

# Chapter 4

## ASIC's 2015–16 annual report

4.1 This chapter discusses the 2015–16 annual report of ASIC. Under Senate Standing Order 25(20),<sup>1</sup> annual reports of bodies established under the ASIC Act are subject to scrutiny by the Senate Economics Legislation Committee which noted the following in relation to ASIC's 2015–16 annual report:

- ASIC's strong performance in two key areas: financial literacy and enforcement;<sup>2</sup>
- ASIC's primary role as a law enforcement agency, with 70 per cent of ASIC's regulatory resources allocated to surveillance and enforcement;<sup>3</sup>
- ASIC's enforcement achievements including:
  - 22 criminal convictions;
  - \$210.5 million in compensation and remediation for investors and consumers;
  - \$1.3 million in civil penalties; and
  - \$2.3 million in infringement notices (109 notices issued).<sup>4</sup>
- ASIC's full engagement with the capability review in July 2015 as a result of the Financial Services Inquiry (FSI);<sup>5</sup>
- the government's commitment to provide an additional \$121.3 million in funding for ASIC to implement ASIC's responses to the recommendations of the FSI;<sup>6</sup> and
- the government's 2017 review of ASIC's enforcement regime for which a report is expected to be presented later in 2017.<sup>7</sup>

4.2 The Senate Economics Legislation Committee considered that ASIC met its reporting obligations and the annual report is apparently satisfactory.<sup>8</sup> Therefore, in

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1 The Senate, *Standing Orders and other orders of the Senate*, August 2015, p. 30.

2 Senate Economics Legislation Committee, Annual reports (No. 1 of 2017), March 2016, p. 18.

3 Senate Economics Legislation Committee, Annual reports (No. 1 of 2016), March 2016, p. 18.

4 Senate Economics Legislation Committee, Annual reports (No. 1 of 2016), March 2016, p. 18.

5 Senate Economics Legislation Committee, Annual reports (No. 1 of 2016), March 2016, p. 19.  
The government response to the FSI was released in October 2015

[https://www.treasury.gov.au/~media/Treasury/Publications%20and%20Media/Publications/2015/Government%20response%20to%20the%20Financial%20System%20Inquiry/Downloads/PDF/Government response to FSI 2015.ashx](https://www.treasury.gov.au/~media/Treasury/Publications%20and%20Media/Publications/2015/Government%20response%20to%20the%20Financial%20System%20Inquiry/Downloads/PDF/Government%20response%20to%20FSI%202015.ashx) (accessed 11 May 2017).

6 Senate Economics Legislation Committee, Annual reports (No. 1 of 2016), March 2016, p. 19.

7 Senate Economics Legislation Committee, Annual reports (No. 1 of 2016), March 2016, p. 20.

8 Senate Economics Legislation Committee, Annual reports (No. 1 of 2016), March 2016, p. 20.

conducting its review of the ASIC 2015–16 annual report, the committee will focus on the statutory requirements under the ASIC Act and other operational matters.

### *Statutory requirements*

4.3 Statutory requirements for the ASIC annual report are set out in section 136 of the ASIC Act and Section 46 of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) cover tabling, distribution and the contents of the annual report.

### *Tabling and distribution*

4.4 The 2015–16 ASIC annual report was provided to the Minister on 14 October 2016, and was presented out of sitting on 31 October 2016. As a result, the legislative requirements as set out below were satisfied:

- Section 46(1), PGPA Act: After the end of each reporting period for a Commonwealth entity, the accountable authority of the entity must prepare and give an annual report to the entity's responsible Minister, for presentation to the Parliament, on the entity's activities during the period; and
- Section 46(2), PGPA Act: The annual report must be given to the responsible Minister by: the 15th day of the fourth month after the end of the reporting period for the entity; or the end of any further period granted under subsection 34C(5) of the Acts Interpretation Act 1901.

4.5 Section 136(4) of the ASIC Act requires that 'the Minister must cause a copy of each annual report to be sent to the Attorney-General of each State and Territory as soon as practical after the Minister receives the report'. ASIC informed the committee that as at 25 November 2016 the 2015–16 annual report has been provided to the Minister so that the report could be provided to the Attorney-General of each State and Territory.<sup>9</sup>

### *Contents of the annual report*

4.6 In addition to the requirements for annual reports as approved by the Joint Committee of Public Accounts and Audit, ASIC is subject to statutory requirements for the contents of the ASIC annual report as set out in sections 136(1)(a–e) and 136(2A) of the ASIC Act. It should be noted that changes to section 136(1) and 136(2) of the ASIC Act were imposed by the *Public Governance and Resources Legislation Amendment Act (No. 1) 2015* which sought to align annual report requirements, where possible, with the PGPA Act.<sup>10</sup> Table 4.1 lists where in the 2015–16 ASIC annual report the current requirements in the ASIC Act are met.

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9 ASIC, *Answer to question on notice*, 25 November 2016 (received 17 January 2017).

10 Public Governance and Resources Legislation Amendment Act (No. 1) 2015, Revised Explanatory Memorandum, pp. 13–14 of 25  
[http://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r5402\\_ems\\_126da0a5-fac4-4fa7-989e-acfc994bec58/upload\\_pdf/500599.pdf;fileType=application%2Fpdf](http://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r5402_ems_126da0a5-fac4-4fa7-989e-acfc994bec58/upload_pdf/500599.pdf;fileType=application%2Fpdf), (accessed 11 May 2017).

**Table 4.1: Statutory requirements for the ASIC annual report**

Section	Reporting requirement (ASIC Act)	2015–16 Annual Report
136(1)(a)	Exercise of ASIC's powers under Part 15 of the <i>Retirement Savings Accounts Act 1997</i> and under Part 29 of the <i>Superannuation Industry (Supervision) Act 1993</i>	Page 188
136(1)(b)	ASIC's monitoring and promotion of market integrity and consumer protection	Pages 22–25 Pages 30–81
136(1)(c)	In relation to ASIC's functions under subsection 11(14), and each agreement or arrangement entered into by ASIC under that subsection, information about the activities that ASIC has undertaken during the period in accordance with that agreement or arrangement	Page 188
136(1)(d)	Operation of the <i>Business Names Registration Act 2011</i>	Pages 83–87
136(1)(e) 136(2)(a)	Information relating to the exercise by ASIC, members of ASIC, or staff members, of prescribed information-gathering powers.	Pages 194–195

***Operational matters identified in the annual report.***

4.7 ASIC has retained three strategic priorities and the 2015–16 annual report is structured according to achievements in these three areas. These are as follows:

- Investor and consumer trust and confidence.<sup>11</sup>
- Fair and efficient markets.<sup>12</sup>
- Efficient registration services.<sup>13</sup>

4.8 The government has committed \$127.3 million over the next four years to implement recommendations from the ASIC Capability Review and the FSI.<sup>14</sup> From this amount \$121.3 million has been allocated to ASIC. ASIC received these funds once the relevant appropriation Bill passed both houses of Parliament on 7 November 2016.<sup>15</sup> As noted in the annual report ASIC will spend the funds in the following ways:

- \$61.1 million to increase data analytics capabilities, including updating the data management system and increasing surveillance capabilities;

11 ASIC, *Annual Report 2015–16*, pp. 30–55.

12 ASIC, *Annual Report 2015–16*, pp. 56–81.

13 ASIC, *Annual Report 2015–16*, pp. 82–87.

14 ASIC, *Annual Report 2015–16*, p. 5.

15 ASIC, *Answer to question on notice*, 25 November 2016 (received 17 January 2017).

- \$57 million to increase enforcement and surveillance activities with a focus on financial advice, responsible lending, life insurance and breach reporting; and
- \$3.2 million to facilitate the accelerated implementation of key FSI recommendations.<sup>16</sup>

4.9 On 20 April 2016 the government announced an industry funding model for ASIC in response to a key recommendation of the FSI. ASIC notes in the 2015–16 annual report that this model will allow for alignment between ASIC's regulatory costs and those in the industry that create the need for regulatory activities.<sup>17</sup> The industry funding model will also provide ASIC with greater certainty of funding and resources. ASIC notes that it is to work closely with the Treasury and industry in establishing the industry model before its commencement.<sup>18</sup>

4.10 The committee notes that on 30 March 2017 the ASIC Supervisory Cost Recovery Levy Bill 2017 and related bills necessary to implement an industry funding model for ASIC were introduced in Parliament.<sup>19</sup> On 4 May 2017 draft regulations were released by the Treasury for stakeholder views.<sup>20</sup> Submissions regarding the regulations close on Friday 26 May 2017.<sup>21</sup> The committee will continue to monitor how the regulations are to work in practice in assisting ASIC in recovering revenue.

### *Enforcement*

4.11 During the reporting period 685 enforcement outcomes were achieved, including criminal and civil litigation and administrative action.<sup>22</sup> This was an increase on the 631 enforcement outcomes in 2014–15.<sup>23</sup> The annual report enforcement outcome data shows an increase in:

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16 ASIC, *Annual Report 2015–16*, p. 5.

17 ASIC, *Annual Report 2015–16*, p. 5.

18 ASIC, *Annual Report 2015–16*, p. 5.

19 ASIC Supervisory Cost Recovery Levy Bill 2017, [http://www.aph.gov.au/Parliamentary\\_Business/Bills\\_Legislation/Bills\\_Search\\_Results/Result?bId=r5842](http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r5842) (accessed 11 May 2017).

20 The Treasury, *ASIC Supervisory Cost Recovery Levy Regulations 2017*, <http://www.treasury.gov.au/ConsultationsandReviews/Consultations/2017/ASIC-Supervisory-Cost-Recovery-Levy-Regulations-2017> (accessed 11 May 2017).

21 The Treasury, *ASIC Supervisory Cost Recovery Levy Regulations 2017*, <http://www.treasury.gov.au/ConsultationsandReviews/Consultations/2017/ASIC-Supervisory-Cost-Recovery-Levy-Regulations-2017> (accessed 11 May 2017).

22 This figure does not reflect the monetary amount obtained through compensation/remediation or in fines paid. ASIC, *Report 485 ASIC enforcement outcomes: January to June 2016*, <http://download.asic.gov.au/media/3971855/rep485-published-08-august-2016.pdf> (accessed 11 May 2017); ASIC, *Report 476 ASIC enforcement outcomes: July to December 2015*, <http://download.asic.gov.au/media/4156870/rep476-published-17-february-2017.pdf> (accessed 11 May 2017).

23 ASIC, *Annual Report 2014–15*, p. 164.

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- Civil litigations successfully completed in relation to the priority of fair and efficient markets;<sup>24</sup>
  - people and companies banned from financial services and credit services;<sup>25</sup> and
  - compensation or remediation under the priority of investor and consumer trust and confidence.<sup>26</sup>

4.12 In contrast, the enforcement outcome data shows a decrease in:

- civil penalties under the priority of investor and consumer trust and confidence;<sup>27</sup>
- the number of infringement notices issued under the priority of investor and consumer trust and confidence;<sup>28</sup> and
- compensation or remediation provided under the priority of fair and efficient markets.<sup>29</sup>

4.13 The 2015–16 annual report notes that the number of investigations commenced under the priority of investor and consumer trust and confidence increased while investigations commenced under the priority of fair and efficient markets decreased.<sup>30</sup> The number of investigations completed under both priorities decreased.<sup>31</sup>

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24 ASIC, *Annual Report 2015–16*, p. 58.

25 ASIC, *Annual Report 2015–16*, p. 32.

26 ASIC, *Annual Report 2015–16*, p. 33.

27 ASIC, *Annual Report 2015–16*, p. 32. ASIC notes that the civil penalty amount of over \$18 million in 2014–15 was due to The Cash Store Pty Ltd matter. The decrease in the total dollar value of civil penalties under the priority of investor and consumer trust and confidence could be due to a decrease in the number of civil litigations being completed under this priority from 43 in 2014–15 to 36 in 2015–16.

28 ASIC, *Annual Report 2015–16*, p. 33. ASIC notes that for the 2015–16 reporting period the number of infringement notice reported was separated by notices under the ASIC Act and notices under the *National Consumer Credit Protection Act 2009*. The 2015–16 annual report does not elaborate on the decrease in the number of infringement notices under the priority of investor and consumer trust and confidence.

29 ASIC, *Annual Report 2015–16*, p. 59. ASIC provides no data for the 2015–16 period regarding compensation or remediation provided under the priority of fair and efficient markets. The 2015–16 annual report does not elaborate on this point.

30 ASIC, *Annual Report 2015–16*, pp. 32, 58.

31 ASIC, *Annual Report 2015–16*, pp. 32, 58.

4.14 During the reporting period ASIC published two six-monthly reports on enforcement statistics. The reports focussed on key themes that have been identified from the enforcement data for the preceding periods.<sup>32</sup>

4.15 ASIC also commenced a number of actions against banks. Actions from August to November 2016 are summarised in Table 4.2 below.

**Table 4.2- Statutory requirements for the ASIC annual report<sup>33</sup>**

<b>Date and ASIC media release No.</b>	<b>Banks and lenders</b>	<b>Fine</b>	<b>Refund</b>	<b>No. Customers</b>	<b>Issues</b>
2016.08.24 16-271	Macquarie IM	\$0.4m			Failure to exercise due care and diligence
2016.09.02 16-289	Commsec	\$0.7m	\$1.1m	25 000	Lack of crossing and principal disclosure in trading pools
2016.09.05 16-291	ANZ		\$29.0m	393 000	Unclear fee disclosures on periodic payments
2016.09.07 16-296	ING Bank		\$5.4m	24 500	Misleading statements on costs and fees
2016.09.07 16-297	Morgan Stanley	\$0.12m			Failure to undertake monthly account reconciliation
2016.09.08 16-298	Westpac		\$20.0m	820 000	Failure to disclose credit card foreign transaction fees
2016.09.12 16-304	Westpac		\$9.2m	161 414	Failure to apply eligible fee waivers

32 ASIC, *Report 485 ASIC enforcement outcomes: January to June 2016*, <http://download.asic.gov.au/media/3971855/rep485-published-08-august-2016.pdf> (accessed 11 May 2017); ASIC, *Report 476 ASIC enforcement outcomes: July to December 2015*, <http://download.asic.gov.au/media/4156870/rep476-published-17-february-2017.pdf> (accessed 11 May 2017).

33 ASIC, *Media Centre – Find a media release*, <http://asic.gov.au/about-asic/media-centre/find-a-media-release/?page=4&filter=2016&find=all> (accessed 15 May 2017).

2016.09.14 16-308	CBA	\$0.18m	\$2.5m	10 729	Breaches of responsible lending from 2011 to 2015.
2016.10.27 16-365	ANZ CBA NAB AMP Westpac		\$178m	202 000	Advice fees for no service
2016.11.09 16-380	Cash Converters	\$1.35m	\$10.8m	118 000	Irresponsible lending
2016.11.16 16-389	Commsec	\$0.2m		1	59 unauthorised transactions on the account of a deceased client over a six month period

4.16 The committee notes the work done by ASIC against banks over a period of four months and will continue to monitor its actions in relation to this.

4.17 ASIC informed the committee that it is currently undertaking the first test case on the best interest duty in relation to financial advisers under the Corporations Act.<sup>34</sup> ASIC was unable to provide specific information to the committee due to the matter currently being heard by the courts. ASIC informed the committee that it would provide an update on the test case at a later date.<sup>35</sup> The committee will continue to monitor the outcomes of the test case once the court process has reached a point where discussion can be had on the matter.

4.18 In response to the legal action taken by ASIC against Mariner Corporation Limited in April 2014,<sup>36</sup> the committee recommended that the government consider ASIC's suggestions for the reform of section 631 of the Corporations Act.<sup>37</sup> The government responded with agreement in principle to this recommendation and informed the committee that it would consider the recommendation when other substantial reforms to take-over laws are considered by the government.<sup>38</sup> The

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34 Mr Peter Kell, Deputy Chairman, Australian Securities and Investments Commission, *Committee Hansard*, 25 November 2016, pp. 9, 10–11.

35 Mr Peter Kell, Deputy Chairman, Australian Securities and Investments Commission, *Committee Hansard*, 25 November 2016, pp. 9, 10–11.

36 *Australian Securities and Investments Commission v Mariner Corporation Limited [2015] FCA 589*.

37 Parliamentary Joint Committee on Corporations and Financial Services, *Report on the 2014-15 annual reports of bodies established under the ASIC Act*, May 2016, p. 25.

38 Australian Government, *Australian Government response to Parliamentary Joint Committee on Corporations and Financial Services' report: The 2014-15 annual reports of bodies established under the ASIC Act*, January 2017.

committee will continue to monitor the government's consideration of the recommendation.

### *Enforcement review*

4.19 On 19 October 2016 a taskforce was announced to review the enforcement regime of ASIC.<sup>39</sup> The taskforce chaired by the Treasury, will consist of a panel of senior representatives from ASIC, the Attorney-General's Department and the Office of the Commonwealth Director of Public Prosecutions. The panel will be supported by an expert group and a reference group of stakeholders. The taskforce is expected to report to the government in 2017. The terms of reference for the taskforce and the list of persons in the expert group can be located on the Treasury website.<sup>40</sup>

### *Surveillance*

4.20 The 2015–16 annual report indicates that the number of high-intensity surveillances completed by ASIC increased during the reporting period. Across the priority of investor and consumer trust and confidence and the priority of fair and efficient markets, 1441 high-intensity surveillances were undertaken in 2015–16.<sup>41</sup> This is an increase from 1016 in 2014–15.<sup>42</sup>

4.21 The 2015–16 annual report notes that ASIC's surveillance during the reporting period was proactive, risk-based and focused on areas such as vertically integrated businesses in the funds management industry, funeral insurance, financial benchmarks, retail over-the-counter derivative trading and auditors and registered liquidators.<sup>43</sup> In 2015–16 ASIC's wealth management project utilised risk-based surveillance to focus on a range of misconduct, including the quality of advice in large, vertically integrated institutions.<sup>44</sup> ASIC notes that it achieved significant regulatory outcomes against licensees and advisers over the life of the project. One such achievement was the banning of 14 advisors from the financial services industry either permanently or for a period of time.<sup>45</sup>

4.22 Surveillance by ASIC also targeted insolvency practitioners with 27 high-intensity surveillances taking place.<sup>46</sup> The 2015–16 annual report notes ASIC's concerns regarding the largely unlicensed and unregulated nature of the pre-

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39 The Treasury, *ASIC Enforcement Review*, <http://www.treasury.gov.au/ConsultationsandReviews/Reviews/2016/ASIC-Enforcement-Review> (accessed 11 May 2017).

40 The Treasury, *ASIC Enforcement Review*, <http://www.treasury.gov.au/ConsultationsandReviews/Reviews/2016/ASIC-Enforcement-Review> (accessed 11 May 2017).

41 ASIC, *Annual Report 2015–16*, p. 3.

42 ASIC, *Annual Report 2014–15*, pp. 6, 8.

43 ASIC, *Annual Report 2015–16*, pp. 32, 57.

44 ASIC, *Annual Report 2015–16*, p. 41.

45 ASIC, *Annual Report 2015–16*, p. 41.

46 ASIC, *Annual Report 2015–16*, p. 65.

insolvency advice market. ASIC raised concerns over how some advisers may 'aid and abet directors in breaching their duties and promote illegal phoenix activity that undermines market confidence and reduces the assets that might otherwise be available for creditors in a formal external administration'.<sup>47</sup> ASIC referred to market intelligence from registered liquidators to better understand phoenix activity as well as conducting investigations and working with other regulators such as the Fair Work Ombudsman, the Australian Financial Security Authority and the Phoenix Taskforce.<sup>48</sup>

4.23 In relation to the pre-insolvency advice market and the role it plays in encouraging phoenix activity, the committee asked ASIC about the fluctuation in the number of companies identified over the years as having the potential to conduct illegal phoenixing; 6223 to 2072 to 11 494 across 2013–14, 2014–15 and 2015–16 respectively.<sup>49</sup> ASIC informed the committee that the fluctuations are due to a number of reasons, one of which is the nature of surveillance programs ASIC is running.<sup>50</sup> The committee encourages ASIC to provide further information in future annual reports about the reasons behind the fluctuation in the number of companies with the potential to conduct illegal phoenix activities.

4.24 The 2015–16 annual report indicates that the number of financial markets has grown from approximately 18 in 2012–13 to 52 in 2015–16.<sup>51</sup> The majority of the growth has been in authorised, but unlicensed financial markets.<sup>52</sup> The annual report indicates that licensed financial markets are subject to surveillance every year while authorised unlicensed markets receive reactive surveillance.<sup>53</sup>

4.25 The committee raised questions about these authorised but unlicensed markets, particular in relation to the amount of surveillance undertaken, why unlicensed markets are monitored differently from licenced markets and how Parliament can be assured that unlicensed markets are operating with integrity.<sup>54</sup>

4.26 ASIC informed the committee that licensed and unlicensed markets exist due to the absence of a tiered market framework.<sup>55</sup> Unlike almost every other developed financial centre, Australia has only one type of financial license which is modelled on

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47 ASIC, *Annual Report 2015–16*, p. 65.

48 ASIC, *Annual Report 2015–16*, p. 65.

49 *Committee Hansard*, 25 November 2016, p. 23; ASIC, *Annual Report 2015–16*, p. 22.

50 Mr Warren Day, Senior Executive Leader, Australian Securities and Investments Commission, *Committee Hansard*, 25 November 2016, p. 23.

51 ASIC, *Annual Report 2012–13*, p. 14; ASIC, *Annual Report 2015–16*, p. 23.

52 ASIC, *Annual Report 2015–16*, p. 23; ASIC, *Answer to question on notice*, 25 November 2016 (received 17 January 2017). The 2015-16 annual report notes that out of 52 authorised markets, 34 are unlicensed.

53 ASIC, *Annual Report 2015–16*, p. 23.

54 ASIC, *Answer to question on notice*, 25 November 2016 (received 17 January 2017).

55 ASIC, *Answer to question on notice*, 25 November 2016 (received 17 January 2017).

the traditional exchange type market.<sup>56</sup> This means that the Australian market licensing regime cannot accommodate other types of facilities for professional investors. As such some markets can be exempt from obtaining a licence under Part 7.2 of the Corporations Act. The exemptions are subject to conditions to address any risks that may be created by these markets.<sup>57</sup> Conditions include that users are only professional investors and that products traded on exempt markets are not usually traded on licensed markets.<sup>58</sup>

4.27 ASIC also informed the committee that the level of supervision differs for unlicensed markets as ASIC's regulatory powers are different for such markets. ASIC has advised the government of the desirability of law reform that would allow unlicensed markets to become licenced markets through a tiered system and subject to more detailed regulatory oversight by ASIC.<sup>59</sup>

4.28 The committee notes ASIC response to issues regarding authorised unlicensed markets. The committee will monitor ASIC's and the Treasury's work in relation to regulatory arrangements for unlicensed markets, including its efforts to progress any law reform.

#### *Market cleanliness*

4.29 The 2015–16 annual report notes that during the reporting period ASIC developed a new measure of equity market cleanliness.<sup>60</sup> This was based on analysis of 'anomalous trading ahead of material, price-sensitive announcements' with a focus on insider trading and information leaks.<sup>61</sup> The measure demonstrated that since the transfer of market supervision to ASIC in 2010 the Australian equities markets have shown an increase in market cleanliness.<sup>62</sup> ASIC released its report on equity market cleanliness in August 2016.<sup>63</sup>

4.30 The committee asked ASIC whether a similar measure could be implemented for areas outside of equity markets such as loans, life insurance and financial advice.<sup>64</sup> ASIC notified the committee that a measure of equity market cleanliness was developed due to the rich data available.<sup>65</sup> As this level of data may not be available in

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56 ASIC, *Answers to question on notice*, 25 November 2016 (received 17 January 2017).

57 ASIC, *Answers to question on notice*, 25 November 2016 (received 17 January 2017).

58 ASIC, *Answers to question on notice*, 25 November 2016 (received 17 January 2017).

59 ASIC, *Answers to question on notice*, 25 November 2016 (received 17 January 2017).

60 ASIC, *Annual Report 2015–16*, pp. 3, 76.

61 ASIC, *Annual Report 2015–16*, pp. 3, 76.

62 ASIC, *Annual Report 2015–16*, pp. 3, 76.

63 ASIC, *Annual Report 2015–16*, pp. 3, 76; ASIC, *Report 487 Review of Australian equity market cleanliness*, <http://download.asic.gov.au/media/3972840/rep487-published-9-august-2016.pdf> (accessed 12 May 2017).

64 ASIC, *Answers to question on notice*, 25 November 2016 (received 17 January 2017).

65 ASIC, *Answers to question on notice*, 25 November 2016 (received 17 January 2017).

other sectors, a similar measure of cleanliness may not be able to be developed.<sup>66</sup> However depending on the data available, loan delinquency and broad failures in relation to various classes of insurance could have a measure of cleanliness like the one established for equity markets.<sup>67</sup>

4.31 ASIC is also considering cleanliness indicators for retail credit markets that are within ASIC's jurisdiction. ASIC notes that there is a high level of loan data on loan defaults that is available from different sources, some of which would assist in being an indicator for cleanliness.<sup>68</sup>

4.32 ASIC notes that in relation to other sectors such as life insurance and financial advice, public reporting and surveillance provide the necessary data to indicate the level of compliance within those sectors without the need for a measure of cleanliness.<sup>69</sup>

4.33 The committee will continue to monitor ASIC's work on market cleanliness measures.

#### *Relief applications*

4.34 During the reporting period ASIC received 1982 applications or waivers for relief from individual entities, out of which relief was granted for 1251 applications.<sup>70</sup> This was a decrease from the 2014–15 period where 2157 number of applications were received, out of which relief was granted for 1473 applications.<sup>71</sup> The 2015–16 annual report does not elaborate on the decrease between the reporting periods.

4.35 ASIC informed the committee that it is not possible to determine how many waivers for individual entities are currently in effect.<sup>72</sup> ASIC also informed the committee that such waivers for individual entities are not subject to parliamentary disallowance and that consumers are notified about individual relief instruments through the ASIC gazette.<sup>73</sup>

4.36 The committee encourages ASIC to provide information in future annual reports regarding how many applications or waivers are in effect and to consider more accessible ways for consumers to obtain information on published individual relief instruments outside of the ASIC Gazette.

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66 ASIC, *Answer to question on notice*, 25 November 2016 (received 17 January 2017).

67 ASIC, *Answer to question on notice*, 25 November 2016 (received 17 January 2017).

68 ASIC, *Answer to question on notice*, 25 November 2016 (received 17 January 2017).

69 ASIC, *Answer to question on notice*, 25 November 2016 (received 17 January 2017).

70 ASIC, *Annual Report 2015–16*, p. 7; ASIC, *Answer to question on notice*, 25 November 2016 (received 17 January 2017).

71 ASIC, *Annual Report 2014–15*, p. 13.

72 ASIC, *Answer to question on notice*, 25 November 2016 (received 17 January 2017).

73 ASIC, *Answer to question on notice*, 25 November 2016 (received 17 January 2017); ASIC, *ASIC Gazette*, <http://asic.gov.au/about-asic/corporate-publications/asic-gazette/> (accessed 11 May 2017).

**Recommendation 1**

**4.37 The committee recommends that ASIC investigate the feasibility of establishing a searchable public register containing information on the applications or waivers for relief currently in effect as well as indicative information for consumers regarding how they might be affected.**

*International cooperation*

4.38 The 2015–16 annual report notes that due to increasingly integrated, complex and competitive global financial markets, an international coordination effort is required.<sup>74</sup> In response to this ASIC formed relationships with international regulators through memberships and participation in bodies such as International Organization of Securities Commissions, the International Association of Insurance Supervisors and FincoNet, the International Financial Consumer Protection Organisation.<sup>75</sup>

4.39 During the reporting period, ASIC made 362 international cooperation requests and received 398 requests.<sup>76</sup> This demonstrates an increase of 32 requests made and a decrease of 26 requests received.<sup>77</sup> As noted in the 2015–16 annual report, 92 of the requests made to ASIC during the reporting period related to enforcement matters.<sup>78</sup> To further facilitate efforts in international regulation and enforcement, ASIC entered into two memorandums of understanding with various services and commissions in the United Kingdom and Singapore.<sup>79</sup>

4.40 ASIC notes in the 2015–16 annual report that it jointly led a new initiative to establish an Asia-Pacific Regional Supervisory College Forum.<sup>80</sup> This initiative is designed to improve cooperation and information sharing efforts in the Asia-Pacific region in relation to targeted financial groups that have regional importance. Members of this forum belong to various services and commissions in the Asia-Pacific region.<sup>81</sup>

4.41 Between 2015–16 ASIC also continued to work on the Asia Region Funds Passport, with ASIC and other services and commissions in the Asia-Pacific region signing a memorandum of cooperation.<sup>82</sup> The project aims to establish a multilateral framework to assist with cross border marketing of managed funds across participating economies in the Asian region.<sup>83</sup>

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74 ASIC, *Annual Report 2015–16*, pp. 14, 48.

75 ASIC, *Annual Report 2015–16*, pp. 14, 48.

76 ASIC, *Annual Report 2015–16*, pp. 14, 48.

77 ASIC, *Annual Report 2014–15*, pp. 20–21.

78 ASIC, *Annual Report 2015–16*, p. 14.

79 ASIC, *Annual Report 2015–16*, pp. 14, 48.

80 ASIC, *Annual Report 2015–16*, pp. 14, 48, 77.

81 ASIC, *Annual Report 2015–16*, pp. 14, 48, 77.

82 ASIC, *Annual Report 2015–16*, p. 47.

83 ASIC, *Annual Report 2015–16*, p. 47.

4.42 The committee encourages ASIC to provide further information in future annual reports on the capacity of ASIC to recover costs in these areas of international cooperation. The committee will continue to monitor ASIC's work regarding managed funds and the regulation of such funds across borders.

#### *ASIC registry*

4.43 In May 2015 the government announced a competitive tender process to 'test the capacity of a private sector operator to upgrade and operate the ASIC registry'; the companies register, the Business Names register and other corporate and professional registers.<sup>84</sup> On 19 December 2016 after the evaluation of the final bids, the government announced that it would not to engage a private operator for the ASIC registry at this time.<sup>85</sup>

4.44 ASIC's annual report notes that during 2015–16 the ASIC registers were searched 90.7 million times, over 240 000 new companies were registered and 333 413 business names were registered.<sup>86</sup> This is an increase from previous years.<sup>87</sup>

4.45 The annual report notes that in 2015–16, 196 Self-Managed Super Fund (SMSF) auditors were registered and 197 SMSF auditors were deregistered.<sup>88</sup> The number of registered SMSF auditors has increased compared to the 123 registration in 2014–15.<sup>89</sup> However, the number has not yet surpassed the registrations of 240 in 2013–14 and 7194 in 2012–13.<sup>90</sup> This is likely due to the slowdown in registrations that was expected once SMSF auditors had to comply with new mandatory registration requirements from 2013.<sup>91</sup> The committee will continue to monitor the trend in the number of registrations.

#### *Financial advisers register*

4.46 The Financial Advisers Register was launched in March 2015. At 30 June 2016 over 23 000 financial advisers appear on the register and the register has been searched over 790 000 times.<sup>92</sup> This is an increase from the 22 000 financial advisers and 200 000 searches reported in the 2014–15 annual report.<sup>93</sup>

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84 ASIC, *Annual Report 2015–16*, pp. 6, 83.

85 Department of Finance, *Australian Securities and Investments Commission (ASIC) Registry*, <https://www.finance.gov.au/procurement/scoping-studies/asic-faqs/> (accessed 11 May 2017).

86 ASIC, *Annual Report 2015–16*, pp. 21, 83, 84.

87 ASIC, *Annual Report 2015–16*, p. 83; ASIC, *Annual Report 2014–15*, pp. 65–66; ASIC, *Annual Report 2013–14*, pp. 47, 50–51.

88 ASIC, *Annual Report 2015–16*, p. 87.

89 ASIC, *Annual Report 2014–15*, p. 68.

90 ASIC, *Annual Report 2013–14*, p. 55.

91 Mr Greg Tanzer, Commissioner, Australian Securities and Investments Commission, *Committee Hansard*, 20 March 2015, p. 20.

92 ASIC, *Annual Report 2015–16*, pp. 21, 24.

93 ASIC, *Annual Report 2014–15*, p. 68.

4.47 Following the implementation of the Financial Advisers Register in March 2015 the committee raised concerns about the absence of information on the Financial Advisers Register regarding financial advisers who have been banned.<sup>94</sup> This has led to questions by the committee about:

- the ability of ASIC to incorporate information from the banned and disqualified person's register in the Financial Advisers Register so as to facilitate having publicly accessible information about financial advisers in a single location;<sup>95</sup> and
- the restrictions placed on ASIC, by the regulations for the Financial Advisers Register, in terms of their ability to capture retrospective data in relation to advisers who had ceased practising prior to 31 March 2015.<sup>96</sup>

4.48 The committee recommended that the government consider strengthening the register by enabling the inclusion of retrospective data on banned and disqualified financial advisers on the Financial Advisers Register.<sup>97</sup> The government noted this recommendation and informed the committee that consumers are able to verify whether a person is an authorised adviser by the fact that they appear on the register.<sup>98</sup> The government also informed the committee that consumers are able to obtain information about banned financial advisers or advisers who have ceased practising prior to 31 March 2015 by searching the banned and disqualified register.<sup>99</sup>

4.49 During the 25 November 2016 hearing on ASIC oversight the committee raised issue with the absence of an identification number for financial advisers on the Financial Advisers Register, potentially allowing for the same person to be recorded on the register with different information.<sup>100</sup> The committee was concerned that without an identifier outside of name a person could move from business to business without negative reporting affecting their registrations on the Financial Advisers Register.<sup>101</sup>

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94 *Committee Hansard*, 16 October 2015, pp. 2–5.

95 *Committee Hansard*, 16 October 2015, pp. 2–5; 19 November 2015, pp. 4–5.

96 *Committee Hansard*, 16 October 2015, pp. 2–5; 19 November 2015, pp. 4–5.

97 Parliamentary Joint Committee on Corporations and Financial Services, *Report on the 2014–15 annual reports of bodies established under the ASIC Act*, May 2016, p. 30.

98 Australian Government, *Australian Government response to Parliamentary Joint Committee on Corporations and Financial Services' report: The 2014–15 annual reports of bodies established under the ASIC Act*, January 2017.

99 Australian Government, *Australian Government response to Parliamentary Joint Committee on Corporations and Financial Services' report: The 2014–15 annual reports of bodies established under the ASIC Act*, January 2017.

100 *Committee Hansard*, 25 November 2016, p. 7.

101 *Committee Hansard*, 25 November 2016, p. 7.

4.50 ASIC responded to the committee by noting that the Financial Advisers Register is relatively new and once the register has been operating for a while, ASIC will be able to identify issues for improvement, such as identifiers.<sup>102</sup>

4.51 The committee will monitor the progress of ASIC in the identification of issues for improvement, such as identifiers outside of name for financial advisers and the implementation of any changes.

4.52 The committee also raised issue with the adequacy of standards contained in Regulatory Guide 146 (RG146)<sup>103</sup> and how RG146 training is provided. The committee was interested to know the progress of the new requirements for financial advisers and how many financial advisers have come into the industry in the past 18 months under the RG146 standards.<sup>104</sup>

4.53 ASIC informed the committee that 1542 advisers started to provide advice in 2015 and 2785 advisers started to provide advice in 2016.<sup>105</sup> ASIC also informed the committee that the Corporations Amendment (Professional Standards of Financial Advisers) Bill 2016 containing the new requirements is currently being considered by Parliament.<sup>106</sup> ASIC noted that once the new proposed standards body has established the standards for the new requirements, ASIC will conduct a review of RG146 in relation to the categories of advisers that it will still be applicable for.<sup>107</sup> The committee will continue to monitor the adequacy of training requirements for financial advisers.

#### *Culture and whistleblowing*

4.54 In an effort to promote good conduct and shift the banking and financial sector culture in the right direction, the 2015–16 annual report indicates that the number of consultations with stakeholders in relation to fair and efficient markets has increased to 903, up from 876 in 2014–15.<sup>108</sup>

4.55 During 2014–15 ASIC established the Office of the Whistleblower and adopted a centralised monitoring procedure for whistleblower complaints. This was in

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102 Mr Peter Kell, Deputy Chairman, Australian Securities and Investments Commission, *Committee Hansard*, 25 November 2016, p. 7.

103 ASIC, Licensing: Training of financial product advisers, *Regulatory Guide 146*, July 2012, <http://download.asic.gov.au/media/1240766/rg146-published-26-september-2012.pdf> (accessed 17 May 2017).

104 *Committee Hansard*, 25 November 2016, pp. 8–9; Australian Government, *Improving Australia's Financial System: Government Response to the Financial System Inquiry*, October 2015, p. 21. The new requirements were an outcome of the FSI and include the requirements for financial adviser to: hold a degree qualification; undertake a professional year; undertake ongoing professional development; pass a registration exam; and subscribe to a code of ethics.

105 ASIC, *Answer to question on notice*, 25 November 2016 (received 17 January 2017).

106 ASIC, *Answer to question on notice*, 25 November 2016 (received 17 January 2017).

107 ASIC, *Answer to question on notice*, 25 November 2016 (received 17 January 2017).

108 ASIC, *Annual Report 2015–16*, p. 57.

response to recommendations from the Senate Economics References Committee inquiry into the performance of ASIC. The 2015–16 annual report notes that during the reporting period the Office of the Whistleblower dealt with 146 disclosures.<sup>109</sup> Eighty per cent of the disclosures were found by ASIC to require no further action due mainly to insufficient information or ASIC not being the correct agency to deal with the disclosure.<sup>110</sup>

### *Education and financial literacy*

4.56 The National Financial Literacy Strategy 2014–17 was released in August 2014. The strategy sets out a national direction for financial literacy and provides a practical framework for action built around five strategic priorities:

1. Educate the next generation, particularly through the formal education system.
2. Increase the use of free, impartial information, tools and resources.
3. Provide quality targeted guidance and support.
4. Strengthen coordination and effective partnerships.
5. Improve research, measurement and evaluation.<sup>111</sup>

4.57 ASIC currently leads the work for the strategy and liaises with appropriate stakeholders, including government, business and education sectors.<sup>112</sup> The first annual highlights report on the activities delivered under the strategy was released in 2015.<sup>113</sup>

4.58 In line with the aim of providing education and tools to help the community with their financial decisions, the 2015–16 annual report notes that ASIC's MoneySmart website provides free, impartial and comprehensive investor and consumer information on money matters.<sup>114</sup> During the reporting period there were 6.1 million visits to website, an increase of 15 per cent from 2014–15.<sup>115</sup> Follow-up research has also shown that 90 per cent of users 'took action on their finances after visiting the site', a slight increase from 2014–15.<sup>116</sup>

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109 ASIC, *Annual Report 2015–16*, pp. 3, 96.

110 ASIC, *Annual Report 2015–16*, p. 96.

111 ASIC, *National Financial Literacy Strategy*, <http://www.financialliteracy.gov.au/strategy-and-action-plan/financial-literacy-action-plan> (accessed 12 May 2017).

112 ASIC, *Annual Report 2015–16*, p. 49.

113 ASIC, *Annual Report 2015–16*, p. 49; ASIC, *National Financial Literacy Strategy*, <http://www.financialliteracy.gov.au/strategy-and-action-plan/financial-literacy-action-plan> (accessed 12 May 2017).

114 ASIC, *Annual Report 2015–16*, pp. 2, 31, 50.

115 ASIC, *Annual Report 2015–16*, pp. 2, 31, 50.

116 ASIC, *Annual Report 2015–16*, pp. 31, 50; ASIC, *Annual Report 2014–15*, pp. 41, 161.

4.59 The 2015–16 annual report notes that financial literacy is now a feature of the Australian Curriculum.<sup>117</sup> ASIC's MoneySmart Teaching program expanded during the reporting period with 5079 schools engaged, compared with 3185 schools in 2014–15.<sup>118</sup> A key resource developed for ASIC's MoneySmart Teaching program during 2015–16 was an online professional development module for primary school teachers on how to engage students in mathematics through the use of real money and financial concepts.<sup>119</sup>

4.60 In June 2016 ASIC released the MoneySmart Cars app, an online tool to assist consumers in making financial decisions.<sup>120</sup> ASIC notes in the 2015–16 annual report that the app is to complement its regulatory work in relation to car finance and add-on insurance products.<sup>121</sup>

### *Regulatory guidance*

4.61 A total of 31 new or revised regulatory guides were published by ASIC during the reporting period.<sup>122</sup> These included guides on fundraising, corporate governance, binary options, whistleblowing and the registration of company auditors.<sup>123</sup> The number of new or revised guides published during the reporting period has increased from 22 during 2014–15.<sup>124</sup>

4.62 The committee asked ASIC about their work to update regulatory guides to reflect changes in the law.<sup>125</sup> ASIC responded by noting that it will need to make small amendments in relation to some regulatory guides while others guides will remain the same as no changes in law have occurred.<sup>126</sup> The committee will continue to monitor the updating of regulatory guides by ASIC.

4.63 The financial reporting on-line quiz launched in December 2014 continues to be hosted by ASIC.<sup>127</sup> The on-line quiz aims to help directors test their knowledge of financial reporting and to direct them to additional resources that may assist in

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117 ASIC, *Annual Report 2015–16*, pp. 2, 52.

118 ASIC, *Annual Report 2015–16*, pp. 2, 25, 31.

119 ASIC, *Annual Report 2015–16*, p. 52.

120 ASIC, *Annual Report 2015–16*, pp. 3, 24, 50.

121 ASIC, *Annual Report 2015–16*, p. 50.

122 ASIC, *Annual Report 2015–16*, pp. 31, 57.

123 ASIC, *Annual Report 2015–16*, pp. 60, 67, 77, 96.

124 ASIC, *Annual Report 2014–15*, pp. 6, 8, 40–41, 57–58; *Annual Report 2015–16*, pp. 31, 57.

125 *Committee Hansard*, 25 November 2016, p. 10.

126 Ms Louise Macaulay, Senior Executive Leader, Australian Securities and Investments Commission, *Committee Hansard*, 25 November 2016, p. 10.

127 ASIC, *Annual Report 2015–16*, p. 67; ASIC, *Financial reporting quiz for directors*, <http://asic.gov.au/regulatory-resources/financial-reporting-and-audit/directors-and-financial-reporting/financial-reporting-quiz-for-directors/> (accessed 11 May 2017).

improving their knowledge.<sup>128</sup> During the reporting period this quiz has been completed by 931 directors.<sup>129</sup> This is a decrease from more than 2000 directors completing the quiz as reported during 2014–15.<sup>130</sup>

4.64 In the previous annual report ASIC indicated that it sought to use the information collected from the quiz to assist them and other organisations, such as the Australian Institute of Company Directors and the Institute of Public Accountants 'in considering ways to assist in educating directors in the future'.<sup>131</sup> No further information on this is provided in the 2015–16 annual report. The committee will continue to monitor the outcomes of this initiative.

#### *External dispute resolution*

4.65 ASIC is responsible for the financial services and consumer credit dispute resolution framework. This framework includes both internal dispute resolution and external dispute resolution schemes. Two external dispute resolution schemes are approved by ASIC. These are the Financial Ombudsman (FOS) and the Credit Investments Ombudsman (CIO).<sup>132</sup>

4.66 During the reporting period FOS and CIO reported on 96 definite systemic issues and 11 cases of serious misconduct.<sup>133</sup> The number of cases of serious misconduct decreased by three and the number of reported definite systemic issues increased by 34 when compared to the previous reporting period.<sup>134</sup>

#### *External dispute resolution review*

4.67 The 2015–16 annual report notes that an independent review into the external dispute resolution schemes, including complaints management, was announced in April 2016 by the government.<sup>135</sup> The committee notes that the final report of this review was released on 9 May 2017 and that the review's main recommendation is that FOS, CIO and the Superannuation Complaints Tribunal be replaced by a single external dispute resolution body for all financial disputes.<sup>136</sup>

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128 Financial Reporting Council, *FRC survey on Financial Literacy of Australian Directors*, September 2012, <http://asic.gov.au/regulatory-resources/financial-reporting-and-audit/directors-and-financial-reporting/financial-reporting-quiz-for-directors/> (accessed 11 May 2017).

129 ASIC, *Annual Report 2015–16*, p. 67.

130 ASIC, *Annual Report 2014–15*, p. 58.

131 ASIC, *Answer to question on notice*, 9 March 2016 (received 19 April 2016).

132 ASIC, *Annual Report 2015–16*, p. 43.

133 ASIC, *Annual Report 2015–16*, p. 43.

134 ASIC, *Annual Report 2015–16*, p. 43; ASIC, *Annual Report 2014–15*, p. 48.

135 ASIC, *Annual Report 2015–16*, p. 43.

136 The Australian Government the Treasury, *Final report Review of the financial system external dispute resolution and complaints framework*, <http://www.treasury.gov.au/~media/Treasury/Consultations%20and%20Reviews/Reviews%20and%20Inquiries/2016/Review%20into%20EDR/Key%20Documents/PDF/EDR%20Review%20Final%20report.ashx> 3 April 2017 (accessed 12 May 2017).

4.68 FOS is conducting its own review into the government's request that it extend its small business jurisdiction to include a review of monetary limits and compensation caps. Public consultation is currently taking place.<sup>137</sup>

4.69 The committee will monitor the government's response and implementation of the recommendations from the review into the external dispute resolution schemes.

### *Deregulation*

4.70 In line with the deregulation focus articulated in the government's Statement of Expectations, ASIC has continued to seek ways to reduce red tape and lower compliance costs. As stated in the 2015–16 annual report, since September 2013 ongoing annual compliance costs for business has been reduced by 'almost \$475 million' with a reduction of \$309 million during the reporting period.<sup>138</sup> ASIC notes the following achievements during the reporting period in this area:

- deregulation of Ministerial powers to ASIC relating to specified market and clearing and settlement facilities;<sup>139</sup>
- guidance on matters such as registration of company auditors and online tools for consumers;<sup>140</sup>
- making it easier for business to interact with ASIC;<sup>141</sup> and
- ensuring certification of the ASIC Registry under ISO 9001 Quality Standard in Information Management is maintained.<sup>142</sup>

### *Committee view*

4.71 The committee notes that in relation to the recommendations it made in its examination of ASIC's 2014–15 annual report, the government provided a satisfactory response.

4.72 The committee will continue to monitor ASIC's activities as described in this chapter particularly in relation to unlicensed markets, cleanliness measures for sectors outside of equity markets, relief applications/waivers, adequate training standards for financial advisers and changes to the financial services and consumer credit dispute resolution framework.

4.73 The committee considers that ASIC has fulfilled its annual reporting responsibilities during the 2015–16 financial year. The committee notes that ASIC is continuing to address significant changes to its mandate and the environment in which it operates as a result of global trends, emerging issues, and recent reviews and

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137 ASIC, *Annual Report 2015–16*, p. 43.

138 ASIC, *Annual Report 2015–16*, p. 6.

139 ASIC, *Annual Report 2015–16*, p. 69.

140 ASIC, *Annual Report 2015–16*, pp. 3, 67.

141 ASIC, *Annual Report 2015–16*, pp. 6, 82.

142 ASIC, *Annual Report 2015–16*, p. 84.

inquiries. The committee will continue to use annual reports and other mechanisms to monitor ASIC's performance and ability to adapt appropriately.

4.74 The committee thanks ASIC for its contributions at hearings, responding to questions on notice, and the timely provision of information to the committee.

**Mr Steve Irons MP**

**Chair**