2

ASIC's annual performance statement

Chair's statement

I, James Shipton, as the accountable authority of ASIC, present the 2019–20 annual performance statement of ASIC, as required under paragraph 39(1)(a) of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act). In my opinion, the annual performance statement is based on properly maintained records, accurately reflects the performance of the entity, and complies with subsection 39(2) of the PGPA Act.

Our purpose

Our vision – a fair, strong and efficient financial system for all Australians – reflects our purpose as Australia's conduct regulator for corporations, markets, financial services and consumer credit and highlights the important role we play on behalf of all Australians.

2.1 Performance objectives

ASIC's performance reporting in 2019–20 was guided by ASIC's Corporate Plan 2019–23 and our 2019–20 Portfolio Budget Statement, which set out our objectives and targets related to investor and consumer trust and confidence, and fair and efficient markets.

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

We aim to do this by:

- pursuing enforcement outcomes
- undertaking supervision and surveillance
- engaging with consumers and industry stakeholders
- providing guidance, input into law reform, and financial capability education.

These regulatory tools are used to achieve our vision of ensuring a fair, strong and efficient financial system for all Australians.

2.2 Key results – investor, consumer and markets performance objectives

Table 2.2.1 sets out our key results for 2019–20 across our supervision, surveillance, enforcement, guidance and education work.

The number of supervisory, surveillance and enforcement actions we undertake, the value of fines imposed or people convicted, and the length of their sentences vary from year to year. The variations depend on factors such as the severity of breaches of the law and the complexity of the investigations we undertake.

Last year, we reformed our approach to supervision and surveillance to focus on onsite supervisory work, as set out later in this chapter. The objective was to proactively identify strategic activities in Australia's most significant financial institutions and assess their effectiveness. The COVID-19 pandemic also meant that onsite supervisory work was not possible from March 2020. Both of these circumstances impacted on our supervision work and the number of activities reported below.

ASIC also moved to a new regulatory workflow platform in 2019–20. As a result, the way enforcement activities are recorded has changed. Some statistics reported in previous years, including the number of investigations completed and the time taken to complete investigations, are not reported this year. We have included further information about the timeliness of our enforcement work and about increases in relevant enforcement activity on pages 41–48.

Table 2.2.1 Key results

Outcome	Total 2019–20	Total 2018–19
Onsite supervisory exercises[1]		
Onsite supervisory exercises commenced	**5**	6
Findings letters issued	**6**	4
Number of days onsite	**98**	124
Number of representatives met during onsite supervisory exercises	**357**	462

1 These are enhanced institutional supervisory exercises conducted by the close and continuous monitoring team. Onsite supervisory activities were temporarily suspended in March 2020 due to the COVID-19 pandemic. Therefore, these results reflect exercises undertaken in the second half of 2019 plus one week in 2020.

Outcome	Total 2019–20	Total 2018–19
Surveillance		
Surveillances completed[2]	**Over 1,250**	Over 1,200
Instances of potentially misleading or deceptive promotional material withdrawn or amended[3]	**48**	37
Interim stop orders and final stop orders[4]	**22**	N/A
Enforcement		
Investigations[5]		
Investigations commenced	**134**	126
Criminal actions		
Criminal litigation completed	**35**	33
Criminal litigation completed successfully (as a percentage)	**90%**	89%
New criminal litigation commenced	**38**	14
Number of people convicted	**30**	27
Custodial sentences (including fully suspended)	**22**	14
Non-custodial sentences/fines	**8**	16
Total dollar value of fines	**$731,650**	$266,050
Civil actions		
Civil litigation completed	**37**	75
Civil litigation completed successfully (as a percentage)	**97%**	96%
New civil litigation commenced	**50**	55
Total dollar value of civil penalties	**$24.9m**	$12.7m

2 This includes over 80 surveillances involving an onsite presence.
3 This includes corrective disclosures obtained from the websites of entities.
4 New measure for 2019–20.
5 Investigations for these purposes meet the definition in section 13 of the ASIC Act and section 247 of the National Credit Act.

Outcome	Total 2019–20	Total 2018–19
Administrative actions[6]		
Administrative actions completed	**39**	84
New administrative actions commenced	**31**	61
Administrative outcomes[7]		
People disqualified or removed from directing companies[8]	**51**	59
Action taken against auditors and liquidators	**62**	55
People/Companies removed, restricted or banned from providing financial services[9]	**79**	85
People/Companies removed, restricted or banned from providing credit services	**29**	97
Court enforceable undertakings[10]		
Court enforceable undertakings accepted	**0**	10
Infringement notices[11]		
Total number of infringement notices issued	**4**	14
Total dollar value of infringement notices	**$671,000**	$731,700
Summary prosecutions		
Summary prosecutions for strict liability offences	**248**	369
Total value of fines and costs	**$793,670**	$1.6m

6 Administrative actions completed and commenced refer to enforcement action following a formal investigation, as defined by section 13 of the ASIC Act and section 247 of the National Credit Act.

7 This includes all disqualifications, suspensions, cancellations and bannings resulting from surveillance and enforcement activities.

8 This includes five bannings arising from civil proceedings, where the court ordered the defendants be banned from financial services.

9 This includes six disqualifications arising from civil proceedings, where the court ordered the defendants be disqualified from directing companies.

10 ASIC did not accept any court enforceable undertakings in 2019–20 and is instead focusing on accelerating court-based enforcement outcomes.

11 These notices were issued for infringements related to the market integrity rules and ASIC derivative transaction rules. Compliance with infringement notices is not an admission of guilt or liability and these entities are not taken to have contravened the law.

Outcome	Total 2019–20	Total 2018–19
Compensation agreed in court enforceable undertakings[12]		
Compensation or remediation	**$0**	$19.7m
Community benefit payments	**$0**	$15.6m
Relief applications		
Relief applications received	**1,308**	1,455
Relief applications approved	**919**	963
Relief applications refused or withdrawn	**217**	297
Relief applications in progress	**172**	195
Licensing and professional registration activities		
AFS licences, including limited AFS licences (new and variations)		
Applications approved	**741**	822
Applications refused/withdrawn	**248**	315
Licences cancelled/suspended	**333**	358
Applications in progress	**484**	455
Australian credit licences (new and variations)		
Applications approved	**233**	356
Applications refused/withdrawn	**117**	221
Licences cancelled/suspended	**390**	552
Applications in progress	**158**	104

12 Compensation or remediation programs monitored by ASIC are not reflected in this statistic. Amounts in compensation, remediation or community benefit payments reported in previous years were agreed in court enforceable undertakings accepted by ASIC.

Outcome	Total 2019–20	Total 2018–19
Registered auditors – registered company auditors, authorised audit company and SMSF auditors		
Applications approved	**116**	148
Applications refused/withdrawn	**38**	59
Licences cancelled/suspended	**521**	568
Applications in progress	**11**	11
Registered liquidators		
Applications approved	**17**	12
Applications refused/withdrawn	**4**	2
Applications in progress	**11**	9
Stakeholder engagement		
Meetings with industry groups and other stakeholders[13]	**Over 2,100**	Over 1,400
Consultation papers published	**15**	13
Industry reports published	**44**	45
Guidance		
New or revised regulatory guides published	**29**	23
New or revised information sheets	**31**	27
Legislative instruments made, amended and repealed	**50**	53
Education		
Users visiting ASIC's Moneysmart website[14]	**10.4m**	8.4m
Average number of users to the Moneysmart website per month	**979,957**	832,000
Number of users who have used a Moneysmart online tool	**3.4m**	2.7m
Average number of users using a Moneysmart tool per month	**325,027**	266,000

13 These meetings involve ASIC operational staff at all levels. This year's data reflects the impact of the COVID-19 pandemic and our focus on ensuring ASIC remains engaged with our regulated population.

14 The number of people visiting the Moneysmart website includes users from around the world. Of the 10.4m users, 9.6m (92%) were in Australia using an Australian IP address.

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

This year, our work aligned with the priorities outlined in *ASIC's Corporate Plan 2019–23: Focus 2019–20*.
These priorities were:

- high-deterrence enforcement action
- prioritising the recommendations and referrals from the Royal Commission
- delivering as the conduct regulator for superannuation
- addressing harms in insurance
- improving governance and accountability
- protecting vulnerable consumers
- addressing poor financial advice outcomes.

In June 2020, we published ASIC's Interim Corporate Plan, which outlined our strategic priorities in response to the impact of the COVID-19 pandemic. These priorities focused on:

- protecting consumers from harm at a time of heightened vulnerability
- maintaining financial system resilience and stability
- supporting Australian businesses to respond to the effects of the COVID-19 pandemic
- continuing to identify, disrupt and take enforcement action against the most harmful conduct
- continuing to build our organisational capacity in challenging times.

Key actions in response to the impact of the pandemic are set out in Chapters 1 and 3.

Measuring our performance

We use qualitative and quantitative measures to evaluate our performance over time. We measure both:

- **regulatory outcomes**, which include the direct results from using our suite of regulatory tools
- **market outcomes**, which reflect the impact of our regulatory work on the markets and sectors we regulate, including on investors and consumers.

Our regulatory toolkit includes:

- enforcement
- supervision and surveillance
- licensing
- engagement
- guidance
- education
- input into law reform.

For most of the issues in our remit, we use a multidimensional approach to address regulatory challenges and consumer harms, employing a combination of our regulatory tools to achieve outcomes for consumers and investors.

In reporting on our work, we combine quantitative and qualitative indicators to provide a narrative about our approach.

Our regular reports about the volume and results of our activities include our six-monthly enforcement updates and regular reports about relief applications.

This chapter sets out key results against our priorities and how we have used our regulatory toolkit to achieve those results.

ASIC Corporate Plan priorities

High deterrence enforcement action

We have focused on efficient and effective enforcement action, particularly cases that have a high deterrence value and those responding to egregious misconduct – for example, misconduct impacting vulnerable consumers.

Key results and examples are set out on pages 34–36 and 41–48.

Prioritising the recommendations and referrals from the Royal Commission

Our work was guided by the outcomes of the Royal Commission and we supported key law reforms to achieve the recommendations of the Royal Commission.

More details are set out on pages 22–27.

Delivering as conduct regulator for superannuation

We continued to work on establishing ASIC as the primary regulator of conduct in superannuation, consistent with the Government's response to the Royal Commission recommendations. We have begun to take on this role where we can without needing the law to change.

We took action to deter misconduct, supported relevant legislative reforms, and continued our supervision and surveillance of superannuation trustees, focusing on whether trustees act in the best interests of consumers and treat them fairly.

Key results and examples are set out on pages 83–86.

Addressing harms in insurance

We continued to review product features and practices that raised concerns. We supported implementation of insurance law reforms and, as they are implemented, will take regulatory action on unfair contract terms and problems in claims handling.

Key results and examples are set out on pages 75–78.

Improving governance and accountability

We have continued our enhanced and intensive supervision of key firms, including by way of our close and continuous monitoring program and targeted reviews of corporate governance practices in large listed entities.

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

Key results of our supervision work are set out on pages 48–53 and 95–97.

Protecting vulnerable consumers

Considering the impact of harm on consumers, particularly those who are vulnerable, is central to how we prioritise our work. We will take regulatory action against unfair treatment of consumers facing hardship, as well as irresponsible actions by financial services providers.

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

Key results and examples are set out on pages 71–74 and 100–105.

Addressing poor financial advice outcomes

We supported measures to improve the professionalism of financial advisers and target the potential misconduct and harms to consumers that arise if advisers provide personal advice to retail clients but portray this advice as general advice.

Key results and examples are set out on pages 79–81.

Strengthening our capabilities to support our vision

Data and analytics

This year, we undertook a major program of work to enhance our data and analytics capability. Some of our key data initiatives included:

- establishing a new Data Lake platform to provide ASIC with a central place for storing our data securely, as well as easy access to data and analytics tools
- cataloguing all our data assets in a customised data cataloguing application
- making our data more widely available to our staff through a series of dashboards.

For example, users can self-service information and insights through:

- the External Dispute Resolution (EDR) Datamart and Dashboard, which allows analysts to explore EDR data and extract insights from the Australian Financial Complaints Authority (AFCA) dataset
- the enhanced Financial Advisers Register dashboard, which gives our teams key regulatory data for a range of functions, including reports of misconduct, breach reports and surveillance information.

These initiatives will ensure that we can optimise the data we collect and use, and also govern it safely and securely. Deploying our data through dashboards and other tools also facilitates rapid identification of areas of concern.

ASIC has also progressed with an interim data strategy that will align all data initiatives across ASIC over the next 12 months and make them visible across the organisation. This interim strategy is a precursor to creating our next multi-year data strategy.

Regulatory Transformation Program

Our Regulatory Transformation Program has continued to improve how stakeholders interact with ASIC.

A new suite of regulatory transactions was added to the ASIC Regulatory Portal this year, including:

- breach reporting for Australian financial services (AFS) licensees and registered auditors
- insolvency statutory reporting
- applications for Assetless Administration Funding
- liquidator requests for ASIC assistance.

These transactions joined industry funding metrics submissions and invoices, and a range of transactions for self-managed superannuation fund (SMSF) auditors and Asia Regional Funds Passport holders.

Lodgement of applications for relief and corporate finance and fundraising documents will move to the portal in July 2020.

Transactions in the portal are structured to make it easier for stakeholders to provide ASIC with required information. Some information is prefilled based on our records and smart forms ask the relevant questions, ensuring that the information ASIC requires is provided upfront.

A range of security features ensures that stakeholders can determine who can see, edit or submit their transactions. Stakeholders can also record correspondence with ASIC about submitted transactions and track their status.

Within ASIC, our regulatory work is now recorded in one place, making it easier to trace matters from initial reports of misconduct to our supervisory work, investigations and enforcement. Consistent recording provides increased visibility, which enhances decision making in individual matters. Increased digitised data gives us better information and understanding of stakeholders and key risks and harms in the sectors we regulate.

Below is a summary of how we have used our regulatory tools to achieve outcomes for consumers and investors. More detail about outcomes achieved in various industry sectors is set out in Chapter 3.

Enforcement

Enforcement action is one of the key regulatory tools available to us to help achieve a fair, strong and efficient financial system for all Australians.

We use a range of regulatory and enforcement sanctions and remedies, including punitive, protective, preservative, corrective and compensatory action.

Our accelerated enforcement work is guided by our 'Why not litigate?' approach, which addresses the community expectation that unlawful conduct should be punished and publicly denounced through the courts.

Office of Enforcement

ASIC's Office of Enforcement was established in July 2019 and has centralised decision-making processes and ensured consistent adoption of the 'Why not litigate?' approach.

Its role is also to increase the focus on priority matters, ensure adequate and flexible resourcing, and achieve greater consistency in our enforcement approach.

Enforcement priorities

As a priority, we target cases of high deterrence value and those involving egregious harm or misconduct, particularly towards vulnerable consumers.

In addition to Royal Commission referrals and case studies, ASIC's Office of Enforcement prioritises:

- misconduct related to superannuation and insurance
- cases that engage our new powers or provisions that now carry penalties or higher penalties
- illegal phoenix activity
- auditor misconduct
- new or emerging types of misconduct, including misconduct carried out online or with the use of emerging technologies.

ASIC will also always prioritise taking action on:

- significant market misconduct
- misconduct that is serious either by its nature or extent of harm, or that involves a large market participant or licensed entity
- misconduct that involves a high risk of significant consumer harm, particularly involving vulnerable consumers
- misconduct by individuals, particularly criminal conduct, or governance failures at board or executive level.

Enforcement priorities in response to the COVID-19 pandemic

ASIC implemented interim enforcement priorities to guide our response to COVID-19 pandemic-related misconduct. These priorities were:

- misconduct arising from behaviour seeking to exploit the COVID-19 pandemic environment, including predatory lending practices, mis-selling of unsuitable insurance or investment products, and poor claims handling
- opportunistic conduct such as scams, unlicensed conduct, and misleading and deceptive advertising
- failure to disclose material negative information to the market
- opportunistic and misleading market announcements
- egregious governance failures within corporations, schemes and superannuation funds.

Increased enforcement activity

Although many investigations were significantly delayed in the period from March 2020 as a result of the COVID-19 pandemic, ASIC has used its increased resources to build its enforcement capability and deal more quickly with matters falling within its priority areas.

In 2019–20, there has been:

- an 11% increase in the number of investigations
- a 48% improvement in the time taken to file civil penalty proceedings
- an increase in the total civil penalties imposed, from $12.7 million to $25 million
- a 57% increase in the number of custodial sentences imposed (including those fully suspended).

In relation to major financial institutions (the four big banks and AMP Limited), there has been a 100% increase in the number of civil penalty proceedings commenced and a 25% increase in matters referred to the Commonwealth Director of Public Prosecutions (CDPP).

There has also been a greater focus on individual accountability in ASIC's enforcement work this year, which has resulted in:

- the number of individuals charged with non-summary criminal offences increasing by 35%
- the number of civil penalty claims made against individuals increasing by 40%.

For more details about our enforcement outcomes, see ASIC's regular updates, including:

- 19-249MR *ASIC update on Royal Commission implementation* (11 September 2019)
- REP 660 *ASIC enforcement update July to December 2019*
- 20-047MR *ASIC update on enforcement and regulatory work* (26 February 2020)
- REP 666 *ASIC enforcement update January to June 2020.*

Criminal convictions

In 2019–20, as a result of our investigations, 30 people were convicted of financial crime, with 22 people receiving custodial sentences (including fully suspended).

Civil actions

In 2019–20, we completed 37 court actions, covering issues such as misleading and deceptive conduct; unconscionable conduct; continuous disclosure contraventions; unfair contract terms; failure to provide financial services efficiently, honestly and fairly; and failure to comply with the best interests duty and related obligations under the Corporations Act.

Of these civil court cases, 97% were successful. The total value of penalties for these cases was $24.9 million.

Protective actions

We banned, removed or restricted 79 people or companies from providing financial services, and 29 people or companies from providing credit services. We disqualified or removed 51 people from directing companies.

Corrective actions

We took action where credit licensees, superannuation trustees or responsible entities made misleading statements to consumers or investors. There were 48 instances of potentially misleading or deceptive promotional material withdrawn or amended in 2019–20.

Infringement notices

In 2019–20, we issued two infringement notices and received a total of $526,000 in payments pursuant to these infringement notices. We issued infringement notices against:

- AMP Life Limited ($275,500)
- AMP Capital Investors Limited ($250,500).

The Markets Disciplinary Panel issued two infringement notices, specifying a total of $145,000 in penalties for alleged breaches of the market integrity rules.[15]

Efficiency and timeliness of our enforcement action

Across the last few years, ASIC has improved the timeliness of commencement of civil and criminal proceedings – including, for example:

- a reduction in the median time for charges to be laid from 28.7 months in 2017–18 to 24.8 months in 2019–20
- a reduction in the median time to commence civil penalty litigation from 24 months in 2017–18 to 11.9 months in 2019–20
- a reduction in the median time to commence other civil litigation from 9.2 months in 2017–18 to 4.7 months in 2019–20.

ASIC takes a taskforce approach to the resourcing of enforcement work, which ensures that dedicated resources can be deployed to address the most serious or prevalent types of misconduct. Using this approach to address misconduct within major financial institutions since 2018 and to deal with referrals and case studies from the Royal Commission has increased the efficiency of those investigations and referrals.

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

George Nowak sentenced to 10 years imprisonment

In April 2020, former financial adviser George Nowak was sentenced in the District Court of South Australia to 10 years imprisonment with a non-parole period of six years and three months. Part-way through his criminal trial, Mr Nowak pleaded guilty to 17 charges of aggravated deception and one charge of dishonest dealings with documents.

The offences relate to Mr Nowak's conduct in dealing with members of SMSFs that were undertaking property purchases offered by companies of which Mr Nowak was a director, including EJ Property Developments Pty Ltd.

ASIC alleged that between December 2012 and December 2013, Mr Nowak misappropriated $1.2 million in SMSF money, failed to hold these funds in a designated account, and did not apply them towards the intended property purchases. Mr Nowak dishonestly and deliberately misled his clients and used their funds for his own benefit.

In delivering the sentence, the judge described the offending as of the utmost seriousness, noting that the fraud had a significant impact on the victims' lives. The 10 years imprisonment represents the maximum penalty for dishonest dealings with documents under section 140 of the *Criminal Law Consolidation Act 1935* (SA).

Gilman Edwin Wong – insider trading

In June 2020, Gilman Edwin Wong, the former chief executive officer of Sirtex Medical Limited (Sirtex), was sentenced for insider trading to a term of imprisonment of one year and six months, suspended by a recognisance release order in the sum of $10,000 and to be of good behaviour for a period of three years.

On 15 May 2020, Mr Wong pleaded guilty to one count of insider trading in relation to his disposal of Sirtex shares on 26 October 2016. At the time of his trading, Mr Wong was in possession of information in relation to the actual global dose sales of the main commercialised product marketed by the company. This was information that was not generally available. Mr Wong sold his Sirtex shares for an average price of $28.56 per share, with the total gross value of the sale proceeds being $2,141,310.98.

On 9 December 2016, Sirtex notified the market of downgraded dose sale growth forecasts. Following the ASX announcement, the opening price of Sirtex shares fell to $13.01 per share, a fall of approximately 49% from the previous day's closing price. By reason of his sale of the shares on 26 October 2016, Mr Wong avoided the significant loss he would have incurred had he sold his shares on 9 December 2016.

CommInsure – criminal conviction and remediation program

In November 2019, the Colonial Mutual Life Assurance Society Limited (trading as CommInsure) was convicted of 87 charges of offering to sell insurance products in the course of unlawful unsolicited telephone calls, contrary to section 992A(3) of the Corporations Act.

CommInsure, at the relevant time a wholly owned subsidiary of the Commonwealth Bank of Australia (CBA), pleaded guilty to the charges and was fined $700,000.

Between October and December 2014, CommInsure sold life insurance policies to CBA customers through a telemarketing firm. The customers had not requested to be contacted for the sale of these products or to receive marketing information. The 'hawking provisions' in the Corporations Act are intended to provide protections to consumers receiving these types of contact. In the 87 relevant calls, CommInsure did not comply with the requirement to offer customers the option of having certain information about the 'hawked' products read to them before the offer to issue or sell.

In a separate but related action, CommInsure conducted a $12 million remediation program in relation to unfair life insurance telephone sales. The concerning sales practices were identified by ASIC during its 2018 review of the sale of direct life insurance, which found that outbound telephone sales were 'more commonly associated with poor sales conduct and increase[d] the risk of poor consumer outcomes'.

John Lindsay Merity – false and misleading statements

In February 2020, John Lindsay Merity was sentenced by the District Court of New South Wales to an overall term of two years imprisonment, with a minimum period of one year in custody, after pleading guilty to two counts of making misleading statements to ASIC.

The charges were brought following ASIC inquiries in 2009 and 2010 to identify the parties who had a relevant interest in a substantial number of shares in Northwest Resources Limited that were held by two companies incorporated in the British Virgin Islands and operating from Hong Kong. During those inquiries, Mr Merity made false or misleading statements to ASIC by stating that he had no interest in the shares when in fact he did.

The sentence of Mr Merity follows orders previously obtained by ASIC from the Federal Court in April 2014 for the cancellation of the Northwest Resources shares held by one of the British Virgin Islands companies.

Octaviar Ltd – High Court finds Group CEO was an officer of subsidiary

In April 2020, the High Court allowed ASIC's appeal from a decision of the Supreme Court of Queensland on the question of whether Michael Christodoulou King, the former CEO and executive director of MFS Ltd (also known as Octaviar Ltd), was an 'officer', as defined in the Corporations Act, of MFS Investment Management Pty Ltd (MFSIM).

MFS Ltd was the parent company of the MFS Group of companies (MFS Group). MFSIM was a subsidiary in the MFS Group and acted as a responsible entity for several registered managed investment schemes, the largest of which was the Premium Income Fund.

The court unanimously held that Mr King was an officer because the definition under the Act is not limited to those who hold or occupy a named office in a corporation or a recognised position with rights and duties attached to it. The court held that the factual findings of the primary judge that Mr King acted as the 'overall boss of the MFS Group' and assumed 'overall responsibility for MFSIM' were sufficient to establish that he had the capacity to affect significantly the financial standing of MFSIM and, therefore, was an officer of MFISM.

ASIC noted that this High Court decision sent a clear signal to anyone running a company, in name or in effect, that they should be responsible and held accountable for their actions.

Bendigo and Adelaide Bank – unfair contract terms

In May 2020, the Federal Court declared that particular terms in six small business contracts used by Bendigo and Adelaide Bank Limited were unfair and void from the outset.

The contracts were standard form small business loan contracts, which the bank entered into with customers after 12 November 2016. The court also declared that the same terms in any other standard form small business contracts entered into between the bank and its customers during that time were also unfair and void from the outset. The bank gave an undertaking to the court not to use, or rely upon, any of the impugned terms in a manner that is unfair or causes any customers to suffer loss or damage.

Since 1 July 2010, ASIC has administered the law dealing with unfair terms in standard form consumer contracts for financial products and services, including loans. From 12 November 2016, the unfair contract terms laws were extended beyond consumers to cover standard-form 'small business' contracts. This was ASIC's first 'unfair contract terms' case, demonstrating our commitment to protecting small business owners from unfair terms in loan contracts.

Supervision and surveillance

Our enhanced supervisory initiatives progressed significantly in 2019–20.

In March 2020, we established ASIC's Supervision Group, embedding our enhanced supervision model within ASIC following completion of the pilot phases of our close and continuous monitoring program and our targeted reviews of corporate governance practices in large listed entities.

The establishment of the Supervision Group is core to our statutory mandate to monitor and promote market integrity and consumer protection in the Australian financial system.

The Supervision Group seeks to influence behavioural change in our most significant financial services institutions to prevent harm resulting from poor corporate systems and conduct. The Group is further developing ASIC's capability to conduct enhanced institutional supervisory work, including efficient collection of data and enhanced understanding and analysis of our target institutions.

Close and continuous monitoring

Our close and continuous monitoring supervisory program is designed to drive enduring cultural and behavioural change and promote earlier identification of practices and processes that cause financial harm to consumers and erode community confidence in the integrity of Australia's major financial institutions.

In 2019, our onsite reviews focused on the institutions' approaches to the detection of, and response to, incidents (breach reporting) and their complaints handling and internal dispute resolution arrangements, including processes, practices, resourcing, governance and reporting. In 2020, our onsite review program had been designed to focus on the internal audit functions of these institutions. However, onsite work paused temporarily in March 2020 due to COVID-19 restrictions.

Since the program began in October 2018, ASIC staff have been onsite at the major banks and AMP for 222 days and have met with 803 banking staff at all levels during the onsite exercises. In 2019–20, we were only able to be onsite for the first half of the financial year plus one week in March 2020. During this time, we spent 98 days onsite and met with 357 bank representatives.

We have completed supervisory reviews or provided findings to each of AMP, ANZ, CBA, NAB and Westpac. Each set of review findings was communicated directly to the chair and CEO of the institution at the completion of the review, with a request for an action plan in response to the findings. ASIC staff maintain regular communication with each institution in relation to the action plans.

The findings of the reviews highlighted areas of poor corporate governance in four broad categories: poor technology systems, weak processes and practices, unclear lines of accountability, and a lack of focus on the profile and influence of non-financial risk. A public report of the findings of our first two reviews was due for publication in early 2020 but was rescheduled due to the COVID-19 pandemic.

During the pause of onsite work, we have focused on developing our supervisory infrastructure and capability and responding to issues arising from the COVID-19 pandemic. We have engaged with the institutions subject to the program to test how they are adjusting their non-financial risk oversight and management and to identify any risks emerging from the institutions' COVID-19 pandemic responses. We have ensured that our work is coordinated and targeted, and that it does not create unnecessary regulatory burden.

Governance

As part of ASIC's focus on governance, the newly established Governance team is undertaking more intensive supervision and providing specialist governance expertise across ASIC.

This year, ASIC completed a targeted supervisory program to review the oversight of non-financial risk by directors and officers in seven of Australia's largest financial services entities and identify any shortcomings.

On 2 October 2019, we communicated our findings in a report on director and officer oversight of non-financial risk: Report 631 *Director and officer oversight* *of non-financial risk*. The report detailed ASIC's observation that boards were challenged by important elements of non-financial risk management and their oversight was less mature than required, which resulted in some instances of systemic and significant misconduct.

ASIC also conducted a review of the governance of executive variable pay outcomes, and whether these are driving the right behaviours and accountabilities of executives in Australia's listed entities. This work focused on the practices of 21 large listed Australian entities, including the seven entities the subject of the initial report, as well as ASX-listed non-financial services entities.

For both of these supervisory reviews, in addition to any broader public findings, we directly communicated to the CEO and boards specific findings relevant to their entity. Our engagement was focused towards driving behavioural change to address specific issues we identified.

From March 2020, we directed our attention to issues that became more important in the COVID-19 pandemic environment, including risk oversight, the operation of virtual and hybrid AGMs and other member meetings, director share trading, dividend payments, executive pay decisions, and operational resilience. We released guidance on the conduct of meetings using virtual technology, director trading, and the governance of executive pay decisions in the COVID-19 pandemic context.

On 12 June 2020, we released Information Sheet 245 to help boards and remuneration committees of listed entities navigate decisions on executive pay in the challenging context of the COVID-19 pandemic.

Our guidance identifies key governance principles to help guide boards with these difficult judgements on pay decisions in the COVID-19 pandemic context. We also identified important principles through the findings of our supervisory review of the governance of executive variable pay outcomes. Many of these remuneration governance principles can be adopted by a broader range of listed entities and in any market.

Other sector-based and issue-based surveillance

In 2019–20, we completed:

- over 350 surveillances in the deposit-taking and credit, financial advice, investment management and superannuation sectors to ensure that financial services providers complied with their conduct obligations
- over 850 surveillances in the corporations, market infrastructure and market intermediaries sectors.

Through our surveillance, we identified and addressed 422 cases of failures, or potential failures, to comply with regulatory obligations.

We published several reports in response to findings of our sector-based or issue-based surveillances, as set out on pages 52–53.

Monitoring of remediation programs

We monitor several significant remediation programs; however, given their large number, many are administered by licensees without ASIC's direct supervision or involvement. ASIC does not have an explicit power to direct that remediations be carried out or that they be conducted in a particular way.

Examples of ASIC's monitoring and other work on remediation include the following.

Financial advice-related remediation: ASIC is monitoring remediation programs by six of Australia's largest banking and financial services institutions in relation to loss or detriment suffered by consumers due to non-compliant advice or fee-for-no-service (FFNS) conduct.

As at 30 June 2020, a total of $1.05 billion in compensation has been paid or offered by those institutions.

Insurance-related remediation: ASIC's industry review of the sale of consumer credit insurance by 11 major banks and lenders has led to a significant remediation program of over $160 million being paid to more than 434,000 consumers. To date, lenders and insurers have paid over $128 million to more than 312,000 consumers to address ASIC's concerns. Shortly, over $32 million will be paid to more than 122,000 consumers.

ASIC also earlier obtained remediation for consumers from providers of add-on insurance products, with refunds totalling over $130 million.

In November 2019, CommInsure conducted a remediation program refunding over $12 million to customers who had been sold a range of life insurance products via telemarketing calls.

Regulatory tools and obligations: The Government is consulting on a number of law reforms that create new obligations for licensees and enhance ASIC's ability to intervene in relation to remediation. ASIC is providing assistance and advice to support draft legislation that would allow us to direct licensees to establish a remediation program in relation to misconduct, as well as new laws that would require licensees to investigate and remediate misconduct by financial advisers and mortgage brokers.

Regulatory guidance: We are reviewing and revising our existing remediation policy and will consult on revised guidance this year. We intend to expand its application effectively across the entire financial services sector and clarify our expectations about how firms should conduct consumer-centric remediation. We will also seek to improve transparency about consumer remediation outcomes. Our updated guidance will be informed by our monitoring of significant remediation programs.

Financial reporting and audit

In 2019–20, we proactively reviewed 287 financial reports of listed entities and other public interest entities for years ended 30 June 2019 and later. We issued media releases about 19 entities that recognised material changes to reported net assets and profits totalling more than $670 million following our inquiries on financial reports. In recent years, material changes have been made to 5% of financial reports following our reviews.

In 2019–20, we proactively reviewed 53 audit files relating to audits of listed entity and other public interest entity financial reports.

Our inspection findings show that more needs to be done to improve audit quality (see Report 648 *Audit inspection report for 2018–19*, issued in December 2019). Auditors have primary responsibility for audit quality, supported by others in the financial reporting ecosystem, such as audit committees.

Reports about supervision and surveillance work

ASIC publishes the results of our supervision, review and surveillance work.

Our reports advance good consumer outcomes and change behaviour by exposing and denouncing conduct that is below community standards, driving improved practices across a sector or market, and recommending changes in industry practice.

In 2019–20, we released 44 regulatory, surveillance or review reports, including on issues such as:

- market cleanliness and the integrity of Australia's equity markets (REP 623 *Review of Australian equity market cleanliness: 1 November 2015 to 31 October 2018*)
- consumer harm from over-the-counter (OTC) binary options and contracts for difference (CFDs) (REP 626 *Consumer harm from OTC binary options and CFDs*)
- what consumers really think of financial advice (REP 627 *Financial advice: What consumers really think*)
- the experiences of consumers in finding a home loan through a mortgage broker (REP 628 *Looking for a mortgage: Consumer experiences and expectations in getting a home loan*)
- oversight of non-financial risk by non-executive directors and officers of companies (REP 631 *Director and officer oversight of non-financial risk*)
- disclosure and why it shouldn't be the default: a joint report with the Dutch Authority for the Financial Markets, which shows that disclosure and warnings can backfire, contributing to consumer harm. The report focuses on the real-world context in which disclosure operates and explains why disclosure and warnings can be less effective than expected, or even ineffective, in influencing consumer behaviour (REP 632 *Disclosure: Why it shouldn't be the default*)
- how superannuation funds provide financial advice to members and the quality of advice provided (REP 639 *Financial advice by superannuation funds*)

- the experiences of consumers who received personal advice to purchase timeshare memberships (REP 642 *Timeshare: Consumers' experiences*)
- industry implementation of the Insurance in Superannuation Voluntary Code of Practice (REP 646 *Insurance in superannuation 2019–20: Industry implementation of the Voluntary Code of Practice*)
- the cyber resilience capabilities of firms operating in Australia (REP 651 *Cyber resilience of firms in Australia's financial markets: 2018–19*)
- wholesale FX practices in Australia (REP 652 *Wholesale FX practices in Australia*)
- member communications from superannuation funds impacted by the PYSP reforms (REP 655 *Review of member communications: Protecting Your Superannuation Package (PYSP) reform*)
- a survey of crowd-sourced funding intermediaries (REP 657 *Survey of crowd-sourced funding intermediaries: 2018–19*)
- ASIC regulation of registered liquidators: July 2018 to June 2019 (REP 658 *ASIC regulation of registered liquidators: July 2018 to June 2019*).

Licensing

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

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

In 2019–20, we finalised 2,062 applications in relation to AFS licences and credit licences. We approved 741 AFS licences and 233 credit licences.

In total, 365 AFS licence and credit licence applications were withdrawn or refused. Applications were often withdrawn after we informed applicants they were unlikely to meet the statutory requirements to obtain a licence.

We assessed 675 applications for registration, cancellation or suspension of auditor licences, for either company auditors, authorised audit companies, or auditors of SMSFs. Of these, we approved 116 and had 38 applications either withdrawn or refused for material deficiencies. We processed 521 auditor-related cancellations and suspensions.

Ongoing obligations associated with a licence

While obtaining a licence marks the commencement of a financial services business, these are continuing obligations until the licence is cancelled. Compliance with a licensee's obligations can be assessed by ASIC at any time, including when a licensee applies to expand the financial services it is licensed to provide.

Australian Golden Securities Ltd (formerly AFS Capital Securities Ltd) (AGS) applied to vary its AFS licence to remove a key person condition that applied to its responsible managers. One of the responsible managers who was subject to the key person condition had been banned from providing financial services until April 2022. ASIC refused the application, as we were concerned that the licensee did not demonstrate organisational competence.

On 21 May 2020, ASIC cancelled AGS's licence, as we were not satisfied that the licensee was meeting its licence obligations. The grounds for cancellation included failure to maintain adequate competence and capacity to provide the financial services covered by its licence, and failure to lodge financial statements and audit reports for 2017–18 and 2018–19.

Provision of information in a timely manner

It is important that applicants seeking an AFS licence provide all information requested by ASIC in a timely manner.

In February 2020, the Corporations Act was amended so that an application for an AFS licence is deemed to be withdrawn if the applicant fails to provide information requested by ASIC within a specified time. ASIC will ordinarily request information without relying on a formal notice issued under the Act, but a notice may be issued when an applicant has failed to provide information requested.

The first deemed withdrawal of an AFS licence application occurred in April 2020. The applicant was asked to provide information relating to its external dispute resolution membership and professional indemnity insurance. When the information remained outstanding, a notice was issued setting a time by which the information must be provided. The applicant failed to respond to the notice and the application was deemed withdrawn. In choosing not to respond, the applicant also forfeited the application fee of $2,470.

Operating within authorisations granted by ASIC

Applicants must ensure that they operate within the licence authorisations granted by ASIC.

ASIC received an application from an AFS licensee that was authorised to provide advice and deal in spot foreign exchange, international money transfers and associated remittance services. The licensee applied to vary its licence to allow it to make a market in derivatives, providing OTC derivative trading services to retail and wholesale customers.

ASIC examined the licensee's business model and available intelligence relating to the applicant and identified that the licensee appeared to be operating a financial services business outside its existing authorisations, raising concerns about compliance with the law. We also identified that the licensee appeared to have included false or misleading information in its application, which is a potential offence. There were also concerns about the competence of the licensee's responsible manager.

ASIC's licensing function ensures that only appropriate persons are licensed to provide financial services. Acting outside an authorisation and making false statements to ASIC, including material omissions, may result in further regulatory action by ASIC.

Following further inquiry, ASIC deemed that the corrective actions made by the licensee in response to our contact adequately mitigated the concerns regarding potentially misleading statements and inadequate disclosure. There are now further consumer disclosures available on its website.

Engagement

ASIC's engagement with stakeholders – including industry, consumer groups and other regulators – seeks to set and maintain regulatory standards, better inform industry practices, and identify harms in the market.

In 2019–20, we held over 2,100 meetings with stakeholders, including:

- consumer and small business representatives, lenders, mortgage brokers, insurers and authorised deposit-taking institutions
- companies, auditors, liquidators, market operators and market intermediaries
- trustees, licensees, scheme operators and financial advisers
- lawyers, corporate advisers and compliance professionals.

We also engage with stakeholders by releasing consultation papers seeking public comment on issues ASIC is considering. For more details on our consultation papers, see below.

Guidance

ASIC provides guidance to industry on how we will administer the law, through regulatory guides, consultation papers and information sheets.

We do this to respond and adapt to structural changes and complexity in the financial services sector and enhance industry participants' understanding of their legal obligations and how we administer the law. Our feedback reports provide transparency about ASIC consultation.

In 2019–20, we published 29 new or reissued regulatory guides and 31 information sheets, on topics such as:

- our product intervention power and how ASIC will administer it (RG 272 *Product intervention power*)
- responsible lending obligations (RG 209 *Credit licensing: Responsible lending conduct*)
- how companies can meet their obligation to have a whistleblower policy (RG 270 *Whistleblower policies*) and whistleblower rights and protections (INFO 239 *Whistleblower rights and protections*)
- disclosure of fees and costs for superannuation and managed investment products (RG 97 *Disclosing fees and costs in PDSs and periodic statements*)
- requirements for foreign financial services providers that wish to provide services in Australia (RG 176 *Foreign financial services providers*).

We issued 15 consultation papers on regulatory guidance and policy, including:

- our proposed product interventions in relation to short-term lending, distribution of OTC binary options and CFDs, and sale of add-on financial products through car-yard intermediaries
- the upcoming design and distribution obligations, which require issuers and distributors to design, market and distribute financial and credit products that meet consumer needs
- the best interests duty for mortgage brokers
- the implementation of Royal Commission recommendations into financial advice fee arrangements and disclosure of independence for advisers.

Guidance and consultation documents released this year include:

- RG 97 *Disclosing fees and costs in PDSs and periodic statements* (updated)
- RG 209 *Credit licensing: Responsible lending conduct* (updated)
- RG 105 *AFS Licensing: Organisational competence* (updated)
- RG 104 *AFS Licensing: Meeting the general obligations* (updated)
- RG 176 *Foreign financial services providers* (updated)
- RG 270 *Whistleblower policies*
- RG 272 *Product intervention power*
- RG 273 *Mortgage brokers: Best interests duty*
- CP 316 *Using the product intervention power: Short term credit*
- CP 325 *Product design and distribution obligations*

- CP 329 *Advice fee consents and independence disclosure*
- INFO 229 *Limited AFS licensees: Complying with your licensing obligations* (updated)
- INFO 238 *Whistleblower rights and protections*
- INFO 239 *How ASIC handles whistleblower reports*
- INFO 240 *AFS licence applications: Providing information for fit and proper people and certain authorisations*
- INFO 241 *Prohibition on influencing employers' superannuation fund choice*
- INFO 243 *Licensing requirements for providers of funeral expenses facilities.*

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

Education

ASIC is the lead Government agency for financial capability, driving initiatives to help Australians be in control of their financial lives. This includes leading and coordinating the **National Financial Capability Strategy 2018**.

The National Strategy identifies three behavioural areas in which Australians can be empowered to take control of their financial lives:

- managing money on a day-to-day basis
- making informed money decisions
- planning for the future.

Our work is informed by research, education and behavioural insights to help us understand how investors and consumers make decisions in practice.

Our education initiatives include:

- promoting and supporting financial literacy through the formal education sector, including supporting teacher capability
- delivering and promoting access to trusted and impartial financial information, tools and guidance for consumers and investors, especially vulnerable consumers
- supporting and growing key partnerships with other organisations to enhance collaboration and increase the reach and impact of financial capability initiatives
- contributing to research and measurement supporting the financial wellbeing of Australians
- ensuring that ASIC is globally engaged and effectively participates in shaping and influencing the international financial capability agenda.

See Chapter 4 for more details about ASIC's rebranded and updated Moneysmart website, our Indigenous Outreach Program, and our work on the new National Indigenous Financial Capability Strategy.

Input into law reform

ASIC provides advice to the Government on the operational implications of Government policy initiatives and legislative change.

We identify the opportunities and risks that inform our preferred position and influence law reform to facilitate and improve the performance of the financial system. In providing our advice, we research and analyse innovation, competition and emerging harms, and identify and plan for the impact of reforms on external stakeholders and our internal capabilities.

This year, we provided advice and input to the Government to facilitate measures to support business in the COVID-19 pandemic environment, including in relation to meetings and financial reporting requirements.

We also provided input to Treasury on key law reforms proposed by the Government, including legislation giving effect to recommendations from the Royal Commission. We have also provided submissions to parliamentary and Government inquiries on key law reform issues.

This included input in relation to the following reforms:

- our new product intervention power, which equips us with the power to intervene when there is a risk of significant consumer detriment
- financial product issuer design and distribution obligations, which strengthen our ability to prohibit retail products that do not align with consumer needs
- ASIC's role as conduct regulator in superannuation
- the best interests duty of mortgage brokers and remuneration for mortgage brokers
- strengthening of the financial sector breach reporting regime
- strengthening penalties for breaches of corporate and financial services laws
- strengthening ASIC's licensing and banning powers and enhancing our investigatory capability
- extending consumer protection provisions to funeral expenses insurance policies and extending unfair contract terms protections to insurance contracts
- ending grandfathered conflicted remuneration in relation to financial advice provided to retail clients
- the enforceability of financial services industry codes
- the application of anti-hawking reforms to superannuation and insurance products
- the proposed Financial Accountability Regime, including working with APRA to ensure that the agencies are ready to implement and jointly administer the regime
- the requirement for litigation funders to hold an AFS licence and comply with the managed investment scheme regime from August 2020.

2.4 Registry services and outcomes

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

Our performance reporting in 2019–20 was guided by *ASIC's Corporate Plan 2019–23: Focus 2019–20*, which set out our objectives and targets related to providing efficient registry services, including the registers of companies and business names, as well as a range of professional registers.

ASIC's registers

The ASIC registry is a critical part of Australia's economic infrastructure. The work we do ensures that the information on our registers is accurate, up to date and available to those using the information, enabling business and consumer stakeholders to make informed decisions. ASIC administers registers of companies and business names, as well as a range of professional and other registers.

We are focused on making it easier for businesses to engage with ASIC and comply with the law, to enhance commercial certainty. We aim to provide services that are online and accessible to all Australians. We work to continuously improve our services to support efficient registration.

Until 30 June 2020, the cost of registration as an Australian company was $495. The cost of registering a business name was $36 for one year and $85 for three years.

Table 2.4.1: ASIC's registers

Outcome	2019–20	2018–19
Total companies registered	**2.78m**	2.76m
New companies registered	**222,048**	223,661
Total business names registered	**2.3m**	2.3m
New business names registered	**387,827**	375,052
Calls and online inquiries responded to by Customer Contact Centre	**631,669**	670,741
Registry lodgements	**2.96m**	2.9m
Percentage of registry lodgements online	**93.2%**	93%
Number of searches of ASIC registers[16]	**243.7m**	142.6m

16 We improved the accuracy of the methodology used to report on the number of public searches in 2019–20 and we now include a wider range of register searches.

Performance overview

ASIC received almost three million lodgements in the 2019–20 financial year, with over 90% processed online without manual intervention. The most common lodgement was 'change to company details' (Form 484), with 968,000 received.

We also answered 631,000 inquiries through our Customer Contact Centre.

Business registration

This year, ASIC facilitated the registration of 610,000 new businesses, comprising 222,000 companies and 388,000 business names.

Throughout 2019–20, ASIC's registry promoted the use of the Australian Government Business Registration Service, launched in June 2018 and available at **www.business.gov.au**. In total, 99.9% of applications to register a company or business name were made online.

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

Register integrity

To keep our registers accurate and up to date, ASIC issues millions of notices to regulated populations each year. In 2019–20, we issued 2.6 million company annual statements and 749,000 business name renewal notices.

Through a range of compliance programs, ASIC deregistered 58,000 companies for non-payment of review fees and 302,000 business names for expired registration or because the entity ceased to exist.

Increased use of online channels

Over 93% of the almost three million lodgements received by ASIC were submitted online, while the volume of lodgements submitted by mail decreased by 7%.

Calls to ASIC's Customer Contact Centre decreased by 9%, while inquiries submitted through our website increased by 3%.

Accessing registry information

Our registers experienced record levels of access in 2019–20, with over 243.7 million searches of public information. We improved the accuracy of the methodology used to report the number of public searches this year and now include a wider range of register searches.

There are 12 registry datasets available at **www.data.gov.au**. These datasets have been viewed over 74,000 times this year, an increase of 1%.

Analysis of key outcomes

Key outcomes achieved by ASIC's registry in 2019–20 are set out below.

Modernising business registers

Over the course of the year, ASIC continued to work with Treasury and the Australian Taxation Office (ATO) to develop proposals for the modernisation of Australian business registers, including 31 in-scope ASIC registers and the Australian Business Register.

In December 2019, the Government announced its commitment to progress the registry modernisation program of work. Registry modernisation will make it easier and faster for businesses to interact with the Government, creating a single, accessible and trusted source of business data. It will introduce a Director Identification Number regime and transfer existing business registers to a modernised platform operated by the ATO.

The Government commitment included funding to stabilise the registry's current technology to ensure continuity for businesses until modernisation occurs.

In June 2020, the legislative package to enable the modernisation of business registers passed both Houses of Parliament.

Journalist search fee exemption

On 30 July 2018, the Government announced it would extend the fee exemption available for certain registry searches, specified in the Corporations (Fees) Regulations 2001, to all journalists for all searches from 1 July 2019.

The exemption from these fees facilitates free access to important information about companies and financial services providers.

Journalists qualify for the exemption where they are seeking access to the information as part of their professional work. Media agencies and individual journalists receive a concession when conducting a search through a commercial ASIC information broker or when requesting a search directly from ASIC.

On 1 July 2019, ASIC established a dedicated 'journalist search portal' where approved journalists can obtain some ASIC registry information for free. In December 2019, the service was expanded to cater for current and historical company information, as well as copies of documents that companies have lodged with ASIC.

As at June 2020, there are over 200 journalists registered to use the service. Details for registration are available from the ASIC website.

Financial Advisers Register

In 2019–20, ASIC supported financial advice sector reforms by enhancing the Financial Advisers Register to enable licensees to comply with their legislative obligations. As part of the reforms, advisers must:

- attain educational qualifications that are approved by the Financial Advisers Standards and Ethics Authority (FASEA)
- pass an exam set by FASEA
- engage in continuing professional development each year and their AFS licensees must advise ASIC if the adviser fails to meet the requirement.

Advisers new to the industry are 'provisional financial advisers' and must complete a year of work and training before they can become a financial adviser.

These changes aim to improve the professionalism of Australia's financial advice industry and help consumers make informed decisions in choosing their adviser.

In November 2019, we updated the Financial Advisers Register to incorporate the enhanced requirements. All financial adviser information is available free of charge on this register at **www.moneysmart.gov.au**.

International collaboration

Executive Director Registry, Rosanne Bell, continued as President of the Corporate Registers Forum (CRF). The CRF is an association of corporate registries from more than 60 jurisdictions. Its aim is to give members the opportunity to review the latest developments in corporate business registers internationally and exchange experiences and information on the present and future operation of corporate business registration systems.

ASIC's involvement with the CRF is important in allowing us to share ideas and best practices and to discuss emerging registry issues.

Registered Agent conduct

An ASIC Registered Agent may be authorised to act on behalf of companies transacting with ASIC registers. This year, approximately 24,000 Registered Agents submitted over 58% of the total 2.2 million lodgements to ASIC's companies registers.

Registered Agents must comply with ASIC's Terms and Conditions, introduced in 2018. The Terms and Conditions describe rights and responsibilities, including:

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

This year, our compliance programs targeted Registered Agents not complying with ASIC's Terms and Conditions, in particular failing to retrieve company annual statements, and Registered Agents operating deregistered companies.

We also considered 61 reports of Registered Agent misconduct this financial year. Of these reports, we cancelled 15 agent registrations and issued warnings to 29.

Digital service provider terms and conditions

A digital service provider is a person or organisation who allows data to be sent to and from ASIC to submit transactions and request information searches of the ASIC registers.

In December 2019, we published Digital Service Provider Terms and Conditions on the ASIC website, defining eligibility criteria and the obligations to be fulfilled by ASIC digital service providers.

These measures strengthen ASIC's registry services delivery model by defining the minimum standards and expectations required of our business partners. By better communicating the requirements to be a registry business partner, strengthening our compliance work, and acting on conduct that generates complaints, we can better inform new and current business partners about their obligations and further promote the integrity of our registers.

Disaster recovery exercise – ASIC registry online services

In December 2019, as part of our work to stabilise the technology underpinning ASIC's registry, we performed a complete disaster recovery exercise covering all registry systems. We simulated failure of our primary data centre in Homebush by shutting down all registry systems, including network links.

The exercise allowed us to practise planned business continuity measures, validate overall system resilience, and identify areas for improvement. It confirmed ASIC's preparedness for any potential incidents that may impact registry systems in the future.

Registry compliance programs

ASIC conducts a number of compliance programs to enhance and maintain the integrity of our registers, with specific focus on the companies register.

This year, we combined data from several ASIC teams to identify 1,600 additional companies that should be lodging financial reports, more than double the number of entities investigated compared to previous years.

Key statistics from our compliance programs include:

- **53,265** companies deregistered due to non-payment of fees
- **2,245** large proprietary companies and unlisted public companies notified to lodge financial reports
- **461** companies referred for investigation for failure to lodge financial statements
- **283,614** business names cancelled due to expired registrations.

Natural disaster relief

ASIC is committed to supporting people impacted by natural disasters. This year, we supported victims of the bushfires that affected many communities and businesses across Australia. We acknowledge that circumstances such as natural disasters may make it difficult for businesses to pay fees or meet their lodgement obligations.

Customers experiencing difficulties are encouraged to contact us to discuss payment options, apply for a payment plan, or apply for a fee waiver.

Impact of the COVID-19 pandemic

The COVID-19 pandemic presented significant challenges for businesses across Australia. During the pandemic, all ASIC registry services continued without disruption. Our Customer Contact Centre remained open for customer inquiries, while online services continued to facilitate lodgement of documents and searches of registers.

To support Government priorities, space in our Traralgon office was provided to Services Australia to accommodate staff providing vital services to the public.

2.5 ASIC Service Charter results

The ASIC Service Charter covers the most common interactions between ASIC and our stakeholders and sets performance targets for these. The table below sets out our performance against the key measures outlined in the Service Charter for the 2019–20 financial year.

Table 2.5.1 ASIC Service Charter performance, 2019–20

Service	Measure	Target	Result
When you contact us			
General telephone queries	We aim to answer telephone queries on the spot	80%	89.6%
General email queries	We aim to reply to email queries within three business days	90%	99.8%
When you access our registers			
Searching company, business name or other data online	We aim to ensure that our online search service is available between 8.30 am and 7.00 pm AEST Monday to Friday, excluding public holidays	99.5%	99.7%
Lodging company, business name or other data online	We aim to ensure that you can lodge registration forms and other information online between 8.30 am and 7.00 pm AEST Monday to Friday, excluding public holidays	99.5%	99.9%
When you do business with us			
Registering a company or business name online	We aim to register the company or business name within one business day of receiving a complete application	90%	99.1%
Registering a company via paper application	We aim to register the company within two business days of receiving a complete application	90%	96.7%
Registering a business name via paper application	For paper applications lodged by mail – complete applications for business name registrations within 7 business days	90%	100%

Service	Measure	Target	Result
Updating company, business name or other ASIC register information online	For applications lodged online – enter critical information and status changes to company or business name registers within one business day	90%	99.9%
Updating company, business name or other ASIC register information via paper application	For paper applications lodged by mail – enter critical information and status changes to company or business name registers within five business days	90%	95.6%
Registering as an auditor	We aim to decide whether to register an auditor within 28 days of receiving a complete application	80%	88%
Registering a managed investment scheme	By law, we must register a managed investment scheme within 14 days of receiving a complete application, except in certain circumstances	100%	100%
Applying for or varying an AFS licence	We aim to decide whether to grant or vary an AFS licence within 150 days	70%	Granted: 76% Varied: 76%
	We aim to decide whether to grant or vary an AFS licence within 240 days	90%	Granted: 89% Varied: 88%
Applying for or varying a credit licence	We aim to decide whether to grant or vary a credit licence within 150 days	70%	Granted: 93% Varied: 96%
	We aim to decide whether to grant or vary a credit licence within 240 days	90%	Granted: 94% Varied: 97%
Applying for relief	We aim to give an in-principle decision within 28 days of receiving all necessary information and fees for applications for relief from the Corporations Act that do not raise new issues	70%	78%

Service	Measure	Target	Result
	We aim to give an in-principle decision within 90 days of receiving all necessary information and fees for applications for relief from the Corporations Act that do not raise new issues	90%	91%
Complaints about misconduct by a company or individual	If someone reports alleged misconduct by a company or an individual, ASIC aims to respond within 28 days of receiving all relevant information	70%	79%
When you have complaints about us			
About ASIC officers, services or actions	We aim to acknowledge receipt of complaints within three working days of receipt. We aim to resolve a complaint within 28 days	70%	Resolved within 28 days: 95%