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Review of the Australian Securities and Investments Commission Annual Report 2019

House of Representatives
Standing Committee on Economics

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Chair's foreword

2020 has been a challenging year for Australians, businesses and our institutions; and ASIC has not been exempted because of COVID-19 as well as self-generated problems.

The COVID-19 pandemic has caused unprecedented disruption to our lives. While the pandemic is primarily a public health issue, it has significantly impacted economies and financial systems around the world. It has led to the closure of our borders; the biggest economic downturn in close to a century; pressure on many small and medium businesses from tough public health measures; and historically low interest rates.

The Australian financial sector and its regulators responded quickly to the pandemic. Financial institutions provided support to Australian families and businesses as they worked to manage their mortgages and debts during a time when income is disrupted. The Morrison government's early release scheme reunited Australians with their own superannuation savings to help them during this difficult time. While some uncertainty remains, it is encouraging that there appears to be a strong economic comeback for Australia against the experience of many other economies.

On the health side, being 'girt by sea' enabled Australia to be one of the few nations that was able to close its international borders and effectively stop COVID-19 entering. Closing our international borders has been the single biggest public health measure taken to protect Australians. The only examples of community transmission have come as a result of a breach of those borders.

On the economic side, when the Australian economy went into this crisis it was better positioned than most to weather the storm. Having a Federal Budget in balance has ensured that lockdown measures could be offset by fiscal support through temporary increases in JobSeeker and the creation of the temporary JobKeeper program. It is a reminder that you are prudent on 'sunny days' in the hope that 'rainy days' never come, but inevitably do.

The opportunity of Australia's economic comeback is to not simply resuscitate Australia's 20th Century economy but build a forward-looking, modern 21st Century economy that provides the foundation for sustainable growth that provides the next generation of Australians with opportunity, employment and home ownership.

However, the economic comeback brings its own challenges. It is essential that governments, regulators, and financial institutions continue to be proactive and work together as the immediacy of the crisis fades and the hard work of economic comeback continues.

The committee notes ASIC's timely response to the pandemic. ASIC quickly adapted to the challenges of the pandemic, adjusting its regulatory priorities to focus on protecting vulnerable consumers, maintaining the integrity of markets, and supporting businesses. In particular, the committee notes ASIC's prompt and ongoing release of guidance regarding retail lenders obligations and ASIC's expectations when assisting consumers who are experiencing financial difficulties due to COVID-19.

The committee notes ASIC's proactive and ongoing engagement with peak bodies, superannuation funds, and financial institutions throughout the various stages and changing circumstances of the pandemic. In particular, the committee notes the strong relationship and high level of cooperation and coordination that ASIC and APRA have displayed during this challenging period.

The committee notes ASIC's progress regarding the implementation of the Royal Commission's recommendations, acknowledging the disruption caused by the pandemic and the deferral of implementation of commitments associated with the Royal Commission. The committee also notes that ASIC has also continued its enforcement work during this challenging period.

However, ASIC's progress and its rapid response to the COVID-19 pandemic are overshadowed by problems of its own making. It is difficult to say that there is as much confidence in ASIC today as there was at the same time last year and ASIC should seek to address these issues as a matter of urgency because they go to the heart of their capacity and internal processes.

As an example, the Committee has been concerned about ASIC's continual refusal to accept responsibility for its misleading and deceptive 'SMSF fact sheet' that has made spectacular and unsupported claims of the cost of establishing and running a self-managed superannuation fund. While this matter may appear trivial, it raises serious questions about the internal processes for approval within ASIC for information that is promoted to inform consumers and their choices, and whether ASIC understands the products they are regulating. It is simply absurd that ASIC would put information in the public square that claimed the cost of running an SMSF annually exceeded half the cost of the maximum contribution that could be made to it without scrutiny of the underlying data. It has only been because of the diligence and persistence of the committee that the inaccuracies of

this fact sheet have been highlighted. To date there has been no acknowledgement of this error, and apology for it. Instead ASIC has stood by it and claimed that new data has simply superseded it. This attitude undermines ASIC's credibility. Had a regulated business made similarly misleading statements about a competitor product they would face sanction. Yet those who impose sanctions are holding themselves to a different standard.

Unfortunately, these concerns of ASIC's internal processes have now been validated following independent investigations into payments made by ASIC on behalf of two of ASIC's most senior officers, the Chair and Deputy Chair Crennan.

The committee will not comment on the substance of these matters, as the independent review is still underway at the time of writing. However, the committee is very disappointed that such a review is necessary. ASIC should be leading by example. It must be beyond reproach in its governance and accountability structures and processes.

ASIC has a lot of work to do to rebuild its credibility and confidence with the committee, and likely the wider business and Australian community. Declining confidence did not originate with the investigations into the Chair and Deputy Chair, though it has substantially compounded it.

The committee takes its role of the oversight of ASIC very seriously. In 2021 it would be fruitful if ASIC demonstrated to the committee how it is reviewing its internal processes to address these issues, so such errors do not occur again; that it has accepted responsibility and that accountability exists within the organisation; and that it is clearly focused on its core duties of enforcement.

While it remains a matter for the Treasurer, these issues justify consideration for reform of ASIC to help rebuild confidence in its capacity, so it fulfils the important statutory functions the Parliament entrusts it with.

In 2021 the committee will closely follow the outcome of the independent review. It will continue to scrutinise ASIC's performance, particularly ASIC's ongoing response to the COVID-19 pandemic and its implementation of the Royal Commission's recommendations.

On behalf of the committee, I thank ASIC representatives for appearing at the public hearings on 5 August 2020 and 23 October 2020.

Tim Wilson MP
Chair



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Membership of the Committee

Chair	Mr Tim Wilson MP
Deputy Chair	Hon Dr Andrew Leigh MP
Members	Dr Anne Aly MP (to 8 October 2020)
	Mrs Bridget Archer MP (to 27 August 2020)
	Mr Adam Bandt MP
	Mr Jason Falinski MP
	Ms Celia Hammond MP (from 27 August 2020)
	Mr Craig Kelly MP
	Mr Andrew Laming MP
	Dr Daniel Mulino MP
	Ms Peta Murphy MP (from 8 October 2020)
	Mr Ted O'Brien MP (to 27 August 2020)
	Mr Julian Simmonds MP (from 27 August 2020)

Committee Secretariat

Secretary Ms Casey Mazzeella (from 3 August 2020)

Mr Stephen Boyd (to 31 July 2020)

Senior Research Officer Ms Stephanie Woodbridge

Research Officer Ms Miriam El-Chami

Administrative Officer Ms Jazmine Rakic



Terms of reference

The House of Representatives Standing Committee on Economics 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 for any inquiry the committee may wish to make. The reports stand referred in accordance with the schedule tabled by the Speaker to record the areas of responsibility of the committee.



List of abbreviations

ABA	Australian Banking Association
ACCC	Australian Consumer and Competition Commission
AFCA	Australian Financial Complaints Authority
ANAO	Australian National Audit Office
APRA	Australian Prudential Regulation Authority
ASIC	Australian Securities and Investments Commission
ASIC Act	<i>Australian Securities and Investments Commission Act 2001 (Cth)</i>
ASX	Australian Securities Exchange
ATO	Australian Taxation Office
BEAR	Banking Executive Accountability Regime
Corporations Act	<i>Corporations Act 2001 (Cth)</i>
MoU	Memorandum of Understanding
National Credit Act	<i>National Consumer Credit Protection Act 2001 (Cth)</i>
Royal Commission	Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry
SME	Small and medium-sized enterprise
SMSFs	Self-Managed Super Funds