

# 4

## ASIC engagement and education

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## 4.1 Engagement

### Regional action

Our Regional Commissioners and regional offices focus on addressing the diverse needs of our community and improving outcomes for consumers and businesses in each Australian state and territory. The Regional Commissioners report to the Commission regularly on activities, services and stakeholder liaison in their state or territory.

#### Australian Capital Territory

Throughout 2021–22, we continued to build collaborative relationships across the Australian Capital Territory at Commonwealth and state levels of the public service and with peak bodies. We supported ASIC’s engagement with consumer groups and financial counselling organisations, as well as supporting the ACT Education Directorate to strengthen the delivery of financial education in Canberra schools. We also engaged regularly with industry, including sitting on the ANZ Financial Wellbeing Survey Steering Committee, and participated in the Financial Inclusion Action Plan Advisory Group alongside the ACCC.

Building on a strong partnership, we worked in collaboration with Beyond Blue to finalise an 18-month money and mental health research project in June 2022. The learnings from this work were shared with Commonwealth agencies and inform the development of improved services to Australians experiencing financial stress.

#### New South Wales

While the COVID-19 pandemic impacted regional outreach with stakeholders and community during 2021–22, we undertook work to prepare for a refreshed and tailored New South Wales regional stakeholder and outreach information-sharing approach to recommence during 2022–23. This will complement existing ASIC national, sectoral and consumer liaison and engagement and maximise the consistency of the approach with that of ASIC’s other Regional Commissioners.

#### Northern Territory

Despite COVID-19 pandemic restrictions, there has been constant engagement and communication with Commonwealth and Northern Territory Government agencies, industry bodies, regional and community groups, and other key industry stakeholders. Our involvement included support for the Northern Territory Government’s October Business Month 2021 and presenting to First Nations students participating in accounting and business enabling courses at Charles Darwin University in the Northern Territory.

#### Queensland

This year, we conducted our regular stakeholder engagement virtually. We continued to meet with industry representatives, consumer groups and other regulators through our Regional Liaison Committee, Consumer Regulator

Forum and other liaison activities. This engagement enabled us to continue the dialogue around how ongoing COVID-19 pandemic conditions were affecting consumers and businesses in Queensland and to take action as appropriate. Meetings since March this year have focused on the recent floods and the potential business impacts and consumer harm arising from the natural disasters that fall within ASIC's regulatory purview.

In May 2021, we participated in Queensland Small Business Month activities across the state.

### **South Australia**

In 2021–22, stakeholder engagement with industry bodies and with regional and community groups continued in a virtual format.

In November 2021, we held a South Australian Regional Liaison Committee meeting.

### **Tasmania**

Tasmanian office stakeholder activities in 2021–22 included a presentation at the Tasmanian Governance Forum organised by the Governance Institute of Australia and direct meetings with key financial services providers. We also attended the Hobart session of the Australian Small Business and Family Enterprise Ombudsman inquiry into education and engagement practices promoting small business disaster resilience session.

### **Victoria**

In the past year, a focus in Victoria has been on championing and supporting the work of the Melbourne and Traralgon teams, as well as the broader work of ASIC. We participated in community outreach events organised by the National Recovery and Resilience Agency to promote ASIC information and resources relating to small business, as well as ASIC's Moneysmart website. The Victorian office also participated in a conference co-hosted by the Federation of Ethnic Communities' Councils of Australia and the Ethnic Communities' Council of Victoria.

### **Western Australia**

In 2021–22, we continued virtual meetings with stakeholders in light of the COVID-19 pandemic restrictions; however, we are moving to encouraging 'hybrid' meetings that permit face-to-face discussions. Our engagement with local and interstate stakeholders during the period included 10 formal liaison meetings convened by the Credit and Banking, Corporations, Financial Reporting and Audit, Registered Liquidators and Market Supervision teams. Additionally, our regional engagement included a very successful visit to the Kimberley region by our Small Business Engagement and Compliance team.

The Regional Liaison Committee convened on three occasions, with virtual attendance by Chair Joseph Longo in July 2021 and April 2022, and with face-to-face attendance in December 2021.

See pages 34–36 for information on our Service Charter results.

## First Nations consumer outreach

ASIC's Indigenous Outreach Program (IOP) works across ASIC to support better outcomes for First Nations consumers. The IOP team has several roles:

- › providing advice, insights and guidance to ASIC teams where regulatory issues or misconduct affect First Nations consumers
- › influencing external stakeholders, including industry, to respond to systemic challenges and the experiences of First Nations consumers
- › providing trusted information, tailored resources and communications, as part of regular ongoing stakeholder engagement.

ASIC's IOP manages a dedicated helpline and email inquiries channel, responding to 75 inquiries (as at 30 June 2022) from First Nations consumers and stakeholders working with First Nations consumers over the year.

During 2021–22, ASIC's IOP focused on innovative and strategic engagements due to the limited opportunities for face-to-face discussions. This involved facilitating collaborative opportunities and leveraging relationships across stakeholder groups to ensure that ASIC, service providers and industry are alive to the range of circumstances experienced by First Nations consumers and can respond appropriately.

## National Indigenous Consumer Strategy

ASIC, as one of the consumer protection agency members of the National Indigenous Consumer Strategy (NICS), endorsed the NICS 2022–2023 Action Plan. This NICS group seeks to improve access to consumer protection services and market outcomes for First Nations consumers. The Action Plan commits members to priorities which identify behaviours causing harm or particular vulnerabilities for First Nations consumers. Under the Action Plan, ASIC will lead the national project by updating the NICS resource *A Guide to Enforcement: Indigenous Consumer Matters*.

## ASIC's Indigenous Financial Services Framework

ASIC continues to develop our Indigenous Financial Services Framework, aimed at driving how we engage with First Nations peoples, and the priorities of our IOP. This involves focusing on our regulator role and working towards reducing the harms and misconduct impacting First Nations peoples, as well as developing stronger partnerships with communities and other stakeholders involved in services and programs assisting these consumers in their experiences and engagement with the financial system.

In 2021–22, ASIC's IOP and Professor Robynne Quiggin of the University of Technology Sydney consolidated learnings from consultations held with many stakeholder groups, including First Nations communities, and focused on sharing these learnings with other stakeholder groups.

This has included three separate financial services industry workshops with industry associations and participants across the credit and banking, superannuation and general insurance sectors. The team has also engaged with other Government agencies where there are aligned objectives and opportunities to collaborate on supporting positive financial outcomes for First Nations consumers.

### House of Representatives Standing Committee on Indigenous Affairs

ASIC made a written submission and appeared before the House of Representatives Standing Committee on Indigenous Affairs as part of the inquiry into corporate sector engagement with First Nations consumers. ASIC's submission covered our regulatory activities where First Nations consumers are affected by financial services misconduct, the role of our IOP in engaging with First Nations consumers, and our use of Reconciliation Action Plans.

### Inter-agency collaboration on financial crime

ASIC collaborates with other Australian enforcement and regulatory agencies on serious and organised crime, including through the Phoenix Taskforce, the Serious Financial Crime Taskforce (SFCT) and the Fintel Alliance. This year, we released 194 intelligence products to partner agencies and received 352 intelligence reports.

- › **Phoenix Taskforce:** Together with other federal, state and territory agencies, ASIC is a member of the

ATO-led Phoenix Taskforce which aims to detect, deter and disrupt illegal phoenix activity. The Phoenix Taskforce members share information and use sophisticated data matching tools to identify those promoting or engaging in illegal phoenix activity. The Phoenix Taskforce members work together to disrupt phoenix operators' business model and make it financially unviable, removing their ability to operate, applying financial penalties and prosecuting the worst offenders.

During 2021–22, ASIC was involved in a number of Phoenix Taskforce operations and conducted joint surveillance activity.

- › **Fintel Alliance:** The Fintel Alliance is a public–private partnership between federal and state government intelligence and law enforcement agencies, private sector businesses, and the Australian Transaction Reports and Analysis Centre (AUSTRAC).
- › **Serious Financial Crime Taskforce:** The ATO-led SFCT is a joint-agency initiative targeting offences related to serious fraud, money laundering and defrauding the Commonwealth. It brings together the knowledge, resources and experience of law enforcement and regulatory agencies to address the most serious threats to the tax and superannuation systems of Australia.

In 2021–22, Cybercrime was a key priority of the taskforce, as reflected in our undertaking in Operation Birks.

## **Serious Financial Crime Taskforce: Disrupting a highly sophisticated cybercrime syndicate responsible for superannuation and share sale fraud**

Operation Birks is a joint cybercrime investigation between the Australian Federal Police (AFP) and ASIC, operating under the umbrella of the SFCT. The investigation identified and disrupted a highly sophisticated cybercrime syndicate responsible for large-scale frauds totalling more than \$27 million.

This is the first criminal prosecution for cyber fraud of this magnitude in Australia, and the first significant cyber attack to target superannuation and share trading accounts.

The joint AFP and ASIC investigation showed that Jasmine Vella-Arparci worked as part of a transnational cybercrime syndicate which used fraudulently obtained identities to commit large-scale and sophisticated cybercrimes.

The syndicate obtained identity information by hacking into companies, purchasing it from the darknet and setting up a cloned superannuation website. Using this information, the syndicate's activities included identity take-overs, unauthorised access to superannuation accounts, the creation of false share trading and mule bank accounts, and more.

The syndicate stole funds from unsuspecting victims. The laundered funds were sent to an overseas contact who purchased untraceable assets such as jewellery. These assets were sold and the money was remitted back to Australia through various cryptocurrencies.

In September 2019, Ms Vella-Arparci was charged with conspiracy to defraud superannuation funds, conspiracy to defraud shareholdings and a money laundering conspiracy. The charges related to frauds committed against eight superannuation funds, seven share brokers and more than 75 individuals. Ms Vella-Arparci has pleaded guilty to the offences and is awaiting sentencing in the County Court of Victoria.

Operation Birks identified weaknesses in the cyber resilience of a number of Australian companies. These weaknesses have resulted in the unauthorised access, disclosure and modification of client information, and the establishment of fake share brokerage, superannuation and bank accounts.

This investigation aligns with ASIC's enforcement priority of targeting perpetrators of egregious cybercrime.

## ASIC–APRA engagement

APRA and ASIC have developed a structured approach for identifying and managing shared risks in relation to their work together. Shared risks are reviewed periodically to help identify and prioritise those areas of joint work where closer monitoring or risk mitigation is required.

### PUBLIC STATEMENT ON APRA–ASIC ENGAGEMENT 2021–22

The **Memorandum of Understanding** (MoU) between the Australian Prudential Regulation Authority (APRA) and the Australian Securities and Investments Commission (ASIC) underpins their commitment to work together to protect the financial well-being of the Australian community. This statement fulfils the agencies' commitment under that MoU to report annually on their engagement activities.<sup>1</sup> APRA and ASIC have collaborated in a number of ways during the financial year. For example, the agencies:

- › continued to engage closely on loan repayment deferrals and borrower hardship, and on issues related to insurance affordability and availability
- › worked with Treasury and the Australian Financial Complaints Authority on business interruption insurance test cases being heard in the Federal Court – this collaboration helped progress these cases in a more timely manner and generated significant engagement from the insurance industry
- › brought together six Australian and New Zealand regulators to consider issues such as consumer protection, conduct regulation and prudential regulation during a supervisory college in November 2021
- › shared information and insights to support each agency's response to natural disasters, and consulted with insurers and the Insurance Council of Australia
- › continued to engage jointly with regulated financial services providers on the issues of cyber readiness and operational resilience. Also, as part of the Council of Financial Regulators, the agencies developed a protocol for the management of a cyber incident at a financial services provider
- › collaborated closely with each other, and other agencies, in relation to the Australian regulatory framework for the payments systems, including crypto-assets.

The agencies continue to work in close partnership on superannuation issues, supporting confidence in the industry and pressing superannuation trustees to continue to improve the outcomes they are delivering to their members. APRA and ASIC have regularly shared information, intelligence and data obtained through supervisory and surveillance work. They have also worked closely together on

<sup>1</sup> The last public statement on APRA–ASIC engagement was issued in December 2021 for the 2021 calendar year. Certain engagement activities appear in the last public statement and this statement due to overlapping reference periods.

regulatory change such as the implementation of requirements imposed by the Your Future, Your Super reforms. APRA and ASIC continue to jointly communicate their expectations to industry through regular joint engagement and communication. This includes a joint letter to trustees on the implementation of the *Retirement Income Covenant* and by facilitating opportunities to discuss topics with industry at CEO roundtable events.

APRA and ASIC strengthened cooperation on enforcement matters during the year. An example of this cooperation was the agencies' engagement during their respective investigations in relation to the AMP superannuation trustees. The court enforceable undertaking accepted by APRA in November 2021 was designed to address regulatory concerns of both APRA and ASIC with the AMP superannuation trustees. Another example was ASIC and APRA coordinating their respective inquiries into a Westpac subsidiary (BT Funds Management), which had been incorrectly charging commissions for insurance in superannuation. ASIC obtained a \$20 million civil penalty in relation to that misconduct.

Collaboration on industry data collections has provided opportunities for both agencies to effectively and efficiently collate insights to inform their respective work and to limit the impost on regulated entities of reporting. More broadly, information sharing between the agencies continues to be critical to how they work together.

APRA and ASIC have developed a structured approach for identifying and managing shared risks in relation to their work together. Shared risks are reviewed periodically to help identify and prioritise those areas of joint work where closer monitoring or risk mitigation is required. This approach has been incorporated into the formal discussions between APRA Members and ASIC Commissioners, including through the APRA–ASIC Committee and supporting Standing Committees of senior members from each agency.

The agencies continue to work together to deliver long-term benefits through a number of significant and potential law reforms. This includes preparation for the Financial Accountability Regime (FAR) that was developed in response to the Financial Services Royal Commission. A key objective of the FAR (subject to it being passed by the Australian Parliament) is to improve the operating culture, and to increase transparency and accountability, of entities in the banking, insurance and superannuation sectors – both in relation to prudential matters and conduct-related matters.

APRA and ASIC will continue to work together to deliver coordinated and efficient regulatory outcomes, and to support the ongoing safety, strength, fairness and efficiency of the financial system for all Australians.



## Regulator Performance Guide

The Regulator Performance Guide (RPG) commenced on 1 July 2021, replacing the 2014 Regulator Performance Framework. The RPG sets out refreshed expectations for regulator performance and reporting. It contains three principles of regulator best practice:

- › **Principle 1: Continuous improvement and building trust** – Regulators adopt a whole-of-system perspective, continuously improving their performance, capability and culture to build trust and confidence in Australia’s regulatory settings.
- › **Principle 2: Risk based and data driven** – Regulators manage risks proportionately and maintain essential safeguards while minimising regulatory burden, and leveraging data and digital technology to support those they regulate to comply and grow.

- › **Principle 3: Collaboration and engagement** – Regulators are transparent and responsive communicators, implementing regulations in a modern and collaborative way. The 2021–22 financial year is a transitional year, during which ASIC must begin to appropriately reflect the RPG in our annual report and Corporate Plan.

ASIC’s Corporate Plan notes the new RPG best practice principles and that over the 2021–22 transitional period we will be aligning how we report on our performance with those principles. This includes aligning the principles with our performance evaluation framework in our Corporate Plan for the 2022–23 year. The RPG best practice principles are broadly reflected in ASIC’s strategic priorities. Table 4.1.1 maps ASIC’s strategic priorities in the Corporate Plan to the three best practice principles.

**Table 4.1.1 ASIC’s priorities mapped against Regulator Performance Guide principles**

External priorities	Principles
Promoting economic recovery – including through better and more efficient regulation, facilitating innovation, and targeting regulatory and enforcement action to areas of greatest harm.	Principle 2: Risk based and data driven
Reducing risk of harm to consumers exposed to poor product governance and design, and increased investment scam activity.	Principle 2: Risk based and data driven
Supporting enhanced cyber resilience and cyber security among ASIC’s regulated population, in line with the whole-of-government commitment to mitigating cyber security risks.	Principle 2: Risk based and data driven
Driving industry readiness and compliance with standards set by law reform initiatives, including the Financial Accountability Regime, reforms in superannuation and insurance, breach reporting, and the design and distribution obligations.	Principle 3: Collaboration and engagement

Internal priorities	Principles
Enhancing communication and engagement with our stakeholders and other regulatory agencies, to ensure that our actions and achievements have a real and tangible impact.	Principle 3: Collaboration and engagement
Improving our infrastructure and systems to strengthen our key internal operations, processes and governance frameworks to effectively support our regulatory work.	Principle 1: Continuous improvement and building trust
Enhancing and effectively utilising our data and cyber resilience capabilities in fulfilling our regulatory mandate and organisational priorities.	Principle 2: Risk based and data driven
Continuing to nurture a workplace environment that promotes a culture of speaking up, challenge, accountability and a 'whole-of-ASIC' lens, underpinned by a sound system of risk management and compliance.	Principle 1: Continuous improvement and building trust

The following summary sets out how we have interpreted and measured our performance against each of the best practice principles. The summary includes cross-references to performance measures in other parts of this report, including case studies and performance metrics in the annual performance statement.

## How we assess performance against Regulator Performance Guide principles

Principle 1 relates to what ASIC is doing to commit to continuous improvement in our processes, governance and capabilities to build trust and confidence in Australia's regulatory settings.

### 1. How we define, communicate and commit to our organisational values and culture.

#### Measures and examples

ASIC's Corporate Plan sets out our internal and external priorities and activities to give effect to ASIC's vision of being a capable, confident and effective regulator – including initiatives to build ASIC's internal regulatory capabilities, administer the law effectively and deliver on ASIC's statutory objectives.

*ASIC's approach to enforcement* (INFO 151) explains how we approach our enforcement role specifically, including how we will meet community expectations that the most serious and harmful misconduct should be judged by the courts and how we will use ASIC's broad range of regulatory tools to respond to contraventions of the law proportionately and effectively.

ASIC sets out our values of accountability, professionalism and teamwork in a publicly available statement. We also set out our expectations of staff in our Code of Conduct. ASIC's values of accountability, professionalism and teamwork ensure there is a strong alignment between our culture and the behaviours that guide our actions and decisions.

Pages 137–140 set out ASIC's diversity and inclusion initiatives and the outcomes we have achieved over this reporting period, including:

- › launching Speak Up, where ASIC staff can anonymously raise a concern or make a confidential report about suspected wrongdoing
- › continuing to meet our diversity employment goals
- › exceeding our equitable gender briefing targets
- › developing outcomes and associated targets for our next Reconciliation Action Plan
- › developing a new pathway for the employment of First Nations peoples via internship programs
- › attaining bronze status in the Australian Workplace Equality Index for a second year
- › launching two new accessibility initiatives.

We are committed to fostering diversity because we believe an inclusive and diverse workforce drives better innovation, creativity and problem-solving by bringing a range of experiences, perspectives and ideas to our decision making.

Pages 135–136 set out ASIC's work health and safety initiatives, including supporting a safe return to work in the office as COVID-19 pandemic lockdowns ended and restrictions eased. This ensures a healthy and safe work environment for all ASIC employees to conduct their regulatory work.

## **2. How we seek out, engage with and respond to internal and external performance reviews, including reflecting on and taking ownership of recommendations aimed at improving our regulatory practices and procedures.**

### **Measures and examples**

Page 12 sets out ASIC's work in relation to the FRAA's first effectiveness and capability assessment of ASIC, through productive and collaborative engagement with the FRAA Panel and FRAA's Treasury Secretariat.

Pages 206–208 set out information about the external scrutiny of ASIC, including ASIC appearances before Parliamentary Joint Committees, Senate Committees and House of Representative Committees.

Page 22 sets out the actions ASIC has taken to implement the recommendations of the Infrastructure Review.

Page 24 identifies the outcomes achieved by ASIC following the investigations and criminal and civil proceedings arising out of the Financial Services Royal Commission.

## **3. How we support and promote a culture of continuous improvement in regulatory practices and staff capabilities.**

### **Measures and examples**

Pages 134–136 set out information about ASIC's workforce planning, including key initiatives and achievements during the reporting period such as:

- › implementation of the capability framework to identify our capability strengths and gaps
- › introduction of the Existing Leaders and Emerging Leaders Program
- › ASIC's national graduate program being ranked #1 in the Australian Government category by the Australian Association of Graduate Employers and #8 in the Government and Public Services category in the Grad Australia Top 100 Graduate Employers.

**4. How we make it easier for regulated entities to do business. How we set standards to deliver high-quality services and regulatory interactions and regularly review these processes to ensure that they are transparent, fair, accessible and responsive.**

**Measures and examples**

Page 22 sets out information about our REU, which seeks to promote better regulation by making it easier for businesses to effectively fulfil their regulatory requirements.

Page 125 sets out the work of ASIC's Innovation Hub, including the number of innovative businesses ASIC provided with informal assistance and guidance on their potential regulatory obligations during the reporting period, as well as the number of fintechs accepted to test in ASIC's enhanced regulatory sandbox.

Page 62 sets out information about the number of new or revised regulatory guidance and information sheets ASIC has published during the reporting period to assist industry to understand and comply with its obligations.

Table 2.3.1 sets out our performance against the key measures outlined in the Service Charter for the reporting period.

**5. How we contribute to continuous improvement of regulatory frameworks by providing input to the Australian Government.**

**Measures and examples**

Pages 22–24 refer to our key projects to support law reform, including:

- › ASIC's engagement with the ALRC on its inquiry into corporations and financial services laws, including the participation of ASIC's Chair on the ALRC's Advisory Committee
- › supporting Government legislative reform in respect of design and distribution obligations, reportable situations and the Financial Accountability Regime.

ASIC has continued to support Treasury and the ATO with the Modernising Business Registers program – see page 65 for further information.

**6. Our compliance with whole-of-government regulatory policies, including on best practice regulation and cost recovery. This helps us to consider the risks, cost effectiveness and impact of regulatory action, including the impacts on competition, innovation and growth.**

**Measures and examples**

In line with the **Australian Government Cost Recovery Guidelines**, on 11 November 2021 ASIC published a **Cost Recovery Implementation Statement for the 2020–21** financial year.

ASIC complies with Office of Best Practice Regulation requirements, including preparing cost-benefit analysis in Regulation Impact Statements for significant regulatory changes. In 2021–22, **the Office of Best Practice Regulation assessed all of ASIC's proposals** requiring a regulatory impact assessment as compliant.

Principle 2 relates to what ASIC is doing to balance managing risks proportionately with minimising regulatory burden. We leverage data and digital technology to help inform these regulatory decisions and to support our regulated population to comply and grow.

- 1. How we identify and prioritise key threats and harms in our external environment by leveraging intelligence and data, and by using these inputs to inform our strategic priority and business planning processes. How our risk-based approach shapes our strategic priorities and our regulatory efforts.**

#### **Measures and examples**

As we set out in our Corporate Plan, our strategic priorities reflect a risk-based and data-driven approach to addressing the most significant threats and harms in our regulatory environment. As part of our strategic planning, we undertake an assessment of our external operating environment to identify the most significant threats and harms to investors, consumers and fair and efficient markets using various data sources, including:

- › insights from our regulatory work, including intelligence obtained from interactions with industry
- › internally available data sources (such as reports of misconduct and breaches, enforcement statistics and licensing data)
- › external data sources (such as data subscription services, data from peer international regulators and available data from the Reserve Bank of Australia, APRA, the Australian Bureau of Statistics (ABS), AFCA and Scamwatch).

- 2. How we use intelligence and data to inform a risk-based approach to compliance and enforcement. How we adopt a risk-based approach to regulation to identify and address misconduct to focus on the greatest areas of harm.**

#### **Measures and examples**

We have embedded risk-based principles in our regulatory work and have invested in building and strengthening our data and analytical tools and capabilities to support our supervision and surveillance.

Pages 41–42 set out how ASIC is strengthening our capabilities in data and analytics to improve our regulatory work. This includes by continued investment in our Data Lake platform, operationalisation of NLP and improving data availability for recurrent data collections.

Page 58 identifies how ASIC has seen consistently high levels of reports relating to scam behaviour since the initial COVID-19 pandemic lockdown, and how we use this information to direct our regulatory activities to identify and address harms to investors and consumers. See, for example, action taken by ASIC in relation to the Cash FX Group.

Page 90 identifies ASIC's action to disrupt 'pump and dump' activity using a multi-pronged early intervention approach.

Page 99 identifies how ASIC has developed a Natural Language Processing solution to flag high-risk DIRRIs.

In deciding how to respond to misconduct, we consider the following factors:

- › the strategic significance (the seriousness of the misconduct or harm, how widespread it is, the importance of deterrence, and our strategic priorities)
- › the likelihood of success of using one or more of the tools available to us
- › issues specific to the case (e.g. the availability of evidence)
- › 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)
- › the availability of resources.

ASIC's approach to enforcement is published in **Information Sheet 151 ASIC's approach to enforcement**. ASIC also publishes quarterly enforcement updates.

Pages 42–44 provide quantitative information on the number of enforcement activities undertaken in this reporting period.

Pages 46–55 provide case studies on ASIC's investigation and enforcement outcomes achieved in this reporting period.

Table 7.2.2 provides data on the number and outcomes of reports of misconduct received by ASIC by issue during this reporting period. Table 7.2.3 provides data on the number and outcomes of breach reports received by ASIC by type.

### **3. How we identify and understand market and regulatory developments and address emerging issues.**

#### **Measures and examples**

Within ASIC's broader strategic planning and decision-making framework, we maintain flexibility in adapting and responding to developments in our operating environment outside the formal strategic planning phases. This may include the emergence of new products, practices or harms, or changes in Government policy.

Pages 213–215 set out information about ASIC's consultation with our external panels. Our panels also help us to better understand industry, consumer and market developments; consider and address risks or harms; and discover potentially harmful conduct.

### **4. How we respond to changes in our external environment, including market changes and the emergence of new business models.**

#### **Measures and examples**

Page 58 identifies how we have prioritised addressing the risk of harm from the consistently high levels of reports relating to scam behaviour. As set out on page 88, scams involving emerging crypto-assets have become the most significant type of investment scam. We have used a number of strategies to combat and disrupt these scams, such as action taken against Helio Lending Pty Ltd.

ASIC has also been monitoring and taking action against unlawful social media advice and influence on retail investment decisions – see the case study on Cash FX Group on page 58 and the case study on financial influencers on page 91.

### **5. How we support deregulation and the economic recovery through better and more efficient regulation.**

#### **Measures and examples**

ASIC has established the REU to engage with external stakeholders on ways to improve the efficiency of our interactions with our regulated population – see page 22 for further information.

Pages 38–39 set out how we have supported economic recovery by focusing on efficient regulation, and the actions we have taken during this reporting period to support this priority. Outcomes include:

- › offering existing licensees an ASIC-initiated variation to their AFS licence to authorise the provision of the same services in relation to securities in a CCIV – see page 60 for further information



- › engaging with industry on impediments to industry's ability to deliver good quality and affordable personal advice – see page 76 for further information
- › supporting and contributing to the ALRC review of the Corporations Act, which is tasked with facilitating a more adaptive, efficient and navigable legislative framework – see page 23 for further information.

Other example of actions we have taken which promote efficient regulation during the reporting period include:

- › transitioning users of the Market Entity Compliance System Portal to the ASIC Regulatory Portal, reducing the number of portals required for stakeholders to interact with us – see page 42 for further information
- › successfully assessing all transitioning insurance claims handling providers within the six-month transition period – see page 59 for further information
- › consulting with consumer advocates and key industry stakeholders to proactively understand and improve industry practices and prevent consumer harm in relation to landlord insurance debt recovery practices – see page 72 for further information
- › providing relief to enable insurers to apply a streamlined process for emergency payments to insured consumers impacted by catastrophic events – see pages 74–75 for further information.

## **6. How we implement our data and technology strategy, and take steps to continuously improve staff and organisational data capability and digital literacy.**

### **Measures and examples**

Pages 41–42 set out our successful implementation of the first year of the *ASIC Data Strategy 2021–26*, as well as the development of a Digital Strategy to transform the way we work internally and how we regulate and interact with our regulated population.

Page 134 sets out our continued implementation of the ASIC capability framework, which focuses on building and maintaining capability in regulatory practice, enforcement, law, data analytics, accounting and auditing.

## 7. How we work with our peer regulators to reduce regulatory impost, including by sharing data and intelligence and managing the cumulative burden of regulations on business.

### Measures and examples

ASIC has memorandums of understanding (MOUs) with numerous peer regulators and agencies. Information about our **MOUs with other regulators** is available on our website.

Pages 109–110 sets out key outcomes and activities undertaken in collaboration with APRA over this reporting period, including:

- › implementing the Your Future, Your Super reforms
- › strengthening cooperation on enforcement matters, including during our investigations into AMP superannuation trustees and our inquiries into BT Funds Management
- › collaborating on industry data collections.

Page 89 sets out information about inter-agency data sharing between ASIC and the ATO which has significantly enhanced our surveillance capabilities.

Page 129 sets out information about ASIC and the ATO's Phoenix Surveillance Campaign to identify directors who may be at risk of engaging in illegal phoenix activity and educate them on their duties and obligations.

Page 87 sets out information about ASIC's work with the CFR agencies and the ACCC in supervising ASX's CHES replacement.

Pages 107–108 set out information about ASIC's collaboration with other Australian enforcement and regulatory agencies on serious and organised crime, including through the Phoenix Taskforce, the SFCT and the Fintel Alliance, and provide a case study on Operation Birks – a joint cybercrime investigation between the AFP and ASIC.

Page 125 sets out information about the number of international cooperation requests we made of, and received from, international peer regulators.

Principle 3 relates to how ASIC engages with our regulated population. We look at how transparent, open and responsive ASIC is to feedback; how we operate; and what we are doing to engage in genuine two-way dialogue with stakeholders and the broader community on our performance.

**1. How we engage genuinely and regularly with our stakeholders, including regulated entities and the broader community.**

**Measures and examples**

Pages 213–215 set out information about ASIC’s consultation with our external panels, including the priority initiatives of our Consumer Consultative Panel. In addition to ASIC’s panels, ASIC’s industry consultation includes Commission meetings with industry groups, major financial institutions, and consumer organisations and their representatives. During the year, ASIC also sought industry feedback through roundtable discussions, open working relationships and regular meetings with our regulated entities, as well as through initiatives such as the REU.

Pages 103–132 set out ASIC’s engagement and education activities with the broader community in this reporting period, including:

- › undertaking outreach and stakeholder engagement activities to understand current issues for First Nations consumers of financial services and provide trusted information, including through the IOP Helpline – see page 106 for more information
- › activities and initiatives undertaken by ASIC’s Regional Commissioners – see pages 104–105 for further information
- › undertaking a Young People and Money survey, publishing the Young People and Money report and launching Get Moneysmart – see page 130 for further information
- › maintaining a source of trusted information via ASIC’s Moneysmart website – see page 131–132 for further details.

## **2. How we engage with stakeholders about upcoming regulatory developments, drive industry readiness, and provide guidance and information that is relevant, clear, concise and easily accessible to our regulated population.**

### **Measures and examples**

ASIC provides guidance to industry on how we will administer the law to enhance industry participants' understanding of their legal obligations and how to meet them through regulatory guides and information sheets.

Page 33 sets out the number of new or revised regulatory guides and information sheets ASIC has published during this reporting period.

ASIC also publishes consultation papers to seek feedback from stakeholders on regulatory matters we are considering, as well as a feedback report to provide transparency about our consultation before updating our regulatory guides or information sheets.

Page 62 identifies the number of publication consultation processes ASIC conducted in the reporting period. These include:

- › consulting on the new ePayments Code – see page 70 for further details
- › consulting with industry on impediments to the delivery of good quality and affordable advice – see page 76 for further details
- › consulting on the design and distribution obligations reforms – see page 23 for further details.

ASIC also publishes the results of our supervision and surveillance work to advance good consumer outcomes and change behaviour by driving improved practices across a sector or market and recommending changes in industry practice – see pages 57–58 for more information about the number of reports published during this reporting period.

Pages 40–41 set out key actions we have taken to drive industry readiness and compliance in relation to recent Government law reform initiatives to support this priority during the reporting period. Other actions we have taken in the reporting period to drive industry readiness for regulatory changes and provide clear guidance to our regulated population include:

- › reviewing the TMDs for certain credit card and loan products offered by five major financial institutions and providing feedback ahead of the commencement of the design and distribution obligations regime. This resulted in an uplift in the quality of TMDs published before the regime commenced – see pages 101–102 for further details
- › providing guidance to industry on cyber resilience – see pages 87–88 for further information
- › communicating with AFS licensees around the Federal Court finding in the RI Advice matter to drive behavioural change in managing cyber risk in AFS licensees – see page 48 for further information
- › providing practical guidance to enhance access to advice – see page 76 for further information
- › reviewing the governance practices of 10 large responsible entities and publishing ASIC's findings and analysis – see page 82 for further information

- › reviewing trustee communications and publishing a report detailing the findings of the review and setting expectations for future MySuper performance test-related communications – see page 85 for further information
- › publishing ASIC’s expectations for industry in the event of a market outage – see page 86 for further information
- › introducing new market integrity rules aimed at promoting the technological and operational resilience of securities and futures market operators and their market participants – see page 92 for further information
- › publishing an information sheet about good practices for market operators and product issuers in admitting and operating ETPs and other investment products that provide exposure to crypto-assets – see page 88 for further information
- › publishing information outlining how financial services laws apply to social media influencers and AFS licensees who use them – see page 91 for further information.

### **3. How we seek out real-time data to inform our regulatory decisions and priorities to help support improved regulatory actions and outcomes.**

#### **Measures and examples**

Pages 23–24 sets out reforms around breach reporting, and how we use these reports to support the early identification and resolution of issues. Page 49 includes a case study on how we have used the new penalty powers against Statewide Superannuation for failure to report breaches to ASIC.

ASIC will publish annually information about the number of reports we receive, which will help to provide transparency about the performance of our regulated sectors.

### **4. How we work with peer regulators to develop innovative approaches to regulatory or policy issues, and share learnings to ensure that our regulatory processes are in line with best practice.**

#### **Measures and examples**

ASIC is a member of the steering group for the IOSCO Fintech Task Force, which contributes to international regulatory work on crypto-assets – see page 126 for further information.

Page 88 sets out how ASIC has helped contribute to the Government’s consideration of crypto-assets. Our contributions are informed by our work with peer regulators in the CFR working group on regulating the crypto-asset ecosystem.

Pages 24 and 110 set out how ASIC and APRA have worked together cooperatively to provide technical and policy input to Treasury in relation to the Financial Accountability Regime, and to establish administrative and business processes and procedures for implementation of the Regime.

## International engagement

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 commitment to strong cooperation and collaboration with our overseas and domestic counterparts continued this year as we focused on joint initiatives and sharing information on market developments, regulatory approaches and consumer protection measures as part of the global COVID-19 pandemic response.

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

We participate in a range of international forums:

- › ASIC is a member of the board of IOSCO and is represented on its policy committees and taskforces, including those examining issues around financial stability, sustainable finance, asset management, crypto-assets, technology, market fragmentation, enforcement, emerging risks and standards implementation
- › ASIC is co-chair of the IOSCO Retail Market Conduct Task Force
- › ASIC is a member of the newly formed IOSCO Fintech Task Force
- › ASIC is a member of the IOSCO Sustainable Finance Task Force
- › ASIC participates in IOSCO Asia-Pacific Regional Committee (APRC) meetings and cochairs the APRC Working Group on Enhancing Supervisory Cooperation
- › ASIC chairs the Market Conduct Working Group of the International Association of Insurance Supervisors
- › ASIC serves on the board of the International Forum of Independent Audit Regulators
- › ASIC vice chairs the International Financial Consumer Protection Organisation and participates in G20/Organisation for Economic Cooperation and Development Financial Consumer Protection Taskforce initiatives
- › ASIC is a member of the CFR International Coordination Group, which meets regularly to coordinate a cohesive approach to major international regulatory risks and issues
- › ASIC is a member of the Global Financial Innovation Network, which is committed to supporting financial innovation and providing a more efficient way for innovative financial technology (fintech) and regulatory technology (regtech) firms to interact with regulators
- › ASIC is negotiating several MOUs with counterparts in New Zealand, India and Luxembourg. We are co-leading the negotiation of a multilateral MOU on supervision for the Asia-Pacific region. These agreements will strengthen cooperation and underpin market access arrangements – for example, substituted compliance arrangements.

## International cooperation requests

This year, we made 320 international cooperation requests (up from 304 requests in 2020–21) and received 463 requests (down from 513 requests in 2020–21) in relation to activities such as surveillance, supervision, enforcement, research and licensing.

This included 116 requests for assistance in enforcement matters, of which 23 requests sought ASIC's assistance to compel material from third parties under the *Mutual Assistance in Business Regulation Act 1992*.

## Innovation Hub

ASIC's Innovation Hub function helps innovative fintech and regtech Australian businesses navigate the regulatory framework and provides a platform for international engagement on fintech and regtech ideas. Through the Innovation Hub, we provide informal assistance to innovative businesses on their potential regulatory obligations and Australia's overarching regulatory framework, including whether the Australian Government's enhanced regulatory sandbox may be an option for a particular business.

## Informal assistance and guidance

In 2021–22, the Innovation Hub met with 124 innovative businesses and provided informal assistance to better understand how the regulatory framework may apply to their intended business model. Some of the business models proposed by the fintech firms involved payments, credit, services related to crypto-assets, and services making use of DLT/blockchain

technology. During this financial year, ASIC granted nine licences to new innovative businesses, which included neo banks and businesses offering services in crypto-assets. Fintech businesses that received informal assistance from ASIC's Innovation Hub before submitting their licence applications were approved faster than those that did not seek assistance. The Innovation Hub has provided informal assistance to over 700 businesses since it was first established in March 2015.

## Enhanced regulatory sandbox

The enhanced regulatory sandbox (ERS) administered by the Innovation Hub allows eligible businesses to test certain innovative financial services or credit activities for up to 24 months without first obtaining an AFS or credit licence. The ERS allows ASIC to facilitate innovation while ensuring consumer and investor protection.

In 2021–22, we accepted four fintechs to test their business model in the ERS. These business models included payment facilities and equity market comparison services. Since its launch in September 2020, a total of 12 entities have been accepted to test in the ERS. In the same period, 22 applications were unsuccessful mainly because they did not adequately meet the minimum legal requirements under the ERS for eligibility or did not satisfy either or both of the relevant innovation and net public benefit tests.

## Domestic and international engagement

The ASIC Innovation Hub continues to facilitate engagement opportunities with other regulators, Government agencies and industry associations.

In 2021–22, the Innovation Hub hosted four Digital Finance Advisory Panel meetings, three Regtech Liaison Forums and one Financial Innovation Regulator Meet-up, bringing together industry leaders and regulatory representatives to help inform ASIC and stakeholders on key fintech and regtech-related developments, issues and collaboration opportunities.

ASIC is one of 11 coordination group members of the Global Financial Innovation Network (GFIN), a network with over 70 members – including regulators, Government bodies and international organisations. GFIN seeks to support financial innovation in the interests of consumers by providing a more efficient way for innovative firms to interact with regulators. ASIC chairs the GFIN RegTech Ecosystem Special Unit, where there is a focus on information sharing and collaboration on the use of emerging technologies for compliance and supervisory purposes.

ASIC is a member of the steering group for the IOSCO Fintech Task Force (formerly known as the Fintech Network) which leads two workstreams on Crypto and Digital Assets and Decentralised Finance (DeFi). ASIC has contributed to IOSCO's earlier work and reports on initial coin offerings and DeFi.

## Business Research and Innovation Initiative Regtech Round

Initiated by the Department of Industry, Science, Energy and Resources, the Business Research Innovation Initiative (BRII) is an Australian Government program which provides funding for small to medium-sized regtech businesses to develop innovative solutions to Government challenges in policy and service-delivery areas.

The latest BRII round assesses the potential of regtech to solve challenges across Government agencies and departments. ASIC was selected as one of four Government agencies to participate in this round.

ASIC's selected challenge explores the potential of using technology to help identify and assess poor market disclosure by listed companies. We have been working with five regtech entities – Bedrock AI Aus Pty Ltd, DigitalX Limited, Eastern Analytica Pty Ltd, Listcorp Pty Ltd and Pyxta Pty Ltd – on the latest phase of the challenge, which required the entities to undertake a feasibility study of their potential regtech solution and present on the findings.

In the next stage of the BRII Regtech Round, two of these regtechs may receive further grants of up to \$1 million each to develop and test a proof of concept over a further 15 months.



## Small business engagement

ASIC plays an important role with regard to small businesses to ensure a strong and healthy economy for all Australians. As part of this role, ASIC:

- › assists small businesses through providing information and guidance
- › engages with small businesses so that we can understand and respond to the challenges they face
- › helps to protect small business through our surveillance, policy and enforcement work.

### Richard Ludwig

Addressing illegal phoenix activity continues to be a focus for ASIC, including taking enforcement action to hold directors and facilitators to account.

In December 2021, Richard Ludwig, a former director of Cap Coast Telecoms Pty Ltd, was convicted and sentenced to five years imprisonment, with a non-parole period of 20 months, after pleading guilty to intentionally dealing with the proceeds of crime and breaching his directors' duties.

Following a commercial dispute that Cap Coast Telecoms had with a creditor, Mr Ludwig sought advice from John Narramore and Stephen O'Neill of pre-insolvency firm SME's R Us. Mr Narramore and Mr O'Neill facilitated an asset protection strategy that involved issuing fictitious invoices to Cap Coast Telecoms by companies under their control. As a consequence, between October 2014 and January 2015, Mr Ludwig transferred \$743,050 of company funds to the companies controlled by Mr Narramore and Mr O'Neill. Mr Narramore and Mr O'Neill subsequently transferred the funds to Mr Ludwig or his associates. Once the funds had been transferred, Cap Coast Telecoms was wound up owing creditors \$2,955,128.

Mr Narramore and Mr O'Neill had previously pleaded guilty to breaches related to the same conduct and were sentenced to four and a half years imprisonment, with a non-parole period of 20 months, and five years imprisonment, with a non-parole period of 22 months, respectively.

## Dongfang Modern Agriculture Holding Group Pty Ltd

ASIC takes enforcement action to promote corporate governance that maintains the integrity of the corporate registers. Lodging annual financial reports with ASIC, holding annual meetings and having the required number of officeholders are key obligations to promote investor confidence and support the integrity of Australia's financial system.

In November 2021, Chinese agricultural producer Dongfang Modern Agriculture Holding Group Pty Ltd was convicted and fined \$300,000 for failing to:

- › lodge with ASIC an annual report for its financial year ending 31 December 2019 and a half-year report for the period ending 30 June 2019
- › hold an annual general meeting for the 2019 calendar year
- › report to its members for the 2019 financial year
- › have a company secretary and at least three directors for the period 9 June 2019 to 27 July 2021.

## Enrico Pucci

ASIC takes action to prevent directors with a history of failed companies from continuing to manage corporations. In April 2022, ASIC disqualified former New South Wales cleaning and labour hire director Enrico Pucci from managing corporations for the maximum period of five years.

Mr Pucci was a director of three companies that were placed into external administration owing creditors more than \$9.7 million. ASIC found that he acted improperly and failed to meet his various obligations as director. In making the decision to disqualify Mr Pucci, ASIC also relied on a Federal Court judgment in proceedings brought against him by the Fair Work Commission, which found that Mr Pucci engaged in illegal phoenix activity and 'the shameless exploitation of a vulnerable workforce and inept attempts to avoid its legal consequences'.

## Phoenix Surveillance Campaign

ASIC uses a range of regulatory tools to identify, disrupt and take action against those who engage in illegal phoenix activity. The Phoenix Surveillance Campaign aims to proactively detect and prevent directors engaging in such activity.

ASIC and the ATO work together to identify directors who may be at risk of engaging in illegal phoenix activity and to educate them of their directors' duties and taxation obligations and the need to seek professional and trusted advice early if they are experiencing financial distress. Previously, campaigns have resulted in companies lodging outstanding ATO returns and evidence of positive impact on directors' behaviour. Between March and June 2022, as part of this year's campaign, ASIC conducted 37 surveillances, 18 of which were in conjunction with the ATO.

## 4.2 Education

ASIC seeks to improve the financial skills, knowledge and efficacy of consumers and equip them to make informed financial decisions through the provision of consumer education and information.

This work includes:

- › consumer education and information, primarily delivered through ASIC's Moneysmart website
- › collaborating with others to understand and measure the impact of consumer education on financial decision making
- › supporting ASIC's supervisory teams to strengthen their consumer-facing work.

Some key projects completed this year include the following.

**Young People and Money report:** ASIC established an Expert Group on the financial wellbeing of young people. The work of the Expert Group has informed the Moneysmart program and provided a greater understanding of the contexts in which young people make financial decisions or need additional support. In December 2021, ASIC released the Young People and Money report summarising ideas and themes arising from the work of the Expert Group.

**Young People and Money Survey:** The second wave of ASIC's Young People and Money Survey was completed in 2021. The 2020 and 2021 surveys each asked 1,500+ young Australians (aged 15–21) about their experiences, attitudes and behaviours across a range of money-related topics. Key findings across the two waves of this research were:

- › 54% of respondents wanted to learn how to manage money well and not waste it
- › 57% of respondents wanted to learn about how to invest, ways to invest, types of investments and possible risks and returns
- › 62% of respondents agreed or strongly agreed that 'I think it's important to start building up my superannuation while I'm young'
- › 51% of respondents agreed or strongly agreed with the statement 'I often feel stressed about money'

The results of this work have influenced the development of money programs supporting young Australians, including Get Moneysmart, launched in March 2022.

**Get Moneysmart:** In 2022, ASIC released Get Moneysmart, a suite of videos, tools and calculators to help young people with everyday money decisions. This new resource is designed to help young people manage their money, deepen their understanding of key money concepts and behaviours, and make money choices that work for them. It offers practical tips to help them make informed money decisions, manage an income, track their spending and plan for the future.

### **School financial literacy pilot program:**

ASIC contributed to a New South Wales state initiative, a pilot program aimed at middle years students. The New South Wales Treasurer's Financial Literacy Challenge was based on real-life learning opportunities, providing online activities to help students develop positive money habits. Students explored ways to make informed money decisions and understand the real costs associated with buying a pet and buying a car. The Financial Literacy Challenge pilot will inform an expanded initiative in 2023 and beyond.

**Supporting Australians impacted by natural disasters:** In February and March 2022, Australians experienced one of the nation's worst recorded flood disasters. ASIC used Moneysmart social media channels to provide important and timely information to help people make financial decisions in a crisis. ASIC worked across agencies and industry to create and deliver content dealing with disasters and financial decision making associated with recovering from natural disasters.

## **ASIC's Moneysmart**

ASIC's Moneysmart program is a trusted source of information for consumers and investors and a starting point for the many financial decisions people make every day. This year, one in every two Australian adults visited the Moneysmart website and engaged with Moneysmart messages via Facebook, Twitter and Instagram.

### **Helping Australians to manage their money and plan ahead**

In 2021–22, Moneysmart calculators and other resources to assist Australians with day-to-day money management received 6.5 million visits:

- › the Mortgage Calculator was used 1,428,000 times
- › the Compound Interest Calculator was used 1,126,000 times
- › the Budget Planner was accessed 660,000 times.

This year, 2.8 million Australians also visited Moneysmart when planning for their financial future:

- › content on investing and making an investment plan received 1,584,000 views
- › the Retirement Calculator was used 72,000 times
- › information on setting a savings goal was accessed by 198,000 people.

## Providing support to those in need

The Moneysmart website is a key information resource for Australians when things go wrong and they need help with money decisions. This year, 684,000 Australians connected with additional support through Moneysmart links. ASIC provided trusted information to Australians looking for urgent help with money, wanting to understand how to protect themselves from scams, and making financial decisions in the pandemic environment:

- › the 'What to do after a natural disaster' page received 13,000 visits
- › the 'Urgent help with money' page received 202,000 visits
- › 92,000 people engaged with content on scams
- › the Moneysmart COVID-19 Information Hub received 75,000 visits.

Through the Moneysmart program, ASIC supported initiatives from the ACCC; the ATO; the Department of Education, Skills and Employment; the Department of the Prime Minister and Cabinet; the Reserve Bank of Australia; Services Australia; and Treasury.