



Parliamentary Joint Committee on Corporations and Financial Services

Report on the 2015-2016 annual reports of bodies
established under the ASIC Act

June 2017

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Duties of the Committee

Section 243 of the *Australian Securities and Investments Commission Act 2001* sets out the Parliamentary Committee's duties as follows:

- (a) to inquire into, and report to both Houses on:
 - (i) activities of ASIC or the Panel, or matters connected with such activities, to which, in the Parliamentary Committee's opinion, the Parliament's attention should be directed; or
 - (ii) the operation of the corporations legislation (other than the excluded provisions); or
 - (iii) the operation of any other law of the Commonwealth, or any law of a State or Territory, that appears to the Parliamentary Committee to affect significantly the operation of the corporations legislation (other than the excluded provisions); or
 - (iv) the operation of any foreign business law, or of any other law of a foreign country, that appears to the Parliamentary Committee to affect significantly the operation of the corporations legislation (other than the excluded provisions); and
- (b) to examine each annual report that is prepared by a body established by this Act and of which a copy has been laid before a House, and to report to both Houses on matters that appear in, or arise out of, that annual report and to which, in the Parliamentary Committee's opinion, the Parliament's attention should be directed; and
- (c) to inquire into any question in connection with its duties that is referred to it by a House, and to report to that House on that question.

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Abbreviations

AAT	Administrative Appeals Tribunal
AASB	Australian Accounting Standards Board
ACCC	Australian Competition and Consumer Commission
ANAO	Australian National Audit Office
APRA	Australian Prudential Regulation Authority
APX	Australia Pacific Exchange
ASIC	Australian Securities and Investments Commission
ASIC Act	<i>Australian Securities and Investments Commission Act 2001</i>
ASX	Australian Securities Exchange
AUASB	Auditing and Assurance Standards Board
CALDB	Companies Auditors and Liquidators Disciplinary Board
CAMAC	Corporations and Markets Advisory Committee
CAMAC Bill	Australian Securities and Investments Commission Amendment (Corporations and Markets Advisory Committee Abolition) Bill 2014
CIO	Credit and Investments Ombudsman
Corporations Act	<i>Corporations Act 2001</i>
CSEF	Crowd Sourced Equity Funding
EU	Enforceable Undertakings
FIRB	Foreign Investment Review Board
FOS	Financial Ombudsman Service
FRC	Financial Reporting Council
FSI	Financial System Inquiry
IASB	International Accounting Standards Board
IAASB	International Auditing and Assurance Standards Board
IFRS	International Financial Reporting Standards
PGPA Act	<i>Public Governance, Performance and Accountability Act 2013</i>
SMSF	Self-Managed Super Fund
The Panel	Takeovers Panel
The Treasury	Department of the Treasury

List of recommendations

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.

Chapter 1

Scrutiny of annual reports

1.1 The Parliamentary Joint Committee on Corporations and Financial Services (the committee) is established by Part 14 of the *Australian Securities and Investments Commission Act 2001* (the ASIC Act). This report is prepared in fulfilment of the committee's duties under subsection 243(b):

to examine each annual report that is prepared by a body established by this Act and of which a copy has been laid before a House, and to report to both Houses on matters that appear in, or arise out of, that annual report and to which...the Parliament's attention should be directed.¹

1.2 The ASIC Act establishes the nine bodies listed below:

- Auditing and Assurance Standards Board (AUASB);
- Australian Accounting Standards Board (AASB);
- Australian Securities and Investments Commission (ASIC);
- Companies Auditors and Liquidators Disciplinary Board (CALDB);
- Corporations and Markets Advisory Committee (CAMAC);
- Financial Reporting Council (FRC);
- Office of the Australian Accounting Standards Board (Office of the AASB);
- Office of the Auditing and Assurance Standards Board (Office of the AUASB); and
- The Takeovers Panel (the Panel).²

1.3 Collectively, these bodies form the 'administrative organs' of the national financial services regulatory scheme established by the ASIC Act and the *Corporations Act 2001* (Corporations Act).³

1.4 While nine bodies are established under the ASIC Act, only six annual reports have been prepared for 2015–16. The ASIC Act directs that one annual report will cover both the AASB and the Office of the AASB. Similarly, the AUASB is required to prepare an annual report that addresses its activities and the activities of the Office

1 *ASIC Act 2001*, s. 243 (b).

2 *ASIC Act 2001*, Parts 2, 9–12.

3 The Hon Lionel Bowen MP, Attorney-General, House of Representatives Hansard, Second Reading Speech, Australian Securities Commission Bill 1988, 25 May 1988, pp. 2990–2991. The ASIC Act predominantly replicates the administrative structure established in the *Australian Securities and Investments Commission Act 1989*. Section 261 of the ASIC Act 2001 directs that bodies established under the *Australian Securities and Investments Commission Act 1989* continue in existence as if they had been established under the ASIC Act 2001.

of the AUASB. CAMAC has not prepared an annual report since 2013–14 as it has ceased operation pending passage of the Australian Securities and Investments Commission Amendment (Corporations and Markets Advisory Committee Abolition) Bill 2014. Accordingly, this report examines the 2015–16 annual reports of the AUASB, the AASB, ASIC, CALDB, the FRC and the Takeovers Panel.

1.5 The committee notes that the annual reports of bodies established under the ASIC Act are also the subject of scrutiny by the Senate Economics Legislation Committee. Senate Standing Order 25(20) requires the Economics Legislation Committee to:

- (a) Examine each annual report referred to it and report to the Senate whether the report is apparently satisfactory.
- (b) Consider in more detail, and report to the Senate on, each annual report which is not apparently satisfactory, and on the other annual reports which it selects for more detailed consideration.
- (c) Investigate and report to the Senate on any lateness in the presentation of annual reports.
- (d) In considering an annual report, take into account any relevant remarks about the report made in debate in the Senate.
- (e) If the committee so determines, consider annual reports of departments and budget-related agencies in conjunction with examination of estimates.
- (f) Report on annual reports tabled by 31 October each year by the tenth sitting day of the following year, and on annual reports tabled by 30 April each year by the tenth sitting day after 30 June of that year.
- (g) Draw to the attention of the Senate any significant matters relating to the operations and performance of the bodies furnishing the annual reports.
- (h) Report to the Senate each year whether there are any bodies which do not present annual reports to the Senate and which should present such reports.

1.6 Therefore, in conducting its review of the annual reports of bodies established under the ASIC Act, the committee will focus on operational matters of interest and raise other matters that in the committee's opinion Parliament should consider.

1.7 Chapter two examines the annual reports of the bodies established under Parts 9–11 of the ASIC Act: CALDB and the Takeovers Panel.

1.8 Chapter three examines the annual reports of the three agencies established by Part 12 of the ASIC Act to oversee the financial reporting framework: the AASB, the AUASB and the FRC.

1.9 Chapter four examines ASIC's annual report.

1.10 In reviewing the annual reports, the committee also considers whether there are opportunities to strengthen the operation of the corporations legislation.

Chapter 2

Bodies established under Parts 9–11 of the ASIC Act

2.1 This chapter considers the 2015–16 annual reports of the:

- Companies Auditors and Liquidators Disciplinary Board (CALDB); and
- The Takeovers Panel (the Panel).

2.2 This chapter also provides an update on the status of the Corporations and Markets Advisory Committee (CAMAC).

Companies Auditors and Liquidators Disciplinary Board

2.3 CALDB was first established as an independent statutory body in 1989 and is currently established by Part 11 of the ASIC Act. Its primary purpose, in the administration of Australia's financial services system, is to hear applications and consider cancellation or suspension of a liquidator's or auditor's registration. The Board's casework is not self-generated as it holds no powers to instigate applications. Rather, applications are brought by either ASIC or the Australian Prudential Regulation Authority (APRA) for the Board's adjudication.¹ Accordingly, the Board operates as an expert disciplinary body for auditors and liquidators in Australia.

2.4 CALDB's 2015–16 annual report states:

CALDB's powers under the Corporations Act to cancel or suspend the registration of an auditor or liquidator...has a public protection element insofar as it both encourages the maintenance of high professional standards amongst auditors and liquidators and provides the means for a transparent disciplinary outcome with respect to those practitioners who do not meet appropriate standards.²

Annual report of CALDB

2.5 Since the committee last reported on CALDB, the passage and partial commencement of the *Insolvency Law Reform Act 2015* has removed responsibility for the discipline of liquidators from CALDB:

The new Act will transfer CALDB's disciplinary powers in respect of liquidators to:

- ASIC in the circumstances specified by [the *Insolvency Law Reform Act 2015*]; and
- Disciplinary committees convened by ASIC and comprising ASIC, a registered liquidator chosen by a prescribed body such as [the Australian

1 *Corporations Act 2001*, Part 9.2, Division 3.

2 CALDB, *Annual Report: 2015–16*, p. 4.

Restructuring Insolvency & Turnaround Association] and a Ministerial appointee.³

2.6 The ASIC Act directs that the annual report is to 'describe the operations' of CALDB for the relevant financial year.⁴

2.7 New applications received by CALDB are categorised as either 'administrative' or 'conduct'. There was one new application to CALDB from ASIC in 2015–16 which related to a conduct matter to do with a liquidator. No new administrative applications were received.

2.8 During 2015–16, three matters were dealt with leading to orders being issued for the cancellation of registration, the suspension of registration, and an order for undertakings to be given respectively.⁵

2.9 An analysis of data provided in previous annual reports indicates that the number of cases referred has continued to decline since 2005–06 (see Table 2.1). CALDB's annual report indicates that during 2015–16 an increased hearing workload in relation to liquidators from 26 to 30 person days contributed to an increase in membership fees, from \$349 166 to \$365 390 during the year.⁶ The committee notes that for this reporting period the Board continues to operate without its full complement of 14 members.⁷

Table 2.1: Number of cases referred: 2005–06 to 2015–16⁸

Financial Year	Auditors	Liquidators
2015–16	0	1
2014–15	1	1
2013–14	2	2
2012–13	0	4
2011–12	0	0

3 CALDB, *Annual Report: 2015–16*, p. 4.

4 *ASIC Act 2001*, s. 214.

5 CALDB, *Annual Report: 2015–16*, p. 8.

6 CALDB, *Annual Report: 2015–16*, pp. 7, 10.

7 CALDB, *Annual Report: 2015–16*, p. 2.

8 CALDB, *Annual report: 2015–16*, p.7; CALDB, *Annual report: 2014–15*, p. 7; CALDB, *Annual report: 2013–14*, p. 6; CALDB, *Annual report: 2012–13*, pp. 7–8; CALDB, *Annual report: 2011–12*, p. 12; CALDB, *Annual report: 2010–11*, p.13; CALDB, *Annual report: 2009–10*, pp. 14–15; CALDB, *Annual report:2008–09*, pp. 13–14; CALDB, *Annual report: 2007–08*, pp. 13–14; CALDB, *Annual report: 2006–07*, pp. 13–14; CALDB, *Annual report: 2005–06*, p. 11.

2010–11	2	1
2009–10	0	0
2008–09	11	1
2007–08	5	0
2006–07	7	0
2005–06	9	3

2.10 A decision of CALDB may be appealed to the Administrative Appeals Tribunal (AAT) or to the Federal Court of Australia. During the 2015–16 financial year, one application for decisions made by CALDB was referred to the AAT.⁹ The Board notes that two matters appealed to the AAT in previous reporting years were finalised in 2015–16. The AAT upheld CALDB's decision in the first matter and dismissed the appeal in the second matter.¹⁰

Committee view

2.11 The committee considers that CALDB has fulfilled its regulatory and reporting responsibilities during the 2015–16 financial year.

2.12 The committee will continue to monitor the effect of the passage of the *Insolvency Law Reform Act 2015* on CALDB's responsibilities and functions.

The Takeovers Panel

2.13 The Panel was established by Part 10 of the ASIC Act as a peer review body largely composed of takeover experts, whose main purpose is the resolution of takeover disputes. During a takeover bid, the Panel is able to declare unacceptable circumstances with respect to the public interest in relation to the affairs of a company, in addition to establishing orders to remedy those circumstances.¹¹

2.14 The Panel is also able to review decisions made by ASIC¹² and maintains its operations with a rule making power.¹³ The Panel's annual report states that:

The Panel improves the certainty, efficiency and fairness of Australia's takeovers market by:

- resolving disputes in a fair, timely, consistent, informal and sound manner; and

9 CALDB, *Annual Report: 2015–16*, p. 1.

10 CALDB, *Annual Report: 2015–16*, p. 1.

11 *Corporations Act 2001*, s. 657A.

12 *Corporations Act 2001*, s. Part 6.10, Division 2.

13 *Corporations Act 2001*, s. 658C.

-
- publishing clear, well-developed guidance.¹⁴

2.15 As at 30 June 2016, the Panel had 39 members, up from 38 at 30 June 2015.¹⁵ Members are nominated by the Minister and appointed by the Governor-General.¹⁶ Members are chosen so that there is a mix of expertise, geographical representation and gender.¹⁷

Annual Report of the Takeovers Panel

2.16 During the 2015–16 financial year, the Panel received 20 applications. This was below the yearly average of 28.7 applications since July 2000 and is the same number as those received in the 2014–15 financial year.¹⁸

2.17 As noted in the committee's previous report, the proportion of applications for which the Panel declined to conduct proceedings grew steadily from 6 per cent in 2001 to 60 per cent in 2014–15.¹⁹

2.18 The Panel indicated that this financial year saw a reversal of this trend, with the proportion of applications where the Panel declined to conduct proceedings dropping to 30 per cent in the 2015–16 financial year.²⁰

2.19 The committee will continue to monitor the proportion of applications for which the Panel declines to conduct proceedings.

2.20 Nine declarations and/or orders were issued in 2015–16 and undertakings were accepted for two matters. The Panel conducted proceedings with nine cases in which unacceptable circumstances were deemed to be present and proceedings were withdrawn in one case.²¹ The issues raised in applications included association/breach of section 606, disclosure, rights issues and trust schemes.²²

2.21 The annual report indicates faster action between a Panel decision and its publication of reasons, with the average number of calendar days between a decision and the publication of reasons being 17.1 days for 2015–16. This is below the average of 35.9 calendar days since March 2000. The time between receipt of an application and a decision increased, with an average of 19.2 days, up from an average of 16.1 days since March 2000.²³

14 Takeovers Panel, *Annual Report 2015–16*, p. 7.

15 Takeovers Panel, *Annual Report 2015–16*, p. 4.

16 *ASIC Act 2001*, s. 172.

17 Takeovers Panel, *Annual Report 2015–16*, p. 12.

18 Takeovers Panel, *Annual Report 2015–16*, p. 5.

19 Parliamentary Joint Committee on Corporations and Financial Services, *Report on the 2014–2015 annual reports of bodies established under the ASIC Act*, May 2016, p. 6.

20 Takeovers Panel, *Annual Report 2015–16*, pp. 5, 18.

21 Takeovers Panel, *Annual Report 2015–16*, pp. 5, 18.

22 Takeovers Panel, *Annual Report 2015–16*, p. 19.

23 Takeovers Panel, *Annual Report 2015–16*, p. 5.

2.22 The Panel was subject to one judicial review regarding Queensland North Australia Pty Limited. Following the Full Federal Court's decision to allow an appeal on 22 May 2015, the court on 4 September 2015 set aside the Panel's decision and remitted the matter to the Panel for decision. The Panel then sought and was granted additional time to consider the application and make a declaration. The Federal Court dismissed a judicial review by Palmer Leisure Coolum Pty Ltd for the Panel's decision to extend time.²⁴ The Panel did not use its rule making power, nor were any matters referred from the court during the financial year.²⁵

2.23 The committee notes that the Panel executive has issued an index of past decisions for future guidance. The Australian Government Takeovers Panel Index of Reasons 2000–2016 is ordered by topic and by legislation. It was published on the Panel's website on 23 September 2016.²⁶

2.24 The Panel maintains contact with the Australian Securities Exchange (ASX), the Foreign Investment Review Board (FIRB) and with ASIC, with which the Panel has a Memorandum of Understanding. The annual report notes the Panel may refer matters to ASIC because aspects of the application might give rise to concerns under the Corporations Act or the Panel wants ASIC to consider whether to make an application. There were three referrals to ASIC during 2015–16²⁷ The report also indicated that the Panel was not subject to any reports by the Australian National Audit Office (ANAO) in 2015–16.²⁸

Committee view

2.25 The committee considers that the Panel has fulfilled its regulatory and reporting responsibilities during the 2015–16 financial year.

Corporations and Markets Advisory Committee

2.26 CAMAC was first established in 1989 and was subsequently established by Part 9 of the ASIC Act. CAMAC's role in the administration of Australia's financial services system is to provide informed and expert advice to the Minister about the content, operation and administration of the corporations legislation, corporations, financial products and markets. On its own initiative or at the Minister's request, CAMAC may provide advice or recommendations about any matter connected with:

- a proposal to make corporations legislation, or to make amendments of the corporations legislation;
- the operation or administration of the corporations legislation;

24 Takeovers Panel, *Annual Report 2015–16*, p. 21.

25 Takeovers Panel, *Annual Report 2015–16*, p. 8.

26 Australian Government Takeovers Panel, *Index of Reasons*, http://www.takeovers.gov.au/content/index_of_reasons/default.aspx, (accessed 22 March 2017).

27 Takeovers Panel, *Annual Report 2015–16*, p. 23.

28 Takeovers Panel, *Annual Report 2015–16*, p. 31.

- law reform in relation to the corporations legislation;
- companies or a segment of the financial products and financial services industry; or
- a proposal to improve the efficiency of the financial markets.

Proposal to abolish CAMAC

2.27 In March 2014, the National Commission of Audit considered that CAMAC's functions could be consolidated into the Department of the Treasury (the Treasury). In May 2014 the Commonwealth Government, as part of the budget, announced its decision to abolish CAMAC and its Legal Committee during the 2014–15 financial year. On 24 September 2014, the government released an exposure draft of legislation to abolish CAMAC. The Australian Securities and Investments Commission Amendment (Corporations and Markets Advisory Committee Abolition) Bill 2014 (the CAMAC Bill) was introduced into the House of Representatives on 4 December 2014. The CAMAC Bill was passed by the House of Representatives on 2 March 2015 and introduced into the Senate on 3 March 2015. The Bill lapsed when Parliament was prorogued on 17 April 2016.

2.28 On 12 February 2015, the Senate referred the provisions of the CAMAC Bill to the Senate Economics Legislation Committee for inquiry and report by 16 March 2015. While the Economics committee recognised that CAMAC had contributed extensively to the development of reforms to corporations law in Australia, it supported the passage of the bill.

2.29 At the time of reporting, the CAMAC Bill has not been reintroduced in the 45th Parliament.

2.30 The committee will continue to monitor developments in relation both to CAMAC and the ongoing effectiveness of the development of reforms to corporations law in Australia.

Chapter 3

Bodies established under Part 12 of the ASIC Act

3.1 This chapter considers the 2015–16 annual reports of the:

- Financial Reporting Council (FRC);
- Australian Accounting Standards Board (AASB); and
- Auditing and Assurance Standards Board (AUASB).

Financial reporting framework

3.2 Part 12 of the ASIC Act establishes Australia's financial reporting system. As outlined in section 224 of the ASIC Act, the objectives of the financial reporting system include:

- facilitating the Australian economy;
- maintaining investor confidence in the Australian economy;
- developing accounting standards that require the provision of information that is relevant, reliable, easy to understand, allows investors to make and evaluate financial decisions, and assists directors to fulfil their statutory financial reporting obligations; and
- developing auditing and assurance standards that provide Australian auditors relevant and comprehensive guidance in determining whether financial reports comply with statutory requirements, and require auditors' reports to be reliable and capable of being readily understood by investors.¹

3.3 Three agencies are established under Part 12 of the ASIC Act as the administrative arms of the financial reporting system; namely, the FRC, the AASB and the AUASB. All three bodies are required to advance and promote the object of Part 12 of the ASIC Act.²

3.4 ASIC is also involved in the administration of the financial reporting system. ASIC's role in overseeing auditor independence is set out under division 5A of the ASIC Act, which covers 'Audit deficiency notifications and reports'. During the 2015–16 financial year ASIC did not conduct any joint inspections.³

3.5 The FRC annual report is required to include an analysis of its achievements against the objects of the financial reporting system.⁴ The Chairs of AASB and

1 *ASIC Act 2001*, s. 224.

2 *ASIC Act 2001*, s. 225, s. 227, s. 227B.

3 *ASIC Annual Report 2015–16*, p. 188.

4 *ASIC Act 2001*, s. 235B.

AUASB must, as soon as practicable after the end of each financial year, prepare and give to the Minister, for presentation to the Parliament, reports of the operations of the AASB, the AUASB and their respective offices.⁵

Coordination between the FRC, the AASB and the AUASB

3.6 The ASIC Act requires interaction between the FRC, the AASB and the AUASB. Accordingly, the FRC's specific accounting standards functions and specific auditing standards functions also include oversight of certain activities of the AASB and the AUASB. The FRC is required to:

- appoint members of the AASB and the AUASB, other than the Chair;
- determine the broad strategic direction of the AASB and AUASB;
- advise the AASB and the AUASB on the Boards' priorities, business plans and procedures;
- monitor the effectiveness of the Boards' consultative arrangements; and
- advise the Office of the AASB and the Office of the AUASB on the offices' budgets and staffing arrangements.⁶

3.7 The ASIC Act also sets out restrictions on the FRC's oversight of the AASB and the AUASB. The FRC does not have power to:

- direct the AASB in relation to the development, or making, of a particular standard;
- veto a standard made, formulated or recommended by the AASB;
- direct the AUASB in relation to the development, or making, of a particular auditing standard; and
- veto a standard made, formulated or recommended by the AUASB.⁷

3.8 The committee notes that the Boards of the AASB and the AUASB have implemented a 'shared support model' with a single National Director and combined administrative staff supporting both Boards.⁸

The Financial Reporting Council

3.9 The FRC was established in 1989 and operates pursuant to Part 12 of the ASIC Act 2001.⁹ The FRC's role in the operation of Australia's corporations law includes:

5 *Public Governance, Performance and Accountability Act 2013*, s. 39, s. 46.

6 *ASIC Act 2001*, s. 225(2)–(2D).

7 *ASIC Act 2001*, s. 225(5)–(8).

8 AUASB, *Annual Report 2015–16*, p. 18; AASB, *Annual Report 2015–16*, p. 15.

9 Section 261 of the ASIC Act directs that bodies established under the *Australian Securities and Investments Commission Act 1989* continue in existence as if they had been established under the *ASIC Act 2001*.

- providing broad oversight of the processes for setting accounting standards and auditing standards in Australia; and
- advising the Minister on these matters.¹⁰

3.10 The ASIC Act also confers on the FRC 'specific accounting standards functions' and 'specific auditing standards functions'. The *Corporations Legislation Amendment (Audit Enhancement) Act 2012* added provisions conferring 'specific auditor quality functions' on the FRC.¹¹

3.11 The FRC's specific auditor quality functions direct the FRC to give the Minister strategic policy advice and reports on the quality of audits conducted by Australian auditors. In undertaking this function, the FRC is to advise the Minister on:

- systems and processes used by Australian auditors and professional accounting bodies in overseeing auditors;
- the procedures and outcomes of reviews;
- investigations and disciplinary procedures applied to Australian auditors;
- the adequacy of audit legislation;
- standard and codes of conduct; and
- the teaching of professional and business ethics.¹²

3.12 The FRC's specific accounting standards functions and the specific auditing standards functions recognise the position of Australia's financial system within the international economy.¹³ The functions also reflect the object in section 224 of the ASIC Act which is 'facilitating the Australian economy by enabling Australian entities to compete effectively overseas'.¹⁴ Accordingly, the FRC is required to:

- monitor developments in international accounting standards and auditing standards;
- further the development of a single set of accounting standards and auditing standards for world-wide use; and
- promote the continued adoption of international best practice accounting standards and auditing standards if doing so would be in the best interests of the private and public sectors of the Australian economy.¹⁵

10 ASIC Act 2001, ss. 225(1).

11 *Corporations Legislation Amendment (Audit Enhancement) Act 2012*, Schedule 2.

12 ASIC Act 2001, ss 225 (2B)–(2C).

13 ASIC Act 2001, ss 225(2), ss 225(2A).

14 ASIC Act 2001, ss. 224(b)(ii).

15 ASIC Act 2001, ss 225(2), ss. 225 (2A).

Annual report of the FRC

3.13 During 2015–16, the FRC continued to actively monitor ongoing international developments in relation to financial reporting and auditing, as well as the effectiveness of the Australian financial reporting framework, including the relevance and appropriateness of current processes for setting accounting and audit standards. The FRC noted that based on its observations during the reporting period, the Australian financial reporting framework continued to be robust and that it was not necessary to propose changes to the Minister at this time.¹⁶

3.14 The FRC highlighted a number of activities undertaken during 2015–16, including:

- conducting a benchmarking process that looked at arrangements employed by other oversight bodies that oversee national standards setters in comparable jurisdictions to Australia;
- undertaking a review of Australian members of international boards and committees that produce accounting and auditing standards; and
- making a submission to the International Financial Reporting Standards (IFRS) *Trustees' Review of Structure and Effectiveness*.¹⁷

3.15 The FRC also approved the reduction in the size of the AASB from 14 members as at 30 June 2016 to 11–12 members with effect from 2016–17.¹⁸ This follows the reduction in the size of the board of the AUASB that came into effect last year. The report also noted the AASB and AUASB's move to a shared support model with both Boards supported by a single National Director and combined administrative staff.¹⁹

Committee view

3.16 The committee considers that the FRC has fulfilled its regulatory and reporting responsibilities during the 2015–16 financial year.

The Auditing and Assurance Standards Board

3.17 The AUASB is established under Subdivision C, Division 1, Part 12 of the ASIC Act. The AUASB's responsibilities include facilitating an Australian financial reporting system that provides guidance to auditors about auditing standards and requirements.²⁰ The AUASB formulates auditing standards, in the form of legislative instruments, which operate under the Corporations Act.²¹

16 FRC, *Annual Report 2015–16*, pp. 1, 17.

17 FRC, *Annual Report 2015–16*, pp. 1, 3.

18 FRC, *Annual Report 2015–16*, p. 12.

19 FRC, *Annual Report 2015–16*, p. 16.

20 *ASIC Act 2001*, s. 224, s. 227A, s. 227B.

21 *ASIC Act 2001*, s. 227B; *Corporations Act 2001*, s. 336.

3.18 Consistent with the object in section 224 to 'enable Australian entities to compete effectively overseas', the AUASB is required to contribute to the 'development of a single set of auditing standards for world-wide use.'²² The ASIC Act also establishes the Office of the AUASB, which provides technical services and administrative support to the AUASB.²³

Annual report of the AUASB

3.19 The AUASB's statutory responsibilities are reflected in the Board's mission statement as contained in the 2015–16 annual report:

The mission of the AUASB is to develop, in the public interest, high-quality auditing and assurance standards, and related guidance, as a means to enhance the relevance, reliability and timeliness of information provided to users of audit and assurance services.

Sound public interest oriented auditing and assurance standards are necessary to reinforce the credibility of the auditing process for those who use audited financial and other related information.

The AUASB contributes to public confidence in the financial reporting and corporate governance frameworks by issuing auditing standards, which are legally enforceable for audits and reviews of financial reports required under the Corporations Act 2001, other auditing and assurance pronouncements and related guidance.

The role of the AUASB also extends to liaison with other NSS [national standard setters] and participating in standard setting initiatives of the IAASB [International Auditing and Insurance Standards Board] to develop a single set of auditing standards for worldwide use. Such involvement seeks to contribute ultimately to the quality of AUASB pronouncements.²⁴

3.20 The annual report indicates that key activities of the AUASB during 2015–16 occurred as the auditing profession prepares to implement changes in reporting to users of financial reports. The report notes that these changes are the culmination of extensive work begun in 2006 by the IAASB and the promulgation of new standards to be applicable on or after 15 December 2016.²⁵

3.21 The AUASB reports that it undertook three separate consultations that successfully influenced the refinement and adoption of the resultant standards. The annual report indicates that in December 2015, the AUASB approved and adopted one new standard, six revised standards and eighteen compiled standards.²⁶

22 *ASIC Act 2001*, s. 227B.

23 *ASIC Act 2001*, s. 227AB.

24 AUASB, *Annual Report 2015–16*, p. 14.

25 AUASB, *Annual Report: 2015–16*, p. 9.

26 AUASB, *Annual Report: 2015–16*, pp. 9–10.

Global developments

3.22 As detailed in the 2015–16 annual report, the AUASB continued its membership and participation in IAASB meetings and working groups and made submissions on all IAASB exposure drafts and discussion papers. This participation included:

- consultation with Australian stakeholders on the IAASB proposals concerning enhanced audit quality, participation in IAASB debate, and feedback to the IAASB on the topic in a submission in May 2016; and
- work on the IAASB Integrated Reporting Working Group, chaired by the AUASB Chairman, and regular meetings with the International Reporting Council.²⁷

Local developments

3.23 The annual report noted continued engagement with Australian stakeholders in order to promote world best practice standards and to obtain feedback on necessary amended standards and guidance.²⁸ This included:

- working closely with the New Zealand Auditing and Assurance Standards Board to promote and facilitate harmonised Australian and New Zealand standards; and
- continued revision of standards and guidance for significant national requirements not otherwise addressed in IAASB standards and practice notes.²⁹

Committee view

3.24 The committee considers that the AUASB has fulfilled its regulatory and reporting responsibilities during the 2015–16 financial year.

The Australian Accounting Standards Board

3.25 The AASB was first established in 1989 and is currently established by Subdivision B, Division 1, Part 12 of the ASIC Act 2001.³⁰ The AASB's role is to develop a conceptual framework by which to evaluate proposed accounting standards and international standards as well as formulating and making accounting standards. The AASB also contributes to the development of 'a single set of accounting standards

27 AUASB, *Annual Report: 2015–16*, pp. 10, 17.

28 AUASB, *Annual Report: 2015–16*, p. 10.

29 AUASB, *Annual Report: 2015–16*, p. 11.

30 Section 261 of the ASIC Act directs that bodies established under the *Australian Securities and Investments Commission Act 1989* continue in existence as if they had been established under the *ASIC Act 2001*.

for world-wide use'.³¹ The ASIC Act also establishes the Office of the AASB, to provide the AASB with administrative and technical support.³²

Annual report of the AASB

3.26 As detailed in the 2015–16 annual report, the AASB's mission statement captures the Board's statutory responsibilities and role in Australia's financial reporting framework:

The mission of the AASB is to:

- (a) create principle-based external reporting standards for Australia that meet user needs; and
- (b) contribute to the development of international external reporting standards.³³

3.27 The annual report indicates that the AASB has made progress in implementing the five key strategic directions set out in its AASB Strategy 2015–19.³⁴

3.28 During 2015–16, the AASB commenced an outreach campaign that identified important issues and concluded that:

- its reporting framework is regarded as too complicated and subjective, requiring the AASB to undertake more work in this area as a key focus for 2016–17;
- IFRS is not a perfect solution for all constituents, requiring the AASB to issue more sector-specific guidance that will include releasing a new standard for the not-for-profit sector;
- general purpose financial reports are regarded by constituents as too complicated and detailed, indicating a need for revised disclosure requirements; and
- accounting standards are regarded as hard to interpret and apply, and need improved consistency and clarity.³⁵

3.29 The AASB identified continuing outreach with stakeholders and regulators as critical to addressing these issues. The AASB reported that it has broadened its forums for engagement that deliver feedback. For the AASB the increased stakeholder engagement is to the benefit of the work that the AASB undertakes on both the domestic and international fronts, particularly when implementing new international reporting standards in Australia and influencing the International Accounting Standards Board (IASB).³⁶

31 *ASIC Act 2001*, s. 227.

32 *ASIC Act 2001*, s. 226A.

33 *AASB, Annual Report 2015–16*, p. 11.

34 *AASB, Annual Report: 2015–16*, pp. 13–15.

35 *AASB, Annual Report: 2015–16*, pp. 7–8.

36 *AASB, Annual Report: 2015–16*, p. 8.

3.30 The AASB has commenced a review of the implementation of IFRS in Australia, focusing on how transaction neutrality has been applied across the for profit sector and the not-for-profit public and private sectors, and whether a third tier of general purpose financial reporting is required.³⁷

3.31 The AASB reported that it undertook a major restructure in cooperation with the AUASB in order to serve the broader objective of ensuring that Australian accounting and auditing practice remains at the forefront of international practices, while remaining fit for purpose in Australia. Accordingly, the annual report indicates that both the AASB and AUASB have adopted a shared support model involving a single National Director and combined administrative staff.³⁸

Committee view

3.32 The committee considers that the AASB has fulfilled its regulatory and reporting responsibilities during the 2015–16 financial year.

37 AASB, *Annual Report: 2015–16*, p. 14.

38 AASB, *Annual Report: 2015–16*, p. 9.

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),¹ 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;²
- ASIC's primary role as a law enforcement agency, with 70 per cent of ASIC's regulatory resources allocated to surveillance and enforcement;³
- 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).⁴
- ASIC's full engagement with the capability review in July 2015 as a result of the Financial Services Inquiry (FSI);⁵
- 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;⁶ and
- the government's 2017 review of ASIC's enforcement regime for which a report is expected to be presented later in 2017.⁷

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

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.⁹

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.¹⁰ Table 4.1 lists where in the 2015–16 ASIC annual report the current requirements in the ASIC Act are met.

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, (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.¹¹
- Fair and efficient markets.¹²
- Efficient registration services.¹³

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.¹⁴ 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 2016.¹⁵ 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.¹⁶

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.¹⁷ 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.¹⁸

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.¹⁹ On 4 May 2017 draft regulations were released by the Treasury for stakeholder views.²⁰ Submissions regarding the regulations close on Friday 26 May 2017.²¹ 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.²² This was an increase on the 631 enforcement outcomes in 2014–15.²³ The annual report enforcement outcome data shows an increase in:

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 (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;²⁴
 - people and companies banned from financial services and credit services;²⁵ and
 - compensation or remediation under the priority of investor and consumer trust and confidence.²⁶

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

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

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.³⁰ The number of investigations completed under both priorities decreased.³¹

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.³²

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 report³³

Date and ASIC media release No.	Banks and lenders	Fine	Refund	No. Customers	Issues
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.³⁴ 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.³⁵ 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 2014,³⁶ the committee recommended that the government consider ASIC's suggestions for the reform of section 631 of the Corporations Act.³⁷ 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.³⁸ The

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.³⁹ 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.⁴⁰

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 2015–16.⁴¹ This is an increase from 1016 in 2014–15.⁴²

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.⁴³ 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.⁴⁴ 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.⁴⁵

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

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'.⁴⁷ 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.⁴⁸

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.⁴⁹ 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.⁵⁰ 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 2015–16.⁵¹ The majority of the growth has been in authorised, but unlicensed financial markets.⁵² The annual report indicates that licensed financial markets are subject to surveillance every year while authorised unlicensed markets receive reactive surveillance.⁵³

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.⁵⁴

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

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.⁵⁶ 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.⁵⁷ Conditions include that users are only professional investors and that products traded on exempt markets are not usually traded on licensed markets.⁵⁸

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.⁵⁹

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.⁶⁰ This was based on analysis of 'anomalous trading ahead of material, price-sensitive announcements' with a focus on insider trading and information leaks.⁶¹ 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.⁶² ASIC released its report on equity market cleanliness in August 2016.⁶³

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.⁶⁴ ASIC notified the committee that a measure of equity market cleanliness was developed due to the rich data available.⁶⁵ As this level of data may not be available in

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.⁶⁶ 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.⁶⁷

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.⁶⁸

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.⁶⁹

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.⁷⁰ 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.⁷¹ 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.⁷² 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.⁷³

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.

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.⁷⁴ 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.⁷⁵

4.39 During the reporting period, ASIC made 362 international cooperation requests and received 398 requests.⁷⁶ This demonstrates an increase of 32 requests made and a decrease of 26 requests received.⁷⁷ As noted in the 2015–16 annual report, 92 of the requests made to ASIC during the reporting period related to enforcement matters.⁷⁸ 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.⁷⁹

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.⁸⁰ 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.⁸¹

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.⁸² The project aims to establish a multilateral framework to assist with cross border marketing of managed funds across participating economies in the Asian region.⁸³

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.⁸⁴ 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.⁸⁵

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.⁸⁶ This is an increase from previous years.⁸⁷

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.⁸⁸ The number of registered SMSF auditors has increased compared to the 123 registration in 2014–15.⁸⁹ However, the number has not yet surpassed the registrations of 240 in 2013–14 and 7194 in 2012–13.⁹⁰ This is likely due to the slowdown in registrations that was expected once SMSF auditors had to comply with new mandatory registration requirements from 2013.⁹¹ 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.⁹² This is an increase from the 22 000 financial advisers and 200 000 searches reported in the 2014–15 annual report.⁹³

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.⁹⁴ 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;⁹⁵ 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 2015.⁹⁶

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.⁹⁷ 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.⁹⁸ 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.⁹⁹

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.¹⁰⁰ 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.¹⁰¹

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.¹⁰²

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)¹⁰³ 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.¹⁰⁴

4.53 ASIC informed the committee that 1542 advisers started to provide advice in 2015 and 2785 advisers started to provide advice in 2016.¹⁰⁵ 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.¹⁰⁶ 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.¹⁰⁷ 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 2014–15.¹⁰⁸

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

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.¹⁰⁹ 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.¹¹⁰

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.¹¹¹

4.57 ASIC currently leads the work for the strategy and liaises with appropriate stakeholders, including government, business and education sectors.¹¹² The first annual highlights report on the activities delivered under the strategy was released in 2015.¹¹³

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.¹¹⁴ During the reporting period there were 6.1 million visits to website, an increase of 15 per cent from 2014–15.¹¹⁵ 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 2014–15.¹¹⁶

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.¹¹⁷ ASIC's MoneySmart Teaching program expanded during the reporting period with 5079 schools engaged, compared with 3185 schools in 2014–15.¹¹⁸ 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.¹¹⁹

4.60 In June 2016 ASIC released the MoneySmart Cars app, an online tool to assist consumers in making financial decisions.¹²⁰ 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.¹²¹

Regulatory guidance

4.61 A total of 31 new or revised regulatory guides were published by ASIC during the reporting period.¹²² These included guides on fundraising, corporate governance, binary options, whistleblowing and the registration of company auditors.¹²³ The number of new or revised guides published during the reporting period has increased from 22 during 2014–15.¹²⁴

4.62 The committee asked ASIC about their work to update regulatory guides to reflect changes in the law.¹²⁵ 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.¹²⁶ 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.¹²⁷ 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

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.¹²⁸ During the reporting period this quiz has been completed by 931 directors.¹²⁹ This is a decrease from more than 2000 directors completing the quiz as reported during 2014–15.¹³⁰

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'.¹³¹ 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).¹³²

4.66 During the reporting period FOS and CIO reported on 96 definite systemic issues and 11 cases of serious misconduct.¹³³ 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.¹³⁴

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.¹³⁵ 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.¹³⁶

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.¹³⁷

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.¹³⁸ 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;¹³⁹
- guidance on matters such as registration of company auditors and online tools for consumers;¹⁴⁰
- making it easier for business to interact with ASIC;¹⁴¹ and
- ensuring certification of the ASIC Registry under ISO 9001 Quality Standard in Information Management is maintained.¹⁴²

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

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

Appendix 1

Tabled documents

1. Opening Statement of Mr Greg Medcraft, Chairman, Australian Securities and Investments Commission, received at public hearing, Sydney, 25 November 2016.
2. Bank Bill Swap Rate: Sectorial Impacts & Transmission Mechanisms, received at public hearing, Sydney, 25 November 2016.

Additional information received by the Committee

1. Answers to questions on notice asked at a public hearing on 25 November 2016, received 22 December 2016.
2. 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, received 8 February 2017.

Appendix 2

Public hearings and witnesses

Sydney, 25 November 2016

Australian Securities and Investments Commission

Ms Cathie Armour, Commissioner

Mr Warren Day, Senior Executive Leader

Mr Peter Kell, Deputy Chair

Mr Greg Kirk, Senior Executive Leader

Ms Louise Macaulay, Senior Executive Leader

Mr Greg Medcraft, Chairman

Mr Tim Mullaly, Senior Executive Leader

Mr John Price, Commissioner

Mr Michael Saadat, Senior Executive Leader

Mr Chris Savundra, Senior Executive Leader

Mr Greg Tanzer, Commissioner

