

Introduction

Background

- 1.1 The House of Representatives Standing Committee on Economics (the committee) is empowered to inquire into, and report on, the annual reports of government departments and authorities tabled in the House that stand referred to the committee in accordance with the Speaker's Schedule.
- 1.2 The Australian Securities and Investments Commission (ASIC) 2019 Annual Report (annual report) stands referred to the committee in accordance with this schedule. The committee resolved at its meeting on 10 June 2020 that it would conduct an inquiry into the annual report.
- 1.3 ASIC is Australia's integrated corporate, markets, financial services, and consumer credit regulator. It is an independent Commonwealth statutory authority and administers the *Australian Securities and Investments Commission Act 2001* (ASIC Act), the *Corporations Act 2001* (Corporations Act), as well as a range of additional legislation.¹
- 1.4 ASIC was established in 1991 as the Australian Securities Commission, replacing the National Companies and Securities Commission and the Corporate Affairs offices of the states and territories. It was renamed ASIC in 1998 when it was given responsibility for consumer protections in superannuation, insurance, and deposit taking. ASIC's responsibilities were expanded in 2010 to regulate trustee companies; consumer credit and

1 ASIC, 'Laws we administer', <<https://asic.gov.au/about-asic/what-we-do/laws-we-administer/>>, accessed 12 November 2020.

finance broking; and for supervising trading on Australian licensed equity, derivatives and futures markets.²

1.5 ASIC's vision is for 'a fair, strong and efficient financial system for all Australians'. To realise this vision, ASIC stated that it will use its 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; and
- provide efficient and accessible business registers that make it easier to do business.³

Areas of responsibility

1.6 As the corporate, markets, financial services, and consumer credit regulator, ASIC has a wide range of responsibilities. It is required by the ASIC Act to:

- maintain, facilitate, and improve the performance of the financial system and entities within it;
- promote confident and informed participation by investors and consumers in the financial system;
- administer the law effectively and with minimal procedural requirements;
- efficiently receive, process, and store information;
- make information about companies and other bodies available to the public as soon as practicable; and
- take whatever action it can, and which is necessary, to enforce and give effect to the law.⁴

2 ASIC, 'How we operate: History', <<https://asic.gov.au/about-asic/what-we-do/our-role/history/>>, accessed 3 August 2020.

3 ASIC, 'Our role', <<https://asic.gov.au/about-asic/what-we-do/our-role/asic-vision-and-mission/>>, accessed 3 August 2020.

- 1.7 ASIC's service charter further describes its role in relation to corporate, market, and financial system regulation encompassing, among other activities:
- registering companies and managed investment schemes;
 - registering auditors and liquidators;
 - registering business names;
 - licensing financial services and consumer credit businesses; and
 - examining new market license proposals.⁵
- 1.8 ASIC maintains publicly accessible registers of companies, and registered and licensed entities, as well as disqualified directors and people who are banned from the financial services industry.⁶
- 1.9 ASIC may also grant relief for companies or individuals from some sections of the Corporations Act and the *National Consumer Credit Protection Act 2009* (National Credit Act).⁷

Enforcement outcomes

- 1.10 ASIC is responsible for pursuing companies or individuals that may have breached the laws it administers. The ASIC Act directs ASIC to 'take whatever action it can take, and is necessary, in order to enforce and give effect to the laws of the Commonwealth that confer functions and powers on it'.⁸
- 1.11 Following the Royal Commission's recommendation regarding ASIC's approach to enforcement, in July 2019, ASIC established an Office of

4 ASIC, 'Our role', <<https://asic.gov.au/about-asic/what-we-do/our-role/>>, accessed 12 November 2020.

5 ASIC, 'ASIC service charter', <<https://asic.gov.au/about-asic/what-we-do/how-we-operate/performance-and-review/asic-service-charter/asic-service-charter/>>, accessed 3 August 2020.

6 ASIC, 'ASIC service charter', <<https://asic.gov.au/about-asic/what-we-do/how-we-operate/performance-and-review/asic-service-charter/asic-service-charter/>>, accessed 3 August 2020.

7 ASIC, 'ASIC service charter', <<https://asic.gov.au/about-asic/what-we-do/how-we-operate/performance-and-review/asic-service-charter/asic-service-charter/>>, accessed 3 August 2020.

8 *Australian Securities and Investments Commission Act 2001*, s. 1.

Enforcement. The purpose of the Office is to ‘strengthen ASIC’s enforcement effectiveness’ and its ‘decision making and capabilities’.⁹

1.12 ASIC stated a key priority in 2019-20 will be ‘ensuring high deterrence enforcement action’ and ‘[continuing] to prioritise referrals from the Royal Commission for investigation and litigation’. ASIC explained it will ‘focus on efficient and effective enforcement action and on targeting cases of egregious harm, especially those involving vulnerable consumers’.¹⁰ ASIC reported that, from January 2019 to January 2020, there has been:

- a 10 per cent increase in the number of ASIC enforcement investigations; and
- a 52 per cent increase in enforcement investigations involving CBA, NAB, Westpac, ANZ and AMP (or their officers or subsidiary companies).¹¹

Scope and conduct of the review

1.13 ASIC appeared before the committee at two public hearings on 5 August 2020 and 23 October 2020 in Canberra via videoconference. Details of the hearings are provided at Appendix A.

1.14 The proceedings of the hearing were webcast through the Parliament’s website, allowing interested parties to view or listen to the proceedings as they occurred. The transcripts of the hearings are available on the committee’s website.¹²

1.15 ASIC’s responses to the committee’s questions on notice and in writing are provided on the committee’s website.¹³

1.16 This report focuses on matters raised at the public hearings.

9 ASIC, *Annual Report 2018-19*, p. 31.

10 ASIC, *Annual Report 2018-19*, p. 31.

11 ASIC, *ASIC Update: September 2019 to February 2020*, p. 5.

12 House of Representatives Standing Committee on Economics, <https://www.aph.gov.au/Parliamentary_Business/Committees/House/Economics/ASICAnnualReport2019/Public_Hearings>.

13 House of Representatives Standing Committee on Economics, <https://www.aph.gov.au/Parliamentary_Business/Committees/House/Economics/ASICAnnualReport2019/Documents>.