



ASIC
Australian Securities &
Investments Commission

REPORT 663

Regulator Performance Framework: ASIC self- assessment 2018–19

June 2020

About this report

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

This report sets out our self-assessment of ASIC's performance against the KPIs in 2018–19.

About ASIC regulatory documents

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

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

Regulatory guides: give guidance to regulated entities by:

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

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

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

Disclaimer

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

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

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A Introduction

Key points

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

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

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

About the Regulator Performance Framework

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

Table 1: Framework KPIs

KPI	ASIC's self-assessment
KPI 1: Regulators do not unnecessarily impede the efficient operation of regulated entities	See paragraphs 22–42
KPI 6: Regulators actively contribute to continuous improvement of regulatory frameworks	
KPI 2: Communication with regulated entities is clear, targeted and effective	See paragraphs 94–109
KPI 5: Regulators are open and transparent in their dealings with regulated entities	
KPI 3: Actions undertaken by regulators are proportionate to the regulatory risk being managed	See paragraphs 159–178
KPI 4: Compliance and monitoring approaches are streamlined and coordinated	

About ASIC

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

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

- 11 The Australian Government recognises that ASIC is required to balance several objectives aimed at both facilitating markets and promoting trust and confidence in the financial system, and that the appropriate balance may require trade-offs: see the Government’s [Statement of Expectations](#) for ASIC.
- 12 The Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (Royal Commission) highlighted widespread misconduct, and conduct that does not meet community standards, across the financial sector. ASIC’s work in 2018–19 has been guided by the outcomes of the Royal Commission, and includes implementing the new obligations and responsibilities that were included in its recommendations. Our strategic change program includes:
- (a) significantly increasing and accelerating court-based enforcement matters as part of our new enforcement strategy, and using the full extent of our new penalties and powers through the operational discipline of ‘Why not litigate?’;
 - (b) embedding and expanding new supervisory approaches, particularly through our Close and Continuous Monitoring (CCM) program and our corporate governance review aimed at improving governance practices at the board level; and
 - (c) working towards our new obligations and responsibilities in response to the Royal Commission, including an expanded role as primary conduct regulator in superannuation.
- 13 This report assesses ASIC’s performance in 2018–19 and so pre-dates the impact of the COVID-19 pandemic. Since this report was originally prepared, ASIC has recognised and responded to the impact of the pandemic on Australian financial services market participants and consumers. We have taken action so industry participants can focus on immediate priorities and the needs of their customers at this difficult time. ASIC is focusing its regulatory efforts on challenges created by the pandemic and other matters where there is the risk of significant consumer harm, serious breaches of the law, risks to market integrity and time-critical matters. Details of [our responses to the COVID-19 pandemic and our expectations of industry](#) at this time are set out on our website.

Evaluating our performance

- 14 The Framework is just one component of ASIC’s suite of performance reporting tools. In accordance with the Commonwealth Performance Framework under the *Public Governance, Performance and Accountability Act 2013*, each year our corporate plan sets out the performance evaluation framework by which we measure our performance.
- 15 We use a range of qualitative and quantitative measures to tell a cohesive story that reflects our performance over time. Our performance results are published in our annual report.
- 16 Increasingly, we are taking a multi-dimensional approach to solving problems, by using more than one regulatory tool. In reporting on our work, we will provide a narrative about that approach to solving problems.
- 17 We also have a number of project-specific measures that show the outcomes of regulatory actions. For example, following publication of a report on total and permanent disability insurance, we will measure whether claims handling has improved, through declined, withdrawn and disputed claims rates.
- 18 We also use a range of more specific tools to evaluate our performance and communicate with our stakeholders. These are set out in Table 2.

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

Tool	Description	Publication frequency
Service charter	The ASIC service charter covers our most common interactions with stakeholders, such as applications for licences, applications for relief from the law, registering a company or business name, and how we respond to reports of alleged misconduct by companies or individuals. Service charter measures include expected timeframes for our response on these interactions, as well as measures for responding to phone and email inquiries.	Yearly
Enforcement update	The enforcement report is part of our commitment to transparency about our enforcement work. It provides a high-level overview of our enforcement priorities and highlights key cases and decisions during the period.	Half-yearly
Market integrity report	The market integrity report highlights our achievements in market surveillance and market integrity enforcement during the period, as well as outlining key short-term priorities. We also publish quarterly data on market characteristics, measures of market concentration and measures of market efficiency.	Half-yearly

Tool	Description	Publication frequency
Reports on relief applications	The relief report summarises when we have exercised, or refused to exercise, ASIC's exemption and modification powers.	Half-yearly
Cost Recovery Implementation Statement (CRIS)	The CRIS is one of a number of key accountability and transparency measures incorporated into the ASIC industry funding model. It explains how we expect to spend our regulatory resources for the financial year by activity, industry sector and subsector, and how levies under the model will be calculated.	Yearly

Stakeholder feedback

- 19 We value stakeholder feedback as a means of helping us achieve our vision, maintain regulatory standards and identify and resolve regulatory issues in the market.
- 20 We seek feedback through a range of channels, including regular industry liaison, external panels and committees, and the ASIC Annual Forum.
- 21 We continue to focus on improving our engagement with stakeholders to give all sectors the opportunity to provide input into our work.

B ASIC self-assessment

Key points

Our self-assessment is based on a review of our activities during 2018–19 against the published evidence metrics for each group of KPIs.

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

KPI 1 and KPI 6

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

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

- 22 We consider KPIs 1 and 6 to be complementary. KPI 1 relates to how we administer the regulatory framework to minimise unnecessary regulatory burden. KPI 6 relates to how we contribute to improving the regulatory framework, such as by providing policy advice to government.
- 23 Both KPIs contribute to ensuring our stakeholders are subject to efficient and appropriate regulation that minimises regulatory costs.

ASIC assessment

- 24 We assess our performance against these KPIs based on how we:
- (a) demonstrate an understanding of the markets in which our regulated population operate, and best practice regulatory approaches in those markets;
 - (b) promote public discussion of market and regulatory developments and engage with stakeholders through regular meetings, external committees and panels, and hosting the ASIC Annual Forum;
 - (c) make it easier for regulated entities to do business, including by:
 - (i) implementing measures to reduce red tape and the compliance burden on business (including for innovative business models); and
 - (ii) effectively and efficiently considering applications by regulated entities for relief from the law; and
 - (d) contribute to continuous improvement of regulatory frameworks by providing advice to government and identifying where reform may be required.

25 We have demonstrated our strong commitment to meeting these KPIs in 2018–19. We continued to focus on efficient, proportionate and effective regulation, and on engaging with the sectors we regulate. We used ASIC’s powers to provide relief from requirements, where appropriate, to minimise costs to business and make the law work better. We grant relief where there is regulatory benefit or minimal regulatory detriment and this is outweighed by the commercial benefit. Our relief makes the law more adaptable and facilitates innovations in products, services or transactions. We provided policy advice to government and helped implement key reforms to optimise the regulatory framework for all stakeholders.

Understanding the market

26 Where we have a strong understanding of current and emerging issues in the financial sector, we are more likely to make decisions that do not unnecessarily impede the efficient operation of our regulated entities, while ensuring regulatory objectives are met and misconduct is addressed.

27 Our strategic planning process begins with applying our threats, harms and behaviours framework—this identifies, describes and prioritises actual and potential harms to consumers, investors and markets. We apply this framework by:

- (a) analysing our external operating environment, including key economic and sectoral trends (see the key trends, risks, challenges and opportunities identified in the environmental scan in the [ASIC Corporate Plan 2019–23: Focus 2019–20](#) (Corporate Plan 2019–20), published 28 August 2019);
- (b) identifying and prioritising threats and behaviours that are or could potentially cause harm—including the work of our Emerging Threat and Harm Committee, which monitors, analyses and responds to changes in our operating environment; and
- (c) testing the rigour of our results with independent external advisory panels and experts.

28 Our strategic priorities are set according to the types of harms we see as most significant, and what we view as the most effective way of taking action against them. These priorities drive the finalisation of team business plans and resource allocation.

29 We also closely monitor developments in the market to identify emerging threats and harms. Our annual corporate plan outlines the key environmental trends to help us better understand the challenges to realising our vision.

- 30 Our Emerging Threats and Harms Committee is a key component of ASIC’s broader risk management framework. This committee of Commissioners and senior ASIC leaders helps ASIC to:
- (a) identify, monitor and advise on emerging risks, including product or sector risks relevant to our strategic priorities;
 - (b) review the perimeter of our regulatory responsibilities for regulatory gaps not subject to appropriate regulation; and
 - (c) monitor key changes to the priority harms that can cause harm to investors, consumers and the markets and sectors we regulate.
- 31 We are committed to better understanding investors’ and consumers’ perceptions of trust and confidence in the sectors we regulate. We do this by maintaining open working relationships with our regulated entities.
- 32 We also regularly consult our external stakeholder advisory panels, including the Consumer Advisory Panel, the recently refreshed External Advisory Panel (see paragraph 55), and sector-specific panels such as the Business Advisory Panel, Corporate Governance Consultative Panel (formerly the Director Advisory Panel), Digital Finance Advisory Panel, Financial Advisers Consultative Panel and Markets Advisory Panel.
- 33 By engaging with these panels, we identify issues in the market and receive suggestions about how to address them. It helps us better understand the markets we regulate and be more forward-looking in examining issues and assessing harms or potential harms to consumers, investors and fair and efficient markets.
- 34 More information on our engagement with stakeholder panels can be found below at evidence metric 1.1.4.
- 35 We also regularly engage with members of our regulated population across all sectors to help us understand market trends and emerging issues.
- 36 ASIC hosts an Annual Forum. The Annual Forum is an event designed to facilitate ASIC engagement with stakeholders, and to explore existing and emerging threats affecting the Australian financial services industry, and ASIC’s regulated population.

Making it easier for business

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

- 38 When publishing new or revised regulatory guides, we aim to provide reasonable transition periods to assist regulated entities adjust to updated operating requirements and regulatory conditions.
- 39 We regularly publish reports where we have exercised, or refused to exercise, our exemption and modification powers in response to applications for relief from the law.
- 40 We aim to efficiently serve our regulated population and publish service standards for making decisions about applications for relief. Under our [service charter](#), we aim to make a decision within 28 days (of receiving all necessary information and fees) on 70% of applications for relief from the Corporations Act that do not raise new policy issues—and make an in-principle decision within 90 days on 90% of these applications.

Continuous improvement of regulatory frameworks

- 41 We continue to actively identify, report on and address a range of significant market and conduct problems in the sectors we regulate.
- 42 Our regulatory guides explain to regulated entities when and how we will exercise powers under legislation, how we will interpret the law, and the principles underlying our approach. Information sheets provide concise guidance on a specific process or compliance issue. We regularly review and update our regulatory guides and information sheets to ensure they remain relevant and appropriate to the issues they address.

Supporting evidence

1.1 Understanding the market

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

- 43 We have implemented and continue to enhance our comprehensive strategic planning process. The process is designed to ensure our priorities and activities contemplate changes in our external environment that may impact our regulated population or Australian consumers.
- 44 In October each year, we internally publish an environmental scan assessment of our external environment. Insights from our October 2018 assessment were included in our [Corporate Plan 2019–20](#).
- 45 Also, specific environmental threats and harms identified in the environmental scan assessment were examined in detail as part of our threats and harms identification assessment process. Key threats and harms driving poor consumer outcomes underpinned our strategic priorities, as published in our [Corporate Plan 2019–20](#).

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

46 Maintaining the integrity of our markets is critical for promoting investor confidence and trust. ASIC’s market integrity rules are an important part of our regulatory framework for maintaining market integrity. Since taking over primary market responsibility for supervision in 2011, we have retained many of the obligations previously imposed by market operators. We have commenced the process of consolidating and reviewing these obligations in consultation with industry stakeholders.

47 For example, in June 2019, we released [Consultation Paper 314 Market integrity rules for technological and operational resilience](#) (CP 314), which asked for stakeholder feedback on proposed market integrity rules for securities and futures market operators and market participants to promote the resilience of their critical systems.

48 Our proposals addressed various issues including change management of critical systems, risk management, data and cyber security, and fair access to markets and trading controls. We received 12 submissions from industry stakeholders in response to our proposals. The [submissions](#) are published on our website.

1.1.3 ASIC holds regular meetings with key stakeholders.

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

50 We actively engaged with stakeholders in a variety of ways, including through advisory panels, roundtables on issues across sectors, and regular meetings—these helped us better understand industry, consumer and market developments, consult on policy matters, consider and address systemic risks or harms, and discover potentially harmful behaviours by entities.

51 We have recently completed a review of our external panels. Based on the results of this review, we will enhance our framework for external engagement by adjusting the composition, format and terms of reference for several panels. Key changes include:

- (a) replacing the External Advisory Panel with a refreshed ASIC Consultative Panel that will have a more flexible format;
- (b) ensuring enhanced resourcing and consumer representation on the Consumer Advisory Panel; and
- (c) updating the terms of reference and purpose of sector-specific panels to ensure organisation-wide consistency.

52 In 2018–19, we held over 1,400 meetings with key stakeholders across our regulated sectors.

1.1.4 Stakeholder panels meet regularly.

53 Regular engagement with our advisory panels is one of the ways we keep up to date with trends and issues in the market. This in turn helps us to be more forward-looking in assessing systemic risks and emerging threats and harms.

54 The External Advisory Panel met three times in 2018–19 and provided advice and feedback on a wide range of matters, including credit card lending, the 2018 National Financial Capability Strategy, direct life insurance, whistleblowing reforms and ASIC’s new supervisory approaches.

55 In 2019–20, we are replacing the External Advisory Panel with a refreshed consultative panel that has a rotating membership, meets in an annual plenary meeting supported by a less-structured panel of members who can be consulted throughout the year on a variety of issues, and is governed by a new statement of purpose and refreshed terms of reference.

56 In 2019–20, we will also refresh the purpose and terms of reference of our other advisory panels to ensure consistency of operation across all panels.

57 Information about our [external committees and panels](#), including the purpose of each and a summary of issues considered, is available on our website and in the ASIC [Annual Report 2018–19](#).

1.1.5 ASIC holds an Annual Forum.

58 ASIC’s most recent Annual Forum was held jointly with the International Organisation of Securities Commissions (IOSCO) General Meeting on 13–17 May 2019, in Sydney. The theme of the 2019 forum was ‘Other people’s money’, exploring how the industry can better focus on the ‘end user’ of financial services products. The forum brought together 415 delegates from 151 member organisations in 98 jurisdictions.

1.2 Making it easier for business

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

59 We have a strong history of incorporating best practice regulatory principles into our policy development process and have been consistently compliant with OBPR requirements.

60 OBPR confirmed that we fully complied with the requirement to prepare a Regulation Impact Statement (RIS) for all regulatory proposals in 2018–19.

- 61 ASIC has a range of other initiatives that contribute to making interaction with government and ASIC simpler and less bureaucratic, and removing unnecessary barriers to business. These include ASIC’s use of relief powers (see paragraphs 69–72), and its innovation support functions—the Innovation Hub and regulatory sandbox—as well as the Small Business Engagement and Compliance team and ASIC’s Regulatory Portal.
- 62 ASIC’s [Innovation Hub](#) provides practical support to innovative start-up and scale-up financial technology (fintech) businesses as they navigate Australia’s financial regulatory system. The support provided includes guidance on regulatory obligations and, as appropriate, potential options relating to ASIC’s relief powers, such as the regulatory sandbox (see paragraph 64).
- 63 In 2018–19, the Innovation Hub provided informal assistance to over 190 businesses, helping them consider regulatory issues early, and where relevant prepare licence or relief applications. In total, ASIC has engaged with over 500 entities—including over 100 regulatory technology (regtech) entities—who through their own work help businesses comply with their regulatory obligations, ensure better consumer outcomes and build trust in the financial services sector. This form of Innovation Hub engagement has led to a 22% reduction in the time taken for businesses to be licensed.
- 64 ASIC’s [regulatory sandbox](#) allows eligible fintech companies to test certain products or services for up to 12 months without an Australian financial services (AFS) licence or credit licence. Eligible companies can rely on either:
- (a) existing statutory exemptions or flexibility in the law (such as by acting on behalf of an existing licensee);
 - (b) ASIC’s fintech licensing exemption for the testing of certain specified products and services; or
 - (c) for other services, individual relief from ASIC.
- 65 ASIC’s Small Business Engagement and Compliance team is another key contributor to our efforts to assist business. It coordinates initiatives that assist, engage and help protect small businesses (businesses with fewer than 20 employees). In the 2018–19 financial year, small businesses represented 96% of all companies and businesses registered with ASIC.
- 66 ASIC is also continuing to implement its Regulatory Transformation program, which provides the regulated population with a streamlined and central point of access to ASIC’s increasing suite of digital services through the [ASIC Regulatory Portal](#). The portal provides services for:
- (a) regulated entities with industry funding obligations;
 - (b) self-managed superannuation fund auditors;

- (c) Australian fund operators and Asia Region Funds Passport fund operators;
- (d) market intermediaries—market participants and retail over-the-counter derivatives providers; and
- (e) trusted representatives of regulated entities—company employees, compliance officers, registered agents or service providers.

67 Over time, ASIC will add services to the portal for:

- (a) existing or potential licensees and their representatives—AFS licensees, credit licensees and market operators;
- (b) existing or potential registered professionals—liquidators, registered company auditors and authorised audit companies; and
- (c) organisations—officeholders or employees who notify or interact with ASIC on behalf of a regulated entity.

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

68 We provided reasonable transition periods, where it was appropriate to do so. For example, in December 2018, ASIC gave superannuation trustees and managed investment schemes transitional relief until 30 September 2020 to update mandatory fees and cost disclosure requirements concerning property operating costs.

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

69 A significant component of ASIC’s approach to reducing red tape is the use of our relief powers to vary or set aside certain legal obligations where there is regulatory benefit or minimal regulatory detriment and this is outweighed by the commercial benefit. In 2018–19, ASIC received 1,455 applications for individual relief, and granted relief in response to 963 (66%).

70 ASIC continues to focus on minimising compliance costs in granting relief to regulated entities, and regularly publishes reports where it has exercised its exemption and modification powers in response to applications for relief from the law.

71 Our 2018–19 relief reports were:

- (a) [Report 620](#) *Overview of decisions on relief applications (October 2018 to March 2019)* (REP 620), published on 21 June 2019; and
- (b) [Report 602](#) *Overview of decisions on relief applications (April 2018 to September 2018)* (REP 602), published on 6 December 2018.

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

72 In 2018–19, ASIC made an in-principle relief decision on 66% of relief applications within 28 days, and on 80% of applications within 90 days. This was slightly below the service charter target for relief assessment of 70% and 90% respectively.

Note: 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.

1.3 Continuous improvement of regulatory frameworks

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

73 During 2018–19, ASIC contributed to the continuous improvement of regulatory frameworks by providing advice to the Australian Government and submissions to parliamentary inquiries on a variety of issues. This included submissions made to the Royal Commission, as well as input on various other law reform initiatives.

74 In 2018–19, ASIC made submissions to Senate and Parliamentary Joint Committee (PJC) inquiries and appeared when required.

75 In 2018–19, we contributed to the following responses and reports produced by the PJC on Corporations and Financial Services:

- (a) [*Statutory oversight of the Australian Securities and Investments Commission, the Takeovers Panel and the Corporations Legislation*](#), report no. 1 of the 45th Parliament, 13 February 2019;
- (b) [*Fairness in franchising*](#), 14 March 2019; and
- (c) [*Options for greater involvement by private sector life insurers in work rehabilitation*](#), 24 October 2018.

76 In 2018–19, ASIC also made submissions on the:

- (a) Senate Economics Legislation Committee, Commonwealth Registers Bill 2019 and four related bills provisions, 13 February 2019;
- (b) Senate Economics Legislation Committee, Treasury Laws Amendment (Consumer Data Right) Bill 2019 [Provisions], 21 March 2019;
- (c) Senate Economics Legislation Committee, Progress report: Treasury Laws Amendment (Consumer Data Right) Bill 2019 [Provisions], 6 March 2019;
- (d) Senate Economics References Committee, Credit and financial services targeted at Australians at risk of financial hardship, 22 February 2019;

- (e) Senate Economics Legislation Committee, Social Services and Other Legislation Amendment (Supporting Retirement Incomes) Bill 2018 [Provisions], 11 February 2019;
 - (f) Senate Economics Legislation Committee, Treasury Laws Amendment (Protecting Your Superannuation Package) Bill 2018 [Provisions], 13 August 2018.
- 77 ASIC also provided input on several key law reform initiatives, including:
- (a) the new product governance regime—encompassing product intervention powers and design and distribution obligations (DDO);
 - (b) law reform to strengthen existing penalties and introduce new ones for breaches of corporate and financial services laws;
 - (c) 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 the best interests duty;
 - (d) law reform to combat illegal phoenix activity, and
 - (e) new whistleblower legislation to improve the protections available for whistleblowers.
- 78 We also actively participated in the Council of Financial Regulators (CFR) working groups to discuss the systemic risks facing the Australian financial system. This included discussions on financing conditions and the housing market, ASIC’s new powers, and post-trade financial market infrastructure.
- 79 Many of ASIC’s submissions in 2018–19 were in support of the Royal Commission (see paragraph 12). Of the 76 recommendations made in the Royal Commission final report, 12 were directed at ASIC or required action by ASIC without the need for legislative change, while 34 recommendations relevant to ASIC require legislative reform—of these, 11 extend ASIC’s remit and powers, and 23 impose new arrangements on ASIC’s regulated population.
- 80 In February and September 2019 ASIC published updates on its actions to implement the Royal Commission recommendations. We committed to fully implementing the 12 recommendations directed at ASIC. Where recommendations require legislative reform, ASIC is working with Treasury to provide policy and technical input on specific measures and embedding new powers as reforms are implemented.
- 81 ASIC’s current and planned actions include:
- (a) continuing to strengthen our enforcement culture and approach, including by adopting an operational self-discipline of ‘Why not litigate?’ and creating a separate Office of Enforcement;

- (b) strengthening our governance and culture to realign our enforcement and regulatory priorities;
- (c) prioritising the referrals made to ASIC in the Royal Commission final report and matters that were case studies before the Royal Commission, and working on a range of misconduct relating to major financial institutions;
- (d) preparing to become the primary conduct and disclosure regulator for superannuation; and
- (e) working with APRA on the extended executive accountability regime for other prudentially regulated institutions and preparing for the implementation of a conduct accountability regime that will also apply to non-prudentially regulated entities.

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

- 82 We contribute to international regulatory policy and standard setting through our membership of the IOSCO Board as well as IOSCO committees, taskforces and various other projects and activities. We also:
- (a) chair the Market Conduct Working Group of the International Association of Insurance Supervisors;
 - (b) serve on the board of the International Forum of Independent Audit Regulators and contribute to the International Accounting Standards Board;
 - (c) 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 Co-operation and Development;
 - (d) participate in working groups established by the World Economic Forum on cyber risk and consumer data protection; and
 - (e) contribute to the Asia–Pacific Economic Cooperation Financial Regulators Training Initiative by providing speakers at training seminars in the region.
- 83 In May 2019, we hosted the IOSCO Annual Meeting in Sydney: see paragraph 58.
- 84 In 2018–19, we advocated for:
- (a) global regulatory coordination and harmonisation in fintech and regtech;

- (b) 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; and
- (c) greater focus on fairness and addressing misconduct, whether legal or not, particularly in the retail sector.

85 We also continued to participate in regional supervisory colleges, designed to facilitate cooperation between regulators to enhance supervision of cross-border financial entities, provide greater visibility of interdependencies and help manage financial and non-financial risks.

86 For example, in 2018–19, we hosted the Asia–Pacific Regional Supervisory College and other colleges, including some related to major credit rating agencies (Fitch, Moody’s and Standard & Poor’s).

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

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

88 ASIC, working under the auspices of the CFR, contributed to Australia’s FSAP response. The cross-agency CFR working group comprised members from Treasury, APRA, the Reserve Bank of Australia (RBA) and ASIC.

89 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.

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

90 In 2018–19, we continued to provide advice to the Australian Government on law reform that might help overcome problems we encounter in administering or enforcing relevant legislation, or as a response to developments in the financial markets: see ASIC’s statutory function in s11(2)(b) of the ASIC Act.

91 The Chair of ASIC, Commissioners and senior ASIC officials liaise regularly with the Treasurer and other responsible Ministers. We continue to inform Treasury Portfolio Ministers of significant issues arising in our areas of responsibility.

- 92 We provided advice to Treasury and the Australian Government on how the law is operating in practice, including at regular ASIC–Treasury liaison meetings, which occur every three months and are attended by the Chair of ASIC and the Deputy Secretary of the Treasury Markets Group.
- 93 We also provided written input and submissions on key law reform initiatives, including on issues such as penalties, product governance, illegal phoenix activity, superannuation reform and whistleblowing: see paragraph 77.

KPI 2 and KPI 5

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

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

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

ASIC assessment

- 95 We have demonstrated ongoing commitment to achieving these KPIs. We remain committed to providing clear guidance to our stakeholders about how we expect them to comply with the law.

Interacting with ASIC

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

- (a) number of:
 - (i) total companies registered;
 - (ii) new companies registered;
 - (iii) total business names registered; and
 - (iv) new business names registered;
- (b) estimated savings in fees to register or renew business names;
- (c) number of calls and online inquiries responded to;
- (d) percentage of forms lodged online; and
- (e) number of searches on ASIC registers.

97 The [ASIC service charter](#) covers the most common interactions between ASIC and our stakeholders and sets performance targets for each.

98 We also maintain and publish guidelines for complaints addressed to ASIC.

Communicating ASIC's expectations

99 Communication remains a key priority for ASIC. Our corporate plan communicates our intent over the next four years to promote positive behaviour in the entities and individuals we regulate to improve financial outcomes for consumers and investors.

100 The key characteristics of the positive behaviour we seek to promote include:

- (a) *fairness*, by treating consumers fairly—including by providing services and products that are accessible, perform in a way that consumers are led to expect and consider their interests;
- (b) *professionalism*, which calls entities and individuals to act with a high standard of competence, independence, integrity, care, ethics and conscientiousness;
- (c) *strong governance controls*, which promote sound decision making and foster a positive culture of achieving efficient, honest and fair outcomes;
- (d) *a commitment to design and distribute products* that meet the needs of consumers and provide value for money;
- (e) *healthy competition* between product and service providers, based on differing business models and structures;
- (f) *robust disclosure and reporting practices*, which provide clear, accurate and timely information to consumers based on their needs;
- (g) *timely and accurate breach reporting to ASIC*;

- (h) *efficient handling of complaints and dispute resolution*; and
- (i) *appropriate and timely consumer compensation* where losses have resulted from poor conduct.

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

102 ASIC follows the [Australian Government guide to regulation](#) when developing policy proposals for consultation. This includes being clear about the problems to be addressed, such as market failure, regulatory failure or an unacceptable hazard or risk.

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

104 To increase transparency in our dealings with regulated entities, we publish:

- (a) industry reports—highlighting how we respond to key trends in industry sectors; and
- (b) relief reports—summarising examples of situations where we have exercised, or refused to exercise, ASIC’s exemption and modification powers from the provisions of the Corporations Act and the National Credit Act.

Performance measurement and reporting

105 ASIC remains committed to evaluating its performance. Our performance measurement and reporting framework comprises regulatory and market outcomes set out in the corporate plan and portfolio budget statement, which are reported against in the annual report, and other more specific tools, including this self-assessment, our service charter performance, enforcement update report and market integrity report.

106 Our performance measures are based on:

- (a) better market outcomes, which are indicators of perceived and actual behaviours that demonstrate trust and confidence in the financial system;
- (b) regulatory outcomes, which reflect what we do using our regulatory tools, and
- (c) project-specific measures that show the outcomes of regulatory action.

107 We are increasingly using a multi-dimensional approach to solving problems, where we use more than one regulatory tool. In reporting on our

work, we will provide a narrative about that approach to solving problems, including the different elements.

108 For example, our work in consumer credit insurance used several regulatory tools: surveillance, transparency, our published report ([Report 622 Consumer credit insurance: Poor value products and harmful sales practices \(REP 622\)](#)), investigation, remediation paid to consumers, guidance to industry on product design and sales practices, and intervention (consulting on banning unsolicited outbound telephone sales).

109 We also report on our performance against the key measures in our service charter, which includes explanations where performance standards are not met: see the [ASIC service charter results: 2018–19](#).

Supporting evidence

2.1 Interacting with ASIC

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

110 We aim to register 90% of companies or business names submitted by online application within one business day of receiving a complete application. In 2018–19, we exceeded our target and registered 99.2% of business names within this timeframe.

111 We aim to register 80% of auditors within 28 days of receiving a complete application. In 2018–19, we exceeded our target and registered 90% of auditors within 28 days.

112 In 2018–19, we registered 100% of managed investment schemes within 14 days of receiving a complete application.

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

113 We exceeded our service charter targets for credit licences in 2018–19, finalising 92% of new applications for a credit licence within 150 days and 96% within 90 days. We also finalised 96% of credit licence variation applications within 150 days and 98% within 240 days.

114 In 2018–19, we finalised 73% of new AFS licence applications within 150 days and 86% within 240 days. The 4% variance against our 240-day target of 90% was driven by a 30% increase in the volume of AFS licence cancellation applications received. We also granted 80% of licence variations in 150 days and 90% in 240 days.

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

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

2.1.4 ASIC addresses complaints in accordance with complaint guidelines.

116 Our service charter target is to resolve 70% of all complaints about ASIC within 28 days of receiving all relevant information. In 2018–19, we exceeded this target, with resolution of 96% of complaints within this timeframe.

2.1.5 ASIC publishes policies and procedures about rights of review.

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

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

118 We regularly seek feedback from our stakeholders through engagement with our advisory panels, discussed in more detail under evidence metric 1.1.4.

2.2 Communicating ASIC's expectations*2.2.1 ASIC uses a variety of media and direct channels to convey information to all stakeholders.*

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

120 We also publish reports of our investigations and analysis of issues affecting our regulated population and consumers of financial services. In 2018–19, we published 45 such reports, including on issues such as credit card lending, sale of direct life insurance, climate risk disclosure, equity market cleanliness and 'buy now, pay later' arrangements.

121 We have a policy of naming entities in our public reports, if doing so will promote transparency in advancing a consumer-protection or market-integrity objective, and when there are no compelling countervailing factors

that weigh against naming: see evidence metric 2.2.3 below for examples of reports when we have identified entities.

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

- 122 All our regulatory guidance publications, and extensive information on ASIC's role, functions and services, are available on the [ASIC website](#), which received 16.49 million views in 2018–19.
- 123 As at 30 June 2019, there were 262 regulatory guides and 189 information sheets published on our website. In 2018–19, we published 23 new or revised regulatory guides and 27 new or revised information sheets relating to our regulatory responsibilities.
- 124 For example, in August 2018, we released [Information Sheet 232](#) *Fees for no service: Remediation* (INFO 232)—this covers ASIC's fees for no-service remediation project about the ongoing remediation of customers of major financial institutions who were charged annual fees for services that were not provided.
- 125 Further examples of publications we released in 2018–19 that established our position on specific issues affecting our regulated population include:
- (a) [Regulatory Guide 269](#) *Approval and oversight of compliance schemes for financial advisers* (RG 269);
 - (b) [Consultation Paper 309](#) *Update to RG 209: Credit licensing: Responsible lending conduct* (CP 309);
 - (c) [Consultation Paper 314](#) *Market integrity rules for technological and operational resilience* (CP 314);
 - (d) [Information Sheet 238](#) *Whistleblower rights and protections* (INFO 238); and
 - (e) [Information Sheet 235](#) *Reporting obligations of Indigenous corporations* (INFO 235).

2.2.3 ASIC regularly publishes reports to inform regulated entities of ASIC's approach and expectations.

- 126 In 2018–19, we published 45 industry reports promoting changes in industry behaviour and informing government policy and law reform.
- 127 For example, in September 2018, we published [Report 594](#) *Review of selected financial services groups' compliance with the breach reporting obligation* (REP 594), which 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.

- 128 In response to the review’s findings, we are ensuring that there is a strong focus on compliance with breach reporting requirements in our CCM program’s approach to supervising major institutions, and we are actively considering enforcement action for failures to report breaches on time.
- 129 In November 2018, we published [Report 600](#) *Review of buy now pay later arrangements* (REP 600), which summarises the findings of our review of ‘buy now, pay later’ arrangements.
- 130 Both [REP 594](#) and [REP 600](#) are examples of reports where we have named entities in order to promote transparency in advancing a consumer-protection objective.
- 131 In December 2018, we published [Report 604](#) *Credit card lending in Australia—An update* (REP 604), which contains an update on ASIC’s work on credit cards and a point-in-time outline of commitments made by credit providers to address the concerns we identified in July 2018 in [Report 580](#) *Credit card lending in Australia* (REP 580).
- 132 Other reports we released in 2018–19 include:
- (a) [Report 587](#) *The sale of direct life insurance* (REP 587);
 - (b) [Report 591](#) *Insurance in superannuation* (REP 591);
 - (c) [Report 593](#) *Climate risk disclosure by Australia’s listed companies* (REP 593); and
 - (d) [Report 614](#) *Financial advice: Mind the gap* (REP 614).

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

- 133 The [ASIC website](#) is designed to be accessible and easy to use. Our pages are designed so that they can be easily read by screen readers and have ‘skip to content’ links at the top of the page which allow screen readers to skip navigational elements and go straight to the text. We also provide text equivalents (‘alt tags’) for images, and transcripts or captions for video files.
- 134 The ASIC website provides comprehensive information on our regulatory and registry activities. In 2018–19, we:
- (a) launched a News Centre with automated, subject-focused news pods;
 - (b) improved the usability and accessibility of our desktop and mobile navigation;
 - (c) created a new accessible template for reports;
 - (d) revamped the small business, Innovation Hub and ‘For Consumers’ sections;

- (e) published several podcasts;
- (f) published guidance for industry funding requirements; and
- (g) continued to streamline our registry-related content.

- 135 In 2018–19, our online search service—for searching company, business names or other data online—was available 99.8% of the time during standard business hours. This exceeded our service charter target of 99.5%.
- 136 In 2018–19, our online lodgement service—for lodging company, business names or other data online—was available 98.4% of the time during standard business hours. This was just below our service charter target of 99.5%.
- 137 In the last financial year, there were 142.6 million searches of ASIC’s registers, up by 20.1 million (or 16%) from 2017–18. We also prepared for a government reform that commenced on 1 July 2019 that exempted journalists from paying certain registry search fees.
- 138 We made more frequent (weekly rather than monthly) updates to many of the datasets available on data.gov.au. More frequent updates have improved the currency of the data available on the companies and business names datasets. This data is available to anyone—they can view and use the data to conduct research or develop new products and services.
- 139 As mentioned at paragraph 65, ASIC’s Small Business Engagement and Compliance team is another key contributor to ASIC’s work in assisting business. This includes providing efficient registry services such as business name services, and information and guidance on compliance.
- 140 In 2018–19, ASIC answered over 670,000 inquiries through its registry communication channels, many from small business owners. There were over 54,000 views of ASIC’s online small business resources, and ASIC’s First Business App was downloaded over 15,000 times.
- 141 In 2018–19, we introduced the [Business Registration Service](#) (BRS), which combines several different business registrations in the one place. The BRS makes it easier to start a business, with the average time taken to do so being under 15 minutes. In 2018–19, there were over 110,000 business names registered using BRS. ASIC also refreshed its resources for small business by simplifying and further developing them using web analytics, to better address queries from small business owners and provide a clearer online user journey.

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

142 Our CCC provides a valuable service to Australians, as a key point of contact for their inquiries. In 2018–19, we responded to 670,741 telephone and online inquiries. We exceeded our service charter targets, with approximately 90.7% of all telephone inquiries answered on the spot, and 91.8% of general email inquiries answered within three business days.

143 We regularly review and update CCC resources, including call centre scripts, to ensure staff have access to up-to-date information. There is regular engagement between the CCC and ASIC’s regulatory teams to ensure staff are notified of pending website publications and media releases, and can respond to customer inquiries efficiently.

2.3 Consulting with stakeholders

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

144 We follow the [Australian Government guide to regulation](#) when developing policy proposals for consultation. This includes being clear about the problem to be addressed, such as market failure, regulatory failure, or an unacceptable hazard or risk. See evidence metric 2.3.2 for examples of recent consultation.

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

145 In 2018–19, we published 13 consultation papers on major new policy. Consultation was open for at least eight weeks for three of these papers, and nine of them were open for at least six weeks.

146 Examples of consultation papers we published in 2018–19 include:

- (a) In February 2019, we released [CP 309](#) which sought feedback on our proposals for updating our guidance on responsible lending, including in new areas, such as written assessments, loan fraud and record keeping. Consultation closed in May 2019 and we held public hearings in August 2019 to test stakeholder views and provide a transparent way to air issues raised in submissions.
- (b) In June 2019, we released [CP 314](#) which sought feedback on proposed market integrity rules for securities and futures market operators and market participants to promote the resilience of their critical systems. Consultation was open for six weeks.

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

147 We publish feedback received in response to all of our consultation papers, generally in the form of feedback reports. These can be found on our website. At times we incorporate comments or suggestions made by industry in response to our proposals into our final guidance or legislative instruments, and, in these cases, the responses will be released at the same time as we issue our new or revised regulatory guides or legislative instruments.

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

148 In addition to consulting on major new policies and draft guidance, we seek feedback through open working relationships with our regulated entities. This is done through regular meetings (see evidence metric 1.1.3) and engagement through our external committees and panels (see evidence metric 1.1.4), as well as our Annual Forum.

2.4 Performance measurement and reporting*2.4.1 ASIC's corporate plan is published annually.*

149 Our [Corporate Plan 2019–20](#) was published on 28 August 2019. This plan:

- (a) describes our operating environment;
- (b) identifies our focus areas over the medium term and in 2019–20;
- (c) explains our strategy and regulatory approach to realise our vision;
- (d) explains the regulatory actions we will take over the medium term and in 2019–20;
- (e) outlines how we will strengthen our capabilities to realise our vision; and
- (f) outlines our performance evaluation framework.

150 We update our corporate plan each year as ASIC's operating environment changes.

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

151 Publishing the Government's [Statement of Expectations](#) and our responding [Statement of Intent](#) is important for transparency of the expectations on ASIC and our intentions in undertaking our role.

152 The Treasurer issued the most recent Statement of Expectations to ASIC in April 2018. We published our Statement of Intent in response in September 2018.

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

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

154 [Results of our performance against the service charter](#) are reported annually in our annual report and on our website.

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

155 [ASIC’s Annual Report 2018–19](#) was tabled in Parliament and published on the ASIC website on 17 October 2019.

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

157 Our performance results, including reporting against the corporate plan and service charter, are published in our annual report. The annual report also includes explanations where outcomes or standards are not met—for example, in this year’s report we note that our result for turnaround times for licence cancellations was 4% below target as we received 30% more cancellation applications this year.

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

158 We are aiming to publish our final self-assessment report and external validation by June 2020.

KPI 3 and KPI 4

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

KPI 4: Compliance and monitoring approaches are streamlined and coordinated

159 We consider that KPIs 3 and 4 primarily concern the effectiveness and efficiency of our approach to identifying and acting against misconduct and changing behaviours to drive good consumer and investor outcomes, principally through surveillance and enforcement. We assess our performance against these KPIs based on how we:

- (a) take a strategic approach to our supervision activities, by targeting the highest priority threats and harms;
- (b) adopt a proportionate approach to enforcement, including being transparent about how we approach our enforcement role and why we respond to types of breaches of the law in different ways;
- (c) minimise the impact on the regulated population of complying with requests for information, including improving our data management and analytics; and
- (d) cooperate and coordinate with other regulators when undertaking relevant supervision activities.

ASIC assessment

Risk-based supervision

- 160 In 2017–18, we enhanced our strategic planning process by introducing a new threat, harm and behaviour framework to better identify and more precisely describe and prioritise actual and potential harms that need to be addressed.
- 161 ASIC uses the threat, harm and behaviour framework to identify regulatory risks in the market to inform the strategic priorities in our corporate plan, which helps us prioritise enforcement and regulatory actions that target harms to investors, consumers and markets.
- 162 Each year, we undertake an assessment to identify harms or potential harms that can pose a threat to investor and consumer trust and confidence, and fair and efficient markets.
- 163 Identifying the highest priority threats and harms is the foundation of ASIC's corporate plan and business-planning process. The corporate plan communicates our view of these threats and harms, providing context from the macroeconomic perspective, as well as demographic trends and industry trends. As an organisation, we will adapt and evolve in responding to the rapid changes in the financial sector.
- 164 For this purpose, we have enhanced our internal governance frameworks to better support strategic decision making. Our Emerging Threat and Harm Committee assists in the effective management of our emerging, strategic, operational and fraud risks across all areas of our business activity.
- 165 Further information on [ASIC's internal governance](#) is published on our website.
- 166 We also train staff, including new staff, in risk management policies, processes and procedures.

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

Enforcement and transparency

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

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

169 We are committed to taking a proportionate approach to enforcement, including being transparent about how we approach our enforcement role and why we respond to particular types of breaches of the law in different ways. Our enforcement approach is led and coordinated by our Office of Enforcement: see paragraphs 187–189.

170 We also publish regular enforcement reports as part of our commitment to transparency about our enforcement work. These reports provide a high-level overview of our priorities, cite statistics about our activities and highlight some important cases.

Information requests

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

172 Our approach to using our powers is to:

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

173 We also utilise data from other sources, where appropriate. The collection of data from external sources, and the improved use of technology represents a significant opportunity to enhance the way we are able to deliver on our objectives and to ensure that our actions are proportionate to the regulatory risks we address.

Cooperation with other regulators

174 We have strong working relationships with Australia’s other key financial regulatory agencies, the RBA and APRA. We also maintain a close and cooperative relationship with Treasury. The four agencies cooperate through their shared membership of the CFR. We also work together with other agencies on issues where our responsibilities overlap.

175 On 29 November 2019, ASIC and APRA released a revised Memorandum of Understanding. This will be reviewed on a regular basis and is one aspect of how ASIC and APRA are establishing closer cooperation. Led by ASIC Commissioners and APRA Members, the agencies meet regularly under a revised engagement structure and work together on areas of common interest, including data, thematic reviews, governance and accountability. Both agencies are committed to detecting prudential and conduct issues early and working to resolve them efficiently and effectively.

176 We also maintain operational and policy relationships with other Australian Government agencies, including:

- (a) the Attorney-General’s Department;
- (b) the Australian Competition and Consumer Commission;
- (c) the Australian Charities and Not-for-profits Commission;
- (d) the Australian Federal Police;
- (e) the Australian Financial Security Authority;
- (f) the Australian Taxation Office;
- (g) the Australian Transaction Reports and Analysis Centre;
- (h) the Commonwealth Director of Public Prosecutions;
- (i) the Commonwealth Ombudsman;
- (j) the Office of the Australian Information Commissioner; and
- (k) the Takeovers Panel.

177 We also engage closely with peer regulators and agencies overseas to develop international regulatory policy. In 2018–19, we advocated for:

- (a) global regulatory coordination and harmonisation in fintech and regtech;
- (b) 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; and

- (c) greater focus on fairness and addressing misconduct, whether legal or not, particularly in the retail sector.

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

Supporting evidence

3.1 Risk-based supervision

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

179 We detail our long-term challenges and the actions ASIC will take to address strategic risks that flow from these challenges each year in our corporate plan. An updated list of our strategic priorities for 2019–20 and beyond can be found in the [Corporate Plan 2019–23](#).

180 Our risk management framework aligns with [International Standard ISO 31000 Risk management](#) and with the [Commonwealth Risk Management Policy](#).

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

181 In 2018–19, we enhanced key aspects of our supervisory approach, as part of our response to widespread conduct failures in the Australian financial services industry.

182 Our approach encompasses onsite supervisory exercises through our CCM program, which proactively identifies strategic activities in parts of Australia’s most significant financial services institutions and assesses their effectiveness. We are also undertaking a targeted review of corporate governance practices. The aim of our enhanced approach is to promote permanent cultural and behavioural change in the monitored institutions and across the financial services market.

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

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

184 Our learning management system Learnhub provides staff with access to online just-in-time and face-to-face learning activities. Learnhub is flexible and on-demand, helping people manage their own professional development and making learning part of their work.

185 Using Learnhub, ASIC has implemented individual capability assessments and plans across the organisation. The capability plans enable team members and managers to discuss and identify capability areas and areas for development, based on an individual’s current role and future career aspirations at ASIC and beyond.

3.2 Enforcement and transparency

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

186 To increase ASIC’s effectiveness in achieving the above performance outcomes, we are implementing a strategic change program which focuses on:

- (a) a renewed approach to enforcement, designed to optimise the deterrence impact of enforcement activity; and
- (b) an enhanced supervisory approach and framework to promote permanent cultural and behavioural change in monitored institutions and across the financial services sector.

187 As part of our renewed approach to enforcement, we established the Office of Enforcement and adopted an operational discipline of ‘Why not litigate?’. To optimise the deterrence impact of our enforcement activity, we are also improving our communication about our enforcement priorities, outcomes and performance, and being transparent about how we approach our enforcement role.

188 In December 2018, we completed our internal enforcement review. A key recommendation of the review was that ASIC establish a separate Office of Enforcement. We resolved to establish an Office of Enforcement in February 2019 and it became operational on 1 July 2019.

189 The principal purpose of the Office of Enforcement is to strengthen ASIC’s enforcement effectiveness and our decision making and capabilities. The Office of Enforcement operates under the following principles:

- (a) a single enforcement strategy for ASIC;
- (b) strengthened governance structures across all ASIC’s enforcement functions;

- (c) collective prioritisation and accountability for delivery of the most strategically important enforcement matters across ASIC;
- (d) flexibility in resource allocation across specialist enforcement teams within the Office of Enforcement;
- (e) collective accountability for enforcement capability building, including enforcement training and the use of technology and data; and
- (f) ensuring proper consideration is given to possible criminal and civil litigation outcomes by applying the ‘Why not litigate?’ operational self-discipline.

190 As a law enforcement agency, we devote about 70% of our regulatory efforts to surveillance and enforcement. In 2018–19, we conducted around 1,200 surveillances, and commenced 151 and completed 103 investigations across the sectors we regulate. Further information on ASIC’s surveillance and enforcement activities can be found in our annual report.

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

3.2.2 ASIC regularly publishes a report about its enforcement actions.

192 Our published reports covering 2018–19 were:

- (a) [Report 615](#) *ASIC enforcement update: July to December 2018* (REP 615), published 9 April 2019; and
- (b) [Report 625](#) *ASIC enforcement update: January to June 2019* (REP 625), published 18 August 2019.

193 As stated in ASIC’s [Annual Report 2018–19](#), enforcement outcomes included 27 criminal convictions, 14 people jailed, \$12.7 million awarded in civil penalties, 182 people or companies banned from providing financial services or credit services, 10 enforceable undertakings secured, \$22.8 million in compensation and remediation for investors and consumers, \$18.1 million in community benefit payments and 55 infringement notices issued (with a value of \$731,700).

3.3 Information requests

3.3.1 Formal information requests to regulated entities are targeted and consider other formal requests for information.

194 When making a formal request for information to regulated entities, we ensure that our requests are targeted, and consider other formal requests for information.

- 195 As noted in paragraph 171, [INFO 145](#) sets out how we exercise our compulsory information-gathering powers, and that they must be used for a proper purpose. We have taken steps to improve our processes around formal notices over a period of time. Our data management hub and internal communication processes ensure that teams coordinate the issuing of notices, in particular where numerous notices are issued to large entities.
- 196 Our Chief Data Office helps ASIC keep track of and coordinate formal information requests, to improve efficiency and help us make the most of our data to drive good regulatory outcomes.
- 197 We publish statistics on the use of ASIC’s most significant compulsory information-gathering powers in our annual report.
- 3.3.2 Formal sign-off, including senior staff and legal officers, precedes all formal requests for information.*
- 198 Within ASIC, decisions to use our compulsory information-gathering powers are subject to an internal scrutiny and approval process.
- 199 The decision to use our powers is made by senior ASIC staff in the context of the particular surveillance or investigation. A senior staff member is required to approve the specific use of a compulsory information-gathering power. An ASIC lawyer performs the final review of a notice exercising a power.
- 3.3.3 ASIC uses data from other sources where appropriate.*
- 200 We subscribe to and utilise a range of external information resources, including:
- (a) Morningstar Direct;
 - (b) Plan for Life;
 - (c) Rice Warner;
 - (d) Bloomberg;
 - (e) IBISWorld;
 - (f) the Australian Bureau of Statistics;
 - (g) the RBA; and
 - (h) publicly available industry-generated reports.
- 201 We use these sources, combined with data obtained through our cooperation with APRA and our own regulatory activities, to help us in our regulatory work.

3.4 Cooperation with other regulators

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

- 202 ASIC has memoranda of understanding with numerous peer regulators and agencies—including, for example, the RBA, the Australian Competition and Consumer Commission, the Australian Federal Police, the Commonwealth Director of Public Prosecutions, the Australian Taxation Office, the Australian Securities Exchange Limited and the Australian Transaction Reports and Analysis Centre.
- 203 In particular, as noted at paragraph 175, we are further strengthening our cooperation with APRA, including with a revised APRA–ASIC Memorandum of Understanding, the new APRA–ASIC Committee and enhanced information-sharing arrangements between the agencies. APRA and ASIC already engage frequently and effectively across a wide range of matters and at all levels of both agencies.
- 204 In the international context, we have, through various activities and projects, demonstrated a strong commitment to supporting the global regulatory agenda and ensuring that Australian influence is applied to international policy setting. We work closely with a range of international organisations, foreign regulators and law enforcement agencies. We make and receive international requests regarding investigations, compliance and surveillance, policy research, delegations, licensing and due diligence, and general referrals.
- 205 ASIC is also committed to cooperation and coordination with other regulators to support financial innovation. We have been part of the Global Financial Innovation Network (GFIN) since its inception in 2018. The GFIN comprises 35 regulators and 7 observers across 21 jurisdictions, and supports 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.
- 206 ASIC was also 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).

International cooperation requests

- 207 In 2018–19, we made 331 international cooperation requests and received 514 requests on 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*.

Bilateral cooperation

- 208 Our bilateral cooperation initiatives include assisting our international counterparts in regionally important jurisdictions to increase capacity. For example, ASIC assists the Indonesian Financial Services Authority, Otoritas Jasa Keuangan (OJK), in a wide range of capacity-building initiatives and has assisted OJK on emerging regulatory issues. We hosted delegations from OJK who were focused on understanding ASIC’s approaches to investment advice, regulation and supervision of investment banks and audit, and independent experts’ reports.
- 209 Information about our [international regulatory and enforcement cooperation](#), including memoranda of understanding, is available on our website.

C Summary of feedback from consultation

Key points

We consulted on a draft version of this self-assessment against the Regulator Performance Framework by approaching a number of industry, professional and consumer associations representing the sectors that we regulate.

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

Responses to consultation

- 210 We received six responses from the 20 organisations we approached for comment. We are grateful to these stakeholders for taking the time to provide their feedback.
- 211 There were a variety of observations from respondents on certain aspects of ASIC's performance. Broadly, the submissions received acknowledged:
- (a) ASIC's level of engagement with the market, its active efforts to consult, and the value of regular liaison with industry; and
 - (b) ASIC's commitment to achieving the objectives of the Framework, with some areas for improvement identified.
- 212 For a list of stakeholders who made submissions in response to this report, see the appendix.

General feedback

- 213 Several stakeholders provided general feedback on the evidence metrics ASIC is required to use under the Framework.
- 214 Chartered Accountants Australia and New Zealand (CAANZ) commented that our self-assessment focuses on ASIC's activity and output, rather than on outcomes or impacts. It noted that the self-assessment does not identify how KPIs 1 to 6 relate to ASIC's vision or mission, and that quantifiable metrics and measures would improve reporting transparency. CAANZ did not suggest specific measures, referring instead to generic enforcement frameworks produced by the Organisation for Economic Co-operation and Development.

- 215 The Australian Restructuring, Insolvency and Turnaround Association (ARITA) raised concerns about the methodology of the assessment process and the perceived lack of independent oversight involved in the self-assessment. ARITA also suggested that the timing of the assessment process over the December to January period made it difficult to obtain feedback from its members.
- 216 Other key themes that emerged from the feedback received included:
- (a) the allocation of ASIC resources between different sectors and regulatory priorities;
 - (b) the need for greater cooperation in information gathering between ASIC and APRA;
 - (c) the importance of ASIC considering the costs of regulation;
 - (d) the delays in ASIC updating some tranches of regulatory guidance; and
 - (e) the advantages in regularly rolling over longstanding relief and legislative instruments into legislation.

ASIC's response

ASIC supports ongoing regulator accountability. We note the Government has consulted on a Bill for the establishment of a financial regulator assessment authority.

We note that the Framework is one of several performance and accountability mechanisms for assessing ASIC. We are accountable to the Parliament and are overseen by the Parliamentary Joint Committee on Corporations and Financial Services. The Government issues a [Statement of Expectations](#) to ASIC, and we issue and abide by our [Statement of Intent](#) in response. Our corporate plans set out our performance framework and indicators, and our annual reports include our annual performance statement each year. Regular capability reviews conducted of ASIC also serve as an additional independent review of our performance.

The KPIs included in the Framework are applied to all Australian regulatory bodies and relate broadly to how regulatory agencies minimise the regulatory burden on their respective regulated populations while achieving their mandates and objectives. The KPIs function as one lens through which to view our performance but are not a comprehensive set of indicators in respect of our overall performance.

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

are reported annually in our annual report, on our website and in this self-assessment.

Measuring effectiveness and impact beyond activity metrics is an ongoing challenge for regulators around the world. ASIC regulates a complex ecosystem of entities that are subject to numerous influences and external forces. We will continue to strive to enhance the measurement of the outcomes of our work, but note that this is an ongoing process.

For example, we are currently piloting project evaluation reviews of certain major projects and initiatives. Completing such reviews will help us evaluate the relationship between market behaviour, consumer outcomes and ASIC's activity.

In relation to the timing of this self-assessment process, we distributed our self-assessment for stakeholder review on 19 December 2019 and allowed a period in excess of two months for stakeholders to respond. We received and granted one request to extend the deadline for submission.

Feedback on specific KPIs

KPI 1 and KPI 6

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

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

Making it easier for business

- 217 In their submissions, stakeholders generally agreed with our self-assessment under KPI 1 and KPI 6.
- 218 The Insurance Council of Australia (ICA) welcomed our pragmatic approach to the collection of useful data from industry.
- 219 The Financial Services Council (FSC) generally agreed with our self-assessment but had concerns about ASIC's failure on some occasions to liaise with APRA to better coordinate information requests. In particular, it considered that ASIC's requests of members to provide information could be time-consuming. It noted that opportunities existed to streamline that process, increase cooperation between ASIC and APRA, standardise requests and share information. The FSC also noted that legislation had been proposed to improve cooperation between ASIC and APRA.
- 220 The Customer Owned Banking Association (COBA) noted ASIC's influential role in regulatory policy debates, and raised concerns regarding our advocacy for the inclusion of consumer credit and basic deposit products

in the DDO regime. In particular, COBA submitted that ASIC did not adequately consider the likely compliance costs in this context. COBA also cited discrete instances where its members had unfavourable interactions with ASIC in its service delivery.

- 221 ARITA’s submission noted that some members it surveyed believed that ASIC’s approach to regulation ‘increases regulatory burden and unnecessarily increases costs without any benefit to the regulatory environment’.
- 222 The Law Council of Australia (LCA) noted frustration in the market about how the financial services licensing regime was administered, in particular the timing and bureaucracy involved in obtaining a licence. No examples were provided.
- 223 The LCA also suggested there would be advantages in regularly rolling over longstanding ASIC relief and legislative instruments into legislation.

ASIC’s response

ASIC has a strong history of incorporating best practice regulatory principles into our policy development process and a consistent record of compliance with the OBPR requirements for best practice regulation.

We work closely with APRA, Treasury and the OBPR to synchronise our activity, reduce red tape and lower compliance costs where possible. Our regulatory guides give guidance to regulated entities by explaining when and how we will exercise specific powers under legislation, explaining how we interpret the law, and describing the principles underlying our approach and giving practical guidance.

We note the discrete incidents reported by COBA members and regret any inconvenience to industry participants, including COBA members, arising from interactions with ASIC. We endeavour to achieve the targets established by our service charter in the delivery of our services to external stakeholders. ASIC takes this commitment seriously, and is continuously looking for ways to improve the customer experience we provide. ASIC is currently investigating potential enhancements to the way we measure and report on our efficiency, with a view to ongoing enhancement of our performance.

The legislation passed by Parliament establishing the DDO regime was the result of an extensive law reform process. In addition to ASIC’s longstanding advocacy in support of product design and distribution obligations, the obligations of product providers to consumers received considerable attention during the Royal Commission. ASIC’s position on the inclusion of consumer credit and basic deposit products in the DDO regime is also consistent with the recommendations subsequently made by the Royal Commission. In its final report, the Royal Commission

suggested that the new regimes be extended to financial products that are not regulated by the Corporations Act, but are regulated by the ASIC Act.

In preparation for the commencement of the DDO regime, ASIC has consulted broadly and extensively with product providers, including COBA. We have sought feedback on consultation papers, hosted industry roundtables and continue to receive and consider industry's views in anticipation of the planned release of guidance on the DDO regime later in 2020.

ASIC has deferred the commencement date of the DDO regime so industry participants can focus on immediate priorities and the needs of their customers during the COVID-19 pandemic. In making this decision, ASIC had regard to the important protections for consumers that these requirements introduce.

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

We will use whatever regulatory tools are necessary to address harms. In particular, we intend to continue to ensure that the licensing regimes we administer strike the appropriate balance between facilitating effective market operation and adequately protecting consumers. 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.

ASIC recognises the potential advantages in the legislature undertaking a program of regular legislative updates, including rolling over longstanding relief and legislative instruments into legislation where appropriate.

Understanding the market

- 224 The ICA recognised ASIC's contribution to law reform following the Royal Commission and the expertise and pragmatism we have shown in our approach to implementing the Royal Commission recommendations.
- 225 The LCA suggested that ASIC's policy in relation to no-action letters would benefit from further market consultation.
- 226 Feedback from ARITA's members indicated an improvement in how member's perceived ASIC was performing in terms of understanding the market and promoting public discussion of market and regulatory developments. However, ARITA noted that some of its members also perceived that ASIC did not give sufficient regard to feedback from members during consultation and did not implement changes suggested by members.

227 ARITA also raised specific issues with how ASIC prioritised resources between misconduct in particular sectors and between updating particular guidance on different issues.

ASIC's response

We will continue to ensure that we genuinely engage with stakeholders to enhance our understanding of the market and developments in our regulated populations. We value the important contribution of all stakeholders and note the important role this has in shaping policy.

As noted in Part B, we have completed a review of our various external stakeholder panels with the aim of continuing to enhance our engagement with our regulated population, investors and consumers to understand matters affecting them and their concerns.

We make decisions about regulatory priorities and allocation of resources based on an assessment of actual and potential threats and harms that need to be addressed. We will use whatever regulatory tools are necessary in order to most effectively address harms, and will continue to prioritise our work to provide better consumer outcomes.

KPI 2 and KPI 5

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

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

Consulting with stakeholders and communicating ASIC's expectations

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

229 The FSC noted that 'the level of discussion and openness' in how ASIC communicated with it had improved.

230 The ICA noted ASIC's communication with industry had been valuable, and made positive submissions about our quarterly meetings, noting the effectiveness of this forum for communication.

231 ARITA members provided favourable feedback regarding ASIC's regional insolvency liaison meetings. The feedback also indicated that ARITA's members perceived an improvement in how we reported to stakeholders on our performance. ARITA noted ASIC's valuable contribution to the consultation process on the latest ARITA Code of Professional Practice.

- 232 However, ARITA also provided feedback from its members that ASIC could be clearer about its requirements when communicating with ARITA members, that they would value further guidance on some issues, and that ASIC did not always have genuine regard to feedback and did not allow sufficient time for members to provide feedback.
- 233 The ICA also indicated it would appreciate additional detailed guidance through our regulatory guides.
- 234 CAANZ provided feedback that its members had concerns about delays in ASIC updating regulatory guidance about particular issues, namely the safe harbour legislation.

ASIC's response

We welcome the feedback from stakeholders about the effectiveness of our consultation and the endorsement of improvements in our engagement with industry over the relevant period.

We will continue to examine ways in which we can ensure we provide relevant information to regulated entities in a timely and effective manner.

While we genuinely consider input and responses to consultation from individual stakeholders, our final policy settings, regulatory guidance and legislative instruments necessarily have regard to overall intended policy outcomes of relevant legislation, and incorporate feedback from all sectors and stakeholders.

We therefore are not always able to reflect specific input from individual respondents in final policy. Our regulatory guides are generally published together with reports setting out the feedback received during consultation and our responses to that feedback.

While we strive to issue timely regulatory guidance and maintain the currency of our guidance, updating of specific guides is subject to our overall framework for prioritising regulatory activity, based on strategic priority, risks and harms, and availability of resources.

KPI 3 and KPI 4

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

KPI 4: Compliance and monitoring approaches are streamlined and coordinated

ASIC's enforcement approach

- 235 Stakeholders broadly supported ASIC's approach to enforcement.

- 236 The ICA noted the significant organisational change ASIC had undertaken following the Royal Commission, including to increase and accelerate court-based enforcement action as part of our ‘Why not litigate?’ enforcement approach.
- 237 ARITA gave positive feedback on ASIC’s increased enforcement action against pre-insolvency advisors and directors in relation to illegal phoenix activity, and ASIC’s acknowledgement of the work done by liquidators in assisting with successful prosecutions.
- 238 However, ARITA also noted that despite consistent feedback from ARITA, ASIC had in its view taken no action to adjust its approach to the regulation of registered liquidators. Some of its members also perceived ASIC to focus on compliance matters relating to liquidators rather than on major issues affecting the regulated population or prosecution of director misconduct.
- 239 The LCA also suggested that ASIC’s resources were disproportionately allocated to the regulation of registered liquidators and should be reallocated to the prosecution of director and officer misconduct. The LCA cited ASIC’s [CRIS](#) and summary of 2018–19 levies, noting that ASIC spent \$7.338 million on the supervision and regulation of liquidators, and only \$0.850 million on the regulation of registered auditors.

ASIC’s response

We note that the figures cited in LCA’s submission for comparison purposes to demonstrate the disproportionality of ASIC’s regulatory efforts in respect of registered auditors do not include a further amount of \$5.628 million spent regulating ‘auditors of disclosing entities’. We suggest that on a cumulative basis the amount spent on auditors is comparable to the amount spent on liquidators.

More broadly, in regulating various sectors, we consider the following factors in deciding how to respond to misconduct and which regulatory tools to use:

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

ASIC will take such action as is necessary to address threats and harms affecting consumers and our regulated population, and to

realise our vision of ensuring a fair, strong and efficient financial system for all Australians.

One of our areas of focus is to promote creditors' confidence in the proper administration of insolvent companies through supervision of registered liquidators. Creditors are entitled to expect a liquidator to wind up an insolvent company in a fair and orderly way so they receive the maximum possible return of their money, recognising that the liquidator is entitled to reasonable remuneration and costs incurred. We thus focus our regulation of liquidators on issues of competence, independence and improper gain.

Cooperation with other stakeholders and regulators

- 240 While most submissions generally supported ASIC's assessment, the FSC and COBA suggested there is scope for ASIC to work more closely with other financial regulators, government agencies and stakeholders to reduce the burden of information requests and the costs of compliance, and to avoid regulatory overlap.
- 241 The FSC raised concerns about the level of coordination of information requests between ASIC and APRA, indicating that receiving similar requests for information created increased business cost and inefficiency for industry. However, the FSC also noted the proposed legislation to facilitate better cooperation between ASIC and APRA.
- 242 COBA emphasised the significance of the costs of regulation to its members, and noted an increase in the volume and complexity of regulatory requirements in the wake of the Royal Commission. COBA suggested that ASIC and Treasury should systematically assess the cumulative cost burden of continuous regulatory change in banking.

ASIC's response

We acknowledge this feedback. In 2019, ASIC and APRA implemented the Royal Commission's recommendation for improved cooperation between ASIC and APRA. The agencies entered into a joint memorandum setting out how they will comply with the statutory obligation to cooperate.

Through improved cooperation between ASIC and APRA, we aim to improve outcomes across the financial sector, increase efficiency of regulation and promote a whole of system approach.

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

Appendix: List of stakeholders who made submissions

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- Australian Restructuring Insolvency and Turnaround Association
 - Law Council Australia
 - Financial Services Council
 - Chartered Accountants Australia and New Zealand
 - Insurance Council of Australia
 - Customer Owned Banking Association
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