase in revenue relates mainly to the recognition of supervisory levies recoverable from industry for ASIC’s regulation-related costs, that commenced in 2017–18.

In 2017–18, ASIC received approximately \$348 million in appropriation revenue from the Government, including \$26 million for the

Enforcement Special Account (ESA), representing a \$6 million or 2% increase compared with 2016–17. The \$6 million increase in appropriation revenue relates mainly to new funding provided to ASIC in 2017–18 for the Royal Commission.

ASIC received approximately \$41 million of own-source revenue, 463% higher than the previous year. The increase in own-source revenue relates to significant court cost recoveries during the year relating to ESA matters.

The increase in expenditure is consistent with the increase in appropriation revenue and represents a general increase in staff and supplier expenditure.

**Table 1.6.1 Revenue, appropriations and expenditure**

	2017–18 (\$'000s)	2016–17 (\$'000s)	Change (\$'000s)	Percentage change
Revenues from Government (incl. Enforcement Special Account)	348,041	341,641	6,400	2%
Own-source revenue	40,875	7,261	33,614	463%
Total revenue	388,916	348,902	40,014	11%
Total expenses (including depreciation and amortisation, net of gains)	399,816	392,460	(7,356)	(2%)
Surplus/(Deficit)	(10,900)	(43,558)	32,658	75%

**Table 1.6.2 ASIC’s use of taxpayers’ money for the outcomes approved by Parliament**

	2017–18	2016–17
<b>Operating expenses (incl. depreciation and amortisation, net of gains)</b>		
Total	\$400m	\$392m
Total revenue increase	2%	6%
<b>Fees and charges raised for the Commonwealth</b>		
Total	\$1,227m	\$920m
Annual increase on previous year	33%	5%