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ASIC's achievements by sector

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Purpose and structure

This section of the report discusses activities and outcomes achieved in each industry funding sector this financial year. Under industry funding, there are six such sectors (deposit-taking and credit; insurance; financial advice; investment management; superannuation and related services; market infrastructure and intermediaries; corporate). Within these six broad sectors, there are 48 subsectors.

This year, to provide more transparency to our stakeholders, and help industry participants to understand the regulatory effort we expended on their subsector, we have outlined our achievements per industry funding sector.

For ASIC achievements by regulatory tool, see Section 3.

Industry funding

The new industry funding model for ASIC became effective on 1 July 2017. This model will provide greater stability and certainty in our funding and ensure we are adequately resourced to carry out our regulatory mandate. The model is about ensuring those who create the need for regulation bear the costs of that regulation, and providing the economic incentives to drive the Government's desired regulatory outcomes for the financial system.

Entities will pay a share of their subsector costs based on a range of business activity metrics. In March 2018, ASIC published 2017–18 indicative levies for 36 out of 48 industry subsectors. ASIC does not yet have access to the business activity metrics required to calculate and publish indicative levies for the remaining 12 subsectors (around 20% of the population of 47,000 regulated entities). These entities will not receive indicative levies until ASIC tables in Parliament a legislative instrument outlining our actual costs, population and business activity metrics for all subsectors in 2017–18. This is scheduled to take place in November 2018.

The 2017–18 indicative levies document, published in June 2018, builds on our Cost Recovery Implementation Statement, released for consultation in October 2017 and released in final form in May 2018.

Levy types

An organisation's levy for a financial year will be equal to its share of the flat and graduated levies for each subsector it is a part of in the financial year:

- › Flat levy – A flat levy will share the total cost of regulating a subsector equally among each entity operating in that subsector.



- › Graduated levy – A graduated levy will include two components: a minimum amount paid by all entities in a subsector, and a graduated amount based on each entity's size or level of business activity.

Fees for service

Fees for service is the second phase of industry funding. Fees for service came into force on 4 July 2018. Fees will be reviewed periodically to ensure they remain accurate and reflective of effort.

Fee-for-service activities

We undertake a range of activities for specific entities at their request. These regulatory activities, for which we charge fees for service, include:

- › licensing and registration
- › compliance reviews of documents
- › requests for changes to market operating rules
- › applications for relief.

These services impact a range of industry subsectors, including Australian credit licensees, AFS licensees, market infrastructure providers, responsible entities, registered liquidators, and companies. The fee for lodgement of certain forms will not be recovered under fees for service, nor will costs associated with maintaining our registry business.

For more information about the industry funding model, see our website:

ASIC.gov.au/industry-funding.

4.1 Deposit-taking and credit



The deposit-taking and credit sector includes **credit licensees** (credit providers, small amount credit providers, and credit intermediaries);

deposit product providers; payment product providers; and margin lenders.

ASIC's work in this sector during 2017–18 focused on continuing to improve consumer outcomes by ensuring compliance by lenders and brokers with the responsible lending obligations. We also took action to reduce the extent to which consumers were sold financial products that did not meet their needs.

Lenders or brokers that sell or arrange unsuitable products may place their customers at risk of substantial financial hardship.

Credit licensees

Unfair contract terms and small business loan contracts

Following engagement with ASIC and the Australian Small Business and Family Enterprise Ombudsman, ANZ, CBA, NAB and Westpac committed to improving terms of their small business loans to reduce the likelihood that particular terms in their contracts are unfair.

In March 2018, we released REP 565 *Unfair contract terms and small business loans*, which sets out the changes that were made and provides guidance to lenders about compliance with the unfair contract terms laws as they relate to small business.

We have also commenced a review of lending contracts by lenders outside these banks to check for compliance with the unfair contract terms laws.

Enforcing compliance with responsible lending laws

We continued to act against non-compliance with responsible lending obligations under consumer credit laws.

Our enforcement outcomes for the year in this area include the following:

- › In February 2018, the Federal Court ordered ANZ to pay a penalty of \$5 million for breaches of the responsible lending provisions by its former car finance business, Esanda. The court found that ANZ failed to take reasonable steps to verify the income of consumers. This judgment followed ASIC's announcement of a package of actions, including \$5 million in remediation, against ANZ for contraventions of various responsible lending provisions of the *National Consumer Credit Protection Act 2009*.
- › In January 2018, we obtained a court enforceable undertaking from Thorn Australia Pty Ltd to pay consumers over \$5 million in refunds and write-offs of default fees for its failure to make adequate inquiries and verify consumers' expenses in respect of 278,683 consumer leases. Thorn Australia also gave an undertaking to have an independent compliance review completed.
- › In May 2018, the Federal Court also ordered a \$2 million penalty against Thorn Australia for contravening responsible lending obligations. The court found that Thorn Australia failed to take steps to verify the financial situation of its customers and conduct a proper assessment of the suitability of the leases it provided. The breaches related to more than 270,000 leases entered between January 2012 and May 2015.

Misleading advertising

ASIC took action against entities where we had concerns about misleading statements being made to consumers in relation to financial products. For example:¹

- › In November 2017, Volkswagen Financial Services Australia Pty Ltd paid a penalty of \$216,000 after we issued it with 20 infringement notices for alleged misleading statements made in an advertising campaign for Volkswagen vehicles. ASIC was concerned that those advertisements did not give sufficient prominence to important conditions applying to the finance offers or adequately explain how some of these conditions operated.
- › In May 2018, we issued three infringement notices to debt management firm Fox Symes and Associates Pty Ltd for making potentially misleading claims, such as 'Free Debt Assistance', 'Reduce debt in minutes' and '15 second approval'. The company has paid a total of \$37,800 in penalties. ASIC was concerned that the statements misrepresented the cost and speed of Fox Symes and Associates' debt management services.

Compensation and remediation

This year, our actions in the credit space contributed to more than \$194 million being ordered or agreed to be refunded or compensated to consumers. For example:

- › In early 2018, Westpac provided more than \$11 million in remediation to around 3,400 credit card customers who experienced financial difficulty after being granted credit card limit increases. This remediation was provided as part of Westpac's commitment to ASIC to improve its lending practices when providing credit card limit increases to customers.

¹ Compliance with infringement notices is not an admission of guilt or liability and these entities are not taken to have contravened the law.

- › In February 2018, ANZ announced it would refund over \$10 million to 52,135 of its 'Business One' business credit card accounts after it reported to ASIC that it failed to properly disclose various fees and interest charges, as well as the amount payable for overseas transactions with foreign merchants or financial institutions.
- › In December 2017, Westpac announced it would refund or discount interest rates for 13,000 owner-occupier borrowers who had interest-only home loans. The refunds were made following an error in Westpac's systems which failed to automatically switch these loans to principal and interest payments at the end of the contracted interest-only period. The refunds amounted to \$11 million for 9,400 of those customers.
- › In July 2017, King Quartet Pty Ltd, trading as The Rental Guys, paid \$100,000 to regional customers to address concerns by ASIC that they had not met their responsible lending obligations by failing to make proper inquiries, conduct verification or carry out unsuitability assessments when arranging leases.

Poor debt collection practices

In May 2018, an ASIC surveillance revealed that Cash Converters Personal Finance Pty Ltd (Cash Converters) had routinely failed to follow RG 96 *Debt collection guideline: For collectors and creditors*, which recommends that consumers be contacted regarding a debt no more than three times per week or 10 times per month. This guideline is based on legislative prohibitions on harassment and coercion. Cash Converters also provided incorrect information to a consumer credit reporting agency, which may have resulted in up to 38,500 customers being reported with inaccurate amounts owing over a one-month period.

The following steps have been taken in response to our concerns:

- › Cash Converters has commenced outsourcing all debt collection work to a specialist third-party debt collector.
- › We imposed licence conditions on Cash Converters to require it to obtain our consent before resuming debt collection activity in-house.
- › Cash Converters has worked with the credit reporting agency to ensure all incorrect listings have been removed.

Cash Converters also made a \$650,000 community benefit payment to the National Debt Helpline.

Payday lending

In October 2017, ASIC entered into court enforceable undertakings with two payday lenders, Web Moneyline Pty Ltd and Good to Go Loans Pty Ltd, in response to an ASIC investigation of the payday lenders' loan product OACC2. We identified that OACC2 loans were provided to consumers on terms which fell outside the definition of a small amount credit contract, among other issues identified.

The court enforceable undertakings require that both payday lenders write off all outstanding OACC2 loans, including any outstanding debts that had arisen as a result of entering into those loans, notify the relevant credit reporting body that these loans have been settled, and refrain from entering into the OACC2 loan product with new consumers.

4.2 Insurance



The insurance sector includes life and general insurance. The insurance subsectors consist of **insurance product providers** (including friendly societies); **insurance product distributors**; and **risk management product providers**.

Insurance product providers

Life insurance claims handling

In May 2018, ASIC and APRA published new data on life insurance claims and claims-related disputes for the period 1 January 2017 to 30 June 2017. This reflects our continued collaboration with APRA, insurers and other stakeholders to establish a consistent public reporting regime for claims data following the release of REP 498 *Life insurance claims: An industry review* in October 2016.

ASIC and APRA have made significant progress with industry to improve the comparability and reliability of data in the life insurance industry. We aim to benefit consumers, insurers and regulators through increased transparency of life insurance claims practices and increased quality of information underpinning public debate and policy making. This should help to drive accountability in the sector and enable better understanding of the claims performance of particular insurers or policies. **For information on life insurance advice, see Section 4.3.**

Insurance product distributors

Preventing sale of inappropriate add-on insurance products

This year, ASIC continued to act to secure refunds for consumers for the sale of inappropriate insurance products.

ClearView Life Assurance Limited will refund approximately \$1.5 million to consumers and stop selling life insurance directly to consumers, after we found that unfair and high-pressure sales practices were at times used on sales calls made to consumers, without personal financial advice.

TAL Direct Pty Ltd offered refunds totalling \$900,000 to around 1,200 Insuranceline funeral insurance customers, as a result of its failure to switch off annual cost of living increases to premiums and cover.

Sale of add-on products with car loans

In August 2017, we released Consultation Paper (CP) 294 *The sale of add-on insurance and warranties through caryard intermediaries*. This paper sought feedback on proposals to introduce a deferred sales model for the sale of add-on insurance products and warranties by intermediaries who are also assisting with the purchase of a motor vehicle, and enhanced supervision obligations on insurers over their authorised representatives. This proposed reform is intended to address systemic poor practices in this sales channel.

Across the period 2017–18, we finalised refund programs totalling \$117 million with insurers QBE, Swann, Allianz and Suncorp for insurance products sold by motor vehicle dealers, including consumer credit insurance (CCI) and tyre and rim insurance. These insurers provided refunds for the sale of insurance that provided low or no value to customers (e.g. because they were ineligible to claim at the time the policy was sold to them or where unnecessary life insurance was sold to young consumers with no dependants). In some cases, the cover was sold to consumers who were unlikely ever to be able to claim.

Consumer credit insurance

Addressing the inappropriate sale of CCI has been a key focus of ASIC because it has long been associated with poor consumer outcomes in Australia and overseas. This includes consumers being unaware that they have purchased CCI and consumers being ineligible to make a claim on their CCI policy.

In August 2017, we established a CCI Working Group with representatives from the banking industry and consumer advocates, to improve consumer outcomes in relation to CCI. Following discussions with ASIC, the banks committed to a range of measures to improve consumer outcomes in relation to CCI, including a deferred sales model for CCI that is sold with credit cards applied for over the telephone and in branches. This means that consumers cannot be sold a CCI policy for their credit card until at least four days after they have applied for their credit card over the telephone or in a branch. This reduces the risk that a consumer will feel pressured to purchase the CCI product or purchases a CCI product that does not meet their needs.

In August 2017, the CBA refunded approximately \$10 million to 65,000 customers following the sale of unsuitable CCI for credit cards. The bank also refunded \$586,000 to around 10,000 customers after over-insuring and overcharging premiums for home loan protection CCI.

Misleading insurance advertising

ASIC's proactive advertising monitoring project reviewed over 8,000 banner, print, television, radio, billboard and website advertisements for insurance to ensure compliance with financial services laws. Some of our public outcomes, following significant ASIC activity, include:

- › In March 2018, RAA Insurance Limited (RAA) paid \$43,200 in penalties, following our concerns that RAA's television advertisements, which made representations about the 'lifetime vehicle replacement' benefit of RAA's comprehensive car insurance policy, did not adequately disclose or explain the eligibility criteria.
- › In December 2017, CommInsure paid \$300,000 towards a consumer advice service and had its advertising sign-off processes independently reviewed after we raised concerns about its life insurance advertising. We found that its advertising may have misled a policyholder to believe they would be entitled to a lump sum payment if they suffered any heart attack. In fact, only heart attacks that met certain medical criteria were covered. CommInsure also updated the definition of 'heart attack' in its trauma life insurance products.
- › In November 2017, AAMI paid \$43,200 in penalties and amended its advertising after we raised concerns that statements on AAMI's website and in radio commercials for its home building insurance 'Complete Replacement Cover' suggested that AAMI would repair or rebuild an insured house, no matter the cost. The statements did not disclose that AAMI could choose to arrange the repair of the house or choose to pay the policyholder the assessed cost of repairing or rebuilding the house, leaving the policyholder to arrange this themselves.

4.3 Financial advice



The financial advice sector includes **AFS licensees** that provide personal advice to retail clients on financial products (other than basic banking

products, and general and consumer credit insurance products); general advice only; and personal advice to wholesale clients only.

ASIC's work in this sector during 2017–18 focused on managing conflicts of interest and the quality of SMSF and life insurance advice. ASIC devotes significant resources to surveillance and enforcement in the financial advice sector, due to the history of misconduct in this sector.

Charging clients without providing advice

In 2017–18, we continued to, amongst other actions, supervise the remediation of affected consumers by ANZ, AMP, CBA, NAB and Westpac where the firms had charged clients annual fees for services, including an annual advice review, which were not provided. These entities had continued to deduct fees for advice and other services from customers' accounts in circumstances where the adviser was no longer attached to the customer or where the customer had given instructions for the deductions to stop.

As at 30 June 2018, customer compensation paid or offered by these entities, since the commencement of ASIC's project, had risen to approximately \$222.3 million, including interest. Since then, the level of customer compensation paid or offered by these entities has increased and it is expected to continue to do so over the coming period.

We further highlighted the systemic problems we identified in this area, and how they may be addressed, through submissions and evidence we provided to the Royal Commission.

Review of vertical integration and conflicts of interest

Managing conflicts of interest is an important part of how AFS licensees who provide financial product advice can help to ensure their customers have trust and confidence in their advice.

In January 2018, ASIC published the findings of its project, which examined how well Australia's largest banking and financial services institutions manage the conflicts of interest that inherently arise as a result of engaging in both the provision of personal advice to retail clients and the manufacturing of financial products under a vertically integrated business model. We assessed the quality of advice in relation to an in-house superannuation platform provided to new customers of AMP, ANZ, CBA, NAB and Westpac. These findings are found in REP 562 *Financial advice: Vertically integrated institutions and conflicts of interest*.

Our findings include that there was:

- › a strong bias towards selling related party products across advice licensees
- › a failure by advisers in 75% of client files reviewed to demonstrate compliance with the best interests duty and related adviser obligations.

We are requiring licensees to review and remediate affected clients. We are also undertaking a series of other regulatory actions in response to the findings of this project to ensure customers receive advice that is in their best interests, is appropriate and prioritises their interests.

Self-managed superannuation fund advice

In 2017–18, we undertook a research project to examine member experiences in setting up and running an SMSF, as well as whether advice providers are complying with the law when providing personal advice to retail clients to set up an SMSF.

On 28 June 2018, we released REP 575 *SMSFs: Improving the quality of advice and member experiences*, which summarises the findings of our work.

Our findings include the following:

- › a large number of advice providers are currently not complying with the best interests duty and related obligations
- › many SMSF members do not properly understand the advantages and disadvantages associated with setting up and running an SMSF.

To assist advice providers in complying with their obligations in the context of SMSFs, we have included a number of practical tips in our report. We have also provided these tips to relevant industry associations for circulation to their members.

ASIC and the ATO are working together to help consumers better understand the advantages and disadvantages of setting up and running an SMSF, with a view to enhancing current relevant communication material and encouraging individuals to undertake SMSF trustee education.

We will also be requiring licensees to review their advice and remediate SMSF clients affected by non-compliant advice.

Life insurance advice

Improving the quality of life insurance advice is a key focus for ASIC. We want to ensure that consumers who want advice on life insurance can obtain good quality financial advice that prioritises their needs.

To assist us with our work, we are analysing exception reports relating to policy replacement from life insurers and using a range of risk indicators to identify advisers who might be providing life insurance advice that does not comply with the law. We commenced collecting policy replacement data in September 2016, and this work is ongoing.

To date, we have completed a number of surveillances on advisers identified as part of the ongoing 'exception reporting' by life insurance companies. As a result, we have banned one financial adviser, we have entered into a court enforceable undertaking with another adviser and we are pursuing administrative action against a further five advisers.

We anticipate taking further enforcement action once we have finalised the surveillances from our latest exception reporting analysis. ***For more information on life insurance claims, see Section 4.2.***

Court enforceable undertaking entered into under ASIC's Life Insurance Lapse Data Project

Our Life Insurance Lapse Data Project receives reports from life insurers that list advisers who have passed thresholds relating to lapsed policies. We analyse these reports and other data to identify a group of high-risk advisers. These reports, used in conjunction with other data, enable us to target our surveillance activities with the ultimate aim of improving the life insurance advice provided to Australian consumers.

In January 2018, we entered into the first court enforceable undertaking under this project. Through our surveillance, we identified that one financial adviser, Duane Wright:

- › failed to undertake adequate inquiries
- › failed to provide adequate replacement product advice
- › advised clients to purchase life insurance that was too expensive
- › failed to consider the long-term impact on retirement savings of placing insurance within superannuation
- › failed to provide accurate information within statements of advice.

Under this court enforceable undertaking, Mr Wright and his business, First National Home Loans and Insurance Pty Ltd, will undergo additional training in relation to the provision of financial product advice and adhere to strict supervision requirements for 12 months, with all advice to be audited by the authorising licensee before it is provided to clients.

Dishonest conduct

Financial advisers are in a position of trust and must act honestly in their dealings with investors' money. In 2017–18, ASIC took enforcement action against financial advisers who breached this trust by engaging in dishonest conduct. For example:

- › In November 2017, following dishonesty charges brought by ASIC, Lewis Fellowes, a former stockbroker from Perth, was sentenced by the Brisbane District Court to three years imprisonment. Mr Fellowes pleaded guilty to one charge of dishonestly using his position with the intention of directly gaining an advantage for someone else and two charges of dishonestly using his position with the intention of directly gaining an advantage for himself, totalling \$1,595,000. Under Mr Fellowes' sentence he was to be released immediately upon entering into a \$30,000, five-year good behaviour bond. The Commonwealth Director of Public Prosecutions (CDPP) prosecuted the matter and has lodged an appeal against this sentence.

- › Following ASIC's investigation, in February 2018 we permanently banned Brenton Poynter, a former authorised representative of Charter Financial Planning Ltd (Charter), from providing financial services. We found that, between January 2015 and June 2016, Mr Poynter deducted a total of \$39,700 in fees from 10 clients' investment accounts for financial advice which he had not provided. Mr Poynter received a personal benefit of \$25,610 from these transactions. We also found that Mr Poynter directed three clients of Charter to deposit a total of \$26,990 directly into his personal bank account for financial services he had not provided. Charter and Mr Poynter's practice have refunded advice fees charged to the relevant clients.
- › In November 2017, ASIC banned former financial adviser with BBY Ltd, Sergio Belardo, from providing financial services for 10 years. Mr Belardo was an authorised representative of BBY Ltd and provided advice and dealing services to BBY retail clients in relation to financial products, including securities and derivatives. We found that Mr Belardo had engaged in unauthorised trading on multiple client accounts, engaged in trading on client accounts that was inconsistent with, or contrary to, the investment strategy agreed in the Statement of Advice, or otherwise agreed with the clients, and provided clients with inaccurate information in relation to their accounts.

Best interests duty and related obligations

Retail clients who rely on personal advice may suffer significant loss if the advice is conflicted or is not of good quality. This year, ASIC took action against financial advisers who are failing to adhere to their obligation to act in the best interests of their clients and related obligations, which were introduced under the Future of Financial Advice (FOFA) reforms. Our actions included bringing civil court proceedings and making banning orders.

First civil proceedings for breach of best interests duty against NSG Services Pty Ltd

In October 2017, in civil proceedings brought by ASIC, the Federal Court imposed a civil penalty of \$1 million on Melbourne-based financial advice firm NSG Services Pty Ltd (currently named Golden Financial Group Pty Ltd) for breaches of its obligation to act in the best interests of its clients. The clients were sold insurance and advised to roll over superannuation accounts that committed them to costly, unsuitable and unnecessary financial arrangements. This was the first civil penalty imposed on a financial services licensee for breaches of the best interests duty.

Civil proceedings against three Melbourne-based companies and former company director

In February 2018, the Federal Court found that three Melbourne-based financial services companies – Wealth and Risk Management Pty Ltd, Yes FP Pty Ltd and Jeca Holdings Pty Ltd – engaged in numerous contraventions of financial services and consumer protection laws and ordered them to pay penalties totalling \$7,150,000. The companies had business models which involved offering and giving cash payments to financially vulnerable clients in connection with the provision of financial advice. This often resulted in a substantial erosion of the clients' superannuation balances. The court also found that a former director of the companies, Joshua Fuoco, was knowingly concerned in the breaches and ordered him to pay a penalty of \$650,000.

Banning order against Christopher Ramsay

In February 2018, ASIC banned Brisbane-based financial adviser Christopher Ramsay for a period of five years for failing to act in the best interests of his clients and giving advice that was not appropriate.

We found that Mr Ramsay failed in his obligations when he provided advice to his Westpac and GWM Adviser Services Limited clients to switch their superannuation and insurance products. For example, he included:

- › misleading fee comparison tables in advice documents which suggested the recommended fund was cheaper than the client's existing fund, when either this was not the case or Mr Ramsay was not comparing similar fee structures
- › a misleading statement in an advice document which stated the client's existing insurer did not offer income protection insurance when it did.

We found that, as a consequence of Mr Ramsay's failings, his clients paid substantially more for some products than they had previously paid and had understood they would pay. In some cases, this significantly reduced the clients' superannuation savings without the clients' knowledge.

Banning order against Lawrence Toledo

On 8 September 2017, ASIC banned Lawrence Toledo from providing financial services for seven years. We found that Mr Toledo failed to act in the best interests of his clients when advising them to establish SMSFs to purchase properties. Mr Toledo failed to:

- › properly identify what his clients wanted advice on and to reasonably investigate what financial products would best suit their needs
- › understand what was required of him to comply with the best interests duty
- › provide advice that was appropriate to the clients.

We continue to take action to protect consumers where financial advisers are not acting in the best interests of their clients.

Infringement notices¹ for misleading consumers

In July 2017, Financial Choice Pty Ltd paid two ASIC infringement notice penalties totalling \$21,600 in relation to ASIC's concerns it was misleading consumers.

The first infringement notice related to a representation made by Financial Choice in bulk emails the company sent to around 215,000 consumers in 2016. The emails falsely stated that Financial Choice had been asked by the consumer's superannuation fund to conduct a survey about their superannuation.

The second infringement notice related to misleading representations on the website findmysuper.com.au, which is operated by Financial Choice. ASIC considered that those representations would lead consumers to believe that they needed to use Financial Choice's services.

As a result of ASIC's concerns that Financial Choice was misleading consumers, Financial Choice has:

- › agreed to stop sending communications that state or imply that Financial Choice is seeking consumers' opinions because superannuation funds have asked it to do so
- › removed the misleading statements from the Find My Super website.

Approval and oversight of compliance schemes for financial advisers

This year, ASIC continued to take an active role in policy advice and implementation in the financial advice sector. For example, in May 2018, we released a consultation paper outlining our proposed approach to approving and overseeing compliance schemes for financial advisers. Under the new legislative regime for adviser professional standards, compliance with a new code of ethics, which is being developed by the Financial Adviser Standards and Ethics Authority (FASEA), will be enforced by ASIC-approved compliance schemes. A draft version of the code was released by FASEA in March 2018.

¹ Compliance with the infringement notices is not an admission of guilt or liability, and these entities are not taken to have contravened the law.

4.4 Investment management, superannuation and related services



The investment management, superannuation and related services sector includes **superannuation trustees; responsible entities;**

wholesale trustees; custodians; investor-directed portfolio service (IDPS) operators; managed discretionary account (MDA) providers; traditional trustee company service providers; and crowd-sourced funding (CSF) intermediaries.

We use a range of regulatory tools, including surveillance, enforcement, guidance and stakeholder engagement to address and prevent inappropriate conduct by responsible entities (REs), superannuation trustees, fund managers and wholesale trustees and custodians.

Our work in the managed funds sector ranges from investigating illegal conduct and pursuing compensation for investors, to identifying compliance failures and monitoring the rectification process, and working with industry to facilitate good business practices.

Superannuation trustees

ASIC is primarily responsible for ensuring superannuation trustees meet their obligations in their dealings with consumers, including disclosure and advice to members and ensuring members have access to complaints processes. ASIC's approach to the regulation of superannuation takes into account the role of APRA as a superannuation regulator, as well as the role of the ATO and other entities such as dispute resolution schemes.

In 2017–18, we actively pursued entities that were providing misleading product disclosure statements and advertising.

OnePath

OnePath (an ANZ subsidiary) provided \$53.5 million in rectification and remediation to 1.3 million customers in connection with failure to provide disclosure documentation, and inadequate systems and processes. OnePath also paid an additional \$10.5 million in compensation for 160,000 superannuation customers affected by breaches caused by the OnePath group between 2013 and 2016. We confirmed the finalisation of all recommendations made by an independent review of OnePath's business activities. Our work achieved redress for affected consumers while also ensuring that the ongoing business practices of the entity meet expected standards.

Tidswell Financial Services Ltd / Spaceship Financial Services Pty Ltd

In April 2018, Spaceship Financial Services Pty Ltd and Tidswell Financial Services Ltd each paid \$12,600 under infringement notices for misleading and deceptive conduct in their advertising and changed the advertising on their fund's website.¹ This penalty was imposed as a result of our increased regulatory focus on new entrants to the superannuation industry, particularly those who target younger investors with potentially lower levels of financial literacy. We were concerned the fund's website prioritised marketing over accurate disclosure, which could mislead prospective members of the fund.

¹ Compliance with infringement notices is not an admission of guilt or liability and these entities are not taken to have contravened the law.

Death benefits by superannuation funds

The Superannuation Complaints Tribunal (SCT) referred several complaints regarding the failure of some superannuation trustees to provide adequate reasoning in their written responses to claims and complaints related to death benefits. Our investigation and analysis confirmed that some superannuation trustees need to improve their practices in this area. We asked those trustees to demonstrate how they are meeting their legal obligations to provide appropriate reasons for decisions, and to provide evidence of policies and procedures, and communicated our expectations more broadly to the industry. We will continue to engage with any trustee that fails to provide adequate written reasons for its decision on complaints.

Investment management responsible entities

Pursuing compensation for investors involved in a Ponzi scheme

We identified and took court action to shut down the unregistered and illegal Courtenay House managed investment scheme. The subsequent appointment of liquidators has enabled the pursuit of compensation for the over 600 investors affected by one of the largest Ponzi schemes in Australia's history, with losses estimated at over \$150 million. The liquidator has conducted public examinations of the operators of the scheme and we are continuing our own investigation of the case.

Significant compliance and disclosure overhaul by a responsible entity

Following a tip concerning poor conduct by a managed investment scheme involved in property development, we engaged with the responsible entity (RE) to minimise potential harms to consumers. As a result, the RE appointed an external consultant to review and improve its compliance framework and processes, changed several product disclosure statement (PDS) disclosures, revised its website advertising and removed two PDSs from the market.

Misleading advertising

In July 2017, Huntley Management Ltd was ordered by the Federal Court to pay a penalty of \$50,000 for false and misleading advertising to the effect that its investment activities were 'approved by the Australian Securities and Investments Commission'. Huntley Management made the statements on its website and in two advertisements in a national newspaper.

Risk profiled entities

We undertake annual risk-based conduct reviews of REs to assess compliance with their AFS licensee obligations. One RE applied to have its licence cancelled following a finding of non-compliance that it was unable to rectify. We also issued three interim stop orders on PDSs from another RE.

This year, we undertook 54 risk-based reviews and again found that, while most REs are generally committed to complying with their obligations, there are particular areas where non-compliance remains an issue, including professional indemnity insurance, financial requirements, conflicts of interest, breach reporting, and custody and risk management (cyber security and scheme liquidity management). We required all non-complying REs to address all areas of non-compliance and are continuing to follow up with them on this.

Exchange traded funds

Exchange traded funds (ETFs) continue to increase in popularity due in part to strong retail SMSF participation. During 2017–18, we assessed the overall state of this market, considering both issuer compliance with general regulatory obligations and specific ETF requirements, as well as market making, buy–sell spreads and how the ETFs are calculating their indicative net asset values. We identified potential improvements, made recommendations to ETF issuers about ways to better inform investors about the operation of the market, and will continue to monitor developments in this area.

Wholesale investment management trustees

We monitor AFS licensees' compliance with their licence conditions and any conduct that may result in harms to investors.

For example, we required an entity operating a wholesale property fund targeting overseas investors to withdraw and correct its misleading disclosures and advertising. It also applied more resources to its compliance arrangements to prevent such breaches from occurring in the future.

In another matter, we found that a licensee of a foreign group failed to meet licensing requirements by not maintaining a responsible manager based in Australia. The licensee applied to have its licence cancelled.

Managed discretionary account providers

ASIC conducted four surveillances in response to a licensee's alleged use of past performance returns to advertise managed discretionary accounts. The advertisements claimed that returns of up to 30% per annum had been achieved by MDAs offering trading in foreign currency, contracts for difference and derivatives. Our surveillance established that these past performance figures were inaccurate, and we intervened to have the advertising removed.

We also made clear to licensees that they must ensure information on their representatives' websites complies with the law, and highlighted our concerns about the use of past performance data by MDA providers in an industry publication. We will continue to focus on the MDA sector in the new financial year.

Crowd-sourced funding intermediaries

The new crowd-sourced funding (CSF) regime came into effect in September 2017 and ASIC began accepting licence applications from CSF intermediaries. The CSF regime is designed to balance the need for regulatory oversight with support for innovation and investment.

We released two regulatory guides, for public companies and for those looking to offer a platform for CSF offers and investments (RG 261 and RG 262). We have licensed nine intermediaries to provide CSF services and engaged with all newly licensed CSF intermediaries on a one-on-one basis to ensure they understand and comply with the new regime, including ensuring that their promotional and disclosure material complies with our new requirements.

We will collect data on the progress of this initiative to assist our ongoing evaluation of the industry.

4.5 Market infrastructure and intermediaries



The market infrastructure and intermediaries sector includes **market infrastructure providers** (Australian market licensees, various

types of market operator; clearing and settlement (CS) facility operators; Australian derivative trade repository operators; exempt market operators; and credit rating agencies); and **market intermediaries** (including market participants; securities dealers; corporate

advisers and over-the-counter (OTC) traders; retail OTC derivatives issuers; and wholesale electricity dealers).

ASIC's work in this sector during 2017–18 continued to focus on improving the effectiveness of Australia's capital markets. Australia's financial market infrastructure

is trusted, internationally competitive and respected. It also supports efficient capital raising, investment and risk management.

Our work also focused on ensuring that disruptive innovation benefits issuers and end-investors and that technological developments support investor trust and confidence.

Market infrastructure providers

Benchmarks reform

ASIC has continued working on reforms to enhance oversight of the administration of financial benchmarks in Australia.

In March 2018, the Parliament passed legislation that introduces a framework for licensing benchmark administrators and makes manipulation of any financial benchmark, or products used to determine financial benchmarks, a specific offence and subject to civil and criminal penalties.

Following passage of this legislation, in June ASIC published benchmarks rules, a significant benchmarks declaration and a regulatory guide, RG 268 *Licensing regime for financial benchmark administrators*, as part of a series of measures to establish a comprehensive regulatory regime for financial benchmarks. This is another significant step in ensuring continued market confidence in Australian financial benchmarks.

Another important benchmarks reform is the new bank bill swap rate (BBSW) calculation methodology, which was introduced in May 2018. We have been overseeing the implementation of this reform, including by ensuring the methodology is effective and fair. The benchmark will now be calculated directly from market transactions during a longer rate-set window and with a larger number of participants, addressing the previous concern about low trading volumes during the rate-set window. The benchmark is now anchored to real transactions at traded prices. This transaction-based approach aims to support the market's trust in the robustness and reliability of the BBSW.

Assessment of National Stock Exchange's listing standards

Listing standards are critical to the integrity of the Australian equities market and the trust and confidence investors have in it. During 2016 and 2017, we undertook targeted assessments of listing standards across the three Australian listing markets. This culminated in the publication of REP 538 *Assessment of National Stock Exchange of Australia Limited's listing standards* in August 2017.

This report made a number of recommendations, aiming to ensure that:

- › persons who can influence the National Stock Exchange (NSX) are of good repute, are sufficiently knowledgeable and will act in the best interests of the NSX market as well as the wider Australian market
- › the NSX market attracts issuers with legitimate motives and connection to Australia and ensures listings occur under Australian-regulated disclosure documents
- › the NSX market operates with integrity and its users are informed.

NSX agreed to have an independent third-party review of the effectiveness of its implementation of the actions from our assessment. This review was completed and published in March 2018.

Competition in settlement

In September 2017, ASIC worked with other members of the CFR and the ACCC to publish guidance and regulatory expectations on safe and effective competition in the settlement of Australian cash equities.

The published policy guidance clarified and extended the policy framework on competition in clearing services established by the CFR in October 2016 and focuses on:

- › regulatory expectations for the conduct of monopoly clearing and settlement service providers
- › requirements for safe and effective competition in the clearing and/or settlement of Australian cash market equities.

ASIC, with the CFR and the ACCC, is continuing to work with the Government to develop the changes to the Corporations Act to include rule-making powers for ASIC and arbitration powers for the ACCC to enforce the CFR's flexible policy framework on competition.

Cyber resilience assessments

ASIC published REP 555 *Cyber resilience of firms in Australia's financial markets* in November 2017. This report provides an analysis of the results of cyber resilience self-assessments from over 100 stockbrokers, investment banks, market operators, post-trade infrastructure providers and credit rating agencies.

The report demonstrated that there is a growing understanding that cyber risk is a strategic, enterprise-wide issue, with larger firms in particular demonstrating a relatively high degree of cyber resilience.

While there is a disparity in the amount of money, skill and time that has been invested in cyber security between large firms and small and medium firms, the small and medium firms are investing to develop stronger cyber resilience, which ASIC will continue to monitor, assess and measure.

Admission guidelines for exchange-traded products

In December 2017, we issued INFO 230 *Exchange traded products: Admission guidelines* to provide clear and consistent guidance on the standards for market operators seeking to admit exchange-traded products (ETPs) to their market, including managed funds, ETFs and structured products.

INFO 230 largely reflects our existing expectations and current market operator practices relating to approving ETP issuers, pricing of underlying assets of ETPs, exposure to derivatives, disclosure of portfolio holdings, liquidity provision and market making, securities lending, ongoing supervision of ETPs and issuers, waivers, product-naming considerations, and other types of ETPs.

During 2017, we worked with the ASX to improve the admission process for ETPs on the ASX market. In contrast to the previous admission process, where ASIC assessed ETP referrals on a case-by-case basis, since December 2017 ASX has taken full responsibility for the day-to-day admission process as it does with the admission of listed companies under its governance and oversight model. Our role is now focused on broader policy issues associated with the continuing growth and evolution of the ETP market.

Market intermediaries

Regulatory Guide 264 *Sell-side research*

We recognise that the integrity of research directly affects the integrity of our financial markets and investor confidence.

In December 2017, ASIC released RG 264 *Sell-side research*, which is directed towards AFS licensees that provide sell-side research. This regulatory guidance examines the conflicts of interest that arise in the provision of sell-side research, such as inappropriate use of inside information and potential preferential treatment of clients.

The guide outlines the obligations imposed on AFS licensees to manage conflicts during each stage of the capital raising process, including by avoiding, controlling and disclosing these conflicts; and the obligation to manage research teams, including by implementing appropriate remuneration structures and coverage decisions.

We provided this guidance in response to our findings of inappropriate arrangements to manage conflicts of interest concerning inside information and research independence that was identified in our August 2016 publication REP 486 *Sell-side research and corporate advisory: Confidential information and conflicts*.

We expect licensees to manage and, where possible, avoid conflicts of interest in sell-side research to ensure the research provided has credibility and integrity and can reasonably be relied on by investors. The handling of confidential information is an ongoing focus for us. Licensees were expected to comply with this guidance by 1 July 2018.

Enforcing the proper management of conflicts of interest

This year, ASIC achieved regulatory outcomes where licensees did not adequately manage their conflicts in the provision of sell-side research.

An ASIC investigation into the capital markets and research business of the investment banking and stockbroking service provider, Foster Stockbroking Pty Ltd (FSB), identified several issues with its management, including the failure to adequately manage conflicts of interests by giving preferential treatment when allocating shares to its directors.

ASIC found that FSB was scaling back the IPO subscription bids for Reffind Limited (RFN) – a company of which FSB was the sole lead manager. ASIC found that FSB was scaling back the IPO subscription bids made by FSB’s directors disproportionately less than subscription bids made by other investors, including FSB retail clients, and did not fully disclose to RFN the shares allocated to FSB directors.

FSB entered into a court enforceable undertaking with ASIC to implement a number of changes to its systems and controls, including more stringent and effective conflicts of interest disclosure policies. FSB agreed to have the implementation of its undertakings independently assessed and also to make a community benefit payment of \$80,000 to The Ethics Centre.

Retail over-the-counter derivatives

Retail OTC derivatives are speculative, high-risk products which can be complex and difficult to understand.

Binary options

In this sector, binary options result in the highest losses for consumers. In May 2018, we released a binary options warning campaign through our MoneySmart website and social media channels.

This campaign aims to inform consumers of the reality that, while binary options promise high returns quickly, they are high-risk, unpredictable investments with a likeness to gambling.

Most binary option providers operate through online platforms and mobile apps, but not all binary options providers operating through these platforms are licensed. ASIC’s warning to consumers provided a reminder to always check that entities are licensed to trade binary options in Australia on ASIC’s professional registers.

This year we worked closely with Google and Apple to remove over 330 unlicensed binary options apps from their app stores. In addition to the unlicensed activity undertaken by these apps, ASIC was concerned that:

- › many of the mobile app descriptions contained statements which appeared to be misleading about the profitability of trading and the amount of profit that could be made
- › the majority of these apps failed to outline the risks of trading binary options, with 80% having no risk warning at all
- › some apps made it appear that the introducing broker was the issuer of the binary option and did not clearly inform investors if and how the broker would be compensated for referral business
- › some binary option review and education sites were merely collecting personal information which could be used for high-pressure cold-call selling.

Apple and Google acted quickly to remove the apps that we identified. Apple has now banned binary options trading apps, and Google has now banned advertising of binary options. We continue to collaborate with the digital community to protect consumers from risky products and unlicensed operators.

Client money reforms

On 4 April 2018, ASIC's Client Money Reporting Rules 2017 became effective. As part of this reform, we released RG 212 *Client money relating to dealing in OTC derivatives*, which is the updated guidance for AFS licensees that hold client money for trading in retail OTC derivatives.

Our guidance ensures that AFS licensees are aware of the effects of the reforms, which includes the restriction of circumstances in which an AFS licensee may use client money, and the imposition of new record-keeping, reconciliation and reporting requirements.

Restrictions imposed on AFS licensees holding client money for trading in retail OTC derivatives include the inability to withdraw and use derivative retail client money for a range of purposes, such as for a licensee's own working capital or for hedging.

These reforms aim to strengthen the protection of derivative retail client money, ensure greater transparency in relation to an AFS licensee's receipt and use of derivative retail client money and, in turn, increase investor trust and confidence in our financial system.

Trade repository data

ASIC continues to monitor OTC derivative trade repository operators to support the integrity of OTC trade data reported to us and other Australian financial regulators. The trade repository data reporting requirements improve the transparency of information in OTC transactions. This better enables us, and other regulators, to identify systemic risk concerns and potential market abuse by OTC traders. It also assists our surveillance and enforcement activities and the development of policy for benchmark reforms.

Credit rating agencies review

Credit rating agencies play an important role in our markets by giving market users a better understanding of credit risks, resulting in more informed investment and financing decisions.

On 31 October 2017, we completed a market-wide surveillance of credit rating agencies. The surveillance commenced in January 2016. It primarily focused on the governance, transparency and disclosure arrangements of credit rating agencies.

Observations made through our surveillance resulted in recommendations to improve compliance of credit rating agencies with their AFS licensee obligations, as outlined in REP 566 *Surveillance of credit rating agencies*, released in February 2018. We are monitoring credit rating agencies' implementation of the recommendations.

Consolidation of ASIC's market integrity rule books and regulatory guides

We are committed to reducing red tape for market participants by administering the law efficiently with a minimum of procedural requirements.

After public consultation, in November 2017 we released consolidated market integrity rules which merge 13 of the 14 previous rule books into four rule books, creating a common set of rules for securities markets and a common set of rules for futures markets.

On 4 May 2018, we also published two regulatory guides that consolidate and replace seven regulatory guides for securities and futures markets participants, which, for example, introduce new guidance on management structures.

Most market operators and market participants were required to comply with the consolidated market integrity rules from 7 May 2018.

4.6 Corporate



The corporate sector includes auditors and liquidators, which are subject to separate fees and levies.

The corporate subsectors include **corporations** (listed corporations; unlisted public companies; large proprietary companies; and small proprietary companies¹); **auditors of disclosing entities**; **registered company auditors**; and **registered liquidators**.

Corporations

The Royal Commission and inquiries such as APRA's prudential inquiry into CBA's governance, culture and accountability have assisted in highlighting more broadly the importance of corporate governance issues. Poor corporate governance can lead to significant investor and consumer losses as well as a loss of confidence in our markets. ASIC's work in corporate governance spans policy development and messaging, surveillance and enforcement activities. Our work in this sector during 2017–18 focused on the following areas.

2017 AGM season report

We actively monitor AGMs of listed companies to identify emerging trends and corporate governance issues and observe the extent to which AGMs are used by companies as a forum to meaningfully engage with their shareholders. This is because shareholder engagement is a cornerstone of good corporate governance.

In January 2018, we published REP 564 *Annual general meeting season 2017*. This provided our overview of the AGM season for S&P/ASX 200 (ASX 200) listed companies in 2017, including our examination of the voting outcomes of resolutions considered at AGMs held by ASX 200 companies in 2017.

The report highlighted strong shareholder input and engagement evidenced by material 'against' votes on changes to remuneration structures, despite a decrease in the number of remuneration strikes from the 2016 season. There was continued, active scrutiny of governance practices by proxy advisers and a focus on gender diversity and specific environmental, social and governance issues such as climate risk.

The report showcased concerns about a lack of significant changes to the structure of AGMs, with 25 companies in the ASX 200 continuing to decide resolutions by a show of hands rather than by conducting a poll. A poll more democratically reflects the principle of 'one share one vote'.

The report included recommendations about good corporate governance practices.

Independent experts

This year we conducted surveillances of a select number of independent experts. Independent expert reports provide an independent assessment of the value of an offer to help investors decide whether to accept an offer for their shares or to approve a transaction affecting control of their company. AFS licensees active in the provision of independent expert reports have heightened responsibilities as financial system gatekeepers.

We identified a number of significant concerns, such as system failings in key procedures, which raised concerns that the advice being provided to shareholders was not reliable and independent and that the firms were failing to satisfy their obligations as AFS licensees.

¹ Small proprietary companies will be charged through an increase to the annual review fee for proprietary companies in the Corporations (Review Fees) Regulations 2003.

Voluntary variation of the AFS licence of HLP Mann Judd Corporate Finance Pty Ltd

As part of this surveillance program, we undertook a review of HLB Mann Judd Corporate Finance Pty Ltd. We were not satisfied that it had met its obligations as an AFS licensee or complied with RG 111 *Content of expert reports* and RG 112 *Independence of experts* in relation to the provision of independent expert reports.

In January 2018, we accepted a voluntary variation from HLB Mann Judd Corporate Finance of its AFS licence. The variation excluded the firm from providing advice as an independent expert. This means that it can no longer prepare or provide independent expert reports, opinions or valuations in connection with corporate transactions, including takeover bids, corporate schemes of arrangement and corporate restructures.

Takeover and control transactions

This year, we continued to scrutinise takeover and control transactions to ensure they were structured fairly and that investors were provided with sufficient information to make properly informed decisions. We took action against companies and individuals that we found to be in breach of their obligations under the Corporations Act.

Takeover transactions

In April 2018, we were involved in the filing of charges in takeover matters in the Brisbane Magistrates Court:

- › Charges against former chair of G8 Education Limited

Charges against Jennifer Hutson, the former director and chair of education provider G8 Education Limited, following our investigation of a takeover bid the company made in 2015 for Affinity Education Group Limited. The 30 charges were for breaches of directors' duties, attempting to pervert the course of justice, and providing or authorising the provision of false and misleading information in relation to the takeover bid.

- › Charges against Clive Palmer and Palmer Leisure Coolum Pty Ltd

Following our investigations of a proposed takeover of The President's Club Ltd (TPC), charges were filed against both Palmer Leisure Coolum Pty Ltd (Palmer Leisure Coolum) and Clive Palmer as director of the company. The charges relate to Palmer Leisure Coolum publicly proposing to make a takeover bid for securities in TPC but not making an offer for those securities within two months as required under section 631(1) of the Corporations Act. Mr Palmer is charged with aiding, abetting, counselling or procuring the company to commit that offence.

Control transactions and shareholder rights

In monitoring control transactions, ASIC seeks to ensure fairness to all shareholders. A key area of our focus is rights issues and other fundraisings that may impact the control of an entity.

Where we have concerns about the control impact of a transaction, we often require changes to be made to deal structures to ensure shareholders have a meaningful say over whether the company should proceed with the transaction or are provided with a fairer opportunity to participate in the transaction. For example, this year we raised concerns with a listed entity that was proposing a large fundraising in several tranches, where only the final tranche was subject to shareholder approval.

We raised concerns with the entity that the underwriter of the fundraising could potentially acquire a majority interest in the company. In addition, by the time shareholders voted on the control of the entity, they would be left with little meaningful choice. This was because alternative arrangements were in place that had the practical effect of passing control if shareholders did not vote in favour of the transaction.

In response to ASIC raising concerns, the entity restructured its transaction to ensure no party would acquire control of the entity under the fundraising.

Fundraising

ASIC continues to review fundraising documents to ensure that they are clear, concise and effective and provide investors with enough information to make a good investment decision.

ICOs and fundraising by unlisted development companies have both been key focuses of our work in 2017–18.

Initial coin offerings

There is global interest in crypto-assets, including the use of ICOs by entities to raise funds. We have provided guidance to the market in INFO 225 *Initial coin offerings and crypto-currency*. On 19 April 2018, ASIC also received delegated powers from the ACCC that enabled ASIC to take action under the Australian Consumer Law for misleading or deceptive conduct in the marketing or selling of ICOs, even if the ICO does not involve a financial product.

In May 2018, we took action to protect investors where we identified fundamental concerns with the structure of an ICO, the status of the offeror and the lack of regulated disclosure. As we considered the tokens being offered were legally preference shares, the offer required prospectus disclosure and was being made by a proprietary limited company (proprietary limited companies are not permitted to make offers of securities requiring disclosure). The transaction was subsequently withdrawn.

Fundraising by unlisted development companies

Throughout the year, we observed several small property developers seeking funding from the public through the issue of preference shares.

Given the potential appeal of the high rates of interest to retail investors and the risks associated with property development, we engaged extensively with issuers to ensure that relevant, important information about the value, costs and status of the development were included in the prospectus.

We also issued orders under section 294 of the Corporations Act directing related operating companies to produce and lodge financial accounts. This was to ensure transparency for investors when a project was under construction, which may not otherwise have been the case.

Financial reporting and audit

Financial reporting surveillance

We review reports of listed entities and other significant entities with the aim of improving the quality of financial reporting.

Audit firm inspections and auditor surveillances are key compliance tools used by ASIC to change the behaviour of registered company auditors and audit firms. We do so by contacting the relevant auditor where our reviews raise concerns that the entity inspected is non-compliant with the audit requirements of the Corporations Act, Australian auditing standards or professional and ethical standards.

Examples of entities responding to our concerns and changing their behaviour to remedy audit deficiencies are discussed below.

Myer writes down intangible assets by \$515 million in its half-year financial report

ASIC raised concerns on the value of assets in Myer Limited's financial report for the full-year ended 29 July 2017. Our concerns included the reasonableness and supportability of the cash flow forecasts used in testing the assets for impairment.

After ASIC raised these concerns, on 21 March 2018 Myer announced its decision to write down the value of its goodwill and brand name intangible assets by \$515 million in its financial report for the half-year ended 27 January 2018. Myer has stated that this write-down in the value of its assets reflects its adoption of lower cash flow forecasts, as well as the deterioration in trading during the first half of the 2018 financial year.

The impairment of non-financial assets remains a focus in ASIC's surveillance of financial reports.

Genworth Mortgage Insurance Australia Limited changes the recognition of premium revenue in its financial report

ASIC raised concerns about the basis used by Genworth Mortgage Insurance Australia Limited (Genworth) to recognise premium revenue in the financial reports for the year ended 31 December 2016 and the half-year ended 30 June 2017, having regard to the pattern of historical claims experience in earlier underwriting years.

After ASIC raised these concerns and engaged in discussions with Genworth about its premium earning pattern, on 15 December 2017 Genworth announced it would change the recognition of premium revenue in its financial report for the year ending 31 December 2017.

Genworth announced that the change would:

- › negatively impact net earned premium by approximately \$40 million
- › reduce the net earned premium for the fourth quarter of 2017 by approximately 17–19%, instead of the previous guidance of 10–15%
- › affect the recognition of revenue for the fourth quarter of 2017 as well as for subsequent reporting periods.

Revenue recognition remains a focus area of our financial reporting surveillances.

Request to cancel registration as a registered company auditor

- › In November 2017, we accepted a request from Stephen James Bourke of PricewaterhouseCoopers to cancel his registration as a registered company auditor following his decision to retire as an auditor.
- › Mr Bourke was lead auditor for the audit of the financial report of Vocation Limited for the year ended 30 June 2014. ASIC found that Mr Bourke should have gathered further audit evidence post balance date and before signing the audit opinion concerning Vocation's dispute with the Victorian Department of Education and Early Childhood Development. In our view,

Mr Bourke should have obtained this further evidence in connection with the recognition and recoverability at year end of a material accrued revenue asset and consideration of any possible impact on goodwill.

Promoting financial report quality

ASIC continues to highlight the areas we will focus on in our surveillance of financial reports by major reporting entities. These releases inform preparers of financial reports so that they can address key reporting matters before issuing their financial reports and ensure that the market is properly informed on a consistent and comparable basis.

In December 2017 and May 2018, we issued media releases outlining our focus areas for financial reports at 31 December 2017 and 30 June 2018.

In the May media release, we explained that we would be focusing on the introduction of major new accounting standards that will have the greatest impact on financial reporting for many companies since the adoption of International Financial Reporting Standards in 2005.

Full-year reports at 30 June 2018 must disclose the future impact of these new accounting standards. Half-year financial reports at 30 June 2018 must comply with the new requirements for revenue recognition and financial instrument valuation.

We also issue media releases on our findings from our reviews.

Auditors play a vital role underpinning investor trust and confidence in the quality of financial reports. **For more information on our surveillances of auditing firms, see Section 4.6.**

For information on our international cooperation to improve financial reporting and audit quality, see Section 5.1.

For information on ASIC's use of breach reports from licensees and auditors to identify and respond to misconduct, see Section 5.7.

Registered liquidators

Implementation of insolvency law reform

Following the introduction of the *Insolvency Law Reform Act 2016* in September 2017, we successfully implemented the second and final tranche of the reform, which focused on registered liquidators' conduct of external administrations.

The reforms aim to increase efficiency, reduce administration costs and promote market competition in personal and corporate insolvency in Australia.

To assist the implementation of this reform, we:

- › delivered updates to information technology (IT) systems, including our corporate register and the published notices website
- › updated regulatory guides, information sheets and forms, helping registered liquidators to comply with their new obligations under the Act following law reform.

We also worked closely with third-party software suppliers to ensure the industry was ready for the reforms.

Applying ASIC's new powers under the *Insolvency Law Reform Act 2016*

Registering liquidators

Following changes brought about by the *Insolvency Law Reform Act 2016* (Reform Act), decisions in relation to the registration of liquidators, variation of conditions of registration and disciplinary matters in relation to registered liquidators are determined by a committee convened by ASIC. Each committee must consist of ASIC as Chair, a registered liquidator chosen by the Australian Restructuring Insolvency and Turnaround Association and a person appointed by the Minister.

When ASIC receives an application for registration as a liquidator, it must refer that application to a committee to decide whether the applicant should be registered. ASIC must give effect to the committee's decision.

During the 2017–18 year, committees were convened to consider 16 applications for registration as a liquidator. Committees determined that four of those applicants ought to be registered without conditions, seven should be registered but conditions be imposed on that registration and the remaining five should not be registered. Of the five applicants who were unsuccessful in seeking registration, three have sought a review at the Administrative Appeals Tribunal (AAT). In the first such matter considered by the AAT, the decision was to register the applicant but apply strict conditions to that registration. The AAT is yet to consider the remaining two applications.

Committees were also convened to consider five applications to vary conditions previously imposed on registrations. The committee determined that in four of those matters the condition in place should be varied, and in the remaining matter the condition was removed.

Directions to comply

Under the Reform Act, we were given a new power to provide a liquidator with a direction to remedy a failure to lodge documents and give information or documents that are otherwise required to be lodged with ASIC. We have successfully used this power on several occasions during the year either to resolve our concerns by achieving compliance or to advance our investigations.

Show cause notices

Under the Reform Act, we received a power to issue a 'show cause' notice to a registered liquidator, which requires liquidators to give us a written explanation as to why the liquidator should continue to be registered, if we believe certain circumstances exist.

This year we used this new power on two occasions. One of these matters is ongoing. We referred the other matter to the disciplinary committee, which determined that the liquidator should continue to be registered subject to a condition that he undertake specified training.

Automatic cancellation and appointment of another liquidator

Under the Reform Act, ASIC was conferred power under section 40-111 of Schedule 2 to appoint a replacement liquidator if a liquidator's registration is suspended or cancelled.

Under section 40-20(1), a liquidator's registration is automatically cancelled if a person becomes an insolvent under administration. On 8 June 2018, former registered liquidator Justin James Cadman was declared bankrupt. We used our powers to remove Mr Cadman from the Register of Liquidators on 13 June 2018. This cancellation caused vacancies in all of Mr Cadman's external administration appointments. On 19 June 2018, we used our new powers to appoint replacement liquidators to the 15 vacant external administrations previously administered by Mr Cadman.

Cancellation of a liquidator's registration

On 19 April 2018, the AAT affirmed a decision to cancel the registration of Randall Joubert as a liquidator. This decision was made by the (former) Companies Auditors and Liquidators Disciplinary Board (CALDB) following an investigation and referral by ASIC. We appeared in the AAT and submitted evidence in support of the CALDB's concerns.

The AAT found that Mr Joubert's actions as a registered liquidator of several companies were deliberate and dishonest and that he was not a fit and proper person to be a registered liquidator.

The AAT further expressed concern that Mr Joubert had failed to notify ASIC of concerns about the companies so that we could consider whether to conduct investigations of possible breaches of the Corporations Act.

Mr Joubert did not appeal the AAT decision. Subsequently, we made an application to the Federal Court to fill the vacancies created by the AAT decision.

Appearing in insolvency court proceedings

ASIC may intervene in any proceeding relating to a matter arising under the Corporations Act or we may seek leave to appear as 'friend of the court' in proceedings where we consider that the court would be assisted by hearing from ASIC. For example, during the year we appeared in the following matters.

Channel 10 – independence of administrators

ASIC appeared as 'friend of the court' in the matter of Ten Network Holdings Ltd. The matter concerned apprehended bias arising from a significant pre-appointment engagement undertaken by the administrators for Channel 10, KordaMentha, which were paid more than \$1 million for their work.

The facts and circumstances of each appointment will determine if apprehended bias exists and the circumstances of this matter were quite unique. Importantly, disclosure does not cure apprehended bias and, in these circumstances, was remedied by the court appointing other independent liquidators to undertake specific tasks in the administration.

Provident Capital Ltd – reasonableness of remuneration

In *Australian Executor Trustee Ltd v Provident Capital Ltd* [2018] FCA 439, the Federal Court reaffirmed key principles about the review of the reasonableness of remuneration claimed by registered liquidators.

The court invited ASIC to assist in the review and provide a written submission. The court acknowledged the complexity of the administration and that the receivers had undertaken a great deal of work diligently, professionally and competently.

The decision provided guidance about the engagement of external consultants and whether they should be engaged as employees or consultants of the company under administration rather than consultants to the receiver's firm. The court found that the amount claimed in remuneration for a consultant was not reasonable because the consultant's cost to the administration included a margin to recover the overheads of the receiver's firm, incidental to engaging the consultant.

The court made a deduction of \$220,000 from total remuneration claimed in the receivership, representing approximately 63% of the margin amount, totalling \$347,824.50, added by the receivers to the fees charged by the consultant.

Report on our public notice website and lodgement project

On 13 June 2018, we published a report outlining the results of our industry-wide project, conducted over a three-year period to June 2017, to review how registered liquidators complied with their obligations to lodge forms with ASIC and publish notices on ASIC's published notices website.

Lodging forms and publishing notices is an integral part of informing creditors and other external stakeholders about key information and events in the conduct of an insolvency administration, including reporting what money they receive and how it is used.

The project identified that registered liquidators are mostly complying with their lodgement and publication obligations, although 70% of registered liquidators were identified as having minor non-compliance issues. We reviewed around 26,000 external administrations and found that only 3.3% of required forms were not lodged and 7% of the required notices were not published.

Key outcomes achieved by the project included guidance to registered liquidators to help them improve their practice management and efficiency regarding compliance with lodgement and publication requirements.

Targeting illegal phoenix activity

The Government announced law reforms to address illegal phoenix activity, building on, among other things, the work of the Phoenix Taskforce, of which we are a member.

We also launched a new webpage to better educate the public on illegal phoenix activity and undertook market engagement in this space through numerous presentations, panel discussions and meetings. ***For more information on our work on illegal phoenix activity, see Sections 4.6 and 5.6.***

ASIC's enforcement action against illegal phoenix activity

In April 2018, ASIC's investigations resulted in the conviction of a former Noodle Box franchisee for engaging in illegal phoenix activity. ASIC alleged that the franchisee transferred company assets and business to another company without the company receiving payment for those assets. The court sentenced the franchisee to two months imprisonment with an automatic disqualification from managing corporations for five years.