



ASIC
Australian Securities &
Investments Commission

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Brief to incoming government

May 2022

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Executive summary

This brief sets out key aspects of ASIC's remit **s 47C**, current law reform programs and areas of ASIC's focus for the next 12 months. More detailed material is at Appendix A. Appendix B is a selection of key regulatory documents published by ASIC in the last 12 months.

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Modernising Business Registers

The Government announced the Modernising Business Registers (**MBR**) program in November 2019, led by the Australian Taxation Office (**ATO**). ASIC is a key partner agency. The program will bring together the Australian Business Register and over 30 ASIC registers onto a single whole-of-government business register platform.

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Breach reporting

The new financial services and credit licensee breach reporting regime commenced on 1 October 2021, implementing the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (**FSRC**) recommendations to clarify and strengthen the breach reporting regime and create 'notify, investigate and remediate' obligations.

The new regime is ambitious – broader and more complex than the previous regime – and ASIC is working closely with industry to address challenges in implementation.

The reforms introduce an obligation on ASIC to publish data about significant and likely significant breaches of core obligations, within four months of the end of each financial year. ASIC is planning to release the first publication on the data gathered in November 2022.

CHES replacement

The Council of Financial Regulators (**CFR**) member agencies (APRA, ASIC, Reserve Bank of Australia (**RBA**) and Treasury) and ACCC are engaging closely with Australian Securities Exchange Ltd (**ASX**) and monitoring ASX's conduct of its Clearing House Electronic Subregister System (**CHES**) replacement program.

The ASX recently delayed the 'go-live' date for the CHES replacement. We expect the ASX to notify us as soon as practicable with the revised go-live date. ASIC's supervision of ASX is currently focused on ASX's governance of the CHES replacement program.

Additional licence conditions were imposed on ASX Clear and ASX Settlement on 24 November 2021, following our investigation of the ASX's trade outage in November 2020. The licence conditions appointed Ernst & Young (**EY**) as an independent expert to provide additional assurance about the CHES replacement program. EY will assess whether ASX's assurance program is fit for purpose, identify any shortfalls, and regularly report to ASIC. ASIC is closely monitoring ASX's progress on the program.

Industry Funding Model Review

The industry funding model (**IFM**) applied to ASIC took effect on 1 July 2017. Approximately 96% of ASIC's activities are recovered in the form of industry funding levies. The remaining 4% are recovered via regulatory fees for transactions initiated by an applicant.

In August 2021, the Government announced that Treasury, in consultation with the Department of Finance and ASIC, would conduct a review of the IFM in 2022 to ensure it remains fit for purpose in the longer term.

In March 2022, Treasury consulted with select industry groups. ASIC participated in this consultation and continues to provide support to Treasury. Further public consultation by Treasury may occur at a later stage.

Digital/data transformation

ASIC's relevance as a regulator rests on our ability to keep pace with industry and regulate in a way that is data-driven and leverages these technologies and methods.

We are developing a Digital Strategy which will set the vision for ASIC as a digitally enabled regulator and build on initiatives already underway. s 47C

Youpla (formerly Aboriginal Community Benefit Fund (ACBF))

The Youpla Group, which sold funeral benefit products (a form of funeral insurance) mainly to indigenous Australians, collapsed in March 2022, resulting in hardship for many consumers and their families.

ASIC has been working closely with NSW Fair Trading (which regulates funeral funds), and the liquidator of the Group. We have an ongoing investigation into the directors' conduct.

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Financial Regulator Assessment Authority (FRAA) assessment of ASIC

The FRAA was established on 1 July 2021 following FSRC recommendations. Its role is to assess and report on the effectiveness and capability of each of ASIC and Australian Prudential Regulation Authority (**APRA**) every two years. ASIC has been working intensively with FRAA's Treasury Secretariat and the FRAA Panel to support its assessment work.

The FRAA's first assessment of ASIC is due to be delivered to the Minister in July 2022. This review will assess ASIC's effectiveness and capability in strategic prioritisation, planning and decision-making, surveillance and licensing. The FRAA is also examining ASIC's use of data and technology in each of these focus areas.

Law reform

Highlighted below are key current law reform programs.

Compensation Scheme of Last Resort (CSLR)

On 28 October 2021, the Government introduced bills into Parliament to establish a CSLR, to enable payment of up to \$150,000 in compensation to eligible consumers

who had received a determination for compensation from the Australian Financial Complaints Authority (**AFCA**) which the relevant financial services or credit licensee is unable to pay.

Under the now-lapsed bills, ASIC would collect CSLR levies, have an oversight role, have enhanced enforcement powers in relation to unpaid levies, and be able to take licensing action where the CSLR pays a determination. ASIC supports introduction of a CSLR.

Competition in Clearing and Settlement, and Financial Market Infrastructure Reforms

In 2016, the Government endorsed Competition in Clearing and Settlement (**CiCS**) reforms that would allow ASIC and the ACCC to impose requirements on ASX's cash equity CS facilities, including rule-making powers for ASIC in respect of CS facilities, and an arbitration power for the ACCC for disputes about access to these CS services.

The CiCS reforms were initially intended to be included in, or alongside, the Financial Market Infrastructure Reforms regulatory reform package, which the Government endorsed in 2021. ASIC supports the CiCS and FMI reforms being progressed.

Financial Accountability Regime (FAR)

The proposed FAR extends the Bank Executive Accountability Regime (**BEAR**) to directly cover conduct issues and apply to a wider range of entities. It is intended to improve the risk and governance cultures of entities in the banking, superannuation and insurance sectors.

ASIC supports greater executive accountability for poor conduct throughout retail financial services. ASIC and APRA have worked together closely to provide technical and policy input to Treasury, and around the systems, guidance and industry engagement needed for joint administration. The agencies will work together to facilitate a smooth transition and implementation of the FAR, should the legislation be passed.

Upcoming matters that will require Ministerial attention

Date	Matter
June 2022	Approval for ASIC delegate to decide on issue of short-term credit product intervention order (PIO) and note possible ASIC delegate decision on continuing credit PIO.
July 2022	Approve for publication the final Cost Recovery Implementation Statement (CRIS) under the industry funding model.
July 2022	Approval required for ASIC to extend the binary options PIO in force from May 2021.
End July 2022	FRAA Report provided to Minister - to be tabled in both Houses of Parliament within 20 sitting days thereafter.

ASIC Priorities

ASIC's four strategic priorities for the period 2022-26 are:

1. Reduce the risk of harm to consumers of financial and credit products caused by poor product design and marketing.
2. Support market integrity through proactive supervision and enforcement of governance and transparency standards in relation to sustainable finance.
3. Protect consumers, especially as they plan for retirement, with a focus on superannuation products, managed investments, and financial advice.
4. Focus on the impacts of technology in financial markets and services, drive good cyber-risk practices, and address digitally enabled misconduct.

We have identified nine ASIC areas of focus for 2022-23 for a cross-ASIC approach. Several of these are described in broad detail below (see above for breach reporting, data/digital strategy and FAR).

1. Sustainable finance/Greenwashing
2. Breach reporting
3. Regulatory efficiency
4. Data strategy and digital transformation
5. Crypto assets
6. Cyber resilience
7. Scams

8. Financial Accountability Regime
9. Design and distribution obligations

Sustainable finance/Greenwashing

Proactive supervision and enforcement of governance and transparency standards in relation to sustainable finance is a priority for ASIC. We want to see continued improvement in climate change governance and disclosure practices; and in particular, that climate change-related disclosures by listed companies comply with the law and are decision-useful for investors.

ASIC is part of the CFR Climate Working Group with Treasury, APRA and the RBA, to advance the work of the International Sustainability Standards Board initiative for a global baseline for disclosure standards.

We recently prepared an Information Sheet to help issuers ensure the promotion of their ESG products does not involve 'greenwashing' or otherwise constitute statements or conduct that is misleading or deceptive. We expect to publish the Information Sheet in June 2022.

Regulatory efficiency

In 2021, ASIC established the Regulatory Efficiency Unit, to promote better regulation by identifying unnecessary frictions in ASIC's interaction with its regulated population and taking steps to streamline our interaction with our regulated population and make it easier for business to get things done.

The Unit has consulted widely among a broad range of ASIC stakeholders and is preparing initiatives to improve ASIC's regulatory communication, guidance and processes.

Crypto-assets

ASIC, along with other regulators, has been providing input to Treasury on a regulatory framework for crypto-assets and those who provide services in the crypto-asset sector. ASIC considers that consumer protection should be a key focus of any regulatory regime applying to crypto-assets.

Scams

ASIC has recently published information about how the law applies to social media influencers, and the licensees who use them (see [Information Sheet 269](#) *Discussing*

financial products and services online (INFO 269)). Influencers who discuss financial products and services online, and do not comply with the financial services laws, risk substantial penalties.

s 47C, s 37(2)(b), s 47E (d)

ASIC has alerted consumers to a rise in investment scams impersonating companies or financial investment firms. ASIC's [Moneysmart website](#) provides consumers with information on banking and credit scams, identity theft, investment scams, Ponzi schemes, superannuation scams and unlicensed companies.

ASIC has participated in a number of reviews and inquiries relevant to the ePayments Code over the last several years, and possible ways it could be used to help protect consumers from scams. ASIC supports work by Government to update and mandate the ePayments Code.

About ASIC

The Australian Securities and Investments Commission (**ASIC**) regulates Australian companies, financial markets, financial services organisations, and professionals who deal and advise in investments, superannuation, insurance, deposit taking and credit.

ASIC plays a critical role in Australia's financial system. ASIC staff are committed to making a difference to the community by protecting consumers and investors, and helping capital flow efficiently through the system. Our vision is a fair, strong and efficient financial system for all Australians. ASIC's Annual Report for 2020-21 is [here](#).

Regulated sectors

ASIC has a very broad jurisdiction and remit, covering a range of regulated populations that differ significantly in number, size and risk profile. For example, we oversee 4,666 Australian credit licensees and 38,766 credit representatives, 19,279 financial advisers, 425 responsible entities, 3,616 registered managed investment schemes, 142 authorised deposit taking institutions, 95 superannuation trustees, 81 general insurers, 3,553 registered company auditors, 23,360 unlisted public companies and 2,085 listed companies, 47 licensed domestic and overseas markets, and 104 market participants. We have stakeholder teams that focus on and interact with each of these regulated sectors. Our enforcement teams also operate across all of our regulated sectors.

Our regulatory toolkit includes licensing, engagement, education, guidance, input into law reform, surveillance and supervision, and enforcement. We use these tools to take targeted and proportionate action to help advance our statutory objectives.

Enforcement

ASIC is a strong and targeted law enforcement agency and an active litigator against misconduct. Our enforcement actions prioritise areas of greatest harm, protecting market integrity and the protection of vulnerable consumers and investors.

At 30 April 2022, we had:

- 134 investigations on foot.
- 83 criminal matters before the courts. Of these, 28 are financial services-related, 14 are markets-related and 41 relate to directors' duties and corporate governance.
- 51 civil matters before the courts. Of these, 38 are financial services-related, 10 are markets-related and 3 relate to corporate governance.

Accountability and governance

ASIC is subject to a wide range of accountability mechanisms, including several Parliamentary committees and most recently, assessment by the Financial Regulator Assessment Authority (**FRAA**).

The Government published its most recent [Statement of Expectations \(SOE\)](#) for ASIC in August 2021. We published our [Statement of Intent \(SOI\)](#) in response, outlining how we will carry out ASIC's functions and exercise ASIC's powers to discharge our responsibilities. ASIC's Corporate Plan for 2021-25 is [here](#).

ASIC has six Commissioners, one of whom will complete her term in June 2022 (biographies [here](#)). ASIC's governance structure was considered by the PJC on Corporation and Financial Services in its report of March 2020. A link to ASIC's current organisational chart is [here](#).

Funding

ASIC will receive \$422m in operational funding in 2021-22, decreasing to \$418m by 2025-26. A further ~\$20m is received per annum in capital funding to support the

replacement of assets. ASIC collects around \$1.7bn per annum in government revenues through fees, charges and levies.

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Appendix A

About ASIC

ASIC is Australia's corporate, markets, financial services and consumer credit regulator.

We are an independent Commonwealth Government body constituted under the *Australian Securities and Investments Commission Act 2001* (**ASIC Act**).

ASIC vision

A fair, strong and efficient financial system for all Australians.

ASIC regulatory mission

To realise our vision we will use all our regulatory tools to:

- change behaviours to drive good consumer and investor outcomes
- act against misconduct to maintain trust and integrity in the financial system
- support innovation in the financial system
- help Australians to be in control of their financial lives.

Legislative responsibilities

ASIC's statutory functions and powers are conferred under the *Corporations Act 2001* (**Corporations Act**), the ASIC Act, and a number of other statutes. They broadly encompass monitoring and promoting market integrity and consumer protection in relation to the Australian financial system. Under the ASIC Act, in performing our functions and exercising ASIC's powers, ASIC must strive to:

- maintain, facilitate and improve the performance of the financial system and entities within it, in the interests of commercial certainty, reducing business costs, and the efficiency and development of the economy
- promote confident and informed participation by investors and consumers in the financial system
- administer the law effectively and with minimal procedural requirements
- receive, process and store, efficiently and quickly, the information ASIC receives
- make information about companies and other bodies available to the public as soon as practicable
- take whatever action ASIC can, and that is necessary, to enforce and give effect to the laws that confer functions and powers on ASIC.

We enforce the law and regulate companies, financial markets, and financial services under the following key legislation:

- ASIC Act
- Corporations Act
- *Insurance Contracts Act 1984*
- *National Consumer Credit Protection Act 2009* (**National Credit Act**)
- *Business Names Registration Act 2011*
- *ASIC Supervisory Cost Recovery Levy Act 2017*
- *ASIC Supervisory Cost Recovery Levy (Collection) Act 2017*.

We also administer parts of the following legislation:

- *Superannuation Industry (Supervision) Act 1993* (**SIS Act**)
- *Life Insurance Act 1995*
- *Medical Indemnity (Prudential Supervision and Product Standards) Act 2003*
- *Retirement Savings Accounts Act 1997*.

Accountability

Parliamentary Committees

ASIC is accountable to Parliament through the following Parliamentary committees, which inquire and report on ASIC's activities and annual reports:

- Parliamentary Joint Committee on Corporations and Financial Services
- Senate Economics Legislation Committee
- House of Representatives Standing Committee on Economics.

Financial Regulator Assessment Authority (FRAA)

The FRAA was established on 1 July 2021 in response to recommendations of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (**FSRC**). It is tasked with assessing and reporting on the effectiveness and capability of ASIC and APRA every two years. The FRAA is composed of three part-time members appointed by the Minister, supported by a Secretariat of Treasury staff. The current members of the FRAA are Mr Nicholas Moore (Chair), Ms Fiona Crosbie, and Mr Craig Drummond.

The FRAA's first assessment of ASIC is due to be delivered to the Minister in July 2022. The review will be a targeted assessment of ASIC's effectiveness and capability in strategic prioritisation, planning and decision making, and ASIC's surveillance and licensing functions. The FRAA will also examine ASIC's use of data and technology in each of these focus areas.

The FRAA's role in assessing effectiveness and capability will provide a meaningful and consistent measure of our capabilities and effectiveness over time. ASIC has engaged productively with the FRAA members and secretariat to help build their understanding of what we do and how we do it, including undertaking a comprehensive self-assessment to help inform the FRAA. We have engaged openly with the FRAA about our achievements, as well as the challenges we face.

We will continue to work constructively with the FRAA to support them in their work.

Australian Commission for Law Enforcement Integrity (ACLEI)

ASIC, along with other Australian Government law enforcement agencies, has been within the jurisdiction of ACLEI since 1 January 2021.

ACLEI supports the Integrity Commissioner to provide independent assurance to Government about the integrity of Australian Government law enforcement agencies and their staff members.

The *Law Enforcement Integrity Commissioner Act 2006* (**LEIC Act**) sets out a framework under which the heads of the subject agencies work in partnership with ACLEI to detect and investigate corruption issues and prevent corrupt conduct within those agencies.

The LEIC Act imposes important reporting obligations on the ASIC Chair, including to notify the Integrity Commissioner of an allegation, or information, that raises a corruption issue in ASIC as soon as practicable after becoming aware of it. ASIC's relationship with ACLEI has been transparent and productive.

Other accountability mechanisms

Other accountability mechanisms include:

- responsible Ministers
- the [Australian Government's Statement of Expectations](#)
- the governance framework in the *Public Governance, Performance and Accountability Act* (**PGPA Act**)
- reporting against the [Australian Government's Regulator Performance Guide](#)
- the regulatory impact principles overseen by the Office of Best Practice Regulation
- audits by the Australian National Audit Office (**ANAO**)
- ASIC's industry funding model (**IFM**)
- freedom of information (**FOI**) legislation
- the ongoing transparency reflected in our regular publications and reporting.

Strategic priorities

In 2022–26, ASIC will be concentrating on four external strategic priorities and four internal strategic priorities, set out below. ASIC has recently extended the timescale for strategic priority setting, to conform with the four-year cycle of the ASIC Corporate Plan and funding. ASIC's 2022 Corporate Plan, to be published in August 2022, will explain our strategic priorities for the next four years and highlight our short-term annual focus areas under each priority.

ASIC's external strategic priorities

External strategic priority 1: Reduce the risk of harm to consumers of financial and credit products, caused by poor product design, distribution and marketing, especially by driving compliance with new requirements

ASIC will focus on promoting good design and strong governance around products that appropriately manage the risk of harm to consumers while providing access to capital. We will also focus on improving standards of conduct and the design and distribution of products by the financial services and credit industry.

External strategic priority 2: Support market integrity through proactive supervision and enforcement of governance, transparency, and disclosure standards in relation to sustainable finance

ASIC will monitor the governance, accountability, sustainability and risk management practices of our regulated population to protect consumers, investors and creditors. We will focus on maintaining professional standards and support confidence and integrity in markets.

External strategic priority 3: Protect consumers, especially as they plan and make decisions for retirement, with a focus on superannuation products, managed investments, and financial advice

ASIC will focus on improving outcomes for consumers of financial and credit products and services, particularly for consumers experiencing vulnerability. We will conduct strategic and reactive surveillances covering superannuation accumulation and retirement products.

External strategic priority 4: 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

ASIC will continue to focus on raising awareness and driving behavioural change in the approach to cyber and operational resilience of industry and individual firms. We will seek to minimise the risk of disruption arising from cyber-attacks and promote confidence in markets.

ASIC's internal strategic priorities

Internal strategic priority 1: Digital capability uplift and strategy

Through our digital strategy, ASIC will focus on developing capability and expanding our use of digital technology to inform markets and support more efficient processes in our regulatory work.

Internal strategic priority 2: Data strategy

ASIC will implement a multi-year coordinated program to execute our data strategy. This strategy will contribute to improvements in our efficiency and effectiveness, driven by access to information and adoption of analytical tools to help us better identify and prioritise issues in our regulatory environment.

Internal strategic priority 3: Modernising business registers

ASIC will continue to support the successful transfer of ASIC registers to the Australian Business Registry Services (**ABRS**).

Internal strategic priority 4: Capability and capacity

ASIC is focusing on enhancing our budget and planning process to ensure our resources are aligned to our priorities. We are looking to replace our finance and human resource systems with new technology to enhance the data collected and the user experience. We are also focusing on recruiting and retaining talent, including supporting the need to grow our technical proficiency.

Regulatory cooperation

Council of Financial Regulators (CFR)

ASIC is a member of the CFR, the coordinating body for Australia's main financial regulatory agencies. Together with the other three members – APRA, the RBA and Treasury – it partners on initiatives to promote stability of the Australian financial system and support effective and efficient regulation by Australia's financial regulatory agencies.

The CFR's focus on cooperation and coordination is supported by multiple [MOUs](#) and bilateral coordination arrangements between member agencies.

The CFR has established working groups, including staff from all the CFR agencies, to engage with particular financial sector matters. Examples of topics covered by current CFR working groups include crypto-assets, debanking, cyber security, and crisis management arrangements for market infrastructure providers and housing markets.

Australian Prudential Regulation Authority (APRA)

ASIC and APRA have a strong, open and collaborative working relationship and regularly consult and engage on matters of mutual interest or concern. Proactive cooperation between ASIC and APRA is important to strengthen the effectiveness and contribute to the efficiency of regulatory outcomes across the financial sector.

The collaboration is underpinned by an engagement structure that enhances cooperation through regular strategic discussions between the ASIC Commissioners and APRA Members at APRA-ASIC Committee (**AAC**) meetings.

The AAC sets the strategic direction for APRA-ASIC cooperation, while the standing committees are charged with the coordination of APRA-ASIC engagement relating to:

- credit, banking and payment providers
- insurance
- superannuation
- enforcement activities
- internal capabilities, which focuses on internal matters of common interest, such as communication and risk management.

Given the alignment between the responsibilities of ASIC and APRA, the activities of one agency can often inform or assist the work of the other. It is important that the agencies maintain strong engagement and proactively exchange information of interest to each other to achieve strong outcomes.

ASIC and APRA have an [MOU](#) that sets out a framework for engagement, including coordination, cooperation and information sharing between the agencies.

Under the MOU, ASIC and APRA have agreed to:

- proactively provide appropriate information and documents that are relevant to the other agency and respond promptly to information and document requests
- seek input from, or collaboration with, the other agency to achieve or improve regulatory outcomes, particularly in policy development, enforcement actions, consultation with industry and statistical collections
- seek to improve efficiencies for the agencies and industry participants.

Coregulation of superannuation

The respective superannuation responsibilities of ASIC and APRA are:

- ASIC is primarily responsible for ensuring registrable superannuation entity (**RSE**) licensees meet their conduct obligations in their dealings with consumers, including disclosure and advice to members and ensuring members have access to complaints processes
- APRA is primarily responsible for ensuring RSE licensees prudently manage their business operations in a manner consistent with their member best interest obligations and the delivery of quality member outcomes.

APRA and ASIC continue to work together to achieve better outcomes for members and reduce regulatory burden to the extent feasible. APRA and ASIC recognise that this involves effectively harnessing each agency's different approach to regulation and supervision, while minimising duplication of regulatory effort.

Australian Taxation Office (ATO)

ASIC and the ATO have an effective working relationship. This is reflected in the [MOU](#), which provides guidance on collaborating and cooperating in respect of the statutory functions of each agency. In addition to the matters covered by the MOU, ASIC and the ATO enter into specific arrangements for cooperation as required. Such arrangements may be bilateral or multilateral, and include information sharing.

ASIC, together with other government agencies, is also a member of the following ATO-led multi-agency taskforces:

- the Serious Financial Crime Taskforce (**SFCT**), which was established in 2015 to identify and address serious and complex forms of financial crime.
- the Phoenix Taskforce which was established in 2014 to detect, deter and disrupt illegal phoenixing. The most serious cases of illegal phoenixing are referred to the SFCT.

Australian Competition and Consumer Commission (ACCC)

ASIC and ACCC share responsibility for overseeing compliance with the Australian Consumer Law at a federal level – ASIC for financial products and services, and the ACCC for other goods and services. ASIC and the ACCC work closely together regularly on compliance and enforcement matters, as consumer issues sometimes span both of our jurisdictions (e.g. certain scam and crypto-asset matters).

ASIC and ACCC have standing bilateral consultation arrangements, and both participate with the states and territories in national consumer affairs standing committees and bodies. We work together with the states and territories on national

consumer affairs issues, from policy matters (with Treasury) through to education, compliance and enforcement issues.

Australian Transaction Reports and Analysis Centre (AUSTRAC)

ASIC has an effective working relationship with AUSTRAC. An ASIC Commissioner jointly chairs a Quarterly Strategic Committee with the Deputy Chief Executive of AUSTRAC. There are a range of operational meetings that sit under that committee. ASIC and AUSTRAC sit together on a range of whole-of-government forums, including the National Criminal Intelligence Capability Committee, Serious Financial Crime Taskforce and the Fintel Alliance. ASIC and AUSTRAC share appropriate intelligence holdings, including risk assessments, threat alerts and tactical intelligence reports.

International cooperation

ASIC engages closely with peer regulators and agencies overseas, as well as international regulatory forums, to develop international regulatory policy, enhance cooperation, and positively influence the operation and regulation of global financial markets.

ASIC's continued strategic participation in multilateral forums and bilateral channels contributes to the way we address market vulnerabilities and consumer harms and how we support a domestic recovery in an interconnected global financial system.

ASIC facilitates cross-border financial activities and capital flows by:

- facilitating international business opportunities, negotiating MOUs to promote access to overseas markets for Australian businesses, and supporting the Australian Government in the negotiation of free-trade agreements
- contributing to the work of international bodies, such as the Global Financial Innovation Network (**GFIN**), and supporting innovative fintech developments between jurisdictions
- designing and implementing regulatory policies relating to the Asia Region Funds Passport
- negotiating and implementing bilateral and multilateral agreements and MOUs on regulatory, supervisory and enforcement matters, and exchanging enforcement information under the International Organization of Securities Commissions (**IOSCO**) multilateral MOU to mitigate poor behaviour and protect investors.

ASIC participates in a range of international forums:

- ASIC is a member of the board of the IOSCO and is represented on its policy committees and taskforces, including those examining issues around financial stability, sustainable finance, asset management, fintech and crypto-assets, technology, market fragmentation, enforcement, emerging risks, and standards implementation.
- ASIC is co-chair of the IOSCO Retail Market Conduct Task Force.
- ASIC participates in IOSCO Asia-Pacific Regional Committee (**APRC**) meetings and co-chairs the APRC Working Group on Enhancing Supervisory Cooperation.
- ASIC serves as a board member of the International Forum of Independent Audit Regulators.
- ASIC is a member of the International Association of Insurance Supervisors and a member of their Market Conduct Working Group.
- ASIC vice chairs the International Financial Consumer Protection Organisation and participates in G20/Organisation for Economic Cooperation and Development Financial Consumer Protection Taskforce initiatives.
- ASIC is a member of the newly formed CFR International Coordination Group, which meets regularly to coordinate a cohesive approach to major international regulatory risks and issues.

Reviews and inquiries

Australian Law Reform Commission (ALRC) Corporations and Financial Services Legislative Framework Review

The ALRC has been asked to inquire into the potential simplification of laws that regulate corporations and financial services in Australia, within existing policy settings. The review is part of the Australian Government's response to the FSRC's final report.

The ALRC released its first interim report in November 2021. The ALRC will release two further interim reports before releasing a final report on 30 November 2023.

This review is important to ASIC and the entities we regulate. A more navigable and less complex legislative framework is likely to bring substantial benefits for industry stakeholders, consumers and ASIC.

ASIC and the ALRC have established a working group to assist the ALRC as required. We will continue to engage closely with the ALRC and Treasury on this review.

Quality of Advice Review

On 11 March 2022, the Australian Government announced the release of the terms of reference for the Quality of Advice Review and the appointment of Ms Michelle Levy as the reviewer.

Under the [terms of reference](#), the Quality of Advice Review will examine:

- the legislative framework for financial advice;
- whether consent arrangements for sophisticated investors and wholesale clients are working effectively for the purposes of financial advice;
- actions taken by ASIC, including our regulatory guidance and legislative instruments;
- the role of financial services entities, including the professional associations.

The review has invited submissions on an [issues paper](#) by 3 June 2022 from the public, and will consult with stakeholders, including consumers and industry.

ASIC's work on the Life Insurance Framework (**LIF**) Review and data collection has been incorporated into the Quality of Advice Review.

ASIC also provided regular updates to Treasury on its 2021 Unmet Advice Needs Project to help inform the Quality of Advice Review. We provided Treasury with a copy of all research and submissions to [Consultation Paper 332](#) *Promoting access to affordable advice for consumers* (**CP 332**).

ASIC will continue to engage with Treasury on the Quality of Advice Review.

A report will be provided to the Government by 16 December 2022.

Industry Funding Model Review

The industry funding regime applied to ASIC took effect on 1 July 2017, after extensive industry consultation from 2015 to 2017. Industry funding was a key recommendation in the 2014 Financial System Inquiry.

Approximately 96% of ASIC's regulatory activities are recovered in the form of industry funding levies. The remaining 4% are recovered via regulatory fees for transactions initiated by an applicant.

In August 2021, the Government announced that Treasury (in consultation with the Department of Finance and ASIC) would conduct a review of the industry funding model in 2022 to ensure it remains fit for purpose in the longer term.

Concurrent to this, the Government [announced temporary relief](#) for licensees that provide personal advice to retail clients on relevant financial products by freezing

their levies at the 2018–19 level for two years. This relief was provided in response to significant increases in levies and other costs associated with regulatory reforms for the financial advice sector.

In March 2022, Treasury engaged in targeted consultation with select industry groups. ASIC participated in these group consultations and continues to provide support to Treasury in relation to the review. Further public consultation, with submissions and roundtables, may occur at a later stage.

Law reform

Financial Services Royal Commission recommendations

The FSRC's final report was released publicly on 4 February 2019, together with the Government's Response to the Royal Commission.

ASIC has worked with the Government and other regulators to support the program of law reform agreed by the Government in its response to the FSRC recommendations. This included contributing to Government consultation with stakeholders, focusing on implementation arrangements for new laws as they commence, developing and consulting on supporting legislative instruments, and issuing regulatory guidance to meet industry demand. Key reforms are referred to below.

Breach reporting

A new breach reporting regime for financial services and credit licensees commenced on 1 October 2021. The breach reporting reforms are intended to:

- clarify and strengthen the breach reporting regime for Australian financial services (**AFS**) licensees (including by providing that certain breaches are 'deemed' reportable, and by obliging licensees to report investigations that continue for more than 30 days)
- introduce a comparable breach reporting regime for credit licensees; and
- create 'notify, investigate and remediate' obligations, which apply in certain situations involving financial advice or credit assistance.

The new regime is broader, more ambitious, and more complex than the previous obligations. It is intended to provide greater transparency, and ultimately a better understanding of the key problems in firms. ASIC is focusing on practical implementation, and on working with industry address any issues that arise.

The reforms introduce an obligation on ASIC to publish data about significant and likely significant breaches of core obligations. The data must be published within four

months of the end of each financial year. ASIC is planning to release the first publication at the end of November 2022.

Design and distribution obligations (DDO)

The DDO commenced in October 2021. They require financial product firms to develop products that meet the needs of the consumers in their intended target market, and to direct distribution to that target market. In this way, the reforms make issuers and distributors more accountable for ensuring products are designed with consumer needs in mind.

ASIC has engaged extensively with industry during implementation and in the initial stages of this reform.

The introduction of the DDO is a key reform in pursuing ASIC's strategic priority of reducing the risk of harm to consumers. Going forward, ASIC will have a particular focus on products where there is a clear risk of harm and where ASIC intervention, relying on the obligations, is likely to improve consumer outcomes.

Financial Accountability Regime (FAR)

The proposed FAR is intended to extend the Bank Executive Accountability Regime (**BEAR**) to a wider range of entities. The FAR is intended to improve the risk and governance cultures of entities in the banking, superannuation and insurance sectors.

The Financial Accountability Regime Bill 2021, which lapsed at dissolution, would have imposed four core obligations:

- **accountability obligations**, which will require accountable entities and accountable persons to conduct their business in a certain manner
- **key personnel obligations**, which will require all accountable persons to be registered and accountable entities to attribute all areas of their operations to an accountable person
- **deferred remuneration obligations**, which will require accountable entities and their significant related entities to defer at least 40% of variable remuneration (e.g. bonuses and incentive payments) for each of their accountable persons for a minimum of four years, if the variable remuneration is above \$50,000
- **notification obligations**, which require accountable entities to provide the regulator with certain information about them and their accountable persons.

ASIC and APRA, under the proposed reforms, would co-administer the regime for approximately 313 APRA-regulated entities that hold an AFS licence and/or credit licence.

ASIC supports greater executive accountability for poor conduct throughout retail financial services. ASIC and APRA have worked together closely to provide technical and policy input to Treasury, and around the systems, guidance and industry engagement needed for joint administration. The agencies will work together to facilitate a smooth transition and implementation of the FAR, should the legislation be passed.

Compensation Scheme of Last Resort (CSLR)

On 28 October 2021, the Government introduced several Bills into Parliament to establish a CSLR. The anticipated CSLR would facilitate the payment of up to \$150,000 in compensation to eligible consumers who had received a determination for compensation from AFCA which remained unpaid. The Bills lapsed at dissolution.

ASIC's role under these proposed reforms would have been to:

- collect CSLR levies as a tax through a similar mechanism to the industry funding model
- have an oversight role in relation to the CSLR (similar to ASIC's oversight of AFCA)
- have enhanced enforcement powers in relation to unpaid levies and the ability to take licensing action where the CSLR pays a determination.

ASIC has previously expressed its support for a CSLR.

Modernising business communications

The Treasury Laws Amendment (Modernising Business Communications) Bill 2022 was introduced in the House of Representatives in February 2022. Its main purpose was to modernise and improve technology neutrality across an expanded range of business communications, while assisting in the reduction of business costs, and better reflecting how businesses want to engage and communicate.

ASIC has previously expressed its support for the Bill.

Competition in Clearing and Settlement (CiCS) and Financial Market Infrastructure (FMI) reforms

In 2016, the Government endorsed CiCS reforms that would allow ASIC and the ACCC to impose requirements on ASX's cash equity clearing and settlement (CS) facilities, including:

- rule-making powers for ASIC in respect of CS facilities
- an arbitration power for the ACCC, to provide for recourse in disputes about the terms of access to ASX's cash equity CS services.

The CiCS reforms will shape ASX's conduct as the sole provider of cash equity CS services in Australia, including its replacement of CHES and to provide legislative certainty on the scope of ASX's CS services that will be subject to these new powers.

The CiCS reforms were initially intended to be included in or alongside the FMI regulatory reforms package, which the Government endorsed in 2021. The FMI package includes reforms to ensure financial regulators have sufficient powers to intervene to manage a crisis and pre-emptively identify and manage risks.

ASIC supports the CiCS and FMI reforms being progressed.

Payment system reforms

ASIC is engaging with Treasury and other regulators on how to implement the recommendations for payment system reforms, agreed to by the Government, following the [Review of the Australian Payments System \(Farrell Report\)](#) and the [Parliamentary Joint Committee Corporations and Financial Services Report: Mobile Payment and Digital Wallet Financial Services](#). We understand Treasury will provide advice to the Australian Government by mid-2022 on a list of defined payment functions that should be regulated. s 47C

s 47C

ASIC is engaging with Treasury and other regulators on the identification of a list of defined payment functions and changes to the *Payment Systems (Regulation) Act 1998* that could underpin further consideration of a new licensing framework for payment functions.

Key areas of current regulatory focus

Streamlining and efficiency

In November 2021, ASIC established the Regulatory Efficiency Unit (**REU**). The REU is a dedicated unit to promote better regulation by removing unnecessary frictions in ASIC's interaction with its regulated population and making it easier for business to get things done, within the current legislative provisions.

The unit seeks to minimise the costs and burdens of regulatory requirements, to reduce the burden on industry and ultimately drive better compliance, while ensuring that consumer protection remains strong.

Consultation is fundamental to the team's work. The team has consulted over 70 external stakeholders, including business, industry associations and academics, to identify and understand key challenges.

From its consultation, some of the areas the unit is focusing on relate to ASIC's systems, our policy development and implementation processes, and our engagement with external stakeholders and peer agencies.

The initiatives that the REU will focus on are currently being settled.

Superannuation and retirement

In line with ASIC's 2022–26 strategic priorities, ASIC has three main areas of focus in respect of superannuation:

- distribution practices
- member communications and transparency
- retirement income.

Distribution practices

Since the FSRC, Parliament has passed several law reforms related to the distribution of financial products. To assist industry, ASIC has subsequently published a range of guidance related to disclosure and distribution practices. ASIC is now monitoring the implementation of the reforms by industry, including through surveillances. An area of focus will be choice products - because these require an active decision, the role of marketing and distribution is important. This work includes consideration of the role financial advisers play in consumers acquiring choice products, and claims made about a product's sustainability credentials.

Member communications and transparency

Superannuation has been the subject of significant reforms, many of which require public, member or regulator disclosure by trustees. ASIC is focused on monitoring whether disclosure complies with the law across several aspects, in particular:

- the communications made by trustees in respect of the annual performance assessment of MySuper products under the Your Future, Your Super reforms passed in 2021. This is to ensure that trustees are not making misrepresentations when notifying members about failures of the performance assessment, particularly in light of the consequences of failure of two successive assessments
- compliance by trustees with the enforceable requirements of [Regulatory Guide 271 Internal dispute resolution \(RG 271\)](#), which came into effect on 5 October 2021. This will assist in allowing ASIC to ensure that superannuation consumers receive better treatment in the resolution of their disputes; and
- fees and cost disclosures made in regulated documents to ensure that they are compliant with ASIC's revised [Regulatory Guide 97 Disclosing fees and costs in PDSs and periodic statements \(RG 97\)](#), given the transition period for these requirements ends in September 2022. This is to ensure trustees appropriately disclose fees and costs, thereby improving confidence in that disclosure.

Retirement income

From 1 July 2022, trustees will be subject to the retirement income covenant, which requires trustees to develop a retirement income strategy. One of ASIC's key focuses is working with APRA to support trustees' implementation through communication and engagement with industry. We will also assist trustees to offer tools to help their members think about retirement income, by issuing new relief and guidance for trustees providing superannuation forecasts (superannuation calculators and retirement estimates).

This work will involve engaging with and supporting the Treasury's Quality of Advice Review.

ASX CHESS replacement program and licencing conditions

The CFR member agencies (APRA, ASIC, the RBA and the Treasury) and the ACCC continue to closely engage with ASX and monitor ASX's conduct on the CHESS replacement program in accordance with the CFR's policy statement [Regulatory expectations for conduct in operating cash equities clearing and settlement](#). The regulatory expectations seek to ensure that ASX, as the sole provider of cash equity CS services, remains responsive to users' evolving needs and provides access on a

transparent and non-discriminatory basis with terms and conditions, including pricing, that are fair and reasonable. More specifically, ASIC and the RBA expect ASX to replace CHES in a safe and timely manner.

ASIC and the RBA as co-supervisors of the ASX CS facilities meet frequently with ASX to receive regular updates on its CHES replacement program progress and to reinforce our ongoing regulatory expectations. ASIC's supervision of ASX is currently focused on ASX's governance of the CHES replacement program, its engagement with stakeholders, the functional and technical aspects of the replacement system, and its management of the risks associated with the implementation and migration to the new system. In particular, ASIC considers that ASX's governance framework is a very important component of the successful execution of a technology project of this size and complexity.

Importantly, the CHES replacement program is an ASX project. ASX will need to manage and work through the impact of the delayed software delivery on the various project milestones, including the likely delayed go-live date. We expect ASX to conduct a robust impact analysis of the delivery delays on the program timeline, engage with industry on any changes to the program's timeline, and notify, as soon as practicable, the revised go-live date.

Additional licence conditions were imposed on ASX Clear and ASX Settlement on 24 November 2021, as an outcome of ASIC's investigation into an ASX trade outage in November 2020. The licence conditions provide an additional layer of assurance on the CHES replacement program with the appointment of an independent expert. The independent expert, which is Ernst & Young (**EY**), will assess whether ASX's assurance program is fit for purpose, identify any shortfalls, and regularly report to ASIC. ASX's assurance program should demonstrate the readiness of ASX, industry and the new system to go live. The licence conditions also require EY to oversee any remedial actions from the recommendations contained in the independent expert report prepared by IBM on the ASX Trade Outage which are relevant to the CHES replacement program. EY is also required to regularly report to ASIC on the status and implementation of these remedial actions.

Financial advice

In line with ASIC's 2022–26 strategic priorities, ASIC has three main areas of focus in respect of financial advice:

- Quality of Advice Review
- implement and administer law reform
- surveillances.

Quality of Advice Review

Refer to the Quality of Advice Review subsection under the Reviews and inquiries section.

Implement and administer law reform

On 1 January 2022, the Better Advice Act reforms commenced. The reforms significantly broadened ASIC's regulatory responsibilities in respect of financial advice. ASIC will continue to implement and administer the reforms, which include:

- administration of the financial adviser exam and taking steps to ensure the Financial Advisers Register is accurate and reliable
- expanding and supporting the role of the Financial Services and Credit Panel (FSCP), which will use its functions and powers to address financial advice misconduct, including less serious misconduct
- facilitating the registration of relevant providers and allowing licensees to register authorised representative financial advisers on the Financial Advisers Register by 1 October 2022.

Surveillances

In 2022–23, we will continue our important surveillances in response to compliance and misconduct issues of financial advisers and advice licensees. These surveillance activities will result in a range of regulatory outcomes including those available from the Better Advice Act reforms, such as referrals to the FSCP and the issuing of warnings and reprimands.

As referred to under Superannuation and retirement, an area of focus will be choice products. This work includes consideration of role financial advisers play in consumers acquiring choice products.

Insurance

In line with ASIC's 2022–26 strategic priorities, ASIC has three main areas of focus in respect of insurance:

- natural disasters
- unfair pricing practices
- claims handling.

Natural disasters

Recent natural disasters since 2019 have included fires, storms and floods. ASIC conducts proactive work with insurers each year to gauge preparedness for the natural disaster season (usually summer).

While each major natural disaster is unique, they tend to raise a range of issues around disclosure, coverage, claims handling and dispute resolution.

The East Coast floods in early 2022 has been one of the largest insurance events in Australia and the most expensive flood event to date. Over 180,000 claims, covering \$3.5 billion in losses so far, have been lodged. Issues arising include:

- under insurance – sum insured not being enough to pay for the rebuild, especially in light of rising construction costs
- non-insurance – many households, up to 50% in some localities, not holding insurance at all or not holding flood cover within their policy
- complexity and non-standard terms – while ‘flood’ is a standard defined term in the law, other key concepts (e.g. ‘storm’, ‘stormwater’, ‘storm surge’, ‘run-off’) do not have a standard definition and the varying definitions used by different insurers means it is difficult to shop around, there will be disputes about whether a particular claim is covered or not, and some consumers are uncertain what their policy covers
- delays and costs – the number of claims, plus the shortage of trades and materials post-COVID, means that rebuilds and repairs are likely to be slower and more expensive than normal
- shortage and duration of temporary accommodation – many affected towns have an acute shortage of temporary accommodation and most policies have a cap on the time or cost of temporary accommodation cover.

Unfair pricing practices

ASIC observed a significant increase in breach reports relating to pricing issues in recent years. We have undertaken some surveillances and an enforcement matter is currently before the courts: see [Media Release \(21-270MR\)](#) *ASIC launches Federal Court action and calls on general insurers to review pricing practices* (15 October 2021).

ASIC is also monitoring a significant remediation program relating to pricing issues. Eight large general insurers are involved and, to date, \$500 million in refunds have been identified as due to affected consumers.

Claims handling

Claims handling became a regulated activity in its own right on 1 January 2022. When consumers claim on their insurance, it is often in difficult circumstances and the consumer may be in a vulnerable position. It is crucial that claims are handled in a timely and fair manner.

ASIC reviewed claims handling practices in the life insurance sector in the 2021–22 financial year.

Product intervention power (PIP)

The PIP came into effect in April 2019. The power allows ASIC to intervene in a targeted way when there is a risk of significant consumer detriment. ASIC's interventions operate for a period of 18 months, after which they may be extended with the consent of the Minister.

This is a proactive power that is broad and flexible, and allows ASIC to address harm to retail consumers arising from evolving products and practices, without stifling the potential for innovation.

Addressing predatory lending

ASIC made a PIP in relation to short-term credit in 2019 to protect consumers from predatory lending. The order operated for 18 months and ensured that short-term credit providers and their associates could not charge fees in total which exceed a limit provided by the National Credit Code (at Schedule 1 to the National Credit Act).

ASIC separately consulted on using its power in relation to continuing credit contracts in July and November 2020.

Addressing detriment resulting from binary options and contracts for difference (CFDs)

In March 2021, ASIC made a product intervention order imposing conditions on the issue and distribution of CFDs to retail clients. This order was extended for five years in April 2022. ASIC's extension of the order ensures that CFD protections in Australia remain in line with those in force in comparable markets elsewhere.

ASIC has also made a product intervention order banning the issue and distribution of binary options to retail clients. The ban took effect in May 2021 to protect retail investors from these harmful products at a time of heightened vulnerability. This order is set to expire in October 2022. ASIC will consult on whether this order should be extended, and Ministerial approval will be sought subject to the consultation process.

Internal dispute resolution (IDR)

ASIC is responsible for overseeing the operation of Australia's financial services dispute resolution framework, which includes:

- setting the standards and requirements for the IDR processes of financial services firms
- oversight of Australian Financial Complaints Authority (**AFCA**).

IDR is the process within financial firms for accepting and dealing with consumer complaints. If a complaint is not resolved through IDR, the complaint may be escalated to AFCA as the single external dispute resolution (EDR) scheme for all complaints about financial products and services.

On 5 October 2021, ASIC's enhanced standards for IDR came into effect for all credit licensees and AFS licensees who deal with retail clients. The new enforceable standards include reduced timeframes for responding to consumer complaints, as well as enhanced requirements for written responses and a requirement to record all complaints.

While ASIC has set IDR standards for many years, this is the first time that the standards have been clearly enforceable and subject to civil penalties. This was made possible by the legislative changes that created AFCA.

These legislative changes also provided ASIC with additional powers aimed at improving transparency around IDR.

In March 2022, ASIC released the final requirements for the IDR data reporting framework. Once ASIC begins receiving IDR data from all financial services firms, we will begin publishing the data on our website.

Buy now pay later

Since the release of our public reports ([Report 600](#) *Review of buy now pay later arrangements* (**REP 600**) on 28 November 2018 and [Report 672](#) *Buy now pay later: An industry update* (**REP 672**) on 16 November 2020) into this industry, we continue to monitor for new products and providers entering the market, engage with industry, industry associations (Australian Finance Industry Association (**AFIA**) and the BNPL Code Compliance Committee) and other regulators, domestic (e.g. RBA) and international, on developments that relate to buy now pay later.

ASIC will continue to monitor this sector, including the impact of the DDO, and test where compliance with them can lead to a reduction in harm to consumers (e.g. the incidence of repeated late fees or consumers who are already in financial stress using buy now pay later).

Youpla (formerly Aboriginal Community Benefit Fund or ACBF)

ASIC and NSW Fair Trading have had long-standing concerns about Youpla (formerly Aboriginal Community Benefit Fund or ACBF). Before collapsing in March 2022, the Youpla group sold funeral benefit products (essentially a form of funeral insurance) mainly to Indigenous Australians.

When the Youpla group collapsed in March 2022, policyholders abruptly lost cover. This has resulted in hardship for some consumers and their families, where policyholders have died shortly before or after the collapse and they are unable to access their cover. Consumer and Indigenous organisations have called on governments (state and federal) to compensate or otherwise support affected consumers.

None of the Youpla group companies had been required to hold an ASIC-issued licence until recently. Where ASIC has had jurisdiction, it has undertaken surveillance, compliance and enforcement actions against Youpla over the last 30 years, largely in relation to inappropriate sales practices, under its Australian Consumer Law powers (in the ASIC Act).

The Youpla group of companies have been unable to sell policies to new customers since 2020 (when the law was changed to remove a licensing exemption they had previously relied on). NSW Fair Trading regulates funeral funds under the *Funeral Funds Act 1979* (NSW), and three of the four Youpla funds were registered and overseen by NSW Fair Trading.

Scams

Investment scams have increased during the pandemic, with scammers looking to take advantage of heightened uncertainty. Some investors are taking on riskier investments in the search for higher returns in a low-yield environment, with some also being influenced by social media groups and personalities.

ASIC has recently published information about how the law applies to social media influencers, and the licensees who use them (see [Information Sheet 269](#) *Discussing financial products and services online* (INFO 269)). Influencers who discuss financial products and services online, and do not comply with the financial services laws, risk substantial penalties.

s 47C, s 37(2)(b), s 47E (d)

s 47C, s 37(2)(b), s 47E (d)

ASIC has alerted consumers to a rise in investment scams impersonating companies or financial investment firms. ASIC's [Moneysmart website](#) provides consumers with information on banking and credit scams, identity theft, investment scams, Ponzi schemes, superannuation scams and unlicensed companies.

ASIC recognises the harm scams involving a financial product can cause and will continue to utilise its regulatory toolbox where scams arise.

There have also been a number of reviews and inquiries relevant to the ePayments Code over the last several years, and possible ways it could be used to help protect consumers from scams. ASIC supports work to update and mandate the ePayments Code.

Crypto-assets and digital assets

Crypto-assets are becoming increasingly mainstream, with more and more Australians accessing these assets or related products and services. Many crypto-assets claim to offer 'investment' returns or operate in a similar way to traditional financial products. However, whether ASIC's existing regulatory regime applies to crypto-assets and related products and services depends on whether they fit within the legal framework for financial products and services. If they do not, consumers do not receive the same level of protection that traditional financial services businesses are required to provide. This creates risks of consumer harm and poor outcomes.

ASIC considers that consumer protection should be a key focus of any regulatory regime applying to crypto-assets. ASIC, along with other regulators, has been providing input to Treasury on a regulatory framework for crypto-assets and those who provide services in the crypto-asset sector. This has been occurring through a CFR working group. ASIC will also respond to Treasury's recent consultation paper proposing a licensing regime for certain service providers, as well as custody requirements.

Under its current remit, ASIC has published good practices for market operators and product issuers in admitting and operating exchange traded products (**ETPs**) and other investment products that provide exposure to crypto-assets: see [Information Sheet 225](#) **Crypto-assets (INFO 225)**.

Cyber

The increasingly connected, digital nature of business, including financial services, heightens the vulnerability of companies, consumers and investors to cyber threats. ASIC's vision is for Australian financial markets and services to be resilient to impactful cyber incidents. This is achieved through close collaboration with regulated firms, regulators and the Australian Government, to improve the cyber resilience of all entities operating in Australia's financial markets. This is a key part of our fourth external strategic priority.

ASIC's continued engagement has been effective at lifting the cyber resilience of Australian financial market firms. Over a six-year period, ASIC has regularly asked firms to assess their cyber resilience against an internationally recognised framework and we have observed a steady improvement in the cyber preparedness of the respondents.

On 5 May 2022, the Federal Court found, in an Australian first, that RI Advice Group Pty Ltd had breached its obligations as an AFS licensee to act efficiently and fairly, by failing to have adequate risk management systems to manage cybersecurity risks.

This decision makes it clear that licensees need to ensure they have adequate technological systems, policies and procedures in place to protect sensitive client information from cyber-attacks, and will serve as a deterrent against poor cyber practices in AFS licensees.

This work is of increasing urgency and importance in the current heightened threat environment.

Sustainable finance/greenwashing

One of ASIC's strategic priorities for 2022–26 is fostering continued improvement in climate change governance and disclosure practices and preventing harms from 'greenwashing'. Greenwashing occurs where there is a misrepresentation about the extent to which an entity's investment products or strategies are environmentally friendly, sustainable or ethical.

ASIC is a member of the IOSCO Task Force on Sustainable Finance, which conducted a review of corporate sustainability disclosure guidance last year. The review found that investor demand for transparent, comparable sustainability-related information was often not met.

ASIC is part of the CFR Climate Working Group with Treasury, APRA and the RBA. The working group considers and coordinates actions in relation to understanding and managing financial climate-related risks.

ASIC is also part of a newly formed working group comprising of ASIC, the Clean Energy Regulator and the ACCC, which is working to ensure evolving business models and technologies in carbon markets have integrity and comply with Commonwealth laws.

In 2021, the trustees of the International Financial Reporting Standards Foundation announced the establishment of the International Sustainability Standards Board (ISSB). The ISSB will develop global baseline climate and sustainability disclosure standards to tackle these challenges. ASIC supports this exercise – consistent, comparable and relevant information is critical to fully informed decisions by investors.

ASIC is prioritising greenwashing misconduct for enforcement action and will utilise its regulatory toolbox where instances of misconduct are identified.

Enforcement

Enforcement is fundamental to ASIC's remit and effectiveness. ASIC will continue to be a strong and targeted law enforcement agency. We will remain an active litigator against misconduct. We will use our full suite of tools and powers to address wrongdoing.

Our enforcement actions will prioritise areas of greatest harm and the protection of vulnerable consumers and investors. As always, our enforcement approach will remain responsive to changes in our regulatory environment. Where appropriate, we will take targeted enforcement action.

End of Financial Services Royal Commission cases

On 9 December 2021, ASIC finalised the final investigation arising from matters considered by the FSRC, by filing civil penalty proceedings against ANZ Banking Group Ltd. As of 3 May 2022, the combined civil penalties awarded in these cases exceeds \$136 million. These actions found misconduct in a variety of categories, including fees-for-no-service breaches, serious non-compliance by financial advisers, harms caused by poor practices in the insurance industry, misconduct in credit and banking activities, system and process failures causing financial harm to customers, and failures by superannuation trustees to deliver on their commitments to members and treat them fairly. For more information, see [Financial Services Royal Commission: Summary of ASIC enforcement action](#).

ASIC releases a biannual enforcement update, which includes statistics on enforcement outcomes across financial services, markets, corporate governance

and small business. The latest release is [Report 722](#) ASIC enforcement update July to December 2021 (**REP 722**).

Enforcement priorities

In the 2022–23 financial year, ASIC will focus on achieving enforcement action in the following areas:

- retail investor scams
- crypto-assets and other high-risk assets
- environmental and social governance issues
- cyber-related misconduct
- misinformation about investment products
- poor product design and distribution
- superannuation misconduct
- credit misconduct
- high risk property schemes
- insurance misconduct
- unfair contract terms in insurance

ASIC will continue to pursue enforcement action in the following key areas:

- serious financial services and market misconduct, including:
 - high-impact or egregious misconduct
 - misconduct impacting indigenous consumers
 - systemic compliance failures by large financial institutions
- governance failures
- insider trading
- market manipulation
- continuous disclosure
- financial reporting contraventions
- scams.

Recent enforcement metrics

Criminal actions

In the 2021–22 financial year (to 30 April 2022), ASIC has:

- commenced 40 criminal proceedings through the CDPP
- referred 46 briefs to the CDPP.

As a result of our investigations, 24 people were convicted of criminal offences, with nine people receiving custodial sentences (including those fully suspended). A total

of \$367,500 in fines have been imposed by the courts and one pecuniary penalty order of \$31,996 was made under the *Proceeds of Crime Act 2002*.

As at 30 April 2022, we had 83 criminal matters before the courts. Of this, 28 are financial services related matters, 14 are markets-related matters and 41 are directors' duties and corporate governance related matters.

Civil actions

In the 2021–22 financial year (to 30 April 2022), ASIC has:

- commenced 33 civil proceedings (of which 24 are civil penalty proceedings)
- completed 27 civil proceedings, covering issues such as fees-for-no-service breaches, false and misleading marketing, misleading sale of insurance, and breaches of continuous disclosure laws. The total value of penalties imposed by the courts was \$229.6 million.

As at 30 April 2022, we had 51 civil matters before the courts. Of this, 38 are financial services related matters, 10 are markets-related matters and 3 are corporate governance related matters.

Protective actions

In the 2021–22 financial year (to 30 April 2022), ASIC has:

- disqualified or removed 49 people from directing companies
- banned, removed or restricted 28 people or companies from providing financial services and credit services.

Recent enforcement action

Westpac

ASIC commenced six separate civil penalty proceedings against Westpac Banking Corporation (**Westpac**) in November 2021: see [Media Release \(21-320MR\)](#) ASIC *launches multiple legal actions against Westpac* (30 November 2021). These proceedings concluded on 22 April 2022, when the Federal Court ordered Westpac to pay penalties in the amount of \$113 million for widespread compliance failures across multiple businesses, including Westpac's banking, superannuation, wealth management and insurance brands.

In general, the breaches found by the court across all six cases showed a failure by Westpac to implement appropriate systems and processes over many years and across many areas of its business. Westpac and its subsidiaries, like all licensees, had an obligation to be honest and fair in its provision of financial services, but failed to prioritise and fund the system upgrades necessary to help fulfil this obligation. For

more information, see [Media Release \(22-097MR\)](#) *Westpac penalised \$113 million after multiple ASIC legal actions* (22 April 2022).

The Westpac compliance failures included:

- charging advice fees to deceased customers
- distributing and charging for multiple general insurance policies to customers for the same property
- charging on ongoing advice contribution fees without disclosure
- charging fees to deregistered company accounts
- charging insurance commission fees to superannuation members, although commissions had been banned under the Future of Financial Advice reforms
- selling consumer credit card and flexi-loan debt to debt purchasers with incorrect interest rates.

Statewide to pay \$4 million penalty for misleading correspondence to members

On 18 January 2022, the Federal Court imposed combined penalties of \$4 million on Statewide Superannuation Pty Ltd (**Statewide**) for providing members with misleading information regarding their insurance and failing to submit a breach report on the issue to ASIC in the time required by law. This was the first civil case in which the court imposed a civil penalty on an AFS licensee for failing to report breaches to ASIC since new penalty powers were introduced in 2019.

From 2017 to 2020, Statewide sent over 14,000 annual statements or other correspondence to at least 7,000 fund members representing that they held insurance within their superannuation in circumstances where their insurance cover had lapsed. Statewide also overcharged insurance premiums of at least \$2.5 million to some fund members. Statewide ultimately failed to report these issues within ten days of becoming aware of them, as then required by law. For more information, see [Media Release \(22-001MR\)](#) *Statewide Superannuation to pay \$4 million penalty for misleading correspondence to members* (18 January 2022).

Rent4Keeps and Layaway Depot: alleged breaches of the National Credit Act

ASIC is suing Rent4Keeps and Layaway Depot in two separate proceedings for alleged breaches of consumer protections offered by the National Credit Act. ASIC's concern is that both businesses operate business models designed to avoid consumer protections for financially vulnerable consumers, including the annual cost and interest rate cap under the National Credit Act.

The harm to Rent4Keeps and Layaway Depot customers, who are often on low incomes or Centrelink benefits, is they will have to pay significantly more for electronics and whitegoods than they lawfully should. For example, one consumer

used Centrelink payments to pay almost \$2,500 for a fridge that retailed at \$365, another paid \$1,200 for a mobile phone that retailed for just \$249. For more information, see [Media Release \(22-090MR\)](#) *ASIC sues Rent4Keeps and Layaway Depot for alleged breaches of National Credit Act* (12 April 2022).

A One Multi and directors: interim orders and injunctions

ASIC moved swiftly to successfully obtain interim orders and injunctions from the Federal Court in Queensland against A One Multi Services Pty Ltd (**A One Multi**) and its directors to protect investors from an unlicensed financial services business. It is also suspected that A One Multi engaged in unlawful activity.

Between 1 January 2019 to 30 June 2021, more than 60 consumers deposited approximately \$25 million into A One Multi's accounts. ASIC alleges that a director has used more than \$5.7 million of A One Multi's money for the directors' personal benefit, including by acquiring real property and luxury vehicles in their names. In addition, more than \$2.4 million had been transferred from A One Multi to buy crypto-assets. For more information, see [Media Release \(21-289MR\)](#) *ASIC obtains Federal Court orders against unlicensed investment scheme A One Multi Services* (4 November 2021).

Rio Tinto

In March 2022 the Federal Court ordered Rio Tinto Limited to pay a penalty of \$750,000, after finding the mining company had contravened its continuous disclosure obligations. ASIC worked in partnership with the US Securities and Exchange Commission and the UK Financial Conduct Authority on this matter. For more information, see [Media Release \(22-043MR\)](#) *Rio Tinto Limited found to have breached continuous disclosure laws* (7 March 2022).

Former registered liquidator Amanda Young

In February 2022, the New South Wales District Court sentenced former registered liquidator Amanda Young to three years imprisonment for dishonesty and fraud offences. The court found that Ms Young transferred money from liquidation bank accounts to her own bank accounts, and attempted to disguise her misappropriation of funds by falsifying internal records and tampering with emails. For more information, see [Media Release \(22-019MR\)](#) *Former Sydney liquidator sentenced to three years' imprisonment for dishonesty and fraud offences* (14 February 2022).

Operational priorities

ASIC funding

ASIC will receive \$422 million in operational funding in 2021–22, decreasing to \$418m by 2025–26. This includes over \$60 million per year in funding for ASIC's ESA. Approximately \$20 million is received per year in capital funding to support the replacement of assets. ASIC collects around \$1.7 billion per year in government revenue through fees, charges and levies.



Modernising Business Registers (MBR) program

The Australian Government announced the MBR program as part of its Deregulation Agenda in November 2019, with funding of \$60.6 million provided in the 2019–20 MYEFO to commence implementation. A further \$419.9 million over four years was provided in the 2020–21 Budget as part of the Digital Business Plan to fully fund the implementation of the program, including director identification numbers (**director ID**).

The ATO is the lead agency for the program and ASIC is a key partner agency.

When complete, the MBR program will bring together the Australian Business Register (**ABR**) and more than 30 ASIC registers on a modern, whole-of-government business register platform.

The MBR program has achieved several significant milestones. These include:

- the appointment of the Commissioner as the Registrar on 4 April 2021
- the completion of a machinery-of-government change to transfer responsibility for registry functions and staff from ASIC to the ATO
- the formation of a new business line, the ABRS within the ATO to accommodate the combined registry workforce
- the introduction of the new ABRS brand and website (www.abrs.gov.au)
- the implementation of director ID, which went live on 31 March 2022, and issued over 438,000 director IDs between 1 November 2021 and 20 April 2022. Director ID will assist with identifying and eliminating director involvement in unlawful activity, such as illegal phoenix activity, creating a fairer business environment.

Under the MBR program, existing aged ASIC business registers will be progressively migrated to the ATO, starting with the Companies register in late 2023. This release brings together the current Companies register, hosted on ASIC systems, with related records from the ABR, creating a single source of data for corporate entities in Australia. Detailed design and build for the Companies register release is now underway.

Following the Companies register release, the same approach will be used to transition existing registers to the new registry service including Business Names Register, Australian Business Numbers (**ABNs**) and Professional and Historical Registers to complete program delivery and for enduring administration by the ABRS.

The MBR Program actively engages with key stakeholders and other Government agencies to provide updates on the progression of the program and understand issues within the current registers to streamline the future registry functions. This includes enhancing data holdings.

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Digital transformation

The pace of technological change in the financial sector continues to grow exponentially. As digital development accelerates, ASIC must keep pace to remain relevant as a regulator governing a digitally mature and innovative industry. We need to adapt to the technological pace of change of the entities we regulate and more broadly the citizens we serve. Without access to the same technologies as those we regulate, we will struggle to maintain an effective regulatory regime.

In addition, new and emerging technologies and products, such as crypto currencies and digital autonomous organisations, require ASIC to have the technology and digital capability to ensure that we can meet the expectations of those we regulate and the Australian public. We have set an ambitious vision to become a leading digital-enabled data-driven regulator across every aspect of our business.

To achieve our vision we have developed a digital strategy that will transform the way we work internally and the way in which we regulate and interact with our regulated populace to support the ASIC vision of a fair, strong and efficient financial system for all Australians. We will improve the experience for the entities we regulate and by doing so we aim to:

- increase the rate of compliance
- promote innovation and facilitate new business models within the financial sector
- leverage automation to ensure ASIC staff are focused on the activities that add value and enrichment
- work within the whole-of-government ecosystem to connect and collaborate to achieve efficiencies and better regulatory outcomes.

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Supporting ASIC's digital vision is ASIC's data strategy (2021–26), which has made a number of achievements and is setting a strong foundation for us to further develop our capabilities. Some examples include:

- implementing our data lake and data catalogue platforms, which has enhanced our ability to discover, share, access and use data across the whole organisation
- developing recurrent data collections, so we can detect harm more efficiently and target our work more effectively
- operationalising machine learning, artificial intelligence and automation tools to improve our surveillance and licensing activities.

Enterprise agreement

On 1 July 2019, ASIC implemented the [ASIC Capability Review](#) recommendations to transfer employees from employment under the *Public Service Act 1999* (**Public Service Act**) to employment under the ASIC Act.

ASIC is currently negotiating a new enterprise agreement to replace the [Australian Securities and Investments Commission enterprise agreement 2019–22 \(2019 EA\)](#). This will be the first agreement negotiated outside the Australian Public Service (noting that the *Australian Government workplace bargaining policy 2020* still applies to ASIC). If employees endorse the new enterprise bargaining agreement at a vote, it will introduce significant changes to the way in which ASIC manages performance, remuneration and reward.

There is no deadline for the finalisation of negotiations, however, the aim is for ASIC employees to vote on the new enterprise bargaining agreement in early July 2022.

Appendix B

Selected regulatory documents released by ASIC in the last 12 months

[REP 725 ASIC quarterly update: January to March 2022](#) (28 April 2022)

[REP 722 ASIC enforcement update July to December 2021](#) (28 March 2022)

[REP 718 Response to submissions on CP 341 Review of the ePayments Code: Further consultation](#) (7 March 2022)

[REP 717 ASIC quarterly update: October to December 2021](#) (3 February 2022)

[REP 716 Cyber resilience of firms in Australia's financial markets: 2020–21](#) (6 December 2021)

[REP 708 ASIC's expectations for industry in responding to a market outage](#) (24 November 2021)

[Cost Recovery Implementation Statement-2020-21](#) (11 November 2021)

[REP 702 Competition in funds management](#) (24 September 2021)

[RG 271 Internal dispute resolution](#) (2 September 2021)

[RG 267 Oversight of the Australian Financial Complaints Authority](#) (2 September 2021)

[REP 696 TPD insurance: Progress made but gaps remain](#) (2 August 2021)

[RG 275 The deferred sales model for add-on insurance](#) (28 July 2021)

[REP 691 Regulator Performance Framework: ASIC self-assessment 2019–20](#) (26 May 2021)