CHAPTER 03

ANNUAL PERFORMANCE STATEMENT

IN THIS CHAPTER

Statement of preparation

I, Joseph Longo, as the Accountable Authority of ASIC, present the 2023–24 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.

Performance objectives

ASIC's performance reporting in 2023–24 was guided by the Corporate Plan and our 2023–24 Portfolio Budget Statement, which set out our objectives and activities related to improving investor and consumer trust and confidence, facilitating fair and efficient markets, and delivering efficient registry systems.

For annual reports prepared for the 2023–24 reporting period, ASIC is required to reconcile performance outcomes in its Annual Performance Statement with reference to best practice principles (see page 109).

What we set out to do in 2023–24

Our Corporate Plan outlines ASIC's strategic priorities and how we aimed to achieve those priorities in 2023–24.

To determine our strategic priorities and projects, we 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 set out our key results for 2023–24, as delivered through the work outlined in the Corporate Plan (summarised in Figure 2). We used a broad range of regulatory tools to achieve outcomes for consumers and investors.

Figure 2—Key activities in 2023–24

Progress key strategic projects

- Scams
- Sustainable finance practices
- Crypto assets
- Design and distribution obligations
- Cyber & operational resilience
- Digital tech & data

Underpinned by our strategic priorities

- Product design & distribution
- Sustainable finance
- Retirement outcomes
- Technology risks

Achieve outcomes across our regulatory functions

1. **Achieve enforcement outcomes** using our broad toolkit and focusing on our enduring and annual enforcement priorities.
2. **Undertake supervision & surveillance** to deter or prevent serious misconduct from arising in the first place, including in large financial institutions.
3. **Provide guidance to industry** to ensure transparency about our expectations and how we plan to administer and enforce the law.
4. **Assess licence and registration applications** which require that applicants meet fit and proper requirements.
5. **Provide regulatory relief** where appropriate to facilitate business and support the economy.
6. **Engage with consumers and industry stakeholders** to understand the risks and trends that are most impactful to the financial system.
7. **Educate consumers** to help them build knowledge, skills and confidence in their financial decision making.
8. **Support accessible registers** to help people to apply, maintain their registration and licence details, search the registers, and interact with ASIC.

Undertake strategic work across our regulated sectors

- Superannuation
- Financial advice
- Corporations
- Credit and banking
- Investment management
- Registered liquidators
- Insurance
- Market infrastructure
- Financial reporting and audit
- Market participation and conduct

Focus on enhancing our capabilities

Digital technology and data: Investing in our use of data and digital technology to become a leading digitally enabled and data-informed regulator.

Effective and efficient decision making: Identifying opportunities to drive effective and efficient decision making across our work.

Staff capability and capacity: Recruiting, retaining and developing talent to enhance our capabilities and capacity.

Business registers: Continuing to support the stabilisation and uplift of business registers

Measuring our performance

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 3 (pages 30–33) outlines our key activity metrics.

In evaluating our work, we also combine quantitative and qualitative indicators to provide a narrative about our approach and the outcomes we achieved. Our activities and outcomes in relation to the work outlined in our Corporate Plan are detailed in the following sections: 'Core strategic projects' (page 34), 'Strategic work across our regulated sectors' (page 43), 'Outcomes across our regulatory functions' (page 84), and 'Service Charter' (page 104).

Activity overview

We have achieved strong outcomes across our regulatory activities in 2023–24.

Table 3 provides an overview of our key activity metrics for 2023–24. 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.

Following the announcement of our new organisational design on 3 July 2023, a key priority in the first half of this financial year was ensuring a smooth and timely transition to the new structure. While we saw an initial slowing in some activity metrics, the new structure brought improvements in the second half of the year, with further benefits expected to be achieved over the long term.

Our new structure means we have changed our approach to surveillance and enforcement work. We have moved towards a more streamlined, whole-of-agency process to determine the best action to take against matters.

This year, our improved triage process enabled us to make faster decisions and reduce time taken for matters to be elevated for a decision on further enforcement and compliance action. This has led to an increase in the number of investigations.

As a result of the new structure, some activities cannot be directly compared with last year.

Table 3—Key activity metrics

OUTCOME	TOTAL 2023–24	TOTAL 2022–23
Enforcement and compliance		
Surveillance		
Surveillances completed[1]	**690**[2]	1,301[3]
Instances of potentially misleading or deceptive promotional material withdrawn or amended	**22**	57
Interim stop orders and final stop orders on disclosure documents[4]	**5**	21
Stop orders under design and distribution obligations[5]	**7**	78
Scam disruption website takedowns		
Investment scam and phishing website takedowns[6]	**Over 7,300**	-
Investigations		
Preliminary investigations commenced	**284**[7]	N/A
Formal investigations commenced[8]	**168**	134
Criminal actions		
Criminal litigation completed	**24**	44
Criminal litigation completed successfully (as a percentage)	**90**	90
New criminal litigation commenced	**23**	32
Average time to complete an investigation (in months)	**25**	23
Average time to a criminal court decision (in months)	**26**	21
Average total time to complete an investigation and reach a court decision (in months)[9]	**56**	60

1 The number of surveillances completed is a measure of surveillance activity or activities by entity or related entities (such as companies, partnerships, licensed or unlicensed entities, and individuals), by disclosure documents (prepared by an entity or entities) or by transactions (by an entity or entities). These surveillance activities can be initiated on a reactive basis (e.g. in response to a report of misconduct or industry intelligence) or proactively as part of a larger surveillance project examining a thematic or industry-wide issue (i.e. a project may comprise a number of surveillances).

2 In line with our new structure, this year we have changed the way we report a portion of this work, which is now undertaken in the Enforcement and Compliance group and recorded as preliminary investigations. On a like-for-like basis, the equivalent metric for surveillances as they were reported in last year's annual report would be 974.

3 The overall number of surveillances completed was higher in 2022–23 due to a number of planned surveillance projects, including a compliance program in relation to the requirement for self-managed superannuation fund (SMSF) auditors to lodge auditor annual statements.

4 These stop orders were issued to prevent offers being made under disclosure documents containing misleading or deceptive statements, and omissions of information required under relevant legislation. In June 2024, ASIC issued the first crowd-sourced funding regime stop order.

5 These stop orders were issued under ASIC's design and distribution obligation powers, which came into effect in October 2021 following a transitional period. The number of stop orders in 2022–23 reflects our approach to quickly address problematic target market determinations (TMDs) soon after the introduction of the regime. This was to uplift standards and set clear expectations for the market under the new laws. This enabled us to shift our focus in 2023–24 to a more specific obligation under laws that require issuers to take reasonable steps that will, or are reasonably likely to, result in distribution being consistent with the TMD. While this resulted in fewer stop orders, it was an important initiative in line with our strategic approach.

6 ASIC's scam website takedown capability was launched in July 2023. Facilitated by a third party specialising in cybercrime detection and disruption, it eliminates or limits exposure of Australian investors to investment scam and phishing websites.

7 This figure reflects the preliminary investigation work undertaken under our new structure by the Enforcement and Compliance group.

8 Investigations for these purposes meet the definition in section 13 of the ASIC Act and section 247 of the National Credit Act.

9 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.

OUTCOME	TOTAL 2023–24	TOTAL 2022–23
Criminal outcomes		
Number of people/companies convicted[10]	**18**	35
Custodial sentences (including fully suspended)	**8**	21
Non-custodial sentences/fines	**10**	14
Total dollar value of fines[11]	**$936,000**	$189,640
Total dollar value of pecuniary penalties	**-**	$28,883
Civil action		
Civil litigation completed	**39**	52
Civil litigation completed successfully (as a percentage)	**82**	94
New civil litigation commenced	**69**	62
Average time to complete an investigation (in months)	**15**	15
Average time to reach a civil court decision (in months)	**27**	22
Average total time to complete an investigation and reach a court decision (in months)[12]	**46**	42
Civil outcomes		
Total dollar value of civil penalties	**$90.8m**	$185.4m[13]
Administrative actions and outcomes[14]		
Actions taken against auditors	**52**	468[15]
Actions taken against liquidators	**2**	2
People disqualified or removed from directing companies	**35**[16]	32
People/companies removed, restricted or banned from providing financial services	**64**[17]	77
People/companies removed, restricted or banned from providing credit services	**11**[18]	28
Public warning notice	**-**	1
Financial Services and Credit Panel outcomes		
Directions issued	**6**	3
Reprimands issued	**4**	-

10 This includes three successful criminal actions without a conviction recorded.
11 The increase in fines arising from criminal actions in 2023–24 is attributed to a fine of $820,000 imposed on Members Equity Bank Limited. The bank was convicted and penalised after pleading guilty to criminal charges of making false and misleading representations and failing to provide required written notices regarding home loans.
12 The time to complete civil investigations is measured from the date an investigation commences to the date initiating proceedings are filed by ASIC. The time to 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 Civil penalties in 2022–23 were higher due to several record penalties awarded by the court.
14 This includes all disqualifications, suspensions, cancellations and bannings resulting from surveillance and enforcement activities.
15 The number of actions against auditors was unusually high in 2022–23 due to a compliance program in which ASIC communicated to more than 1,400 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.
16 This includes four disqualifications arising from civil proceedings, where the court ordered that the defendant be disqualified from directing companies.
17 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.
18 This includes four instances where the court made orders restraining individuals from engaging in credit activity.

OUTCOME	TOTAL 2023–24	TOTAL 2022–23
Warnings issued	**1**	-
Registration Prohibition Orders issued	**2**	-
Court enforceable undertakings		
Court enforceable undertakings accepted	**7**	3
Infringement notices[19]		
Total number of infringement notices issued	**26**	20
Total dollar value of infringement notices	**$7.2m**	$6.7m
Summary prosecutions		
Summary prosecutions for strict liability offences	**186**	210
Total value of fines and costs	**$1.1m**	$1.6m
Guidance		
Industry reports published	**18**	37
New or revised regulatory guides published	**30**	34
New or revised information sheets	**34**	29
Legislative instruments made, amended and repealed	**88**	56
Licensing and professional registration activities		
Administrative decisions		
Licensing and registration applications received	**1,531**	1,497
Licensing and registration applications approved	**1,116**	1,287
Licensing and registration applications refused or withdrawn	**385**	413
Licensing and registration applications in progress	**626**	612
Australian financial services (AFS) licences, including limited AFS licences (new and variations)		
Applications approved	**679**	841
Applications refused/withdrawn	**195**	215
Licences cancelled/suspended	**269**	329
Applications in progress	**457**	417
Australian credit licences (new and variations)		
Applications approved	**239**	263
Applications refused/withdrawn	**133**	145
Licences cancelled/suspended	**204**	212
Applications in progress	**113**	135

19 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).

OUTCOME	TOTAL 2023–24	TOTAL 2022–23
Registered auditors – registered company auditors, authorised audit company and self-managed superannuation fund (SMSF) auditors		
Applications approved	**198**	183
Applications refused/withdrawn	**57**	53
Licences cancelled/suspended	**560**	1,019[20]
Applications in progress	**56**	60
Registered liquidators		
Liquidators registered by ASIC	**17**	29
Registration committees convened during the year	**24**	36
Outcome of Liquidator Registration Committee convened during the year		
Applications for registration approved by committee[21]	**15**	28
Applications for registration refused by committee	**1**	3
Committee matters in progress – registration applications yet to be determined	**8**	5
Engagement		
Consultation papers published	**14**	7
Meetings with industry groups and other stakeholders	**Over 1,200**	Over 1,600
Regulatory relief		
Applications for relief from the Corporations Act		
Relief applications received	**1,085**	1,154
Relief applications approved	**886**	887
Relief applications refused or withdrawn	**135**	301
Relief applications in progress	**39**	59
Education		
Users visiting ASIC's Moneysmart website	**11.8m**	11.1m
Number of users who have used a Moneysmart online tool	**6.2m**	5.6m

20 The unusually high number of licences cancelled or suspended in 2022–23 was underpinned by the compliance program relating to 1,400 SMSF auditors who had outstanding annual statements. See Footnote 15.

21 A breakdown of the applications approved by the Liquidator Registration Committee, with or without conditions, can be found in Table 11 on page 198.

Core strategic projects

In 2023–24, we undertook six core strategic projects underpinned by four strategic priorities.

Our Corporate Plan outlines our regulatory priorities and the actions we plan to take over the following 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 2023–24, our key strategic projects were:

- scams
- sustainable finance practices
- crypto assets
- design and distribution obligations (DDOs)
- cyber and operational resilience
- digital technology and data.

As set out in Figure 2 on page 27, these projects were underpinned by the strategic priorities for 2023–24, as outlined in our Corporate Plan:

- **Product design and distribution:** Reduce the risk of harm to consumers of financial, investment, credit and credit-like products, caused by poor product design, distribution and marketing, especially by driving compliance with DDOs.
- **Sustainable finance:** Support market integrity and efficiency through supervision and enforcement of current governance and disclosure standards to reduce harms from greenwashing, while engaging closely on climate-related financial disclosure requirements.
- **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 cyber and operational resilience practices, including within companies and financial market infrastructure, and act to address digitally enabled misconduct.

Scams

This year, ASIC continued to combat scams designed to trick Australians into believing they are making genuine investments. Our investment scam and phishing website takedown capability is part of the whole-of-government Fighting Scams initiative. The initiative supports the work of the National Anti-Scams Centre (NASC), which commenced operations on 1 July 2023. We remain committed to disrupting scams and influencing our regulated population to uplift their anti-scam practices.

See Spotlight 1 on page 35.

ASIC is an active member of the International Organization of Securities Commissions (IOSCO), which is working to combat scams and online fraud at a global and regional level. IOSCO's Asia Pacific Regional Committee shares information and focuses on ways to enhance cooperation to combat scams.

SPOTLIGHT 1

Protecting consumers from scams

This year, ASIC took down more than 7,300 investment scam and phishing websites, protecting Australians from fake investment platforms, crypto asset scams, and websites posing as legitimate financial service businesses.

The scams taken down included fake investment platform websites, news articles, celebrity endorsement websites, cryptocurrency and investment comparison websites, as well as bank scams, crypto asset investment scam websites, and impersonation and phishing scams.

The websites came to ASIC's attention from reports to ASIC or to the Australian Competition and Consumer Commission's (ACCC's) Scamwatch, or by proactive identification by ASIC's takedown provider. ASIC's takedown service, provided by a private company specialising in cybercrime detection and disruption, removed or limited access to investment scam and phishing websites, working with organisations hosting the sites to achieve this.

ASIC co-led the NASC's Fusion Cell (a taskforce that brought together expertise from government and the private sector) to disrupt investment scams. The Fusion Cell operated from August 2023 to February 2024. Suspected scam websites were referred to ASIC for takedown evaluation, and in the six months of the Fusion Cell's operation, these referrals resulted in 220 takedowns.

ASIC has listed some of the websites taken down through this initiative on the Moneysmart Investor Alert List, launched in November 2023. Over 700 new listings have been added to this list since its launch, receiving 150,000 page views this year and protecting consumers from potential harm. For instance, one consumer avoided investing $230,000 in an entity impersonating a legitimate business after checking the list and finding a match.

If you think you've been scammed, take these steps:

1. Do not send any more money.
2. Report it to your financial institution.
3. Contact IDCARE.[22]
4. Be wary of follow-up scams.
5. Report it to Scamwatch.[23]
6. Warn your family and friends.

Visit the ASIC website for more information.[24]

22 https://www.idcare.org
23 https://www.scamwatch.gov.au/report-a-scam
24 https://asic.gov.au/about-asic/news-centre/news-items/scam-alert-scammers-are-changing-the-way-they-impersonate-financial-services-businesses-in-sophisticated-bond-and-term-deposit-scams/

Sustainable finance practices

Promoting sound, sustainable finance practices continues to be a strategic priority for ASIC. Our work this year included:

- close engagement on law reform relating to the introduction of Australia's mandatory climate-related financial disclosure regime for large businesses and financial institutions
- continued engagement with international and domestic peers through the IOSCO Sustainable Finance Taskforce and the Australian Council of Financial Regulators Climate Working Group
- ongoing surveillance and enforcement activity focused on preventing harms from greenwashing by ensuring that sustainable finance-related products, services and practices comply with existing laws.

In ASIC's first greenwashing civil penalty action, following a liability and penalty hearing in December 2023, the Federal Court in August 2024 ordered Mercer Superannuation (Australia) Limited to pay an $11.3 million penalty after it admitted it made misleading statements about the sustainable nature and characteristics of some of its superannuation investment options.[25]

ASIC also succeeded in court action alleging misleading and deceptive conduct against Vanguard Investments Australia. The Federal Court found Vanguard contravened the law by making misleading claims about certain environmental, social and governance exclusionary screens applied to investments in a Vanguard index fund.[26]

This year, ASIC issued an additional seven infringement notices totalling $110,520 for greenwashing conduct (to Morningstar, Northern Trust Asset Management, Melbourne Securities Corporation Limited and Fertoz Limited). ASIC also obtained 34 sustainable finance–related corrective disclosure outcomes across sectors such as superannuation, managed investment schemes and listed companies.

Looking ahead, we expect our work will continue to scale up. We will have a significant role supporting the introduction, administration and enforcement of mandatory climate-related financial disclosure obligations. We will continue to engage closely on ongoing policy development in the sustainable finance area, as contemplated by the Australian Government's sustainable finance roadmap, published on 19 June 2024.

See Spotlight 2 on page 37 for an example of our work in the sustainable finance space.

25 https://asic.gov.au/about-asic/news-centre/find-a-media-release/2024-releases/24-173mr-asic-s-first-greenwashing-case-results-in-landmark-11-3-million-penalty-for-mercer/
26 https://asic.gov.au/about-asic/news-centre/find-a-media-release/2024-releases/24-061mr-asic-wins-first-greenwashing-civil-penalty-action-against-vanguard/

SPOTLIGHT 2

Acting on inadequate disclosures relating to sustainable finance

ASIC continues to focus on surveillance and enforcement work targeting greenwashing.

In August 2023, ASIC commenced civil penalty proceedings against LGSS Pty Ltd as trustee for Local Government Super (Active Super), alleging that Active Super exposed its members to investments it claimed to restrict or eliminate. The action against Active Super was the third greenwashing matter filed by ASIC in the Federal Court.

We were concerned about Active Super misleading its members in some of the representations made about its investment approach. Between 2021 and 2023, Active Super published statements online and in reports and disclosure documents stating that investments in gambling, coal mining, Russian entities and oil tar sands entities were eliminated or restricted through the use of environmental, social and governance investment screens. However, from 1 February 2021 to 30 June 2023, Active Super invested in various securities that it had claimed were eliminated or restricted. These securities were held by Active Super directly and indirectly (via managed funds or exchange traded funds).

On 5 June 2024, the Federal Court found that certain of these representations were misleading and deceptive. Justice O'Callaghan found that the use of terms such as 'not invest', 'No Way' and 'eliminate' were unequivocal and not the subject of any potential qualifications by Active Super's Sustainable and Responsible Investment Policy.

In relation to representations made about gambling investments, Justice O'Callaghan considered that no reasonable person would construe these as mere 'guiding principles' because the critical language used in them was unequivocal.

'This is a significant outcome which shows our commitment to taking on misleading marketing and greenwashing claims made by companies in the financial services industry,' said ASIC Deputy Chair Sarah Court. 'ASIC took this case because it sends a strong message to companies making sustainable investment claims that they need to reflect their true position.'

Crypto assets

ASIC's continued focus on crypto assets reflects our concerns in relation to a range of emerging asset types that are risky, inherently volatile and complex, with the potential to give rise to consumer harm and threaten market integrity.

Many of these assets fall within the existing financial services regulatory regime. This year, we continued to support industry in understanding the regulatory considerations involved in the use of digital assets, blockchain and distributed ledger technology. We increased our industry engagements, assessed licence applications, and supported innovative firms through our Innovation Hub and the regulatory sandbox. We have seen a number of new crypto asset–related managed funds, including exchange traded funds, entering our market this year, and will continue to closely monitor developments.

We also achieved a number of important enforcement outcomes in relation to crypto asset–related businesses. We took these actions to clarify what is a regulated product and when a provider needs a licence. Matters included BPS Financial, Block Earner, Finder Wallet, and Bobbob Pty Ltd. We also disrupted scams relating to crypto assets.

We continued to assist the Australian Government with the development of its proposed digital asset platform framework, announced in October 2023. We held discussions on crypto assets with the Council of Financial Regulators and participated in projects to set international standards in this area, including IOSCO projects on crypto assets, decentralised finance and tokenisation.

CASE STUDY 1:

BPS Financial Pty Ltd

From January 2020, BPS Financial Pty Ltd (BPS) promoted a cryptocurrency called Qoin tokens, traded via a Qoin Wallet, to retail consumers and business owners (termed 'Qoin Merchants') as a means of paying for goods and services. Up to 30 September 2022, 93,000 customers had opened a Qoin Wallet, and BPS received more than $40 million from the sale of Qoin tokens.

In May 2024, following proceedings brought by ASIC, the Federal Court found BPS engaged in unlicensed conduct when offering the Qoin Wallet, which was found to be a non-cash payment facility.

The Court also found BPS had engaged in misleading or deceptive conduct and had made false or misleading representations concerning the Qoin Wallet, including that:

- the Qoin Wallet was officially registered or officially approved when it was not
- the Qoin Wallet could be used to purchase goods and services from an increasing number of Qoin merchants when, in fact, the number was declining
- consumers who purchased Qoin tokens could be confident that they would be able to exchange tokens for other crypto assets, or currency such as Australian dollars, through independent exchanges.

This result sends a strong message to organisations in the crypto industry that their products will be scrutinised by ASIC and that they must comply with their regulatory obligations to ensure consumers are protected. This action was one of several enforcement actions ASIC took against crypto asset businesses to clarify what is a regulated product and when a provider needs a licence.

Design and distribution obligations

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

We made seven stop orders in the period ending 30 June 2024, in relation to deficient target market determinations (TMDs) and contraventions of the 'reasonable steps' obligation. This included the first stop order to be issued on a life insurance product. We made one final stop order preventing Coral Coast Distributors (Cairns) Pty Ltd (CCD) from having customers at its Urban Rampage retail stores enter agreements to pay for goods on credit through Centrepay deductions.

We also accepted an enforceable undertaking from buy now pay later provider Elepay.

We commenced two civil proceedings during the year. One was against online investment platform, eToro Aus Capital Limited, relating to reasonable steps taken to distribute a contract for difference product and the appropriateness of the target market of the product. The other was against Bit Trade Pty Ltd, a provider of the Kraken crypto exchange to Australian customers.

See Spotlight 3 for details of the final stop order in relation to Urban Rampage.

SPOTLIGHT 3

Preventing inappropriate targeting of consumers

ASIC stops retail stores from targeting consumers with inappropriate credit arrangements tied to Centrelink payments.

Coral Coast Distributors (Cairns) Pty Ltd (CCD), trading as Urban Rampage, operates 10 stores in regional and remote locations in Queensland, the Northern Territory and Western Australia. It sells clothing and household goods primarily to First Nations consumers, offering credit via a deferred debt arrangement involving Centrepay.

Centrepay is a facility that allows consumers to pay for goods and services from registered businesses by deducting amounts from their Centrelink payments before the benefit is paid to the consumer.

On 24 April 2024, ASIC issued a final stop order on CCD, prohibiting it from signing up customers into Centrepay credit arrangements in its stores.

ASIC investigated and took action against Urban Rampage after concerns were raised by First Nations advocates and financial counsellors that consumers were experiencing financial hardship and seeking emergency relief after entering Centrepay deduction arrangements.

ASIC's stop order was based on breaches of DDOs relating to CCD's published and proposed Target Market Determination. ASIC found that the arrangements were unsuitable for consumers in CCD's target market because they were unlikely to be consistent with the consumers' financial situation and placed them at risk of financial hardship.

Urban Rampage applied to the Administrative Appeals Tribunal for a review of ASIC's decision and a stay of the stop order pending review. On 12 June, the tribunal dismissed Urban Rampage's stay application. The review is ongoing.

See **Media Release 24-084**[27] 'ASIC orders end to Centrepay credit arrangements in Urban Rampage stores', 26 April 2024.

> *'Addressing harm impacting First Nations Australians is a key priority for ASIC and we continue to work closely with financial counsellors and advocates in regional and remote communities to understand the challenges those communities face. Where ASIC sees conduct that places First Nations consumers at risk of financial harm, we will act to stop it.'*
>
> Alan Kirkland, ASIC Commissioner.

27 https://asic.gov.au/about-asic/news-centre/find-a-media-release/2024-releases/24-084mr-asic-orders-end-to-centrepay-credit-arrangements-in-urban-rampage-stores/

Cyber and operational resilience

In 2023–24, we continued to focus on robust cyber-risk management and operational resilience among the entities we regulate, working closely with other agencies, regulated entities and the government to address these critical issues.

We supported the whole-of-government response to cyber incidents, including through the National Coordination Mechanism's Financial Services Working Group. We also contributed to government policy initiatives, including the implementation of the 2023–2030 Australian Cyber Security Strategy, and provided input to proposals by the Council of Financial Regulators. We continued to actively participate in joint initiatives and incident responses with the Council of Financial Regulators' Cyber and Operational Resilience Working Group.

CASE STUDY 2:

Cyber Pulse Survey

A string of high-profile cyber incidents that began in late 2022 highlighted the need for all businesses operating in Australia's financial system to have robust cyber capabilities.

In 2023–24, ASIC launched the ASIC Cyber Pulse Survey, the largest survey on corporate Australia's cyber resilience. The survey measured participants' ability to:

- govern and manage organisation-wide cyber risks
- identify and protect information assets that support critical services
- detect, respond to, and recover from cyber security incidents.

In addition to providing individual feedback reports to participants, which benchmarked them against their peers, ASIC published Report 776[1] *Spotlight on cyber: Findings and insights from the cyber pulse survey 2023*. The report called on organisations to prioritise their cyber security after the survey identified significant gaps in cyber risk management capabilities. It summarised important trends, identified areas for improvement, and highlighted better practices with practical examples designed to support behavioural change among entities operating in Australia's financial system.

The findings from the survey have also informed a cyber awareness strategy designed to improve entities' cyber resilience capabilities.

1 www.asic.gov.au/regulatory-resources/find-a-document/reports/rep-776-spotlight-on-cyber-findings-and-insights-from-the-cyber-pulse-survey-2023/

Digital technology and data

In 2023–24, we made important progress in bolstering our capabilities in technology and data.

TRANSFORMATION CALLOUT

Real and tangible uplifts in digital and data capabilities

As new threats and disruptions arise in the ever-changing financial environment, it is critical that we continue to evolve and that our technological tools are fit for purpose. This enables us to act effectively where we see risks and harms. Through our multi-year strategy to strengthen our digital and technology capabilities, we aim to be a leading, digitally enabled and data-informed regulator by 2030, supported by and dependent on the funding and investment available to us.

In 2023–24, we were able to build significant momentum towards this goal, with important uplifts in our digital and technology capabilities. This improved not only our ability to effectively mitigate risks in our environment but also the way we interact with our stakeholders and support the integrity of the financial system.

Key examples included:

- implementing new voice-to-text transcription technology to support our enforcement work, significantly reducing the time taken to transcribe verbal evidence and retrieve insights from external data sources. The technology further supports a more efficient and secure process for transferring audio and video files
- digitising key forms, which allows data to be extracted in a structured way that enables in-depth analysis and supports our risk-based approach to surveillance
- introducing a Fight Scams Network between the ACCC, ASIC and an external takedown service partner to enable real-time scam alerts to be triaged and easily shared between agencies
- publishing the beta version of the new Professional Register Search function (aimed at replacing the current Connect Online service) with a user-centred design that makes it easier for consumers and other users to quickly find information
- modernising the look and feel of the ASIC website homepage to improve the user experience, with further enhancements to follow
- launching further enhancements to the ASIC Newsroom, focusing on audience segmentation and personalisation. ASIC news alert subscribers can now customise the topics and frequency of the ASIC news they wish to receive.

We also strengthened infrastructure and operational capabilities to collect, store and process data. For instance, under the new internal dispute resolution (IDR) reporting framework, we were able to receive, in early 2024, IDR data on an expanded basis, with the coverage increasing from an initial 344 entities to approximately 8,600 entities. Our collection and subsequent publication of this data will provide greater public visibility of where consumers are having difficulties, and support better IDR practices by the firms we regulate.

Strategic work across our regulated sectors

Strategic work with cross-sectoral impact

Protecting consumers facing financial hardship

In 2023–24, we worked actively to ensure banks and lenders provided adequate support for consumers experiencing financial hardship, and that those consumers knew how to seek help.

See Spotlight 4 for more details.

SPOTLIGHT 4

Helping Australians in financial hardship

With cost-of-living pressures on the rise, ASIC is actively working with lenders to ensure customers facing hardship get the support they need.

In August 2023, ASIC issued an open letter to the CEOs of all lenders[28] advising of our heightened focus on financial hardship and our expectations of lenders. We issued the letter in response to evidence suggesting that increasing numbers of consumers were experiencing financial hardship due to cost-of-living pressures.

We then collected data from 30 large lenders. We reviewed 10 of these lenders in more detail and, in May 2024, published our findings in **Report 782**[29] *Hardship, hard to get help: Findings and actions to support customers in financial hardship*. Our findings highlighted that lenders were not doing enough to support their customers experiencing financial hardship. For instance, 35% of customers who submitted a hardship notice dropped out of the process on at least one occasion. In about 40% of cases where payments were reduced or deferred, customers fell into arrears right after the assistance period ended. In the worst cases, lenders ignored hardship notices, effectively abandoning customers who needed their support.

We provided individual written feedback to the lenders we reviewed and asked them to prepare an action plan outlining how they intended to respond to the issues identified. We will follow up with the lenders to monitor their progress, and are considering further regulatory action in relation to certain issues we identified.

Following the release of Report 782, ASIC launched a consumer awareness campaign[30] on Moneysmart to inform Australians of their rights to seek financial hardship assistance.

> *'ASIC has made this a priority focus area, and where appropriate, we will not hesitate to take enforcement action to protect consumers.'*
>
> Joseph Longo, ASIC Chair

28 https://asic.gov.au/about-asic/news-centre/find-a-media-release/2023-releases/23-235mr-as-cost-of-living-pressures-persist-asic-calls-on-lenders-to-support-customers-in-financial-hardship/
29 https://asic.gov.au/regulatory-resources/find-a-document/reports/rep-782-hardship-hard-to-get-help-findings-and-actions-to-support-customers-in-financial-hardship/
30 https://moneysmart.gov.au/just-ask-your-lender-for-help

Implementing the Financial Accountability Regime

During the year, ASIC continued to work closely with the Australian Prudential Regulation Authority (APRA) to implement the Financial Accountability Regime (FAR), which imposes a strengthened responsibility and accountability framework for entities in the banking, insurance and superannuation industries and their directors and senior executives.

CASE STUDY 3:

Implementing the Financial Accountability Regime

FAR commenced for banks on 15 March 2024, with ASIC and APRA providing the banking industry with additional time (up to 30 June 2024) to submit applications for the registration of new accountable persons and comply with notification obligations.

This year ASIC and APRA also released further materials to help the financial services industry meet the new FAR requirements. This included a supporting legislative instrument directed at the insurance and superannuation industries, and guidance for all sectors.

ASIC and APRA have also engaged with regulated entities to help them prepare for the implementation of FAR. This engagement is ongoing as we move toward the 15 March 2025 commencement date for the superannuation and insurance industries.

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

Promoting the responsible and safe use of consumer data and artificial intelligence

We continue to be vigilant in relation to potential harms stemming from the misuse of consumer data, algorithms and artificial intelligence (AI) in financial services, and we have led the discussion on a sound regulatory approach.

See Spotlight 5 on our AI symposium.

SPOTLIGHT 5

Regulation of the use of AI

ASIC convened a symposium of experts to discuss approaches to the effective regulation of AI and ways to ensure its safe and responsible use in Australia.

AI is evolving at a rapid pace internationally and domestically, and ASIC is actively engaging in the public dialogue in relation to its use. We are working to inform our regulated entities about existing obligations when using AI, improve awareness of the key risks AI poses to consumers and markets, and build understanding in how industry is using AI.

In May 2024, ASIC partnered with the University of Technology Sydney Human Technology Institute to stage a symposium of experts from academia, business, industry and government to discuss how AI is changing regulation, and how regulators can respond, drawing on lessons from leading international approaches. Much of the current narrative about AI stems from tech businesses or major users of the technology. The symposium was designed to include the perspectives of those on whom AI is used.

The symposium included an AI thought leaders' roundtable with 40 leading experts in AI governance and regulation, with discussions on emerging AI use cases and what can be learnt from international regulatory approaches to AI. ASIC Chair Joseph Longo noted that governments and regulators must have a hand in shaping how AI technology is designed and deployed.

The symposium included a keynote address by the Hon Stephen Jones MP, Assistant Treasurer and Minister for Financial Services, and a panel discussion between Mr Longo, ACCC Commissioner Liza Carver, Privacy Commissioner Carly Kind, and eSafety Commissioner Julie Inman Grant. The evening session, open to the public, attracted 200 attendees.

While ASIC has been leading conversations on this topic for some time, the symposium was another opportunity to engage with those at the forefront of the use and regulation of AI in Australia. ASIC will continue working with industry, government and others to balance innovation with the responsible and safe use of emerging technologies.

> *'We should avoid … the notion that AI is too complex to be knowable. Like all technology, AI is the product of human ingenuity and can therefore, by definition, be understood. Moreover, it is the job of government and regulators to ensure that these systems are explainable and transparent.'*
>
> Joseph Longo, Opening remarks to the ASIC UTS AI Regulators Symposium

Deterring cold calling in superannuation switching business models

In 2023–24, we took action on cold-calling practices that induced inappropriate superannuation switching that eroded superannuation balances. This included a decision against financial adviser Mr A by the Financial Services and Credit Panel, which found that the relevant provider did not adequately consider 2 clients' objectives, needs and financial situation or base all judgements on their relevant circumstances. The clients had been referred to the provider by a third-party superannuation switching cold-calling operator who made an unsolicited telemarketing call to them offering a superannuation review.

CASE STUDY 4:

Deterring cold calling in superannuation switching business models

ASIC took action to deter cold-calling practices amid evidence of adverse consumer outcomes arising from unsuitable financial advice that came about as a result of an unsolicited call from a high-pressure cold-calling operator.

Our work included:

- a review of cold-calling operators who contact consumers to encourage superannuation switching
- a project in relation to superannuation trustees' oversight of advice fee deductions
- liaison with superannuation trustees to identify cold-calling switching models
- a consumer and industry education campaign
- commencing investigations in relation to certain cold-calling operators.

In late April 2024, ASIC launched a consumer awareness campaign on Moneysmart, urging consumers to 'just hang up' on cold callers and 'just scroll past' social media clickbait leading to inappropriate superannuation switching advice. In just over a month, the Moneysmart social media campaign[1] reached millions of Australians, including people in the accumulation phase of their superannuation journey (who were most impacted by cold-calling business models). The consumer campaign laid the groundwork for targeted industry messaging, and ramped up public pressure on unscrupulous operators benefiting from cold-calling business models.

Shortly after launching the campaign, we revealed the findings of our cross-sector work to deter cold-calling business models and issued a warning to unscrupulous operators using high-pressure sales tactics to lure consumers into receiving inappropriate superannuation switching advice. Given this type of advice had caused considerable volumes of superannuation fund movement into high-risk property investments, with significant payments to cold-calling operators, we reminded superannuation trustees, advice licensees and advisers of their responsibilities to members and clients. More broadly, we called on the advice and superannuation sectors to assist in preventing cold calling for super switching business models, including by reporting it to ASIC if and when they become aware of it.

We published **Report 781**[2] *Review of superannuation trustee practices*, calling on superannuation trustees to renew efforts to protect members from harmful advice fee deductions, including from advice originated by cold-calling businesses; and **Information Sheet 282**[3] *Unsolicited contact leading to financial advice*, outlining how financial services laws apply to unlicensed entities referring consumers to a third party for the provision of financial advice.

ASIC has also begun investigations into a range of entities identified as participating in cold calling for superannuation switching business models.

1 www.facebook.com/MoneySmartAu/postspfbid02YYqP1ThNdvB8W1VKz2fSTohsee4rhQBVJA3KnsUc3PUy7bEjUdBfXtCpKvGv86tCl
2 www.asic.gov.au/regulatory-resources/find-a-document/reports/rep-781-review-of-superannuation-trustee-practices-protecting-members-from-harmful-advice-charges/
3 www.asic.gov.au/regulatory-resources/financial-services/giving-financial-product-advice/unsolicited-contact-leading-to-financial-advice/

Acting against inadequate internal and external dispute resolution arrangements

ASIC continued to promote sound internal and external dispute resolution arrangements for consumer complaints. This included commencing civil penalty proceedings against Telstra Super on 3 November 2023, alleging that 40% of Telstra Super's responses to complainants between October 2021 and January 2023 did not comply with its own IDR procedures. This was ASIC's first case alleging a failure to comply with IDR requirements since certain provisions of ASIC's Regulatory Guide 271[31] *Internal dispute resolution* became enforceable in October 2021. This litigation is ongoing.

CASE STUDY 5:

Internal dispute resolution data collection

In March 2024, ASIC completed the first collection of IDR data from over 8,600 financial services firms. Around 87% of financial services firms successfully submitted an IDR data report to ASIC.

The IDR data reporting framework is the culmination of many years of work with industry to record, improve and standardise the quality of dispute resolution data. Collecting, and ultimately publishing, IDR data will improve the transparency and accountability of financial services firms' responses to consumer complaints and their approach to IDR. The framework provides ASIC with an important data set to assist with regulatory decision making, and will drive firms to improve IDR practices.

Since 5 October 2021, financial services firms have been required to record all complaints received and have an effective system for recording information about complaints (see Regulatory Guide 271).

The successful data collection from all firms in March was the result of many years of investment in new technologies and systems that enable us to store and process data at the required scale.

This new data, especially when combined with existing ASIC data, will be a powerful tool that ASIC can use to identify threats and prevent or address harms. We published our first regulatory application of the data in May, when calling on superannuation trustees to urgently consider their arrangements for dealing with death benefits claims.[1]

1 www.asic.gov.au/about-asic/news-centre/news-items/improving-superannuation-member-services-dealing-with-death-benefit-claims/

31 www.asic.gov.au/regulatory-resources/find-a-document/regulatory-guides/rg-271-internal-dispute-resolution/

Acting against misconduct that impacts small business

Our enforcement action targeting misconduct and predatory practices by financial services and credit providers helps to prevent unfair outcomes for small businesses who engage with these providers. Where necessary, we also take action against companies, directors and other officeholders who fail in their duties.

This year we disqualified 27 people from managing corporations due to their role in the collapse of multiple small proprietary companies. Some of the directors who received the maximum allowable disqualification of five years had also engaged in illegal phoenix activity and used company funds to make payments to related parties for no commercial reason. The failure of company directors to pay the ATO, employee entitlements or other creditors puts them at an unfair competitive advantage over other small proprietary companies.

On 6 September 2023, ASIC commenced proceedings against PayPal Australia, alleging that its standard form contracts with small business customers contain an unfair contract term. On 5 July 2024, the Federal Court declared a term used by PayPal Australia in its standard form contracts with small businesses to be unfair. The Court found that the term was unfair because its effect was to allow PayPal to retain fees that it had erroneously charged if the small business failed to notify PayPal of the error within 60 days of the fee appearing on its account statement.

We continue to target misconduct related to company failures and illegal phoenix activity resulting in outstanding debts, which can be very harmful to other small businesses. 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 data-matching tools to identify those promoting or engaging in phoenix activity. We work together to disrupt phoenix operators' business models and make them financially unviable, removing their ability to operate, applying financial penalties and prosecuting the worst offenders.

Acting against unfair contract terms

We have taken enforcement action against misconduct involving unfair contract terms.

CASE STUDY 6:

Auto & General

In April 2024, ASIC appealed the Federal Court's decision to dismiss ASIC's proceedings against Auto & General Insurance Company Limited (Auto & General) regarding an alleged unfair contract term under the ASIC Act.

The alleged unfair contract term was contained in Auto & General's home and contents policies in the period between 5 April 2021 and 4 May 2023. It required policyholders to notify Auto & General if *'anything'* changes about their home and contents, and stated that if policyholders did not provide the notifications, then Auto & General may reduce or refuse to pay claims, or may cancel or not offer to renew their contracts.

ASIC has appealed the decision of the Federal Court that the term is not unfair. ASIC remains concerned that the term imposes an unclear obligation on policyholders regarding what they need to disclose to the insurer, and that the term could mislead or confuse policyholders as to their true rights and obligations under the contract by suggesting that the insurer has broader rights to refuse claims than is otherwise available under the Insurance Contracts Act.

This is ASIC's first matter concerning alleged unfair contract terms in insurance contracts since the unfair contract term protections in the ASIC Act were expanded to include insurance contracts with consumers and small businesses. These changes were aimed at ensuring customers receive the same protections from unfair terms in insurance contracts as they do with contracts for other financial services, and to encourage insurers to improve the level of clarity and transparency in their contracts and remove potentially unfair terms.

See **Media Release 24-079**[1] 'ASIC appeals Federal Court findings relating to unfair contract term in insurance contracts by Auto & General', 19 April 2024.

1 www.asic.gov.au/about-asic/news-centre/find-a-media-release/2024-releases/24-079mr-asic-appeals-federal-court-findings-relating-to-unfair-contract-term-in-insurance-contracts-by-auto-general/?altTemplate=betanewsroom

Targeting high-risk property schemes

We have continued to act on high-risk property schemes that expose investors to significant losses. Following are outcomes of enforcement actions taken by ASIC during the year:

- On 3 April 2023, the Federal Court found that current and former directors of Linchpin Capital Group Limited and Endeavour Securities (Australia) Ltd had breached their duties as officers of a responsible entity of a registered managed investment scheme (MIS). On 10 January 2024, the court ordered the directors to pay $390,000 in pecuniary penalties and be banned from managing corporations for a period ranging from three to five years. This decision has been appealed.
- On 20 December 2023, Mudasir Mohammed Naseeruddin was sentenced to four years and four months imprisonment after pleading guilty to two charges of dishonest conduct, and two charges under s184 of the Corporations Act, in relation to dishonestly obtaining superannuation funds from investors based on false representations, including representations that the funds would be invested in property development.

Acting against non-lodgement of financial reports

ASIC prosecuted 12 companies for failing to lodge 56 annual financial reports. They were fined a total of approximately $414,000.

On 24 April 2024, Australian financial services licensee Odyssey Equity Finance Pty Ltd (Odyssey) was sentenced in the Dandenong Magistrates' Court for failing to lodge financial reports with ASIC for each of the financial years ending 30 June 2020, 2021 and 2022. While the court acknowledged some mitigating factors, Odyssey was discharged without conviction on giving security, by entering into a recognisance in the sum of $2,500 to be of good behaviour for a period of 12 months. A special condition of the bond is that Odyssey is required to comply with outstanding reporting obligations within the period of the bond.

Superannuation

ASIC is responsible for regulating conduct in the superannuation industry, including the conduct and disclosure obligations of trustees of registrable superannuation entities. Our work is focused on trustee conduct that affects superannuation fund members. During 2023–24, we focused on improving the delivery of retirement outcomes and member services by superannuation funds.

CASE STUDY 7:

Retirement outcomes

Superannuation trustees play a pivotal role in improving the retirement outcomes of Australians. The introduction of the retirement income covenant on 1 July 2022 created an obligation on trustees to identify and meet their members' retirement income needs.

In July 2023, ASIC and APRA jointly released Report 766[1] *Implementation of the retirement income covenant: Findings from the APRA and ASIC thematic review*. The review found there was a lack of progress and insufficient urgency from trustees in implementing the covenant and improving members' retirement outcomes.

ASIC also reviewed trustees' compliance with DDOs involving longevity risk retirement products. Due to their complexity and barriers to exit, there are increased member risks with these products. We observed that the TMDs for these products generally contained appropriate distribution conditions (i.e. conditions and restrictions on how the product is distributed to consumers), but often defined the target market and review triggers too broadly to enable the trustee to determine when the product or the TMD was no longer appropriate for the target market. We engaged with four trustees to ensure they improved their TMDs and distribution monitoring processes, as appropriate. Following the review, all trustees updated their TMDs to address our concerns.

As member service offerings continue to be a focus for many trustees, we reviewed a number of superannuation calculators offered by trustees, to assess compliance with the ASIC (Superannuation Calculators and Retirement Estimates) Instrument 2022/603. The review identified that:

- Two trustees had not adopted the default settings prescribed in the instrument for inflation assumptions and drawdown periods.
- Two trustees claimed that their calculator assumptions aligned with ASIC's Moneysmart tools when they did not.

Following the review, trustees updated their superannuation calculators to address our concerns.

In November 2023, ASIC and APRA issued an industry survey to understand trustees' progress with addressing the recommendations in Report 766. In July 2024, ASIC and APRA jointly released Report 784[2] *Industry Update: Pulse check on retirement income covenant implementation*, outlining the results of the self-assessment survey. This found that while some trustees had made progress, results varied widely across the sector and some trustees showed a lack of urgency.

1 www.asic.gov.au/regulatory-resources/find-a-document/reports/rep-766-implementation-of-the-retirement-income-covenant-findings-from-the-apra-and-asic-thematic-review/

2 www.asic.gov.au/regulatory-resources/find-a-document/reports/rep-784-industry-update-pulse-check-on-retirement-income-covenant-implementation/

CASE STUDY 8:

Member services review

The way superannuation trustees interact with members can have a significant impact on people's lives, especially in times of emotional and financial stress. As the conduct regulator of superannuation trustees, ASIC focuses on improving the quality of these interactions. In 2023–24, ASIC began a multi-year review into industry practices and compliance with laws involving trustee administration and member services. The first phase of the review focused on how trustees handle death benefit claims.

We analysed IDR data reported to ASIC by trustees, and external dispute resolution (EDR) data collected by the Australian Financial Complaints Authority (AFCA).

Between 2021 and 2023, there was a steep increase in the number of death benefits complaints to AFCA. Growth in complaints about service-related issues doubled over this period, but complaints about delays in death benefit claims handling saw a disproportionate increase, surging from 2.5% of service-related complaints to AFCA in 2021 to 8.5% in 2023. Our analysis of IDR data, which covers complaints made directly to trustees, identified that service issues were the focus of more than half of all such complaints in 2023. Complaints specifically about delays in handling death benefit claims increased in the first quarter of 2023 and have remained high.

We also reviewed how 22 trustees, who collectively account for two-thirds of the $2.7 trillion pool of APRA-regulated superannuation assets, communicate with their members about making death benefit nominations and claims on their websites.

ASIC called on trustees to urgently consider improvements after our review found the quality of information provided by trustees was often poor.

We published our interim observations on our website.[1] We are continuing to review detailed information from trustees about their processes, to identify whether they are meeting their obligations and where improvements need to be made to deliver better member outcomes. We will publish our findings in the coming year.

1 www.asic.gov.au/about-asic/news-centre/news-items/improving-superannuation-member-services-dealing-with-death-benefit-claims/

Member services failures remained an ASIC enforcement priority in 2023–24.

CASE STUDY 9:

Enforcement activity on superannuation member services

In November 2023, ASIC commenced a civil penalty proceeding against Telstra Super, alleging it failed to respond to more than 200 member complaints in a timely and adequate manner. ASIC alleges that 40% of Telstra Super's responses to complainants between October 2021 and January 2023 did not comply with its own IDR procedures. This is ASIC's first case alleging a failure to comply with internal dispute resolution requirements since certain provisions of ASIC's Regulatory Guide 271 became enforceable from October 2021. See Media Release 23-295[1] 'ASIC takes civil penalty action against Telstra Super in Australian-first case', 6 November 2023. This litigation is ongoing.

We also commenced civil penalty proceedings against the trustee of AustralianSuper over an alleged failure to have adequate policies and procedures in place for consolidating members' accounts. ASIC alleges that for almost 10 years, AustralianSuper failed to have adequate policies and procedures to identify members who held multiple AustralianSuper accounts and to merge those accounts, where merger was in a member's best interests. AustralianSuper then continued to charge multiple sets of fees and insurance premiums to these members. See Media Release 23-249[2] 'ASIC sues AustralianSuper over multiple superannuation accounts', 8 September 2023. This litigation is ongoing.

In November 2023, Superannuation trustee OnePath Custodians Pty Ltd (OnePath) was ordered to pay a $5 million penalty for making false or misleading representations about its right to continue charging fees, and for failing to provide services to members efficiently, honestly and fairly due to its misleading conduct and by deducting fees when not entitled to do so. See Media Release 23-320[3] 'OnePath Custodians penalised $5 million for fees for no service misconduct', 29 November 2023.

1 www.asic.gov.au/about-asic/news-centre/find-a-media-release/2023-releases/23-295mr-asic-takes-civil-penalty-action-against-telstra-super-in-australian-first-case#!page=1&search=23-295MR
2 www.asic.gov.au/about-asic/news-centre/find-a-media-release/2023-releases/23-249mr-asic-sues-australiansuper-over-multiple-superannuation-accounts/
3 www.asic.gov.au/about-asic/news-centre/find-a-media-release/2023-releases/23-320mr-onepath-custodians-penalised-5-million-for-fees-for-no-service-misconduct

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 2023–24 included reviewing credit card outcomes for consumers, and reducing harm to low-income First Nations consumers from high-fee transaction accounts. We also continued to focus on compliance with DDOs, and ensuring compliance with the new provisions applying to small amount credit contracts and consumer leases.

CASE STUDY 10:

Better Banking for Indigenous Consumers Project

ASIC's Better Banking for Indigenous Consumers Project has focused on reducing fee harm to low-income First Nations consumers experiencing excessive fees from high-fee transaction accounts. We reviewed the practices of four banks, but we consider that the findings apply across the banking sector.

We reviewed data from low-income First Nations consumers in discrete geographic locations and those receiving ABSTUDY payments nationwide to quantify the harm experienced from excessive fees. We identified over 150,000 customers in high-fee accounts while eligible for low-fee accounts, with these customers experiencing $6 million in fees over a 12-month period. We also reviewed bank processes and products to identify improvements that could result in better consumer outcomes.

ASIC provided participating banks with the review findings and a range of recommendations for improvement. Banks then committed to actions and improvements including:

- remediation of over $28 million for low-income customers, with approximately $24.5 million to customers identified from ASIC's review
- devising better processes for account migration to low-fee accounts, including embracing opt-out migration for specific customer cohorts and tailored opt-in migration, and reducing customer burden overall, such as by removing the requirement to attend a bank branch
- revising and expanding eligibility criteria and the distribution of low-fee accounts to low-income customers, as well as reviewing product offerings to remove fees and create new lower-fee products
- enhancing communication channels and content for effective communications with First Nations customers
- considering providing targeted Indigenous services such as call lines and in-person outreach.

ASIC's expectation is that all banks could take similar steps to review and consider their customers' experiences of fee harm by proactively reviewing their data and through process improvements focusing on effectiveness and reducing customer burden. While we have focused on low-income First Nations consumers, this is indicative of harm experienced by low-income customers more broadly. See Media Release 23-183[1] 'ASIC acts to ensure better banking outcomes for Indigenous consumers', 5 July 2023.

1 www.asic.gov.au/about-asic/news-centre/find-a-media-release/2023-releases/23-183mr-asic-acts-to-ensure-better-banking-outcomes-for-indigenous-consumers/

Our enforcement actions in this sector continued to focus on misleading and unconscionable conduct, charging of prohibited fees, and products being targeted at inappropriate markets.

We had strong court-based enforcement outcomes in relation to lenders and banks. In January 2024, the Commonwealth Director of Public Prosecutions was successful in a criminal action on a matter referred by ASIC against Members Equity Bank Limited (ME Bank). ME Bank was penalised $820,000 after pleading guilty to criminal charges of making false and misleading representations and failing to provide required written notices regarding home loans (see Case study 11). Following are other notable court outcomes during the year.

- Ferratum Australia Pty Ltd (in liquidation) was found to have charged prohibited fees and overcharged customers on small amount credit contracts, as well as having inadequate systems for calculating, recording and monitoring early payout amounts.[32] Ferratum was ordered to pay a total of $16 million in penalties in relation to its numerous breaches of the National Credit Act and National Credit Code.
- Sunshine Loans was found to have charged customers prohibited fees.[33]
- ANZ was penalised $15 million for misleading customers about available funds (see Case study 12).
- NAB was penalised $2.1 million for unconscionable conduct over account fees.[34]
- Cigno Australia and BSF Solutions were found to have engaged in credit activity without an Australian Credit licence and charged consumers prohibited fees. This outcome follows our persistent regulatory and enforcement work on an entity that has used multiple business models to evade regulation and consumer protection requirements.

See Spotlight 6.

- Macquarie Bank Limited was ordered to pay a penalty of $10 million for failing to have effective controls to prevent and detect unauthorised fee transactions conducted by third parties, such as financial advisers, on customer cash management accounts using Macquarie's bulk transacting facility.

See Spotlight 7.

32 www.asic.gov.au/about-asic/news-centre/find-a-media-release/2023-releases/23-248mr-court-finds-ferratum-australia-charged-prohibited-fees-and-overcharged-customers/
33 www.asic.gov.au/about-asic/news-centre/find-a-media-release/2024-releases/24-074mr-court-finds-sunshine-loans-charged-customers-prohibited-fees
34 www.asic.gov.au/about-asic/news-centre/find-a-media-release/2023-releases/23-258mr-nab-penalised-2-1-million-for-unconscionable-conduct-over-account-fees/

We have also commenced proceedings against Westpac for failing to respond to hardship notices.[35] We took our first action in relation to debt management, alleging that vulnerable customers who engaged the firm Solve My Debt Now were left worse off.[36]

DDOs are an important new tool in our regulatory toolkit. We are focused on making sure financial products meet the needs of consumers they are intended for and are distributed in an appropriate way for the intended target market. The first final stop order was issued in the Urban Rampage matter referred to in Spotlight 3, and we accepted a court enforceable undertaking from buy now pay later provider Elevare Pay Easy Pty Ltd, after it admitted it did not have TMDs for seven credit products it distributed to consumers.[37]

CASE STUDY 11:

ME Bank fined $820,000 after pleading guilty to criminal charges

Following an ASIC investigation and referral to the CDPP, in January 2024, the Federal Court ordered Members Equity Bank Limited (ME Bank) to pay a penalty of $820,000 after the bank pleaded guilty to criminal charges of making false and misleading misrepresentations and failing to provide required written notices to its home loan customers. The relevant conduct was compulsorily self-reported, and ME Bank admitted to the charges at an early stage.

The offending conduct occurred between December 2016 and September 2018. The first count concerned letters to customers that misstated the minimum amount they had to repay following the expiry of a fixed-rate or interest-only period on their home loan. The remaining counts concerned failures to send letters to customers whose repayment arrangements were due to expire, and who were not advised of resultant changes to their interest rate and minimum repayment amounts.

ASIC took this action to highlight the importance of banks properly notifying and updating their customers, who are entitled under the law to receive accurate information about changes to their loans, and that failure to do so can result in criminal convictions.

See **Media Release 24-005**[1] 'ME Bank sentenced after pleading guilty to criminal charges', 19 January 2024.

1 www.asic.gov.au/about-asic/news-centre/find-a-media-release/2024-releases/24-005mr-me-bank-sentenced-after-pleading-guilty-to-criminal-charges/

35 www.asic.gov.au/about-asic/news-centre/find-a-media-release/2023-releases/23-242mr-asic-sues-westpac-for-failing-to-respond-to-hardship-notices/
36 www.asic.gov.au/about-asic/news-centre/find-a-media-release/2023-releases/23-212mr-asic-sues-debt-management-firm-solve-my-debt-now-and-its-director/
37 www.asic.gov.au/about-asic/news-centre/find-a-media-release/2024-releases/24-012mr-asic-accepts-court-enforceable-undertaking-from-buy-now-pay-later-provider-elepay/

CASE STUDY 12:

ANZ ordered to pay $15 million for misleading customers about available funds

Action by ASIC resulted in Australia and New Zealand Banking Group Limited (ANZ) being ordered to pay a $15 million penalty in September 2023.

ANZ made representations to its customers via ANZ internet banking, the ANZ app, ATMs, in-person communications and telephone banking that cash and cheque deposits, transfers and merchant refunds were available immediately for withdrawal using certain ANZ credit and travel cards as cash advances without incurring a fee, when in fact they were not. Customers who relied on these representations and drew on uncleared funds as cash were charged fees and interest.

ASIC's investigation led to court findings that, by the above conduct, ANZ made false or misleading representations on the key ANZ channels with respect to the price of cash advances from 27 May 2016 to April 2021.

The court also found that between April 2018 and September 2021, in circumstances where there was a risk that customers would misapprehend the circumstances in which fees and interest were charged, ANZ did not act efficiently, honestly and fairly because it failed to take timely action to address the problem.

ASIC's action also resulted in ANZ remediating approximately $8.3 million to 186,000 accounts for fees and interest charged on cash advances, and establishing a new remediation program to remediate customers charged a cash advance fee between November 2018 and September 2021.

See **Media Release 23-260**[1] 'ANZ penalised $15 million for misleading customers about available funds', 26 September 2023.

1 www.asic.gov.au/about-asic/news-centre/find-a-media-release/2023-releases/23-260mr-anz-penalised-15-million-for-misleading-customers-about-available-funds/

SPOTLIGHT 6

Disrupting harmful credit business models

ASIC took action over many years to disrupt Cigno and BSF Solutions, which used evolving business models to evade regulation and target vulnerable consumers.

We frequently receive complaints about harm caused by unlicensed short-term and continuing credit contracts. Providers of these products often charge significant fees and target vulnerable consumers who are in financial difficulty, have previously applied for and been declined regulated credit and/or require loans for basic living expenses. This is particularly concerning in the context of the rising cost of living.

Our experience is that some of these providers design business models deliberately intended to avoid the required consumer protections. Some incorporate new entities and change business models when we commence action to address misconduct.

As early as 2016, we began receiving reports relating to Cigno Pty Ltd (Cigno) and its role in managing loans for a short-term credit provider. After the introduction of new powers in 2019, we made an industry-wide credit product intervention order that effectively banned entities from charging fees in excess of a permitted short-term exemption. Despite this, Cigno began operating under a new high-cost business model, which our Federal Court action in June 2022 succeeded in stopping.

After becoming aware that the entity and its related parties had adopted yet another new business model, we investigated further and commenced civil penalty proceedings in October 2023 against Cigno Australia, its director, Mark Swanepoel, and BSF Solutions and its director, Brenton James Harrison. The fees charged as a result of the unlicensed conduct total over $70 million.

On 24 May 2024, the Federal Court found Cigno Australia and BSF Solutions engaged in credit activity without an Australian Credit licence and charged consumers prohibited fees. It also found that Mr Swanepoel and Mr Harrison were involved in the unlicensed activity and other National Credit Act breaches. The Court made orders restraining Cigno Australia and BSF Solutions from recovering any further fees, charges or other amounts (including late payment fees and amounts of principal), and will later determine whether Cigno Australia, Mr Swanepoel, BSF Solutions and Mr Harrison should pay a pecuniary penalty in respect of this conduct and be restrained from carrying on a business engaging in credit activity.

'ASIC has taken regulatory and enforcement action over many years to respond to various business models used by entities connected to Cigno Australia, BSF Solutions, Mr Swanepoel and Mr Harrison.

We took this action because we were concerned that the Cigno Australia and BSF Solutions' "No Upfront Charge Loan Model" provided short-term loans totalling over $34 million and charged over $70 million in fees to more than 100,000 consumers between July 2022 and December 2022.'

Sarah Court
ASIC Deputy Chair

SPOTLIGHT 7

Holding large financial institutions to account

ASIC's case against Macquarie Bank for failing to have effective controls to prevent and detect unauthorised transactions by third parties led to a penalty of $10 million.

In April 2024, following proceedings brought by ASIC, Macquarie Bank Limited was ordered by the Federal Court to pay a pecuniary penalty of $10 million for contravening its obligation to provide financial services efficiently, honestly and fairly. While Macquarie initially defended the proceeding, it later admitted that it failed to have effective controls to prevent or detect unauthorised fee transactions conducted by third parties, such as financial advisers, on customer cash management accounts using Macquarie's bulk transacting facility.

Between 1 May 2016 and 15 January 2020, Macquarie enabled customers to give third parties varying levels of authority to transact on their accounts, including a limited authority to withdraw the third party's fees. Macquarie also made available to third parties a bulk transaction facility that enabled multiple withdrawals from multiple customer cash management accounts to be made simultaneously. Despite being aware of the inherent risk, Macquarie failed to implement effective controls to prevent or detect bulk transactions involving fees that would be outside the scope of the limited fee authority.

In addition to the penalty imposed by the Court, Macquarie agreed to remediate the clients of financial adviser Ross Hopkins, who was able to fraudulently withdraw around $2.9 million from his customers' accounts without being detected by Macquarie.

This case also sends an important message to financial institutions and other financial services licensees that fraud controls are increasingly important, and appropriate controls must be in place.

> *'ASIC expects financial institutions to prioritise and invest in systems that protect their customers. Macquarie fell short of its obligation to do all things necessary to provide its financial services efficiently, honestly and fairly, and as a result, it has become liable for a substantial penalty.'*
>
> Joseph Longo
> ASIC Chair

Insurance

The insurance sector comprises life and general insurance, including 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 focused on investigating general insurance claims handling practices, and working with industry to improve practices. We also reviewed past premium increases for life insurance products, and disclosure and marketing materials around premiums, to ensure life companies were meeting their obligations as well as consumer expectations.

CASE STUDY 13:

General Insurance claims handling and floods inquiry

In June 2022, ASIC reviewed claims handling practices for home insurance claims from the start of the new regime (effective 1 January 2022) requiring insurers to provide claims handling and settling services efficiently, honestly and fairly.

We observed good and poor practices across all six participating insurers in our review. Our thematic findings are set out in Report 768[1] *Navigating the storm: ASIC's review of home insurance claims*, published in August 2023.

Insurers must be able to meet their obligations across all claims, particularly when claims volumes are heightened following a severe weather event. We identified five key areas for improvement:

- better communications with consumers
- better project management
- better handling of complaints
- better treatment of vulnerability
- better resourcing of claims handling and dispute resolution functions.

ASIC acted on these findings by calling on insurers to improve their claims handling and resourcing. ASIC also addressed the Insurance Council of Australia 2023 Annual Conference and called on insurers across the industry to get the basics right for insurance pricing promises, product design and distribution, and claims handling.[2] ASIC further made a submission to the House of Representatives Standing Committee on Economics inquiry into insurers' responses to major floods claims in 2022, and we appeared as a witness and gave evidence to the inquiry on 2 February 2024.

Following evidence given by insurers at the inquiry, ASIC wrote to the chairs and CEOs of general insurance companies, reminding them of their obligations as AFS licensees when handling claims, and setting our expectation to see an increased focus by insurers on resolving any outstanding claims related to flood events that occurred in 2022. We have sought additional information from some insurers on outstanding claims from those events.

ASIC is actively monitoring claims handling practices and has commenced several investigations. Claims handling misconduct, with a particular focus on home insurance, remains a key enforcement priority for ASIC.

Our interventions will improve consumer outcomes as:

- Consumers will be less likely to have a poor claims experience due to insurers improving their practices in respect of claims handling.
- Best practice claims handling conduct will allow insurers to focus on other challenges facing consumers in the insurance market, such as insurance access and affordability.

1 https://download.asic.gov.au/media/tgrozota/rep768-published-16-august-2023.pdf
2 www.asic.gov.au/about-asic/news-centre/speeches/the-princess-and-the-pea-getting-the-basics-right-in-insurance/

CASE STUDY 14:

Life insurance premium increases

Life insurance plays an important role in safeguarding the financial wellbeing of Australians. In recent years, significant premium increases have raised concerns about the accessibility and sustainability of life insurance products. ASIC and APRA are checking the progress of life companies in meeting regulatory, consumer and community expectations in relation to premium increases.

ASIC and APRA issued a public letter in December 2022 to put life company CEOs on notice of regulator concerns, and asked them to review past premium increases, and disclosure and marketing materials around premiums. We sent a separate letter to the Council of Australian Life Insurers (CALI) asking what steps could be taken at an industry level to address our concerns with product labelling practices.

We reviewed responses from 16 life companies, and further engaged with seven, which collectively accounted for 98% of the retail life insurance market by annual premiums and covered approximately 3.9 million lives at the time of the review. As a result of our work:

- By December 2024, life companies will, supported by CALI guidance, adopt a new set of premium labels for new retail policies that more accurately reflect premium experience.
- Four life companies amended the product disclosure statements (PDSs) of flagship on-sale products to provide clear reasons for premium changes, in addition to the two life companies that had already been doing so.
- Marketing and disclosure of when, how and why premiums may change was improved across the industry.
- Three insurers that increased premiums without a clear contractual right to do so instituted remediation programs, expecting to return approximately $22 million into the hands of policyholders.

During this work we identified that life companies need to focus particularly on:

- having sound risk management and compliance assurance around premium adjustments, and ensure that contract terms allowing for increases are transparent and not unfair
- explaining clearly how premiums are calculated and may change over the life of the policy
- designing and pricing life insurance products factoring in consumers' need for premium stability.

ASIC and APRA issued a second joint letter to life company CEOs to emphasise these expectations. We will continue to monitor the progress of life companies in relation to the three key issues we identified during the year. We expect to see more improvements from life companies, including stronger governance of the premium review process and an uplift in consumer understanding of life insurance premiums.

Our enforcement action resulted in significant penalties for misleading statements made in product disclosure statements (see Case study 15), and for mis-selling and unconscionable conduct in the sale of insurance products (see Case study 16).

CASE STUDY 15:

RACQ Insurance Pty Ltd is penalised $10 million for potentially misleading statements

ASIC's actions resulted in RACQ Insurance Limited (RACQ) being ordered to pay a $10 million penalty by the Federal Court in November 2023 for potentially misleading customers in its PDSs about the pricing discounts available for certain types of insurance cover. RACQ self-reported the pricing failure after ASIC called on general insurers to review their pricing practices in October 2021.

The PDSs for RACQ's Motor, Home, Caravan & Trailer and Unique Vehicle insurance policies included statements that certain discounts would be applied to customers' insurance premiums. The Court found that these statements were potentially misleading because the discounts were only applied by RACQ to the base insurance premium, not to additional premiums paid for certain optional extras.

ASIC's investigation led to Court findings that RACQ sent out the misleading PDSs on at least 5 million occasions between March 2017 and March 2022. Some 458,746 customers missed out on approximately $86.5 million in discounts they should have received.

RACQ's PDSs have since been updated and it has committed to a remediation program for a range of pricing promise failures, not limited to those failures relating to this action. RACQ reported the total cost of the remediation could reach $220 million.

CASE STUDY 16:

Select AFSL and others penalised $13.6 million for mis-selling insurance

In July 2023, following proceedings brought by ASIC, the Federal Court imposed combined penalties of $13.5 million on Select AFSL (Select), BlueInc Services Pty Ltd (BlueInc) and Insurance Marketing Services Pty Ltd for engaging in unconscionable conduct and other contraventions of financial services law when selling life, funeral and accidental injury insurance under the brand names Let's Insure and FlexiSure.

The Court ordered Mr Russell Howden, the sole director of each of the companies, to pay $100,000 and disqualified him from managing corporations for five years. ASIC's case concerned the mis-selling of insurance over the phone to consumers, including First Nations consumers from remote communities. English was not the first language of many of these consumers.

The Court observed that misrepresentations were made, high-pressure tactics applied, sales tactics used to overbear the free will of consumers, and that having made sales, retention agents ignored the express wishes of consumers to cancel policies and acted so as to wear them down.

The Court also penalised Select and BlueInc for conflicted remuneration contraventions, which included sales agents being given a cruise to the Gold Coast, a Vespa scooter and trips to Las Vegas and Hawaii.

ASIC considered this was a clear case of consumers not having the opportunity to understand and consider the features of the insurance product they had been offered, resulting in poor consumer outcomes.

ASIC took this action to deter misconduct relating to financial products and reduce the risk of harm to consumers, particularly those who are vulnerable.

Financial advice

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 2023–24 included facilitating the registration of relevant providers (financial advisers), and completing a review of the roles of advisers and advice licensees in relation to Choice superannuation products. We also provided guidance and infrastructure to enable notification for financial advisers relying on the experienced provider pathway.

See Case study 4 for details of our work in deterring cold-calling superannuation switching business models.

ASIC's enforcement action in this sector led to a number of significant court outcomes and penalties. Following are two notable court outcomes:

- R M Capital Pty Ltd was found to have failed to take reasonable steps to ensure that its authorised representative, the SMSF Club Pty Ltd (SMSF Club), did not accept conflicted remuneration (see Case study 17).
- Mercer Financial Advice (Australia) Pty Ltd was ordered to pay a $12 million penalty after being found to have failed in its fee disclosure obligations and for charging fees to customers it was not entitled to charge.[38]

38 https://asic.gov.au/about-asic/news-centre/find-a-media-release/2023-releases/23-314mr-mercer-to-pay-12-million-penalty-for-misleading-representations-and-fee-disclosure-failures/

CASE STUDY 17:

ASIC succeeds in conflicted remuneration case against financial advice licensee

On 29 February 2024, the Federal Court found that R M Capital Pty Ltd (RM Capital) failed to take reasonable steps to ensure that its authorised representative, the SMSF Club Pty Ltd (SMSF Club), did not accept conflicted remuneration.

ASIC's case alleged that SMSF Club advised its clients to set up SMSFs to buy real property marketed by real estate agent Positive RealEstate Pty Ltd. ASIC alleged that pursuant to referral agreements, Positive RealEstate paid SMSF Club around $5,000 each time a client bought a property through it using their SMSF. It was alleged that the payments could reasonably be expected to have influenced financial product advice given by SMSF Club to its clients, and so constituted prohibited conflicted remuneration under the Corporations Act.

ASIC contended that SMSF Club contravened s963G of the Corporations Act by accepting payments from Positive RealEstate, and RM Capital contravened s963F of the Corporations Act by failing to take reasonable steps to ensure SMSF Club did not accept the payments.

A hearing as to penalty and other relief against RM Capital has been set down for 12 December 2024. Judgement has been reserved in relation to ASIC's allegations against SMSF Club.

See **Media Release 24-038**[1] 'ASIC succeeds in conflicted remuneration case against financial advice licensee', 4 March 2024.

1 www.asic.gov.au/about-asic/news-centre/find-a-media-release/2024-releases/24-038mr-asic-succeeds-in-conflicted-remuneration-case-against-financial-advice-licensee

Investment management

The investment management sector includes responsible entities, wholesale trustees, operators of notified foreign passport funds, custodians, investor directed portfolio service operators, managed discretionary account providers, traditional trustee company service providers, corporate collective investment vehicles and crowdsourced funding intermediaries. In 2023–24, we focused on sustainability-related disclosure and governance practices across issuers of investment products, as well as surveillance of issuers of investment products, focusing on the 'reasonable steps' obligations.

In a significant signal on the importance of directors' duties, our enforcement action against current and former directors of Linchpin Capital Group Limited and Endeavour Securities (Australia) Ltd resulted in an order to pay $390,000 in penalties for breaching their duties as officers of a responsible entity of a registered managed investment scheme. They were also banned from managing corporations for a period of three to five years. While this decision has been appealed, it is a reminder to directors of entities that operate managed investment funds that they must act in the best interests of members.

Our first 'licensee for hire' case resulted in wholesale licensee Lanterne Fund Services Pty Ltd (Lanterne) being ordered to pay a $1.25 million penalty after it failed to comply with obligations of Australian financial services (AFS) licence holders (see Case study 18).

Our enforcement work in the sector also resulted in two significant criminal outcomes in matters referred by ASIC to the Commonwealth Director of Public Prosecutions:

- In March 2024, David Sipina became the third person to plead guilty to criminal charges relating to Courtenay House in a matter referred by ASIC. The Courtenay House group offered returns to investors based on representations that their funds would be traded in the Forex and Futures markets. ASIC alleges that approximately 585 investors contributed over $180 million to the scheme but only a fraction of the funds were actually traded. Instead, the majority of new investor funds were used to repay earlier investors, a fraudulent arrangement known as a Ponzi scheme. In addition to conducting the criminal investigation into the matter, ASIC had previously taken civil action to freeze assets and assisted liquidators.
- In December 2023, Mudasir Mohammed Naseeruddin was sentenced to four years and four months imprisonment after pleading guilty to two charges of dishonest conduct, and two charges in relation to dishonestly obtaining superannuation funds from investors based on false representations, including representations that the funds would be invested in property development (see Case study 19).

CASE STUDY 18:

Licensee for hire business ordered to pay $1.25 million for failing to comply with obligations under AFSL

Lanterne operated a 'licensee for hire' business model through which it authorised over 60 corporate authorised representatives (CARs) and under them, 205 authorised representatives (ARs) who together had up to $1.685 billion in funds under management. In return for authorisation, Lanterne charged an upfront fee of $5,000 per CAR and up to $3,000 per month in ongoing fees. Despite the scale of Lanterne's CARs, Lanterne had only one full-time employee, its CEO and sole director, Peter Cozens.

In April 2024, following proceedings brought by ASIC, the Federal Court ordered Lanterne to pay a $1.25 million penalty for its failure to comply with six of the general obligations of AFS licence holders.

Lanterne admitted that it:

- did not have a formal or documented risk management system or any systems of processes in place to identify, assess or mitigate risks
- relied on CARs self-reporting any exceptions to compliance with their obligations and had no formal or documented review or audit process to assess whether a representative complied with financial services laws
- conducted no discernible due diligence on the CARs and only limited background checks on the individuals involved with them
- did not have enough appropriately qualified responsible managers with sufficient time to undertake their roles
- did not offer or provide training to its CARs or ARs, did not require evidence or information about training, and did not maintain any records of training
- had insufficient human resources to enable it to monitor and supervise its representatives
- did not have an adequate IT infrastructure, IT resources plan, security management plan, IT back-up protocol or disaster recovery plan, and maintained its records using a paper filing system until September 2020.

The Court found Lanterne breached its AFS licence obligations between March 2019 and October 2021 when it failed to:

- have adequate risk management systems
- have adequate technological and human resources to provide the services covered by its AFS licence
- ensure that its representatives were adequately trained
- maintain the competence to provide financial services covered by its AFS licence
- take reasonable steps to ensure that its representatives complied with Australian financial services laws
- do all things necessary to ensure that the financial services covered by the licence were provided efficiently, honestly and fairly.

The Court also ordered that an independent expert be appointed to review and report on Lanterne's systems, processes and controls, and that Lanterne must implement the recommendations made by the independent expert once the report is received.

ASIC took this action because Lanterne's arrangements were woefully inadequate for a business of its scale, posing a significant risk to investors. ASIC wanted to send a message to licensees that it is vital they take their compliance obligations seriously to protect consumers and investors.

See **Media Release 24-071**[1] 'ASIC action results in $1.25 million Court imposed penalty against AFSL 'licensee for hire' firm', 11 April 2024.

1 www.asic.gov.au/about-asic/news-centre/find-a-media-release/2024-releases/24-071mr-asic-action-results-in-1-25-million-court-imposed-penalty-against-afsl-licensee-for-hire-firm

CASE STUDY 19:

Melbourne Property Developer jailed for dishonest conduct

On 20 December 2023, Mudasir Mohammed Naseeruddin was sentenced to a total prison sentence of four years and four months for dishonest conduct in the course of carrying on a financial services business and for failing to exercise powers and discharge duties in good faith in the best interests of a corporation.

Mr Naseeruddin encouraged investors to roll over their superannuation monies into newly created SMSFs and to lend those funds to his two companies, Secure Investments Pty Ltd and Aquila Group Pty Ltd. Mr Naseeruddin was a director of both companies. He told victims that the funds would be invested in property developments, but only a small portion of their funds were invested this way.

The court found that between 13 May 2015 and 6 January 2020, Mr Naseeruddin dishonestly obtained more than $520,000 from six investors, including three First Nations investors from rural New South Wales. The court also found that between 14 July 2016 and 23 December 2019, Mr Naseeruddin dishonestly used his position as a director of Secure Investments Pty Ltd to withdraw over $550,000 from the company to purchase shares in a security company for his own benefit.

This result aligns with ASIC's enduring priorities to take action against governance and directors duties failures relating to high-risk property schemes that expose investors to significant loss, and misconduct impacting First Nations people.

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 2023–24 continued to focus on stakeholder engagement and 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 20:

ASX and CHESS replacement

We have maintained high-intensity supervision of Australian Securities Exchange (ASX), reflecting the critical nature of ASX's services to the Australian financial system. Following ASX's decision in November 2022 to pause the replacement of its cash equity clearing and settlement system (CHESS), ASIC and the Reserve Bank of Australia (RBA) have been closely monitoring ASX's governance arrangements for the CHESS Replacement program.

ASIC required ASX to prepare and have independently audited three special reports under notice, with the final special report on ASX's Portfolio, Program and Project Management Frameworks being released in November 2023. Using the reports, ASIC has continued to closely monitor what regulatory actions are needed to ensure that ASX's project delivery meets the highest standards required in the replacement of this critical national infrastructure.

ASIC has also been closely monitoring ASX's continued maintenance and investment in existing CHESS, to ensure it continues to meet ongoing resilience, reliability, integrity and security requirements. This will be a continued focus for ASIC and the RBA.

At ASIC's request, in August 2023, ASX established a new Cash Equities Clearing and Settlement Advisory Group. This is a small group of recognised industry leaders with deep expertise in clearing, settlement, custody, technology, registry services and markets. The Advisory Group provided valuable advice and recommendations on the CHESS replacement solution design decision, and is also expected to be a key advisory body for the decision on a move to T+1 settlement (settlement of a trade within 1 business day of the transaction) in Australia.

ASIC for the first time issued an infringement notice to a market operator (see Case study 21).

CASE STUDY 21:

ASX fined $1,050,000 for order information transparency failure

On 8 February 2024, ASIC fined ASX Limited $1,050,000 for failing to make pre-trade information available on 8,417 occasions between 4 April 2019 and 22 December 2022.

Under the market integrity rules, market operators are required to make certain information such as the volume and price of orders available on its trading system. Pre-trade information is fundamental to fair and transparent markets because it assists with price formation, aids liquidity, and enables investors to assess investment opportunities and value listed companies.

ASIC found that ASX's failure was a result of an incorrect system configuration. ASIC considered ASX's conduct was serious and that the circumstances giving rise to the system configuration issue was indicative of carelessness by ASX. The incorrect configuration went undetected until drawn to ASX's attention by a market participant. ASIC found that on at least two occasions before 22 December 2022, ASX could have, but did not, identify the system configuration issue.

This result was the first time that ASIC had issued an infringement notice to a market operator. This aligns with ASIC's enforcement priority focusing on technology and operational resilience for market operators and market participants.

See **Media Release 24-039**[1] 'ASX pays $1,050,000 penalty for order information transparency failure', 7 March 2024.

1 www.asic.gov.au/about-asic/news-centre/find-a-media-release/2024-releases/24-039mr-asx-pays-1-050-000-penalty-for-order-information-transparency-failure/

Market participation and conduct

ASIC promotes trust and confidence in markets through our surveillance of trading on Australia's securities, futures and over-the-counter (OTC) markets, and our supervision of market intermediaries, including investment banks, securities dealers and issuers of OTC products. In 2023–24, our focus areas included:

- actions to promote fair and orderly financial markets, such as the development and use of new tools to enhance our detection of complex and novel market abuse matters
- initiatives to enhance cyber, technology and operational resilience
- risk-based surveillance of complex product issuers to identify and disrupt conduct contravening DDOs and misconduct relating to crypto assets within our remit
- proactive supervision and enforcement of governance, transparency and disclosure standards
- promoting the development of international standards and better practices through participation in IOSCO working groups and liaising with other local and international regulators.

During the year, ASIC provided limited class relief to wholesale market intermediaries from compliance with unfair contract terms obligations for International Swaps Derivatives Association agreements and other professional financial market contract types entered into with certain sophisticated financial market participants. We granted relief to enable Australian institutional investors and counterparties to continue to rely on industry standard form contracts to participate in global wholesale financial markets, and to maintain the efficiency and integrity of those markets while not excluding genuine small businesses from unfair contract terms protections.

We achieved a significant court-based outcome that helps clarify expectations for pre-hedging relating to disclosure and consent. Westpac was ordered to pay a maximum penalty amount for engaging in unconscionable conduct when it engaged in pre-hedging ahead of an interest rate swap transaction with a consortium comprising AustralianSuper and IFM entities. The interest rate swap related to managing interest rate risk associated with the consortium's purchase from the NSW Government of a majority stake in electricity provider Ausgrid (see Case study 23).

CASE STUDY 22:

Setting standards for pre-hedging practices

ASIC observed a wide range of pre-hedging practices in the Australian market, with some falling significantly short of our expectations.

On 1 February 2024, ASIC published an open letter to the CEOs of market intermediaries setting out our guidance regarding pre-hedging practices. The guidance covered eight key areas for market intermediaries to consider when undertaking pre-hedging.

The purpose of the letter was to:

- raise and harmonise minimum standards of conduct related to pre-hedging
- improve transparency so that clients are better informed when making investment decisions
- promote informed markets and a level playing field between market intermediaries
- uphold integrity and investor confidence in the Australian financial markets.

We will consider supplementing the letter with further guidance as international standard setting progresses.

CASE STUDY 23:

Westpac ordered to pay the maximum penalty for engaging in unconscionable conduct in large interest rate swap

An ASIC investigation led to the Federal Court of Australia in January 2024 declaring that Westpac Banking Corporation (Westpac) engaged in unconscionable conduct in October 2016 when executing a $12 billion interest rate swap transaction, the largest of its kind in Australian financial market history.

The Court declared Westpac's conduct was unconscionable due to the following factors:

- Westpac was aware of its client's concern about trading prior to the swap transaction (pre-hedging) that had the potential to adversely affect the price of the swap transaction to their detriment. Every basis point increase to the price of the swap transaction would involve a cost to its client of about $4.7 million.
- Despite being aware of its client's concerns, Westpac acted on an internal plan to pre-hedge up to 50% of the interest rate risk by trading in significant volumes of interest rate derivatives in the market before the swap transaction was executed.
- Westpac failed to obtain client consent or give clear and full disclosure about the extent of its planned pre-hedging.
- Once Westpac began on-market pre-hedging trading, the client could not protect itself against the risk that Westpac's trading would increase the price of the swap transaction to the client.

Appropriate conduct for pre-hedging is an issue of global significance. In this case, Westpac's behaviour was unconscionable and exposed its client to significant risk. Westpac's conduct was also in stark contrast with that of several other banks. If pre-hedging is not carried out in an appropriate manner, it can be unfair, unconscionable and result in poor client outcomes.

Westpac was ordered to pay the maximum penalty of $1.8 million. Had Westpac engaged in similar conduct today, the maximum available penalty would have been significantly higher.

The Court also declared that Westpac contravened sections 912A(1)(a) (obligation to provide financial services efficiently, honestly and fairly) and 912A(1)(aa) (obligation to have adequate arrangements to manage conflicts of interest) of the Corporations Act.

Our commitment to ensuring the integrity and cleanliness of Australia's financial markets is reflected in our continuing enforcement activity on market manipulation and insider trading, as well as breaches of continuous disclosure obligations. Some notable outcomes include:

- Mr Cameron Waugh being sentenced for insider trading, and Mr Henry Eng Chye Heng being sentenced for market manipulation and creating a false or misleading appearance of active trading

See Spotlight 8.

- Finfluencer Mr Adam Blumenthal being ordered to pay a penalty of $850,000 and being disqualified from managing corporations for five years for market rigging and breaches of directors' duties[39]
- Holista Colltech Ltd being ordered to pay a $1.8 million penalty for breaching continuous disclosure obligations.[40]

A significant penalty outcome was also achieved in our case relating to suspected manipulation in commodities derivatives markets (see Case study 24).

CASE STUDY 24:

J.P. Morgan Securities Australia Limited gets $775,000 penalty for market gatekeeper failure

On 10 April 2024, following an ASIC investigation, the Markets Disciplinary Panel (MDP) fined J.P. Morgan Securities Australia Limited (JPMSAL) $775,000 for permitting suspicious client orders to be placed on the ASX 24 futures market.

The MDP found JPMSAL should have suspected 36 orders placed by a client between 11 January 2022 and 3 March 2022 were submitted with the intention of creating a false or misleading appearance with respect to the market for, or the price of, the Eastern Australia Wheat futures January 2023 (WMF3) contracts.

The MDP considered that JPMSAL's failure to identify its client's trading as suspicious was 'careless', that JPMSAL should have detected the conduct, and should have acted more expeditiously when alerted to the order activity by ASIC.

The MDP's decision emphasises that market participants cannot solely rely on automated trading monitoring systems to detect potential misconduct, should ensure that staff have appropriate knowledge of the products they and their clients trade in, and be able to detect and respond to any suspicious behaviour. Further, market participants should ensure clients for which they permit direct market access to, remain competent and aware of their obligations.

This result aligns with ASIC's enduring enforcement priority to take action for misconduct damaging market integrity and ASIC's 2023 enforcement priority to address manipulation in energy and commodities derivatives markets.

See **Media Release 24-093**[1] 'J.P. Morgan Securities $775,000 penalty for market gatekeeper failure', 9 May 2024.

1 www.asic.gov.au/about-asic/news-centre/find-a-media-release/2024-releases/24-093mr-j-p-morgan-securities-775-000-penalty-for-market-gatekeeper-failure/

39 www.asic.gov.au/about-asic/news-centre/find-a-media-release/2024-releases/24-076mr-adam-blumenthal-ordered-to-pay-850-000-and-disqualified-for-five-years-for-market-rigging-and-directors-duties-breaches/

40 www.asic.gov.au/about-asic/news-centre/find-a-media-release/2024-releases/24-053mr-holista-colltech-to-pay-1-8-million-penalty-for-breaching-continuous-disclosure-obligations-over-the-sale-of-its-covid-product

SPOTLIGHT 8

Taking tough action on insider trading and market manipulation

ASIC's success in two recent market trading cases reflects our commitment to protecting the integrity of Australia's markets by holding market operators and participants to the highest standard.

In March 2022, following ASIC's market surveillance, ASIC began an investigation into suspected insider trading of shares in Genesis Minerals Limited (Genesis). ASIC alleged that Mr Cameron Waugh came into possession of inside information in his role at Omnia Company Pty Ltd (Omnia), where he was advising on a proposed share placement and board restructure for Genesis.

At the time of ASIC's investigation, Mr Waugh was living overseas. Once he returned to Australia, ASIC's investigation was expedited and an arrest warrant was executed in December 2022 before Mr Waugh could leave the country.

On 24 January 2024, Mr Waugh pleaded guilty to insider trading in shares of Genesis between 14 and 21 September 2021, profiting by $57,256.

In sentencing Mr Waugh, the judge attributed Mr Waugh's actions to greed, stating: 'You wanted something you did not have and wanted to portray yourself as something you were not … you believed money and the trappings of wealth would validate you…It seems the good will of those supporting you was overridden by your desire for success.'

On 26 March 2024, the Supreme Court of Western Australia sentenced Mr Waugh to two years' imprisonment with a non-parole period of nine months.

Mr Waugh is the first person to be sentenced and serve time in jail in Western Australia under the new penalty provisions for insider trading. As a result of his conviction, Mr Waugh was automatically disqualified from managing corporations for five years.

ASIC took further action to protect the integrity of Australia's markets when it referred a criminal brief to the CDPP in relation to the founder of listed bottled water producer Eneco Refresh, Henry Eng Chye Heng. Mr Heng was sentenced to 18 months' imprisonment for market manipulation and creating a false or misleading appearance of active trading following a hearing in the Perth District Court on the 19 April 2024. The court ordered Mr Heng be released forthwith on recognisance on the condition that he be of good behaviour for a period of 12 months.

Mr Heng was sentenced for using share trading accounts held in the names of his family to manipulate the share price of Eneco on 24 occasions between 18 December 2020 and 15 December 2021. Mr Heng also used share trading accounts held in the names of his family to conduct trades that created a false or misleading appearance of active trading in Eneco on 30 April 2021 and 30 November 2021.

On 3 May 2024, Mr Heng also pleaded guilty and was convicted of nine counts of failing as a director to notify the market operator of a change in his relevant interests in breach of section 205G(10) of the Corporations Act. The court ordered Mr Heng be released on his own recognisance with a $10,000 personal surety and upon the condition that he be of good behaviour for a period of 12 months.

> *'A clean market that is fair, orderly and transparent is critical to an efficient economy. It facilitates Australian businesses to raise capital and manage risk, and gives investors confidence to participate.*
>
> *As part of our efforts to keep Australia's markets clean, ASIC has been actively targeting insider trading through our new award-winning system, which automatically hunts for and detects suspected market misconduct.'*
>
> Joseph Longo
> ASIC Chair

Corporations

In 2023–24, we continued to supervise the corporate sector, including overseeing fundraising and merger and acquisition transactions, monitoring corporate governance conduct and disclosure practices, reviewing disclosures on related party transactions, and considering associated applications for relief. We updated ASIC's legislative instruments relating to takeovers and associated regulatory guidance. We reviewed the use of virtual-only meetings of company members for compliance with recent law reforms. We also conducted work to promote cyber and operational resilience, including publishing the Cyber Pulse Survey in November 2023 (see Case study 2).

CASE STUDY 25:

Corporate finance transactions

Market integrity impacts all Australians through their direct investment holdings or indirect exposure via superannuation. Corporate transactions, including IPOs, secondary raisings, and merger and acquisition activity, are all indicators of healthy capital markets. ASIC's work in monitoring and acting where concerns are identified enhances the ability of all Australians to confidently participate in financial markets.

In 2023–24, ASIC received 76 schemes of arrangement and 29 takeover bids with an implied value of more than $103 billion. ASIC regularly provides submissions in takeover disputes brought before the Australian Takeovers Panel, where parties are seeking declarations of 'unacceptable circumstances'. In 2023–24, 23 applications were received by the Takeovers Panel, and ASIC took an active role in numerous proceedings involving novel issues relating to deal protection devices, equity derivatives, and the general jurisdiction of Chapter 6 of the Corporations Act over contractual promises among others.

In addition, ASIC continued to review fundraising documents to enable informed investor participation, including assessing compliance with DDOs. In 2023–24, we received more than 500 original prospectuses that were collectively seeking to raise more than $8 billion.

Our work in this area continues to ensure that corporate control transactions in Australia are carried out in a fair and competitive manner. This is pivotal to the integrity of our financial markets, supporting Australia's status as a sound place to invest.

CASE STUDY 26:

Upholding the quality of independent expert reports

Investors rely on independent expert reports when making decisions on approving or rejecting corporate transactions, including, for example, takeover bids, corporate schemes of arrangement, corporate restructures and related party transactions.

In 2023–24, we took action over concerns that PKF Melbourne Corporate Pty Ltd, which produced independent expert reports, did not have sufficient internal policies and procedures, and that this was impacting the preparation of their reports.

Following our investigation, PKF Melbourne Corporate Pty Ltd admitted its conduct did not ensure the financial services covered by its licence were provided efficiently, honestly and fairly, and that it did not have adequate arrangements for the management of conflicts of interest. It agreed to a court enforceable undertaking to cease providing independent expert reports until an independent expert completes a review of its policies and procedures and the licensee implements all recommendations.

Our enforcement work resulted in court-based enforcement outcomes that emphasise the seriousness of obligations on directors and the consequences of engaging in fraudulent activity and providing false information (see Case study 27).

CASE STUDY 27:

Sentencing of Continental Coal Directors and Company Secretary

In August 2020, following ASIC's investigation, the Commonwealth Director of Public Prosecutions charged former directors of Continental Coal Limited, Peter Neil Landau and Dr Ashley Paul D'Sylva, and company secretary Jane Rosemary Flegg with breaching their duties as officers of the company. The charges included using their positions dishonestly to transfer a total of $3,047,000 to Celtic Capital Pty Ltd and OKAP Ventures Pty Ltd from Continental Coal's account, giving false information to the ASX, and lodging a false document with ASIC.

Two of the officers, Mr Landau and Ms Flegg, were also charged with 63 counts of stealing, forgery and uttering offences under the Criminal Code (WA) relating to another ASX-listed company, Citation Resources Limited, of which Mr Landau was a former director. The charges alleged they stole over $2.2 million from Citation and forged and uttered a bank statement to conceal the theft.

Dr D'Sylva was also charged with one count of breaching his duties as a director of Continental Coal.

All three officers pleaded guilty to their respective charges and were sentenced to terms of imprisonment and good behaviour bonds by Courts of Western Australia.

Mr Landau was sentenced in the District Court to five years and two months' imprisonment with a non-parole period of three years and two months for five stealing offences and one offence of forging and uttering. Mr Landau was also sentenced to a further 12 months' imprisonment for two Corporations Act offences. Mr Landau was separately sentenced in the Magistrates Court to two months' imprisonment for one count of breaching s722 of the Corporations Act for failing to hold $1,032,00 of investor application monies on trust. The earliest release date for Mr Landau is 8 October 2027.

In sentencing Mr Landau, Justice McGrath remarked that Mr Landau's conduct involved extended breaches of trust and went against the fundamental responsibilities of a company director.

Justice McGrath observed that the benefits of being in the corporate world were great but so too were the responsibilities and stated, 'it is at the time of pressure arising from financial difficulties that a director must most diligently adhere to the proper performance of their duties'.

Dr D'Sylva was sentenced to 8 months' imprisonment to be released immediately on entering into a recognisance release order in an amount of $5,000 and to be of good behaviour for 18 months, for one count of breaching s184(1)(a) of the Corporations Act.

Ms Flegg was sentenced to three years, six months' imprisonment with a non-parole period of 21 months. Ms Flegg was also sentenced to a further eight months' imprisonment for giving false information to the ASX.

This matter serves as a reminder of the fundamental duties of company directors to act in the best interests of the company and the consequences of failing to do so.

CASE STUDY 28:

Prison term for obtaining financial advantage by deception

William O'Dwyer, former managing director of property developer Ralan Group, was sentenced to immediate imprisonment after pleading guilty to six criminal offences of obtaining a financial advantage by deception. The conduct included loaning deposits paid by purchasers to the development company as working capital. Unsecured creditors were owed around $232 million when the entity went into liquidation in 2019.

In his sentencing remarks, District Court Judge Anderson observed that the financial advantage was 'enormous' and that the conduct was 'ongoing and deliberate, and a calculated fraud'.

> *'Today's penalty is significant and emphasises the seriousness of fraudulent activities, together with ASIC's commitment to investigate and prosecute such cases, and the importance of holding those responsible accountable for their actions.'*
>
> Sarah Court, ASIC Deputy Chair

See **Media Release 24-013**[1] 'Former Ralan Group managing director sentenced to four years in prison', 2 February 2024.

1 www.asic.gov.au/about-asic/news-centre/find-a-media-release/2024-releases/24-013mr-former-ralan-group-managing-director-sentenced-to-four-years-in-prison

Registered liquidators

ASIC regulates 642 registered liquidators who were appointed external administrators to over 11,000 failed companies during the year. Our work in 2023–24 focused on:

- thematic surveillance to improve compliance and inform regulatory guidance
- improving data available to the public through our insolvency statistics
- engaging with a range of domestic and international stakeholders
- updating Regulatory Guides and the Assetless Administration Fund grant guidelines and managing the Reviewing Liquidator Panel and Abandoned Company Panel.

ASIC publishes, on our website, important insolvency data collected in forms lodged with us.

During the year, we consulted on updates to three Regulatory Guides, including Regulatory Guide 217[41] *Duty to prevent insolvent trading: Guide for directors*, Regulatory Guide 258[42] *Registered liquidators: Registration, disciplinary actions and insurance requirements*, and Regulatory Guide 16[43] *External administrators and controllers: Reporting of possible offences and misconduct*. We are considering all submissions before releasing the updated guides.

41 https://download.asic.gov.au/media/5772721/rg217-published-31-august-2020.pdf
42 https://download.asic.gov.au/media/4166077/rg258-published-1-march-2017.pdf
43 https://download.asic.gov.au/media/vi5fxk0s/rg16-published-5-september-2024.pdf

Criminal charges were brought by the Commonwealth Director of Public Prosecutions as a result of ASIC referrals of investigations in the sector:

- Peter Andrew Amos was charged in December 2023 with six counts of dishonestly using his position as an officer of a company to gain an advantage for his business and himself. This investigation was a collaboration between ASIC and the ATO under the Serious Financial Crime Taskforce (SFCT).[44]
- Ronald Lester Cardwell (who was not a registered liquidator) was convicted in March 2024 and sentenced to a term of 24 months' imprisonment, to be served by way of intensive correction order, for dishonestly using his position as an appointed liquidator to withdraw company funds.[45]

Outcomes from the liquidator disciplinary committee included:

- the cancellation in June 2023 of Richard Ernst Auricht's registration as a liquidator[46]
- the imposition of conditions in December 2023 on Steven Naidenov, a registered liquidator, requiring that over the next two years Mr Naidenov arrange for a peer review of six external administrations conducted by him, to be selected by ASIC.[47]

Financial reporting and audit

Quality financial reports provide important information for investors and other stakeholders, and auditors play an important part in maintaining investor trust and confidence in the quality of the reports.

ASIC is improving and evolving our strategic regulatory approach to financial reporting and audit. This year, we commenced work on a review of the six largest audit firms. As part of this, we evaluated their implementation of quality management systems. We found several areas of concern and put industry on notice of these concerns in May 2024. This will inform work that we will be undertaking in 2024–25 to ensure compliance by auditors with their independence and ethics obligations.

This builds on the changes ASIC made last financial year to adopt a new and more comprehensive approach to financial reporting and audit surveillances, which results in a better overview of the financial reporting chain. In addition to auditors, it highlights the role of other stakeholders (such as audit committees and those preparing financial reports) in ensuring the quality of the financial report and audit.

44 www.asic.gov.au/about-asic/news-centre/find-a-media-release/2023-releases/23-347mr-former-registered-liquidator-pleads-guilty-to-dishonest-conduct
45 www.asic.gov.au/about-asic/news-centre/find-a-media-release/2024-releases/24-042mr-members-voluntary-liquidator-sentenced-for-dishonestly-using-his-position-to-withdraw-company-funds
46 www.asic.gov.au/about-asic/news-centre/find-a-media-release/2023-releases/23-187mr-liquidator-disciplinary-committee-cancels-registration-of-richard-ernst-auricht/
47 www.asic.gov.au/about-asic/news-centre/find-a-media-release/2024-releases/24-004mr-liquidator-disciplinary-committee-imposes-conditions-on-registration-of-steven-naidenov

In October 2023, we issued our first integrated Report 774[48] *Annual financial reporting and audit surveillance report 2022–23*. This highlighted findings from our work in 2022–23 and explained how the quality of financial reports and audits can be improved. In addition, we reported our audit findings directly to the directors of companies, audit committees and audit firms.

In 2023–24, we continued to proactively review financial reports of listed entities and other public interest entities and, for the first time, included large proprietary companies that were previously exempt from lodging. As part of our integrated approach, which recognises the strong link between issues identified in the financial report and the quality of the audit, we conducted audit surveillances on higher-risk financial reports identified through our financial reporting surveillance program.

Our financial reporting surveillance work resulted in:

- Link Group restating its 2023 financial results after ASIC raised concerns of material misstatements in the carrying value of certain business assets, provisions and expenses in relation to a settlement with the UK Financial Conduct Authority
- LPI (Australia) restating its 2021–22 comparative figures in its 2022–23 financial report in response to ASIC's concerns that it had failed to consolidate substantial assets, liabilities and income from a wholly owned subsidiary.

Our auditor compliance program identified 20 instances where registered company auditors (RCAs) had failed to lodge their annual statements. ASIC's engagement with these RCAs resulted in eight complying with their obligation to lodge annual statements, six choosing to voluntarily cancel their registration, and ASIC cancelling the registration of six RCAs.

Our enforcement work in the financial reporting and audit sector includes securing payment of infringement notices, making applications for administrative outcomes to the Companies Auditors Disciplinary Board (CADB), considering possible criminal enforcement outcomes and negotiating compliance by way of court enforceable undertakings. The work also includes consideration of emerging issues and suspected misconduct of individuals working within the broader cultural system in which auditors operate. In the past year, for example, we gave significant consideration to individuals involved in the breaches of confidentiality concerning PwC and the ATO. This included engagement with and the review of extensive materials held by the Tax Practitioners Board; work undertaken to ban Peter Collins from providing financial services; engagement with the ATO, the AFP and overseas regulators; and inquiries into PwC's licenced entities to understand risks associated with conflicts of interest in PwC.

Our enforcement work resulted in significant outcomes, including fines and penalties and licence cancellations. For example:

- Three infringement notices totalling $20,625 were paid by Nicholas Benbow, director of William Buck Audit (Vic) Pty Ltd. This was the first time ASIC had issued infringement notices under the Corporations Act for an alleged breach of audit rotation requirements. The infringement notices were issued because ASIC had reasonable grounds to believe that Mr Benbow failed to conduct each of the three listed company reviews in

48 www.asic.gov.au/regulatory-resources/find-a-document/reports/rep-774-annual-financial-reporting-and-audit-surveillance-report-2022-23/

accordance with the auditing standards. The auditing standards require auditors to comply with important requirements pertaining to independence.[49]

- Mining exploration company Condor Blanco Mines Limited was fined $100,000 for failing to lodge five annual financial reports with ASIC.[50]
- ASIC cancelled the AFS licence of Everest Asset Management Pty Ltd (Everest) due to failure to prepare and lodge the required financial statements and auditor opinions with ASIC. ASIC also found that Everest was likely to contravene its obligations as an AFS licensee in the future.[51]

An ASIC investigation also resulted in the CADB finding that an audit partner of BDO East Coast Partnership failed to meet the minimum standard under the Australian Auditing Standards (see Case study 29).

CASE STUDY 29:

Companies Auditors Disciplinary Board finds BDO audit partner failed to meet minimum standards.

On 30 August 2023, the CADB found that James Mooney, an audit partner of BDO East Coast Partnership (BDO), had failed to meet the minimum standard under the Australian Auditing Standards when he did not obtain reasonable assurance during his audit of Engage:BDR Limited (Engage) that its 2018 financial statements were free from the risk of material misstatement. Engage is an ASX-listed technology company.

Mr Mooney's failings were identified by ASIC during its proactive audit surveillance process, which led to an investigation and application by ASIC to the CADB.

The most serious breach of the auditing standards involved Mr Mooney's failure to obtain adequate evidence and perform adequate testing of Engage's revenue recognitions.

The CADB ordered that Mr Mooney undertake to ASIC not to perform the duties of a registered company auditor until 31 December 2023. The CADB's decision followed Mr Mooney voluntarily undertaking to ASIC not to act as a registered company auditor between 1 June 2023 and 31 December 2023. Mr Mooney also undertook to engage another registered company auditor to review his first three company audits from 1 January 2024 and complete 20 additional hours of professional development. Mr Mooney was also ordered to pay ASIC's costs of $175,000.

The CADB acknowledged Mr Mooney's cooperation with ASIC during the proceedings and that his conduct was on the lower end of the scale of seriousness, involving no allegations of dishonesty or impropriety.

The action emphasises that failures to comply with the auditing standards in relation to significant disclosure matters, such as revenue, potentially impact and undermine confidence in the integrity of Australia's capital markets.

49 www.asic.gov.au/about-asic/news-centre/find-a-media-release/2024-releases/24-066mr-head-of-audit-at-william-buck-victoria-pays-20-625-penalty-for-audit-rotation-issues/
50 www.asic.gov.au/about-asic/news-centre/find-a-media-release/2023-releases/23-274mr-condor-blanco-mines-limited-fined-100-000-for-financial-report-failures
51 www.asic.gov.au/about-asic/news-centre/find-a-media-release/2024-releases/24-106mr-asic-cancels-everest-asset-management-s-afs-licence

Outcomes across our regulatory functions

Enforcement and compliance

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.

TRANSFORMATION CALLOUT

More timely, effective and collaborative decisions

ASIC's new organisational structure came into effect on 3 July 2023. A core objective of the redesign was to improve the timeliness and effectiveness of our decisions through greater collaboration and coordination.

As many of the threats we must address in the financial environment require a multi-faceted, cross-agency response, the ability to harness our collective knowledge and expertise is key to our success in tackling these threats. By breaking down the structural silos within the organisation, we have been able to better align our regulatory, supervisory and enforcement functions. This has led to better information sharing, problem solving and decision making – which ultimately leads to beneficial outcomes for consumers and markets.

One way we achieved this was through the establishment of a new regulatory triage system, which simplified the pathway to reaching decisions on reports of misconduct by consolidating nine different referral processes into one. This centralised, whole-of-organisation approach brings together senior leaders and experts across our regulatory and enforcement functions at an early point in the assessment process, to make joint decisions and coordinate actions, promoting greater consistency in decisions and reducing duplication of effort. This has meant that more reports of misconduct can be assessed in a more timely way, and be dealt with more effectively. Importantly, it has allowed compliance and enforcement actions to be taken faster on certain cases of egregious conduct and, in doing so, protect the Australian community from serious harm.

Criminal convictions

In 2023–24, our investigations resulted in 18 people being convicted of criminal offences, with eight receiving custodial sentences (including fully suspended sentences). The total value of fines ordered was $936,000.

Civil actions

In 2023–24, we completed civil actions against 39 defendants, covering issues such as breaches of directors' duties and continuous disclosure obligations, deficient systems and failures to have effective controls, unconscionable conduct in overcharging customers periodic payment fees, misleading representations in fee disclosure obligations and misleading customers about available funds in credit card accounts.

The total value of penalties for these civil court cases was $90.8 million.

Protective actions

We banned, removed or restricted 64 people or companies from providing financial services, and 11 people or companies from providing credit services.

We disqualified or removed 35 people from directing companies.

We took action against 52 company and SMSF auditors, and against two registered liquidators.

We issued instruments, reprimands or warnings to five financial advisers through the Financial Services and Credit Panel.

Corrective actions

We took action where credit licensees, superannuation trustees or responsible entities made misleading statements to consumers or investors. In 22 instances, potentially misleading or deceptive promotional material was withdrawn or amended in 2023–24.

Infringement notices

In 2023–24, ASIC issued 26 infringement notices.

There were 22 infringement notices issued to entities, and we received $1,336,305 in related payments. We issued infringement notices against the following parties:

- Bobbob Pty Ltd ($53,280)
- H.E.S.T. Australia Ltd ($48,600)
- Morningstar Investment Management Australia Limited ($29,820)
- Northern Trust Asset Management Australia Pty Ltd ($29,820)
- Melbourne Securities Corporation Limited ($13,320)
- ASX Limited ($1,050,000)
- Nicholas Scott Benbow ($20,625)
- Penta Capital Pty Ltd ($53,280)
- Fertoz Limited ($37,560).

The Markets Disciplinary Panel (MDP) issued four infringement notices to four market participants, with a total of $5.38 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 seven court enforceable undertakings in 2023–24.

We monitor all active court enforceable undertakings to ensure all obligations are met. Currently, we are monitoring 15 such undertakings, and our work indicates that all parties are complying.

Compliance activity

Enforcement action cannot be taken in every instance and ASIC's extensive compliance work is designed to have maximum impact across as many sectors and matters as possible. ASIC uses a wide range of data and analytics to highlight non-compliance and to take appropriate and proportionate action.

ASIC undertakes a range of activities to facilitate compliance with the law and regulations.

This can include reactive surveillances from specific reports of alleged misconduct and proactive surveillances based on thematic reviews and trends, themes or issues we have identified.

We also assist external administrators under our External Administrator Assistance Program, in obtaining a Report on Company Activities and Property (ROCAP) or company books and records in possession of officers and third parties. ASIC may contact company officers or third parties to ensure their statutory obligations to assist liquidators and administrators when companies enter external administration are actioned. Where compliance is not achieved, and failure to assist the liquidator or administrators persists, we may commence criminal proceedings against the company officers or third parties. In 2023–24, ASIC received 1,423 requests for assistance from external administrators.

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 3 on pages 30–33 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 this annual report, we prioritised 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 2024.

Guided by this approach, the case studies referenced throughout this report provide a snapshot of the enforcement actions we took over 2023–24.

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. Through our work, we seek to influence behavioural change and prevent harm resulting from poor corporate systems and conduct. We also seek to ensure that entities and individuals are acting in the best interest of consumers and investors, and that financial services providers have resources, competence and systems in place to operate efficiently, honestly and fairly.

We conduct targeted, risk-based surveillance across our regulated populations to maximise the impact and benefit of our work. This includes surveillance of corporate transactions, market activities and financial reporting and audit quality.

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 2023–24, the four major banks (ANZ, Commonwealth Bank of Australia, National Australia Bank and Westpac Banking Corporation) were subject to institutional supervision.

Misconduct reports by the public

Our analysis of reports of alleged 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.

For more information on reports of misconduct, see Appendix 5.

Guidance to industry

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 legal obligations and how to comply. Our feedback reports provide transparency about ASIC's response to consultation.

In 2023–24, we published 14 consultation papers, 30 new or revised regulatory guides and 34 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

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 high-risk applications to ensure that only suitable persons and organisations are licensed or registered.

In 2023–24, ASIC finalised 1,719 AFS licences and credit licence applications, including cancellations and suspensions.

We approved 679 AFS licences and 239 credit licences. We cancelled or suspended 269 AFS licences and 204 credit licences, the majority of which were licensees voluntarily applying for licence suspension or cancellation.

During the year, 328 AFS licence and credit licence applications were withdrawn, rejected for lodgement or refused. Of these, 187 were 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 140 applications for lodgement, mainly due to material deficiencies in the information provided. One application was refused in 2023–24.

We assessed 819 applications relating to RCAs, authorised audit companies and SMSF auditors. Of these, 164 were approved, 45 were withdrawn and 560 were cancelled or suspended.

CASE STUDY 30:

Importance of verifying the accuracy of information in a licence application

An entity applied for a licence to become an AFS licensee. The applicant nominated a single responsible manager and stated that it was not aware of any prior history of the proposed responsible manager that might raise probity concerns or concerns about whether the applicant would comply with financial services laws if a licence was granted.

ASIC became aware of prior conduct relating to the responsible manager that raised concerns and we used our compulsory notice powers to obtain documents from a third party to ascertain the facts relating to that conduct. As it was unclear whether the applicant was aware of the conduct, ASIC shared the document with the applicant.

When ASIC's concerns were raised with the applicant, the applicant withdrew the licence application.

Regulatory relief

Where appropriate, we continued to provide relief to participants in capital markets and the financial services industry, with the aim of facilitating business, promoting innovation and supporting the Australian economy. During the year, we received 1,085 applications for relief from requirements of the Corporations Act, with 886 granted.

Engagement with key stakeholders

TRANSFORMATION CALLOUT

Meaningful engagement with external stakeholders

We are committed to working constructively and transparently with industry and the broader community, to build our understanding of complex issues, make the right regulatory decisions, and set clear expectations for those we regulate. We are always mindful of the role we should play to support the economy and innovation, and reduce the regulatory burden on businesses.

In 2023–24, we have continued to deepen our relationships with stakeholders in our everyday work.

Our commissioners and senior leaders held a range of public speaking engagements across a variety of platforms and media, to highlight our strategic direction and clarify our regulatory and enforcement stance. We further held formal and informal listening engagements to gather and consider the views of the community. Shortly after they joined ASIC in late 2023, our three new Commissioners also wrote to key stakeholders in their areas of regulatory focus, inviting them to meet and give feedback on their experiences with and expectations of ASIC.

A number of initiatives aimed at strengthening our engagement with stakeholders were carried out in 2023–24. We enhanced our approach to providing regulatory guidance, by improving the clarity and timeliness of consultations with stakeholders. We published our core principles for developing and implementing regulatory guidance[1] in August 2023. We also published an updated Information Sheet 151 to embed early engagement meetings in our investigations process where appropriate.

In addition, we developed a research and measurement strategy to better gauge external sentiment toward ASIC, and to track and measure stakeholder perceptions. This has helped us to better understand how the public perceives our actions and to identify opportunities for improvement.

1 www.asic.gov.au/regulatory-resources/find-a-document/regulatory-document-updates/regulatory-developments-timetable/asic-s-core-principles-for-developing-and-implementing-regulatory-guidance/

First Nations engagement

Our Indigenous Outreach Program is 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.

The program works 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 activities throughout the year to build and leverage relationships with stakeholder groups, support ASIC's Enforcement outcomes and increase our awareness of the range of experiences of First Nations people and communities. This year, we:

- responded to 158 enquiries (as at 30 June 2024) from First Nations consumers and their advocates, and stakeholders working with First Nations communities through our dedicated Indigenous Help Line and email channel
- undertook regional and remote outreach work in locations such as Palm Island, Yarrabah and Wujal Wujal in Queensland; Darwin, Nhulunbuy and Baniyala in the Northern Territory; Perth and Kalgoorlie in Western Australia; and the Hunter Region in New South Wales
- participated in events such as the First Nations Foundation's Indigenous Super Summit, Anglicare NT's Financial Inclusion Forum, Financial Counselling Australia's National Conference, the National Indigenous Legal Conference, Financial Counselling Australia's Goldfields Forum, and the NSW Community Voice Networks' Community Worker Forum
- continued to participate in activities as part of the National Indigenous Consumer Strategy (NICS), and through the work of ASIC's Indigenous Advisory Group, ASIC's Cross-Government Engagement Group, and various industry engagements.

ASIC's Indigenous Financial Services Framework

ASIC continues to progress the long-term outcomes in ASIC's Indigenous Financial Services Framework,[52] including through the establishment of the following dedicated engagement streams.

- ASIC Indigenous Advisory Group – This dedicated forum comprises First Nations peoples from various locations and with a range of personal and professional experience (see Panels section for more details on this group).
- ASIC's Cross-Government Engagement Group – The functions and responsibilities of this network of federal agencies are aligned to the Framework outcomes. The aim of this group is to identify opportunities for agencies represented to collaborate on key challenges for Indigenous consumers, information sharing of insights, data and opportunities for joint engagement and outreach to communities.

52 www.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 – In 2023–24, we facilitated three virtual workshops[53] with a range of financial services industry representatives on opportunities to address key challenges experienced by First Nations peoples when engaging with the financial system. Workshop topics included:
  - challenges with identification verification for First Nations peoples
  - identification of, and assistance for, First Nations peoples experiencing or at risk of financial abuse
  - providing services to First Nations communities that focus on culture, community and best practice engagement.

ASIC – National Indigenous Consumer Strategy project

As part of our role in the National Indigenous Consumer Strategy (NICS) Reference Group, ASIC led the delivery of the 2023–24 NICS national project: the creation of online learning modules for *A guide to enforcement: Indigenous consumer matters*. The modules aimed to update an existing guide and increase NICS agencies' capacity to undertake culturally appropriate investigations when misconduct impacts First Nations consumers.

The modules feature staff from across NICS member agencies, drawing on their experiences working in First Nations communities, as well as their lived experience as First Nations people.

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 its law reform agenda. We implement reforms once they are passed by Parliament, including by issuing regulatory guidance and using our regulatory and enforcement tools. We identify opportunities and risks that affect our ability to implement the law as intended by Parliament and advise on law reform to improve financial system performance.

In 2023–24, we participated in a range of reviews and reform processes, including:

- a scams mandatory industry codes consultation
- the Select Committee on Adopting Artificial Intelligence inquiry
- the Australian Law Reform Commission's Review of the Legislative Framework for Corporations and Financial Services Regulation
- ongoing work on the Quality of Advice Review
- implementation of the Financial Accountability Regime (FAR)
- Treasury consultations on:
  - buy now pay later reforms
  - the regulatory framework for managed investment schemes
  - licensing exemptions for foreign financial service providers

53 www.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/

- the Regulation Impact Statement for the proposed unfair trading practices prohibition
- licensing and regulation of payment service providers
- law reform to regulate crypto asset service providers and payment stablecoins.

Engagement with Parliament and accountability mechanisms

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

In 2023–24, we responded to 348 sets of Questions on Notice (around 1100 individual questions) from parliamentarians. Questions on Notice cover topics across all of ASIC's remit, work and governance.

This year ASIC engaged with 18 separate parliamentary inquiries across the Senate, House of Representatives and Joint Committees. ASIC attended 16 hearings and made 23 submissions.

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 (ACP)
- ASIC Consumer Consultative Panel
- Corporate Governance Consultative Panel
- Cyber Consultative Panel
- Digital Finance Advisory Panel
- Fixed Income, Currencies and Commodities (FICC) Markets Consultative Panel
- Financial Advisers Consultative Panel
- Markets Consultative Panel
- Indigenous Advisory Group
- Registry Business Advisory Group.

ASIC Consultative Panel

The ACP is our strategic consultative body. It assists ASIC to identify and assess potential threats and harms in the sectors we regulate; consults on proposed regulatory changes and market conditions; and provides input into our strategic and forward planning. Panel members are pre-eminent representatives of the academic, consumer, industry, legal and regulatory sectors, and are appointed in their personal capacity.

We held two ACP plenary meetings in 2023–24 to consider changing market conditions, review a range of threats and harms as input for ASIC's strategic planning for 2024–25, and discuss topics such as AI and superannuation member services. We also met with targeted groups of members with expertise in such areas as payments reforms, financial regulation and enforcement, and market and economic developments. Members were also consulted on a range of specific issues and spoke at ASIC events to share their expertise, including the ASIC Annual Forum and the ASIC Leadership Forum.

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 2023–24, including in a joint session with the ACCC's equivalent consumer panel, the Consumer Consultative Committee. The panel members' priority focus areas included:

- consumer credit and cost-of-living issues, including financial hardship and credit reporting
- emerging issues in high-cost lending and industry responses to recent reforms
- general insurance issues, including claims handling and pricing failures
- financial services issues facing First Nations people and communities, including in relation to banking, superannuation and funeral insurance
- a joint focus with the ACCC's consumer panel on disrupting scams.

Corporate Governance Consultative Panel

The Corporate Governance Consultative Panel continued to meet during 2023–24. The panel was established in 2020 to enable ASIC to gain a deeper understanding of ongoing and emerging issues in corporate governance practices. Panel members include listed company directors, industry association representatives, institutional investors and academics. The panel met twice in 2023–24. It discussed climate change–related disclosure, companies' use of AI and advanced data analytics, corporate governance best practices, and the cyber resilience of companies.

Cyber Consultative Panel

The Cyber Consultative Panel is an independent group that advises ASIC on our supervisory approach to building the cyber resilience of financial services and markets, and shares views on intelligence, trends and emerging threats. The panel met twice this year, in November and June, in accordance with its terms of reference. We engaged with this panel on the publication of ASIC's findings from our Cyber Pulse Survey, our forward workplan, ASIC's approach to cyber awareness and capability uplift of regulated entities, and the Australian Government's 2023–2030 Cyber Security Strategy. To help understand how Australian businesses are addressing cyber security at the board and leadership level, the panel invited guest participation from directors and industry representatives at its June meeting.

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, who facilitate dialogue between industry and the public sector. The panel provides a network for domestic departments and agencies dealing with innovative businesses, promoting a coordinated approach to financial innovation and regtech. It informs ASIC's engagement with the fintech and regtech sectors. During 2023–24, it explored such topics as operating challenges facing fintechs and regtechs, crypto assets, payments reforms, the Consumer Data Right, central bank digital currencies and developments in AI use.

Fixed Income, Currencies and Commodities Markets Consultative Panel

The Fixed Income, Currencies and Commodities (FICC) Markets Consultative Panel is an independent group of senior members from the financial services industry who advise ASIC on its approach to fulfilling its responsibilities for supervision and surveillance of Australian FICC markets, and on broader market developments. During 2023–24, the FICC Markets Consultative Panel met twice. Issues discussed included pre-hedging practices, use cases for artificial intelligence, cyber resilience and data governance, barriers and challenges to market integrity and scaling of carbon markets, price discovery in illiquid securities, and proposed changes to OTC derivative reporting rules.

Financial Advisers Consultative Panel

The Financial Advisers Consultative Panel contributes to ASIC's understanding and capacity to identify and respond to emerging trends in the financial advice industry. The panel met three times in 2023–24 with a mix of in-person and remote attendees. Discussion topics included cold-calling operators, SMSF advice and services, and internal dispute resolution processes. The panel also discussed ASIC's Report 779[54] *Superannuation and choice products: What focus is there on performance?*, the Quality of Advice Review, and client preferences in relation to sustainable investments and crypto assets.

Markets Consultative Panel

The Markets Consultative Panel is an independent group of senior members from the financial services industry focusing on exchange markets. It advises ASIC on its approach to its responsibilities for the day-to-day supervision of the Australian market and on broader market developments. The panel met five times in 2023–24. Issues discussed included market conditions and challenges, pre-hedging practices, transition to T+1 settlement, regulating digital platforms, market outages, competition in corporate listings, competition in clearing and settlement, risks and trends in public and private markets, market cleanliness and information leakage, and potential changes to ASIC's market integrity rules.

54 www.asic.gov.au/regulatory-resources/find-a-document/reports/rep-779-superannuation-and-choice-products-what-focus-is-there-on-performance/

Indigenous Advisory Group

The Indigenous Advisory Group comprises First Nations peoples from various locations and a range of personal and professional experience. The group ensures ASIC continues to build our understanding of the diverse needs, experiences and priorities of First Nations consumers when engaging with the financial system. Members provide advice, guidance and insights on key challenges, emerging themes and community priorities for First Nations consumers and communities, consistent with ASIC's statutory mandate, and with a focus on activities and stakeholders regulated by ASIC. This enables ASIC to prioritise, elevate and position First Nations peoples' views and experiences as part of our regulatory role, strategic priorities, and operational activities.

In 2023–24, this group met three times. It discussed longstanding challenges for First Nations consumers such as banking accessibility, identification verification, the impacts of high-cost centre products and low-value insurance products, and the barriers to First Nations consumers' effective engagement with superannuation funds and associated products.

Registry Business Advisory Group

As part of the return of the registry business to ASIC from the ATO, ASIC established an external advisory body, the Registry Business Advisory Group (RBAG), in March 2024. The RBAG facilitates direct consultation and engagement with users of ASIC's registry services to provide strategic insight and guide the development of future proposals to stabilise and uplift the ASIC business registers.

The RBAG met twice this year and discussed strategic issues relating to future work.

Improving stakeholder engagement through better regulatory efficiency

ASIC's regulated population spends significant time and resources interacting with ASIC. We therefore seek to identify ways to make it easier and more efficient for them to engage with ASIC. In the past year, we have embedded change in practices relating to the development of ASIC's regulatory guidance materials, early engagement with businesses in an investigation, and changes to ASIC's licensing processes.

We also conducted a second round of structured engagement with stakeholders to identify opportunities for new initiatives, which we have begun implementing. These include supporting the implementation of the government's cross-agency Regulatory Initiatives Grid.

ASIC's regional engagement program

Our regional engagement program is active in all states and territories, providing a platform for ASIC to liaise with stakeholders across Australia and gather valuable insights into current and emerging issues.

Led by our Regional Commissioners, this engagement is mainly facilitated through regular meetings of Regional Liaison Committees, attended by ASIC Commissioners and by a range of industry and consumer representatives in each location.

In 2023–24, 16 face-to-face liaison meetings were held across Australia. Regional Commissioners also met twice with regional liaison leaders at the Reserve Bank of Australia, to share knowledge and observations from stakeholders. These meetings help inform broader ASIC activities.

During the year, themes and issues discussed included hardship and cost of living pressures, particularly due to rising interest rates, as well as predatory lending practices, inflation and energy costs – which affect businesses and consumers alike. Issues relating to insurance – including availability, affordability and claims handling – continue to be important for those communities affected by extreme weather events. Discussions also focused on climate-related disclosure and the challenges for companies and advisers in implementing upcoming mandatory reporting standards.

Small businesses and their representatives cited payment systems and solvency concerns, and regional bank closures as impacting their operations, as well as an ongoing focus on director identification (ID) and business register developments. Cyber security and resilience continue to be key areas of concern, compounded by an increase in the prevalence and sophistication 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 combat scams.

Our regional engagement program also includes direct engagement with community organisations and businesses. For example, in the Northern Territory, Mr Longo spoke at the Australian Institute of Company Directors' Northern Territory Annual Dinner, about our regional collaboration and cooperation; ASIC also liaises regularly with representatives of First Nations businesses, government agencies, non-government organisations and financial counsellors who work with First Nations communities. Highlights this year included two event partnerships to explore the challenges faced by First Nations consumers, communities, and businesses – a regulator roadshow with the ACCC in July, and the 'Djama Rrambangi' (Working Together) Financial Inclusion Forum with Anglicare NT in March. In South Australia, ASIC participated in the 'Gov to You' event at the Small Business Expo, helping connect small businesses with the government agencies and industry associations they need.

We also continued to promote ASIC's Moneysmart tools and resources to regional communities to encourage consumer financial capability. In March, we delivered 3 Moneysmart workshops to members of the Australian Army with the Australian Defence Force's Financial Services Consumer Centre.

Our regional engagement program continues to be an important part of our stakeholder interactions, informing our business planning and prioritisation of work.

See our results against our Service Charter on page 104.

International engagement

ASIC engages closely with international regulators and agencies to advance global regulatory policy, facilitate cooperation and influence standards. Through our international engagement, ASIC captures vital intelligence that enables us to identify trends and emerging risks in financial markets, and enhances our ability to regulate effectively.

In 2023–24, we made 249 international cooperation requests and received 350 in relation to activities such as surveillance, supervision, enforcement, research and licensing. This included 199 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 participated in a range of international forums. For example, ASIC is a board member 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 Chair of the Committee on Regulation of Market Intermediaries
- is a member of the Fintech Task Force
- is a member of the Sustainable Finance Task Force
- actively participates in the Asia Pacific Regional Committee including leading regional initiatives.

ASIC is also a member of:

- the International Association of Insurance Supervisors' Market Conduct Working Group
- the 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
- the 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
- the Council of Financial Regulators' International Coordination Group, which meets regularly to coordinate a cohesive approach to major international regulatory risks and issues.

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. In 2023–24, ASIC:

- signed an MOU with Banca d'Italia
- signed an MOU with the UK Financial Reporting Council on arrangements for the recognition of audit qualifications
- concluded an MOU with India's International Financial Services Centres Authority that is awaiting signature
- concluded an MOU with the Vietnam State Securities Commission (SSC) that is expected to be signed in August 2024.

Throughout 2023–24, ASIC continued to support the Department of Foreign Affairs and Trade (DFAT) in negotiations for free trade agreements with multiple countries.

CASE STUDY 31:

ASIC–Vietnam State Securities Commission capacity-building program

In March 2022, ASIC signed an agreement with DFAT to work in partnership with the Vietnam State Securities Commission (SSC) to deliver a capacity-building program. The program aims to strengthen the SSC's capability to regulate effectively and support the development of policy to improve Vietnam's market integrity. ASIC is providing expertise across such areas as equity market surveillance, fintech, corporate governance, risk management, sustainable finance and scams. The program is being delivered via face-to-face training, webinars and delegation visits, and has substantially enhanced regulatory cooperation and strengthened Australian–Vietnamese relationships. ASIC and the Vietnam SSC will enter into an MOU to support ongoing cooperation in the second half of 2024.

Interactive webinar – fintech and robo-advice

On 2 August 2023, ASIC delivered an interactive Fintech and Robo-advice webinar in partnership with the SSC and DFAT (Hanoi). ASIC's Innovation Hub staff presented on fintech and regtech innovation, Australia's regulatory sandbox, crypto assets and regulating the provision of robo-advice.

Equity Market Surveillance Workshop

On 6–10 November 2023, two senior ASIC staff members delivered the two-day Equity Market Surveillance Workshop, hosted at the SSC office in Hanoi and supported by DFAT. The workshop focused on how ASIC undertakes real-time market surveillance, as well as our approach to enforcement, insider trading and market manipulation.

Senior SSC delegation to ASIC's annual forum and side meetings

ASIC arranged a visit for a delegation of 6 senior SSC staff members to the ASIC Annual Forum on 21–22 November 2023 in Melbourne. The delegates gained insights into how regulators can respond effectively to disruption drivers such as geopolitical and economic change, AI and cyber. The key objective was to further develop partnerships between the SSC and senior ASIC staff. ASIC also facilitated side meetings with representatives of APRA, Treasury and the Royal Melbourne Institute of Technology to discuss issues related to policy development, market supervision and regulation.

Interactive webinar – Good governance and internal risk management

On 15 April 2024, ASIC delivered an interactive webinar titled 'Good Governance and Risk Management' in partnership with the SSC and DFAT (Hanoi). ASIC staff presented on directors' duties and reporting obligations, and internal governance including staff training at ASIC.

Innovation Hub

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

Informal assistance and guidance

In 2023–24, ASIC staff met with representatives of 64 innovative businesses to help them understand how the regulatory framework may apply to their intended business models. Some proposed business models involved payments, credit, services related to crypto assets, regtech, and services that use a range of different technologies.

During the financial year, ASIC granted four licences to new innovative businesses, which included those offering services in payments 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 enables 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 2023–24, eight entities actively tested their business model in the ERS, with four of those entities reaching the end of their exemption period. The business models tested included a green loan provider and several payment facilities, many of which use blockchain technology. At the end of their exemption period, businesses that lodged voluntary reports with ASIC said they had a positive experience with the ERS. Two entities that completed testing in the ERS have since become corporate authorised representatives of AFS licensees.

Domestic and international engagement

In 2023–24, the Innovation Hub hosted 4 Digital Finance Advisory Panel (DFAP) meetings, and two Regtech Liaison Forums. The latter provides a forum for the regtech sector to engage with ASIC on developments within and challenges facing the sector, and to discuss regulatory changes that may present potential opportunities for regtechs.

ASIC is one of 10 coordination group members of the Global Financial Innovation Network, which has over 70 members, including regulators, government bodies and international organisations.

ASIC is also a member of the steering group for the IOSCO Fintech Task Force, and a member of the IOSCO working groups on Artificial Intelligence (AI), Asset Tokenisation, and the implementation of IOSCO's Crypto and Digital Assets (CDA) and Decentralised Finance (DeFi) report recommendations.

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-sized 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, in 2022–23, 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 DHIAI PTY LTD) provided a successful solution that took it to the next stage of the program. It has received another grant (of up to $1 million) to develop a proof of concept over 15 months. ASIC worked closely with the company in 2023–24 with a view to testing a minimal viable product in 2024–25.

Small business engagement

As part of our commitment to small business, our organisational redesign created a Companies and Small Business team, to strengthen regulation and supervision, and stakeholder engagement, in the sector. ASIC's enforcement priorities have an explicit focus on conduct and issues affecting small business, with dedicated enforcement staff.

As our largest group of stakeholders, ASIC is highly committed to supporting small businesses and protecting their interests. This includes:

- ensuring ASIC understands the issues and opportunities for small business, and can take action to address those that fall within our regulatory remit
- ensuring small businesses understand their rights and responsibilities.

To meet these commitments, we provide a range of resources and regular communication through our website, news articles, social media and newsletters. This includes regulatory guidance on starting, running and closing a business and on specific issues such as the responsibilities of company directors and how to prevent insolvent trading.

We know many small businesses are interested to understand more about ASIC's approach to greenwashing and the planned changes to climate reporting. Therefore, after consultation with our stakeholders, we published guidance on our website in March 2024, in a news article titled *Climate reporting and greenwashing: What small businesses need to know*.[55]

We took part in over 100 small business events and meetings in 2023–24, engaging regularly with other government agencies, industry associations, and small business advisory and counselling services. We also directly engaged with small business owners. ASIC has collaborated with other regulators on breaking down barriers for small business, and sharing our small business resources.

55 www.asic.gov.au/about-asic/news-centre/articles/climate-reporting-and-greenwashing-what-small-businesses-need-to-know/

ASIC is a member of the ATO-led Phoenix Taskforce. For more information on the taskforce, see page 49.

Educating consumers

ASIC's Moneysmart program helps Australian investors and consumers by providing free and independent financial information and tools. Moneysmart is a trusted source of independent information for Australians in the current economic climate, with more than 11 million visitors to the Moneysmart website this year.

Educating investors

In October, ASIC launched the 'Don't get burnt by hype – invest in facts' consumer awareness campaign to raise awareness of the risk associated with investment hype. The campaign coincided with the Australian release of Dumb Money, a film about a short squeeze on stocks of video game seller GameStop in 2021. The campaign, which urged retail investors to carefully research online investment opportunities, included a cinema advertisement that aired nationally at screenings of the film. The campaign was awarded first place in the Best Government Sponsored Campaign category at the Mumbrella CommsCon Awards.

Building awareness about scams

Scams are a strategic priority for ASIC and in response to the growing number of investment scams, ASIC strengthened its scam prevention tools to support consumers with the publication of a new investor alert list.[56] ASIC also updated its investor checklist and created a scams hub on Moneysmart to help Australians avoid, identify and report scams.

This year, Moneysmart's scam-related content received around 500,000 page views. Its investor alert list was the most popular, receiving 150,000 page views since its launch on November 8.

ASIC's investor alert list is part of the government's Fighting Scams initiative to address scams and online fraud and protect Australians from financial harm. The initiative also supports the work of the National Anti-Scams Centre (NASC), which began operations on 1 July 2023.

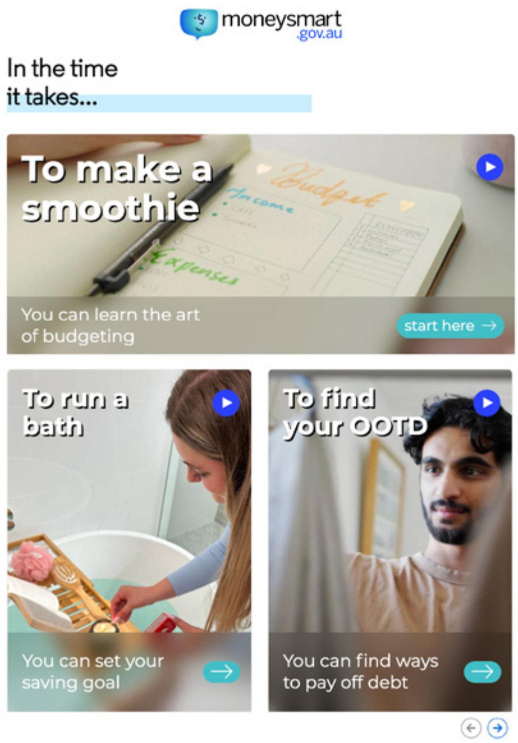
Helping young Australians facing cost of living pressures

In November, Moneysmart launched the 'In the time it takes' consumer awareness campaign. This campaign was targeted at Australia's Gen Z (young people aged between 18 and 26) to demonstrate how quick it can be to learn simple money tips and build positive financial habits to set them up for their future. The campaign was informed by nationwide research that showed Gen Z is more concerned about finances than any other generation in Australia. Encouragingly, the research also showed Gen Z has a strong desire to boost their money skills.

56 https://moneysmart.gov.au/check-and-report-scams/investor-alert-list

The campaign:

- reached more than 11 million Australians through more than 187 stories across earned media
- secured over 2.2 million impressions across Facebook, Instagram, LinkedIn and X, and more than 1.2 million impressions on YouTube
- increased views of Moneysmart budgeting content by 47%, while total visits to Moneysmart.gov.au lifted from 1.5 million unique visits to over 1.8 million during the campaign period (when compared to the same period the previous year).



Just ask! Hardship help is available campaign

As a growing number of Australians face financial stress due to increases in the cost of living, Moneysmart launched a consumer awareness campaign in June to reach and engage Australians about their rights to seek financial hardship assistance.

The campaign included:

- a Moneysmart page with information to help address barriers by busting myths about financial hardship assistance
- a video addressing the questions and barriers that stop people seeking help, promoted through YouTube and other social media
- case studies with real consumers who shared their experiences about asking their lenders for hardship assistance.

The campaign was covered nationally across radio, TV, online and print, with a projected audience reach of more than 16 million Australians. It followed the release of ASIC's report, *'Hardship, hard to get help: Lenders fall short in financial hardship support'*, which found that most lenders should be doing more to support customers experiencing financial hardship.

Moneysmart social media

ASIC engages with consumers and investors via social media channels, encouraging Australians to have conversations about money and to use Moneysmart's tools and content when facing financial decisions.

In the past year, we engaged with more than 1.5 million Australian social media users across Facebook, X and Instagram. The most popular topics were managing super and practical tips to deal with the increased cost of living, including budgeting and finding ways to save.

Supporting accessible registers

Business registers are a critical part of Australia's economic infrastructure and enable businesses to operate with transparency and accountability. Comprising over 30 different registers, the ASIC business registers are the official source of information about business names, companies, and other professionals registered or licensed to operate in the Australian economy.

The two largest registers – the companies and business names registers – contain the details of more than 3.4 million companies and 2.8 million business names. In the past year, there were more than 343 million searches of ASIC registers and 3.1 million updates processed.

Effective 23 May 2024, responsibility for the ASIC business registers and related services returned from the ATO to ASIC under a Machinery of Government change. This was an administrative change, but the ways in which people register, search the business registers, and interact with ASIC remain the same. The ATO will continue to operate the Australian Business Register and director ID register. ASIC remains responsible for enforcing director ID offences.

We will aim to ensure that the ASIC business registers are efficient and accessible, and make it easier to do business. As part of this, ASIC will collect fees and charges that are expected to contribute around $1.4 billion to Commonwealth revenue annually.

Performance overview

We helped facilitate 690,000 new registrations, comprising 304,000 companies and 386,000 business names. In total, 99.9% of applications to register a company or business name were made online. The cost of registering a business name is $44 for one year and $102 for three years.

We received almost 3.1 million lodgements during 2023–24. The most common lodgement made was 'Change to company details' (Form 484), with 1 million received. More than 94.8% of the 3.1 million lodgements received were submitted online.

Our Customer Contact Centre provides front-line support for regulated entities, people seeking to start up a business, financial consumers, digital service providers, ASIC registered agents, business owners, directors and secretaries. It answered 435,000 enquiries this year.

RegistryConnect program

ASIC has established the RegistryConnect program to lead development of proposals for the stabilisation and targeted uplift of its business registers. The program aims to provide a reliable, secure, and trusted registry platform that supports economic growth. The program's strategic objectives are to stabilise the business registers technology to increase the security and reliability of infrastructure, modernise and uplift the public and government registry technology interfaces, and provide high-integrity business information, including the possible linking of key data sets such as director ID numbers to the company register.

ASIC Service Charter results

The ASIC Service Charter covers the most common interactions between ASIC and our stakeholders, and sets performance targets for how quickly we will respond. This includes a number of interactions through services provided by the ATO and Australian Business Registry Services on behalf of ASIC.

As part of our efforts to maintain and enhance business registers, we are working to enhance the services we provide in the future and will review the service charter in the coming year. Table 4 sets out our performance against the key measures outlined in the Service Charter for 2023–24.

Table 4—ASIC Service Charter performance 2023–24

SERVICE	MEASURE	TARGET (%)	RESULT (%)
When you contact us			
General telephone queries	We aim to answer telephone queries on the spot	80	**89.6**
General email queries	We aim to reply to email queries within three business days	90	**98.2**
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	**99.9**
Lodging company, business name or other data online	We aim to ensure that you can lodge registration forms and other information online between 8.30 am and 7.00 pm AEST Monday to Friday, excluding public holidays	99.5	**99.9**
When you do business with us			
Registering a company or business name online	We aim to register the company or business name within one business day of receiving a complete application	90	**99.9**

SERVICE	MEASURE	TARGET (%)	RESULT (%)
Registering a company via paper application	We aim to register the company within two business days of receiving a complete application	90	**94.8**
Registering a business name via paper application	For paper applications lodged by mail – complete applications for business name registrations within seven business days	90	**100**
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	**99.8**
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	**92.9**
Registering as a registered company auditor or self-managed superannuation fund auditor	We aim to decide whether to register an auditor within 28 days of receiving a complete application	80	**82**
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: 80 Varied: 75**
	We aim to decide whether to grant or vary an AFS licence within 240 days	90	**Granted: 90 Varied: 89**

SERVICE	MEASURE	TARGET (%)	RESULT (%)
Applying for or varying a credit licence	We aim to decide whether to grant or vary a credit licence within 150 days	70	**Granted: 95 Varied: 95**
	We aim to decide whether to grant or vary a credit licence within 240 days	90	**Granted: 99 Varied: 96**
Applying for relief	We aim to give an inprinciple decision within 28 days of receiving all necessary information and fees for applications for relief from the Corporations Act	70	**74**
	We aim to give an inprinciple decision within 90 days of receiving all necessary information and fees for applications for relief from the Corporations Act	90	**92**
When you have complaints about us			
About ASIC officers, services or actions	We aim to resolve a complaint within 28 days	70	**97**

Unclaimed money

ASIC is responsible for the administration of unclaimed money in bank accounts and life insurance policies that has not been touched or claimed for a certain amount of time. The unclaimed money can come 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. As at 30 June 2024, $2.3 billion of unclaimed money vested with the Commonwealth.

During 2023–24, ASIC received $480.8 million in unclaimed money compared to the $341.8 million received in 2022–23. The funds are transferred to the Official Public Account (OPA).

Table 5—Unclaimed money received by type

LODGEMENTS BY TYPE	2023–24 ($)			2022–23 ($)
	Principal	Interest	Total	
Company	141,524,351	N/A	141,524,351	112,910,890
Banking	294,447,871	N/A	294,447,871	217,383,109
Life insurance	44,795,856	N/A	44,795,856	11,546,951
Total	**480,768,078**	N/A	**480,768,078**	**341,840,950**

Unlike the above three lodgement types, deregistered company trust money is not transferred to the OPA. These funds are trust funds held and managed by ASIC under a special account for the purposes of dealing with funds received by ASIC under the provisions of section 601(1A) of the Corporations Act. During 2023–24, ASIC received $27.8 million, and earned $1.98 million in interest. This money remains in trust and is not available to ASIC to fund its operations.

Table 6—Amount received and held by ASIC Trust account

LODGEMENTS BY TYPE	2023–24 ($)			2022–23 ($)
	Principal	Interest	Total	
Deregistered company trust money	27,803,087	1,979,085	29,782,172	23,983,079

ASIC's register of unclaimed money is publicly available. In February 2024, ASIC updated the target claim processing time from 28 days to 60 days to reflect the increase in lodgements and complex claims. These complex claims take longer to process and have been increasing over time, which resulted in ASIC taking longer than 28 days to process them. Since February 2024, ASIC has been meeting the revised target of 60 days.

Interest applied on unclaimed money is based on the March-to-March CPI, which is disclosed on the ASIC Moneysmart website. From 1 July 2013, with the exception of claims paid under the deregistered company trust money, ASC paid claims and interest across all claim types, totalling $174.7 million in 2023–24, compared with $130.0 million in the previous year.

Table 7—Amount paid to owners of unclaimed money from the Official Public Account

CLAIMS BY TYPE	2023–24 ($)			2022–23 ($)
	Principal	Interest	Total	
Company	48,156,669	3,509,248	51,665,917	33,809,048
Banking	99,116,617	6,664,987	105,781,604	77,564,155
Life insurance	8,361,242	995,862	9,357,104	12,953,839
Total	**155,634,528**	**11,170,097**	**166,804,625**	**124,327,042**

Table 8—Amount paid to owners of unclaimed money from ASIC Trust account

CLAIMS BY TYPE	2023–24 ($)			2022–23 ($)
	Principal	Interest	Total	
Deregistered company trust money	7,890,311	N/A	7,890,311	5,701,908

Principles of regulator best practice

PRINCIPLES OF REGULATOR BEST PRACTICE	EXAMPLES OF HOW THESE PRINCIPLES HAVE BEEN DELIVERED
Continuous improvement and building trust: regulators adopt a whole-of-sysem perspective, continuously improving their performance, capability and culture to build trust and confidence in Australia's regulatory settings.	ASIC recognises the need to keep pace with changes in our external environment and we continuously improve our capabilities (including those of our people, processes and systems) to achieve our statutory objectives. This is demonstrated throughout this report. See, for example, Digital technology and data (page 42), ASIC's people strategy in Chapter 5, and our approaches to regulation and enforcement (pages 29–89), engagement (pages 89–101) and education (pages 101–102).
Risk-based and data-driven: regulators manage risks proportionately and maintain essential safeguards while minimising regulatory burden, and leveraging data and digital technology to support those they regulate to comply and grow.	ASIC uses a risk-based and data-driven approach to determine the greatest threats and harms in our regulatory environment. We seek to balance investor and consumer education with strong administrative compliance and enforcement activities to achieve our regulatory objectives. See, for example, Digital technology and data (page 42), and our activities outlined on pages 29–87.
Collaboration and engagement: regulators are transparent and responsive communicators, implementing regulations in a modern and collaborative way.	We are committed to working constructively and transparently with industry and the broader community, so that we can understand complex issues in their fullness, arrive at the right regulatory decisions, and set clear expectations for those we regulate. We are always mindful of the role we should play to support the economy, encourage innovation and reduce the regulatory burden on businesses. See, for example, our engagement with key stakeholders (pages 89–101), and our collaboration with APRA in Appendix 1.