ASIC
Australian Securities & Investments Commission

# Annual Report 2018–19

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October 2019

**Australian Securities and Investments Commission**

**James R. F. SHIPTON**
Chair

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1 October 2019

The Hon. Josh Frydenberg MP
Treasurer
Parliament House
CANBERRA ACT 2600

Dear Treasurer

I am pleased to give you the annual report of the Australian Securities and Investments Commission for the year ended 30 June 2019.

The report has been prepared in accordance with section 136 of the *Australian Securities and Investments Commission Act 2001* (ASIC Act), section 46 of the *Public Governance, Performance and Accountability Act 2013*, sections 17AA to 17AJ of the Public Governance, Performance and Accountability Rule 2013, and Resource Management Guide No. 135 *Annual reports for non-corporate Commonwealth entities*, published by the Department of Finance in May 2018.

I note that you are required under section 136 of the ASIC Act to cause the report to be tabled in each Chamber within 15 sitting days of receiving it.

Yours sincerely

**James Shipton**
Chair

# Contents

# 1

# ASIC's role

# Chair's report

## On behalf of my fellow Commissioners, I am pleased to present this report outlining ASIC's work and achievements in 2018–19.

I take this opportunity to thank outgoing Deputy Chair Peter Kell for his valued contribution to ASIC's work over many years, and to welcome Deputy Chairs Daniel Crennan QC and Karen Chester and Commissioners Danielle Press and Sean Hughes.

It has been a momentous year for the Australian financial system.

The important work of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (Royal Commission) highlighted the costs and consequences of misconduct in the financial services industry and of failing to abide by the standards of behaviour required by the law, the regulator and the community.

The Royal Commission also reinforced and informed the strategic program of change that ASIC began in February 2018 and is continuing to implement to bolster the impact and effectiveness of our activities.

We welcomed the passage through Parliament of legislation that strengthened the penalties and regulatory tools available to ASIC, including a stronger penalty framework for corporate and financial sector misconduct. Parliament also provided design and distribution obligations for financial services firms and a product intervention power for ASIC.

These reforms significantly enhance ASIC's regulatory and enforcement toolkit and will enable us to take more proactive action to improve standards and achieve fairer outcomes for consumers.

This year we also had the privilege of hosting the 44th International Organization of Securities Commissions (IOSCO) Annual Meeting, in Sydney – a major event in the international regulatory calendar and an important opportunity to share ideas and enhance cooperation between regulators from around the world.

We held the IOSCO meeting jointly with our ASIC Annual Forum, with the theme 'Other People's Money'. The Forum explored how the financial services industry can better focus on the end users – people – and how financial market participants can better meet public expectations when dealing with other people's money.

As the theme of our Annual Forum made clear, we are focused on how the financial system must put people and fairness first. We reiterate that more needs to be done to achieve this.

In 2018, we adopted a new, clear vision and mission to focus our activities.

### Our vision

A fair, strong and efficient financial system for all Australians.

### Our regulatory mission

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

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

### Our registry mission

To realise our vision, we will provide efficient and accessible business registers that make it easier to do business.

## Our strategic change program

As part of our change program, we have been:

- significantly increasing and accelerating court-based enforcement matters as part of our new enforcement strategy. We are also looking to use the full extent of our new penalties and powers through the operational discipline of 'Why not litigate?'
- embedding and expanding new supervisory approaches and promoting best practice and innovation in regulation – particularly through our Close and Continuous Monitoring program (or CCM) and our corporate governance review that is aimed at improving governance practices at the board level
- implementing new and existing reforms and working towards our new obligations and responsibilities in response to the Royal Commission. This includes an expanded role for ASIC to become the primary conduct regulator in superannuation.

In 2018–19, there has been:

- a 20% increase in the number of ASIC enforcement investigations
- a 51% increase in enforcement investigations involving Australia's largest financial institutions (or their officers, employees or subsidiary companies)
- a 216% increase in wealth management investigations.

In August 2018 and March 2019, the Government announced a total of $474 million in additional funding over four years to strengthen and expand ASIC's remit, including our ability to address misconduct in the financial services sector. This funding will be crucial for ASIC as we put the Royal Commission recommendations into effect. It will also enable ASIC's deployment of enhanced regulatory approaches, including our supervisory initiatives.

# Outlook – our strategic priorities

We have identified seven principal strategic priorities for 2019–20.

The strategic priorities we have identified represent the most significant ways in which we are addressing consumer harm, punishing wrongdoing, and encouraging better culture and behaviour – including a greater emphasis on *fairness and professionalism* – throughout the industry.

## ASIC's key priorities

### High deterrence enforcement action

We are focused on efficient and effective enforcement action, particularly cases that have a high deterrence value and those responding to egregious misconduct (e.g. misconduct impacting vulnerable consumers).

We will better communicate our enforcement priorities, outcomes and performance.

### Prioritising the recommendations and referrals from the Financial Services Royal Commission

Our regulatory work is being guided by the outcomes of the Royal Commission. In addition, we will support key law reforms to achieve the recommendations of the Royal Commission.

We will prioritise Royal Commission referrals, and progress them efficiently and effectively.

### Delivering as a conduct regulator for superannuation

In establishing ASIC as the primary regulator of conduct in superannuation, consistent with the Government's response to the Royal Commission recommendations, we will improve outcomes in superannuation through:

- taking decisive regulatory and enforcement action to deter misconduct, and supporting relevant legislative reforms
- supervision and surveillance of superannuation trustees focusing on whether trustees act in the best interests of consumers and treat them fairly
- implementation of the superannuation recommendations of the Financial Services Royal Commission and other reviews.

### Addressing harms in insurance

We will take enforcement and other regulatory action against mis-selling, particularly to vulnerable consumers, and review product features and practices that raise concerns.

We will support and implement insurance law reforms. As these reforms are legislated, we will take regulatory action on unfair contract terms and problems in claims handling.

### Improving governance and accountability

We will conduct enhanced and intensive supervision of key firms, including via our CCM program and our Corporate Governance Taskforce.

We will be prioritising enforcement cases that hold individuals to account for governance failures or breaches that result in harm.

We are committed to supporting and implementing the proposed conduct accountability regime, and new laws on phoenix activity to deter misconduct among company directors and practitioners.

### Protecting vulnerable consumers

Considering the impact of harm to consumers, particularly those who are vulnerable, is central to how we prioritise our work.

We will take regulatory action against unfair treatment of consumers facing hardship as well as irresponsible actions by financial services providers.

We remain committed to our Indigenous Outreach Program, which helps Indigenous Australians better manage their finances and improves the quality of financial services provided to them.

### Addressing poor financial advice outcomes

We will support measures to improve the professionalism of financial advisers and target the potential misconduct and harms to consumers that may arise from the industry's shift towards 'general advice' models.

We are also closely monitoring the potential harms that may result from larger institutions' departure from the sector.

## Operational priorities

We also recognise the importance of strengthening our own capabilities so that we have the right people and the right tools to do our job. To this end, we are:

- building up ASIC's capability in behavioural sciences, data and technology
- positioning ASIC as a strategic and agile regulator
- developing and using new regulatory tools and remedies
- scaling up ASIC to deliver these outcomes.

**James Shipton**
**Chair**

## Our achievements

Below is a snapshot of some of our key achievements this year.

**For more information about our key results, see Table 2.2.1**

### Surveillance

**Over 1,200** surveillances undertaken

### Investigations

**151** investigations commenced

**103** investigations completed

### Prosecutions

**26** individuals charged in criminal proceedings

**167** criminal charges laid

**14** custodial sentences (10 people imprisoned)

**16** non-custodial sentences

**369** individuals charged in summary prosecutions for strict liability offences

**798** criminal charges laid in summary prosecutions for strict liability offences

### Civil penalties

**$12.7m** in civil penalties imposed by the courts

### Bannings

**182** people removed or restricted from providing financial services or credit

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

**55** actions taken against auditors and liquidators

### Infringement notices, compensation and court enforceable undertakings

**14** infringement notices issued

**$0.73m** infringement penalties paid

**$22.8m** compensation and remediation for investors and consumers

**$18.1m** community benefit fund payments

**10** court enforceable undertakings

### Engagement

**Over 1,400** engagements with stakeholders

### Industry reports

**45** industry reports published

We report many of these figures every six months in our Enforcement Updates (Report 615 and Report 625). Those reports are based on information available at the time of reporting and in some cases the totals vary slightly from the statistics reported in this table, which are definitive.

# 1.1 ASIC's role and responsibilities

## Our regulatory approach

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

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

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

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

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

Our Emerging Threats and Harms Committee is a key component of ASIC's broader risk management framework. This Committee of Commissioners and senior ASIC leaders helps ASIC:

- identify, monitor and advise on emerging risks, including product or sector risks relevant to our strategic priorities
- review the perimeter of our regulatory responsibilities for regulatory gaps not subject to appropriate regulation
- monitor key changes to the priority harms that can cause harm to investors, consumers and the markets and sectors we regulate.

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

- the matter's strategic significance (the seriousness of the misconduct or harm, how widespread it is, the importance of deterrence, and our strategic priorities)
- the likelihood of success of using one or more of the tools available to us
- the issues specific to the case (e.g. availability of evidence)
- the benefits of pursuing misconduct (e.g. the impact of remedies we may be able to obtain to deter misconduct and protect or compensate consumers, and other public interest factors)
- the availability of resources.

## Our legislative responsibilities

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

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

We monitor and promote market integrity and consumer protection in relation to the Australian financial system and payments system.

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

- ASIC Act
- *Business Names Registration Act 2011*
- *Corporations Act 2001* (Corporations Act)
- *Insurance Contracts Act 1984*
- *National Consumer Credit Protection Act 2009* (National Credit Act).

We also administer parts of the following legislation:

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

# Oversight

## Responsible Ministers

At 30 June 2019, the Ministers responsible for ASIC were the:

- Treasurer, the Hon. Josh Frydenberg MP
- Assistant Treasurer and Minister for Housing, the Hon. Michael Sukkar MP
- Assistant Minister for Superannuation, Financial Services and Financial Technology, Senator the Hon. Jane Hume.

## Parliamentary oversight

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

## Correspondence with members of Parliament

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

We aim to respond to 100% of correspondence within 28 days of receipt. In 2018–19, we responded to 265 letters and emails from members of Parliament. We responded to 91% of this correspondence within 14 days and 100% within 28 days.

## Financial and operational oversight

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

The PGPA Act also requires ASIC to prepare a corporate plan covering our purpose, environment, performance, capability, and risk oversight and management for the budget forward estimates period. *ASIC's Corporate Plan 2018–19 to 2021–22* was published on 31 August 2018.

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

# 1.2 ASIC's structure and management

## This year, the Government appointed two new Deputy Chairs and two additional Commissioners to ASIC.

The Commission made some important changes to ASIC's structure, appointing a group of executive directors who sit between the Commission and senior executive leaders and have operational responsibility for the organisation.

This allows the Commission to better focus on strategic matters, engage with external stakeholders, and provide oversight and governance to teams.

**For more information on the Commissioners, see Section 1.3 and on Executive Directors, see Section 1.4**

The Commission in June 2019: From left, Deputy Chair Daniel Crennan QC, Commissioner Danielle Press, Commissioner John Price, Deputy Chair Karen Chester, Chair James Shipton, Commissioner Cathie Armour and Commissioner Sean Hughes.

# ASIC organisational structure

## Commission

**James Shipton**
Chair

| **Cathie Armour** | **John Price** | **Karen Chester** | **Daniel Crennan QC** | **Sean Hughes** | **Danielle Press** |
|---|---|---|---|---|---|
| Commissioner | Commissioner | Deputy Chair | Deputy Chair | Commissioner | Commissioner |

### Supervisory Teams

**Financial Services**
- Credit, Retail Banking & Payments
- Insurers

**Markets**
- Corporations
- Financial Reporting & Audit
- Insolvency Practitioners
- Market Infrastructure
- Market Supervision

**Wealth Management**
- Financial Advisers
- Investment Managers
- Superannuation

### Office of Enforcement

**Financial Services Enforcement**
- Financial Services Enforcement
- Wealth Management Enforcement – Major Financial Institutions
- Wealth Management Enforcement

**Markets Enforcement**
- Corporations & Corporate Governance
- Enforcement WA & Criminal Intelligence Unit
- Markets Enforcement

**Close & Continuous Monitoring**
- Close & Continuous Monitoring Team

**Assessment & Intelligence**
- Licensing
- Misconduct & Breach Reporting
- Office of Small Business
- Office of the Whistleblower
- Small Business, Compliance & Deterrence

**Strategy**
- Financial Capability
- International
- Strategic Intelligence
- Strategic Policy
- Behavioural Research & Policy Unit

**Chief Legal Office**
- Administrative Law
- Commission Counsel
- Delegates Panel
- Special Counsel

**Operations**
- Corporate Services
- Finance
- Information Technology
- Specialist Services/ Chief Data Officer

**Commission Specialist Teams**
- Corporate Affairs
- Internal Audit & Operational Risk
- People & Development

**Registry**
- Communication & Engagement
- Governance & Strategy
- Legal
- Program Delivery
- Service Delivery
- Service Delivery Support
- Registry Development
- Workload, Insight & Reporting

# 1.3 ASIC Commissioners

### James Shipton

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

James Shipton commenced as ASIC Chair on 1 February 2018.

Australian Criminal Intelligence Commission, Australian Government Financial Literacy Board, Consumer Advisory Panel, Council of Financial Regulators, Criminal Justice and Law Enforcement Forum, External Advisory Panel, International Organization of Securities Commissions, Serious Financial Crime Taskforce, Trans-Tasman Council on Banking Supervision

### Karen Chester

**BEc (Hons)**

Karen Chester commenced as ASIC Deputy Chair on 29 January 2019.

Consumer Advisory Panel, External Advisory Panel

### Daniel Crennan QC

**BA, LLB (Hons)**

Daniel Crennan commenced as ASIC Deputy Chair on 16 July 2018.

Consumer Advisory Panel, External Advisory Panel

Internal committees: Enforcement Committee

### John Price

**BA, LLB (Hons)**

John Price commenced as an ASIC Commissioner on 21 March 2012.

ASIC Business Advisory Panel, Consumer Advisory Panel, Council of Financial Regulators, Digital Finance Advisory Panel, Director Advisory Panel, External Advisory Panel, Federal Regulatory Agency Group, Financial Reporting Council, Serious Financial Crime Taskforce, Small Business Commissioners Meetings, Trans-Tasman Council on Banking Supervision, Trans-Tasman Emerging Risk Committee

Internal committees: ASIC Diversity Council, Regulatory Policy Committee, Regulatory Transformation Committee

## Cathie Armour

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

Cathie Armour commenced as an ASIC Commissioner on 3 June 2013.

CFR Financial Markets Infrastructure Steering Committee, Consumer Advisory Panel, External Advisory Panel, Director Advisory Panel, Markets Advisory Panel

Internal committees: Audit Committee, Reconciliation Action Plan Steering Committee, Regulatory Issues Committee, Regulatory Transformation Committee

## Danielle Press

**BEc (Hons)**

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

Consumer Advisory Panel, Director Advisory Panel, External Advisory Panel, Markets Advisory Panel

## Sean Hughes

**BA, LLB (Hons), LLM**

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

ASIC–APRA Committee, Consumer Advisory Panel, External Advisory Panel, Trans-Tasman Council on Banking Supervision, Trans-Tasman Emerging Risk Committee

Internal committees: Emerging Threats and Harms Committee, ASIC Annual Forum Project Board

## Peter Kell

**BA (Hons)**

Peter Kell ceased his role as Deputy Chair on 6 December 2018.

Peter commenced as an ASIC Commissioner on 7 November 2011 and was appointed Deputy Chair on 6 May 2013.

# 1.4 ASIC Executive Directors

## Executive Director Assessment and Intelligence

**Warren Day**
BBus (Acc), LLB (Hons), MProfAcc, LLM, MBus (InfoTech)

## Executive Director Markets Enforcement

**Sharon Concisom**
LLB (Hons)

## Executive Director Financial Services

**Michael Saadat**
BEc, LLB (Hons), LLM, EMBA

## Executive Director Strategy

**Greg Kirk**
BA, LLB (Hons)

## Executive Director Financial Services Enforcement

**Tim Mullaly**
LLB, BBus

## Executive Director Wealth Management

**Joanna Bird**
BA, LLB (Hons), BCL (Hons)

## Executive Director Markets

**Greg Yanco**
BBus (Acc), FCPA, MSAFAA

## General Counsel

**Chris Savundra**
BCom, LLB (Hons), BCL (Distinction)

## Executive Director Registry

**Rosanne Bell**
BCom

## Chief Supervisory Officer Close and Continuous Monitoring

**Oliver Harvey**
BA, LLB, MPhil

## Executive Director Operations

**Carlos Iglesias**
BEc (Acc)

## Chief Supervisory Officer Close and Continuous Monitoring

**Louise Macaulay**
BA (Hons), LLB, LLM

# 1.5 Stakeholder teams

## ASIC's stakeholder teams and who they regulate

## Markets

**Greg Yanco – Executive Director**

### Corporations

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

- Unlisted public companies: 23,360
- Listed companies (excluding listed schemes): 2,085

### Financial Reporting and Audit

**Doug Niven – Senior Executive Leader**

- Registered company auditors: 3,962
- Entities required to produce financial reports: 32,296
- Registered SMSF auditors: 5,919

### Insolvency Practitioners

**Thea Eszenyi – Senior Executive Leader**

- Registered liquidators: 651
- Companies entering external administration: 8,105

### Market Infrastructure

**Nathan Bourne – Senior Executive Leader**

- Licensed domestic and overseas financial markets: 28
- Exempt markets: 20
- Licensed domestic and overseas clearing and settlement facilities: 7
- Exempt clearing and settlement facilities: 1
- Derivative trade repositories: 2
- Credit rating agencies: 6

### Market Supervision

**Calissa Aldridge – Senior Executive Leader**

- Market participants: 97
- Securities dealers: 989
- Investment banks: 22
- Retail OTC derivative providers: 66
- Wholesale electricity providers: 48

## Wealth Management

**Joanna Bird – Executive Director**

### Financial Advisers

**Kate Metz – Senior Executive Leader**

- Financial advisers: 26,793
- AFS licensees licensed to provide personal advice: 4,199
- AFS licensees licensed to provide general advice only: 1,760
- AFS licensees licensed to deal in financial products only: 178

### Investment Managers

**Rhys Bollen – Senior Executive Leader**

- Responsible entities: 437
- Registered managed investment schemes: 3,712
- Wholesale trustees: 1,644
- MDA operators: 215
- IDPS operators: 91
- Custodial service providers: 1,090
- Foreign financial services providers: 934
- Total assets: $1.5 trillion

### Superannuation

**Jane Eccleston – Senior Executive Leader**

- Superannuation trustees: 114
- Total assets under management: $1,834 million

## Financial Services

**Michael Saadat – Executive Director**

### Credit, Retail Banking and Payments

**Tim Gough – Senior Executive Leader**

- Authorised deposit-taking institutions: 147
- Australian credit licensees: 5,188
- Credit representatives: 38,187
- Non-cash payment facility providers: 610
- Trustee companies: 11

### Insurers

**Emma Curtis – Senior Executive Leader**

- General insurers: 82
- Life insurers: 29
- Friendly societies: 12

### Financial Capability

**Laura Higgins – Senior Executive Leader**

## Assessment and Intelligence

**Warren Day – Executive Director**

## Close and Continuous Monitoring

**Louise Macaulay and Oliver Harvey – Chief Supervisory Officers**

- Entities subject to supervision: AMP, ANZ, CBA, NAB and Westpac

## Registry

**Rosanne Bell – Executive Director**

- Total companies registered: 2.7 million
- New companies registered: 223,661
- Total business names registered: 2.3 million
- New business names registered: 375,052
- Number of searches of ASIC registers: 142.6 million

## Office of Enforcement

### FINANCIAL SERVICES ENFORCEMENT

**Tim Mullaly – Executive Director**

#### Financial Services Enforcement

**Melissa Smith – Senior Executive Leader**

#### Wealth Management Enforcement – Major Financial Institutions

**David McGuinness – Senior Executive Leader**

#### Wealth Management Enforcement

**Marita Hogan – Senior Executive Leader**

### MARKETS ENFORCEMENT

**Sharon Concisom – Executive Director**

#### Corporations and Corporate Governance

**George Stogdale – Senior Executive Leader**

#### Enforcement Western Australia and Criminal Intelligence Unit

**Natalie Dürr – Senior Executive Leader**

#### Markets Enforcement

**Sharon Concisom – Senior Executive Leader**

# 1.6 Regional Commissioners

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

**For more information on our regional action, see Section 4.2**

## Australian Capital Territory

**Laura Higgins**
BEd, BA (Hons)

- Commenced as Acting Regional Commissioner in May 2019.

**Christian Mikula**
BA, LLB (Hons)

- Regional Commissioner from February 2016 to May 2019.

## New South Wales

**Michael Saadat**
BEc, LLB (Hons), LLM, EMBA

- Commenced as Regional Commissioner in July 2016.

## Northern Territory

**Duncan Poulson**
BA, LLB

- Commenced as Regional Commissioner in February 2006.

## Queensland

**Amanda Zeller**
BCom, CPA

- Commenced as Acting Regional Commissioner in May 2019.

**John Weaver**
LLB, MSc (Fraud and Risk Management), FGIA

- Regional Commissioner from June 2016 to May 2019.

## South Australia

**Melissa Smith**
LLB (Hons), BA (Juris), GDLP

- Commenced as Regional Commissioner in June 2015.

## Tasmania

**Chris Green**
LLB, GDipBA (Exec)

- Commenced as Regional Commissioner in November 2013.

## Victoria

**Warren Day**
BBus (Acc), LLB (Hons), MProfAcc, LLM, MBus (InfoTech)

- Commenced as Regional Commissioner in October 2008.

## Western Australia

**Natalie Dürr**
LLB

- Commenced as Regional Commissioner in July 2017.

# 1.7 Government priorities

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

ASIC welcomed the release of the final report of the Royal Commission on 1 February 2019.

The Royal Commission examined whether there has been misconduct or conduct that falls below community expectations in the banking, superannuation and financial services industry. ASIC assisted the Royal Commission throughout the year by providing detailed intelligence across different market sectors, witness statements and submissions, and by appearing at public hearings.

**For more information on the Royal Commission, see Section 1.8**

## Increased funding for ASIC

In August 2018 and then in March 2019, the Government announced over $470 million in additional funding to help strengthen and intensify ASIC's approach to enforcement and expand its ability to address misconduct in the financial sector.

The funding will support enhanced supervision of larger financial institutions, help ASIC implement its new role as the primary conduct regulator for superannuation, and support the administration of a conduct-focused accountability regime.

## Product intervention power and design and distribution obligations

On 5 April 2019, the *Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Act 2019* came into force, providing ASIC with a product intervention power and imposing design and distribution obligations on industry.

The product intervention power will strengthen ASIC's consumer protection toolkit by equipping us with the power to intervene where there is a risk of significant consumer detriment. ASIC will consult on its approach to using this important new power in the second half of 2019.

The design and distribution obligations will bring accountability for issuers and distributors to design, market and distribute financial and credit products that meet consumer needs. Phased in over two years, the obligations will require issuers to identify in advance the consumers for whom their products are appropriate, and direct distribution to that target market.

Together, these significant legislative reforms will enable ASIC to take more effective action to improve standards and achieve fairer outcomes for consumers. ASIC will work with industry, including through guidance, as it puts in place processes and systems to meet its new obligations.

## Strengthening corporate and financial sector penalties

The *Treasury Laws Amendment (Strengthening Corporate and Financial Sector Penalties) Act 2019* came into force on 13 March 2019 and is an important step forward for ASIC's enforcement regime. ASIC is now in a stronger position to pursue significant civil penalties and criminal sanctions against those who breach the law.

This new law implements recommendations of the ASIC Enforcement Review Taskforce. It strengthens existing penalties and introduces new penalties for breaches of corporate and financial services laws, including by:

- increasing the maximum prison penalty to 15 years for the most serious offences, substantially increasing maximum prison penalties for a range of other significant offences, and doubling fines for many offences
- increasing the maximum civil penalty for individuals to $1.05 million or three times the benefit obtained, and for companies to $10.5 million or three times the benefit obtained or 10% of annual turnover, capped at $525 million
- extending civil penalties to a greater range of misconduct, including the failure of AFS licensees and credit licensees to act efficiently, honestly and fairly
- making disgorgement orders available as an additional remedy in civil penalty proceedings.

The legislation follows ASIC's recommendations to Government to increase penalties and ensure that significant breaches of the law are appropriately punished.

## Stronger protections for whistleblowers

The passage in March 2019 of the *Treasury Laws Amendment (Enhancing Whistleblower Protections) Act 2019* significantly improved the protections available for whistleblowers who report misconduct. The reforms are intended to encourage people who have observed misconduct to come forward, to provide better protection for them, and to support increased reporting of corporate wrongdoing.

The reforms complement the measures ASIC has had in place since 2014 to improve our processes for assessing whistleblower reports and for communicating with whistleblowers during our inquiries.

ASIC's Office of the Whistleblower is overseeing the implementation of the reforms, which commence from 1 July 2019.

**For more information on whistleblower protections, see Section 5.4**

## Combating illegal phoenix activity

In 2018–19, the Government progressed significant law reform to help combat illegal phoenix activity. This activity involves creating a new company to continue the business of a company deliberately liquidated to avoid paying taxes, creditors and employee entitlements.

These reforms build on the work of the Phoenix Taskforce, of which ASIC is a member. ASIC assisted the Government in developing the reforms and made submissions to the consultation process.

In December 2018, the Government amended the Insolvency Practice Rules (Corporations) 2016 to restrict related party voting rights and limit the ability of phoenix operators to unduly influence the conduct of an external administration. In April 2019, the Government amended the Corporations Act to introduce new offence provisions for entering into a transaction to reduce the recovery of employee entitlements. The amendments also introduced provisions to assist in the disqualification of company directors of two or more companies that have relied on the Fair Entitlements Guarantee scheme and have also breached the Corporations Act.

In February 2019, the Government introduced into Parliament a package of reforms to further address illegal phoenix activity. These pending reforms include new phoenix offence provisions, measures to prevent the misuse of backdating director appointments and resignations, and voidable transaction provisions that allow the recovery of company assets for the benefit of creditors. Reform to implement a Director Identification Number is being pursued via the Government's registry modernisation initiative.

**For more information on our work on combating illegal phoenix activity, see Sections 3.7 and 5.5**

## Modernising of business registers

Over the course of the year, we continued to work with Treasury and the Australian Taxation Office (ATO) to develop options for the modernisation of Australian business registers, including 31 in-scope ASIC registers and the Australian Business Register. We will continue this work to facilitate the Government's 2018–19 budget announcement to modernise and consolidate ASIC's registers with the Australian Business Registrar. In the meantime, we are continuing to support our existing systems, which are approaching the end of their useable life.

**For more information on our registry, see Section 2.4**

## Competition

In October 2018, the *Treasury Laws Amendment (Enhancing ASIC's Capabilities) Act 2018* amended the ASIC Act to give ASIC an explicit mandate to consider the effects that the performance of our functions and the exercise of our powers will have on competition in the financial system.

We have issued internal guidance on the practical application of this mandate and are updating relevant regulatory guides, internal systems and manuals.

## Other government inquiries

In 2018–19, ASIC made submissions to several parliamentary and government inquiries and was involved in numerous tabled reports.

The 2018–19 reports included:

- Standing Committee on Economics, *Review of the Australian Securities and Investments Commission Annual Report 2017*, tabled 10 September 2018
- Parliamentary Joint Committee on Corporations and Financial Services, *Oversight of ASIC, the Takeovers Panel and the Corporations Legislation: Report No. 1 of the 45th Parliament*, 13 February 2019
- Parliamentary Joint Committee on Corporations and Financial Services, *The operation and effectiveness of the Franchising Code of Conduct*, 14 March 2019
- Parliamentary Joint Committee on Corporations and Financial Services, *Options for greater involvement by private sector life insurers in work rehabilitation*, 24 October 2018
- Senate Economics Legislation Committee, *Banking System Reform (Separation of Banks) Bill 2019*, 8 May 2019
- Senate Economics Legislation Committee, *Parliamentary Joint Committee on the Australia Fund Bill 2018*, 3 April 2019
- Senate Economics Legislation Committee, *Lower Tax Bill 2018*, 2 April 2019
- Senate Economics Legislation Committee, *Australian Business Securitisation Fund Bill 2019 [Provisions]*, 26 March 2019.

The 2018–19 submissions included:

- Senate Economics Legislation Committee, *Commonwealth Registers Bill 2019 and four related Bills [Provisions]*
- Senate Economics Legislation Committee, *Treasury Laws Amendment (Consumer Data Right) Bill 2019 [Provisions]*, 21 March 2019
- Senate Economics Legislation Committee, Progress report: *Treasury Laws Amendment (Consumer Data Right) Bill 2019 [Provisions]*, 6 March 2019
- Senate Economics References Committee, *Credit and financial services targeted at Australians at risk of financial hardship*, 22 February 2019
- Senate Economics Legislation Committee, *Treasury Laws Amendment (Making Sure Multinationals Pay Their Fair Share of Tax in Australia and Other Measures) Bill 2018 [Provisions]*, 11 February 2019
- Senate Economics Legislation Committee, *Social Services and Other Legislation Amendment (Supporting Retirement Incomes) Bill 2018 [Provisions]*, 11 February 2019
- Senate Economics References Committee, *Financial and tax practices of for-profit aged care providers*, 27 November 2018

- Senate Economics Legislation Committee, *Treasury Laws Amendment (Making Sure Foreign Investors Pay Their Fair Share of Tax in Australia and Other Measures) Bill 2018*; *Income Tax (Managed Investment Trust Withholding Tax) Amendment Bill 2018*; *Income Tax Rates Amendment (Sovereign Entities) Bill 2018*, 9 November 2018
- Senate Economics Legislation Committee, *Treasury Laws Amendment (Making Sure Every State and Territory Gets Their Fair Share of GST) Bill 2018*, 8 November 2018
- Senate Economics Legislation Committee, *Treasury Laws Amendment (Protecting Your Superannuation Package) Bill 2018 [Provisions]*, 13 August 2018.

## 1.8 Financial Services Royal Commission

On 30 November 2017, the Prime Minister and the Treasurer announced that the Government would establish a Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry.

On 14 December 2017, the Governor-General appointed the Hon. Kenneth Hayne AC QC as Commissioner. The Commissioner provided the final report of the Royal Commission to Government on 1 February 2019. On 4 February 2019, the Treasurer released the Government's response to the Royal Commission.

Of the final report's 76 recommendations, 12 were directed at ASIC or required action by ASIC without the need for legislative change, while 34 recommendations relevant to ASIC will require legislative reform. Of these, 11 extend ASIC's remit and powers and 23 impose new arrangements on ASIC's regulated population.

We published an update in February 2019 on our planned actions to implement the Royal Commission recommendations. We committed to fully implementing the 12 recommendations directed at ASIC. Where recommendations require legislative reform, we are working with Treasury to provide policy and technical input on specific measures and embedding new powers as reforms are implemented.

The Royal Commission recommendations reinforced and informed the program of change that ASIC began in 2018. We have also aligned our priorities to respond to the Royal Commission and to address the Government's response to the Royal Commission.

## ASIC action

ASIC is committed to taking action in response to the Royal Commission's final report and the Government's response. Our current and planned actions include:

- working with Treasury's Financial Services Reform Implementation Committee, established to coordinate the implementation of reforms arising from the Government's response to the Royal Commission
- continuing to strengthen our enforcement culture and approach, including by adopting an operational self-discipline of 'Why not litigate?' and creating a separate Office of Enforcement
- strengthening our governance and culture to realign our enforcement and regulatory priorities
- prioritising the referrals made to ASIC in the Royal Commission final report and matters that were case studies before the Royal Commission, and working on a range of misconduct relating to major financial institutions
- preparing to become the primary conduct and disclosure regulator for superannuation
- working with the Australian Prudential Regulation Authority (APRA) on the extended executive accountability regime for other prudentially regulated institutions and preparing for the implementation of a conduct accountability regime that will also apply to non-prudentially regulated entities.

We are also strengthening our cooperation with APRA, including by revising the existing APRA-ASIC Memorandum of Understanding, refreshing the APRA-ASIC governance structure through the establishment of the APRA-ASIC Committee in the second half of 2019, and further enhancing information-sharing arrangements between the two agencies. APRA and ASIC already engage frequently and effectively across a wide range of matters and at all levels of both agencies.

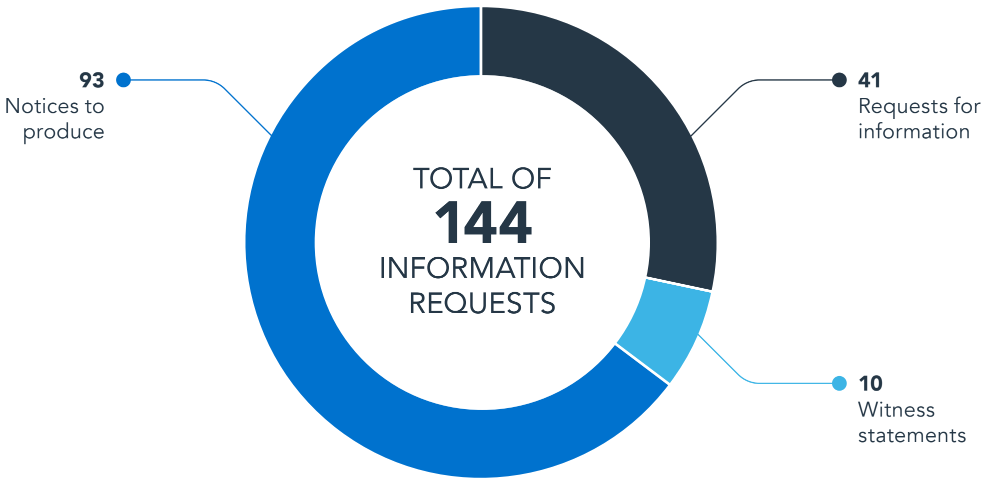
### Summary of ASIC input to the Royal Commission

Over the course of the Royal Commission, ASIC responded to 144 requests for information (including 93 notices to produce, 41 requests for information, and 10 witness statements), reviewed over 160,000 documents, and produced more than 97,000 documents. Seven witnesses from ASIC appeared at the hearings.

Our work included document review and production, assisting the Royal Commission on potential law reform and policy issues, government liaison, preparation of submissions and responses to Royal Commission reports, and information management and litigation support.

### Table 1.8.1 ASIC's Royal Commission effort

| Volume of work | | Resource effort | |
|---|---|---|---|
| Average timeframe for our responses to information requests | 5 days | Dedicated team (funded) effort (hours) | 25,216 |
| Number of documents reviewed | 160,559 | | |
| Number of documents produced | 97,321 | Unfunded resource effort (hours) | 29,016 |
| Number of pages produced | 562,529 | | |




There were 13 referrals made to ASIC, 11 of which were in the Royal Commission's final report. Two referrals were made by the Commissioner during the Royal Commission hearings. Conduct the subject of one matter referred to ASIC by the Royal Commission was before the courts in 2018–19 (NAB/NULIS). ASIC has assessed and begun investigations into a further 32 case studies examined by the Royal Commission. One of these case studies was before the courts in 2018–19 (Dover/McMaster) and another was being considered by the Commonwealth Director of Public Prosecutions (CDPP) for potential criminal action.

## Budget

ASIC was given a total of $10.628 million ($5.882 million in FY18 and $4.746 million in FY19) to cover the costs of its engagement with the Royal Commission.

The funding recognised ASIC's critical role in assisting the Royal Commission, as we provided a significant quantity of information relevant to the matters the Royal Commission examined. It also acknowledged that ASIC required external assistance to engage with the Royal Commission, so that we could remain focused on our ongoing work as a regulator.

# 1.9 Office of Enforcement

## This year, we made significant progress in changing ASIC's approach to enforcement.

On 21 December 2018, Deputy Chair Daniel Crennan QC completed an Internal Enforcement Review of ASIC with Michael Wyles QC, Professor Ian Ramsay, Australian Federal Police Deputy Commissioner Leanne Close, and Andrew Bailey and Andrew Di Pasquale of counsel. One of the key recommendations of that review was that ASIC establish a separate Office of Enforcement. The review was provided to ASIC's Commissioners and to the Royal Commission.

We resolved to establish an Office of Enforcement in February 2019 and the Office became operational on 1 July 2019. The principal purpose of the Office is to strengthen ASIC's enforcement effectiveness and our decision making and capabilities.

The Office is responsible for carrying out ASIC's enforcement activities. It will operate under the following principles:

- a single enforcement strategy for ASIC
- strengthened governance structures across all of ASIC's enforcement functions
- collective prioritisation and accountability for delivery of the most strategically important enforcement matters across ASIC
- flexibility in resource allocation across specialist enforcement teams within the Office
- collective accountability for enforcement capability building, including for enforcement training and the use of technology and data across the Office
- ensuring that proper consideration is given to possible criminal and civil litigation outcomes by applying the 'Why not litigate?' operational self-discipline.

In 2019–20, a key priority for ASIC will be ensuring high deterrence enforcement action. ASIC will focus on efficient and effective enforcement action and on targeting cases of egregious harm, especially those involving vulnerable consumers. We will also continue to prioritise referrals from the Royal Commission for investigation and litigation.

To optimise the deterrence impact of our enforcement work, we will improve our communication of our enforcement priorities, outcomes and performance.

## Recent enforcement metrics

Since last year, we have also been significantly increasing and accelerating our investigations, which should translate into more court-based outcomes as part of our new enforcement strategy. In 2018–19, there has been:

- a 20% increase in the number of ASIC enforcement investigations
- a 51% increase in enforcement investigations involving Australia's largest financial institutions (or their officers, employees or subsidiary companies)
- a 216% increase in wealth management investigations.

**For more information, see Report 615 *ASIC enforcement update: July to December 2018* and Report 625 *ASIC enforcement update: January to June 2019***

# 1.10 Enhanced approach to supervision

ASIC has enhanced key aspects of its supervisory approach, as part of its response to widespread conduct failures in the Australian financial services industry.

The aim of our enhanced supervisory approach is to promote permanent cultural and behavioural change in the monitored institutions and across the financial services market.

Our approach now encompasses the Close and Continuous Monitoring (CCM) program, continued supervision of providers and participants in various markets and a targeted review of corporate governance practices.

## Close and Continuous Monitoring

The CCM program introduces a new supervisory model for Australia's largest financial services institutions (AMP, ANZ, CBA, NAB and Westpac) and features a regular onsite ASIC presence in these institutions to review specific practices.

The CCM program also emphasises C-suite engagement, designed to encourage a shift in leadership mindset, non-financial risk management, day-to-day behaviours and decision making. We are currently focusing our targeted reviews on breach reporting and internal dispute resolution within the supervised institutions.

Once a review is complete, ASIC writes to the CEO and chair of the board of each institution with observations resulting from the onsite surveillance. ASIC will ensure that the institutions' response to these observations is appropriate and timely. We will also take a comparative look across the groups, once a review on a topic is complete. A public statement will be made at the completion of thematic reviews.

This approach is one part of ASIC's response to the deficiencies in the institutions' identification and management of non-financial risk. It also aligns our regulatory approach more closely with international peer agencies such as the United Kingdom's Financial Conduct Authority (FCA), the Securities and Futures Commission of Hong Kong, and the US Federal Reserve.

## Ongoing onsite supervision of providers and participants in various markets

We are also continuing our onsite supervision of equities and futures markets infrastructure providers and participants and extending this supervision to infrastructure providers and participants in the fixed income, currencies and commodities markets. Onsite supervision was also used recently to support our work on supervising allocations for capital raising.

### Close and Continuous Monitoring program

The CCM program reviews specific practices of the supervised institutions to identify deficiencies at an early stage and to ensure that they are promptly and directly identified and elevated to key decision makers in those groups. The program is initially focusing on:

- how institutions detect and respond to reportable breaches of financial services laws, and how they remediate those breaches in a timely manner
- how the institutions resolve disputes (i.e. customer complaints management), including assessing processes, practices, information technology systems, communications and reporting.

Since the program started in October 2018, we have:

- conducted 300+ onsite interviews of banking staff at all levels
- had ASIC employees onsite in one or more institutions for most business days since late October 2018
- reviewed thousands of documents, including information provided to the boards.

ASIC plans to expand the program to additional large and complex financial services entities and to increase the depth of coverage of the entities that are currently part of the program.

## Corporate governance review

Alongside our onsite supervision and the CCM program, we conduct targeted and thematic reviews of corporate governance practices of a broad range of financial services organisations (including the monitored institutions) and other ASX 100 entities.

Focus areas this year were governance processes and practices in director and officer oversight of non-financial risk, and the granting and vesting of variable remuneration to key management personnel.

### Corporate Governance Taskforce

ASIC's Corporate Governance Taskforce was established to conduct a targeted and thematic review of corporate governance practices across large listed entities in Australia. The aim is to improve market integrity and investor and consumer outcomes by improving governance practices. Our work is focused on detecting cultural, organisational and risk management failings, gaining a deeper understanding of the practices of the entities we regulate, and adapting our regulatory responses where there are significant changes in the market to improve the governance practices of those entities.

This year, we analysed the governance practices of seven of Australia's largest ASX-listed financial institutions to understand how directors and officers oversee (and, in the case of officers, manage) non-financial risk. We also reviewed discretionary decision making in variable remuneration outcomes for key management personnel for these entities, as well as 14 other ASX 100 entities.

During these reviews, we issued 31 information requests, reviewed over 43,000 documents, and completed 97 interviews. ASIC also engaged an expert in organisational and behavioural analysis, who completed 35 interviews with directors and officers, observed board, risk committee and remuneration committee meetings of six entities, and conducted 20 surveys with over 180 responses from board members and executives.

#### Corporate governance-related outcomes

As part of our corporate governance work, we use our suite of regulatory tools to modify behaviour and improve corporate conduct. This conduct includes treating investors and consumers fairly, being accountable to investors through accurate, timely and clear disclosure, and adopting sound corporate governance practices.

# 1.11 Financial summary and expenditure

## Outcomes

Parliament funds ASIC to achieve the outcome of improved confidence in Australia's financial markets through promoting informed investors and financial consumers, facilitating fair and efficient markets, and delivering efficient registry systems.

## Revenue for the Commonwealth

In 2018–19, ASIC raised $1,273 million for the Commonwealth in fees, charges and supervisory cost recovery levies, an increase of 5% from the 2017–18 year.

## Revenue, appropriations and expenditure

In 2018–19, ASIC received approximately $374 million in appropriation revenue from the Government, including $36 million for the Enforcement Special Account (ESA), representing a $26 million or 8% increase compared with 2017–18. The $26 million increase in appropriation revenue relates mainly to additional funding provided to ASIC in 2018–19 for new budget measures.

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

ASIC received approximately $11 million of own-source revenue,[1] which is $30 million lower than the previous year. This reduction in own-source revenue relates mainly to significant court costs recoveries during 2017–18 relating to ESA matters. The increase in the 2018–19 deficit result is mainly attributable to the year-on-year change in own-source revenue.

1 Revenue generated and retained by ASIC, including court costs recovered, royalties and other sundry income.

### Table 1.11.1 Revenue, appropriations and expenses

| | 2018–19 $'000 | 2017–18 $'000 | Change $'000 | Change % |
|---|---|---|---|---|
| Revenues from Government (incl. ESA) | **374,313** | 348,041 | 26,272 | 8% |
| Own-source revenue (incl. other adjustments) | **11,443** | 40,875 | (29,432) | (72%) |
| Total revenue | **385,756** | 388,916 | (3,160) | (1%) |
| Total expenses (incl. depreciation and amortisation, net of gains) | **431,133** | 399,816 | 31,317 | 8% |
| Surplus/(Deficit) | **(45,377)** | (10,900) | (34,477) | 316% |

### Table 1.11.2 ASIC's use of taxpayers' money for the outcomes approved by Parliament

| | 2018–19 | 2017–18 |
|---|---|---|
| **Operating expenses (incl. depreciation and amortisation, net of gains)** | | |
| Total (net of gains) | **$431m** | $400m |
| Annual change on previous year | **+8%** | +2% |
| **Fees and charges (including industry funding) raised for the Commonwealth** | | |
| Total | **$1,273m** | $1,216m |
| Annual change on previous year | **+5%** | +32% |

# 2

# ASIC's annual performance statement

# Chair's statement

I, James Shipton, as the accountable authority of ASIC, present the 2018–19 annual performance statement of ASIC, as required under paragraph 39(1)(a) of the PGPA Act. In my opinion, the annual performance statement is based on properly maintained records, accurately reflects the performance of the entity, and complies with subsection 39(2) of the PGPA Act.

# Our purpose

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.

# 2.1 Performance objectives

ASIC's performance reporting in 2018–19 was guided by *ASIC's Corporate Plan 2018–19 to 2021–22* (at pages 36–39) and our *Portfolio Budget Statement* (at pages 143–144), which set out our objectives and targets related to investor and consumer trust and confidence, and fair and efficient markets.

In particular, we aim to achieve our **key performance outcome**, as stated in the 2018–19 Portfolio Budget Statement (at page 149), of 'improved confidence in Australia's financial markets through promoting informed investors and financial consumers, facilitating fair and efficient markets and delivering efficient registry systems'.

Our regulatory mission is to:

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

We do this by pursuing enforcement outcomes, conducting surveillances, engaging with consumers and industry stakeholders and providing guidance, policy advice and financial capability education. These regulatory tools are used to achieve our vision of ensuring a fair, strong and efficient financial system for all Australians.

**For more information on how we achieve this key performance outcome, see Sections 2.2 and 2.3 and Chapter 3**

# 2.2 Key results – investor, consumer and markets performance objectives

The number of surveillances and enforcement actions we undertake, the value of the fines imposed or the number of people convicted, and the length of their sentences as a result of these actions vary from year to year. This variation depends on factors such as the severity of breaches of the law and the complexity of the investigations we undertake.

This year, we have enhanced our approach to supervision and surveillance to focus on onsite supervisory exercises through our CCM program. The objective of our enhanced approach is to proactively identify strategic activities in parts of Australia's most significant financial institutions, assess their effectiveness, and escalate deficiencies to the boards and CEOs. This shift in focus has impacted on the number of traditional surveillances undertaken.

**For more information on the work of the CCM program, see Section 1.10**

Some of our results this year have also been impacted by our necessary focus on assisting and responding to the Royal Commission.

**For more information on ASIC's input to the Royal Commission, see Section 1.8**

### Table 2.2.1 Key results

| Outcome | Total 2018–19 | Total 2017–18 |
|---|---|---|
| **Close and Continuous Monitoring program – supervisory exercises[1]** | | |
| CCM program supervisory exercises commenced | **6** | – |
| Findings letters issued | **4** | – |
| Number of days onsite | **124** | – |
| Number of representatives met during CCM program supervisory exercises | **462** | – |

1 These are new supervision activities, conducted by the CCM program team, which commenced in October 2018.

| Outcome | Total 2018–19 | Total 2017–18 |
|---|---|---|
| **Surveillance** | | |
| Surveillances completed[2] | **Over 1,200**[3] | Over 1,500[4] |
| Instances of potentially misleading or deceptive promotional material withdrawn or amended | **37** | 51 |
| **Enforcement**[5] | | |
| **Investigations**[6] | | |
| Investigations commenced | **151** | 126 |
| Investigations completed | **103** | 124 |
| **Criminal actions** | | |
| Criminal litigation completed | **33** | 16 |
| Criminal litigation completed successfully (as a percentage) | **89%** | 100% |
| New criminal litigation commenced | **14** | 30 |
| Number of people convicted | **27** | 22 |
| Custodial sentences (including fully suspended) | **14** | 13 |
| Non-custodial sentences/Fines | **16** | 13 |
| Total dollar value of fines | **$266,050** | $15,100 |
| Average time to complete an investigation in months | **23** | 24 |
| Average time to a criminal court decision in months | **29** | 30 |
| Average total time to complete an investigation and reach a court decision in months | **52** | 54 |

2 ASIC is moving to a new regulatory workflow platform. As a result, we are adjusting how matters are characterised and changing our recording systems. In 2018–19, these changes are in progress and information is sourced from old and new platforms using different characteristics. These results are necessarily approximate.
3 This includes over 110 surveillances involving an onsite presence.
4 Last year, we incorrectly reported this as 'Over 1,200', as over 300 financial reporting surveillances were omitted in error. In 2017–18, we completed over 1,500 surveillances.
5 For more information on the types of civil penalties, people or companies removed, restricted or banned from providing credit services, and the types and value of the fines for infringement notices, see Section 2.3.
6 Investigations for these purposes meet the definition in section 13 of the ASIC Act.

| Outcome | Total 2018–19 | Total 2017–18 |
|---|---|---|
| **Civil actions** | | |
| Civil litigation completed | **75** | 111 |
| Civil litigation completed successfully (as a percentage) | **96%** | 99% |
| New civil litigation commenced | **55** | 77 |
| Total dollar value of civil penalties | **$12.7m** | $42.2m |
| Average time to complete an investigation in months | **20** | 24 |
| Average time to a civil court decision in months | **19** | 8 |
| Average total time to complete an investigation and reach a court decision in months | **39** | 32 |
| **Administrative actions** | | |
| Administrative actions completed | **84** | 91 |
| New administrative actions commenced | **61** | 56 |
| People disqualified or removed from directing companies | **62** | 50 |
| Action taken against auditors and liquidators | **55** | 62 |
| People/Companies removed, restricted or banned from providing financial services | **85** | 92 |
| People/Companies removed, restricted or banned from providing credit services | **97** | 41 |
| Average time to complete an investigation in months | **26** | 21 |
| Average time to an administrative decision in months | **4** | 5 |
| Average total time to complete an investigation and reach a court decision in months | **31** | 25 |
| **Court enforceable undertakings** | | |
| Court enforceable undertakings accepted | **10** | 27 |

| Outcome | Total 2018–19 | Total 2017–18 |
| --- | --- | --- |
| **Infringement notices**[7] | | |
| Total number of infringement notices issued | **14** | 55 |
| Total dollar value of infringement notices | **$731,700** | $2.02m |
| **Summary prosecutions** | | |
| Summary prosecutions for strict liability offences | **369** | 398 |
| Total value of fines and costs | **$1.6m** | $1.5m |
| **Agreed compensation** | | |
| Compensation or remediation | **$22.8m** | $351.6m |
| Community benefit payments | **$18.1m** | $48.1m |
| **Stakeholder engagement** | | |
| Meetings with industry groups and other stakeholders | **Over 1,400** | Over 2,100 |
| Consultation papers published | **13** | 11 |
| Industry reports published | **45** | 45 |
| **Guidance** | | |
| New or revised regulatory guides published | **23** | 36 |
| New or revised information sheets | **27** | 32 |
| Legislative instruments made, amended and repealed | **53** | 93 |
| **Relief applications** | | |
| Relief applications received | **1,455** | 1,872 |
| Relief applications approved | **963** | 1,061 |
| Relief applications refused or withdrawn | **297** | 457 |
| Relief applications in progress | **195** | 354 |

7 These notices were issued for infringements related to the market integrity rules, ASIC derivative transaction rules, continuous disclosure rules, the ASIC Act, the National Credit Act and Australian Consumer Law. Compliance with infringement notices is not an admission of guilt or liability and these entities are not taken to have contravened the law.

| Outcome | Total 2018–19 | Total 2017–18 |
|---|---|---|
| **Education** | | |
| Users visiting ASIC's MoneySmart website | **8.4m** | 7.4m |
| Average number of users to the MoneySmart website per month | **832,000** | 716,000 |
| Number of users who have used a MoneySmart online tool | **2.7m** | 2.3m |
| Average number of users utilising a MoneySmart tool per month | **266,000** | 217,000 |

# 2.3 Analysis – implementing our investor, consumer and markets performance objectives

In 2018–19, we employed the full range of regulatory tools available to us to deliver outcomes under the Portfolio Budget Statement and to fulfil our objectives of promoting investor and consumer trust and confidence and ensuring fair and efficient markets.

The regulatory tools we used to identify and respond to threats and harms to consumers were enforcement, supervision and surveillance, licensing, engagement, guidance, education and policy advice.

This year, our work aligned with the focus areas outlined in our *Corporate Plan 2018–22: Focus 2018–19*, namely:

- potential harms from technology
- poor culture and professionalism
- culture, governance and incentives that can harm markets
- practices that target financially vulnerable consumers
- misalignment of retail product design and distribution with consumer needs
- increased global uncertainty.

### Potential harms from technology

ASIC's focus on innovation and new developments includes monitoring potential threats or harms from technology, driven by the growing digital environment and structural changes in financial services and markets.

Ongoing areas of focus in our markets work include high-frequency or algorithmic trading.

We also monitor and assess the cyber resilience of our regulated population by analysing cyber resilience self-assessments in order to understand trends and themes across the sector and at an individual entity level. We conduct 'deep dives' on entities or groups of entities to assess whether the self-assessments we are given can be effectively evidenced. We provide feedback to entities on how they compare to their peers and we compare the relative performance of different sectors.

We also encourage early engagement with innovative or transformational technologies via our Innovation Hub, the key point of engagement for innovative start-ups wanting to engage with ASIC.

Through our Innovation Hub, we observe trends, facilitate the development of compliant systems, and give practical support to start-ups and scale-ups as they navigate Australia's financial regulatory system. We maintain ongoing engagement with the regulatory technology (regtech) community via guidance from the Innovation Hub's work and our quarterly Regtech Liaison Forums.

### Poor culture, professionalism and governance

This year, ASIC continued its important work redressing instances of poor culture, professionalism and governance in the corporate, financial services and credit sectors.

We established the Corporate Governance Taskforce (CGTF), which conducts targeted and thematic reviews of corporate governance practices across large listed entities in Australia. The CGTF is designed to better detect cultural, organisational and/or risk management failings, to gain a deeper understanding of the practice of entities we regulate, and to adapt our regulatory responses where there are significant changes in the market.

**For more information on the CGTF, see Section 1.10**

We continued our work on supervising the remediation of customers who have been charged fees for no service. ASIC undertook large-scale supervisory work, which includes overseeing both the compensation programs of six major financial institutions and their reviews to determine where there were other systemic fees-for-no-service failures. This work has resulted in significant compensation paid, or to be paid, to affected customers, with the banks collectively provisioning around $1.7 billion for remediation for consumers.

**For more information on our work on fees for no service, see Section 3.3**

### Practices that target financially vulnerable consumers

ASIC creates and distributes tailored resources, tools and information that support financially vulnerable consumers in making informed decisions.

We use social media to engage, educate and enable Australians to improve their financial lives. This forms part of our harm reduction approach.

This year, we conducted a campaign for International Women's Day. We encouraged women to engage with their superannuation, because on average women retire with much lower superannuation balances than men. Social media posts targeting women reached over 156,000 people.

We also continue to educate book up providers and consumers about fair and legal ways in which book up can be provided to enable remote and regional Indigenous communities to purchase goods and services.

**For more information on our work for vulnerable consumers, see Sections 4.1, 4.3 and 4.4**

### Misalignment of retail product design and distribution with consumer needs

In April 2019, the Corporations Act was amended to give ASIC a product intervention power and the ability to enforce design and distribution obligations.

The product intervention power, available for ASIC to use immediately, strengthens our consumer protection toolkit by equipping us with the power to intervene where there is a risk of significant consumer detriment. This allows us to take a range of temporary actions, including banning a product or product feature, imposing sale restrictions, and amending product information or choice architecture.

The design and distribution obligations, which commence in April 2021, will require firms to have appropriate product governance processes and controls in place to ensure that consumers receive products that are consistent with their objectives, financial situation and needs.

In June 2019, we released for consultation a draft regulatory guide on the product intervention power. Consultation Paper 313 *Product intervention power* sets out the scope of the power, when and how we expect to use the power, and how a product intervention order is made. In July 2019, we released Consultation Paper 316 *Using the product intervention power: Short term credit*, on the first proposed use of our new product intervention power in the short-term credit sector.

## Increased global uncertainty

ASIC has worked to manage increasing global uncertainty by testing cross-border business compliance and providing guidance on international regulations and policies.

The Asia Region Funds Passport commenced on 1 February 2019 and is designed to provide investors with access to funds from participating economies throughout the Asia region. Japan, Thailand, New Zealand and Australia are able to receive and process registration applications from local prospective Passport funds, as well as entry applications from foreign Passport funds.

**For more information on the Asia Region Funds Passport, see Section 5.1**

We released a suite of seven new and updated regulatory guides to provide comprehensive guidance to the funds management industry on the changes arising from introduction of the Asia Region Funds Passport. This guidance aims to promote industry-wide consistency and to help industry access the Asia Region Funds Passport.

In July 2019, we released Consultation Paper 315 *Foreign financial services providers: Further consultation*, outlining our proposal to provide Australian financial services (AFS) licensing relief to foreign providers of funds management financial services. This is part of the broader framework we will adopt for regulation of foreign entities providing financial services to clients in Australia.

**For more information on ASIC guidance released this year, see further below in this Section 2.3**

## Enforcement

We use a range of regulatory and enforcement sanctions and remedies to bring wrongdoers to account and ensure appropriate punishment and public denunciation for misconduct. In doing so, we also seek to deter poor behaviour and encourage greater willingness by entities and individuals to act in accordance with the law.

This year, we increased and accelerated our court-based enforcement matters as part of our new enforcement strategy, and in response to recommendations of the Royal Commission.

We adopted a 'Why not litigate?' operational self-discipline and began the process of establishing an Office of Enforcement.

**For more information on the Office of Enforcement, see Section 1.9**

The *Treasury Laws Amendment (Strengthening Corporate and Financial Sector Penalties) Act 2019* came into force in March 2019. This new law improves ASIC's enforcement toolkit, strengthens existing penalties, and introduces new penalties for breaches of corporate and financial services laws. Individuals now face up to 15 years imprisonment and companies can receive maximum fines of up to $525 million.

**For more information on these reforms, see Section 1.7**

Enforcement action continues to be one of the key regulatory tools available to us to help achieve a fair, strong and efficient financial system for all Australians. We use a range of regulatory and enforcement sanctions and remedies, including punitive, protective, preservative, corrective or compensatory action. We also resolve matters through court enforceable undertakings or by issuing infringement notices.

**For more information on our regulatory tools, see Section 1.9**

Some examples of enforcement action and key outcomes delivered in 2018–19 include the following.

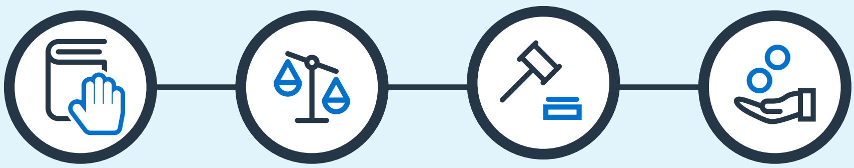
### Punitive actions

In 2018–19, we completed 75 civil court cases, covering issues such as engaging in unlicensed credit activity, misleading and deceptive conduct, failure to act with due care and diligence, market integrity rules, market manipulation, and unsolicited offers. Of these cases, 96% were successful. The total value of penalties for these civil court cases was $12.7 million.

## Westpac ordered to pay $3.3 million after Federal Court found it traded to affect the BBSW and engaged in unconscionable conduct

In November 2018, the Federal Court ordered Westpac to pay $3.3 million for contravening the ASIC Act by its involvement in the setting of the bank bill swap rate (BBSW) in 2010. This was the maximum penalty available. The Federal Court also ordered that an independent expert review Westpac's systems, policies and procedures and report its findings to ASIC within nine months.

**Timeline of Federal Court proceedings against Westpac for its BBSW conduct**



**APRIL 2016**

ASIC commenced Federal Court proceedings against Westpac.

**OCT–DEC 2017**

Trial held before Justice Beach to determine liability.

**MAY 2018**

Westpac was found to have engaged in unconscionable conduct and to have contravened its AFS licensee obligations.

**NOV 2018**

Justice Beach ordered Westpac to pay a $3.3 million penalty and appoint an independent expert to review Westpac's current systems, policies and procedures.

The court orders followed a judgment on 24 May 2018, which found that Westpac had, on four occasions between 6 April 2010 and 6 December 2010, traded with the dominant purpose of influencing yields of traded prime bank bills and the setting of the BBSW in a way that was favourable to its rate set exposure.

The court found that Westpac had acted unconscionably, had contravened its obligation as an AFS licensee under section 912A of the Corporations Act, and had inadequate procedures and training in place. Westpac was ordered to pay ASIC's costs of, and incidental to, the penalty hearing.

Each of ANZ and NAB had earlier paid pecuniary penalties of $10 million for attempts to engage in unconscionable conduct in respect of the setting of the BBSW and had entered into court enforceable undertakings, which provided for them to pay $20 million to be applied to the benefit of the community. CBA had earlier paid a pecuniary penalty of $5 million and had entered into a court enforceable undertaking, which provided for it to pay $15 million to be applied to the benefit of the community.

### ASIC's proceedings against APCHL and former directors

In December 2018, the High Court handed down judgment on appeals brought by us against the former directors of Australian Property Custodian Holdings Pty Ltd (APCHL).

APCHL was the responsible entity of a managed investment scheme which collapsed in 2010 owing investors approximately $550 million. Following reports and concerns about the collapse of APCHL and The Prime Retirement and Aged Care Property Trust, we began an investigation into the conduct of the responsible entity, APCHL, and the management of the Prime Trust.

As a result of the High Court appeals, the Federal Court was required to redetermine penalties. This occurred at a hearing in August 2019 and the decision was reserved.

This case highlights that directors who are officers of responsible entities have an obligation to scheme members to discharge their duties with care and diligence, to not improperly use their position, to comply with the law, and to act in the interests of scheme members.

### State One Stockbroking fined for failure to comply with market integrity rules

In November 2018, the Federal Court ordered that State One Stockbroking pay penalties totalling $350,000 for breaches of ASIC's market integrity rules.

The court found that State One had failed to maintain the necessary organisational and technical resources with respect to post-trade alert systems and had placed bids on behalf of a client that it ought reasonably have suspected had the intention of creating a false or misleading appearance with respect to the market for, or price of, those securities. State One also agreed to pay $150,000 to ASIC for its legal and investigative costs of the matter.

ASIC Commissioner Cathie Armour said: *'The market integrity rules are vital to ensuring that Australia's financial markets are fair and efficient. Market participants are reminded of the importance of their role as gatekeepers to our markets. If they fail to meet their obligations, ASIC will take action.'*

### AMP and Clayton Utz produce documents sought by ASIC

On 7 March 2019, Clayton Utz provided ASIC with notes from interviews conducted with current and former employees and officers of AMP who were interviewed as part of a report to AMP in October 2017 regarding fees for no service. The Clayton Utz report was considered in the Royal Commission in April 2018.

Clayton Utz produced the interview notes before the court hearing and agreed to pay ASIC's costs of the proceedings.

ASIC had begun Federal Court proceedings against AMP and Clayton Utz in December 2018, seeking an order compelling Clayton Utz to produce the interview notes. The notes had been withheld from ASIC by AMP, which claimed that they were subject to legal professional privilege. ASIC disputed this claim. The notes related to ASIC's investigation into AMP for charging fees for no service and responded to a compulsory notice to produce issued under section 33 of the ASIC Act in October 2018.

ASIC Deputy Chair Daniel Crennan QC said: *'ASIC is determined to take enforcement action against the major banks and financial service providers and to use all legal powers necessary to investigate the significant issue of fees for no service. Entities should take seriously their obligations under statutory notices issued by ASIC, including producing documents in accordance with the specified timeframe and not preventing the disclosure of documents to ASIC by making unsubstantiated legal professional privilege claims. These interruptions delay and frustrate ASIC's investigations.'*

### Federal Court delivers judgment against Vocation Limited and its officers

In May 2019, the Federal Court delivered its judgment in relation to ASIC's civil penalty proceedings against Vocation Limited (in liquidation) and its officers Mark Hutchinson (former CEO), John Dawkins (former Chairman), and Manvinder Gréwal (former CFO).

The proceedings related to:

› statements made to ASX about funding contracts with the Victorian Department of Education and Early Childhood Development (DEECD) and to UBS AG Australia (UBS) about a fully underwritten placement to institutional and sophisticated investors
› a review by DEECD into two of Vocation's main registered training organisations.

The court found that:

› Vocation engaged in conduct that was misleading and deceptive in relation to statements to ASX and UBS, in a 25 August 2014 ASX announcement and in a due diligence questionnaire (DDQ), and failed to disclose to the market the actions taken by the former DEECD in July and August 2014 when it suspended all payments to Vocation
› Mr Hutchinson and Mr Dawkins contravened the Corporations Act by causing or permitting Vocation's contravention of section 674(2) of the Corporations Act
› Mr Hutchinson contravened the Corporations Act by causing or permitting Vocation's misleading and deceptive statements in the 25 August announcement and the DDQ
› Mr Gréwal contravened the Corporations Act by causing or permitting Vocation's misleading and deceptive statements in the DDQ.

ASIC Commissioner Cathie Armour said: *'ASIC regards statements that mislead or withhold material information as risking serious damage to the integrity and operation of the Australian market. As such, timely and accurate market disclosures will continue to be a key focus of ASIC's market supervision and enforcement.'*

### Federal Court finds that Whitebox Trading Pty Ltd and its sole director did not engage in market manipulation

On 7 June 2019, the Federal Court found that Whitebox Trading Pty Ltd and its sole director and principal, Johannes Boshoff, did not engage in market manipulation in contravention of sections 1041A and 1041B of the Corporations Act in connection with orders they placed on ASX Limited for securities in the S&P ASX 200 Index on 18 October 2012 and on four earlier dates in 2012. The court also found that Mr Boshoff did not fail in the discharge of his duties as a director of Whitebox.

## Criminal convictions

In 2018–19, as a result of our investigations, 27 people were convicted of financial crime, with 14 people receiving sentences of imprisonment. This year, 10 of the people sentenced to imprisonment were required to serve time in custody, compared to five in the 2017–18 financial year.

### Douglas and Maureen Johnston sentenced to imprisonment for defrauding investors

In May 2019, Douglas Johnston was sentenced to six years imprisonment for defrauding investors of approximately $815,000. Mr Johnston acted with his wife, Maureen Johnston, to secure funds from investors, effectively lying about how the money would be used.

Mrs Johnston was sentenced to five years and six months imprisonment in December 2018, after pleading guilty to three counts of obtaining a financial advantage by deception, totalling $1,027,000.

Our investigation found that between 2010 and 2013, Mr and Mrs Johnston used funds investors had deposited into a bank account of Small Business Management Pty Ltd to withdraw cash, repay their debts, transfer into an account in the name of Mrs Johnston, and pay new investor deposits in a Ponzi-style operation.

### Computer hacker imprisoned for unauthorised access and insider trading

In June 2019, an IT consultant was sentenced to three years imprisonment, after pleading guilty to a total of 11 charges for insider trading, unauthorised access to data with the intention to commit a serious offence, and the alteration of electronic devices required by ASIC. The court ordered that after serving 18 months, he be released on his own recognisance to be of good behaviour for 18 months.

Between 2012 and 2016, the consultant hacked into the network of a financial publisher with the intention of using this information to engage in insider trading. He used this inside information on 70 occasions to buy shares in 52 different companies and profited from the selling of shares soon after the reports with the buy recommendations were published.

He was also charged with producing altered devices and deleting data relating to ASIC's investigation, following a compulsory notice to produce under the ASIC Act.

### Former financial adviser Gabriel Nakhl imprisoned for dishonest conduct

On 15 March 2019, Gabriel Nakhl, a former financial adviser, was sentenced to 10 years imprisonment with a non-parole period of six years. In June 2018, Mr Nakhl pleaded guilty to eight counts of engaging in dishonest conduct with investor funds. The conduct affected 12 investors between 2009 and 2011 while Mr Nakhl was a representative of Australian Financial Services Limited (in liquidation) and between 2011 and 2013 when he acted as the sole director of SydFA Pty Ltd (deregistered).

The court found that Mr Nakhl had effectively lied about investing funds in a range of products and had instead used these funds for his own benefit, losing approximately $5.1 million. ASIC had obtained orders in 2013 to freeze Mr Nakhl's assets, permanently prevent him from providing financial services, and preclude him from managing a company for a period of 15 years.

### Former liquidator David Leigh imprisoned for fraud

In May 2019, former liquidator David Leigh was sentenced to seven years imprisonment after pleading guilty to three counts of fraud. ASIC's investigation revealed that as co-liquidator of Neolido Holdings Pty Ltd, Mr Leigh had dishonestly used $800,000 in funds from the Neolido external administration bank account for his own purposes.

Mr Leigh's conviction followed a disciplinary committee decision in February 2019 to cancel his registration as a liquidator and prohibit other liquidators from allowing him to work on their behalf for a period of eight years.

### Former Perth insurance broker imprisoned for dishonest conduct

In April 2019, a Perth insurance broker was sentenced to two years and nine months imprisonment, with a non-parole period of 18 months.

The senior insurance broker, who also acted as a director of Phoenix Insurance Brokers Pty Ltd (Phoenix), pleaded guilty to seven counts of dishonest conduct after diverting $199,391.32 in client refunds to personal accounts held in his name. These 51 refunds were owed to 35 clients from Phoenix for cancellations and adjustments of their insurance policies.

As a result of his conviction, he is automatically disqualified from managing companies for five years.

### Four and a half years imprisonment for dishonest conduct

In 2012, ASIC commenced investigations into the conduct of John Falconer, Farouk Fagredin and Andrew Sigalla of TZ Ltd, a Sydney-based company listed on ASX. In September 2017, John Falconer, TZ Ltd's former director and chief financial officer, was extradited from Thailand to face charges.

Mr Falconer pleaded guilty to:

- five counts of dishonest conduct as a director, relating to illegitimate payments totalling $6.25 million from the company's accounts between December 2006 and September 2008
- one count of authorising or permitting the lodgement of false or misleading information to ASX in financial reports, which failed to disclose the true nature of certain payments within the report.

In November 2018, the Supreme Court sentenced Mr Falconer to four and a half years imprisonment, with a minimum of three years to serve. During ASIC's investigation, we issued over 200 notices to produce documents, obtained statements from 52 different witnesses, undertook detailed forensic accounting analysis to determine the flow of funds, and liaised with the Hong Kong Securities and Futures Commission and the International Criminal Police Organization.

### High Court finds no unconscionable conduct in APY Lands book up case

In June 2019, the High Court of Australia dismissed ASIC's appeal against Mr Lindsay Kobelt, former owner and operator of Nobby's Mintabie General Store in the remote South Australian Anangu Pitjantjatjara Yankunytjatjara (APY) Lands.

Mr Kobelt provided a system of book up to his customers, most of whom were Aboriginal residents of the APY Lands, allowing them to purchase goods and second-hand motor vehicles on credit. In return, Mr Kobelt required his customers to provide him with their debit cards, PINs and details of their income, which he used to withdraw all, or nearly all, of each customer's money from their bank account on or around the day they were paid.

The trial judge held that Mr Kobelt engaged in unlicensed credit activity and acted unconscionably. The Full Federal Court upheld the finding in relation to unlicensed credit activity but found that Mr Kobelt had not engaged in unconscionable conduct. A majority of the High Court upheld the Full Federal Court decision.

ASIC will continue to work collaboratively on book up law reform and to educate book up providers and consumers on fair and legal ways in which book up can be provided.

### Protective actions

We banned, removed or restricted 85 people or companies from providing financial services.

We banned, removed or restricted 97 people or companies from providing credit services, for failing to comply with their responsible lending obligations or for engaging in unlicensed credit activity.

We took action against self-managed superannuation fund (SMSF) auditors who were in breach of their SIS Act requirements, including failing to comply with auditing and independence standards, or who were otherwise considered not fit and proper persons. We deregistered 8 auditors, suspended the registration of 2, and imposed additional conditions on 25 others. We cancelled the registration of 19 auditors at their request, following compliance concerns raised with them by the ATO or ASIC.

### Queensland SMSF adviser banned for four years

In July 2018, ASIC banned Queensland financial adviser James Cribb from providing financial services for four years and suspended his AFS licence, held by Mode AFSL Pty Ltd, for 10 weeks.

ASIC found that Mr Cribb failed to act in his clients' best interests when providing advice on SMSFs. ASIC found that Mr Cribb had prioritised his own interests over those of his clients by providing advice that was likely to benefit other entities related to him, including an SMSF administration business of which he was sole director and a shareholder. Mr Cribb's advice failures were identified in ASIC's recent review of SMSF advice.

### Perth adviser permanently banned by ASIC

In June 2019, we permanently banned Phillip Emidio Bruni after our review found that he had been dishonest and engaged in misleading or deceptive conduct. Mr Bruni had failed to give advice documents at all or within time, act in the best interests of his clients, give appropriate advice, or give priority to his clients' interests. Our review revealed inconsistencies in the dates that documents were created, a forged signature on an authority to proceed, and an attempt to manufacture evidence to avoid scrutiny by ASIC.

ASIC Commissioner Danielle Press said: *'ASIC's decision reflects our expectation that financial advisers uphold the attributes of honesty and professionalism in their work. ASIC expects advisers to adhere to the law at all times and meet their obligations of providing appropriate advice that is in the best interests of their clients.'*

### OneCash Ltd directors disqualified

In November 2018, we disqualified three Queensland directors from managing corporations, following liquidator reports that creditors were owed more than $60 million. Damian Dodds and Stephen Anderson were disqualified for two years and six months, and Marie Dodds was disqualified for 18 months. Each has been charged by the Queensland Police Service with criminal offences. The disqualifications followed the appointment of liquidators to OneCash Ltd, RPMZone Pty Ltd, DSM Connect Pty Ltd and All Breads Australia Pty Ltd.

### Table 2.3.1 Corporate governance-related outcomes[1]

| Misconduct type | Criminal | Civil | Administrative | Court enforceable undertaking | Negotiated outcome | Total (misconduct) |
|---|---|---|---|---|---|---|
| Action against auditors | 0 | 0 | 14 | 0 | 0 | **14** |
| Action against liquidators | 1 | 2 | 1 | 1 | 0 | **5** |
| Action against directors | 3 | 0 | 3 | 0 | 0 | **6** |
| Misconduct related to insolvency | 0 | 0 | 2 | 0 | 0 | **2** |
| Other corporate governance misconduct | 0 | 17 | 0 | 0 | 0 | **17** |
| **Total (remedy)** | **4** | **19** | **20** | **1** | **0** | **44** |

1 We had 9 criminal and 9 civil corporate governance-related matters underway where a final result was pending as at 1 July 2019, as the court or tribunal had not decided the penalty or final order, or made a decision on conviction or sentence, or decided if a breach was committed.

## Corrective actions

We took action where credit licensees, superannuation trustees or responsible entities made misleading statements to consumers or investors. There were 37 instances of potentially misleading or deceptive promotional material withdrawn or amended in 2018–19.

## Compensatory actions

Our actions in 2018–19 contributed to $22.8 million of compensation and remediation paid, or ordered to be paid, to consumers. Taking enforcement action to ensure that consumers are appropriately compensated is a key ASIC priority.

## Court enforceable undertakings

In 2018–19, ASIC accepted 10 court enforceable undertakings. After accepting a court enforceable undertaking, we work with entities and independent experts to improve culture and compliance practices in order to facilitate long-term behavioural change. On multiple occasions, we took civil proceedings as well as accepting court enforceable undertakings. For more examples of court enforceable undertakings accepted this year, see ASIC's compliance reports available on the enforceable undertakings register on our website.

### Goldman Sachs court enforceable undertakings related to bookbuild

In July 2018, we accepted a court enforceable undertaking from Goldman Sachs Australia Pty Ltd (GS Australia) to improve controls relating to bookbuild messaging in certain equity capital market transactions managed by GS Australia.

ASIC Commissioner Cathie Armour said: *'This court enforceable undertaking reinforces our focus on intermediary conduct and standards in capital raising transactions. Investors need to have confidence that they are being provided with accurate information in the course of a bookbuild or underwriting process.'*

### ASIC has also accepted court enforceable undertakings from individuals

We also accepted court enforceable undertakings from individuals, including Wollongong-based financial adviser James Phillip Allen, after it was found that he failed to act in the best interests of his clients. In September 2018, Mr Allen agreed that if he wishes to re-enter the financial services industry after the three-year exclusion period he has agreed to, he will need to complete a degree or equivalent qualification, pass an exam, and undertake a supervised year of work and training.

## Infringement notices

In 2018–19, we issued 12 infringement notices and received a total of $311,700 in payments pursuant to these infringement notices. We issued infringement notices against:

- Australian Corporate Bond Company Pty Ltd ($25,200)
- Metricon Homes Pty Ltd ($50,400)
- Byte Power Group Limited ($33,000)
- Gold Mountain Limited ($33,000)
- HostPlus Pty Ltd ($12,600)
- Local Appliance Rentals ($157,500).

We also entered into a court enforceable undertaking with Local Appliance Rentals requiring remediation of clients, improvements to compliance systems, and the payment of a $100,000 community benefit payment.

The Markets Disciplinary Panel issued two infringement notices, specifying a total of $420,000 in penalties for alleged breaches of the market integrity rules.[1]

**For more information on the Markets Disciplinary Panel, see Section 8.1**

## Delivering timely enforcement action

Each year, we report on the average time taken to complete our investigations and achieve a criminal, civil or administrative decision. We do so in support of our commitment to transparency and our aim to deliver timely enforcement action.

**For more information on the timeliness of our enforcement actions, see Table 2.2.1**

The time taken to achieve enforcement outcomes is influenced by a variety of factors. This should be kept in mind when comparing outcomes produced each year. For example, the average time taken to receive a court decision for civil matters increased in 2018–19, from 8 to 19 months, due to the closure of a number of long-running matters. The average for criminal decisions decreased by two months.

We are exploring ways to improve the efficiency and timeliness of our enforcement processes, such as by using e-surveillance, e-investigation and e-discovery to expedite investigation and discovery.

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

## Supervision and surveillance

In 2018–19, in addition to the supervisory exercises undertaken in our CCM program, we completed:

- over 300 surveillances in the deposit-taking and credit, financial advice, investment management and superannuation sectors to ensure that financial services providers complied with their conduct obligations
- over 900 surveillances in the corporations, market infrastructure and market intermediaries sectors.

Through our surveillance, we identified and addressed 613 cases of failures, or potential failures, to comply with regulatory obligations.

### Sector and issue-based surveillance

We published several reports in response to findings of our sector-based or issue-based surveillances. For example:

- Report 586 *Review of reverse mortgage lending in Australia* outlines our findings on the lending practices and consumer outcomes in the reverse mortgage market and the effectiveness of enhanced responsible lending obligations.
- Report 587 *The sale of direct life insurance* and Report 588 *Consumers' experiences with the sale of direct life insurance* contain the findings of our review of the sale of direct life insurance products, including term life, accidental death, trauma, total and permanent disability, and income protection insurance. The review explored how the design and sale of such products contribute to poor consumer outcomes and outlined ASIC's expectations of industry.
- Report 591 *Insurance in superannuation*, our review of the insurance arrangements of 47 superannuation trustees, focuses on insurance claims and complaints handling, disclosures, insurer rebates paid to trustees, and members being defaulted into demographic categories that resulted in higher premiums.
- Report 594 *Review of selected financial services groups' compliance with the breach reporting obligation* examines the breach reporting processes of 12 financial services groups and identifies serious delays in the time taken to identify, report and correct significant breaches of the law across the industry. ASIC will continue its surveillance and enforcement work to improve compliance in this sector.
- Report 605 *Allocations in equity raising transactions* outlines the potential impact of conflicts of interest in allocation decisions and highlights areas of improvement for licensees and issuers when raising equity on our listed markets.

### Financial reporting and audit

Our surveillance of financial reports in 2018–19 led to material changes to 3% of the 294 reports of listed entities and other public interest entities reviewed. As a result of our surveillances, 8 entities recognised changes to reported net assets and profits totalling $232.5 million.

In 2018–19, we also reviewed 65 audit files of listed entities and the financial report audits of other public interest entities. In January 2019, we issued Report 607 *Audit* *inspection program 2017–18*, which covers our future focus areas for auditors and the 98 audit files we reviewed in the 18 months to 30 June 2018.

**For more information on our audit firm inspections, see Section 3.7**

We will take matters involving auditor conduct to the Companies Auditors Disciplinary Board. In 2018–19, as a result of our investigations, one registered company auditor was deregistered.

### Auditor's registration cancelled

In December 2018, the Companies Auditors Disciplinary Board (CADB) cancelled the registration of Reginald Williams, a Queensland-based registered auditor, following an application by ASIC.

ASIC contended that Mr Williams failed to carry out or perform adequately and properly the duties of an auditor in relation to his audit of the financial report of LM Managed Performance Fund for the year ended 30 June 2012.

On 5 December 2018, Mr Williams applied to the Administrative Appeals Tribunal (AAT) for a review of the CADB decision, a stay of the operation and implementation of the CADB decision pending AAT review, an order for confidentiality against disclosure of his name during the AAT review, and suppression of publication of any evidence.

On 19 March 2019, the AAT refused Mr Williams's applications for a stay, confidentiality, and suppression of evidence, with his application for review by the AAT of the CADB decision proceeding.

## Licensing

ASIC assesses applications for AFS licences and credit licences. We also maintain a number of professional registers for registered companies, SMSFs, auditors and liquidators.

**For information on our licensing of market operators and benchmark administrators, see Section 3.5.**

Our licensing and registration function governs entry into the financial system. We use a risk-based approach to assessment, devoting most resources to complex and high-risk applications to ensure that only suitable persons and organisations are licensed or registered.

In 2018–19, we assessed over 2,080 applications for AFS licences and credit licences. We approved over 800 AFS licences, 4 limited AFS licences and 356 credit licences. We also cancelled or suspended 358 financial services licences and 552 credit licences.

During the year, 326 AFS licence and credit licence applications were withdrawn. Applications were often withdrawn after we informed applicants that they were unlikely to meet the statutory requirements to obtain a licence. We also did not accept 201 applications due to material deficiencies in the information provided.

We assessed over 659 applications for registration as auditors (including company auditors and SMSF auditors). Of these, we approved 148, we refused 1 due to material deficiencies, and 58 were withdrawn. We also cancelled or suspended 568 registrations.

**For more information on licensing and professional registration, see Table 8.2.7**

### Former manager convicted of making false or misleading statements to ASIC in a licence application

When ASIC assesses a licence application, we consider an applicant's ability to provide licensed services efficiently, honestly and fairly, and in compliance with the applicant's financial services obligations. We assess this by looking at who the applicant has nominated to act as a 'responsible manager' of its financial services business. For an application to succeed, we require nominated responsible managers to be competent and of good fame and character.

In this case, the nominated responsible manager stated that he had not previously been bankrupt, when he had in fact been declared bankrupt in 2008.

Where a proposed responsible manager makes false statements to ASIC, this raises serious concerns about their honesty and character. The submission of false licensing information to ASIC also significantly undermines the integrity of its licensing assessment processes. We referred the matter to the CDPP, who prosecuted the responsible manager. On 19 November 2018, he pleaded guilty to three charges of knowingly making false or misleading statements in documents submitted in support of an AFS licence application or involving his nomination as a responsible manager. He was convicted by the Magistrates Court and fined $3,000.

### ASIC's decision to refuse to grant an AFS licence

In January 2019, the AAT affirmed ASIC's decision to refuse an AFS licence because the applicant's nominated responsible manager failed to show an adequate understanding of the general obligations that apply to a licensee and failed to disclose matters that the AAT considered materially relevant, including past breaches of other laws.

The case highlights the importance of providing full and frank disclosure to ASIC in a licence application, and the weight placed on an applicant's past conduct in financial services or under other legislation in determining a licence application. A failure to disclose relevant information runs the risk of an application being refused. If ASIC discovers the false disclosure after a licence has been granted, we may cancel it or seek other remedies.

This follows an earlier AAT decision on 21 December 2018, affirming ASIC's decision to refuse an application where an applicant failed to provide all relevant information to enable ASIC to determine whether to grant a licence.

### ASIC imposes additional licence conditions on AMP Financial Planning

In April 2019, ASIC granted AMP Financial Planning Pty Ltd (AMPFP) a licence variation to provide managed discretionary account (MDA) services. This followed our surveillance of AMPFP's MDA services and advice business.

MDAs create additional risks for retail clients because when a client enters into a contract with an MDA provider, they give the provider authority to make investment decisions on their behalf on an ongoing basis without seeking the client's prior approval.

In granting the variation, we included additional conditions as a result of observations made during our surveillance. The conditions were put in place to ensure that AMPFP adequately monitors and supervises the MDA services provided by its advisers, and that its advisers are adequately trained and meet its best interests obligations. The conditions also seek to ensure that when providing MDA services, AMPFP has the necessary human, financial and technological resources, as well as risk management and internal dispute resolution systems, and that it maintains adequate records.

### Six-year ban and AFS licence cancellation for OTC market contravention

In November 2018, ASIC banned Stavro D'Amore, former director of Berndale Capital Securities Pty Ltd (Berndale), from providing financial services for six years. The order was made after ASIC found that Mr D'Amore:

- was involved in contraventions of financial services laws by Berndale
- is likely to contravene a financial services law
- is not adequately trained, or is not competent, to provide financial services.

ASIC cancelled the AFS licence of Berndale on the same day.

Berndale is also a retail over-the-counter (OTC) derivatives provider and our investigations found systemic failures in complying with reporting requirements. ASIC also found that Berndale failed to have adequate financial and human resources and did not provide financial services efficiently, honestly and fairly. Berndale is appealing the licence cancellation.

On 5 December 2018, ASIC obtained freezing orders from the Federal Court against Berndale, its associated entities and Mr D'Amore, preventing them from selling or otherwise dealing with their property (including cash held with Australian banks) without ASIC's consent. The orders remain in place.

## Engagement

Engaging with stakeholders, including industry, consumer groups and other regulators, helps us identify and resolve regulatory issues in the market.

We have an extensive program of stakeholder engagement at operational and Commission levels.

At the Commission level, we have a stakeholder engagement plan to ensure that we use Commission senior engagement to achieve our vision. This Commission-level engagement with stakeholders helps us understand market trends and emerging issues.

At the operational level, we hold frequent meetings with numerous stakeholder sectors and representatives.

In 2018–19, we held over 1,400 meetings with external stakeholders, including government agencies, industry bodies, consumer and small business representatives, financial services entities, companies, auditors, liquidators, market operators, market intermediaries, corporate advisers and compliance professionals.

We also engage with stakeholders by releasing consultation papers seeking public comment on matters ASIC is considering. In 2018–19, we released 13 consultation papers on topics including credit licensing reform, market integrity rules, and responsible lending conduct.

## Guidance

We publish guidance documents to respond and adapt to structural changes and complexity in the financial services industry and to enhance industry participants' understanding of their legal obligations and how we administer the law.

In 2018–19, we published 23 regulatory guides and 27 information sheets on topics such as funds management, oversight of compliance schemes for financial advisers, and crypto-assets.

We also released 45 reports covering issues such as credit card lending, buy now pay later arrangements, and insurance in superannuation.

**For more information on these reports, see Chapter 3**

## ASIC publications 2018–19

Examples of publications released this year to provide guidance to our stakeholders include:

- RG 269 *Approval and oversight of compliance schemes for financial advisers*
- CP 309 *Update to RG 209: Credit licensing: Responsible lending conduct*
- CP 312 *Stub equity in control transactions*
- CP 314 *Market integrity rules for technological and operational resilience*
- INFO 232 *Fees for no service: Remediation*
- INFO 238 *Whistleblower rights and protections*
- INFO 235 *Reporting obligations of Indigenous corporations*
- REP 580 *Credit card lending in Australia*
- REP 584 *Improved protections for deposit accounts with third-party access*
- REP 586 *Review of reverse mortgage lending in Australia*
- REP 587 *The sale of direct life insurance*
- REP 591 *Insurance in superannuation*
- REP 593 *Climate risk disclosure by Australia's listed companies*
- REP 597 *High-frequency trading in Australian equities and the Australian–US dollar cross rate*
- REP 600 *Review of buy now pay later arrangements*
- REP 601 *Market assessment report: Yieldbroker Pty Ltd*
- REP 605 *Allocations in equity raising transactions*
- REP 614 *Financial advice: Mind the gap*
- REP 615 *ASIC enforcement update: July to December 2018*
- REP 625 *ASIC enforcement update: January to June 2019.*

We also updated and reissued some of our publications, including:

- RG 192 *Licensing: Wholesale equity schemes*
- RG 132 *Funds management: Compliance and oversight*
- INFO 157 *Foreign financial services providers – practical guidance*
- INFO 225 *Initial coin offerings and crypto-assets.*

**For a complete list of the publications issued this year, see our website.**

### Consultation on ASIC's responsible lending guidance

In February 2019, we released Consultation Paper 309 *Update to RG 209: Credit licensing: Responsible lending conduct*, seeking feedback on proposals to update our guidance on responsible lending, including in new areas such as written assessments, loan fraud and record keeping.

The updated guidance will reflect recent regulatory and enforcement action, the results of ASIC thematic reviews, and initiatives such as comprehensive credit reporting, open banking and changes in technology such as data aggregation. The consultation closed in May 2019.

ASIC will hold public hearings during August 2019 to test stakeholder views, hear about changes in and options around good market practices, and provide a transparent way to air views raised in written submissions.

## Education

ASIC is the lead agency for financial capability in Australia. This year, we launched the 2018 National Financial Capability Strategy to support Australians in better managing their money on a day-to-day basis, making informed financial decisions, and planning for the future.

We focused on improving the financial capability of young people. For example, our MoneySmart Teaching program supports teachers in delivering financial education through online professional learning and resources aligned to the Australian Curriculum. These professional development courses help teachers improve their own financial wellbeing and their confidence in teaching children how to manage money. The courses are free, accredited, online and tested with teachers through a Teacher Working Group to ensure that they are relevant and practical.

### Teachers' engagement with MoneySmart tools

'This course has been personally most beneficial. If I'd known this info in my younger years, I would have been more in control of my financial situation. I'm going to recommend it to my nearest and dearest and work colleagues.'

Teacher who completed 'Teach MoneySmart: Be MoneySmart'

'I have been stimulated by the range of integrated units and resources in the program and feel inspired to teach MoneySmart which engages students and teaches financial literacy using authentic contexts and provides skills and strategies which are relevant for everyday life.'

Primary teacher, ACT

'Financial literacy relates to mathematical thinking. Be a critical thinker when spending, budgeting and saving money. I would highly recommend the unit plans to my colleagues as a strong starting point to teach students financial literacy. From this training, I will be more aware of my spending, especially with invisible money.'

Secondary teacher, NSW

'I am a secondary teacher in Horsham. We love your website and the tools available. We use your calculators and activities to teach our kids about financial literacy.'

MoneySmart consumer

### MoneySmart grants for school principals

ASIC is working with school leaders in a joint initiative with the Australian Primary Principals Association. Through the MoneySmart Grants for Principals, 10 primary schools started financial literacy projects with a focus on creating authentic learning opportunities to teach students how to manage money. These schools are drawing on existing MoneySmart Teaching resources and participating in a range of activities, including community gardens, market days, a café, product development, a financial literacy classroom and a multimedia project.

'The resources are great prompts for teachers – practical and creative. The activities are useful but not onerous. I congratulate all those wonderful teachers taking the time and effort to teach this vital set of skills and awareness. Mental health, physical health, financial health – they are all interconnected to personal wellbeing and the overall health of our society.'

Malcolm Elliot, President of the Australian Primary Principals Association.

### Student loans and managing financial firsts

ASIC has worked collaboratively with the Department of Education and Training to ensure that tertiary students understand the nature of their student loans. The MoneySmart website hosts a video outlining how a HELP loan is repaid and reminding students of their responsibilities in repaying the loan. On the back of this work, in March 2019 ASIC invited universities to join the MoneySmart university project to ensure that their students have information to make and navigate financial decisions, including managing spending and debt, superannuation, and considering a range of financial firsts often faced by tertiary students.

Our education initiatives include:

- ASIC's MoneySmart website and MoneySmart Teaching and Universities programs
- Financial Wellbeing Network events to share information and research with organisations representing business, not-for-profit community groups, education, academia and government
- ASIC's Indigenous Outreach Program (IOP), which supports the needs of Indigenous consumers and investors.

**For more information on the IOP, see Section 4.4**

## Policy advice

ASIC takes an active role in policy advice and implementation to improve the performance of the financial system. In 2018–19, we engaged in ongoing discussions with Treasury and provided advice and input into key law reforms proposed by the Government.

**For more information on government policy, see Section 1.7**

Areas where ASIC provided input included:

- law reform to strengthen existing penalties and introduce new ones for breaches of corporate and financial services laws, in order to ensure that significant breaches of the law are appropriately punished
- the new design and distribution obligations, which strengthen ASIC's ability to prohibit retail products that do not align with consumer needs
- the new product intervention power, which equips ASIC with the power to intervene in a timely manner when there is a risk of significant consumer detriment
- reforms to superannuation legislation, banning funds from inducing employers to encourage employees to join certain funds, and extending civil penalties to trustees for breaches of their best interests duty
- law reform to combat illegal phoenix activity
- new whistleblower legislation to improve the protections available for whistleblowers.

We also actively participated in Council of Financial Regulators (CFR) working groups to discuss the systemic risks facing the Australian financial system and regulatory developments. This year, this included discussions on financing conditions and the housing market, ASIC's new powers, and post-trade financial market infrastructure.

We continued to engage with and provide policy advice to international regulators.

**For more information on our engagement with international regulators, see Section 5.1**

# 2.4 Registry services and outcomes

To realise our vision of a fair, strong and efficient financial system for all Australians, we aim to provide efficient and accessible business registers that make it easier to do business.

## Performance objectives

ASIC's performance reporting in 2018–19 was guided by *ASIC's Corporate Plan 2018–22: Focus 2018–19* (at page 39) and our Portfolio Budget Statement (at pages 145–156), which set out our objectives and targets related to providing efficient registry services, including the registers of companies and business names, as well as a range of professional registers.

### ASIC's registers

ASIC's registers are the official source of information for companies, business names and financial professionals registered to operate in Australia. They are a critical part of Australia's economic infrastructure. The information contained in the registers enables businesses and consumers to make informed decisions.

The cost of registration as an Australian company was $488, increasing to $495 from 1 July 2019.

In 2018–19, we introduced the Asia Region Funds Passports register, a multilaterally agreed framework to facilitate the cross-border marketing of passport funds across participating economies in the Asia region.

Table 2.4.1 ASIC's registers

| Outcome | 2018–19 | 2017–18 |
|---|---|---|
| Total companies registered | **2.7m** | 2.6m |
| New companies registered | **223,661** | 244,510 |
| Total business names registered | **2.3m** | 2.25m |
| New business names registered | **375,052** | 366,181 |
| Calls and online inquiries responded to by our Customer Contact Centre | **670,741** | 678,697 |
| Registry lodgements | **2.9m** | 3.0m |
| Percentage of registry lodgements online | **93%** | 93% |
| Number of searches of ASIC registers | **142.6m** | 122.5m |

## Company registration – more choice for those starting a new business

Company and business name registrations are important steps in starting a new business. This year, 223,661 companies and 375,052 business names were registered with ASIC.

In June 2018, we launched the new Business Registration Service, enabling direct online company registration through a government website for the first time. Until this year, online company registrations could only be completed through commercial businesses and at an additional cost. The new service extends services already in place for direct business name registration.

Services to register both companies and business names with ASIC are now offered through the Business Registration Service at **business.gov.au**.

This makes it easier to start a business by providing a single online service for the registration of companies, business names, Australian Business Numbers and other tax registrations.

The new service has accounted for 8% of company registrations and 30% of business name registrations this year.

### Accessing registry information

This year, our registers experienced a record level of access with over 142.6 million searches of public information. We also prepared for a government reform on 1 July 2019 that exempts journalists from paying certain registry search fees.

We made more frequent (weekly rather than monthly) updates to many of the datasets available on **data.gov.au**. More frequent updates have improved the currency of the data available on the companies and business names datasets. This data is available for anyone to view and use to conduct research or develop new products and services.

There are 12 registry datasets available on **data.gov.au**. These datasets have been viewed over 73,000 times this year.

## Analysis of key outcomes

Key outcomes achieved by ASIC's registry in 2018–19 include the following.

**Quality recertification:** This year, ASIC's quality certification (for a further three-year period) under ISO9001:2015 was conducted by Bureau Veritas, a global leader in inspection, quality and testing services. We have maintained quality certification in information management since 1994.

**Moving more company invoices online:** We have expanded services to move more invoices from paper and mail-based to online, which is good for the environment and helps us align with the Government's strategy to make more services digital. Over 682,568 additional invoices were issued online this year.

**International collaboration:** Earlier this year, ASIC signed an agreement with the Registration Authority of the Abu Dhabi Global Market to facilitate the exchange of information and expertise. Under the agreement, we will collaborate with the Registration Authority towards enhancing performance by sharing best practice and views on industry trends.

**Corporate Registers Forum:** ASIC's Executive Director Registry, Rosanne Bell, continued as President of the international Corporate Registers Forum (CRF). The CRF is an association of corporate registries from over 60 international jurisdictions. This year, our involvement with the CRF included attending the annual forum in April 2019 to share ideas and best practice and to discuss emerging registry issues.

**Promoting online safety:** We are working to manage the effects of scams that pose a significant threat to the public, the business community and ASIC. During 2018–19, ASIC answered 9,747 customer inquiries about scams and received over 103,000 visits to our dedicated webpage. Our work to combat scams raises awareness about online safety by:

- alerting customers when a new scam is detected
- providing information on how to protect yourself from email scams
- sharing updates through social media, our website and publications.

## Registry gatekeeper conduct

An ASIC Registered Agent may be authorised to act on behalf of companies transacting with ASIC registers. Registered Agents submitted over 57% of the total 2.2 million lodgements to ASIC's companies registers this year.

In October 2018, ASIC introduced mandatory Terms and Conditions for Registered Agents, which set out:

- eligibility criteria to be a Registered Agent
- grounds on which ASIC may cancel a Registered Agent status
- requirements for lodging documents and lodging online
- expectations of Registered Agents lodging on behalf of a company.

We have already seen a drop of 18% in the Registered Agent population to 22,230 at 30 June. By removing inactive agents and those not meeting our expectations, we expect to see increased compliance with lodgement and annual review obligations.

### Revised Information Broker Agreements

Information Broker Agreements govern the commercial arrangements through which Information Brokers access ASIC registry data. The agreements define roles and responsibilities, govern the use of the data being accessed, and set the terms of use of ASIC online services facilitating data access.

Key changes introduced this year to strengthen our governance arrangements included:

- revisions to the term of each agreement to increase the frequency of review
- specific provisions to ensure continued compliance with privacy legislation
- provisions for service suspension and termination for failure to pay invoices within agreed terms
- increased security requirements.

### Digital Service Provider Terms and Conditions

The Digital Service Provider Terms and Conditions define eligibility criteria and the obligations to be fulfilled by ASIC digital service providers. We are updating these terms and conditions, including to strengthen ASIC's capacity to enforce compliance and address misbehaviour.

A draft of the new requirements has been circulated to all ASIC digital service providers for review and feedback. The terms and conditions are expected to be finalised and introduced in the second half of 2019.

These measures strengthen the ASIC registry services delivery model by defining the minimum standards and expectations required of our business partners.

By better communicating the requirements to be a registry business partner, strengthening our compliance work, and acting on behaviours that generate complaints, we hope to better inform new and current business partners about their obligations and to further promote the integrity of our registers.

# 2.5 ASIC Service Charter results

The ASIC Service Charter covers the most common interactions between ASIC and our stakeholders and sets performance targets for these. Table 2.5.1 sets out our performance against the key measures outlined in the Service Charter for the 2018–19 financial year.

**Table 2.5.1 ASIC Service Charter performance, 2018–19**

| Service | Measure | Target | Result |
|---|---|---|---|
| **When you contact us** | | | |
| General telephone queries | We aim to answer telephone queries on the spot | 80% | 90.7% |
| General email queries | We aim to reply to email queries within three business days | 90% | 91.8% |
| **When you access our registers** | | | |
| Searching company, business name or other data online | We aim to ensure that our online search service is available between 8.30 am and 7.00 pm AEST Monday to Friday, excluding public holidays | 99.5% | 99.8% |
| Lodging company, business name or other data online | We aim to ensure that you can lodge registration forms and other information online between 8.30 am and 7.00 pm AEST Monday to Friday, excluding public holidays | 99.5% | 98.4% |
| **When you do business with us** | | | |
| Registering a company or business name online | We aim to register the company or business name within one business day of receiving a complete application | 90% | 99.2% |
| Registering a company via paper application | We aim to register the company within two business days of receiving a complete application | 90% | 98.9% |

| Service | Measure | Target | Result |
|---|---|---|---|
| Registering a business name via paper application | For paper applications lodged by mail, we aim to complete applications for business name registrations within seven business days | 90% | 100% |
| Updating company, business name or other ASIC register information online | For applications lodged online, we aim to enter critical information and status changes to company or business name registers within one business day | 90% | 99.9% |
| Updating company, business name or other ASIC register information via paper application | For paper applications lodged by mail, we aim to enter critical information and status changes to company or business name registers within five business days | 90% | 93.6% |
| Registering as an auditor | We aim to decide whether to register an auditor within 28 days of receiving a complete application | 80% | 90% |
| Registering a managed investment scheme | By law, we must register a managed investment scheme within 14 days of receiving a complete application, except in certain circumstances | 100% | 100% |
| Applying for or varying an AFS licence | We aim to decide whether to grant or vary an AFS licence within 150 days | 70% | Granted: 73%<br>Varied: 80% |
| | We aim to decide whether to grant or vary an AFS licence within 240 days | 90% | Granted: 86%[1]<br>Varied: 90% |
| Applying for or varying a credit licence | We aim to decide whether to grant or vary a credit licence within 150 days | 70% | Granted: 92%<br>Varied: 96% |
| | We aim to decide whether to grant or vary a credit licence within 240 days | 90% | Granted: 96%<br>Varied: 98% |

| Service | Measure | Target | Result |
|---|---|---|---|
| Applying for relief[2] | We aim to give an in-principle decision within 28 days of receiving all necessary information and fees for applications for relief from the Corporations Act that do not raise new issues | 70% | 66% |
| | We aim to give an in-principle decision within 90 days of receiving all necessary information and fees for applications for relief from the Corporations Act that do not raise new issues | 90% | 80% |
| Complaints about misconduct by a company or individual | If someone reports alleged misconduct by a company or an individual, ASIC aims to respond within 28 days of receiving all relevant information | 70% | 73% |
| **When you have complaints about us** | | | |
| About ASIC officers, services or actions | We aim to acknowledge receipt of complaints within three working days of receipt. We aim to resolve a complaint within 28 days | 70% | Resolved within 28 days: 96% |

1 We received 30% more AFS licence cancellation applications this year.

2 This year, immediately before the introduction of fees for service, a lodging party lodged a suite of 228 applications associated with a demerger. The delays associated with this transaction materially impacted our efficiency indicators.

# 2.6 Banking Act, Life Insurance Act, unclaimed money and special accounts

ASIC reunites people with their unclaimed money, as we are responsible for the administration of unclaimed money from banking and deposit-taking institutions and life insurance institutions (page 153 of ASIC's Portfolio Budget Statement 2018–19).

We fulfil this responsibility by maintaining a register of unclaimed money from banks, credit unions, building societies, life insurance companies and friendly societies, as well as shares that have not been collected from companies. The public can search our register and make claims. We process claims within 28 days of receiving all necessary claim documentation.

In 2018–19, ASIC received $76.9 million in unclaimed money. This was less than the $89.6 million we received in 2017–18.

We paid out a total of $56.6 million in claims in 2018–19, compared with $68.3 million the previous year.

We paid claimants interest ($2.7 million of the $56.6 million) on unclaimed money from periods from 1 July 2013 onwards, at a rate of 2.5% for 2013–14, 2.93% for 2014–15, 1.33% for 2015–16, 1.31% for 2016–17, 2.13% for 2017–18 and 1.9% for 2018–19.

### Table 2.6.1 Amount paid to owners of unclaimed money

| | 2018–19 ($) | | | |
|---|---|---|---|---|
| Claims by type | Principal | Interest | Total | 2017–18 ($)[1] |
| Company | 32,867,204 | 1,182,529 | **34,049,733** | 36,348,640 |
| Banking | 15,160,493 | 1,376,185 | **16,536,678** | 28,108,937 |
| Life insurance | 3,912,765 | 167,808 | **4,080,573** | 3,609,086 |
| Deregistered company trust money | 1,927,504 | n/a | **1,927,504** | 244,983 |
| **Total** | **53,867,966** | **2,726,522** | **56,594,488** | **68,311,645** |

1 Includes principal and interest.

# 3

# ASIC's achievements by sector

# Purpose and structure

This section of the report discusses activities and outcomes achieved for each industry funding sector this financial year, to help stakeholders better understand the regulatory effort we expended in their subsector.

## Industry funding

ASIC industry funding means that those who create the need for regulation bear the costs of that regulation. Under the model, entities pay a share of the costs to regulate their subsector through industry levies, which are based on a range of business activity metrics. The model provides a reasonable indication to industry year on year about the levies to be paid. Any changes to the model over time will have an impact on the costs of regulation recovered from each sector.

We published our indicative industry levies for 2018–19 as part of our Cost Recovery Implementation Statement (CRIS) in June 2019. The CRIS explains how the costs of ASIC's regulatory activities will be recovered from each sector. The CRIS is available on our website.

Publication of this information helps industry better plan for the actual levy for 2018–19, which is billed in January 2020 after ASIC's regulatory costs are published and business activity metrics for each subsector are provided by regulated entities.

Under industry funding, there are seven sectors (deposit-taking and credit; insurance; financial advice; investment management, superannuation and related services; market infrastructure and intermediaries; corporate; and large financial institutions) and 52 subsectors.

**For ASIC achievements by regulatory tool, see Chapter 2.**

# 3.1 Deposit-taking and credit

The deposit-taking and credit sector comprises **credit licensees** (credit providers and credit intermediaries), **deposit product providers**, **payment product providers**, and **margin lenders**.

ASIC's work in this sector during 2018–19 focused on responsible lending and ensuring that consumers are sold products that are appropriate for their needs.

## Credit providers

### Credit card project

In July 2018, we released Report 580 *Credit card lending in Australia*, which reported that more than one in six consumers were struggling with credit card debt.

Our review analysed over 21 million credit card accounts from 12 credit providers between 2012 and 2017.

We found that:

- in June 2017, there were almost 550,000 people in arrears, an additional 930,000 people with persistent debt, and a further 435,000 people repeatedly repaying only small amounts
- consumers could have saved $621 million during the 12 months to June 2017 if they had carried their balance on a card with a lower interest rate
- over 30% of consumers who transferred their balance to a new credit card increased their debt by 10% or more during the promotional period and 63% of consumers did not cancel a card after a balance transfer
- four credit providers continued to apply old repayment allocation rules for some or all credit card contracts entered before July 2012. We estimate that almost 525,000 consumers were charged more interest as a result.

During our review, the Government passed legislative reforms which included:

- tightening the responsible lending requirements for credit cards, by introducing a requirement that a credit card contract be assessed as unsuitable if the consumer was unable to repay the credit limit within a period prescribed by ASIC. In September 2018, following our review, we prescribed a three-year period
- strengthening the existing prohibition on unsolicited credit limit increase offers
- changes to interest calculations, particularly when applying interest charges retrospectively
- the right to request credit limit reduction and card cancellation online.

In addition to implementing the responsible lending reforms, we required industry to improve issues with conduct and outcomes that we identified in our review. In December 2018, we reported on changes being made by providers to help consumers with credit card debt. This included requiring providers to:

- trial proactive steps to help consumers with potentially problematic credit card debt or who are failing to repay balance transfers
- restrict the amount by which consumers may exceed their credit limit to 10% of the limit
- allocate repayments for all credit cards in the more favourable way required for cards entered into after July 2012.

We will monitor compliance with the new requirements and commence a follow-up review in 2020–21.

### Unfair contract terms protections for small business borrowers

In September 2018, we announced that, following ASIC's review, Prospa Advance Pty Ltd (Prospa) changed loan terms in its standard form small business loan contract to address terms being unfair to small business borrowers.

The changes included addressing problematic terms of the kind outlined in ASIC Report 565 *Unfair contract terms and small business loans*, and changes to other terms that could have operated unfairly for borrowers and guarantors. For example, Prospa amended its early repayment clause so that:

- borrowers may repay their loan early without requiring Prospa's consent
- if borrowers repay their loan early, Prospa will provide a discount on the remaining interest payable (previously, Prospa had an absolute discretion to provide a discount if borrowers repaid early).

Prospa agreed that all customers who entered into or renewed contracts from 12 November 2016 would have the benefit of these changes.

### Reverse mortgage providers

In August 2018, we published Report 586 *Review of reverse mortgage lending in Australia*, as part of ASIC's work for older Australians. Our report identifies that although there is an important role for such products, there is a risk that some borrowers may not recognise the longer-term impact on their future financial needs.

Importantly, we also found that the enhanced consumer protections introduced for reverse mortgages in 2012 have reduced risks to consumers. These protections include a 'no negative equity guarantee' that protects borrowers from owing more than the market value of their property, a presumption of unsuitability for high loan-to-value ratios, and additional obligations to inquire about the needs and objectives of potential borrowers.

We analysed data on 17,000 reverse mortgages, 111 loan files, lender policies and procedures, and complaints. We also commissioned in-depth consumer research interviews with 30 randomly selected borrowers and consulted over 30 industry and consumer stakeholders.

Our review found that lenders needed to make more detailed inquiries about consumers' requirements and objectives, including how a loan would affect their future financial needs, tenancy protection and pension income. We identified potentially unfair contract terms, such as unilateral variation clauses and non-monetary default clauses, which entitled a lender to take action disproportionate to the related breach. Lenders have now acted to remove these types of clauses from their loan contracts.

We also formed a working group involving lenders and industry participants to improve lending practices, and we are trialling a comprehension testing regime to monitor consumer outcomes in this industry.

## Small and medium amount credit providers

We continued to act against non-compliance with responsible lending obligations under consumer credit laws. This year, we focused on offers of high-cost credit and the consumer leasing industry. We also examined emerging products that give consumers additional payment options but are not regulated credit and may potentially cause consumer harm.

### Local Appliance Rentals Pty Ltd

In November 2018, after ASIC identified concerns about compliance with responsible lending obligations and supervision of franchisees, Local Appliance Rentals paid infringement notices totalling $157,500. We also obtained a court enforceable undertaking from Local Appliance Rentals to remediate consumers for past practices, appoint an independent compliance consultant, and pay a community benefit payment of $100,000.

Local Appliance Retails leased household goods, including to low-income consumers, recipients of payments from Centrelink, and people in regional and remote Australia. The remediation included refunds of excess payments and excessive late fees.

## Buy now pay later arrangements

This year, we continued to examine emerging products that give consumers additional payment options but can potentially cause consumer harm.

In November 2018, we released Report 600 *Review of buy now pay later arrangements*, ASIC's first review of this rapidly growing industry.

Buy now pay later arrangements allow consumers to buy and receive goods and services immediately but pay for their purchase over time.

### Buy now pay later


**MERCHANTS**
In just two years...

**50x** more merchants with Zip Pay

**45x** more merchants with Afterpay

**CONSUMERS**

400,000 FY16

**2 million FY18**

**REVENUE OF PROVIDERS**

$32 million Q2 2016

**$78 million Q2 2018**

**TRANSACTIONS**

June 2016 80,000

**June 2018 1.9 million**

We identified signs that some consumers, including many young people, are already struggling with too much debt from these arrangements. We also found that some buy now pay later arrangements resulted in the price of goods being inflated and some had influenced consumers to spend more overall.

Only one of the six providers in our review examined the income and existing debts held by consumers before providing its services. After feedback from ASIC, all six providers changed some of their practices to help consumers stay in control and make informed decisions about their purchases and payments.

The buy now pay later industry will be an area of ongoing focus for ASIC, while we monitor whether additional protections are required.

Previously, ASIC's jurisdiction to regulate conduct and address risks to consumers who use these kinds of products was limited. This was one of the reasons we supported the extension of ASIC's proposed product intervention power to all credit facilities regulated under the ASIC Act. These new powers came into effect in April 2019.

## Credit intermediaries

### Ban on flex commissions in car finance market

Our ban on flex commissions in the car finance market came into force on 1 November 2018. Flex commissions were paid by lenders to car finance brokers, allowing the car dealer to set the interest rate on the car loan. Dealers would earn a larger commission on loans with higher interest rates, leading to vulnerable consumers paying excessive interest rates on their loans. We are monitoring lenders' compliance with the ban, which we expect will result in consumers being charged lower interest rates and will end exploitative pricing practices.

## Deposit product providers

### Review of deposit accounts with third-party access

In August 2018, we announced that following a review by ASIC, five banks would improve compliance measures and controls for deposit accounts that can be operated by a third party, such as a financial adviser. Our report, Report 584 *Improved protections for deposit accounts with third-party access*, identified that banks needed to do more to manage the risks to customers arising from third parties having access to money in the accounts.

The banks involved agreed to improve their practices, including by:

- ensuring that account application forms and communications are clearer
- improving the monitoring of advisers' use of the accounts and their transaction requests
- analysing any fraud that occurs on the accounts and remediating customers who have lost funds due to unauthorised transactions.

### Approval of Banking Code

In June 2019, ASIC approved the first stage of changes to the Australian Banking Association's (ABA's) new Banking Code of Practice. The changes include:

- new provisions to ensure that a bank will not charge fees for services to deceased customers, where services are no longer being provided to that customer's estate
- changes to the commitments around the provision of valuations to small business customers
- changes to reflect ASIC's implementation of law reforms to credit card responsible lending.

The new Code commenced on 1 July 2019.

All ABA member banks will be required to subscribe to the Code as a condition of their ABA membership. The protections in the Code will form part of the banks' contractual relationships with their banking customers.

ASIC will decide on further changes to the Code in 2019 after consultation with key stakeholders. These further changes are designed to address recommendations of the Royal Commission and relate to the accessibility of banking products and services for vulnerable consumers, the charging of default interest on agricultural loans in the event of natural disasters, and various small business protections.

## Payment product providers

### Review of the ePayments Code

In March 2019, we published Consultation Paper 310 *Review of the ePayments Code: Scope of the review*, seeking feedback on the topics we propose to include in our review of the ePayments Code. We are undertaking the review to ensure that the Code continues to be effective and relevant to consumers and Code subscribers. In light of significant continuing developments in financial technology and innovation, a key focus of consultation has been consideration of options to future-proof the Code.

# 3.2 Insurance

The insurance sector comprises life and general insurance and includes **insurance product providers** (including friendly societies), **insurance product distributors**, and **risk management product providers**.

This year, ASIC continued to focus on the sale of inappropriate products and the way products are sold. We undertook targeted reviews, building on previous work to raise industry standards, and introduced new levels of transparency to enable consumers to make more informed decisions.

## Insurance product providers

### Life insurance claims data

In a world-first initiative in March 2019, APRA and ASIC published life insurance data and an online tool that allows consumers to compare life insurers' performance in handling claims and disputes. The latest data was released in June 2019, covering the 12 months to December 2018.


The launch of the online life insurance tool with Sean Hughes and Geoff Summerhayes from APRA.

Consumers may now review an individual life insurer's claims and disputes outcomes and compare them against other insurers and the industry average. The full set of published data may be accessed on APRA's website and the life insurance claims comparison tool is available on ASIC's MoneySmart website. As a result, consumers may compare each insurer's:

- claims-acceptance rates
- average claim time
- number of claims-related disputes
- policy cancellation rates.

This level of transparency and accountability plays a critical role in increasing demand-side pressure and improving trust in financial services.

## Insurance product distributors

### Consumer credit insurance

This year, our work to address the inappropriate sale of consumer credit insurance (CCI) focused on ensuring that consumers who have been harmed are remediated, CCI products offer consumers better value, and sales practices comply with our requirements.

In 2018–19, ASIC identified a range of consumer harms, including:

- an average claims ratio of 19 cents in the dollar for CCI sold with personal loans and home loans, and 11 cents in the dollar for CCI sold with credit cards
- consumers being sold CCI despite being ineligible to claim against one or more types of cover
- the use of pressure selling techniques or other unfair sales practices
- consumers receiving inappropriate personal advice under a general advice model for the purchase of unsuitable policies
- consumers being charged incorrect premiums for their CCI policy.

We have addressed the problems we identified by:

- commencing enforcement investigations into the sales practices of several firms
- requiring lenders and insurers to undertake large-scale remediation programs for consumers who have suffered harm. ASIC estimates that lenders and insurers will collectively pay in excess of $100 million to over 300,000 consumers
- consulting on banning the unsolicited outbound telephone sales of CCI, due to the consumer harms we have seen as a result of this practice
- requiring lenders and insurers to comply with new and strengthened minimum standards when offering CCI products
- expecting all lenders to incorporate a four-day deferred sales model for all CCI products sold across all channels (not just lenders that subscribe to the Banking Code of Practice).

We published a report on the findings of our work on 11 July 2019.

### Sale of direct life insurance

In August 2018, ASIC published Report 587 *The sale of direct life insurance* and Report 588 *Consumers' experiences with the sale of direct life insurance*, after reviewing various products, including term life, accidental death, trauma, total and permanent disability, and income protection insurance. Direct life insurance sales are often made by telemarketing, online or face to face, including through bank branches. The review explored whether and how the design and sale of these products contribute to poor consumer outcomes.

Our review found:

- high cancellation rates and poor claims outcomes: a sign that people are being sold products they do not want or cannot afford, or that are not right for them
- three in five of all policies sold were cancelled within three years
- of the claims we looked at:
  - 58% of claims were accepted
  - 15% of claims were rejected
  - 27% of claims were withdrawn
- some products offered little value to customers – for example, accidental death insurance had a claims ratio of 16.1%, meaning that for every dollar paid in premiums only 16 cents was paid in claims.

Our report made clear our expectations, namely that:

- the outbound selling of life and funeral insurance will be restricted
- firms stop selling products that do not meet the needs of consumers
- firms respond and raise standards through their code of practice.

We will intervene and take enforcement action if industry does not stop selling poor value products.

### Sale of add-on products through car yards

This year, we finalised further refund programs from Aioi Nissay Dowa Insurance Company Australia (ADICA), Eric Insurance, Virginia Surety Company, Sovereign Insurance Australia, LFI Group and NM Insurance for insurance products sold by motor vehicle dealers, including guaranteed asset protection (GAP) insurance, consumer credit insurance, extended warranty, and tyre and rim insurance. This brings the total customer refunds to over $130 million.

These insurance providers refunded sales of insurance offering low or no value to consumers – for example, because they were ineligible to claim at the time the policy was sold to them, or because unnecessary life insurance was sold to young people with no dependants.

Our engagement with industry contributed to significant changes in the add-on market, including:

- a reduction in commissions paid to dealers, from a maximum of 75% of the premium to around 20%
- an increase in claims paid compared to premiums paid – for example, the average loss ratio for both GAP and CCI across the three main insurers has doubled since 2016–17
- improvements to product design
- the introduction of knock out questions by car dealers to check that the customer is eligible under the policy before it can be sold to them
- some insurers ceasing to sell some add-on products, and four insurance providers exiting the market completely.

## Insurance claim investigations

In 2018, at a workshop hosted by ASIC, regulators and industry stakeholders analysed and discussed proposed mandatory minimum standards for claim investigations for inclusion in the General Insurance Code of Practice, with the aim of addressing consumer harms from investigation practices.

This year, ASIC gathered data on the number of comprehensive motor vehicle claims investigated over a one-year period, and the outcome of the claims. We found that:

- over 71% of claims investigated are found to be valid and are paid out
- only 4% of investigated claims are declined due to fraud, revealing a very high 'false positive' rate for suspected fraudulent claims
- 15% of investigated claims are withdrawn.

We proposed a set of mandatory minimum standards to address identified consumer harms related to the investigation process. The minimum standards seek to ensure that insurers maintain active, timely and visible oversight of claim investigations, claims are assessed in a reasonable time, and consumers have the support they need.

In July 2019, we published Report 621 *Roadblocks and roundabouts: A review of car insurance claim investigations*, a report on the findings of our work on insurance claim investigations.

# 3.3 Financial advice

The financial advice sector includes **AFS licensees and their representatives** who provide **personal advice or general advice to retail and/or wholesale clients**.

In 2018–19, ASIC's work in this sector focused on remediating consumers who were charged fees for no service, licensee oversight, understanding consumer awareness around general financial advice, and banning advisers engaging in misconduct.

## Financial advisers

### Charging clients without providing advice

In 2018–19, we continued to supervise the remediation of customers of ANZ, AMP, CBA, Macquarie Bank, NAB and Westpac who were charged annual fees for services, including an annual advice review, which were not provided (fees for no service).

This work resulted in significant compensation being paid, or to be paid, to affected customers. As at 30 June 2019, the banks have collectively provisioned around $1.7 billion for fees-for-no-service remediation.

In August 2018, we released Information Sheet 232 *Fees for no service: Remediation* to assist licensees in remediating clients. Our media release of 11 March 2019, 19-051MR *ASIC provides update on further reviews into fees-for-no-service failures*, publicly disclosed the status of the banks' further reviews in relation to fees for no service and further set out ASIC's expectations of remediation programs.

### Mind the Gap (Report 614)

In March 2019, ASIC published Report 614 *Financial advice: Mind the gap*, which analysed consumer awareness and understanding of the differences between personal or general financial advice.

ASIC's research revealed that many consumers confuse general and personal advice, exposing them to greater risk of making poor financial decisions. For example, despite receiving a general advice warning, many Australians receiving general advice may incorrectly think that:

- their personal circumstances have been taken into account, and/or
- the adviser has an obligation to act in their best interests when providing the advice.

**Factors that can influence how consumers perceive advice**

## Consumers are more likely to perceive advice that …

| | |
|---|---|
| is from **customer service staff** | is from **more qualified staff** |
| is from **mass media** (e.g. TV, radio) | is from a **face-to-face appointment** |
| is a **sales** or **marketing recommendation** | requires the **consumer to provide personal information** |
| has **no fees** | has **upfront fees** |
| is about **'less personal'** topics (e.g. term deposits) | is about **'more personal'** topics (e.g. superannuation) |
| … as **general advice** | … as **personal advice** |

ASIC is commissioning further research that will seek to identify a more appropriate label for general advice, or different labels for general advice provided in different circumstances, and will consumer test different versions of the general advice warning.

### Solar Financial Advisory Pty Ltd AFS licence cancellation

In November 2018, ASIC cancelled the AFS licence of Sydney-based Solar Financial Advisory Pty Ltd (Solar), following a surveillance relating to concerns about licensee oversight. ASIC found that Solar had failed to:

- manage conflicts of interest. A Solar representative had recommended that clients establish SMSFs to invest in a private development company owned and administered by the representative and the representative's associated companies. It was found that Solar had failed to:
  - undertake adequate background checks on its representatives to identify and test potential conflicts of interest
  - update and test personnel information on an ongoing basis
  - train its representatives on conflicts of interest
  - have adequate arrangements to manage conflicts of interest
- ensure that its representatives complied with financial services laws, by failing to provide appropriate oversight
- properly monitor and supervise its representatives
- maintain adequate human and financial resources
- adequately manage its internal dispute resolution process, by failing to acknowledge and/or record complaints and properly communicate with complainants.

The cancellation of Solar's AFS licence forms part of ASIC's ongoing efforts to improve standards across the financial services industry.

## Adviser bannings

ASIC takes administrative action, such as banning individual advisers, to protect investors and consumers and to deter misconduct.

This year, the Financial Advisers team banned 11 advisers from providing financial services.

### Bans imposed in 2018–19 include:

- **Peter Anthony Chigwidden:** Mr Chigwidden was banned from providing financial services for five years. ASIC found that he had consistently failed to address the stated needs and objectives of his clients and as a result did not provide advice that was in their best interests. When advising clients on product switching, he failed to adequately consider the cost impact or other consequences of that advice, leaving clients poorly informed. Crucially, the switching advice failed to show that the recommended products better met the clients' needs than their existing products.
- **Subeer Luthra:** ASIC permanently banned Mr Luthra from providing financial services and engaging in credit activities as a result of his dishonest conduct. ASIC was notified of Mr Luthra's misconduct by Westpac. Mr Luthra advised his clients to switch their superannuation to a product issued by BT (part of the Westpac Group), and to obtain comprehensive personal insurance, without taking their needs and objectives into consideration. He also recommended BT insurance and superannuation products to all his clients without adequately investigating their existing financial products. The advice resulted in Mr Luthra's clients paying excessive premiums that eroded their superannuation contributions at a point in their lives when they did not have time to rebuild their assets for retirement. ASIC found that Mr Luthra is not of good fame or character to provide financial services because his conduct was dishonest and deliberate, and motivated by personal enrichment. ASIC also determined that Mr Luthra is not a fit and proper person to engage in credit activities.

# 3.4 Investment management, superannuation and related services

The investment management, superannuation and related services sector includes **superannuation trustees**, **responsible entities**, **wholesale trustees**, **operators of notified foreign passport funds**, **custodians**, **investor directed portfolio service (IDPS) operators**, **managed discretionary account (MDA) providers**, **traditional trustee company service providers**, and **crowd-sourced funding intermediaries**.

In 2018–19, ASIC focused on the responsibilities of superannuation trustees to consumers in relation to insurance offered through superannuation and dispute resolution. These are both areas in which significant legislative change occurred during the year.

Our regulatory work and the Royal Commission highlighted the importance of trustees properly overseeing advice fee deductions from superannuation accounts. To help consumers understand product fees and costs, we consulted on changes to the fee and cost disclosure requirements applying to superannuation and managed investment products in Consultation Paper 308 *Review of RG 97 Disclosing fees and costs in PDSs and periodic statements*. This followed the release of Report 581 *Review of ASIC Regulatory Guide 97: Disclosing fees and costs in PDSs and periodic statements*, an external review of these requirements involving extensive industry engagement.

Our work in the managed funds sector ranged from investigating illegal conduct and pursuing compensation for investors, to identifying compliance failures and monitoring the rectification process or taking action to address non-compliance. We also worked with industry to facilitate good business practices, issued revised guidance, released the findings of sector surveys to improve understanding of these sectors, and undertook thematic reviews about MDAs and IDPSs.

## Superannuation trustees

ASIC is primarily responsible for ensuring that superannuation trustees meet certain obligations in their dealings with consumers, including disclosure and advice to members, and ensuring that members have access to complaints processes.

### Insurance in superannuation

Millions of Australians hold insurance through superannuation, yet this insurance is not always delivered in a way that meets consumer expectations. In September 2018, we released Report 591 *Insurance in superannuation*, our review of the insurance arrangements of 47 superannuation trustees. The report identified improvements needed across the industry in relation to:

- claims processes and complaints handling
- disclosure
- defaulting of consumers into smoker premium rates in the absence of information that the consumer is a smoker.

We have been monitoring, through public information and onsite visits to trustees, the industry's progress in implementing the Insurance in Superannuation Voluntary Code of Practice. This Code aims to improve product design, consumer understanding, and complaints and claims processes for consumers. At the end of 2018–19, 62 trustees have publicly indicated that they are adopting the Code.

This year, we also focused on ensuring that automatic smoker defaults do not apply to any public offer superannuation funds. ASIC considers that the practice of automatically defaulting members as 'smokers' when setting premiums is unacceptable, because high premiums can significantly erode members' retirement benefits. Our work resulted in trustees who we identified as automatically defaulting new members as smokers ceasing this practice.

### Dispute resolution arrangements for superannuation

We identified through our insurance work long timeframes for the resolution by some trustees of complaints concerning insurance claims. This can impact consumers when at their most vulnerable. We consider that superannuation trustees' approach to internal dispute resolution (IDR) provides a meaningful measure of the way trustees treat their members and whether they act in their members' best interests.

We investigated trustees with insurance complaint response timeframes beyond 90 days, to identify the drivers of complaints and what improvements were being made to IDR practices. We gave feedback to individual trustees and published our findings in industry publications. In May 2019, we released Consultation Paper 311 *Internal dispute resolution: Update to RG 165*, on IDR requirements. It proposes a shorter timeframe for dispute resolution (45 days) and improved practices to deal with complaints.

We continued to engage with trustees about their failure to provide adequate written reasons in response to complaints about death benefit payments. This led to improvements in trustee processes, including updated template letters and additional employee training. As well as promoting trustee accountability and consumer confidence, proper written reasons can help a consumer decide whether to escalate their complaint to external dispute resolution.

We also took steps to ensure that trustees acted to help consumers access the appropriate external dispute resolution body.

From 1 November 2018, the Australian Financial Complaints Authority (AFCA) became the dispute resolution body responsible for resolving superannuation complaints. Before this, superannuation complaints were considered by the Superannuation Complaints Tribunal. We followed up with individual trustees who were slow to join AFCA to ensure that they did so ahead of 1 November 2018.

We also contacted 46 trustees, with a collective membership of over 6.6 million Australians, that had inadequate disclosure on their websites about AFCA's role in complaints management. These trustees subsequently updated their consumer-facing disclosure, so members had easy access to information about their right to contact AFCA. In the first six months of AFCA's operation, superannuation complaints accounted for 9% of all complaints received by AFCA.

## Responsible entities

ASIC is responsible for ensuring that responsible entities meet their obligations to members. We undertake proactive supervision and surveillances of responsible entities that have been identified through our threat, harm and behaviour framework as being most likely to cause harm or potential harm to consumers, investors, and fair and efficient markets.

### Endeavour and Linchpin

ASIC obtained orders that Endeavour Securities (Australia) Limited (Endeavour) and Linchpin Capital Group Limited (Linchpin) be placed into liquidation and that receivers be appointed over the assets of a registered scheme operated by Endeavour and an unregistered scheme operated by Linchpin into which the registered scheme was invested.

Endeavour and Linchpin are related entities. Linchpin on-lent the funds to directors, related entities and authorised representatives who recommended that clients invest in these schemes, generally on an unsecured basis. The court found that Endeavour:

- did not act in the best interests of the members of the registered scheme
- failed to provide financial services efficiently, honestly and fairly
- failed to exercise due care and skill as a responsible entity
- engaged in related party transactions without member approval.

In total, the registered scheme received $17.3 million from 131 investors. There were 41 investors in the unregistered scheme, which had assets of $21.2 million.

### Australian Mutual Holdings Limited

Following an ASIC investigation, on 17 April 2019, ASIC's Financial Services and Credit Panel banned Jeffrey Worboys and Matthew Barnett from providing financial services for six years. Mr Worboys and Mr Barnett were joint executive officers and directors of Australian Mutual Holdings Limited (AMHL).

ASIC found that Mr Worboys and Mr Barnett did not exercise the degree of care and diligence required and failed to act in the best interests of the members of the Courtenay House Capital Investment Fund, which was operated by AMHL. This included a failure to ensure that the persons responsible for trading funds had the requisite qualifications and experience to manage a foreign exchange and derivatives fund.

### Infringement notices related to exchange-traded bonds

Australian Corporate Bond Company Pty Ltd (ACBC) paid $25,200 in penalties after ASIC issued two infringement notices for alleged misleading statements made in the promotion of exchange-traded bonds on the ACBC website between May and December 2017.

We were concerned about ACBC's misrepresentation about term deposits and exchange-traded bonds carrying a similar risk while producing a higher return. For example, investments in a term deposit of up of $250,000 are protected by the Australian Government guarantee for authorised deposit-taking institutions, while investments in exchange-traded bonds are not.

### Interim and final stop orders for schemes involving defective disclosure

This year, we also issued interim and final stop orders in respect of Product Disclosure Statements relating to offers of interests in property development schemes, a mortgage scheme and an initial coin offering (ICO) where we found disclosure to be defective. We also reviewed disclosure by exchange-traded funds to identify defective disclosure.

### Cancelled licences

We cancelled the AFS licence of CWS Mortgages Ltd for failing to comply with professional indemnity insurance requirements and of Vesta Living Communities Ltd for failing to fulfil its organisational competence and financial resource requirements.

### Guidance

This year, to improve our understanding of the market, we commenced a pilot program to collect recurrent data for all registered managed investment schemes and reviewed our regulatory settings against IOSCO recommendations about liquidity in collective investment vehicles.

We released reports in relation to crowd-sourced funding intermediaries (Report 616) and marketplace lending providers (Report 617). These reports provide a deeper understanding of new and existing business models, as well as insights into our monitoring of activity levels and assessment of risks in these sectors.

We also revised Information Sheet 157 *Foreign financial services providers – practical guidance*. This information sheet provides guidance for foreign financial services providers seeking to provide services in Australia.

In addition, we reissued class order relief for business matching services and out-of-use notices for warrants.

## Wholesale trustees

We continue to monitor and conduct risk-based surveillance of compliance by wholesale trustees with their licence conditions and any conduct that may result in harms to investors. Our subsequent actions have included addressing misleading and deceptive statements about an ICO offering, requiring amendments to promotional materials in relation to statements about past performance, requiring additional measures to manage processes for certifying wholesale clients, and causing the voluntary cancellation of an AFS licence.

We also reissued Regulatory Guide 192 *Licensing: Wholesale equity schemes* due to the sunsetting of the existing relief. The revised guidance relates to amendments to the existing relief to take into account a strengthening of financial and custody requirements in 2013.

## Managed discretionary account providers and platforms

We began a review of the market practices of MDAs and platforms to identify issues affecting consumer outcomes in this growing sector of the market – for example, transparency and conflicts of interest.

# 3.5 Market infrastructure

The market infrastructure sector includes **Australian market licensees**, various types of **market operators**, **benchmark administrators**, **clearing and settlement (CS) facility operators**, **Australian derivative trade repository operators**, **exempt market operators**, and **credit rating agencies**.

ASIC's work in this sector during 2018–19 continued to focus on improving the effectiveness of Australia's capital markets. This included technology governance and operational risk management for market operators, supporting legitimate crypto-asset businesses to operate lawfully in Australia through direct feedback to firms, ongoing oversight of and policy development for clearing and settlement facility operators, implementation of the tiered market licensing regime, publication of the Yieldbroker (OTC trading platform) report, and implementation of an oversight model for benchmark administrators.

## Large securities exchange operators

### Market integrity rules for technology and operational resilience

In September 2018, following an extensive review with the assistance of KPMG and the Reserve Bank of Australia (RBA), ASIC published Report 592 *Review of ASX Group's technology governance and operational risk management standards*.

In June 2019, we released Consultation Paper 314 seeking feedback on proposed market integrity rules for securities and futures market operators, and market participants, to promote the resilience of their critical systems. Failures of critical systems can severely impact market integrity, and it is important that we update the rules to align with changes in the technology and processes that underpin financial markets, particularly as the multimarket environment for Australian listed securities creates interdependencies between participants and operators, and the outsourcing and offshoring of critical systems is becoming more prevalent.

The proposed rules apply to both the securities and futures markets and address:

- maintaining critical systems
- change management in relation to critical systems
- outsourcing
- risk management, and data and cyber security
- incident management and business continuity planning
- governance and resourcing
- fair access to markets and trading controls.

### Supporting legitimate crypto-asset business in operating lawfully

To support legitimate crypto-asset business in operating lawfully in Australia, we updated Information Sheet 225 *Initial coin offerings and crypto-assets*. Crypto-assets such as cryptocurrency, or tokens, are created and dispersed using distributed ledger technology, sold through initial coin offerings (e.g. to raise capital to fund projects), and traded on crypto-asset trading platforms.

The technology surrounding crypto-assets can be complex and can fall under the jurisdiction of several regulatory agencies. Information Sheet 225 reinforces the obligation on crypto-asset businesses to avoid misleading and deceptive conduct whether or not the crypto-asset is or involves a financial product. Information Sheet 225 also provides high-level regulatory signposts as a starting point to help crypto-asset participants comply with the obligations administered by ASIC.

ASIC has taken action to stop several proposed initial coin offerings or token-generation events (together, ICOs) targeting retail investors. We have stopped the issue of a Product Disclosure Statement for a crypto-asset managed investment scheme, and on five other occasions since April 2018 have acted to prevent ICOs raising capital without the appropriate investor protections. These ICOs have been put on hold and some are considering how to restructure to comply with relevant legal requirements.

## Clearing and settlement facility operators

### Chicago Mercantile Exchange

On 26 February 2019, the overseas CS facility licence of the Chicago Mercantile Exchange (CME) was varied to authorise it to provide central counterparty services to the licensed exchange-traded derivatives market to be operated by FEX Global Ltd. CME's authorisation facilitates greater competition in the Australian financial system by permitting a US-based central counterparty (CCP) to provide CCP services to a licensed domestic market. CME is licensed as an overseas CS facility because of the regulatory equivalence of the US and Australian CS facility regimes.

## Established specialised market operators

### Yieldbroker assessment

In November 2018, we reported on our assessment of the Yieldbroker market. We recommended improvements to the market's arrangements for conflicts and governance, supervision and enforcement, and systems and controls. Yieldbroker addressed each of our recommendations, resulting in a significant strengthening of governance and compliance arrangements, including an upgrade of its conflicts arrangements. Among other improvements, it developed a remuneration policy, a compliance manual, and enhanced monitoring systems.

## Exempt market operators

### Implementation of the Market Licence Regime

In May 2018, we introduced a two-tiered market licence regime that allowed us to tailor our licences to assist the operation of specialised and emerging financial markets. We implemented this regime across the year, and most of the exempt professional market platforms in the commodities, FX and fixed income sectors applied for licences. As of 30 June 2019, the Minister's delegate had granted the first licences for these platforms, with most of the outstanding applications being in the latest stages of processing.

# 3.6 Market intermediaries

The market intermediaries sector includes **market participants**, **securities dealers**, **corporate advisers**, **over-the-counter (OTC) traders**, **retail OTC derivatives issuers**, and **wholesale electricity dealers**.

ASIC's work in this sector during 2018–19 included enhancing our supervision model for the most complex and high-risk market intermediaries, which involves broader engagement across each entity and the development of tailored supervision plans.

We embedded our oversight of market intermediaries' fixed income, currency and commodities businesses, including through a thematic review of foreign exchange practices, onsite reviews, and detailed surveillance of large transactions. We also addressed harms to retail consumers in the retail OTC derivatives market through a range of licensing action, referrals to our Enforcement teams, and disrupting unlicensed conduct.

## Enhanced market intermediary supervision

We have enhanced our supervisory approach for the largest and most complex market intermediaries in order to facilitate early detection of actual and potential harms and to foster constructive and timely behavioural change. We are doing this by, among other things, developing a deeper understanding of governance arrangements and internal controls that can help prevent poor conduct.

We are increasing our engagement through onsite reviews and meetings in order to identify areas of potential harm, to provide faster feedback on how to address the potential harms, and to act where appropriate. Our onsite reviews have covered themes such as culture and conduct, risk programs and training, corporate governance, compliance arrangements, pre- and post-trade controls, client money, and client disclosure arrangements.

**For more information on corporate governance and Close and Continuous Monitoring, see Section 1.10**

## Oversight of fixed income, currency and commodity market intermediaries

This year, we continued to enhance our oversight of fixed income, currency and commodity markets. We conducted several onsite and targeted surveillance reviews where we assessed wholesale foreign exchange market participants against their obligations under the Corporations Act, the FX Global Code and Report 525 *Promoting better behaviour: Spot FX*. We also focused on the use of 'last look' practices in Australia and the use of mark-ups in foreign exchange businesses.

We reviewed the fixed income businesses of several firms and began reviews of the management of conflicts of interest by commodity businesses and intermediaries. We also completed targeted reviews of significant fixed income transactions to identify breaches of the law or compliance failures by market intermediaries.

### Allocations in equity raising transactions

In December 2018, ASIC published Report 605 *Allocations in equity raising transactions*, summarising our review of transactions and practices by large and mid-sized AFS licensees. The report underscores the potential impact of conflicts of interest in allocation decisions and highlights areas of improvement for licensees and issuers when raising equity on our listed markets.

We recommended that licensees:

- engage with issuers at various stages during a transaction
- ensure that messages to investors are not misleading and deceptive
- review the adequacy of allocation policies and procedures
- avoid allocations to connected persons
- proactively identify and manage potential conflicts of interest.

The issuer's objectives should be the primary driver of allocation recommendations. Licensees should ensure that their controls, including policies and procedures, training and monitoring, are appropriate and that they are providing financial services efficiently, honestly and fairly.

Issuers should also be engaged with their capital raising transactions, with a particular focus on raising funds on the best terms possible.

ASIC continues to periodically review transactions and we have found that our ongoing presence is changing behaviour in this sector.

### High-frequency trading

ASIC's latest review of high-frequency trading revealed that high-frequency traders are responsible for a quarter of equity market and Australian–US dollar cross rate transactions.

In November 2018, we published Report 597 *High-frequency trading in Australian equities and the Australian–US dollar cross rate*, which analyses high-frequency traders and their impact on measures of market quality. We found that high-frequency traders maintain a significant presence, they do not appear to degrade investor execution outcomes, and the costs imposed on investors for trading with high-frequency traders are small and continue to decline. We also found that intraday trading has decreased and that holding times are increasing.

## Retail OTC derivatives market

Retail OTC derivatives issuers in Australia offer various products, including margin foreign exchange, binary options and contracts for difference. We continue to respond to a high incidence of misconduct in the retail OTC derivatives sector, involving large client losses.

This year, we continued to closely monitor this market and progressed a number of enforcement and administrative actions where we found breaches of the law. In April 2019, we conducted an extensive information-gathering exercise of the licensed entities active in retail OTC derivatives, covering 18 areas. Information obtained will be used to help us address key themes and concerns in the sector.

We publicly warned Australian issuers that they may be dealing with offshore investors illegally and to cease any non-compliant activities, particularly given that many jurisdictions – such as China, Europe, Japan and North America – have restricted or prohibited the provision of certain OTC derivatives to retail investors. We also worked to ensure that retail OTC derivatives providers are complying with foreign laws. We have liaised with various foreign regulatory agencies on this issue.

## Progress on benchmark reform

Financial markets around the world, including Australia, use LIBOR (London Interbank Offered Rate) as a benchmark rate underpinning trillions of dollars of financial contracts. Preparation for the upcoming end of LIBOR is a key challenge for the global finance industry. In 2019, ASIC began a project with the support of APRA and the RBA to ensure that the end of LIBOR is understood and well managed. We have written to systemically important firms in the industry about their preparedness, asking them to identify their exposures to LIBOR and how they will transition to alternative rates.

Strengthening local financial benchmarks and fall-back provisions is another key issue in benchmark reform. While ASIC is confident that the BBSW will remain a significant benchmark, we are overseeing ongoing reforms to the BBSW calculation methodology to minimise potential future disruption.

ASIC licensed the administrator of the BBSW (ASX) to ensure reliability, market integrity and investor confidence. The European Commission determined that the Australian regime for benchmark administrators is equivalent to that of the European Union. This decision allows Australian licensed benchmark administrators to comply with EU regulations without the need to be dually licensed.

ASIC monitors the trades and orders that contribute to the BBSW rate set for misconduct and activity that may undermine the integrity of the process. Surveillance and reporting tools were enhanced during the period, which has improved efficiency.

# 3.7 Corporate

The corporate subsectors include **corporations** (listed corporations, **unlisted public companies**, **large proprietary companies**, and small proprietary companies[1]), **auditors of disclosing entities**, **registered company auditors**, and **registered liquidators**.

The Royal Commission and inquiries such as the APRA inquiry into CBA have highlighted that poor governance practices can lead to significant consumer and investor losses, as well as loss of confidence in our markets.

ASIC's work in this sector during 2018–19 focused on improving corporate governance practices and enhancing fairness and disclosure for retail investors in corporate finance transactions.

## Corporations

### Climate risk disclosure

In September 2018, ASIC published Report 593 *Climate risk disclosure by Australia's listed companies*, in response to the increasing foreseeability of climate change-related risks and the growing focus on the issue by investors. The report follows a surveillance project examining the climate risk disclosure practices of a sample of companies in the S&P ASX 300 and contains recommendations about consideration and disclosure of climate risk.

Our report recommends that directors and advisers adopt a probative and proactive approach to climate risk, comply with the law where it requires disclosure of material risk, and consider reporting under the framework developed by the Taskforce on Climate-Related Financial Disclosures. We anticipate continued work in this area as disclosure practices develop over time.

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

### ASIC intervention in de-listing application

ASIC intervened in a de-listing application by Flinders Mines Limited (Flinders). Flinders is a public mining company listed on ASX. In December 2018, Flinders applied for de-listing, together with a share buy-back and rights issue. The proposed transactions would have had the effect of increasing its major shareholder's relevant interest in Flinders from 56% to a maximum of 65% and the resolutions could be passed by the shareholder.

ASIC received numerous reports of misconduct regarding Flinders and considered the concerns raised by minority shareholders. Following a Takeovers Panel declaration of unacceptable circumstances in proceedings in which ASIC was an active participant, Flinders withdrew its de-listing application and abandoned its other proposed corporate actions.

ASIC also worked with ASX in relation to its release of amended Guidance Note 33: *Removal of entities from the ASX official list*. The revised Guidance Note indicates that ASX will now usually require a listed entity to obtain the approval of its security holders before its removal from the official list by way of a special resolution (rather than an ordinary resolution).

### Withdrawal rights for retail shareholders

In June 2019, we intervened in a rights 'low document' entitlement offer by St Barbara Mines Limited (St Barbara), which resulted in the company allowing retail shareholders to withdraw their acceptances. A low document offer is a security offer generally undertaken by listed entities where the securities can be offered for sale or issue without a public document.

During the retail offer period, St Barbara announced a production downgrade that negatively impacted its share price. ASIC intervened as we believed that retail shareholders were not being given the chance to reconsider their investment decision, even though the new trading price was now below the entitlement offer price. After our intervention, St Barbara announced that retail investors would be given an opportunity to withdraw their acceptances.

## Small business outcomes

ASIC focuses on helping small businesses understand and comply with their legal obligations under the Corporations Act and conducts surveillance, enforcement and policy work. Where necessary, we take administrative, civil or criminal action against companies, directors and other officeholders who fail in their duties. By doing so, ASIC helps to ensure that all market participants can benefit from a level playing field.

This year, ASIC recorded 514 small business-related outcomes (see Table 3.7.1).

As at 1 July 2019, ASIC had 161 small business-related criminal matters underway that had not achieved a final result (see Table 3.7.2). They were not included in Table 3.7.1 because either:

- the court or tribunal has determined liability but not decided the penalty or final order
- a plea was entered but the court or tribunal has not yet made a decision on conviction or sentence
- the court has not yet decided if a breach of law or an offence was committed.

**For more on ASIC's Office of Small Business, see Section 5.3**

### Table 3.7.1 Small business enforcement outcomes by misconduct and remedy type

| Misconduct type | Criminal | Administrative | Total (misconduct) |
|---|---|---|---|
| Action against persons or companies | 364 | 132 | 496 |
| Efficient registration and licensing | 18 | 0 | 18 |
| **Total (remedy)** | **382** | **132** | **514** |

### Table 3.7.2 Small business criminal cases underway as at 1 July 2019

| Misconduct type | Criminal |
|---|---|
| Action against persons or companies | 154 |
| Misconduct related to registration and licensing | 7 |
| **Total** | **161** |

## Auditors of disclosing entities

### Financial reporting surveillance

In 2018–19, ASIC proactively reviewed 300 financial reports of listed and other significant entities, with the aim of improving the quality of financial reports and providing useful information for investors and other stakeholders.

We continue to publicly highlight financial reporting focus areas for directors, preparers and auditors in our surveillance of financial reports. Our releases allow stakeholders to address key reporting matters before issuing their financial reports and ensure that the market is properly informed on a consistent and comparable basis. Areas of focus include impairment of non-financial assets, recognition of revenue, and the adoption of new accounting standards on revenue and financial instruments.

### Premier Investments writes down brand name assets

ASIC raised concerns about the value of the casual wear brand name assets in the financial report of Premier Investments Limited (Premier) for the year ended July 2017. We questioned the reasonableness and supportability of the royalty rate assumptions and sales growth forecasts used in testing the assets for impairment.

As a result of ASIC's work, Premier wrote down the value of the relevant assets by $30 million in its financial report for the following year ended July 2018.

### Audit inspection program

Auditors play a vital role in underpinning investor trust and confidence in the quality of financial reports. To improve and maintain audit quality, we reviewed approximately 65 financial reports of listed entities during the year. In January 2019, we released Report 607 *Audit inspection program report for 2017–18*, reporting the results of our audit firm risk-based inspections for the 18 months to 30 June 2018.

This year, we emphasised the importance of good leadership in audit firms, including their staff members embracing the need to improve audit quality and being accountable for their work in conducting quality audits.

ASIC's reviews also ensured that audit firms continue to focus on the sufficiency and appropriateness of the audit evidence they obtain, their professional scepticism, and their appropriate use of the work of experts and other auditors. We also continued to encourage auditors to focus on the impairment of non-financial assets, revenue recognition, and the impact of the new accounting standards.

## Registered liquidators

### Liquidator of suspected phoenix company

Through the Assetless Administration Fund (AA Fund), ASIC combats the harms associated with illegal phoenix activity, such as losses for employees, businesses and consumers. The AA Fund supports registered liquidators in investigating and examining matters involving pre-insolvency advisers and illegal phoenixing. This may include funding a liquidator to conduct public examinations, where there is a reasonable basis to suspect that this may reveal evidence to support recovery action by the liquidator or possible prosecution by ASIC.

This year, a registered liquidator used their own firm's resources and undertook sufficient investigations to find that a liquidated company's director had likely engaged in misconduct. To complete the investigation and conduct public examinations, the liquidator applied for funding from the AA Fund. The funding allowed the liquidator to gather enough evidence to launch recovery actions against the director and their spouse. ASIC is also funding the liquidator's recovery action through the AA Fund. This case highlights the utility of the AA Fund when liquidators are appointed to companies otherwise devoid of assets – enabling liquidators to investigate, seek recovery for creditors, and combat illegal phoenix activity.

### Former liquidator imprisoned

In February 2018, ASIC commenced an investigation into the conduct of a registered liquidator alleged to have stolen $800,000 from the bank account of an external administration that he jointly controlled.

Following our investigation, the liquidator was charged and on 3 May 2019 he pleaded guilty to three charges of fraud. He was sentenced to seven years imprisonment and will be eligible for parole after serving 22 months in custody.

ASIC also referred the alleged misconduct to the Liquidators Disciplinary Committee, which cancelled the liquidator's registration. Other liquidators will be prohibited from allowing him to work on their behalf for eight years.

### Liquidators forced to repay remuneration

In June 2019, the Federal Court fixed remuneration sought by liquidators John Sheahan and Ian Lock for the voluntary administration and liquidation of the Cedenco Group. Remuneration was fixed at $3.9 million compared to the $5.8 million sought, a reduction of 33%. The liquidators were ordered to repay the difference plus interest at the court's interest rates and were ordered to pay ASIC's costs.

Earlier in February 2019, the court found that the remuneration reports provided to creditors fell 'well short' of the requirements, including in some cases not providing any remuneration reports. The court found that creditors had suffered substantial injustice as they were not able to properly consider the reasonableness of the remuneration.

The court found that external administrators should:

- ensure that remuneration reports comply with the Act
- ensure that time sheet narrations accurately record tasks undertaken
- review work in progress
- write off time where relevant
- appropriately tailor templates or precedent documents.

# 3.8 Large financial institutions

## Entities subject to Close and Continuous Monitoring

We have enhanced key aspects of our supervisory approach, as part of our response to widespread conduct failures in the Australian financial services industry.

Our approach now includes the CCM program, which introduces a new supervisory model for Australia's largest financial services institutions (AMP, ANZ, CBA, NAB and Westpac) and features a periodic onsite ASIC presence in these institutions to review specific practices. We are also in the process of a targeted review of corporate governance practices of these institutions and a selection of other ASX 100 listed entities.

**For more information on the CCM program and our review of corporate governance practices, see Section 1.10**

# 4

# ASIC for all Australians

A key part of our mission is to help Australians be in control of their financial lives.

We seek opportunities to improve peoples' knowledge and help build confidence around financial matters. This includes working with regional communities and our Indigenous population to ensure that the financial system serves the needs of all Australians.

# 4.1 ASIC's MoneySmart

The MoneySmart program provides trusted tools and information to help Australians be in control of their financial lives. This year, extensive consumer consultation helped shape a fresh MoneySmart, to be released in 2019–20.

In August 2018, ASIC released 'Women talk money', a series of videos designed to highlight some of the major challenges women face around money. The videos sought to inspire women to share their personal money stories and motivate them to actively engage with their finances and build confidence in managing their money.

'MoneySmart's Budget Planner tool opened my eyes that most of my money can be saved.'

MoneySmart Consumer

'I'm really loving the infographics and just wanted to thank you for making statistics fun! It has helped put my goals in perspective.'

MoneySmart Consumer

Left: Author Jane Caro, who features in our 'Women talk money' videos, with ASIC's Laura Higgins.

## The Next Generation MoneySmart Program

The MoneySmart program, launched in 2011, reaches millions of Australians each year. In 2018–19, we invested in consumer research, testing, content planning and design to produce the next generation MoneySmart, to be released in 2019–20.

Through this project, which surveyed, interviewed and interacted with over 1,000 consumers, we aim to:

- increase consumer engagement with MoneySmart
- set up MoneySmart for measurable continuous improvement
- enhance the user experience of MoneySmart.

## 2018 National Financial Capability Strategy

As the lead agency in Australia for financial capability, ASIC launched the latest National Financial Capability Strategy in August 2018.

The priorities outlined in the National Strategy inform the practices of the broader financial capability community. The Strategy supports them in encouraging long-term behavioural change by building strong financial capabilities in individuals, families and communities.

The new National Strategy was shaped by a consultation process that included over 145 submissions from stakeholders and built on the 2014–17 National Financial Literacy Strategy.

Below: Members of the Australian Government Financial Literacy Board at the launch of the 2018 National Financial Capability Strategy.

### ASIC's Financial Wellbeing Network

The ASIC-led Financial Wellbeing Network has over 1,500 members from various organisations in the business, not-for-profit, education and government sectors that work to empower Australians to be in control of their financial lives. The network includes ASIC-coordinated events, newsletters, a research hub and service delivery expertise.

In 2018–19, we delivered the following events:

- 'Why a Human-Centred Approach Matters', with Peter Kell, ASIC and Rebecca Hendry, Meld Studios
- 'Financial Capability: An International Perspective', with Nancy Castillo, Financial Health Network USA and Steve Trites, Financial Consumer Agency of Canada
- 'Financial Wellbeing in 2019: A Panel Discussion', with Delia Rickard, ACCC; Peter McNamara, GSM; and Robynne Quiggin, UTS
- 'Financial Decision Making: How Do We Really Build Financial Capability?', with Dr Emily Heath, EY and Andrew Dadswell, ASIC.

Over 90% of attendees left feeling satisfied or very satisfied with our events, and over 80% of attendees report that they will take action as a result of attending.

# 4.2 Regional action

In 2018–19, our Regional Commissioners and regional offices focused on addressing the diverse needs of our community and improving outcomes for consumers and businesses in each Australian state and territory.

Through our Regional Commissioners and regional liaison, we ensure that we maintain an active presence in each state and territory. The Regional Commissioners report to the Commission three times a year on activities, services and liaison in their state or territory.

This year, our work in the regions included improving financial capability for specific community sectors, engaging with local agencies and industry associations, and collaborating with other local government departments and agencies on policy issues.

Our performance against our Service Charter this year (see Section 2.5) shows ASIC has provided high levels of service Australia wide.

## Australian Capital Territory

Our team in the ACT continues to build strong working relationships across Canberra at both the Commonwealth and state levels of the public service and with peak bodies.

In August 2018, the ACT office supported the launch of the National Financial Capability Strategy. ASIC Chair James Shipton welcomed a number of Parliamentarians and key stakeholders to Parliament House. The event featured RBA Governor Philip Lowe, who emphasised the importance of consumers actively engaging with their finances.

**For more information on ASIC's financial capability initiatives, see Sections 2.3 and 4.1**

In March 2019, ahead of International Women's Day, ASIC hosted a panel discussion to encourage women to engage with their superannuation and know their superannuation balance. The panel was moderated by Elysse Morgan, ABC journalist and host of *The Business*. Participants from over a dozen public sector agencies attended the National Museum of Australia for a challenging panel discussion on women and money, highlighting ASIC priorities around superannuation and featuring a number of personal stories emphasising that everyone needs to have money conversations. Women are taking control of their financial futures, and more women than men consolidated their superannuation funds last year.

Above: ASIC Chair James Shipton spent time with a financial counsellor and listened to calls on the National Debt Helpline.

## New South Wales

In May 2019, we hosted the IOSCO Annual Meeting. The NSW Regional Commissioner was Master of Ceremonies at the IOSCO Presidents Committee meeting, which included the signing ceremony for new signatories to the IOSCO Multilateral Memorandum of Understanding.

The IOSCO Annual Meeting was held together with the ASIC Annual Forum 2019, which attracted a diverse mix of international and local participants and a record attendance overall.

**For more information on ASIC's hosting of the IOSCO Annual Meeting, see Section 5.1**

Consumer Action Law Centre, Victoria: Gerard Brody (CEO, Consumer Action Law Centre), Fiona Guthrie (Financial Counselling Australia), James Shipton, Laura Higgins and Michael Saadat.

We continued to support ASIC's engagement with consumer groups and financial counselling organisations, including taking part in Financial Counselling Australia's 'A day in the life' project, which invites federal politicians and senior decision makers in government and industry to spend time with a financial counsellor in order to better understand the work they do.

## Northern Territory

Our regional work included presenting at Chartered Accountants ANZ, Certified Practising Accountants (CPA) Australia and Institute of Public Accountants (IPA) events in Darwin and Alice Springs. Commissioner Danielle Press spoke at a Business and Professional Women's event.

We also supported ASIC's engagement with consumer groups and financial counselling organisations, including hosting a roundtable discussion about the work we do to support older Australians, and we engaged with members of newly arrived migrant communities at the Melaleuca Refugee Centre.

We spent two weeks in Arnhem Land, gathering evidence for an investigation and helping people with financial consumer matters. We also delivered governance training for Aboriginal directors living at the remote community of Pirlangimpi on the Tiwi Islands.

We collaborated with Lenore Dembski, the Office of the Registrar of Indigenous Corporations, the Australian Institute of Company Directors and Charles Darwin University to host events celebrating the contribution Indigenous women make as directors and business leaders. ASIC produced a series of posters celebrating the achievements of Aboriginal and Torres Strait Islander women in business.

Supporting the Indigenous Business Sector – Darwin event with Tradara Briscoe, artist and designer, and Tanyah Nasir, trainer and consultant, who both run their own businesses.

We worked with NT Police to remove four people with dishonesty-related criminal convictions from the corporate register, disqualifying them from holding directorships and managing corporations.

## Queensland

This year, we took part in a range of stakeholder events and local outreach programs. Our work with small business included attending a regulatory rally in Townsville in October, to coincide with Small Business Professionals Week, where we distributed information about our support services for small businesses.

In March, we attended the Australian Government Small Business Fair in Rockhampton and in May we participated in a cross-agency event in Beenleigh for Queensland Small Business Week, promoting tools and resources available to help small businesses understand their obligations.

In October, we travelled to Palm Island with representatives of the Indigenous Consumer Action Network, to meet with locals and other agencies to deliver financial literacy resources and gather intelligence on local financial issues. The visit was part of the targeted outreach program to support recipients of class action compensation payments made by the Queensland Government.

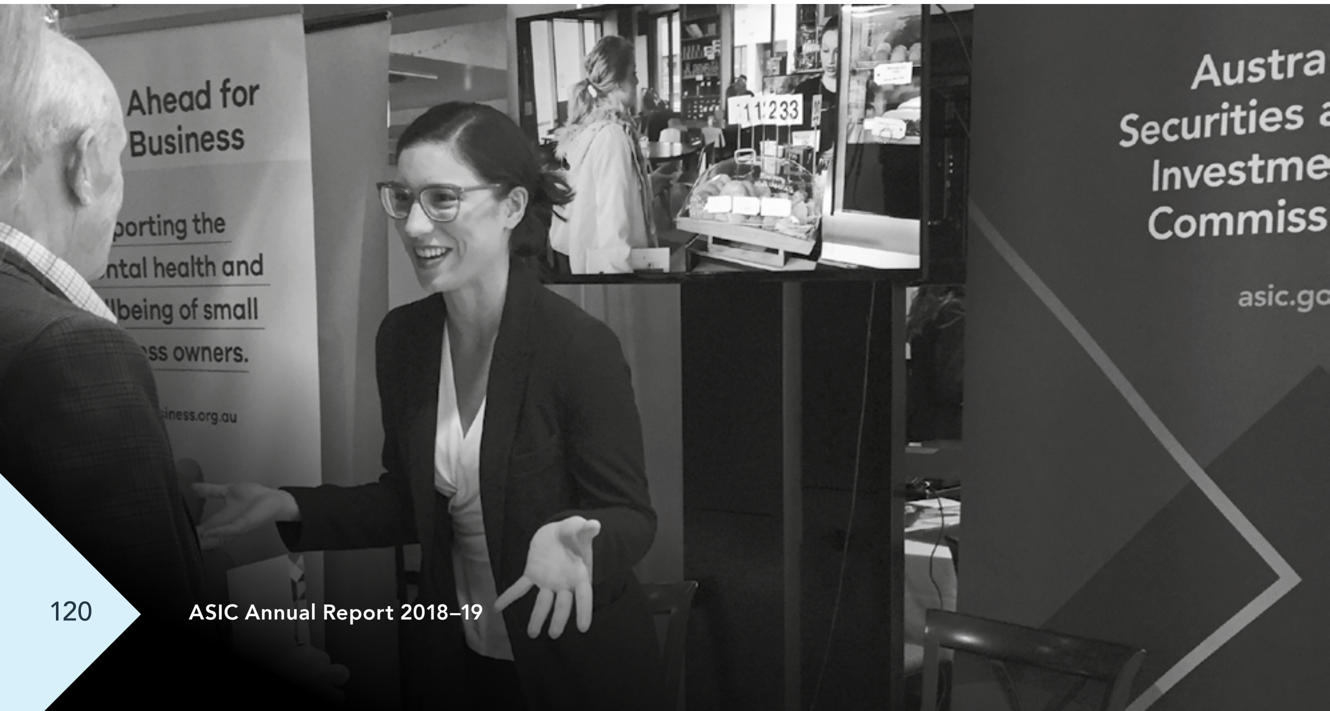
## South Australia

This year, our regional work focused on providing support and advice to small business. We joined with other federal, state and local agencies to provide information on compliance, registration and licences, training, safety and business growth strategies.

ASIC took the MoneySmart message to the Riverland Field Days in Barmera, spoke to the local community about making good financial decisions, and promoted our MoneySmart website, app and financial literacy resources.

We also presented at professional events, including the Financial Planning Association annual general meeting, the SA/NT Australian Restructuring Insolvency and Turnaround Association conference, the Law Society of South Australia and Chartered Accountants ANZ about regulatory issues relevant to their sector.

Below: ASIC Project Officer Melissa Gross onsite providing information and advice for small business.



## Tasmania

In September 2018, we hosted over 50 members of the Tasmanian business community at an ASIC stakeholder function attended by our Chair and three Commissioners. We held two Regional Liaison Committee meetings this year and discussed experiences that businesses have had with the ASIC registry and matters highlighted by the Royal Commission.

In March, we participated in Small Business Fairs in Launceston and Hobart, where we answered questions from small business owners and consumers about our role in this sector and ASIC's registry services. We also showcased our Small Business Hub and the First Business App and distributed Small Business booklets and MoneySmart material.

## Victoria

In October 2018, we held a MoneySmart stand at the Elmore Field Day in regional Victoria, with the support of the ASIC Chair and members of our Graduate Program. The three-day event attracted a strong attendance of 35,000 visitors from across Victoria and New South Wales. We distributed around 1,500 MoneySmart showbags and the ASIC Chair met with local small business representatives and the Rural Financial Counselling Service.

We marked the occasion of ASIC's tenancy of our Traralgon office reaching 25 years. ASIC has occupied the entire building in the La Trobe Valley since June 1993.

Our Victorian Regional Commissioner, Warren Day, spoke at the Victorian Independent Broad-based Anti-corruption Commission's Protected Disclosure Coordinator Forum in June about ASIC's approach to whistleblowers, the experience of ASIC's Office of the Whistleblower over the last three years, and the amendments to whistleblower provisions in the Corporations Act coming into effect from 1 June 2019.

Our Regional Commissioner also recorded a small business podcast with Alexi Boyd for her radio show *Small Biz Matters*, discussing ASIC's role in starting up and closing down businesses, our work with small business, phoenix activity, and other cross-agency work. He is also a guest on ABC Gippsland once a month, speaking about consumer issues and ASIC's MoneySmart program with Jonathon Kendall.

## Western Australia

This year, we continued our engagement with local industry by convening eight liaison meetings across the corporate finance, insolvency, accounting, credit and market participant sectors, providing stakeholders with a forum to raise concerns or emerging issues in their sectors.

In August, we hosted the annual ASIC stakeholder function, where the Chair presented on ASIC's current priorities. Commissioner Cathie Armour hosted a 'Women Directors' event and introduced ASIC's Corporate Governance Taskforce to the local community.

Our Regional Commissioner gave presentations during the year to the business community on a variety of regulatory topics, including governance and risk management, financial technology (fintech) and regulatory technology (regtech), and ASIC's approach to enforcement.

# 4.3 Our work with vulnerable consumers

We create and distribute tailored resources, tools and information that support financially vulnerable consumers in making informed decisions. We also focus on promoting industry behaviour that leads to fairer outcomes for vulnerable consumers and take regulatory action to ensure that consumers facing hardship are treated fairly.

Our new product intervention power allows us to confront and respond to significant consumer harm from financial and credit products. We issued Consultation Paper 313 *Product intervention power* on the scope of the power and how we expect to use it, and Consultation Paper 316 *Using the product intervention power: Short term credit*, on the first proposed use of the power in the short-term credit sector. This paper detailed significant consumer detriment, including for some of our most vulnerable consumers.

Beyond our implementation of the new product governance regime, we are updating our responsible lending guidance and acting to address conflicts of interest that may cause consumer harm.

We are examining how lenders engage with consumers experiencing financial hardship, undertaking reviews of product features or practices that raise concerns, and considering sales techniques that can disproportionately affect vulnerable consumers – for example, in the direct life and consumer credit insurance sector.

Our regulatory work is informed by the insights of our behavioural unit about what works for consumers, what drives behaviour, and how to influence it for the better.

# 4.4 Indigenous outreach

## Indigenous awareness and action

ASIC's Indigenous Outreach Program (IOP) provides specialist advice, insight and support to other ASIC teams to ensure that we effectively and appropriately address the needs of Indigenous consumers and investors.

IOP also engages with Indigenous communities and stakeholders working with Indigenous Australians to more effectively enable us to enhance the financial wellbeing of Indigenous consumers.

### Engagement with Indigenous consumers and advocates

In 2018–19, our work with Indigenous consumers included:

- continuing to provide a direct point of contact through the IOP Helpline and IOP email
- providing strategic outreach in remote regions, including Central Queensland, south-west Western Australia and the Kimberley
- attending state and national financial counsellors' conferences
- ongoing participation in Indigenous networks, including the National Indigenous Consumer Strategy, the North Queensland Indigenous Consumer Issues Taskforce, the WA Indigenous Consumer Assistance Forum and the Consumer Action Law Centre's Indigenous network.

We remain focused on having a visible presence in remote as well as urban communities to help us better understand key issues of concern for Indigenous consumers.

We also continue to support the engagement of Indigenous consumers in the financial system. Our current areas of focus include:

- working to ensure that the superannuation system better meets the needs of Indigenous consumers
- potential law reform to remove the exemption of funeral expenses as a financial product (a recommendation of the Royal Commission)
- continuing to work collaboratively on book up law reform and to educate book up providers and consumers on fair and legal ways in which book up can be provided.

### Consumer education initiatives for Indigenous consumers

In response to issues raised through outreach activities, we engaged an Indigenous creative media company to create a series of animations highlighting topics such as dealing with family pressures about money and seeking help to sort out money problems. These are available on the MoneySmart website and were created and distributed in collaboration with stakeholders in regional and remote areas of Australia.

### Central Australian Aboriginal Media Association

ASIC uses a range of media channels to reach Indigenous consumers. This year, the IOP participated in interviews forming a series of radio programs aimed at increasing knowledge around superannuation in remote Aboriginal communities.

The programs were coordinated by the Central Australian Aboriginal Media Association (CAAMA) and covered topics such as consolidating superannuation and insurance in superannuation. CAAMA promoted and distributed the programs through its radio network, which reaches remote communities across the Northern Territory and central regions of South Australia and Western Australia. The radio programs will also be translated into Pitjantjatjara and Arrernte, two languages commonly spoken by CAAMA listeners.

# 4.5 ASIC in the community

ASIC is a leader among government agencies in offering a national program that gives our people opportunities to make an impact on charities that are important to them. This year, our people:

- supported 44 different charities through workplace giving:
  - around 10% of ASIC's people made pre-tax contributions this year, donating over $106,000
- volunteered, using the paid leave provided by ASIC, at:
  - Smith Family iTrack – youth mentoring (national)
  - Youth Law Australia (national)
  - Foodbank Victoria (Melbourne)
  - Exodus Loaves and Fishes (Sydney)
  - Meals on Wheels (Traralgon).

We are also recognised for integrating our Graduate Program into our community work. Each year, our new graduates participate in a charity project to fundraise for one of our charity partners. In 2018, our graduate cohort raised over $15,000 for Lifeline Australia.

Lifeline Chair John Brogden visited ASIC in November 2018 to congratulate our graduates in person for their efforts.

## National speaker events

In July 2018, we hosted the Hon. Linda Burney MP, Member for Barton, as our keynote speaker during NAIDOC Week.

The NAIDOC Week theme for 2018 was *Because of her, we can!* As pillars of Indigenous society, Aboriginal and Torres Strait Islander women play active and significant roles at the community, local, state and national levels.

Linda's journey is a terrific example of this. She spoke about what NAIDOC means to her, the importance of reciprocity in the culture of First Nations peoples, and the invaluable role that women play in society.

Below: ASIC Chair James Shipton, former Deputy Chair Peter Kell, Danille Abbott and Abbey Glynn, two of our Indigenous staff members, with the Hon. Linda Burney in Sydney.

Another highlight of our National Speakers Program this year was the ASIC Anzac Day event, where we were honoured to welcome His Excellency General the Hon. Sir Peter Cosgrove AK MC (Retd) and Wing Commander Alicia Broadhead to our offices to speak about leadership, dedication and the Anzac spirit.

His Excellency General the Hon. Sir Peter Cosgrove AK MC (Retd) and Wing Commander Alicia Broadhead.

# 5

# ASIC cooperation

## ASIC cooperates with peer agencies, industry and the public to support the work we do in the financial sector for the benefit of all Australians.

For example:

- our work with our overseas counterparts ensures that we are on top of international developments and enables us to influence global regulatory policy
- our Innovation Hub helps innovative Australian businesses comply with regulatory requirements and provides a platform for international engagement on fintech and regtech ideas
- our Office of Small Business engages with and helps protect small business in Australia
- our Office of the Whistleblower coordinates the recording and actioning of reports from whistleblowers
- we participate in the Government's Phoenix Taskforce, Serious Financial Crime Taskforce and Black Economy Taskforce to address misconduct, including illegal phoenix activity
- our analysis of reports of misconduct received from the public, and of breach notifications from industry, is critical in informing our regulatory work.

# 5.1 Regional and international engagement

ASIC engages closely with peer regulators and agencies overseas to develop international regulatory policy. This engagement ensures that ASIC can positively influence the operation and regulation of global financial markets.

In 2018–19, we advocated for:

› global regulatory coordination and harmonisation in fintech and regtech

› deeper regional integration through initiatives such as the Asia Region Funds Passport and stronger regional supervisory cooperation, especially in trans-Tasman issues through closer collaboration with New Zealand regulators

› greater focus on fairness and addressing misconduct, whether legal or not, particularly in the retail sector.

ASIC is also involved in international policy in terms of trade and investment.

ASIC is a member of the IOSCO Board and is represented on its policy committees and taskforces. We also:

› chair the Market Conduct Working Group of the International Association of Insurance Supervisors

› serve on the board of the International Forum of Independent Audit Regulators and contribute to the International Accounting Standards Board

› contribute to consumer policy through membership of the International Financial Consumer Protection Organisation Governing Council and the Financial Consumer Protection Taskforce established by the Organisation for Economic Cooperation and Development

› participate in working groups established by the World Economic Forum on cyber risk and consumer data protection

› contribute to the Asia–Pacific Economic Cooperation Financial Regulators Training Initiative by providing speakers at training seminars in the region.

## IOSCO Annual Meeting and ASIC Annual Forum 2019

In May 2019, ASIC hosted the 44th Annual Meeting of IOSCO in Sydney, bringing together 415 delegates from 151 member organisations in 98 jurisdictions.

The IOSCO Annual Meeting is a major event in the international regulatory calendar and an important opportunity to share ideas and enhance cooperation between regulators from around the world.

James Shipton with the Forum organising team.

The IOSCO Board meeting discussed issues such as crypto-assets, artificial intelligence and machine learning, market fragmentation in securities and derivatives markets, and retail distribution and digitalisation.

We held the IOSCO meeting alongside our ASIC Annual Forum, with the theme 'Other People's Money'. The Forum explored how the financial services industry can better focus on the end user and how market participants can ensure that they meet public expectations.

The Annual Dinner featured Professor Mihir A Desai from Harvard Business School and Harvard Law School, who dissected key learnings from his book *The wisdom of finance: How the humanities can illuminate and improve finance.*

The event featured international speakers, including IOSCO Board Chair Ashley Alder, Chief Executive of the UK FCA Andrew Bailey, and Chair of the European Securities and Markets Authority Steven Maijoor. Attendees heard from leading academics and industry participants on a range of topics, from how business can create shared value for stakeholders to ways in which financial services can effectively reach all parts of society, including the vulnerable. ASIC's Commission discussed how the new leadership team is embracing current challenges of financial regulation and focusing ASIC on the future.

## Asia Region Funds Passport

The Asia Region Funds Passport (ARFP) provides a multilateral framework to facilitate the cross-border marketing of managed funds across participating economies in the Asia region. It is intended to support the development of an Asia-wide funds management industry through improved market access and regulatory harmonisation. Participating economies include Australia, Japan, the Republic of Korea, New Zealand and Thailand.

ASIC worked closely with Treasury to develop the ARFP legislation, which took effect in September 2018, and issued guidance to support the funds management industry in facilitating the ARFP. The ARFP commenced on 1 February 2019, with Australia as an inaugural participant.

## Promoting regional cooperation

### Regional supervisory colleges

Supervisory colleges facilitate deeper dialogue and cooperation between regulators to enhance supervision of cross-border financial entities, provide greater visibility of interdependencies, and help manage financial and non-financial risks.

ASIC continues to participate in supervisory colleges, such as hosting the Asia–Pacific Regional Supervisory College and other colleges, including some pertaining to major credit rating agencies (Fitch, Moody's and S&P).

### IOSCO Asia–Pacific Regional Committee

This year, we focused on strengthening our ties with IOSCO's Asia–Pacific Regional Committee (APRC). The APRC gives IOSCO members in our region the opportunity to speak with a unified voice, which is important given the significant regulatory changes with extra-territorial effect emanating particularly from the European Union.

Our work this year included encouraging APRC members to bring emerging concerns in their domestic jurisdictions to the regional level – for example, we encouraged the sharing of examples of conduct that is harmful but not strictly illegal. As a result, the IOSCO Board has commissioned work on this topic in the coming year.

### Delegation to China

In April 2019, we worked to strengthen ties and cooperation with our Chinese regulatory counterparts by sending an ASIC delegation to visit the China Securities Regulatory Commission, the Chinese Banking and Insurance Regulatory Commission, the State Administration of Foreign Exchange and other regulators in China.

## International cooperation requests

This year, we made 331 international cooperation requests and received 514 requests in relation to activities such as supervision, surveillance, intelligence, enforcement, policy and benchmarking licensing, and capacity building.

This included 130 requests to ASIC for assistance in enforcement matters, including 30 requests seeking ASIC's assistance to compel material from third parties under the *Mutual Assistance in Business Regulation Act 1992*.

### International cooperation

In November 2018, ASIC cancelled the AFS licence of retail OTC derivative issuer AGM Markets Pty Ltd (AGM) and banned former director and Chief Executive Officer of AGM, Yossef Ashkenazi, from providing financial services for eight years.

ASIC found that AGM's financial services business involved core elements of unconscionability and unmanaged conflicts of interest and followed a business model that disregarded key conduct requirements. ASIC also launched related civil proceedings.

AGM's conduct was connected to individuals and entities overseas, and significant information was obtained from foreign jurisdictions in the course of our investigation. ASIC made nine requests for assistance to foreign agencies in this matter, including pursuant to the IOSCO Multilateral Memorandum of Understanding. The international assistance received by ASIC played a significant role in progressing this matter.

## Capacity building

Our capacity building initiatives are an important part of ASIC's international regulatory strategy. They provide a unique perspective on how financial markets are changing in emerging economies and the regulatory challenges this poses, as well as allowing ASIC to share expertise with our regulatory peers.

### Capacity building in Indonesia

ASIC assists the Indonesian Financial Services Authority, Otoritas Jasa Keuangan (OJK), in a wide range of capacity building initiatives. The objective is to strengthen OJK's capacity to develop and implement global standards and practices, and to build a culture of responsive and skill-based surveillance and risk-focused supervision. This year, OJK staff interacted with ASIC through seminars, workshops and mutual visits.

ASIC also provided extensive assistance to OJK on emerging regulatory issues. We hosted delegations from OJK focused on understanding ASIC's approaches to investment advice, the regulation and supervision of investment banks and audit, and independent experts' reports.

We delivered workshops on enforcement approaches to financial reporting fraud and phoenix activity and participated in a workshop on Islamic capital markets. We also contributed to a seminar in Indonesia on fintech regulation in the context of anti-money laundering.

### IOSCO Assessment Committee

ASIC is a member of IOSCO's Assessment Committee, which is responsible for programs to review implementation of the IOSCO Principles and Objectives of Securities Regulation, the global standard for securities regulators.

During the period, ASIC participated in a program devised by IOSCO's Assessment Committee to help IOSCO members complete self-assessments against the IOSCO principles. In December 2018, we reviewed and advised on the self-assessments prepared by participants. These self-assessments are key to jurisdictions critiquing their own regulation and its implementation and identifying any weaknesses.

## Financial Sector Assessment Program

In 2018–19, Australia underwent a Financial Sector Assessment Program (FSAP) review, conducted by the International Monetary Fund (IMF). The FSAP provides a comprehensive analysis of a country's financial sector.

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

The FSAP included an assessment of Australia's implementation of the Core Principles for Effective Banking Supervision, aspects of the Insurance Core Principles, and aspects of Australia's financial market infrastructure.

## Brexit

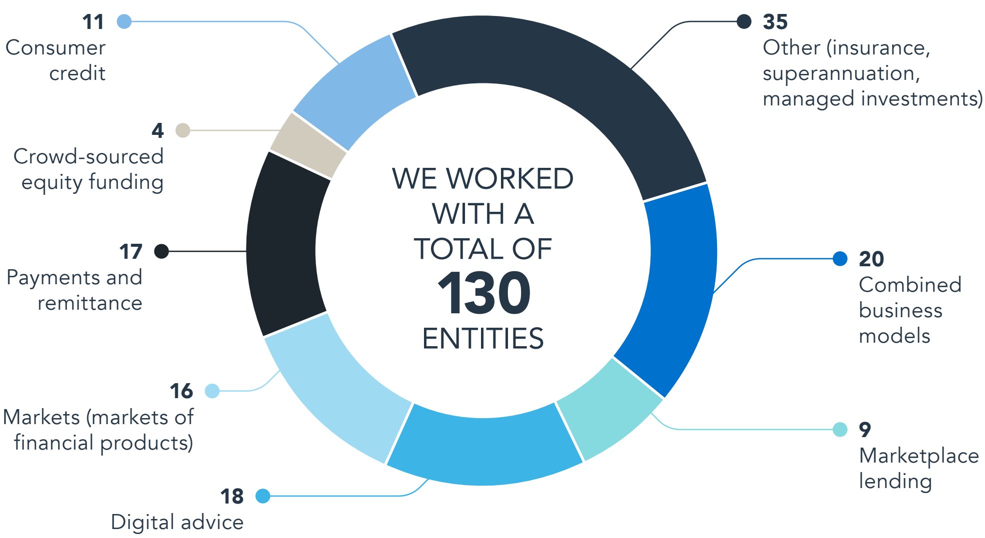
This year, ASIC developed a work plan to identify and minimise potential Brexit-related impacts on Australian financial services, markets and participants. We liaised closely with the UK FCA and the Bank of England.

In February 2019, we released guidance 'Preparing for Brexit' and, in April 2019, we released a joint statement with the FCA announcing our updated memorandum of understanding (MOU) on alternative investment funds and our new MOU on trade repositories. We continue to monitor Brexit-related developments.

## 5.2 Innovation Hub

In 2018–19, the Innovation Hub provided informal assistance to over 190 businesses (fintech and regtech), helping them consider regulatory issues early and where relevant prepare licence or relief applications.

Of the new fintech businesses that engaged with the Innovation Hub before submitting their licence application, we granted 25 new AFS licences or credit licences. These applicants received approval materially faster than those that had not sought assistance.



## ASIC and regtech

In September 2018, ASIC received $6 million in funding for financial years 2018–19 and 2019–20 to undertake a range of initiatives to promote the use of regtech by financial firms that aim to deliver better consumer outcomes. ASIC will run four regtech initiatives in 2019, including demonstration events in August and September 2019.

These initiatives will focus on:

› improving the compliance and quality of financial promotions

› monitoring the quality of financial advice

› using voice analytics and voice-to-text applications to help identify compliance issues in the sale of direct life insurance

› developing a Licensing Technology-Assisted Guidance (TAG) Tool (potentially a chatbot), designed to provide guidance on ASIC's licensing framework.

This year, ASIC also ran five natural language processing trials with regtech firms to investigate how this technology could be deployed to assist ASIC in its supervisory work. On balance, the results of the trials were positive, providing a better understanding of how this technology may potentially maximise efficiencies in ASIC's regulatory work.

## International engagement on innovation

ASIC has been part of the Global Financial Innovation Network (GFIN) from its inception in 2018. The GFIN has grown to comprise 35 regulators and 7 observers across 21 jurisdictions. It is committed to supporting financial innovation in the interests of consumers by creating a framework for cooperation between regulators to share experiences and approaches to innovation. As part of the GFIN cross-border pilot, ASIC will work with regtech firms to explore their testing plans across multiple jurisdictions.

ASIC was on the 2018–19 steering committee for the IOSCO Fintech Network, which is focused on information sharing across regulators. We are a member of the network's four workstreams (distributed ledger technology, artificial intelligence and ethics, regtech, and innovation).

# 5.3 Office of Small Business

ASIC's Office of Small Business focuses and coordinates ASIC's efforts and initiatives to assist, engage and help protect small businesses (those with fewer than 20 employees). In the 2018–19 financial year, small businesses represented 96% of all companies and businesses registered with ASIC.

**Assist:** In May 2019, to better address the queries that small business owners have and to provide a clearer online user journey, we refreshed our resources for small businesses by simplifying and further developing them using web analytics.

### Engagement

**8,649**

subscribers to *InFocus* newsletter

**54,479**

views of the Small Business Hub

### Resources

**14,504**

downloads of the First Business app (as at 30 June 2019)

**Engage:** To increase awareness of ASIC's role in small business and listen to the issues faced by Australian small businesses, ASIC teams presented at over 84 forums, exhibitions and meetings across Australia. This included collaborating with the Department of Jobs and Small Business to attend small business fairs in 18 locations across Australia.

**Protect:** This year, we updated AFCA's and ASIC's registers to remove licensees who are not currently engaging in credit or providing financial services, or who have not complied with the obligation to be a member of AFCA. This work proactively addressed a potential harm to small businesses that would not otherwise have access to an external dispute resolution body.

**For more information on ASIC's registers, see Section 2.4**

**For more information on ASIC's small business outcomes, see Section 3.7**

# 5.4 Office of the Whistleblower

ASIC's Office of the Whistleblower is the central point in ASIC for recording and actioning the disclosures we receive from whistleblowers, ensuring that we communicate with them throughout our inquiries, and for engaging with stakeholders on implementing Australia's corporate sector whistleblower protection regime.

In early 2019, the Government passed legislation to strengthen and expand Australia's corporate sector whistleblower protection regime. We consulted with financial services providers, professional services providers, and other regulators on implementation of the reforms.

We assess all breaches that whistleblowers disclose to us and inform them of their statutory rights and protections. We recently updated our guidance to reflect the new regime.

This year, we dealt with 278 disclosures by whistleblowers. Around 62% of these related to corporations and corporate governance, including internal company disputes. We also dealt with matters related to credit and financial services and the conduct of licensees (27%), markets (7%), and other issues (4%).

Following our preliminary inquiries, we referred approximately 7% of matters to our compliance, surveillance or investigation team.

We assessed approximately 93% of disclosures as requiring no further action by ASIC, often due to insufficient evidence. In some cases, we referred the matter to another agency, law enforcement body, or third party (such as a liquidator) that was better placed to deal with the issue or was already taking action.

# 5.5 Inter-agency collaboration on financial crime

## Criminal Intelligence Unit

ASIC's Criminal Intelligence Unit collaborates with other Australian enforcement and regulatory agencies on serious and organised crime, including through the Phoenix Taskforce and the Serious Financial Crime Taskforce (SFCT). This year, we released 123 intelligence products to partner agencies and received 172 intelligence reports. We also provided to the Australian Criminal Intelligence Commission our analysis of the threats posed to the Australian taxation system by illegal phoenix activity.

## Serious Financial Crime Taskforce

The SFCT is a multi-agency initiative targeting offences related to serious fraud, money laundering, and defrauding the Commonwealth. In 2018–19, we contributed to its work in respect of crimes related to international tax evasion, illegal phoenix activity, and a new priority of cyber crime affecting the Australian taxation and superannuation systems.

From 2020 to 2023, we will have increased taskforce funding to support our role in enforcement activities and criminal intelligence analysis.

## Phoenix Taskforce

ASIC continued its collaboration with the federal, state and territory agencies in the Phoenix Taskforce, which takes a whole-of-government approach to combating illegal phoenix activity.

Our work this year included presentations, panel discussions, and meetings with fellow regulators, insolvency practitioners, professional bodies, small business and industry groups. We also supported the significant law reform that the Government has progressed to address illegal phoenix activity.

**For more information on our enforcement action to combat illegal phoenix activity, see Sections 1.7 and 3.7**

### Former director imprisoned for 12 months for illegal phoenix activity

In November 2018, a former director of Metropolitan Design Pty Ltd (Metropolitan) was sentenced to 12 months imprisonment by the Magistrates Court in Queensland after pleading guilty to charges related to illegal phoenix activity. The former director was convicted of 13 breaches of directors' duties under the Corporations Act. He was released on a $3,000 two-year good-behaviour bond and disqualified from managing corporations for five years from 18 November 2018 as a result of his conviction.

ASIC investigated the director's conduct after receiving a liquidator's report. In September 2015, Metropolitan was placed into liquidation, owing the ATO $235,626. Our investigations revealed that between 13 April and 22 September 2015, the director instructed debtors to redirect payments owed to Metropolitan to his personal sole-trader bank account, thus using his position dishonestly to gain an advantage for himself. His actions intentionally set out to deny the ATO money owed to it – conduct constituting illegal phoenix activity. The matter was prosecuted by the CDPP.

# 5.6 Misconduct reporting

## Misconduct reports from the public

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

Our 27 information sheets, which explain our role in relation to the most frequently reported concerns, were read online by over 79,000 unique readers in 2018–19. Our 15 YouTube video clips were viewed over 13,600 times during the year.

In 2018–19, we dealt with 10,249 reports of alleged misconduct. This is 7% more than in 2017–18, reflecting increased awareness flowing from the Royal Commission.

## Breach reports from licensees and auditors

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

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

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

In 2018–19, we dealt with:

› 705 auditor breach reports, 44% more than in 2017–18

› 2,173 breach reports about managed investment schemes and AFS licensees, a 56% increase from 2017–18.

This increase is due to licensees reviewing their breach reporting practices in light of the Royal Commission and ASIC's review. We anticipate that increases in these reports will continue for some time.

## Report 594 *Review of selected financial services groups' compliance with the breach reporting obligation*

This year, ASIC published a review of the breach reporting practices of 12 financial services groups: ANZ, CBA, NAB, Westpac, AMP, Bank of Queensland, Bendigo Bank, Credit Union Australia, Greater Bank, Heritage Bank, Macquarie and Suncorp.

The review considered the institutions' compliance with reporting requirements under section 912D of the Corporations Act. The law requires all AFS licensees to report to ASIC a 'significant breach' within 10 business days of becoming aware of it.

In Report 594, released in September 2018, ASIC identified serious and unacceptable delays in the time taken to identify, report and correct significant breaches of the law among Australia's most important financial institutions. Key findings included the following:

- Financial institutions were taking too long to identify significant breaches, with the major banks taking an average time of 1,726 days (over 4.5 years).
- There were delays in remediation for consumer loss. It took an average of 226 days from the end of a financial institution's investigation into the breach to the first payment to impacted consumers. (This is on top of the average across all institutions of 1,517 days before the breach is discovered, as well as the time taken to start and complete an investigation.)
- The significant breaches (within the scope of the review) caused financial losses to consumers of approximately $500 million, with millions of dollars of remediation yet to be provided.
- The process from starting an investigation to lodging a breach report with ASIC also took too long, with major banks taking an average of 150 days.

Once a financial institution has investigated and determined that a breach has occurred and that it is significant, the law requires the breach be reported to ASIC within 10 business days. One in seven significant breaches (110 of 715) were reported later than that 10-business-day requirement.

In response to the review's findings, ASIC is ensuring that there is a strong focus on compliance with breach reporting requirements in its new CCM program approach to supervising major institutions. ASIC is also actively considering enforcement action for failures to report breaches on time.

## Statutory reports from liquidators, administrators and receivers

We received 8,106 initial reports from external administrators. Over 7,200 of these reported suspected offences by company officers, with the remainder lodged because the return to unsecured creditors may be less than 50 cents in the dollar. Of the 7,200 that reported misconduct, we requested supplementary reports from the external administrators in 1,008 cases. These supplementary reports typically set out the results of the external administrator's inquiries and the evidence to support the alleged offences. We referred 24% of supplementary reports assessed in 2018–19 for compliance, investigation or surveillance action, compared to 20% in 2017–18.

# 5.7 Australian Financial Complaints Authority

The Australian Financial Complaints Authority (AFCA) commenced operations on 1 November 2018. AFCA deals with consumer, small business and primary producer complaints about banking, insurance, investments, financial advice, credit and superannuation.

AFCA replaced two ASIC-approved, industry-based schemes – the Credit and Investments Ombudsman and the Financial Ombudsman Service – as well as the statutory Superannuation Complaints Tribunal. In its first six months of operations, AFCA received over 35,000 complaints.

As an authorised external dispute resolution (EDR) scheme, AFCA is governed by an independent board responsible for ensuring the scheme's ongoing compliance with the authorisation requirements, ministerial conditions and ASIC regulatory requirements. The Corporations Act gives ASIC a range of powers in relation to AFCA, including requiring that ASIC approve material changes to the scheme.

This year, we focused on ensuring a smooth transition to AFCA and that consumer access to EDR was maintained during the transition. ASIC worked with AFCA and other stakeholders on a range of implementation issues and reforms to the dispute resolution framework. This included:

- ASIC approval of the inaugural AFCA scheme Rules and the Independent Assessor Terms of Reference in September 2018, following AFCA's public consultation

- proactive measures, including licence cancellations, to protect consumers from the few financial firms that were not complying with their licence obligation to be a member of the AFCA scheme
- ASIC approval of Rules changes to give effect to a further AFCA authorisation condition introduced by the Government, which required AFCA to extend its jurisdiction to allow the scheme to deal with certain complaints about conduct dating back to 1 January 2008 – the approval followed AFCA's public consultation on the proposed changes
- receiving statutory reports from AFCA about systemic issues and serious contraventions involving financial firms.

Additional reforms affecting AFCA include regulations requiring financial firms to take reasonable steps to cooperate with AFCA in resolving complaints and the Government's announcement that it will establish an industry-funded, forward-looking compensation scheme of last resort.

In May 2019, ASIC also began public consultation on updated IDR standards and how financial firms handle consumer and small business complaints, including the introduction of a mandatory IDR data collection and reporting framework. This work is informed by consumer research and intelligence from the IDR stream of ASIC's CCM program.

**For more information on the CCM program, see Section 1.10**

# 6

# ASIC's people

# 6.1 Workforce planning

## Working at ASIC

The 2019 Australian Public Service (APS) Employee Census was conducted in May and June 2019 with 72% of our people taking part. The results showed that our people are engaged and committed to the work we do. Of those who participated, 91% strongly believe in ASIC's purpose and objectives and 86% consider themselves committed to ASIC's goals.

ASIC's commitment to creating a diverse workforce was also evident in the survey results, with 86% of us responding positively compared to the APS average of 78%. The Census includes scores on three key indices: Employee engagement, Wellbeing and Innovation. ASIC scored above the APS average across all three indices.

The ASIC Enterprise Agreement 2019–22 was approved by the Fair Work Commission in May 2019. The first 2% per annum salary increase under the agreement also took effect in May.

**For more information on employment data, see Appendix 8.1**

## Recruitment

We are committed to investing in our workforce and we continue to recruit people from a wide variety of disciplines, including law, finance, economics, statistics and analytics, business and accounting, mathematics, arts and social science, and information technology and computer science.

## Staff benefits

We continued to provide professional development and other benefits for staff in 2018–19, such as:

- up to 15.4% superannuation contribution
- annual performance bonus paid to ASIC 4 and executive level employees **(for ASIC's 2018–19 performance payments, see Table 8.1.8)**
- reward and recognition programs, including individual and team awards
- payment of relevant professional association memberships
- a study assistance program with employees supported in their studies across a range of disciplines, including IT and data analytics, leadership, applied finance and law
- flexible working arrangements.

2019 graduates with Commissioners Sean Hughes and Danielle Press.

## Graduate Program

In 2019, ASIC received over 2,000 graduate applications and was recognised as a Top Graduate Employer by the Australian Association of Graduate Employers. ASIC was ranked #1 in the Australian Government category.

ASIC has a well-established national 18-month Graduate Program, providing on-the-job training, structured development opportunities, and rotation through different teams. During the program, graduates receive significant professional development in both business and interpersonal skills.

Graduates progress through a multistaged recruitment process that enables us to select a diverse range of candidates. To further support ASIC's strategic priorities, we have doubled our intake of graduates from mathematics, statistics and analytics disciplines. This year, we employed 24 graduates. Next year, we intend to further expand this valuable program and employ over 50 graduates.

### Testimonials from recent ASIC graduates

#### Sabrina Mobbs – law graduate 2018

Through the Graduate Program, I rotated through four teams across ASIC which exposed me to incredibly varied work and allowed me to better understand and appreciate the broad mandate ASIC has. I completed rotations in Enforcement, Markets, Strategy and Corporations.

The work I did across these teams ranged from contributing to the case theory for a large investigation into directors' duties and attending onsite at investment banks to reviewing disclosure documents for prospective capital raisings and writing briefs to the Commission.

### Roger Samuel – arts and social sciences graduate 2018

I joined ASIC because I wanted to help ensure that all Australians can trust our financial system, which we rely on every day to provide a roof over our head, to protect ourselves against life's unknowns, and to save for the future. The ASIC Graduate Program was particularly appealing to me because I was able to rotate through four very different teams and see the regulatory system from the law reform process all the way through to civil and criminal litigation.

I've thoroughly enjoyed the Graduate Program, in particular the supportive managers as they have always prioritised my learning to help me understand the purpose behind the work that we do.


ASIC's 2018 graduates with John Brogden, Chair of Lifeline. Our graduates have raised more than $15,000 for Lifeline Australia, as part of their graduate fundraising project.

## Mentoring

We provide our people with opportunities to participate in a range of mentoring programs. In 2018–19, these included the following.

**ASIC's mentoring program:** Developing our capability at all levels, in areas such as regulatory professionalism, learning agility, technological adeptness, communication skills, business skills and leadership skills. This year, 136 people (69 mentees and 67 mentors) participated in the program.

**Women in Banking and Finance:** Conducted externally, this mentoring program supports women preparing for senior leadership roles. This year, four ASIC leaders participated as mentees and four ASIC senior executives participated as mentors.

**Women in Law Enforcement Strategy (WILES):** A 10-month formal mentoring program to address the under-representation of women in law enforcement agencies, particularly at senior levels. This year, five ASIC leaders participated in this program as mentees.

## Learning

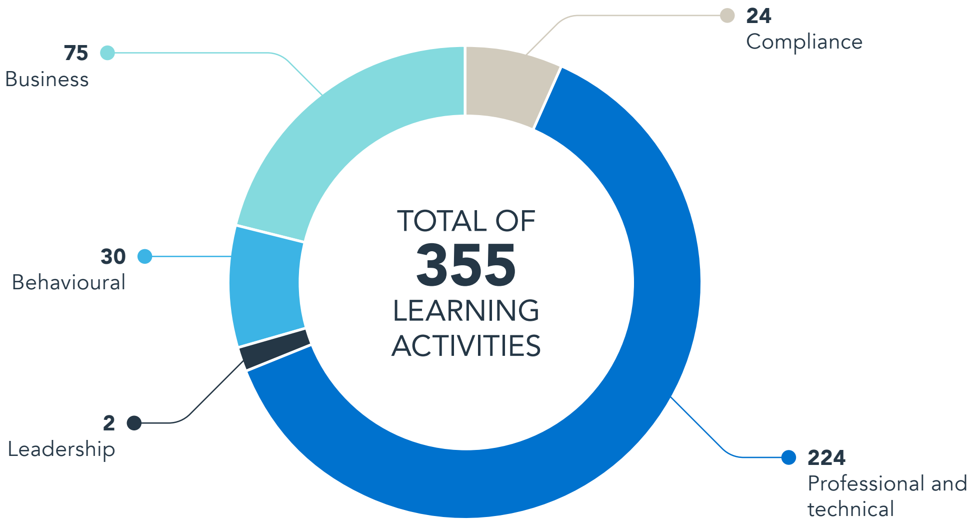
ASIC's people participated in over 20,000 learning activities covering capabilities outlined in our organisational learning framework and our professional and technical learning frameworks.

Our professional and technical learning frameworks focus on building and maintaining capability in regulatory practice, enforcement, law, data analytics, accounting and auditing.

We develop our teams' capabilities through both formal and on-the-job learning activities. Our Learning team, in partnership with our Professional and Technical Learning Networks, Communities of Practice and team Learning Champions, sponsor, guide, develop and deliver capability building activities.

While we continue to develop our future capabilities in data analytics, emerging technologies and stakeholder engagement, we are expanding our focus to include:

- reviewing and refreshing our regulatory practice learning framework, and developing new learning activities and resources to support this
- developing a suite of learning activities to support our Close and Continuous Monitoring and supervisory teams
- piloting a capability assessment and planning tool online for implementation across ASIC in 2019–20
- developing a new leadership capability framework to guide learning and talent activities to support ASIC's management team.




## Work health and safety

We proactively maintain work health and safety through our case management and responses to incidents that have the potential for injury. This approach has had excellent results, with ASIC being the only Commonwealth agency to receive a refund on its premium from Comcare.

We are promoting a culture of risk awareness and welcome our teams' engagement in conducting risk assessments and identifying potential areas of harm.

This year, we introduced a new mental health and wellbeing program, developed to help people leaders recognise and respond to signs of emotional distress.

Our flu vaccination program resulted in 53.6% participation and we continued to train and support our Health and Safety Representatives, First Aid Officers and Harassment Contact Officers.

Work has progressed on the revised Work Health and Safety Management System, with new policies, procedures and guidelines developed, including on fatigue management and dealing with threats of self-harm and violence.

# 6.2 Diversity and inclusion at ASIC

We recognise the value of a diverse workforce and an inclusive culture, and we actively encourage diversity of thought to ensure a fair, strong and efficient financial system for all Australians.

Our approach to diversity and inclusion is governed by the ASIC Diversity Council.

This year, ASIC's diversity and inclusion strategies achieved:

- our commitment to a 50/50 gender-balanced leadership team at the Senior Executive Service (SES) level, with women comprising 52% of senior executives
- an increase in the workforce of those identifying as Indigenous (1.35%), up from 1.09% the previous year
- an increase of 12% in the Australian Workplace Equality Index, which measures LGBTIQ+ workplace inclusion
- 215 attendees across four 'Women in ASIC – Communities of Practice' events.

**For more information on the diversity of ASIC's workforce, see Appendix 8.1**

## Women in ASIC

ASIC supports women in leadership and senior positions, as part of our inclusion and diversity strategy. We met our voluntary target of 50% women in senior positions in 2018–19, including our target for equal representation in Executive Level 1, Executive Level 2 and SES positions.

The Women in ASIC Committee delivers:

- 'Keeping You Connected' events for ASIC employees on extended leave, including parents. We invite people on extended leave to come into the office to socialise and keep up to date with developments
- continued Communities of Practice quarterly events to discuss topics related to women in leadership and workforce participation. Highlights this year included journalist Virginia Trioli speaking about the changing nature of social media and the Hon. Justice Anne Ferguson, Chief Justice of the Supreme Court of Victoria, who spoke about becoming the first solicitor to be appointed Victoria's Chief Justice
- our popular annual 'Bring Your Daughter to Work' event.

Ayesha Budd participating in a 'Bring Your Daughter to Work' event, where we organised a mini exchange market to explain the concept of shares and how exchange markets work.

### ‘Balance for Better’ with Elizabeth Broderick AO

Australia’s longest serving Sex Discrimination Commissioner (2007–15), Elizabeth Broderick AO, joined us for International Women’s Day. This year’s theme was ‘Balance for Better’. During a Q&A session with Commissioner Danielle Press, Elizabeth spoke about tackling discrimination, flexible working, and keeping emotionally replenished.

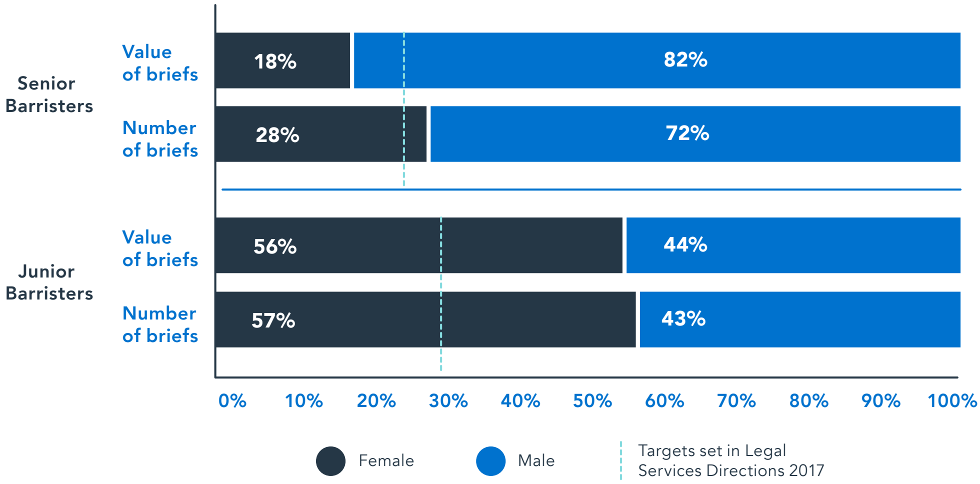
This event was hosted by Women in ASIC and concluded with the annual Women in Leadership award, which went to Diana Steicke from ASIC’s Assessment and Intelligence team. Diana received the Women in Leadership award for her work on the development of ASIC’s Small Business Strategy. Diana has strengthened the cohesion and collaboration between ASIC teams that engage with small business.


Eleni Atsalakis, Joanna Greco, Elizabeth Broderick AO and Commissioners Danielle Press and Cathie Armour celebrate International Women’s Day.

## Equitable gender briefing

As a result of ASIC's proactive effort to ensure that we brief female barristers equitably, the proportion of female barristers we brief has increased significantly in recent years. ASIC is on track to meet long-term targets set by the Law Council of Australia to ensure that at least 30% of all briefed or selected barristers are women and/or that women account for 30% of the value of all barristers' brief fees paid.

ASIC briefings to barristers 2018–19, by gender




This year, we significantly exceeded the targets set by the Legal Services Directions 2017 for junior barristers and exceeded the target for the number of briefs for senior female barristers. While ASIC has not yet met the target for the value of briefs to senior female barristers, the steps ASIC has taken in recent years will assist in meeting this target in the future.

In addition to signing up to the Law Council of Australia's Equitable Briefing Policy, ASIC is a founding signatory to the Charter of Commitment to achieve gender equitable briefing practices in commercial litigation. This charter is part of a joint initiative by the Commercial Bar Association of Victoria, members of the judiciary, and the Victorian Equal Opportunity and Human Rights Commission.

## Rainbow Network

Our LGBTIQ+ Network continues to raise awareness about LGBTIQ+ issues in the workplace and provide support to ASIC employees. This year, ASIC participated in the annual Australian Workplace Equality Index, which measures LGBTIQ+ workplace inclusion, and received an increase of 12% in the index.


Ross Wetherbee, President of Wear it Purple, being presented with a cheque at our 2019 IDAHBIT celebration.

The Rainbow Network also marked International Day Against Homophobia, Biphobia, Interphobia and Transphobia (IDAHBIT). Commissioner Danielle Press and Ross Wetherbee, President of Wear it Purple, spoke at an event highlighting the importance of a workplace culture of celebrating difference, and showcasing the mission of Wear it Purple, which fosters supportive, safe, empowering and inclusive environments for LGBTIQ+ young people.

## Reconciliation Action Plan

ASIC is progressing towards the measurable targets included in its Stretch Reconciliation Action Plan (RAP) 2017–20, launched in April 2018. This ongoing work shows ASIC's commitment to the journey of reconciliation.

The focus areas of our RAP include:

- building real, respectful and long-lasting relationships with Indigenous employees and external stakeholders
- ensuring a culturally sensitive and aware workplace
- increasing and retaining Indigenous people at ASIC.


One of the new plaques installed in ASIC workplaces Australia-wide.

Examples of the RAP initiatives achieved include the Aboriginal and Torres Strait Islander flags being displayed in ASIC reception areas, and ASIC installing plaques acknowledging the traditional owners and paying respect to their cultures and elders.

National Reconciliation Week celebrations in 2019 were our biggest yet. ASIC's Sydney employees participated in an Indigenous food knowledge event with external educators sharing knowledge on native meats, herbs and spices cultivated

Members of ASIC's Indigenous Staff Network Group at the first offsite in Sydney.

and used by Aboriginal and Torres Strait Islander peoples for thousands of years. This was followed by live performances in Sydney and Brisbane, which were video conferenced across all ASIC offices, showcasing Indigenous culture through music and dance.

We have also been focusing on building cultural awareness in the workplace, including having an Indigenous consultant provide face-to-face Indigenous cultural training in Sydney, Melbourne, Hobart, Canberra and Adelaide and successfully expanding the use of Indigenous catering for ASIC's RAP events and other ASIC events.

## Indigenous employment initiatives at ASIC

Aboriginal and Torres Strait Islander employment is a key objective of ASIC's RAP.

Our employment initiatives include:

- participation in the Indigenous Australian Government Development Program
- participation in the Indigenous Apprenticeship Program
- supporting two team members to take part in the Jawun secondment program.

This year, the Indigenous Staff Network Group, which includes people from a number of ASIC offices, had its first offsite in Sydney and participated in networking and professional development activities.

## Multicultural access and equity

ASIC's Multicultural Plan for 2018–19 focuses on the culturally and linguistically diverse communities that access ASIC services.

This year, the Multicultural Access and Equity Committee:

- continued to monitor customer engagement with ASIC's telephone interpreter service
- offered ASIC employees the opportunity to register in the HR management system as an interpreter.

ASIC's Developing Cultural Awareness training continues to have a high completion rate (97% of our people).

### ASIC celebrates International Day of People with Disability with Annabelle Williams OAM

On 3 December 2018, ASIC celebrated International Day of People with Disability with guest speaker Annabelle Williams OAM. Annabelle, a former Paralympic swimmer for Australia and current Legal Counsel for the Australian Olympic Committee, provided her insights on the importance of inclusion and accessibility in the workplace and shared her personal and professional experience of living with a disability. Annabelle reminded us that diversity, in all its forms, is an opportunity.


Annabelle Williams OAM spoke on empowering people with disabilities and ensuring inclusiveness and equality.

## Accessibility

An accessible and inclusive workplace is a priority for ASIC. For example, ASIC's websites are designed to be read by screen readers, transcripts and captions are available for all video files, and a text equivalent is available for all images. The Digital Assistance team in ASIC's Contact Centre supports customers requiring additional assistance with online transactions.

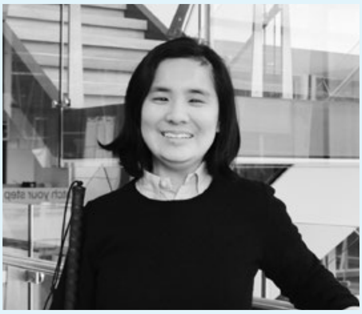
We aim to eliminate barriers to accessibility, promote disability awareness initiatives across ASIC, and encourage training and career development opportunities for people with a disability.

This year, ASIC participated in the Australian Network on Disability's Access and Inclusion Index for the first time, ranking 11th of the 23 participating organisations.

We are making progress against our Accessibility Action Plan, including accessing the Government's RecruitAbility program to recruit graduates in our 2019 intake and having employees complete our Disability Awareness e-learning module.

ASIC also supports the National Disability Strategy 2010–2020, which sets out a 10-year national policy framework to improve the lives of people with disability, promote participation, and create a more inclusive society. The second progress report can be found at **www.dss.gov.au**.

### Rebecca Wong – law graduate 2019



Since joining ASIC as a law graduate six months ago, I have been amazed and humbled by the support I've received from people at all levels of the organisation. An activity-based work environment certainly presents challenges when you're blind and navigating ASIC's internal data management systems with a screen reader hasn't been easy. ASIC's Work Health and Safety team has offered me invaluable assistance in this regard, so the difficulties I have encountered have been hindrances rather than insurmountable barriers. My contact in WHS has helped me organise orientation around the office and obtain the assistive technology I need.

Above all, my colleagues in Financial Services Enforcement and the Chief Legal Office have been patient, open-minded and flexible, ensuring I am able to thrive in and contribute to an organisation whose values and work I believe in. For me, inclusivity isn't about doing everything right from the get-go; it's about learning, improving, and being open to change.

# 7

# Financial Statements

# Contents

# Independent Auditor's Report

**INDEPENDENT AUDITOR'S REPORT**

**To the Treasurer**

**To the Minister for Revenue and Financial Services**

## Opinion

In my opinion, the financial statements of the Australian Securities and Investments Commission ('the Entity') for the year ended 30 June 2019:

(a) comply with Australian Accounting Standards – Reduced Disclosure Requirements and the *Public Governance, Performance and Accountability (Financial Reporting) Rule 2015*; and

(b) present fairly the financial position of the Entity as at 30 June 2019 and its financial performance and cash flows for the year then ended.

The financial statements of the Entity, which I have audited, comprise the following statements as at 30 June 2019 and for the year then ended:

- Statement by the Accountable Authority and Chief Financial Officer;
- Statement of Comprehensive Income;
- Statement of Financial Position;
- Statement of Changes in Equity;
- Cash Flow Statement;
- Administered Schedule of Comprehensive Income;
- Administered Schedule of Assets and Liabilities;
- Administered Reconciliation Schedule;
- Administered Cash Flow Statement; and
- Notes to and forming part of the financial statements, comprising an Overview and other explanatory information.

## Basis for opinion

I conducted my audit in accordance with the Australian National Audit Office Auditing Standards, which incorporate the Australian Auditing Standards. My responsibilities under those standards are further described in the *Auditor's Responsibilities for the Audit of the Financial Statements* section of my report. I am independent of the Entity in accordance with the relevant ethical requirements for financial statement audits conducted by the Auditor-General and his delegates. These include the relevant independence requirements of the Accounting Professional and Ethical Standards Board's APES 110 *Code of Ethics for Professional Accountants* (the Code) to the extent that they are not in conflict with the *Auditor-General Act 1997*. I have also fulfilled my other responsibilities in accordance with the Code. I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my opinion.

## Accountable Authority's responsibility for the financial statements

As the Accountable Authority of the Entity, the Chair is responsible under the *Public Governance, Performance and Accountability Act 2013* (the Act) for the preparation and fair presentation of annual financial statements that comply with Australian Accounting Standards – Reduced Disclosure Requirements and the rules made under the Act. The Chair is also responsible for such internal control as the Chair determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

GPO Box 707 CANBERRA ACT 2601
19 National Circuit BARTON ACT
Phone (02) 6203 7300 Fax (02) 6203 7777

In preparing the financial statements, the Chair is responsible for assessing the ability of the Entity to continue as a going concern, taking into account whether the Entity's operations will cease as a result of an administrative restructure or for any other reason. The Chair is also responsible for disclosing, as applicable, matters related to going concern and using the going concern basis of accounting unless the assessment indicates that it is not appropriate.

### Auditor's responsibilities for the audit of the financial statements

My objective is to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes my opinion. Reasonable assurance is a high level of assurance,but is not a guarantee that an audit conducted in accordance with the Australian National Audit Office Auditing Standards will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of the financial statements.

As part of an audit in accordance with the Australian National Audit Office Auditing Standards, I exercise professional judgement and maintain professional scepticism throughout the audit. I also:

- identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for my opinion. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control;
- obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Entity's internal control;
- evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates and related disclosures made by the Accountable Authority;
- conclude on the appropriateness of the Accountable Authority's use of the going concern basis of accounting and, based on the audit evidence obtained, whether a material uncertainty exists related to events or conditions that may cast significant doubt on the Entity's ability to continue as a going concern. If I conclude that a material uncertainty exists, I am required to draw attention in my auditor's report to the related disclosures in the financial statements or, if such disclosures are inadequate, to modify my opinion. My conclusions are based on the audit evidence obtained up to the date of my auditor's report. However, future events or conditions may cause the Entity to cease to continue as a going concern; and
- evaluate the overall presentation, structure and content of the financial statements, including the disclosures, and whether the financial statements represent the underlying transactions and events in a manner that achieves fair presentation.

I communicate with the Accountable Authority regarding, among other matters, the planned scope and timing of the audit and significant audit findings, including any significant deficiencies in internal control that I identify during my audit.

Australian National Audit Office

Lorena Skipper
Acting Executive Director
Delegate of the Auditor-General

Canberra
20 August 2019

# Statement by the Accountable Authority and Chief Financial Officer

In our opinion, the attached financial statements for the Year ended 30 June 2019 comply with subsection 42(2) of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act), and are based on properly maintained financial records as per subsection 41(2) of the PGPA Act.

In our opinion, at the date of this statement, there are reasonable grounds to believe that the Australian Securities and Investments Commission will be able to pay its debts as and when they fall due.

J.R.F. Shipton
Chair
20 August 2019

E. L. Hodgson
Chief Financial Officer
20 August 2019

# Statement of Comprehensive Income

## FOR THE YEAR ENDED 30 JUNE 2019

| | Notes | 2019 $'000 | 2018 $'000 |
|---|---|---|---|
| **NET COST OF SERVICES** | | | |
| **Expenses** | | | |
| Employee benefits | 1.1A | **227,035** | 209,526 |
| Suppliers | 1.1B | **157,468** | 149,915 |
| Depreciation and amortisation | 3.2A | **46,122** | 40,709 |
| Finance costs – unwinding of restoration provision | | **224** | 30 |
| Impairment loss allowance on financial instruments – trade and other receivables | 7.2B | **589** | 859 |
| Write-down and impairment of other assets | 1.1C | **205** | 71 |
| **Total expenses** | | **431,643** | 401,110 |
| | | | |
| **LESS:** | | | |
| **Own-source revenue** | | | |
| Rendering of services | | **3,282** | 1,943 |
| Operating sublease rent and property recoveries | | **2,460** | 2,674 |
| Other revenue | 1.2A | **5,701** | 36,258 |
| **Total own-source revenue** | | **11,443** | 40,875 |
| | | | |
| **Gains** | | | |
| Reversal of write-downs and impairment | 3.1B | **510** | 1,294 |
| **Total gains** | | **510** | 1,294 |
| | | | |
| **Net Cost of Services** | | **419,690** | 358,941 |
| | | | |
| **Total revenue from Government** | 1.2B | **374,313** | 348,041 |
| **Surplus/(Deficit)** | | **(45,377)** | (10,900) |
| | | | |
| **OTHER COMPREHENSIVE INCOME** | | | |
| **Items not subject to subsequent reclassification to net cost of services** | | | |
| Changes in asset revaluation reserve | | **5,363** | – |
| **Total comprehensive income/(loss)** | | **(40,014)** | (10,900) |

The above statement should be read in conjunction with the accompanying notes.

# Statement of Financial Position

## AS AT 30 JUNE 2019

| | Notes | 2019 $'000 | 2018 $'000 |
|---|---|---|---|
| **ASSETS** | | | |
| **Financial assets** | | | |
| Cash and cash equivalents | 3.1A | **65,221** | 62,703 |
| Trade and other receivables | 3.1B | **135,158** | 122,430 |
| **Total financial assets** | | **200,379** | 185,133 |
| **Non-financial assets** | | | |
| Leasehold improvements | 3.2A | **28,802** | 26,057 |
| Plant and equipment | 3.2A | **20,661** | 22,102 |
| Computer software | 3.2A | **86,855** | 90,445 |
| Prepayments | | **10,377** | 13,846 |
| **Total non-financial assets** | | **146,695** | 152,450 |
| **Total assets** | | **347,074** | 337,583 |
| **LIABILITIES** | | | |
| **Payables** | | | |
| Suppliers | 3.3A | **49,621** | 42,485 |
| Other payables | 3.3B | **40,113** | 40,540 |
| **Total payables** | | **89,734** | 83,025 |
| **Provisions** | | | |
| Employee provisions | 6.1A | **76,017** | 68,455 |
| Other provisions | 3.4A | **18,280** | 14,685 |
| **Total provisions** | | **94,297** | 83,140 |
| **Total liabilities** | | **184,031** | 166,165 |
| **Net assets** | | **163,043** | 171,418 |
| **EQUITY** | | | |
| Contributed equity | | **436,058** | 404,419 |
| Reserves | | **22,500** | 17,137 |
| Accumulated deficit | | **(295,515)** | (250,138) |
| **Total equity** | | **163,043** | 171,418 |

The above statement should be read in conjunction with the accompanying notes.

# Statement of Changes in Equity

## FOR THE YEAR ENDED 30 JUNE 2019

| | Notes | 2019 $'000 | 2018 $'000 |
|---|---|---|---|
| CONTRIBUTED EQUITY | | | |
| **Opening balance** | | **404,419** | 364,970 |
| **Transactions with owners** | | | |
| **Contributions by owners** | | | |
| Equity injections – Appropriations | | **7,294** | 22,185 |
| Departmental capital budget | | **24,345** | 17,264 |
| **Total transactions with owners** | | **31,639** | 39,449 |
| **Closing balance as at 30 June** | | **436,058** | 404,419 |
| RETAINED EARNINGS | | | |
| **Opening balance** | | **(250,138)** | (235,316) |
| s51 withholding of prior year appropriations | | **–** | (3,922) |
| **Comprehensive income** | | | |
| Surplus/(Deficit) for the period | | **(45,377)** | (10,900) |
| **Total comprehensive loss** | | **(45,377)** | (10,900) |
| **Closing balance as at 30 June** | | **(295,515)** | (250,138) |
| ASSET REVALUATION RESERVE | | | |
| **Opening balance** | | **17,137** | 17,137 |
| **Comprehensive income** | | | |
| Other comprehensive income | | **5,363** | – |
| **Total comprehensive income** | | **5,363** | – |
| **Closing balance as at 30 June** | | **22,500** | 17,137 |
| TOTAL EQUITY | | | |
| **Opening balance** | | **171,418** | 146,791 |
| s51 withholding of prior year appropriations | | **–** | (3,922) |
| **Comprehensive income** | | | |
| Other comprehensive income | | **5,363** | – |
| Surplus/(Deficit) for the period | | **(45,377)** | (10,900) |
| **Total comprehensive loss** | | **(40,014)** | (10,900) |
| **Transactions with owners** | | | |
| **Contributions by owners** | | | |
| Equity injections – Appropriations | | **7,294** | 22,185 |
| Departmental capital budget | 5.1A | **24,345** | 17,264 |
| **Total transactions with owners** | | **31,639** | 39,449 |
| **Closing balance as at 30 June** | | **163,043** | 171,418 |

The above statement should be read in conjunction with the accompanying notes.

# Cash Flow Statement

## FOR THE YEAR ENDED 30 JUNE 2019

| | Notes | 2019 $'000 | 2018 $'000 |
|---|---|---|---|
| **OPERATING ACTIVITIES** | | | |
| **Cash received** | | | |
| Appropriations | | **370,324** | 390,181 |
| Operating cash received | | **3,282** | 1,920 |
| Net GST received | | **14,261** | 15,882 |
| Cost recoveries | | **3,649** | 32,649 |
| Other cash received | | **5,008** | 11,449 |
| **Total cash received** | | **396,523** | 452,081 |
| **Cash used** | | | |
| Employees | | **220,589** | 210,220 |
| Suppliers | | **162,252** | 164,096 |
| Transfers to the Official Public Account | | **12,032** | 47,827 |
| **Total cash used** | | **(394,873)** | (422,143) |
| **Net cash from/(used by) operating activities** | | **1,651** | 29,938 |
| **INVESTING ACTIVITIES** | | | |
| **Cash used** | | | |
| Purchase of leasehold improvements, plant and equipment and intangibles | | **38,160** | 46,448 |
| **Net cash (used by) investing activities** | | **(38,160)** | (46,448) |
| **FINANCING ACTIVITIES** | | | |
| **Cash received** | | | |
| Appropriations – contributed equity | | **39,027** | 42,014 |
| **Net cash from financing activities** | | **39,027** | 42,014 |
| **Net increase/(decrease) in cash held** | | **2,518** | 25,504 |
| Cash and cash equivalents at the beginning of the reporting period | | **62,703** | 37,199 |
| **Cash and cash equivalents at the end of the reporting period** | 3.1A | **65,221** | 62,703 |

The above statement should be read in conjunction with the accompanying notes.

# Administered Schedule of Comprehensive Income

## FOR THE YEAR ENDED 30 JUNE 2019

| | Notes | 2019 $'000 | 2018 $'000 |
|---|---|---|---|
| **NET COST OF SERVICES** | | | |
| **Expenses** | | | |
| Grants | 2.1A | **12,953** | 3,552 |
| Impairment loss allowance on financial instruments | 2.1B | **61,944** | 53,948 |
| Claims for unclaimed monies | 2.1C | **53,521** | 65,813 |
| Promotional costs for MoneySmart initiatives | | **570** | 547 |
| **Total expenses** | | **128,988** | 123,860 |
| **LESS:** | | | |
| **Own-source revenue** | | | |
| **Taxation revenue** | | | |
| Fees | | **800,216** | 760,857 |
| Supervisory cost recovery levies | | **50,157** | 27,824 |
| **Total taxation revenue** | | **850,373** | 788,681 |
| **Non-taxation revenue** | | | |
| Supervisory cost recovery levies | | **223,204** | 208,542 |
| Fees and fines | 2.2A | **199,054** | 219,023 |
| Unclaimed monies lodgements | 2.2B | **70,862** | 88,477 |
| **Total non-taxation revenue** | | **493,120** | 516,042 |
| **Total revenue** | | **1,343,493** | 1,304,723 |
| **Net contribution by services** | | **1,214,505** | 1,180,863 |

The above schedule should be read in conjunction with the accompanying notes.

# Administered Schedule of Assets and Liabilities

## AS AT 30 JUNE 2019

| | Notes | 2019 $'000 | 2018 $'000 |
|---|---|---|---|
| **ASSETS** | | | |
| **Financial assets** | | | |
| Cash and cash equivalents | | **1,859** | 1,641 |
| Supervisory cost recovery levies receivable | | **282,438** | 236,366 |
| Fees and fines receivable | 4.1A | **143,150** | 137,087 |
| Trade and other receivables | 4.1B | **8,600** | 6,424 |
| **Total assets administered on behalf of Government** | | **436,047** | 381,518 |
| **LIABILITIES** | | | |
| **Payables and provisions** | | | |
| Suppliers and other payables | 4.2A | **31,707** | 29,872 |
| Unclaimed monies provisions | 4.2B | **347,790** | 348,936 |
| **Total liabilities administered on behalf of Government** | | **379,497** | 378,808 |
| **Net assets/(liabilities)** | | **56,550** | 2,710 |

The above schedule should be read in conjunction with the accompanying notes.

# Administered Reconciliation Schedule

## AS AT 30 JUNE 2019

| | 2019 $'000 | 2018 $'000 |
|---|---|---|
| **Opening assets less liabilities as at 1 July** | **2,710** | (241,167) |
| **Net contribution by services:** | | |
| Administered income | **1,343,493** | 1,304,723 |
| Administered expenses | **(128,988)** | (123,860) |
| | **1,214,505** | 1,180,863 |
| **Transfers (to)/from the Australian Government** | | |
| Appropriation transfers from Official Public Account: | | |
| Special (unlimited) and ordinary appropriations | | |
| Appropriation Act No. 1 | **15,004** | 5,566 |
| Banking Act unclaimed monies | **16,535** | 28,109 |
| Life Insurance Act unclaimed monies | **4,081** | 3,609 |
| Section 77 PGPA Act | **37,104** | 39,012 |
| Total of appropriation transfers from Official Public Account | **72,724** | 76,296 |
| Administered transfers to Official Public Account | **(1,233,389)** | (1,013,282) |
| **Closing assets less liabilities as at 30 June** | **56,550** | 2,710 |

The above schedule should be read in conjunction with the accompanying notes.

# Administered Cash Flow Statement

## FOR THE YEAR ENDED 30 JUNE 2019

| | 2019 $'000 | 2018 $'000 |
|---|---|---|
| **OPERATING ACTIVITIES** | | |
| **Cash received** | | |
| Corporations Act, National Consumer Credit Protection Act, Business Names Registration (Fees) Act and Superannuation Industry (Supervision) Act | **1,158,389** | 920,811 |
| Corporation Act unclaimed monies | **50,665** | 63,652 |
| Banking Act unclaimed monies | **12,902** | 6,512 |
| Life Insurance Act unclaimed monies | **7,295** | 18,312 |
| **Total cash received** | **1,229,251** | 1,009,287 |
| **Cash used** | | |
| Refunds paid to: | | |
| Company shareholders | **34,050** | 36,613 |
| Deposit-taking institution account holders | **16,537** | 28,109 |
| Life insurance policy holders | **4,081** | 3,609 |
| Promotion expenses for MoneySmart Initiatives | **10,528** | 560 |
| Grants | **3,220** | 3,578 |
| Net GST paid | **(46)** | (28) |
| **Total cash used** | **(68,368)** | (72,441) |
| **Net cash from operating activities** | **1,160,883** | 936,846 |
| **Cash from Official Public Account for:** | | |
| Appropriations | **72,724** | 76,296 |
| **Less: Cash to Official Public Account for:** | | |
| Corporations Act, National Consumer Credit Protection Act and Business Names Registration (Fees) Act fees and charges | **1,162,527** | 924,806 |
| Corporations Act unclaimed monies | **50,665** | 63,652 |
| Banking Act unclaimed monies | **12,902** | 6,512 |
| Life Insurance Act unclaimed monies | **7,295** | 18,312 |
| **Total cash to Official Public Account** | **(1,233,389)** | (1,013,282) |
| **Net (decrease) in cash held** | **218** | (140) |
| Cash and cash equivalents at the beginning of the reporting period | **1,641** | 1,781 |
| **Cash and cash equivalents at the end of the reporting period** | **1,859** | 1,641 |

The above schedule should be read in conjunction with the accompanying notes.

# Notes to and forming part of the financial statements

FOR THE YEAR ENDED 30 JUNE 2019

## Overview

### Objectives of the Australian Securities and Investments Commission (ASIC)

ASIC is an independent Commonwealth Government body operating under the *Australian Securities and Investments Commission Act 2001* (ASIC Act) to administer the *Corporations Act 2001*, and other legislation, throughout Australia. ASIC is a not-for-profit entity and our objectives, outlined in s1(2) of the ASIC Act, include:

- the promotion of confident and informed participation of investors and consumers in the financial system;
- the maintenance, facilitation and improvement in the performance of the financial system and the entities within that system in the interests of commercial certainty, reducing business costs, and the efficiency and development of the economy; and
- to administer the laws that confer functions and powers on it effectively and with a minimum of procedural requirements.

ASIC collects and administers revenue under the *Corporations Act 2001* and the *National Consumer Credit Protection Act 2009* and prescribed fees set by the *Corporations (Fees) Act 2001*, the *Corporations (Review Fees) Act 2003*, the *National Consumer Credit Protection Act 2009*, the Business Names Registration (Fees) Regulations 2010 and *Superannuation Industry (Supervision) Act 1993*. In addition, ASIC collects taxation revenue under the *ASIC Supervisory Cost Recovery Levy Act 2017*, the *ASIC Supervisory Cost Recovery Levy (Collection) Act 2017*, the *ASIC Supervisory Cost Recovery Levy (Consequential Amendments) Act 2017*, the ASIC Supervisory Cost Recovery Levy Regulations 2017; and the ASIC Supervisory Cost Recovery Levy (Consequential Amendments) Regulations 2017. This revenue is not available to ASIC and is remitted to the Official Public Account (OPA). Transactions and balances relating to these fees are reported as administered items. Administered items are distinguished by shading in these financial statements.

ASIC is structured to deliver a single outcome, and the result is in the Statement of Comprehensive Income:

> *To allow markets to allocate capital efficiently to fund the real economy by promoting investor and financial consumer trust and confidence, facilitating fair, orderly and transparent markets and delivering efficient and accessible registration.*

The continued existence of ASIC in its present form and with its present programs is dependent on Government policy and on continuing funding by Parliament for ASIC's administration and programs.

### Basis of preparation

The financial statements are general purpose financial statements and are required by section 42 of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act).

The financial statements and notes have been prepared in accordance with the:

› Public Governance, Performance and Accountability (Financial Reporting) Rule 2015 (FRR; and

› Australian Accounting Standards – Reduced Disclosure Requirement issued by the Australian Accounting Standards Board (AASB) that apply for the reporting period.

The financial statements have been prepared on an accrual basis and in accordance with the historical cost convention, except for certain assets and liabilities at fair value. Except where stated, no allowance is made for the effect of changing prices on the results or the financial position.

The financial statements are presented in Australian dollars and values are rounded to the nearest thousand dollars unless otherwise specified.

### New Accounting Standards

From 1 July 2018, AASB 139 *Financial Instruments: Recognition and Measurement* was replaced by AASB 9 *Financial Instruments*. ASIC's financial instruments consist of cash and cash equivalents, trade debtors, trade creditors and grants payable. Under the new standard ASIC uses the simplified approach and continues to measure financial instruments at amortised cost. This is shown in Note 7.2. All other new accounting standards, amendments to standards and interpretations that were issued prior to the sign-off date and are applicable to the current reporting period did not have a material effect and are not expected to have a future material effect on ASIC's financial statements.

### Taxation

ASIC is exempt from all forms of taxation except Fringe Benefits Tax (FBT) and the Goods and Services Tax (GST).

## Reporting of Administered activities

Administered revenues, expenses, assets, liabilities and cash flows are disclosed in the Administered Schedules and related notes.

Except where otherwise stated, administered items are accounted for on the same basis and using the same policies as for departmental items, including the application of Australian Accounting Standards.

## Prior period adjustments

In 2018–19, ASIC made a prior year adjustment relating to the over accrual of revenue relating to the supervision of Australia's financial markets and competition for market services and the Supervisory cost recovery levies. The table below summarises the adjustments to the prior year.

| | Note | 2018 $'000 | Adjustments $'000 | 2018 (Restated) $'000 |
|---|---|---|---|---|
| **Administered Schedule of Comprehensive Income** | | | | |
| Non-taxation revenue | | | | |
| Supervisory cost recovery levies | | 219,548 | (11,006) | 208,542 |
| **Statement of Financial Position** | | | | |
| Financial Assets | | | | |
| Supervisory cost recovery levies receivable | | 247,372 | (11,006) | 236,366 |
| Fees and fine receivable | 4.1A | 137,812 | (725) | 137,087 |
| **Administered Reconciliation Schedule** | | | | |
| Opening assets less liabilities as at 1 July | | (240,443) | (725) | (241,168) |
| Administered Income | | 1,315,730 | (11,006) | 1,304,724 |
| Closing assets less liabilities as at 30 June | | 14,441 | (11,731) | 2,710 |

## Events after the reporting period

There were no events occurring after balance date that had a material effect on the Departmental or Administered financial statements.

# Note 1: Departmental financial performance

This section analyses the financial performance of ASIC for the year ended 30 June 2019

## 1.1 Expenses

| | 2019 $'000 | 2018 $'000 |
|---|---|---|
| **1.1A: Employee benefits** | | |
| Wages and salaries | **167,415** | 155,664 |
| Superannuation | | |
| Defined-benefit schemes | **11,133** | 11,380 |
| Defined-contribution schemes | **21,101** | 19,684 |
| Leave and other entitlements | **28,253** | 19,974 |
| Separation and redundancies[1,2] | **(867)** | 2,824 |
| **Total employee benefits** | **227,035** | 209,526 |

1 Separation and redundancy costs are generally calculated on the basis of two weeks pay for every year of service for each employee with a minimum of four weeks and a maximum of 48 weeks.

2 The Separation and redundancies amount of ($0.867m) is mainly attributable to a downward revision to provisions for employee restructuring (refer to Note 6.1A: Employee provisions – Restructuring provision and Note 3.4A: Other provisions – Provision for restructuring).

### Accounting Policy

Accounting policies for employee related expenses are detailed in Note 6. People and relationships.

| | 2019 $'000 | 2018 $'000 |
|---|---|---|
| **1.1B: Suppliers** | | |
| **Goods and services supplied or rendered** | | |
| Legal and forensic costs | **32,382** | 27,835 |
| Consultants and specialist services | **28,843** | 27,249 |
| Office computer and software expenses | **27,896** | 28,394 |
| Information costs | **9,189** | 9,489 |
| Property-related outgoings | **8,180** | 9,161 |
| Travel | **6,260** | 5,048 |
| Other goods and services | **4,354** | 3,968 |
| Learning and development | **3,884** | 3,445 |
| Bank fees | **2,888** | 2,730 |
| Communications | **2,661** | 2,227 |
| Postage and freight | **2,405** | 2,951 |
| Security | **2,008** | 1,985 |
| Recruitment | **1,569** | 1,463 |
| **Total goods and services supplied or rendered** | **132,519** | 125,945 |
| | | |
| Goods supplied | **2,142** | 2,244 |
| Services rendered | **130,377** | 123,701 |
| **Total goods and services supplied or rendered** | **132,519** | 125,945 |
| | | |
| **Other suppliers** | | |
| Operating lease rentals | **22,736** | 21,926 |
| Workers compensation expense | **2,024** | 1,930 |
| Fringe benefits tax | **189** | 114 |
| **Total other suppliers** | **24,949** | 23,970 |
| **Total suppliers** | **157,468** | 149,915 |

### Leasing commitments

ASIC, in its capacity as lessee, has a range of long-term leases with fixed dates for expiry. In 2018–19, ASIC entered into new leases in Adelaide and Traralgon.

| | 2019 $'000 | 2018 $'000 |
|---|---|---|
| **Commitments for minimum lease payments in relation to non-cancellable operating leases are payable as follows:** | | |
| Within 1 year | **22,565** | 26,902 |
| Between 1 to 5 years | **56,307** | 43,445 |
| More than 5 years | **16,575** | 32,597 |
| **Total operating lease commitments** | **95,447** | 102,944 |

#### Accounting Policy

Operating lease payments (net of lease incentives), are expensed on a straight line-basis, which is representative of the pattern of benefits derived from the leased assets.

| **1.1C: Write-down and impairment of other assets** | | |
|---|---|---|
| Write-off of plant & equipment | **205** | 71 |
| **Total write-down and impairment of other assets** | **205** | 71 |

## 1.2 Own-source revenue

#### Accounting Policy

**Rendering of services**

Revenue from rendering of services is recognised when the resources have been purchased. Revenue is recognised when:

- The amount of revenue, stage of completion and transaction costs incurred can be reliably measured; and
- The probable economic benefits associated with the transaction will flow to ASIC.

**Operating lease revenue**

Operating sublease revenue is recognised as revenue on commencement of the lease under the Memorandum of Understanding. The leases terms are on a 12 month rolling basis.

| | 2019<br>$'000 | 2018<br>$'000 |
|---|---|---|
| **1.2A: Other revenue** | | |
| Cost recoveries[1] | **3,648** | 34,094 |
| Other[2] | **2,053** | 2,164 |
| **Total other revenues** | **5,701** | 36,258 |

1 Amounts recovered by ASIC for court costs, investigations, professional fees, legal costs and prosecution disbursements.

2 Includes resources received free of charge (auditors' remuneration) of $0.380m (2018: $0.360m).

## Accounting Policy

### Resources received free of charge

Resources received free of charge are recognised as revenue when, and only when, a fair value can be reliably determined and the services would have been purchased if they had not been donated. Use of those resources is recognised as an expense. Resources received free of charge are recorded as either revenue or gains depending on their nature.

| | 2019<br>$'000 | 2018<br>$'000 |
|---|---|---|
| **1.2B: Revenue from Government** | | |
| Appropriations: | | |
| Departmental appropriations | **338,096** | 321,762 |
| Departmental special appropriations[3] | **36,217** | 26,279 |
| **Total revenue from Government** | **374,313** | 348,041 |

3 A special account is a limited special appropriation that notionally sets aside an amount that can be expended for a particular purpose. $36.2m of ASIC's 2018–19 ordinary annual appropriation has been allocated to the Enforcement Special Account, which was established to fund the costs arising from the investigation and litigation of matters of significant public interest.

## Accounting Policy

### Revenue from Government

Amounts appropriated for departmental appropriations for the period (adjusted for any formal additions and reductions) are recognised as revenue from Government when ASIC gains control of the appropriation. Appropriations receivable are recognised at their nominal amounts.

# Note 2: Income and expenses administered on behalf of Government

This section analyses the activities that ASIC does not control but administers on behalf of the Government. Unless otherwise noted, the accounting policies adopted are consistent with those applied for departmental reporting.

## 2.1 Administered – expenses

| | 2019 $'000 | 2018 $'000 |
|---|---|---|
| **2.1A: Grants** | | |
| Rendering of services | | |
| Insolvency practitioners | **2,953** | 3,552 |
| Ecstra Foundation[1] | **10,000** | – |
| **Total grants** | **12,953** | 3,552 |

1 In the 2018–19 Budget, the Federal Government provided a one-off grant in administered funding to be provided to the Ecstra Foundation to support initiatives which enhance female financial capability. The grant was paid in June 2019.

### Accounting Policy

ASIC administers payments to registered insolvency practitioners to undertake preliminary investigations of suspected breaches of directors' duties and fraudulent conduct and to report the outcome of their findings to ASIC for further action as appropriate.

Grant liabilities are recognised to the extent that (i) the services required to be performed by the grantee have been performed or (ii) the grant eligibility criteria have been satisfied, but payments due have not been made. When the Government enters into an agreement to make these grants and services, but services have not been performed or criteria satisfied, this is considered a commitment.

| **2.1B: Impairment loss allowance on financial instruments** | | |
|---|---|---|
| Impairment of receivables | **58,374** | 51,251 |
| Waiver of fees and charges owing | **3,570** | 2,697 |
| **Total impairment on financial instruments** | **61,944** | 53,948 |

| | 2019 $'000 | 2018 $'000 |
|---|---|---|
| **2.1C: Claims for unclaimed monies** | | |
| Claims – Bank and deposit taking institution account holders | **9,533** | 2,969 |
| Claims – Life Insurance policy holders | **4,036** | 13,133 |
| Claims – Corporations Act 2001 | **39,952** | 49,711 |
| **Total other expenses** | **53,521** | 65,813 |

### Accounting Policy

Refer to Note 4.1 for the policy pertaining to the impairment of receivables and fee waivers.

In determining whether a fee should be waived in whole or part, ASIC considers the extent to which the company's officers or its representatives contributed to the circumstances of the matter, in accordance with Part 7 of the Finance Minister's Delegation under section 63 of the PGPA Act.

Administered expenses for refunds of unclaimed monies under the *Banking Act 1959*, *Life Insurance Act 1995* and *Corporations Act 2001* are recognised by estimating the value of claims likely to be repaid in respect of unclaimed money collected by ASIC as at balance date. The methodology used to determine the value of probable claims is determined by an independent actuary. Successful claims are paid out of the provision account.

## 2.2 Administered – income

### Accounting Policy

All administered revenues are revenues relating to the course of ordinary activities performed by ASIC on behalf of the Government.

Administered revenue is generated from fees and fines under the following legislation:

- *Corporations (Fees) Act 2001*
- *Corporations (Review Fees) Act 2003*,
- National Consumer Credit Protection (Fees) Regulation 2010,
- Business Names Registration (Fees) Regulation 2012 and
- *Superannuation Industry (Supervision) Act 1993*.

Administered fee revenue is recognised on an accruals basis when:

- the client or the client group can be identified in a reliable manner;
- an amount of prescribed fee or other statutory charge is payable by the client or client group under legislative provisions; and
- the amount of the prescribed fee or other statutory charge payable by the client or the client group can be reliably measured.

Administered taxation revenue is recognised at its nominal amount due and an expense is recognised for impaired debts.

| | 2019 $'000 | 2018 $'000 |
|---|---|---|
| **Non-taxation revenue** | | |
| **2.2A: Fees and fines** | | |
| Fines | **134,579** | 155,196 |
| Searches and information brokers fees | **64,475** | 63,827 |
| **Total fees and fines** | **199,054** | 219,023 |
| **2.2B: Unclaimed monies lodgements** | | |
| *Corporations Act 2001* unclaimed monies | **50,665** | 63,652 |
| *Banking Act 1959* unclaimed monies | **12,902** | 6,513 |
| *Life Insurance Act 1995* unclaimed monies | **7,295** | 18,312 |
| **Total unclaimed monies** | **70,862** | 88,477 |

## Accounting Policy

ASIC undertakes the collection of certain levies on behalf of the Government. These comprise of:

- the *ASIC Supervisory Cost Recovery Levy Act 2017*;
- the *ASIC Supervisory Cost Recovery Levy (Collection) Act 2017*;
- the *ASIC Supervisory Cost Recovery Levy (Consequential Amendments) Act 2017*;
- the ASIC Supervisory Cost Recovery Levy Regulations 2017; and
- the ASIC Supervisory Cost Recovery Levy (Consequential Amendments) Regulations 2017.

ASIC also receives non-taxation revenue from search fees, fines – including late fees, court fines, penalties and infringement notices – and from unclaimed monies received under the *Banking Act 1959*, *Life Insurance Act 1995* and *Corporations Act 2001*. This revenue is not available to ASIC and is transferred to the OPA.

Administered revenue arising from levies is recognised on an accrual basis.

The collectability of debts is reviewed at balance date. Provisions are made when collection of the debt is judged to be less, rather than more, likely.

# Note 3: Departmental financial position

This section analyses ASIC's assets used to conduct its operations and the operating liabilities incurred as a result. Employee related information is disclosed in the People and Relationships section.

## 3.1 Financial assets

| | 2019 $'000 | 2018 $'000 |
|---|---|---|
| **3.1A: Cash and cash equivalents** | | |
| Cash in special accounts | **62,954** | 59,135 |
| Cash on hand | **2,267** | 3,568 |
| **Total cash and cash equivalents** | **65,221** | 62,703 |

Cash in special accounts does not include amounts held in trust. ($12.196m in 2019 and $4.908m in 2018).

| | 2019 $'000 | 2018 $'000 |
|---|---|---|
| **3.1B: Trade and other receivables** | | |
| **Goods and services receivables:** | | |
| Goods and services | **5,179** | 1,551 |
| **Total goods and services receivables (gross)** | **5,179** | 1,551 |
| **Less impairment allowance** | **(602)** | (616) |
| **Total goods and services receivables (net)** | **4,577** | 935 |
| **Appropriations receivables:** | | |
| Appropriations receivable | **126,040** | 117,407 |
| **Total appropriations receivable** | **126,040** | 117,407 |
| **Other receivables:** | | |
| GST receivable from the Australian Taxation Office | **4,541** | 4,088 |
| **Total other receivables** | **4,541** | 4,088 |
| **Total trade and other receivables (net)** | **135,158** | 122,430 |
| **Trade and other receivables are expected to be recovered:** | | |
| No more than 12 months | **135,158** | 122,430 |

Credit terms for goods and services were within 30 days (2018: 30 days)

| | 2019 $'000 | 2018 $'000 |
|---|---|---|
| **Reconciliation of the movement in the impairment allowance account** | | |
| As at 1 July | **616** | 1,051 |
| Amounts recovered and reversed | **(510)** | (1,294) |
| Increase recognised in net cost of services | **496** | 859 |
| **Total as at 30 June** | **602** | 616 |

## Accounting Policy

**Receivables**

Trade receivables and other receivables are classified as 'loans and receivables' and recorded at face value less any impairment. Trade receivables are recognised where ASIC becomes party to a contract and has a legal right to receive cash. Trade receivables are derecognised on payment.

Financial assets are assessed for impairment at the end of each reporting period. Allowances are made when collectability of the debt is no longer probable.

## 3.2 Non-financial assets

**3.2A: Reconciliation of the opening and closing balances of leasehold improvements, plant & equipment and intangibles**

| | Leasehold improvements $'000 | Plant & equipment $'000 | Computer software $'000 | Total $'000 |
|---|---|---|---|---|
| **As at 1 July 2018** | | | | |
| Gross book value | 91,079 | 58,939 | 344,598 | 494,616 |
| Accumulated depreciation/amortisation and impairment | (65,022) | (36,837) | (254,153) | (356,012) |
| **Total as at 1 July 2018** | **26,057** | **22,102** | **90,445** | **138,604** |
| Additions: | | | | |
| by purchase | 3,366 | 5,378 | 2,079 | 10,823 |
| internally developed | – | – | 27,855 | 27,855 |
| Total additions | **3,366** | **5,378** | **29,934** | **38,678** |
| Revaluations and impairments recognised in operating result | 3,804 | 1,559 | – | 5,363 |
| Depreciation/amortisation expense | (4,425) | (8,173) | (33,524) | (46,122) |
| Write-offs recognised in the operating result | – | (205) | – | (205) |
| **Total as at 30 June 2019** | **28,802** | **20,661** | **86,855** | **136,318** |

| | Leasehold improvements $'000 | Plant & equipment $'000 | Computer software $'000 | Total $'000 |
|---|---|---|---|---|
| **Total as at 30 June 2019 represented by:** | | | | |
| Gross book value | 94,213 | 65,616 | 374,532 | 534,361 |
| Accumulated depreciation/amortisation and impairment | (65,411) | (44,955) | (287,677) | (398,043) |
| **Total as at 30 June 2019** | **28,802** | **20,661** | **86,855** | **136,318** |

The carrying value of leasehold improvements, plant & equipment and computer Hardware was reviewed at 30 June 2019. No indicators of impairment were found.

## Accounting Policy

Assets are recorded at cost of acquisition, except where stated below.

The cost of acquisition includes the fair value of assets transferred in exchange and liabilities undertaken. Financial assets are initially measured at their fair value plus transaction costs where appropriate.

### Asset Recognition Threshold

Purchases of leasehold improvements, plant and equipment are initially recognised at cost in the Statement of Financial Position, except for purchases costing less than $2,000, which are expensed in the year of acquisition (other than where they form part of a group of similar items which are significant in total).

The initial cost of an asset includes an estimate of the cost of dismantling and removing the item and restoring the site on which it is located. This is particularly relevant to 'make good' provisions taken up by ASIC where there exists an obligation to restore the premises to their original condition at the conclusion of the lease. These costs are included in the value of ASIC's property expenses with a corresponding provision for the 'make good' recognised.

### Revaluations

Following initial recognition at cost, leasehold improvements, plant and equipment were carried at latest revaluation less accumulated depreciation and accumulated impairment losses. Valuations are conducted with sufficient frequency to ensure that the carrying amounts of assets did not differ materially from the assets' fair values as at the reporting date. The regularity of independent valuations depended on the volatility of movements in market values for the relevant assets. An independent valuation of ASIC's assets was undertaken as at 30 June 2019.

### Accounting Policy (continued)

Revaluation adjustments are made on a class basis. Any revaluation increment was credited to equity under the heading of asset revaluation reserve except to the extent that it reversed a previous revaluation decrement of the same asset class that was previously recognised in the surplus/deficit. Revaluation decrements for a class of assets are recognised directly in the surplus/deficit except to the extent that they reversed a previous revaluation increment for that class.

Any accumulated depreciation as at the revaluation date was eliminated against the gross carrying amount of the asset and the asset was restated to the revalued amount.

**Depreciation**

All depreciable leasehold improvements, plant and equipment assets are written down to their estimated residual values over their estimated useful lives to ASIC, using the straight-line method of depreciation.

Depreciation rates (useful lives), residual values and methods are reviewed at each reporting date and necessary adjustments are recognised in the current, or current and future reporting periods, as appropriate.

Depreciation rates applying to each class of depreciable asset are based on the following useful lives:

| | 2019 | 2018 |
|---|---|---|
| Leasehold improvements | **Residual lease term** | Residual lease term |
| Plant and equipment | **2 to 80 years** | 2 to 80 years |

## Accounting Policy

### Impairment

All assets were assessed for impairment as at 30 June 2019. Where indications of impairment exist, the asset's recoverable amount is estimated and an impairment adjustment made if the asset's recoverable amount is less than its carrying amount.

The recoverable amount of an asset is the higher of its fair value less costs of disposal and its value in use. Value in use is the present value of the future cash flows expected to be derived from the asset. Where the future economic benefit of an asset is not primarily dependent on the asset's ability to generate future cash flows, and the asset would be replaced if the entity were deprived of the asset, its value in use is taken to be its current replacement cost.

### Derecognition

An item of property, plant and equipment is derecognised upon disposal or when no further future economic benefits are expected from its use or disposal.

### Intangibles

ASIC's intangibles comprise software either purchased or internally developed for internal use. These assets are carried at cost less accumulated amortisation and accumulated impairment losses.

Software is amortised on a straight-line basis over its anticipated useful life. The useful life of ASIC's hardware is 2 to 10 years (2018: 2 to 10 years).

All software assets were assessed for indications of impairment as at 30 June 2019.

### Significant accounting judgements and estimates

In the process of applying the accounting policies listed in this note, ASIC has made assumptions or estimates in the following areas that have the most significant impact on the amounts recorded in the financial statements:

› The fair value of leasehold improvements and property, plant and equipment is assessed at market value or current replacement cost as determined by an independent valuer and is subject to management assessment between formal valuations.

## 3.3 Payables

| | Note | 2019 $'000 | 2018 $'000 |
|---|---|---|---|
| **3.3A: Suppliers** | | | |
| Trade creditors and accruals | 7.2A | **41,832** | 32,723 |
| Operating lease rent payable | | **7,789** | 9,762 |
| **Total suppliers** | | **49,621** | 42,485 |

Supplier payables are settled per the terms of the purchase order or contract and are expected to be settled within 12 months.

| | 2019 $'000 | 2018 $'000 |
|---|---|---|
| **3.3B: Other payables** | | |
| Other unearned revenue | **9,199** | 7,176 |
| Property lease incentives[1] | **17,818** | 19,335 |
| Salaries and bonuses | **12,384** | 12,335 |
| Separations and redundancies | **505** | 1,674 |
| Other | **207** | 20 |
| **Total other payables** | **40,113** | **40,540** |

1 Lease incentives are amortised over the lease term.

## 3.4 Other provisions

| | Provision for restructuring $'000 | Provision for restoration costs $'000 | Provision for settlement costs $'000 | Total Other Provisions $'000 |
|---|---|---|---|---|
| As at 1 July 2018 | 1,142 | 8,873 | 4,670 | **14,685** |
| Additions | – | – | 7,150 | **7,150** |
| Amounts reversed | (353) | (1,426) | (2,000) | **(3,779)** |
| Amortisation of restoration provision discount | – | 224 | – | **224** |
| **Total as at 30 June 2019** | **789** | **7,671** | **9,820** | **18,280** |

### Accounting Policy

**Restoration costs**

ASIC currently has seven lease agreements (2018: seven) for the leasing of premises which have provisions requiring ASIC to restore the premises to their original condition at the conclusion of the lease. The provision reflects the current best estimate of these future restoration costs discounted to reflect the present value of the future payments.

**Settlement costs**

ASIC recognises a provision for the estimated costs that will be paid on settlement of current legal proceedings based on past history of settlement costs.

The accounting policy for the provision for restructuring is contained in Note 6 People and relationships.

# Note 4: Assets and liabilities administered on behalf of the Government

This section analyses assets used to conduct operations and the operating liabilities incurred as a result of activities that ASIC does not control but administers on behalf of the Government. Unless otherwise noted, the accounting policies adopted are consistent with those applied for departmental reporting.

## 4.1 Administered – financial assets

| | 2019 $'000 | 2018 $'000 |
|---|---|---|
| **4.1A: Taxation receivables** | | |
| Fees and fines receivable | **220,744** | 206,689 |
| **Total taxation receivables (gross)** | **220,744** | 206,689 |
| Less impairment loss allowance | | |
| Fees and fines | **77,594** | 69,602 |
| **Total taxation receivables (net)** | **143,150** | 137,087 |

Taxation receivables are due from entities that are not part of the Australian Government.

Credit terms for goods and services were within 30 days (2018: 30 days)

| | 2019 $'000 | 2018 $'000 |
|---|---|---|
| **4.1B: Trade and other receivables** | | |
| Information brokers' fees | **8,463** | 6,241 |
| GST receivable | **137** | 183 |
| **Total trade and other receivables (gross)** | **8,600** | 6,424 |

## Accounting Policy

### Receivables

Administered receivables are recognised at their nominal value less an impairment allowance. The Finance Minister has determined that statutory receivables are not financial instruments and accordingly ASIC has assessed administered receivables for impairment under *AASB 136 Impairment of Assets (FRR 26.3)*.

The impairment allowance is raised against receivables for any doubtful debts and any probable credit amendments, and is based on a review of outstanding debts at balance date. This includes an examination of individual large debts and disputed amounts with reference to historic collection patterns.

The impairment allowance expense is calculated using estimation techniques to determine an estimate of current receivables which are unlikely to be collected in the future.

Administered receivables that are irrecoverable at law or are uneconomic to pursue are written off under s63 of the PGPA Act.

## 4.2 Administered – payables

| | 2019 $'000 | 2018 $'000 |
|---|---|---|
| **4.2A: Suppliers and other payables** | | |
| Supplier payables | **233** | 191 |
| Refund of fees payable | **16,669** | 15,295 |
| Unallocated monies | **7,008** | 6,634 |
| Grants payable[1] | **1,023** | 1,290 |
| Other non-current payables[2] | **6,774** | 6,462 |
| **Total payables** | **31,707** | 29,872 |

All payables are for entities that are not part of the Australian Government.

All payables, with the exception of Other non-current payables, are expected to be settled within 12 months. Settlement is usually made within 30 days.

1 Settlement is made according to the terms and conditions of each grant. This is usually within 30 days of performance and eligibility.

2 Other non-current payables are over payments of fees where payments are made to ASIC in error. The settlement period is expected to be greater than 12 months as these are unidentified payments.

| | 2019 $'000 | 2018 $'000 |
|---|---|---|
| **4.2B: Unclaimed monies provisions** | | |
| *Corporations Act 2001* claims | **197,957** | 192,054 |
| *Banking Act 1959* claims | **123,229** | 130,233 |
| *Life Insurance Act 1995* claims | **26,604** | 26,649 |
| **Total other provisions** | **347,790** | 348,936 |

## Accounting Policy

### Provisions

The provisions recognised in the Administered Schedule of Assets and Liabilities are for estimated claims payable from collections of unclaimed monies administered by ASIC as at balance date. ASIC adopted a provision for future claims based on an independent valuation calculated by a registered actuary, under *AASB 137 Provisions, Contingent Liabilities and Contingent Assets*.

### Significant accounting judgements and estimates

The provision has been estimated taking into account the historic claims pattern experienced since 2002 and the outstanding lodgements. The estimate reflects the volatility of unclaimed monies lodgements and claims from year to year, which is impacted by factors including economic events, legislative change, media exposure and the behaviour of claimants, each of which has differed significantly from year to year and over time. The estimated future flow of refunds over time has been discounted to present value at a risk-free rate of interest based on government bond rates with similar terms to the expected refunds. Allowance has been made for payment of compounding interest for all claims from 1 July 2013 on unclaimed balances in accordance with actual legislated interest rates and estimated future interest rates based on economist expectations for inflation in the medium to longer term, noting legislated interest rates are linked to movements in the CPI.

# Note 5: Funding

This section identifies ASIC's funding structure.

## 5.1 Appropriations

### 5.1A: Annual appropriations ('recoverable GST exclusive')

| Annual appropriations for 2019 | Annual appropriation $'000 | Adjustments to appropriation[1] $'000 | Total appropriation $'000 | Appropriation applied in 2019 (current and prior years) $'000 | Variance[2] $'000 |
|---|---|---|---|---|---|
| **Departmental** | | | | | |
| Ordinary annual services | 374,313 | 12,032 | **386,345** | 400,204 | **(13,859)** |
| Capital Budget | 24,345 | – | **24,345** | 25,958 | **(1,613)** |
| Other Services | | | | | |
| Equity Injections | 7,294 | – | **7,294** | 13,069 | **(5,775)** |
| **Total Departmental** | 405,952 | 12,032 | **417,984** | 439,231 | **(21,247)** |
| **Administered** | | | | | |
| Ordinary annual services | 19,683 | – | 19,683 | 14,905 | 4,778 |
| **Total Administered** | 19,683 | – | **19,683** | **14,905** | **4,778** |

1 Section 74 receipts.

2 The variance in the departmental expenses is due to accrued expenses from the prior year being drawn down in the current year from operating and equity funding, as well as unspent appropriation from departmental capital budget.

## Accounting Policy

**Equity Injections**

Amounts appropriated which are designated as 'equity injections' for a year (less any formal reductions) and Departmental Capital Budgets (DCB) are recognised directly in contributed equity in that year.

| Annual appropriations for 2018 | Annual appropriation[1] $'000 | Adjustments to appropriation[2] $'000 | Total appropriation $'000 | Appropriation applied in 2018 (current and prior years) $'000 | Variance $'000 |
|---|---|---|---|---|---|
| Departmental | | | | | |
| Ordinary annual services | 348,041 | 47,827 | 395,868 | 364,885 | 30,983 |
| Capital Budget | 20,868 | – | 20,868 | 14,236 | 6,632 |
| Other Services | | | | | |
| Equity Injections | 22,185 | – | 22,185 | 27,777 | (5,592) |
| Total Departmental | 391,094 | 47,827 | 438,921 | 406,898 | 32,023 |
| Administered | | | | | |
| Ordinary annual services | 7,302 | – | 7,302 | 5,439 | 1,863 |
| Total Administered | 7,302 | – | 7,302 | 5,439 | 1,863 |

1 Determination under section 51 of the PGPA Act. Appropriation Act (No. 1) DCB 2017–2018 reduced by $3.604m.

2 Section 74 receipts

| | 2019 $'000 | 2018 $'000 |
|---|---|---|
| **5.1B: Unspent annual appropriations ('recoverable GST exclusive')** | | |
| **Departmental** | | |
| *Appropriation Act (No. 1) 2016–2017*[1] | **3,922** | 3,922 |
| *Supply Act (No. 2) 2016–2017* | **–** | 229 |
| *Appropriation Act (No. 2) 2016–2017* | **–** | 3,634 |
| *Appropriation Act (No. 1) 2017–2018* | **–** | 97,146 |
| *Appropriation Act (No. 1) DCB 2017–2018*[2] | **3,604** | 11,375 |
| *Appropriation Act (No. 2) 2017–2018* | **1,951** | 4,376 |
| *Appropriation Act (No. 3) 2017–2018* | **–** | 7,818 |
| *Appropriation Act (No. 1) 2018–2019* | **75,767** | – |
| *Appropriation Act (No. 1) DCB 2018–2019* | **6,158** | – |
| *Appropriation Act (No. 3) 2018–2019* | **31,885** | – |
| *Appropriation Act (No. 2) 2018–2019* | **21** | – |
| *Appropriation Act (No. 4) 2018–2019* | **492** | – |
| Enforcement Special Account | **62,954** | 59,135 |
| **Total departmental** | **186,754** | 187,635 |

Unspent departmental appropriations include cash balances of $2.267m (2018: $4.135m).

1 Includes $3.922m quarantined under section 51 of the PGPA Act. The balance of this appropriation is not available beyond 30 June 2019, following the repeal of Appropriation Act (No.1) 2016–2017 on 1 July 2019.

2 Includes $3.604m quarantined under section 51 of the PGPA Act.

| | 2019 $'000 | 2018 $'000 |
|---|---|---|
| **Administered** | | |
| *Appropriation Act (No. 1) 2017–2018* | 1,473 | 3,810 |
| *Appropriation Act (No. 1) 2018–2019* | 6,032 | – |
| *Appropriation Act (No. 3) 2018–2019* | 1,045 | – |
| **Total administered** | 8,550 | 3,810 |

Unspent administered appropriations include cash balances of $0.564m (2018: $0.465m). Comparatives have changed as closing cash at bank was not previously included.

**5.1C: Special appropriations ('recoverable GST exclusive')**

| Authority | Type | Purpose | Appropriation applied 2019 $'000 | Appropriation applied 2018 $'000 |
|---|---|---|---|---|
| *s69 Banking Act 1959*, Administered | Unlimited | ASIC has responsibility for the administration of unclaimed monies from banking and deposit taking institutions. ASIC receives special appropriations from the OPA (section 69 *Banking Act 1959*) to refund amounts to banking and deposit taking institution account holders. | **16,535** | 28,109 |
| *s216 Life Insurance Act 1995*, Administered | Unlimited | ASIC has responsibility for the administration of unclaimed monies from life insurance institutions and friendly societies. ASIC receives special appropriations from the OPA (section 216 *Life Insurance Act 1995*) to refund amounts to life insurance policy holders. | **4,081** | 3,609 |
| *s77 PGPA Act*, *Corporations Act 2001*, *National Consumer Credit Protection Act 2009*, Business Names Registration (Fees) Regulations 2010 and *Superannuation Industry (Supervision) Act 1993*. (Refunds of overpaid Corporations Act fees and charges), Administered | Unlimited | ASIC has responsibility for the administration and collection of Corporations Act fees and charges. All fees and charges are deposited into the OPA as received. Refunds of overpayments are appropriated under section 77 of the PGPA Act. | **4,150** | 4,040 |
| *s77 PGPA Act*, *Corporations Act 2001* (Refunds of unclaimed money held under s1341 *Corporations Act 2001*), Administered | Unlimited | ASIC has responsibility for the administration of unclaimed monies under s1341 of the *Corporations Act 2001*. | **32,955** | 34,971 |
| **Total** | | | **57,721** | 70,729 |

## 5.2 Special Accounts

| | Enforcement Special Account[1] | | ASIC Trust and Other Moneys Special Account 2018[2] | | Deregistered Companies Trust Moneys Special Account[3] | | Security Deposits Special Accounts[4] | | Investigations, Legal Proceedings, Settlements and Court Orders Special Account[5] | |
|---|---|---|---|---|---|---|---|---|---|---|
| | 2019 $'000 | 2018 $'000 | 2019 $'000 | 2018 $'000 | 2019 $'000 | 2018 $'000 | 2019 $'000 | 2018 $'000 | 2019 $'000 | 2018 $'000 |
| Balance carried forward from previous year | **59,135** | 33,064 | **4,908** | – | **–** | 3,504 | **–** | 467 | **–** | 11 |
| Appropriation for the reporting period | **36,217** | 26,279 | **51,556** | 327 | **–** | 791 | **–** | – | **–** | – |
| Costs recovered | **2,213** | 29,355 | **118** | 10 | **–** | 39 | **–** | 5 | **–** | – |
| Available for payments | **97,565** | 88,698 | **56,582** | 337 | **–** | 4,334 | **–** | 472 | **–** | 11 |
| Cash payments from the Special Account | **(34,611)** | (29,563) | **(44,386)** | (21) | **–** | (225) | **–** | – | **–** | – |
| Adjustments | **–** | – | | 4,592 | **–** | (4,109) | **–** | (472) | **–** | (11) |
| Balance carried forward to the next period | **62,954** | 59,135 | **12,196** | 4,908 | **–** | – | **–** | – | **–** | – |
| Balance represented by: | | | | | | | | | | |
| Cash held in entity bank accounts | **–** | – | **12,196** | 4,908 | **–** | – | **–** | – | **–** | – |
| Cash held in the Official Public Account | **62,954** | 59,135 | **–** | – | **–** | – | **–** | – | **–** | – |
| | **62,954** | 59,135 | **12,196** | 4,908 | **–** | – | **–** | – | **–** | – |

1 Appropriation: s78 *Public Governance, Performance and Accountability Act 2013*. Establishing Instrument: s78 *Public Governance, Performance and Accountability Act 2013*. Purpose: the Enforcement Special Account (ESA) is a departmental special account which was established by a determination of the Finance Minister on 23 August 2016 to fund the costs of ASIC arising from the investigation and litigation of matters of significant public interest.

2 Appropriation: s78 *Public Governance, Performance and Accountability Act 2013*. Establishing Instrument: s78 *Public Governance, Performance and Accountability Act 2013*. Purpose: the ASIC Trust and Other Moneys Special Account was established by a determination of the Finance Minister on 31 March 2018, to consolidate the three Special Accounts above, which expired due to the sunsetting provisions of the *Legislations Act 2003*.

3 Appropriation: s78 *Public Governance, Performance and Accountability Act 2013*. Establishing Instrument: s78 *Public Governance, Performance and Accountability Act 2013*. Purpose: the Deregistered Companies Trust Moneys Special Account was established by the Finance Minister on 18 February 2008 to manage property vesting in the Commonwealth as a result of the deregistration provisions of the *Corporations Act 2001*. This special account expired on 31 March 2018 due to the sunsetting provisions of the *Legislations Act 2003*.

4 Appropriation: s78 *Public Governance, Performance and Accountability Act 2013*. Establishing Instrument: s78 *Public Governance, Performance and Accountability Act 2013*. Purpose: the ASIC Security Deposits Special Account was established by a determination of the Finance Minister on 18 February 2008 to manage security deposits lodged with ASIC by registered liquidators, licensed securities dealers, licensed investment advisers and financial services licensees. This special account expired on 31 March 2018 due to the sunsetting provisions of the *Legislations Act 2003*.

5 Appropriation: s78 *Public Governance, Performance and Accountability Act 2013*. Establishing Instrument: s78 *Public Governance, Performance and Accountability Act 2013*. Purpose: the ASIC Investigations, Legal Proceedings, Settlements and Court Orders Special Account was established by a determination of the Finance Minister on 18 February 2008 to manage money or other property temporarily held by ASIC for the benefit of a person other than the Commonwealth as a result of investigations conducted by ASIC, legal proceedings to which ASIC is a party, deeds of settlement to which ASIC is a party, enforceable undertakings accepted by ASIC and court orders referring to ASIC. This special account expired on 31 March 2018 due to the sunsetting provisions of the *Legislations Act 2003*.

ASIC also has a Services for Other Entities and Trust Moneys Special Account – Australian Securities and Investments Commission (SOETM). This account was established under s78 *Public Governance, Performance and Accountability Act 2013*. The SOETM combines the purposes of the Other Trust Moneys and the Services for other Government and Non-agency Bodies special accounts into a single standard-purpose Special Account. The SOETM enables ASIC to continue to hold and expend amounts on behalf of persons or entities other than the Commonwealth. The SOETM will typically be used to accommodate small amounts of miscellaneous monies, for example, amounts received in connection with services performed for or on behalf of any persons or entities that are not agencies as prescribed under the PGPA Act, such as other governments. For the year ended 30 June 2019, the account had a nil balance and there were no transactions debited or credited to it during the current or prior reporting period.

## 5.3 Regulatory charging summary

| | 2019 $'000 | 2018 $'000 |
|---|---|---|
| **Amounts applied** | | |
| Departmental | | |
| Appropriation applied | **286,961** | 247,372 |
| **Total amounts applied** | **286,961** | 247,372 |
| **Expenses** | | |
| Departmental | **286,961** | 247,372 |
| **Total expenses** | **286,961** | 247,372 |
| **External Revenue** | | |
| Administered | | |
| Fees for services | **13,600** | – |
| ASIC Supervisory Cost Recovery Levy | **273,361** | 247,372 |
| **Total external revenue** | **286,961** | 247,372 |

### Regulatory charging activities

On 20 April 2016, the Australian Government announced it would introduce an industry funding model for ASIC. Under the industry funding model ASIC's regulatory costs will be recovered from the industry sectors we regulate, through a combination of:

a) general industry levies (cost recovery levies);

b) statutory industry levies; and

c) cost recovery fees (fees for service), for user-initiated, transaction-based activities where we provide a specific service to individual entities.

ASIC's costs associated with regulatory activities will be recovered from industry as outlined in ASIC's Cost Recovery Implementation Statement. Activities include:

› stakeholder engagement
› education
› guidance
› surveillance
› enforcement
› policy advice.

The cost recovery implementation statement for the above activities is available at:

https://download.asic.gov.au/media/5169042/cris-asic-industry-funding-model-2018-19-published-27-june-2019.pdf

### 5.4 Net cash appropriation arrangements

| | 2019 $'000 | 2018 $'000 |
|---|---|---|
| **Total comprehensive income/(loss) less depreciation/amortisation expenses previously funded through revenue appropriations** | **6,108** | 29,809 |
| Plus: depreciation/amortisation expenses previously funded through revenue appropriation | **(46,122)** | (40,709) |
| **Total comprehensive (loss) – as per the Statement of Comprehensive Income** | **(40,014)** | (10,900) |

## Note 6: People and relationships

This section describes a range of employment and post-employment benefits provided to our people and our relationships with other key people.

### 6.1 Employee provisions

| | 2019 $'000 | 2018 $'000 |
|---|---|---|
| **6.1A: Employee provisions** | | |
| Annual leave entitlement | **22,127** | 21,203 |
| Long service leave entitlement | **49,986** | 41,278 |
| Restructuring provision | **1,712** | 3,822 |
| Redundancy provision | **2,192** | 2,152 |
| **Total employee provisions** | **76,017** | 68,455 |

## Accounting Policy

Liabilities for 'short-term employee benefits' (as defined in AASB 119 *Employee Benefits*) and termination benefits expected within 12 months of the end of the reporting period are measured at their nominal amounts.

Other long term employee benefits are measured as net total of the present value of the defined benefit obligations at the end of the reporting period minus the fair value at the reporting period of plan assets (if any) of which the obligations are to be settled directly.

### Leave

The liability for employee benefits includes provision for annual leave and long service leave. No provision has been made for sick leave as all sick leave is non-vesting and the average sick leave taken in future years by employees of ASIC is estimated to be less than the annual entitlement for sick leave.

The leave liabilities are calculated on the basis of employees' remuneration at the estimated salary rates that will be applied at the time leave is taken, including ASIC's employer superannuation contribution rates to the extent that the leave is likely to be taken during service rather than paid out on termination.

The liability for long service leave has been determined by reference to the work of an independent actuary dated 18 December 2018. Actuarial reviews of long service leave are undertaken at least every five years. The estimate of the present value of the liability takes into account attrition rates and pay increases through promotion and inflation.

### Superannuation

ASIC employees are members of the Commonwealth Superannuation Scheme (CSS), the Public Sector Superannuation Scheme (PSS), the PSS Accumulation Plan (PSSap) or other superannuation funds held outside the Australian Government.

The CSS and PSS are defined-benefit schemes of the Australian Government. The PSSap is a defined-contribution scheme.

The liability for defined benefits is recognised in the financial statements of the Australian Government and is settled by the Australian Government in due course. This liability is reported in the Department of Finance's administered schedule and notes.

ASIC makes employer contributions to its employees' defined-benefit superannuation schemes at rates determined by an actuary to be sufficient to meet the current cost to the Government, and ASIC accounts for the contributions as if they were contributions to defined contribution plans.

The liability for superannuation recognised as at 30 June represents outstanding contributions.

### Separation and redundancy

Provision is made for separation and redundancy benefit payments. ASIC recognises a provision for termination when it has developed a detailed formal plan for the terminations and has informed those employees affected that it will carry out the terminations.

### Accounting Policy continued

**Restructuring**

ASIC recognises a provision for restructuring when the Government has announced a funding measure which will result in a future reduction in functions, resources and staff and the costs associated with these future reductions can be reliably estimated.

**Significant accounting judgement and estimates**

In the process of applying the accounting policies listed in this note, ASIC has made assumptions or estimates in the following areas that have the most significant impact on the amounts recorded in the financial statements:

› Leave provisions involve assumptions based on the expected tenure of existing staff, patterns of leave claims and payouts, future salary movements and future discount rate.

## 6.2 Key management personnel remuneration

Key management personnel (KMP) are those persons having authority and responsibility for planning, directing and controlling the activities of ASIC, directly or indirectly. ASIC has determined the key management personnel to be members of the Commission, the Portfolio Minister and Minister for Revenue and Financial Services and other Australian Government entities and ASIC Executive Directors. Key management personnel remuneration is reported in the table below:

| | 2019 $'000 | 2018 $'000 |
|---|---|---|
| Short-term employee benefits | **6,558** | 3,902 |
| Post-employment benefits | **622** | 437 |
| Other long-term benefits | **150** | 406 |
| **Total key management personnel remuneration expenses**[1] | **7,330** | 4,745 |

The total number of key management personnel who are included in the above table is 22 (2018: 13). During the financial year, an overpayment to a former KMP totalling $1,672 was identified. This payment is a recoverable payment under s16A(1) of the *Remuneration Tribunal Act 1973* and is repayable to the Commonwealth.

1 The above key management personnel remuneration excludes the remuneration and other benefits of the Portfolio Minister. The Portfolio Minister's remuneration and other benefits are set by the Remuneration Tribunal and are not paid by ASIC.

## 6.3 Related party disclosures

**Related party relationships**

ASIC is an Australian Government controlled entity. Related parties to ASIC are Key Management Personnel including the Commission members and ASIC Executive Directors that have the responsibilities for planning, directing, and controlling ASIC's resources.

**Transactions with related parties**

Given the breadth of Government activities, related parties may transact with the government sector in the same capacity as ordinary citizens. Such transactions include the payment or refund of taxes, receipt of a Medicare rebate or higher education loans. These transactions have not been separately disclosed in this note.

ASIC transacts with other Australian Government controlled entities consistent with normal day-to-day business operations provided under normal terms and conditions, including the payment of workers compensation and insurance premiums, sub-leasing of office space and payment of superannuation contributions. These are not considered individually significant to warrant separate disclosure as related party transactions.

During the financial year ASIC entered into transactions with a KMP for relocation purposes totalling $86,208.

# Note 7: Managing uncertainties

This section describes how ASIC manages financial risks within its operating environment.

## 7.1 Contingent assets and liabilities

| | 2019 $'000 | 2018 $'000 |
|---|---|---|
| 7.1A: Departmental contingent liabilities and assets | | |
| **Contingent assets** | | |
| Claims for costs | | |
| Balance from previous period | **6,239** | 2,881 |
| Adjustments to prior period contingent receivables: | | |
| Assets relinquished | **(2,914)** | (487) |
| Revisions to estimates | **2,064** | (1,000) |
| New contingent receivables | **4,249** | 4,845 |
| **Total contingent assets** | **9,638** | 6,239 |
| **Net contingent assets** | **9,638** | 6,239 |

### Quantifiable contingencies (ASIC Departmental)

The above contains 20 matters (2018: 12 matters) of contingent assets disclosed in respect to matters which ASIC has received an award of costs in its favour, however agreement with respect to the quantum payable to ASIC has not been reached. ASIC has estimated these matters represent a combined receivable of $9.638m (2018: $6.239m), which is disclosed as a contingent asset because realisation of this debt is not virtually certain.

### Unquantifiable contingencies (ASIC Departmental)

ASIC is party to many civil litigation matters arising out of its statutory duty to administer and enforce laws for which it is responsible.

Like any corporate body, ASIC may from time to time be the subject of legal proceedings for damages brought against it or may receive notice indicating that such proceedings may be brought. In either case ASIC, like any other party to civil litigation, may be required to pay the other party's costs if ASIC is unsuccessful. In accordance with AASB 137 *Provisions, Contingent Liabilities and Contingent Assets*, ASIC has not disclosed the value of these matters on the grounds that it may seriously prejudice the outcome of these cases.

As at the date of this report there are civil matters that may result in an award of costs in favour or against ASIC.

### Civil litigation brought, or threatened to be brought, against ASIC as a defendant

There is, at the date of this report, four matters of this type where proceedings are current. In this matter, ASIC denies liability and is of the view that, save for having to pay legal fees and other out-of- pocket expenses, it is likely that ASIC will:

- successfully defend the actions instituted; and
- not be required to pay any damages.

Conversely, ASIC, like any other party to civil litigation, may be entitled to recover costs arising out of such litigation if it is successful. In addition to the matters specifically referred to in this note, ASIC has legal action pending in a number of other matters, however, due to the uncertainty over the outcome of outstanding and pending court cases, duration of court cases and the legal costs of the opposing party, ASIC is unable to reliably estimate either its potential payments to, or potential cost recoveries from, opposing litigants. There may also be other matters where ASIC has received an award of costs in its favour, however no contingent asset has been disclosed as recovery of the debt is not probable. There may also be other matters where no contingency has been quantified because the costs awarded for or against ASIC are estimated to be less than $20,000 each.

## Accounting Policy

Contingent liabilities and contingent assets are not recognised in the Statement of Financial Position but are reported in this note. They may arise from uncertainty as to the existence of a liability or asset or represent an asset or liability in respect of which the amount cannot be reliably measured. Contingent assets are disclosed when settlement is probable but not virtually certain and contingent liabilities are disclosed when settlement is greater than remote.

### Significant accounting judgements and estimates

No accounting assumptions or estimates have been identified that have a significant risk of causing a material adjustment to carrying amounts of assets and liabilities within the next reporting period.

### Quantifiable administered contingencies – Banking Act, Life Insurance Act and Corporations Act administration

An actuarial assessment of the number of claims that are likely to be lodged with ASIC in respect to unclaimed monies was conducted by a registered actuary. ASIC adopted the registered actuary's calculation for the likely claims payable, excluding interest and reported in Note 4.2B.

The contingent liability represents an estimate of the principal unclaimed monies that have been lodged with ASIC but where the likelihood of a successful claim is regarded as remote. No allowance has been made for the compounding interest, which is payable for a successful claim lodged from 1 July 2013 in accordance with legislated interest rates. The contingent liability has been calculated by deducting from the total principal balance, excluding interest, of unclaimed monies lodged but not yet claimed, the undiscounted amount of the provision for future refunds excluding any interest:

| | |
|---|---|
| *Banking Act 1959* | \$475.864m (2018: \$463.273m) |
| *Life Insurance Act 1995* | \$73.882m (2018: \$69.098m) |
| *Corporations Act 2001* | \$345.075m (2018: \$318.626m) |

### Unquantifiable administered contingencies

There are no unquantifiable administered contingent liabilities.

### Accounting Policy

Administered contingent liabilities represent a repayment estimate of unclaimed monies that are considered remote. There are no administered contingent assets as at 30 June 2019 (2018: nil).

## 7.2 Financial instruments

| | Notes | 2019 $'000 | 2018 $'000 |
|---|---|---|---|
| **7.2A: Categories of financial instruments** | | | |
| **Financial assets under AASB 139** | | | |
| Loans and receivables: | | | |
| Cash and cash equivalents[1] | 3.1A | | 3,568 |
| Trade receivables | 3.1B | | 935 |
| **Total financial assets at amortised cost** | | | 4,503 |
| **Financial assets under AASB 9** | | | |
| **Financial assets at amortised cost** | | | |
| Loans and receivables: | | | |
| Cash and cash equivalents[1] | 3.1A | **2,267** | |
| Trade receivables | 3.1B | **4,577** | |
| **Total financial assets at amortised cost** | | **6,844** | |
| **Total financial assets** | | **6,844** | 4,503 |
| **Financial liabilities** | | | |
| **Financial liabilities at amortised cost** | | | |
| Trade creditors | 3.3A | **41,832** | 32,723 |
| **Total financial liabilities at amortised cost** | | **41,832** | 32,723 |

1 Cash and cash equivalents is cash on hand only and is recognised at its nominal amount.

## Accounting Policy

### Financial assets

With the implementation of *AASB 9 Financial Instruments* for the first time in 2019, ASIC classifies its financial assets in the following category:

- Cash and cash equivalents are measured at nominal amounts.
- Trade receivables are measured at amortised cost

The classification depends on both ASIC's business model for managing the financial assets and contractual cash flow characteristics at the time of initial recognition. Financial assets are recognised when the entity becomes a party to the contract and, as a consequence, has a legal right to receive or a legal obligation to pay cash and derecognised when the contractual rights to the cash flows from the financial asset expire or are transferred upon trade date.

Comparatives have not been impacted by the application of AASB 9.

### Financial assets at amortised cost

Financial assets included in this category need to meet two criteria:

1. the financial asset is held in order to collect the contractual cash flows; and
2. the cash flows are solely payments of principal and interest (SPPI) on the principal outstanding amount.

Amortised cost is determined using the effective interest method.

### Effective interest method

Income is recognised on an effective interest rate basis for financial assets that are recognised at amortised cost.

### Impairment of financial assets

Financial assets are assessed for impairment at the end of each reporting period based on the simplified approach.

The simplified approach for trade debtors is used. This approach always measures the loss allowance as the amount equal to the lifetime expected credit losses.

A write-off constitutes a derecognition event where the write-off directly reduces the gross carrying amount of the financial asset.

### Financial liabilities at amortised cost

Supplier payables are recognised at amortised cost. Liabilities are recognised to the extent that the goods or services have been received (and irrespective of having been invoiced).

### Accounting judgement and estimates

No accounting assumptions or estimates have been identified that have a significant risk of causing a material adjustment to carrying amounts of financial assets and liabilities within the next reporting period.

The application of AASB 9 has had no impact on the classification or carrying amount of Trade receivables.

| | 2019 $'000 | 2018 $'000 |
|---|---|---|
| 7.2B: Net gains or losses on financial assets | | |
| **Financial assets at amortised cost** | | |
| Impairment | **589** | 859 |
| **Net gain/(loss) on financial assets at amortised cost** | **589** | 859 |

## 7.3 Administered – financial instruments

| | Notes | 2019 $'000 | 2018 $'000 |
|---|---|---|---|
| 7.3A: Categories of financial instruments | | | |
| **Financial assets under AASB 139** | | | |
| Cash and cash equivalents[1] | | | 1,641 |
| Trade receivables | 4.1B | | 6,241 |
| **Total financial assets at amortised costs** | | | 7,882 |
| **Financial assets under AASB 9** | | | |
| **Financial assets at amortised cost** | | | |
| Loans and receivables: | | | |
| Cash and cash equivalents[1] | | **1,859** | |
| Trade receivables | 4.1B | **8,600** | |
| **Total financial assets at amortised cost** | | **10,459** | |
| **Total financial assets** | | **10,459** | 7,882 |
| **Financial liabilities** | | | |
| **Financial liabilities at amortised cost** | | | |
| Grants payable | 4.2A | **1,023** | 1,290 |
| Suppliers payables | 4.2A | **233** | 191 |
| **Total financial liabilities at amortised cost** | | **1,256** | 1,481 |

1 Cash and cash equivalents is cash on hand only and is recognised at its nominal amount.

The application of AASB 9 has had no impact on the classification or carrying amount of Administered trade receivables or liabilities.

## 7.4 Fair value measurement

### Accounting Policy

ASIC deems transfers between levels of the fair value hierarchy to have occurred at the end of the reporting period. See Note 3.2A for further details on ASIC's valuation policy and procedures.

| | Fair value measurements at the end of the reporting period | |
|---|---|---|
| | 2019 $'000 | 2018 $'000 |
| **Non-financial assets:** | | |
| Leasehold improvements | **28,802** | 26,057 |
| Plant and equipment | **20,661** | 22,102 |
| **Total non-financial assets** | **49,463** | 48,159 |

ASIC did not measure any non-financial assets at fair value on a non-recurring basis as at 30 June 2019.

# Note 8: Other information

## 8.1 Aggregate assets and liabilities

| | 2019 $'000 | 2018 $'000 |
|---|---|---|
| **8.1A: Aggregate assets and liabilities** | | |
| Assets expected to be recovered in: | | |
| No more than 12 months | **210,756** | 199,067 |
| More than 12 months | **136,318** | 138,604 |
| **Total assets** | **347,074** | 337,671 |
| | | |
| Liabilities expected to be settled in: | | |
| No more than 12 months | **101,460** | 89,651 |
| More than 12 months | **82,571** | 76,603 |
| **Total liabilities** | **184,031** | 166,253 |

| | 2019 $'000 | 2018 $'000 |
|---|---|---|
| **8.1B: Administered – aggregate assets and liabilities** | | |
| Assets expected to be recovered in: | | |
| No more than 12 months | **434,188** | 379,877 |
| More than 12 months | **–** | – |
| **Total assets** | **434,188** | 379,877 |
| Liabilities expected to be settled in: | | |
| No more than 12 months | **372,723** | 372,346 |
| More than 12 months | **6,774** | 6,462 |
| **Total liabilities** | **379,497** | 378,808 |

## 8.2 Expenditure relating to statutory boards and tribunal

### Accounting Policy

Pursuant to Parts 11 and 12 of the ASIC Act and the *Superannuation (Resolution of Complaints) Act 1993*, ASIC is required to support the Companies Auditors Disciplinary Board and the Superannuation Complaints Tribunal. Employee and administrative expenditure incurred on behalf of this board and the tribunal are included in the Statement of Comprehensive Income of ASIC.

| | 2019 $'000 | 2018 $'000 |
|---|---|---|
| Companies Auditors Disciplinary Board | **427** | 525 |
| Superannuation Complaints Tribunal | **7,502** | 6,185 |

The Superannuation Complaints Tribunal (SCT) is an independent body with distinct responsibilities as set out under the *Superannuation (Resolution of Complaints) Act 1993* and has operated under the budgetary umbrella of ASIC since 1 July 1998.

## 8.3 Assets of deregistered companies vesting in ASIC

Section 601AD of the *Corporations Act 2001* provides that, on deregistration of a company, all of the company's property vests in ASIC. In 2011–12, ASIC began taking a proactive approach to administering vested property and accounts for any proceeds on realisation of those assets in accordance with its statutory duties.

Vested assets are not available to ASIC and are not recognised in the financial statements.

| | 2019 Quantity | 2018 Quantity |
|---|---|---|
| Class of asset | | |
| Land | **638** | 521 |
| Shares | **117** | 76 |
| Other | **90** | 74 |
| *Closing balance* | **845** | 671 |

Land is comprised of real property as described on the relevant Land Titles Registry. Shares are comprised of parcels of shares in both private and publicly listed companies and include those parcels held by the company as trustee. Other assets include such property as intellectual property (e.g. trademarks) and mortgages.

## 8.4 Security deposits from dealers, investment advisers and liquidators

The *Corporations Act 2001* and the Corporations Regulations 2001 require applicants for a dealer's or investment adviser's licence, and applicants for registration as a liquidator, to lodge a security deposit with ASIC. These monies, deposits, stock, bonds or guarantees are not available to ASIC and are not recognised in the financial statements.

| | 2019 $'000 | 2018 $'000 |
|---|---|---|
| Security deposits under Corporations Regulations 2001 regulation 7.6.02AA (dealers and investment advisers) | | |
| Cash (at bank) | **83** | 303 |
| Inscribed stock | **20** | 20 |
| Bank guarantees | **8,900** | 8,920 |
| *Closing balance* | **9,003** | 9,243 |
| Security deposits under the *Corporations Act 2001* s1284(1) (liquidators) | | |
| Insurance bond | **1,800** | 1,800 |
| *Closing balance* | **1,800** | 1,800 |

## 8.5 Budgetary reports and explanations of major variances

### 8.5A: Departmental Budgetary Reports

The following tables provide a comparison of the original budget as presented in the 2018–19 Portfolio Budget Statements (PBS) to the 2018–19 final outcome as presented in accordance with Australian Accounting Standards for ASIC. The budget is not audited. Explanations for variances greater than +/- 10% and greater than +/- $5m are provided.

### Statement of Comprehensive Income

| | Actual | Original Budget | Variance |
|---|---|---|---|
| | 2019 $'000 | 2019 $'000 | 2019 $'000 |
| **NET COST OF SERVICES** | | | |
| **Expenses** | | | |
| Employee benefits | 227,035 | 234,677 | (7,642) |
| Suppliers | 157,468 | 112,416 | 45,052 |
| Depreciation and amortisation | 46,122 | 37,246 | 8,876 |
| Finance costs – unwinding of restoration provision | 224 | 504 | (280) |
| Impairment loss allowance on financial instruments – trade and other receivables | 589 | – | 589 |
| Write-down and impairment of assets | 205 | – | 205 |
| **Total expenses** | 431,643 | 384,843 | 46,800 |
| **LESS:** | | | |
| **Own-source revenue** | | | |
| Rendering of services | 3,282 | 3,662 | (380) |
| Operating sublease rent and property recoveries | 2,460 | 2,700 | (240) |
| Other revenue | 5,701 | 2,160 | 3,541 |
| **Total own-source revenue** | 11,443 | 8,522 | 2,921 |
| **Gains** | | | |
| Reversal of write-downs and impairment | 510 | – | 510 |
| **Total gains** | 510 | – | 510 |
| **Net Cost of Services** | 419,690 | 376,321 | 43,369 |
| **Total revenue from Government** | 374,313 | 342,428 | 31,885 |
| **Surplus/(Deficit)** | (45,377) | (33,893) | (11,484) |

| | Actual | Original Budget | Variance |
|---|---|---|---|
| | 2019 $'000 | 2019 $'000 | 2019 $'000 |
| **OTHER COMPREHENSIVE INCOME** | | | |
| **Items not subject to reclassification to net cost of services** | | | |
| Changes in asset revaluation reserve | 5,363 | – | 5,363 |
| **Total comprehensive income/(loss)** | (40,014) | (33,893) | (6,121) |

| Explanations of major variances | Affected line items |
|---|---|
| **Expense** | |
| Supplier expenses were higher than budgeted due mainly to the additional revenue from Government received as part of the Mid-Year Economic and Fiscal Outlook (MYEFO) in December 2018 for new budget measures. | Suppliers |
| Depreciation and amortisation expenses were higher than budgeted due to accelerated depreciation associated with the capitalisation of a major computer software asset. | Depreciation and amortisation |

## Statement of Financial Position

| | Actual 2019 $'000 | Original Budget 2019 $'000 | Variance 2019 $'000 |
|---|---|---|---|
| **ASSETS** | | | |
| **Financial assets** | | | |
| Cash and cash equivalents | 65,221 | 37,199 | 28,022 |
| Trade and other receivables | 135,158 | 109,289 | 25,869 |
| **Total financial assets** | 200,379 | 146,488 | 53,891 |
| **Non-financial assets** | | | |
| Leasehold improvements | 28,802 | 25,477 | 3,325 |
| Plant and equipment | 20,661 | 13,558 | 7,103 |
| Computer software | 86,855 | 98,824 | (11,969) |
| Other non-financial assets | 10,377 | 16,573 | (6,196) |
| **Total non-financial assets** | 146,695 | 154,432 | (7,737) |
| **Total assets** | 347,074 | 300,920 | 46,154 |
| **LIABILITIES** | | | |
| **Payables** | | | |
| Suppliers | 49,621 | 45,571 | 4,050 |
| Other payables | 40,113 | 27,820 | 12,293 |
| **Total payables** | 89,734 | 73,391 | 16,343 |
| **Provisions** | | | |
| Employee provisions | 76,017 | 70,417 | 5,600 |
| Other provisions | 18,280 | 11,227 | 7,053 |
| **Total provisions** | 94,297 | 81,644 | 12,653 |
| **Total liabilities** | 184,031 | 155,035 | 28,996 |
| **Net assets** | 163,043 | 145,885 | 17,158 |
| **EQUITY** | | | |
| Contributed equity | 436,058 | 434,263 | 1,795 |
| Reserves | 22,500 | 17,137 | 5,363 |
| Accumulated deficits | (295,515) | (305,515) | 10,000 |
| **Total equity** | 163,043 | 145,885 | 17,158 |

| Explanations of major variances | Affected line items |
|---|---|
| **Financial assets** | |
| The increase in cash and cash equivalents is mainly attributed to timing differences in funding received and expenditure incurred with respect to the Enforcement Special Account. | Cash and cash equivalents |
| The increase in trade and other receivables is mainly attributable to timing differences in revenue from Government received and associated expenditure incurred. | Trade and other receivables |
| **Non-financial assets and Equity** | |
| The increase in these non-financial assets is attributable to a revaluation at the end of the year. This is also reflected in a net increase to the Asset Revaluation Reserve and recognised in Other Comprehensive Income. Refer to Note 3.2A. | Leasehold improvements, Plant & equipment and Reserves |
| Refer to the variance explanation for depreciation and amortisation. | Computer software |
| The variation in Other non-financial assets is due in part to a reduction in the number of prepayment arrangements in place. Additionally, most of the current prepayment arrangements pertain to 12-month contracts, which are fully amortised within the financial year. | Other non-financial assets |
| **Payables** | |
| The variance is due to a higher level of remaining court costs received in advance (Other unearned income) in relation to Enforcement Special Account (ESA) matters. | Other payables |
| The variance is due to higher than expected accrued ESA expenses. | Other provisions |

## Statement of Changes in Equity

| | Actual 2019 $'000 | Original Budget 2019 $'000 | Variance 2019 $'000 |
|---|---|---|---|
| **CONTRIBUTED EQUITY** | | | |
| **Opening balance** | 404,419 | 404,419 | – |
| **Transactions with owners** | | | |
| **Contributions by owners** | | | |
| Equity injections – Appropriations | 7,294 | 5,499 | 1,795 |
| Departmental capital budget | 24,345 | 24,345 | – |
| **Total transactions with owners** | 31,639 | 29,844 | 1,795 |
| **Closing balance as at 30 June** | 436,058 | 434,263 | 1,795 |
| **RETAINED EARNINGS** | | | |
| **Opening balance** | (250,138) | (271,622) | 21,484 |
| **Comprehensive income** | | | |
| Surplus/(Deficit) for the period | (45,377) | (33,893) | (11,484) |
| **Total comprehensive loss** | (45,377) | (33,893) | (11,484) |
| **Closing balance as at 30 June** | (295,515) | (305,515) | 10,000 |
| **ASSET REVALUATION RESERVE** | | | |
| **Opening balance** | 17,137 | 17,137 | – |
| **Comprehensive income** | | | |
| Other comprehensive income | 5,363 | – | 5,363 |
| **Total comprehensive income** | 5,363 | – | 5,363 |
| **Closing balance as at 30 June** | 22,500 | 17,137 | 5,363 |
| **TOTAL EQUITY** | | | |
| **Opening balance** | 171,418 | 149,934 | 21,484 |
| **Comprehensive income** | | | |
| Other comprehensive income | 5,363 | – | 5,363 |
| Surplus/(Deficit) for the period | (45,377) | (33,893) | (11,484) |
| **Total comprehensive loss** | (40,014) | (33,893) | (6,121) |
| **Transactions with owners** | | | |
| **Contributions by owners** | | | |
| Equity injections – Appropriations | 7,294 | 5,499 | 1,795 |
| Departmental capital budget | 24,345 | 24,345 | – |
| **Total transactions with owners** | 31,639 | 29,844 | 1,795 |
| **Closing balance as at 30 June** | 163,043 | 145,885 | 17,158 |

| Explanations of major variances | Affected line items |
|---|---|
| The increase to the deficit is mainly attributable to the increase in depreciation and amortisation expense (refer to variance explanation for depreciation and amortisation). | Surplus/(Deficit) for the period – Retained earnings |

## Cash Flow Statement

| | Actual 2019 $'000 | Original Budget 2019 $'000 | Variance 2019 $'000 |
|---|---|---|---|
| **OPERATING ACTIVITIES** | | | |
| **Cash received** | | | |
| Appropriations | 370,324 | 352,180 | 18,144 |
| Operating cash received | 3,282 | 3,662 | (380) |
| Net GST received | 14,261 | – | 14,261 |
| Cost recoveries | 3,649 | – | 3,649 |
| Other cash received | 5,008 | 4,500 | 508 |
| **Total cash received** | 396,523 | 360,342 | 36,181 |
| **Cash used** | | | |
| Employees | 220,589 | 234,677 | (14,088) |
| Suppliers | 162,252 | 113,064 | 49,188 |
| Transfers to the Official Public Account | 12,032 | 3,353 | 8,679 |
| **Total cash used** | 394,873 | 351,094 | 43,779 |
| **Net cash from/(used by) operating activities** | 1,651 | 9,248 | (7,597) |
| **INVESTING ACTIVITIES** | | | |
| **Cash used** | | | |
| Purchase of property, plant and equipment | 38,160 | 39,092 | (932) |
| **Total cash used** | (38,160) | (39,092) | 932 |
| **Net cash (used by) investing activities** | (38,160) | (39,092) | 932 |
| **FINANCING ACTIVITIES** | | | |
| **Cash received** | | | |
| Appropriations – contributed equity | 39,027 | 29,844 | 9,183 |
| **Total cash received** | 39,027 | 29,844 | 9,183 |
| **Net cash from financing activities** | 39,027 | 29,844 | 9,183 |

| | Actual | Original Budget | Variance |
|---|---|---|---|
| | 2019 $'000 | 2019 $'000 | 2019 $'000 |
| **Net increase/(decrease) in cash held** | 2,518 | – | 2,518 |
| Cash at the beginning of the reporting period | 62,703 | 37,199 | 25,504 |
| **Cash at the end of the reporting period** | 65,221 | 37,199 | 28,022 |

| Explanations of major variances | Affected line items |
|---|---|
| **Cash received** | |
| Net GST received is not budgeted for in the Portfolio Budget Statements (PBS). This item is offset against the Cash used – Suppliers original budget disclosed in the PBS. | Net GST received/Suppliers |
| Please refer to explanation for Cash and cash equivalent. | Appropriations – contributed equity |
| **Cash used** | |
| Suppliers expenses were higher than budget due mainly to the combination of additional revenue from Government received at MYEFO for new budget measures and Net GST received offset (see variance comment for Net GST received). | Suppliers |
| The increase relates to higher Own-source revenue receipts. These receipts are unpredictable and therefore subject to variation. | Transfers to the Official Public Account |

## 8.5B: Administered budgetary reports

The following tables provide a comparison of the original budget as presented in the 2018–19 Portfolio Budget Statements (PBS) to the 2018–19 final outcome as presented in accordance with Australian Accounting Standards for the entity. The budget is not audited. Explanations of variances greater than +/- 10% and greater than +/- $5m are provided.

### Administered Schedule of Comprehensive Income

| | Actual | Original Budget | Variance |
|---|---|---|---|
| | 2019 $'000 | 2019 $'000 | 2019 $'000 |
| **EXPENSES** | | | |
| Grants | 12,953 | 14,610 | (1,657) |
| Impairment loss allowance on financial instruments | 61,944 | 56,907 | 5,037 |
| Claims for unclaimed monies | 53,521 | 42,820 | 10,701 |
| Promotional costs for MoneySmart initiatives | 570 | 572 | (2) |
| **Total expenses** | 128,988 | 114,909 | 14,079 |
| **LESS:** | | | |
| **Own-source revenue** | | | |
| **Taxation revenue** | | | |
| Fees | 800,216 | 802,998 | (2,782) |
| Supervisory cost recovery levies | 50,157 | 41,829 | 8,328 |
| ***Total taxation revenue*** | 850,374 | 844,827 | 5,547 |
| **Non-taxation revenue** | | | |
| Supervisory cost recovery levies | 223,204 | 232,373 | (9,169) |
| Fees and fines | 199,054 | 188,678 | 10,376 |
| Unclaimed monies | 70,862 | 50,693 | 20,169 |
| ***Total non-taxation revenue*** | 493,120 | 471,744 | 21,376 |
| **Total revenue** | 1,343,493 | 1,316,571 | 26,923 |
| **Net contribution by services** | 1,214,505 | 1,201,662 | 12,844 |

| Explanations of major variances | Affected line items |
|---|---|
| The increase in claims for unclaimed monies is due to the revaluation adjustment of the claims provision. Refer to the Accounting Policy note at 4.2B. | Claims for unclaimed monies/ Non-taxation revenue unclaimed monies |
| The increase is due to new expenditure measures approved as part of MYEFO, leading to higher than budgeted cost recoveries. | Supervisory cost recovery levies/ Taxation revenue |

## Administered Schedule of Assets and Liabilities

| | Actual 2019 $'000 | Original Budget 2019 $'000 | Variance 2019 $'000 |
|---|---|---|---|
| **ASSETS** | | | |
| **Financial assets** | | | |
| Cash and cash equivalents | 1,859 | 2,517 | (658) |
| Supervisory cost recovery levies receivable | 282,438 | – | 282,438 |
| Fees and fines receivable | 143,150 | 182,568 | (39,418) |
| Trade and other receivables | 8,600 | 212 | 8,388 |
| **Total assets administered on behalf of Government** | 436,047 | 185,297 | 250,750 |
| **LIABILITIES** | | | |
| **Payables and provisions** | | | |
| Suppliers and other payables | 31,707 | 20,896 | 10,811 |
| Unclaimed monies provisions | 347,790 | 311,699 | 36,091 |
| **Total liabilities administered on behalf of Government** | 379,497 | 332,595 | 46,902 |
| **Net assets/(liabilities)** | 56,550 | (147,298) | 203,848 |

| Explanations of major variances | Affected line items |
|---|---|
| The variance is due to the classification, where the Supervisory cost recovery levies receivable and Trade and other receivables were budgeted for in Fees and fines receivable. The increase in total receivables arises as the Supervisory cost recovery levies were recognised in the budget on a cash basis whereas the actuals are recognised on an accrual basis. | Supervisory cost recovery levies receivable/Fees and fines receivable/Trade and other receivables |
| This is mainly due to an increase in the value of unidentified payments received. | Suppliers and other payables |
| The provision has been impacted by an actuarial review of claims patterns and economic factors resulting in lower discount rate being applied. | Unclaimed monies provisions |

# 8

# Appendices

# 8.1 Appendices relating to how our people achieve our vision

## The role of the Commission

The Commission is responsible for ASIC's strategic direction and priorities. The Commission meets twice each month (except January and December) to:

- decide on matters within ASIC's regulatory functions and powers that have strategic significance
- oversee management and operations of ASIC as an Australian Government agency.

The Commission appoints and evaluates the performance of its executive directors and senior executive leaders and approves budgets and business plans for each team.

**For more information on ASIC's corporate structure, see Section 1.2**

Commissioners are appointed by the Governor-General, on the nomination of the Treasurer.

The Treasurer may nominate only those people who are qualified by knowledge of, or experience in, business, the administration of companies, financial markets, financial products and financial services, law, economics or accounting.

Commissioners are appointed on fixed terms that may be terminated only for the reasons set out in section 111 of the ASIC Act. The Remuneration Tribunal sets Commissioners' remuneration, which is not linked to their performance.

The ASIC Act requires Commissioners to disclose to the Minister direct or indirect pecuniary interests in corporations carrying on business in Australia, businesses in Australia, interests regulated by ASIC, or expectations, understandings, arrangements or agreements for future business relationships.

Chris Savundra, General Counsel, is the primary source of legal advice to the Commission, providing legal counsel to the Commission on major regulatory and enforcement matters. Kathleen Cuneo was Acting Chief Legal Officer from January 2018 to January 2019, while Chris Savundra had oversight of ASIC's work in assisting the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry.

Other independent legal and accounting experts also advise on specific matters.

The Commission delegates various powers and functions to executive directors, senior executive leaders, Regional Commissioners, and employees reporting to them, to ensure that ASIC's business is carried out efficiently and effectively. Delegations are reviewed regularly, and the Commission requires its delegates to act in accordance with policies and procedures approved by the Commission. The Commission held 36 meetings in 2018–19.

### Table 8.1.1 Commission meetings, 2018–19

| Commissioner | Eligible to attend | Attended |
|---|---|---|
| James Shipton | 20 scheduled meetings<br>16 unscheduled meetings | 19<br>16 |
| Peter Kell | 9 scheduled meetings<br>9 unscheduled meetings | 8<br>7 |
| Daniel Crennan | 19 scheduled meetings<br>15 unscheduled meetings | 18<br>15 |
| Karen Chester | 10 scheduled meetings<br>6 unscheduled meetings | 10<br>6 |
| Cathie Armour | 20 scheduled meetings<br>16 unscheduled meetings | 17<br>13 |
| John Price | 20 scheduled meetings<br>16 unscheduled meetings | 19<br>14 |
| Danielle Press | 16 scheduled meetings<br>13 unscheduled meetings | 15<br>12 |
| Sean Hughes | 11 scheduled meetings<br>8 unscheduled meetings | 10<br>8 |

Note: Commission members are unable to formally form part of a Commission meeting when they are overseas, even where they join the discussion by telephone.

Unscheduled Commission meetings are called to obtain the Commission's decision on specific issues where required outside of the meeting timetable.

The Commission also meets on a weekly basis to:

› discuss rapidly evolving matters or those that require early input or an update on approach or strategy
› coordinate Commissioners' activities.

In 2018–19, ASIC began a program to reform our governance, structure and decision-making processes in light of recommendations from the Royal Commission and the application of the executive accountability regime. Phase 1 of this program is scheduled to be completed in late 2019.

Additional information on ASIC's internal governance is published on our website.

## Audit Committee and audit services

The Audit Committee operates independently of management and plays a key role in assisting the Chair to discharge his responsibilities for the efficient, effective, economical and ethical use of Commonwealth resources. The Committee does this by providing independent assurance to the Chair on ASIC's financial and performance reporting, risk oversight and management, and system of internal control. ASIC's Audit Committee Terms of Reference are available on our website.

The Committee reviewed ASIC's 2018–19 financial statements and provided advice to the Chair and Commissioners on the preparation and review of financial statements before the Chair signed them. The Committee met four times during the year, supplemented by two special meetings.

### Table 8.1.2 Audit Committee meetings, 2018–19

| Member | Eligible to attend | Attended |
|---|---|---|
| **Geoffrey Applebee** | | |
| First appointed as an independent member on 1 February 2010 | 4 main meetings | 4 |
| Reappointed as independent member and Chairman on 1 September 2015 | 2 special meetings | 2 |
| **David Prothero** | | |
| First appointed as an independent member on 1 March 2011 | 4 main meetings | 4 |
| Reappointed as independent member and Deputy Chairman on 1 July 2016 | 2 special meetings | 2 |
| Retired from the Committee on 30 June 2019 | | |
| **Adrian Walkden** | | |
| First appointed as an independent member on 9 November 2017 | 2 main meetings | 2 |
| Retired from the Committee on 31 December 2018 | 2 special meetings | 2 |

| Member | Eligible to attend | Attended |
|---|---|---|
| **Cathie Armour** | | |
| ASIC Commissioner | 4 main meetings | 4 |
| First appointed as a committee member on 13 June 2018 | 2 special meetings | 2 |
| **Peter Achterstraat AM** | | |
| First appointed as a committee member on 22 February 2019 | 2 main meetings | 2 |

Independent members Geoffrey Applebee and David Prothero are chartered accountants and company directors with significant financial, business and community experience. Adrian Walkden was Chief Information Officer for a separate Commonwealth entity and has significant information technology experience within an Australian Government setting. Peter Achterstraat is the NSW Productivity Commissioner and has held a number of senior NSW State Government appointments, as well as being a former Deputy Commissioner of Taxation with the ATO. The internal appointee, Cathie Armour, is a Commissioner of ASIC.

Internal audit services are provided by internal audit employees from ASIC's Internal Audit and Operational Risk team, supported by specialist private sector internal audit providers as needed. The Australian National Audit Office provides external audit services. Senior external and internal audit representatives attend Audit Committee meetings.

**Geoffrey Applebee**
**Chairman**
Audit Committee
July 2019

## Boards, committees and panels

We actively engage with our stakeholders, including through the advisory panels listed below, to gain a deeper understanding of industry and consumer developments, consult on policy matters, and identify threats and harms in the sectors we regulate.

### Australian Government Financial Literacy Board

The Australian Government Financial Literacy Board was established in 2005. It is a non-statutory body that provides independent and strategic guidance to the Government and ASIC on financial literacy and capability issues.

The Board met twice during 2018–19. It supported the launch of the 2018 National Financial Capability Strategy at Parliament House in Canberra. The Board also provided feedback on ASIC's financial capability priorities, including the design of the next generation MoneySmart website, an enhanced stakeholder engagement strategy, and improvements to the MoneySmart Teaching program.

## ASIC Business Advisory Panel

The Business Advisory Panel (formerly the Business Advisory Committee) enables direct consultation with the business community about our registry and licensing services, with an emphasis on small business.

It advises on strategic direction, including proposed legislative and policy changes, as well as operations and improvement initiatives, with a focus on registry and assessing the impacts to business. Panel members are drawn from a wide range of business, industry and professional organisations.

The Panel met twice in 2018–19. Significant themes of engagement across the year were the Government proposals to modernise ASIC's business registers and introduce a Director Identification Number. The Panel's feedback on the experiences of businesses and agents in using our registry services was useful in informing the development of proposals and our improvement priorities.

## Consumer Advisory Panel

The Consumer Advisory Panel (CAP) was established in 1999 and advises ASIC on current issues affecting consumers and retail investors in the financial services and wealth management industries. The CAP also informs ASIC's surveillance, enforcement, policy and financial education initiatives.

The CAP meets three times a year and a joint meeting is held annually with the Consumer Consultative Committee of the Australian Competition and Consumer Commission (ACCC).

This year, the CAP focused on the challenges faced by vulnerable consumers and specific financial issues faced by older people nearing retirement, including responsible lending for car loans and small amount loans, credit cards, buy now pay later products, reverse mortgages, debt collection and debt management practices, insurance claims handling, superannuation advice, and conflicted remuneration. The CAP also considered the effectiveness of enforceable undertakings, remediation, industry codes, and competition from a consumer perspective. It engaged with various areas of current law reform, including:

- implementation of product intervention powers and issuer and distributor obligations
- reform to the dispute resolution framework
- professional standards reforms for financial advisers
- the findings and recommendations of the Royal Commission.

## Digital Finance Advisory Panel

The Digital Finance Advisory Panel (formerly the Digital Finance Advisory Committee) was established in 2015. It helps ASIC support innovation in financial services and markets. The Panel provides advice and feedback on opportunities, developments and emerging risks for start-up fintech and regtech businesses. ASIC's engagement with those businesses is channelled through its Innovation Hub.

Members are drawn from the fintech, regtech, venture capital, consumer and academic sectors, and serve in their personal capacity. Representatives of Treasury, APRA, the RBA, the Office of the Information Commissioner, the ACCC, the Australian Transaction Reports and Analysis Centre (AUSTRAC) and Austrade attend as observers. Other agencies also attend as observers when relevant issues are being discussed.

In 2018–19, the Panel met four times and advised on topics including:

- the impact of the Consumer Data Right, the New Payments Platform, and Open Banking on the financial technologies sector
- the state of crypto-assets and initial coin offerings in Australia
- ongoing reviews of the development of regulatory technologies in the region.

### Director Advisory Panel

The Director Advisory Panel was established in 2013 to enable ASIC to gain a deeper understanding of developments and systemic risks in the corporate sector. Members are directors drawn from entities of various sizes, representing different sectors and locations.

In 2018–19, the Panel met twice and discussed a range of matters, including ASIC's Corporate Governance Taskforce, the effectiveness of disclosure for consumers from a behavioural economics perspective, and the Royal Commission's interim and final reports.

### External Advisory Panel

The External Advisory Panel was established in 2009 to help ASIC gain a deeper understanding of developments and issues in the financial services industry and the markets we regulate, enabling us to be more forward-looking in examining issues and assessing systemic risks. Members are drawn from various sectors and sit in a personal capacity.

During 2018–19, the Panel met four times and provided advice and feedback on, among other things, credit card lending, financial capability and the 2018 National Financial Capability Strategy, direct life insurance, whistleblowing reforms, and ASIC's new supervisory approaches, including Close and Continuous Monitoring.

### Financial Advisers Consultative Committee

The Financial Advisers Consultative Committee was established in 2017. It supplements ASIC's engagement with the financial advice industry by improving our capacity to identify, assess and respond to emerging trends, and by enhancing our relationships with key stakeholders. Members are practising financial advisers with a range of skills in insurance, superannuation, self-managed superannuation funds and digital financial advice. They sit in a personal capacity.

During 2018–19, the Committee met three times and provided feedback on a range of topics, including the Royal Commission, conflicts of interest in the financial advice industry, digital advice, managed discretionary accounts, timeshare and life insurance reforms.

### Markets Advisory Panel

The Markets Advisory Panel was established in 2010. It advises on ASIC's approach to its responsibilities for day-to-day supervision of the Australian market and on broader market developments. Members are drawn from the financial services industry, with experience in retail markets, institutional banking and asset management.

During 2018–19, the Panel met five times and provided advice on a wide range of topics, including:

- our CCM program and onsite model for the supervision of large financial institutions
- our reviews of exchange-traded products and high-frequency trading in the equities and foreign exchange markets
- equity raising allocations
- ASX CHESS replacement
- market data costs
- implications of the Royal Commission
- applications and risks of artificial intelligence and machine learning in financial markets.

## Disciplinary or peer review panels

The panels listed below have disciplinary or peer review functions and assist in our regulatory decision making.

### Financial Services and Credit Panel

The Financial Services and Credit Panel (FSCP) comprises a pool of industry participants from which sitting panels are drawn. These panels add an element of peer review to the administrative decision-making process and make decisions about whether to ban individuals from providing financial services or engaging in credit activities. A matter may be referred to the FSCP where we consider it appropriate for peer review because of its significance, complexity or novelty.

The FSCP consists of part-time members who are leaders in the financial services and consumer credit industry. Each sitting panel consists of two members from the FSCP and an ASIC employee member.

During 2018–19, the FSCP made banning orders against four individuals, including Jeffrey Worboys and Matthew Barnett. Mr Worboys and Mr Barnett were banned from providing financial services for six years due to their failure to exercise the required degree of care and diligence and to act in the best interests of the members of a managed investment scheme they operated.

### Liquidator Registration and Disciplinary Committees

Applications for registration as a liquidator, and potential disciplinary action against registered liquidators, are referred to specially convened committees.

Each committee consists of an ASIC Chair, a registered liquidator chosen by the Australian Restructuring, Insolvency and Turnaround Association, and a person appointed by the Minister.

During 2018–19, ASIC registered a total of 12 liquidators, including five who had applied for registration in the prior year. ASIC received and referred 11 new applications for registration as a liquidator to the committees. Seven of these new applicants were registered, two were registered with conditions, two were not registered, and the outcome of the remaining two applications is yet to be determined.

The disciplinary committee heard one disciplinary matter and determined to cancel the registration of a Brisbane-based registered liquidator. A further three registered liquidators were referred to the committee and the referrals had not been heard by 30 June 2019.

The register of liquidators and a summary of disciplinary actions taken can be found on the ASIC website.

### Markets Disciplinary Panel

The Markets Disciplinary Panel (MDP) is a peer review panel engaged by ASIC to make decisions about whether infringement notices should be given to market participants for alleged contraventions of the market integrity rules. It consists of part-time members with extensive market or professional experience. Matters are referred to the MDP by ASIC as an alternative to bringing civil proceedings.

During 2018–19, the MDP issued infringement notices in respect of two matters:

- UBS Securities Australia Ltd paid a $120,000 infringement notice in connection with transactions that the MDP considered were not made in the ordinary course of trading and were not in accordance with instructions of UBS's clients
- Macquarie Securities (Australia) Limited paid a $300,000 infringement notice in connection with orders and trade reports that the MDP considered did not comply with the rules about regulatory data.

The MDP has had one instance of non-compliance with an infringement notice. In that matter, ASIC commenced civil penalty proceedings in the Federal Court in relation to alleged breaches of the market integrity rules by State One Stockbroking Limited (State One). On 20 November 2018, the court found that State One had failed to maintain the necessary organisational and technical resources for post-trade alerts and it placed bids on behalf of a client that it ought reasonably have suspected had the intention of creating a false or misleading appearance in the market for, or price of, those securities. The court directed State One to pay penalties totalling $350,000. State One also agreed to pay $150,000 to ASIC for its legal and investigative costs for the matter.

The infringement notices issued by the MDP are published on the MDP Outcomes Register on the ASIC website. Compliance with an infringement notice is not an admission of guilt or liability, and the market intermediary is not taken to have contravened subsection 798H(1) of the Corporations Act.

## ASIC's people

ASIC continues to attract and retain highly skilled employees who are instrumental in ensuring that we carry out our regulatory functions and achieve our regulatory goals.

As at 30 June 2019, ASIC had a total of 1,701 employees. Table 8.1.3 shows a breakdown by location for each classification and Table 8.1.4 provides a detailed picture of the gender breakdown of our people.

### Table 8.1.3 ASIC employees (FTE), by location, 2018–19

| Roles | Vic. | NSW | Qld | WA | SA | Tas | ACT | NT | Total |
|---|---|---|---|---|---|---|---|---|---|
| Chair | 1 | – | – | – | – | – | – | – | **1** |
| Deputy Chair | 1 | 1 | – | – | – | – | – | – | **2** |
| Member | 3 | 1 | – | – | – | – | – | – | **4** |
| SES | 13 | 26 | – | 1 | 1 | – | 1 | – | **42** |
| Exec 2 | 169 | 249 | 35 | 25 | 8 | 7 | 6 | – | **499** |
| Exec 1 | 118 | 202 | 41 | 32 | 11 | 4 | 4 | 1 | **413** |
| ASIC 4 | 130 | 115 | 42 | 23 | 11 | 3 | 1 | – | **325** |
| ASIC 3 | 102 | 68 | 24 | 14 | 6 | 1 | 2 | – | **217** |
| ASIC 2 | 143 | 13 | 12 | 1 | 2 | 1 | – | – | **172** |
| ASIC 1 | 22 | – | – | – | – | – | – | – | **22** |
| ASIC Act | – | 4 | – | – | – | – | – | – | **4** |
| **Total** | **702** | **679** | **154** | **96** | **39** | **16** | **14** | **1** | **1,701** |

Notes:

1 Net average number over 12 months on net FTE basis (i.e. excluding FTEs working on capital projects).

2 Includes staff at the Superannuation Complaints Tribunal and the CADB.

3 Excludes contractors and secondments from other agencies.

Note: Data rounded – some totals and subtotals may vary.

**Table 8.1.4 Combined totals for Commissioners and for employees under the ASIC Act and under the Public Service Act 1999, by gender, 2018–19**

| Roles | Ongoing | | | | Non-ongoing | | | | Total |
|---|---|---|---|---|---|---|---|---|---|
| | Full-time | | Part-time | | Full-time | | Part-time | | |
| | Female | Male | Female | Male | Female | Male | Female | Male | |
| **Appointee** | – | – | – | – | 3 | 4 | – | – | **7** |
| Chair | – | – | – | – | – | 1 | – | – | **1** |
| Deputy Chair | – | – | – | – | 1 | 1 | – | – | **2** |
| Member | – | – | – | – | 2 | 2 | – | – | **4** |
| **ASIC Act employees** | 1 | 1 | – | – | 9 | 11 | 1 | – | **23** |
| SES | – | 1 | – | – | 7 | 10 | 1 | – | **19** |
| Other ASIC Act employees | 1 | – | – | – | 2 | 1 | – | – | **4** |
| **Public Service Act employees** | 611 | 629 | 197 | 34 | 101 | 74 | 19 | 6 | **1,671** |
| SES | 10 | 9 | 3 | 1 | – | – | – | – | **23** |
| Exec 2 | 162 | 225 | 69 | 15 | 11 | 16 | 1 | – | **499** |
| Exec 1 | 120 | 192 | 49 | 8 | 21 | 19 | 4 | – | **413** |
| ASIC 4 | 156 | 98 | 24 | – | 26 | 16 | 3 | 1 | **324** |
| ASIC 3 | 81 | 75 | 16 | 2 | 24 | 15 | 1 | 3 | **217** |
| ASIC 2 | 76 | 29 | 33 | 7 | 15 | 5 | 6 | 2 | **173** |
| ASIC 1 | 6 | 1 | 3 | 1 | 4 | 3 | 4 | – | **22** |
| **Total** | **612** | **630** | **197** | **34** | **113** | **89** | **20** | **6** | **1,701** |

Table 8.1.5 shows how our regulatory resources are deployed, breaking down employee numbers according to the number of full-time equivalent (FTE) employees per regulatory team.

### Table 8.1.5 FTE employees for each ASIC regulatory team, 2018–19

| Team | Total net FTE |
|---|---|
| **Markets** | |
| Corporations | 38 |
| Financial Reporting and Audit | 28 |
| Insolvency Practitioners | 24 |
| Market Infrastructure | 30 |
| Market Supervision | 86 |
| **Wealth Management** | |
| Financial Advisers | 43 |
| Investment Managers | 34 |
| Superannuation | 22 |
| **Financial Services** | |
| Credit, Retail Banking and Payments | 53 |
| Insurers | 22 |
| Financial Capability | 43 |
| **Close and Continuous Monitoring** | **9** |
| **Office of Enforcement** | |
| **Financial Services Enforcement** | |
| Financial Services Enforcement | 36 |
| Wealth Management Enforcement – Major Financial Institutions | 60 |
| Wealth Management Enforcement | 31 |
| **Markets Enforcement** | |
| Corporations and Corporate Governance | 36 |
| Enforcement WA and Criminal Intelligence Unit | 34 |
| Markets Enforcement | 42 |

| Team | Total net FTE |
|---|---|
| **Other** | |
| Assessment and Intelligence | 146 |
| Registry | 194 |

Note: the figures in the above table are indicative only and do not reflect the following additional employees:

- an additional 54 FTE staff are employed to work on ESA matters
- an additional 78 FTE staff provide enforcement support services and legal counsel.

Most of our staff are employed under the ASIC Enterprise Agreement 2019–22, which is ongoing. Table 8.1.6 shows the industrial arrangements for all ASIC employees. Table 8.1.7 shows the salary ranges per annum for ASIC employees.

We continue to provide our people with the opportunity to receive an annual performance bonus. Table 8.1.8 shows the performance payments we made in 2018–19.

### Table 8.1.6 Industrial arrangements for ASIC employees as at 30 June 2019[1]

| Classification | ASIC Act s120(3) | AWA[2] | EA[3] | Total |
|---|---|---|---|---|
| ASIC 1 | – | – | 23 | **23** |
| ASIC 2 | – | – | 198 | **198** |
| ASIC 3 | – | – | 270 | **270** |
| ASIC 4 | – | – | 373 | **373** |
| Exec 1 | – | – | 482 | **482** |
| Exec 2 | – | – | 605 | **605** |
| SES | 19 | 11 | 18 | **48** |
| ASIC Act | 5 | – | – | **5** |
| **Total** | **24** | **11** | **1,969** | **2,004** |

1 The number of industrial arrangements for ASIC employees is calculated based on total headcount as at 30 June 2019, rather than FTE. This is because each industrial instrument belongs to an individual, regardless of their work pattern, and our obligations against those instruments relate to a number of people, not FTE.

2 Australian workplace agreement.

3 Enterprise agreement.

### Table 8.1.7 Salary ranges per annum

| Classification | Minimum per annum | Maximum per annum |
|---|---|---|
| ASIC 1 | $45,004 | $50,735 |
| ASIC 2 | $52,339 | $63,871 |
| ASIC 3 | $66,714 | $78,002 |
| ASIC 4 | $79,830 | $92,179 |
| Exec 1 | $104,617 | $123,432 |
| Exec 2 | $118,513 | $169,387 |
| SES | $180,000 | $319,884 |

### Table 8.1.8 Performance payments, 2018–19, by classification

| Classification | No. of recipients | Aggregate | Minimum | Maximum | Average |
|---|---|---|---|---|---|
| ASIC 4 | 263 | $950,285 | $557 | $13,361 | $3,613 |
| Exec 1 | 438 | $2,423,155 | $609 | $18,917 | $5,532 |
| Exec 2 | 605 | $5,397,077 | $1,403 | $28,477 | $8,921 |
| SES | 46 | $839,007 | $6,983 | $36,305 | $18,239 |

Note: This table includes payments for the 2017–18 performance year that were paid in 2018–19, plus any pro-rata payments for the 2018–19 performance year for employees who left ASIC in 2018–19.

## Table 8.1.9 Information about remuneration for key management personnel (KMP)[1]

| | | Short-term benefits | | | Post-employment benefits | Other long-term benefits | | Termination benefits | Total remuneration |
|---|---|---|---|---|---|---|---|---|---|
| Name | Position title | Base salary ($) | Bonuses[6] ($) | Other benefits and allowances ($) | Superannuation contributions ($) | Long service leave | Other long-term benefits | Termination benefits ($) | Total remuneration ($) |
| James Shipton | Chair[2] | 758,535 | – | – | 25,000 | 18,331 | – | – | 801,866 |
| Daniel Crennan | Deputy Chair[2] | 588,433 | – | 58,213[7] | 23,846 | 13,871 | – | – | 684,363 |
| Karen Chester | Deputy Chair[2] | 244,131 | – | – | 23,430 | 5,620 | – | – | 273,181 |
| John Price | Commissioner[2] | 465,606 | – | – | 70,265 | 37,047 | – | – | 572,918 |
| Peter Kell | Deputy Chair[2] | 214,178 | – | – | 33,399 | 6,035 | – | – | 253,612 |
| Catherine Armour | Commissioner[2] | 533,693 | – | – | 25,000 | 12,915 | – | – | 571,608 |
| Danielle Press | Commissioner[2] | 438,327 | – | – | 19,519 | 10,085 | – | – | 467,931 |
| Sean Hughes | Commissioner[2] | 332,749 | – | – | 49,504 | 7,899 | – | – | 390,152 |
| Christopher Savundra | General Counsel | 320,423 | 23,511 | 29,738 | 25,000 | 8,365 | – | – | 407,037 |
| Carlos Iglesias | Executive Director Operations | 314,423 | 12,768 | 32,362 | 54,662 | 7,953 | – | – | 422,168 |
| Greg Kirk | Executive Director Strategy | 303,285 | 30,215 | 29,738 | 53,523 | 7,604 | – | – | 424,365 |

| | | Short-term benefits | | | Post-employment benefits | | Other long-term benefits | Termination benefits | Total remuneration |
|---|---|---|---|---|---|---|---|---|---|
| Rosanne Bell | Executive Director Registry[3] | 146,123 | 10,265 | 11,904 | 23,309 | 3,647 | – | – | 195,248 |
| Timothy Mullaly | Executive Director Financial Services Enforcement[3] | 140,164 | 2,933 | 11,904 | 23,846 | 3,645 | – | – | 182,492 |
| Warren Day | Executive Director Assessment and Intelligence[3] | 146,915 | 7,332 | 11,904 | 25,667 | 3,581 | – | – | 195,399 |
| Joanna Bird | Executive Director Wealth Management[3] | 154,083 | 10,137 | 13,643 | 15,540 | 3,564 | – | – | 196,967 |
| Michael Saadat | Executive Director Financial Services[3] | 152,560 | 7,241 | 13,725 | 23,951 | 3,598 | – | – | 201,075 |
| Sharon Concisom | Executive Director Markets Enforcement[3] | 152,075 | 4,399 | 11,904 | 23,434 | 3,644 | – | – | 195,456 |

| | | Short-term benefits | | | Post-employment benefits | Other long-term benefits | Termination benefits | | Total remuneration |
|---|---|---|---|---|---|---|---|---|---|
| Greg Yanco | Executive Director Markets[3] | 140,193 | 7,476 | 13,725 | 21,182 | 3,717 | – | – | 186,293 |
| Kathleen Cuneo | Acting Chief Legal Officer[4] | 135,870 | 20,820 | 17,156 | 24,869 | 3,406 | – | – | 202,121 |
| Matthew Abbott | Senior Executive Leader Corporate Affairs[5] | 147,738 | 4,326 | 16,013 | 12,125 | 3,596 | – | – | 183,798 |
| Clare Lewis | Senior Executive Leader Internal Audit and Operational Risk[5] | 140,517 | 6,865 | 16,013 | 11,766 | 3,421 | – | – | 178,582 |
| Helen O'Loughlin | Chief of Staff[5] | 142,859 | 16,071 | 16,013 | 13,462 | 3,640 | – | – | 192,045 |

1 This table is prepared on an accrual basis.

2 The remuneration for these positions is set by the Remuneration Tribunal. This is outlined in the Remuneration Tribunal (Remuneration and Allowances for Holders of Full-time Public Office) Determination 2018.

3 Part year remuneration disclosure – commenced as a KMP on 14 January 2019.

4 Part year remuneration disclosure – ceased as a KMP on 30 January 2019.

5 Part year disclosure – ceased as a KMP on 13 January 2019.

6 Bonus expenses reported in the financial statements relating to 2018–19 service were based on the best estimate available when approved. The bonus amounts reported above have incorporated subsequent information.

7 This disclosure includes relocation and housing expenses paid in accordance with ASIC's relocation policy.

## Table 8.1.10 Information about remuneration for senior executives[1]

| | | Short-term benefits | | | Post-employment benefits | Other long-term benefits | | Termination benefits | Total remuneration |
|---|---|---|---|---|---|---|---|---|---|
| Total remuneration bands ($) | Number of senior executives | Average base salary ($) | Average bonuses ($) | Average other benefits and allowances ($) | Average superannuation contributions ($) | Average long service leave | Average other long-term benefits | Average termination benefits ($) | Average total remuneration ($) |
| 0–220,000 | 24 | 100,466 | 5,915 | 10,094 | 15,254 | 2,494 | – | 1,917 | 136,140 |
| 220,001–245,000 | 3 | 171,744 | 9,429 | 12,423 | 31,085 | 4,277 | – | – | 228,958 |
| 245,001–270,000 | 1 | 180,039 | 21,251 | 23,790 | 32,693 | 4,410 | – | – | 262,183 |
| 270,001–295,000 | 2 | 207,073 | 10,424 | 27,765 | 33,536 | 5,247 | – | – | 284,045 |
| 295,001–320,000 | 4 | 237,665 | 10,347 | 28,506 | 24,073 | 5,732 | – | – | 306,323 |
| 320,001–345,000 | 5 | 237,590 | 19,310 | 27,510 | 43,219 | 5,888 | – | – | 333,517 |
| 345,001–370,000 | 3 | 266,853 | 22,318 | 27,180 | 38,873 | 6,595 | – | – | 361,819 |
| 370,001–395,000 | 2 | 292,974 | 22,223 | 27,765 | 34,528 | 7,324 | – | – | 384,814 |

1 This table is prepared on an accrual basis.

## Table 8.1.11 Information about remuneration for other highly paid staff[1]

| | | Short-term benefits | | | Post-employment benefits | Other long-term benefits | | Termination benefits | Total remuneration |
|---|---|---|---|---|---|---|---|---|---|
| Total remuneration bands ($) | Number of senior executives | Average base salary ($) | Average bonuses ($) | Average other benefits and allowances ($) | Average superannuation contributions | Average long service leave | Average other long-term benefits | Average termination benefits ($) | Average total remuneration ($) |
| 220,001–245,000 | 16 | 187,439 | 11,972 | – | 30,293 | 4,342 | – | – | 234,046 |
| 245,001–270,000 | 13 | 201,412 | 14,385 | 4,168 | 31,442 | 5,043 | – | – | 256,450 |
| 270,001–295,000 | 1 | 201,839 | 14,114 | 29,738 | 37,794 | 5,024 | – | – | 288,509 |
| 295,001–320,000 | 2 | 251,827 | 9,156 | 12,896 | 33,097 | 6,263 | – | – | 313,239 |

1 This table is prepared on an accrual basis.

# 8.2 Appendices relating to assessments

## Assessing misconduct and other reports

### Misconduct reports from the public

We record and assess every report of alleged misconduct that we receive and we use this information to identify and respond to misconduct.

In 2018–19, we dealt with 10,249 reports of alleged misconduct. Table 8.2.1 below shows the outcome of the misconduct reports received by ASIC during the financial year.

### Table 8.2.1 Misconduct issues, by category, 2018–19

| Category | 2018–19 |
|---|---|
| **Corporations and corporate governance** | |
| Governance issues | 13% |
| Failure to provide books and records or a report as to affairs to an insolvency practitioner | 8% |
| Fraud allegations | 3% |
| Insolvency practitioner misconduct | 3% |
| Insolvency matters | 3% |
| Other (e.g. shareholder issues, reporting issues) | 15% |
| **Subtotal** | **45%** |
| **Financial services and retail investors** | |
| Credit issues | 13% |
| Operating an unregistered managed investment scheme or providing financial services without an AFS licence | 6% |
| General licence obligations | 6% |
| Other (e.g. insurance, advice, misleading or deceptive conduct, unconscionable conduct) | 11% |
| **Subtotal** | **36%** |

| Category | 2018–19 |
|---|---|
| **Market integrity** – including insider trading, continuous disclosure, misleading statements, and market manipulation | 9% |
| **Registry integrity** – including incorrect address recorded on ASIC's register, lodging false documents with ASIC, and issues with business names | 4% |
| **Subtotal** | **13%** |
| **Issues out of ASIC's jurisdiction** | **6%** |
| **Total** | **100%** |

### Table 8.2.2 Misconduct issues, by outcome, 2018–19

| Misconduct reports | Number |
|---|---|
| **Total misconduct reports finalised**[1] | **10,249** |
| **Outcome** | **Percentage** |
| **Referred for action by ASIC**[2] | **21%** |
| **Resolved**[3] | **12%** |
| Compliance achieved | 2% |
| Warning letter issued | 4% |
| Referred for internal or external dispute resolution | 6% |
| Assistance provided | <0.5% |
| More appropriate agency | <0.5% |
| **Analysed and assessed for no further action**[4] | **54%** |
| Insufficient evidence | 41% |
| No action | 13% |
| **No jurisdiction**[5] | **9%** |
| **No breach or offences** | **4%** |
| **Total** | **100%** |

1 Where ASIC receives reports about the same entity and issue, we merge these matters.

2 The matters ASIC takes into account when deciding whether or not to commence a formal investigation are set out in more detail in Information Sheet 151 *ASIC's approach to enforcement*.

3 This can involve referral to an EDR scheme, ASIC issuing a warning letter to the party that may be in breach of the Corporations Act, ASIC providing assistance to the reporter in the form of guidance and information about how best to resolve the matter themselves, or ASIC taking action to achieve compliance.

4 Preliminary inquiries made and information provided analysed and assessed for no further action by ASIC, due to insufficient evidence or other reason, such as where another agency or law enforcement body or third party (e.g. a liquidator) is better placed to appropriately deal with the underlying issues or is already taking action.

5 Where relevant, ASIC directs reporters to the appropriate agency or solution.

## Breach reports from licensees and auditors

The Corporations Act requires AFS licensees to tell us in writing within 10 business days about any significant breach (or likely breach) of their obligations. We also receive breach reports from auditors who have reasonable grounds to suspect a breach of the Corporations Act by the company, managed investment scheme or AFS licensee that they are appointed to audit.

Table 8.2.3 provides a breakdown of the breach reports we assessed in 2018–19 by type and outcome.

### Table 8.2.3 Breach reports by type and outcome, 2018–19

| Breach | |
|---|---|
| **Type** | **Number** |
| Auditor breach reports | 705 |
| Breach reports about AFS licensees and managed investment schemes | 2,173 |
| **Total breach reports finalised** | **2,878** |
| **Outcome** | **Percentage** |
| **Referred for action by ASIC** | **22%** |
| Referred for compliance, investigation or surveillance | 19% |
| Assist existing investigation or surveillance | 3% |
| **Analysed and assessed for no further action** | **78%** |
| No further action | 78% |
| No offence identified | <0.5% |
| **Total** | **100%** |

For more information about the matters that require an auditor to report a breach of the law to ASIC, see sections 311, 601HG and 990K of the Corporations Act.

### Statutory reports from liquidators, administrators and receivers

The Corporations Act requires liquidators, administrators and receivers (i.e. external administrators) to report to ASIC if they suspect that company officers are guilty of an offence. Liquidators must also report if the return to unsecured creditors may be less than 50 cents in the dollar.

Table 8.2.4 provides details of the statutory reports that we assessed in 2018–19 by type and outcome.

#### Table 8.2.4 Statutory reports from liquidators, administrators and receivers, 2018–19

| Type | Number |
|---|---|
| **Initial reports from liquidators, administrators and receivers**[1] | **8,106** |
| Reports alleging misconduct | 7,227 |
| Reports not alleging misconduct | 879 |
| **Supplementary reports alleging misconduct** | **515** |
| **Total statutory reports finalised (initial + supplementary)** | **8,621** |
| **Outcome** | **Percentage** |
| **Supplementary report analysed and assessed, no further information required**[2] | **76%** |
| **Supplementary reports referred** | **24%** |
| Referred for compliance, investigation or surveillance | 22% |
| Assisted existing investigation or surveillance | 2% |
| **Total** | **100%** |

1 We requested a further report (supplementary report) from the external administrator in 14% of cases.

2 There was insufficient evidence to warrant commencing a formal investigation in 87% of the cases where a supplementary report was requested and subsequently it was determined that no further information was required. We retain these reports for intelligence purposes for possible future use.

### ASIC's use of compulsory information-gathering powers

Since 2010–11, ASIC has reported the use of significant compulsory information-gathering powers under statute. This appendix discloses data by number of instances in 2018–19, with comparative data for 2017–18.

#### Table 8.2.5 Use of significant compulsory information-gathering powers

| Use of significant compulsory information-gathering powers | | Number of notices 2018–19 | Number of notices 2017–18 |
|---|---|---|---|
| **Appear for examination** | | | |
| ASIC Act, s19[1] | Requirement to appear for examination | **589** | 650 |
| ASIC Act, s58 | Power to summons a witness and take evidence | **0** | 0 |
| National Credit Act, s253[1] | Requirement to provide reasonable assistance | **22** | 50 |
| **Give reasonable assistance** | | | |
| Corporations Act, s1317R | Power to require assistance in prosecutions | **13** | 25 |
| ASIC Act, s49(3) | Power to require reasonable assistance in prosecutions | **14** | 24 |
| National Credit Act, s51 | Requirement to provide reasonable assistance | **1** | 0 |
| Corporations Act, s601FF | Power to conduct surveillance/monitor managed investment scheme | **0** | 0 |
| National Credit Act, s274(4) | Requirement to provide reasonable assistance | **0** | 0 |
| Corporations Act, s912E | Power to require assistance and disclosure of books and information from an AFS licensee | **148** | 412 |

| Use of significant compulsory information-gathering powers | | Number of notices 2018–19 | Number of notices 2017–18 |
|---|---|---|---|
| **Produce documents** | | | |
| National Credit Act, s266 | Requirement to produce books (credit activities) | **91** | 123 |
| National Credit Act, s267 | Requirement to produce books | **128** | 114 |
| ASIC Act, s30 | Notice to produce books about affairs of body corporate or registered scheme | **899** | 1,014 |
| ASIC Act, s31 | Notice to produce books about financial products | **27** | 74 |
| ASIC Act, s32A | Notice to produce books about financial services | **4** | 7 |
| ASIC Act, s33 | Notice to produce books in person's possession | **1,433** | 1,470 |
| **Provide access** | | | |
| ASIC Act, s29 | Power to inspect books | **0** | 0 |
| Corporations Act, s821D | Power to require access to a CS facility | **0** | 0 |
| **Provide information** | | | |
| ASIC Act, s12GY(2) | ASIC to require claims to be substantiated | **0** | 0 |
| ASIC Act, s37(9)(a) | Power requiring explanation of books | **2** | 0 |
| Corporations Act, s601HD | Power to request information about compliance plan of a registered scheme | **0** | 0 |
| National Credit Act, s49(1) | Requirement to provide information (statement) | **126** | 138 |

| Use of significant compulsory information-gathering powers | | Number of notices 2018–19 | Number of notices 2017–18 |
|---|---|---|---|
| Corporations Act, s912C | Power to require information from an AFS licensee | **735** | 640 |
| National Credit Act, Sch 2 item 17 | Power to require information (obtain statement or audit report) | **0** | 0 |
| Corporations Act, s672A | Power to require disclosure of relevant interests | **8** | 45 |
| Corporations Act, s672B | Power to require disclosure of relevant interests | **0** | 0 |
| National Credit Act, s37(4) | Power to request information or audit report from licence applicant | **0** | 0 |
| Corporations Act, s792D | Power to require reasonable assistance from a market licensee | **3** | 13 |
| **Provide information and produce books** | | | |
| ASIC Act, s30A | Notice to auditors requiring information or books | **35** | 43 |
| ASIC Act, s30B | Notice to registered liquidators requiring information or books | **6** | 3 |
| **Search warrants** | | | |
| *Crimes Act 1914*, s3E | Warrants to search premises/conveyance or person | **66**[2] | 55 |
| ASIC Act, s36 | Warrant to search premises | **0** | 0 |

1 These notices may include directions to provide reasonable assistance or produce documents.

2 Of the 66 warrants issued (for 13 individual investigations) in 2018–19, 57 were executed.

### Table 8.2.6 Use of other powers

| Use of other powers | | Number of notices 2018–19 | Number of notices 2017–18 |
|---|---|---|---|
| **Obligations of carriers and carriage service providers** | | | |
| *Telecommunications Act 1997*, s313 | Request for help as is reasonably necessary for enforcing the criminal law and laws imposing pecuniary penalties | **0** | 0 |
| **Provide documents, information or evidence** | | | |
| *Mutual Assistance in Business Regulation Act 1992*, s10(2) | Requirement to produce documents, to give information or to appear to give evidence and produce documents | **30** | 31 |

## Licensing and professional registration activities

ASIC assesses applications for AFS licences and credit licences. We also maintain a number of professional registers for registered companies, SMSFs, auditors and liquidators.

Our licensing and registration function is an important element of our regulatory framework as it governs entry into the financial system. We use a risk-based approach to assessment, with the aim of devoting the most resources to assessing the most complex and high-risk applications. This is to ensure that only suitable persons and organisations are licensed or registered.

Examples include four instances where applicants challenged ASIC's decision to refuse to grant them a financial services licence because we were not satisfied that they were suitable, by appealing our refusal to the Administrative Appeals Tribunal (AAT). The AAT upheld ASIC's decision to refuse to grant an AFS licence in all four instances. In a fifth case, the applicant agreed to tailored licence conditions to appropriately address ASIC's concerns. This was then confirmed by the AAT.

In 2018–19, we assessed over 2,080 applications for AFS licences and credit licences. We approved over 800 AFS licences, 4 limited AFS licences and 356 credit licences.

Of the 1,178 AFS licence and credit licence applications that were approved (including both new licences and licence variations), 711 (60%) were approved in a form different in scope from the licence authorisations sought by the applicant or the standard conditions. For AFS licence applications, approximately 57% were approved with changes to the form of the licence, while for credit licence applications this proportion was approximately 68%.

There were 1,592 financial services licence applications under consideration during the relevant period. Of these, 822 were approved, 134 were rejected for lodgement due to material deficiencies, 172 were withdrawn, 9 were refused and the remaining 455 were still under assessment. Of the 822 approved applications, 467 (57%) were approved with alterations to the original application.

There were 682 credit licence applications under consideration during the relevant period. Of these, 356 were approved, 67 were rejected for lodgement due to material deficiencies, 154 were withdrawn and the remaining 104 were under assessment. Of the 356 approved applications, 244 (68%) were approved with alterations to the original application.

We assessed over 218 applications for registration as auditors (including company auditors and SMSF auditors). Of these applications, we approved 148, 1 was rejected due to material deficiencies and 58 were withdrawn. We also cancelled or suspended 568 registrations.

Table 8.2.7 provides a breakdown of the type and number of applications we assessed in 2018–19 compared to 2017–18.

### Table 8.2.7 ASIC's licensing and professional registration activities

| | 2018–19 | 2017–18 |
|---|---|---|
| **AFS licences, including limited AFS licences (new and variations)** | | |
| Approved | **822** | 758 |
| Refused/Withdrawn | **315** | 410 |
| Cancelled/Suspended | **358** | 204 |
| In progress | **455** | 561 |
| **Australian credit licences (new and variations)** | | |
| Approved | **356** | 430 |
| Refused/Withdrawn | **221** | 188 |
| Cancelled/Suspended | **552** | 331 |
| In progress | **104** | 204 |
| **Registered auditors – registered company auditors, authorised audit company and SMSF auditors** | | |
| Approved | **148** | 195 |
| Refused/Withdrawn | **59** | 95 |
| Cancelled/Suspended | **568** | 632 |
| In progress | **11** | 39 |

| | 2018–19 | 2017–18 |
|---|---|---|
| **Registered liquidators** | | |
| Approved | **12** | – |
| Refused/Withdrawn | **2** | – |
| In progress | **9** | – |

## Reports required under statute and other reporting requirements

### ASIC Act

As required by section 136(1)(a), ASIC reports that in 2018–19 we issued one legislative instrument under the SIS Act, namely ASIC legislative instrument 2018/1080 made on 14 December 2018 under section 335 in Part 29 of the SIS Act.

We did not exercise our powers under Part 15 of the *Retirement Savings Account Act 1997*.

As required under section 136(1)(c), ASIC reports that during 2018–19 we conducted one joint inspection with the US Public Company Accounting Oversight Board under the terms of an agreement between the two organisations. We did not conduct any joint inspections with the Canadian Public Accountability Board or the Luxembourg Commission de Surveillance du Secteur Financier or share any information with them under the relevant provisions of the ASIC Act during 2018–19.

### Commonwealth fraud control guidelines

ASIC has a fraud control policy and plan in place, which is reviewed every two years and approved by the Operational Risk Committee. We have appropriate fraud prevention, detection, investigation and reporting mechanisms in place, considering the nature of ASIC's activities. We have taken all reasonable measures to deal appropriately with fraud.

## External scrutiny of our agency

### Financial Services Royal Commission

The Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry was announced on 30 November 2017 and the Hon. Kenneth Hayne AC QC was appointed as Commissioner on 14 December 2017. The Commissioner provided the final report of the Royal Commission to Government on 1 February 2019.

On 4 February 2019, the Treasurer released the Government's response to the Royal Commission. ASIC published an update in February 2019 on our planned actions to implement the Royal Commission recommendations. The Royal Commission reinforced and informed the program of change that ASIC began in 2018 and is continuing to implement.

**For more information on the Royal Commission, see Section 1.8**

### Judicial decisions and decisions of administrative tribunals

There were no judicial decisions, administrative tribunal decisions, or decisions by the Australian Information Commissioner in 2018–19 that have had, or may have, a significant impact on ASIC's operations.

### Australia's Financial Reporting Council Auditor Disciplinary Processes

In April 2019, the Financial Reporting Council (FRC) released its report, which made a number of recommendations for improvement in the processes of ASIC, the CADB, Chartered Accountants ANZ, CPA Australia, and the IPA. The report focused on matters related to taking enforcement actions against or disciplining registered company auditors (RCAs) who do not meet the standards expected of them.

The FRC report was partly a response to a recommendation by the PJC for a review of ASIC's enforcement powers in relation to auditors.

The report recommended that ASIC:

- have better integrated systems to track enforcement matters across ASIC and a more structured approach to auditor surveillance matters:
  - On 1 June 2018, we introduced a new workflow system for ASIC regulatory and enforcement activities, common across all ASIC teams, including our surveillance of potential RCA misconduct matters. This system will capture processes, documents and decision points in a common structured way using consistent terminology across ASIC.
- should evaluate its criteria for audit enforcement actions and explain how the 'Why not litigate?' operational self-discipline would apply to RCA misconduct matters:
  - ASIC will re-evaluate its criteria for taking auditor enforcement actions, and the types of outcomes that it may seek, including the use of enforceable undertakings and referrals of matters to the CADB as part of our implementation of the new Office of Enforcement.
- should consider the division of resources between audit inspection and financial reporting surveillance work:
  - Audit firm inspections, surveillances on audits of concern, and financial reporting surveillances are all conducted within ASIC's Financial Reporting and Audit team.
  - Resources will continue to be dynamically allocated within the team to achieve the best outcomes for quality financial reporting supported by quality audits.
- should publish the results of audit inspections in greater detail, including naming firms:

- ASIC has decided to publish the percentage of findings for named audit firms in its next audit firm inspection report.

### Reports by Parliamentary Joint Committees

In 2018–19, ASIC contributed to the following responses and reports produced by the Parliamentary Joint Committee on Corporations and Financial Services:

- *Oversight of ASIC, the Takeover Panel and the Corporations Legislation No. 1 of the 45th Parliament*, 1 May 2019
- *The operation and effectiveness of the Franchising Code of Conduct*, 14 March 2019
- *Options for greater involvement by private sector life insurers in work rehabilitation*, 24 October 2018.

### Senate Standing Committees

During 2018–19, ASIC testified before the Senate Economics Committees numerous times and provided answers to Questions on Notice.

ASIC was involved in the following reports finalised by the Senate Economics Committees:

- Standing Committee on Economics, *Review of the Australian Securities and Investments Commission Annual Report 2017*, tabled 10 September 2018
- Senate Economics Legislation Committee, *Banking System Reform (Separation of Banks) Bill 2019*, 8 May 2019
- Senate Economics Legislation Committee, *Parliamentary Joint Committee on the Australia Fund Bill 2018*, 3 April 2019
- Senate Economics Legislation Committee, *Lower Tax Bill 2018*, 2 April 2019
- Senate Economics Legislation Committee, *Australian Business Securitisation Fund Bill 2019 [Provisions]*, 26 March 2019
- ASIC also contributed to the following reports:
  - *Banking System Reform (Separation of Banks) Bill 2019*, 8 May 2019
  - *Parliamentary Joint Committee on the Australia Fund Bill 2018*, 3 April 2019
  - *Lower Tax Bill 2018*, 2 April 2019
  - *Australian Business Securitisation Fund Bill 2019 [Provisions]*, 26 March 2019
  - Parliamentary Joint Committee on Corporations and Financial Services, *Oversight of ASIC, the Takeover Panel and the Corporations Legislation No. 1 of the 45th Parliament*, 1 May 2019
  - Parliamentary Joint Committee on Corporations and Financial Services, *The operation and effectiveness of the Franchising Code of Conduct*, 14 March 2019
  - Parliamentary Joint Committee on Corporations and Financial Services, *Options for greater involvement by private sector life insurers in work rehabilitation*, 24 October 2018.

### Other reports

This financial year, there were no:

- statements of significant issues reported to the Minister relating to ASIC's non-compliance with finance law

- reports issued by the Auditor-General relating to the financial statements of Australian Government entities
- capability reviews of ASIC.

ASIC was examined in the report on the Commonwealth Ombudsman's monitoring of agency access to stored communications and telecommunications data under Chapters 3 and 4 of the *Telecommunications (Interception and Access) Act 1979*, issued in November 2018.

### *Freedom of Information Act 1982*

Members of the public have the right to apply to ASIC for access to documents in ASIC's possession under the *Freedom of Information Act 1982* (FOI Act).

Applications must be in writing, state that they are made under the FOI Act, provide information to identify the documents requested, and provide details of where notices under the FOI Act can be sent to the applicant.

Requests by email should be sent to:
**foirequest@asic.gov.au**

or you may lodge a mail request to:

Senior Manager
Administrative Law Team
GPO Box 9827
Melbourne VIC 3001

For further information on how to apply, visit our website at **www.asic.gov.au**.

Categories of documents in ASIC's possession include, for operational matters:

- licence and professional registration applications
- applications from businesses, correspondence, internal working papers, policy proposals and submissions
- administrative, civil and criminal enforcement matters, including documents obtained under ASIC's compulsory powers.

And, for other matters, categories of documents include:

- law reform, including submissions and proposal papers
- correspondence with members of the public, government entities, parliamentary committees, business entities and other bodies
- administration, including accommodation, accounts, expenditure, invoices, audit, human resources, recruitment and employee management, delegation and authorisation
- reference materials, including those contained in the library, handbooks, guidelines, manuals, regulatory documents, media releases, information releases, pamphlets and annual reports
- other documents held as public information (in the ASCOT database).

Members of the public can inspect ASIC regulatory documents, information brochures, media releases, reports, legislative instruments and other regulatory publications on our website.

*ASIC Digest*, which includes ASIC regulatory documents and additional information, is published by Thomson Reuters under the terms of an agreement with ASIC.

*ASIC Digest* is available by subscription from Thomson Reuters, telephone 1300 304 197.

Information from ASIC's registers and databases that is available to the public for the payment of a fee cannot be obtained under the FOI Act.

Agencies subject to the FOI Act must publish information for the public as part of the Information Publication Scheme. This requirement is in Part 2 of the FOI Act and has replaced the former requirement to publish a section 8 statement in an annual report.

ASIC's Information Publication Scheme Plan, showing what information is published in accordance with the scheme requirements, can be found at **https://asic.gov.au/about-asic/freedom-of-information-foi/information-publication-scheme/**.

## Grants programs

The Assetless Administration Fund (AA Fund) is a grant scheme established by the Government and administered by ASIC. The scheme may fund liquidators for:

- preliminary investigations and reports into the failure of companies with few or no assets, where it appears that enforcement action may result from the investigations and reports
- the winding up of companies under Part 5.4C of the Corporations Act
- actions to recover assets where fraudulent or unlawful phoenix activity is suspected
- review and reporting by a reviewing liquidator of companies in external administration involving suspected illegal phoenix activity.

On 1 July 2018, ASIC was allocated $4.610 million. On 1 January 2019, an increase in funding of $1.238 million was allocated to help fund liquidators taking asset recovery action, in particular relating to illegal phoenix activity. The total funding allocation for 2018–19 was $5.848 million. ASIC paid and committed the amount of $3.651 million to liquidators in 2018–19.

In 2018–19, under the grant scheme, ASIC received 724 applications for funding comprising:

- 582 banning (EX02) applications
- 141 'Matters other than s206F – Director banning' (EX03) applications
- 1 application for a liquidator to recover assets.

ASIC granted funding for:

- 226 banning (EX02) applications
- 69 'Matters other than s206F – Director banning' (EX03) applications
- 1 application for a liquidator to recover assets.

ASIC appointed liquidators and funded:

- 15 windings up of abandoned companies
- 2 reviewing liquidators to report on eight matters.

Reports funded by the AA Fund assisted in approximately 88% of director bannings (44 out of 50).

Information on grants by ASIC under the AA Fund can be found at **www.asic.gov.au/for-finance-professionals/registered-liquidators/your-ongoing-obligations-as-a-registered-liquidator/assetless-administration-fund/**.

# 8.3 Appendices relating to statements required by law

## Portfolio budget statement outcomes

### Table 8.3.1 Agency resource statement, 2018–19

| | | Actual available appropriation for 2018–19 $'000 | Cash payments made[1] 2018–19 $'000 | Balance remaining 2018–19 $'000 |
|---|---|---|---|---|
| **Ordinary annual services[2]** | | | | |
| **Departmental** | | | | |
| Departmental appropriation[3] | | 579,221 | 393,672 | 185,549 |
| **Administered expenses** | | | | |
| Outcome 1 – Bill 1 | | | | |
| Administration fund | | 19,683 | 14,905 | N/A |
| **Total ordinary annual services** | **A** | 598,904 | 408,577 | N/A |
| **Other services** | | | | |
| **Departmental non-operating** | | | | |
| Equity injections[4] | | 15,304 | 13,069 | 2,235 |
| **Total other services** | **B** | 15,304 | 13,069 | 2,235 |
| **Total available appropriations (A+B)** | | **614,208** | **421,646** | **N/A** |
| **Special appropriations limited by criteria/amount** | | | | |
| Banking Act 1959 | | N/A | 16,535 | N/A |
| Life Insurance Act 1995 | | N/A | 4,081 | N/A |
| **Total special appropriations** | **C** | N/A | 20,616 | N/A |
| **Total appropriations excluding special accounts (A+B+C)** | | 614,208 | 442,261 | N/A |

| | | Actual available appropriation for 2018–19 $'000 | Cash payments made[1] 2018–19 $'000 | Balance remaining 2018–19 $'000 |
|---|---|---|---|---|
| **Special Account[5]** | | | | |
| Opening balance | | 59,135 | N/A | N/A |
| Appropriation receipts | | 36,217 | N/A | N/A |
| Costs recovered | | 2,213 | N/A | N/A |
| Payments made | | N/A | 34,611 | N/A |
| **Total special account** | **D** | 97,565 | 34,611 | N/A |
| **Total resourcing (A+B+C+D)** | | 711,773 | 476,872 | N/A |
| Less appropriations drawn from annual appropriations above and credited to special accounts | | (36,217) | N/A | N/A |
| **Total net resourcing for ASIC** | | **675,556** | **476,872** | **N/A** |

1 Does not include GST.

2 Appropriation Bill (No. 1) 2018–19, Appropriation Bill (No. 3) 2018–19, prior year departmental appropriation and section 74 relevant agency receipts.

3 Includes $24.345 million for the Departmental Capital Budget. For accounting purposes, this amount has been designated as 'contributions by owners'.

4 Appropriation Bill (No. 2) 2018–19.

5 Does not include Special Public Money.

### Table 8.3.2 Expenses by outcome

| | | Budget[1] 2018–19 (1) $'000 | Actual expenses 2018–19 (2) $'000 | Variance column (1) minus column (2) $'000 |
|---|---|---|---|---|
| **Outcome 1: Improved confidence in Australia's financial markets through promoting informed investors and financial consumers, facilitating fair and efficient markets, and delivering efficient registry systems.** | | | | |
| A | Administered expenses funded by administered appropriations | 19,683 | 13,523 | 6,160 |
| B | Departmental expenses funded by departmental appropriations and own-source revenue | 384,843 | 431,643 | (46,800) |
| | **Total for Outcome 1 (A+B)** | 404,526 | 445,166 | (40,640) |
| | Average FTE[2] | 1,719 | 1,700 | 19 |

1 Based on the 2018–19 forecast as set out in ASIC's 2018–19 Portfolio Budget Statements.

2 2018–19 Portfolio Budget Statements quoted the average staffing level, which is different from FTE. The average staffing level includes employees working on capital projects, while the FTE excludes employees working on capital projects.

## Managing property vested in ASIC or the Commonwealth

ASIC administers the property of deregistered companies. This property remains vested in ASIC or, in the case of trust property, the Commonwealth until it is lawfully dealt with or evidence is provided that the property no longer vests in ASIC or the Commonwealth for some other reason.

ASIC accounts for any proceeds on realisation of property vested in it by transferring such proceeds, less the expenses incurred in dealing with the property, into the Official Public Account in accordance with our statutory duties.

The proceeds are treated like any other unclaimed money for which ASIC is responsible.

In 2018–19, the number of new cases received increased to 1,497 and the number of cases finalised increased to 1,488.

Table 8.3.3 below shows vested properties of deregistered companies by number of cases.

## Assets of deregistered companies vesting in ASIC or the Commonwealth

Section 601AD of the Corporations Act provides that when a company is deregistered, all of its property vests in ASIC or, in the case of trust property, the Commonwealth. We account for any proceeds on realisation of those assets in accordance with our statutory duties.

We generally only deal with vested property once an application is made by a third party for us to exercise powers under section 601AE or section 601AF of the Corporations Act. We do not consider it practical to value any identified vested property and, consequently, such property is not recorded or disclosed in these financial statements.

### Table 8.3.3 Vested properties of deregistered companies (by number of cases)

| Claims by type | 2018–19 | 2017–18 |
|---|---|---|
| Total new cases | **1,497** | 1,417 |
| Total finalised cases | **1,488** | 1,425 |
| **Property disposals** | | |
| Transferred | **92** | 82 |
| Sold | **9** | 6 |
| No longer vested[1] | **723** | 693 |
| Other[2] | **51** | 47 |
| Total property disposals | **875** | 828 |

1 Property is removed from ASIC's records when the company is reinstated, a third party lawfully deals with the asset, or evidence is provided that the property no longer vests in ASIC.

2 Includes where the vested property interest has been discharged, released, surrendered or withdrawn.

## Environmental performance

This section describes ASIC's environmental performance in accordance with government policy. In 2018–19, we continued to mitigate our impact on the environment through the initiatives discussed below.

### Energy efficiency

Our total electricity consumption has reduced by 39% since 2010–11.

We minimise our consumption of office energy with initiatives including LED lighting, motion sensor-controlled lighting, and the use of power-saving mode for ICT equipment.

### Table 8.3.4 Consumption of office energy

| Indicator | 2018–19 | 2017–18 |
|---|---|---|
| Light and power – ASIC tenancies (kWh) | **2,810,828** | 2,895,023 |
| MJ per person | **4,337** | 5,347 |
| Light and power – ASIC computer centres (kWh) | **764,292** | 852,217 |
| MJ per $m^2$ | **5,823** | 6,586 |
| Greenhouse gas emissions (tonnes $CO_2$-e) – attributed to all light and power | **3,420** | 3,731 |

Note: Energy consumption includes sub-tenanted areas that are not separately metered. Contains extrapolated data for 0.23% of total consumption.

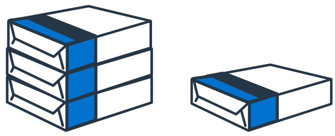
### Waste reduction

Our digitisation strategies include using online legislation and electronic working methods to review lengthy reports and papers online rather than in printed form. Default duplex settings on printers and automatic overnight job purging further reduce our use of copy paper.

### Table 8.3.5 Waste reduction

| Indicator | 2018–19 | 2017–18 |
|---|---|---|
| Office paper purchased by FTE (A4 reams/FTE) | **4** | 7 |
| Percentage of office paper purchased with recycled content | **100%** | 98% |
| Toner cartridges recycled (kgs) | **571** | 452 |
| IT equipment recycled or re-used (tonnes) | **5.5** | 6.8 |

**Since 2014–15, we have reduced our consumption of office paper purchased by FTE by 67%.**



## Travel

ASIC employees are authorised to travel only when there is a demonstrated business need and when alternative communication tools, such as telephone and video conferencing, are not appropriate. This year, there were more than 32,000 video connections, both intra-office and office to external locations, a 24% increase on last year as an alternative to air travel.

### Table 8.3.6 Type and amount of travel undertaken by ASIC employees

| Indicator | 2018–19 | 2017–18 |
|---|---|---|
| **Ground travel**[1] | | |
| Total number of fleet vehicles | **3** | 5 |
| Total distance travelled by fleet vehicles (kms) | **43,041** | 62,351 |
| Average fuel consumption of fleet vehicles (litres/100 kms) | **7.11** | 8.23 |
| Total direct greenhouse emissions of fleet (tonnes $CO_2$–e) | **8.09** | 12.10 |
| Total distance travelled using GoGet carshare (kms) | **3,483** | 4,644 |
| **Air travel** | | |
| Total distance of air flights (kms) | **10,849,207** | 11,278,871 |
| Total greenhouse emissions of flights (tonnes $CO_2$-e) | **1.036** | not available |
| **Alternative meeting communications** | | |
| Total number of video conferencing calls | **9,113** | 7,741 |

1 The fleet data is for the period 1 April to 31 March each year.

### Property

ASIC continues to reduce its environmental footprint, including by the expansion of activity-based working in our offices nationally, which has enabled us to increase the number of people located in our Sydney and Melbourne offices without increasing the space footprint. In 2018–19 we also reduced the space footprint in our Adelaide office.

### Information and engagement

We continued to provide information to employees on our intranet and at induction on sustainable initiatives. Our employees are also provided with our twice-annual performance reporting and participate in environmental activities such as Earth Hour.

## Consultancies and expenditure on advertising

### *Commonwealth Electoral Act 1918*

Section 311A of the *Commonwealth Electoral Act 1918* requires agencies to report expenditure on services provided by advertising agencies, market research organisations, polling organisations, direct mail organisations and media advertising organisations.

Sums less than $13,200 are not required to be reported. All sums are GST inclusive and are actual expenditures for 2018–19. During 2018–19, ASIC conducted the advertising campaigns set out in Table 8.3.7 below.

Further information on ASIC's advertising campaigns is available on our website. Information on advertising campaign expenditure greater than $250,000 is available in the reports on Australian Government advertising prepared by the Department of Finance. Those reports are available at **www.finance.gov.au**.

### Table 8.3.7 Expenditure on advertising agency services, 2018–19

| Agency | Expenditure ($) | Purpose |
|---|---|---|
| Mediabrands Australia Pty Ltd | 13,235 | GradAustralia advertising – online profile and GenerationOne Indigenous Careers Guide 2019 |
| Mediabrands Australia Pty Ltd | 14,680 | 2020 GradConnection yearly subscription |
| Mediabrands Australia Pty Ltd | 32,065 | e-financial careers advertising |
| The Nielsen Company (Australia) Pty Ltd | 74,453 | Advertising Monitoring Services |

| Agency | Expenditure ($) | Purpose |
|---|---|---|
| Mediabrands Australia Pty Ltd | 13,986 | 2019 Graduate advertising – GradConnection gold package and diversity bundle |
| Australian Public Service Commission | 25,545 | 2018–19 Public Service Gazette (APS Jobs Advertising) |
| Mediabrands Australia Pty Ltd | 23,766 | Universal McCann – Seek stand out 150 ad pack |
| Mediabrands Australia Pty Ltd | 38,523 | Seek job ads 3 × 50 |
| Mediabrands Australia Pty Ltd | 57,041 | LinkedIn package 2019 |
| **Total** | **293,294** | |

### Table 8.3.8 Expenditure on services by market research, polling, direct mail and media advertising organisations, 2018–19[1]

| Agency | Expenditure ($) | Purpose |
|---|---|---|
| Mobius Marketing | 19,360 | Mobius web design |
| Fuji Xerox Business Force Pty Ltd | 52,970 | On boarding letter mailout |
| A.C.N. 613 066 541 Pty Ltd | 76,120 | Reverse mortgage questionnaire |
| Bastion Insights Pty Ltd | 87,890 | Market and social research with consumers to explore their practices, attitudes and understanding relevant to the ePayments Code |
| Bastion Insights Pty Ltd | 168,135 | Consumer research school banking project |
| Cultural Perspectives Pty Ltd | 17,424 | Research project, small business strategy for culturally and linguistically diverse communities |
| Cutthru Pty Ltd | 79,750 | Life insurance claims data CR |

| Agency | Expenditure ($) | Purpose |
|---|---|---|
| Deloitte Touche Tohmatsu | 50,000 | Development of a report on the mortgage broker industry addressing trends in the market, such as volume of lending and commission arrangements |
| Heartward Pty Ltd | 71,850 | Timeshare consumer research |
| Heartward Pty Ltd | 79,976 | Consumer experience of comprehensive motor vehicle claims investigations |
| Kiel Advisory Group Pty Ltd | 140,525 | Provision of qualitative research services |
| Les Bell and Associates Pty Ltd | 53,575 | Consumer research and report on impacts of proposed changes to fees and cost disclosure in PDSs and periodic statements for superannuation and managed investments |
| Newgate Communications Pty Ltd | 96,569 | Market and social research – credit card repayments consumer research |
| String Research Insights Consulting Pty Ltd | 71,370 | Development of monitor/questionnaire |
| The Lab Insight and Strategy Sydney Pty Ltd | 98,340 | Research to explore consumers' attitudes, behaviour and experience in relation to switching motor and home building/ contents insurance |
| The Seedling Group Pty Ltd | 141,099 | Exploring how Aboriginal and Torres Strait Islander peoples have become high-level users of high-cost credit products, such as payday loans, consumer leases, and funeral and life insurance, in order to understand the consumer patterns in the use of these products |
| Sensis Pty Ltd | 34,387 | White Pages directory listings |
| **Total** | **1,339,340** | |

1 We have listed market research organisations that are recognised by the Australian Market & Social Research Society (AMSRS) and the Association of Market and Social Research Organisations (AMSRO).

# Procurement

## Managing procurement

ASIC's use of Commonwealth resources and expenditure of public money is primarily governed by the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) and the Public Governance, Performance and Accountability Rule 2014 (PGPA Rule). Responsibility for compliance with the Commonwealth Procurement Rules (CPRs) lies with the appropriate financial delegates.

The delegates are supported by a central procurement team of qualified procurement officers who:

- develop and maintain our procurement processes and systems to promote compliance with the PGPA Act, the PGPA Rule and the CPRs for all levels of procurement
- manage complex and high-risk procurement activities, including procurements that are subject to the mandatory procurement procedures of the CPRs.

Our procurement framework aims to facilitate compliance with the core principles and policies of the CPRs, including 'value for money', 'encouraging competition', 'efficient, effective, ethical and economical use of resources' and 'accountability and transparency'.

We undertake regular audits of procurement and any instances of non-compliance are reported through the compliance report and addressed as required through process improvement initiatives.

All major contracts entered into in 2018–19 contained provisions, as required, allowing the Auditor-General access to information held by contractors relating to contract performance.

## Using AusTender

ASIC advertises all open tender opportunities through the AusTender website, **www.tenders.gov.au**.

During 2018–19, ASIC did not implement any standing offer arrangements (procurement panels) and awarded 856 procurement activities (each valued at $10,000 or more reported on AusTender) for a total value of $152.117 million. Of these procurements, 287 were valued in excess of $80,000 for a total value of $132.311 million.

Contracts of $100,000 or more were reported on AusTender, in accordance with the Senate order on departmental and agency contracts. Information on contracts and consultancies awarded by ASIC is also available on the AusTender website. Our annual procurement plan was published on AusTender by 1 July 2018 and was updated as required during the year.

No contracts were exempt from the contract reporting requirements.

## Consultancy contracts

During 2018–19, ASIC entered into 49 new consultancy contracts, involving total expenditure of around $6.625 million. In addition, 32 ongoing consultancy contracts were active during the year, involving total expenditure of $7.460 million.

### Table 8.3.9 Consultancy trend data

| Business data | 2018–19 | 2017–18 |
| --- | --- | --- |
| Number of new consultancies | **49** | 43 |
| Expenditure on new consultancies ($ millions) | **6.625** | 4.697 |
| Number of ongoing consultancies | **32** | 22 |
| Expenditure on ongoing consultancies ($ millions) | **7.460** | 3.200 |

Note: The above figures are GST inclusive and include all consultancies valued over $10,000, as indicated on AusTender. The figures differ from the consultancy expenditures shown in the financial statements, which are the value of all consulting costs exclusive of GST. Annual reports contain information about actual expenditure on contracts for consultancies. Information on the value of contracts and consultancies is available on the AusTender website, **www.tenders.gov.au**.

## Policy on selection and engagement of consultants

ASIC's consultancy budget is managed centrally and business units seeking to engage consultants must prepare a business case seeking funding. Requests to engage consultants must be linked to outcomes in business plans and must contribute to ASIC's objectives. Once the engagement of a consultant is approved, the procurement method used will be in accordance with the CPRs and ASIC's procurement policies.

Of the 49 consultants that ASIC engaged during 2018–19:

- 24 were for specialised or professional skills
- 1 was for skills not currently available within ASIC
- 24 were for independent research or assessment.

The method of procurement used was open tender for 27 engagements (including engagements from panels), limited tender for 22 engagements and 0 pre-qualified tender engagements.

The consultants were engaged for the following main service categories:

- accounting services
- audit services
- business intelligence consulting services
- education and training services
- information technology consulting services
- internal audits
- management advisory services
- market research
- research programs
- risk management consultation services
- strategic planning consultation services.

## Procurement initiatives to support small business

ASIC supports small business participation in the Australian Government procurement market. Small and medium enterprises and small enterprise participation statistics are available on the Department of Finance website, **www.finance.gov.au**.

ASIC recognises the importance of ensuring that small businesses are paid on time. The results of the Survey of Australian Government Payments to Small Business are available on the Treasury website, **www.treasury.gov.au**.

ASIC's procurement practices support small businesses by:

- encouraging the use of the Commonwealth Contracting Suite for low-risk procurements valued under $200,000, where applicable
- presenting information in an accessible format.

# 8.4 Five-year summary of key stakeholder data

| Business data | 2018–19 | 2017–18 | 2016–17 | 2015–16 | 2014–15 |
|---|---|---|---|---|---|
| Companies (total) | **2.7m** | 2.6m | 2.5m | 2.4m | 2.2m |
| New companies registered | **223,661** | 244,510 | 249,394 | 246,051 | 235,182 |
| AFS licensees | **6,159** | 6,170 | 6,058 | 5,511 | 5,198 |
| Authorised market infrastructure providers[1] | **64** | 65 | 67 | 52 | 50 |
| Registered company auditors | **3,962** | 4,226 | 4,365 | 4,483 | 4,596 |
| Registered liquidators | **651** | 663 | 711 | 707 | 711 |
| Registered managed investment schemes | **3,712** | 3,726 | 3,632 | 3,619 | 3,642 |
| Credit licensees | **5,188** | 5,503 | 5,576 | 5,726 | 5,779 |
| Fundraising documents lodged | **794** | 898 | 1,017 | 891 | 1,078 |
| Control transactions – schemes and bids | **73** | 60 | 72 | 64 | 78 |
| Control transactions – schemes and bids implied target size | **$34.3bn** | $32bn | $18bn | $34.8bn | $27.4bn |
| Fundraising where ASIC required additional disclosure | **$3.2bn** | $3.5bn | $7.2bn | $6.4bn | $9.4bn |
| Recoveries, costs, compensation, fines or assets frozen | **$77.7m** | $437.8m | $849.7m | $217.4m | $61.1m |
| % successful criminal and civil litigations | **94%** | 99% | 90% | 96% | 85% |
| Criminal and civil litigation and administrative actions concluded[2] | **192** | 138 | 220 | 181 | 167 |

| Business data | 2018–19 | 2017–18 | 2016–17 | 2015–16 | 2014–15 |
|---|---|---|---|---|---|
| Criminals imprisoned | **10** | 6 | 13 | 13 | 12 |
| Reports of crime or misconduct finalised | **10,249** | 9,567 | 9,011 | 9,751 | 9,669 |
| Total searches of ASIC databases | **142.6m** | 122.5m | 90.6m | 90.7m | 86.2m |
| Business names (total) | **2.3m** | 2.2m | 2.2m | 2.1m | 2.2m |
| New business names registered | **375,052** | 366,181 | 348,266 | 337,413 | 327,687 |
| Registered SMSF auditors | **5,919** | 6,039 | 6,339 | 6,671 | 6,669 |
| % company data lodged on time | **94.6%** | 94.6% | 94.6% | 95% | 96% |
| Fees and charges collected for the Commonwealth | **$1,273m** | $1,227m | $920m | $876m | $824m |
| Employees (average FTEs)[3] | **1,701** | 1,656 | 1,640 | 1,627 | 1,609 |

1 We changed the methodology for reporting the number of authorised market infrastructure providers in 2016–17. This figure now includes exempt financial markets, licensed clearing and settlement (CS) facilities, exempt CS facilities, licensed trade repositories and credit rating agencies in addition to domestic and overseas financial markets.

2 Excludes summary prosecutions for strict liability offences.

3 Net average number over 12 months on net FTE basis (i.e. excluding FTEs working on capital projects).

# 9

# Glossary

# Glossary

| | |
|---|---|
| **AA Fund** | Assetless Administration Fund |
| **AAT** | Administrative Appeals Tribunal |
| **ABA** | Australian Banking Association |
| **ACCC** | Australian Competition and Consumer Commission |
| **AFCA** | Australian Financial Complaints Authority |
| **AFS licence** | Australian financial services licence |
| **ANZ** | Australia and New Zealand Banking Group Limited |
| **APRA** | Australian Prudential Regulation Authority |
| **APRC** | Asia–Pacific Regional Committee |
| **APS** | Australian Public Service |
| **APY** | Anangu Pitjantjatjara Yankunytjatjara |
| **ARFP** | Asia Region Funds Passport |
| **ASIC Act** | *Australian Securities and Investments Commission Act 2001* |
| **ASX** | ASX Limited or the exchange market operated by ASX Limited |
| **ATO** | Australian Taxation Office |
| **AUSTRAC** | Australian Transaction Reports and Analysis Centre |
| **BBSW** | Bank bill swap rate |
| **CADB** | Companies Auditors Disciplinary Board, formerly known as the Companies Auditors and Liquidators Disciplinary Board (CALDB) |
| **CAP** | Consumer Advisory Panel |
| **CBA** | Commonwealth Bank of Australia |
| **CCI** | Consumer credit insurance |
| **CCM** | Close and Continuous Monitoring |
| **CDPP** | Commonwealth Director of Public Prosecutions |
| **CFR** | Council of Financial Regulators |
| **CGTF** | Corporate Governance Taskforce |

| | |
|---|---|
| **CHESS** | ASX Clearing House Electronic Subregister System |
| **Corporations Act** | *Corporations Act 2001* |
| **CP** | Consultation Paper |
| **CPRs** | Commonwealth Procurement Rules |
| **CRF** | Corporate Registers Forum |
| **CRIS** | Cost Recovery Implementation Statement |
| **crowd-sourced funding** | A financial service where start-ups and small businesses raise funds, generally from a large number of investors that invest small amounts of money |
| **CS** | Clearing and settlement |
| **cyber resilience** | An organisation's ability to prepare for, respond to and recover from a cyber attack |
| **derivative** | A financial instrument where the value is derived from an underlying asset, such as a share, commodity or index |
| **digital advice** | Digital advice (also known as robo-advice or automated advice) is the provision of automated financial product advice using algorithms and technology and without the direct involvement of a human adviser |
| **EDR** | External dispute resolution |
| **ESA** | Enforcement Special Account |
| **FCA** | UK Financial Conduct Authority |
| **financial capability** | The combination of an individual's attitude, knowledge, skills, confidence and ability to make sound financial decisions |
| **fintech** | Financial technology |
| **FOI Act** | *Freedom of Information Act 1982* |
| **FRC** | Financial Reporting Council |
| **FSAP** | Financial Sector Assessment Program |
| **FSCP** | Financial Services and Credit Panel |
| **FTE** | Full-time equivalent |
| **GAP** | Guaranteed asset protection |
| **GFIN** | Global Financial Innovation Network |
| **ICO** | Initial coin offering |

| | |
|---|---|
| **ICT** | Information and communications technology |
| **IDPS** | Investor directed portfolio service |
| **IDR** | Internal dispute resolution |
| **IMF** | International Monetary Fund |
| **industry funding** | A funding model whereby those who create the need for and benefit from ASIC's regulation bear the costs. Entities pay a share of the costs to regulate their subsector through industry levies based on a range of business activity metrics. |
| **INFO** | Information Sheet |
| **Innovation Hub** | ASIC's online hub providing tailored content for fintech businesses that are developing innovative financial products or services |
| **IOP** | Indigenous Outreach Program |
| **IOSCO** | International Organization of Securities Commissions |
| **IPA** | Institute of Public Accountants |
| **IT** | Information technology |
| **LGBTIQ+** | Lesbian, gay, bisexual, trans, intersex and queer |
| **LIBOR** | London Interbank Offered Rate |
| **marketplace lending** | Marketplace lending generally describes an arrangement through which retail or wholesale investors invest money (seeking to earn a return), which is then lent to borrowers (consumers or businesses) |
| **MDA** | Managed discretionary account |
| **MDP** | Markets Disciplinary Panel |
| **MoneySmart** | ASIC's consumer website |
| **NAB** | National Australia Bank |
| **NAIDOC** | National Aborigines and Islanders Day Observance Committee |
| **National Credit Act** | *National Consumer Credit Protection Act 2009* |
| **OJK** | Otoritas Jasa Keuangan, the Indonesian Financial Services Authority |
| **OTC** | Over-the-counter |

| | |
|---|---|
| **payday loans** | Small-amount or short-term loans to individuals that generally attract significantly higher interest rates and costs than other types of loans |
| **PDS** | Product disclosure statement |
| **PGPA Act** | *Public Governance, Performance and Accountability Act 2013* |
| **PGPA Rule** | Public Governance, Performance and Accountability Rule 2014 |
| **phoenix activity (illegal)** | Transferring assets of an indebted company to a new company to avoid paying creditors, tax or other employee entitlements |
| **Phoenix Taskforce** | A cross-agency taskforce the Government established in 2014 to combat illegal phoenix activity. |
| **PJC** | Parliamentary Joint Committee |
| **RAP** | Reconciliation Action Plan |
| **RBA** | Reserve Bank of Australia |
| **RCA** | Registered company auditor |
| **RE** | Responsible entity |
| **regtech** | Regulatory technology; technology designed to address regulatory challenges in the financial services sector |
| **Regulatory Transformation program** | ASIC's program to increase efficiency by establishing a common language across ASIC, streamlining our regulatory business processes, making compliance and interaction with us easier through online portals, and implementing a single technology strategy |
| **REP** | Report |
| **RG** | Regulatory Guide |
| **Royal Commission** | Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Committee |
| **SCT** | Superannuation Complaints Tribunal |
| **SES** | Senior Executive Service |
| **SFCT** | Serious Financial Crime Taskforce |
| **SIS Act** | *Superannuation Industry (Supervision) Act 1993* |
| **SMSF** | Self-managed superannuation fund |

# 10

# Compliance index

# Reporting requirements under the *Public Governance, Performance and Accountability Act 2013*

| PGPA rule reference | Part of report/Description | Requirement | Location (page(s)) |
|---|---|---|---|
| **17AD(g)** | **Letter of transmittal** | | |
| 17AI | A copy of the letter of transmittal signed and dated by the accountable authority on the date the final text is approved, with a statement that the report has been prepared in accordance with section 46 of the PGPA Act and any enabling legislation that specifies additional requirements in relation to the annual report | Mandatory | 1 |
| **17AD(h)** | **Aids to access** | | |
| 17AJ(a) | Table of contents | Mandatory | 2-3 |
| 17AJ(b) | Alphabetical index | Mandatory | 285 |
| 17AJ(c) | Glossary of abbreviations and acronyms | Mandatory | 267–271 |
| 17AJ(d) | List of requirements | Mandatory | 274–284 |
| 17AJ(e) | Details of contact officer | Mandatory | Inside back cover |
| 17AJ(f) | Entity's website address | Mandatory | Inside back cover |
| 17AJ(g) | Electronic address of report | Mandatory | Inside back cover |
| **17AD(a)** | **Review by accountable authority** | | |
| 17AD(a) | A review by the accountable authority of the entity | Mandatory | 6–10 |
| **17AD(b)** | **Overview of the entity** | | |
| 17AE(1)(a)(i) | A description of the role and functions of the entity | Mandatory | 11–13 |

| PGPA rule reference | Part of report/Description | Requirement | Location (page(s)) |
|---|---|---|---|
| 17AE(1)(a)(ii) | A description of the organisational structure of the entity | Mandatory | 14–15 |
| 17AE(1)(a)(iii) | A description of the outcomes and programs administered by the entity | Mandatory | 38–43, 70–74 |
| 17AE(1)(a)(iv) | A description of the purposes of the entity as included in the Corporate Plan | Mandatory | 38, 44 |
| 17AE(1)(b) | An outline of the structure of the portfolio of the entity | Portfolio departments – mandatory | N/A |
| 17AE(2) | Where the outcomes and programs administered by the entity differ from any Portfolio Budget Statement, Portfolio Additional Estimates Statement or other portfolio estimates statement that was prepared for the entity for the period, details of variation and reasons for change | Mandatory | 210–218 |
| **17AD(c)** | **Report on the performance of the entity** | | |
| **Annual performance statement** | | | |
| 17AD(c)(i); 16F | Annual performance statement in accordance with paragraph 39(1)(b) of the PGPA Act and section 16F of the PGPA Rule | Mandatory | 37–78 |
| **17AD(c)(ii)** | **Reports on financial performance** | | |
| 17AF(1)(a) | A discussion and analysis of the entity's financial performance | Mandatory | 35–36, 159–218 |
| 17AF(1)(b) | A table summarising the total resources and total payments of the entity | Mandatory | 252–254 |

| PGPA rule reference | Part of report/Description | Requirement | Location (page(s)) |
|---|---|---|---|
| 17AF(2) | If there may be significant changes in the financial results during or after the previous or current reporting period, information on those changes, including the cause of any operating loss of the entity; how the entity has responded to the loss and the actions that have been taken in relation to the loss; and any matter or circumstances that it can reasonably be anticipated will have a significant impact on the entity's future operation or financial results | If applicable, mandatory | N/A |
| **Management and accountability** | | | |
| ***Corporate governance*** | | | |
| 17AG(2)(a) | Information on compliance with section 10 (fraud systems) of the PGPA Act | Mandatory | 247 |
| 17AG(2)(b)(i) | A certification by the accountable authority that fraud risk assessments and fraud control plans have been prepared | Mandatory | 247 |
| 17AG(2)(b)(ii) | A certification by the accountable authority that appropriate mechanisms for preventing, detecting incidents of, investigating or otherwise dealing with, and recording or reporting, fraud that meet the specific needs of the entity are in place | Mandatory | 247 |
| 17AG(2)(b)(iii) | A certification by the accountable authority that all reasonable measures have been taken to deal appropriately with fraud relating to the entity | Mandatory | 247 |
| 17AG(2)(c) | An outline of structures and processes in place for the entity to implement principles and objectives of corporate governance | Mandatory | 13, 14–15, 220–223 |

| PGPA rule reference | Part of report/Description | Requirement | Location (page(s)) |
|---|---|---|---|
| 17AG(2)(d)–(e) | A statement of significant issues reported to the Minister under paragraph 19(1)(e) of the PGPA Act that relate to non-compliance with finance law and action taken to remedy non-compliance | If applicable, mandatory | N/A |
| ***External scrutiny*** | | | |
| 17AG(3) | Information on the most significant developments in external scrutiny and the entity's response to the scrutiny | Mandatory | 247–251 |
| 17AG(3)(a) | Information on judicial decisions and decisions of administrative tribunals and by the Australian Information Commissioner that may have a significant effect on the operations of the entity | If applicable, mandatory | 248 |
| 17AG(3)(b) | Information on any reports on operations of the entity by the Auditor-General (other than reports under section 43 of the Act), a Parliamentary Committee or the Commonwealth Ombudsman | If applicable, mandatory | 249–250 |
| 17AG(3)(c) | Information on any capability review on the entity that was released during the period | If applicable, mandatory | 249–250 |
| ***Management of human resources*** | | | |
| 17AG(4)(a) | An assessment of the entity's effectiveness in managing and developing employees to achieve entity objectives | Mandatory | 146–150 |
| 17AG(4)(b) | Statistics on the entity's APS employees on an ongoing and non-ongoing basis, including the following:<br>› Statistics on staffing classification levels<br>› Statistics on full-time employees<br>› Statistics on part-time employees<br>› Statistics on gender<br>› Statistics on staff location<br>› Statistics on employees who identify as Indigenous | Mandatory | 151, 155, 227–237 |

| PGPA rule reference | Part of report/Description | Requirement | Location (page(s)) |
|---|---|---|---|
| 17AG(4)(c) | Information on any enterprise agreements, individual flexibility arrangements, Australian workplace agreements, common law contracts, and determinations under subsection 24(1) of the Public Service Act | Mandatory | 146, 231–232 |
| 17AG(4)(c)(i) | Information on the number of SES and non-SES employees covered by agreements, arrangements, contracts or determinations during this period | Mandatory | 228–231 |
| 17AG(4)(c)(ii) | The salary ranges available for APS employees by classification level | Mandatory | 232 |
| 17AG(4)(c)(iii) | A description of non-salary benefits provided to employees | Mandatory | 146–150 |
| 17AG(4)(d)(i) | Information on the number of employees at each classification level who received performance pay | If applicable, mandatory | 232 |
| 17AG(4)(d)(ii) | Information on aggregate amounts of performance pay at each classification level | If applicable, mandatory | 232 |
| 17AG(4)(d)(iii) | Information on the average amount of performance payments, and the range of such payments, at each classification level | If applicable, mandatory | 232 |
| 17AG(4)(d)(iv) | Information on the aggregate amount of performance payments | If applicable, mandatory | 232 |
| ***Assets management*** | | | |
| 17AG(5) | An assessment of the effectiveness of asset management where asset management is a significant part of the entity's activities | If applicable, mandatory | 209, 254–255 |
| ***Purchasing*** | | | |
| 17AG(6) | An assessment of the entity performance against the Commonwealth Procurement Rules | Mandatory | 261 |

| PGPA rule reference | Part of report/Description | Requirement | Location (page(s)) |
|---|---|---|---|
| **Consultants** | | | |
| 17AG(7)(a) | A summary statement detailing the number of new contracts engaging consultants entered into during the period; the total actual expenditure on all new consultancy contracts entered into during the period (inclusive of GST); the number of ongoing consultancy contracts that were entered into during a previous reporting period; and the total actual expenditure in the reporting year on the ongoing consultancy contracts (inclusive of GST) | Mandatory | 261–262 |
| 17AG(7)(b) | A statement that 'During [reporting period], [specified number] new consultancy contracts were entered into involving total actual expenditure of $[specified million]. In addition, [specified number] ongoing consultancy contracts were active during the period, involving total actual expenditure of $[specified million].' | Mandatory | 261 |
| 17AG(7)(c) | A summary of the policies and procedures for selecting and engaging consultants and the main categories of purposes for which consultants were selected and engaged | Mandatory | 262–263 |
| 17AG(7)(d) | A statement that 'Annual reports contain information about actual expenditure on contracts for consultancies. Information on the value of contracts and consultancies is available on the AusTender website.' | Mandatory | 262 |

| PGPA rule reference | Part of report/Description | Requirement | Location (page(s)) |
|---|---|---|---|
| ***Australian National Audit Office access clauses*** | | | |
| 17AG(8) | If an entity entered into a contract with a value of more than $100,000 (inclusive of GST) and the contract did not provide the Auditor-General with access to the contractor's premises, the report must include the name of the contractor, the purpose and value of the contract, and the reason why a clause allowing access was not included in the contract | If applicable, mandatory | N/A |
| ***Exempt contracts*** | | | |
| 17AG(9) | If an entity entered into a contract or there is a standing offer with a value greater than $10,000 (inclusive of GST) that has been exempted from being published in AusTender because it would disclose exempt matters under the FOI Act, the annual report must include a statement that the contract or standing offer has been exempted, and the value of the contract or standing offer, to the extent that doing so does not disclose the exempt matters | If applicable, mandatory | N/A |
| ***Small business*** | | | |
| 17AG(10)(a) | A statement that '[Name of entity] supports small business participation in the Commonwealth Government procurement market. Small and Medium Enterprises (SME) and Small Enterprise participation statistics are available on the Department of Finance's website.' | Mandatory | 263 |
| 17AG(10)(b) | An outline of the ways in which the procurement practices of the entity support small and medium enterprises | Mandatory | 263 |

| PGPA rule reference | Part of report/Description | Requirement | Location (page(s)) |
|---|---|---|---|
| 17AG(10)(c) | If the entity is considered by the Department administered by the Finance Minister as material in nature – a statement that '[Name of entity] recognises the importance of ensuring that small businesses are paid on time. The results of the Survey of Australian Government Payments to Small Business are available on the Treasury's website.' | If applicable, mandatory | 263 |
| ***Executive remuneration*** | | | |
| 17AD(da) | Information about executive remuneration in accordance with Subdivision C of Division 3A of Part 2 – 3 | Mandatory | 233–235 |
| ***Financial statements*** | | | |
| 17AD(e) | Inclusion of the annual financial statements in accordance with subsection 43(4) of the PGPA Act | Mandatory | 159–218 |
| **Other mandatory information** | | | |
| 17AH(1)(a)(i) | If the entity conducted advertising campaigns, a statement that 'During [reporting period], [name of entity] conducted the following advertising campaigns: [name of advertising campaigns undertaken]. Further information on those advertising campaigns is available at [address of entity's website] and in the reports on Australian Government advertising prepared by the Department of Finance. Those reports are available on the Department of Finance's website.' | If applicable, mandatory | 258 |
| 17AH(1)(a)(ii) | If the entity did not conduct advertising campaigns, a statement to that effect | If applicable, mandatory | N/A |

| PGPA rule reference | Part of report/Description | Requirement | Location (page(s)) |
|---|---|---|---|
| 17AH(1)(b) | A statement that 'Information on grants awarded by [name of entity] during [reporting period] is available at [address of entity's website].' | If applicable, mandatory | 251 |
| 17AH(1)(c) | Outline of mechanisms of disability reporting, including reference to the website for further information | Mandatory | 157 |
| 17AH(1)(d) | Website reference to where the entity's Information Publication Scheme statement pursuant to Part II of the FOI Act can be found | Mandatory | 251 |
| 17AH(1)(e) | Correction of material errors in previous annual report | If applicable, mandatory | 284 |
| 17AH(2) | Information required by other legislation | Mandatory | 247–250 |

Note: N/A means not applicable.

Source: Department of Finance, Resource Management Guide No. 135 *Annual report for non-corporate Commonwealth entities* (2016).

# Additional compliance reporting requirements

| Description | Requirement | Source of requirement | Location (page(s)) |
|---|---|---|---|
| Exercise of ASIC's powers under Part 15 of the *Retirement Savings Accounts Act 1997* and under Part 29 of the *Superannuation Industry (Supervision) Act 1993* | Mandatory | ASIC Act, s136(1)(a) | 247 |
| ASIC's monitoring and promotion of market integrity and consumer protection in relation to the Australian financial system and the provision of financial services | Mandatory | ASIC Act, s136(1)(b) | 81–111 |
| ASIC's activities in accordance with each agreement or arrangement entered into by ASIC under section 11(14) of the ASIC Act | Mandatory | ASIC Act, s136(1)(c) | 247 |
| The operation of the *Business Names Registration Act 2011*, including details of the level of access to the Business Names Register using the internet and other facilities, the timeliness with which ASIC carries out its duties, functions and powers under the Act, and the cost of registration of a business name under the Act | Mandatory | ASIC Act, s136(1)(d) | 70–77 |
| The number of times ASIC used an information-gathering power, the provision of the Corporations Act, the ASIC Act, or another law that conferred the power, and the number of times in the previous financial year that ASIC used the power | Mandatory | ASIC Act, s136(1)(e), reg 8AAA(1) | 242–245 |

| Description | Requirement | Source of requirement | Location (page(s)) |
|---|---|---|---|
| ASIC's regional administration in referring states and the Northern Territory, including a statement on our performance against service-level performance indicators during the relevant period | Mandatory | Corporations Agreement, s603(3) | 117–121 |
| Financial services and consumer credit external dispute resolution schemes | Suggested | Senate Economics References Committee inquiry into the performance of ASIC, Recommendation 4 | 143–144, 96–97 |
| Court enforceable undertakings and their effectiveness | Suggested | Senate Economics References Committee inquiry into the performance of ASIC, Recommendation 27 | 10, 41, 48, 57–58, 59, 84, 224, 248 |

## Annual Report 2017–18 errata

On page 37 of the 2017–18 Annual Report, we inadvertently reported the total number of surveillances as 'Over 1200'. Over 300 financial reporting surveillances were omitted in error. In 2017–18, we completed over 1,500 surveillances.

On page 176 of the 2017–18 Annual Report, we inadvertently reported some 'Initial reports' in the 'Supplementary Report' numbers. Initial reports not alleging misconduct also included some Supplementary Reports, when they should not have. Accordingly, for the 2017–18 year, Initial Reports from liquidators, administrators and receivers alleging misconduct numbered 7,171 and not 6,840; Initial Reports not alleging misconduct numbered 1,036 and not 1,983; Supplementary Reports assessed alleging misconduct numbered 600 and not 931; and total statutory reports finalised (initial + supplementary) were 8,807 and not 9,754.

# 11

# General index

## D



## E

## F



## G



## H



## I

## L



## M

## N



## O



## P

## R



## S

## T



## U



## V



## W

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