# 2

# ASIC's annual performance statement

# Chair's statement

I, Joseph Longo, as the Accountable Authority of ASIC, present the 2022–23 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 2022–23 was guided by the Corporate Plan and our 2022–23 Portfolio Budget Statement, which set out our objectives and targets related to investor and consumer trust and confidence, and fair and efficient markets.

We plan 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
- providing guidance to industry
- assessing licence and registration applications
- engaging with consumers and industry stakeholders
- providing regulatory relief where appropriate
- educating consumers.

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

# 2.2 Measuring and reporting on our performance

This year, our work aligned with the strategic priorities and actions outlined in the Corporate Plan published in August 2022.

## Measuring our performance

In evaluating our work, we combine quantitative and qualitative indicators to provide a narrative about our approach, as detailed in our Corporate Plan.

As ASIC is a law enforcement agency, the volume and results of our surveillance and enforcement activities remain an important measure of our performance. Table 2.3.1 outlines our key results.

We have been developing an impact assessment methodology to measure the impact and effectiveness of our regulatory interventions. This annual report includes case studies based on this methodology. These appear in Impact assessments 2.5.1, 2.5.2 and 2.6.1. This is the first year that ASIC has publicly reported on the impact assessment methodology. We will continue to refine it in the future.

Our work aligns with the Australian Government's best practice principles for regulator performance: continuous improvement and building trust; risk based and data driven; and collaboration and engagement. The case studies in this annual report illustrate how our work demonstrates these principles in relation to our core strategic projects, other strategic work and ongoing regulatory work.

Reflecting these principles, we also measure our performance against our Service Charter targets to continuously improve our performance, capability and culture (see section 2.7).

Our Corporate Plan outlines ASIC's core strategic projects, other strategic work, and ongoing regulatory work. In deciding on these projects, ASIC applied the regulator best practice principles to identify key trends in our regulatory environment and target our surveillance and enforcement actions. In this chapter, we report on the progress we have made in each category. The core strategic projects for 2022–23 were:

- scams
- sustainable finance
- crypto-assets
- design and distribution obligations
- reportable situations
- cyber and operational resilience
- the Financial Accountability Regime (FAR)
- digital technology and data.

Our other strategic work is conducted in the following industry sectors:

- superannuation
- financial advisers
- investment managers
- credit and banking
- insurance
- market infrastructure
- market supervision
- corporations
- financial reporting and audit
- registered liquidators.

Our ongoing regulatory work includes:

- enforcement
- supervision and surveillance
- guidance
- licensing and registration
- engagement
- regulatory relief
- education.

We use a combination of the regulatory tools available to us to achieve outcomes for consumers and investors.

This chapter sets out key results against our priorities and in relation to the above strategic projects and ongoing regulatory work.

## ASIC's strategic priorities

In 2022–23, our work was guided by four strategic priorities identified in our Corporate Plan:

- Product design and distribution: reduce the harm to consumers caused by poor product design, distribution and marketing, especially by driving compliance with new requirements.
- Sustainable finance: support market integrity through proactive supervision and enforcement of governance, transparency and disclosure standards.
- Retirement decision making: protect consumers, especially as they plan and make decisions for retirement, with a focus on superannuation products, managed investments and financial advice.
- Technology risks: focus on the impacts of technology in financial markets and services, drive good cyber-risk and operational resilience practices, and act to address digitally enabled misconduct, including scams.

# 2.3 Key results

Table 2.3.1 sets out our key results for 2022–23 across our supervision, surveillance, enforcement, guidance and education work.

The number of supervisory, surveillance and enforcement actions we undertake, the value of fines and penalties, and the number of convictions 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.

Our new structure means we have changed our approach to surveillance and enforcement work. In the lead-up to the new structure coming into effect, we focused on finalising existing activities to enable a smooth transition. As a result, there are notable variances in some activities and outputs compared to last year.

### Table 2.3.1 Key results

| Outcome | Total 2022–23 | Total 2021–22 |
|---|---|---|
| **Surveillance** | | |
| Surveillances completed[1,2] | **Over 1,300** | Over 1,040 |
| Instances of potentially misleading or deceptive promotional material withdrawn or amended | **57** | 61 |
| Interim stop orders and final stop orders on disclosure documents[3] | **21** | 18 |
| Interim stop orders under design and distribution obligations[4] | **78** | 2 |

1 This includes over 30 surveillances involving an on-site presence.
2 The number of surveillances completed is a measure of surveillance activity or actitivities by entity or related entities (such as companies, partnerships, licensed or unlicensed entities, and individuals), by disclosure documents (prepared by entity or entities) or by transactions (by entity or entities). These surveillance activities may arise from reports of misconduct, breach reports or as part of a larger surveillance project examining a thematic or industry-wide issue (i.e. a project may comprise a number of surveillances).
3 These stop orders were issued to prevent offers being made under disclosure documents containing misleading or deceptive statements, and omissions of information required under the legislation.
4 These stop orders were issued under ASIC's design and distribution obligations powers, which came into effect in October 2021, following a transitional period.

| Outcome | Total 2022–23 | Total 2021–22 |
|---|---|---|
| **Enforcement** | | |
| **Investigations** | | |
| Investigations commenced[5] | **134** | 107 |
| **Criminal actions[6]** | | |
| Criminal litigation completed | **44** | 38 |
| Criminal litigation completed successfully (as a percentage) | **90%** | 89% |
| New criminal litigation commenced | **32** | 52 |
| Average time to complete an investigation (in months) | **23** | 23 |
| Average time to a criminal court decision (in months) | **21** | 15 |
| Average total time to complete an investigation and reach a court decision (in months)[7] | **60** | 44 |
| **Criminal outcomes** | | |
| Number of people/companies convicted[8] | **35** | 34 |
| Custodial sentences (including fully suspended) | **21** | 13 |
| Non-custodial sentences/fines | **14** | 21 |
| Total dollar value of fines | **$189,640**[9] | $2.1m[10] |

5 Investigations for these purposes meet the definition in section 13 of the ASIC Act and section 247 of the National Credit Act.
6 The statistics relating to criminal actions and outcomes have been revised to include results that were omitted last year due to delays in record keeping. This was due to the timing of our public comment on the matters and cut-off date for reporting. These changes comprised adding one completed successful criminal litigation action (resulting in a conviction and custodial sentence) and two commenced criminal litigation actions. In line with these additions, the average time statistics have been adjusted.
7 The time to complete criminal investigations is measured from the date an investigation commences to the date a referral is made to the Commonwealth Director of Public Prosecutions (CDPP). The time to reach a criminal court decision is measured from the date charges are laid by the CDPP to the date a sentence is handed down. The time involved in achieving enforcement outcomes can vary, depending on many factors, such as the time a matter is with the CDPP for assessment or the time a matter is before the courts.
8 This includes three successful criminal actions without a conviction recorded.
9 The decrease in fines and pecuniary penalties arising from criminal actions in 2022–23 is attributed to a larger-than-usual proportion of matters resulting in custodial sentences instead of fines.
10 The increase in fines arising from criminal actions in 2021–22 is attributed to a fine of $1.71 million imposed on Avanteos Investments. The former subsidiary of Commonwealth Bank was convicted and penalised for failing to update defective disclosure statements, resulting in deceased consumers being charged fees after their death.

| Outcome | Total 2022–23 | Total 2021–22 |
| --- | --- | --- |
| Total dollar value of reparation orders | **–** | – |
| Total dollar value of pecuniary penalties | **$28,883** | $102,175 |
| **Civil action** | | |
| Civil litigation completed | **52** | 61 |
| Civil litigation completed successfully (as a percentage) | **94%** | 100% |
| New civil litigation commenced | **62**[11] | 75 |
| Average time to complete an investigation (in months) | **15** | 19 |
| Average time to a civil court decision (in months) | **22** | 17 |
| Average total time to complete an investigation and reach a court decision (in months)[12] | **42** | 33 |
| **Civil outcomes** | | |
| Total dollar value of civil penalties | **$185.4m** | $229.9m |
| **Administrative actions and outcomes**[13] | | |
| Action taken against auditors[14] | **468** | 59 |
| Action taken against liquidators | **2** | 3 |
| People disqualified or removed from directing companies[15] | **32** | 58 |

11 The decrease in the number of new civil litigation commenced is attributed to the cyclical nature of our enforcement work. Following the completion of 61 civil litigation actions last year, we have commenced 132 new investigations, which are at the beginning of the enforcement life cycle. The outcome of these investigations will flow through in the years to come.

12 The 'average total time to complete a civil investigations' is measured from the date an investigation commences to the date initiating proceedings are filed by ASIC. The 'average total time to reach a civil court decisions' is measured from the date initiating proceedings are filed to the date a judgment is handed down. There are occasions when a judgment is reserved, which affects the overall time to reach a court decision.

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

14 As part of a 2022–23 compliance program, ASIC communicated to more than 1,400 self-managed superannuation fund (SMSF) auditors that they had outstanding annual statements. Most of these auditors subsequently lodged their statements. Those SMSF auditors with outstanding annual statements were advised on 3 August 2022 that ASIC was considering cancelling their registration. Notice of cancellation was sent to these auditors on 23 January 2023, following their continued non-compliance.

15 This includes four disqualifications arising from civil proceedings, where the court ordered that the defendant be disqualified from directing companies.

| Outcome | Total 2022–23 | Total 2021–22 |
|---|---|---|
| People/companies removed, restricted or banned from providing financial services[16] | **77** | 39 |
| People/companies removed, restricted or banned from providing credit services[17] | **28** | 18 |
| Public warning notice[18] | **1** | – |
| Reprimands issued[19] | **3** | – |
| Licence conditions imposed on ASX | **–** | 3 |
| **Court enforceable undertakings** | | |
| Court enforceable undertakings accepted | **3** | 1 |
| Compensation or remediation agreed in court enforceable undertakings[20] | **–** | – |
| **Infringement notices**[21] | | |
| Total number of infringement notices issued | **20** | 3 |
| Total dollar value of infringement notices[22] | **$6.7m** | $136,890 |
| **Summary prosecutions** | | |
| Summary prosecutions for strict liability offences | **210** | 181 |
| Total value of fines and costs | **$1.6m** | $1,019,106 |

16 This includes one instance where the court imposed permanent injunctions on an individual, restraining them from carrying on a financial services business in Australia in contravention of the Corporations Act and one instance where an individual was removed from providing financial services under the terms of a court enforceable undertaking.

17 This includes four instances where the court made orders restraining individuals from engaging in credit activity.

18 On 28 June 2023, ASIC issued a public warning notice to consumers about the activities of David Zohar regarding the promotion of investments in Lithium Lakes Limited.

19 These reprimands were issued by the Financial Services and Credit Panel to admonish financial advisers in relation to conduct or circumstances that had already ceased.

20 Compensation or remediation programs monitored by ASIC are not reflected in this statistic. Amounts in compensation or remediation were agreed in court enforceable undertakings accepted by ASIC.

21 These notices were issued for infringements related to the market integrity rules and the ASIC Act. Compliance with infringement notices is not an admission of guilt or liability and these entities are not taken to have contravened the law. The figure includes infringement notices issued by ASIC and infringement notices issued by the Markets Disciplinary Panel (MDP).

22 This includes an infringement notice of $4.5 million issued by the MDP to Openmarkets Australia. The MDP had reasonable grounds to believe that Openmarkets had contravened numerous market integrity rules and did not have appropriate procedures to ensure compliance with requirements to deal with suspicious trading. This is the largest penalty the MDP has ever imposed.

| Outcome | Total 2022–23 | Total 2021–22 |
|---|---|---|
| **Applications for relief from the Corporations Act** | | |
| **Relief applications** | | |
| Relief applications received | **1,154** | 1,361 |
| Relief applications approved | **887** | 1,084 |
| Relief applications refused or withdrawn | **301** | 374 |
| Relief applications in progress | **59** | 127 |
| **Licensing and professional registration activities** | | |
| **Administrative decisions** | | |
| Licensing and registration applications received | **1,497** | 1,655 |
| Licensing and registration applications approved | **1,287** | 1,596 |
| Licensing and registration applications refused or withdrawn | **413** | 439 |
| Licensing and registration applications in progress | **612** | 819 |
| **Australian financial services (AFS) licences, including limited AFS licences (new and variations)** | | |
| Applications approved | **841** | 1,178 |
| Applications refused/withdrawn | **215** | 277 |
| Licences cancelled/suspended | **329** | 314 |
| Applications in progress | **417** | 559 |
| **Australian credit licences (new and variations)** | | |
| Applications approved | **263** | 267 |
| Applications refused/withdrawn | **145** | 139 |
| Licences cancelled/suspended | **212** | 224 |
| Applications in progress | **135** | 180 |

| Outcome | Total 2022–23 | Total 2021–22 |
|---|---|---|
| **Registered auditors – registered company auditors, authorised audit company and self-managed superannuation fund (SMSF) auditors** | | |
| Applications approved | **183** | 151 |
| Applications refused/withdrawn | **53** | 23 |
| Licences cancelled/suspended | **1,019** | 607 |
| Applications in progress | **60** | 80 |
| **Registered liquidators** | | |
| Liquidators registered by ASIC | **29** | 21 |
| Registration committees convened during the year | **36** | 25 |
| **Outcome of Registration Committee convened during the year** | | |
| Applications for registration approved by Committee[23] | **28** | 17 |
| Applications for registration refused by Committee | **3** | 7 |
| Committee matters in progress – registration application yet to be determined | **5** | 1 |
| **Stakeholder engagement** | | |
| Meetings with industry groups and other stakeholders | **Over 1,600**[24] | Over 1,900 |
| **Consultation and guidance** | | |
| Consultation papers published | **7** | 20 |
| Industry reports published | **37** | 37 |
| New or revised regulatory guides published | **34** | 41 |
| New or revised information sheets | **29** | 59 |
| Legislative instruments made, amended and repealed | **56** | 58 |

23 A breakdown of the applications approved by the Committee, with or without conditions, can be found in Table 6.2.3.

24 The decrease in stakeholder engagement meetings in 2022–23 is attributed to a change in focus, with teams allocating more resources to cross-agency core strategic projects (see section 2.4).

| Outcome | Total 2022–23 | Total 2021–22 |
|---|---|---|
| **Education** | | |
| Users visiting ASIC's Moneysmart website[25] | **11.1m** | 11.0m |
| Average number of users to the Moneysmart website per month | **1.0m** | 1.0m |
| Number of users who have used a Moneysmart online tool | **5.6m** | 5.3m |
| Average number of users using a Moneysmart tool per month | **530,000** | 495,000 |

25 The number of people visiting the Moneysmart website includes users from around the world. Of the 11.1 million users, 9.7 million (88%) were from Australia, using an Australian IP address.

# 2.4 Core strategic projects

Our Corporate Plan outlines our regulatory priorities and the actions we plan to take over the next four years. These are based on monitoring and analysis of our operating environment, the identification of threats and behaviours that lead to harm, and the prioritisation of harms that need to be addressed.

In 2022–23, our work was guided by four strategic priorities identified in our Corporate Plan – product design and distribution; sustainable finance; retirement decision making; and technology risks. Our eight core strategic projects, discussed below, contribute to achieving our four strategic priorities.

## Scams

ASIC's scam strategy for 2022–23 focused on maximising the disruption of investment scams, influencing financial institutions to do more to prevent and detect financial scams, and ensuring their response to customers who had fallen victim to a scam was appropriate.

ASIC's anti-scam work in 2022–23 included:

› a review of the scam prevention, detection and response strategies of Australia's four major banks, resulting in the publication of a report
› a highly successful trial of an investment scam website takedown service, which contributed to ASIC obtaining funding to continue to engage this service from July 2023
› enforcement action with significant outcomes, including one scammer being sentenced to more than five years in prison.

### Case study 2.4.1 Successful website takedown trial

In 2022, ASIC engaged a third-party website takedown service provider to carry out a three-week trial to test the provider's capacity to take down investment scam and phishing websites. The websites taken down included:

- fake firms claiming to be regulated by ASIC
- fake firms impersonating Australian financial services (AFS) licence holders
- crypto-asset investment scams
- unregulated firms offering financial services or products
- fake comparison sites promoting these investment scams
- suspected fraudulent websites identified by ASIC (including from reports of misconduct lodged with ASIC).

The trial was highly successful and outcomes included:

- almost 900 scam groups (mainly websites but also compromised mail servers) relating to over 3,000 individual attacks (webpages and emails) were detected and taken down
- 62% of attacks were removed in 24 hours or less.

Following the trial, and as part of the FY24 Budget, the Government committed a total of $17.6 million over four years (and $4.4 million ongoing) for ASIC to engage a third party to take down investment scam and phishing websites from July 2023.

For more examples of our work on scams, see case studies 2.6.4 and 2.6.10.

## Sustainable finance practices

Environmental, social and governance (ESG) issues are driving the biggest changes to financial reporting and disclosure standards in a generation. Sustainable finance is an important strategic priority for ASIC. It is a transformational issue for global markets, and ASIC is committed to keeping pace with changes as we develop.

In the last year, ASIC's focus in relation to sustainable finance has shifted from educating our regulated population about the need to develop good practices in this area to taking enforcement action. Our strategy is to enforce existing laws, work closely with domestic and international bodies to actively contribute to proposed domestic law reform and guidance, and further strengthen our own capabilities in this space.

In June 2022, we published **Information Sheet 271**[26] *How to avoid greenwashing when offering or promoting sustainability-related products* to help product issuers avoid greenwashing. Since then, we have conducted surveillances of sustainability-related disclosure and governance practices of listed companies, managed funds and superannuation funds. Where misconduct was identified, ASIC took the appropriate regulatory and enforcement action to protect investors and deter further misconduct.

We conducted a targeted review of sustainability-related statements and products to ensure firms maintain high standards of governance and disclosure. A summary of our outcomes in relation to greenwashing misconduct is set out in **Report 763**[27] *ASIC's recent greenwashing interventions*. The report provides transparency about why and when ASIC intervened to correct disclosures.

ASIC contributed to the ongoing improvement of climate and sustainability disclosure and governance practices and standards through our continued work with domestic and international peers. These included the Council of Financial Regulators Climate Working Group and the International Organization of Securities Commissions (IOSCO) Sustainable Finance Task Force. ASIC's work on greenwashing also aligns with the Australian Government's broader sustainable finance agenda.

See case studies 2.5.4 and 2.5.12 for more examples of our sustainable finance work.

26 https://asic.gov.au/regulatory-resources/financial-services/how-to-avoid-greenwashing-when-offering-or-promoting-sustainability-related-products/

27 https://asic.gov.au/regulatory-resources/find-a-document/reports/rep-763-asic-s-recent-greenwashing-interventions/

## Crypto-assets

Emerging technologies and products, including the expansion of crypto-assets, present new terrain for legislators and regulators to navigate.

ASIC supports the Australian Government's commitment to establishing a framework for licensing and regulating crypto-asset service providers. We will continue to look at enforcement actions we can take under our existing remit to safeguard investors, consumers and the market.

In response to the risks posed by crypto-assets, we undertook a wide range of activities to protect investors and maintain market integrity. We have supported Treasury with its continuing consideration of law reform to regulate crypto-asset service providers and payment stablecoins. Additionally, we have highlighted the risks of crypto-asset investing to consumers through a range of communication activities and updates to Moneysmart webpages on cryptocurrencies and crypto scams.

We also used our regulatory enforcement tools, where appropriate, by:

- commencing civil penalty proceedings against three entities – BPS Financial Pty Ltd, Web3 Ventures Pty Ltd (trading as Block Earner) and Finder Wallet Pty Ltd – for alleged unlicensed conduct and other breaches
- making four interim stop orders where ASIC found that the target market determinations (TMDs) for financial products providing exposure to crypto-assets were non-compliant with design and distribution obligations
- undertaking targeted surveillance of issuers of derivatives providing exposure to crypto-assets, including Oztures Trading Pty Ltd (trading as Binance Australia Derivatives).

We also continued to engage in bilateral and multilateral discussions on crypto-assets with our domestic and overseas peers, including the Council of Financial Regulators in Australia and the IOSCO Fintech Task Force.

## Design and distribution obligations

ASIC is focused on reducing the potential for harm to retail consumers from poor product design and distribution practices, including by enforcing and uplifting compliance with design and distribution obligations.

ASIC pursued targeted, risk-based surveillance focused on sectors and products that pose the greatest risks of consumer harm. We have completed surveillances in the superannuation, small amount credit and investment product sectors, and published public reports on our findings to influence behaviours across the industry, encouraging firms to improve their compliance.

We made 78 stop orders in the period ending 30 June 2023, predominantly in relation to deficient TMDs.

In December 2022, ASIC commenced civil penalty proceedings in the Federal Court of Australia against American Express Australia Limited (Amex) and Firstmac Limited (Firstmac) for alleged breaches of the design and distribution obligations. The proceedings brought against Amex concern two credit cards it issued that were co-branded with retailer David Jones. The proceedings brought against Firstmac concern its distribution of interests in a registered managed investment scheme to its term deposit holders.

> **See case studies 2.5.11 and 2.5.13 for more examples of how ASIC is implementing the design and distribution obligations.**

## Reportable situations

We worked throughout 2022–23 to support the implementation and ongoing improvement of the reportable situations regime to ensure we meet our own objectives and those of industry and consumers.

We released our first publication of information lodged under the regime on 27 October 2022. ASIC's approach to reporting will evolve over time as the regime matures and allows for greater granularity in reporting.

On 27 April 2023, ASIC released updates to **Regulatory Guide 78**[28] *Breach reporting by AFS licensees and credit licensees*. The updates are intended to support the use of breach reporting data for ASIC's regulatory purposes and public reporting, and to reduce the regulatory burden on industry. ASIC also made minor changes to the prescribed form for lodging reportable situations. These form changes clarify how some questions should be answered, and direct licensees to the guidance available in Regulatory Guide 78.

ASIC has developed an application programming interface (API) to facilitate machine-to-machine submission of reportable situations data. This API improves efficiency for higher-volume users submitting reports under the reportable situations regime by removing the need to manually input information into the prescribed form.

We have developed enhanced data analytics capabilities to better support us in using the information received under the reportable situations regime. This includes self-service data analytics tools for interacting with the data, as well as a machine learning (ML) model for triaging reports.

28 https://asic.gov.au/regulatory-resources/find-a-document/regulatory-guides/rg-78-breach-reporting-by-afs-licensees-and-credit-licensees/

## Cyber and operational resilience

One of ASIC's strategic priorities across the financial services sector is to encourage good cyber-risk and operational resilience practices. Recently, we have seen cyber-attacks affect the integrity and efficiency of global markets, and in turn, trust and confidence in service and product providers. ASIC will continue to work closely with the Australian Prudential Regulation Authority (APRA) and other regulators, regulated firms and government on these important issues.

This year, we conducted our Cyber Pulse Survey, following consultation with industry and government, to understand cyber preparedness and to uplift standards in our regulated cohort. The survey opened on 7 June 2023, and public companies and other entities holding an ASIC licence or authorisation were encouraged to participate. We asked respondents to assess their cyber security and controls, governance arrangements and incident preparedness. Observations from the survey results will be shared in a public report in the 2023–24 financial year.

We supported whole-of-Australian-Government responses, leading the National Coordination Mechanism's Financial Services Working Group following the cyber-attack on Latitude Financial Services. ASIC has also engaged with government on policy initiatives, and on proposals with the broader Council of Financial Regulators. We continue to actively participate in joint initiatives and incident response with the Council of Financial Regulators' Cyber and Operational Resilience Working Group.

## Financial Accountability Regime

ASIC continues to work with APRA to prepare for the implementation of FAR. During 2022–23, ASIC and APRA developed a package of materials to assist industry to meet the new FAR requirements for authorised deposit-taking institutions (ADIs), including drafting supporting legislative instruments for consultation.

ASIC and APRA are also engaging with ADIs and banking industry bodies to help regulated entities prepare for the implementation of FAR. We are working with APRA to assess pre-commencement material, particularly regarding the new requirement for accountable entities to nominate their significant related entities.

Both agencies continue to engage closely with regulated entities and with each other on aligning supervisory and enforcement approaches.

## Digital technology and data

Technology and data are critical to every business we regulate. We are dealing with operating environments, customer engagement and misconduct that all centre on technology and data. We have been investing in new technologies and systems to enhance our capabilities for some years, and are committed to looking at ways we can enhance our capabilities even further.

During 2022–23, ASIC reviewed all external digital interactions and worked with external stakeholders to identify areas for improvement. We began redeveloping our licensing systems using human-centred design techniques.

We have continued to enhance our data lake platform to allow us to store and process data at the scale required, and provide our analysts with the latest analytics tools. We successfully launched our first recurrent data collection on internal dispute resolution (IDR), with the first real data collected in January–February 2023 from around 100 industry entities. We also developed ways to effectively collect, store, combine and leverage recurrent data sets to inform our regulatory work. This includes data on external dispute resolution (EDR) from the Australian Financial Complaints Authority (AFCA) and IDR data provided by financial entities from January 2023 onwards.

We delivered pilots of ML solutions for teams across ASIC and rolled out the latest business intelligence visualisation tools organisation-wide. This has improved self-service reporting and our analytics capability. We also developed a data literacy program that is being progressively rolled out to all relevant staff.

We formed a partnership with APRA to collect data for FAR and for superannuation, with both projects in different stages of development.

We also created and embedded a data ethics framework and developed an ASIC Artificial Intelligence (AI) Policy to ensure that we responsibly take advantage of the opportunities offered by emerging generative AI.

For more information on this work, see case study 2.5.8.

# 2.5 Other strategic work

## Superannuation

ASIC is responsible for regulating conduct in relation to superannuation, including the conduct and disclosure obligations of superannuation trustees of registrable superannuation entities. We are issues driven and focus on trustee conduct that affects superannuation fund members.

This financial year, we focused on increasing trustees' compliance with IDR obligations and continuing to improve the insurance arrangements trustees provide to members.

### Identifying and consolidating multiple accounts

Unintentional duplicate accounts in the same superannuation fund can result in members paying multiple sets of fees, including insurance premiums, which can significantly erode their superannuation balance over time. Trustees are required to annually identify and automatically consolidate duplicate member accounts in a superannuation fund to minimise members paying unnecessary fees. After considering data that raised questions about whether trustees are consistently complying with this important obligation, ASIC reviewed a sample of nine trustees, covering industry and retail funds, to examine their compliance.

Our review highlighted that some trustees were not doing enough to reduce the proliferation of accounts. Some trustees were failing to meet their legal obligations, while others were identified as needing to improve their practices. For instance, three of the nine trustees in ASIC's review did not have documented business rules for identifying and consolidating multiple accounts on an annual basis across some or all of their funds.

Following engagement with ASIC, all the trustees with poor practices are implementing improvements that will result in fewer members having duplicate accounts and will help ensure they are not paying additional fees. Three trustees are undertaking remediation for members affected by the trustees' failure to comply with the law. To highlight the importance of this issue and encourage better practices across the industry, ASIC publicised its review and areas for improvement (see **Media Release 23-175**[29] 'ASIC warns super trustees to boost efforts to consolidate duplicate member accounts', 29 June 2023).

29 https://asic.gov.au/about-asic/news-centre/find-a-media-release/2023-releases/23-175mr-asic-warns-super-trustees-to-boost-efforts-to-consolidate-duplicate-member-accounts/

## Case study 2.5.1 Internal dispute resolution in superannuation

ASIC reviewed trustees' compliance with their obligations in **Regulatory Guide 271**[1] *Internal dispute resolution*. We conducted an initial review of 35 trustees before undertaking a more detailed examination of 10 trustees.

ASIC identified several areas of concern directly affecting consumers including that:

- several trustees failed to respond to a significant portion of their complaints in a timely manner
- most trustees failed to keep complainants informed when there was a delay in responding
- many written responses failed to alert consumers to their right to take their complaint to AFCA
- internal reporting often lacked sufficient detail to identify, much less remedy, deficiencies in complaint handling.

The review also found that trustees needed to improve complaints management to better manage systemic issues and harness intelligence to improve their products and services.

ASIC wrote to the relevant trustees and required them to promptly remedy the issues identified. We are also considering other regulatory action where we identified more serious concerns.

In addition, ASIC released **Report 751**[2] *Disputes and deficiencies: A review of complaints handling by superannuation trustees* in December 2022. This report encourages all superannuation trustees to critically examine their dispute resolution arrangements, make timely improvements and ensure that these are fit for purpose in the future.

1 https://asic.gov.au/regulatory-resources/find-a-document/regulatory-guides/rg-271-internal-dispute-resolution/
2 https://asic.gov.au/regulatory-resources/find-a-document/reports/rep-751-disputes-and-deficiencies-a-review-of-complaints-handling-by-superannuation-trustees/

## Impact assessment 2.5.1 Delivering better outcomes for members in relation to insurance provided through their superannuation funds

ASIC's work to address consumer harms arising from insurance provided through superannuation funds has seen trustees make a range of changes to their practices, including offering better value insurance and improving how they manage claims made by members.

### Why ASIC intervened

Approximately 8 million Australians have some type of insurance through their superannuation. Many trustees automatically provide members with death cover, total and permanent disability (TPD) cover and income protection cover rather than the member actively selecting cover.

ASIC found three broad areas of concern: poor value insurance, deficient claims handling processes, and communication practices that did not help members understand or make suitable changes to their cover.

### How ASIC intervened

In 2022, we reviewed 15 trustees with funds including 3 million accounts with death and/or TPD cover, and around 800,000 accounts with income protection cover. We conducted the review to check on the progress made by trustees to improve their arrangements for life insurance in superannuation in response to law reform and concerns raised by ASIC.

The findings are set out in the March 2023 **Report 760**[1] *Insurance in superannuation: Industry progress on delivering better outcomes for members*.

1 https://asic.gov.au/regulatory-resources/find-a-document/reports/rep-760-insurance-in-superannuation-industry-progress-on-delivering-better-outcomes-for-members/

Impact assessment 2.5.1 continued

—

**How trustees responded to ASIC's concerns**

We found that trustees had addressed all three areas of concern:

› Trustees have made changes so that members get better value for money from their insurance cover. All 15 trustees have removed or are in the process of removing their 'activities of daily living' definition for TPD cover, with this change improving insurance cover for around 3 million members.

› Many trustees have enhanced their oversight of how insurers are handling claims and streamlined their claims processes to make them easier for members to navigate. Of the 15 trustees, 10 are analysing complaints and withdrawn claims to identify and address frictions in their claims handling process.

› Trustees have improved how they explain their insurance offerings to make it easier for members to understand and make appropriate decisions for their circumstances. Most of the 15 trustees now more clearly explain when and how different terms and conditions apply.

**How ASIC's intervention improved consumer outcomes**

Consumers will benefit as:

› retirement balances should increase as a result of members no longer paying for insurance that does not meet their needs or that they cannot claim

› members are less likely to withdraw claims due to frictions or unnecessary complexities in the claims handling process

› members should be able to make better decisions about the level and nature of insurance cover they hold through their superannuation fund.

## Financial advisers

The financial advice sector covers AFS licensees and their representatives that provide personal advice to retail clients on financial products, general advice, and personal advice to wholesale clients.

ASIC's work in this sector during 2022–23 included focusing on financial adviser conduct and referrals of misconduct to the Financial Services and Credit Panel; completing the Life Insurance Framework review and providing the findings for consideration in the Quality of Advice Review; updating guidance for financial advisers who provide self-managed superannuation advice; and financial adviser registration.

Our work reviewing the Financial Advisers Register to ensure it accurately reflects the status of financial advisers who did not pass the financial adviser exam also continued this year.

### Case study 2.5.2 Updated guidance on self-managed superannuation fund advice

In December 2022, we issued **Information Sheet 274**[1] *Tips for giving self-managed superannuation fund advice* to help AFS licensees and their representatives comply with their obligations when providing personal advice about self-managed superannuation funds (SMSFs). We also updated consumer information on our Moneysmart SMSF webpage.

The information sheet provides updated guidance about SMSF balances, and compares the performance of SMSFs with APRA-regulated funds. It explains that the superannuation balance – whether high or low – is important but it is only one factor when considering whether an SMSF is suitable for a client. Other important factors include the risks and costs associated with setting up and/or switching to an SMSF, investment strategies, diversification, liquidity, asset choice, trustee responsibility, time commitment, and the potential benefits of professional advice when deciding to set up and/or switch to an SMSF.

In response to feedback received from ASIC's targeted industry consultation, we supplemented the information sheet with case studies to illustrate that an SMSF balance is only one factor a financial adviser should consider when determining whether an SMSF is suitable for their client.

1 https://asic.gov.au/regulatory-resources/financial-services/giving-financial-product-advice/tips-for-giving-self-managed-superannuation-fund-advice/

### Case study 2.5.3 ASIC anti-hawking action

In February 2023, following ASIC action, National Advice Solutions Pty Ltd appeared at the Southport Magistrates Court in Queensland and pleaded guilty to one charge of breaching anti-hawking laws. The Court imposed a penalty of $70,000. Between August 2019 and June 2020, National Advice Solutions made unsolicited calls to consumers encouraging them to roll over their superannuation into different superannuation products. The company then charged an initial fee for the rollover as well as ongoing fees.

ASIC also cancelled National Advice Solutions' AFS licence for providing advice to clients under what they described as a 'layered advice strategy'. Under this strategy, the licensee separated the financial advice they provided to clients into pre-determined topics, regardless of the client's personal circumstances, goals or advice needs. ASIC's action makes clear that it is inappropriate in these circumstances to separate out insurance and superannuation advice, as the products are so intrinsically linked that advice regarding the two topics cannot appropriately be delivered in isolation.

Further, ASIC banned National Advice Solutions' two responsible managers from providing financial services for 10 years. ASIC found that they both bore part of the responsibility for the systemic failings that arose from using a layered advice strategy.

This action is part of ASIC's ongoing efforts to improve standards across the financial advice industry.

## Investment managers

The investment management sector includes responsible entities, wholesale trustees, operators of notified foreign passport funds, custodians, investor-directed portfolio service operators, managed discretionary account (MDA) providers, traditional trustee company service providers, corporate collective investment vehicles and crowd-sourced funding intermediaries.

In 2022–23, we focused on taking action against greenwashing and testing compliance with design and distribution obligations for investment products.

### Case study 2.5.4 Sustainable finance and greenwashing

Since publishing **Information Sheet 271**[1] *How to avoid greenwashing when offering or promoting sustainability-related products*, ASIC has undertaken reactive and proactive greenwashing surveillances. Our work included reviewing the product disclosure statements (PDSs) of 122 funds and considering the investment processes of 17 funds.

As a result of our review, 14 responsible entities amended disclosures in 21 PDSs and one fund's name was changed after greenwashing concerns were raised. In one instance, the PDS for a fund was changed to remove vague claims that its minerals were responsibly sourced and to provide further explanation about how ore is refined in accordance with relevant standards. In another instance, a PDS was amended after concerns were raised about the use of vague terms, such as 'social diversity', 'robust sustainable practices' and 'protection of the planet'.

1 https://asic.gov.au/regulatory-resources/financial-services/how-to-avoid-greenwashing-when-offering-or-promoting-sustainability-related-products/

### Design and distribution obligations

In 2022, ASIC reviewed investment product issuers' compliance with design and distribution obligations. We released our findings in **Report 762**[30] *Design and distribution obligations: Investment products*. We focused on these because we were concerned that consumers were at risk of being inappropriately exposed to high-risk products. As a result of our review, we issued 26 interim stop orders for breaches of the TMD requirements. Our actions led to 12 issuers amending 18 TMDs and 5 issuers withdrawing 7 TMDs.

ASIC placed stop orders on Open Corps Fund Management Limited, trading as ResiFund (Resi), in its capacity as the responsible entity for the Australian Residential Property Fund. The Fund invested in a portfolio of Australian residential property assets, used leverage, had low levels of liquidity and engaged in property development activities.

ASIC found that Resi had failed to appropriately address the risks and features of the Fund in defining its target market and used inadequate distribution conditions. Notably, ASIC took issue with Resi's treatment of the Fund's investment strategy as 'low risk'.

The stop orders were lifted following a hearing and amendments to the Fund's TMD that addressed ASIC's concerns by excluding certain categories of investors from the target market.

30 https://asic.gov.au/regulatory-resources/find-a-document/reports/rep-762-design-and-distribution-obligations-investment-products/

## Impact assessment 2.5.2 Misleading marketing of funds' investment performance and risk

ASIC has acted to improve the way in which managed funds are promoted to consumers. Where marketing does not accurately reflect a product's performance or risk profile, consumers may make investments that do not meet their objectives.

### Why ASIC intervened

ASIC was concerned that retail investors and potentially unsophisticated wholesale investors, especially retirees, were making important investment decisions influenced by marketing that did not accurately portray the risk and return profile of the funds in which they were investing.

### How ASIC intervened

In March 2022, ASIC began surveillance of the marketing of managed funds to identify inaccurate or potentially misleading content in promotional materials. We scrutinised traditional and digital media marketing of funds, including search engine and social media advertising. We identified concerns with marketing materials, scrutinised funds' PDS, websites, other disclosures and TMDs. We then raised our concerns with the responsible entities or trustees of the managed funds.

### How businesses responded to ASIC's concerns

The surveillance resulted in changes that should reduce the level of misleading marketing of fund performance and associated risks by 17 responsible entities or trustees of 23 funds with approximately $2.1 billion in assets under management. They have:

- amended, or arranged for the funds' investment manager to amend, their marketing material and/or practices
- agreed to withdraw or improve advertisements, with changes to content, including increasing the prominence of warnings about the reliability of past performance continuing into the future; clearly explain that target returns are not guaranteed; not compare their funds to products with a lower risk profile; and not suggest that investor capital was safe when this was not the case.

Four of these responsible entities also undertook to amend the compliance plans of five funds (representing $705 million in assets under management) to ensure better supervision of these funds' marketing.

Voluntary changes made to fund compliance plans included vetting fund advertising before releasing it, providing regular training for staff involved in fund marketing requirements, and monitoring dynamic digital marketing.

In addition, ASIC placed interim stop orders on a further two responsible entities in relation to marketing two additional funds – one of which was replaced with a permanent stop order.

Impact assessment 2.5.2 continued

—

**How ASIC's intervention improved consumer outcomes**

Consumers will benefit as they can:

- make better investment decisions as a result of receiving more balanced marketing materials
- choose among funds based on their fundamental investment risk in a market that is less distorted by inaccurate marketing.

## Credit and banking

The credit and banking sector includes authorised deposit takers (banks and credit unions), credit providers and lessors, credit intermediaries (including mortgage and finance brokers), payment providers, traditional trustee companies and debt management firms. ASIC's work in this sector in 2022–23 focused on compliance with design and distribution obligations, and protecting financially vulnerable consumers through the use of product intervention orders.

### Reinforcing compliance with design and distribution obligations for providers of consumer credit

ASIC undertook targeted reviews of compliance with design and distribution obligations by selected small amount credit contract and buy now pay later providers. This included a review of their TMDs and the data and metrics that inform review triggers. In December 2022, ASIC released **Report 754**[31] *Target market determinations for small amount credit contracts*. We observed that small amount credit contact providers' TMDs lacked detail in the descriptions of their products and target markets. Further, their review triggers were not sufficiently granular to be useful. Review triggers must establish events and circumstances that would reasonably suggest that the target market may no longer be appropriate. In June 2023, we provided similar feedback to the buy now pay later providers that were subject to ASIC's review.

We also issued two interim stop orders in relation to credit products where we saw deficiencies in the TMDs of those products. The interim stop orders were in relation to:

- a credit for rent product issued by One Card Credit Pty Ltd known as the Scorebuilder and Safetynet product (February 2023)
- a buy now pay later product issued by humm BNPL Pty Ltd (May 2023).

We revoked both interim stop orders once the providers made sufficient changes to their TMDs or products to comply with their obligations.

31 https://asic.gov.au/regulatory-resources/find-a-document/reports/rep-754-target-market-determinations-for-small-amount-credit-contracts/

### Case study 2.5.5 Protecting financially vulnerable consumers: Cigno action

ASIC made two product intervention orders in July 2022 in relation to short-term credit and continuing credit contracts. These orders successfully stopped particular business models, including models used by entities such as Cigno Pty Ltd (Cigno) and BHF Solutions Pty Ltd (BHF Solutions), which sought excessive fees from vulnerable consumers who required small loans, resulting in significant consumer detriment.

ASIC also began court proceedings against Cigno and BHF Solutions, alleging the entities had engaged in credit activities without holding an Australian credit licence for their lending model, which they purported to operate under the continuing credit exemption in the National Credit Code.

In the first instance, the Federal Court of Australia dismissed our application; however, we successfully appealed to the Full Court of the Federal Court, which handed down its decision in June 2022. In December 2022, the High Court dismissed special leave applications by Cigno and BHF Solutions seeking to appeal the decision of the Full Court. The matter was remitted to the Federal Court and final orders were made on 12 July 2023, including declarations of contravention and injunctions.

## Insurance

The insurance sector comprises life and general insurance and includes insurance product providers (including friendly societies), insurance product distributors, risk management product providers and claims handling and settling services providers.

This year, ASIC's work in insurance focused on investigating general insurance pricing practices, preparing for the implementation of reforms to the unfair contract terms regime, and working with industry to improve practices.

## Case study 2.5.6 General insurance pricing misconduct

ASIC has taken significant and sustained action over the past two years to address widespread failures by general insurers to meet the pricing promises made to their consumers. Our work has resulted in general insurers taking steps to repay an estimated $815 million in remediation and to improve their systems to minimise the risk of future pricing failures.

Pricing misconduct occurs when insurers promise price discounts, benefits or rewards to customers (including no-claims discounts, multi-policy discounts or loyalty discounts), and then fail to deliver on the promises in full. These pricing failures distort competition and result in consumers being overcharged on their policies or not receiving all the benefits promised to them.

ASIC acted to improve consumer outcomes by calling on all general insurers to review their pricing practices, systems and controls as a matter of priority, to ensure consumers received the full discounts they were promised (see **Media Release [21-270MR]**[1] 'ASIC launches Federal Court action and calls on general insurers to review pricing practices', 15 October 2021). ASIC subsequently wrote to 11 general insurers requiring them to conduct a comprehensive review of their pricing practices to identify any problems, fix deficiencies in their practices, and repay consumers who had been overcharged.

The thematic findings from the pricing reviews are set out in **Report 765**[2] *When the price is not right: Making good on insurance pricing promises*, published in June 2023. This report identifies how failures by general insurers to adequately manage their non-financial risks have led to pricing failures and significant consumer harm. It also confirms the standards general insurers need to meet in designing and promoting pricing promises to ensure consumers get the full benefit of any discounts promised.

ASIC has taken action in the Federal Court of Australia against Insurance Australia Limited (IAL) and the Court handed down a penalty of $40 million against IAL for failing to honour discount promises made to consumers who held NRMA-branded insurance policies (see **Media Release [21-270MR]**[1] and **Media Release [23-179MR]**[3] 'IAL penalised $40 million over pricing discount failures', 30 June 2023). This penalty is the largest-ever penalty imposed by the Court against an insurer for breaches of the financial services laws.

1 https://asic.gov.au/about-asic/news-centre/find-a-media-release/2021-releases/21-270mr-asic-launches-federal-court-action-and-calls-on-general-insurers-to-review-pricing-practices/
2 https://asic.gov.au/regulatory-resources/find-a-document/reports/rep-765-when-the-price-is-not-right-making-good-on-insurance-pricing-promises/
3 https://asic.gov.au/about-asic/news-centre/find-a-media-release/2023-releases/23-179mr-ial-penalised-40-million-over-pricing-discount-failures#!page=2&type=media%20releases&startDate=01/01/2023&endDate=02/08/2023

Case study 2.5.6 continued

—

We have also taken civil penalty proceedings in the Federal Court over alleged pricing discount failures by RACQ Insurance Limited (see **Media Release [23-038]**[1] 'ASIC sues RACQ over alleged pricing discount failures, urges industry to improve pricing practices', 24 February 2023).

ASIC has other ongoing investigations into general insurers involving suspected failures to deliver on promised price discounts.

Our interventions will improve consumer outcomes as:

- consumers will be less likely to be overcharged on their premiums due to insurers improving their systems, controls and governance in respect of pricing promises
- an efficient and competitive insurance marketplace is supported by insurers meeting their pricing promises in full, providing more transparent pricing, and acting to rebuild trust in the general insurance industry.

1 https://asic.gov.au/about-asic/news-centre/find-a-media-release/2023-releases/23-038mr-asic-sues-racq-over-alleged-pricing-discount-failures-urges-industry-to-improve-pricing-practices/

### Unfair contract terms review

ASIC continued its work on unfair contract terms in 2022–23, including by issuing proceedings against:

- Auto & General Insurance Company Limited on 4 April 2023 relating to a broad notification obligation term contained in a number of PDSs it issued for home and contents insurance
- HCF Life Insurance Company Pty Limited on 11 May 2023 relating to a 'pre-existing condition' term contained in three types of insurance policies it issued.

ASIC has a number of other matters still under investigation in relation to alleged unfair contract terms.

## Market infrastructure

The market infrastructure sector includes Australian financial market infrastructure licensees, various types of market operators, benchmark administrators, clearing and settlement facility operators, derivative trade repository operators and credit rating agencies.

ASIC's work in this sector during 2022–23 continued to focus on providers' compliance with their obligations under the financial services laws. This helps to ensure good consumer and investor outcomes and to maintain trust and integrity in Australia's financial markets.

## Case study 2.5.7 ASX and CHESS replacement

We have maintained a high level of intensity in our regulatory supervision of ASX. This reflects the critical nature of the services ASX provides.

Following ASX's announcement that it would pause the CHESS Replacement Program in November 2022, ASIC and the Reserve Bank of Australia (the regulators) acted to ensure that all necessary steps were taken to support and maintain the current CHESS until it is successfully replaced. On 15 December 2022, ASIC issued notices to ASX Clear Pty Ltd (ASX Clear) and ASX Settlement Pty Ltd (ASX Settlement) under section 823B of the Corporations Act, which required ASX to produce a special report on the current CHESS, and to have that report audited by EY.

On the same day, we also issued a letter setting out our expectations, including requiring attestations from the Board of Directors that they reasonably believed that the information in the special report was accurate. They would also have to release public versions of the report that appropriately consider the confidentiality of commercial and security (including cyber) information.

ASIC took further regulatory action in February 2023 to ensure that ASX adequately responds to the findings and recommendations of the ASX CHESS Replacement Application Delivery Review by Accenture. This includes taking all the necessary steps to address the identified gaps and deficiencies in relation to the ASX Group's portfolio, program and project management frameworks.

The audited special report will assist us when we are assessing whether any further regulatory action is required. ASIC has also contributed to the consideration by the Parliamentary Joint Committee (Oversight of ASIC, the Takeovers Panel and the Corporations Legislation) of matters relating to the delayed implementation of the ASX CHESS Replacement Program, including the relevant oversight arrangements.

### Case study 2.5.8 Data-centric approach to fixed income, commodities and currencies market surveillance reducing manual processing and increasing accuracy of surveillance activities

We won the Australian Public Service (APS) Data Analytics and Visualisation Award 2023 for our sophisticated insider trading surveillance and detection capability. An ASIC team of specialists in data analytics and surveillance developed the capability. The new system automatically hunts for and detects suspected market misconduct, and profitable and suspicious trading patterns, and identifies connections between traders and potential sources of inside information.

More broadly, we continue to take a data-centric approach to our surveillance of the markets. During 2022–23, we continued to develop advanced analytics in relation to the fixed income, commodities and currencies (FICC) sector of the market. We use market-leading technology in a centralised cloud platform to reduce technology risks and enable our surveillance analysts to efficiently and accurately identify signals of potential market misconduct.

We have developed dashboards and risk-based analytics that allow us to conduct reactive surveillances of matters that emerge from Australian Transaction Reports and Analysis Centre (AUSTRAC) suspicious matter reports and direct complaints to ASIC. We are able to quickly ascertain whether further investigation is required without the need to serve legal notices on issuers, market intermediaries and market licensees. This has reduced the burden on our regulated population.

Recently, we leveraged our over-the-counter (OTC) derivatives trade repository data and interactive dashboards to identify entities and the scale and size of their exposure during significant market events. For example, during the 2023 Silicon Valley Bank collapse, we were better prepared to respond in a coordinated manner alongside APRA and the Reserve Bank of Australia as market events unfolded.

## Market supervision

ASIC promotes trust and confidence in markets through our surveillance of trading on Australia's securities, futures and OTC markets, and our supervision of market intermediaries, including market participants, investment banks, securities dealers and issuers of OTC products. Focus areas this year included conduct and conflicts of interest in wholesale markets; changing retail investor dynamics; product design and governance; responding to overseas banking issues and market volatility; and technology and operational resilience (e.g. the implementation of new market integrity rules, monitoring market participants' progress in meeting our expectations in market outages, and an environmental scan of the use of AI).

### Case study 2.5.9 Disrupting high-risk offers of products and services to retail clients

In 2022–23, ASIC conducted a thematic review of online retail brokers in response to rapid growth in retail trading activity and the number of online firms providing stockbroking services to retail clients. We noted that some brokers are offering retail investors high-risk products or services that may be unfair, inappropriate or result in poor outcomes.

We issued a warning to brokers in August 2022 to be careful about or to reconsider offering retail investors high-risk products and services, such as securities lending, crypto-assets and offers of 'zero' or 'low-cost' brokerage where the true cost is masked.

ASIC acted swiftly to disrupt activities that may result in harm to retail investors and to clarify our regulatory expectations for brokers. Our action resulted in brokers changing their existing or planned offers of products or services, including:

- one broker reassessing its proposal to offer securities lending to retail clients
- several brokers reassessing or ceasing plans to offer retail clients the ability to trade unregulated crypto products alongside securities
- several brokers removing potentially misleading statements from their websites (e.g. about the safety and security of their products or services or how client assets are held)
- several entities making changes to strengthen their client money handling arrangements to better protect retail clients.

### Case study 2.5.10 Artificial intelligence and machine learning in markets

We actively monitor the markets for new trends and emerging issues, including the latest opportunities and challenges emerging from the use of AI and ML.

During the year, ASIC undertook an environmental scan of AI and ML in markets, including use cases, benefits and risks, and controls to mitigate risks. This involved consulting with market participants and some of their clients and international regulators, and conducting desk-based research. We also assessed whether the automated order processing (AOP) Market Integrity Rules (Securities Markets) 2017 and associated guidance are still fit for purpose, given developments with AI, ML and automated trading, and in the context of guidance from IOSCO.

The firms consulted had varying levels of maturity in their use of AI and ML, and reported a range of use cases. Offshore proprietary trading firms and global institutional investment banks were the most sophisticated users of AI and ML techniques in their trading, risk management and back-office functions. They also had more sophisticated governance and control frameworks. The technology was more broadly used in back-office and operational functions to improve the efficiency of high-volume processing tasks. There appears to be an AI and ML skills deficit domestically, with over-reliance on offshore teams across the full spectrum of touch points. As the technology is increasingly used to achieve results for clients, a key challenge for firms will be ensuring their control functions have the capacity and capability to test, challenge and verify that the systems operate as intended, in compliance with the law and not contrary to their clients' interests.

In relation to the securities market AOP rules, we determined that they are fit for purpose, but aspects of the guidance could be updated (e.g. to reflect the more adaptive and learning nature of algorithms). Our assessment reinforced that there is a gap in the futures market rules, and this is an area that we plan to consult on in the future.

## Corporations

In 2022–23, our work supervising the corporate sector focused on climate-related governance and financial disclosures, overseeing corporate finance transactions, considering applications for relief from certain corporate law obligations, and reviewing whistleblower programs and reporting on good practices for handling whistleblower disclosures.

## Case study 2.5.11 Design and distribution obligations

We reviewed the appropriateness of TMDs for investment products offered under the fundraising provisions of the Corporations Act. These include shares issued by investment companies, preference shares, Additional Tier 1 securities issued by prudentially regulated entities, and debentures.

We selected the TMDs for review by assessing all retail offers of these products since 1 March 2022. We used risk-based criteria relating to the terms of the product, the underlying business model or asset allocation (as relevant), past performance, the size of the offer, and the nature of the offer (e.g. if the offer was only open to people associated with the company).

Over the review period, we identified 119 offers under the fundraising provisions that were subject to design and distribution obligations and took the following actions:

- We reviewed TMDs for 35 offers after risk assessment.
- We took action on 14 of the 35 offers, involving 7 stop orders and 7 negotiated outcomes that included the withdrawal of some offers.

See **Report 762**[1] *Design and distribution obligations: Investment products*, released on 3 May 2023.

1 https://asic.gov.au/regulatory-resources/find-a-document/reports/rep-762-design-and-distribution-obligations-investment-products/

### Case study 2.5.12 Greenwashing

We conducted reactive and proactive surveillances on greenwashing, looking into ESG-related disclosures in disclosure documents lodged with us by companies raising capital from retail investors. We intervened to secure changes or additional disclosure to prevent harm to investors, consumers and market integrity, and to deter greenwashing misconduct. Our interventions include:

- An oil and gas company removed net zero emissions statements, including a target to achieve net zero emissions by 2050, from its prospectus. The company was unable to provide additional information about how the targets would be achieved and the potential feasibility of achieving them.
- An energy exploration company removed 'clean energy' claims from its prospectus. The company's exploration activities were not sufficiently progressed to determine the viability of extracting clean energy from its assets.
- A mining company provided, in a supplementary prospectus, more detailed information and context to the environmental and sustainability credentials of its 'low-carbon' processing technology.

See **Report 763**,[1] *ASIC's recent greenwashing interventions* (RP 763) released on 10 May 2023.

1 https://asic.gov.au/regulatory-resources/find-a-document/reports/rep-763-asic-s-recent-greenwashing-interventions/

## Case study 2.5.13 Corporate finance transactions

ASIC continues to take action in corporate control transactions to ensure that investors are given an equal opportunity to participate in, and receive the information they need to make an informed choice about, a control transaction. Our work also seeks to ensure that control transactions are structured and conducted in a fair and competitive manner. We adopt a risk-based approach in our review of corporate control transactions to ensure that we target conduct with the most potential to harm investors.

In 2022–23, we reviewed 43 schemes of arrangement and 24 takeover bids with an implied value of more than $24.6 billion. We achieved disclosure or structural changes in about 75% of those we reviewed. We also received 35 shareholder-approved acquisitions and attained disclosure changes in almost 90% of the acquisitions we reviewed.

We also reviewed an independent expert's report that was to be provided to investors in a company so they could vote on a third party increasing its control of the company. The expert concluded that the transaction was fair and reasonable.

We intervened to ensure that an appropriate valuation methodology had been used to value the securities in the company and that the expert had applied appropriate assumptions in its valuation to reach its opinion. As a result of our intervention, the independent expert's opinion was withdrawn. Our intervention ensured that investors were not given information that would undermine their ability to make an informed choice about how to vote on the transaction. Ultimately, the transaction did not proceed.

ASIC continues to review fundraising documents to ensure they provide investors with enough information to make fully informed investment decisions, and to confirm that they comply with design and distribution obligations. In 2022–23, we received more than 450 original prospectuses that were collectively seeking to raise more than $7 billion.

We intervened and issued 23 disclosure, and design and distribution obligation, stop orders, preventing the issuers from making the offers. A number of these offers were in the unlisted sector, where high-risk offers were made to raise funds from retail investors to on-lend to potential property and mining developments.

### Case study 2.5.14 Review of whistleblower programs

We reviewed the whistleblower programs of seven large firms, focusing on their arrangements to protect and support whistleblowers, handle and use information contained in whistleblower disclosures, and the level of executive and board oversight of the programs.

Generally, our review showed that all firms had developed practices to handle whistleblower disclosures that are in line with Part 9.4AAA of the Corporations Act. These practices were also often in line with good practice tips highlighted in **Regulatory Guide 270**[1] *Whistleblower policies*. We observed that the quality and maturity of the firms' governance frameworks and programs to assess and consider whistleblower disclosures varied, and ASIC has provided feedback to the firms.

On 2 March 2023, ASIC published **Report 758**,[2] *Good practices for handling whistleblower disclosures*, summarising our review findings and setting out scalable good practices that firms can adopt for their own whistleblower programs.

1 https://asic.gov.au/regulatory-resources/find-a-document/regulatory-guides/rg-270-whistleblower-policies/
2 https://asic.gov.au/regulatory-resources/find-a-document/reports/rep-758-good-practices-for-handling-whistleblower-disclosures/

## Financial reporting and audit

Quality financial reports provide important information for investors and other stakeholders making decisions about the allocation of scarce resources. Auditors play a vital role in underpinning investor trust and confidence in the quality of those financial reports.

In 2022–23, we aligned our financial reporting and audit surveillance (previously known as audit inspection) programs, as there can be a strong link between the issues identified in a financial report and the quality of audit work undertaken on the financial report. We combined the two programs to create a single financial reporting and audit surveillance program and implemented risk-based targeting of financial reports, making better use of internal and external data. We will choose higher risk financial reports, and with key audit areas reviewed primarily relating to the most significant outcomes from the financial report reviews. We will report negative findings directly to the directors of companies, audit committees and audit firms.

## Case study 2.5.15 ASIC root cause analysis of six largest audit firms

ASIC released a thematic report following its review of root cause analysis on negative audit quality findings conducted by the largest six audit firms. The report included better practice recommendations.

The review was conducted in advance of the new audit quality management standard ASQM 1 *Quality Management for Firms that Perform Audits or Reviews of Financial Reports and Other Financial Information, or Other Assurance or Related Services Engagements* coming into effect. ASQM 1 required all audit firms to have designed and implemented systems for quality management by 15 December 2022.

**Report 739**[1] *Root cause analysis: Audit firm thematic review* identified many existing good practices across the six firms, including the inclusion of a wide range of sources of audit files for root cause analysis, and maintaining the independence of root cause analysis teams. The report included better practice recommendations for all audit firms to consider when planning for the implementation of ASQM 1.

Our review showed that the top root cause of negative audit quality findings, across the sample reviewed, was skill deficiency in individual auditors, followed by the application of professional scepticism and auditor mindset.

ASIC encourages audit firms to consider potential underlying root causes more widely, including focusing on supervision and review, and exploring further relevant remedial actions to improve audit quality.

1 https://asic.gov.au/regulatory-resources/find-a-document/reports/rep-739-root-cause-analysis-audit-firm-thematic-review/

### Case study 2.5.16 Former auditor of Big Un Limited convicted for failing to comply with auditing standards

On 1 August 2022, the former auditor of the collapsed entity Big Un Limited was convicted for failing to conduct the audit of Big Un Limited in compliance with auditing standards. The audit related to the financial year ending 30 June 2017.

Following a guilty plea, the former auditor was convicted and ordered to pay a penalty of $2,000. At the time of the offence, the maximum penalty for contravening subsection 307A(2) of the Corporations Act was $10,500. In March 2019, the penalties significantly increased, with the possibility of up to two years imprisonment for individuals or penalties of up to $53,280 for audit companies.

In October 2020, the former auditor voluntarily cancelled their registration as a company auditor.

This is the second auditor to face criminal charges for failing to comply with auditing standards. In 2021, the auditor of Halifax Investment Services was convicted of the same offence.

## Registered liquidators

The registered liquidator team regulates 656 registered liquidators who accepted appointments to nearly 8,000 external administrations during the year. Our work during the year focused on:

- examining poor behaviours by liquidators, including those relating to independence, remuneration and competency
- supporting liquidator investigations through grants from the Assetless Administration Fund
- improving our data analytics and technology capabilities and reporting to enhance our ability to identify and act on emerging harms, set strategic priorities, create efficiencies and inform policy.

## Case study 2.5.17 Natural language processing for declarations of independence, relevant relationships and indemnities

We have been using natural language processing (NLP) and more recently ML to review the content of declarations of independence, relevant relationships and indemnities (DIRRIs) to support our surveillance of registered liquidator independence.

NLP and ML facilitate electronic reviews of DIRRIs (lodged with ASIC as a PDF attachment) to search for specified words and phrases and identify instances in which conflict concerns may exist. ML refines the accuracy of the search process by using annotated keyword data. This enables all DIRRIs lodged (not just a small sample) to be reviewed in 'real time' and releases ASIC resources to focus on surveillance of identified potential concerns, rather than staff reviewing each DIRRI manually, which is not practical given the large number of DIRRIs lodged with ASIC annually.

Using this solution, we have successfully identified DIRRIs where we have acted early to address independence concerns.

From 1 July 2022 to 30 June 2023, we processed around 6,100 DIRRIs using NLP and ML, identifying an average of 17.7% of DIRRIs for review. We began inquiries in 9.8% of DIRRIs reviewed (including DIRRIs from group appointments).

Most matters actioned resulted in improved educational and disclosure outcomes. Improvements in disclosures benefit creditors by allowing them to better assess a liquidator's independence.

### Review of small business restructuring process

In January 2023, ASIC published **Report 756**[32] *Review of small business restructuring process*. The report outlines the findings from our lodgement data for all 82 small business restructuring practitioner appointments that commenced in the review period (1 January 2021 to 30 June 2022) and the outcomes of those restructurings to 30 September 2022.

Small business restructuring appointments have increased substantially since the review period, with 447 restructuring practitioner appointments from 1 July 2022 to 30 June 2023. Following the report, we engaged with small business practitioners who had appointments during the review period. The practitioners provided feedback on their experience with the process.

32 https://asic.gov.au/regulatory-resources/find-a-document/reports/rep-756-review-of-small-business-restructuring-process/

This was ASIC's first report since reforms were introduced on 1 January 2021 to create a new simplified debt restructuring process for eligible small businesses and a new type of registered liquidator. This is the first type of insolvency appointment that leaves the control of the insolvent company in the hands of the directors and not the appointed registered liquidator.

Based on information reviewed to 30 September 2022, ASIC identified:

- creditors approved the majority (72) of the 78 sent to affected creditors (92%)
- where a restructuring plan was accepted, 47 plans (65%) were effectuated, one plan (2%) was terminated and 24 plans (33%) were ongoing as at 30 September 2022
- the majority of companies where a restructuring plan was effectuated or was ongoing appeared to be continuing to operate (66%)
- the ATO was a creditor of 89% of the companies that entered a restructuring plan and was a major creditor of 79% of the companies.

# 2.6 Ongoing regulatory and enforcement work

## 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. Our enforcement actions focus on preventing and addressing significant harm to consumers, markets and our financial system.

### Criminal convictions

In 2022–23, our investigations resulted in 35 people being convicted of criminal offences, with 21 people receiving custodial sentences (including fully suspended sentences).

### Civil actions

In 2022–23, we completed 52 civil actions, covering issues such as fees for no service breaches, systemic compliance failures, continuous disclosure contraventions, false and misleading advertising, misleading sale of insurance, financial hardship misconduct, superannuation advice breaches, and failure to comply with the best interests duty.

The total value of penalties for these civil court cases was $185.4 million.

### Protective actions

We banned, removed or restricted 77 people or companies from providing financial services, and 28 people or companies from providing credit services.

We disqualified or removed 32 people from directing companies.

### Corrective actions

We took action where credit licensees, superannuation trustees or responsible entities made misleading statements to consumers or investors. In 56 instances, potentially misleading or deceptive promotional material was withdrawn or amended in 2022–23.

### Infringement notices

In 2022–23, ASIC issued 15 infringement notices and received $219,480 in related payments. We issued infringement notices against:

- Tlou Energy Limited ($53,280)
- Vanguard Investments Australia Limited ($39,960)
- Diversa Trustees Limited ($13,320)
- Black Mountain Energy Limited ($39,960)
- Midway Limited ($33,000)
- Jacaranda Finance Pty Ltd ($26,640)
- Future Super Investment Services Pty Ltd ($13,320).

The Markets Disciplinary Panel (MDP) issued five infringement notices to a market participant, with a total of $6.49 million in penalties for alleged breaches of the market integrity rules.

### Court enforceable undertakings

Court enforceable undertakings are a flexible tool that ASIC can use to improve compliance with the law and encourage a culture of compliance.

We accepted three court enforceable undertakings in 2022–23.

We monitor all active court enforceable undertakings to ensure all obligations are met. Currently, we are monitoring 13 such undertakings, and our work indicates that all parties are complying.

### Helping protect small business

Where necessary, we take action against companies, directors and other officeholders who fail in their duties. This helps to create a level playing field. In 2022–23, we recorded 252 small business–related outcomes.

Together with other federal, state and territory agencies, ASIC is a member of the ATO-led Phoenix Taskforce, which aims to detect, deter and disrupt illegal phoenix activity. Taskforce members share information and use sophisticated data-matching tools to identify those promoting or engaging in phoenix activity. We work together to disrupt phoenix operators' business model and make it financially unviable, removing their ability to operate, applying financial penalties and prosecuting the worst offenders.

### Case study 2.6.1 Illegal phoenix activity

In March 2023, ASIC disqualified former Victorian director Roxanne Cornell for five years after finding she engaged in illegal phoenix activity. Between November 2015 and February 2020, Ms Cornell was a director of Coconut Post Tensioning Pty Ltd, Coconut Group Pty Ltd and Petrox Nominees Pty Ltd – all companies that operated in the building and construction industry. All three companies subsequently went into liquidation, owing a combined total of $6,133,017 to creditors.

ASIC found that Ms Cornell acted improperly and failed to meet her obligations as a director. This included engaging in phoenix activity by transferring and operating a business using new entities to sustain a loss-making business and to intentionally avoid paying creditors. Other concerns ASIC had included Ms Cornell making improper payments from the entities to herself and others, causing detriment to the companies, and not assisting the liquidators appointed to the entities.

We continue to focus on illegal phoenix activity and are committed to using our regulatory tools of engagement, surveillance and enforcement to identify, disrupt and act against those who engage in this conduct.

### Table 2.6.1 Small business enforcement outcomes by misconduct and remedy type

| Misconduct type | Criminal | Administrative | Total (misconduct) |
|---|---|---|---|
| Action against persons or companies | 240 | 31 | **271** |

Of the actions summarised in Table 2.6.1:

- 181 convictions related to individuals who failed to assist registered liquidators
- 48 convictions related to companies that failed to lodge annual financial reports with ASIC
- 11 related to criminal convictions prosecuted by the Commonwealth Director of Public Prosecutions (CDPP), with 3 receiving custodial sentences
- 27 persons were disqualified from managing corporations, with 3 related to illegal phoenix activity
- 4 Australian credit licences were cancelled or suspended.

As at 1 July 2023, ASIC had 93 small business–related criminal cases underway against persons or companies.

## Enforcement examples

As ASIC is a law enforcement agency, the volume and results of our enforcement activities provide an important measure of our performance. Table 2.3.1 provides data on our enforcement activities, but we also use case studies in our reporting to better illustrate the impact of our actions.

We regulate all financial services and consumer credit, and authorised financial markets operating in Australia. This role covers many thousands of entities, individuals and transactions, making our remit one of the broadest of any comparable regulator in Australia or the world. Consequently, over the course of a year, we take more actions than we can report on in detail in our annual report. In choosing case studies for our annual report, we prioritise those that most clearly relate to the priorities and core projects identified in our Corporate Plan, and the priorities identified in our enforcement priorities for 2023.

Guided by this approach, the following nine case studies provide a snapshot of the enforcement actions we took over 2022–23.

### Case study 2.6.2 ASIC issued infringement notices relating to sustainable finance

During 2022–23, we issued 12 infringement notices, totalling more than $150,000, relating to sustainable finance practices across five entities. These spanned listed companies, a responsible entity of a managed fund, a superannuation trustee and a superannuation fund promoter. All infringement notices have been paid.

*Note: Payment of an infringement notice is not an admission of guilt or liability.*

We issued:

- four infringement notices to Tlou Energy Limited and three to Black Mountain Energy Limited, relating to suspected false or misleading sustainability-related statements made to the ASX
- three infringement notices to investment manager Vanguard Investments Australia Limited and one to superannuation trustee Diversa Trustees Limited, relating to suspected false or misleading statements made by the entities that overstated the investment exclusions applicable to their products
- one infringement notice to Future Super Investment Services Pty Ltd, the promotor of the Future Super Fund, relating to a suspected false or misleading Facebook post that overstated the positive environmental impact of the Fund.

## Case study 2.6.3 ANZ penalised $25 million for misleading customers and failing to provide promised benefits

Action by ASIC resulted in Australia and New Zealand Banking Group Limited (ANZ) being ordered to pay a $25 million penalty in October 2022. This was due to its failure to provide certain benefits it had agreed to give customers with offset transaction accounts or under its Breakfree Package.

The Breakfree Package offered fee waivers, interest rate discounts on eligible ANZ products, and other benefits in exchange for paying an annual fee. Its offset customers were entitled to interest rate reductions on eligible home and commercial loans. These benefits were not always passed on to the customer.

ASIC's investigation led to court findings that for more than 20 years, ANZ failed to provide benefits, such as fee waivers and interest rate discounts, to approximately 689,000 customer accounts, with customers affected up until September 2021. The court also found that ANZ made false or misleading representations to certain customers when it represented that it had, and would continue to have, adequate systems and processes to provide the contractual benefits they were entitled to. ASIC's action will result in ANZ paying more than $211 million in remediation to affected customers.

This matter was the final civil case filed following ASIC's enforcement investigations arising from the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (Financial Services Royal Commission).

### Case study 2.6.4 Melbourne woman sentenced after stealing millions from superannuation and share trading accounts

Following a joint investigation by the Australian Federal Police (AFP) and ASIC, in December 2022, a Melbourne woman was sentenced to five years and six months' imprisonment for her central role in an international cybercrime syndicate.

The syndicate engaged in fraud and identity theft to steal more than $3.3 million from superannuation and share trading accounts, and attempted to steal a further $7.5 million.

The offender worked with others to create a cloned website that mimicked the website of a superannuation fund, using a domain name that was almost identical to the legitimate site. Online advertisements were used to promote the cloned website, bringing it the top of the search engine.

The intention was to harvest super members' usernames and passwords when they visited the cloned website ('phishing'). The stolen information was used to gain unauthorised access to member accounts.

ASIC and the AFP's complex investigation revealed cybercrime occurring on multiple levels that had a devastating impact on the victims.

We will continue working with other regulators and law enforcement agencies, both domestic and international, to disrupt scams and coordinate enforcement strategies.

### Case study 2.6.5 Dealing with debtors in financial hardship – ClearLoans' $6 million penalty

ASIC action against credit provider Membo Finance Pty Ltd and its credit representative Richmond Group Financial Services Pty Ltd, trading as ClearLoans, resulted in the companies being ordered to pay more than $6 million in penalties.

ClearLoans was a credit business that provided loans of between $3,000 and $15,000 on 12-month to 60-month terms, with a fixed interest rate of 43% per annum. Loans were secured by a personal guarantee, usually by a friend or relative. In cases of default by a debtor, ClearLoans attempted to collect from the guarantor.

Our investigation led to Federal Court findings that the companies had failed to act efficiently, honestly and fairly when dealing with debtors in financial hardship, had commenced court proceedings to enforce credit contracts in a state other than where the debtor or guarantor lived, and had breached other requirements of the consumer credit legislation.

In addition to the financial penalties, ASIC also obtained court orders for ClearLoans to discontinue a number of enforcement proceedings against borrowers and guarantors.

### Case study 2.6.6 GetSwift's $15 million penalty for breaching continuous disclosure laws

In February 2023, following proceedings brought by ASIC, GetSwift Ltd was ordered by the Federal Court to pay a pecuniary penalty of $15 million, the largest ever penalty against a company for breaching continuous disclosure laws.

The Court also imposed penalties on GetSwift's principal directors, Bane Hunter and Joel Macdonald, that were among the highest imposed on individuals for corporate misconduct. Mr Hunter was ordered to pay a $2 million pecuniary penalty and disqualified from managing corporations for 15 years. Mr Macdonald was ordered to pay a $1 million pecuniary penalty and disqualified from managing corporations for 12 years. A third director, Brett Eagle, was ordered to pay a pecuniary penalty of $75,000 and was disqualified from managing corporations for two years.

In 2017, GetSwift made ASX announcements about agreements with clients, including Amazon, the Commonwealth Bank of Australia (CBA) and Yum Brands, for the use of its software-as-a-service platform. However, these clients were only trialling, or contemplating trialling, the GetSwift platform. At the time of the announcements, these trials were not revenue generating. Over the period of the announcements, GetSwift's share price rose almost 800%. GetSwift also raised $100 million in capital from institutional investors, including $75 million in December 2017, when the company's share price was close to its peak.

This result aligns with ASIC's enduring enforcement priority to take action for breaches of the continuous disclosure provisions to protect consumers and to maintain trust and integrity in Australian financial markets.

### Case study 2.6.7 Markets Disciplinary Panel fined Ord Minnett Limited $888,000

On 31 March 2023, following an ASIC investigation into an on-market share buyback conducted by Ord Minnett Limited (Ord Minnett), the MDP issued an infringement notice for $888,000 for two contraventions of the market integrity rules.

On 1 September 2021, Ord Minnett received instructions to commence a buyback on behalf of an ASX-listed entity. The MDP had reasonable grounds to consider that Ord Minnett twice contravened market integrity rules when conducting the buyback by failing to follow client instructions, and executing a pre-arranged trade that caused the market to not be fair and orderly.

Ord Minnett was fined $111,000 for the first breach and $777,000 for the second breach.

The MDP considered that Ord Minnett did not intend to breach the rules but failed to adequately investigate the question of crossings in a buyback. The MDP considered that Ord Minnett failed to recognise the contraventions or implement any changes to its systems to prevent or mitigate the risk of further breaches.

This was ASIC's first matter before the MDP under the newly increased penalty regime.

### Case study 2.6.8 Former director of Tesla Motors Australia convicted for insider trading

Following an ASIC investigation and referral to the CDPP, in March 2023, a former director of Tesla Australia was convicted and sentenced on two counts of insider trading.

As part of our surveillance of Australia's financial markets, ASIC observed some unusual trading activity on the ASX around the time that a small Australian lithium producer, Piedmont Lithium Ltd, announced that it had entered into an agreement with Tesla Motors Inc. On a review of the trading, it appeared that the then country director of Tesla Australia had purchased shares in Piedmont in advance of the supply agreement being announced.

The former director was charged with one count of insider trading and one count of tipping another with inside information. They pleaded guilty, were convicted on both charges and sentenced to two and half years imprisonment to be served if there was any further misconduct. They were also ordered to forfeit the full trading profit and were disqualified from managing companies for five years.

### Case study 2.6.9 Tyson Scholz – Permanent injunctions ordered against social media ‘finfluencer’

Following ASIC action, in April 2023 the Federal Court made permanent injunctions against social media finfluencer Tyson Robert Scholz, prohibiting him from carrying on a financial services business in Australia in contravention of the Corporations Act.

These orders followed the findings in December 2022 that Mr Scholz had contravened section 911A of the Corporations Act by carrying on a financial service business between March 2020 and November 2021 without an AFS licence.

The Court permanently prohibited Mr Scholz from:

- hosting online groups for which a membership fee is charged, and in which messages are exchanged by members about share trades (either in a group chat or through direct messages from Mr Scholz), without an AFS licence
- carrying on a financial services business in Australia in contravention of section 911A of the Corporations Act.

ASIC took this action to underline the importance of ensuring that anyone who recommends financial products or provides financial advice on social media complies with financial services laws that exist to protect investors.

## Impact assessment 2.6.1 Preventing investment losses from binary options

We acted to protect consumers from significant investment losses from the sale of binary options. These products can result in investors losing substantial sums in a short period. Our action resulted in estimated savings to consumers of more than $100 million.

### Why ASIC intervened

Binary options are OTC derivatives that allow consumers to speculate on the occurrence or non-occurrence of a specified event in a defined timeframe. They have an 'all-or-nothing' payoff structure, with one of two possible outcomes resulting in the consumer losing their entire investment.

The way in which binary options were designed and sold meant that consumers were likely to make cumulative losses over time. Our research found that in 2018, around 80% of retail clients who traded binary options made losses, which were estimated to total $490 million.

### How ASIC intervened

We prohibited businesses from issuing and distributing binary options to retail clients by making a product intervention order. The initial order was in place from May 2021 to October 2022. We extended the order in September 2022 following public consultation. The ban on selling binary options will now continue until October 2031.

### How businesses responded to ASIC's concerns

ASIC has monitored the binary options market and found that all licensed businesses have complied with the product intervention order, and ceased selling binary options to retail clients. We have also taken disruptive action where we have identified scams and unlicensed offers of binary options.

### How ASIC's intervention improved consumer outcomes

We estimate that extending the prohibition on selling binary options until 2031 will save consumers more than $100 million in investment losses. This assumes the net loss of around $14 million incurred by consumers in trading binary options in the 12 months before the product intervention order commenced in May 2021 would have continued at a similar rate without our intervention.

## Supervision and surveillance

ASIC's supervision and surveillance work is core to our statutory mandate to monitor and promote market integrity and consumer protection in the Australian financial system. It seeks to influence behavioural change and prevent harm resulting from poor corporate systems and conduct.

### Supervision of large financial institutions

Our institutional supervision focuses on those financial institutions that have the greatest potential impact on consumers due to market share or other factors. This focused supervision seeks to proactively minimise misconduct and consumer harm by improving organisation-wide factors, including governance, accountability, systems and culture. In 2022–23, the four major banks (ANZ, CBA, National Australia Bank and Westpac Banking Corporation) were subject to institutional supervision.

A key area of focus included reviewing their approach to scam prevention, detection and response.

### Case study 2.6.10 Scam prevention, detection and response by the four major banks

Scams are increasing in volume and sophistication, causing significant financial and other harm to Australian consumers, including the most vulnerable in our community.

Recognising the important role of banks in scam prevention, detection and response, ASIC conducted a review of the four major banks' activities in these areas and published **Report 761**[1] *Scam prevention, detection and response by the four major banks* in April 2023.

Our review focused on the major banks with the expectation that they should have the most mature and effective policies, processes and practices in relation to scams.

Through the review, ASIC saw that the major banks had invested significantly in their anti-scam efforts over the last several years and had implemented a number of innovative initiatives. However, noting the increasing prominence and impact of scams, ASIC considers that there is still more to be done. Key findings included that:

- their overall approach to strategy and governance in relation to scams was variable and overall less mature than expected
- their approaches to determining liability were inconsistent and narrow
- scam victims were not always well supported by their bank
- there were gaps and inconsistencies in how they detect and stop scam payments
- while there were examples of emerging good practice, steps taken to help prevent customers from falling victim to scams varied across banks.

1 https://asic.gov.au/regulatory-resources/find-a-document/reports/rep-761-scam-prevention-detection-and-response-by-the-four-major-banks/

### Ongoing surveillance activities in relation to sustainable finance

Since publishing **Information Sheet 271**[33] *How to avoid greenwashing when offering or promoting sustainability-related products* in June 2022, we have undertaken reactive and proactive surveillance in relation to greenwashing.

Our work has covered disclosure documents, PDSs, advertisements, websites and other market disclosures. More specifically, it has included:

- surveillance of the managed funds sector, including a review of the PDSs of 122 funds, and further consideration of the investment processes of 17 funds
- surveillance of ESG-related disclosures in disclosure documents lodged with us by companies raising capital from retail investors
- responding to reports of misconduct and breach reports.

As a result of this surveillance work, between 1 July 2022 and 31 March 2023, we achieved 23 corrective disclosure outcomes, securing changes or additional disclosure to prevent harm to investors, consumers and market integrity, and to deter greenwashing misconduct.

We continue to encourage all product issuers and advisers to consider the questions and principles set out in **Information Sheet 271**[33] and to keep up to date with international and domestic developments in relation to sustainable finance.

ASIC has received $4.3 million from the Australian Government to further expand our surveillance and enforcement activities in relation to greenwashing over 2023–24. As part of this expanded program of surveillance, we will be progressing our surveillance across our regulated populations.

33 https://asic.gov.au/regulatory-resources/financial-services/how-to-avoid-greenwashing-when-offering-or-promoting-sustainability-related-products/

## Case study 2.6.11 Public outcomes of our supervision and surveillance work

We publish the results of our supervision and surveillance work.

Our reports support good consumer outcomes and change behaviour by improving practices across a sector or market. Reflecting the principles of regulator best practice, these reports illustrate how we use data and technology to identify harms more quickly and accurately, and to provide more efficient and targeted regulation.

In 2022–23, we released 37 supervision, surveillance or review reports, including on issues such as:

- progress made by superannuation trustees to improve their arrangements for life insurance in superannuation – **Report 760**[1] *Insurance in superannuation: Industry progress on delivering better outcomes for members*
- compliance with design and distribution obligations by issuers of investment products – **Report 762**[2] *Design and distribution obligations: Investment products*
- how failures by general insurers to manage non-financial risk have led to significant consumer harm – **Report 765**[3] *When the price is not right: Making good on insurance pricing promises.*

1 https://asic.gov.au/regulatory-resources/find-a-document/reports/rep-760-insurance-in-superannuation-industry-progress-on-delivering-better-outcomes-for-members/
2 https://asic.gov.au/regulatory-resources/find-a-document/reports/rep-762-design-and-distribution-obligations-investment-products/
3 https://asic.gov.au/regulatory-resources/find-a-document/reports/rep-765-when-the-price-is-not-right-making-good-on-insurance-pricing-promises/

## Misconduct reports by the public

Our analysis of reports of misconduct received from the public is critical to informing our regulatory work.

We encourage members of the public to report concerns about corporate and financial services to us. We use this information to direct our regulatory activities to identify and address harms to investors and consumers.

Since the initial COVID-19 pandemic lockdown in early 2020, ASIC has seen consistently high levels of reports relating to scam behaviour. This has resulted in ASIC issuing regular alerts, warnings and reminders to the public to be vigilant in protecting their money and identity.

For more information on misconduct and breach reports, see Appendix 5.

## Guidance

Through regulatory guides, consultation papers and information sheets, we provide guidance to industry on how we will administer the law.

We do this to enhance industry participants' understanding of their legal obligations and how to meet them. Our feedback reports provide transparency about ASIC consultations.

In 2022–23, we published seven consultation papers, 34 new or revised regulatory guides and 29 new or revised information sheets.

For a complete list of the publications issued, see our website at **www.asic.gov.au/regulatory-resources/**.

## Licensing and registration

### Licensing

ASIC assesses applications for AFS licences, credit licences, audit companies, registered companies and SMSF auditors. We also support the committee that assesses the registration of liquidator applications. Aligned with the principles of regulator best practice, we use a risk-based approach to assessment, devoting more of our resources to complex and higher-risk applications to ensure that only suitable persons and organisations are licensed or registered.

In 2022–23, ASIC finalised 2,005 AFS licences and credit licence applications, including cancellations and suspensions. We approved 841 AFS licences and 263 credit licences. We cancelled or suspended 329 AFS licences and 212 credit licences, the majority of which were licensees voluntarily applying for licence suspension or cancellation. During the reporting period, 195 AFS licence and credit licence applications were voluntarily withdrawn, mostly after we completed our assessment and informed applicants that they were unlikely to meet the statutory requirements to obtain a new or varied licence. We refused to accept 160 applications for lodgement, mainly due to material deficiencies in the information provided. Two applications assessed were refused in 2022–23.

We assessed 1,028 applications relating to auditor (company auditor, authorised audit company and SMSF auditor) registrations, cancellations or suspensions. Of these, 169 were approved, 50 were withdrawn and 777 were cancelled or suspended.

### Case study 2.6.12 Facilitating transition to the corporate collective investment vehicles regime

On 1 July 2022, the corporate collective investment vehicle (CCIV) regime commenced. A CCIV is a new type of company that is used for investing and funds management.

In recognition of the similarities between CCIVs and managed investment schemes, ASIC considered that AFS licensees authorised to provide financial product advice and/or deal in managed investment schemes would be competent to provide those financial services in relation to the CCIV regime.

To facilitate licensees' adoption of the new regulatory regime, we wrote to the 185 AFS licensees who held relevant authorisations in managed investment schemes offering to add an authorisation for 'securities in a CCIV'. Existing eligible licensees who took advantage of this did not have to provide any supporting documents to vary their licences, and 41 of these were granted this authorisation in 2022–23.

In addition, we updated **Information Sheet 240**[1] *AFS licence applications: Providing information for fit and proper people and certain authorisations* to streamline proof for prospective AFS licensee applicants. We have prioritised their assessment since 1 July 2022.

To date, we have approved five corporate director applicants, with two for retail and wholesale CCIVs, and three for only wholesale CCIVs.

1 https://asic.gov.au/for-finance-professionals/afs-licensees/applying-for-and-managing-an-afs-licence/afs-licence-applications-providing-information-for-fit-and-proper-people-and-certain-authorisations/

### Case study 2.6.13 Debt management firms

Firms can only provide debt management services if they were licensed or had applied to ASIC for a licence before 1 July 2021.

As at June 2023, ASIC had received 123 applications to provide debt management services, and granted 79 licences.

The rate of debt management firm applications withdrawn and refused is approximately three times higher than the historical average for non-debt management firm credit licence applications. This result supports the objective of the legislative reforms to ensure that only participants that ASIC has no reason to believe will not comply with credit licence obligations are licensed to provide debt management services.

### Case study 2.6.14 Importance of disclosing material changes to an applicant's proposed business when applying for a licence

ASIC received an application for an AFS licence to provide general financial product advice and deal in a range of financial products.

Based on the information provided by the applicant, ASIC formed the view that the licence should be granted and provided the applicant with a draft AFS licence. However, ASIC subsequently became concerned that the applicant intended to engage in securities lending to retail clients, which the applicant had not disclosed in the application.

As we had recently cautioned industry about offering securities lending to retail investors (see **Media Release (22-239MR)**[1] 'ASIC warns brokers considering high-risk offers to retail investors', 31 August 2022), we were concerned that this may have been a deliberate omission. We no longer had reason to believe the applicant would comply with their licence obligations if an AFS licence was granted. When advised of our concerns, the applicant withdrew their application.

1 https://asic.gov.au/about-asic/news-centre/find-a-media-release/2022-releases/22-239mr-asic-warns-brokers-considering-high-risk-offers-to-retail-investors/

## Registry services and outcomes

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

### Modernising Business Registers program

As part of the 2020 Budget, the Australian Government announced the implementation of the MBR program.

The aim of the MBR program was to transfer existing business registers to a modernised platform to be administered by Australian Business Registry Services (ABRS) within the ATO. This would allow the creation of a single, accessible and trusted source of business data.

In April 2021, as a first step in the MBR program, the Commissioner of Taxation was appointed Registrar for the ABRS and ASIC registry staff, and functions were moved to the ABRS through a machinery of government change.

Since then, the ABRS has been responsible for carrying out ASIC registry functions under delegation from ASIC, including operating the Customer Contact Centre in Traralgon, Victoria.

Until the Registrar assumes direct responsibility for registry functions under the law, ASIC will continue to report on registry performance.

ASIC's Registry Interactions and Services team manages ASIC's relationship with the ABRS.

### Independent review of the MBR program

In February 2023, the Australian Government announced an independent review of the MBR program led by Mr Damon Rees, to ensure the program was being delivered within a reasonable timeframe and budget.

In August 2023, in response to the review's findings that the expected economic benefits of the program do not justify the revised costs, the Assistant Treasurer announced the Government would stop the MBR program and would prioritise the stabilisation of existing registers.

ASIC is working with Treasury and the ATO to implement the Government's decision to stop the program and plan the way forward for the modernisation of business registers. The Government will consider options to uplift registries following further analysis.

ASIC remains committed to providing efficient and accessible business registers that make it easier for Australians to do business and interact with government.

### ASIC registers

ASIC's registers are the official source of information for business names, companies and financial professionals registered to operate in Australia. They are a critical part of Australia's economic infrastructure. The registry is responsible for the administration of ASIC registers, including the two largest registers of companies and business names, and a range of professional and other registers.

The registry aims to ensure information on the registers is accurate, up to date and available to those using it, enabling business and consumer stakeholders to make informed decisions. The registry is focused on making it easier for businesses to engage with ASIC and comply with the law, enhancing commercial certainty. The registry aims to provide services that are online and accessible to all Australians and continuously looks for ways to improve services and support efficient registration.

**Table 2.6.2: ASIC registers**

| Outcome | Total 2022–23 | Total 2021–22 |
|---|---|---|
| Total companies registered | 3.23m | 3.09m |
| New companies registered | 274,964 | 292,166 |
| Total business names registered | 2.71m | 2.54m |
| New business names registered | 387,629 | 421,607 |

| Outcome | Total 2022–23 | Total 2021–22 |
|---|---|---|
| Calls and online inquiries responded to by our Customer Contact Centre | 408,062 | 523,858 |
| Registry lodgements | 3.25m | 3.25m |
| Percentage of registry lodgements online | 94.6% | 94.3% |
| Number of searches of ASIC registers | 317.7m | 265.8m |

## Performance overview

The registry received almost 3.25 million lodgements during the 2022–23 financial year. The most common lodgement made was 'Change to company details' (Form 484), with 1 million received. The ABRS, operating the Customer Contact Centre, answered 408,000 inquiries.

### Business registration

The registry helped facilitate 663,000 new registrations, comprising 275,000 companies and 388,000 business names.

Throughout 2022–23, the registry promoted the use of the Australian Government's Business Registration Service, which is available through **business.gov.au**. In total, 99.4% of applications to register a company or business name are now made online. The cost of registering a business name is $42 for one year and $98 for three years.

### Increased use of online channels

More than 94.6% of the 3.25 million lodgements received were submitted online, while the volume of lodgements submitted by mail decreased by 27%. Similarly, telephone calls to the Customer Contact Centre operated by the ABRS decreased by 9%, while inquiries submitted through the website increased by 6%.

## Analysis of key registry outcomes

Key outcomes achieved by the registry in 2022–23 are set out below.

### Director identification numbers

As part of the MBR program, the director ID service was introduced in November 2021. The vast majority of directors have now obtained a director ID, with more than 2.3 million director IDs issued.

In 2022–23, ASIC supported the ABRS to encourage directors to apply for their director ID.

We are responsible for enforcing related offences set out in the Corporations Act, which include failing to obtain a director ID.

The director ID requirement applies to directors if their organisation is a company, registered foreign company, registered Australian body or First Nations corporation.

### Registry services

ASIC retains registry functions under the law, and we remain committed to ensuring business registers are efficient and accessible and make it easier to do business.

We work closely with the ABRS to ensure the registry is administered for the benefit of all Australians.

In 2022–23, we continued working with the ABRS to:

- support the transfer of responsibility for statutory registry functions from ASIC to the ABRS
- deliver the subset of functions that remain with ASIC, using technology to make it easier for regulated entities to meet their obligations
- move the ASIC business registers off ageing technology infrastructure to the new ABRS registry platform and establish services for data exchange between ASIC and the ABRS
- ensure we have full and timely access to registry data to support our regulatory and enforcement work
- implement registry-related aspects of regulatory reforms, including financial advise registration and CCIV regimes.

## Engagement

### First Nations engagement

Our Indigenous Outreach Program is supported by an established and specialist team working across ASIC. It provides advice, insights and support to ensure our engagement with First Nations people is culturally appropriate and sensitive. It also aims to ensure that we are a trusted source of information and resources for First Nations consumers and communities through our communications channels. We also work with industry, service providers and other government agencies to influence system change and support positive financial outcomes for First Nations people.

We undertake various engagement and outreach opportunities throughout the year to build and leverage relationships with stakeholder groups and ensure we are aware of the range of experiences of First Nations people and communities. This year, we:

- responded to 85 inquiries (as at 30 June 2023) from First Nations consumers and stakeholders working with First Nations consumers that came through a dedicated helpline and email channel
- undertook regional and remote outreach with local service providers in the Anangu Pitjantjatjara Yankunytjatjara Lands (South Australia), Wujal Wujal (Queensland), and Broome and the surrounding communities of Bidyadanga and Djarindjin (Western Australia)
- participated in events such as the First Nations Foundation's Financial Wellness days in Sydney (NSW), Broome banking roundtables (Western Australia), Financial Counselling Australia's national conference in Canberra (ACT), and through regular networks including the North Queensland Indigenous Consumer Issues Taskforce
- continued to participate in activities as part of the National Indigenous Consumer Strategy (NICS), including leading the national NICS project to develop learning modules for increased

engagement with a cross-agency resource, *The Guide to Enforcement: Indigenous Consumer Matters*.

In February 2023, we published our **Indigenous Financial Services Framework**[34] (Framework). The Framework was developed through extensive and thorough consultations with First Nations people across geographic regions, as well as representatives from the financial services industry, other government agencies and regulators.

The Framework articulates several long-term outcomes that ASIC will continue to pursue. We will do so by embedding key learnings across our organisation and through ongoing collaboration and engagement with other key stakeholders whose role also affects First Nations people's financial outcomes and wellbeing.

### Case study 2.6.15 Better Banking for Indigenous Consumers project

We began our Better Banking for Indigenous Consumers project in late 2022. Under the project, a review of data from some of Australia's major and regional banks revealed that many First Nations consumers had high-fee accounts despite being eligible for a low-fee basic account.

Our review focused on fees charged to transaction accounts in identified geographic areas with higher-than-average proportions of First Nations people receiving concession payments from Services Australia and the Department of Veterans' Affairs, and students and apprentices nationally who received Abstudy payments. We found that more than 110,000 consumers with high-fee accounts, who were eligible for low-fee accounts, had paid over $6 million in fees over a 12-month period. The most prevalent fee was for being overdrawn, which is not charged on a low-fee account.

The reviewers also considered banks' current processes for promoting and migrating customers to low-fee basic transaction accounts. In particular, we considered data demonstrating significant numbers of customers on concession payments who paid fees for being overdrawn or having payments dishonoured, and considered the implications for existing distribution processes and triggers in banks' transaction account TMDs.

ASIC is committed to working with banks to better support positive financial outcomes for First Nations customers.

34 https://asic.gov.au/about-asic/what-we-do/how-we-operate/stakeholder-liaison/asic-s-indigenous-outreach-program/asic-s-indigenous-financial-services-framework/financial-services-industry-engagement/

## Engagement with the Australian Government: Law reform and inquiries

ASIC provides advice to the Australian Government on the operational implications of policy initiatives and legislative change to support the Government's law reform agenda. We implement reforms once they are passed by Parliament, including through regulatory guidance and using our regulatory and enforcement tools.

We identify the opportunities and risks that affect our ability to implement the law as intended by Parliament and advise on law reform to facilitate and improve the performance of the financial system.

In 2022–23, we actively participated in several reviews and reform processes, including:

- the Australian Law Reform Commission's Review of the Legislative Framework for Corporations and Financial Services Regulation
- the Review of the ASIC Industry Funding Model
- the Quality of Advice Review
- reforms to the buy now pay later sector
- implementation of the FAR
- Treasury consideration of law reform to regulate crypto-asset service providers and payment stablecoins.

## Engagement with Parliament: Accountability mechanisms

ASIC remains committed to engaging with and responding to parliamentary and other oversight and accountability mechanisms. Staff from a range of teams across ASIC make a substantial contribution to this work, in particular by preparing supporting materials for appearances at hearings, and written responses to Questions on Notice.

In 2022–23, we responded to 146 sets of Questions on Notice (around 504 individual questions) from parliamentarians. Questions on Notice cover topics across all of ASIC's remit, work and governance.

Detailed information on external oversight of ASIC, and ASIC's engagement with Parliament and other oversight mechanisms, is provided in Appendix 2: ASIC's governance and operations.

## Panels

We take a consultative approach to addressing harms and emerging developments in Australia's financial system. ASIC hosts the following consultative committees and forums:

- ASIC Consultative Panel
- ASIC Consumer Consultative Panel
- Corporate Governance Consultative Panel
- Cyber Consultative Panel
- Digital Finance Advisory Panel
- FICC Markets Consultative Panel
- Financial Advisers Consultative Panel
- Markets Consultative Panel.

### ASIC Consultative Panel

The ASIC Consultative Panel is our strategic consultative body – assisting ASIC to identify and assess potential threats and harms in the sectors we regulate, consult on proposed regulatory changes and market conditions, and provide input into our strategic and forward planning.

Panel members are pre-eminent representatives from the academic, consumer, industry, legal and regulatory sectors, and are appointed in their personal capacity.

The Panel's Terms of Reference were refreshed in 2022–23 to ensure it is working effectively and efficiently. This included amending the scope of the Panel to formally reflect its role in providing feedback on ASIC's strategic and forward planning and enhance member engagement, including through additional formal and ad hoc meetings.

The Panel met twice in 2022–23 to consider changing market conditions, review a range of threats and harms as input for ASIC's strategic planning for 2023–24, and discuss specific topics, such as changing capital market dynamics and sustainable finance. Members were also consulted on a range of issues in their areas of expertise, including cryptocurrencies, AI and retirement income.

### ASIC Consumer Consultative Panel

The ASIC Consumer Consultative Panel was established in November 1998 after we assumed regulatory responsibility for consumer protection in financial services. A key role of the Panel is to provide ASIC with information and intelligence on current and emerging consumer issues affecting consumers of the financial products and services ASIC regulates.

The Panel met in person three times in 2022–23, including in a joint session with the Australian Competition and Consumer Commission's (ACCC's) equivalent consumer panel, the Consumer Consultative Committee.

The Panel members' priority areas of focus included:

- financial services issues facing First Nations people and communities, particularly the effects of the failure of the Youpla Group (formerly the Aboriginal Community Benefit Fund), banking access, digital exclusion, second-hand car lending and insurance
- consumer credit and cost-of-living issues, including mortgage stress, financial hardship and credit reporting
- a joint focus with the ACCC's consumer panel on 'greenwashing' claims in financial services and across retail markets for goods and services
- general insurance claims handling, unfair contract terms, and the impacts of climate change and extreme weather events on insurance accessibility.

### Corporate Governance Consultative Panel

The Corporate Governance Consultative Panel continued to meet during 2022–23. The Panel was established in 2020 to enable ASIC to gain a deeper understanding of developments and emerging issues in corporate governance practices. Members of the Panel include listed company directors, industry association representatives, institutional investors and academics. The Panel met twice in 2022–23. It discussed climate change–related disclosure, whistleblower programs and the cyber resilience of companies.

### Cyber Consultative Panel

The Panel met twice this year, in November and May, in accordance with its Terms of Reference. This independent group advises ASIC on our supervisory approach for the cyber resilience of financial services and markets, and shares views on trends or emerging threats.

We engaged with this Panel in relation to our Cyber Pulse Survey to seek views and feedback on the form and content of the survey and our approach generally. Other topics of discussion included incident responses, the cyber insurance market domestically and the Australian Government's 2023–2030 Cyber Security Strategy consultation and the effect of the strategy on ASIC-regulated entities.

### Digital Finance Advisory Panel

The Digital Finance Advisory Panel was established in 2015 to help inform ASIC's financial technology (fintech) and regulatory technology (regtech) approach and to maintain engagement with the sector. Panel members are drawn from a cross-section of the fintech and regtech communities, academia and industry associations.

The Panel also includes active observers from government and regulatory agencies to help facilitate dialogue between industry and the public sector. The establishment of the Panel has fostered a network of domestic departments and agencies dealing with innovative businesses, promoting a coordinated approach to financial innovation and regtech. The Panel helps inform the focus of ASIC's engagement with the fintech and regtech sectors.

During 2022–23, the Panel explored topics including crypto-assets, payment reforms, the Consumer Data Right, central bank digital currencies and AI.

### FICC Markets Consultative Panel

The FICC Markets Consultative Panel is a new ASIC external panel that was formed in April 2023, and held its first meeting in the 2022–23 financial year. Issues discussed included FICC market conditions, the securitisation market, cyber and operational resilience in the industry, green bonds, and FICC monitoring and surveillance capabilities.

### Financial Advisers Consultative Panel

The Financial Advisers Consultative Panel met three times in 2022–23. The Panel provided an industry perspective on emerging risks and technological challenges facing the industry. The discussion focused on monitoring finfluencers, cyber resilience and security, and technology advances in financial advice processes.

Implementation of law reform work continued to feature in the meetings. This included relevant provider registration and qualified tax relevant provider status, the reportable situations regime, and design and distribution obligations. The Financial Advisers Register review and **Information Sheet 274**[35] *Tips for giving self-managed superannuation fund advice* were also discussed.

The Panel also provided industry insight into investment preferences for ESG credentials, product design offerings, client behaviour and the Quality of Advice Review work.

### Markets Consultative Panel

During 2022–23, the Markets Consultative Panel met five times. Issues discussed included market conditions and challenges, emerging risks in retail markets, crypto-assets, AI, monitoring of employee communications, cyber events, operational and market resilience, and changes to the market integrity rules.

## Improving stakeholder engagement through better regulatory efficiency

We are implementing three initiatives to improve regulatory efficiency and outcomes for stakeholders and ASIC. These initiatives contribute to ASIC administering the law more effectively, and make it easier for you to interact with us. They include continuing to develop and maintain our regulatory guidance; our use of information-gathering powers and early investigation meetings; and our approach to stakeholder engagement.

As part of this project, we launched a regulatory developments timetable in February 2023 to help industry better anticipate when we will issue draft or final guidance, or create a legislative instrument. The timetable will be published biannually.

These initiatives complement our projects to enhance our licensing processes, systems and related communications, which all contribute to regulatory efficiency and effectiveness.

35 https://asic.gov.au/regulatory-resources/financial-services/giving-financial-product-advice/tips-for-giving-self-managed-superannuation-fund-advice/

## ASIC's regional engagement program

We maintain an active presence in all states and territories across Australia. Our wide-ranging program of targeted engagement with regional stakeholders is led by the Regional Commissioners in each state and territory.

The Regional Commissioners also maintain a network of Regional Liaison Committees, which meet regularly, giving us opportunities to discuss current and emerging local issues with industry and consumer representatives in each area. Eleven face-to-face meetings were held in Queensland, New South Wales, South Australia, Tasmania, Victoria and Western Australia in 2022–23. These meetings provide valuable insights that help inform broader ASIC activity.

Our regional engagement program also includes direct engagement with community organisations, including First Nations representatives. For example, in the Northern Territory, ASIC liaises regularly with representatives of First Nations businesses, government departments and agencies, non-government organisations and financial counsellors who work with First Nations communities. Highlights this year included collaborating with **Beyond Blue**[36] to provide a workshop for business owners and managers in Central Australia and working with the Northern Territory Indigenous Business Network to deliver a business support workshop.

We also regularly promote ASIC's Moneysmart tools and resources to regional communities to encourage consumer financial capability. In March, we co-hosted a stand with the Australian Small Business and Family Enterprise Ombudsman at the South East Field Days event in regional South Australia. In 2022–23, we also partnered with Charles Darwin University to deliver seven Moneysmart workshops to students, and supported a trial Moneysmart schools project for public schools in the ACT.

During 2022–23, themes and issues discussed during regional engagement included the current economic environment, issues facing small businesses in the regions, and cost-of-living pressures on consumers.

Issues relating to insurance – including availability, affordability and claims handling – were particularly important for those communities affected by extreme weather events. Other discussions included the consequences of the variable levels of financial capability in communities, and the cost of and access to financial advice.

Another recurring theme was the challenges, particularly for small businesses, of maintaining effective cyber resilience and dealing with the increasing prevalence and complexity of scams and digitally enabled misconduct. An ongoing focus was ASIC's work in relation to cyber security, including how businesses can improve their cyber resilience, and combatting scams.

36 https://www.beyondblue.org.au/

Our regional liaison program continues to be an important element of our stakeholder engagement and informs our business planning and prioritisation of work.

> See section 2.7 for more information about our results against our Service Charter.

## International engagement

ASIC engages closely with peer regulators and agencies overseas to develop international regulatory policy, enhance cooperation, and positively influence the operation and regulation of global financial markets. In 2022–23, we made 225 international cooperation requests and received 362 in relation to activities such as surveillance, supervision, enforcement, research and licensing.

This included 93 international requests for assistance in enforcement matters, of which 34 requests (including supplementary requests) sought ASIC's assistance to compel materials from third parties under the *Mutual Assistance in Business Regulation Act 1992*.

We participate in a range of international forums. ASIC is a member of the:

- Board of IOSCO and is represented on its policy committees and taskforces, including those examining issues around financial stability, sustainable finance, asset management, crypto-assets, technology, market fragmentation, enforcement, consumer protection, emerging risks and standards implementation. As part of IOSCO, ASIC:
  - is Vice-Chair of the Committee on Regulation of Market Intermediaries
  - is a member of the Fintech Task Force
  - is a member of the Task Force on Sustainable Finance
  - participates in Asia-Pacific Regional Committee meetings and co-chairs the Working Group on Enhancing Supervisory Cooperation
- International Association of Insurance Supervisors' Market Conduct Working Group
- International Financial Consumer Protection Organisation and participates in the G20/Organisation for Economic Co-operation and Development (OECD)'s Financial Consumer Protection Task Force initiatives
- Council of Financial Regulators' International Coordination Group, which meets regularly to coordinate a cohesive approach to major international regulatory risks and issues
- Global Financial Innovation Network, which is committed to supporting financial innovation and providing a more efficient way for innovative fintech and regtech firms to interact with regulators.

ASIC negotiates memorandums of understanding (MOUs) with international regulatory agencies to foster coordination, cooperation and information sharing, and reflect agencies' intentions to maintain proactive, open and collaborative relationships. These agreements strengthen cooperation and underpin market access arrangements; e.g. substituted compliance arrangements.

In 2022–23, ASIC:

- concluded an MOU with our counterpart in Luxembourg and is finalising several MOUs with counterparts in New Zealand and India
- co-led the negotiation of a multilateral MOU on supervision between member authorities of IOSCO's Asia-Pacific Regional Committee for the Asia-Pacific region.

Throughout 2022–23, ASIC continued to support the Department of Foreign Affairs and Trade in negotiations for free trade agreements with multiple countries.

## Innovation Hub

As part of our approach to support responsible innovation, we established the Innovation Hub in 2015, which helps innovative Australian fintech and regtech businesses navigate the regulatory framework. It also provides a platform for domestic and international engagement on fintech and regtech developments.

### Informal assistance and guidance

In 2022–23, ASIC staff met with representatives of 84 innovative businesses to help them understand how the regulatory framework may apply to their intended business model. Some business models proposed involved payments, credit, services related to crypto-assets, regtech and services that use a range of different technologies.

During the financial year, ASIC granted 12 licences to new innovative businesses, which included neo banks and businesses offering services in payments, digital advice and crypto-assets. Fintech businesses that received informal assistance from our Innovation Hub before submitting their licence applications were consistently approved faster than those that did not seek assistance.

### Enhanced regulatory sandbox

The enhanced regulatory sandbox (ERS) administered by the Innovation Hub and the Licensing team allows eligible businesses to test certain innovative financial services or credit activities for up to 24 months without first obtaining an AFS or credit licence. The ERS allows ASIC to facilitate innovation while ensuring consumer and investor protection.

In 2022–23, eight entities actively tested their business model in the ERS and four of those entities reached the end of their exemption period. The business models tested included payment facilities and equity market comparison services. At the end of their exemption period, representatives of a number of the businesses said they had a positive experience. One has since obtained an AFS licence while another is in the process of seeking an AFS licence.

### Domestic and international engagement

In 2022–23, the Innovation Hub hosted four Digital Finance Advisory Panel meetings, one Regtech Liaison Forum and one Financial Innovation: Regulator Meet-up session. The latter brought together industry leaders and regulatory representatives to help inform ASIC and stakeholders on key fintech- and regtech-related developments, issues and collaboration opportunities.

ASIC is one of 11 coordination group members of the Global Financial Innovation Network, which has more than 70 members, including regulators, government bodies and international organisations.

ASIC is also a member of the steering group for the IOSCO Fintech Task Force, which leads two workstreams, Crypto and Digital Assets, and Decentralised Finance.

### Business Research and Innovation Initiative – Regtech Round

Sponsored by the Department of Industry, Science and Resources, the Business Research and Innovation Initiative (BRII) is an Australian Government program that provides funding for small to medium regtech businesses to develop innovative solutions to regulatory challenges in government.

We were selected as one of four government agencies to participate in the BRII RegTech Round, which assesses the potential of regtech to solve challenges across government agencies and departments.

Our challenge explores the potential of using technology to help identify and assess poor market disclosure by listed companies. This is an important initiative that forms part of our digital and data agenda.

In the first stage of the program, five regtech entities were awarded grants of up to $100,000 to conduct a three-month feasibility study of their proposed solutions. Eastern Analytica Pty Ltd (trading as DHI-AI PTY LTD) provided a successful solution that took it to the next stage of the program. ASIC will work closely with the company, which will receive another grant (of up to $1 million) to develop a proof of concept over 15 months.

### Small business engagement

ASIC plays an important role in relation to small businesses to ensure a strong and healthy economy for all Australians. As part of this role, we:

- assist small businesses by providing information and guidance
- engage with small businesses so that we can understand and respond to the challenges they face
- help to protect small businesses through our surveillance, policy and enforcement work.

We are also a member of the ATO-led Phoenix Taskforce. For more information on this taskforce, see case study 2.6.1.

## Education

Through Moneysmart, ASIC seeks to improve the financial skills and knowledge of consumers and investors to help them make informed financial decisions.

The Moneysmart program includes the Moneysmart website, social media communities and lesson plans to help teachers deliver financial literacy education in the classroom.

In 2022–23, the Moneysmart website had 9.7 million Australian users, with the most popular tools being the income tax calculator (1.9 million page views) and the mortgage calculator (1.6 million page views), which had functionality added to it this year to help users see the effect of rising interest rates on their home loan repayments.

We engage with consumers and investors via social media channels, encouraging Australians to have conversations about money and to use Moneysmart's tools and content. Our social media activity included:

- Facebook: 196,900 likes, with 46 million impressions and 859,000 engagements
- Twitter: 61,400 followers, with 674,000 impressions and 9,400 engagements
- Instagram: 4,600 followers, with 5.3 million impressions and 7,000 engagements.

### ASIC's resources help Australians manage the rising cost of living

- From February to June 2023, there was a marked increase (600,000 more users than the previous year) in visitation to our Moneysmart website as Australians sought guidance on managing their finances.
- In response to increased interest rates and financial pressures, ASIC created a cost-of-living hub on the Moneysmart website to provide people with information.
- In March 2023, a campaign providing information on managing mortgage repayments reached 590,000 people on social media. The campaign used data provided by lenders to reach consumers in 21 postcodes known to be experiencing mortgage stress, encouraging them to review their situation and contact their lender.

### Building awareness of scams

- Australians lost $377 million to investment scams in 2022, and scams are a strategic priority for ASIC. We promoted scams awareness throughout 2022–23, mainly through Moneysmart's social media channels.
- In November 2022, ASIC participated in Scams Awareness Week, which is an annual campaign to reduce the impact of scams by helping consumers identify and avoid them.
- The Moneysmart website was also a key source of information during major data breaches in late 2022 as Australians sought information on identity theft.

### Refreshed teacher resources

- ASIC provides access to free lesson plans for teachers and members of the public to support financial literacy.
- In February 2023, we released eight new lesson plans tailored to different grade levels, from primary through to secondary school. The lesson plans cover core financial topics, such as budgeting, compound interest, buying a car and spotting scams.

# 2.7 ASIC Service Charter results

The ASIC Service Charter covers the most common interactions between ASIC and our stakeholders and sets performance targets for these. This includes a number of interactions through services provided by the ATO and ABRS on behalf of ASIC (see 'Registry services and outcomes' on page 75). Table 2.7.1 sets out our performance against the key measures outlined in the Service Charter for the 2022–23 financial year.

### Table 2.7.1 ASIC Service Charter performance 2022–23

| Service | Measure | Target | Result |
|---|---|---|---|
| **When you contact us** | | | |
| General telephone queries | We aim to answer telephone queries on the spot | 80% | 89.1% |
| General email queries | We aim to reply to email queries within three business days | 90% | 99.9% |
| **Give reasonable assistance** | | | |
| 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% | 100.0% |
| 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% | 99.7% |
| **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% | 99.4% |
| Registering a company via paper application | We aim to register the company within two business days of receiving a complete application | 90% | 92.2% |

| Service | Measure | Target | Result |
|---|---|---|---|
| Registering a business name via paper application | For paper applications lodged by mail – complete applications for business name registrations within seven business days | 90% | 94.1% |
| 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% | 92.3% |
| Registering as an auditor | We aim to decide whether to register an auditor within 28 days of receiving a complete application | 80% | 80% |
| 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: 75%<br>Varied: 66% |
| | We aim to decide whether to grant or vary an AFS licence within 240 days | 90% | Granted: 88%<br>Varied: 83% |
| Applying for or varying a credit licence | We aim to decide whether to grant or vary a credit licence within 150 days | 70% | Granted: 91%<br>Varied: 81% |
| | We aim to decide whether to grant or vary a credit licence within 240 days | 90% | Granted: 93%<br>Varied: 87% |

| Service | Measure | Target | Result |
|---|---|---|---|
| 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 | 70% | 81% |
| | 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 | 90% | 94% |
| Complaints about misconduct by a company or individual | If someone reports alleged misconduct by a company or individual, ASIC aims to respond within 28 days of receiving all relevant information | 70% | 72% |
| **When you have complaints about us** | | | |
| About ASIC officers, services or actions | We aim to resolve a complaint within 28 days | 70% | 97% |

# 2.8 Unclaimed money

ASIC is responsible for the administration of unclaimed money from authorised deposit-taking institutions, under section 69 of the *Banking Act 1959* (Banking Act); life insurance companies and friendly societies, under section 216 of the *Life Insurance Act 1995* (Life Insurance Act); and companies with unclaimed money, under various sections of the *Corporations Act 2001* (Corporations Act).

ASIC's register of unclaimed money is publicly available through the ASIC Moneysmart webpage. Claims are processed within 30 business days of receiving all necessary claim documentation. We have paid claimants interest on unclaimed money from 1 July 2013.

During 2022–23, ASIC received $341.8 million in unclaimed money compared to $289 million received in 2021–22. We paid a total of $124.3 million in claims and interest in 2022–23 compared with $109.7 million the previous year. Funds are transferred to and from the Official Public Account.

### Table 2.8.1 Amount paid to owners of unclaimed money

| | 2022–23 ($) | | | |
|---|---|---|---|---|
| **Claims by type** | **Principal** | **Interest** | **Total** | **2021–22 ($)** |
| Company | 32,394,309 | 1,414,739 | 33,809,048 | 34,338,410 |
| Banking | 74,456,046 | 3,108,109 | 77,564,155 | 65,975,776 |
| Life insurance | 12,344,879 | 608,960 | 12,953,839 | 9,423,909 |
| **Total** | **119,195,234** | **5,131,808** | **124,327,042** | **109,738,095** |

| | 2022–23 ($) | | | |
|---|---|---|---|---|
| **Claims by type** | **Principal** | **Interest** | **Total** | **2021–22 ($)** |
| Deregistered company trust money | 5,701,908 | N/A | 5,701,908 | 2,531,694 |