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## ASIC's annual performance statement

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# 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
<b>Close and Continuous Monitoring program – supervisory exercises<sup>1</sup></b>		
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	–

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

Outcome	Total 2018–19	Total 2017–18
<b>Surveillance</b>		
Surveillances completed <sup>2</sup>	Over 1,200 <sup>3</sup>	Over 1,500 <sup>4</sup>
Instances of potentially misleading or deceptive promotional material withdrawn or amended	37	51
<b>Enforcement<sup>5</sup></b>		
<b>Investigations<sup>6</sup></b>		
Investigations commenced	151	126
Investigations completed	103	124
<b>Criminal actions</b>		
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
<b>Civil actions</b>		
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
<b>Administrative actions</b>		
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
<b>Court enforceable undertakings</b>		
Court enforceable undertakings accepted	10	27

Outcome	Total 2018–19	Total 2017–18
<b>Infringement notices<sup>7</sup></b>		
Total number of infringement notices issued	14	55
Total dollar value of infringement notices	\$731,700	\$2.02m
<b>Summary prosecutions</b>		
Summary prosecutions for strict liability offences	369	398
Total value of fines and costs	\$1.6m	\$1.5m
<b>Agreed compensation</b>		
Compensation or remediation	\$22.8m	\$351.6m
Community benefit payments	\$18.1m	\$48.1m
<b>Stakeholder engagement</b>		
Meetings with industry groups and other stakeholders	Over 1,400	Over 2,100
Consultation papers published	13	11
Industry reports published	45	45
<b>Guidance</b>		
New or revised regulatory guides published	23	36
New or revised information sheets	27	32
Legislative instruments made, amended and repealed	53	93
<b>Relief applications</b>		
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

<sup>7</sup> 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
<b>Education</b>		
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



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<sup>1</sup>**

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
<b>Total (remedy)</b>	<b>4</b>	<b>19</b>	<b>20</b>	<b>1</b>	<b>0</b>	<b>44</b>

<sup>1</sup> 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.<sup>1</sup>

**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.

<sup>1</sup> 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.'

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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	<b>2.7m</b>	2.6m
New companies registered	<b>223,661</b>	244,510
Total business names registered	<b>2.3m</b>	2.25m
New business names registered	<b>375,052</b>	366,181
Calls and online inquiries responded to by our Customer Contact Centre	<b>670,741</b>	678,697
Registry lodgements	<b>2.9m</b>	3.0m
Percentage of registry lodgements online	<b>93%</b>	93%
Number of searches of ASIC registers	<b>142.6m</b>	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](https://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](https://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
<b>When you contact us</b>			
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%
<b>When you access our registers</b>			
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%
<b>When you do business with us</b>			
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% Varied: 80%
	We aim to decide whether to grant or vary an AFS licence within 240 days	90%	Granted: 86% <sup>1</sup> 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% Varied: 96%
	We aim to decide whether to grant or vary a credit licence within 240 days	90%	Granted: 96% Varied: 98%



Service	Measure	Target	Result
Applying for relief <sup>2</sup>	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%
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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**

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

¹ Includes principal and interest.