5

ASIC cooperation

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

For example:

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

5.1 Regional and international engagement

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

In 2018–19, we advocated for:

- global regulatory coordination and harmonisation in fintech and regtech
- deeper regional integration through initiatives such as the Asia Region Funds Passport and stronger regional supervisory cooperation, especially in trans-Tasman issues through closer collaboration with New Zealand regulators
- greater focus on fairness and addressing misconduct, whether legal or not, particularly in the retail sector.

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

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

- chair the Market Conduct Working Group of the International Association of Insurance Supervisors
- serve on the board of the International Forum of Independent Audit Regulators and contribute to the International Accounting Standards Board
- contribute to consumer policy through membership of the International Financial Consumer Protection Organisation Governing Council and the Financial Consumer Protection Taskforce established by the Organisation for Economic Cooperation and Development
- participate in working groups established by the World Economic Forum on cyber risk and consumer data protection
- contribute to the Asia–Pacific Economic Cooperation Financial Regulators Training Initiative by providing speakers at training seminars in the region.

IOSCO Annual Meeting and ASIC Annual Forum 2019

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

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

James Shipton with the Forum organising team.

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

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

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

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

Asia Region Funds Passport

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

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

Promoting regional cooperation

Regional supervisory colleges

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

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

IOSCO Asia–Pacific Regional Committee

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

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

Delegation to China

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

International cooperation requests

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

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

International cooperation

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

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

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

Capacity building

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

Capacity building in Indonesia

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

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

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

IOSCO Assessment Committee

ASIC is a member of IOSCO's Assessment Committee, which is responsible for programs to review implementation of the IOSCO Principles and Objectives of Securities Regulation, the global standard for securities regulators.

During the period, ASIC participated in a program devised by IOSCO's Assessment Committee to help IOSCO members complete self-assessments against the IOSCO principles. In December 2018, we reviewed and advised on the self-assessments prepared by participants. These self-assessments are key to jurisdictions critiquing their own regulation and its implementation and identifying any weaknesses.

Financial Sector Assessment Program

In 2018–19, Australia underwent a Financial Sector Assessment Program (FSAP) review, conducted by the International Monetary Fund (IMF). The FSAP provides a comprehensive analysis of a country's financial sector.

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

The FSAP included an assessment of Australia's implementation of the Core Principles for Effective Banking Supervision, aspects of the Insurance Core Principles, and aspects of Australia's financial market infrastructure.

Brexit

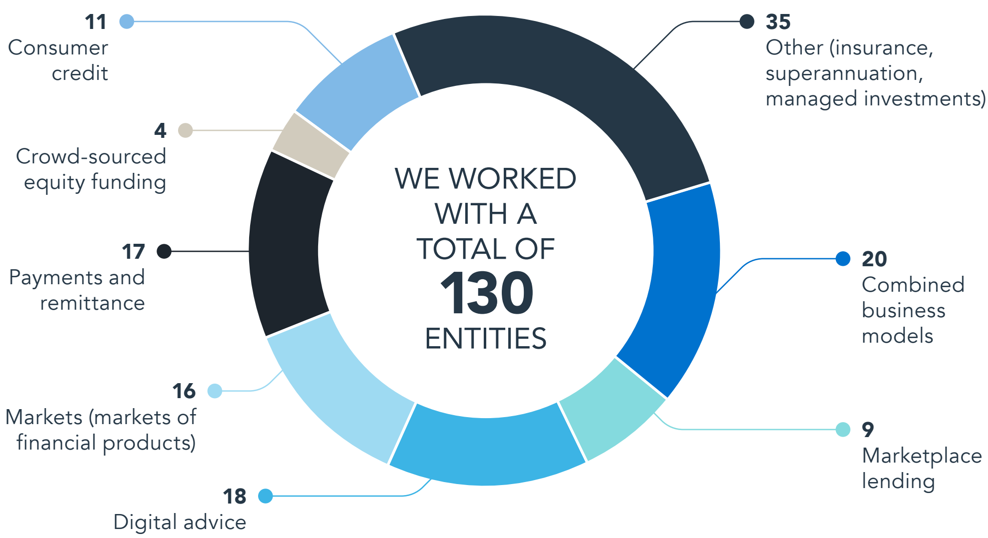
This year, ASIC developed a work plan to identify and minimise potential Brexit-related impacts on Australian financial services, markets and participants. We liaised closely with the UK FCA and the Bank of England.

In February 2019, we released guidance 'Preparing for Brexit' and, in April 2019, we released a joint statement with the FCA announcing our updated memorandum of understanding (MOU) on alternative investment funds and our new MOU on trade repositories. We continue to monitor Brexit-related developments.

5.2 Innovation Hub

In 2018–19, the Innovation Hub provided informal assistance to over 190 businesses (fintech and regtech), helping them consider regulatory issues early and where relevant prepare licence or relief applications.

Of the new fintech businesses that engaged with the Innovation Hub before submitting their licence application, we granted 25 new AFS licences or credit licences. These applicants received approval materially faster than those that had not sought assistance.



ASIC and regtech

In September 2018, ASIC received $6 million in funding for financial years 2018–19 and 2019–20 to undertake a range of initiatives to promote the use of regtech by financial firms that aim to deliver better consumer outcomes. ASIC will run four regtech initiatives in 2019, including demonstration events in August and September 2019.

These initiatives will focus on:

› improving the compliance and quality of financial promotions
› monitoring the quality of financial advice
› using voice analytics and voice-to-text applications to help identify compliance issues in the sale of direct life insurance
› developing a Licensing Technology-Assisted Guidance (TAG) Tool (potentially a chatbot), designed to provide guidance on ASIC's licensing framework.

This year, ASIC also ran five natural language processing trials with regtech firms to investigate how this technology could be deployed to assist ASIC in its supervisory work. On balance, the results of the trials were positive, providing a better understanding of how this technology may potentially maximise efficiencies in ASIC's regulatory work.

International engagement on innovation

ASIC has been part of the Global Financial Innovation Network (GFIN) from its inception in 2018. The GFIN has grown to comprise 35 regulators and 7 observers across 21 jurisdictions. It is committed to supporting financial innovation in the interests of consumers by creating a framework for cooperation between regulators to share experiences and approaches to innovation. As part of the GFIN cross-border pilot, ASIC will work with regtech firms to explore their testing plans across multiple jurisdictions.

ASIC was on the 2018–19 steering committee for the IOSCO Fintech Network, which is focused on information sharing across regulators. We are a member of the network's four workstreams (distributed ledger technology, artificial intelligence and ethics, regtech, and innovation).

5.3 Office of Small Business

ASIC's Office of Small Business focuses and coordinates ASIC's efforts and initiatives to assist, engage and help protect small businesses (those with fewer than 20 employees). In the 2018–19 financial year, small businesses represented 96% of all companies and businesses registered with ASIC.

Assist: In May 2019, to better address the queries that small business owners have and to provide a clearer online user journey, we refreshed our resources for small businesses by simplifying and further developing them using web analytics.

Engagement

8,649

subscribers to *InFocus* newsletter

54,479

views of the Small Business Hub

Resources

14,504

downloads of the First Business app (as at 30 June 2019)

Engage: To increase awareness of ASIC's role in small business and listen to the issues faced by Australian small businesses, ASIC teams presented at over 84 forums, exhibitions and meetings across Australia. This included collaborating with the Department of Jobs and Small Business to attend small business fairs in 18 locations across Australia.

Protect: This year, we updated AFCA's and ASIC's registers to remove licensees who are not currently engaging in credit or providing financial services, or who have not complied with the obligation to be a member of AFCA. This work proactively addressed a potential harm to small businesses that would not otherwise have access to an external dispute resolution body.

For more information on ASIC's registers, see Section 2.4

For more information on ASIC's small business outcomes, see Section 3.7

5.4 Office of the Whistleblower

ASIC's Office of the Whistleblower is the central point in ASIC for recording and actioning the disclosures we receive from whistleblowers, ensuring that we communicate with them throughout our inquiries, and for engaging with stakeholders on implementing Australia's corporate sector whistleblower protection regime.

In early 2019, the Government passed legislation to strengthen and expand Australia's corporate sector whistleblower protection regime. We consulted with financial services providers, professional services providers, and other regulators on implementation of the reforms.

We assess all breaches that whistleblowers disclose to us and inform them of their statutory rights and protections. We recently updated our guidance to reflect the new regime.

This year, we dealt with 278 disclosures by whistleblowers. Around 62% of these related to corporations and corporate governance, including internal company disputes. We also dealt with matters related to credit and financial services and the conduct of licensees (27%), markets (7%), and other issues (4%).

Following our preliminary inquiries, we referred approximately 7% of matters to our compliance, surveillance or investigation team.

We assessed approximately 93% of disclosures as requiring no further action by ASIC, often due to insufficient evidence. In some cases, we referred the matter to another agency, law enforcement body, or third party (such as a liquidator) that was better placed to deal with the issue or was already taking action.

5.5 Inter-agency collaboration on financial crime

Criminal Intelligence Unit

ASIC's Criminal Intelligence Unit collaborates with other Australian enforcement and regulatory agencies on serious and organised crime, including through the Phoenix Taskforce and the Serious Financial Crime Taskforce (SFCT). This year, we released 123 intelligence products to partner agencies and received 172 intelligence reports. We also provided to the Australian Criminal Intelligence Commission our analysis of the threats posed to the Australian taxation system by illegal phoenix activity.

Serious Financial Crime Taskforce

The SFCT is a multi-agency initiative targeting offences related to serious fraud, money laundering, and defrauding the Commonwealth. In 2018–19, we contributed to its work in respect of crimes related to international tax evasion, illegal phoenix activity, and a new priority of cyber crime affecting the Australian taxation and superannuation systems.

From 2020 to 2023, we will have increased taskforce funding to support our role in enforcement activities and criminal intelligence analysis.

Phoenix Taskforce

ASIC continued its collaboration with the federal, state and territory agencies in the Phoenix Taskforce, which takes a whole-of-government approach to combating illegal phoenix activity.

Our work this year included presentations, panel discussions, and meetings with fellow regulators, insolvency practitioners, professional bodies, small business and industry groups. We also supported the significant law reform that the Government has progressed to address illegal phoenix activity.

For more information on our enforcement action to combat illegal phoenix activity, see Sections 1.7 and 3.7

Former director imprisoned for 12 months for illegal phoenix activity

In November 2018, a former director of Metropolitan Design Pty Ltd (Metropolitan) was sentenced to 12 months imprisonment by the Magistrates Court in Queensland after pleading guilty to charges related to illegal phoenix activity. The former director was convicted of 13 breaches of directors' duties under the Corporations Act. He was released on a $3,000 two-year good-behaviour bond and disqualified from managing corporations for five years from 18 November 2018 as a result of his conviction.

ASIC investigated the director's conduct after receiving a liquidator's report. In September 2015, Metropolitan was placed into liquidation, owing the ATO $235,626. Our investigations revealed that between 13 April and 22 September 2015, the director instructed debtors to redirect payments owed to Metropolitan to his personal sole-trader bank account, thus using his position dishonestly to gain an advantage for himself. His actions intentionally set out to deny the ATO money owed to it – conduct constituting illegal phoenix activity. The matter was prosecuted by the CDPP.

5.6 Misconduct reporting

Misconduct reports from the public

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

Our 27 information sheets, which explain our role in relation to the most frequently reported concerns, were read online by over 79,000 unique readers in 2018–19. Our 15 YouTube video clips were viewed over 13,600 times during the year.

In 2018–19, we dealt with 10,249 reports of alleged misconduct. This is 7% more than in 2017–18, reflecting increased awareness flowing from the Royal Commission.

Breach reports from licensees and auditors

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

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

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

In 2018–19, we dealt with:

- 705 auditor breach reports, 44% more than in 2017–18
- 2,173 breach reports about managed investment schemes and AFS licensees, a 56% increase from 2017–18.

This increase is due to licensees reviewing their breach reporting practices in light of the Royal Commission and ASIC's review. We anticipate that increases in these reports will continue for some time.

Report 594 *Review of selected financial services groups' compliance with the breach reporting obligation*

This year, ASIC published a review of the breach reporting practices of 12 financial services groups: ANZ, CBA, NAB, Westpac, AMP, Bank of Queensland, Bendigo Bank, Credit Union Australia, Greater Bank, Heritage Bank, Macquarie and Suncorp.

The review considered the institutions' compliance with reporting requirements under section 912D of the Corporations Act. The law requires all AFS licensees to report to ASIC a 'significant breach' within 10 business days of becoming aware of it.

In Report 594, released in September 2018, ASIC identified serious and unacceptable delays in the time taken to identify, report and correct significant breaches of the law among Australia's most important financial institutions. Key findings included the following:

- Financial institutions were taking too long to identify significant breaches, with the major banks taking an average time of 1,726 days (over 4.5 years).
- There were delays in remediation for consumer loss. It took an average of 226 days from the end of a financial institution's investigation into the breach to the first payment to impacted consumers. (This is on top of the average across all institutions of 1,517 days before the breach is discovered, as well as the time taken to start and complete an investigation.)
- The significant breaches (within the scope of the review) caused financial losses to consumers of approximately $500 million, with millions of dollars of remediation yet to be provided.
- The process from starting an investigation to lodging a breach report with ASIC also took too long, with major banks taking an average of 150 days.

Once a financial institution has investigated and determined that a breach has occurred and that it is significant, the law requires the breach be reported to ASIC within 10 business days. One in seven significant breaches (110 of 715) were reported later than that 10-business-day requirement.

In response to the review's findings, ASIC is ensuring that there is a strong focus on compliance with breach reporting requirements in its new CCM program approach to supervising major institutions. ASIC is also actively considering enforcement action for failures to report breaches on time.

Statutory reports from liquidators, administrators and receivers

We received 8,106 initial reports from external administrators. Over 7,200 of these reported suspected offences by company officers, with the remainder lodged because the return to unsecured creditors may be less than 50 cents in the dollar. Of the 7,200 that reported misconduct, we requested supplementary reports from the external administrators in 1,008 cases. These supplementary reports typically set out the results of the external administrator's inquiries and the evidence to support the alleged offences. We referred 24% of supplementary reports assessed in 2018–19 for compliance, investigation or surveillance action, compared to 20% in 2017–18.

5.7 Australian Financial Complaints Authority

The Australian Financial Complaints Authority (AFCA) commenced operations on 1 November 2018. AFCA deals with consumer, small business and primary producer complaints about banking, insurance, investments, financial advice, credit and superannuation.

AFCA replaced two ASIC-approved, industry-based schemes – the Credit and Investments Ombudsman and the Financial Ombudsman Service – as well as the statutory Superannuation Complaints Tribunal. In its first six months of operations, AFCA received over 35,000 complaints.

As an authorised external dispute resolution (EDR) scheme, AFCA is governed by an independent board responsible for ensuring the scheme's ongoing compliance with the authorisation requirements, ministerial conditions and ASIC regulatory requirements. The Corporations Act gives ASIC a range of powers in relation to AFCA, including requiring that ASIC approve material changes to the scheme.

This year, we focused on ensuring a smooth transition to AFCA and that consumer access to EDR was maintained during the transition. ASIC worked with AFCA and other stakeholders on a range of implementation issues and reforms to the dispute resolution framework. This included:

› ASIC approval of the inaugural AFCA scheme Rules and the Independent Assessor Terms of Reference in September 2018, following AFCA's public consultation

- proactive measures, including licence cancellations, to protect consumers from the few financial firms that were not complying with their licence obligation to be a member of the AFCA scheme
- ASIC approval of Rules changes to give effect to a further AFCA authorisation condition introduced by the Government, which required AFCA to extend its jurisdiction to allow the scheme to deal with certain complaints about conduct dating back to 1 January 2008 – the approval followed AFCA's public consultation on the proposed changes
- receiving statutory reports from AFCA about systemic issues and serious contraventions involving financial firms.

Additional reforms affecting AFCA include regulations requiring financial firms to take reasonable steps to cooperate with AFCA in resolving complaints and the Government's announcement that it will establish an industry-funded, forward-looking compensation scheme of last resort.

In May 2019, ASIC also began public consultation on updated IDR standards and how financial firms handle consumer and small business complaints, including the introduction of a mandatory IDR data collection and reporting framework. This work is informed by consumer research and intelligence from the IDR stream of ASIC's CCM program.

For more information on the CCM program, see Section 1.10