



**ASIC**

Australian Securities &  
Investments Commission

**REPORT 618**

# **Regulator Performance Framework: ASIC self- assessment 2017–18**

April 2019

## **About this report**

The Regulator Performance Framework (Framework) provides a set of six common key performance indicators (KPIs) for Australian Government regulators.

This report sets out our self-assessment of ASIC's performance against the KPIs in 2017–18.

### About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

**Consultation papers:** seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

**Regulatory guides:** give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

**Information sheets:** provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

**Reports:** describe ASIC compliance or relief activity or the results of a research project.

### Disclaimer

This report does not constitute legal advice. We encourage you to seek your own professional advice to find out how the Corporations Act and other applicable laws apply to you, as it is your responsibility to determine your obligations.

Examples in this report are purely for illustration; they are not exhaustive and are not intended to impose or imply particular rules or requirements.

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

Report number	Report date
<a href="#">REP 511</a>	December 2016 (released January 2017)
<a href="#">REP 561</a>	December 2017 (released January 2018)

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## A Introduction

### Key points

The Regulator Performance Framework (Framework) provides six common key performance indicators (KPIs) for Australian Government regulators.

These KPIs cover reducing regulatory burden, communication, risk-based and proportionate approaches to regulation, efficient and coordinated monitoring, transparency, and continuous improvement of regulatory frameworks.

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

### About the Regulator Performance Framework

- 1 The Framework provides common performance measures to assess how Australian Government regulators operate. The Framework is designed to assess one aspect of a regulator's performance—the extent to which it minimises regulatory burden while fulfilling its other activities. It is one component of evaluating the broader performance of regulators.
- 2 There are six mandated, common, outcomes-based KPIs set by Government that cover reducing regulatory burden, communication, risk-based and proportionate approaches to regulation, efficient and coordinated monitoring, transparency, and continuous improvement of regulatory frameworks.
- 3 In October 2017, we published a revised [Regulator Performance Framework: ASIC evidence metrics](#), a set of evidence metrics to support the KPIs. Detailed results of our achievements against the evidence metrics are set out in Section B of this report.
- 4 Under these revised metrics, to improve clarity and reduce repetition of relevant evidence metrics in our self-assessment, we decided to group KPIs together where we consider there is overlap in the nature and purpose of those KPIs. We set out these grouped KPIs in Table 1.

**Table 1: Framework KPIs**

KPI	ASIC's self-assessment
KPI 1: Regulators do not unnecessarily impede the efficient operation of regulated entities	See paragraphs 20–77
KPI 6: Regulators actively contribute to continuous improvement of regulatory frameworks	
KPI 2: Communication with regulated entities is clear, targeted and effective	See paragraphs 78–140
KPI 5: Regulators are open and transparent in their dealings with regulated entities	
KPI 3: Actions undertaken by regulators are proportionate to the regulatory risk being managed	See paragraphs 141–192
KPI 4: Compliance and monitoring approaches are streamlined and coordinated	

## About ASIC

- 5 ASIC is Australia's integrated corporate, markets, financial services and consumer credit regulator.
- 6 We are an independent Australian Government body. We are set up under and administer the *Australian Securities and Investments Commission Act 2001* (ASIC Act), and we carry out most of our work under the *Corporations Act 2001* (Corporations Act) and the *National Consumer Credit Protection Act 2009* (National Credit Act).
- 7 Our vision—*a fair, strong and efficient financial system for all Australians*—reflects our purpose as Australia's conduct regulator for corporations, markets, financial services and consumer credit, and highlights the important role we play on behalf of all Australians.
- 8 To realise our vision, we will use all our regulatory tools to:
  - (a) change behaviours to drive good consumer and investor outcomes;
  - (b) act against misconduct to maintain trust and integrity in the financial system;
  - (c) promote the strong and innovative development of the financial system; and
  - (d) help Australians to be in control of their financial lives.
- 9 Our registry mission is to provide efficient and accessible business registers that make it easier to do business.
- 10 Our statutory objectives are to facilitate and improve the performance of the financial system (including fair and efficient markets); promote the confident

and informed participation of investors and consumers; administer the laws that confer functions and powers on ASIC effectively and with a minimum of procedural requirements; take whatever action we can take, and is necessary, to enforce and give effect to these laws; and conduct an efficient registry (see s1(2) of the ASIC Act). Following a recent amendment to the ASIC Act, we must also consider the effects that the performance of our functions and the exercise of our powers will have on competition in the financial system.

- 11 The Government expects us to balance these objectives aimed at both facilitating markets and promoting trust and confidence in the financial system and recognises this may require trade-offs: see ASIC [Statement of Expectations](#).
- 12 ASIC currently faces widespread misconduct and conduct that does not meet community standards across the financial sector, as highlighted by the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry: see also evidence metric 1.3.

## Evaluating our performance

- 13 The Framework is just one component of ASIC’s suite of performance reporting tools. In accordance with the Commonwealth Performance Framework under the *Public Governance, Performance and Accountability Act 2013*, each year our corporate plan sets out our performance evaluation framework by which we measure our performance.
- 14 We use a range of qualitative and quantitative measures to assess and report on our performance and tell a cohesive story that reflects our performance over time in the context of the environment in which we operate. The performance results are published in our annual report.
- 15 We also use a range of more specific tools to evaluate our performance and communicate with our stakeholders. These are set out in Table 2.
- 16 We welcome the Government’s decision to create a separate, dedicated oversight body for regulators in the financial system. This will allow for better assessment of the regulators’ sustained performance and improve the effectiveness of other accountability mechanisms. We look forward to working both with the Government and the new body to further enhance our performance reporting.

**Table 2: Tools to evaluate our performance and communicate with stakeholders**

Tool	Description
Service charter	The <a href="#">ASIC service charter</a> covers our most common interactions with stakeholders, such as applications for licences, applications for relief from the law, registering a company or business name, and how we respond to reports of alleged misconduct by companies or individuals. Service charter measures include expected timeframes for our response to these interactions, as well as measures for responding to phone and email inquiries.
Enforcement report	The <a href="#">enforcement report</a> , which we publish on a biannual basis, is part of our commitment to transparency about our enforcement work. It provides a high-level overview of our enforcement priorities and highlights some important cases and decisions during the period.
Market integrity report	The <a href="#">market integrity report</a> , published on a biannual basis, highlights our achievements in market surveillance and market integrity enforcement during the period, as well as outlining our key short-term priorities. In addition, we publish quarterly data on market characteristics (including volatility), measures of market concentration and measures of market efficiency.
Reports on relief applications	The <a href="#">relief reports</a> summarise examples of situations where we have exercised, or refused to exercise, ASIC's exemption and modification powers.
Cost Recovery Implementation Statement (CRIS)	The <a href="#">CRIS</a> is one of a number of key accountability and transparency measures incorporated into the ASIC industry funding model. It explains how we expect to spend our regulatory resources for the financial year by activity, industry sector and subsector, and how levies under the model will be calculated.

## Stakeholder feedback

- 17 We value stakeholder feedback as a means of helping us to achieve our vision. Regular stakeholder feedback also helps us communicate and maintain regulatory standards and identify and resolve regulatory issues in the market.
- 18 We seek feedback through a range of avenues, including regular industry liaison, external panels and committees, and the ASIC Annual Forum.
- 19 We continue to improve our engagement with industry and other stakeholders to give all sectors the opportunity to provide input into our work.

## B ASIC self-assessment

### Key points

Our self-assessment is based on a review of our activities during 2017–18 against the published evidence metrics for each group of KPIs.

Overall, our performance against the KPIs demonstrated a strong commitment to achieving the objectives of the Framework. Nevertheless, there are some areas for improvement that we will continue to focus on.

### KPI 1 and KPI 6

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

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

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



## ASIC assessment

- 23 We have demonstrated our strong commitment to meeting these KPIs in 2017–18. We have continued to focus on efficient, proportionate and effective regulation, and on engaging with the sectors we regulate. Where appropriate, we have used ASIC’s powers to provide relief from requirements to minimise costs to business. We have provided policy advice to the Australian Government and helped implement key regulatory reforms to optimise the regulatory framework for all stakeholders.

## Understanding the market

- 24 Where we have a strong understanding of current and emerging issues or developments in the financial sector, we are more likely to make decisions that do not unnecessarily impede the efficient operation of our regulated entities, while ensuring regulatory objectives are met and misconduct is addressed.
- 25 One way we demonstrate and improve our understanding of the market is through our stakeholder panels, including the Digital Advisory Panel, External Advisory Panel, Consumer Advisory Panel, Director Advisory Panel, Markets Advisory Panel, and Registry and Licensing Business Advisory Committee. By engaging with our advisory panels, we identify issues in the market and receive suggestions about how to address them. This assists us in better understanding the markets that ASIC regulates and being more forward-looking in identifying and assessing harms or potential harms to consumers, investors and fair and efficient markets. More information on ASIC’s engagement with stakeholder panels can be found below at evidence metric 1.1.4.
- 26 Our stakeholder engagement is bolstered by our Commission stakeholder engagement plan, which has been developed to ensure that we use Commission senior engagement to best achieve our vision. This Commission-level engagement with industry leaders helps us understand market trends and emerging issues.
- 27 We also closely monitor developments in the market to identify emerging threats and harms. Our annual corporate plan evaluates and outlines the key environmental trends to help us better understand the challenges to realising our vision.

## Making it easier for business

- 28 We continue to reduce red tape and lower compliance costs by working closely with Treasury, the Office of Best Practice Regulation (OBPR) and the Australian Government.

- 29 We have a strong history of incorporating best practice regulatory principles into our policy development process, and we have been consistently compliant with OBPR requirements.
- 30 In 2017–18, net ongoing compliance costs decreased by \$17.9 million. This was mainly due to relief granted to regulated entities. Since September 2014, we have reduced ongoing annual compliance costs by almost \$469.2 million.
- 31 A significant component of our approach to reducing red tape is using ASIC’s relief powers to set aside certain legal obligations where the compliance cost savings outweigh the regulatory risks to investors and consumers.
- 32 In 2017–18, we received 1,872 applications for individual relief. Of these, we granted relief in response to 1,061 applications (57%).
- 33 ASIC’s Office of Small Business (established in March 2017) supports the small business sector to succeed. In August 2017, ASIC’s Office of Small Business launched our [Small Business Strategy 2017–2020](#). This strategy has enabled us to better focus and coordinate ASIC’s efforts and initiatives to assist and protect small business in Australia by:
- (a) assisting small business through our registry services and providing information and guidance;
  - (b) engaging with small business and government bodies, so that we can understand and respond to the challenges and opportunities faced by small business; and
  - (c) working to level the playing field for small business through surveillance, enforcement and policy work so that everyone is playing by the same rules.

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

- 34 We continue to actively identify, report on and address a range of significant market and conduct problems in the sectors we regulate.
- 35 We regularly review and update our regulatory guides and information sheets to ensure that they remain relevant and appropriate to the issues they address.
- 36 Our regulatory guides explain to regulated entities when and how we will exercise specific powers under legislation (primarily the Corporations Act and the National Credit Act), explaining how we interpret the law, describing the principles underlying our approach, and giving practical guidance. Information sheets provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

37 During 2017–18 we contributed to continuous improvement of regulatory frameworks by providing advice to the Australian Government and submissions to parliamentary inquiries, on a variety of issues.

## Supporting evidence

### 1.1 Understanding the market

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

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

39 The scan highlights key trends, developments, risks, challenges and opportunities impacting consumers, investors and regulated entities. This information is available in [ASIC's Corporate Plan 2018–22: Focus 2018–19](#) (Corporate Plan 2018–19), which was published after the reporting period on 31 August 2018.

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

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

41 In our [ASIC's Corporate Plan 2017–18 to 2020–21: Focus 2017–18](#) (Corporate Plan 2017–18), we identified the following sources that will inform how we measure perceptions of trust and confidence and market integrity over the reporting period:

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

42 As part of our Australian Financial Attitudes and Behaviour Tracker research (Wave 6), we found that 18% of Australians reported a negative experience with financial services providers, including banks, financial advisers, mortgage brokers, insurance companies and superannuation providers: see the ASIC [Annual Report 2017–18](#) for more information.

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

- 43 We actively and extensively engage with our diverse range of stakeholders. We engage with regulated entities, consumers (including small business) and academics in a variety of ways, including through our extensive range of advisory panels, roundtables on specific issues across sectors, and regular meetings. These forms of engagement help us to:
- (a) gain a deeper understanding of industry, consumer and market developments;
  - (b) consult on policy matters;
  - (c) consider, and help to address, systemic risks or harms in the sectors we regulate; and
  - (d) discover potentially harmful behaviours by entities.
- 44 In 2017–18, we held 2,160 meetings with a number of key external stakeholders across our regulated sectors. Stakeholders we met with included:
- (a) consumer and small business representatives, lenders, mortgage brokers, insurers, authorised deposit-taking institutions, payment product providers and industry bodies, as well as other regulators and government agencies, in relation to the deposit-taking and credit industry sector;
  - (b) companies, auditors, liquidators, market operators, market intermediaries and industry bodies in relation to the corporate and market infrastructure and intermediaries industry sectors;
  - (c) other government agencies, including the Australian Competition and Consumer Commission (ACCC), the Australian Financial Security Authority (AFSA), the Australian Prudential Regulation Authority (APRA), the Council of Financial Regulators (CFR) and the Reserve Bank of Australia (RBA);
  - (d) lawyers, corporate advisers and compliance professionals working in corporate finance and mergers and acquisitions; and
  - (e) financial advisers and their licensees. For example, we engaged with industry associations such as the Association of Financial Advisers and the Financial Planning Association of Australia in relation to financial advice.

*1.1.4 Stakeholder panels meet regularly.*

- 45 Regular engagement with our stakeholder panels is one of the ways we keep up to date with trends and issues in the market. This in turn assists us in

being more forward-looking in examining issues and assessing systemic risks and emerging threats and harms.

- 46 The External Advisory Panel helps ASIC gain a deeper understanding of developments and systemic risks within the financial services industry. During 2017–18, the panel met four times and provided advice and feedback on a wide range of matters, including financial services and the Indigenous community, issues in the financial advice sector, raising professional standards in the financial services sector, illegal phoenix activity, current issues in whistleblowing, and the decline in audit quality. The panel also discussed ASIC’s data strategy, harms or potential harms to consumers, investors and fair and efficient markets, and the ASIC enforcement review.
- 47 Other panels established to provide ASIC with advice and guidance include the Australian Government Financial Literacy Board, Consumer Advisory Panel, Director Advisory Panel, Markets Advisory Panel, Digital Finance Advisory Committee, Financial Advisers Consultative Committee, and Registry Business Advisory Committee.
- 48 [Information about our external committees and panels](#), including the purpose of each committee, membership and a summary of issues the panels have considered, is available on our website and in the ASIC [Annual Report 2017–18](#).

#### *1.1.5 ASIC holds an Annual Forum.*

- 49 ASIC’s Annual Forum was held on 19–20 March 2018 in Sydney. The theme of the 2018 forum was ‘Maintaining Trust’, exploring ideas for building strong relationships of trust in a changing financial sector. A total of 612 delegates attended the 2018 forum which is broadly in line with 613 delegates in 2017. Feedback from stakeholders on the forum was generally positive with 99% of respondents rating the event as either good, very good or excellent.

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

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

- 50 The OBPR confirmed that we fully complied with the requirement to prepare a Regulation Impact Statement (RIS) for all relevant regulatory proposals in 2017–18. Additionally, all required RISs were found to be consistent with best practice.

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

- 51 We have provided reasonable transition periods, where it is appropriate to do so. For example, in May 2018, ASIC gave financial firms, including superannuation trustees, transitional relief until 1 July 2019 to update mandatory disclosure documents with the Australian Financial Complaints Authority’s (AFCA) contact details. Measures were also put in place to ensure that consumers are kept informed of how and where to pursue their complaints during the transition to AFCA commencement.

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

- 52 We publish regular reports on relief applications summarising examples of situations where we have exercised, or refused to exercise, ASIC’s exemption and modification powers from the financial reporting, managed investment, takeovers, fundraising or financial services provisions of the Corporations Act and the National Credit Act.

- 53 Our 2017–18 relief reports are:

- (a) [Report 574](#) *Overview of decisions on relief applications (October 2017 to March 2018)* (REP 574), published on 20 June 2018; and
- (b) [Report 556](#) *Overview of decisions on relief applications (April to September 2017)* (REP 556), published on 6 December 2017.

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

- 54 Under [our service charter](#), we aim to make a decision within 28 days (of receiving all necessary information and fees) on 70% of applications for relief from the Corporations Act and the National Credit Act that do not raise new policy issues, and make a decision within 90 days on 90% of these applications.
- 55 In 2017–18, we made an in-principle relief decision on 71% of the relief applications within 28 days, and on 87% of applications within 90 days. This year’s results include and were influenced by applications where we did not receive all the information we needed to make a decision at the time of receiving the application.

### 1.3 Continuous improvement of regulatory frameworks

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

- 56 In 2017–18, we made submissions to Senate and Parliamentary Joint Committee (PJC) inquiries and appeared when required.
- 57 For example, in January 2018, we made a submission to the PJC inquiry into the impact of new and emerging information and communications technology on Australian law enforcement agencies. Our submission highlighted:
- (a) challenges facing ASIC arising from new and emerging ICT, with a focus on the dark web and digitisation
  - (b) the work done by ASIC to respond to those challenges, including our investment in data analytical tools and law reform which would support ASIC
  - (c) engagement with other law enforcement agencies on these issues.
- 58 On 14 December 2017, the Government established the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (Royal Commission). During the reporting period, the Royal Commission examined whether there had been misconduct or conduct which falls below community expectations within the banking, superannuation and financial services industry. ASIC assisted the Royal Commission by providing detailed intelligence across different market sectors, witness statements and submissions, and appearing at public hearings. As at 30 June 2018, we had received 58 requests for documents, including 29 notices to produce, provided 7 witness statements and produced more than 26,000 documents (over 195,000 pages).
- 59 In February 2018, ASIC made a submission in response to the Government’s consultation on draft legislation for design and distribution obligations and product intervention power. We support the Government’s work to strengthen consumer protection by introducing these important reforms, and we will work closely with stakeholders as we prepare guidance.
- 60 On 2 November 2017, the Government announced the establishment of a mandatory comprehensive credit reporting regime, which applied from 1 July 2018. We provided comments to Treasury on the design of the regime and met with industry and other stakeholders to discuss the new requirements.
- 61 In September 2017, the Government announced a package of reforms to address illegal phoenix activity, building on, among other things, the work of the Phoenix Taskforce, of which we are a member. ASIC made a submission

to the Taskforce’s consultation process. In the 2018–19 Budget, the Government announced its intention to reform the Corporations Act to include new phoenix offences, restrict related party voting rights, prevent misuse of backdating director appointments and change director resignation provisions. The significant reform to implement a Director Identification Number is being pursued through the Government’s business registry modernisation initiative.

- 62 We assisted the Government to establish a new body, announced by the Minister for Revenue and Financial Services in May 2018, to boost the advancement of financial capability across Australia. The new body—a not-for-profit public company—will manage and distribute the \$55 million in community benefit payments.
- 63 On 28 March 2018, we responded to the Productivity Commission’s *Competition in the Australian Financial System: Draft report* with a submission focusing on the recommendations most relevant to ASIC. We also commented on the Productivity Commission’s recommendations to relabel general advice, allow financial advisers to promote specific credit advice, and introduce a competition champion.
- 64 We made submissions to the Productivity Commission’s review of the competitiveness and efficiency of Australia’s superannuation system. In November 2017, we made a submission that highlighted our work in relation to the conduct of trustees and others in engaging with employers who make important decisions about default superannuation, and in the offering of insurance within superannuation. The Productivity Commission released its draft report on 29 May 2018 and ASIC made a submission in response to that report.
- 65 In September 2017, we appeared before the PJC inquiry into the life insurance industry and made a submission highlighting our ongoing concerns about practices in the industry.
- 66 In January 2018, we made a submission to the PJC inquiry into the impact of new and emerging information and communications technology on Australian law enforcement agencies.
- 67 In February 2017, the Senate established the Select Committee on Lending to Primary Production Customers to inquire into, and report on, the regulation and practices of financial institutions in relation to primary production industries, including agriculture, fisheries and forestry. ASIC appeared at hearings, and our input was quoted in the Committee’s report, released in December 2017.
- 68 In January 2018, we made a submission to the Legal and Constitutional Affairs Legislation Committee in relation to the Bankruptcy Amendment



(Enterprises Incentives) Bill 2017 and attended a hearing of the Committee in March 2018.

*1.3.2 ASIC attends relevant international meetings and participates in relevant committees to promote better coordination of regulatory activities internationally, to participate in standard setting, and to learn from peer experiences and share best practice.*

69 We contribute to international regulatory policy and standard setting through our membership of the International Organization of Securities Commissions (IOSCO) Board as well as through IOSCO committees, taskforces and various other projects and activities. We have also sought to establish information-sharing networks, such as IOSCO’s Data Analytics Group, on novel or complex topics. In 2017–18, some of the forums we participated in included:

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

70 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.

71 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 and hosted a total of three supervisory colleges in the Asia–Pacific region since 2016. These forums are establishing themselves as an important regulatory tool and we are continuing to expand our involvement in these supervisory colleges globally.

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

- 72 In 2018, Australia underwent a review by the International Monetary Fund (IMF), as part of its Financial Sector Assessment Program (FSAP).
- 73 Australia’s regulatory framework was assessed according to relevant international standards. This review focused on Australia’s implementation of the Core Principles for Effective Banking Supervision (issued by the Basel Committee on Banking Supervision), Australia’s regime for financial market infrastructure (informed by the Committee on Payments and Market Infrastructures and IOSCO principles for financial market infrastructure), and oversight of insurance (informed by the Insurance Core Principles, issued by the International Association of Insurance Supervisors). ASIC’s involvement was most significant on the assessment of financial market infrastructure and insurance oversight.
- 74 The IMF also reviewed the effectiveness of coordination and cooperation across Australia’s financial regulatory agencies and relevant Government departments. This considered the operation of the Council of Financial Regulators, and bilateral arrangements in place between regulatory authorities to understand Australia’s preparedness to mitigate systemic risk emerging in the financial system.

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

- 75 In 2017–18, we were committed to providing advice to the Government on law reform that might be required to overcome problems we encounter in administering or enforcing the legislation, or as a response to developments in the financial markets: see ASIC’s statutory function in s11(2)(b) of the ASIC Act.
- 76 The Chair of ASIC, ASIC Commissioners and senior ASIC officials continue to regularly liaise with the Treasurer and other responsible Ministers. We continue to inform Treasury Portfolio Ministers of significant issues arising in our areas of responsibility.
- 77 We provided advice to Treasury and the Government on how the law is operating in practice. One mechanism through which we did this was ASIC–Treasury liaison meetings, which occur once every three months and are attended by the Chair of ASIC and the Deputy Secretary of the Treasury Markets Group. Other Commissioners and senior executives also attend, depending on the items being discussed. These meetings complement the specific assistance we provide on key law reform matters as well as monthly meetings between ASIC and Treasury staff: see evidence metric 1.3.1.

## KPI 2 and KPI 5

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

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

- 78 We consider that KPIs 2 and 5 primarily concern how effectively we communicate our expectations around the behaviour of our regulated population. We assess our performance against these KPIs based on how we:
- (a) manage interactions with regulated entities in an efficient manner;
  - (b) communicate with stakeholders on issues that affect our regulated population, such as our assessment of the threats and harms we see in the market, through:
    - (i) our corporate plan;
    - (ii) guidance we provide about our regulatory expectations;
    - (iii) our approach to enforcement;
    - (iv) our decisions on applications for relief;
    - (v) consulting with our regulated population on policy proposals that affect them; and
    - (vi) reporting to stakeholders on our performance.

### ASIC assessment

- 79 We have demonstrated ongoing commitment to achieving these KPIs. We remain committed to providing clear guidance to our stakeholders about how we expect them to comply with the law. We continue to publish clear guidance on our expectations around the behaviour of our regulated entities.

### Interacting with ASIC

- 80 The [ASIC service charter](#) covers the most common interactions between ASIC and our stakeholders and sets performance targets for each.
- 81 Our Customer Contact Centre (CCC) also provides a valuable service to Australians, as the main point of contact for their inquiries. In 2017–18, we responded to 678,697 telephone and online inquiries. We exceeded our service charter targets with approximately 92.8% of all inquiries answered on the spot, and we responded to 92.1% of general email inquiries within three business days.

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

- 82 Communication is a key priority for ASIC. In 2017–18, we refreshed our vision and mission statements to better support and explain our work and why we take the actions we do. The [updated vision and mission](#) can be found on the ASIC website and in ASIC's [Annual Report 2017–18](#).
- 83 One example where we had clear, targeted and direct communications with entities about our expectations was in relation to death benefits by superannuation funds.
- 84 The Superannuation Complaints Tribunal (SCT) referred several complaints to ASIC 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.

### **Consulting with stakeholders**

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

### **Performance measurement**

- 86 We are committed to evaluating our performance. We have a performance evaluation framework that sets out how we will measure and evaluate our performance.
- 87 Our performance measures are based on:
- (a) better market outcomes, which are indicators of perceived and actual behaviours that demonstrate trust and confidence in the financial system; and
  - (b) regulatory outcomes, which reflect what we do using our regulatory tools.

## Supporting evidence

### 2.1 Interacting with ASIC

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

88 One of ASIC's core objectives is to provide efficient registration services. We do this through the ASIC Registry, and our delivery of this priority is measured by:

- (a) The number of:
  - (i) total companies registered;
  - (ii) new companies registered;
  - (iii) total business names registered; and
  - (iv) new business names registered;
- (b) the estimated savings in fees to register or renew business names;
- (c) the number of calls and online inquiries responded to;
- (d) the percentage of forms lodged online;
- (e) the number of searches on ASIC registers; and
- (f) our performance against the [ASIC service charter](#).

89 We aim to register 90% of business names within seven business days of receiving a complete application. We exceeded our target in 2017–18 and registered 100% of business names within this timeframe.

90 We aim to register 80% of auditors within 28 days of receiving a complete application. In 2017–18 we registered 62% of auditors within 28 days. This is because applications beyond the 28-day target are generally complex ones, requiring, for example, additional policy work or legal review.

91 We registered 100% of managed investment schemes within 14 days of receiving a complete application in 2017–18.

*2.1.2 ASIC publishes service standards for licensing financial services and credit businesses and reports annually on its performance.*

92 In November 2017, we updated our service charter targets for Australian financial services (AFS) licences and Australian credit licences. We are now aiming to finalise 70% of complete applications within 150 days, and 90% of complete applications within 240 days.

93 We exceeded our service charter targets for credit licences in 2017–18, finalising 87% of new applications for a credit licence within 150 days and

93% within 90 days. We finalised 90% of credit licence variation applications within 150 days, and 94% within 240 days.

- 94 In 2017–18, we finalised 74% of new AFS licence applications within 150 days and 88% within 240 days. We also granted 75% of licence variations in 150 days and 86% in 240 days.

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

- 95 ASIC’s complaint management framework was introduced in September 2015, which allows us to effectively manage complaints by members of the public about our services, actions, decisions or staff. We value the public’s right to complain and are committed to treating complaints seriously, promptly, fairly and genuinely. See our [Complaint management policy](#) for more information on how to submit a complaint to ASIC and what to expect when a complaint is lodged.

*2.1.4 ASIC addresses complaints in accordance with complaint guidelines.*

- 96 Our service charter target is to resolve 70% of all complaints about ASIC within 28 days of receiving all relevant information. In 2017–18, we met our target. We resolved 96% of all complaints within 28 days of receipt.

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

- 97 [Information Sheet 9 ASIC decisions: Your rights](#) (INFO 9) sets out an overview of a person’s rights when we make a decision about corporations, securities or financial products and services that might affect the person, and how the person can exercise those rights. INFO 9 was last updated in July 2018.

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

- 98 Transparent communication is a key priority for ASIC. We seek feedback through open working relationships with our regulated entities and other stakeholders, including consumer representatives. This is done through regular meetings with industry stakeholders (see evidence metric 1.1.3) and regular engagement through our external committees and panels (see evidence metric 1.1.4).

- 99 To increase transparency in our dealings with our regulated entities, we publish:
- (a) industry reports—highlighting how we respond to key trends in the industry sectors; and
  - (b) relief reports—summarising examples of situations where we have exercised, or refused to exercise, ASIC’s exemption and modification

powers from the provisions of the Corporations Act and the National Credit Act.

100 We have reported on the relief reports we published in 2017–18 under evidence metric 1.2.3, and the corporate finance reports and market integrity reports under evidence metric 2.2.3.

## 2.2 Communicating ASIC's expectations

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

101 In recent years we have taken a number of measures to increase our focus on transparency, including revamping our website and using new media channels, including our regulatory portal, to communicate directly with regulated entities and stakeholders more broadly.

102 The [ASIC Regulatory Portal](#) is where our regulated community can access ASIC's increasing suite of digital services. The portal will improve how we deliver online services to our regulated populations over time, and how regulated entities can transact and interact with us. Currently, the portal is available to all regulated entities subject to ASIC industry funding obligations as well as the trusted representatives of regulated entities. It is an important first step on our journey to improve the experience of our regulated stakeholders.

103 We will continue to assess the most appropriate communication delivery tools and channels and are ready to adopt new tools and technology.

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

104 All our regulatory guidance publications, and extensive information on ASIC's role, functions and services, are available on the [ASIC website](#), which received 16.22 million visits in 2017–18.

105 As at 30 June 2018, there were 261 regulatory guides and 179 information sheets published on our website. In 2017–18, we published 36 new or revised regulatory guides and 32 new or revised information sheets relating to our regulatory responsibilities.

106 For example, in September 2017 we released [Information Sheet 225 Initial coin offerings and crypto-currency \(INFO 225\)](#) to provide guidance to help issuers of initial coin offerings consider their legal obligations when offering coins or tokens. The information sheet provides guidance about the potential application of the Corporations Act to businesses that are considering raising funds through an initial coin offering.

107 ASIC's [MoneySmart website](#) also provides Australians with free and independent tools and information to help them be in control of their

financial lives. We aim to provide impartial financial guidance that can help people navigate the often-confusing world of financial products and services and link them to resources that can help them make better financial decisions.

108 In 2017–18, over 7.3 million people visited MoneySmart, and it attracts an average of 1 million visits a month. Research indicates that 38% of Australian adults are aware of MoneySmart, and 90% of users reported that they took action on their finances after visiting the website.

109 We provide a range of resources to help people understand financial matters. For example, this year we released our ‘Buying a home’ series of videos, which cover topics like budgeting and knowing how much you can borrow. Our online calculators are designed to help consumers make more informed decisions, support them to manage their money and motivate them to achieve their financial goals. In 2017–18, the Budget Planner, the Mortgage Calculator and the Income Tax Calculator continued to be popular among Australians seeking to better understand financial matters.

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

110 In 2017–18, we published 45 industry reports promoting changes in industry behaviour and informing government policy and law reform: see examples described in paragraphs 111–115 below.

111 In January 2018, we published [Report 562](#) *Financial advice: Vertically integrated institutions and conflicts of interest* (REP 562). This contains findings of how well Australia’s largest banking and financial services institutions manage conflicts of interest that arise when providing personal advice to retail clients as well as developing financial products, under a vertically integrated business model.

112 In March 2018, we published [Report 565](#) *Unfair contract terms and small business loans* (REP 565). This report details the changes made by the big four banks to bring their small business loan contracts into compliance with the unfair contracts terms laws and provides guidance to bank and non-bank lenders.

113 In June 2018, we published [Report 575](#) *SMSFs: Improving the quality of advice and member experiences* (REP 575). This report outlines our findings from a large research project that examined member experiences in setting up and running a self-managed superannuation fund (SMSF) and whether financial advisers are complying with the law when providing personal advice to retail clients to set up an SMSF.

114 In January 2018, we published [Report 564](#) *Annual general meeting season 2017* (REP 564). This report highlights emerging corporate governance



issues and trends arising during the annual general meeting (AGM) season for S&P/Australian Securities Exchange (ASX) 200 listed companies in 2017.

115 In August 2017, we published [Report 540](#) *Investors in initial public offerings* (REP 540). Based on the findings from this project, we believe that our regulation of initial public offerings (IPOs) is largely sound; however, we will continue to enhance our regulation of IPOs.

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

116 The [ASIC website](#) is designed to be accessible and easy to use. This includes:

- (a) designing pages so they can be read easily;
- (b) inserting a 'skip to content' link at the top of the page, which allows readers to skip navigational elements and go straight to the text;
- (c) providing text equivalents ('alt text') for images; and
- (d) providing transcripts or captions for video files.

117 The ASIC website provides comprehensive information on all our registry activities. This year, we continued to simplify the most highly accessed webpages, expanded our web chat inquiry channel across more inquiry types, and increased our video content, publishing new videos, including guidance on 'Closing your company'.

118 In 2017–18, our online search service—for searching company names, business names or other data online—was available 99.6% of the time during standard business hours. This exceeds our service charter target of 99.5%.

119 In 2017–18, our online lodgement service—for lodging company names, business name or other data online—was available 99.8% of the time during standard business hours. This was just above our service charter target of 99.5% and an increase from 2016–17.

120 In the last financial year, there were 122.5 million searches of ASIC's registers, 99.9% of which were conducted online. Around 96% of searches of the ASIC registers are provided free of charge, consistent with the Government's open data policy.

121 The Company and Business Names Registers are our two largest registers. They contain details of more than 2.6 million companies and 2.25 million business names and are the two most searched of all ASIC's registers.

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

122 Our CCC provides a valuable service to Australians, as the main point of contact for their inquiries. In 2017–18, we responded to 678,697 calls and online inquiries.

123 We regularly review and update resources (including call centre scripts) in the CCC to ensure staff have access to up-to-date information. There is regular engagement between the CCC and ASIC’s regulatory teams to ensure staff are notified of pending website publications and media releases. This ensures that the CCC can respond to customer inquiries efficiently when there is activity in the marketplace.

## **2.3 Consulting with stakeholders**

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

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

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

125 In 2017–18, we published 11 consultation papers on major new policies. Consultation was open for at least eight weeks for three of these papers, and open for at least six weeks for half of the consultation papers.

126 On 24 August 2017, we released [Consultation Paper 294](#) *The sale of add-on insurance and warranties through caryard intermediaries* (CP 294). Consultation was open for 8.5 weeks, allowing for 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.

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

127 We published 11 stakeholder consultation papers, including one paper related to the repeal or remaking of sunseting legislative instruments. These sunseting papers were open for consultation for at least four weeks.

128 We published 100% of the non-confidential submissions we received in response to our consultation papers. These can be found in our media

releases and on our website. At times, we may include non-confidential comments or suggestions received from industry in our final guidance or legislative instruments. Where this is the case, the responses will be released at the same time we issue our new or revised regulatory guides, or when we have remade our legislative instruments.

129 As at 30 June 2018, we were still finalising our guidance and/or legislative instruments in light of the feedback we received for six of the consultation papers. One consultation paper closed after 30 June 2018. We will be publishing the non-confidential submissions in 2018–19 with our final guidance and/or legislative instruments.

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

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

**2.4 Performance measurement and reporting**

*2.4.1 ASIC's corporate plan is published annually.*

131 Our [Corporate Plan 2017–18](#) was published on 31 August 2017. In 2017–18 we refreshed our vision and mission statements to better support and explain our work and why we take the actions we do. The [updated vision and mission](#) can be found on the ASIC website and in ASIC's [Annual Report 2017–18](#).

132 We published our latest corporate plan, [Corporate Plan 2018–19](#), on 31 August 2018. This plan:

- (a) describes our operating environment;
- (b) identifies our focus areas over the medium term and in 2018–19;
- (c) explains our strategy and regulatory approach to realise our vision;
- (d) explains the regulatory actions we will take over the medium term and in 2018–19;
- (e) outlines how we will strengthen our capabilities to realise our vision; and
- (f) outlines our performance evaluation framework.

133 As we are expecting rapid changes to ASIC's operating environment over the next four years, updates to the plan will be needed. These updates will

include addressing recommendations from the Royal Commission, and from other inquiries such as the Productivity Commission’s review of the competitiveness and efficiency of Australia’s superannuation system.

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

134 In April 2018, the Treasurer issued a [Statement of Expectations](#) to ASIC. We published our [Statement of Intent](#) in response in September 2018.

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

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

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

137 [Results of our performance against the service charter](#) are reported in our annual report and on our website and are outlined above at paragraphs 88 to 96.

*2.4.4 ASIC’s annual report is published and includes reporting against the corporate plan and service charter, including explanations where outcomes or standards are not met.*

138 ASIC’s [Annual Report 2017–18](#) was published in October 2018.

139 In accordance with the Commonwealth Performance Framework under the *Public Governance, Performance and Accountability Act 2013*, our corporate plan sets out our performance evaluation framework, by which we measure our performance. We report against a range of qualitative and quantitative measures to assess our performance and tell a cohesive performance story that reflects our performance over time in the context of the environment in which we operate. The performance results are published in our annual report.

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

140 This self-assessment, including a summary of stakeholder feedback on the draft self-assessment, was completed in April 2019.

## KPI 3 and KPI 4

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

KPI 4: Compliance and monitoring approaches are streamlined and coordinated

- 141 We consider that KPIs 3 and 4 primarily concern the effectiveness and efficiency of our approach to identifying and acting against misconduct and changing behaviours to drive good consumer and investor outcomes, principally through surveillance and enforcement. We assess our performance against these KPIs based on how we:
- (a) take a strategic approach to our supervision activities, by targeting the highest priority threats and harms;
  - (b) adopt a proportionate approach to enforcement, including being transparent about how we approach our enforcement role and why we respond to particular types of breaches of the law in different ways;
  - (c) minimise the impact on the regulated population of complying with requests for information, including improving our data management and analytics; and
  - (d) cooperate and coordinate with other regulators when undertaking relevant supervision activities.

### ASIC assessment

- 142 We have demonstrated ongoing commitment to achieving these KPIs, through our risk-based supervision of entities based on our threats, harms and behaviours framework. In 2017–18 we enhanced our strategic planning process by introducing a new threat, harms and behaviour framework to better identify, more precisely describe and prioritise actual and potential harms that need to be addressed. This framework guides how we identify threats of harm, the behaviours that underpin those threats, and actual and potential harms to consumers, investors and fair and efficient markets.
- 143 The framework includes our approach to monitoring our operating environment to understand key trends, identifying and prioritising focus areas by understanding the behaviours that drive misconduct and the harms that result from them, and testing the threats and harms that we have identified by consulting external advisory panels and experts. Our framework also supports how we plan our regulatory actions and allocate our resources. In addition, our framework supports how we evaluate the outcomes of our work and report on our performance.
- 144 In 2017–18, we focused on identifying, diagnosing and then addressing the harms and behaviours that endanger trust and integrity in our financial

markets. We work to ensure that we use the right regulatory tools to address the harms we identify. In doing this, we must consider several objectives, including the strategic significance of the matter and the efficient use of our resources. We also consider the benefits of pursuing misconduct, including specific and general deterrence and protecting or obtaining compensation for consumers, again noting that for every contravention of the law we will consider whether court enforcement tools should be deployed.

145 ASIC will use whatever regulatory tools are necessary to address harms. We will continue to work with Government on the significant upgrade to ASIC's enforcement powers and penalties, and the proposed financial product governance obligations and intervention powers.

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

147 We continue our transformation into a data-driven and technologically adept regulator by investing in our data analytics capabilities, trialling new technologies and supporting the ASIC Chief Data Office. Our Chief Data Office has implemented a data strategy that is aimed at improving our data management and analytics capabilities and reducing the impact on the regulated population of complying with formal requests for information.

### **Risk-based supervision**

148 As a law enforcement agency, we devote about 70% of our regulatory efforts to surveillance and enforcement. In 2017–18, we conducted around 1,200 surveillances and around 129 investigations across the sectors we regulate. Further information on ASIC's surveillance activities can be found in our annual reports.

149 ASIC takes proportionate action in the sense that we adopt strategic or responsive regulation theory, identified with the work of Professor Ian Ayres and John Braithwaite. A central feature is the 'enforcement pyramid' involving sanctions of escalating severity where most regulatory action occurs at the base of the pyramid with initial attempts to promote compliance by persuasion.

150 We conduct proactive and reactive supervisory activities. Both proactive and reactive activities can be risk based. Proactive supervision is the result of ASIC scanning the regulatory environment for possible problems. These may relate to specific industries, conduct or entities. Reactive supervision is prompted by a specific complaint, breach report or tip-off concerning the subject of the surveillance.

**Enforcement and transparency**

151 When potential breaches of the law come to our attention, we carefully consider and assess each matter and determine how to respond. Our decision is influenced by the evidence and information gathered during our investigations.

152 We publish our approach to enforcement: see [Information Sheet 151](#) *ASIC's approach to enforcement* (INFO 151).

**Information requests**

153 When we commence an investigation, we use various investigative powers, including ASIC's compulsory information-gathering powers, ASIC's power to make an application for a search warrant, ASIC's powers to access telecommunication records, and ASIC's power to make an application for a stored communications warrant.

154 We use these investigative powers to discover whether a suspected contravention has, in fact, occurred.

155 We must use ASIC's compulsory powers for a proper purpose. This means that the use of a power must be designed to advance our inquiry. We recognise that we must use these powers responsibly and we have safeguards in place to ensure that they are not misused.

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

**Cooperation with other regulators**

157 We have strong working relationships with Australia's key financial regulation agencies, the RBA and the APRA. We also maintain a close and cooperative relationship with Treasury. The four agencies cooperate through their shared membership of the CFR. We also work together with other agencies on issues where our responsibilities overlap. We are also seeking to improve our cooperation with APRA even further.

158 Beyond the members of the CFR, we also actively engage with a range of other domestic bodies. These relationships seek to ensure streamlined and coordinated approaches.

159 Through various activities and projects, we have demonstrated a strong commitment to supporting the international regulatory agenda and ensuring that Australian influence is applied to international policy setting. We work closely with a range of international organisations, foreign regulators and law enforcement agencies. We make and receive international requests regarding investigations, compliance and surveillance, policy research, delegations, licensing and due diligence, and general referrals.

## Supporting evidence

### 3.1 Risk-based supervision

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

160 Each year, we undertake an assessment to identify harms or potential harms that can pose a threat to investor and consumer trust and confidence and fair and efficient markets.

161 Identifying the highest priority threats and harms is the foundation of ASIC's corporate plan and business planning process. The corporate plan communicates our view of these threats and harms, providing context from the macroeconomic perspective as well as demographic trends and industry trends.

162 We detail our long-term challenges and the strategic risks that flow on from these challenges each year in our corporate plan. An updated list of our strategic risks for 2018–19 and beyond can be found in [Corporate Plan 2018–19](#).

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

163 We have established an internal guide to help teams undertake 'best practice' risk-based surveillance, which sets out some common high-level, risk-based surveillance processes, language, and templates for documenting decisions and outcomes.

164 In addition, our Regulatory Transformation Program is changing how we work and will ensure our information systems are appropriate for a modern regulator. We have on-boarded our teams into the new system and are moving ever closer to our aim of creating a single point of information about what we do and provide a rich data source for the build-out of our analytics capabilities.

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

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



- 166 In September 2017 we launched our new learning management system, Learnhub. The system provides our team members with access to online just-in-time and face-to-face learning activities. Learnhub is flexible and on-demand, and it helps team members to manage their own professional development, making learning part of their work.
- 167 Using Learnhub, ASIC is implementing individual capability assessments and plans across the organisation. The capability plans enable team members and managers to discuss and identify capability areas and areas for development, based on an individual's current role and future career aspirations at ASIC and beyond.
- 168 As an organisation, we will adapt and evolve in responding to the rapid changes in the financial sector. For this purpose, we have enhanced our internal governance frameworks to better support strategic decision making. For example, the ASIC Emerging Threat and Harm Committee analyses, monitors and responds to changes in our operating environment, including changes to threats of harm and any emerging threats that may cause harm. Our Emerging Threat and Harm Committee and Operational Risk Committee assist, on an ongoing basis, in the effective management of our emerging, strategic, operational and fraud risks across all areas of our business activity.
- 169 [Further information on ASIC's internal governance](#) is published on our website.
- 170 Our risk management framework aligns with [International Standard ISO 31000 Risk management](#) and with the [Commonwealth Risk Management Policy](#).
- 171 The Operational Risk Committee makes recommendations to our Commission on improvements to ASIC's risk management framework and practices.

### **3.2 Enforcement and transparency**

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

- 172 [INFO 151](#) explains how we approach our enforcement role and why we respond to particular types of breaches of the law in different ways. It covers topics such as ASIC's regulatory powers, how we select matters for formal investigation, what enforcement tools are available to ASIC, how we decide which enforcement tools to use, how we interact with people during investigations and enforcement actions, and the benefits of cooperating with ASIC.

173 These new approaches enhance our approach to our enforcement role as outlined in [INFO 151](#).

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

174 We publish regular enforcement reports as part of our commitment to transparency about our enforcement work. The reports provide a high-level overview of some of our enforcement priorities, outline statistics on our enforcement activities and highlight some important cases. Our published reports covering 2017–18 were:

- (a) [Report 568](#) *ASIC enforcement outcomes: July to December 2017* (REP 568), published 28 February 2018; and
- (b) [Report 585](#) *ASIC enforcement outcomes: January to June 2018* (REP 585), published 9 August 2018.

175 As stated in ASIC’s [Annual Report 2017–18](#), our overall enforcement outcomes included 22 criminal convictions, 13 people jailed, \$42.2 million awarded in civil penalties, 183 people or companies banned from providing financial services or credit services, 27 enforceable undertakings secured, \$351.6 million in compensation and remediation for investors and consumers, \$48.1 million in community benefit payments and 55 infringement notices issued (with a value of \$2.02 million).

176 Many instances of misconduct before the Royal Commission have been the subject of ASIC investigations and resulted in regulatory actions. During the year, we undertook over 1,200 surveillances and completed 129 formal investigations.

177 Since 1 February 2018 there has been a 15% increase in the number of ASIC enforcement investigations on foot and a 50% increase in the number of ASIC enforcement investigations of misconduct by large financial institutions (or their employees or subsidiary companies).

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

**3.3 Information requests**

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

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

180 Our approach to using ASIC’s powers is to:

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

181 We publish statistics on the use of ASIC’s most significant compulsory information-gathering powers in our [annual report](#).

182 Our internal fortnightly reporting process helps ensure awareness of compliance, monitoring and engagement plans among teams.

183 Additionally, our Chief Data Office helps ASIC keep track of and coordinate formal information requests, to improve efficiency and help us make the most of our data to drive good regulatory outcomes.

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

184 As stated in [INFO 145](#), we must use ASIC’s compulsory powers for a proper purpose. This means that the use of a power must be designed to advance our inquiry. We recognise that we must use these powers responsibly and we have safeguards in place to ensure that they are not misused.

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

185 We subscribe to a range of external information resources, including MorningstarDirect, Plan for Life, and consumer research databases. We use these sources, combined with data obtained through our regulatory activities, to help us realise our vision.

### **3.4 Cooperation with other regulators**

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

186 In addition to our membership of CFR, we also maintain operational and policy relationships with other Australian Government agencies, including:

- (a) Austrade;
- (b) the Attorney-General’s Department;
- (c) the Australian Competition and Consumer Commission;
- (d) the Australian Charities and Not-for-profits Commission;
- (e) the Australian Crime Commission;
- (f) the Australian Federal Police;
- (g) the Australian Financial Security Authority;
- (h) the Australian Taxation Office;

- (i) the Australian Transaction Reports and Analysis Centre;
- (j) the Commonwealth Director of Public Prosecutions;
- (k) the Commonwealth Ombudsman;
- (l) the Department of Jobs and Small Business
- (m) the Department of Foreign Affairs;
- (n) the Director of Public Prosecutions;
- (o) the Fair Work Ombudsman;
- (p) the Financial Reporting Council;
- (q) the Office of the Australian Information Commissioner; and
- (r) the Takeovers Panel.

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

*International cooperation requests*

188 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*

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

190 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 market 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.

191 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.

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

## C Summary of feedback from consultation

### Key points

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

This section highlights the key issues that arose out of the feedback received and our responses to those issues. It is not meant to be a comprehensive summary of all submissions received. We have limited this section to the key issues.

### Responses to consultation

- 193 We received four responses from the 20 organisations we approached for comment. We are grateful to these stakeholders for taking the time to provide their feedback.
- 194 There were a variety of observations from respondents on various aspects of ASIC's performance. The Insurance Council of Australia (ICA) broadly endorsed our self-assessment for 2017–18. However, the Australian Restructuring, Insolvency and Turnaround Association (ARITA) surveyed its members and found that they generally disagreed that ASIC met the KPIs.
- 195 For a list of stakeholders who made submissions in response to this report, see the appendix.

### General feedback

- 196 Several stakeholders provided general feedback on the evidence metrics ASIC is required to use under the Framework. Chartered Accountants Australia and New Zealand (CAANZ) commented that our performance metrics could be improved by including more quantifiable measures. They did not suggest any specific measures. The Australian Institute of Company Directors (AICD) submitted that given the context of the Royal Commission along with broader trends towards greater accountability and transparency at an industry and regulator level, it would be worth revisiting the approach to ASIC's self-assessment.

### *ASIC's response*

ASIC welcomes the call for greater regulator accountability with the planned establishment of a new oversight body. We will be proactive in working with the new oversight body to develop regulatory performance measurement frameworks that provide a public mechanism for monitoring our effectiveness, with a particular focus on measuring ASIC's impact on the fairness, strength and efficiency of the Australian financial system.

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

Quantitative measures are included in our service charter, which are referred to under evidence metrics 2.1.1 and 2.1.2. [The ASIC service charter](#) sets out target timeframes for our response on our common interactions with stakeholders, such as registration services, licensing applications, as well as measures for responding to phone and email inquiries. The results of our performance against the service charter are reported annually in our annual report, on our website and in this self-assessment.

We note that measuring effectiveness quantitatively, going beyond activity metrics (e.g. the number of supervisory and surveillance activities completed) is an ongoing challenge for regulators around the world.

We will incorporate post-implementation evaluation reviews of certain major supervision projects into ASIC's annual strategic planning process. Completing such reviews will help us evaluate whether market behaviour or consumer outcomes have changed as a result of a project.

We also note that the Royal Commission focused on the effective enforcement of the law. This is different to the objectives of the Framework, which is designed to assess only one aspect of a regulator's performance—the extent to which it minimises regulatory burden in the course of fulfilling its other activities. The Framework is only one component of the broader performance of regulators.

## Feedback on specific KPIs

### KPI 1 and KPI 6

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

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

### Making it easier for business

- 197 In their submissions, stakeholders generally agreed with our self-assessment under KPI 1 and KPI 6.
- 198 In its submission, the ICA welcomed our continued, demonstrated understanding of current and emerging market issues in the financial sector and our commitment to helping ensure that our activities do not unnecessarily impede the efficient operation of regulated businesses. The ICA also submitted that ASIC was effective in actively contributing to the continuous improvement of relevant regulatory frameworks, including at an international level.
- 199 At the same time, ARITA’s submission noted that some members it surveyed believed that ASIC’s approach to regulation ‘increases regulatory burden and unnecessarily increases costs without any benefit to the regulatory environment’.
- 200 The AICD argued that KPI 1 and KPI 6 do not have the natural overlap that the other grouped KPIs have, and that merging these KPIs should be reconsidered as making it easier for business and improving regulatory frameworks will not always be harmonious.
- 201 The AICD also recommended that ASIC collaborate with the private sector and Treasury, and establish an expert body to provide independent advice on corporate law reform given the cessation of the Corporations and Markets Advisory Committee (CAMAC).

#### *ASIC’s response*

We have a strong history of incorporating best practice regulatory principles into our policy development process and a consistent record of compliance with the OBPR requirements for best practice regulation. In 2017–18, we decreased ongoing net compliance costs for industry by \$17.9 million and since September 2014, we have reduced ongoing annual compliance costs by almost \$469.2 million.

We work closely with Treasury and the OBPR to reduce red tape and lower compliance costs. Our regulatory guides give guidance

to regulated entities by explaining when and how we will exercise specific powers under legislation, explaining how we interpret the law, and describing the principles underlying our approach and giving practical guidance.

As noted in Section B, we tailor our regulatory response to address the key threats and harms in the sectors we regulate. Our approach enables us to effectively and efficiently prioritise actual and potential harms that need to be addressed.

We will use whatever regulatory tools are necessary to address harms. We will continue to work with Treasury and other members of the Council of Financial Regulators on a significant number of important reform projects announced by the Government. This includes a significant upgrade to ASIC's powers, the proposed financial product governance obligations and intervention powers, and the Government's response to the Royal Commission. Implementing these reforms will be a key focus of ASIC over the short to medium term.

As we have previously stated, we consider that KPI 1 and KPI 6 are complementary. KPI 1 relates to how we administer the regulatory framework to minimise any unnecessary regulatory burden. KPI 6 relates to how we contribute to the process of improving the regulatory framework itself; this includes providing policy advice to government, identifying potentially redundant or unnecessary legislative provisions, and identifying provisions that could be reformed to reduce business compliance costs with little regulatory detriment. Both of these KPIs contribute to ensuring that our stakeholders are subject to efficient and appropriate regulation that minimises regulatory costs.

### Understanding the market

- 202 The ICA acknowledged that ASIC has genuinely engaged with relevant stakeholders on matters of policy and that we have continued to demonstrate understanding of the current and emerging market issues in the financial sector.
- 203 CAANZ noted that ASIC's stakeholder engagement mechanisms, including panels and meetings, were valuable forums for discussing industry, consumer and market developments.

#### *ASIC's response*

We will continue to ensure that we genuinely engage with stakeholders to enhance our understanding of the market and developments within our regulated populations.



## KPI 2 and KPI 5

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

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

### Communicating ASIC's expectations

204 Stakeholders broadly supported our assessment of ASIC's stakeholder engagement approach and communication efforts.

#### *ASIC's response*

We will continue to examine ways to ensure that we provide relevant information to regulated entities in a timely and effective fashion.

### Consulting with stakeholders

205 Most submissions by stakeholders endorsed our approach to stakeholder engagement.

206 The ICA noted ASIC's communication with industry has been generally clear, targeted and effective. The AICD submitted that ASIC has genuinely engaged on matters of policy.

207 At the same time, ARITA's submission included feedback from its members that raised concerns that ASIC did not have regard to their feedback during consultation. ARITA noted that ASIC revised a number of its forms following the commencement of the *Insolvency Law Reform Act 2016* (ILRA). This resulted in a significant period of change for the profession and ARITA received significant feedback from its members that ASIC failed to respond to their queries about the new and revised forms in a timely manner, even where queries were lodged in accordance with the requested process.

#### *ASIC's response*

We endeavour to provide stakeholders with eight weeks to provide us with feedback on major policy proposals. Sometimes, our consultation periods are shorter than this due to the circumstances of the initiative we are consulting on (e.g. when the timeframes established by the Government).

While we always genuinely consider suggestions from individual stakeholders, our final policy guidance or legislative instruments need to take into account feedback from all stakeholders, and must adhere to the regulatory requirements and intended policy outcomes.

As such, we cannot always reflect individual suggestions in the final policy. Our regulatory guides are usually published alongside a report setting out the feedback we received during our formal consultation process, along with our responses to that feedback.

We acknowledge ARITA's feedback from insolvency practitioners that there have sometimes been delays in ASIC responding to queries about the ILRA reforms. We did not allocate sufficient resources to support queries from the regulated population.

Since the law was changed, ASIC has received more than 1,000 queries or requests for support from the insolvency sector. While we acknowledge the delays experienced by some industry members, we responded to the vast majority of requests within 24 hours.

We have allocated additional resources to resolving industry participants' queries which has further improved response times.

### KPI 3 and KPI 4

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

KPI 4: Compliance and monitoring approaches are streamlined and coordinated

### ASIC's enforcement approach

- 208 The AICD provided comments on ASIC's enforcement approach, suggesting that KPIs 3 and 4 provided an opportunity for ASIC to discuss the evidence and findings presented to the Royal Commission during the reporting period. The AICD also submitted that it supported a more proactive approach to enforcement by ASIC to achieve deterrence.
- 209 ARITA noted in its submission that a number of its members believe that ASIC tended to focus on compliance matters rather than major strategic issues faced by the regulated population.
- 210 At the same time, CAANZ supported the work of the Government and ASIC to upgrade ASIC's enforcement powers and penalties in 2018. CAANZ also noted that many instances of misconduct before the Royal Commission have been the subject of ASIC investigations and resulted in regulatory actions.

#### *ASIC's response*

In October 2018, ASIC committed in submissions to the Royal Commission to a 'Why not litigate?' enforcement stance and publicly committed to that posture going forward. Under this approach, ASIC's enforcement culture requires investigations to be conducted with a clear view of the regulatory outcomes to be achieved and with a focus on the question, 'Why not litigate?'

Again we note that the Royal Commission had a different focus to that of the Framework, which is designed to assess only one aspect of a regulator's performance—the extent to which it minimises regulatory burden.

ASIC's Commission is also establishing a separate Office of Enforcement within ASIC and this will be implemented in 2019.

The Office of Enforcement will be responsible for investigating and taking enforcement action in response to contraventions of the legislation we administer.

The Office of Enforcement will have an overarching communication strategy to maximise the deterrent impact of ASIC's enforcement actions. The Commission will formulate and adopt KPIs for the Office of Enforcement, which the Office of Enforcement will report against annually. On (at least) an annual basis, the Office of Enforcement will prepare and provide the Commission with comprehensive data and analysis that evaluates the performance of the Office of Enforcement both quantitatively and qualitatively.

The Government has also announced a number of new enforcement powers for ASIC. These powers will enhance our effectiveness in deterring misconduct and ensuring a fair, strong and efficient financial system for all Australians. Implementation processes for these powers are at different stages. ASIC will continue to support the Government with implementation of the new and proposed powers.

As noted above in our response under 'General Feedback', the Framework is only one component of the broader performance of regulators. While the Royal Commission focused on the effectiveness of enforcement of the law, the Framework focuses on whether we have been effective in minimising regulatory burden. The Royal Commission found that, while regulators are subject to a number of accountability mechanisms, there is no independent assessment of their strategic performance against their overall mandate.

### **Cooperation with other stakeholders and regulators**

- 211 Most of the submissions received stated that there is further scope for ASIC to work more closely with other financial regulators and stakeholders to reduce the cost of compliance and avoid regulatory overlap.
- 212 The ICA submitted that coordination of enforcement approaches between regulators would lead to less regulatory overlap and support the efficient operation of regulated entities. The ICA also noted opportunities for ASIC to work with the ACCC to avoid regulatory overlap following the recent amendment to the ASIC Act.
- 213 The AICD stakeholder suggested ASIC should provide further information on the relationship between ASIC and APRA in our self-assessment.

214 ARITA noted in its submission that some members raised concerns about:  
...the apparent failure of ASIC to actively pursue misconduct reported by registered liquidators. This includes illegal phoenix activity which some respondents felt was being left to other agencies, with little support from ASIC.

*ASIC's response*

We acknowledge this feedback. In 2019, ASIC and APRA will work together to implement the Royal Commission's recommendation for a joint memorandum setting out how ASIC and APRA intend to comply with a mandatory statutory obligation to co-operate.

ASIC and APRA are currently working together to enhance cooperation arrangements including by revising the existing Memorandum of Understanding. The aim is to improve outcomes across the financial sector, increase efficiency of regulation and promote a whole of system view. This work will be completed in 2019.

While the Government has amended the ASIC Act to require ASIC to consider the effect that our work and the exercise of our powers may have on competition in the financial system, the Government has made clear that this change is not intended to make ASIC an enforcer of competition law, which remains within the remit of the ACCC.

We will continue to examine ways to enhance our coordination with other regulators to improve regulatory outcomes.

ASIC is taking action against illegal phoenix activity and our collaboration with other regulators through the Phoenix Taskforce and Serious Financial Crime Taskforce (SFCT) aims to minimise this harm.

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.

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 will continue its focus on countering illegal phoenix activity: see the ASIC [Annual Report 2017–18](#) for more information.

## Appendix: List of stakeholders who made submissions

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- Australian Institute of Company Directors
  - Australian Restructuring Insolvency and Turnaround Association
  - Chartered Accountants Australia New Zealand
  - Insurance Council of Australia
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