



# 1

## ASIC's role

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# Chair's report

On behalf of my fellow Commissioners, I am pleased to present this annual report for 2020–21.

Having been appointed as Chair on 1 June 2021, I am proud to have been given the opportunity to lead ASIC at this important time for the organisation.

The past year has been a challenging and significant one for ASIC. We have worked with the Government to help Australian businesses and consumers recover from the economic impact of the COVID-19 pandemic, and prioritised finalising the implementation of the important reforms arising from the Financial Services Royal Commission (Royal Commission).

We have also had to confront some shortcomings in our own organisation. This was important for us to acknowledge and address to ensure that we meet the high standards set for us, and that we expect of ourselves, as we do from those we regulate.

## Internal governance

The Auditor-General's report on the ASIC 2019–20 financial statements and Dr Vivienne Thom AM's subsequent review of ASIC's governance (the Thom Review) highlighted that some of ASIC's internal systems and processes needed to improve.

At 30 June 2021, ASIC had implemented a number of the recommendations of the Thom Review directed at ASIC through a program of change designed to deliver long-term improvement to ASIC's risk and compliance practices and capabilities. ASIC completed its implementation of the recommendations of the Thom Review in August 2021.

We also established a Chief Risk Officer and a Head of Office function. Respectively, these roles will support our new risk management framework and increase internal oversight and executive accountability, enabling the Commission to focus on strategic regulatory and statutory decision making and stakeholder management.

## COVID-19 pandemic response

Supporting Australia's recovery from the economic impacts of the COVID-19 pandemic has been central to ASIC's work across 2020–21 and will continue to be a priority in the year ahead.

We coordinated our COVID-19 pandemic response with peer regulators, adjusted our strategic priorities and provided a range of concessions and targeted interventions that supported businesses and consumers. We continue to monitor the key vulnerabilities of our regulated population, to protect consumers and provide certainty for markets and businesses.

Looking ahead, we remain committed to supporting economic recovery as one of our key strategic priorities for 2021–22. Our work will include:

- › identifying and pursuing ways to maintain and improve the fair and efficient operation of capital markets and the corporate sector, to facilitate business investment and confident participation by investors in the financial system
- › through a dedicated unit within ASIC, seeking ways to change how we administer the law to minimise the costs and burdens of regulatory requirements for our regulated population and consumers
- › promoting innovation (e.g. through the Innovation Hub and the enhanced regulatory sandbox) and considering competition in our work
- › working with industry and other regulators to enhance cyber resilience
- › expanding our use of data and digital technology to inform markets and consumers, and to support faster, better regulatory outcomes
- › facilitating novel business models and transactions, including by exercising ASIC’s regulatory relief powers as appropriate.

## **Financial Services Royal Commission**

In 2020–21, we finalised much of the enforcement action arising from the Royal Commission.

We also welcomed the introduction of new regulatory tools and powers that will position us to better achieve our regulatory purpose and deliver maximum benefit for consumers and investors. This includes our expanded conduct role in superannuation, the new product design and distribution obligations, and changes to the breach reporting regime and to the prohibition on hawking.

## **Commission and staff**

This year, we have seen changes to ASIC’s Commission. Along with welcoming new Deputy Chair, Sarah Court, I would like to take this opportunity to thank outgoing Chair James Shipton and Deputy Chair Daniel Crennan QC for their valued contributions to ASIC’s work.

I would also like to acknowledge the leadership of Deputy Chair Karen Chester, particularly during her period as Acting Chair, and my fellow Commissioners Cathie Armour, Sean Hughes and Danielle Press, for their work and unwavering commitment to ASIC.

Most of all, I want to thank ASIC’s 2,000-plus staff for their resilience and professionalism in a challenging period. They have worked diligently to ensure that ASIC performed its functions and delivered for the Australian community.

## Looking ahead

The aftermath of the Royal Commission and the COVID-19 pandemic have had a profound impact on how we work, and have highlighted the importance of having the right organisational infrastructure to support our regulatory and enforcement functions and responsibilities.

One of my first priorities as Chair was to commission an independent review of our infrastructure to enhance ASIC's strength and effectiveness by improving some of its internal capabilities. We will implement the recommendations of this review across the coming year.

Our approach to enforcement is also key to our effectiveness as a regulator. ASIC must be an active and credible law enforcement agency and we will use our full enforcement toolkit as appropriate. Criminal charges, civil cases, enforceable undertakings, product interventions, financial penalties, bannings and licence conditions – they are all on the table and will be used to achieve what's right. We will hold individuals and corporations to account and will act quickly and decisively to disrupt, deter and punish misconduct.

Productive relationships with other regulators are also essential for ASIC. During the upcoming year, we will continue to engage with our peer regulators, especially the Australian Prudential Regulation Authority (APRA), to share information, avoid duplication and promote common approaches to regulation.

I am confident in ASIC and its future as a strong, professional and trusted regulator that is committed to working with stakeholders to support the Australian economy.



**Joseph Longo**  
Chair

# 1.1 ASIC's role and responsibilities

ASIC is Australia's integrated corporate, markets, financial services and consumer credit regulator. ASIC is established under the *Australian Securities and Investments Commission Act 2001* (ASIC Act).

## Our vision

Our vision is for a fair, strong and efficient financial system for all Australians.

## Our regulatory purpose

To realise our vision, we will use all our regulatory tools to:

- › change behaviours to drive good consumer and investor outcomes
- › act against misconduct to maintain trust and integrity in the financial system
- › promote strong and innovative development of the financial system
- › help Australians to be in control of their financial lives.

## Our legislative responsibilities

The ASIC Act states that ASIC has the function of monitoring and promoting market integrity and consumer protection in relation to the Australian financial system and the payments system.

It requires ASIC to strive to:

- › maintain, facilitate and improve the performance of the financial system and entities within it in the interests of commercial certainty, reducing business costs, and the efficiency and development of the economy
- › promote confident and informed participation by investors and consumers in the financial system
- › administer the law effectively and with minimal procedural requirements
- › receive, process and store – efficiently and quickly – the information we receive
- › make information about companies and other bodies available to the public as soon as practicable
- › take whatever action we can, and which is necessary, to enforce and give effect to the law.

We enforce the law and regulate companies, financial markets and financial services under the following key legislation:

- › ASIC Act
- › *Business Names Registration Act 2011*
- › *Corporations Act 2001* (Corporations Act)
- › *Insurance Contracts Act 1984*
- › *National Consumer Credit Protection Act 2009* (National Credit Act).

We also administer parts of the following legislation:

- › *Banking Act 1959*
- › *Life Insurance Act 1995*
- › *Medical Indemnity (Prudential Supervision and Product Standards) Act 2003*
- › *Retirement Savings Accounts Act 1997*
- › *Superannuation (Resolution of Complaints) Act 1993*
- › *Superannuation Industry (Supervision) Act 1993* (SIS Act).

## Our regulatory approach

In everything we do, we are guided by our vision of a fair, strong and efficient financial system for all Australians.

Our regulatory toolkit includes supervision and surveillance, enforcement, financial capability work, industry engagement, guidance and input into law reform.

We use this toolkit across the industry sectors we regulate to identify and respond to threats and harms, and to achieve our vision.

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

## ASIC Corporate Plan

Our *Corporate Plan 2020–24* (Corporate Plan) sets out our priorities and actions. These are based on monitoring and analysis of our operating environment, identification of threats and behaviours that lead to harm, and prioritisation of those harms that need to be addressed.

The Corporate Plan outlines the actions we plan to take to address the impact of the COVID-19 pandemic, as well as longer term threats and harms in our regulatory environment.

See pages 41–43 for more detail on our Corporate Plan priorities.

Chapters 2 and 3 set out our achievements against the qualitative and quantitative measures identified in our Corporate Plan.

## 1.2 ASIC's structure and management

### ASIC governance

ASIC continues to make improvements to our governance, structure and decision-making processes. This year, we built on the governance and accountability framework established last year. The framework sets out a clear, transparent and common understanding of ASIC's governance and accountability structures and processes. The objective of the framework is to promote effective, efficient and impartial decision making at ASIC and to articulate clear accountabilities.

ASIC's governance and accountability structures are consistent with ASIC being an independent Commonwealth agency that is a statutory body corporate and reflect the legislative framework within which ASIC operates. ASIC's Chair, Joseph Longo, is the accountable authority under section 9A of the ASIC Act and held this position from 1 June 2021. During the reporting period up to 31 May 2021, James Shipton held the position of ASIC Chair and was the accountable authority except from 23 October 2020 to 31 January 2021, during which period Karen Chester held the position of acting ASIC Chair and was the accountable authority.

### Enhanced risk management framework

In July 2020, ASIC introduced the role of Chief Risk Officer and further improved our governance structures by actively enhancing our risk management framework. Our new risk management framework is designed not only to satisfy our risk management obligations under the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) but to translate risk management into structured and consistent practices and governance arrangements. This includes a 'Three Lines of Accountability' approach, which provides clear management ownership and accountability for risks.

As part of this change, we have implemented an Executive Integrity Committee that is focused on proactively enhancing ASIC's broader integrity practices by ensuring that the policies, procedures, training, investigation and reporting mechanisms are aligned and effective across key integrity risks, such as fraud, corruption and conflicts of interest.

### Head of Office

In March 2021, ASIC established a Head of Office function, consistent with the 2015 ASIC Capability Review recommendation. The new Head of Office, called the Chief Operating Officer (COO), is responsible for operational strategy and management and for delivery to the Commission of cross-group outcomes, including budget development and resource allocation, Commission legislative and policy obligations relating to this, and capability and systems build.

The implementation of this new function has increased internal oversight and executive accountability and enabled the Commission to give greater focus to strategic matters, regulatory decision making, external engagement and communication.

In June 2021, ASIC established the Office of the Chair, and appointed Louise Macaulay as Chief of Staff to lead the Office. The role of the Chief of Staff is to provide core counsel and advice to the Chair, as well as support on all strategic and operational matters, both internally and externally. The Office of the Chair will operate as a key link between the Chair, Commissioners, ASIC senior executives and key external stakeholders to identify and assess key issues, solve problems and facilitate information flows.

### Thom Review

This year, ASIC also implemented a number of the recommendations of the Thom Review directed at ASIC. Following the Thom Review, in early 2021 ASIC developed and started to implement its response action plan. Under this plan, ASIC established an executive integrity committee, completed its review of potential breaches of legislation and policy and launched a revised technology-based compliance incident management (notification) system.

### External oversight

External oversight of ASIC was strengthened this year. From 1 January 2021, ASIC came under the jurisdiction of the Australian Commission for Law Enforcement Integrity. This Commission investigates corruption issues involving staff members and former staff members of organisations that fall under its jurisdiction.

In June, the *Financial Regulator Assessment Authority Bill 2021* was passed by Parliament, implementing recommendations 6.13 and 6.14 of the Royal Commission. Under the legislation, a new independent body, the Financial Regulator Assessment Authority, will be established to regularly review and report on the effectiveness and capability of ASIC and APRA.

In its first year, the Financial Regulator Assessment Authority will be tasked with assessing the effectiveness and capability of ASIC to assist ASIC Chair Joseph Longo in ensuring ASIC is operating consistently with the Government's Statement of Expectations and is supporting Australia's economic recovery from the COVID-19 pandemic.

Further information about ASIC's governance and the role of the Commission is set out in the Appendices on pages 184–185.



# ASIC organisational structure



## ASIC Commissioners

### Joseph Longo

#### Chair

Joseph Longo commenced as ASIC Chair on 1 June 2021.



### Sarah Court

Sarah Court commenced as ASIC Deputy Chair on 1 June 2021.



### Karen Chester

Karen Chester commenced as ASIC Deputy Chair on 29 January 2019.



### Cathie Armour

Cathie Armour commenced as an ASIC Commissioner on 3 June 2013.



### Danielle Press

Danielle Press commenced as an ASIC Commissioner on 17 September 2018.



### Sean Hughes

Sean Hughes commenced as an ASIC Commissioner on 1 December 2018.



### James Shipton

James Shipton ceased his role as ASIC Chair on 31 May 2021. He commenced as ASIC Chair on 1 February 2018.



### Daniel Crennan QC

Daniel Crennan ceased his role as ASIC Deputy Chair on 25 October 2020. He commenced as ASIC Deputy Chair on 16 July 2018.



## ASIC Executive Committee



### Chair Commission

Joseph Longo



### Executive Director Financial Services Enforcement

Tim Mullaly



### Executive Director Financial Services and Wealth

Joanna Bird



### General Counsel

Chris Savundra



### Executive Director Markets Enforcement

Sharon Concisom



### Chief Supervisory Officer (Acting) Supervision Group

Suneeta Sidhu



### Chief Operating Officer

Warren Day



### Executive Director Assessment and Intelligence (Acting)

Diana Steicke



### Executive Director Strategy

Greg Kirk



### Executive Director Markets

Greg Yanco

ASIC Executive Committee members as at 30 June 2021.  
The above list does not reflect standing attendees.

## Stakeholder teams

### ASIC's stakeholder teams and who they regulate

#### Markets

**Greg Yanco – Executive Director**

##### Chief Accountant

**Douglas Niven – Chief Accountant**

#### Corporations

**Claire LaBouchardiere and Rachel Howitt – Senior Executive Leaders**

- › Unlisted public companies: 23,360
- › Listed companies (excluding listed schemes): 2,085

#### Insolvency Practitioners, Financial Reporting and Audit

**Thea Eszenyi – Senior Executive Leader**

- › Registered company auditors: 3,553
- › Entities required to produce financial reports: 30,763
- › Registered SMSF auditors: 5,527
- › Registered liquidators: 649
- › Companies entering external administration: 4,235

#### Market Infrastructure

**Nathan Bourne – Senior Executive Leader**

- › Licensed domestic and overseas financial markets: 47
- › Exempt markets: 3
- › Licensed domestic and overseas clearing and settlement facilities: 7
- › Exempt clearing and settlement facilities: 1
- › Derivative trade repositories: 1
- › Credit rating agencies: 6
- › Benchmark administrators: 2

#### Market Supervision

**Calissa Aldridge – Senior Executive Leader**

- › Market participants: 104
- › Securities dealers: 1,128
- › Investment banks: 24
- › Retail OTC derivatives: 64
- › Wholesale electricity: 48

## Financial Services and Wealth

**Joanna Bird – Executive Director**

### Credit and Banking

**Tim Gough – Senior Executive Leader**

- › Australian credit licensees: 4,777
- › Credit representatives: 38,776
- › Authorised deposit-taking institutions: 142
- › Non-cash payment facility providers: 610
- › Trustee companies: 11

### Financial Advisers

**Kate Metz – Senior Executive Leader**

- › Financial advisers: 19,279
- › AFS licensees licensed to provide personal advice: 4,137
- › AFS licensees licensed to provide general advice only: 989

### Insurers

**Emma Curtis – Senior Executive Leader**

- › General insurers: 81
- › Life insurers: 27
- › Friendly societies: 11

### Investment Managers

**Rhys Bollen – Senior Executive Leader**

- › Responsible entities: 425
- › Registered managed investment schemes: 3,616
- › Wholesale trustees: 1,647
- › MDA operators: 247
- › IDPS operators: 83
- › Foreign financial services providers: 994

- › Custodial service providers: 1,116
- › Total assets: \$2,452.4 billion

### Superannuation

**Jane Eccleston – Senior Executive Leader**

- › Superannuation trustees: 95
- › Total assets: \$2,221 billion

## Supervision

### Close and Continuous Monitoring

**Suneeta Sidhu – Chief Supervisory Officer (Acting)**

Entities subject to supervision:

- › AMP Limited
- › Australia and New Zealand Banking Group Limited
- › Commonwealth Bank of Australia
- › National Australia Bank Limited
- › Suncorp Group Limited
- › Westpac Banking Corporation

### Governance

**Kim Demarte – Senior Executive Leader (Acting)**

The Governance team has a broad range of stakeholders in its various roles supervising governance practices in Australia's larger entities and licensees, implementing the new Financial Accountability Regime and overseeing the whistleblower policy requirement applying to public companies, large proprietary companies and superannuation trustees.

Office of Enforcement

FINANCIAL SERVICES ENFORCEMENT

Tim Mullaly – Executive Director

Financial Services Enforcement

Melissa Smith – Senior Executive Leader

Wealth Management Enforcement –  
Major Financial Institutions

David McGuinness – Senior  
Executive Leader

Wealth Management Enforcement

Marita Hogan – Senior Executive Leader

MARKETS ENFORCEMENT

Sharon Concisom – Executive Director

Corporations and  
Corporate Governance

Jennifer Balding – Senior  
Executive Leader

Enforcement Western Australia and  
Criminal Intelligence Unit

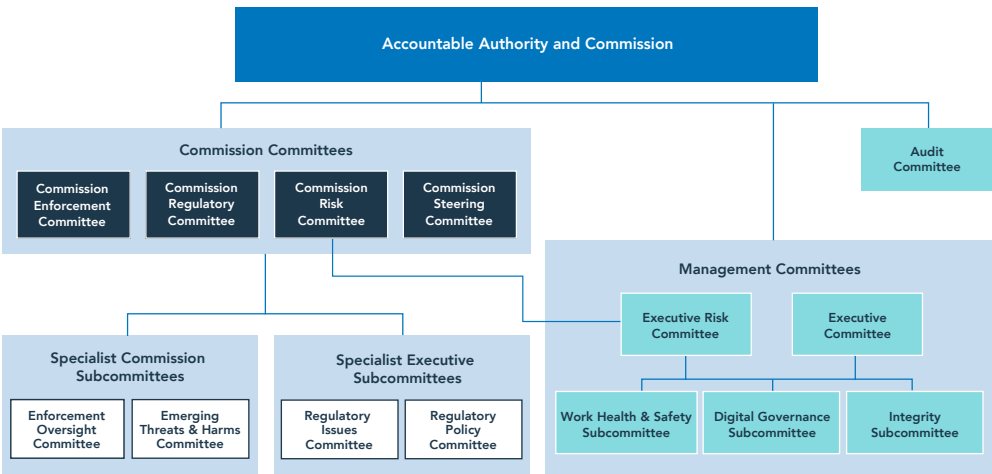
Natalie Dürr – Senior Executive Leader

Markets Enforcement

Molly Choucair – Senior  
Executive Leader

The Commission has established a number of committees to assist it with the effective and efficient performance of its regulatory and governance roles.

ASIC governance structure



## Commission meetings

Commission meetings are convened by ASIC's Chair under section 103 of the ASIC Act. They take place twice a month and may be convened more regularly as required.

## Commission Committees

Commission Committees comprise the full Commission and other standing attendees. There are three decision-making Commission Committees for collective decisions on strategic and/or significant enforcement, regulatory and risk matters:

- › **Commission Enforcement Committee:** Chaired by Deputy Chair Sarah Court, this Committee makes strategic and/or significant enforcement decisions, including in relation to conduct, strategy and focus of major matters and enforcement policies, and oversees ASIC's enforcement and litigation work.
- › **Commission Regulatory Committee:** Chaired by Deputy Chair Karen Chester, this Committee makes strategic and/or significant decisions relating to regulatory policy, law reform, applications for relief, policy frameworks and reports, and oversees ASIC's regulatory activities and functions.
- › **Commission Risk Committee:** Chaired by Commissioner Sean Hughes, this Committee considers all types of risk of a strategic and/or significant nature that affect ASIC, its regulated population, Australia's financial system and Australian consumers. It is responsible for setting and monitoring ASIC's risk management framework and ASIC's risk appetite. The Committee monitors

ASIC risk by reviewing whether material risks have been identified, remediation plans are in place and adequate resources have been deployed to appropriately manage risks.

There is one Commission Committee that gives guidance:

- › **Commission Steering Committee:** Chaired by Commissioner Danielle Press, this Committee provides a forum for the Commission to be given timely information on emerging issues and to progress issues and initiatives prior to them reaching a decision-making forum. The discussions at the meeting will generally not involve day-to-day organisational issues; however, they may include whole-of-organisation frameworks and policies as required.

## Specialist subcommittees

The role of the subcommittees is to guide staff members in carrying out their functions and to provide oversight regarding this work. The subcommittees assist the efficiency of the Commission by assessing matters and ensuring that their consideration is sufficiently mature before they are escalated to the Commission or Commission Committee for decision (if required). They also provide oversight of matters that are important but fall outside the definition of strategic and/or significant matters that are reserved for the Commission.

There are four subcommittees:

- › **Enforcement Oversight Committee:** Assists the Commission with oversight of the Office of Enforcement and the execution of ASIC's enforcement strategy.

- › **Emerging Threats and Harms Committee:** Identifies and provides advice on the management of emerging and strategic risks in ASIC's regulated population or areas it regulates.
- › **Regulatory Policy Committee:** Considers submissions recommending new or revised regulatory policy, law reform and novel applications for relief from the laws administered by ASIC.
- › **Regulatory Issues Committee:** Considers matters generated by the surveillance and supervisory work undertaken by ASIC's regulatory teams.

## Governance Committees

Governance Committees assist the Commission and the accountable authority in undertaking their governance roles. There are two such committees:

- › **Commission Risk Committee:** (As set out above).
- › **Audit Committee:** Operates independently of management and assists the Chair to discharge his responsibilities for the efficient, effective, economical and ethical use of Commonwealth resources. It also provides independent assurance to the Chair and the Commission on ASIC's financial and performance reporting, risk oversight and management, and systems of internal control.

## Management Committees

The Management Committees are executive-level committees responsible for undertaking and overseeing the day-to-day management of ASIC. There are two such committees:

- › **Executive Committee:** Responsible for the day-to-day operation and management of ASIC, implementing and delivering ASIC's policies, plans and priorities and leading the implementation of ASIC's business plans.
- › **Executive Risk Committee:** Responsible for identifying and monitoring significant risks to ASIC, maintaining risk management frameworks and policies, and implementing and overseeing audit/assurance processes and risk mitigation strategies.



## Regional Commissioners

ASIC's Regional Commissioners are our local ambassadors, promoting ASIC initiatives and engaging with regional communities.

### Australian Capital Territory

#### Laura Higgins

- › Commenced as Regional Commissioner in May 2019.

### South Australia

#### Melissa Smith

- › Commenced as Regional Commissioner in June 2015.

### New South Wales

#### Greg Yanco

- › Commenced as Acting Regional Commissioner in December 2019.

### Tasmania

#### Chris Green

- › Commenced as Regional Commissioner in November 2013.

### Northern Territory

#### Duncan Poulson

- › Commenced as Regional Commissioner in February 2006.

### Victoria

#### Warren Day

- › Commenced as Regional Commissioner in October 2008.

### Queensland

#### Amanda Zeller

- › Commenced as Regional Commissioner in May 2019.

### Western Australia

#### Natalie Dürr

- › Commenced as Regional Commissioner in July 2017.

## 1.3 Government priorities

### Economic recovery

ASIC is committed to maintaining financial system resilience and to facilitating post-pandemic economic recovery and growth. Through effective and proportionate regulation, we remove unnecessary frictions and build trust for confident participation in a resilient financial system. ASIC works closely with other regulators on the Council of Financial Regulators (CFR) to monitor, and where necessary respond to, financial stability risks.

Over the past year, ASIC undertook a range of activities to help support the post-pandemic economic recovery. We facilitated equity capital raisings to help listed companies access capital quickly. As the economy started to recover, extra capital has enabled businesses to bring forward investment decisions and bring on new staff, helping stimulate the economy.

ASIC has continued to reduce the risk of harm to consumers through advice on scams and unlicensed conduct. Our deferral of non-time-critical activities has aided businesses in responding to the impact of the pandemic.

We have provided guidance to help banks, superannuation trustees and insolvency practitioners navigate this turbulent period. Ongoing guidance was also provided to insurers as they dealt with the ramifications from the 2019 bushfires and 2020 floods.

### Supporting Government legislative reform

ASIC provides advice to the Government on the operational implications of Government policy initiatives and legislative change to support the Government's law reform agenda. We implement reforms once they are passed by Parliament, including through regulatory guidance.

We identify the opportunities and risks that affect our ability to implement the law as intended by Parliament and we advise on law reform to facilitate and improve the performance of the financial system.

This year, we provided advice and input to the Government to facilitate measures to support business in the COVID-19 pandemic environment, including in relation to virtual meetings and electronic communications.

We also provided input to Treasury on key law reforms proposed by the Government, including legislation giving effect to recommendations from the Royal Commission. This included input in relation to the following reforms:

- › financial product design and distribution obligations
- › proposed amendments to the insolvency regime, including a simplified liquidation process for small businesses (see Chapter 3 for more detail)
- › removing some of the exemptions to the conflicted remuneration rules

- › the transfer of ASIC's business registry staff and functions to the Australian Taxation Office (ATO) as part of the Government's Modernising Business Register (MBR) program
- › changes to Australia's consumer credit framework
- › the deferred sales model for add-on insurance
- › reforms to improve ASIC's effectiveness as the conduct regulator for superannuation
- › the removal of the funeral expenses policy exemption in the Corporations Act
- › enhancement of the unfair contract terms regime, including its application to life insurance
- › the Your Future, Your Super reforms
- › the application of the anti-hawking reforms to superannuation and insurance products
- › strengthening the financial sector breach reporting regime
- › ending grandfathered conflicted remuneration in relation to financial advice provided to retail clients and extending the ban on conflicted remuneration to stamping fees paid in relation to listed investment companies and listed investment trusts (excluding real estate investment trusts)
- › the proposed Financial Accountability Regime, including working with APRA to ensure that the agencies are ready to implement and jointly administer the regime
- › the requirement for litigation funders to hold an Australian financial services (AFS) licence and comply with the managed investment scheme regime.

## Implementation of Royal Commission recommendations

We have continued to provide advice and input to support the program of law reform agreed by the Government in its response to the Royal Commission's recommendations. This includes contributing to Government consultation with stakeholders, focusing on implementation arrangements for new laws as they commence, developing and consulting on supporting legislative instruments, and issuing regulatory guidance to meet industry demand.

We have released a number of information papers, consultation papers and guidance, including:

- › RG 274 – regulatory guidance on the product design and distribution obligations, released 11 December 2020
- › CP 339 – consultation on guidance and prescribed customer information for the deferred sales model for add-on insurance, released 11 March 2021
- › INFO 256 – information about the obligations that apply to fee recipients who provide personal advice to retail clients under an ongoing fee arrangement, released 25 March 2021
- › CP 340 – consultation on guidance on the breach reporting obligation that applies from 1 October 2021, released 22 April 2021
- › INFO 253 – information on claims handling and settling services for insurance products regulated by ASIC, in light of the removal of the claims handling exemption, released 6 May 2021.

Last financial year, the Government announced that, due to the impact of the COVID-19 pandemic, certain Royal Commission-related legislative matters would be introduced to Parliament later than initially planned. This deferral was intended to allow financial services entities to focus their attention and resources on their COVID-19 pandemic responses and to plan for the post-COVID-19 pandemic economic recovery.

To support industry participants to focus on immediate priorities and the needs of their customers during the COVID-19 pandemic, ASIC deferred commencement

of the mortgage broker best interests duty and remuneration reforms to 1 January 2021, and the design and distribution obligations until 5 October 2021, six months after their original commencement dates.

Table 1.3.1 sets out action taken by ASIC in relation to legislative reforms that have already been introduced or are scheduled to be introduced in late 2021.

Table 1.3.2 sets out action taken by ASIC in relation to Royal Commission measures that do not require legislative reform.

### Table 1.3.1 Measures requiring legislative reform

For those measures involving law reform, ASIC has issued regulatory guidance or consulted on draft legislative instruments relating to eight recommendations as set out in Table 1.3.1.

Title	Commencement	Action taken by ASIC
Removal of the claims handling exemption ( <i>Recommendation 4.8</i> )	Commenced 1 January 2021	On 6 May 2021, ASIC released INFO 253, providing information for anyone who provides claims handling and settling services for insurance products regulated by ASIC.
Unfair contract terms in insurance ( <i>Recommendation 4.7</i> )	Commenced 5 April 2021	On 20 October 2020, ASIC issued updates to INFO 210 and INFO 211, on unfair contract terms protections for consumers and small businesses. The information sheets now provide information about how the unfair contract terms will apply to insurance contracts.
Lack of independence disclosure ( <i>Recommendation 2.2</i> )	Commences 1 July 2021	On 25 March 2021, ASIC made a legislative instrument setting the requirements for the disclosure of lack of independence that an AFS licensee or authorised representative must give clients where they would breach s923A of the Corporations Act if they used words such as 'independence', 'impartial' or 'unbiased'.

Title	Commencement	Action taken by ASIC
Advice fee reforms (Recommendations 2.1, 2.2, 3.2 and 3.3)	Commences 1 July 2021	<p>On 25 March 2021, ASIC made two legislative instruments setting the requirements for the written consent that a fee recipient must obtain from a client before deducting, or arranging to deduct, advice fees from a client account as part of an ongoing fee arrangement and for the written consent that a superannuation trustee must obtain from a member before deducting advice fees from a superannuation account under a non-ongoing fee arrangement.</p> <p>ASIC also released INFO 256 to answer frequently asked questions about the obligations that apply to fee recipients who provide personal advice to retail clients under an ongoing fee arrangement.</p>
Breach reporting reforms (Recommendations 1.6, 2.8, 2.9 and 7.2)	Commences 1 October 2021	<p>On 22 April 2021, ASIC released draft guidance on the breach reporting reforms for consultation.</p>
Reference checking and information sharing protocol for financial advisers and mortgage brokers (Recommendations 1.6 and 2.7)	Commences 1 October 2021	<p>On 19 November 2020, ASIC released Consultation Paper 333, setting out a proposal for a draft ASIC Protocol which outlines obligations for licensees in relation to undertaking a reference check on an individual seeking to be employed or authorised as a financial adviser or mortgage broker.</p> <p>ASIC also consulted on a draft information sheet to help licensees understand their reference checking and information-sharing obligations.</p> <p>The final Protocol and INFO 257 were released on 20 July 2021.</p>

Title	Commencement	Action taken by ASIC
No hawking of superannuation or insurance products ( <i>Recommendations 3.4 and 4.1</i> )	Commences 5 October 2021	On 21 July 2021, ASIC released Consultation Paper 346, setting out proposals for updating Regulatory Guide 38 <i>The hawking prohibitions</i> (RG 38) to reflect the new legislative changes.
Deferred sales model for add-on insurance ( <i>Recommendation 4.3</i> )	Commences 5 October 2021	On 11 March 2021, ASIC released Consultation Paper 339, setting out ASIC's proposed approach to implementation of the deferred sales model for add-on insurance, for stakeholder feedback.
Product design and distribution obligations ( <i>non-Royal Commission measure</i> )	Commences 5 October 2021	On 11 December 2020, ASIC released RG 274 <i>Product design and distribution obligations</i> .

### Table 1.3.2 Non-legislative measures

ASIC has either completed or taken action in relation to the following two recommendations of the Royal Commission that do not require legislative reform.

Title	Status	Action taken by ASIC
Amendments to the Banking Code ( <i>Recommendation 1.10</i> )	Ongoing	On 7 January 2021, ASIC approved a variation to the Banking Code to refine the definition of 'small business'.
Life insurance commissions review ( <i>Recommendation 2.5</i> )	Ongoing	<p>During 2020–21, ASIC substantially completed our review of 2017 life insurance advice and began preparations for our review of 2021 life insurance advice.</p> <p>ASIC also collected data for the 2020 calendar year from life insurers following COVID-19 pandemic delays.</p>

## 1.4 Financial summary

### Outcomes

Parliament funds ASIC to achieve the outcome 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.

### Revenue for the Commonwealth

In 2020–21, ASIC raised \$1,513 million for the Commonwealth in fees, charges and supervisory cost recovery levies, an increase of 11% from the 2019–20 year.

### Revenue, appropriations and expenditure

In 2020–21, ASIC received approximately \$437 million in appropriation revenue from the Government, including \$59 million for the Enforcement Special Account (ESA), representing a \$34 million or 8% increase compared with 2019–20.

ASIC received approximately \$41 million of own-source revenue,<sup>1</sup> which is \$23 million higher than the previous year. The increase in own-source revenue relates mainly to reimbursement of operating and capital expenditure incurred by ASIC on government programs funded directly by other Australian Government entities.

The increase in total expenses is consistent with the increase in appropriation and own-source revenue, noting that lease liability principal payments are not included in this total.

The reduction in the 2020–21 deficit is primarily driven by the revenue variances mentioned above. Most of the funding received was for capital expenditure.

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1 Revenue generated and retained by ASIC, including court costs recovered, royalties and other sundry income.

**Table 1.4.1 Revenue, appropriations and expenditure**

	2020–21 (\$'000s)	2019–20 (\$'000s)	Change (\$'000s)	Percentage change
Revenues from Government (incl. ESA)	<b>437,092</b>	403,261	33,831	8%
Own-source revenue	<b>40,598</b>	18,060	22,538	125%
Total revenue	<b>477,690</b>	421,321	56,369	13%
Total expenses (incl. depreciation and amortisation, net of gains)	<b>492,107</b>	489,507	2,600	1%
Surplus/(Deficit)	<b>(14,417)</b>	(68,186)	53,769	(79%)

**Table 1.4.2 ASIC's use of taxpayers' money for outcomes approved by Parliament**

	2020–21 (\$'000s)	2019–20 (\$'000s)
<b>Operating expenses (incl. depreciation and amortisation, net of gains)</b>		
Total expenses (net of gains)	<b>492,107</b>	489,507
Annual change on previous year	<b>0%</b>	14%
<b>Fees and charges (incl. industry funding) raised for the Commonwealth</b>		
Total	<b>1,512,563</b>	1,358,462
Annual change on previous year	<b>11%</b>	7%



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