3

ASIC's achievements by sector

To help industry participants understand the regulatory effort ASIC expended in the sectors we regulate, this chapter highlights the activities and outcomes achieved in each sector this financial year.

Industry funding

ASIC industry funding means that those who create the need for regulation bear the costs of that regulation. Under the model, entities pay a share of the costs to regulate their subsector through industry levies, based on a range of business activity metrics, and cost recovery fees for service.

There are seven industry funding sectors (deposit taking and credit; insurance; financial advice; investment management, superannuation and related services; market infrastructure and intermediaries; corporate; and large financial institutions) and 52 subsectors.

In June 2022, ASIC published for comment indicative industry levies for 2021–22 in a consultation Cost Recovery Implementation Statement (CRIS). ASIC will take into account stakeholder feedback in preparing the final CRIS, which will be published on our website.

3.1 Deposit-taking and credit

The deposit-taking and credit sector comprises **credit licensees** (credit providers and credit intermediaries), **deposit product providers**, **payment product providers**, **traditional trustee companies** and **margin lenders**.

We use the full suite of our regulatory tools to promote fairness and professionalism in this sector, in order to bring about sound consumer outcomes. ASIC's work in this sector during 2021–22 included engaging with lenders about their approach to consumers experiencing financial hardship and reviewing and updating the ePayments Code.

Addressing financial hardship – ASIC surveillance and influence

In 2021, ASIC continued to engage with lenders about their approach to those impacted by COVID-19, including as a result of further lockdowns. ASIC has encouraged lenders to continue to work with consumers who are struggling with their repayments to find appropriate solutions.

During the pandemic, many lenders closely examined and, in many cases, improved their processes and practices for responding to consumers experiencing financial difficulties:

- some lenders made hardship assistance more accessible to consumers and streamlined hardship assessments
- many lenders took steps to improve communications about hardship assistance and upskill their staff to have better conversations with consumers
- some lenders sought to improve consumer outcomes by using data analytics, including to identify consumers who may be at greater risk of experiencing financial difficulties.

We were pleased to see lenders rethinking and modifying their financial hardship processes in response to the pandemic. Importantly, we have strongly encouraged lenders to embed these improved practices into their existing hardship activities.

Reviewing and updating the ePayments Code

ASIC updated the ePayments code to clarify and enhance several important protections for consumers. The changes strengthen the Code's protections by removing ambiguity and, where appropriate, expanding protections.

The ePayments Code is a voluntary industry Code administered by ASIC to which most banks, credit unions and building societies subscribe. The Code provides consumer protections in relation to electronic payments, including ATM, EFTPOS, credit and debit card transactions, online payments, and internet and mobile banking. The Code also sets out a process for customers to get help from their financial institution in retrieving funds they have mistakenly paid to the wrong person.

ASIC has extended the Code to cover payments made using the New Payments Platform. We have also expanded the process subscribers use to seek a return of a mistaken internet payment to now include partial returns where the full amount of the payment is unavailable. Additionally, ASIC has updated the Code's compliance monitoring and data collection requirements, unauthorised transactions framework and complaints handling obligations.

This followed a comprehensive consultation process with subscribers, consumer groups, industry associations and other stakeholders that culminated in Report 718 *Response to submissions on CP 341 Review of the ePayments Code: Further consultation.*

The requirement to be a 'fit and proper' person

During ASIC's assessment of a debt management services application, we discovered that the sole nominated responsible manager of the applicant had been removed from the roll of Australian Legal Practitioners in 1997 and had been refused re-admission on 7 May 2021. A court considering the decision to refuse re-admission determined that during the past four years, the individual continued to act unlawfully, inconsistently with professional standards, or dishonestly on various occasions across various roles.

While the conduct did not arise in relation to the provision of financial services or credit activities, ASIC considered such conduct was relevant to the fit and proper person test for an officer of an applicant. ASIC was not satisfied that the nominated responsible manager was a fit and proper person to perform one or more functions as an officer of an applicant seeking to provide debt management services under a credit licence.

After ASIC communicated our concerns, the applicant withdrew its application.

Taking action against predatory lenders

ASIC has taken action in the Federal Court against lenders alleging they have attempted to structure their businesses in a way that seeks to bypass the National Credit Act and National Credit Code. The National Credit Act and Code impose important obligations to protect consumers, including caps on fees and interest rates.

On 28 June 2022, ASIC was successful in its appeal before the Full Federal Court against Cigno Pty Ltd and BHF Solutions Pty Ltd. Cigno and BHF Solutions operated a lending model purporting to rely on an exemption in the National Credit Code and claimed they did not require an Australian credit licence that would have provided their consumers with important consumer protections such as the caps on fees and interest rates. The lender, BHF Solutions, provided the credit and charged a fee under the credit contract to consumers. However, Cigno, under a composite services agreement, separately charged very high fees to arrange and manage the credit. These fees, combined with the lender's fees, exceeded the prescribed maximum charge allowed in order to be exempt from holding a credit licence. In some instances, the combined fees meant consumers paid an annual percentage rate of about 800% on the loan.

On 11 April 2022, ASIC commenced separate actions in relation to two separate business models involving financially vulnerable consumers which ASIC is concerned are designed to avoid consumer protections, including the 48% annual cost rate cap under the National Credit Act. The cost rate cap is the maximum that can be charged under a credit contract, taking into account fees and charges and the timing of repayments. In our action against Rent 4 Keeps Pty Ltd and Darranda Pty Ltd, it is alleged that one consumer used Centrelink payments to pay almost $2,500 for a fridge which retailed at $365, and another paid $1,200 for a mobile phone which retailed for just $249. Similarly, in its action against Layaway Depot Pty Ltd, ASIC alleges that some customers paid $780 for a Bluetooth speaker which retailed for $200 and $1,200 for a mobile phone which retailed for just $249.

On 7 June 2022, ASIC commenced action against Sunshine Loans Pty Ltd, which is alleged to have collected $320,000 in prohibited fees from consumers in relation to small amount credit contracts. The National Credit Code limits the fees that may be charged under these loans to an establishment fee, monthly fees and default fees. Sunshine Loans allegedly charged consumers the maximum amount of those fees, and then sought to charge consumers additional fees in the form of repayment amendment or rescheduling fees.

3.2 Insurance

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

This year, ASIC's work in insurance focused on implementing new law reforms and providing relief where needed, working with industry to improve practices, supervising large-scale remediation programs and investigating general insurance pricing practices.

Collaborative intervention – Landlord insurance debt recovery practices

ASIC works with the industry stakeholders we regulate to improve industry practices and to protect consumers. During 2021–22, we continued our collaborative approach in responding to concerns that some landlord insurance providers were inappropriately pursuing uninsured tenants in attempting to recover the cost of repairs to residential properties following damage and the acceptance of landlord insurance claims.

Consumer advocates raised concerns with ASIC about the debt recovery practices by certain landlord insurers, and their representatives, including concerns about insurers:

- pursuing uninsured tenants to recover costs for accidental or unintentional property damage
- failing to provide an adequate explanation, and include evidence, about why the tenant was liable for the damage
- taking advantage of the tenant's vulnerability by coercing tenants into paying for the insurer's costs of the insurance claim.

ASIC took proactive steps to understand industry practices and the concerns raised by consumer advocates, engaging with key stakeholders to prevent consumer harm and improve industry practices. We:

- engaged with the Insurance Council of Australia and its member insurers and communicated ASIC's expectations for fair and reasonable conduct when insurers pursue recovery action against uninsured tenants
- wrote to individual insurers identified in complaints and obtained commitments that they would improve their processes and procedures when deciding to take, and when pursuing, recovery actions to meet ASIC's expectations
- engaged with our co-regulator, the Australian Competition and Consumer Commission (ACCC), on matters of jurisdictional overlap to ensure a united approach to concerns involving debt recovery practices.

Large-scale remediation – Failure to honour promised discounts

During the financial year, ASIC continued to supervise large-scale remediation programs to ensure that they are complete, thorough and robust, and that affected consumers receive their full entitlements. This included supervising remediation programs by Insurance Australia Group Limited (IAG) where over $420 million is expected to be paid to customers with approximately four million policies to fulfil insurance premium discounts which had not been delivered to customers in full as promised from at least 1 July 2012.

The promised discounts included multi-policy discounts and no claims bonus discounts on home and motor insurance policies.

As at 30 June 2022, IAG had paid over $200 million (refunds of insurance premiums paid plus taxes, charges and interest) as a result of its failure to fully honour the promised discounts.

General insurance pricing practices and misleading representations about discounts

In addition to supervising remediation, in October 2021, ASIC filed civil penalty proceedings against Insurance Australia Limited (IAL) in the Federal Court. ASIC alleges that IAL engaged in misleading or deceptive conduct and made false or misleading representations to some NRMA Insurance customers by stating that customers were eligible for certain discounts on renewal of their home and motor insurance policies and then failing to apply those discounts.

ASIC is concerned about pricing practices across the general insurance industry. In October 2021, we called on all general insurers to review their pricing systems and controls as a matter of priority (see Media Release 21–270MR *ASIC launches Federal Court action and calls on general insurers to review pricing practices*). ASIC has been monitoring pricing reviews being conducted by 11 general insurers, which will result in improvements to disclosure, governance, monitoring and supervision, and IT systems and the simplification of insurance products and promises.

Black Saturday Bushfires Review

ASIC reviewed the claims handling practices of general insurers in the aftermath of the 2019–20 bushfires. We assessed claims-level data for 8,801 residential property claims from 12 insurers to monitor their performance and to identify whether insurer conduct met expectations ahead of the commencement of the reforms making insurance claims handling a financial service on 1 January 2022.

ASIC identified good practices and some areas for improvement. Good practices included:

- proactively contacting consumers in affected areas
- paying the maximum temporary accommodation benefit at the outset of claims assessed as total losses
- making product design changes to broaden policy coverage effectively making these policy changes retrospective.

Areas for improvement included:

- some policies include debris removal as part of the sum insured rather than as an additional benefit
- some consumers had used up all their temporary accommodation benefit
- improvements were needed to the quality, accuracy and reliability of claims information recorded.

We engaged with each insurer to discuss findings and areas for improvement. We benchmarked the performance of insurers by key metrics relative to their peers. Insurers responded positively to feedback which provided them with valuable insights regarding their claims handling practices.

ASIC issued a media release publicly outlining the findings of the review and highlighting the actions insurers must take to manage claims efficiently, honestly and fairly in future disasters.

Implementing reforms to claims handling and settling services

This year, ASIC continued to focus on implementing the remaining reforms arising from the Financial Services Royal Commission, including the significant reform to regulate insurance claims handling and settling services as a 'financial service' under the Corporations Act.

Following the passing of the *Financial Sector Reform (Hayne Royal Commission Response) Act 2020*, certain persons providing claims handling and settling services must now hold an AFS licence, and comply with general licensee and new claims handling disclosure obligations, under the Corporations Act. The obligations commenced on 1 January 2022, and require insurance claims to be handled 'efficiently, honestly and fairly'.

On 8 February 2022, ASIC made a legislative instrument that allows insurers to give emergency payments of up to $5,000 to consumers in certain circumstances without first giving them a Cash Settlement Fact Sheet (CSFS). A CSFS is a written document that insurers must provide to consumers when they are offered a cash settlement, setting out the options available to settle their claim. ASIC's relief recognises that the obligation to provide a written CSFS at the time of the cash settlement offer may, in urgent or emergency situations, create an unnecessary delay in the consumer receiving a cash payout to meet their needs.

The relief was granted following an application for relief from the Insurance Council of Australia. ASIC consulted with various industry, consumer and Government stakeholders before deciding to grant the relief. Following provision of the relief, insurers were able to apply a streamlined process for emergency payments to insured consumers impacted by catastrophic events such as the severe weather and flooding in south-east Queensland and northern New South Wales.

Overall, ASIC received 15 applications for relief during the financial year in relation to the claims handling and settling services reforms.

3.3 Financial advice

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

In 2021–22, ASIC focused on engaging with industry on impediments to industry's ability to deliver good quality and affordable personal advice, facilitating registration for financial advisers and administering the financial adviser exam, and taking administrative action against licensees who fail to maintain Australian Financial Complaints Authority (AFCA) membership.

Practical guidance developed to enhance access to advice

To address concerns that consumers may find it difficult to access good quality and affordable personal advice, ASIC undertook a project to look at the impediments industry participants face in meeting consumers' advice needs. We focused on identifying what steps industry and ASIC can take to address these impediments.

On 17 November 2020, ASIC issued Consultation Paper 332 *Promoting access to affordable advice for consumers* to seek industry's ideas about how to improve access to quality advice in Australia. We received an unprecedented 466 submissions – including 242 from financial advisers – and we conducted several roundtable discussions.

During the reporting period, to address key issues raised by industry in the consultation, including requests for shorter, simpler and more user-friendly regulatory guidance, ASIC delivered:

- a new dedicated and centralised Financial Advice webpage to make it easier for advice licensees and advisers to find ASIC guidance relevant to the financial advice industry
- the publication of three example records of advice (ROAs) and practical guidance via Information Sheet 266 *FAQs: Records of Advice*, comprising frequently asked questions about ROAs
- practical guidance and an example statement of advice for limited advice in Information Sheet 267 *Tips for giving limited advice*.

Financial Advisers Register Review project

A requirement for financial advisers to pass a financial adviser exam was introduced as part of the professional standards for financial advisers in March 2017. Following passage of the *Financial Sector Reform (Hayne Royal Commission Response—Better Advice) Act 2021*, ASIC began administering the exam from 1 January 2022.

In early April 2022, ASIC commenced the Financial Advisers Register Review project to ensure that the Financial Advisers Register accurately reflects the correct status of financial advisers who were prohibited from providing personal advice to retail clients on relevant financial products because they did not pass the financial adviser exam by 1 January 2022, or otherwise do not qualify for an extension of time to pass the exam.

As at 30 June 2022, the Financial Advisers Register includes details for 16,620 active financial advisers. AFS licensees must ensure that details about their financial advisers on the Register are correct in accordance with their obligations under the Act. An accurate Financial Advisers Register is integral to ensuring that the public can reference accurate and up-to-date records when making decisions about whether to engage an adviser.

As part of the project in this financial year, ASIC wrote to 491 AFS licensees to update 793 advisers' records to reflect a ceased authorisation status on the Financial Advisers Register or provide proof of their having passed the financial adviser exam, or their eligibility for the exam extension.

As at 30 June 2022, 432 AFS licensees had updated the Financial Advisers Register to change the authorisation status of 696 advisers to 'ceased' after receiving correspondence from ASIC.

Advice licensees who fail to maintain AFCA membership

ASIC takes administrative action to cancel the AFS licence of licensees where they do not comply with the obligation to be a member of the external dispute resolution scheme operated by AFCA. This is a crucial consumer protection requirement in the Australian financial services law regime. During 2021–22, our work in this space has resulted in:

- seven licensees complying with their obligations and obtaining AFCA membership after receiving compliance warning letters from ASIC
- four licensees voluntarily cancelling their AFS licence
- ASIC cancelling two AFS licences through administrative action.

Financial advice – Multiple failures by timeshare company Ultiqa

In May 2021, following action by ASIC, the Federal Court declared that timeshare company Ultiqa Lifestyle Promotions Ltd (Ultiqa) breached financial services laws by failing to ensure that financial advice given to consumers was in the consumers' best interests.

Timeshare schemes are complex financial products that can be difficult to understand, often involving significant long-term financial commitments that can be challenging to exit. Between October 2017 and March 2019, financial advisers acting as authorised representatives of Ultiqa advised consumers to invest in the Ultiqa Lifestyle Scheme, a timeshare scheme, even though this advice was not in the consumers' best interests nor appropriate to their circumstances.

Justice Downes found that Ultiqa's authorised representatives prioritised sales objectives and targets over their consumers' best interests, 'engaging in tactics to pressure the consumers to sign up at the presentation, including (in one instance) preventing the consumer from obtaining external advice, (in two instances) misleading the consumers by representing that the interest in the Scheme was not a time-share scheme, in generally not giving the consumers sufficient privacy and time to discuss and debate the proposed acquisition of interests in the Scheme, and by offering inducements to the consumers to sign up at the presentation.'

Consumers reported that the upfront cost of joining the scheme was between $10,000 and $25,000 with ongoing annual fees of up to $800. Most consumers who bought into the timeshare scheme took out a loan with a company related to Ultiqa to pay for their timeshare interest, and later many were unable to book holidays in their timeshares due to lack of availability.

ASIC brought this action after an investigation revealed Ultiqa's sales tactics, including a sales manual that encouraged sales agents to 'corner' consumers into investing in a timeshare scheme that many could not afford.

Former Victorian financial adviser sentenced to imprisonment for obtaining financial advantage by deception

Following an ASIC investigation and referral to the CDPP, former financial adviser Ahmed Saad was convicted by the County Court (Victoria) of one charge of obtaining financial advantage by deception and one charge of attempting to obtain financial advantage by deception.

Mr Saad was sentenced to nine months imprisonment for the first charge and a concurrent one month's imprisonment for the second charge. Mr Saad was also sentenced to an 18-month community correction order, including 100 hours of unpaid community work.

Beginning in October 2016, Mr Saad operated a scheme in which he provided his clients illegal early access to their superannuation funds. Mr Saad submitted applications for one-off advice fees to a superannuation fund in which he represented that he had provided financial services when he had not. He would then pay these funds back to clients, facilitating unlawful early release.

Between 11 November 2016 and 13 October 2017, Mr Saad obtained $1,531,925 from the superannuation fund on behalf of 168 clients, and between 11 August 2017 and 11 October 2017, he attempted to obtain a further $92,400 on behalf of 10 clients. Mr Saad indirectly benefited from the scheme by growing his client base.

The unlawful release of superannuation is a serious form of misconduct. ASIC investigated Mr Saad to deter other financial advisers from engaging in this conduct.

3.4 Investment management, superannuation and related services

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

In 2021–22, our focus in this sector was on encouraging better governance practices, challenging misleading representations, and working towards greater transparency of underperforming MySuper products.

Guidance to avoid greenwashing: Information Sheet 271

In June 2022, ASIC issued Information Sheet 271 *How to avoid greenwashing when offering or promoting sustainability-related products* (INFO 271) to help superannuation and investment funds avoid greenwashing or overstating the green credentials of their sustainability-related financial products. Alongside this publication, ASIC also released consumer guidance on environmental social governance investing.

In relation to investments, 'greenwashing' is the practice of misrepresenting the extent to which a financial product or investment strategy is environmentally friendly, sustainable or ethical. Greenwashing distorts relevant information that investors might reasonably require to make informed decisions and poses a threat to a fair and efficient financial system. The release of INFO 271 followed ASIC's review into the disclosure practices for a sample of sustainability-related superannuation and investment products. The Information Sheet lists nine questions issuers should consider when preparing PDS disclosures and promotional material for such products. INFO 271 does not create new disclosure obligations – it helps issuers navigate their existing disclosure obligations (including the prohibitions on misleading or deceptive conduct set out in the Corporations Act and ASIC Act against the growing and evolving sustainable finance landscape). INFO 271 seeks to lift disclosure standards to ensure investors have adequate and clear information to make informed investment decisions with respect to sustainability-related financial products.

While INFO 271 focuses on superannuation and investment funds, its principles can apply more broadly to all entities which offer or promote financial products that take into account sustainability-related considerations as part of their investment strategies and decision making (such as companies listed on a securities exchange or entities issuing green bonds). Given the growing investor demand for, and availability of, sustainability-related products in

Australia, greenwashing remains a priority area for ASIC and sustainability-related disclosures will continue to be monitored for misleading claims.

Investment management

ASIC takes administrative action, such as licence cancellations and suspensions and banning individuals as well as court action to protect investors and consumers and to deter misconduct. Some key outcomes in the managed investments scheme sector that ASIC achieved this year include:

- **Future Asset Management International Ltd (FAMI):** ASIC cancelled the AFS licence of FAMI (the responsible entity of three registered schemes) in November 2021 because it is in liquidation. Under the terms of the cancellation, the liquidators of FAMI could continue to transfer the schemes to a new responsible entity, investigate or preserve the assets and affairs of the schemes, and wind up the schemes until 31 May 2022.
- **Dylan Rands:** ASIC banned Mr Rands from providing financial services for five years after finding that he engaged in market manipulation while he was a dealer and portfolio manager at Regal Funds Management Pty Ltd (Regal). As part of his portfolio manager role, Mr Rands managed trading in Clearview Wealth Limited shares, which were held in several Regal funds. ASIC found that Mr Rands engaged in manipulative trading in relation to Clearview Wealth Limited shares and breached the Corporations Act. ASIC also found that Mr Rands was not adequately trained or competent to provide financial services and perform functions as an officer of an entity that carries on a financial services business.
- **PE Capital Funds Management Ltd (PECFM):** Following action by ASIC, the Federal Court ordered PECFM into liquidation after finding that the firm breached the law by operating managed investment schemes without an AFS licence and by engaging in misleading and deceptive conduct. From around 2015, PECM made misleading and deceptive statements representing that it was authorised to operate the schemes when it was not. It also made misleading and deceptive statements about how investments would be structured, telling investors they had preferential securities when they did not and, in the case of one fund, misrepresenting the investment strategy that would be used.
- **ISG Financial Services Limited (ISG):** ASIC suspended the AFS licence of ISG (the responsible entity of two registered schemes) in June 2022 until 30 September 2022 because it failed to meet statutory audit and financial reporting lodgement obligations for itself and the schemes and did not have the required professional indemnity insurance coverage in place between 14 July 2020 and 21 June 2021. Under the terms of the suspension, ISG cannot issue any new interests in the schemes until the suspension is lifted. However, it may continue to provide financial services that are necessary for, or incidental to, the day-to-day operation of the schemes.

Reviewing responsible entity governance practices

ASIC conducted a review of the governance practices of 10 large responsible entities of managed investment schemes to explore specific aspects of responsible entity governance and gain better insights. ASIC chose the responsible entities based on the total value of assets under management and the specific business models used. The responsible entities, in ASIC's review, were not selected based on risk or specific concerns. As at 30 June 2021, these responsible entities collectively managed approximately $588 billion in registered schemes.[1]

ASIC collected information from the responsible entities regarding a range of topics, including business models, board composition, performance and governance, as well as compliance committees and service provider oversight. ASIC also met with the responsible entities to discuss and obtain further information. The findings from ASIC's analysis are detailed in a January 2022 presentation titled 'Governance of responsible entities', which also summarises the relevant legal frameworks and sets out important considerations regarding governance for the responsible entities and their boards.

1 The figure of $588 billion is derived from ASIC's Industry Funds Metrics data for the 2020–21 financial year. The total amount invested excludes assets that are cross-invested in another scheme operated by the same responsible entity.

The managed funds industry plays a significant role in delivering financial outcomes for Australians. Good governance practices support sound decision making by the boards of responsible entities by ensuring that they are well informed and less susceptible to conflicts of interest. This, in turn, can optimise the capacity of responsible entities to deliver better outcomes for investors while complying with the law. ASIC seeks to promote the adoption of good governance practices by undertaking reviews of existing practices and encouraging entities to consider findings and take steps to improve.

Surveillance of misleading performance and risk representations

In March 2022, ASIC initiated a surveillance into the marketing of managed funds to identify the use of misleading performance and risk representations in promotional material. The surveillance scrutinised traditional and digital media marketing of funds, including search engine advertising, targeting retail investors and potentially unsophisticated wholesale investors, such as some retirees. ASIC was concerned that, in a relatively volatile environment, consumers seeking reliable or high returns were being misled about fund performance and risks.

The surveillance identified a range of concerning representations in fund marketing material, including:

- promoting target returns without disclosing risks or reasonable assumptions underpinning those targets
- comparing fund performance to other financial products, indices or benchmarks that have much lower risks
- using out-of-date or potentially unrepresentative past performance data
- failing to include warnings that past performance is not an indicator of future performance
- failing to balance claims about the reliability of returns with warnings about the risk of those returns.

After ASIC wrote to the responsible entities of funds in relation to our concerns, many made changes, including withdrawing or amending their marketing materials and strategies or introducing additional compliance controls.

Misleading marketing of investments as lower risk leads to $750,000 penalty

On 26 November 2021, following action by ASIC, the Federal Court found that La Trobe Financial Asset Management (La Trobe) made false or misleading representations in the marketing of the La Trobe Australian Credit Fund (the Fund). La Trobe was ordered to pay a $750,000 penalty.

La Trobe's advertising in newspapers and magazines and on websites included statements that any capital invested in the Fund would be 'stable'. ASIC claimed that this gave the impression there could be no loss of capital and that La Trobe failed to express in a sufficiently prominent manner that a person who invested in the Fund could, in fact, lose substantial amounts of capital invested. The court found that the statement that any capital invested in the Fund would be 'stable', in the sense of there being no risk of substantial loss of that capital, was a false or misleading representation.

The court also found that La Trobe made false or misleading representations that investors in its 48 Hour Account and 90 Day Account would be able to withdraw their funds between 48 hours and 90 days of providing withdrawal notice, whereas:

- La Trobe had up to 12 months to satisfy a withdrawal while the Fund was liquid
- if the Fund ceased to be liquid, investors were entitled to withdraw only when a withdrawal offer was made by La Trobe.

In his decision, Justice O'Bryan stated that 'the misleading conduct was serious and had very considerable potential to mislead the public about the characteristics of the investment options – both as to the entitlement to withdraw funds and the risk of loss of capital invested'.

Superannuation

Improving funds' governance practices

During the early stages of the COVID-19 pandemic, there were significant declines in asset values, resulting in out-of-cycle valuations for unlisted assets. We conducted a surveillance looking at the ability for directors and executives of superannuation funds with access to sensitive information about the revaluation of the funds' unlisted asset options to use this knowledge to switch investment options to minimise their losses at this time. The use of confidential information for gain by directors and executives is problematic, as it may be at the expense of other fund members and decrease confidence in the superannuation industry.

We reviewed the conflicts management frameworks of 23 superannuation trustees and we analysed trades by 127 individuals on their member accounts at superannuation funds. The individuals comprised directors and executives, as well as their related parties.

Our surveillance identified that there was a lack of appropriate oversight and control measures in relation to investment switching. Trustees did not have robust systems in place to prevent directors and senior executives from potentially misusing price-sensitive confidential information for personal gain.

We wrote to the 23 trustees outlining our concerns and requesting that they take steps to improve existing policies and procedures. In response, 19 trustees have implemented a range of changes to address our concerns (with the other four trustees merging during our surveillance), including:

- increasing board-level engagement so there is greater board oversight, input and direction
- increasing staff awareness of the policies and their obligations through greater internal communication and training
- undertaking an independent review of the trustee's broader conflicts management frameworks.

Based on the evidence obtained during our surveillance, ASIC was satisfied that no further action was warranted against any individuals in relation to the identified transactions. We communicated publicly about this work to drive better behaviour outcomes by trustees.

ASIC engaged APRA extensively in relation to this work, including on its relevance to APRA's consultation on Prudential Standard SPS 530 *Investment Governance in Superannuation*, and its ongoing work on unlisted asset valuation practices.

Greater transparency for members in relation to underperformance of their MySuper products

ASIC undertook a review of communications made to members by trustees of the 13 products that failed APRA's first annual performance tests for MySuper products under Part 6A of the SIS Act in financial year 2020–21.

The annual performance test is designed to hold trustees to account for underperformance through greater transparency and increased consequences in order to protect superannuation members and increase their retirement savings.

Under the law, where a product fails the test, transparency of performance is given to members through required website disclosure and a notice the trustee must send to members in a prescribed form. Before the results of the 2020–21 performance test were published, we wrote to trustees whose products were likely to fail to remind them of their legal obligations. After the results were known, we looked at whether trustees had sent the mandatory notice and updated their website to refer to the performance test failure as required by law. Our review did not identify significant concerns about compliance with these obligations.

We did, however, identify opportunities for improvement to communications about performance more generally. As well as mandatory disclosures, our review looked at performance test-related communications more generally to determine whether trustees were undermining the consumer protection element of the reforms by misleading their members about product performance. We had some concerns here. The notice members receive where their product fails the performance test suggests they should consider moving their money to a different superannuation product. Our review found communication practices that detract from this message. We found that six trustees did not prominently disclose the failed test on their website and seven trustees presented information in relation to the test in a way that may have caused a member to discount the importance of the test. In these cases, we contacted trustees directly for corrective changes to their website or other materials.

In June 2021, we published Report 729 *Review of trustee communications about the MySuper performance test*, in which we detailed the findings of our review and set expectations for future communications about performance.

3.5 Market infrastructure

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

ASIC's work in this sector during 2021–22 continued to focus on providers' compliance with their obligations under the financial services laws to help ensure good consumer and investor outcomes and maintain trust and integrity in Australia's financial markets.

Operational resilience: ASX outage and industry resilience

ASIC has continued our focus on ensuring market resilience this year by publishing our expectations for industry in the event of a market outage (REP 708).

We also imposed new licence conditions on ASX's Australian market licence, ASX Clear and ASX Settlement. These licence conditions require remediation of the underlying issues with ASX operations that led to the November 2020 market outage. Further, the conditions asign accountability to the ASX board and senior executives for the implementation of the remedial actions and require attestations on behalf of the ASX board that adequate controls, procedures, skills and resources are in place. ASIC is also continuing to review the circumstances of an outage of the ASX 24 derivatives trading platform that occurred on 17 March 2022.

On 10 March 2022, ASIC introduced new market integrity rules aimed at promoting the technological and operational resilience of securities and futures market operators and their market participants (see 'Market integrity rules for technological and operational resilience' on page 92).

ASIC also conducted a review of TP ICAP, a leading global markets infrastructure and data solutions provider. We reviewed TP ICAP's conflict-handling arrangements, its arrangements for monitoring and enforcing compliance with the market operating rules, and its operational resilience (including cyber resilience), systems and controls. TP ICAP's compliance with its licence obligations was generally found to be adequate, with recommendations made concerning monitoring and surveillance, as well as resilience.

CHESS replacement

ASX is undertaking a multi-year transformation program to replace its clearing and settlement system (CHESS) with a system based on distributed ledger technology. We expect ASX to replace CHESS in a safe and timely manner to ensure market stability and resiliency. Together with other Council of Financial Regulators (CFR) agencies and the ACCC, we are supervising ASX's governance of the program, stakeholder engagement, and management of key risks. This includes system development and testing, participant readiness, pricing and data access.

In November 2021, licence conditions were imposed on ASX following ASIC's investigation into the ASX trade outage. The conditions provide an additional layer of assurance with the appointment of an independent expert who will assess whether ASX's assurance program is fit for purpose, identify any shortfalls, and regularly report to ASIC. ASX's assurance program should demonstrate the readiness of ASX and industry to go-live. The new system should achieve a significant uplift in intraday and end-of-day processing performance. At a minimum, it must deliver the same technical performance CHESS meets today, while also delivering the benefits of contemporary technology.

ASIC will continue to monitor closely ASX's implementation and to engage industry as it enters key program phases.

Enhancing cyber resilience

This year, ASIC formed a new team to deliver our strategic roadmap for supervising the cyber resilience of our regulated entities, and to contribute to Government and other regulatory cyber initiatives.

ASIC engages with both Government and other regulatory agencies, including through the Council of Financial Regulators (CFR). Through the CFR Cyber Security Working Group, we have contributed to the delivery of cyber resilience programs. This work includes the development of a protocol to guide our response to cyber incidents against regulated entities with potential systemic impacts, as well as the completion of the pilot phase of the Cyber and Operational Resilience Intelligence-led Exercises.

In December 2021, ASIC published Report 716 *Cyber resilience of firms in Australia's financial markets: 2020–21*. Since 2016, we have been engaging with financial market firms and operators on their cyber resilience to understand their preparedness and to drive behavioural change. This report summarises our observations from this third, industry-specific, self-assessment program.

In this report, ASIC observed that supply chain cyber risk management continues to be a significant challenge, even for larger firms. Many responding firms indicated that they were targeting an uplift in their capability in this area in the coming 12 months.

We have also been communicating with AFS licensees about the Federal Court finding in the RI Advice matter (see page 48). We are using this case to drive behavioural change in managing cyber risk in AFS licensees.

Working with Government on crypto-asset regulation

The crypto-asset industry has evolved rapidly in recent years. A growing number of regulated and unregulated entities are now developing and marketing crypto-asset-related services to Australians. Similarly, retail and wholesale investors in Australia have an increased appetite for accessing crypto-assets and related services. Determining how crypto-assets are classified (whether they are financial products) and regulated can be a complex legal process.

ASIC has established an internal crypto-asset working group to engage with industry, coordinate matters through ASIC, build skills and knowledge, and contribute to the Government's consideration of crypto-assets. On 29 October 2021, ASIC published good practices for market operators and product issuers in admitting and operating exchange traded products (ETPs) and other investment products that provide exposure to crypto-assets (Information Sheet 225 *Crypto-assets* and Information Sheet 230 *Exchange traded products: Admission guidelines*).

Key matters covered by ASIC's good practice guide include admission and monitoring standards, custody of crypto-assets, pricing methodologies, disclosure and risk management. The first ETPs were launched on 12 May 2022.

Since the COVID-19 pandemic, crypto scams have also risen significantly to become the most reported scams in the period since 1 July 2021. In response, ASIC has used a number of strategies to combat and disrupt scams, particularly where there is a risk to Australian consumers. These strategies include consumer warnings about fake celebrity-endorsed bitcoin promotions which are actually fake websites posing as crypto trading robots or cryptocurrency 'pump and dump' scams. We have also taken enforcement action to disrupt scams and misconduct. For example, Helio Lending Pty Ltd, which offered cryptocurrency-backed loans to consumers, has been charged with falsely claiming that it held an Australian credit licence when it did not.

Inter-agency data sharing leading to advanced market data analytics

We continuously explore ways to better leverage data and advanced analytics to enhance successful regulatory business outcomes.

We are mapping our equity trade surveillance data with data from the ATO to identify insider trading rings and suspicious trading behaviour. Our algorithms identify connections between traders and family members, colleagues, neighbours and, more recently, directors of companies, and they alert us to suspicious trades. This is important because, on some estimates, insider trading and information leakage may be costing the Australian market hundreds of millions of dollars per year.

Using data in this way can lessen manual work on insider trading analysis by ASIC staff. It also reduces compliance costs for market participants – for example, ASIC notices of direction under section 912E of the Corporations Act to identify clients involved in suspicious trading. The efficient use of this cross-agency data has significantly reduced the number of notices issued for this client identification purpose.

Our specialist data analysts are currently making innovative progress with other use cases using an anonymised map of associated trading accounts and enhancing the identification of other types of serious market misconduct, such as market manipulation and possible breaches of ASIC's market integrity rules. We are developing new system tools and dashboards that leverage advanced algorithms to automatically scan the market for collusive behaviour.

3.6 Market intermediaries

The market intermediaries sector includes **market participants**, **securities dealers**, **corporate advisers**, **over-the-counter (OTC) traders**, **retail OTC derivatives issuers**, and **wholesale electricity dealers**.

ASIC's work in this sector during 2021–22 included a focus on market manipulation occurring via social media forums, online financial influencers, and new market integrity rules.

Pump and dump activity – ASIC action

There was a concerning trend in the second half of 2021 of social media forums being used to coordinate 'pump and dump' activity in listed stocks, which may amount to market manipulation. Some people appeared to be using online forums to blatantly entice others to pump share prices before selling their shares and hoping to take a profit.

ASIC used a multi-pronged early intervention approach to quickly disrupt the activity, working closely with stakeholders such as:

- ASX to quickly identify target companies and pause trading to disrupt the activity
- market participants, where suspicious client account activity was identified – in some cases, market participants closed client accounts
- social media platforms to close several forums after ASIC posted in the forums to deter the activity.

ASIC will act where there are threats to market integrity and investors, including taking enforcement action where appropriate and looking for new and innovative ways to disrupt concerning conduct.

Financial influencers

In the second half of 2021, ASIC undertook a review which found that many online financial influencers did not fully understand how the law applies to them and did not hold an AFS licence. In December 2021, the ASIC Young People and Money Survey found that almost one-third of young people follow at least one financial influencer on social media. Of those, 64% reported changing at least one of their financial behaviours as a result.

In March 2022, we published Information Sheet 269 *Discussing financial products and services online* (INFO 269), outlining how financial services laws apply to social media influencers and AFS licensees who use them. Using a series of practical case studies, INFO 269 highlights:

- activities where influencers may contravene the law, with examples on financial advice, dealing by arranging, and misleading or deceptive conduct
- issues for influencers to consider, including whether an AFS licence is needed and doing due diligence on people who are paying them
- that AFS licensees who use influencers should do due diligence and have appropriate risk management and compliance arrangements in place.

In response, many influencers modified their content. ASIC also ran a social media campaign (viewed by 2.4 million people) to raise awareness of the risks of consumers relying on social media to make investment decisions.

The growth of online financial discussion is changing the way retail investors access and share financial information. It is important that online content is accurate, balanced and provided in compliance with financial services laws.

Market integrity rules for technological and operational resilience

Australia's markets and their participants are facing increased technological and operational risks. In March 2022, to help safeguard the integrity and resilience of Australia's markets, ASIC introduced new market integrity rules aimed at promoting the technological and operational resilience of securities and futures market operators and participants. The rules take effect from 10 March 2023 and set minimum expectations and controls relating to:

- change management
- outsourcing
- information security
- business continuity planning
- governance and resourcing
- trading controls (market operators only).

The rules clarify and strengthen existing obligations for market operators and participants and provide greater domestic and international alignment. The International Organization of Securities Commissions (IOSCO) and regulators globally have been raising standards for the systems and controls of market operators and participants at both a jurisdictional level and through multilateral initiatives.

Together with the new rules, we published REP 719 outlining industry feedback on the impact of the proposed rules.

3.7 Corporate

The corporate sector includes **auditors and liquidators**, which are subject to separate fees and levies. The corporate subsectors include **corporations** (listed corporations, unlisted public companies, large proprietary companies, and small proprietary companies), **auditors of disclosing entities**, **registered company auditors**, and **registered liquidators**.

In 2021–22, our work in this sector focused on climate-related governance and financial disclosures, the oversight of corporate finance transactions, increased scrutiny of the quality of disclosures in the operating and financial review of directors' reports, financial reporting surveillance, and implementing an NLP solution for Declarations of Independence, Relevant Relationships and Indemnities (DIRRIs) lodged by registered liquidators.

Sustainability governance and disclosure

ASIC's targeted surveillance activities, engagement with domestic and international peer regulators, and consistent reinforcement of key statutory obligations have supported continued improvement in the transparency and governance of listed companies in this area.

As international standards develop, ASIC continues to encourage listed companies to use the G20 Financial Stability Board's Taskforce on Climate-Related Financial Disclosures (TCFD) recommendations as the primary framework for voluntary climate change-related disclosures. Listed companies reporting climate-related information under the TCFD are expected to be well placed to transition to any future standard.

Examining 'net zero' statements in prospectuses

In ASIC's review of prospectuses, we have increased the scrutiny of statements being made by issuers in relation to any net zero and related sustainability commitments or the development of 'green' technologies. We believe there is increased market and investor interest in the environmental, social and corporate governance credentials of issuers.

Net zero commitments and related plans may be considered forward-looking statements, for which there must be reasonable grounds. Where there are no reasonable grounds to underpin a net zero statement that is predictive in nature, the disclosure may be misleading.

We have intervened in a number of prospectuses during the year and have required clarification or retraction of net zero and related statements. Issuers have been required to detail the plans and progress made towards their net zero targets or sustainability targets. Where plans have been largely unsubstantiated, we have required removal of the sustainability statements.

Corporate finance transactions

Ensuring that investors are given information to make informed choices in corporate control transactions

ASIC continues to intervene in corporate control transactions to prevent investor harm by improving the standard of information that entities undertaking control transactions provide to investors. Our work seeks to ensure that investors are given the information they need to make an informed choice about how to vote on, or whether to accept, an offer to acquire their securities.

This year, we reviewed the information provided to investors for a scheme of arrangement under which investors were offered a combination of cash and scrip consideration. All investors would receive the same cash consideration but could choose to receive scrip consideration in either one of two entities. Entities undertaking schemes provide investors with the board's recommendation and an independent expert's report opining on whether the scheme is in the best interests of investors. We expect that the board and the expert consider each of the alternative forms of consideration when making their recommendation or providing an opinion.

We intervened to ensure that the board and expert did not consider only one form of scrip consideration offered, and instead turned their minds to the alternative scrip consideration as well. As a result of our intervention, the expert included information about the alternative scrip consideration and the board considered this alternative in disclosing its recommendation. Our intervention ensured that investors could make an informed choice about how to vote on the scheme.

Financial reporting surveillance

Quality financial reports provide important information for investors and other stakeholders in making decisions about the allocation of scarce resources.

In 2021–22, ASIC proactively reviewed 220 financial reports of listed entities and other public interest entities for years ended 30 June 2021 and later. Following our surveillance inquiries, we issued media releases about 13 entities that recognised material changes to financial information previously released to the market or made enhanced disclosure of business risks. In recent years, material changes have been made to 4% of financial reports following our reviews.

We issued media releases concerning material financial reporting changes by Jayex Technology Limited, Academies Australasia Group Limited, Mosaic Brands Limited, Earlypay Limited, Woodside Petroleum Limited, Collection House Limited, Oliver's Real Food Limited and Buddy Technologies Limited. In addition, five entities provided additional disclosure of material business risks as a result of our focus on the operating and financial review (OFR).

We continue to publicly highlight focus areas for directors, preparers and auditors ahead of each reporting season. These areas can then be addressed before financial reports are issued so that the market is properly informed.

Annual reports – Operating and financial review

In ASIC's reviews of financial reports, we have increased our scrutiny of the quality of disclosures in the OFR of directors' reports. An OFR is required under the Corporations Act by all listed entities. It aims to provide information that shareholders would reasonably require to make an informed assessment of an entity's operations, financial position, business strategies and prospects for future financial years. The OFR is of particular importance to retail investors who do not have the research resources of their institutional counterparts. We believe that a high-quality OFR helps to address this imbalance and contributes to confident and well-informed market participants.

We contacted a number of entities where we considered that the OFR in their financial reports did not meet the requirements of the Corporations Act or the regulatory guide on the subject published by ASIC. Betmakers Technology Group Limited, Ashley Services Group Limited, IQ3Corp Limited, Telix Pharmaceuticals Limited and Audio Pixel Holdings Limited subsequently made disclosures on the ASX announcements platform. ASIC also presented to stakeholder groups to improve awareness of this important aspect of financial reporting. The OFR continues to be a focus of our financial reporting reviews.

Woodside Petroleum increases restoration provision by US$239 million in its annual financial report

ASIC raised concerns about the amount of the provision for restoration costs in the financial report of Woodside Petroleum Limited (now named Woodside Energy Group Limited) for the year ended 31 December 2020. Our concerns, which included the basis on which the provision was calculated and the adequacy of disclosure of that basis, originated from a review of the prior year financial report.

After ASIC raised these concerns, Woodside increased the provision by US$239 million for restoration costs on the future decommissioning of offshore oil rigs and associated infrastructure assets in its financial report for the year ended 31 December 2021. This increase is primarily due to the inclusion of costs for the removal of rigid plastic-coated pipelines.

Woodside also improved its disclosure of the basis for providing for future restoration costs. This included disclosing:

- the types of offshore and onshore infrastructure assets for which full removal has been provided
- that full removal has not been provided for certain pipelines and infrastructure, parts of offshore platform substructures, and certain subsea infrastructure, and the reasons for this
- an indication of the additional costs if certain items for which full removal has not been provided for are not exempted from full removal by the National Offshore Petroleum Safety and Environmental Management Authority.

Restoration obligations for companies in the offshore oil and gas sector can be significant and ASIC will continue to focus on the reasonableness of this provision and the adequacy of disclosures.

Audit inspections

Auditors play a vital role in underpinning investor trust and confidence in the quality of financial reports.

In 2021–22, we proactively reviewed the audits of the financial reports of 45 listed and other public interest entities. We will publish our report on the findings from these reviews in the second quarter of 2022–23.

Findings from our previous reviews show that more needs to be done to improve audit quality (see Report 709 *Audit inspection report: 1 July 2020 to 30 June 2021* (issued November 2021)). Auditors have primary responsibility for audit quality, supported by others in the financial reporting ecosystem such as directors and audit committees.

While audit firm action plans remain important in improving audit quality, ASIC continues regulatory initiatives, including:

- a focus on enforcement actions for auditor conduct matters
- reviewing the approach of the largest six audit firms to undertaking root cause analysis on negative findings
- increased transparency by publishing the level of adverse findings for each of the six largest audit firms.

ASIC updated Regulatory Guide 260 *Communicating findings from audit files to directors, audit committees or senior managers* to advise that, from 2022–23, we will communicate negative findings from our reviews of audit files to directors to protect the interests of investor and market confidence in the conduct of audits and the quality of financial reports.

SMSF auditors

SMSF auditors play a vital role in promoting confidence in the SMSF sector. ASIC is responsible for the registration of SMSF auditors and works with the ATO as co-regulators of SMSF auditors. The ATO monitors SMSF auditor conduct and refers auditors to ASIC where it considers that their conduct is causing harm to consumers. ASIC can disqualify, suspend or impose additional conditions on the registration of an SMSF auditor.

In 2021–22, we removed from the register 40 auditors who were in breach of the SIS Act requirements, including Australian auditing standards. These included:

- 10 auditor registrations were cancelled for failing to lodge annual statements
- 9 auditors were disqualified for failing to comply with auditing standards, breaches of independence or fitness and proprietary
- 21 auditors voluntarily requested cancellation after concerns were raised with them by ASIC.

We also imposed conditions on the registration of 19 other auditors for non-compliance with the SIS Act and Australian auditing standards.

SMSF auditor annual statement compliance

During 2021–22, ASIC commenced a review of the compliance of SMSF auditors with their obligation to lodge annual statements as required by section 128G of the SIS Act. These statements collect important compliance information.

ASIC contacted 1,460 SMSF auditors regarding their outstanding annual statements, resulting in:

- cancelling the registration of 10 SMSF auditors, who previously had their registrations reinstated after ASIC had cancelled them, for not lodging annual statements
- 94 SMSF auditors voluntarily cancelling their registrations
- 527 SMSF auditors lodging at least one outstanding annual statement.

Companies Auditors Disciplinary Board

We will take matters involving auditor conduct to the Companies Auditors Disciplinary Board (CADB). In 2021–22, as a result of our investigations, one registered company auditor's registration was cancelled – see the case study on page 53 – and another was suspended by the CADB.

Auditor's registration suspended

Following an application by ASIC, in March 2022, the CADB suspended the registration of Jakin Leong Loke, a New South Wales-based registered company auditor.

ASIC contended that Mr Loke failed to perform his duties as an auditor adequately and properly in relation to his involvement as a member of the audit team for the 2017 audit of Big Un Ltd.

Due to ASIC's action, Mr Loke's registration as a company auditor was suspended for 12 months. Mr Loke was also required to undertake additional professional education and hire a registered company auditor, approved in advance by ASIC, as a peer reviewer to oversee the first three company audits he conducts following the resumption of his registration.

Registered liquidators

Natural Language Processing (NLP)

Registered liquidator independence underpins the public's confidence in Australia's insolvency regime. The law requires registered liquidators to lodge a copy of their DIRRIs for insolvency appointments with ASIC. There are currently approximately 5,000 DIRRIs with on average seven pages lodged in PDF form each year. It is not possible to manually assess each DIRRI for any independence concerns.

To address this challenge, ASIC developed an NLP solution which uses automation and machine learning to search all DIRRIs as they are lodged to identify independence risks. Flagged high-risk DIRRIs are then manually reviewed and surveillances commenced, if appropriate.

The benefits of the NLP solution include:

- improved timeliness – analysis is performed in near real time on lodgement of the DIRRIs by registered liquidators
- improved breadth of coverage – all DIRRIs are automatically assessed under this process and prioritised for review
- improved efficiency/effectiveness – manual review is prioritised for DIRRIs identified as bearing risk markers
- improved surveillance selection – more accurate and earlier selection of registered liquidators, pre-insolvency advisers and referring parties for further investigation and surveillance should help reduce potential harms related to registered liquidator conflicts of interest.

Former liquidator sentenced to imprisonment for dishonesty and fraud offences

In February 2022, following an investigation by ASIC, Amanda Young, a former registered liquidator, was sentenced in the District Court (NSW) to a total period of three years imprisonment to be served as an intensive corrections order in the community. This included a condition she perform 350 hours of community service. Ms Young pleaded guilty to fraud and dishonesty offences.

ASIC's investigation found that while acting as liquidator, Ms Young had transferred a total of $193,862 from two companies to her own bank account. Ms Young also attempted to disguise this misappropriation of funds when she falsified internal records and tampered with an email from a legal professional. In sentencing Ms Young, the court noted that her conduct was 'deliberate, continuing and egregious and entailed a significant degree of deception and guile, involving legal professionals in the hope it would divert the investigative gaze from the offender'.

This result aligns with ASIC's enforcement priority to take action to address serious misconduct and hold gatekeepers to account so as to maintain trust and integrity in the financial system. The matter was prosecuted by the CDPP after a referral from ASIC.

Directions power

Under the Corporations Act, registered liquidators must lodge documents with ASIC. If a document has not been lodged, ASIC has the power to direct a registered liquidator to lodge it with us. This year, we issued four directions to three liquidators.

In one of these matters, we directed a liquidator to lodge two outstanding accounts of receipts and payments, and provided two extensions. However, the documents were not lodged, and consequently we issued a direction to the liquidator to not accept further appointments under Chapter 5 of the Corporations Act.

Disciplinary committee decision

ASIC became aware of a former voluntary administrator's alleged failure to identify a threat to his independence and subsequently referred the registered liquidator, Nicholas Crouch, to a committee convened under section 40–45 of Schedule 2 to the Corporations Act to decide on his registration as a liquidator.

On 24 June 2022, the committee found that Mr Crouch:

- failed to carry out adequately and properly the duties or functions that a registered liquidator must carry out under law, by accepting an appointment as a voluntary administrator when he was not seen to be independent due to his pre-appointment dealings
- failed to exercise care and diligence in cooperating and assisting the liquidator who replaced him
- contravened provisions of the Corporations Act by failing to lodge an end of administration return with ASIC and by failing to transfer to the liquidator who replaced him all books relating to the voluntary administration that were within his possession or control.

The committee also decided that while Mr Crouch's registration should continue, he should be publicly reprimanded and ASIC should direct him not to accept any further appointments as a liquidator during the period 29 June to 31 December 2022.

3.8 Large financial institutions

Supervision of large financial institutions

ASIC conducts intensive supervision of Australia's largest and most complex institutions that have the greatest potential to impact consumers: CBA, WBC, NAB, ANZ, AMP and Suncorp.

Some of the areas of focus during 2021–22 included the implementation of regulatory reforms, such as the design and distribution obligations and the reportable situations regime in major financial institutions, and the effectiveness of the internal audit functions of the Big 4 banks. We also had a hybrid supervision model for Macquarie Group and reviewed the effectiveness of its controls to manage conflicts of interest.

Implementation of design and distribution obligations by major supervised institutions

Before the commencement of the design and distribution obligations regime, ASIC reviewed the target market determinations (TMDs) for certain credit card and loan products offered by five major financial institutions. We focused on the conduct of these institutions, given the significant number of consumers affected by their conduct, as well as the market-leading position of the institutions, which is likely to influence the practices across the broader industry.

We were able to swiftly provide feedback to the institutions in areas where our analysis indicated that the TMDs did not fully satisfy the objects of the upcoming reforms. The institutions addressed our concerns by adjusting their TMDs with key changes made, including:

- better identifying customers for whom the product would not be suitable
- more clearly articulating the needs, objectives and financial situations of target customers, rather than merely listing product attributes
- more clearly articulating the features of the product, including features that are likely to be disadvantageous
- improving the review triggers, including better linking them to known indicators of poor customer outcomes.

This initial review led to an uplift in the quality of TMDs published by these institutions before the regime commenced. Since then, the institutions have been making ongoing changes. ASIC will continue to work with industry to improve its implementation of design and distribution obligations to improve product governance arrangements across the life cycle of financial products.

The design and distribution obligations require financial services firms to adopt a consumer-centric approach to their product governance. For issuers, this includes designing products consistent with the objectives and financial needs of intended consumers, determining and articulating the target market for specific products, and specifying events and circumstances (review triggers) that would indicate that the target market or distribution conditions are no longer appropriate. Both issuers and distributors must then take 'reasonable steps' to ensure that products are reaching consumers in the defined target market. They must also monitor the specified events and circumstances to ensure that the target market remains appropriate.

Review of internal audit functions

We reviewed the effectiveness of the internal audit functions of the Big 4 banks in improving compliance with financial services laws, enhancing customer outcomes and reducing harm. Internal audit functions perform a key gatekeeper role for large financial services institutions. An effective internal audit function provides independent oversight and assurance to prevent failures in risk management, governance, internal controls, processes and systems that can harm consumers or result in poor outcomes.

The review outlined some areas for improvement, including:

- root cause analysis, where improvements would more readily uncover the underlying drivers of issues and enhance the effectiveness of actions to sustainably address those issues
- data analytics capabilities and resources, where uplift would increase the banks' ability to use analytics more extensively across audits and use a range of techniques to deliver higher levels of assurance and better insights
- annual audit planning processes, where improvements would enhance the ability to build an audit program based on a risk-based foundation
- quality of reporting to senior management to allow it to better understand trends and patterns, including new and emerging issues, and take appropriate action.

In response to our feedback, the banks outlined detailed action plans to address our findings, which we have commenced monitoring.