



ASIC
Australian Securities &
Investments Commission

REPORT 727

Regulator Performance Framework: ASIC self- assessment 2020–21

May 2022

About this report

The Regulator Performance Framework (Framework) provides a set of six common key performance indicators (KPIs) for Australian Government regulators.

This report sets out ASIC's self-assessment of its performance against the KPIs in 2020–21. It supplements ASIC's [Annual report 2020–21](#).

About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

Consultation papers: seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

Regulatory guides: give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

Information sheets: provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

Reports: describe ASIC compliance or relief activity or the results of a research project.

Disclaimer

This report does not constitute legal advice. We encourage you to seek your own professional advice to find out how the Corporations Act and other applicable laws apply to you, as it is your responsibility to determine your obligations.

Examples in this report are purely for illustration; they are not exhaustive and are not intended to impose or imply particular rules or requirements.

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A Introduction

Key points

The Regulator Performance Framework (Framework) is designed to assess one aspect of a regulator’s performance—the extent to which it minimises regulatory burden while fulfilling its objectives and delivering its functions.

The Framework is one component of ASIC’s suite of performance reporting tools.

ASIC is working to update its performance reporting, in line with the revised reporting requirements outlined in the Australian Government’s new [Regulator performance guide](#).

About the Regulator Performance Framework

- 1 The Framework comprises six mandated, common, outcomes-based key performance indicators (KPIs) set by the Australian Government. We have grouped KPIs together where we consider there is overlap in their nature and purpose. We have set out these grouped KPIs in Table 1.
- 2 The results of ASIC’s achievements against the KPIs are set out in Section B of this report.

Table 1: Framework KPIs

KPI	ASIC’s self-assessment
KPI 1: Regulators do not unnecessarily impede the efficient operation of regulated entities	See paragraphs 14–50 (evidence metrics 1.1–1.3)
KPI 6: Regulators actively contribute to continuous improvement of regulatory frameworks	
KPI 2: Communication with regulated entities is clear, targeted and effective	See paragraphs 51–91 (evidence metrics 2.1–2.4)
KPI 5: Regulators are open and transparent in their dealings with regulated entities	
KPI 3: Actions undertaken by regulators are proportionate to the regulatory risk being managed	See paragraphs 92–125 (evidence metrics 3.1–3.4)
KPI 4: Compliance and monitoring approaches are streamlined and coordinated	

Revised requirements for regulator performance reporting

- 3 From 1 July 2021, the reporting of regulators’ performance has been incorporated into the performance reporting obligations under the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) and the *Public Governance, Performance and Accountability Rule 2014*. Specifically, regulators will no longer be required to produce a standalone self-assessment report for the 2020–21 financial year and subsequent reporting periods. Instead, performance reporting will be integrated into regulators’ corporate plans and annual reports. The first year (that is, reporting for the 2020–21 financial year) is considered a transitional year and regulators may choose to publish a final standalone self-assessment report.
- 4 The revised regulator performance reporting requirements were introduced as part of the release of the Australian Government’s [Regulator performance guide](#) (Guide). The Guide outlines the Government’s refreshed Performance Expectation Framework and three principles of regulator best practice—that is, continuous improvement and building trust, risk-based and data driven, and collaboration and engagement.
- 5 ASIC is working to update its performance reporting, in line with the revised reporting requirements.

About ASIC

- 6 ASIC is Australia’s corporate, markets, financial services and consumer credit regulator. We are an independent Australian Government body. We are established under the *Australian Securities and Investments Commission Act 2001* (ASIC Act) and we carry out most of our work under the *Corporations Act 2001* (Corporations Act) and the *National Consumer Credit Protection Act 2009* (National Credit Act).
- 7 We are committed to achieving our statutory objectives and performing our functions in accordance with the ASIC Act. Our statutory objectives are to:
- (a) maintain, facilitate and improve the performance of the financial system (including fair and efficient markets);
 - (b) promote the confident and informed participation of investors and consumers;
 - (c) administer the law with a minimum of procedural requirements;
 - (d) take whatever action we can and is necessary to enforce and give effect to the law and conduct an efficient registry; and
 - (e) consider the effects that the performance of our functions and the exercise of our powers will have on competition in the financial system.

Note: See the ASIC Act, s1(2) and (2A).

- 8 We monitor and promote market integrity and consumer protection in relation to the Australian financial system and payments system: see the ASIC Act, s12A(2) and (3).
- 9 We are also committed to meeting the expectations of the Australian Government, as set out in the latest [Statement of Expectations](#) (released in August 2021). We have responded to the Statement of Expectations with our [Statement of Intent](#). The Statement of Intent outlines how we will achieve our objectives, carry out our functions and exercise ASIC’s powers in discharging our role.

Evaluating our performance

- 10 The Framework is just one component of ASIC’s suite of performance reporting tools. Each year, we publish a corporate plan, which includes our performance evaluation framework (in accordance with the Commonwealth Performance Framework under the *PGPA Act*).
- 11 Our performance evaluation framework sets out how we will measure and evaluate our performance. We use qualitative and quantitative measures to evaluate our performance over time. Our performance results, including our Service Charter results, are published in our annual report.
- 12 In addition to our annual report, we report on our performance and communicate with our stakeholders in various publications, including:
- (a) [ASIC quarterly updates](#);
 - (b) [enforcement updates](#) (published half-yearly);
 - (c) [market integrity updates](#) (published monthly); and
 - (d) the [cost recovery implementation statement](#) (published yearly).
- 13 We value stakeholder feedback on our performance and gather feedback regularly through a range of channels, including regular industry liaison and external panels and committees.

B ASIC self-assessment

Key points

Overall, we demonstrated a strong commitment to meeting our KPIs in 2020–21.

KPI 1 and 6: In 2020–21, we focused on responding quickly to the immediate risks arising from the COVID-19 pandemic, helping businesses respond to the effects of the pandemic, while monitoring and assessing the key vulnerabilities of our regulated sectors. We also worked closely with the Australian Government on supporting Australia’s economic recovery. In addition, we continued to implement the Government’s legislative agenda, engage with the sectors we regulate (including virtually) and minimise red tape and industry burden.

KPI 2 and 5: Communication and transparency are key priorities for ASIC. In 2020–21, we continued to communicate our priorities, expectations (including our expectations on entities’ conduct during the ongoing COVID-19 pandemic) and approach to our regulated entities and other stakeholders using a variety of channels.

KPI 3 and 4: We take a proportionate and outcomes-based approach to our regulatory work, targeting the highest priority threats and harms in the sectors we regulate. In 2020–21, we responded quickly to the risks and challenges in the financial sector flowing from the COVID-19 pandemic and targeted cases of high deterrence value and those involving egregious harm or misconduct, particularly towards vulnerable consumers.

KPI 1 and KPI 6

KPI 1: Regulators do not unnecessarily impede the efficient operation of regulated entities

KPI 6: Regulators actively contribute to continuous improvement of regulatory frameworks

- 14 We consider KPIs 1 and 6 to be complementary. KPI 1 relates to how we administer the regulatory framework. KPI 6 relates to how we contribute to improving the regulatory framework.
- 15 We assess our performance against KPIs 1 and 6 based on how we:
- (a) demonstrate an understanding of the markets in which our regulated population operates, and best practice regulatory approaches in those markets;
 - (b) promote public discussion of market and regulatory developments and engage with stakeholders;
 - (c) make it easier for regulated entities to do business; and

(d) contribute to continuous improvement of regulatory frameworks by providing input to the Australian Government.

16 In paragraphs 17–50, we have outlined our performance against KPIs 1 and 6 according to the following evidence metrics:

- (a) 1.1 Understanding the market;
- (b) 1.2 Making it easier for business; and
- (c) 1.3 Continuous improvement of regulatory frameworks.

1.1 Understanding the market

17 Having a strong understanding of current and emerging issues in the financial sector helps ASIC make decisions that do not unnecessarily impede the efficient operation of business, while ensuring the Australian Government’s regulatory objectives are met and emerging harms, consumer detriment and instances of misconduct are addressed.

Assessing our external operating environment and planning strategically

18 In October 2020, we commenced our strategic planning process by undertaking an environmental scan to:

- (a) analyse our external operating environment, including key economic and sectoral trends;
- (b) identify and prioritise the threats and behaviours that are causing or could potentially cause harm; and
- (c) test the rigour of our results with our external panels and experts.

19 The most significant harms that we identified as part of our environmental scan shaped our strategic priorities, corporate plan and business planning process (including resource allocation). Insights from our October 2020 environmental scan were included in our corporate plan.

20 In response to the COVID-19 pandemic, we adjusted our annual strategic planning process for 2020–21. We prioritised regulatory responses to the immediate risks arising from the pandemic, supporting businesses in responding to the effects of the pandemic and supporting Australia’s economic recovery, while monitoring and assessing the key vulnerabilities of our regulated sectors.

21 We delayed or deferred a range of regulatory activities to enable industry to focus on their responses to the COVID-19 pandemic, including:

- (a) pausing our onsite supervision work;
- (b) delaying consultation on many of the law reform initiatives recommended by the Royal Commission into Misconduct in the

Banking, Superannuation and Financial Services Industry (Royal Commission), such as the breach reporting reforms; and

- (c) deferring the commencement of the mortgage broker best interests duty and remuneration reforms to January 2021, and the design and distribution obligations to October 2021.

Engaging with stakeholders

22 We regularly engage with members of our regulated population across all sectors to better understand market trends and emerging issues. We maintain open working relationships with our regulated entities.

23 In 2020–21, we adjusted our engagement approach to accommodate the impact of the COVID 19 pandemic by meeting with stakeholders and hosting regularly scheduled events virtually.

Meetings with stakeholders

24 In 2020–21, we held regular meetings with industry representatives, professional bodies, consumer groups and small business. These included meetings on specific issues and regular scheduled meetings with particular sector representatives.

Stakeholder panels

25 We regularly consult our external panels about developments, challenges and emerging threats and harms in the sectors we regulate. This helps us better understand industry, consumer and market developments, consider and address systemic risks or harms, and discover potentially harmful conduct by entities.

26 Information about our [external panels](#) is available on our website.

27 Table 2 summarises the input of our stakeholder consultative panels in 2020–21.

Table 2: Stakeholder panel meetings

Panel	Summary of activity in 2020–21
ASIC Business Advisory Panel	In 2020–21, the panel continued its focus on the Australian Government's commitment to modernise business registers and implement the director identification number initiative. The panel was discontinued in March 2021 following the transfer of ASIC registry staff and functions to the Australian Taxation Office (ATO).
ASIC Consultative Panel	ASIC hosted the panel's inaugural plenary meeting virtually in November 2020. Members discussed trends in financial services, banking and consumer behaviour, and emerging threats and harms within ASIC's regulatory remit.

Panel	Summary of activity in 2020–21
Consumer Advisory Panel (now the ASIC Consumer Consultative Panel)	In 2020–21, the panel met three times and held two out-of-session meetings. The meetings focused on issues such as the implementation of law reform relating to the Royal Commission, product intervention orders and the design and distribution obligations, the supply of good quality and affordable advice, updates to the internal dispute resolution and remediation guidance, responsible lending, the buy now pay later sector, and retirement incomes.
Corporate Governance Consultative Panel	The panel met twice in 2020–21 to discuss the impact of the COVID-19 pandemic, environmental, social and governance issues, cyber resilience, and insolvency reforms.
Digital Finance Advisory Panel	The panel met four times in 2020–21. It focused on issues of interest to the Senate Select Committee on Financial Technology and Regulatory Technology, decentralised finance, open banking, central bank digital currencies, and the Australian Government’s enhanced regulatory sandbox.
Financial Advisers Consultative Panel	The panel met three times in 2020–21. Issues discussed included law reform relating to the Royal Commission and ASIC’s work on unmet advice needs, life insurance, general advice, and fee and cost disclosure for superannuation and managed investment products.
Market Consultative Panel	The panel met five times in 2020–21. Issues discussed included equity and debt capital markets, retail investor trading, climate disclosures, cyber risk, crypto assets, market events, and the implementation of the product intervention power and the design and distribution obligations.

1.2 Making it easier for business

- 28 We continue to focus on making it easier for business to operate efficiently and productively, including by:
- (a) implementing measures to reduce red tape and compliance burden; and
 - (b) providing regulated entities with relief from the law where there is regulatory benefit, or where there is minimal regulatory detriment and this is outweighed by the commercial benefit—thereby facilitating innovations in products, services and transactions.
- 29 In August 2021, ASIC announced the establishment of its Regulatory Efficiency Unit. The Unit aims to promote better regulation by removing unnecessary frictions in our interaction with industry, to reduce regulatory impost and to drive better compliance.

Reducing red tape and compliance burden

- 30 ASIC complies with the requirements of the regulatory impact assessment framework administered by the Office of Best Practice Regulation, including the requirement to prepare a Regulation Impact Statement when required.

- 31 When publishing new or revised regulatory guidance in response to industry demand, we aim to provide reasonable transition periods to help regulated entities adjust to updated operating requirements and regulatory conditions.
- 32 ASIC also has a range of ongoing initiatives that are aimed at making interaction with us simpler or removing unnecessary barriers to business.
- 33 [ASIC's Regulatory Portal](#) continues to improve how stakeholders interact with ASIC. From August 2020, all lodgements for fundraising and corporate finance and applications for relief were moved to the portal, with a new Offer Notice Board for listing all fundraising offers. Applications for relief were also moved from an email inbox to structured smartforms on the portal (that only ask questions relevant to each transaction type and are prefilled with details already held by ASIC), with quick links to relevant regulatory guides to make the application process more efficient. These changes follow the move of breach reporting for Australian financial services (AFS) licensees and registered auditors and insolvency statutory reporting to the portal in 2019–20. There are now over 62,000 individual users on the portal and over 45,000 organisations represented.
- 34 ASIC's [Innovation Hub](#) helps innovative businesses navigate Australia's financial regulatory system. In 2020–21, the Innovation Hub provided informal assistance to 56 businesses (totalling over 607 businesses since March 2015). During the year, ASIC granted five new AFS licences and credit licences to businesses that had received informal assistance, which were approved faster than those applications that had not sought informal assistance.
- 35 The [enhanced regulatory sandbox](#) (ERS) commenced operation in September 2020, superseding the previous regulatory sandbox administered by ASIC. The ERS allows businesses to test certain innovative financial services or credit activities without first obtaining an AFS licence or a credit licence.
- 36 ASIC published [Information Sheet 248](#) *Enhanced regulatory sandbox* (INFO 248) on 25 August 2020 to explain the eligibility of businesses to test within the ERS and to provide guidance around the application process. We also hosted two webinars to provide practical guidance for potential applicants. As at 30 June 2021, six entities have been accepted to test in the ERS.
- 37 ASIC's Small Business Engagement and Compliance team coordinates initiatives to engage and help protect [small businesses](#) with fewer than 20 employees. In 2020–21, we supported businesses during the COVID-19 pandemic lockdowns by publishing resources on companies facing financial difficulties, small business insurance advice and small business loan

deferrals. We also supported businesses that have been affected by bushfires and floods.

Providing relief from the law

- 38 In 2020–21, ASIC received 948 applications for individual relief from the law and granted relief in response to 755 (80% of applications). We made in-principle relief decisions for 66% of applications within 28 days (ASIC service charter target: 70%) and 85% of applications within 90 days (ASIC service charter target: 90%).
- 39 During the year, we provided regular updates on how we have exercised our exemption and modification powers in response to applications for relief from the law (e.g. through our newsletters).

Performance highlights

Relief for financial advice businesses

In response to the COVID-19 pandemic, we provided temporary relief to enable the financial advice industry to use a Record of Advice (ROA) instead of a Statement of Advice (SOA) in more circumstances (e.g. when providing advice on the early release of superannuation schemes). The temporary relief was extended for an additional six months in September 2020, and in April 2021 the relief was broadened to allow financial advisers to provide an ROA, rather than an SOA, to existing clients requiring financial advice. In October 2021, we further extended the relief until 15 April 2022, following additional consultation with the sector.

Relief to facilitate capital raising

In 2019–20, we provided temporary relief to help listed companies raise capital quickly during the COVID-19 pandemic by enabling certain ‘low doc’ offers (including rights offers, placements and share purchase plans) to be made to investors, even if they did not meet all the usual requirements. After consultation with a range of capital market participants, we extended our temporary relief to 31 December 2020. We also worked closely with the Australian Securities Exchange (ASX), which extended its temporary waiver to allow companies to raise an increased amount of capital without shareholder approval (subject to certain conditions) to 30 November 2020.

During 2020–21, we introduced new permanent relief to issuers to facilitate voluntary escrow arrangements and pre-prospectus advertising in connection with initial public offerings without the need to apply for individual relief.

Relief for financial reports and audits

We have assisted companies, directors and auditors to meet their reporting and audit obligations during the COVID-19 pandemic by:

- providing an additional one month for listed and unlisted entities to lodge audited financial reports for balance dates up to 7 January 2021 and balance dates between 23 June 2021 and 7 July 2021; and

- adopting a ‘no action’ position where annual general meetings (AGMs) of public companies for year-ends up to 7 July 2021 are held seven months, rather than five months, after year-end and virtual meetings are held for year-ends to 31 March 2021. This allows additional time to distribute financial reports to members before the AGM. In September 2021, we provided an additional two months for public companies to hold their AGMs to provide companies with flexibility for the upcoming AGM season, while restrictions on gathering and movement persisted due to the COVID-19 pandemic.

1.3 Continuous improvement of regulatory frameworks

- 40 We support Treasury’s work on law reform by providing input on the operational implications of Australian Government policy.
- 41 We provide submissions to parliamentary and Australian Government inquiries on key law reform issues, provide input to the Minister and Treasury, and work closely with the Council of Financial Regulators (CFR) working groups.
- 42 We implement reforms passed by Parliament, and regularly review and update our regulatory guides and information sheets in response to industry demand.
- 43 We also actively participate in international forums and committees.

Supporting law reform

- 44 During 2020–21, we continued to provide input on the following reforms:
- (a) the financial product design and distribution obligations;
 - (b) changes to Australia’s consumer credit framework;
 - (c) ASIC’s role as the conduct regulator for superannuation;
 - (d) ‘Your Future, Your Super’;
 - (e) the prohibition on the hawking of insurance products;
 - (f) strengthening the financial sector breach reporting regime; and
 - (g) the proposed Financial Accountability Regime (FAR), in conjunction with the Australian Treasury and the Australian Prudential Regulation Authority (APRA).

Submissions to parliamentary and Government inquiries

- 45 Throughout the year, we provided submissions to parliamentary and Australian Government inquiries on key law reform issues. For example:
- (a) the PJC submission to the inquiry into mobile payment and digital wallet financial services; and

- (b) the PJC submission to the inquiry into criminal activity and law enforcement during the COVID-19 pandemic.

46 The PJC released its final report on the regulation of auditing in Australia. ASIC made a submission to this inquiry in 2019–20. We will provide input to any proposed legislative or auditing standard changes following the release of the Australian Government’s response to the report recommendations.

Advice to the Minister and Treasury on possible improvements to the regulatory framework

47 In 2020–21, we continued to inform Treasury Portfolio Ministers of significant issues arising in our areas of responsibility: see ASIC’s statutory function in s11(2)(b) of the ASIC Act.

48 The ASIC Chair, Commissioners and senior ASIC officials liaise regularly with the Treasurer and other responsible Ministers. We provide advice to Treasury and the Australian Government, including at ASIC–Treasury liaison meetings, which occur regularly and are attended by the ASIC Chair and the Deputy Secretary, Treasury Markets Group.

Participation in the CFR working groups

49 In 2020–21, we actively participated in the CFR working groups: see ‘Cooperation with other regulators’ at paragraphs 115–120. The cross-agency CFR includes the Australian Treasury, APRA, the Reserve Bank of Australia (RBA) and ASIC.

Participating in international forums and committees

50 ASIC participates in numerous international forums and committees to contribute to international regulatory policy and standard setting, learn from peer regulator experiences and share best practice. Our commitments to collaboration with our overseas peer agencies are set out in ‘Cooperation with other regulators’ at paragraphs 121–123.

KPI 2 and KPI 5

KPI 2: Communication with regulated entities is clear, targeted and effective

KPI 5: Regulators are open and transparent in their dealings with regulated entities

51 KPIs 2 and 5 primarily relate to how effectively we communicate and consult with our regulated population, including in relation to behaviour and

conduct in compliance with the law, industry standards and community expectations.

- 52 We assess our performance against KPIs 2 and 5 based on how we:
- (a) interact with regulated entities;
 - (b) communicate our priorities, expectations and approach to our regulated entities and other stakeholders;
 - (c) consult with our regulated population on proposals for regulatory guidance that affect them; and
 - (d) report to stakeholders on our performance.
- 53 In paragraphs 54–91, we have outlined our performance against KPIs 2 and 5 according to the following evidence metrics:
- (a) 2.1 Interacting with ASIC;
 - (b) 2.2 Communicating ASIC’s expectations;
 - (c) 2.3 Consulting with stakeholders; and
 - (d) 2.4 Performance measurement and reporting.

2.1 Interacting with ASIC

- 54 We are focused on improving our services and making it easier for businesses to engage with ASIC and comply with the law.
- 55 Our recently established Regulatory Efficiency Unit is intended to:
- (a) streamline our interaction with our regulated population;
 - (b) review how ASIC administers the law and how we can remove unnecessary frictions;
 - (c) improve the efficiency of our processes; and
 - (d) minimise the costs and burdens of regulatory requirements, to reduce the impost on industry and ultimately drive better compliance.

Providing efficient registry services

- 56 Throughout 2020–21, we demonstrated our ongoing commitment to:
- (a) delivering our services efficiently through the ASIC registry, and ensuring that the information on our registers is accurate, up to date, easily accessible to all Australians, and enables business and consumers to make informed decisions; and
 - (b) improving the efficiency and effectiveness of our interactions with stakeholders generally.
- 57 In 2020–21, we:

- (a) handled 3.13 million registry lodgements, with 94% processed online; and
- (b) registered 279,000 new companies and 460,000 business names, primarily online.

58 The [ASIC service charter](#) covers the most common interactions between ASIC and our stakeholders and sets performance targets for these. In 2020–21, we exceeded most of the performance targets: see Table 3.

Table 3: 2020–21 ASIC performance against service standards

Service	Performance
New business registrations	Exceeded our target and registered 100% of new businesses that submitted an application online within one business day of receiving a complete application (target: 90%).
Auditor registrations	Exceeded our target and registered 92% of auditors within 28 days of receiving a complete application (target: 80%).
Managed investment scheme registrations	Achieved our target and registered 100% of managed investment schemes within 14 days of receiving a complete application (target: 100%).
Credit licence applications	Exceeded our targets by finalising 95% of new applications within 150 days (target: 70%) and 98% within 240 days (target: 90%), and finalising 95% of variation applications within 150 days (target: 70%) and 97% within 240 days (target: 90%).
AFS licence applications	Exceeded our target by finalising 74% of new AFS licence applications and 75% of licence variations within 150 days (target: 70%). We also finalised 91% of new AFS licence applications and 88% of licence variations within 240 days (target: 90%).

59 During the year, we continued to support Treasury and the ATO with the Australian Government’s Modernising Business Registers (MBR) program. The MBR program will create a new whole-of-Government platform to bring together data from 31 ASIC registers and the Australian Business Register and implement director identification numbers. The platform, which will be administered by the Australian Business Registry Services within the ATO, will be rolled out progressively between 2021 and 2024.

60 In April 2021, ASIC registry staff were moved to the ATO to support the Australian Business Registry Services’ functions.

Handling complaints

61 We have:

- (a) a complaints management framework—this allows us to effectively manage complaints about our services, actions, decisions or staff (see our [Complaint management policy](#)); and
- (b) policies and procedures about rights of review (see [Information Sheet 9 ASIC decisions: Your rights](#) (INFO 9)).

62 In 2020–21, we exceeded our target by resolving 99% of complaints received within three working days of receipt (target: 70%). We aim to resolve a complaint within 28 days.

2.2 Communicating ASIC’s expectations

63 We regularly communicate our priorities, expectations and approach to our regulated entities and other stakeholders through:

- (a) our four-year corporate plan;
- (b) speeches by ASIC Commissioners and senior executives;
- (c) guidance published in response to industry demand, with information about how we will administer the law and our regulatory expectations;
- (d) reports about our supervision and surveillance work—these reports expose poor conduct and aim to drive improved practices;
- (e) market integrity updates highlighting work done to safeguard Australia’s financial markets;
- (f) newsletters outlining areas of focus, risks and strategic priorities relating to a particular sector; and
- (g) enforcement reports outlining action taken to deliver against our enforcement priorities by targeting cases of high deterrence value and those involving egregious harm or misconduct, particularly towards vulnerable consumers.

Communicating our strategic priorities and expectations

64 ASIC’s corporate plan is the cornerstone of our communication with regulated entities. It outlines our strategic priorities and the actions we will take to address what we see as the most significant harms.

65 In August 2020, we published the [ASIC corporate plan 2020–24](#) to outline our five strategic priorities in response to the impact of the COVID-19 pandemic. Despite the challenges posed by the pandemic, we made it clear that we expected entities to treat customers fairly, avoid adding further financial harm or burden to consumers, report material breaches of the law, maintain records of the services they provide, and ensure appropriate supervision of their activities, including where staff are working remotely.

Industry reports

66 In 2020–21, we released 19 reports to outline the findings from our supervision and surveillance and enforcement work. Our reports advance good consumer outcomes by exposing and denouncing poor conduct and driving improvements in industry practices.

- 67 In September 2020, we published [Report 668](#) *Allocations in debt capital market transactions* (REP 668), summarising findings from our thematic surveillance of debt capital raising practices and selected transactions (2018–2020) and setting out better practices for AFS licensees acting as intermediaries in primary debt capital markets.
- 68 Other examples of reports released in 2020–21 include:
- (a) [Report 672](#) *Buy now pay later: An industry update* (REP 672);
 - (b) [Report 675](#) *Default insurance in superannuation: Member value for money* (REP 675);
 - (c) [Report 676](#) *Review of school banking programs* (REP 676);
 - (d) [Report 678](#) *Audit quality measures, indicators and other information 2019–20* (REP 678); and
 - (e) [Report 686](#) *Review of competition in the Australian funds management industry* (REP 686).

Regulatory guidance

- 69 In 2020–21, we published 36 new or reissued regulatory guides and 50 new or revised information sheets to inform regulated entities about how we will administer the law.
- 70 In December 2020, we released [Regulatory Guide 274](#) *Product design and distribution obligations* (RG 274) to help issuers and distributors of financial products comply with the design and distribution obligations in Pt 7.8A of the Corporations Act. RG 274 explains our interpretation of the design and distribution obligations and our approach to administering the obligations. Our guidance is principles and risk-based (rather than prescriptive), while providing examples of how the legislation applies. This is consistent with the approach of the legislation, which is outcomes-focused and asks issuers and distributors to implement the design and distribution obligations in the context of their products and business.
- 71 In May 2021, we released [Information Sheet 253](#) *Claims handling and settling: How to comply with your AFS licence obligations* (INFO 253) to help firms understand the claims handling and settling services reforms that commenced on 1 January 2021.
- 72 Other examples of guidance published in 2020–21 include:
- (a) [Regulatory Guide 271](#) *Internal dispute resolution* (RG 271);
 - (b) [Regulatory Guide 107](#) *Fundraising: Facilitating electronic offers of securities* (RG 107);
 - (c) [Regulatory Guide 217](#) *Duty to prevent insolvent trading: Guide for directors* (RG 217);

- (d) [Regulatory Guide 246](#) *Conflicted and other banned remuneration* (RG 246);
- (e) [Regulatory Guide 160](#) *Time-sharing schemes* (RG 160);
- (f) [Information Sheet 213](#) *Marketplace lending (peer-to-peer lending products)* (INFO 213);
- (g) [Information Sheet 245](#) *Board oversight of executive variable pay decisions* (INFO 245); and
- (h) [Information Sheet 255](#) *Activist short selling campaigns in Australia* (INFO 255).

Performance highlights

Payment deferrals

In response to the COVID-19 pandemic, lenders reacted quickly by deferring repayments on more than 500,000 home loans. To encourage the delivery of appropriate and fair outcomes for consumers at the expiry of deferrals, ASIC published expectations for lenders in August 2020, which included that:

- lenders should make reasonable efforts to contact consumers before their repayment deferral expires; and
- if a consumer cannot return to meeting repayments, lenders should gather personalised information about the consumer's circumstances to better enable them to offer assistance that genuinely meets the needs of each consumer.

Unfair contract terms in insurance contracts

Since April 2021, unfair contract term protections have applied to standard form consumer and small business insurance policies.

ASIC undertook targeted supervisory work to identify potentially unfair contract terms in home, motor vehicle, pet, travel and life insurance contracts, to set expectations and to encourage industry to remove or qualify unfair terms. We held roundtables with industry, updated existing information sheets and proactively engaged with insurers, industry, consumer advocate groups and peer regulators.

ASIC's supervisory work has resulted in important changes to insurance contracts, such as reducing barriers to lodge a legitimate claim and extending timeframes that might be difficult for an insured person to meet.

Providing access to ASIC regulatory and registry information

- 73 Regulated entities can access the information they need on ASIC's website. Our website complies with Australian Government accessibility guidelines.
- 74 We regularly enhance our website functionality and use new channels, including our regulatory portal, to communicate directly with regulated entities and stakeholders.

- 75 We also regularly review and update resources in our Customer Contact Centre for staff to use to respond to inquiries.
- 76 In 2020–21:
- (a) our online services for searching and lodging company, business names or other data online were available 100% of the time during standard business hours, exceeding our target of 99.5%;
 - (b) there were 219.2 million searches of ASIC registers (over 50% higher compared with 2018–19); and
 - (c) our Customer Contact Centre responded to almost 600,000 calls and online inquiries (the number of telephone inquiries decreased by 12%, while the number of website inquiries increased by 7.8%). We exceeded our ASIC service charter targets, with 90% of telephone inquiries answered on the spot (target: 80%), and 98% of general email inquiries answered within three business days (target: 90%).

2.3 Consulting with stakeholders

- 77 We publish consultation papers to seek industry feedback on proposals for potential regulatory guidance to support Australian Government policy and legislative reform. We aim to have our consultations for major new policies open for eight weeks where possible, with user testing of proposals where appropriate. Feedback from industry consultation is published along with the final regulatory guidance we provide.
- 78 We follow the [Australian Government guide to regulatory impact analysis](#) when developing proposals for consultation. This includes being clear about the problem being addressed, such as market failure, regulatory failure, or an unacceptable hazard or risk.
- 79 In 2020–21 we published 14 consultation papers. Consultation on one paper was open for 15 weeks, four were open for 10–12 weeks and nine were open for 4–6 weeks.
- 80 During the year, we also sought industry feedback through roundtable discussions, open working relationships and regular meetings with our regulated entities, and engagement through our external panels.
- 81 We publish the feedback we receive in response to all key consultation papers, generally in the form of feedback reports. Our feedback reports provide a summary of the key issues and suggestions raised by industry in their submissions and our responses to those issues/suggestions. The non-confidential submissions from industry are published at the same time as we issue our new or revised regulatory guides or legislative instruments.
- 82 Examples of consultation papers released in 2020–21 include:

- (a) [Consultation Paper 330](#) *Using the product intervention power: Continuing credit contracts* (CP 330), released July 2020;
- (b) [Consultation Paper 332](#) *Promoting access to affordable advice for consumers* (CP 332), released November 2020;
- (c) [Consultation Paper 339](#) *Implementing the Royal Commission recommendations: The deferred sales model for add-on insurance* (CP 339), released March 2021;
- (d) [Consultation Paper 340](#) *Breach reporting and related obligations* (CP 340), released April 2021; and
- (e) [Consultation Paper 343](#) *Crypto-assets as underlying assets for ETPs and other investment products* (CP 343), released June 2021.

83 During 2020–21, we published feedback reports in response to the key consultation papers we released in 2019–20, including:

- (a) [Report 665](#) *Response to submissions on CP 311 Internal dispute resolution: Update to RG 165* (REP 665), released July 2020;
- (b) [Report 674](#) *Response to submissions on CP 325 Product design and distribution obligations* (REP 674), released December 2020;
- (c) [Report 687](#) *Response to submissions on CP 329 on advice fee consents and independence disclosure* (REP 687), released March 2021; and
- (d) [Report 692](#) *Response to submissions on CP 302 Proposed changes to ASIC's capital requirements for market participants* (REP 692), released June 2021.

84 The feedback reports to some of the consultation papers we published in 2020–21 include:

- (a) [Report 695](#) *Response to submissions on CP 339 on the deferred sales model for add-on insurance* (REP 695), released July 2021;
- (b) [Report 698](#) *Response to submissions on CP 340 Breach reporting and related obligations* (REP 698), released September 2021; and
- (c) [Report 705](#) *Response to submissions on CP 343 Crypto-assets as underlying assets for ETPs and other investment products* (REP 705), released October 2021.

85 In response to the feedback we received to CP 332, we released an [infographic](#) in July 2021 to set out the key issues raised by respondents in their submissions.

2.4 Performance measurement and reporting

86 We are committed to evaluating and reporting on our performance. Our performance evaluation framework is set out in our [corporate plan](#). It includes qualitative and quantitative measures for evaluating:

- (a) market outcomes—these reflect the impact of our regulatory work on the markets and sectors we regulate, including on investors and consumers; and
- (b) regulatory outcomes—these include the direct results from using our suite of regulatory tools.
- 87 We reported against our performance for 2020–21 in the following:
- (a) the [ASIC annual report 2020–21](#), tabled in Parliament and published on the ASIC website in October 2021; and
- (b) our six-monthly [enforcement updates](#) in April and September 2021 (see ‘Enforcement and transparency’ at paragraphs 106–111).
- 88 We are working to align our performance reporting with the new requirements under the PGPA Act, including reporting against the three principles of regulator best practice under the Australian Government’s [Regulator performance guide](#), in ASIC’s 2021–22 annual report (which will be published in October 2022).
- 89 We are continuing to refine our performance measurement and reporting framework so that we can effectively use data and other tools to:
- (a) better measure and report on our efficiency as an organisation across our mandate; and
- (b) better assess the impact of key projects and regulatory interventions.
- 90 For example, to enable us to evaluate and report on the outcomes of our most significant projects, we are undertaking a pilot to assess the impact of a collection of projects on reducing harms for consumers and investors. We are also exploring ways that we can measure the efficiency of some of our key regulatory workstreams.
- 91 Externally, the newly established independent body, the Financial Regulator Assessment Authority, will regularly review and report on the effectiveness and capability of ASIC and APRA.

KPI 3 and KPI 4

KPI 3: Actions undertaken by regulators are proportionate to the regulatory risk being managed

KPI 4: Compliance and monitoring approaches are streamlined and coordinated

- 92 KPIs 3 and 4 primarily concern the proportionality, streamlining and coordination of our approach to acting against misconduct and changing behaviours, including through supervision, surveillance and enforcement.
- 93 We assess our performance against KPIs 3 and 4 based on how we:

- (a) take a strategic approach to our regulatory activities, by targeting the highest priority threats and harms;
- (b) take a targeted, outcomes-based and less prescriptive regulatory approach;
- (c) adopt a proportionate and transparent approach to supervision and enforcement;
- (d) minimise the impact on our regulated population when they are required to comply with requests for information; and
- (e) cooperate and coordinate with other regulators when undertaking relevant supervision activities.

94 In paragraphs 95–125, we have outlined our performance against KPIs 3 and 4 according to the following evidence metrics:

- (a) 3.1 Risk-based approach to regulation;
- (b) 3.2 Enforcement and transparency;
- (c) 3.3 Information requests; and
- (d) 3.4 Cooperation with other regulators.

3.1 Risk-based approach to regulation

95 As part of ASIC’s annual strategic planning, we undertake an assessment of our external operating environment to identify the most significant threats and harms to investors and consumers, and fair and efficient markets. This process drives our strategic priorities and regulatory actions.

96 We have embedded strong risk-based principles in our regulatory work, enabling a harms-based and proportionate approach to supervision and surveillance and the prioritisation of misconduct. We have invested in building and strengthening our data and analytical tools and capabilities to support our supervision and surveillance work.

97 Our surveillance approach generally focuses on problematic products or services, rather than undertaking broad-scale monitoring of entities across a sector. This approach is more effective in identifying and addressing issues in our regulated markets, as well as imposing less burden on our regulated entities.

98 In deciding how to respond to misconduct (including which regulatory tools to use), we consider the following factors:

- (a) the strategic significance (the seriousness of the misconduct or harm, how widespread it is, the importance of deterrence, and our strategic priorities);
- (b) the likelihood of success of using one or more of the tools available to us;

- (c) issues specific to the case (e.g. availability of evidence);
- (d) the benefits of pursuing misconduct (e.g. the impact of remedies we may be able to obtain to deter misconduct and protect or compensate consumers, and other public interest factors); and
- (e) the availability of resources.

99 ASIC has a product intervention power for addressing significant consumer detriment when it arises. The power allows us to address specific harms in a targeted and flexible way, avoiding the need for broader legislative or regulatory interventions.

Targeting the highest priority threats and harms

100 In 2020–21, we responded quickly to the risks and challenges in the financial sector flowing from the COVID-19 pandemic:

- (a) We recalibrated our regulatory priorities to allow us and our regulated entities to focus on the impact of the pandemic. We deferred some activities and redeployed staff to address issues of immediate concern, including maintaining the integrity of markets and protecting vulnerable consumers.
- (b) We coordinated our pandemic response with peer regulators and provided a range of concessions and targeted interventions that supported businesses and consumers.
- (c) We worked to ensure that our responses to consumer harm and detriment were targeted and appropriate to the regulatory risk being managed.

Ensuring market resilience in a COVID-19 pandemic environment

101 During 2020–21, we continued to focus on ensuring market resilience by monitoring the equity market’s capacity to continue operating during periods of high volatility and large trading volumes. We also continued to engage with market intermediaries to understand the effectiveness of their business continuity and supervision arrangements.

102 In December 2020, we published a webpage on [operational resilience of market intermediaries during the COVID-19 pandemic](#) to encourage better practices among market intermediaries. This followed information we published in March 2020 on our expectations of market intermediaries’ business continuity and the supervision of staff during the COVID-19 pandemic: see [Market integrity update: COVID-19](#).

103 In 2020–21, ASIC upgraded its markets assessment and intelligence system and enhanced its data analysis capabilities. The new system leverages Amazon Web Services (AWS) cloud capabilities to flexibly scale market surveillance capacity, enabling ASIC to process ever-growing volumes of

data, cover broader market activities and improve performance. We also engaged with other Government agencies and various data providers to compile more comprehensive data sets to strengthen our supervisory efforts.

Conducting onsite supervision

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

105 During the second half of 2020–21, we recommenced our deep dive supervisory reviews, by combining virtual technologies with onsite engagement, where feasible (we temporarily suspended our onsite review programs earlier in the year in response to the COVID-19 pandemic).

3.2 Enforcement and transparency

106 We are committed to taking a proportionate approach to enforcement, including being transparent about how we approach our enforcement role and why we respond to breaches of the law in different ways: see [Information Sheet 151](#) *ASIC’s approach to enforcement* (INFO 151).

Taking action against misconduct

107 Our approach to enforcement is key to our effectiveness as a regulator. We use our full enforcement toolkit as appropriate, including criminal charges, civil cases, enforceable undertakings, product interventions, financial penalties, bannings and licence conditions.

108 Our enforcement approach is led and coordinated by our Office of Enforcement, with internal oversight by ASIC’s Enforcement Oversight Committee.

109 In 2020–21, we focused on the most egregious misconduct, conduct that harms vulnerable consumers, reports of scams and misleading misconduct, and finalising the enforcement action arising from the Royal Commission.

110 Beyond the COVID-19 pandemic, we will continue to focus on efficient and effective enforcement of cases that have a high deterrence value or involve egregious conduct, including addressing consumer harm from elevated debt levels and hardship, with a focus on predatory lending.

Publishing enforcement reports

- 111 We publish regular reports with information about our enforcement work. We reported on our enforcement outcomes for 2020–21 in:
- (a) [Report 688](#) *ASIC enforcement update: July to December 2020* (REP 688); and
 - (b) [Report 699](#) *ASIC enforcement update: January to June 2021* (REP 699).

3.3 Information requests

- 112 In 2020–21, we applied our compulsory information-gathering powers as set out in [Information Sheet 145](#) *ASIC’s compulsory information-gathering powers* (INFO 145). That is, we limited burden and intrusion on regulated entities and protected confidentiality. Statistics on our use of ASIC’s most significant compulsory information-gathering powers are available in our annual report.
- 113 When making formal requests to regulated entities, we ensure that:
- (a) our requests are targeted and consider other formal requests for information (to avoid numerous notices being issued to large entities);
 - (b) we use data that is available from other sources, where appropriate; and
 - (c) decisions to use ASIC’s compulsory information-gathering powers are subject to our formal sign-off process.
- 114 We are continuing to improve our systems for collecting data and information from our regulated population, and developing tools to more effectively analyse and use existing data.

3.4 Cooperation with other regulators

- 115 We are committed to working closely with:
- (a) our domestic peer regulators and Australian Government agencies; and
 - (b) our peer regulators and agencies overseas.

Working with domestic peer regulators and Government agencies

- 116 We have strong working relationships with Australia’s other financial regulators, including through our shared membership of the CFR.
- 117 We maintain a close and cooperative relationship with Treasury. We also maintain operational and policy relationships with other Australian Government agencies, including with:
- (a) APRA;
 - (b) the Attorney-General’s Department;

- (c) the ACCC;
- (d) the Australian Charities and Not-for-profits Commission;
- (e) the Australian Federal Police;
- (f) the Australian Financial Security Authority;
- (g) the ATO;
- (h) the Australian Transaction Reports and Analysis Centre;
- (i) the Commonwealth Director of Public Prosecutions;
- (j) the Commonwealth Ombudsman;
- (k) the Office of the Australian Information Commissioner; and
- (l) the Takeovers Panel.

118 ASIC has memorandums of understanding (MOUs) with numerous peer regulators and agencies. Information about our MOUs with other regulators is available on our website: see [other regulators and organisations](#).

119 We work closely with other agencies on issues where our responsibilities overlap, especially APRA, to share information, avoid duplication and promote common approaches to regulation. Proactive cooperation between ASIC and APRA contributes to the efficiency of regulatory outcomes across the financial sector.

120 ASIC also collaborates with other Australian enforcement and regulatory agencies on serious and organised crime, including through the Serious Financial Crime Taskforce, the Fintel Alliance and the Phoenix Taskforce. In 2020–21, we released 123 intelligence reports to partner agencies and received 287 intelligence reports.

Performance highlights

APRA

- During 2020–21, we continued to work closely with APRA on FAR, which will be jointly administered by the two agencies, APRA's Superannuation Data Transformation and the FAR data collections.
- We held joint supervisory engagements with APRA to ensure major financial institutions are continuing with their LIBOR transition plans. We published [Information Sheet 252](#) *Managing conduct risk during LIBOR transition* (INFO 252) in November 2020.

The ACCC

- In April 2021, ASIC, in conjunction with the ACCC, released [Regulatory Guide 96](#) *Debt collection guideline: For collectors and creditors* (RG 96). The guideline informs creditors who are directly involved in debt collection and specialist external agencies who provide debt collection services about how consumer protection laws apply.

The Council of Financial Regulators

- In 2020–21, we continued to work with other CFR agencies on supervising ASX's project to replace its clearing and settlement (CHES) system, including project governance, stakeholder engagement, and the management of key risks such as those relating to system development and testing, participant readiness, pricing and data access.
- We also continued to work with the other CFR agencies on measures to enhance the regulation of financial market infrastructure. In June 2021, the Government announced that it intends to introduce a regulatory reform package consistent with the CFR's earlier recommendations.

Cross-agency working group targeting misleading financial services advertising

- ASIC established a cross-agency working group focused on enhancing the surveillance, monitoring and enforcement of misleading advertising.
- Over the course of 12 months, the working group developed and trained surveillance and enforcement teams to use various tools to monitor advertisements within their portfolios, with a particular focus on digital platforms, reviewed over 67,000 advertisements (with 122 being referred to surveillance and enforcement teams for further action), and began a six-week trial using artificial intelligence and machine learning to monitor financial services advertising.

Engaging with international peer regulators

- 121 ASIC engages closely with peer regulators and agencies overseas to develop international regulatory policy, enhance cooperation, and positively influence the operation and regulation of global financial markets. Our participation helps inform the way we address market vulnerabilities and consumer harms and how we support a domestic recovery in an interconnected global financial system. Better alignment between regulators in Australia and overseas also benefits Australian regulated entities operating across jurisdictions—for example, by enabling entities to receive recognition of Australian laws and substituted compliance, which results in compliance cost savings.
- 122 ASIC participates in a range of international forums:
- ASIC is a member of the International Organization of Securities Commissions (IOSCO) Board 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, emerging risks, and standards implementation.
 - ASIC is co-chair of the IOSCO Retail Conduct Task Force.

- (c) ASIC participates in IOSCO Asia–Pacific Regional Committee (APRC) meetings and co-chairs the APRC Working Group on Enhancing Supervisory Cooperation. ASIC is chair of the Market Conduct Working Group of the International Association of Insurance Supervisors.
- (d) ASIC serves on the board of the International Forum of Independent Audit Regulators.
- (e) ASIC vice chairs the International Financial Consumer Protection Organisation and participates in G20/Organisation for Economic Cooperation and Development Financial Consumer Protection Taskforce initiatives.
- (f) ASIC is a member of the steering committee for the IOSCO Fintech Network and a member of the network’s workstreams on distributed ledger technology, artificial intelligence and ethics, decentralised finance and approaches to innovation.
- (g) ASIC is a member of the Global Financial Innovation Network, which provides a more efficient way for innovative financial technology and regulatory technology firms to interact with regulators.
- (h) ASIC is a member of the newly formed CFR International Coordination Group, which coordinates major international regulatory risks and issues.

123 ASIC is negotiating several MOUs with bilateral counterparts in New Zealand, India, Hong Kong and the United States. These agreements will strengthen cooperation and underpin market access arrangements (e.g. substituted compliance arrangements).

International cooperation requests

124 We make and receive international requests in relation to investigations, compliance and surveillance, policy research, delegations, licensing and due diligence, and general referrals.

125 In 2020–21, we made 304 international cooperation requests and received 513 requests (130 requests related to enforcement matters, with 37 requests seeking ASIC assistance to compel third parties to provide material under the *Mutual Assistance in Business Regulation Act 1992*).