

Chapter 4

ASIC's 2016–17 annual report

4.1 This chapter discusses the 2016–17 annual report of ASIC.

Statutory requirements for the ASIC annual report

4.2 Statutory requirements for the ASIC annual report 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

4.3 The 2016–17 ASIC annual report was provided to the Minister on 5 October 2017 and was tabled in the House of Representatives on 26 October 2017.¹ 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*.

4.4 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 the Minister had provided the Attorney-General of each State and Territory with a copy of the ASIC annual report in December 2017.²

Contents of the annual report

4.5 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

1 House of Representatives, *Votes and Proceedings*, No. 87–26 October 2017, p. 1226.

2 Australian Securities and Investments Commission, answers to questions on notice, 19 February 2018 (received 4 April 2018).

possible, with the PGPA Act.³ Table 4.1 lists where in the 2016–17 ASIC annual report the current requirements in the ASIC Act are met.

Table 4.1: Statutory requirements for the ASIC annual report

Section	Reporting requirement (ASIC Act)	2016–17 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 184
136(1)(b)	ASIC's monitoring and promotion of market integrity and consumer protection.	Pages 30–40 Pages 46–76
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 184
136(1)(d)	Operation of the <i>Business Names Registration Act 2011</i> .	Pages 9, 42–43, Pages 82–86, 96, Page 182
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 190–191

3 Public Governance and Resources Legislation Amendment Act (No. 1) 2015, Revised Explanatory Memorandum, pp. 17–18 of 26
http://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r5402_ems_126da0a5-fac4-4fa7-989e-acfc994bec58/upload_pdf/500599.pdf;fileType=application%2Fpdf, (accessed 6 November 2017).

Strategic priorities

4.6 ASIC has retained three strategic priorities and the 2016–17 annual report is structured according to achievements in these three areas as follows:

- investor and consumer trust and confidence;⁴
- fair and efficient markets; and⁵
- efficient registration services.⁶

Matters identified in the annual report

4.7 The remainder of this chapter considers the following matters identified in the annual report:

- ASIC's industry funding model;
- Surveillance;
- Enforcement;
- Compensation and remediation;
- ASIC Enforcement Review;
- ASIC Product Intervention Powers;
- Audit quality;
- Professional Standards for Financial Advisers;
- Illegal phoenix activity;
- Innovation Hub;
- Granting or varying AFS licences;
- Service Charter Performance;
- Relief applications;
- Building Financial Capability;
- Revenue, appropriations and expenditure; and
- ASIC Staffing.

ASIC's industry funding model

4.8 ASIC's industry funding model commenced on 1 July 2017. The *ASIC Supervisory Cost Recovery Levy Act 2017* passed Parliament on 14 June 2017 and the *ASIC Supervisory Cost Recovery Levy Regulations 2017* commenced in 2017.⁷

4 Australian Securities and Investments Commission, *Annual Report 2016–17*, pp. 30–35, 46–61.

5 Australian Securities and Investments Commission, *Annual Report 2016–17*, pp. 36–41, 62–81.

6 Australian Securities and Investments Commission, *Annual Report 2016–17*, pp. 42–43, 82–86.

4.9 The Act imposes a levy on entities regulated by ASIC to recover its regulatory costs.⁸ In determining the levy for a financial year, ASIC may include the following costs relating directly or indirectly to:

- the regulation of leviable entities;
- surveillance;
- education;
- guidance;
- engagement with industry; and
- policy advice.⁹

4.10 The annual report states that industry funding will:

- provide ASIC with greater certainty about its funding and ensure adequate resourcing;
- create price signals for industry on the use of ASIC's resources; and
- ensure that industry participants who create the need for ASIC's regulatory activities will bear the associated costs.¹⁰

4.11 The annual report also notes that ASIC will continue to work with stakeholders to implement the model throughout 2017–18 prior to issuing invoices in early 2019.¹¹

4.12 The committee will continue to monitor the operation of the regulations and how they are assisting ASIC in recovering revenue.

Surveillance

4.13 Australia's financial system relies heavily on the roles performed by gatekeepers. As such, the conduct of these gatekeepers has an influence on consumer and investor trust and confidence. The surveillance of, and enforcement action against, gatekeepers is therefore a vital and substantial part of ASIC's work. ASIC allocates about 70 per cent of its regulatory resources to surveillance and enforcement.¹²

4.14 The number of high intensity surveillances and investigations completed by ASIC during 2016–17 is similar to the 2015–16 financial year. During the reporting

7 *ASIC Supervisory Cost Recovery Levy Act 2017*, <https://www.legislation.gov.au/Details/C2017A00043>; ASIC Supervisory Cost Recovery Levy Regulations 2017 [F2017L00805], <https://www.legislation.gov.au/Details/F2017L00805>

8 ASIC Supervisory Cost Recovery Levy Regulations 2017 [F2017L00805], *Explanatory Statement*, <https://www.legislation.gov.au/Details/F2017L00805/Explanatory%20Statement/Text>

9 *ASIC Supervisory Cost Recovery Levy Act 2017*.

10 Australian Securities and Investments Commission, *Annual Report 2016–17*, p. 6.

11 Australian Securities and Investments Commission, *Annual Report 2016–17*, p. 6.

12 Australian Securities and Investments Commission, *Annual Report 2016–17*, pp. 4, 34.

period, ASIC conducted 1437 high-intensity surveillances and completed 157 investigations (a high-intensity surveillance generally takes more than two days of effort to complete).¹³ This included:

- 154 high-intensity surveillances to monitor whether lenders, brokers and insurers complied with their obligations;¹⁴
- 227 high-intensity surveillances to monitor whether financial advisers complied with their advice obligations;¹⁵
- 140 high-intensity surveillances of how responsible entities, superannuation trustees and other entities operating in the wealth management sector complied with their obligations;¹⁶
- 404 high-intensity surveillances to monitor how companies and their directors complied with their obligations under the *Corporations Act 2001* (Corporations Act) concerning their operations as a company, such as in relation to fundraising and control transactions;¹⁷
- 49 high-intensity surveillances of insolvency practitioners (focused on independence, competence and improper gain);¹⁸
- 157 high-intensity surveillances to monitor compliance with financial reporting and audit requirements;¹⁹ and
- 270 high-intensity surveillances of the market.²⁰

Enforcement

4.15 As a result of its surveillance and investigation activity, ASIC achieved the following outcomes in enforcing the law across the financial system:

- 20 criminal convictions;
- 13 people imprisoned;
- \$5.2 million in civil penalties;
- 100 people/companies banned from financial services;
- 108 people/companies banned from credit services;
- 51 people disqualified or removed from directing companies; and

13 Australian Securities and Investments Commission, *Annual Report 2016–17*, pp. 4, 22.

14 Australian Securities and Investments Commission, *Annual Report 2016–17*, p. 46.

15 Australian Securities and Investments Commission, *Annual Report 2016–17*, p. 51.

16 Australian Securities and Investments Commission, *Annual Report 2016–17*, p. 53.

17 Australian Securities and Investments Commission, *Annual Report 2016–17*, p. 63.

18 Australian Securities and Investments Commission, *Annual Report 2016–17*, p. 66.

19 Australian Securities and Investments Commission, *Annual Report 2016–17*, p. 69.

20 Australian Securities and Investments Commission, *Annual Report 2016–17*, p. 74.

- 29 successful actions against auditors and liquidators.²¹

Criminal and civil litigation

4.16 In relation to the priority of investor and consumer trust and confidence, ASIC was successful in 9 of the 10 criminal cases completed in 2016–17, resulting in 10 convictions.²² Of the 55 civil cases completed in the same period, ASIC was successful in 91 per cent of cases, with a total dollar value of \$3.9 million in civil penalties.²³

4.17 In its report last year, the committee noted that it would monitor ASIC's first test case on the best interests duty in relation to financial advisers under the Corporations Act.²⁴ The case was part of ASIC's attempt to 'address the culture and incentives that lead to poor financial advice by taking action against misconduct in the financial advice industry'.²⁵

4.18 In April 2017, the Federal Court found that financial advice firm NSG Services Pty Ltd (NSG) breached the best interests obligations of the Corporations Act. In its annual report, ASIC states:

NSG clients were sold insurance or advised to roll over superannuation accounts that committed them to costly, unsuitable financial arrangements.²⁶

4.19 The NSG case was the first judicial finding of liability against a licensee for breaching the requirements under the Future of Financial Advice reforms.²⁷ The Federal Court imposed a \$1 million civil penalty against NSG for breaches of the best interests duty.²⁸

4.20 In relation to the priority of fair and efficient markets, ASIC was successful in 92 per cent of the 13 completed criminal cases, resulting in 10 convictions. Of the 23 civil cases completed, ASIC was successful in 87 per cent of cases, with a total dollar value of \$1.3 million in civil penalties.²⁹

21 Australian Securities and Investments Commission, *Annual Report 2016–17*, pp. 5, 32.

22 Australian Securities and Investments Commission, *Annual Report 2016–17*, p. 31.

23 Australian Securities and Investments Commission, *Annual Report 2016–17*, p. 31.

24 Parliamentary Joint Committee on Corporations and Financial Services, *Report on the 2015–16 annual reports of bodies established under the ASIC Act*, June 2017, p. 23.

25 Australian Securities and Investments Commission, *Annual Report 2016–17*, p. 51.

26 Australian Securities and Investments Commission, *Annual Report 2016–17*, p. 51.

27 Australian Securities and Investments Commission, *Annual Report 2016–17*, p. 51.

28 Australian Securities and Investments Commission, 17-365MR *Financial advice firm to pay \$1 million penalty for breach of best interests duty*, <http://asic.gov.au/about-asic/media-centre/find-a-media-release/2017-releases/17-365mr-financial-advice-firm-to-pay-1-million-penalty-for-breach-of-best-interests-duty/> (accessed 13 November 2017).

29 Australian Securities and Investments Commission, *Annual Report 2016–17*, p. 37.

4.21 In its report last year, the committee noted the work done by ASIC against banks including advice fees for no service, irresponsible lending, unclear fee disclosures, and failure to disclose credit card foreign transaction fees.³⁰

4.22 During 2016–17, ASIC progressed legal action against Australia's four largest banks. ASIC alleged the banks traded in a manner that was unconscionable and attempted to create an artificial price for bank bills to affect the bank bill swap rate (BBSW), Australia's key interest rate benchmark, in order to achieve a financial gain.³¹

4.23 ASIC commenced civil penalty proceedings in the Federal Court against the Australia and New Zealand Banking Group (ANZ) on 4 March 2016³² and against National Australia Bank (NAB) on 7 June 2016.³³ The Federal Court imposed pecuniary penalties of \$10 million on both ANZ and NAB. ASIC also accepted enforceable undertakings from ANZ and NAB which provides for both banks to pay \$20 million to be applied to the benefit of the community and \$20 million towards ASIC's investigation and other costs.³⁴

4.24 ASIC also commenced civil penalty proceedings in the Federal Court against Westpac Banking Corporation (Westpac) on 5 April 2016 and Commonwealth Bank of Australia (CBA) on 30 January 2018.³⁵ As at 1 May 2018, ASIC's case against Westpac is awaiting judgement.

4.25 The committee will continue to monitor ASIC's activities in relation to proceedings against banks for manipulation of the BBSW.

30 Parliamentary Joint Committee on Corporations and Financial Services, *Report on the 2015–16 annual reports of bodies established under the ASIC Act*, June 2017, pp. 22–23.

31 Australian Securities and Investments Commission, *Annual Report 2016–17*, p. 4.

32 Australian Securities and Investments Commission, 16-060MR *ASIC commences civil penalty proceedings against ANZ for BBSW conduct*, <http://asic.gov.au/about-asic/media-centre/find-a-media-release/2016-releases/16-060mr-asic-commences-civil-penalty-proceedings-against-anz-for-bbsw-conduct/> (accessed 13 March 2018).

33 Australian Securities and Investments Commission, 16-183MR *ASIC commences civil penalty proceedings against National Australia Bank for BBSW conduct*, <http://asic.gov.au/about-asic/media-centre/find-a-media-release/2016-releases/16-183mr-asic-commences-civil-penalty-proceedings-against-national-australia-bank-for-bbsw-conduct/> (accessed 13 March 2018).

34 Australian Securities and Investments Commission, 17-393MR *ASIC accepts enforceable undertakings from ANZ and NAB to address conduct relating to BBSW*, <http://asic.gov.au/about-asic/media-centre/find-a-media-release/2017-releases/17-393mr-asic-accepts-enforceable-undertakings-from-anz-and-nab-to-address-conduct-relating-to-bbsw/> (accessed 13 March 2018).

35 Australian Securities and Investments Commission, 18-024MR *ASIC commences civil penalty proceedings against Commonwealth Bank of Australia for BBSW conduct*, <http://asic.gov.au/about-asic/media-centre/find-a-media-release/2018-releases/18-024mr-asic-commences-civil-penalty-proceedings-against-commonwealth-bank-of-australia-for-bbsw-conduct/> (accessed 13 March 2018).

Administrative actions

4.26 In relation to the priority of investor and consumer trust and confidence, ASIC banned 108 people/companies from financial services in 2016–17 (up from 81 in 2015–16) and 108 people/companies from credit services (up from 55 in 2015–16). However, the annual report notes that 'the number of bannings in 2016–17 includes instances where conditions were placed on an AFS licensee', but does not specify the number of such instances. The annual report also notes that increase in bannings from credit services resulted from failures 'to lodge Annual Compliance Certificates or maintain EDR scheme membership'.³⁶

4.27 During the reporting period, ASIC conducted a review of how effectively Australia's largest banking and financial services institutions oversee their financial advisers. ASIC's review identified:

- failure to notify ASIC about institutions' serious non-compliance concerns about adviser conduct;
- inadequate background and reference checking when recruiting new advisers; and
- ineffective (or partially ineffective) audit processes to assess whether advice complied with the best interests duty and other legal obligations.³⁷

4.28 ASIC banned 35 financial advisers 'who were reported during the review as having demonstrated serious compliance failures'. Approximately \$37 million was paid to an approximately 2200 customers 'who suffered loss or detriment as a result of non-compliant conduct by advisors' for the period up to 31 May 2017.³⁸

4.29 In relation to the priority of fair and efficient markets, ASIC disqualified or removed 51 people from directing companies (up from 39 in 2015–16).³⁹

4.30 In 2016–17, ASIC issued infringement notices under its market integrity rules with a total dollar value of \$2.29 million. As part of that total, ASIC also issued the first infringement notice for an alleged breach under the ASIC Derivative Transaction Rules (Reporting) since it was implemented in 2013. The notice was issued to Westpac with a penalty of \$127 500.⁴⁰

4.31 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. These themes were:

- gatekeeper culture and conduct in financial services and credit;

36 Australian Securities and Investments Commission, *Annual Report 2016–17*, p. 32; see also footnote 13.

37 Australian Securities and Investments Commission, *Annual Report 2016–17*, p. 51.

38 Australian Securities and Investments Commission, *Annual Report 2016–17*, p. 51.

39 Australian Securities and Investments Commission, *Annual Report 2016–17*, p. 38.

40 Australian Securities and Investments Commission, *Annual Report 2016–17*, p. 38.

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- gatekeeper culture and conduct in markets;
 - digital disruption;
 - cyber threats;
 - misalignment of retail product design and distribution with consumer understanding;
 - cross-border businesses, services and transactions;
 - market integrity;
 - corporate governance; and
 - financial services.⁴¹

Enforceable undertakings

4.32 In its annual report, ASIC stated that 'culture and incentives that drive poor conduct by gatekeepers, including directors and market participants, can undermine investor trust and confidence in our markets'.⁴²

4.33 ASIC's annual report shows that one of the ways that ASIC tries to address poor culture is through enforceable undertakings. In 2016–17, ASIC accepted 16 enforceable undertakings. After accepting an enforceable undertaking, ASIC works with companies and independent experts to improve culture and compliance practices. ASIC states that, as a result of this collaborative approach, there has been an improvement in 'compliance with the law and positive, long-term behavioural change'.⁴³

4.34 The enforceable undertakings may involve:

- write-offs, refunds, and interest reductions to consumers;
- payments to fund consumer advocacy, financial literacy and financial counselling programs;
- strengthening systems and controls;
- engaging independent experts to review and test compliance frameworks; and
- an agreement by a registered liquidator not to re-apply for registration for three years.⁴⁴

41 Australian Securities and Investments Commission, *Report 536 ASIC enforcement outcomes: January to June 2017*, <http://download.asic.gov.au/media/4442431/rep536-published-22-august-2017.pdf> (accessed 8 November 2017); ASIC, *Report 513 ASIC enforcement outcomes: July to December 2016*, <http://download.asic.gov.au/media/4175428/rep513-published-8-march-2017.pdf> (accessed 8 November 2017).

42 Australian Securities and Investments Commission, *Annual Report 2016–17*, p. 39.

43 Australian Securities and Investments Commission, *Annual Report 2016–17*, p. 60.

44 Australian Securities and Investments Commission, *Annual Report 2016–17*, p. 60.

4.35 ASIC also reports publicly on how companies and individuals comply with enforceable undertakings. During 2016–17, ASIC published four interim reports setting out compliance with enforceable undertakings.⁴⁵

Compensation and remediation

4.36 During 2016–17, ASIC oversaw \$837.7 million in compensation and remediation that was paid, or ordered to be paid, to investors and consumers.⁴⁶

4.37 This total included \$617.2 million that the Supreme Court of Queensland ordered four former officers and the fund manager of MFS Investment Management Limited (MFSIM) to pay in compensation. The court found the former officers and fund manager did not act honestly in carrying out their duties in managing MFSIM which was the responsible entity for a managed investment scheme.⁴⁷

4.38 Another significant part of the overall compensation to consumers related to the four major banks and AMP charging their customers fees for no service. ASIC's breach reports identified that the four major banks and AMP had:

- charged clients annual fees for services, including an annual advice review, where those services were not provided; and
- continued to deduct fees for advice and other services from customers' accounts in circumstances where the adviser was no longer attached to the customer, or where the customer had given instructions for the deductions to stop.⁴⁸

4.39 In terms of factors contributing to licensees charging fees for no service, ASIC observed that some licensees:

- prioritised advice revenue and fee generation over ensuring that they delivered the required services; and
- did not have in place adequate systems, data, policies or procedures to provide ongoing advice services.⁴⁹

4.40 At 30 June 2017, a total of \$112.1 million had been paid or offered to customers. ASIC noted that 'the banks and AMP estimate that they will have to pay a further \$93 million in compensation to customers'.⁵⁰

4.41 ASIC also noted that they have asked each of the banks, AMP and Macquarie to:

45 Australian Securities and Investments Commission, *Annual Report 2016–17*, p. 60.

46 Australian Securities and Investments Commission, *Annual Report 2016–17*, p. 4.

47 Australian Securities and Investments Commission, *Annual Report 2016–17*, p. 4.

48 Australian Securities and Investments Commission, *Annual Report 2016–17*, p. 52.

49 Australian Securities and Investments Commission, *Annual Report 2016–17*, p. 52.

50 Australian Securities and Investments Commission, *Annual Report 2016–17*, p. 52.

...conduct a comprehensive further review into the practices of the advice licensees within their groups to determine whether similar issues exist elsewhere in these businesses. These reviews are ongoing.⁵¹

4.42 During 2016–17, ASIC also monitored the remediation program established by Macquarie Equities Limited under its enforceable undertaking with ASIC. ASIC noted that, as at 5 June 2017, the remediation program had paid approximately \$24.7 million of compensation (including interest) to 263 clients, and was now substantially complete.⁵²

ASIC Enforcement Review

4.43 On 19 October 2016, the ASIC Enforcement Review Taskforce (Taskforce) was established to review the enforcement regime of ASIC. The Taskforce, chaired by the Treasury, consists 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 is supported by an expert group and a reference group of stakeholders.⁵³

4.44 The ASIC Enforcement Review was established to examine 'the adequacy of ASIC's enforcement regime to deter misconduct and foster consumer confidence in the financial system'. The annual report sets out ASIC's priorities for the review, including:

- addressing the type, level and consistency of penalties available to ASIC;
- enhancing the breach reporting regime; and
- introducing a power to ban people from managing firms that provide financial services.⁵⁴

4.45 The Taskforce completed eight consultations during 2017. The consultations examined legislation dealing with corporations, financial services, credit and insurance and assessed the suitability of regulatory tools presently available to ASIC to perform its functions effectively.⁵⁵

4.46 The committee notes the Taskforce reported to government in December 2017 and that the government response was released in April 2018.⁵⁶ The committee

51 Australian Securities and Investments Commission, *Annual Report 2016–17*, p. 52.

52 Australian Securities and Investments Commission, *Annual Report 2016–17*, p. 52.

53 Australian Securities and Investments Commission, *Annual Report 2016–17*, p. 7; The Treasury, *ASIC Enforcement Review*, <http://www.treasury.gov.au/ConsultationsandReviews/Reviews/2016/ASIC-Enforcement-Review> (accessed 11 May 2017).

54 Australian Securities and Investments Commission, *Annual Report 2016–17*, p. 7.

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

56 The Treasury, *Australian Government response to the ASIC Enforcement Review*, <https://treasury.gov.au/publication/p2018-282438/> (accessed 1 May 2018).

will pursue matters arising from the Taskforce report and government response through its ASIC Oversight process.

ASIC Product Intervention Powers

The Financial System Inquiry (FSI) 2015 made recommendations in relation to protecting consumers from purchasing harmful financial products where there is a risk the product will be significantly damaging to the consumer.⁵⁷

4.47 As part of the government's response to the FSI recommendations, Treasury instituted a consultation process on the design and distribution obligations and product intervention powers.⁵⁸

4.48 In March 2017, ASIC made a submission to the Treasury consultation paper on the proposed:

- design and distribution obligation that requires issuers and distributors to establish processes and controls for ensuring that products are designed with consumer needs in mind and are targeted at appropriate sections of the population; and
- product intervention power that would enable ASIC to take direct action to deal with significant shortcomings in products or conduct that result in consumer detriment.⁵⁹

4.49 In essence, the design and distribution obligation creates new accountability mechanisms. In its annual report, ASIC stated that the combination of design and distribution obligations and product intervention powers should improve consumer outcomes.⁶⁰

4.50 The committee notes that on 21 December 2017, the government released for consultation draft legislation on the design and distribution obligations for financial products and product intervention powers for ASIC.⁶¹

4.51 The committee acknowledges that the new obligations and powers have resulted from a recognition that a regulatory regime based solely on disclosure can be ineffective for a variety of reasons and that further measures are required. The committee will consider the new accountability mechanisms and stronger consumer

57 Financial System Inquiry 2015, *Final Report*, pp. 206–212.

58 Treasury Proposals Paper, *Design and Distribution Obligations and Product Intervention Power, December 2016*, p. 3.

59 Australian Securities and Investments Commission, *Annual Report 2016–17*, p. 8.

60 Australian Securities and Investments Commission, *Annual Report 2016–17*, p. 8.

61 Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Bill 2017—Exposure Draft, <https://static.treasury.gov.au/uploads/sites/1/2017/12/c2017-t247556-Exposure-Draft.pdf>; Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Bill 2017—Exposure Draft Explanatory Memorandum, <https://static.treasury.gov.au/uploads/sites/1/2017/12/c2017-t247556-Explanatory-Memorandum.pdf>

protections in relation to financial and credit products contained in the draft amendment bill. The committee will pursue these matters further through the ASIC Oversight process.

Audit quality

4.52 Audit quality underpins investor trust and confidence in the quality of financial reports and is vital in ensuring that markets and investors are properly informed.⁶²

4.53 In June 2017, ASIC released a report of the results of its audit firm risk-based inspections for the 18 month period between July 2015 and December 2016. A total of 390 key audit areas across 93 audit files from 23 firms of various sizes were reviewed. ASIC's published its findings in Report 534 *Audit inspection program report for 2015–16*.⁶³

4.54 In 25 per cent of key audit areas, auditors did not obtain reasonable assurance from public listed entities that the financial report as a whole was free of material misstatement. This compares to 19 per cent of 463 key audit areas reported for the 18 month period to June 2015.⁶⁴

4.55 ASIC found that audit firms need to continue to focus on ensuring that auditors:

- obtain sufficient and appropriate audit evidence;
- exercise an appropriate level of professional scepticism; and
- use the work of experts and other auditors appropriately.⁶⁵

4.56 The Financial Reporting Council noted ASIC's review findings in its annual report for 2016–17. In its report, the FRC warned that caution is needed in generalising the results across the entire market due to the review's focus on higher risk audit areas. The FRC argued that the results should be viewed as an indication of how some firms address more challenging audit situations.⁶⁶

4.57 The FRC also considers that it is premature to propose changes to the Minister regarding audit quality and instead believes in encouraging greater consistency and transparency of audit quality review programs conducted by accounting bodies such as the CPA, IPA and Chartered Accountants ANZ.⁶⁷

62 Australian Securities and Investments Commission, *Annual Report 2016–17*, p. 69.

63 Australian Securities and Investments Commission, *Annual Report 2016–17*, p. 69; see also Australian Securities and Investments Commission, Report 534 *Audit inspection program report for 2015–16*, June 2017, <http://download.asic.gov.au/media/4331127/rep534-published-29-june-2017.pdf> (accessed 15 November 2017).

64 Australian Securities and Investments Commission, *Annual Report 2016–17*, p. 69.

65 Australian Securities and Investments Commission, *Annual Report 2016–17*, p. 69.

66 Financial Reporting Council, *Annual Report 2016–17*, p. 17.

67 Financial Reporting Council, *Annual Report 2016–17*, p. 20.

4.58 The committee recognises the critical importance of audit quality. The committee has had a long-standing interest in this matter and is particularly concerned that audit quality continues to deteriorate. This raises questions about ASIC's response over the past decade and the measures that ASIC, the FRC and the standards boards have taken thus far. The committee will cover these matters in greater detail in its ASIC Oversight report.

Professional Standards for Financial Advisers

4.59 On 15 March 2017 the *Corporations Amendment (Professional Standards of Financial Advisers) Act 2017* (Professional Standards Amendment Act) commenced.⁶⁸ The Professional Standards Amendment Act introduced measures relating to compulsory standards of education for new and existing advisers, the supervision of new advisers, a code of ethics, an exam and ongoing professional development.⁶⁹

4.60 The legislative amendments reflect nine of the fourteen recommendations made by the committee in its report on proposals to lift the professional, ethical and educational standards in the financial services industry.⁷⁰

4.61 Prior to the commencement of the Professional Standards Amendment Act, financial advisers were required to complete a course at an education level broadly equivalent to the 'Diploma' or 'Certificate III' levels under the Australian Qualifications Framework. There were no ongoing education requirements.⁷¹

4.62 The committee observes that, as of 1 January 2019, new financial advisers will be required to pass an exam in compliance with the Professional Standards Council.⁷² Existing financial advisers will be required to meet the full educational standards, including a completed bachelor degree or equivalent qualification, by 1 January 2024.⁷³

68 *Corporations Amendment (Professional Standards of Financial Advisers) Act 2017*, <https://www.legislation.gov.au/Details/C2017A00007>

69 Australian Securities and Investments Commission, *Annual Report 2016–17*, p. 52.

70 Australian Government response to the Parliamentary Joint Committee on Corporations and Financial Services report, *Inquiry into proposals to lift the professional, ethical and education standards in the financial services industry*, December 2014 (tabled 8 August 2017) https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Corporations_and_Financial_Services/Financial_Adviser_Qualifications/Additional_Documents (accessed 14 November 2017).

71 Australian Securities and Investments Commission, *RG 126: Licensing: Training of financial product advisers*, July 2012, pp. 5 and 20, <http://download.asic.gov.au/media/1240766/rg146-published-26-september-2012.pdf>, (accessed 15 March 2018).

72 *Corporations Amendment (Professional Standards of Financial Advisers) Act 2017*, Part 1, Division 8A, Subdivision A, Section 921B(3), <https://www.legislation.gov.au/Details/C2017A00007>.

73 *Corporations Amendment (Professional Standards of Financial Advisers) Act 2017*, ss. 1546B(1).

4.63 The Professional Standards Amendment Act also established the functions of a standards body. This resulted in the government establishing the Financial Adviser Standards and Ethics Authority (FASEA) as a Commonwealth company on 11 April 2017, to set the education, training and ethical standards of financial advisers who provide personal advice on relevant financial products to retail clients.⁷⁴

4.64 Under the Corporations Act, FASEA is responsible for:

- approving degrees or higher or equivalent qualifications;
- approving foreign qualifications;
- approving and/or administering the exam;
- determining the requirements for the professional year;
- selecting an appropriate common term for provisional relevant providers;
- setting supervision or other requirements for provisional relevant providers;
- determining the continuous professional development (CPD) requirements in relation to licensees' CPD years;
- determining the requirements for financial advisers whose CPD year changes and whether to modify the operation of the Corporations Act for these individuals, for example, by requiring licensees to report non-compliance with the CPD requirement at a time other than at the end of their new CPD year;
- determining the bridging course requirements for existing providers; and
- setting the Code of Ethics.⁷⁵

4.65 The committee also observes that the requirements under section 921D of the Corporations Act for relevant providers to meet continuing professional development standards exempts advisers of time-sharing schemes.⁷⁶ The committee will monitor the appropriateness of this exemption as well as the overall effect of the Professional Standards Amendment Act through its ASIC Oversight process.

Illegal phoenix activity

4.66 Phoenix activity is not defined in legislation. Legal phoenix activity essentially encompasses business rescue activities and is a legitimate use of the corporate form. By contrast, illegal phoenix activity involves company directors stripping and transferring assets from one company to another in order to intentionally

74 Treasury, *Financial Adviser Standards and Ethics Authority Limited (FASEA)*, <https://treasury.gov.au/programs-and-initiatives-banking-and-finance/financial-adviser-standards-and-ethics-authority-limited-fasea/> (accessed 15 March 2018).

75 Treasury, *Financial Adviser Standards and Ethics Authority Limited (FASEA)*, <https://treasury.gov.au/programs-and-initiatives-banking-and-finance/financial-adviser-standards-and-ethics-authority-limited-fasea/> (accessed 15 March 2018).

76 *Corporations Amendment (Professional Standards of Financial Advisers) Act 2017*, ss. 921D(2).

and dishonestly deny unsecured creditors (for example, employees and providers of goods and services) fair access to their entitlement to the company's assets.⁷⁷

4.67 During 2016–17, ASIC took action against illegal phoenix activity through surveillance and enforcement work by:

- targeting surveillance and action against directors with a history of failed companies where allegations of illegal phoenix activity exist;
- enforcing the law against advisers, directors and registered liquidators who facilitate illegal phoenix activity;
- disrupting collusion between pre-insolvency advisers, directors and registered liquidators on illegal phoenix activity;
- undertaking joint operational matters with other government agencies, such as the ATO, including prosecuting facilitators of illegal phoenix activity;
- reviewing registered liquidator declarations of independence to identify inappropriate relationships between registered liquidators and pre-insolvency advisers; and
- funding liquidators through the Assetless Administration Fund to investigate failed companies with few or no assets that raise concerns about illegal phoenix activity.⁷⁸

4.68 As part of its work to help detect and combat illegal phoenix activity, ASIC continued to work with other member agencies in the Serious Financial Crime Taskforce (a multi-agency taskforce led by the Australian Federal Police) and the Phoenix Taskforce (which comprises 28 federal, state and territory government agencies including the Australian Taxation Office (ATO), Department of Employment, and the Fair Work Ombudsman).⁷⁹

4.69 The committee notes that the government undertook a consultation process on reforms to address illegal phoenix activity during the year.⁸⁰ The committee will use the ASIC Oversight process to monitor the progress of the government's anti-

77 Australian Securities and Investments Commission, *Annual Report 2016–17*, p. 68; Australian Government, *Combatting illegal phoenixing*, Consultation paper, September 2017, pp v and 1, <https://static.treasury.gov.au/uploads/sites/1/2017/09/170928-final-Phoenixing-Consultation-Paper-1.pdf> (accessed 1 May 2018).

78 Australian Securities and Investments Commission, *Annual Report 2016–17*, p. 68.

79 Australian Securities and Investments Commission, *Annual Report 2016–17*, p. 68; see also Commonwealth Serious Financial Crime Taskforce, <https://www.acic.gov.au/about-crime/taskforces/commonwealth-serious-financial-crime-taskforce> (accessed 1 May 2018) and Australian Tax Office, *Phoenix Taskforce*, <https://www.ato.gov.au/General/The-fight-against-tax-crime/Our-focus/Illegal-phoenix-activity/Phoenix-Taskforce/?=redirected> (accessed 23 January 2018).

80 Department of the Treasury, *Reforms to address illegal phoenix activity*, <https://treasury.gov.au/consultation/c2017-t221952/> (accessed 23 January 2018).

phoenixing agenda, including proposals to introduce a Director Identification Number (DIN).

Innovation Hub

4.70 In March 2015, ASIC launched an Innovation Hub to help financial technology (fintech) businesses navigate Australia's regulatory system in the financial services sector.⁸¹ The aim is to assist these businesses without compromising investor and financial consumer trust and confidence. The Innovation Hub is designed to help fintech businesses by providing access to senior staff at ASIC to streamline licensing and by offering informal guidance that assists businesses to navigate the regulatory system.⁸²

4.71 The Innovation Hub has four key elements:

- stakeholder engagement;
- informal assistance and guidance for eligible businesses;
- the Innovation Hub website; and
- coordination of ASIC's innovation-related work.⁸³

4.72 In 2016–17, ASIC worked with 95 entities through the Innovation Hub resulting in 93 entities receiving informal assistance in relation to areas including crowd-sourced funding, marketplace lending, digital advice, consumer credit, payments and remittances and other areas such as insurance and superannuation.⁸⁴

Fintech

4.73 'Fintech' refers to the technology used to support or enable banking and financial services companies. These may include mobile and web-based applications, processes, products or business models. The most common fintech business models engaging with ASIC are in relation to digital advice, marketplace lending and consumer credit.⁸⁵

Regtech

4.74 'Regtech' refers to the technology developed to assist financial services companies to comply with regulation in a simple, inexpensive and efficient way.⁸⁶

4.75 ASIC has identified several challenges regtech businesses are addressing including:

81 Australian Securities and Investments Commission, Report 523: *ASIC's Innovation Hub and our approach to regulatory technology*, <http://download.asic.gov.au/media/4270022/rep523-published-26-may-2017.pdf> p. 5.

82 Australian Securities and Investments Commission, *Annual Report 2016–17*, p. 79.

83 Australian Securities and Investments Commission, *Annual Report 2016–17*, p. 79.

84 Australian Securities and Investments Commission, *Annual Report 2016–17*, p. 81.

85 Australian Securities and Investments Commission, *Annual Report 2016–17*, p. 79.

86 Australian Securities and Investments Commission, *Annual Report 2016–17*, p. 80.

- identity verification;
- fraud prevention through transaction analysis;
- trade tracking and analysis;
- anti-money laundering (AMI);
- know your customer (KYC) compliance; and
- monitoring culture through people analytics.⁸⁷

4.76 In May 2017, ASIC published a report that outlined their proposed future approach to regtech. The proposed initiatives include:

- establishing a new regtech liaison group;
- conducting future technology trials; and
- hosting a problem-solving event challenging regtechs to find a solution to a compliance issue identified by ASIC.⁸⁸

Regulatory Sandbox

4.77 In December 2016, ASIC launched a 'regulatory sandbox' to allow innovative businesses to develop and test their ideas. The framework for the regulatory sandbox provides three ways to test a new product or service without a licence:

- using the existing flexibility in the regulatory framework or exemptions in the law, which mean that a licence is not required; or
- using ASIC's fintech licensing exemption, which allows eligible businesses to test certain services for 12 months without holding an AFS licence or credit licence;
- obtaining tailored, individual licensing exemptions to facilitate product or service testing.⁸⁹

4.78 The regulatory sandbox program allows eligible businesses to test services for up to 12 months with up to 100 retail clients.⁹⁰ Eligible businesses may provide advice on, and deal in, (other than acting as a product issuer):

- listed or quoted Australian securities;
- debentures, stocks or bonds issued or proposed to be issued by the Australian Government;

87 Australian Securities and Investments Commission, *Regtech*, <http://asic.gov.au/for-business/your-business/innovation-hub/regtech/>, (accessed 19 April 2018).

88 Australian Securities and Investments Commission, *Annual Report 2016–17*, p. 80.

89 Australian Securities and Investments Commission, *Annual Report 2016–17*, p. 80.

90 Australian Securities and Investments Commission, 17-429MR ASIC's regulatory sandbox proposal to remain unchanged, <http://www.asic.gov.au/about-asic/media-centre/find-a-media-release/2017-releases/17-429mr-asic-s-regulatory-sandbox-proposal-to-remain-unchanged/> (accessed 16 January 2018).

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- simple managed investment schemes;
 - deposit products;
 - some kinds of general insurance products; and
 - payment products issued by authorised deposit-taking institutions (ADIs).⁹¹

4.79 On 24 October 2017, Treasury released an exposure draft for the *Treasury Laws Amendment (Measures for a later sitting) Bill 2017: FinTech Sandbox Regulatory Licensing Exemptions* which proposes to extend the scope of fintech licensing exemption in a number of areas, including the testing period, caps, limits and number of times a business can make use of the sandbox.⁹²

4.80 In December 2017, ASIC released a consultation paper seeking feedback from industry participants on the proposal to retain and expand the regulatory sandbox licensing exemptions. ASIC was due to report their findings in March 2018.⁹³ As at 1 July 2018, ASIC has yet to release its findings.

4.81 In the consultation paper, ASIC stated:

- the regulatory sandbox framework involves licensing exemptions for fintech companies;
- that ASIC is not involved in selecting applicants and negotiating individual testing terms for people using the licensing exemption. Instead, eligible businesses are able to notify ASIC and then commence testing without an individual approval process;
- that ASIC is 'balancing the benefits of concept validation testing against the risks of consumer harm from poor conduct by unlicensed businesses that have not demonstrated their competence to deal with consumers'; and
- that it is challenging to compare ASIC's regulatory sandbox framework with fintech sandbox environments introduced in other jurisdictions, as the regulatory regime and approach to authorising fintech businesses differ significantly from jurisdiction to jurisdiction.⁹⁴

91 Consultation Paper 297, Retaining ASIC's fintech licensing exemption, 12 December 2017, <http://download.asic.gov.au/media/4570456/cp297-published-12-december-2017.pdf> (accessed 16 January 2017).

92 Treasury Laws Amendment (Measures for a later sitting) Bill 2017, <https://treasury.gov.au/consultation/c2017-t230052/>, (accessed 19 April 2018).

93 Australian Securities and Investments Commission, Retaining ASIC's fintech licensing exemption, *Consultation Paper 297*, 12 December 2017, <http://download.asic.gov.au/media/4570456/cp297-published-12-december-2017.pdf> (accessed 16 January 2017).

94 Australian Securities and Investments Commission, Retaining ASIC's fintech licensing exemption, *Consultation Paper 297*, 12 December 2017, pp. 7–8.

4.82 Noting both the above, and that as at 1 July 2018, ASIC has yet to release its findings, the committee will monitor the operation of the regulatory sandbox, including how ASIC is managing the risks as well as the overall outcomes.

Granting or varying AFS licences

4.83 ASIC assesses applications for AFS licences and credit licences as part of its regulatory framework. Each application must be subject to a detailed, comprehensive assessment in order to ensure the competence of providers of financial and credit services.⁹⁵

4.84 In 2016–17, ASIC assessed more than 3000 AFS licence and credit licence applications and approved 1159 AFS licences and 406 credit licences.⁹⁶ ASIC reported an increase in approved applications for new and varied AFS licences. The increase was attributed to the government's decision to repeal the limited exemption for accountants giving advice to Self-Managed Super Funds from 1 July 2016.⁹⁷

Service Charter Performance

4.85 The ASIC Service Charter covers the most common interactions between ASIC and its stakeholders and sets performance targets for these interactions.⁹⁸

4.86 ASIC's Service Charter targets are based on sustainable target levels with current resources. ASIC met or exceeded most Service Charter performance targets during 2016–17.⁹⁹

4.87 ASIC's annual report showed it did not meet performance targets in relation to deciding whether to grant or vary an AFS licence. Targets were measured in two stages. ASIC set a target of processing 70 per cent of regular applications within 60 days from the date of application. For more complex applications often requiring additional work, ASIC set a target of ensuring 90 per cent of applications were processed within 120 days from the date of application.¹⁰⁰

4.88 During 2016–17, ASIC granted AFS licences within 60 days in 21 per cent of instances and licence variations in 51 per cent of instances, falling short of the 70 per cent target. AFS licences were granted within 120 days in 38 per cent of instances and license variations in 73 per cent of instances, again falling short of the 90 per cent target.¹⁰¹

4.89 ASIC's annual report attributes the decline of ASIC's performance in this area to ASIC's resourcing and a more rigorous approach to assessing regulatory concerns

95 Australian Securities and Investments Commission, *Annual Report 2016–17*, p. 35.

96 Australian Securities and Investments Commission, *Annual Report 2016–17*, p. 35.

97 Australian Securities and Investments Commission, *Annual Report 2016–17*, p. 187.

98 Australian Securities and Investments Commission, *Annual Report 2016–17*, p. 96.

99 Australian Securities and Investments Commission, *Annual Report 2016–17*, p. 97.

100 Australian Securities and Investments Commission, *Annual Report 2016–17*, p. 97.

101 Australian Securities and Investments Commission, *Annual Report 2016–17*, p. 97.

in licence applications. Another contributing factor was the increase in licence applications following the expiry of the transition period for accountants' limited licences (see previous section).¹⁰²

4.90 ASIC advises in its annual report that it will continue to review their Service Charter to determine sustainable target levels consistent with current resources.¹⁰³

4.91 The committee welcomes ASIC adopting a more rigorous approach to assessing licence applications. However, ASIC has fallen significantly short of its Service Charter performance targets in this area. The committee will continue to monitor ASIC's progress towards meeting these Service Charter performance targets.

Relief applications

4.92 ASIC has the power to grant exemptions from, or modifications to, the law in certain situations. Companies and individuals can apply to ASIC for relief from the:

- Corporations Act; or
- *Superannuation Industry (Supervision) Act 1993*.¹⁰⁴

4.93 ASIC most frequently uses its discretionary powers for provisions of the Corporations Act involving accounting, takeovers, fundraising, managed investment schemes, licensing and disclosure.¹⁰⁵

4.94 In its annual report, ASIC noted that it is frequently approached by business 'for help to make the law work better for them'. ASIC set out its rationale as follows, stating that in order to 'cut red tape', ASIC 'may vary or set aside certain legal obligations when the compliance cost savings outweigh the risks to investors and consumers'.¹⁰⁶

4.95 ASIC is able to provide these legislative waivers to an individual business (individual relief) or to a class of businesses (by legislative instrument).¹⁰⁷

4.96 ASIC received 1818 applications for individual relief in 2016–17, down from 1982 applications in 2015–16 and 2157 applications in 2014–15.¹⁰⁸

102 Australian Securities and Investments Commission, *Annual Report 2016–17*, pp. 35, 97.

103 Australian Securities and Investments Commission, *Annual Report 2016–17*, p. 97.

104 Australian Securities and Investments Commission, *Apply for relief*, <https://asic.gov.au/about-asic/dealing-with-asic/apply-for-relief/> (accessed 24 July 2018).

105 Australian Securities and Investments Commission, Information Sheet 82: *Apply for relief*, <http://asic.gov.au/about-asic/dealing-with-asic/apply-for-relief/>, (accessed 19 April 2018).

106 Australian Securities and Investments Commission, *Annual Report 2016–17*, p. 9.

107 Australian Securities and Investments Commission, *Annual Report 2016–17*, p. 9.

108 Australian Securities and Investments Commission, *Annual Report 2016–17*, p. 9; Parliamentary Joint Committee on Corporations and Financial Services, *Report on the 2015–2016 annual reports of bodies established under the ASIC Act*, p. 27.

4.97 In 2016–17, ASIC granted relief to 1129 entities, refused 79 applications, and 381 applications were withdrawn. There were still 229 applications under assessment at 30 June 2017.¹⁰⁹

4.98 In December 2016 and June 2017, ASIC published reports on relief applications received and where ASIC had exercised its exemption and modification powers under the Corporations Act and the *National Consumer Credit Protection Act 2009*.¹¹⁰

4.99 In its report for 2015–2016, the committee noted that ASIC had stated that it was not possible to determine how many waivers for individual entities were currently in effect. 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. The committee therefore encouraged ASIC to provide information in future annual reports about 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. To this end, the committee recommended 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.¹¹¹

4.100 The committee notes that the government responded on 13 June 2017 to the recommendation the committee made in its 2015–16 annual report 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.

4.101 In its response, the government noted that ASIC generally grants relief based on policy positions on which they consult, and that ASIC publishes in its regulatory guides. These guides are available on ASIC's website.¹¹²

4.102 The government further noted that:

ASIC's individual relief decisions can be appealed to the Administrative Appeals Tribunal and, in the case of applications for relief from the takeovers provisions of the Corporations Act 2001 (Corporations Act), the

109 Australian Securities and Investments Commission, *Annual Report 2016–17*, p. 9.

110 Australian Securities and Investments Commission, *Annual Report 2016–17*, p. 9.

111 Parliamentary Joint Committee on Corporations and Financial Services, *Report on the 2015–2016 annual reports of bodies established under the ASIC Act*, pp. 27–28.

112 Australian Government response to the Parliamentary Joint Committee on Corporations and Financial Services *Report on the 2015–2016 annual reports of bodies established under the ASIC Act*, p. 1.

Takeovers Panel. ASIC's legislative instruments are subject to Parliamentary disallowance.¹¹³

4.103 The government further noted that it may be challenging to establish a register of waivers that are 'in effect' because most ASIC individual instruments 'apply and are limited on their face by reference to a specific event or transaction rather than having an expiry date'.¹¹⁴

4.104 ASIC noted that it was not aware of significant consumer concerns about its use of relief powers. Furthermore, ASIC stressed that:

...it usually will only grant relief in new policy applications where it considers that there is a net regulatory benefit, or any regulatory detriment is minimal and is outweighed by the commercial benefit. ASIC will also not generally offer relief to reverse the usual and intended effect of the Corporations Act or National Credit Act.¹¹⁵

4.105 In conclusion, the government was of the view that the existing transparency and accountability mechanisms around ASIC's exemption and modification powers meant that creating a searchable database of relief instruments would not necessarily add significant value.¹¹⁶

Building Financial Capability

4.106 ASIC is the lead government agency with responsibility for financial capability and coordinates the National Financial Literacy Strategy 2014–17. ASIC's annual report defines financial capability as:

'the combination of an individual's attitude, knowledge, skills, confidence and ability to make sound financial decisions.'¹¹⁷

4.107 In its study of Australian financial attitudes and behaviours, ASIC found that in the six month period from September 2016 to February 2017, 36 per cent of respondents reported that 'dealing with money is stressful and overwhelming'.¹¹⁸ This

113 Australian Government response to the Parliamentary Joint Committee on Corporations and Financial Services *Report on the 2015–2016 annual reports of bodies established under the ASIC Act*, p. 1.

114 Australian Government response to the Parliamentary Joint Committee on Corporations and Financial Services *Report on the 2015–2016 annual reports of bodies established under the ASIC Act*, pp. 1–2.

115 Australian Government response to the Parliamentary Joint Committee on Corporations and Financial Services *Report on the 2015–2016 annual reports of bodies established under the ASIC Act*, p. 2.

116 Australian Government response to the Parliamentary Joint Committee on Corporations and Financial Services *Report on the 2015–2016 annual reports of bodies established under the ASIC Act*, p. 1.

117 Australian Securities and Investments Commission, *Annual Report 2016–17*, p. 192.

118 Australian Securities and Investments Commission, *Annual Report 2016–17*, p. 33.

was an increase from the 30 per cent reported in the previous study period.¹¹⁹ Such findings have prompted ASIC to further develop education tools and resources to improve people's confidence with managing their money.¹²⁰

4.108 During 2016–17, ASIC aimed its financial capability programs at particular demographic groups including school students, older Australians, women, culturally and linguistically diverse communities, indigenous Australians and people facing divorce and separation.¹²¹

MoneySmart

4.109 ASIC's MoneySmart website offers free, impartial and comprehensive information on money matters for all Australians across a wide range of demographic groups. There were over 7 million visits to the website during the reporting period, up from 6.1 million 2015–16. Follow-up research has shown 89 per cent of users reported taking action on their finances after visiting the MoneySmart website in 2016–17.¹²²

4.110 ASIC works with state and territory education departments to deliver its MoneySmart Teaching program under a National Partnership Agreement. In 2016–17, ASIC engaged over 5800 schools—more than 62 per cent of the nation's schools—with ASIC's MoneySmart Teaching program. Since 2012 more than 32 000 teachers have received training in financial literacy through the teaching program.¹²³

4.111 ASIC also improved its MoneySmart website through actions such as the launch of the Simple money manager tool to assist culturally and linguistically diverse Australians with routine budgeting. The tool is available in eight community languages in addition to English.¹²⁴

4.112 ASIC has also focussed on helping indigenous consumers. In July 2016, ASIC launched the 'Take a minute with your money' videos aimed at providing key financial tips to Indigenous consumers around:

- motor vehicle finance—how to get the best deal on a car and your loan;
- consumer leases and renting items for your home; and
- book up—how to manage your store account or tab.¹²⁵

4.113 In March 2017, ASIC launched 'Knowing, Growing, Showing', a financial literacy teaching resource to support learning opportunities for Indigenous Australians launched in March 2017. The resource is aligned to the Australian Curriculum and

119 Australian Securities and Investments Commission and EY, *Australian Financial Attitudes and Behaviour Tracker, Key Findings Report: Wave 5 – March 2017*, p. 5.

120 Australian Securities and Investments Commission, *Annual Report 2016–17*, p. 33.

121 Australian Securities and Investments Commission, *Annual Report 2016–17*, p. 25.

122 Australian Securities and Investments Commission, *Annual Report 2016–17*, pp. 24, 30.

123 Australian Securities and Investments Commission, *Annual Report 2016–17*, p. 59.

124 Australian Securities and Investments Commission, *Annual Report 2016–17*, p. 25.

125 Australian Securities and Investments Commission, *Annual Report 2016–17*, p. 117.

addresses cultural and community values around money, finances, and consumer issues in three stages:

- Knowing—introduces the basics of money;
- Growing—develops the skills needed to make smart choices with money; and
- Showing—uses applied learning to demonstrate an understanding of money and enterprise.¹²⁶

Revenue, appropriations and expenditure

4.114 In 2016–17, ASIC raised \$920 million for the Commonwealth in fees and charges, an increase of 5 per cent from 2015–16. ASIC noted that the increase in revenue was due to continued net company growth and fee indexation.¹²⁷

4.115 In 2016–17, ASIC received approximately \$342 million in appropriation revenue from government, including \$27 million from the Enforcement Special Account. This was a \$30 million increase in appropriation on 2015–16. ASIC also received approximately \$7 million of own-source revenue, \$2 million more than in 2015–16.¹²⁸

ASIC Staffing

4.116 As at 30 June 2017, ASIC staff totalled 1930 people, an increase from the 1826 people employed at this time in the previous year. The most significant increases occurred at Executive Levels 1 and 2 with 175 additional staff, while staff at ASIC 2 level was reduced by 100.¹²⁹

4.117 The committee notes that as of 30 June 2017 ASIC had increased the number of employees within ASIC who identify as Indigenous to 16, an increase of 23 per cent. This means that nearly 1 per cent of ASIC staff identify as Indigenous. The committee notes that ASIC has used Indigenous specific employment initiatives to recruit and retain Indigenous staff members as part of its target of 3 per cent Indigenous employment by 2018.¹³⁰

4.118 As at 30 June 2017, ASIC had 50.1 per cent women at Executive Level 1, 48.4 per cent women at Executive Level 2, and 42.1 per cent women at SES level. ASIC has several mentoring programs in place to support women in leadership roles and senior positions. In addition to broader mentoring program for all employees, ASIC provides the 'Women in Law Enforcement Strategy' (four SES mentors and three

126 Australian Securities and Investments Commission, *Annual Report 2016–17*, p. 117.

127 Australian Securities and Investments Commission, *Annual Report 2016–17*, p. 26.

128 Australian Securities and Investments Commission, *Annual Report 2016–17*, p. 26.

129 Australian Securities and Investments Commission, *Annual Report 2016–17*, p. 108; Australian Securities and Investments Commission, *Annual Report 2015–16*, p. 105.

130 Australian Securities and Investments Commission, *Annual Report 2016–17*, p. 116.

executive-level mentees) and 'Women in Banking and Finance' (four SES mentors and five executive-level mentees).¹³¹

4.119 ASIC has made efforts to raise awareness about LGBTI issues and provide support to staff. ASIC participated in the Pride in Diversity's Australian Workplace Equality Index (a benchmark for LGBTI inclusion for Australian workplaces) and launched an LGBTI mentoring program in February 2017.¹³²

Committee view

4.120 The committee acknowledges that significant changes to ASIC's regulatory environment and to ASIC's powers are either being proposed or under way. The committee will continue to monitor ASIC's activities as set out in this chapter, including ASIC's approach to enforcement, ASIC's measures to improve audit quality, ASIC's supervision of financial markets, ASIC's industry funding model, the government response to the ASIC Enforcement Review, the design and distribution obligations and ASIC's product intervention powers and associated draft legislation, the government's proposed changes to the penalty regime, the professional standards for financial advisers and the overall effect of the Professional Standards Amendment Act, the progress of the government's reforms to address illegal phoenix activity, ASIC's management of risks associated with the regulatory sandbox, and the progress of ASIC's efforts to raise the financial literacy of Australians.

4.121 The committee considers that ASIC has fulfilled its annual reporting responsibilities during the 2016–17 financial year. The committee will continue to use annual reports and other mechanisms to monitor ASIC's performance.

4.122 The committee thanks ASIC for its contributions at hearings and responding to questions on notice.

Mr Steve Irons MP

Committee Chair

131 Australian Securities and Investments Commission, *Annual Report 2016–17*, p. 112.

132 Australian Securities and Investments Commission, *Annual Report 2016–17*, p. 113.