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To help industry participants understand the regulatory effort ASIC expended in each sector 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.

More information, including copies of the latest Cost Recovery Implementation Statement, is available 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**, 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 2020–21 focused on responding to the impact of COVID-19 on consumers, and in particular how lenders have responded to consumers experiencing financial difficulties due to the pandemic, misleading advertising and debt collection.

The impact of the COVID-19 pandemic: Payment deferrals

In response to the COVID-19 pandemic, ASIC began to monitor how lenders were responding to consumers experiencing financial difficulties due to the pandemic. Our monitoring work included regularly meeting with a range of lenders and consumer advocates.

Lenders reacted quickly to the pandemic, 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

- › 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.

We became aware that some consumers whose repayment deferrals were expiring were not responding to their lender, despite their lender trying to contact them. This was of concern to us and to lenders because if a consumer was unable to resume repayments on their home loan and did not engage with their lender, their financial situation could quickly worsen. To help address this concern, we ran targeted communications through our Moneysmart social media throughout September 2020, encouraging consumers to engage with their lender or seek the free assistance of the National Debt Helpline.

This work was assisted by our monitoring activities, where some lenders were able to share information about their customers on repayment deferrals, to allow ASIC to better target our messages.

Misleading advertising

Recognising the risk that misleading financial services advertising may present to vulnerable consumers during the COVID-19 pandemic, ASIC established a cross-agency working party focused on enhancing surveillance, monitoring and enforcement responses to misleading advertising.

The working party found an overall high level of compliance; the majority of financial services advertising during the COVID-19 pandemic was consistent with the law. However, ASIC still saw ongoing issues in certain sectors, including fund managers providing inadequate or inaccurate disclosures, and exaggerated or misleading past returns on markets-related products.

Over the course of 12 months, the working party successfully executed the following initiatives to address these issues:

- › 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 of these referred to surveillance and enforcement teams for further action
- › began a six-week trial using artificial intelligence and machine learning to monitor financial services advertising. During the trial, we scanned almost 1.7 million webpages and identified 1,960 potential risk cases. In a subsequent two-week analysis, we scanned 1,000 Google ads and identified over 100 advertisements which were referred to ASIC teams for further review
- › liaised with other local and international financial services regulators and major digital platforms to understand misleading advertising perspectives and challenges within Australia and across international jurisdictions
- › challenged all ASIC staff to identify and report misleading advertising through the working party's Eyes and Ears campaign.

Protecting consumers from predatory lending

A number of associated entities, including Cigno Pty Ltd (Cigno) and BHF Solutions Pty Ltd (BHF Solutions), have operated unlicensed lending models that provide small amount loans to large numbers of consumers and charge substantial fees on those loans, which in some cases have added up to almost 1,000% of the loan amount.

The operators of these lending models claim to be exempt from the National Credit Act and the National Credit Code, and therefore consumers were not afforded any of the statutory consumer protections contained in the legislation, including responsible lending and disclosure requirements and cost caps.

ASIC's multi-pronged approach to dealing with these lending models demonstrates that we will use various regulatory tools when appropriate to address harm, and will act quickly and decisively even in a complex and changing environment.

While some of the actions outlined below occurred outside of the reporting period for this annual report, we have included this example because ASIC has made a sustained effort over a long period of time to address this conduct due to concerns about the vulnerability of the consumers involved.

Short-term credit – product intervention order

On 12 September 2019, ASIC used its new product intervention power in relation to the short-term lending model to protect consumers from predatory lending. The order, which operated for 18 months, ensured that short-term credit providers and their associates could not charge fees in total which exceeded a particular limit provided for in the National Credit Code. Cigno, an affected entity, unsuccessfully sought judicial review of the order both in the Federal Court and then in the full Federal Court, which, on 29 June 2021, upheld the order. The court favoured a broad construction of the power allowing ASIC to consider and factor in consumer detriment that arises from the surrounding circumstances of how a product is made available, such as through complex lending structures like the short-term lending model.

Continuing credit contracts – proposed product intervention order and court action

In September 2019, Cigno and BHF Solutions began offering a similar product using continuing (rather than short-term) credit contracts. To address the potential significant detriment arising from this model, ASIC publicly consulted on a proposed continuing credit product intervention order in July and November 2020, which also sought to limit overall fees charged in relation to the product.

After ASIC identified a potential issue with the product intervention powers, in June 2021 the Government made amendments to the product intervention powers to clarify ASIC's jurisdiction in relation to fees and charges of financial and credit products.

In September 2020, ASIC filed proceedings in the Federal Court against Cigno and BHF Solutions, to test whether they were in breach of the National Credit Act when using this new model by engaging in credit activities without holding a credit licence. On 23 June 2021, the Federal Court dismissed ASIC's application. ASIC has appealed this decision because of a concern that it will effectively limit the application of the credit legislation, potentially denying vulnerable consumers the protections afforded by the National Credit Act and the National Credit Code.

ASIC continues its work in this space to protect consumers from predatory lending models.

Debt management firms

Another key focus for ASIC this year, particularly in relation to vulnerable consumers, has been the debt-management sector, including services known as 'credit repair'.

As part of a package of reforms announced by the Treasurer on 25 September 2020, debt management firms must now hold a credit licence when they are paid to represent consumers in disputes with financial firms. This reform took effect on 1 July 2021.

The reform requires debt management firms to meet the ongoing obligations imposed on credit licensees. These obligations include a requirement to meet the 'fit and proper person' test, and to undertake their activities 'efficiently, honestly and fairly'.

Debt management firms must now be members of the Australian Financial Complaints Authority (AFCA), enabling consumers to have AFCA consider their complaints without cost and in a timely way.

ASIC is continuing to work closely with Treasury to implement these changes.

Debt collection company convicted of engaging in unlicensed credit activities

Black Collections Pty Ltd (Black Collections) pleaded guilty and was convicted of engaging in unlicensed credit activities and holding out that it held a licence that would authorise it to collect on consumer debts when it did not. The company operated as a debt collection agency in Double Bay, New South Wales.

An ASIC investigation found that between about 5 October 2016 and about 12 March 2018, Black Collections collected consumer credit debts without holding a credit licence.

Black Collections was convicted and fined \$8,800 for engaging in unlicensed credit activity and \$4,400 for holding out that it held a licence that would authorise it to collect on consumer debts, when it did not.

Buy now pay later arrangements

The buy now pay later sector is an area of ongoing focus for ASIC. In November 2020, ASIC published a new report on the buy now pay later industry, which has grown substantially since our initial review in 2018. Report 672 *Buy now pay later: An industry update* charts the growth and popularity of these arrangements.

The review considered aggregated data from six buy now pay later providers and four major financial institutions. ASIC also commissioned consumer research to understand consumer behaviour and experiences with buy now pay later arrangements.

Our review found that the number of buy now pay later transactions increased from 16.8 million in the 2017–18 financial year to 32.0 million in the 2018–19 financial year, representing an increase of 90%.

Our research also shows that one in five consumers are missing payments. In the 2018–19 financial year, missed payment fee revenue for all buy now pay later providers in the review totalled over \$43 million, a growth of 38% compared to the previous financial year.

There are regulatory changes coming that will affect the industry, with the design and distribution obligations coming into effect in October 2021 and the industry developing a code of conduct.

We will continue to monitor buy now pay later products and the response by the sector to the COVID-19 pandemic. We will also continue to closely monitor the use of small amount and alternative credit products, especially by vulnerable consumers.

Important obligations of Australian credit licensees

Australian credit licensees have important obligations. In December 2020, Jia Ge was convicted of giving misleading information in five home loan applications. He was sentenced to eight months imprisonment and directed to be released upon giving security of \$500 and to be of good behaviour for two years. Because of the conviction, Mr Ge is also automatically disqualified from managing corporations for five years.

Mr Ge previously held an Australian credit licence and was a former mortgage broker and former director of Dollars R Us Pty Ltd ACN 165 438 595 (Deregistered) (Dollars R Us). Between February and May 2017, Dollars R Us was engaged by four customers to help secure loans to purchase properties. The scheme involved each of the applicants paying money to a company related to Mr Ge, who would then transfer the money back to the customers to give a false appearance of employment and a regular salary. Home loan applications prepared and lodged by Mr Ge falsely claimed that the customers were employed by Mr Ge's related company and were receiving salaries.

3.2 Insurance

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

This year, ASIC's work in insurance focused on responding to the impact of the COVID-19 pandemic on consumers and businesses, implementing the remaining reforms arising from the Royal Commission, and assisting consumers affected by natural disasters.

Life and general insurers' responses to consumers experiencing financial hardship

We reviewed the responses of major life insurers and general insurers to consumers experiencing financial hardship or vulnerability during the COVID-19 pandemic. We focused on ensuring that insurers were treating consumers fairly and doing everything possible to support them in times of need.

We also swiftly engaged with life insurers and general insurers – covering around 85% of the life insurance and 70% of the retail home and car insurance markets respectively – to ensure that insurers were doing everything possible to support consumers who were experiencing financial hardship or vulnerability, both to maintain their insurance cover and to be able to make a claim. Where we

found unfair outcomes for consumers, we prompted insurers to change their practices, including offering a range of support options, proactively identifying and contacting consumers and extending claim lodgement timeframes.

Our review identified a number of areas where insurers could make improvements to support consumers during both challenging and stable economic cycles. On 22 April 2021, we wrote to Australian life and general insurers about the improvements they should make to ensure a more complete and robust hardship framework and to provide enduring supports for consumers experiencing heightened financial hardship or vulnerability from other events, including natural disasters such as floods and bushfires.

Travel insurance

An important area of focus for ASIC during the onset of the COVID-19 pandemic was travel insurance. We engaged with travel insurers – covering around 90% of the travel insurance market – to ensure that they were responding appropriately to policyholders affected by the COVID-19 pandemic travel restrictions.

Where policyholders could not use their travel insurance due to the travel restrictions, we prompted insurers to provide them with premium refunds for unused cover.

\$10 million of consumer remediation: Allianz travel insurance

ASIC secured \$10 million in remediation from Allianz Australia Insurance Limited (Allianz) and AWP Australia Pty Ltd trading as Allianz Global Assistance (AWP) for travel insurance potentially mis-sold to around 31,500 consumers through Allianz's own website and those of its distribution partners, including Expedia.

The refunds are for several forms of misconduct accepted by Allianz and AWP. The misconduct involved:

- › the sale of policies to consumers who were not eligible to make a claim
- › partially paid travel insurance claims
- › the sale of policies on Expedia websites for premiums that were higher than those for the policies sold on a standalone basis.

ASIC took action to ensure that customers are remediated in full. To address these conduct issues, Allianz and AWP have:

- › removed the potentially misleading or deceptive statements from their websites and those of their partners
- › remediated travel insurance customers whose claims were partially paid
- › refunded premiums, with interest, to customers who had purchased travel insurance from Allianz's own website or those of its partners.

Unfair contract terms in insurance contracts

Since 5 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 on unfair contract term protections for consumers and small businesses, and proactively engaged with insurers, industry, consumer advocate groups and peer regulators.

ASIC's supervisory work has resulted in important changes to insurance contracts, which we expect will improve consumer outcomes and minimise significant imbalances in the parties' rights and obligations under a contract. Examples of changes to insurance contract terms as a result of our work include:

- › changing an insurer's unilateral discretion under an insurance policy
- › reducing barriers to lodge a legitimate claim
- › extending timeframes that might be difficult for an insured person to meet
- › reducing the need to comply with preconditions
- › providing enhanced transparency and clarity for consumers.

ASIC will use the range of regulatory tools, including enforcement action where appropriate, where we see consumer harms and unfair contract terms in standard form consumer and small business insurance contracts.

ASIC's response to natural disasters

ASIC has responded quickly to recent natural disasters affecting people around Australia. Our focus has been on providing timely and important information to affected consumers to help them lodge insurance claims, and working with insurers to improve claims handling practices.

To help consumers affected by natural disasters, we:

- › distributed information through Moneysmart.gov.au
- › provided public updates through targeted media interviews
- › provided tailored information to members of Parliament whose electorates have been affected by natural disasters.

Moneysmart's 'Dealing with natural disasters' information had over 17,000 unique page views between March 2020 and April 2021.

We also helped to protect consumers from harm at a time of heightened vulnerability by issuing public warnings about 'disaster chasers', who can scam consumers affected by a natural disaster by interfering in the claims process.

ASIC's work on improving hardship responses by insurers will help those affected by natural disasters to recover and get back on track financially.

In December 2020, ASIC wrote to insurers setting out our recommendations for their claims handling practices in preparation for the 2020–21 natural disaster event season. We recommended that insurers should consider the following key actions to help consumers who have lodged a natural disaster claim:

- › centralise oversight of the claim with a dedicated claims manager after the claim has been lodged and until it is resolved
- › proactively and effectively communicate with consumers about the claims process, how their claim will be assessed, and how their claim is progressing
- › consider whether their insurance products are designed to meet the needs of consumers who live in parts of Australia that are prone to natural disasters, and whether the way these products are being distributed results in appropriate products being sold to those consumers.

These recommendations were informed by the findings of consumer research commissioned by ASIC, and based on our view of what is needed to help ensure that insurers meet the duty of utmost good faith and the design and distribution obligations, which commence in October 2021.

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 2020–21, ASIC focused on helping financial advice businesses respond to the impact of the COVID-19 pandemic through the provision of temporary relief, and on improving consumers' access to good-quality, affordable personal financial advice.

COVID-19 pandemic relief for financial advice businesses

As the COVID-19 pandemic escalated, we took immediate steps to help financial advice businesses respond to its impact, including through providing temporary relief to help the industry provide consumers with affordable and timely advice during the pandemic. Our temporary relief allowed the use of a Record of Advice (ROA) instead of a Statement of Advice in more circumstances, including when advisers were providing advice on the early release of superannuation schemes.

The temporary relief was extended on 23 September 2020 for an additional six months.

On 15 April 2021, we again extended aspects of the relief that allow greater use of ROAs following feedback from industry that some financial advice practices found this measure helpful.

ASIC has also released COVID-19 pandemic-related frequently asked questions (FAQs) on its website for financial advisers. These FAQs provide a practical explanation of how the temporary relief measures work and other practical tips to help advisers with issues arising as a result of the COVID-19 pandemic.

Access to quality financial advice

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

On 17 November 2020, we published Consultation Paper 332 *Promoting access to affordable advice for consumers* (CP 332) to seek industry feedback about the impediments participants face in providing good-quality and affordable advice.

We received 466 submissions to CP 332. This was a record result and demonstrated the significant interest that the consultation generated. In April 2021, following our analysis of responses to CP 332, we held roundtables with three separate groups: advisers, licensees and advice compliance managers and industry associations. The purpose of the roundtables was to further explore issues raised in submissions to CP 332 and to discuss solutions to these issues.

Adviser bannings: Superannuation advice

ASIC takes administrative action, such as banning individual advisers, to protect investors and consumers and to deter misconduct. This year, bans imposed included two relating to misleading communications about MySuper funds.

Under the Government's Stronger Super reforms, a member's accrued default amounts of superannuation were to be transferred to a MySuper fund by 1 July 2017, unless a member opted out of the transfer. The following two advisers issued or authorised misleading communications related to this.

Andrew Carl Hills: In April 2021, ASIC banned Mr Hills, a former authorised representative of Aon Hewitt Financial Advice Limited, from providing financial services for four years. ASIC found that Mr Hills allowed or authorised misleading and inaccurate letters about superannuation to be issued to some Aon Master Trust members.

After receiving the letters, hundreds of members did not fully transition to MySuper. Instead, their accrued default amounts remained in Aon Master Trust's 'choice' superannuation product, which was generally more expensive than the MySuper product, partly because the administration fees for the choice superannuation product would continue to include commissions payable to each member's financial adviser.

Christopher Chan: In April 2021, ASIC banned Mr Chan, a former authorised representative of Australian Unity Personal Financial Services Limited, from providing financial services, controlling a financial services business, or performing any function as an officer of a financial services business for five years. ASIC found that Mr Chan sent misleading and deceptive emails about superannuation to some clients in 2016.

ASIC's review of Mr Chan's emails found that he advised clients to opt out of MySuper, claiming that the MySuper product had higher fees than the fee on their existing superannuation balances. However, this information was not correct for every client. After Mr Chan sent the emails to clients, some members did not fully transition to MySuper and continued paying higher fees as a result and continued to pay commissions out of their accounts to their financial adviser.

Financial advisers must not engage in misleading conduct in connection with financial products or services. Financial advisers must also prioritise their clients' interests when providing personal advice.

Stockbroker financial advice review

Retail clients play an integral role in equity capital markets, enabling companies to raise capital and maintain a broad shareholder base. This participation is facilitated by stockbrokers who commonly provide financial advice, allowing retail clients to make informed decisions across the primary and secondary markets.

In the previous financial year, we conducted surveillance activities, including an onsite component, to review the compliance and supervision arrangements that stockbrokers have in place to meet their advice obligations. This year, we engaged with the stockbrokers to remediate deficiencies and improve practices. Key areas requiring improvements included:

- › adviser supervision and monitoring
- › record keeping
- › classification of financial product advice
- › statements of advice.

We have communicated our observations to industry, highlighting common areas for improvement and better practices as appropriate. Future surveillance work will be targeted to those areas requiring improvement to drive better industry standards. Where we identify serious compliance failures or misconduct, we will take regulatory action.

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 2020–21, our work in this sector focused on responding to the impact of the COVID-19 pandemic on consumers and businesses, insurance in superannuation and strengthening ASIC’s role as a conduct regulator for superannuation.

Investment management

Managing investor liquidity risk

As the COVID-19 pandemic affected markets throughout 2020, ASIC was concerned that retail funds invested in illiquid assets may face increasing member redemption requests that could not be satisfied by quick sales of assets at their book value. We were concerned that this may lead to the long-term freezing of member distributions and redemptions or asset ‘fire sales’, either of which may have triggered wider ‘runs’ on funds or rapid asset price declines.

In March and April 2020, ASIC reminded retail fund responsible entities of their obligations to manage member liquidity by monitoring investor redemption and application levels, to actively review fund redemption terms against the liquidity of assets, and to ensure that fund disclosure and marketing accurately represent the reliability of redemptions and distributions.

In June 2020, we began a review of a selection of retail funds invested in relatively illiquid assets to understand the nature and significance of any investor liquidity challenges that funds faced due to the pandemic. Our review covered 14 retail funds across three different strategies with an aggregate of \$1.7 billion in assets under management and approximately 8,500 investors.

We reviewed fund information to examine the liquidity of fund assets, the flow of investor applications and redemptions, the adequacy of responsible entities’ liquidity risk management frameworks, and the adequacy of their disclosure around investor liquidity risk and redemption rights generally.

We found that during the first half of 2020, there was a significant deterioration in cash received from investor applications in comparison to cash paid out in investor redemptions. However, this did not affect the regularity of distributions paid or of redemption opportunities and there was no material decrease in the liquidity of fund assets. Most of the responsible entities had introduced enhanced liquidity monitoring in March 2020, then eased back on this over the following quarter.

Overall, ASIC found that the liquidity frameworks of responsible entities were adequate and that liquidity risks and redemption rights were appropriately disclosed to investors.

Valuations of illiquid assets

The valuation of illiquid assets is important for members of registered managed investment schemes, particularly during periods of economic disruption and financial volatility such as experienced during the COVID-19 pandemic. ASIC undertook a review of the current regulatory settings for valuations of illiquid assets held in registered schemes to identify whether these settings are adequate to protect members' interests during periods of market volatility, such as that experienced during the COVID-19 pandemic, and to make recommendations on future actions.

The review compared ASIC's current regulatory guidance with that of other Australian and international supervisory bodies, incorporated the information derived from consultations with the valuers of illiquid assets on their practices, and involved a review of the illiquid asset valuation practices of 10 responsible entities with a total of \$21 billion invested in illiquid assets during the COVID-19 pandemic.

Overall, we found that regulatory settings were adequate and the governance frameworks, procedures and processes used by the responsible entities in the review were generally adequate in how they responded to the uncertainties arising out of the COVID-19 pandemic.

We did identify inconsistencies between valuation policies, compliance plan measures and information disclosed to investors in Product Disclosure Statements in a small number of funds. The responsible entities involved have addressed, or are in the process of addressing, these issues. Later in 2021, we will provide feedback on our findings to the firms involved and to the sector generally.

Superannuation

Superannuation trustees' support of members during the COVID-19 pandemic

During 2020, ASIC undertook a surveillance of public communications about issues and legislative measures related to the COVID-19 pandemic to quickly identify and prevent consumer harm arising from poor, inaccurate or potentially misleading statements.

Between March and July 2020, ASIC reviewed 51 websites of 50 superannuation trustees that at the time of the review were collectively responsible for approximately 94% of the \$1.87 trillion in assets under management in the APRA-regulated superannuation industry.

Most of the websites ASIC reviewed had a dedicated COVID-19 pandemic webpage that was prominent and easy to access from the homepage. While most websites contained accurate information about legislative and economic changes, many lacked detail about how members' insurance through their superannuation might be affected if they chose to access

their superannuation early, or if their employment status changed because of the COVID-19 pandemic. Several websites had inaccurate or incomplete information about insurance eligibility in superannuation if an early release of superannuation payment resulted in a low account balance. There was limited information about scams on fund websites.

We also identified projection tools on 14 websites that could have discouraged members from applying for the early release of superannuation because the tools used assumptions that exaggerated the long-term impact of withdrawal.

In light of the unique circumstances of the COVID-19 pandemic crisis, ASIC's priority was to ensure that trustees acted promptly to improve communications to members. We contacted 26 trustees and one third-party provider about our concerns and sought prompt changes. All of the problematic communications were removed or amended quickly. Six of the projection tools were proactively changed by trustees, without direct contact by ASIC, after ASIC published COVID-19 FAQ (1E).

Better outcomes for consumers receiving automatic insurance cover through their superannuation

Most Australians hold life insurance through their superannuation fund. Insurance is attached to almost 10 million superannuation accounts. Approximately 86% of these are on the default settings, meaning that members with these accounts have been provided life insurance automatically by their fund.

(continued)

The way that superannuation trustees provide default insurance to their members has been a key focus for ASIC throughout 2020–21. Our work included Report 675 *Default insurance in superannuation: Member value for money* (REP 675), in which we examined the value for money that superannuation members receive from default insurance and identified steps for trustees to take to improve insurance provided to their members. We also published Report 673 *Consumer engagement in insurance in super*, which was prepared by Susan Bell Research and explores the experiences of superannuation fund members seeking to make changes to their insurance arrangements through directly contacting their funds.

A particular focus of our work was on the erosion of superannuation benefits caused by members paying too much for their insurance as a result of being inaccurately categorised into a higher-risk occupational category. Most funds group occupations into categories such as 'blue collar' and 'white collar' to reflect different levels of risk and the cost of insurance cover associated with different occupations. Because trustees often have limited data on their members' occupations, many members end up in the category their trustee has designated as the default.

ASIC reviewed the practices of 21 trustees who we identified as using a high-risk occupational category as their default but who were more likely to have a membership with a white-collar or broad-based mix of occupations. Trustees often select the highest risk category as their default to ensure that all members are covered regardless of their occupation. In the MySuper products we looked at, the price of default insurance for the highest risk category was, on average, approximately double that of the lowest risk category.

We found that some trustees had poor disclosure practices, including 15 that were using generic labels such as 'standard' or 'general' for the most expensive occupational category. This can contribute to members not appreciating that they may be able to move to less expensive insurance based on their occupation. Further, in many cases, the process for members to update their occupational category was not readily apparent or accessible.

ASIC engaged with the trustees to seek improvements. Most have updated their disclosures to include clearer information about their default categories. Many have also taken steps to encourage more members to check whether they are in an appropriate occupational category – for example, by calling or emailing members to invite them to update their occupation details with the fund. Three trustees have committed to changing their generic label to make it more meaningful (e.g. from 'standard' to 'blue collar'), two of which have already implemented this change.

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 2020–21 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.

Ensuring market resilience

ASIC has continued its focus on ensuring market resilience this year by monitoring the equity market's capacity to continue to operate during periods of high volatility and large trading volumes.

The ASX Limited's equities market trading platform (ASX Trade) suffered an outage for most of the day on 16 November 2020, following a system upgrade over the preceding weekend. ASIC is assessing the impact of the ASX Trade outage and subsequent issues experienced with ASX's Centre Point dark-pool trade matching service, order cancellations and other delays that occurred during the week of 16 November 2020. As part of this work, we have engaged with market operators, market participants, investors and other stakeholders on the impact of the incident.

ASIC is also revisiting the recommendations made in Report 509 *Review of the ASX equity market outage on 19 September 2016* to determine whether any changes are needed to regulatory settings for market participants and/or market operators.

Over-the-counter derivative trade reporting rules

We are implementing internationally standardised reporting requirements for OTC derivatives trade information to align with other major jurisdictions. This change is expected to decrease complexity and compliance costs for Australian entities, especially for those operating across borders.

Improved data quality and consistent data across jurisdictions are also expected to improve the utility of OTC derivatives data for regulatory purposes, including surveillance, monitoring market conduct, policy and strategic decision making, and monitoring systemic risk to ensure financial system stability.

In November 2020, we released Consultation Paper 334 *Proposed changes to simplify the Derivative Transaction Rules (Reporting)*. This is the first of two consultations on proposed significant changes to implement the standards. We published initial proposals and considerations shortly after US and European consultations to provide transparency to industry and encourage engagement.

The project is ongoing, with a second consultation paper and final rules expected in 2022.

Financial market infrastructure reforms

In 2019, the Council of Financial Regulators (CFR) consulted on a range of measures to enhance the regulation of financial market infrastructure. The enhancements aim to promote the strong and innovative development of the financial system and to ensure that financial regulators have sufficient powers to intervene to manage a crisis and pre-emptively identify and manage risks. ASIC worked together with fellow CFR agencies to develop the proposed reform package for consultation and to engage with stakeholder feedback. In 2020, the CFR provided its advice to the Government recommending a package of reforms.

In June 2021, the Government announced that it intends to introduce a regulatory reform package consistent with the CFR's recommendations. This includes:

- › introducing a crisis management regime for licensed clearing and settlement (CS) facilities, supported by a \$5 billion standing appropriation available to the Reserve Bank of Australia (RBA) to ensure the continued operation of a CS facility
- › enhancing the supervisory and licensing powers of ASIC and the RBA in respect of financial market infrastructures
- › streamlining and clarifying certain regulatory powers.

ASIC will continue to work with the CFR to implement the recommendations.

LIBOR transition

ASIC has continued to promote an orderly transition from LIBOR (London Interbank Offered Rate) to alternative reference rates. During the year, we spoke publicly on the need to prepare for LIBOR transition and published several communications to provide guidance and clarification for the industry, including setting the expectation that market participants should not reference LIBOR in new contracts beyond 31 December 2021.

Recognising a distinct difference in readiness between various segments of the industry, ASIC issued targeted communications for buy-side firms and corporations to encourage all firms to examine their LIBOR exposure and take necessary steps to ensure an orderly transition.

In November 2020, ASIC published Information Sheet 252 *Managing conduct risk during LIBOR transition* (INFO 252) with practical guidance that Australian entities can adopt to manage conduct risk during LIBOR transition.

ASIC and APRA held joint supervisory engagements with key financial institutions to ensure that they are continuing with their LIBOR transition plans and keeping pace with the timelines and milestones provided by each of the risk-free-rates global working groups.

Clearing and settlement

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.

Together with other Council of Financial Regulators (CFR) agencies and the Australian Competition and Consumer Commission (ACCC), we are supervising ASX's governance of the project, stakeholder engagement, and the management of key risks, including system development and testing, participant readiness, and pricing and data access.

In October 2020, ASIC and the RBA made public our expectations of ASX that it replaces CHESS as soon as this can be safely achieved by ASX and CHESS users. We expect ASX to provide independent assurances to the regulators before migrating to the new system. The new system is expected to achieve a significant uplift in intraday and end-of-day processing performance.

At a minimum, the new system must deliver the same resilience, performance, recoverability, availability and security that CHESS meets today, while also delivering the benefits of contemporary technology, including significant uplift in processing capacity.

ASIC, with the CFR and the ACCC, will continue to closely monitor and engage with ASX and other key stakeholders as the program enters key industry-wide testing and readiness phases.

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 2020–21 included a focus on market integrity and enhancing our monitoring of fixed income, currencies and commodities (FICC) markets.

ASIC continued to engage with market intermediaries during the pandemic to understand the effectiveness of their business continuity and supervision arrangements. We published better practices and observations on the conduct of intermediaries during the pandemic. ASIC also focused on a number of strategic priorities, including high-deterrence enforcement action, improving governance and accountability, and protecting vulnerable consumers.

Product intervention orders: Binary options and contracts for difference

ASIC used its product intervention power to reduce the risk of significant detriment to retail clients resulting from contracts for difference (CFDs) and binary options.

On 23 October 2020, we made a product intervention order imposing conditions on the issue and distribution of CFDs to retail clients. The order took effect on 29 March 2021. It reduces CFD leverage available

to retail clients to a maximum ratio of 30:1 and targets product features and sales practices that amplify retail clients' CFD losses, such as providing inducements to become a client or to trade. The order strengthens protections for retail clients after ASIC found that CFDs have resulted in, and are likely to result in, significant detriment to retail clients.

ASIC reviews in 2017, 2019 and 2020 found that most retail clients lose money trading CFDs. During a volatile five-week period in March and April 2020, the retail clients of a sample of 13 CFD issuers made a net loss of more than \$774 million. During this period, more than 15,000 retail client CFD trading accounts fell into negative balance owing \$10.9 million to CFD issuers. Some debts were forgiven.

On 1 April 2021, we made a product intervention order banning the issue and distribution of binary options to retail clients from 3 May 2021. The ban follows ASIC findings that approximately 80% of retail clients lost money trading binary options and that binary options are likely to result in cumulative losses to retail clients over time because of their product characteristics.

The product intervention orders remain in force for 18 months and bring Australian practice into line with consumer protections in force in comparable markets overseas.

Fixed income, currencies and commodities onsite reviews

FICC markets are global and directly link to the real economy. ASIC's FICC strategy addresses threats to these markets that may cause harm to the real economy and consumers. We have intensified our focus on FICC markets through proactive onsite surveillances this year, with thematic reviews targeting:

- › sales and trading practices at three fixed income businesses, including governance and supervision, risk management, and compliance controls that support these businesses
- › conflicts of interest arrangements employed by two wholesale FICC markets businesses.

Each review involved onsite inspections over several days, questioning key staff, demonstrations of key systems and controls, and reviewing an extensive range of supporting documentation. It is critical that compliance, risk, supervisory and governance arrangements, including all three lines of defence, remain adequately resourced and competent to effectively manage risk and ensure compliance with relevant regulatory obligations.

Where we identified weaknesses or areas for improvement, we recommended remedial actions be implemented to uplift conflicts management arrangements in wholesale FICC markets businesses, and that better practices and controls be embedded in fixed income businesses, including:

- › embedding policies and training that are specifically developed and applied to the operating environment and business practices of the financial markets business units
- › implementing more robust controls for conflicts management and to mitigate the risk of information leakage
- › ensuring that governance frameworks clearly set out accountability and decision-making responsibilities for considering conduct-related issues
- › prioritising the implementation of technology solutions to enhance transaction and communication monitoring and surveillance capabilities.

Capital framework market integrity rules

We routinely review monthly and annual financial information submitted by market participants as required under the ASIC market integrity rules. Obtaining an accurate understanding of a market participant's financial position is an important component of ensuring the financial stability of our stakeholders, helping to better protect investors and counterparties.

In 2020, we identified differences in classification between the annual return and the financial report of certain assets and liabilities of a market participant. The differences we found included the treatment of some items which did not comply with requirements under the Australian Accounting Standards. However, the participant remained in compliance with minimum capital requirements at all times.

The market participant was required to submit amended annual and monthly returns reflecting the correct asset and liability balances. These adjustments and resubmissions were required in order to comply with the criteria for classifying current assets and current liabilities in Australian Accounting Standard AASB 101 *Presentation of financial statements* and the derecognition criteria of financial assets in Australian Accounting Standard AASB 9 *Financial instruments*.

In June 2021, ASIC made new market integrity rules for capital, providing important protections for investors and the integrity of the market, while simplifying the capital framework for market participants. These new rules better align our standards with comparable international capital frameworks and the financial requirements of the Australian financial services licensing regime.

Activist short selling

ASIC analysed activist short selling in Australian and overseas securities markets. In May 2021, we published Information Sheet 255 *Activist short selling campaigns in Australia* (INFO 255), outlining ASIC's expectations to promote market integrity during these campaigns. INFO 255:

- › describes the impact of activist short selling on markets
- › provides an overview of the Australian regulatory framework relevant to these campaigns

- › recommends better practices for activist short sellers and authors of short reports, market operators, target entities and market participants
- › lists some of the actions that ASIC may take in response to these campaigns.

Short reports can provide new research and analysis and test the veracity of information released by a target entity. Some activist short sellers have exposed flawed business models, questionable business or accounting practices, insolvency and fraud in targeted entities. However, activist short sellers can also unduly distort the price of a target entity's securities.

To protect the integrity of Australia's securities markets and address any information asymmetry, INFO 255 outlines better practices for activist short sellers, target entities, market operators and market participants. These include, for activist short sellers, releasing short reports outside normal trading hours, drawing on reliable information, and avoiding overly emotive language. Target entities should seek a temporary trading halt to provide time to digest and comprehensively respond to the claims of activist short sellers.

Upgrade to ASIC's market surveillance platform to enhance data analytics functionality to identify market misconduct

In 2020–21, ASIC upgraded its Markets Assessment and Intelligence (MAI) system and enhanced its data analysis capabilities.

MAI is a key business system which supports ASIC's mandated responsibilities to supervise trading on Australian licensed financial markets. This upgrade delivered more scalable and secure data storage by replacing outdated Adobe Flash with HTML5. The new system leverages AWS cloud capabilities to flexibly scale market surveillance capacity. This future-proofs ASIC to process ever-growing volumes of data sets, cover broader market activities and improve performance.

ASIC also engaged with other Government agencies and various data providers to compile more comprehensive data sets to strengthen our supervisory efforts and ensure the integrity of Australian financial markets.

This series of activities set a strong foundation for ASIC's expansion of monitoring capabilities into the fixed income, commodities and currency markets, while maintaining our strength in real-time surveillance of listed securities and derivatives markets.

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 2020–21, our work in this sector focused on establishing the Corporate Governance Consultative Panel and supporting the healthy operation of capital markets by promoting best practice corporate culture and conduct and ensuring that investors are treated fairly in corporate transactions. We also responded to the impact of the COVID-19 pandemic on businesses and consumers, including by facilitating virtual meetings and extending temporary relief for capital raising.

Facilitating fundraising

The COVID-19 pandemic continued to cause ongoing uncertainties for companies seeking to raise capital. We ensured that our capital markets continued to function efficiently and fairly through a range of measures, including:

- › **Extending temporary capital raising relief:** After consultation with a range of capital market participants, we extended our temporary relief helping listed companies raise capital quickly using 'low doc' offers to 31 December 2020. We also worked closely with ASX, which extended its temporary waiver to 30 November 2020. This allowed companies to raise an increased amount of capital without shareholder approval subject to certain conditions.
- › **Introducing new permanent relief:** Since August 2020, issuers can rely on legislative relief to facilitate voluntary escrow arrangements and pre-prospectus advertising in connection with IPOs without the need to apply for individual relief.

Corporate Governance Consultative Panel

We established the Corporate Governance Consultative Panel in 2020 to enable ASIC to gain a deeper understanding of developments and emerging issues in corporate governance practices.

Members of this Panel include listed company directors, industry association representatives, institutional investors and academics.

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.

Guidance and relief for financial reports and audits under COVID-19 pandemic conditions

ASIC has assisted companies, directors and auditors in meeting their reporting and audit obligations having regard to the impact of the COVID-19 pandemic. This includes:

- › **liaison:** regular contact with large and small audit firms, accounting bodies, the Australian Institute of Company Directors, standard setters, other regulators internationally, the Group of 100 and others to monitor emerging reporting and audit issues, resource pressures and other relevant developments
- › **focus areas:** outlining reporting and audit focus areas, including asset values, liabilities, solvency and going concern, as well as disclosures on uncertainties, key assumptions, underlying drivers of results, strategies, risks and future prospects
- › **extended reporting deadlines:** 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
- › **timing of annual general meetings:** adopting a 'no action' position where annual general meetings 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
- › **guidance:** providing FAQs on our website to address common questions on the reporting and audit obligations of companies, directors and auditors given the impacts from the pandemic
- › **reviews of reports and audits:** focusing our financial reporting surveillances and audit inspections to promote informed markets about the impacts of the pandemic on entities through audited financial reports
- › **regulatory activities:** some changes to our regulatory activities to ease the burden on companies, directors and auditors who may be under pressure due to remote work and other impacts of the pandemic
- › **presentations:** a number of webinars and podcasts on COVID-19 pandemic impacts and guidance.

Response to the COVID-19 pandemic: Financial reports

The COVID-19 pandemic created unprecedented challenges for preparers of financial reports and their auditors. ASIC proactively identified potential issues and released FAQs with information on how to address those issues for both preparers and auditors.

Critical areas included asset values (including impairment), going concern and solvency, Government support (both received and the impact of withdrawal), the risk of extended lockdowns, and, for financial institutions, expected credit losses. ASIC encouraged entities to consider both internal and external factors.

The FAQs also provided information to directors on the matters which needed to be addressed in documents accompanying the financial report. For example, the operating and financial review was to focus on risks specific to the entity and industry and disclose strategies to mitigate those risks.

Financial reports selected for review as part of ASIC's annual surveillance program specifically included entities we assessed as likely to have been either adversely or favourably affected by the pandemic. To ensure that stakeholders were properly informed about an entity's performance, we considered whether the positive or negative impacts of the COVID-19 pandemic were adequately disclosed and whether the entity may have misled users and obscured its performance by reporting on a pre-pandemic and post-pandemic basis.

Management was encouraged to be neither overly optimistic nor pessimistic in its assumptions about the future and in addressing other estimation uncertainties affecting the carrying amounts of assets and liabilities. Key assumptions needed to be disclosed and the reasons for management's decisions properly documented.

Acknowledging the difficulties created by employees working remotely, entities were offered an additional month in which to lodge their financial report. ASIC also had ongoing discussions with auditors about their ability to conduct an audit.

Holding auditors to account

Auditors play a vital role in underpinning investor trust and confidence in the quality of financial reports, which provide important information for investors and others who make decisions based on those reports. Audit quality is even more important in the context of COVID-19 pandemic conditions. There can be more difficult judgements about asset values, liabilities, solvency, going concern and disclosures, as well as challenges from any remote work arrangements.

ASIC is taking a broader, more intensive supervisory and enforcement approach to our work program on audit. This includes increasing transparency by publishing the level of adverse findings for large audit firms, publishing the largest six firm annual inspection reports, and progressing work on assessing the severity of our findings as well as broader measures and indicators of audit quality. We are reviewing firm culture in relation to audit quality, and how the largest six firms attract and retain the right talent for quality audits.

This year, we continued our review of the financial statements of listed and other public interest entities and the audit files of a number of these entities.

Our inspection findings showed that more can be done to improve audit quality. See Report 677 *Audit inspection report: 1 July 2019 to 30 June 2020* and our supplementary report containing a broader group of audit quality measures and indicators, Report 678 *Audit quality measures, indicators and other information 2019–20*. These, together with the largest six firm inspection reports, were released on 22 December 2020.

In November 2020, the Parliamentary Joint Committee released its final report on the regulation of auditing in Australia. We will provide input to any proposed legislative or standard changes and publish required policy and guidance following the Government's response to the report recommendations.

Providing certainty to the market during the COVID-19 pandemic: Virtual meetings of members

In March 2021, ASIC published a temporary no-action position to facilitate the convening and holding of member meetings using virtual technology. The no-action position applies to meetings held between 21 March 2021 and 31 October 2021, or any earlier date for which measures are passed by Parliament relating to the use of virtual technology in member meetings. It also allows entities with balance dates up to 7 April 2021 an additional two months to hold their annual general meetings.

ASIC's no-action position was designed to give certainty to the market given that the ongoing COVID-19 pandemic still created uncertainty around gatherings and travel. It followed on from the expiry of Corporations (Coronavirus Economic Response) Determination (No. 3) 2020 on 21 March 2021, which had permitted the convening and holding of virtual meetings during the pandemic.

The no-action position maintained the status quo while Parliament considered legislation introduced by the Government in relation to the use of virtual technology to hold member meetings. This legislation was passed in August 2021.

Providing certainty to the market during the COVID-19 pandemic: Virtual meetings for companies in external administration

The temporary modifications to the operation of the Corporations Act made by the Corporations (Coronavirus Economic Response) Determination (No. 1) 2020 confirmed that meetings of members and creditors for companies in external administration could be held using virtual technology.

ASIC provided input to Treasury on reforms to implement permanent changes to allow the use of virtual technology to conduct meetings for companies in external administration.

On 15 December 2020, the *Corporations Amendment (Corporate Insolvency Reforms) Act 2020* received royal assent. Schedule 4 of this Act, dealing with virtual meetings and electronic communications, commenced on 16 December 2020.

ASIC notified registered liquidators about the passing of these reforms on 21 December 2020.

Implementing insolvency law reform

On 24 September 2020, the Government announced reforms to Australia's insolvency framework to help more small businesses restructure and survive the economic impact of the COVID-19 pandemic. These reforms were aimed at incorporated businesses with liabilities of less than \$1 million. Key elements of the reforms included introducing a new:

- › restructuring process that allowed eligible small businesses to remain in control during the restructuring process
- › class of registered liquidator for individuals who wished to be registered only to act as a restructuring practitioner under the new restructuring process
- › simplified liquidation process for eligible small businesses.

Legislation passed both Houses of Parliament in December 2020 and commenced on 1 January 2021. To support these reforms, ASIC:

- › developed 20 new forms or documents and updated existing forms where necessary
- › enhanced IT systems to enable electronic lodgement of these new and amended forms
- › updated the application process to allow individuals to apply to be registered as a liquidator only to act as a restructuring practitioner under the new restructuring process, including issuing guidance to assist the person prepare their application
- › published on our website information about the new restructuring and simplified liquidation processes.

The Government's temporary COVID-19 pandemic measures to assist companies continue to operate during the pandemic included temporary safe harbour relief for directors from personal liability for insolvent trading for debts incurred in the ordinary course of business. This temporary measure ceased on 31 December 2020.

The reforms extended this temporary measure for a short period to protect directors during the period from when they resolved to appoint a restructuring practitioner to when the appointment could be made.

ASIC published information to assist directors of eligible companies understand the temporary relief measure and what they had to do to access the temporary safe harbour relief introduced by these reforms, including enhancing IT systems to enable directors to make the necessary notifications.

Court applications: Registered liquidators

ASIC deals with court applications under Chapter 5 of the Corporations Act that must be served on ASIC, including:

- › novel applications for relief due to the COVID-19 pandemic
- › applications under Chapter 5 or Schedule 2 where ASIC is named as a party
- › registered liquidator replacement and/or retirement applications
- › an application for an inquiry into the conduct of a registered liquidator under section 45-1 or section 90-15 of Schedule 2
- › applications under Chapter 5 or Schedule 2 where the court has specifically requested ASIC's assistance or has ordered ASIC to respond in writing to the application.

During the financial year ended 30 June 2021, the Registered Liquidators legal team considered 296 court applications and 17 applications for authorisation as an eligible applicant.

Financial reporting surveillance

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

In 2020–21, we proactively reviewed 254 financial reports of listed entities and other public interest entities for years ended 30 June 2020 and later. We issued media releases about five entities that recognised material changes to reported

net assets and profits totalling more than \$200 million following our inquiries on financial reports. In recent years, material changes have been made to 4% of financial reports following our review.

We issued media releases concerning material financial reporting changes following our inquiries of Nitro Software Limited, Kresta Holdings Limited, Elixinol Global Limited, LawFinance Limited and Ainsworth Game Technology Limited.

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

Audit inspections

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

In 2020–21, we proactively reviewed 45 audit files relating to audits of listed entity and other public interest entity financial reports.

Our inspection findings show that more needs to be done to improve audit quality (see Report 677 *Audit inspection report 1 July 2019 to 30 June 2020* issued in December 2020). Auditors have primary responsibility for audit quality, supported by audit committees and others in the financial reporting ecosystem.

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

- › a focus on enforcement actions for auditor conduct matters
- › reviewing the culture within the largest six audit firms focused on audit quality and firm talent for quality audits
- › increased transparency by publishing the level of adverse findings for each of the largest six audit firms.

We published a supplementary report with a broader group of audit quality measures and indicators (*Report 678 Audit quality measures, indicators and other information 2019–20*).

Better data

ASIC publishes statistical data on corporate insolvency in Australia from 1999. Our Series 1 (Companies entering external administration for the first time) and Series 2 (All formal insolvency appointments) statistics have historically been published on our website on a monthly basis more than one month in arrears.

In April 2020, to provide more timely data in response to the COVID-19 pandemic, we started publishing statistics of companies entering external administration on a weekly basis. The new Series 1B compared the current period (both weekly and monthly) to the same period in the prior year.

We provided more timely information to assist market participants in monitoring the impact of Government measures introduced to support the economy in response to the COVID-19 pandemic, specifically around corporate insolvency.

We quickly identified that rather than the expected increase in formal appointments from the economic impact of the COVID-19 pandemic, there was in fact a material decline in formal appointments which coincided with measures introduced by the Government. This decline was sustained throughout 2020–21.

During the course of the 2020–21 financial year, the published statistics were enhanced to provide additional data at both the state and industry levels to help identify areas or industries suffering stress.

ASIC will continue to seek to enhance the data it publishes to provide more accurate and timely information.

Directors disqualified from managing corporations

ASIC takes action to prevent directors with a history of failed companies from continuing to manage corporations.

In September 2020, ASIC disqualified Michael David Steele from managing corporations for the maximum period of five years. Mr Steele was an officer of two companies that were placed into external administration owing investors more than \$4.5 million.

ASIC found that Mr Steele failed to lodge documents with the ATO, failed to invest money as promised, and transferred investor funds into his personal accounts for personal expenses. Mr Steele had also been convicted in 2018 and 2019 of failing to assist the liquidators.

Illegal phoenix activity and directors' duties

Addressing illegal phoenix activity continues to be a focus for ASIC. Ensuring that directors comply with their duties is a key element.

In December 2020, Andre Kunz, former director of Total Hoarding Supplies Pty Ltd ACN 107 987 271 (Deregistered) (THS) and Sybab Pty Ltd ACN 144 935 311 (Deregistered) (Sybab), was convicted of breaching his duties as a director after engaging in illegal phoenix activity. Mr Kunz was sentenced to a community corrections order for two years and 200 hours of community service work and was ordered to pay a fine of \$2,000. Because of the conviction, he is automatically disqualified from managing corporations for five years.

The ASIC investigation found that Mr Kunz dishonestly transferred over \$2 million of assets belonging to THS to Sybab, a company of which he was also a director. The consideration for the asset transfer was a 20-year loan with Sybab, with no repayment to be made before the end of the loan period. THS was subsequently unable to continue to trade and generate cash flow to be able to meet its liabilities, leading to the company's insolvency. At the time of the asset transfer, THS was being pursued by the Bendigo and Adelaide Bank for outstanding loans of over \$1.6 million.

The investigation was aided by a report from the liquidators of THS, which ASIC funded through the Assetless Administration Fund.

Registered liquidator misconduct

We take a holistic and scalable approach to the regulation of registered liquidators. When ASIC considers reports of misconduct against registered liquidators, we take into account factors such as the information differential between the consumer and the liquidator, and whether the underlying behaviour of the registered liquidator meets the high standards expected by the community and at law.

We received a report of misconduct from a small community-based organisation regarding an insolvent company and deposit funds not being repaid to it by the registered liquidator. ASIC determined that this was not a commercial dispute relating to a pre-appointment transaction; rather, the liquidator appeared to have received the deposit after their appointment to the insolvent company and had not delivered the ordered equipment.

ASIC inquired of the liquidator on what basis the funds were being retained, triggering the immediate repayment of the money to the organisation, which was then able to continue its fundraising activities to support its local community.

SMSF auditors' activities and outcomes

ASIC works with the ATO as co-regulators of approved SMSF auditors. ASIC is responsible for the registration 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.

During 2020–21, the ATO referred 32 approved SMSF auditors to ASIC for action. ASIC initiated another eight SMSF auditor surveillance cases based on other sources, including four because the auditors had breached conditions previously imposed on their registrations and four because of concerns that the auditors were not fit and proper persons.

Actions taken by ASIC included one disqualification, one ASIC-initiated registration cancellation, and the imposition of additional conditions on a registration. ASIC also accepted the voluntary cancellation of 12 auditors as negotiated outcomes from our investigation of matters referred by the ATO.

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 affect consumers: CBA, WBC, NAB, ANZ, AMP and Suncorp.

As set out in Chapter 2, the focus in 2020–21 was on:

- › monitoring how the institutions responded to the pandemic (particularly issues confronting vulnerable consumers)
- › including Suncorp in the cohort with a comprehensive review of two of the key systems that enable the early detection and prevention of customer harms (the incidents management and internal dispute resolution systems)
- › the initiation of reviews of the institutions' internal audit functions
- › continued monitoring of actions taken and outcomes achieved by institutions in response to reviews conducted in prior years, including internal dispute resolution and breach reporting in the context of incident management.

Management of customer complaints and internal dispute resolution

Our work reviewing the internal dispute resolution practices of CBA, WBC, NAB, ANZ and AMP sought to uplift the way customer complaints are managed and responded to with a view to preventing poor outcomes from recurring in the future. Our key findings included:

- › poor and fragmented complaint management **systems and data** did not support robust and consistent resolution and response to complaints and limited opportunities for analysis and improvement
- › weak **processes and practices** resulted in the under-recording of complaints, longer resolution times and inconsistent identification of systemic issues
- › poor **accountability** limited end-to-end oversight of customer complaints
- › a lack of strategic focus on addressing the **systemic issues** arising out of customer complaints.

The institutions responded positively to our findings and put forward action plans to rectify the issues identified. During 2020–21, we engaged regularly with them to track progress against their action plans and to test for improved customer outcomes through the monitoring of key performance metrics. We observed positive changes across a range of metrics, indicating that outcomes for customers have improved. For example, in the year following our reviews (as compared to the year prior):

- › complaints to AFCA relating to the reviewed institutions made up a smaller proportion of the total complaints to AFCA, suggesting a relative improvement in internal complaints management processes of the reviewed institutions compared to the non-reviewed population
- › on average, the institutions were the subject of a smaller proportion of complaints to AFCA after the customer had already lodged their complaint directly to the institution, suggesting that the institutions' internal responses to complaints have been more effective and satisfactory to customers
- › on average, a smaller proportion of complaints about the institutions made to AFCA required escalation and resolution through AFCA's case management process, suggesting that more customers have had their complaints dealt with in a more efficient manner with less external intervention by AFCA required.