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ASIC's role

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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 Commissioner	John Price Commissioner	Karen Chester Deputy Chair	Daniel Crennan QC Deputy Chair	Sean Hughes Commissioner	Danielle Press Commissioner

Supervisory Teams			Office of Enforcement		
Financial Services	Markets	Wealth Management	Financial Services Enforcement	Markets Enforcement	Close & Continuous Monitoring
Credit, Retail Banking & Payments	Corporations	Financial Advisers	Financial Services Enforcement	Corporations & Corporate Governance	Close & Continuous Monitoring Team
Insurers	Financial Reporting & Audit	Investment Managers	Wealth Management Enforcement – Major Financial Institutions	Enforcement WA & Criminal Intelligence Unit	
	Insolvency Practitioners	Superannuation	Wealth Management Enforcement	Markets Enforcement	
	Market Infrastructure				
	Market Supervision				

Assessment & Intelligence	Strategy	Chief Legal Office	Operations	Commission Specialist Teams
Licensing	Financial Capability	Administrative Law	Corporate Services	Corporate Affairs
Misconduct & Breach Reporting	International	Commission Counsel	Finance	Internal Audit & Operational Risk
Office of Small Business	Strategic Intelligence	Delegates Panel	Information Technology	People & Development
Office of the Whistleblower	Strategic Policy	Special Counsel	Specialist Services/ Chief Data Officer	
Small Business, Compliance & Deterrence	Behavioural Research & Policy Unit			

Registry			
Communication & Engagement	Legal	Service Delivery	Registry Development
Governance & Strategy	Program Delivery	Service Delivery Support	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.

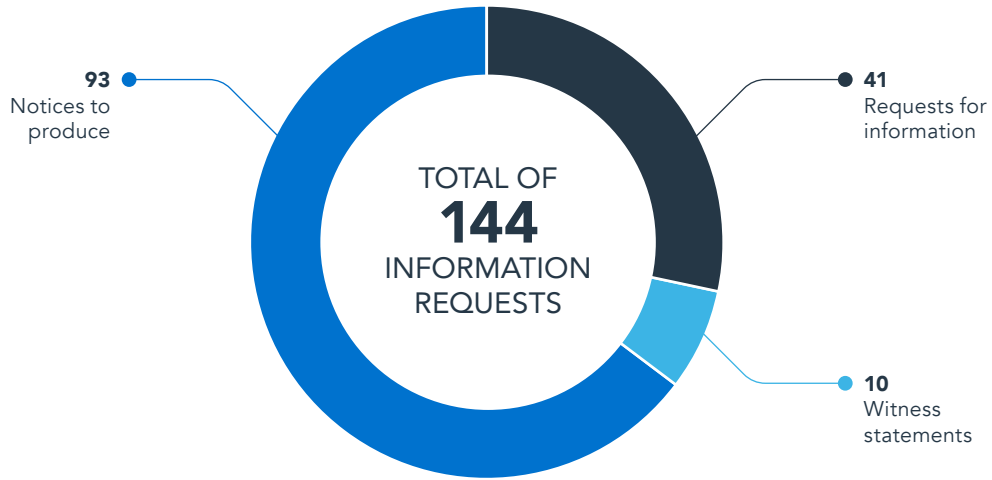
Summary of ASIC input to the Royal Commission

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%