

# 5

## ASIC cooperation

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# ASIC cooperation

In order to further ASIC's work in the financial sector for the benefit of all Australians, we place emphasis on efficient cooperation with peer agencies and the public, including:

- › Our work with our international counterparts ensures that we are on top of international developments and provides us with the opportunity to influence global regulatory policy.
- › Our Innovation Hub assists innovative Australian businesses to comply with regulatory requirements and provides a platform for international engagement on financial technology (fintech) and regulatory technology (regtech) ideas.
- › Our data strategy supports our alignment with whole-of-government initiatives, including the Public Data Policy and the Digital Continuity Policy 2020.
- › Our Office of Small Business assists, engages with, and helps protect small business in Australia.
- › Our Office of the Whistleblower acts as a central coordination point within ASIC for ensuring that we record and action reports from whistleblowers.
- › Our Criminal Intelligence Unit assists us to identify, understand and counter serious and organised crime.
- › We participate in the Government's Phoenix Taskforce, Serious Financial Crime Taskforce and Black Economy Taskforce to address misconduct, including illegal phoenix activity.
- › The intelligence that we receive from the public as reports of misconduct, and from industry as breach notifications, is critical in informing our regulatory work.

## 5.1 Cooperation – regional and international engagement

ASIC engages closely with peer regulatory authorities and international organisations to develop international regulatory policy. This engagement is crucial to ensuring that ASIC remains a world-leading regulator and can positively influence the operation and regulation of global financial markets.

In 2017–18, we contributed to international policy development in a variety of areas. We had a particular focus on advocating for global regulatory coordination and harmonisation in the areas of fintech and regtech. We also advocated for deeper levels of regional integration through initiatives such as the Asia Region Funds Passport (ARFP).

We are also involved in international policy in trade and investment. We provided advice and support to the Department of Foreign Affairs and Trade (DFAT) regarding the financial services aspects of free trade agreements.

Importantly, we continue to offer our technical expertise to regulatory authorities in emerging markets. This critical work seeks to assist these regulators in building their capability to regulate effectively.

Our principal international engagement is through the International Organization of Securities Commissions (IOSCO). ASIC is a member of the IOSCO Board and has representatives on its policy committees and taskforces.

We also participate extensively in other global policy forums relevant to areas within our jurisdiction, including insurance, accounting standards and supervision, consumer protection, cyber risk, data, and financial markets, particularly derivatives markets.

Some of the forums we participated in during 2017–18 included:

- › the International Association of Insurance Supervisors (IAIS) (we currently chair IAIS’s Market Conduct Working Group)
- › the International Forum of Independent Audit Regulators (IFIAR) and the International Accounting Standards Board (ASIC is a board member of IFIAR)
- › the International Financial Consumer Protection Organisation (IFCPO) (ASIC is a member of the IFCPO’s Governing Council)
- › the Financial Consumer Protection Taskforce (established by the Organisation for Economic Co-operation and Development (OECD))
- › the working group established by the World Economic Forum on consumer data protection.

Consistent with the global nature of the markets that ASIC regulates, we are also actively engaged with international policy-setting and standard-setting forums. In some instances, we engaged in the forums mentioned above, such as IOSCO and the IAIS, with the clear objective of improving global regulatory standards. In other cases, we have sought to establish information-sharing networks, such as IOSCO’s Data Analytics Group, on novel or complex topics.

## International Forum of Independent Audit Regulators

This year, through IFIAR and together with eight other regulators, we met with the six largest firm networks worldwide on initiatives to improve audit quality. We also work with other IFIAR members on measures such as improved information sharing, improved auditing and ethical standards, and information sharing on enforcement approaches. We chaired the International Co-operation Working Group up to April 2018 and led work on the mobility of auditors across borders and the use of supervisory colleges by regulators.

## Asia–Pacific cooperation

### Asia Region Funds Passport

In 2017–18, in close cooperation with Treasury, we continued to support the implementation of the ARFP legislation and regulations. The ARFP is intended to support the development of an Asia-wide funds management industry through improved market access and regulatory harmonisation. Participating economies include Australia, Japan, the Republic of Korea, New Zealand and Thailand.

We are also working with Treasury to support the development of legislation to implement the proposed regime for corporate collective investment vehicles (CCIVs). The regime is intended to support Australia’s fund management industry in making offers of investments in the Asia region. We are developing guidance for each of these initiatives.

ASIC represents Australia on, and is the current Chair of, the Joint Committee, which is the governing body of the ARFP and is responsible for its implementation.

### ARFP Pilot Program

The ARFP Pilot Program launched in 2018, with the objectives of:

- › testing regulator processes and systems needed for the ARFP
- › identifying areas that may require further development of the Passport Rules before the ARFP goes live
- › identifying any remaining barriers to offering interests in the passport fund in another participating economy.

Australian fund managers are testing the ARFP application process with ASIC. We worked with the fund managers and their advisers to help them to understand how to apply using ASIC’s Regulatory Portal and how ASIC would assess their applications. We are also providing feedback on the quality of their applications to help them with future applications.

## Asia-Pacific Regional Supervisory Colleges

In March 2018, ASIC co-hosted the third annual Asia-Pacific Regional Supervisory College in Sydney with the Securities and Futures Commission of Hong Kong.

Eleven regulators were represented at the college, which reviewed two firms with significant regional footprints. Compliance, conduct and culture, cyber risk strategies and geopolitical risks consistently emerged as areas of supervisory focus. We have participated in the three Asia-Pacific Regional Supervisory Colleges held since 2016, two of which were hosted by us. We regard these as important components of our regulatory toolkit for supervisory cooperation across borders. We continue to participate actively in these colleges and other global supervisory colleges.

## IOSCO Asia-Pacific Regional Committee

ASIC has sought to create closer regional ties through international forums. In 2017–18, we focused on strengthening IOSCO's Asia-Pacific Regional Committee (APRC).

Through the APRC, IOSCO members within our region can speak with a unified voice. This has been an important element of ASIC's regulatory strategy, given the implementation of significant regulatory changes with extraterritorial effect from other parts of the world.

ASIC has encouraged APRC members to raise emerging concerns in their domestic jurisdictions at the regional level through the APRC.

## Fintech

Technology is rapidly reshaping financial services around the world. This highlights the value to Australian consumers and industry of ASIC engaging internationally in this area. For example, ASIC continues to engage with peer regulators and international organisations on the issue of cryptocurrencies and ICOs. Shared international perspectives have informed ASIC's own regulatory response.

ASIC presented on numerous occasions at fintech conferences and forums organised by international institutions, such as the International Monetary Fund (IMF), World Bank and OECD.

## Capacity building

Capacity building in overseas markets offers ASIC a unique perspective on how financial markets are changing in emerging economies and the regulatory challenges that this poses. It also allows us to share our expertise with some of our key global partners.

### Capacity building in Indonesia

ASIC assists the Indonesian Financial Services Authority, OJK, in a wide range of capacity-building initiatives. The objective of this program is to strengthen OJK's capacity to develop and implement global standards and practices; build a culture of responsive, skill-based surveillance and risk-focused supervision; and respond to emerging regulatory issues.

In 2017–18, our assistance focused on regulating the activities of investment banks, enforcement approaches to financial reporting fraud, professional standards and regulation of financial advisers.

### Capacity building through APEC Financial Regulators Training Initiative

ASIC contributes to the Asia-Pacific Economic Cooperation (APEC) Financial Regulators Training Initiative (FRTI) by providing speakers at training seminars in the region. ASIC is in its second year of chairing the FRTI advisory group of securities regulators.

## International assessments

### IOSCO assessment committee

In 2017–18, as part of an IOSCO Standards Implementation Monitoring Review Committee, we reviewed self-assessments from a range of jurisdictions on their compliance with the IOSCO Principles relating to secondary markets.

This process of peer review provides important assistance for regulatory authorities that are seeking to update their standards in accordance with global best practice.

### Financial Sector Assessment Program

In 2018, Australia underwent a Financial Sector Assessment Program (FSAP) review conducted by the IMF. The FSAP provides a comprehensive analysis of a country's financial sector and regulatory frameworks.

ASIC, working under the auspices of the CFR, contributed to Australia's FSAP response effort. This cross-agency CFR working group comprised members from the Australian Treasury, APRA, the RBA and ASIC.

The 2018 FSAP is focused closely on Australia's implementation of the Core Principles for Effective Banking Supervision, the Insurance Core Principles and Australia's financial market infrastructure.

## Multilateral cooperation

In 2018, we became one of the first signatories to IOSCO's Enhanced Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information (EMMoU). The EMMoU is built upon the current MMoU (signed in 2002). It provides additional tools to facilitate greater cross-border enforcement cooperation and assistance among securities regulators, enabling them to respond to the risks and challenges posed by globalisation and advances in technology since 2002.

## International cooperation requests

In 2017–18, we made 393 international cooperation requests and received 495 requests on activities such as supervision, surveillance, intelligence, enforcement, policy and benchmarking licensing and capacity building.

This included 145 requests to ASIC for assistance in enforcement matters, including 22 requests seeking ASIC's assistance to compel material from third parties under the *Mutual Assistance in Business Regulation Act 1992*.

## Bilateral cooperation

In 2017–18, ASIC hosted 29 international delegations from 18 jurisdictions. The delegations included authorities from Mongolia, Malaysia, Abu Dhabi, Korea, Japan, Hong Kong, the United Kingdom and the United States.

A number of these visits built on strong and existing relationships. For example, there were meetings with the US Securities and Exchange Commission, the New Zealand Financial Markets Authority and the UK Financial Conduct Authority to discuss strategic issues such as innovation and markets regulation. Others resulted in new bilateral cooperation agreements such as the signing of a fintech agreement with the Abu Dhabi Global Market Financial Services Regulatory Authority.

Topics discussed across other meetings included regulatory responses to fintech, data analytics and applications in regulatory supervision and enforcement contexts, corporate governance, market conduct issues and financial stability issues, and approaches to enhancing cross-border supervision and cooperation.

## 5.2 Innovation Hub

ASIC is committed to promoting the strong and innovative development of the financial system. Our Innovation Hub provides the opportunity for innovative start-up businesses to understand how regulation might affect them without compromising regulatory objectives, including consumer protection. It also helps us to monitor and understand developments.

We also drive some of our major projects, including our regulatory sandbox framework and our regtech initiatives, through the Innovation Hub.

### Informal assistance and guidance

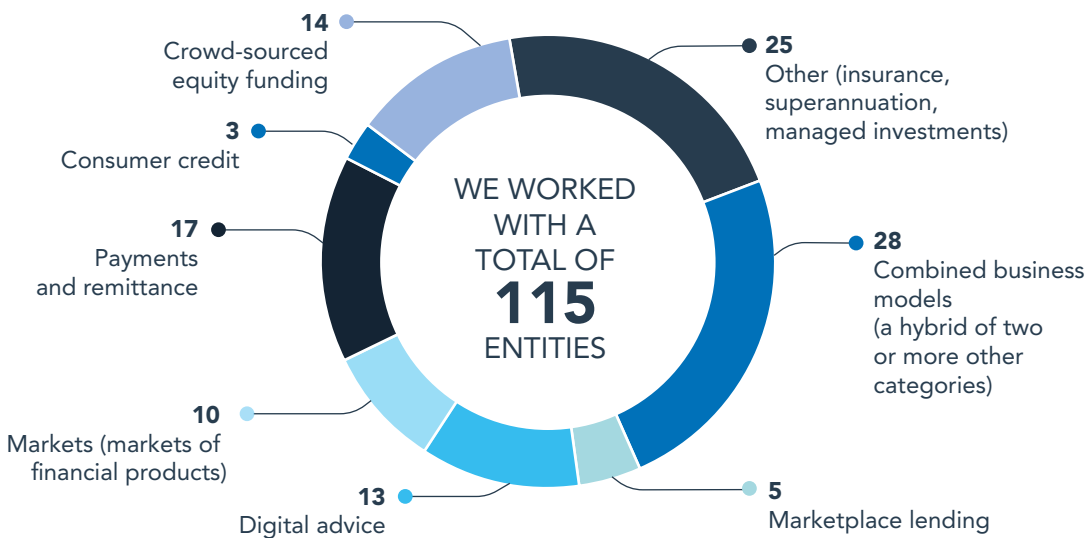
In 2017–18, the Innovation Hub provided informal assistance to 105 start-up firms to help them to consider regulatory issues early and, where relevant, prepare licence or relief applications.

The most common business models we saw were crowd-sourced equity funding, payments and remittance, markets in financial products and combined business models (hybrids of two or more other categories). This work remains central to the Innovation Hub.

During 2017–18, in relation to Innovation Hub matters, we granted 16 new AFS licences or credit licences and varied one. New fintech businesses that have engaged with the Innovation Hub before submitting their licence application generally receive approval faster than those that have not done so.

In 2017–18, we presented at 19 events for the financial services start-up community on topics including:

- › ICOs and cryptocurrencies
- › licensing innovative business models
- › ASIC's approach to regtech and fintech.



## Communication

In 2017–18, there were 18,700 visits to the Innovation Hub webpages. Most queries related to the regulatory sandbox. There were also 48,600 visits to the ICOs page in 2017–18.

In 2017–18, ASIC issued a number of publications for innovative businesses on a range of topics, including ICOs; crowd-sourced funding; and the Innovation Hub and our approach to regulatory technology. **For more information on our published policy advice, see Section 3.3.**

## Coordination and cooperation

ASIC continues to coordinate a network with the Treasury and other domestic regulators and agencies, including the RBA, APRA, AUSTRAC, DFAT, the ATO, the ACCC, the OAIC and Austrade, to discuss innovation in financial services and markets, and the opportunities, developments and emerging risks for start-up fintech and regtech businesses.

## Regulatory sandbox framework

The regulatory sandbox, which allows innovative start-up businesses to develop and test their ideas, includes a tailored, individual licensing exemption to facilitate product or service testing.

In 2017–18, six entities made use of ASIC's fintech licensing exemption. Two of those entities have since been licensed by ASIC.

## Regtech and fintech

Regtech has enormous potential to help organisations build a culture of compliance, identify learning opportunities and save time and money on regulatory matters.

In 2017–18, we met with 17 regtech stakeholders and solution providers to discuss developments and provide informal assistance to them.

In February, we released a set of trials to understand and encourage the application of natural language processing tools in resolving regulatory problems. These trials explored potential efficiencies in supervision, including through automation and prediction, and presented a learning opportunity for ASIC.

In 2017–18, we played an active role in supporting regtech in Australia by facilitating collaboration and sharing information through hosting a showcase event, establishing a Regtech Liaison Forum and conducting regtech trials.

### Hosting a problem-solving event – ASIC's Regtech Showcase and Regtech Liaison Forum

This year, our Regtech Showcase attracted developers, financial institutions, law and professional service firms and other regulators.

We focused on two key regtech topics:

- › the future of regulatory reporting – the use of new technologies to provide for more efficient and effective provision and access to regulatory information
- › understanding and meeting regulatory obligations – how software and algorithms can help firms to understand and meet their regulatory obligations more efficiently and effectively.

Regtech developers were also provided with an opportunity to present on solutions that they have already developed.

## International engagement

In 2017–18, we continued to meet with our international regulatory counterparts to discuss developments and policy proposals concerning fintech (such as advanced data analytics, artificial intelligence and machine learning) and continued to engage with IOSCO, the IMF, the World Economic Forum and the Financial Stability Board to contribute to the global discourse on fintech and regtech.

In 2017–18, we expanded our existing network of bilateral fintech cooperation agreements to include the Abu Dhabi Global Market Financial

Services Regulatory Authority, the Swiss Financial Markets Authority, the China Securities Regulatory Commission, the Dubai Financial Services Authority and participating Canadian provincial securities regulators.

We also reaffirmed our commitment to collaborate and cooperate with the New Zealand Financial Markets Authority on the expanding opportunities in fintech and innovation, and signed an enhanced fintech cooperation agreement with the United Kingdom's Financial Conduct Authority.

## 5.3 Data strategy

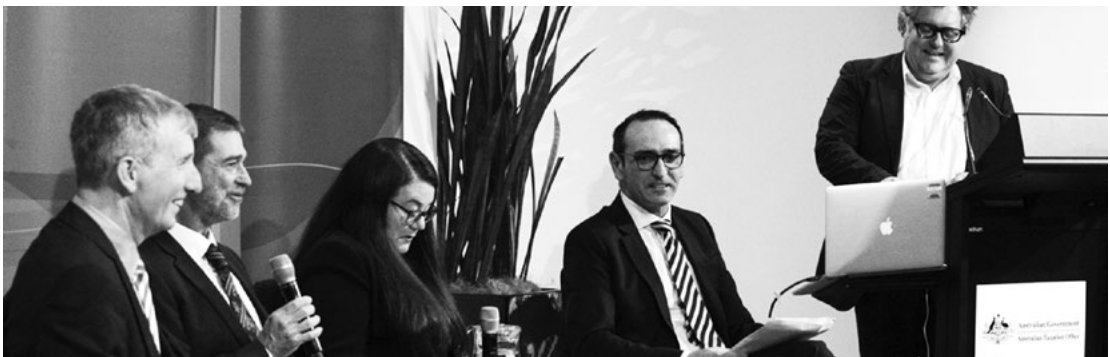
We launched ASIC's Data Strategy 2017–2020 on 19 September 2017. Our Data Strategy describes our objectives and our approach to improving how we capture, share and use data.

Ensuring we have good-quality, well-governed data is fundamental to our activities related to:

- › monitoring behaviour and outcomes
- › registration and licensing
- › regulated entity reporting and regulatory activities
- › data sharing with partner regulators and other third parties.

This strategy supports ASIC's alignment with whole-of-government initiatives, including the Public Data Policy and the Digital Continuity Policy 2020. We will review our progress against our strategy and publish an update annually.

Since we published ASIC's Data Strategy, we have met with a range of government agencies and financial institutions to discuss our strategy and our approach to data governance, data management and analytics. These have included the Hong Kong Securities and Futures Commission, the ACCC, APRA, the RBA, the Australian Bureau of Statistics (ABS), the Department of Education and Training, the Clean Energy Regulator and the Department of Human Services.



ASIC's Chief Data Officer, John Wallace (second from right), participating in a panel discussion at the ATO Technical Conference with representatives from the CDPP, Department of Industry, Innovation and Science and ATO.



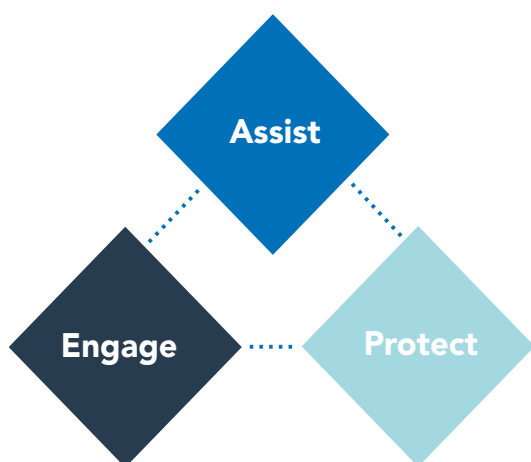
## 5.4 Office of Small Business

ASIC's Office of Small Business launched our Small Business Strategy 2017–2020 in August 2017. This strategy has enabled us to better focus and coordinate ASIC's efforts and initiatives to help small business.

ASIC's REP 571 *ASIC and small business*, published in April 2018, explains ASIC's Small Business Strategy and the ways in which we assist, engage with and help to protect (as consumers) small business in Australia.

We do this by:

- › assisting small business through our registry services and providing information and guidance
- › engaging with small business and government bodies, so that we can understand and respond to the challenges and opportunities faced by small business
- › helping to protect small business. We are working to level the playing field for small business through surveillance, enforcement and policy work so that everyone is playing by the same rules.



**Assist:** The Small Business Hub on our website draws together useful information for people starting, operating or closing a small business. It includes ASIC publications relevant to small business as well as guides, webinars and links to other government agency websites.

**Engage:** ASIC teams attended approximately 150 forums, exhibitions and meetings related to small business across Australia. We maximise our impact in the small business community by working with key stakeholders, such as the ACCC, the ATO, the Fair Work Ombudsman, the Australian Small Business and Family Enterprise Ombudsman and state small business commissioners, to present to CPA Australia members. The roadshow, entitled 'Navigating the maze of regulation', was well attended by more than 600 accountants. The roadshow recognised the important role that accountants play in supporting small business and enabled CPA members to have access to representatives of all the partnering agencies.

At Government Business Network events and small business festivals, we provided information about ASIC's registry work to people considering starting a small business.

**Protect:** In March 2018, ASIC released a report setting out the details of the changes made by the big four banks to remove unfair terms from their small business loan contracts of up to \$1 million. The report, REP 565 *Unfair contract terms and small business loans*, provides guidance to bank and non-bank lenders about compliance with the unfair contract terms laws as they relate to small business. The report follows the announcement in August 2017 that the big four banks had committed to improving the terms of their small business loans following work with ASIC and the Australian Small Business and Family Enterprise Ombudsman.

## 5.5 Office of the Whistleblower

We value the information we receive from whistleblowers. ASIC's Office of the Whistleblower is a central point within ASIC for ensuring that we record and action whistleblower matters appropriately.

We assess all information we receive; however, not every matter brought to our attention requires regulatory action. We will consider any breaches that have been disclosed and provide information on statutory protections that may be available to the whistleblower.

In 2017–18, we dealt with 228 disclosures by whistleblowers. Around 63% of these related to corporations and corporate governance (including internal company disputes). We also dealt with matters related to credit and financial services and the conduct of licensees (26%), markets (8%) and other issues (3%).

Following preliminary inquiries, approximately 5% of matters were referred for compliance, surveillance or investigation, including to assist ongoing activities.

Around 95% of disclosures were assessed as requiring no further action by ASIC, often due to insufficient evidence. In some cases, another agency, law enforcement body or third party (e.g. a liquidator) was better placed to appropriately deal with the underlying issues or was already taking action.

In 2017–18, we also continued to support the Government's work to reform Australia's corporate whistleblowing regime. **For more information on whistleblower reforms, see Section 1.5.**

## 5.6 Serious financial crime

### Countering crime – ASIC's Criminal Intelligence Unit

ASIC's Criminal Intelligence Unit (CIU) supports ASIC to identify, understand and counter serious and organised crime. The unit was formed to strengthen ASIC's connections and support joint work with Australian law enforcement and regulatory agencies on serious and organised crime.

Serious financial crime affects all Australians. The threats are real and increasing in complexity and harm. The CIU undertakes intelligence assessments to understand these threats and led ASIC's contribution to the Australian Criminal Intelligence Commission report *Serious financial crime in Australia 2017*, which provides an insight to the national threat picture (available on [www.acic.gov.au](http://www.acic.gov.au)).

### Game changers – regulatory transformation and analytics

ASIC's Regulatory Transformation program and data analytics will be game changers in ASIC's ability to detect serious and organised crime. The consolidation of ASIC's data holdings and significant enhancements in ASIC's analytics capabilities are providing ASIC with a platform to better understand and counter the evolving threats of serious and organised crime.

## Serious Financial Crime Taskforce

ASIC participates in the Serious Financial Crime Taskforce (SFCT) – a multi-agency effort targeting offences related to serious fraud, money laundering and defrauding the Commonwealth. The taskforce’s priorities for 2017–18 included crimes related to international tax evasion, illegal/phoenix activity, trusts and superannuation. The CIU supports our work with the SFCT.

In supporting the SFCT, we undertook a sophisticated analysis of key datasets to detect and understand potentially serious and organised crimes. We continue to refine and apply our approach to managing incoming data from partner agencies.

## The Phoenix Taskforce

ASIC continued its collaboration with the Phoenix Taskforce – a taskforce the Government established in 2014.

Illegal phoenix activity involves creating a new company to continue the business of an existing company which a director deliberately liquidates to avoid paying taxes, creditors and employee entitlements. Directors who engage in illegal phoenix activity intentionally and dishonestly

deny unsecured creditors (e.g. employees, subcontractors and suppliers) fair access to their entitlement to the company’s assets.

ASIC’s collaboration with other regulators through the Phoenix Taskforce and SFCT aims to minimise this harm. The CIU assists the whole-of-ASIC approach, including through analysis of professional facilitators and providing intelligence assistance to support enforcement outcomes. That approach led to enforcement action and referral of matters to the SFCT.

Collaboration continued in 2017–18 on recommendations to the Government and the Government’s subsequent consultation on law reform to address illegal phoenix activity. The Government announced law reforms in the area, including in the 2018–19 Budget.

ASIC launched a new webpage to better educate the public on illegal phoenix activity and highlight the whole-of-government approach to combatting this issue.

We undertook market engagement through numerous presentations, panel discussions and meetings with a wide variety of stakeholders, including fellow regulators, insolvency practitioners, professional bodies, small business and industry groups.

ASIC will continue its focus on countering illegal phoenix activity.

## 5.7 Misconduct reporting

### Misconduct reports from the public

ASIC encourages members of the public to report concerns about corporate and financial services to us. We use this information to direct our regulatory activities to identify and address harms to investors and consumers. The intelligence we receive from the public is critical in supporting our work.

Our 27 information sheets, which explain our role in relation to the most frequently reported concerns, were read online more than

130,000 times in 2017–18. Our 14 YouTube video clips, which serve a similar purpose, were also viewed more than 7,000 times in 2017–18.

In 2017–18, we dealt with 9,567 reports of alleged misconduct – 6% more than in 2016–17. The increase in reports occurred in the second half of the year, largely as a result of increased awareness flowing from the Royal Commission. This has halted the trend of decreases in reports of misconduct that has been evident since the peak in 2010–11 (15,634 reports).

## Breach reports from licensees and auditors

ASIC uses breach reports from licensees and auditors to identify and respond to misconduct.

The Corporations Act requires AFS licensees to tell us in writing, within 10 business days, about any significant breach (or likely breach) of their obligations. Failure to report a significant breach is an offence and may result in penalties.

We also receive breach reports from auditors who have reasonable grounds to suspect a breach of the Corporations Act by the company, managed investment scheme or AFS licensee they are appointed to audit.

In 2017–18, we dealt with:

- › 491 auditor breach reports – 4% fewer than in 2016–17
- › 1,394 breach reports about managed investment schemes and AFS licensees – a 16% increase from 2016–17.

## Suspicious activity reporting

Suspicious activity reporting obligations are a key component of ASIC working together with our regulated population to promote market integrity and keep our markets clean.

Under ASIC Market Integrity Rule 5.11.1, a market participant must notify ASIC if it has reasonable grounds to suspect that a person has placed an order or entered into a transaction:

- › while in possession of inside information; or
- › which has the effect of creating or maintaining an artificial price or a false and misleading appearance in the market or price for trading in financial products.

Suspicious activity reports (SARs) provide ASIC with valuable market intelligence to supplement our existing market surveillance activities. Market participants are best placed to know their clients' trading behaviour and identify activity which may be indicative of market misconduct and trigger reporting obligations to ASIC. Importantly, ASIC does not expect market participants to investigate reportable matters,

rather, that upon identification, these matters are reported to ASIC without undue delay, as approximately 15% of all SARs result in formal enforcement investigations or other regulatory outcomes following action by relevant ASIC stakeholder teams.

In the financial year 2017–18, ASIC received a total of 124 SARs – this is the highest figure since reporting obligations commenced in 2013. ASIC values the reporting made by market participants and continues to encourage our regulated population to closely monitor market activity and report SARs accordingly.

## Statutory reports from liquidators, administrators and receivers

When we request a supplementary report from a liquidator, we can use the supplementary report to determine whether to start a formal investigation.

We received 6,840 initial reports from external administrators related to suspected offences by company officers (including liquidators reporting if the return to unsecured creditors may be less than 50 cents in the dollar).

We assessed 931 supplementary reports related to alleged misconduct. These supplementary reports typically set out the results of the external administrator's inquiries and the evidence they believe supports the alleged offences. We referred 13% of these for compliance, investigation or surveillance, compared with 18% in 2016–17.

More than 25% of the cases we identified as 'analysed and assessed for no further action' resulted from ASIC having insufficient evidence to warrant commencing a formal investigation and being unlikely to obtain further evidence. In another 20% of assessed cases, we requested a further report from the external administrator. All 'no further action' cases are retained for intelligence purposes for possible future use.