

# 2

## ASIC's annual performance statement

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## Chair's statement

I, Joseph Longo, as the accountable authority of ASIC, present the 2020–21 annual performance statement of ASIC, as required under paragraph 39(1)(a) of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act). In my opinion, the annual performance statement is based on properly maintained records, accurately reflects the performance of the entity, and complies with subsection 39(2) of the PGPA Act.

## Our purpose

Our vision – a fair, strong and efficient financial system for all Australians – reflects our purpose as Australia's conduct regulator for corporations, markets, financial services and consumer credit and highlights the important role we play on behalf of all Australians.

### 2.1 Performance objectives

ASIC's performance reporting in 2020–21 was guided by our Corporate Plan and our 2020–21 Portfolio Budget Statement, which set out our objectives and targets related to investor and consumer trust and confidence, and fair and efficient markets.

In particular, we aim to achieve our **key performance outcome**, as stated in the Portfolio Budget Statement, of 'improved confidence in Australia's financial markets through promoting informed investors and financial consumers, facilitating fair and efficient markets and delivering efficient registry systems'.

We aim to do this by:

- › pursuing enforcement outcomes
- › undertaking supervision and surveillance
- › engaging with consumers and industry stakeholders
- › providing guidance, input into law reform, and consumer education.

These regulatory tools are used to achieve our vision of ensuring a fair, strong and efficient financial system for all Australians.

## 2.2 Key results

Table 2.2.1 sets out our key results for 2020–21 across our supervision, surveillance, enforcement, guidance and education work.

The number of supervisory, surveillance and enforcement actions we undertake, the value of fines imposed or people convicted, and the length of their sentences vary from year to year. The variations depend

on factors such as the severity of breaches of the law and the complexity of the investigations we undertake. The results also reflect the impact of the COVID-19 pandemic, which meant that close and continuous monitoring onsite supervisory work was not possible for a large portion of 2020.

**Table 2.2.1 Key results<sup>1</sup>**

Outcome	Total 2020–21	Total 2019–20
<b>Institutional supervision<sup>2</sup></b>		
Onsite supervisory exercises commenced	1	5
Findings letters issued	2	6
Number of days onsite	59	98
Number of representatives met during onsite supervisory exercises	197	357
<b>Surveillance</b>		
Surveillances completed <sup>3</sup>	Over 1,080	Over 1,250
Instances of potentially misleading or deceptive promotional material withdrawn or amended	59	48
Interim stop orders and final stop orders	13	22

1 This year, we do not have comparative 2019–20 statistics for measures relating to the time taken to complete investigations. This is because during the 2019–20 financial year, we moved to a new workflow platform and these statistics could not be recorded consistently over the period of the transition from the older platform to the new one. Now that the transition is complete, we are again able to accurately record and report on these statistics.

2 Institutional onsite supervisory activities conducted by close and continuous monitoring were suspended for much of 2020. Therefore, these statistics reflect activities undertaken primarily in the first half of 2021, with only minimal days spent onsite during December 2020. 'Onsite' supervisory exercises include those undertaken using virtual and hybrid approaches to engagement.

3 This includes over 30 surveillances involving an onsite presence.

Outcome	Total 2020–21	Total 2019–20
<b>Enforcement<sup>4</sup></b>		
<b>Investigations</b>		
Investigations commenced <sup>5</sup>	110	134
<b>Criminal actions</b>		
Criminal litigation completed	29	35
Criminal litigation completed successfully (as a percentage)	100%	90%
New criminal litigation commenced	53	41 <sup>6</sup>
Average time to complete an investigation (in months)	28	–
Average time to a criminal court decision (in months)	12	–
Average total time to complete an investigation and reach a court decision (in months)	40	–
<b>Criminal outcomes</b>		
Number of people/companies convicted <sup>7</sup>	29	30
Custodial sentences (including fully suspended)	10	22
Non-custodial sentences/Fines	19	8
Total dollar value of fines	\$151,100	\$731,650
Total dollar value of reparation orders	\$1.8m	0
<b>Civil action</b>		
Civil litigation completed	46	37
Civil litigation completed successfully (as a percentage)	93%	97%

4 ASIC moved to a new regulatory workflow platform in 2019–20. Due to differences in the way enforcement activities were recorded in the legacy system compared to the new platform, statistics relating to the time taken to complete criminal and civil actions were not reported last year. The time taken to complete investigations and litigation action has been included for 2020–21.

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

6 Last year, we reported that 38 new criminal litigation actions were commenced. This number has been corrected to include a further three criminal actions that were omitted due to delays in record keeping.

7 This includes six successful criminal actions where either a good behaviour bond or a fine was imposed without a conviction recorded.

<b>Outcome</b>	<b>Total 2020–21</b>	<b>Total 2019–20</b>
New civil litigation commenced	83	50
Average time to complete an investigation (in months)	13	–
Average time to a civil court decision (in months)	13	–
Average total time to complete an investigation and reach a court decision (in months)	26	–
<b>Civil outcomes</b>		
Total dollar value of civil penalties	\$189.4m	\$24.9m
<b>Administrative actions and outcomes<sup>8</sup></b>		
Action taken against auditors and liquidators	49	62
People disqualified or removed from directing companies <sup>9</sup>	49	51
People/Companies removed, restricted or banned from providing financial services	49	79
People/Companies removed, restricted or banned from providing credit services	46	29
<b>Court enforceable undertakings</b>		
Court enforceable undertakings accepted	3	0
Compensation or remediation agreed in court enforceable undertakings <sup>10</sup>	\$9.1m	\$0
<b>Infringement notices<sup>11</sup></b>		
Total number of infringement notices issued	3	4
Total dollar value of infringement notices	\$392,000	\$671,000

8 This includes all disqualifications, suspensions, cancellations and bannings resulting from surveillance and enforcement activities.

9 This includes four disqualifications arising from civil proceedings, where the court ordered the defendants be disqualified from directing companies.

10 Compensation or remediation programs monitored by ASIC are not reflected in this statistic. Amounts in compensation or remediation were agreed in court enforceable undertakings accepted by ASIC.

11 These notices were issued for infringements related to the market integrity rules and continuous disclosure. Compliance with infringement notices is not an admission of guilt or liability and these entities are not taken to have contravened the law.

Outcome	Total 2020–21	Total 2019–20
<b>Summary prosecutions</b>		
Summary prosecutions for strict liability offences	224	248
Total value of fines and costs	\$669,906	\$793,670
<b>Applications for relief from the Corporations Act</b>		
<b>Relief applications<sup>12</sup></b>		
Relief applications received	948	1,308
Relief applications approved	755	919
Relief applications refused or withdrawn	238	217
Relief applications in progress	168	172
<b>Licensing and professional registration activities</b>		
<b>Administrative decisions</b>		
Licensing and registration applications received	2,075	1,500
Licensing and registration applications approved	1,159	1,090
Licensing and registration applications refused or withdrawn	410	403
Licensing and registration applications in progress	1,146	653
<b>AFS licences, including limited AFS licences (new and variations)</b>		
Applications approved	776	741
Applications refused/withdrawn	270	248
Licences cancelled/suspended	308	333
Applications in progress <sup>13</sup>	873	484

12 From July 2021, relief applications are lodged and received through the ASIC Regulatory Portal. Due to the differences in the way lodgements were recorded in the legacy system compared to the new platform, statistics relating to relief applications for 2020–21 are not comparable to previous years. The statistics reflect lodgements received and the overall outcome. In previous years, the statistics reflected applications made according to the applicable legislative provision.

13 The increased volume compared to 2019–20 related to applications for claims handling and settling services, and debt management activities, as participants needed to lodge applications before 30 June 2021 in order to have the benefit of transitional relief.

Outcome	Total 2020–21	Total 2019–20
<b>Australian credit licences (new and variations)</b>		
Applications approved	219	233
Applications refused/withdrawn	114	117
Licences cancelled/suspended	278	390
Applications in progress	260	158
<b>Registered auditors – registered company auditors, authorised audit company and SMSF auditors</b>		
Applications approved	164	116
Applications refused/withdrawn	26	38
Licences cancelled/suspended	546	521
Applications in progress	13	11
<b>Registered liquidators<sup>14</sup></b>		
Liquidators registered by ASIC	31	17
Registration committees convened during the year	37	21
<b>Outcome of registration committees convened during the year</b>		
Applications for registration approved by committee	27	14
Applications for registration refused by committee	8	1
Committee matters in progress – registration applications yet to be determined	2	6 <sup>15</sup>

14 Our methodology for presenting the activity of the registration committee has changed this year. Accordingly, the comparative outcomes for 2019–20 shown above differ from those reported in ASIC's annual report for 2019–20.

15 Of the six committee matters in progress at 30 June 2020, one application was refused during 2020–21 and five applications were approved during 2020–21. These outcomes are not included in the table of outcomes for committees convened during 2020–21.

Outcome	Total 2020–21	Total 2019–20
<b>Consultation and guidance</b>		
Consultation papers published	14	15
Industry reports published	28	44
New or revised regulatory guides published	36	29
New or revised information sheets	50	31
Legislative instruments made, amended and repealed	54	50
<b>Education</b>		
Users visiting ASIC's Moneysmart website <sup>16</sup>	11.0m	10.4m
Average number of users to the Moneysmart website per month	1.0m	979,957
Number of users who have used a Moneysmart online tool	4.6m	3.4m
Average number of users using a Moneysmart tool per month	440,764	325,027

<sup>16</sup> The number of people visiting the Moneysmart website includes users from around the world. Of the 11.0m users, 10.0m (91%) were from Australia using an Australian IP address.



## 2.3 ASIC Service Charter results

The ASIC Service Charter covers the most common interactions between ASIC and our stakeholders and sets performance targets for these.

Table 2.3.1 sets out our performance against the key measures outlined in the Service Charter for the 2020–21 financial year.

**Table 2.3.1 ASIC Service Charter performance 2020–21**

Service	Measure	Target	Result
<b>When you contact us</b>			
General telephone queries	We aim to answer telephone queries on the spot	80%	90%
General email queries	We aim to reply to email queries within three business days	90%	98%
<b>Give reasonable assistance</b>			
Searching company, business name or other data online	We aim to ensure that our online search service is available between 8.30 am and 7.00 pm AEST Monday to Friday, excluding public holidays	99.5%	100%
Lodging company, business name or other data online	We aim to ensure that you can lodge registration forms and other information online between 8.30 am and 7.00 pm AEST Monday to Friday, excluding public holidays	99.5%	100%
<b>When you do business with us</b>			
Registering a company or business name online	We aim to register the company or business name within one business day of receiving a complete application	90%	100%
Registering a company via paper application	We aim to register the company within two business days of receiving a complete application	90%	95%

Service	Measure	Target	Result
Registering a business name via paper application	For paper applications lodged by mail – complete applications for business name registrations within seven business days	90%	100%
Updating company, business name or other ASIC register information online	For applications lodged online – enter critical information and status changes to company or business name registers within one business day	90%	100%
Updating company, business name or other ASIC register information via paper application	For paper applications lodged by mail – enter critical information and status changes to company or business name registers within five business days	90%	94%
Registering as an auditor	We aim to decide whether to register an auditor within 28 days of receiving a complete application	80%	92%
Registering a managed investment scheme	By law, we must register a managed investment scheme within 14 days of receiving a complete application, except in certain circumstances	100%	100%
Applying for or varying an AFS licence	We aim to decide whether to grant or vary an AFS licence within 150 days	70%	Granted: 74% Varied: 75%
	We aim to decide whether to grant or vary an AFS licence within 240 days	90%	Granted: 91% Varied: 88%
Applying for or varying a credit licence	We aim to decide whether to grant or vary a credit licence within 150 days	70%	Granted: 95% Varied: 95%
	We aim to decide whether to grant or vary a credit licence within 240 days	90%	Granted: 98% Varied: 97%

Service	Measure	Target	Result
Applying for relief <sup>17</sup>	We aim to give an in-principle decision within 28 days of receiving all necessary information and fees for applications for relief from the Corporations Act that do not raise new issues	70%	66%
	We aim to give an in-principle decision within 90 days of receiving all necessary information and fees for applications for relief from the Corporations Act that do not raise new issues	90%	85%
Complaints about misconduct by a company or individual	If someone reports alleged misconduct by a company or an individual, ASIC aims to respond within 28 days of receiving all relevant information	70%	73%

#### When you have complaints about us

About ASIC officers, services or actions	We aim to acknowledge receipt of complaints within three working days of receipt. We aim to resolve a complaint within 28 days	70%	Resolved within 28 days: 99%
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<sup>17</sup> The 28-day and 90-day Service Charter targets for in-principle decisions on relief applications were affected due to ASIC's transition to a new platform. Instances where all necessary information had not yet been received and novel applications could not be identified are excluded from the calculation of the Service Charter result, as they would have been in the legacy system. These issues are currently being addressed.

## 2.4 Analysis: Implementing our performance objectives

This year, our work aligned with the priorities outlined in the Corporate Plan published in August 2020.

These priorities are summarised on pages 41–43.

In June 2020, we also published the *ASIC Interim Corporate Plan 2020–21: Strategic priorities responding to the impact of the COVID-19 pandemic* (ASIC's Interim Corporate Plan), outlining five strategic priorities to address the impact of the COVID-19 pandemic. These priorities were incorporated into the Corporate Plan. They have been a central focus over the last year and will remain a focus for us in the near term. They are summarised on page 41.

### Measuring our performance

We use qualitative and quantitative measures to evaluate and review our performance, as detailed in our Corporate Plan. We measure both:

- › **regulatory outcomes**, which include the direct results from using our suite of regulatory tools
- › **market outcomes**, which reflect the impact of our regulatory work on the markets and sectors we regulate, including on investors and consumers.

We are currently enhancing the quantitative measures we use to report on efficiency and effectiveness. In particular, we are enhancing measures of:

- › efficiency by adopting a framework for the evaluation of the time, cost and quality of key regulatory processes
- › effectiveness by continuing an impact assessment pilot to improve our assessment of specific regulatory interventions.

Our regulatory tools include:

- › enforcement
- › supervision
- › surveillance
- › licensing
- › engagement
- › guidance
- › education
- › input into law reform.

For most of the issues in our remit, we employ a combination of our regulatory tools to achieve outcomes for consumers and investors.

In reporting on our work, we combine quantitative and qualitative indicators to provide a narrative about our approach. Our regular reports about the volume and results of our activities include our six-monthly enforcement updates, our monthly market integrity updates and regular reports about corporate insolvency and corporate finance.

This chapter sets out key results against our priorities and how we have used our regulatory toolkit to achieve those results.

# ASIC Corporate Plan priorities

## Priorities to address the COVID-19 pandemic

### Protect consumers from harm at a time of heightened vulnerability

We have focused on taking action against predatory lending, disrupting the mis-selling of harmful products and acting against scams.

Key results and examples are set out on pages 45, 54, pages 61–62 and on pages 76–79.

### Maintain financial system resilience and stability

We have responded promptly to instances of market dislocation and disorder as well as many other practices and use continuous monitoring and enforcement where required.

Key results and examples are set out on pages 54–58 and in Sections 3.5 and 3.6.

### Support Australian businesses to respond to the effects of the COVID-19 pandemic

We have provided relief on a temporary basis to facilitate the operations of businesses at a time of potential financial stress, and we have focused on processing expedited individual relief applications in an efficient manner to support the operational activities of regulated entities.

Key results and examples are set out in Table 2.2.1 and on page 56 and in Section 3.7.

### Continue to identify, disrupt and take enforcement action against the most harmful conduct

During the COVID-19 pandemic, we have paid particular attention to reports of scams and misleading conduct, including by cracking down on unlicensed conduct. We have focused our enforcement activities on the most egregious misconduct and conduct that harms vulnerable consumers.

Key results and examples are set out on pages 44–53.

### Continue to build our organisational capacity in challenging times

We have moved quickly to provide our staff with the means to conduct investigations and litigation effectively in the COVID-19 pandemic environment, which include the establishment of secure ways to conduct confidential examinations and interviews remotely.

We are working to improve the way we measure and assess our performance and illustrate the impacts and outcomes of our work. In particular, we will examine, and be informed by, the lessons learnt during this period to further improve our crisis response plans for the future.

Key results and examples are set out in Section 1.2 and on pages 43–44.

## Priorities beyond the COVID-19 pandemic

### Promoting confident participation in the financial system to support long-term economic recovery

We have focused on supporting the long-term recovery of the Australian economy. This includes fostering positive behaviours of fairness, strong governance controls, and robust disclosure and reporting practices, as well as encouraging healthy competition and appropriate and timely consumer compensation.

Key results and examples are set out on pages 55–58 and in Sections 3.3 and 3.7.

### Deterring poor behaviour and misconduct through our enforcement approach and driving cultural change using all of our regulatory tools

We have focused on efficient and effective enforcement action, particularly cases that have a high deterrence value and those responding to egregious misconduct – for example, misconduct affecting vulnerable consumers.

Key results and examples are set out on pages 44–53.

### Improving entities' management of key risks to prevent and mitigate harms to consumers and promote a healthy financial system and economic growth

We have supported measures to improve the financial skills, knowledge and efficacy of consumers and entities and to provide them with information and tools to help them make informed financial decisions.

Key results and examples are set out on pages 60–67.

### Addressing consumer harm as a result of elevated debt levels and hardship, with a focus on predatory lending

We have continued to increase the use of rapid and disruptive enforcement action to prevent predatory lending and punish breaches of the law. We have also focused on situations where consumer segments are particularly vulnerable or susceptible to predatory behaviour.

Key results and examples are set out in Table 2.2.1 and on pages 76–79.

### Reducing poor product design and restricting mis-selling

We have focused on monitoring the design and sale of financial products, the potential use of unfair contact terms, and distribution practices that may lead to poor outcomes for consumers and may breach the law.

Key results and examples are set out on page 49 and in Section 3.2.

## Reducing misconduct by company directors and professional service providers

We continued to ensure that individual accountability is given appropriate attention in our investigations in relation to company directors and officers.

Key results and examples are set out in Table 2.2.1 and Section 3.7.

## Delivering as a conduct regulator for superannuation

We continued to work on establishing ASIC as the primary regulator of conduct in superannuation, consistent with the Government's response to the Royal Commission recommendations.

We took action to deter misconduct, supported relevant legislative reforms, and continued our supervision and surveillance of superannuation trustees, focusing on whether trustees act in the best interests of consumers and treat them fairly.

Key results and examples are set out in Section 3.4.

## Strengthening our capabilities to support our vision

### Data and analytics

We have continued to build on our data and analytics capabilities during 2020–21 to better support our regulatory work. A number of material developments in the last year have allowed ASIC to better exploit the value of our data and drive improvement in ASIC operations. Some examples include:

- › developing and initiating the long-term ASIC Data Strategy 2021–2026
- › implementing our Data Lake platform to allow storage and processing of data at the scale required, and provide our data professionals with access to the latest analytic tools
- › building our data catalogue through automated scanning of our systems
- › execution of multiple data initiatives leveraging tools and methodologies involving natural language processing, automation and self-serve dashboards, as well as the exploration of artificial intelligence and machine learning.

In the future, recurrent data collections and data sharing will be a feature of ASIC's data and analytic capability uplift. Once completed, these collections will maximise the availability and use of data across Government, minimise industry burden and the need for ad hoc collection, and better focus our regulatory attention.

Recurrent data collection initiatives in development include:

- › internal dispute resolution – collection of internal customer complaints data from ASIC-regulated financial services organisations
- › managed funds – collection of granular fund-level descriptive and performance data on managed funds
- › mortgages – collection of granular account-level descriptive and performance data on mortgages
- › working with APRA on APRA’s Superannuation Data Transformation and the Financial Accountability Regime data collections
- › enhancement for data-sharing initiatives between the ATO and ASIC to help identify illegal phoenix activity.

## Regulatory Transformation Program

Our Regulatory Transformation Program continued to deliver improvements for our stakeholders and regulatory work.

From August 2020, all fundraising documents and corporate finance lodgements were able to be lodged via the ASIC Regulatory Portal, and a new Offer Notice Board was launched to list all fundraising offers. Applications for relief were moved from an email inbox to structured smartforms on the portal, helping make the application process more efficient.

Transactions in the Regulatory Portal are structured to make it easier for stakeholders to understand what information they need to provide ASIC. Paper forms have been replaced with smartforms that only ask questions relevant to each transaction type. These smartforms are prefilled with details

already held by ASIC, with quick links to relevant regulatory guides. There are over 62,000 individual users on the portal and over 45,000 organisations represented.

The digitisation of transactions and workflows enables ASIC to track each case more easily from initial breach or misconduct reports through to enforcement action. We now have a comprehensive view of our stakeholders that combines information such as licence applications, fundraising documentation, company directors, complaints and investigations. This enhanced visibility supports better decision making and provides a better understanding of the sectors we regulate.

## Our regulatory tools

### Enforcement

Enforcement action is one of the key regulatory tools available to us to help achieve a fair, strong and efficient financial system for all Australians. Our enforcement actions focus on areas of greatest harm in order to take an active and targeted approach to enforcement.

Our Office of Enforcement was established in July 2019. Its role is to increase the focus on priority matters, implement centralised decision-making processes, ensure adequate and flexible resourcing, and achieve greater consistency in our enforcement approach.



## Enforcement priorities

As a priority, we target cases of high deterrence value and those involving egregious harm or misconduct, particularly towards vulnerable consumers. In addition to Royal Commission referrals and case studies, ASIC's Office of Enforcement prioritises:

- › misconduct related to superannuation and insurance
- › cases that engage our new powers or provisions that now carry penalties or higher penalties
- › illegal phoenix activity
- › auditor misconduct
- › new types of misconduct, including misconduct carried out online or using emerging technologies.

ASIC will also always prioritise taking action on:

- › significant market misconduct
- › misconduct that is serious by either its nature or extent of harm, or that involves a large market participant or licensed entity
- › misconduct that involves a high risk of significant consumer harm, particularly involving vulnerable consumers
- › misconduct by individuals, particularly criminal conduct, or governance failures at board or executive level.

## Enforcement priorities in response to the COVID-19 pandemic

In response to the impact of the COVID-19 pandemic on the financial system and the potential for harm that this has created, we have continued to pursue matters to address the following issues:

- › conduct that seeks to exploit the pandemic environment, including predatory lending, mis-selling and poor claims handling
- › opportunistic conduct, including scams
- › failures to disclose materially negative information
- › opportunistic and misleading market announcements
- › egregious governance failures within corporations, schemes and superannuation funds.

Guided by these priorities, ASIC conducted investigations and sought urgent orders to protect vulnerable consumers. This included obtaining:

- › injunctions to restrain companies in the Mayfair 101 Group from promoting debenture products
- › interim orders restraining New South Wales-based PW Kitt Co Pty Ltd and its sole director, Larry John Dawson, from disposing of assets
- › interim orders and injunctions against Debt Wipeout and associated individuals for unlicensed financial services
- › freezing orders against Perth-based Monica Kaur and associated property developers providing unlicensed financial advice services and involved in, promoting and operating an unregistered managed investment scheme

- › orders restraining Matthew Alan Beresford from carrying on a financial services business and suspending the websites of Maxwell Financial Services and Asset Capital Holdings.

### **Criminal convictions**

In 2020–21, as a result of our investigations, 29 people were convicted of criminal offences, with 10 people receiving custodial sentences (including those fully suspended).

### **Civil actions**

In 2020–21, we completed 46 court actions, covering issues such as unlicensed consumer leasing; fees for no service breaches; overcharging interest; misleading and deceptive conduct; unconscionable conduct; continuous disclosure contraventions; failure to provide financial services efficiently, honestly and fairly; and failure to comply with the best interests duty and related obligations under the Corporations Act.

Of these cases, 93% were successful. The total value of penalties for the cases was \$189.4 million.

### **Protective actions**

We banned, removed or restricted 49 people or companies from providing financial services, and 46 people or companies from providing credit services.

We disqualified or removed 49 people from directing companies.

### **Corrective actions**

We took action where credit licensees, superannuation trustees or responsible entities made misleading statements to consumers or investors. There were 59 instances of potentially misleading or deceptive promotional material withdrawn or amended in 2020–21.

### **Infringement notices**

In 2020–21, we issued three infringement notices and received a total of \$392,000 in payments pursuant to these infringement notices. We issued infringement notices against:

- › Regional Express Holdings Limited
- › Macquarie Securities (Australia) Limited
- › Life Trading Pty Ltd.

Two of these were issued by the Markets Disciplinary Panel, specifying a total of \$326,000 in penalties for alleged breaches of the market integrity rules.

One of those infringement notices also required the market participant to enter into a court enforceable undertaking to appoint an independent expert to review and report on whether the participant has appropriate supervisory policies and procedures to ensure compliance with the market integrity rules.

### **Helping protect small business**

Where necessary, we take action against companies, directors and other officeholders who fail in their duties. By doing so, ASIC works to create a level playing field. This year, ASIC recorded 313 small business-related outcomes.

**Table 2.4.1 Small business enforcement outcomes by misconduct and remedy type**

Misconduct type	Criminal	Administrative	Total (misconduct)
Action against persons or companies	235	78	313

Of the actions summarised in Table 2.4.1:

- › 210 convictions relate to external administrator programs
- › 14 convictions relate to companies that failed to lodge annual financial reports with ASIC
- › 11 relate to criminal convictions prosecuted by the Commonwealth Director of Public Prosecutions, of which three received custodial sentences and two related to illegal phoenix activity
- › 44 persons were disqualified from managing corporations, of which four related to illegal phoenix activity
- › 34 Australian credit licences were cancelled or suspended.

As at 1 July 2021, ASIC had 142 small business-related criminal cases underway against persons or companies.

ASIC also works to combat illegal phoenix activity. This year, of the 78 administrative actions in Table 2.4.1, four involved disqualification of directors where there were clear signs of illegal phoenix activity. In addition to these administrative outcomes, ASIC achieved two criminal convictions for matters that related to directors engaging in illegal phoenix activity. ASIC is committed to using its regulatory tools of engagement, surveillance and enforcement to identify, disrupt and take action against those who engage in illegal phoenix activity.

## Enforcement examples

### **Westpac subsidiaries: Personal financial advice about superannuation**

On 3 February 2021, a unanimous High Court confirmed that Westpac Bank subsidiaries, Westpac Securities Administration Limited and BT Funds Management Limited (the Westpac subsidiaries), breached financial services laws.

These breaches related to telephone sales campaigns conducted by the Westpac subsidiaries where consumers were told that they were being provided with general financial advice. In the calls, the Westpac subsidiaries recommended that consumers roll out of their other superannuation funds into Westpac-related superannuation accounts.

The court agreed with ASIC that the context and detailed discussions in the calls meant that the Westpac subsidiaries were actually providing personal advice. Neither Westpac subsidiary was licensed to provide personal financial product advice.

The court held that if a sales campaign is constructed so that a reasonable person might expect the caller to have considered the particular financial situation of the consumer, then it will fall within the personal advice provisions.

ASIC brought this enforcement action because of a concern that Westpac relied on a financial product sales model that blurred the line between general and personal advice.

ASIC argued, and the court agreed, that consumers' decisions regarding superannuation accounts are 'significant financial decision[s]' and, as the advice was personal financial advice, it needed to comply with the requirement that it be in the best interests of the consumer. The court held that Westpac provided advice that was not in the best interests of consumers. In fact, this conduct had the potential for significant harm to consumers.

## **Mayfair made 'misleading or deceptive' statements and 'created a false and misleading impression' of its debenture products**

On 23 March 2021, the Federal Court found that Mayfair Wealth Partners Pty Ltd and its associated companies engaged in misleading or deceptive conduct, and made false or misleading representations in advertisements for its debenture products.

Mayfair was previously promoting two debenture products to wholesale investors by using sponsored link internet advertising through Google AdWords and Bing Ads, so that the websites for Mayfair's debenture products appeared as sponsored links when consumers searched online for 'bank term deposit' or 'term deposit'.

Justice Anderson found that Mayfair engaged in misleading or deceptive conduct, and made false or misleading representations, by representing that:

- › Mayfair's debenture products were comparable to, and of similar risk profile to, bank term deposits
- › the principal investment would be repaid in full on maturity
- › Mayfair's debenture products were specifically designed for investors seeking certainty and confidence in their investments and therefore carried no risk of default.

The court also found that Mayfair and M101 Nominees engaged in further misleading or deceptive conduct and made false or misleading representations by representing that the M Core Fixed Income Notes were fully secured, when they were not.

This action was taken as part of ASIC's 'True to Label' project targeting investment managers and financial product issuers who have lured unsophisticated investors into high risk products via misleading marketing. This matter demonstrates that ASIC will take action not only where investments are marketed as safer, lower risk or more liquid when they are not, but also where search engines or online platforms are used in a misleading or deceptive way to entice investors to purchase products that they are not searching for.

## **ASIC enforcement action against major financial institutions for significant customer harm caused by poor systems, processes and monitoring**

The Royal Commission identified a class of conduct whereby customers were charged fees for services that were not provided to them (known as 'fees for no service' or FFNS) or customers were not receiving the promised benefits from financial services and products. The conduct has been the subject of ongoing enforcement action and investigation by ASIC.

What has been central to many of these instances of misconduct has been a failure of systems design and implementation, poor monitoring of those systems and processes, and delay in identifying, fixing and remediating customers for these system failures. As at 30 June 2021, six of Australia's largest banking and financial services institutions had paid, or offered to pay, a total of \$1.86 billion in compensation to customers who suffered loss or detriment because of FFNS misconduct or non-compliant advice.

ASIC has brought the following enforcement actions arising from these kinds of system and process failures:

- › The Commonwealth Bank of Australia (CBA) was ordered to pay a \$5 million penalty after the court found that CBA had breached the ASIC Act and the Corporations Act by failing to provide promised benefits to customers of its AgriAdvantage Plus Package.
- › Two NAB superannuation trustee companies (NULIS Nominees (Australia) Limited and MLC Nominees Pty Ltd) were ordered by the Federal Court to pay a \$57.5 million penalty for FFNS breaches. This is one of the largest total penalties ever imposed in a civil action filed by ASIC and reflects the egregious nature of FFNS misconduct.
- › Australia and New Zealand Banking Group Limited (ANZ) was ordered to pay \$10 million in penalties after being found to have engaged in unconscionable conduct and breached its obligations as a financial services licensee over the charging of certain fees to personal and business customers in relation to periodic payments.
- › CBA was ordered to pay a \$7 million penalty after the Federal Court had previously declared that CBA made false or misleading representations and engaged in misleading and deceptive conduct, which led to a rate of interest being charged on business overdraft accounts that was substantially higher than what its customers had been advised.

## **Winding up of unregistered managed investment scheme and operating a financial services business without an AFS licence involving significant investor funds**

In December 2020, the Federal Court found that Chris Marco, AMS Holdings (WA) Pty Ltd (AMS) and AMS as trustee of the AMS Holdings Trust contravened the Corporations Act by operating an unregistered managed investment scheme (UMIS) and carrying on a financial services business without holding an AFS licence. The court ordered the winding up of the UMIS operated by Mr Marco and AMS and appointed McGrath Nicol as liquidators and as receivers and managers over all the defendants' property. It further ordered that Mr Marco be permanently restrained from carrying on a financial services business without an AFS licence and restrained from operating an UMIS.

The civil action was commenced following ASIC inquiries which identified that Mr Marco had accepted over \$200,000,000 from more than 130 investors over a 10-year period and the deficiency in net assets of the scheme was in the hundreds of millions of dollars.

## Significant financial penalties imposed for harmful conduct targeting vulnerable consumers in the retail over-the-counter market

As part of ASIC's enforcement priority to address misconduct that involves a high risk of significant consumer harm, particularly to vulnerable consumers, ASIC has achieved significant outcomes in two enforcement actions taken against retail over-the-counter (OTC) derivative providers.

### \$75 million penalty ordered against AGM Markets Pty Ltd and its authorised representatives

In October 2020, the Federal Court ordered that AGM Markets Pty Ltd and two of its authorised representatives, OT Markets Pty Ltd and Ozifin Tech Pty Ltd, pay a total of \$75 million in penalties for systemic unconscionable conduct while providing OTC derivative products to retail investors.

Justice Beach also ordered that refunds be paid to approximately 10,000 former clients. The court heard that account managers engaged on behalf of OT Markets Pty Ltd were told to 'kill your customers', a reference to encouraging their clients – often vulnerable investors whose trust the account managers had sought to win – to make deposits and trades.

### \$20 million penalty ordered against Forex Capital Trading Pty Ltd

On 29 April 2021, the Federal Court ordered Forex Capital Trading Pty Ltd (Forex CT) to pay a \$20 million penalty for engaging in systemic unconscionable conduct, paying conflicted remuneration to its team leaders and account managers, and failing to act in the best interests of its clients. The court also ordered that its sole director, Shlomo Yoshai, pay a \$400,000 penalty and be disqualified from managing corporations for eight years for breaching his duties as a director and aiding Forex CT's unconscionable conduct.

Previous to the court's decision, ASIC had cancelled Forex CT's AFS licence, banned Mr Yoshai from providing financial services for 10 years, and similarly banned two former Forex CT team leaders and three former account managers from providing financial services for periods ranging from three to six years.

These enforcement outcomes demonstrate that OTC providers must have proper systems in place to ensure that they, and their representatives, comply with the law when dealing with customers.



## Former CFO guilty of market manipulation and fraud offences

In May 2021, Zhonghan Wu (also known as John Wu), the former chief financial officer of Traditional Therapy Clinics Limited (TTC), was sentenced in the District Court (NSW) to an intensive corrections order for one year and 10 months, which included a condition that he perform 200 hours of community service.

Mr Wu was also sentenced to a community corrections order for two years and six months after pleading guilty to fraud offences.

ASIC's investigation found that between 8 September 2015 and 30 November 2015, Mr Wu carried out, and attempted to carry out, multiple share transactions in TTC shares using four different trading accounts. The trading had the effect of creating an artificial price for TTC shares on the Australian Securities Exchange (ASX). When trades in one trading account were rejected for suspicious trading, Mr Wu would use another trading account to continue trading in TTC shares.

Mr Wu's trading occurred immediately after TTC's listing on ASX, following an initial public offering (IPO) in August 2015 that raised approximately \$15 million through the issuance of 30 million TTC shares at \$0.50 a share. Mr Wu carried out the transactions in order to maintain the TTC share price above the IPO issue price of \$0.50 per share.

In addition to the market manipulation offence, Mr Wu was also found guilty of fraud. In 2012 and 2015, Mr Wu obtained loans from CBA for mortgages to purchase various properties. In support of his loan applications, Mr Wu provided false and misleading documents to CBA. The loan applications resulted in Mr Wu receiving funds totalling \$360,000.

This result aligns with ASIC's enforcement priority to take action over serious market misconduct and to hold gatekeepers to account.

The matter was prosecuted by the Commonwealth Director of Public Prosecutions after a referral from ASIC.

## 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 123 intelligence products to partner agencies and received 287 intelligence reports.

- › **Phoenix Taskforce:** Together with other federal, state and territory agencies, ASIC is a member of the ATO-led Phoenix Taskforce. The Phoenix Taskforce's whole-of-government strategy is to reduce the incidence and impact of illegal phoenix activity.

ASIC's work as part of the Phoenix Taskforce for 2020–21 included publishing information about illegal phoenix activity; working with the ATO to implement the Data Fusion Joint Analytics, which fuses data from both agencies and applies advanced analytics to identify illegal phoenix behaviours for early intervention and disruption; and 42 Phoenix Surveillance Campaign visits, involving ATO and ASIC officers educating directors about illegal phoenix activity and discussing current compliance obligations.

- › **Serious Financial Crimes Taskforce:** The SFCT is a multi-agency initiative targeting offences related to serious fraud, money laundering and defrauding the Commonwealth.

In 2020–21, we continued our contributions to the priorities of the SFCT relating to international tax evasion, illegal phoenix activity, cybercrime affecting the Australian taxation and superannuation systems and serious financial crime affecting the ATO-administered measures of the Commonwealth Coronavirus Economic Response Package.

- › **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.

During the reporting period, ASIC continued contributions to Fintel Alliance priorities addressing networked and complex financial crime.

## Supervision and surveillance

### Institutional supervision

Institutional supervision, conducted by ASIC's close and continuous monitoring team, focuses on those financial institutions that have the greatest potential impact on consumers, due to market share or other factors. This focused supervision seeks to proactively minimise misconduct and consumer harm through the uplift of organisation-wide factors, including governance, accountability, systems and culture. The Big 4 Banks (CBA, WBC, NAB and ANZ) and AMP have been subject to institutional supervision since late 2018, with Suncorp joining the cohort in 2020–21.

During the first half of 2020–21, onsite review programs were temporarily suspended due to the COVID-19 pandemic. The focus changed to leveraging our ongoing engagements with the institutions to understand and oversee their response to issues arising from the pandemic, particularly the impact on vulnerable consumers.

As Australia started to adjust to pandemic conditions, we recommenced our deep dive supervisory reviews, adopting a hybrid approach to supervision and leveraging engagement using virtual technologies combined with onsite engagement, where feasible. This adapted approach has enabled us to be responsive as the COVID-19 pandemic continues while ensuring that this important work continues. During the latter part of 2020–21, we initiated our reviews of the internal audit functions of the focus institutions (this work will

continue in 2021–22) and initiated our engagement with Suncorp by conducting a comprehensive review of its incidents and issues management and internal dispute resolution systems and practices.

Throughout 2020–21, we continued to monitor actions taken and outcomes achieved by the institutions in response to reviews conducted in prior years.

For more information on the outcomes observed during 2020–21 in response to the previous review of internal dispute resolution, see page 110.

### Governance supervision

ASIC's Governance team is focused on improving customer and investor outcomes by uplifting the governance practices of, and implementing governance related reforms affecting, a broad spectrum of entities that ASIC regulates.

In 2020–21, our key focus areas have been:

- › driving ASIC's preparation to implement and jointly administer with APRA the proposed Financial Accountability Regime, a multi-year project that aims to improve transparency and strengthen accountability and governance in relation to both prudential and conduct-related matters

- › reviewing whistleblower policies of public companies, large proprietary companies and superannuation trustees to understand how entities are responding to the recent whistleblower reforms and to engage with entities to improve policy standards
- › reviewing corporate governance statements from ASX-listed companies to understand the quality of disclosure about governance practices and adherence to the ASX Corporate Governance Council Principles and Recommendations
- › engaging with firms on the findings from our review of board oversight and discretion in executive variable pay schemes and the revision of Information Sheet 245 *Board oversight and discretion in executive variable pay schemes*. A case study reporting on the outcomes of this work is included on page 57.

During the ongoing COVID-19 pandemic, we responded to changes in market conditions by reviewing and/or providing guidance on matters such as the conduct of virtual and hybrid member meetings, director share trading, operational resilience, and the impact on retail shareholders of board decisions on dividends.

## Board oversight and discretion in executive variable pay schemes

Our work on board oversight and discretion in the executive variable pay schemes of 21 large ASX-listed companies sought to deter corporate misconduct and prevent consumer and investor harm by improving the governance of executive variable pay schemes. Feedback was provided directly to the reviewed companies and the overall findings and guidance were initially published in Information Sheet 245 *Board oversight and discretion in executive variable pay schemes* (INFO 245) in June 2020 to provide immediate guidance in light of the COVID-19 pandemic environment.

Between June and December 2020, we engaged with 20 of the 21 companies about the practices they had changed or adopted to address our feedback. We found that many companies had made substantial changes to their remuneration governance since our review. In some instances, the review itself and the questions asked prompted early action, for example:

- › To improve the **active, timely and consistent exercise of discretion**, eight companies developed and implemented tools, such as modifiers, guidelines and decision trees, to guide the exercise of discretion in response to risk and conduct issues and nine companies developed formal 'look-back' processes to inform the remuneration committee's oversight of deferred pay.
- › To ensure **adequately informed exercise of discretion**, 12 companies indicated that they would introduce, or uplift, written and verbal contributions of independent control functions and the use of external advisers. Six companies also committed to including specific agenda items on cross-committee report-backs to maintain information symmetry across committee members.
- › To **effectively manage conflicts**, six companies implemented a practice of management exiting the boardroom during determinations of the group pool, group performance or individual pay outcomes and four companies introduced a separate pool to pay CEO remuneration as a mechanism to limit conflicts.
- › To increase the **transparency of variable pay outcomes and the exercise of discretion**, 14 companies committed to including details of key discussion points on executive pay outcomes in the minutes.

In March 2021, we reissued INFO 245 as enduring guidance beyond the pandemic. INFO 245 highlights our overall findings and better practices to the market and has been widely leveraged as a reference tool for boards. It has been cited in various publications and industry events.

## Sector-based and issue-based surveillance

In 2020–21, we completed:

- › over 350 surveillances in the deposit-taking and credit, financial advice, insurance, investment management and superannuation sectors to ensure that financial services providers complied with their conduct obligations
- › over 730 surveillances in the corporations, market infrastructure and market intermediaries sectors.

Through our surveillance, we identified and addressed over 460 cases of failures, or potential failures, to comply with regulatory obligations.

## Public outcomes of our supervision and surveillance work

ASIC publishes the results of our supervision, review and surveillance work.

Our reports advance good consumer outcomes and change behaviour by driving improved practices across a sector or market and recommending changes in industry practice.

In 2020–21, we released 26 supervision, surveillance or review reports, including on issues such as:

- › our surveillance of debt capital raising practices and selected transactions (REP 668 *Allocations in debt capital market transactions*)
- › the buy now pay later industry, the experiences of customers and regulatory developments (REP 672 *Buy now pay later: An industry update*)

- › the experiences of superannuation fund members who were not using a financial adviser and directly contacted their fund to make inquiries about, or make changes to, their insurance arrangements (REP 673 *Consumer engagement in insurance in super*)
- › metrics for measuring the value for money that members receive from default insurance offered through superannuation (REP 675 *Default insurance in superannuation: Member value for money*)
- › ASIC's review of school banking programs in Australian primary schools (REP 676 *Review of school banking programs*)
- › the results and findings of ASIC's second round of regulatory technology (regtech) initiatives and the regtech events held during the 2019–20 financial year (REP 685 *ASIC's regtech initiatives 2019–20*).

## Misconduct reports from the public

Our analysis of reports of misconduct received from the public is critical in informing our regulatory work.

ASIC encourages members of the public to report concerns about corporate and financial services to us. We use this information to direct our regulatory activities to identify and address harms to investors and consumers.

Since the initial COVID-19 pandemic lockdown in March 2020, ASIC has seen consistently high levels of reports relating to scam behaviour. This has resulted in ASIC providing regular alerts, warnings and reminders to the public to be vigilant in protecting their money and identity.

For more information on misconduct and breach reports, see pages 209–212.

## Licensing

ASIC assesses applications for AFS licences and credit licences. We also maintain a number of professional registers for registered companies, self-managed superannuation funds (SMSFs), auditors, company auditors and liquidators. We use a risk-based approach to assessment, devoting most resources to complex and higher risk applications to ensure that only suitable persons and organisations are licensed or registered.

In 2020–21, ASIC finalised 1,965 applications in relation to AFS licences and credit licences, including applications for licences, cancellations and suspensions. We approved 776 AFS licences and 219 credit licences. We cancelled or suspended 308 AFS licences and 278 credit licences, the majority of which related to licensees voluntarily applying for licence suspension or cancellation.

A total of 384 AFS licence and credit licence applications were withdrawn or refused. Applications were often

withdrawn after we completed our assessment and informed applicants that they were unlikely to meet the statutory requirements to obtain a new or varied licence. We refused to accept 144 applications for lodgement, often due to material deficiencies in the information provided.

We assessed 736 applications relating to auditor registrations, cancellations or suspensions (company auditor, authorised audit company and SMSF auditor). Of these, 164 were approved, 25 were withdrawn, 1 was refused and 546 were cancelled or suspended.

Liquidator applications are lodged with ASIC, which must refer the application to a committee that will decide whether the applicant should be registered. ASIC must register an applicant if the committee has decided that the applicant should be registered and the applicant produces evidence in writing that they have taken out adequate and appropriate professional indemnity and fidelity insurance.

### Additional guidance on fit and proper person test

On 18 February 2020, the *Financial Sector Reform (Hayne Royal Commission Response—Stronger Regulators (2019 Measures)) Act 2020* amended the Corporations Act and the National Credit Act to improve the regulatory tools available to ASIC. This included aligning the probity tests to be applied by ASIC when determining whether to grant a new or varied AFS licence or credit licence. ASIC must consider a ‘fit and proper person’ test for controllers and officers of all AFS licence and credit licence applications.

In January 2021, to assist applicants further, ASIC updated Information Sheet 240 *AFS licence applications: Providing information for fit and proper people and certain authorisations* and Information Sheet 244 *Credit licence applications: Providing information for fit and proper people* to advise that, in appropriate cases, ASIC will accept alternative methods of establishing that relevant persons are fit and proper.

## ASIC's inquiries lead to application being withdrawn

This financial year, ASIC received an application for a new Australian financial services licence. The applicant nominated a single responsible manager who had been an adviser at a prior licensee. ASIC had concerns about the quality of financial advice provided by the nominee while at the prior licensee, as well as the licensee's monitoring and supervision of its representatives.

During the assessment, ASIC considered audit review files that had been completed for the prior licensee. These audit reviews demonstrated repeated oversights by the nominated responsible manager, including the failure to disclose conflicts of interest, the failure to provide the relevant disclosure documents to clients, deficiencies in maintaining documentation, and the failure to act in the best interests of, and to provide appropriate advice to, clients.

A number of these failings by the nominated responsible manager were also identified in a compliance report provided to ASIC by an external compliance consultant.

When ASIC asked the applicant about the concerns identified, the applicant withdrew its application. This is one of many cases where ASIC, in performing its gatekeeper function, ensures that only applicants that are able to satisfy ASIC that they have sufficient skills and knowledge are granted a licence.

## 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.

Due to the uncertainty and restrictions caused by the COVID-19 pandemic, many of our normal stakeholder activities in 2020–21 were restricted. However, our performance against our Service Charter this year shows that ASIC has provided high levels of service Australia-wide.

See pages 37–39 for more information on our Service Charter results.

See pages 193–195 for more information on our regional action.



## Indigenous outreach

The Indigenous Outreach Program (IOP) works to provide specialist advice, insight and support across ASIC to ensure that the needs of Indigenous consumers and investors are addressed effectively and appropriately. The IOP also leads ASIC's engagement with industry on outcomes for Indigenous consumers.

The IOP undertakes outreach and strategic engagement activities as part of its role, enabling a timely awareness of financial services issues affecting Indigenous consumers and investors. The team manages a helpline and email address to enable Indigenous consumers and stakeholders working with Indigenous consumers to access the IOP directly for assistance.

### ASIC's Indigenous roadmap

In 2020–21, the IOP continued with stakeholder and community engagements to hear and learn from the values, priorities and aspirations of Aboriginal and Torres Strait Islander Australians when engaging with the financial system.

With Professor Robynne Quiggin of the University of Technology Sydney, the IOP concluded consultations in late 2020 with more than 170 individual service providers from across the country. In early 2021, the IOP engaged with approximately 100 diverse community members through eight virtual stakeholder consultations.

The IOP and Professor Quiggin will use these learnings to identify actions, opportunities for collaboration, and tools to help us work towards more appropriate financial products and services, a better experience of the financial system, and overall improved wellbeing for Aboriginal

and Torres Strait Islander Australians. This work will continue into 2021–22 and will continue to draw on co-design principles – shaped by Indigenous stories, lived experiences and aspirations.

### Scams awareness campaign

Scams Awareness Week in August 2020 marked the beginning of a six-week campaign to promote awareness of scams that have affected Aboriginal and Torres Strait Islander Australians. The IOP partnered with representatives of the Queensland Office of Fair Trading to develop an online campaign under the National Indigenous Consumer Strategy. The campaign highlighted the six most common types of scams, including investment and phishing scams, and offered tips on how people might recognise scams and protect themselves and their communities. The messages were promoted through a number of channels, including media, social media, websites and newsletters, reaching more than 450,000 people nationally – exceeding the campaign's goal by fivefold.

### 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.

ASIC's 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.

ASIC participates in a range of international forums:

- › ASIC is a member of the board of the International Organization of Securities Commissions (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 participates in IOSCO Asia-Pacific Regional Committee (APRC) meetings and co-chairs the APRC Working Group on Enhancing Supervisory Cooperation. ASIC is chair of the Market Conduct Working Group of the International Association of Insurance Supervisors.
- › 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 newly formed 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 regtech firms to interact with regulators.
- › ASIC is negotiating several memoranda of understanding (MOUs) with bilateral counterparts in New Zealand, India, Hong Kong and the United States. These agreements will strengthen cooperation and underpin market access arrangements – for example, substituted compliance arrangements.

### International cooperation requests

This year, we made 304 international cooperation requests (down from 497 requests in 2019–20) and received 513 requests (down from 528 requests in 2019–20) in relation to activities such as surveillance, supervision, enforcement, research and licensing.

This included 130 requests for assistance in enforcement matters, of which 37 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 helps innovative Australian businesses comply with regulatory requirements and provides a platform for international engagement on fintech and regtech ideas. Through the Innovation Hub, we provide informal assistance to fintech businesses on their regulatory obligations, Australia's overarching regulatory framework and, as appropriate, options relating

to relief powers such as the Australian Government’s enhanced regulatory sandbox (ERS).

ASIC, and its Innovation Hub, continue to pursue collaborative opportunities with other regulators, Government agencies, and industry associations. We adjusted our engagement approach to accommodate the impact of the COVID-19 pandemic environment, hosting our regularly scheduled events and industry engagements virtually.

In 2020–21, the Innovation Hub continued to host its quarterly Digital Finance Advisory Panel meetings and Quarterly Regtech Liaison Forum events, bringing together industry leaders and regulatory representatives to help inform ASIC and stakeholders on key fintech-related and regtech-related developments, issues and opportunities.

ASIC is one of 11 coordination group members of the Global Financial Innovation Network (GFIN). The GFIN has over 60 regulator members and is committed to supporting financial innovation in the interests of consumers by creating a framework for cooperation between regulators to share experiences and approaches to innovation. In 2020–21, ASIC was involved in the GFIN’s Cross-Border Testing initiative. We provided informal assistance and guidance to fintechs and regtechs that applied to us under the program.

ASIC is a member of the steering committee for the IOSCO Fintech Network, established in mid-2018. ASIC is a member of many of the network’s workstreams and in 2020–21 we contributed to IOSCO’s work in distributed

ledger technology, artificial intelligence and ethics, regtech, decentralised finance and approaches to innovation.

### **Informal assistance and guidance**

In 2020–21, the Innovation Hub met with 56 innovative businesses, all of which received relevant informal assistance to better understand how their business models could navigate Australia’s regulatory framework. Since March 2015, ASIC has provided informal assistance to over 607 innovative businesses.

During this financial year, ASIC granted five new AFS licences or credit licences to fintech businesses. Fintech businesses that receive informal assistance from ASIC before submitting their licence application were approved materially faster than those not having sought assistance.

### **Enhanced regulatory sandbox**

The ERS commenced operation on 1 September 2020. It allows natural persons and businesses to test certain innovative financial services or credit activities without first obtaining an AFS licence or credit licence.

The ERS supersedes the previous regulatory sandbox administered by ASIC, allowing testing of a broader range of financial services and credit activities for a longer duration (up to 24 months) than the superseded sandbox.

ASIC published Information Sheet 248 *Enhanced regulatory sandbox* (INFO 248) on 25 August 2020. INFO 248 explains the eligibility of businesses to test within the ERS and provides guidance around the application process. We

hosted two webinars outlining the ERS with some practical guidance for potential applicants.

Six entities have been accepted to test in the ERS in the period from its commencement on 1 September 2020 to 30 June 2021.

### ASIC and regtech

The Government announced on 7 August 2018 that ASIC would receive \$6 million of funding over two financial years, 2018–19 and 2019–20, to promote Australia as a world leader in the development and adoption of regtech solutions for the financial services industry.

ASIC applied the funding to a series of regtech initiatives in 2020, including:

- › **Supervisory technology initiatives:** ASIC undertook five internal regtech initiatives testing the potential of regtech for enhancing supervisory effectiveness and efficiency. The learnings from these trials were shared publicly with the regtech stakeholder community.
- › **Remote services and supervision webinar:** This webinar was a discussion forum between industry, regulators and guests highlighting regtech's potential to support the provision and supervision of financial services while many staff members work remotely.
- › **Good lending practices demonstration and webinar:** This was a public problem-solving event with a curated synthetic data set in which selected regtech providers demonstrated how artificial intelligence and machine learning can be used to support a firm's compliance with responsible lending obligations.

The regtech solutions were showcased at a public webinar, which was followed by an industry panel discussion.

ASIC published Report 685 *ASIC's regtech initiatives 2019–20* on 20 January 2021, summarising the results and findings of the second round of initiatives.

On 15 April 2021, the Department of Industry, Science, Energy and Resources (DISER) announced the challenges under the latest round of the Business Research and Innovation Initiative (BRII) focusing on regtech. ASIC was successful in having a challenge accepted by DISER under this round of BRII. Under the BRII project, the Commonwealth provides grant funding to small to medium-sized regtech businesses to develop innovative solutions over two years to the regulatory problem set out in the challenge.

ASIC's BRII challenge seeks innovative solutions to help identify and assess poor market disclosure by listed companies.

### Small business engagement

ASIC assists, engages and helps protect small businesses to ensure a strong and healthy economy for all Australians.

Supporting Australian businesses in responding to the effects of the COVID-19 pandemic has been a focus for ASIC. We have provided support to business during COVID-19 pandemic lockdowns by publishing relevant resources on topics including companies facing financial difficulties and getting trusted business advice, small business insurance advice and advice about small business loan deferrals. As lockdown restrictions eased, ASIC recommenced its engagement with businesses.

## Guidance

Through regulatory guides, consultation papers and information sheets, ASIC provides guidance to industry on how we will administer the law.

We do this to enhance industry participants' understanding of their legal obligations and how we administer the law. Our feedback reports provide transparency about ASIC consultation. In 2020–21, we published 28 consultation papers, 32 new or revised regulatory guides and 51 new or revised information sheets.

For a complete list of the publications issued this year, see our website at [www.asic.gov.au/regulatory-resources/](http://www.asic.gov.au/regulatory-resources/).

## Education

Through the provision of consumer education, ASIC seeks to improve consumers' financial skills, knowledge and efficacy and provide them with information and tools to help them make informed financial decisions.

This work includes:

- › consumer education and information, primarily delivered through the Moneysmart website and stakeholder programs such as Moneysmart for teachers
- › collaborating with others to understand and measure the impact of consumer education on financial decision-making
- › embedding consumer insights across the organisation, including supporting ASIC's supervisory teams to strengthen their consumer-facing work.

Some key projects completed this year include:

- › **Young People and Money Survey:**  
The first wave of *ASIC's Young People and Money Survey* asked 1,500+ young Australians (aged 15–21) about their experiences, attitudes and behaviours across a range of money-related topics. The results of this work will inform ASIC's communication activities and, more broadly, will influence programs and initiatives for young Australians.
- › **Youth expert working group:** In August 2020, ASIC established an expert group on the financial wellbeing of young people to identify and explore key issues affecting the financial lives of young Australians. Dr Phil Lambert led this work, including convening four working groups to explore how young people engage with money. The working groups focused on agendas relating to preschool-aged children through to adolescents and also considered the role of institutions interacting with young people making financial decisions. Findings from the working groups will be released next year.
- › **School banking programs review:** In December 2020, ASIC released *Report 676 Review of school banking programs*. The review sought to identify why banks, schools and students engage with school banking programs, understand whether banks assess the impacts of their programs on students' savings habits, and analyse the long-term impact of targeting marketing towards children. Through the review, ASIC found that school banking programs claim to help children develop long-term savings habits; however, providers were unable to demonstrate that these programs

in and of themselves improve savings behaviour. Since releasing the report, three states and territories have announced the cessation of school banking programs and increased their focus on understanding and delivering effective financial education in schools.

## ASIC's Moneysmart

Moneysmart helps Australians take control of their financial lives with free calculators, tips and guidance.

### Supporting Australians during the pandemic

This year, the Moneysmart COVID-19 Information Hub continued to help Australians understand where to seek additional support when experiencing hardship and managing changes to their financial circumstances. As at 30 June 2021, the Hub had received 532,635 page views:

- › The COVID-19 pandemic 'Accessing your super' webpage had received 132,594 visits and 26% of visitors to the page used the Super Withdrawal Estimator to see the impact of early access on their retirement savings.
- › Views of content on 'Urgent help with money' reached 240,510 page views, an increase of 145% from the previous year.

Use of the Moneysmart Mortgage Calculator increased from the previous year by 29% to 1,212,289 users. There were also increases in visitation to information on loans and investing. As at 30 June 2021:

- › Page views on 'No or low interest loans' had increased from the previous year by 33% to 89,713 views, and page views on 'Payday loans' had increased for the same period by 88% to 99,357 views.
- › Page views on 'Investing' content had increased from the previous year by 7% to 2,536,831 views.

### Supporting better financial outcomes for young people

Economic, social and educational settings for young people have shifted dramatically in the pandemic environment and money is a topic of high engagement and concern. Pages in the 'Student life and money' content section with the highest visitation by young people as at 30 June 2021 included 'Moving out of home' (41,746 page views) and 'Studying' (15,523 page views).

## Disrupting financial scams during the COVID-19 pandemic

A financial scam involves a victim parting with their money on the promise of a questionable financial opportunity. During the COVID-19 pandemic, ASIC became aware of greater numbers of scammers seeking to take advantage of people. Reports of misconduct to ASIC over January–February 2021 were up by more than 200% compared to the previous year.

ASIC's work focuses on disrupting the scam activity, including warning the public and working with institutions to prevent further victims. Where possible, we alert Australian banks to specific accounts being used for scams, often triggering investigations by the bank.

ASIC publishes lists of 'Companies you should not deal with' and 'Fake regulators and exchanges' on Moneysmart to alert the public to these entities.

This year, we warned consumers of a rise in crypto-asset (or cryptocurrency) scams. These scams encourage investors to sign up to 'crypto-asset trading' online and deposit funds into a trading account, either via a crypto wallet or bank account.

When the consumer asks to withdraw their funds, bitcoin scammers either cease all contact or demand further payment before funds can be released.

## 2.5 Registry services and outcomes

To realise our vision of a fair, strong and efficient financial system for all Australians, we aim to provide efficient and accessible business registers that make it easier to do business.

In April 2021, ASIC registry staff and functions moved to the ATO through a machinery of government (MoG) change. The Commissioner of Taxation was appointed as Registrar to assist ASIC in the performance of its registry functions.

This significant change to ASIC's registry function was an important step in the progressive rollout of the Government's MBR program. ASIC will continue to report on registry performance until the Registrar assumes primary responsibility for registry functions under law.

### ASIC's registers

ASIC's performance reporting in 2020–21 was guided by our Corporate Plan, which sets out our objectives and targets related to providing efficient registry services, including the registers of companies, business names and a range of professional registers.

The ASIC registers are the official source of information for business names, companies and financial professionals registered to operate in Australia. They are a critical part of Australia's economic infrastructure.

The registry aims to:

- › ensure information on the registers is up to date, accurate and available to those using the information, enabling business and consumer stakeholders to make informed decisions
- › make it easier for businesses to engage with ASIC and comply with the law, and to enhance commercial certainty
- › provide services that are online and accessible to all Australians
- › continuously improve registry services to support efficient registration.



**Table 2.5.1 ASIC's registers**

<b>Outcome</b>	<b>Total 2020–21</b>	<b>Total 2019–20</b>
Total companies registered	<b>2.92m</b>	2.78m
New companies registered	<b>279,853</b>	222,048
Total business names registered	<b>2.4m</b>	2.3m
New business names registered	<b>460,409</b>	387,827
Calls and online inquiries responded to by our Customer Contact Centre	<b>599,377</b>	631,669
Registry lodgements	<b>3.13m</b>	2.96m
Percentage of registry lodgements online	<b>94%</b>	93.2%
Number of searches of ASIC registers	<b>219.2m</b>	243.7m

## Performance overview

ASIC received just over three million lodgements during the 2020–21 financial year, with 94% processed online without manual intervention. The most common lodgement made was 'Change to company details' (Form 484), with over one million received. We also answered 599,000 inquiries through our Customer Contact Centre.

### Business registration

ASIC's registry helped facilitate the registration of 739,000 new businesses, comprising 279,000 companies and 460,000 business names.

Throughout 2020–21, the registry promoted the use of the Australian Government Business Registration Service available through [www.business.gov.au](http://www.business.gov.au).

In total, 99.97% of applications to register a company or business name are now made online.

The cost of registering a business name is \$37 for one year and \$88 for three years.

### Increased use of online channels

A total of 94% of the three million lodgements received were submitted online, while the volume of lodgements submitted by mail decreased by 6.3%. Similarly, telephone calls coming into our Customer Contact Centre decreased by 12%, while inquiries submitted through our website increased by 7.8%.

## Analysis of key registry outcomes

Key outcomes achieved by ASIC's registry in 2020–21 are set out below.

### Modernising business registers

Over the course of the year, ASIC continued supporting Treasury and the ATO with the MBR program.

In the 2018–19 Budget, the Government announced its commitment to the modernisation of 31 ASIC registers, including the companies register, the Business Names Register and the ABR, on a new whole-of-government platform administered by the Australian Business Registry Services within the ATO.

The MBR program will:

- › progressively roll out between 2021 and 2024
- › bring together the 31 in-scope ASIC registers and the ABR
- › introduce the director identification number initiative.

The following milestones were achieved during the 2020–21 financial year:

- › the Government committed to an investment of \$419.9 million to enable the full implementation of the MBR program through the Digital Business Plan within the 2020 Federal Budget
- › the Commissioner of Taxation was appointed as Registrar on 4 April 2021
- › in an MoG change, 221 ASIC registry staff transitioned to the ATO on 15 April 2021 to support the functions of the Registrar.

The Registrar's role is to lead and implement the MBR program and perform statutory registry functions and exercise registry powers as a delegate of ASIC. As the MBR program progresses, the Registrar will assume primary responsibility for those functions under law.

The ATO has taken over the lease of the Traralgon premises where ASIC is retaining a presence of around 90 staff members.

## International collaboration

The Executive Director of ASIC Registry, Rosanne Bell, continued as President of the international Corporate Registers Forum (CRF) during 2020–21.

The CRF is an association of corporate registries from more than 60 jurisdictions. The aim of the CRF is to provide members with the opportunity to review the latest developments in corporate business registers internationally and to exchange experiences and information on the present and future operation of corporate business registration systems. The registry's involvement with the CRF is an important networking opportunity to share ideas and best practice, and to discuss emerging registry issues.

In May 2021, the CRF entered into an MOU with partner organisations the European Business Registers Association and the International Association of Commercial Administrators. The MOU recognises the desire of each member to share knowledge, provide mutual assistance and participate in collaborative activities.

## Natural disaster relief

ASIC has a longstanding history of supporting those affected by natural disasters. This year, we supported victims of bushfires and floods which affected many communities and businesses across Australia. We realise that circumstances such as natural disasters may make it difficult for businesses to pay fees or meet their lodgement obligations.

## Impact of the COVID-19 pandemic

The COVID-19 pandemic presented many challenges for businesses across Australia. During the pandemic, ASIC registry services continued to be available to the public and regulated population, and all key service targets were achieved.

ASIC supported affected businesses through initiatives such as fee waivers.

ASIC supported Services Australia to continue its important work during the pandemic by sharing space in the Traralgon office for five months.

## 2.6 Unclaimed money

ASIC reunites people with their unclaimed money, as we are responsible for the administration of unclaimed money from banking and deposit-taking institutions and life insurance institutions.

We fulfil this responsibility by maintaining a register of unclaimed money from banks, credit unions, building societies, life insurance companies and friendly societies, as well as shares that have not been collected from companies. The public can search our register and make claims. We process claims within 28 days of receiving all necessary claim documentation.

In 2020–21, ASIC received \$299.6 million in unclaimed money. This was more than the \$202.8 million we received in 2019–20.

We paid out a total of \$88.4 million in claims in 2020–21, compared with \$58.9 million the previous year.

We paid claimants interest (2020–21: \$2.9 million of the \$88.4 million) on unclaimed money from periods from 1 July 2013 onwards, at a rate of 2.5% for 2013–14, 2.93% for 2014–15, 1.33% for 2015–16, 1.31% for 2016–17, 2.13% for 2017–18, 1.9% for 2018–19, 1.33% for 2019–20 and 2.19% for 2020–21.

**Table 2.6.1 Amount paid to owners of unclaimed money**

Claims by type	2020–21 (\$)			2019–20 (\$)
	Principal	Interest	Total	
Company	28,109,684	1,146,336	<b>29,256,020</b>	26,202,895
Banking	51,011,372	1,576,319	<b>52,587,691</b>	25,485,668
Life insurance	4,753,338	206,402	<b>4,959,740</b>	5,978,954
Deregistered company trust money	1,586,529	N/A	<b>1,586,529</b>	1,265,365
<b>Total</b>	<b>85,460,923</b>	<b>2,929,057</b>	<b>88,389,980</b>	<b>58,932,882</b>