



Parliamentary Joint Committee on Corporations and Financial Services

Report on the 2017–2018 annual reports of bodies
established under the ASIC Act

April 2019

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Table of Contents

Committee membership	iii
Abbreviations	vii
List of recommendations	ix
Chapter 1.....	1
Scrutiny of annual reports	1
Introduction	1
Statutory & regulatory requirements for annual reports	2
Report structure	4
Chapter 2.....	5
Codes of conduct and disclosure of interests	5
Codes of conduct	5
Disclosure of interests	5
Committee view.....	7
Chapter 3.....	11
Bodies established under Parts 10–11 of the ASIC Act	11
Companies Auditors Disciplinary Board	11
The Takeovers Panel	12
Chapter 4.....	13
Bodies established under Part 12 of the ASIC Act.....	13
Financial reporting framework	13
The Financial Reporting Council	14
The Standards Boards	17
The Australian Accounting Standards Board	18
The Auditing and Assurance Standards Board.....	20
Chapter 5.....	23
ASIC's 2017–18 annual report	23
Statutory requirements for the ASIC annual report.....	23
Contents of the annual report	25
Matters identified in the annual report	26

Committee view.....	40
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Abbreviations

AASB	Australian Accounting Standards Board
AFCA	Australian Financial Complaints Authority
AFS	Australian Financial Services
AOSSG	Asia Oceanic Standard Setters Group
APRA	Australian Prudential Regulation Authority
APS	Australian Public Service
ASAF	Accounting Standards Advisory Forum
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
CADB	Companies Auditors Disciplinary Board
CEO	Chief Executive Officer
Corporations Act	<i>Corporations Act 2001</i>
FRC	Financial Reporting Council
FSI	Financial System Inquiry
IASB	International Accounting Standards Board
IAASB	International Auditing and Assurance Standards Board
IFASS	International Forum of Accounting Standard Setters
LGBTI	Lesbian, gay, bisexual, trans, and/or intersex
Panel	Takeovers Panel
PGPA Act	<i>Public Governance, Performance and Accountability Act 2013</i>
PGPA Rule	Public Governance, Performance and Accountability Rule 2014
Royal Commission	Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry
Taskforce	ASIC Enforcement Review Taskforce
Treasury	Department of the Treasury

List of recommendations

Recommendation 2.1

2.13 The committee recommends that the Department of the Treasury examine whether there should be more consistent codes of conduct for members of bodies established under the ASIC Act and, subject to those findings, bring forward legislation to establish more consistent codes of conduct for members of bodies established under the *Australian Securities and Investments Commission Act 2001*.

Recommendation 2.2

2.16 The committee recommends that the *Australian Securities and Investments Commission Act 2001* be amended to include a statutory requirement for the members of the Financial Reporting Council to avoid or disclose conflicts of interest.

Recommendation 2.3

2.22 The committee recommends that the Department of the Treasury examine whether there is any reason why the disclosure of interest requirements for the bodies established under the *Australian Securities and Investments Commission Act 2001* should not be aligned and, subject to those findings, bring forward legislative amendments to align the requirements and include provisions for:

- avoiding conflicts of interest;
- declaration in writing prior to appointment of known interests or conflicts of interest;
- declaration of conflicts of interest for matters being considered at meetings and recording of those declarations in the meeting minutes;
- relinquishment of involvement in any matters where conflicts of interest are present; and
- penalties or sanctions for breaches.

Recommendation 2.4

2.26 The committee recommends that the Department of the Treasury examine and publicly report on whether the bodies established under the *Australian Securities and Investments Commission Act 2001* have adhered to the existing disclosure of interest requirements.

Chapter 1

Scrutiny of annual reports

Introduction

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, in the Parliamentary Committee's opinion, the Parliament's attention should be directed.¹

1.2 The ASIC Act establishes the eight bodies listed below:

- Australian Securities and Investments Commission (ASIC);
- The Takeovers Panel (the Panel);
- Companies Auditors Disciplinary Board (CADB);
- Financial Reporting Council (FRC);
- Australian Accounting Standards Board (AASB);
- Office of the Australian Accounting Standards Board (Office of the AASB);
- Auditing and Assurance Standards Board (AUASB); and
- Office of the Auditing and Assurance Standards Board (Office of the AUASB).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 The Corporations and Markets Advisory Committee which was previously established by the ASIC Act ceased to exist on the commencement of Schedule 7 to the *Statute Update (Smaller Government) Act 2018*.⁴

1 *Australian Securities and Investments Commission Act 2001*, ss. 243(b).

2 *Australian Securities and Investments Commission Act 2001*, Parts 2, 10–12.

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.

4 *Australian Securities and Investments Commission Act 2001*, s. 261.

Statutory & regulatory requirements for annual reports

1.4 The ASIC Act, the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) and the Public Governance, Performance and Accountability Rule 2014 (PGPA Rule) prescribe the statutory and regulatory requirements for the bodies to provide annual reports to the responsible minister for tabling in Parliament (as set out in Table 1.1).

1.5 ASIC has reporting requirements under the ASIC Act, the PGPA Act and the PGPA Rule. The Takeovers Panel, CADB and the FRC are not Commonwealth entities under the PGPA Act or PGPA Rule, and therefore section 46 of the PGPA Act on annual reports does not apply to those bodies.⁵ Those three bodies have statutory reporting requirements under the ASIC Act as listed in Table 1.1.

1.6 Clauses 6, 16 and 17 of Schedule 1 of the PGPA Rule prescribe the Offices of the AUASB and the AASB as listed entities for the purposes of the finance law. The Chairs of the AUASB and the AASB are the accountable authorities of the listed entities. Clauses 16 and 17 of Schedule 1 of the PGPA Rule prescribe that for the purposes of the finance law (and therefore annual reports under section 46 of the PGPA Act), the listed entities encompass the Chair, members, staff, consultants and others undertaking the functions of the AASB, the AUASB and their Offices (as set out in the ASIC Act).⁶

1.7 Section 11 of the PGPA Act clarifies that Commonwealth entities can be either corporate or non-corporate Commonwealth entities. The AASB and AUASB as listed entities are also non-corporate entities and are therefore subject to the annual reporting requirements under clauses 17AA–17AJ of the PGPA Rule.⁷

5 Department of Finance, *Flipchart of PGPA Act Commonwealth entities and companies* (182), 1 July 2017.

6 *Public Governance, Performance and Accountability Rule 2014*, Schedule 1, clauses 6, 16, 17.

7 The AASB and the AUASB previously had statutory annual reporting requirements under the ASIC Act (sections 235J and 236DG), requiring their Chairs to provide annual reports on their respective boards and the offices (See *Australian Securities and Investments Commission Act 2001*, Compilation No. 56, 19 March 2015, registered 20 March 2015). However, those sections were repealed when the PGPA Act was established (see *Australian Securities and Investments Commission Act 2001*, Endnote 4—Amendment history; *Public Governance and Resources Legislation Amendment Act (No. 1) 2015*). The explanatory memorandum for the bill repealing those sections noted that annual reporting requirements are provided for in section 46 of the PGPA Act (see *Public Governance and Resources Legislation Amendment Bill (No. 1) 2015*, Explanatory Memorandum, Notes on schedule 5, items 66 and 69). Subsections 235D(3)(c) and 236DB(3)(c) of the ASIC Act also make reference to requirements for the Chairs of the AASB and the AUASB to make annual reports under section 46 of the PGPA Act. Section 46 of the PGPA Act sets out the annual reporting requirements for Commonwealth entities. While the AASB and AUASB are not listed on the Flipchart of PGPA Act Commonwealth entities and companies, their respective Offices are. Commonwealth entities are defined under section 10 of the PGPA Act as being one of the following types: a Department of State, a Parliamentary Department, a listed entity, or a body corporate.

Table 1.1: Statutory and regulatory requirements for annual reports

2017–18	Section of the ASIC Act	Section of the PGPA Act	Clause of the PGPA Rule	Requirements met
ASIC	8(1, 1A), 9A, 136(4)	10, 11, 39, 46	17AA–17AJ	Yes
Takeovers Panel	183			Yes
CADB	214			Yes
FRC	235B			Yes
AASB and its Office		10, 11, 39, 46	6, 17AA–17AJ Schedule 1, cl. 17	Yes
AUASB and its Office		10, 11, 39, 46	6, 17AA–17AJ Schedule 1, cl. 16	Yes

Source: Sections of the ASIC Act and PGPA Act as listed; Department of Finance, *Flipchart of PGPA Act Commonwealth entities and companies* (182), 1 July 2017; Public Governance and Resources Legislation Amendment Bill (No. 1) 2015, *Explanatory Memorandum*, Notes on schedule 5, items 66 and 69; Clauses of the PGPA Rule 2014 as listed; see also the discussion in the following paragraphs; AASB and AUASB, *Annual Reports*, 2017–18, p. 71; see also footnote 7. For details on whether requirements were met, see chapters 3–5.

1.8 Table 1.1 summarises which bodies the committee considers have met their annual reporting requirements, based on the committee's examination of those reports in chapters 3 to 5 of this report. The AASB and AUASB and their respective Offices have produced their annual reports as a combined document.⁸

1.9 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 under Senate Standing Order 25(20). Therefore, in conducting its review of the annual reports of bodies established under the ASIC Act, the committee will focus on the statutory requirements, pertinent operational matters, and other matters that, in the committee's opinion, Parliament should consider.

8 AASB & AUASB, *2017–18 Annual Reports*, Letter of transmittal.

Report structure

1.10 The remainder of the report is structured as follows:

- chapter two discusses the code of conduct and disclosure of interest requirements for bodies established under the ASIC Act;
- chapter three discusses the annual reports of the bodies established under Parts 9–11 of the ASIC Act: CADB and the Takeovers Panel;
- chapter four 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; and
- chapter five examines ASIC's annual report and issues arising from it.

Chapter 2

Codes of conduct and disclosure of interests

2.1 This chapter considers the codes of conduct and the requirements for the disclosure of interests that apply to the eight bodies established under the ASIC Act.

Codes of conduct

2.2 The extent to which codes of conduct apply to the bodies established under the ASIC Act varies (as shown in Table 2.1).

2.3 In all cases, the staff of the bodies are covered by codes of conduct. Codes of conduct also apply to members of ASIC, the Chairs of the Australian Accounting Standards Board (AASB) and Auditing and Assurance Standards Board (AUASB), and to the Takeovers Panel in some circumstances.

2.4 However, statutory requirements for codes of conduct do not appear to apply to the Companies Auditors Disciplinary Board (CADB), the Financial Reporting Council (FRC) and non-Chair members of the AASB and AUASB.

Disclosure of interests

2.5 Of the eight bodies established by the ASIC Act, seven have statutory requirements for both members and staff to disclose conflicts of interests (as shown in Table 2.1).

2.6 By contrast, there is no statutory requirement for members of the FRC to disclose or avoid conflicts of interest. However, the secretariat of the FRC is subject to disclosure requirements under the *Public Service Act 1999*¹.

Audit firm payments to current and former partners

2.7 The FRC, AASB and AUASB all have members who are former partners of audit firms.² ASIC also uses retired audit partners from the big four audit firms to assist with audit quality reviews.³

2.8 Recent media articles have drawn attention to certain ongoing payments made to retired partners of audit firms and raised questions about whether those payments may give rise to a potential conflict of interest if that person subsequently serves in an audit-related role on a board.⁴

1 The secretariat of the FRC is provided by staff from the Department of the Treasury.

2 Financial Reporting Council, *Members*, www.frc.gov.au/about_the_frc/members/ (accessed 21 March 2019); AASB, *Current Board Members*, www.aasb.gov.au/AASB-Board/Current-Board-members.aspx; AUASB, *Current Board Members*, www.auasb.gov.au/About-the-AUASB/Current-Board-members.aspx, (accessed 21 March 2019).

3 Australian Securities and Investments Commission, Answers to questions on notice AET28, Senate Economics Legislation Committee 21 February 2019 (received 21 March 2019).

4 Edmund Tadros, 'PwC looks to remove conflict issues around payments to former partners', *The Australian Financial Review*, 15 March 2019.

Table 2.1: Codes of conduct and disclosure of interests requirements

		Code of Conduct (from 1 July 2019)	Disclosure of interests
ASIC	Members	ASIC (ASIC Act, s. 126B)	ASIC Act, s. 123
	Staff	ASIC (ASIC Act, s. 126B)	ASIC Act, s. 125, 126, 126A
Takeovers Panel	Panel members	Australian Public Service (APS)—(only in some circumstances)	ASIC Act, s. 185
	Staff	APS	Public Service Act, ss. 13(7)
CADB	CADB		ASIC Act, s. 211
	Staff	ASIC (ASIC Act, s. 126B)	ASIC Act, s. 125, 126
FRC	Members		
	Staff	APS	Public Service Act, ss. 13(7)
AASB	Chair	APS (ASIC Act, s. 235E)	ASIC Act, s. 236DA
	Members		
Office of the AASB		APS (ASIC Act, s. 235E)	Public Service Act, ss. 13(7)
AUASB	Chair	APS (ASIC Act, s. 236DC)	ASIC Act, s. 236J
	Members		
Office of the AUASB		APS, ASIC Act, s. 236DC	Public Service Act, ss. 13(7)

Key: Grey shading in a square indicates that there appears to be no statutory requirements, noting the exception of the Takeovers Panel, where the Australian Public Service (APS) Code of Conduct applies in some circumstances. Source: *Australian Securities and Investments Commission Act 2001*; AASB, AUASB, *Annual Report*, 2017–18, p. 68; *Public Service Act 1999*; Financial Reporting Council, *Annual Report*, 2017–18, p. 24; Companies Auditors Disciplinary Board, *Annual Report for the year ending 30 June 2008*, pp. 5, 12; Takeovers Panel, *Annual Report*, 2017–18, pp. 10, 24; For provisions of the ASIC Act that commence on 1 July 2019 see *Treasury Laws Amendment (Enhancing ASIC’s Capabilities) Act 2018*.

Committee view

Codes of conduct

2.9 The committee notes that the extent to which codes of conduct apply to the bodies established under the ASIC Act varies. The committee is not aware of whether there are valid reasons for the variations, or whether the variations have arisen as a consequence of separate legislative amendments over time.

2.10 The committee considers that bodies established under the ASIC Act as 'administrative organs' of the national financial services regulatory scheme should be held to the highest standards and set an example for the corporate sector that they regulate.

2.11 The committee notes that ASIC members will be subject to the new ASIC code of conduct. The committee considers that the members of the other bodies established under the ASIC Act should be subject to either the ASIC code of conduct or an equivalent code of conduct.

2.12 The committee therefore recommends that Treasury examine whether there should be more consistent codes of conduct for members of bodies established under the ASIC Act, and, subject to those findings, bring forward legislative amendments to establish more consistent codes of conduct.

Recommendation 2.1

2.13 The committee recommends that the Department of the Treasury examine whether there should be more consistent codes of conduct for members of bodies established under the ASIC Act and, subject to those findings, bring forward legislation to establish more consistent codes of conduct for members of bodies established under the *Australian Securities and Investments Commission Act 2001*.

Disclosure of interests

2.14 The committee notes that the FRC is the only body established by the ASIC Act that does not have a statutory requirement for its members to avoid or disclose conflicts of interests. The committee is not aware of any reason why FRC members should not be subject to a statutory requirement to avoid or disclose conflicts of interest, similar to members of the other bodies established under the ASIC Act.

2.15 The committee considers that the requirements for the disclosure of interests across all eight bodies established by the ASIC Act should be aligned. Therefore, the committee recommends that the ASIC Act be amended to include a statutory requirement for the members of the Financial Reporting Council to avoid or disclose conflicts of interest.

Recommendation 2.2

2.16 The committee recommends that the *Australian Securities and Investments Commission Act 2001* be amended to include a statutory requirement for the members of the Financial Reporting Council to avoid or disclose conflicts of interest.

2.17 The committee also notes that of the disclosure of interest requirements set out in the ASIC Act (listed in Table 2.1), only two are the same (the Offices of the AASB and the AUASB).⁵ It is not clear whether there are valid reasons for the variations, or whether the variations have arisen as a consequence of separate legislative amendments over time.

2.18 The committee observes that while the disclosure requirements for the various ASIC Act bodies vary, most include some elements of the following requirements:

- avoiding conflicts of interest;
- declaring in writing, during the appointment process, known interests or conflicts of interest;
- declaring conflicts of interest for matters being considered at a meeting, with any such declaration to be recorded in the minutes; and
- relinquishing involvement in any matters where conflicts of interests are present.

2.19 Further, the committee notes that only ASIC and CADB staff are subject to a penalty for breaches of the statutory disclosure requirements (the statutory disclosure requirements for the other bodies do not contain any penalties for breaches). Staff of the FRC, the Takeovers Panel and the Offices of the AASB and AUASB may be subject to sanctions under section 15 of the Public Service Act for breaches of disclosure requirements. There do not appear to be penalties or sanctions for members of any of the bodies for breaches of statutory disclosure requirements.⁶

2.20 The committee considers that, unless there is a good reason for the variations in the statutory requirements for avoiding or disclosing conflicts of interests, the variations may make it inappropriately complex for the members, staff and stakeholders of the bodies established under the ASIC Act. In addition, as noted above, bodies established under the ASIC Act as 'administrative organs' of the national financial services regulatory scheme should be held to the highest standards and set an example for the corporate sector that they regulate.

2.21 The committee therefore recommends that Treasury examine whether there is any reason why the disclosure of interest requirements in the ASIC Act should not be aligned. To the extent possible, the committee considers that the disclosure requirements should be aligned to the highest standard.

5 *Australian Securities and Investments Commission Act 2001*, s. 236DA, s. 236J.

6 Sections of the ASIC Act and Public Service Act as listed in Table 2.1.

Recommendation 2.3

2.22 The committee recommends that the Department of the Treasury examine whether there is any reason why the disclosure of interest requirements for the bodies established under the *Australian Securities and Investments Commission Act 2001* should not be aligned and, subject to those findings, bring forward legislative amendments to align the requirements and include provisions for:

- **avoiding conflicts of interest;**
- **declaration in writing prior to appointment of known interests or conflicts of interest;**
- **declaration of conflicts of interest for matters being considered at meetings and recording of those declarations in the meeting minutes;**
- **relinquishment of involvement in any matters where conflicts of interest are present; and**
- **penalties or sanctions for breaches.**

2.23 The committee notes that the issue of audit firms making ongoing payments to former partners has the potential to create conflicts of interests, including where those people undertake public service or regulatory roles that relate to auditing. The committee notes that ASIC, the FRC, the AASB and the AUASB all have former audit partners in public service or regulatory roles that relate to auditing.

2.24 In numerous ASIC oversight reports over the last decade, the committee has expressed the view that auditors play a critical and unique role as gatekeepers in Australia's financial services system. It is therefore essential for auditors to operate in a way that is free from conflicts of interest.

2.25 Equally, it is vital that those charged with regulating auditors operate with transparency and exemplary governance arrangements. The committee considers that, as part of the review recommended above, it would be appropriate to examine whether the existing requirements regarding the disclosure of conflicts of interest have been met. The committee therefore recommends that Treasury examine whether the disclosure arrangements for all bodies established under the ASIC Act have been adhered to.

Recommendation 2.4

2.26 The committee recommends that the Department of the Treasury examine and publicly report on whether the bodies established under the *Australian Securities and Investments Commission Act 2001* have adhered to the existing disclosure of interest requirements.

Chapter 3

Bodies established under Parts 10–11 of the ASIC Act

3.1 This chapter discusses the 2017–18 annual reports of the:

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

Companies Auditors Disciplinary Board

3.2 CADB is currently established by Part 11 of the ASIC Act. CADB has the functions and powers conferred on it by Part 9.2 of the Corporations Act.¹ CADB's primary purpose is to hear applications in relation to an auditor who is suspected of failing to carry out their duties and functions adequately, and to consider the cancellation or suspension of an auditor's registration. Applications may be brought to CADB by ASIC or the Australian Prudential Regulation Authority.²

Annual Report of CADB

3.3 The ASIC Act directs the annual report to describe the operations of CADB for the relevant financial year.³

3.4 During the reporting year, CADB worked on one matter that was not concluded before the end of the reporting period. One other matter was filed and subsequently withdrawn by ASIC.⁴

3.5 CADB has a board of up to 14 members appointed by the Minister, each appointed for up to three years, including a Chairperson and Deputy Chairperson. The board members are intended to have a mixture of relevant accounting and business expertise. The Chairperson and Deputy Chairperson must have been enrolled as a barrister or solicitor in a relevant court for a period of at least five years.⁵ In order to hear particular applications, a panel of three or five members is determined and established by the Chairperson.⁶ The committee notes that for this reporting period, CADB consisted of seven members, namely a Chairperson, Deputy Chairperson, two accounting members and three business members.⁷

1 *Australian Securities and Investments Commission Act 2001*, s. 204.

2 *Corporations Act 2001*, s. 1292.

3 *Australian Securities and Investments Commission Act 2001*, s. 214.

4 Companies Auditors Disciplinary Board, *Annual Report 2017–18*, p. 1.

5 *Australian Securities and Investments Commission Act 2001*, s. 203.

6 *Australian Securities and Investments Commission Act 2001*, s. 210A.

7 Companies Auditors Disciplinary Board, *Annual Report 2017–18*, pp. 1–2.

Committee view

3.6 The committee notes that the Government agreed to the committee's recommendation in last year's report on annual reports to review the adequacy of auditor disciplinary functions.⁸ In November 2018, the Government requested the Financial Reporting Council to complete the review.⁹

3.7 The committee considers that CADB has fulfilled its regulatory reporting responsibilities for the 2017–18 financial year.

The Takeovers Panel

3.8 The Panel was established by Part 10 of the ASIC Act as a peer review body largely comprised of takeover experts, whose main purpose is the resolution of takeover disputes. The Panel's functions are conferred on it by or under the Corporations Act.¹⁰ 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. The Panel examines the way in which control of a company is acquired. The Panel can establish orders to remedy those circumstances.¹¹ The Panel is also able to review decisions made by ASIC.¹²

3.9 The ASIC Act directs the annual report to describe the operations of the Panel for the relevant financial year.¹³ The Panel's annual report indicates 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 publishing clear, well-developed guidance.¹⁴

3.10 The committee recently considered the operations of the Panel in its ASIC oversight report.¹⁵

Committee view

3.11 The committee considers that the Panel has fulfilled its regulatory reporting responsibilities during the 2016–17 financial year.

8 Australian Government response to the Parliamentary Joint Committee on Corporations and Financial Services report: *Report on the 2016–2017 annual reports of bodies established under the ASIC Act*, November 2018, p. 2.

9 Financial Reporting Council, *Minutes*, 16 November 2018, p. 1.

10 Australian Securities and Investments Commission Act 2001, Part 10, s. 174.

11 Corporations Act 2001, s. 657A.

12 Corporations Act 2001, s. 656A.

13 Australian Securities and Investments Commission Act 2001, s. 183.

14 Takeovers Panel, *Annual Report 2017–18*, p. 7.

15 Parliamentary Joint Committee on Corporations and Financial Services, *Oversight of ASIC, the Takeovers Panel and the Corporations Legislation No.1 of the 45th Parliament*, 13 February 2019.

Chapter 4

Bodies established under Part 12 of the ASIC Act

4.1 This chapter considers the 2017–18 annual reports of the:

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

Financial reporting framework

4.2 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:

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

4.3 The FRC annual report notes that, under Part 12 of the ASIC Act, the core objectives for the financial reporting system in Australia are to facilitate the Australian economy by:

- reducing the cost of capital;
- enabling Australian entities to compete effectively overseas; and
- having accounting and auditing standards that are clearly stated and easy to understand.²

4.4 Part 12 of the ASIC Act establishes three agencies as the administrative arms of the financial reporting system: 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.³

1 *Australian Securities and Investments Commission Act 2001*, s. 224.

2 Financial Reporting Council, *Annual Report 2017–18*, p. 5.

3 *Australian Securities and Investments Commission Act 2001*, s. 225, s. 227, s. 227B.

4.5 ASIC is also involved in the administration of the financial reporting system. ASIC's role in identifying and addressing audit deficiency is set out under division 5A of the ASIC Act—audit deficiency notifications and reports.⁴

Coordination between the FRC, the AASB and the AUASB

4.6 The ASIC Act sets out the relationship between the FRC, the AASB and the AUASB. The FRC has specific functions relating to accounting standards and auditing standards with respect to certain activities of the AASB and the AUASB, including:

- appointing members of the AASB and the AUASB, other than the Chair;
- advising the AASB and the AUASB on priorities, business plans and procedures;
- advising the Office of the AASB and the Office of the AUASB on budgets and staffing arrangements;
- determining the broad strategic direction of the AASB and the AUASB;
- promoting the adoption of international best practice accounting and auditing standards into the Australian system;
- monitoring the continued relevance and effectiveness of accounting and auditing standards; and
- monitoring the effectiveness of the AASB and the AUASB's consultative arrangements.⁵

4.7 The ASIC Act sets out express restrictions on the FRC's ability to become involved in the technical deliberations of the AASB and the AUASB. In particular, it provides that the FRC does not have the power to:

- direct the AASB or the AUASB in relation to the development, or making, of a particular standard; or
- veto a standard made, formulated or recommended by the AASB or the AUASB.⁶

4.8 These restrictions are designed to ensure the independence of the standard setting boards.⁷

The Financial Reporting Council

4.9 The FRC operates pursuant to Part 12 of the ASIC Act.⁸ As the peak body responsible for overseeing the effectiveness of the financial reporting framework in Australia,⁹ the FRC's role in the operation of Australia's corporations law includes:

4 *Australian Securities and Investments Commission Act 2001*, s. 50A.

5 *Australian Securities and Investments Commission Act 2001*, ss. 225(2), ss. 225(2A).

6 *Australian Securities and Investments Commission Act 2001*, ss. 225(5)–(8).

7 *Australian Securities and Investments Commission Act 2001*, s. 225.

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

4.10 The FRC's specific auditor quality functions direct it to give the Minister and professional accounting bodies strategic policy advice and report on the quality of audits conducted by Australian auditors, including:

- the systems and processes used by auditors to comply with legislative provisions dealing with the conduct of audits, auditing standards, and codes of conduct;
- the systems and processes used by professional accounting bodies for quality assurance reviews of audit work;
- the action that auditors who have been subject to review have taken in response;
- the action taken by professional accounting bodies to ensure that auditors who have been subject to review respond appropriately;
- the investigation and disciplinary procedures of professional accounting bodies applied to auditors;
- the adequacy of relevant legislative provisions;
- standards, and codes of conduct; and
- the teaching of professional and business ethics by professional accounting bodies related to audit quality.¹¹

4.11 The FRC's functions also reflect the objective of section 224 of the ASIC Act which is to 'facilitate the Australian economy by enabling Australian entities to compete effectively overseas'.¹² 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.¹³

8 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 *Australian Securities and Investments Commission Act 2001*.

9 Financial Reporting Council, *Annual Report 2017–18*, p. 5.

10 *Australian Securities and Investments Commission Act 2001*, ss. 225(1).

11 *Australian Securities and Investments Commission Act 2001*, ss. 225 (2B)–(2C).

12 *Australian Securities and Investments Commission Act 2001*, para. 224(b)(ii).

4.12 Following the committee's recommendation to the government in 2017 that the FRC review the adequacy of auditor disciplinary functions, the FRC is expected to provide a report to government in March 2019.¹⁴

FRC annual report

4.13 The FRC annual report is required to include an analysis of its achievements against the objects of the financial reporting system.¹⁵

4.14 The FRC engaged in a number of activities during 2017–18, including:

- conducting a review of international professional and academic literature that identified Audit Quality Indicators with measurability;¹⁶
- holding discussions with accounting firms about concerns related to the ASIC audit quality inspection results;¹⁷
- conducting an FRC Audit Quality Action Plan in response to the ASIC Audit Inspection Program results release in June 2017;¹⁸ and
- conducting an Audit Committee Chairs survey.¹⁹

4.15 The FRC's Strategic Plan for 2017 outlines six Strategic Priorities:

- (a) to promote initiatives to improve the financial reporting system for both the public and private sectors (including the not-for-profit sector as well as the for-profit sector) and to make financial reports more useful, simple and relevant;
- (b) to continue to monitor the quality of audits carried out by Australian auditors;
- (c) to continue to influence international accounting and auditing developments, particularly by promoting suitably qualified Australians and New Zealanders for appointment to relevant international boards;
- (d) to consider external reporting initiatives including their alignment with, and impact on, financial reporting requirements;
- (e) to continue and enhance interaction with stakeholders, including users, preparers and auditors of financial reports; and

13 *Australian Securities and Investments Commission Act 2001*, ss. 225(2), ss. 225 (2A).

14 Financial Reporting Council, Audit Quality, www.frc.gov.au/media/media-releases/2019-2/audit-quality/ (accessed 18 February 2019).

15 *Australian Securities and Investments Commission Act 2001*, s. 235B.

16 Financial Reporting Council, *Annual Report 2017–18*, p. 17.

17 Financial Reporting Council, *Annual Report 2017–18*, p. 17.

18 Financial Reporting Council, *Annual Report 2017–18*, p. 15.

19 Financial Reporting Council, *Annual Report 2017–18*, p. 16.

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- (f) to encourage appropriate use of technology in the preparation and auditing of financial reports.²⁰

Oversight of Australian standard setting

4.16 As noted earlier, a key role of the FRC is to determine the strategic direction of the standard setting boards. The FRC annual report notes that since its establishment, the FRC has made three determinations concerning the broad strategic direction of the AASB and the AUASB:

- to require the AASB to work towards the adoption of accounting standards that are the same as those issued by the International Accounting Standards Board (IASB);
- to require the AASB to pursue the harmonisation of Government Financial Statistics and Generally Accepted Accounting Principles reporting; and
- to require the AUASB to use auditing standards issued by the International Auditing and Assurance Standards Board (IAASB) as a base from which to develop the Australian standards, to develop auditing and assurance standards other than for historical financial information, and to participate in audit research that is conducive to the AUASB's standard-setting activities.²¹

4.17 The FRC notes that 'each of these directions is still current and the FRC continually monitors their appropriateness and is satisfied that the Boards have implemented these directions to the extent possible'.²²

Committee view

4.18 The committee considers that the FRC has fulfilled its annual reporting responsibilities during the 2017–18 financial year.

The Standards Boards

4.19 The AASB and the AUASB implement a joint operating model and work collaboratively to align their strategies, visions and missions.²³ The two boards also share administrative staff.²⁴

4.20 The annual report sets out the lines of authority and administrative arrangements:

The AASB and AUASB are effectively operating to the extent permitted by legislation, as a single Office supporting both Boards. The Chairs are Chief Executive Officers and the Accountable Authority under the PGPA and are responsible for the preparation of the financial reports for each entity, however have delegated to the maximum extent permitted the CEO

20 Financial Reporting Council, *Strategic Plan 2017–20*, p. 6.

21 Financial Reporting Council, *Annual Report 2017–18*, p. 11.

22 Financial Reporting Council, *Annual Report 2017–18*, p. 12.

23 AASB and AUASB, *Annual Report 2017–18*, p. 8.

24 AASB and AUASB, *Annual Report 2017–18*, p. 72.

responsibilities to the National Director. The National Director supports the Chairs of the respective Boards, and manages the technical employees of both Boards and the professional employees. The AASB and AUASB have implemented a shared service model, in that the AASB provides all administrative services for the AUASB.²⁵

4.21 The Chairs of the AASB and 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 on the operations of the AASB, AUASB and their respective Offices.²⁶

4.22 The AASB and the AUASB presented their financial reports jointly. This was supplemented with a detailed segment note outlining the appropriations received, the direct costs incurred by each agency, as well as common expenses.²⁷ Nevertheless, this report examines the AASB and the AUASB as individual entities.

The Australian Accounting Standards Board

4.23 The AASB is established by Subdivision B, Division 1, Part 12 of the ASIC Act.²⁸ The ASIC Act also establishes the Office of the AASB, to provide the AASB with administrative and technical support.²⁹ The Office of the AASB is considered a listed entity under Clause 17 of the PGPA regulations.³⁰

4.24 The AASB's functions include the development of a conceptual framework to evaluate proposed accounting standards and international accounting standards. The AASB is charged with making accounting standards for the purposes of the corporations legislation. Additionally, the AASB contributes to the development of 'a single set of accounting standards for world-wide use' by participating in the consultation and formulating processes of international standard setting bodies.³¹

Annual report of the AASB

4.25 The AASB's role in Australia's financial reporting framework is defined in its mission statement:

Develop, issue and maintain principles-based Australian accounting and external reporting standards that meet user needs and enhance external reporting consistency and quality.

25 AASB and AUASB, *Annual Report 2017–18*, p. 84.

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

27 AASB and AUASB, *Annual Report 2017–18*, p. 80.

28 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 *Australian Securities and Investments Commission Act 2001*.

29 *Australian Securities and Investments Commission Act 2001*, s. 226A.

30 Australian Securities and Investments Commission Regulations 2001, cl. 17.

31 *Australian Securities and Investments Commission Act 2001*, s. 227.

Contribute to the development of a single set of accounting and external reporting standards for world-wide use.³²

4.26 The annual report notes that key achievements of the AASB during the 2017–18 financial year include the issuing of four new standards:

- AASB Practice Statement 2 *Making Materiality Judgements*;
- AASB 1059 *Service Concession Arrangements: Grantors*;
- AASB 17 *Insurance Contracts*; and
- AASB 1048 *Interpretation of Standards*.³³

4.27 The AASB addressed concerns raised in feedback from their 2017 review of the implementation of International Financial Reporting Standards in Australia by publishing two additional guidance materials for the For-Profit and Not-for-Profit sectors:

- The AASB's For-Profit Entity Standard-Setting Framework; and
- The AASB's Not-for-Profit Entity Standard-Setting Framework.³⁴

4.28 The AASB contributed to international views by actively participating at the Accounting Standards Advisory Forum (ASAF), International Forum of Accounting Standard Setters (IFASS) and Asia Oceanic Standard Setters Group (AOSSG). The contribution of the AASB included:

- leading the AOSSG working group dealing with Financial Instruments with Characteristics of Equity, and representing the working group at ASAF meetings;
- presenting to IFASS on the 'relevance of parent and/or subsidiary financial statements if consolidated financial statements are available';
- providing feedback to IASB staff on 'goodwill and impairment: views of Australian corporates, users and regulators' which informed the IASB on issues raised by constituents in relation to goodwill and impairment;
- holding and participating in a number of bilateral meetings with other national standard-setters, including Malaysia, Japan and the United States; and
- the appointment of the AASB Chair to the IASB's Management Commentary Panel, which will lead the IASB's revision of its original Practice Statement.³⁵

Committee view

4.29 The committee considers that the AASB has fulfilled its annual reporting responsibilities during the 2017–18 financial year.

32 AASB and AUASB, *Annual Report 2017–18*, p. 9.

33 AASB and AUASB, *Annual Report 2017–18*, p. 10.

34 AASB and AUASB, *Annual Report 2017–18*, p. 22.

35 AASB and AUASB, *Annual Report 2017–18*, p. 24.

The Auditing and Assurance Standards Board

4.30 The AUASB is established under Subdivision C, Division 1, Part 12 of the ASIC Act. The ASIC Act also establishes the Office of the AUASB, which provides technical services and administrative support to the AUASB.³⁶ The Office of the AUASB is a listed entity under clause 16 of the PGPA Regulations.³⁷

4.31 The AUASB's responsibilities include facilitating an Australian financial reporting system that provides guidance to auditors.³⁸ The AUASB formulates auditing standards, in the form of legislative instruments, which operate under the *Corporations Act 2001*.³⁹

4.32 Consistent with the objective of section 224 of the ASIC Act 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'.⁴⁰

AUASB annual report

4.33 The AUASB's statutory responsibilities are reflected in its mission statement as contained in the 2017–18 annual report:

Develop, issue and maintain in the public interest, best practice Australian auditing and assurance standards and guidance that meet user needs and enhance audit and assurance consistency and quality.

Contribute to the development of a single set of auditing and assurance standards for world-wide use.⁴¹

4.34 The 2017–18 annual report sets out the AUASB's strategies for achieving its statutory purpose:

- develop, issue and maintain high quality Australian auditing and assurance standards that meet the needs of report users. Use IAASB Standards—where they exist, modified as necessary—or develop Australian-specific standards and guidance;
- with the AASB, play a leading role in reshaping the Australian external reporting framework by working with regulators to develop objective criteria on:
 - who prepares external reports (including financial reports);
 - the nature and extent of assurance required on external reports;

36 *Australian Securities and Investments Commission Act 2001*, s. 227AB.

37 *Australian Securities and Investments Commission Regulations 2001*, cl. 16.

38 *Australian Securities and Investments Commission Act 2001*, s. 224, s. 227A, s. 227B.

39 *Australian Securities and Investments Commission Act 2001*, s. 227B; *Corporations Act 2001*, s. 336.

40 *Australian Securities and Investments Commission Act 2001*, s. 227B.

41 AASB and AUASB, *Annual Report 2017–18*, p. 9.

- actively influence international auditing and assurance standards and guidance by demonstrating thought leadership and enhancing key international relationships;
- attain significant levels of key stakeholder engagement, through collaboration, partnership and outreach;
- influence initiatives to develop assurance standards and guidance that meet user needs for external reporting beyond financial reporting;
- monitor and respond to emerging issues impacting the development of auditing and assurance standards and guidance, including changing technologies; and
- develop guidance and education initiatives, or promote development by others, to enhance consistent application of auditing and assurance standards and guidance.⁴²

4.35 The annual report indicates that key activities of the AUASB during 2017–18 included:

- making two submissions on IAASB auditing exposure drafts;⁴³ and
- issuing two revised standards:
 - ASA 102 *Compliance with Ethical Requirements when Performing Audits, Reviews and Other Assurance Engagements*; and
 - ASAE 3500 *Performance Engagements*.⁴⁴

4.36 The annual report also indicated that the AUASB was working with other arms of government and industry on various projects to address the following topics:

- auditor reporting implementation;
- assurance over extended forms of external reporting;
- use of technology in the audit, including data analytics;
- financial reporting and assurance frameworks;
- public sector auditing and assurance issues;
- matters related to small and medium audit practices and audits of small and medium-sized entities;
- prescribed reports; and
- superannuation audit issues.⁴⁵

42 AASB and AUASB, *Annual Report 2017–18*, p. 47.

43 AASB and AUASB, *Annual Report 2017–18*, p. 50.

44 AASB and AUASB, *Annual Report 2017–18*, pp. 10, 50.

45 AASB and AUASB, *Annual Report 2017–18*, pp. 50–51.

4.37 The AUASB hosted a series of Agenda Consultation Forums in 2017 designed to allow stakeholders to provide input to the AUASB on its technical agenda and an update of its work program.⁴⁶ It also hosted other events, including a roundtable discussion with academics at the University of New South Wales.⁴⁷

4.38 The AUASB, in conjunction with the AASB, continued to work closely with their New Zealand counterparts on a number of common areas such as extended external reporting, management commentary and audit quality.⁴⁸ The AUASB Chair and/or Technical Director attended all New Zealand AUASB meetings either in person or via teleconference and seconded a staff member to the New Zealand AUASB to evaluate the rollout of audit reporting requirements.⁴⁹

4.39 During 2017–18, the AUASB achieved six key performance indicators. The committee notes that the AUASB deferred the revision of out-of-date Guidance Statements GS 010 and GS 019 until 2018–20. The committee also notes that the AUASB Stakeholder Survey, to be performed in conjunction with the AASB, was not completed in the second half of 2017–18 despite delays from the previous financial period and that a new date has not been proposed. Further the redevelopment of the AUASB website was also deferred. The committee observes that the development of systems and processes to promote educational initiatives conducted by others is an ongoing priority.⁵⁰

Committee view

4.40 The committee considers that the AUASB has fulfilled its annual reporting responsibilities during the 2017–18 financial year.

46 AASB and AUASB, *Annual Report 2017–18*, p. 43.

47 AASB and AUASB, *Annual Report 2017–18*, p. 43.

48 AASB and AUASB, *Annual Report 2017–18*, p. 9.

49 AASB and AUASB, *Annual Report 2017–18*, p. 56.

50 AASB and AUASB, *Annual Report 2017–18*, p. 58.

Chapter 5

ASIC's 2017–18 annual report

5.1 This chapter discusses the 2017–18 annual report of ASIC.

Statutory requirements for the ASIC annual report

5.2 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

5.3 The 2017–18 ASIC annual report was provided to the Treasurer on 12 October 2018 and was presented to Parliament on 31 October 2018.¹ 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*.

5.4 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'. At the time of drafting, ASIC had not responded to the committee to confirm that the Minister had provided the Attorney-General of each State and Territory with a copy of the ASIC annual report.

5.5 In addition to the requirements for annual reports as approved by the Joint Committee of Public Accounts and Audit, ASIC is subject to further 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 sections 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.² Table 4.1 lists where in the 2017–18 ASIC annual report the current requirements in the ASIC Act are met.

1 House of Representatives, *Votes and Proceedings*, No. 149–26 November 2018, p. 1944.

2 *Public Governance and Resources Legislation Amendment Act (No. 1) 2015*, Revised Explanatory Memorandum, pp. 17–18.

Table 5.1: Statutory requirements for the ASIC annual report in the ASIC Act

Paragraph/ Subsection	Reporting requirement (ASIC Act)	2017–18 Annual Report
136(1)(a)	Exercise of ASIC's powers under Part 15 of the Retirement Savings Accounts Act 1997 and under Part 29 of the Superannuation Industry (Supervision) Act 1993 (SIS Act).	Page 180
136(1)(b)	ASIC's monitoring and promotion of market integrity and consumer protection in relation to: <ul style="list-style-type: none"> (i) The Australian Financial System; and (ii) the provision of financial services. 	Pages 31–49 Pages 71–75, 94, 167
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 180
136(1)(ca)	Information about the activities that ASIC has undertaken during the period in exercise of its powers, and performance of its functions, under Chapter 5 of, or Schedule 2 to, the Corporations Act and any provisions of that Act that relate to that Chapter or Schedule	Page 81
136(1)(d)	Operation of the <i>Business Names Registration Act 2011</i> .	Pages 50, 51, 53–54
136(1)(e) 136(2A)	Information relating to the exercise by ASIC, members of ASIC, or staff members, of prescribed information-gathering powers.	Pages 176–179
136(4)	Provide annual report to the Attorney-General of each state and territory. (See paragraph 5.4 of this chapter).	Cannot be determined from the annual report

PGPA Act 2013 and the Corporations Agreement

5.6 The committee notes that ASIC completed nearly all the reporting requirements under the PGPA Act. However, under 17AH(1)(c) of the PGPA Rule, ASIC must include an outline of its mechanisms for disability reporting, including reference to the relevant website for further information. While ASIC's annual report detailed the initiatives it implemented during the 2017–18 financial year in relation to accessibility,³ it did not include a reference or link to the relevant website.

5.7 ASIC also has mandatory reporting obligations under section 603(3) of the Corporations Agreement 2002, which states:

(3) The Commission will include, in its annual report, a statement on the performance of the Commission against those performance indicators during the relevant period.⁴

5.8 ASIC is required to maintain levels of service to States and the Northern Territory that is equal to or above the service provided prior to the formation of the Corporations Agreement 2002. It is to achieve this through regional office and service centres and is delegated the responsibility of maintaining a system of performance indicators in relation to its level of service provided over each reporting period.⁵

5.9 The committee notes that ASIC's annual report 2017–18 does not provide sufficient information to determine if ASIC has met the performance levels required under the Corporations Agreement 2002.

Contents of the annual report

Purpose

5.10 ASIC's core purpose is to monitor and promote:

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

Strategic priorities

5.11 ASIC's strategic priorities comprised the following initiatives:

- being a strategic and agile organisation;
- accelerating enforcement initiatives;
- adopting new supervisory approaches; and
- encouraging regulatory technology (regtech) adoption.⁷

3 Australian Securities and Investments Commission, *Annual Report 2017–18*, p. 106.

4 Corporations Agreement 2002, s. 603(3).

5 Corporations Agreement 2002, s. 603(1); s. 603(2).

6 Australian Securities and Investments Commission, *Annual Report 2017–18*, p. 36.

7 Australian Securities and Investments Commission, *Annual Report 2017–18*, p. 6.

Report structure of ASIC's 2017–18 annual report

5.12 The ASIC annual report for 2017–18 is structured as follows:

- ASIC for all Australians (MoneySmart, regional action, Indigenous outreach, community work);
- ASIC's annual performance statement (objectives, key results, analysis, Registry services and outcomes, Service Charter, Banking and Life Insurance Acts);
- ASIC's achievements by sector;
- ASIC cooperation (regional and international engagement, Innovation Hub, Data strategy);
- ASIC's workforce planning diversity and inclusion);
- Financial statements.

Matters identified in the annual report

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

- Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (Royal Commission);
- ASIC's industry funding model;
- ASIC enforcement review;
- product intervention powers and design and distribution obligations;
- comprehensive credit reporting;
- combating illegal phoenix activity;
- surveillance;
- dispute resolution;
- improving financial capability across Australia;
- registry modernisation;
- innovation hub and regulatory sandbox;
- whistleblowers;
- revenue, expenditure and appropriations;
- staffing;
- enforcement;
- granting or varying Australian Financial Services (AFS) and credit licences and auditor registration; and
- service charter performance.

Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry

5.14 ASIC reported that it had assisted the Royal Commission, which was established on 14 December 2017, by providing detailed intelligence across different market sectors, witness statements and submissions, and attending public hearings.⁸

5.15 In ASIC's annual report 2017–18, ASIC reported that as at 30 June 2018, it had received 58 requests for documents, provided 7 witness statements and produced more than 26 000 documents to the Royal Commission.⁹

5.16 During 2017–18, ASIC dealt with 9567 reports of alleged misconduct, 6 per cent more than in 2016–17, which it attributed to increased public awareness resulting from the Royal Commission. This result was contrary to the trend of decreased reports of misconduct that ASIC has received since its peak in 2010–11 when it received over 15 000 reports.¹⁰

ASIC's industry funding model

5.17 ASIC's industry funding model, which came into effect through the *ASIC Supervisory Cost Recovery Levy Act 2017*, commenced on 1 July 2017.¹¹ The model aims to 'ensure that those who create the need for regulation bear the costs of that regulation, and to provide incentives to drive compliance'.¹²

5.18 The Act imposes a levy on entities regulated by ASIC to recover its regulatory costs.¹³ There are six sectors subject to the industry funding model:

- deposit-taking and credit;
- insurance;
- financial advice;
- investment management, superannuation and related services;
- market infrastructure and intermediaries; and
- corporate.¹⁴

5.19 In determining the levy for a financial year, ASIC may include the following costs relating directly or indirectly to:

8 Australian Securities and Investments Commission, *Annual Report 2017–18*, p. 16.

9 Australian Securities and Investments Commission, *Annual Report 2017–18*, p. 16.

10 Australian Securities and Investments Commission, *Annual Report 2017–18*, p. 93.

11 *ASIC Supervisory Cost Recovery Levy Act 2017*; ASIC Supervisory Cost Recovery Levy Regulations 2017 [F2017L00805].

12 Australian Securities and Investments Commission, *Annual Report 2017–18*, p. 58.

13 ASIC Supervisory Cost Recovery Levy Regulations 2017 [F2017L00805], Explanatory Statement.

14 ASIC Supervisory Cost Recovery Levy Regulations 2017, Part 3.

- the regulation of leviable entities;
- surveillance;
- education;
- guidance;
- engagement with industry; and
- policy advice.¹⁵

5.20 The annual report states that industry funding assisted ASIC to raise \$1227 million for the Commonwealth in 2017–18, an increase of 33 per cent from the previous financial year.¹⁶

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

ASIC Enforcement Review

5.22 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, consisted 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 was supported by an expert group and a reference group of stakeholders.¹⁷

5.23 The Taskforce was charged with 'considering the adequacy of the current regime to deter misconduct and foster consumer confidence in the financial system'.¹⁸ In April 2018, the Government released the Taskforce's final report and its response. The government agreed to all 50 recommendations in principle and has prioritised 30 of them to enhance ASIC's enforcement toolkit, including:

- stronger criminal and civil penalties for licensees;
- stronger obligations for licensees to report breaches to ASIC;
- enhancing ASIC's ability to take effective action against senior managers who are found to be incompetent;
- a stronger power to refuse or cancel AFS and credit licences where the licensee is not fit;
- powers to direct licensees to undertake remedial action; and
- enhanced warrant powers.¹⁹

15 *ASIC Supervisory Cost Recovery Levy Act 2017*.

16 Australian Securities and Investments Commission, *Annual Report 2017–18*, p. 22.

17 Australian Securities and Investments Commission, *Annual Report 2016–17*, p. 7; The Treasury, *ASIC Enforcement Review*, December 2017, p. viii.

18 Australian Securities and Investments Commission, *Annual Report 2017–18*, p. 16.

19 Australian Securities and Investments Commission, *Annual Report 2017–18*, p. 16.

Product intervention powers and design and distribution obligations

5.24 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.²⁰

5.25 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.²¹

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

- design and distribution obligation to ensure that financial products are targeted at the right people; and
- product intervention power that would enable ASIC to take direct action where there is a risk of products or conduct resulting in consumer detriment.²²

5.27 In its annual report, ASIC stated that the combination of design and distribution obligations and product intervention powers should deliver fairer outcomes for consumers.²³

5.28 On 20 December 2017, the government released for consultation draft legislation on the design and distribution obligations for financial products and product intervention powers for ASIC.²⁴ ASIC stated in its annual report that it had made a submission to the consultation and that it will work closely with stakeholders to prepare guidance.²⁵ The government subsequently conducted two further consultations on 19 July 2018 on the Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Power) Bill 2018, and on

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

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

22 Department of the Treasury, *Design and Distribution Obligations and Product Intervention Power—Draft Legislation*, <https://treasury.gov.au/consultation/c2017-t247556>, (accessed 22 March 2019).

23 Australian Securities and Investments Commission, *Annual Report 2017–18*, p. 8.

24 Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Bill 2017—Exposure Draft; Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Bill 2017—Exposure Draft Explanatory Memorandum.

25 Australian Securities and Investments Commission, *Annual Report 2017–18*, p. 17.

22 October 2018 with the Corporations Amendment (Design and Distribution Obligations and Product Intervention Powers) Regulations 2018.²⁶

Comprehensive credit reporting

5.29 From 1 July 2018, the big four banks must provide comprehensive credit reporting information to certain credit reporting bodies.²⁷ The new regime is intended to give lenders access to a borrower's actual credit position and enhance ASIC's powers to monitor compliance with the regime.²⁸

5.30 In its annual report, ASIC stated that it has met with industry and other stakeholders to discuss the new requirements.²⁹

Combating illegal phoenix activity

5.31 ASIC reported that it had continued to work with the Phoenix Taskforce which provides for a collaborative effort by regulators to combat illegal phoenix activity. The annual report noted the new reforms announced by the government in the 2018–19 Budget.³⁰

5.32 In April 2018, ASIC reported that it had taken enforcement action against a former Noodle Box franchisee for engaging in illegal phoenix activity by transferring company assets and business to another company without the original company receiving payment for those assets. The court sentenced the franchisee to two months imprisonment with an automatic disqualification from managing corporations for five years.³¹

5.33 ASIC stated that it had launched a new webpage to 'better educate the public on illegal phoenix activity and highlight the whole-of-government approach to combatting this illegal practice'.³² ASIC also conducted presentations, panel

26 Department of the Treasury, Corporations Amendment (Design and Distribution Obligations and Product Intervention Powers) Regulations 2018, <https://treasury.gov.au/consultation/c2018-t337145>, (accessed 22 March 2019); Department of the Treasury, Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Power) Bill 2018, <https://treasury.gov.au/consultation/c2018-t312297> (accessed 22 March 2019).

27 National Consumer Credit Protection Amendment (Mandatory comprehensive credit reporting) Bill 2018—Exposure Draft, p. 3, <https://static.treasury.gov.au/uploads/sites/1/2018/02/Exposure-Draft-EM.pdf> (accessed 22 March 2019).

28 Department of the Treasury, *Mandatory comprehensive credit reporting*, <https://treasury.gov.au/consultation/c2018-t256276/> (accessed 22 February 2019).

29 Australian Securities and Investments Commission, *Annual Report 2017–18*, p. 17.

30 Australian Securities and Investments Commission, *Annual Report 2017–18*, p. 93.

31 Australian Securities and Investments Commission, *Annual Report 2017–18*, p. 82.

32 Australian Securities and Investments Commission, *Annual Report 2017–18*, p. 46; see also pp. 82 and 93.

discussions and meetings with stakeholders including fellow regulators, insolvency practitioners, professional bodies, small business and industry groups.³³

Surveillance

5.34 The number of surveillances and investigations completed by ASIC during the 2017–18 financial year included:

- Over 500 surveillances in deposit-taking and credit, financial advice, investment management and superannuation sectors to ensure that financial services providers complied with their conduct obligations;³⁴ and
- Over 700 surveillances in the corporations, market infrastructure and intermediate sectors.³⁵

5.35 ASIC reported that through its surveillance regime, it had identified and addressed 938 cases of failures, or potential failures, to comply with regulatory obligations.³⁶

5.36 ASIC indicated in its annual report that it is moving to a new regulatory processes platform, including changing the way matters are characterised and recorded. As a result, ASIC's report on the total surveillances completed during 2017–18 was over 1200. The committee notes that ASIC has changed its reporting method in relation to surveillances in its annual report. While ASIC's annual report contains the total number of surveillances it estimates that it has completed, ASIC did not report how many of those surveillances were 'high intensity'. High intensity surveillances were previously reported in ASIC's annual reports as surveillances that take more than two days to complete.³⁷

Dispute resolution

5.37 On 9 May 2017, the government announced it would establish a new 'one stop shop' for financial complaints, the Australian Financial Complaints Authority (AFCA). AFCA replaces the Financial Ombudsman Service, the Credit and Investments Ombudsman and the Superannuation Complaints Tribunal.³⁸

5.38 AFCA will deal with complaints made by consumers, small businesses and primary producers relating to the financial, credit and superannuation industries. AFCA retains several of the key features of the prior external dispute resolution schemes and has expanded small business and monetary jurisdiction.³⁹

33 Australian Securities and Investments Commission, *Annual Report 2017–18*, p. 93.

34 Australian Securities and Investments Commission, *Annual Report 2017–18*, p. 40.

35 Australian Securities and Investments Commission, *Annual Report 2017–18*, p. 40.

36 Australian Securities and Investments Commission, *Annual Report 2017–18*, p. 40.

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

38 Australian Securities and Investments Commission, *Annual Report 2017–18*, p. 18.

39 Australian Securities and Investments Commission, *Annual Report 2017–18*, p. 18.

5.39 ASIC is responsible for overseeing the operation of AFCA and, through enhanced reporting and information provisions, AFCA is required to report systemic issues to regulators including ASIC, the Australian Prudential Regulation Authority (APRA) and the Australian Taxation Office. ASIC published *Regulatory Guide 267—Oversight of the AFCA* in June 2018 to assist with AFCA's reporting obligations to regulators and to provide information about directions powers.⁴⁰

Improving financial capability in Australia

5.40 ASIC maintains responsibility for improving the financial capability of Australian communities by developing the 2018 National Financial Literacy Strategy.⁴¹ 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'.⁴²

5.41 In its study of Australian financial attitudes and behaviours, ASIC found that 35 per cent of respondents reported that 'dealing with money is stressful and overwhelming'.⁴³ This is similar to the 36 per cent reported in the previous study period. ASIC also reported a difference in confidence levels between men and women, with 41 per cent of women reporting that they find dealing with money stressful and overwhelming compared to 28 per cent of men. ASIC is developing a 'Women's Money Goals' graphic to address these concerns.⁴⁴

MoneySmart

5.42 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 7.3 million visits to the website during the reporting period, up from 7 million in 2016–17. Follow-up research has shown 90 per cent of users reported taking action on their finances after visiting the MoneySmart website in 2017–18.⁴⁵

5.43 ASIC continued to focus on helping Indigenous consumers by covering new topics such as 'Managing large sums of money' and 'Dealing with pressure from family about money' to address key concerns raised through ASIC's engagement with Indigenous communities on the MoneySmart website.⁴⁶

5.44 ASIC also continued its involvement with the Indigenous Superannuation Working Group with seven staff members travelling to five remote communities,

40 Australian Securities and Investments Commission, *Annual Report 2017–18*, p. 18.

41 Australian Securities and Investments Commission, *Annual Report 2017–18*, p. 5.

42 Australian Securities and Investments Commission, *Annual Report 2017–18*, p. 197.

43 Australian Securities and Investments Commission, *Annual Report 2017–18*, p. 25.

44 Australian Securities and Investments Commission, *Annual Report 2017–18*, p. 25.

45 Australian Securities and Investments Commission, *Annual Report 2017–18*, p. 24.

46 Australian Securities and Investments Commission, *Annual Report 2017–18*, p. 30.

along with other public and private representatives, to assist 500 Indigenous consumers by:

- contacting government agencies and superannuation funds to resolve outstanding claims;
- assisting consumers to consolidate multiple superannuation fund accounts;
- helping confirm and align identification records by contacting local organisations and government agencies; and
- locating superannuation account details and finding lost superannuation.⁴⁷

Registry modernisation

5.45 ASIC is responsible for the administration of over 31 registers.⁴⁸ ASIC reported that it had achieved key results relating to the provision of efficient registration services, including:

- an increase in the total number of companies registered to 2.6 million, up from 2.5 million for the previous year;
- approximately 18 000 new business names registered; and
- increased searches of ASIC registers with 122.5 million searches compared to 90.6 million searches for the same period in the previous year.⁴⁹

5.46 In 2017, the government established the National Business Simplification Initiative. As part of this initiative, business registries (including registers held by ASIC) are to receive an upgrade and be streamlined where possible.⁵⁰ The program is also intended to enable connections between business registers, as well as state and territory services and non-government third parties.⁵¹

Innovation Hub and regulatory sandbox

5.47 In March 2015, ASIC launched an Innovation Hub to help financial technology (fintech) businesses navigate Australia's regulatory system in the financial services sector.⁵² The Innovation Hub is designed to help innovative start-up businesses to understand how regulation may affect them and to assist businesses to navigate the regulatory system.⁵³

47 Australian Securities and Investments Commission, *Annual Report 2017–18*, p. 31.

48 Australian Securities and Investments Commission, *Annual Report 2017–18*, p. 49.

49 Australian Securities and Investments Commission, *Annual Report 2017–18*, p. 50.

50 Australian Securities and Investments Commission, *Annual Report 2017–18*, p. 19.

51 Industry Research and Development (National Business Simplification Initiative—Connecting Government Digital Business Services Program) Instrument 2017 [F2017L00893], s. 5.

52 Australian Securities and Investments Commission, Report 523: *ASIC's Innovation Hub and our approach to regulatory technology*, p. 5.

53 Australian Securities and Investments Commission, *Annual Report 2017–18*, p. 88.

5.48 In 2017–18, ASIC worked with 115 entities through the Innovation Hub resulting in 105 entities receiving informal assistance in relation to areas including crowd-sourced equity funding, payments and remittance, consumer credit, digital advice, insurance, superannuation and managed funds, marketplace lending and combined business models (a hybrid of two or more categories).⁵⁴

Regtech and fintech

5.49 'Regtech' refers to the technology developed to assist financial services companies to comply with the regulatory framework in a way that is simple, inexpensive and efficient. Similarly, 'fintech' refers to the technology developed to support banking and financial services companies. These services may include mobile and web-based applications, processes, products or business models.⁵⁵

5.50 In its annual report, ASIC stated that it had met with 17 regtech stakeholders and solution providers to provide informal assistance and information about developments.⁵⁶

5.51 In February 2018, ASIC conducted trials to determine the application of natural language processing tools in resolving regulatory problems. The trials explored potential efficiencies in supervision such as through automation and prediction.⁵⁷

Data Strategy

5.52 In September 2017, ASIC launched its Data Strategy 2017–2020 which outlines ASIC's objectives and approaches to improving the capture, sharing and use of data by ASIC.⁵⁸

5.53 ASIC reported that having good-quality, well-governed data will assist it in relation to:

- monitoring behaviour and outcomes;
- registration and licensing;
- regulated entity reporting and regulatory activities; and
- data sharing with partner regulators and other third parties.⁵⁹

Regulatory Sandbox

5.54 In December 2016, ASIC launched a 'regulatory sandbox' to allow innovative businesses to develop and test their ideas. In 2017–18, ASIC received 18 700 visits to its Innovation Hub webpages where most queries related to the regulatory sandbox.⁶⁰

54 Australian Securities and Investments Commission, *Annual Report 2017–18*, p. 88.

55 Australian Securities and Investments Commission, *Annual Report 2017–18*, pp. 89, 90, 199.

56 Australian Securities and Investments Commission, *Annual Report 2017–18*, p. 89.

57 Australian Securities and Investments Commission, *Annual Report 2017–18*, p. 89.

58 Australian Securities and Investments Commission, *Annual Report 2017–18*, p. 90.

59 Australian Securities and Investments Commission, *Annual Report 2017–18*, p. 90.

5.55 The regulatory sandbox program allows eligible businesses to test services for up to 12 months with up to 100 retail clients.⁶¹ 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;
- simple managed investment schemes;
- deposit products;
- some kinds of general insurance products; and
- payment products issued by authorised deposit-taking institutions.⁶²

5.56 The committee notes that in December 2017, ASIC released a consultation paper seeking feedback from industry participants on the proposal to retain and expand the regulatory sandbox licencing exemptions. Commissioner John Price noted that respondents were 'generally in favour of ASIC being ambitious in the regtech area'.⁶³

Whistleblowers

5.57 During 2017–18, ASIC's Office of the Whistleblower received 228 disclosures by whistleblowers, with 63 per cent of matters reported relating to corporations and corporate governance (including internal company disputes).⁶⁴ Other matters related to:

- credit and financial services and the conduct of licensees (26 per cent);
- markets (8 per cent); and
- other issues (3 per cent).⁶⁵

5.58 ASIC reported that approximately 5 per cent of matters were referred for compliance, surveillance or investigation, including to assist ongoing activities, while the other 95 per cent of matters were determined as not requiring further action by ASIC.⁶⁶

60 Australian Securities and Investments Commission, *Annual Report 2017–18*, p. 89.

61 Australian Securities and Investments Commission, *RG 257—Testing fintech products and services without holding an AFS or credit licence*.

62 Australian Securities and Investments Commission, Consultation Paper 297, *Retaining ASIC's fintech licensing exemption*, 12 December 2017.

63 Australian Securities and Investments Commission, Keynote address by Mr John Price, Commissioner, *#Accelerate Regtech 2018: The role of the regulator*, Amora Jamison Hotel, Sydney, 3 May 2018, p. 2.

64 Australian Securities and Investments Commission, *Annual Report 2017–18*, p. 92.

65 Australian Securities and Investments Commission, *Annual Report 2017–18*, p. 92.

66 Australian Securities and Investments Commission, *Annual Report 2017–18*, p. 92.

5.59 On 19 February 2019, the Treasury Laws Amendment (Enhancing Whistleblower Protections) Bill 2018 passed both Houses of Parliament.⁶⁷ The Bill is intended to strengthen and consolidate whistleblower protections for the corporate and finance sector by extending protections for individuals who identify actual or suspected conduct by a regulated entity that is:

- misconduct, or an improper state of affairs or circumstances in relation to a regulated entity;
- contravention of any law administered by ASIC and/or APRA;
- conduct that represents a danger to the public or the financial system; or
- an offence against any other law of the Commonwealth that is punishable by imprisonment for a period of 12 months or more.⁶⁸

5.60 The committee will monitor the operation of the new whistleblower protections regime as part of its oversight of the effectiveness and relevance of the Corporations Legislation.

Revenue, expenditure and appropriations

5.61 As stated above, the 2017–18 financial year was the first year that ASIC has collected fees as part of the new regime under the *ASIC Supervisory Cost Recovery Levy Act 2017*. From 1 July 2017, all ASIC regulated entities have been required to cover a portion of ASIC's costs. As a result, ASIC reported in its annual report that during 2017–18 it had raised a total of \$1 227 million in fees, charges and supervisory cost levies, a 33 per cent increase on the previous financial period.⁶⁹

5.62 In 2017–18, ASIC received approximately \$348 million in appropriation revenue from government, including \$26 million from the Enforcement Special Account. This was a \$6 million increase in appropriation on 2016–17. ASIC also received approximately \$40 million of own-source revenue, \$33 million more than in 2016–17. ASIC also reported total expenses, including depreciation and amortisation (net of gains), at \$399 million and a decreased overall deficit from \$43 million in 2016–17 to \$10 million in 2017–18.⁷⁰

Staffing

5.63 As at 30 June 2018, ASIC staff totalled 1 864 people, a decrease from the 1930 people employed at this time in the previous year. ASIC identified that it had increased the number of staff working at the Executive 1 and 2 levels by

67 Treasury Laws Amendment (Enhancing Whistleblower Protections) Bill 2018.

68 Treasury Laws Amendment (Enhancing Whistleblower Protections) Bill 2018, *Revised Explanatory Memorandum*, p. 16.

69 Australian Securities and Investments Commission, *Annual Report 2017–18*, p. 22.

70 Australian Securities and Investments Commission, *Annual Report 2017–18*, p. 22.

35 employees compared to the previous year, while staff at ASIC levels 2 to 4 were reduced.⁷¹

5.64 The committee notes that as of 30 June 2018, ASIC had increased the number of employees within ASIC who identify as Indigenous and/or Torres Strait Islander to 18, up from 16 in the previous year. The committee notes that ASIC has used Indigenous employment strategies to recruit and retain Indigenous staff members including various graduate, cadet and apprenticeship programs, advertising using Indigenous media and collaborating with the Australian Public Service Commission Indigenous Capability team.⁷²

5.65 ASIC has also continued to raise awareness about lesbian, gay, bisexual, trans, and/or intersex (LGBTI) issues and provide support to staff through its Rainbow Network. ASIC made a second submission to Pride in Diversity's Australian Workplace Equality Index, a benchmark for LGBTI inclusion for Australian workplaces. ASIC achieved a total score of 59, an improvement from the previous year.⁷³

5.66 The committee notes that as at 30 June 2018, ASIC had met its 50 per cent target for women in leadership roles at Executive Level 1 and 52 per cent at Executive Level 2. The Senior Executive Service level also improved its gender balance to 45 per cent from 42.1 per cent the previous year. ASIC has continued to support women in leadership roles including the launch of a comprehensive Action Plan by the Women in ASIC Committee in 2017–18. ASIC has also taken steps to ensure that it briefs female barristers equitably by engaging with the Law Council of Australia. ASIC's annual report stated that it had met 3 of the 4 targets set by the Law Council of Australia.

5.67 During 2017–18, ASIC continued to make progress against its Accessibility Action Plan, including:

- launching a Disability Awareness e-learning module for staff;
- joining the Australian Network on Disability in 2018; and
- continuing to access the government's RecruitAbility program for the 2018 graduate intake.⁷⁴

5.68 ASIC also engaged with further culturally and linguistically diverse communities, including through the following achievements:

- 98.1 per cent of staff have completed the cultural awareness learning module; and

71 Australian Securities and Investments Commission, *Annual Report 2017–18*, p. 171.

72 Australian Securities and Investments Commission, *Annual Report 2017–18*, p. 103.

73 Australian Securities and Investments Commission, *Annual Report 2017–18*, p. 102.

74 Australian Securities and Investments Commission, *Annual Report 2017–18*, p. 106.

- more than 50 staff registered with ASIC speak languages other than English and assist with translations work.⁷⁵

5.69 The committee noted that ASIC uses the Translating and Interpreting Service to assist with customer communication through languages other than English.⁷⁶

Enforcement

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

- 22 criminal convictions;
- 13 people imprisoned;
- \$42.2 million in civil penalties;
- 133 people/companies removed, restricted or banned from providing financial services or credit;
- 50 people/companies disqualified or removed from directing companies;
- 62 actions taken against auditors and liquidators;
- 27 enforceable undertakings;
- \$351.6 million awarded in compensation or remediation for investors and financial consumers; and
- 55 infringement notices issued to a combined value of \$2.02 million.⁷⁷

5.71 During 2017–18, ASIC published 45 industry reports to promote changes in industry behaviour and inform government policy and law reform.⁷⁸

Criminal and civil litigation

5.72 In relation to the priority of investor, consumer and markets performance objectives, ASIC was successful in the 16 criminal cases it completed in 2017–18. Of the 111 civil cases completed in the same period, ASIC was successful in 99 per cent of cases, with a total dollar value of \$42.2 million awarded in civil penalties.⁷⁹

Granting or varying AFS and credit licences and auditor registration

5.73 ASIC assesses applications for AFS licences and credit licences as part of its regulatory framework. Each application must be subject to a comprehensive risk-based assessment in order to ensure the appointment of suitable persons and organisations.⁸⁰

75 Australian Securities and Investments Commission, *Annual Report 2017–18*, p. 105.

76 Australian Securities and Investments Commission, *Annual Report 2017–18*, p. 105.

77 Australian Securities and Investments Commission, *Annual Report 2017–18*, p. 5.

78 Australian Securities and Investments Commission, *Annual Report 2017–18*, p. 5.

79 Australian Securities and Investments Commission, *Annual Report 2017–18*, pp. 37–38.

80 Australian Securities and Investments Commission, *Annual Report 2017–18*, p. 48.

5.74 In 2017–18, ASIC assessed more than 3000 AFS licence and credit licence applications, and approved 750 AFS licences, 23 limited AFS licences and 430 credit licences.⁸¹ ASIC reported a decrease in approved applications for new and varied AFS licences from the previous year.

5.75 ASIC also reported assessing over 694 applications for registration of auditors, including company auditors and auditors of self-managed super funds. 195 applications were approved and 95 were withdrawn. ASIC also reported cancelling or suspending 632 registrations.⁸²

Service Charter Performance

5.76 The ASIC Service Charter covers the most common interactions between ASIC and its stakeholders, and sets performance targets for these interactions.⁸³

5.77 ASIC's annual report showed that it did not meet performance targets in relation to deciding whether to register an auditor. ASIC set a target of processing 80 per cent of applications within 28 days of receiving the complete application. ASIC reported that it had processed applications within the 28 day threshold in 62 per cent of cases and noted that applications which took a longer time to process were generally more complex, and potentially required additional policy work or legal review.⁸⁴

5.78 ASIC's annual report for 2017–18 showed some changes to the timeframe in which ASIC aims to process AFS licences and credit licences. The targets continue to be measured in two stages. However, ASIC's target timeframe for processing 70 per cent of applications, which involve deciding whether to grant or vary a licence for both AFS and credit licences, has been extended to 150 days from 60 days in the previous year. The time frame for the second stage, which involves a target of processing 90 per cent of applications, has also been extended to 240 days from the 120 days of the previous year.⁸⁵

5.79 During 2017–18, ASIC granted AFS licenses within 150 days in 74 per cent of instances and licence variations in 75 per cent of instances, exceeding the 70 per cent target. AFS licences were granted within 240 days in 88 per cent of instances and licence variations in 86 per cent of instances, falling short of the 90 per cent target.⁸⁶

5.80 ASIC granted credit licences within 150 days in 87 per cent of instances and licence variations in 90 per cent of instances, exceeding the 70 per cent target. Credit

81 Australian Securities and Investments Commission, *Annual Report 2017–18*, p. 48.

82 Australian Securities and Investments Commission, *Annual Report 2017–18*, p. 48.

83 Australian Securities and Investments Commission, *Annual Report 2017–18*, p. 53.

84 Australian Securities and Investments Commission, *Annual Report 2017–18*, p. 54.

85 Australian Securities and Investments Commission, *Annual Report 2017–18*, p. 54.

86 Australian Securities and Investments Commission, *Annual Report 2017–18*, p. 54.

licences were granted within 240 days in 93 per cent of instances and licence variations in 94 per cent of instances, again exceeding the 90 per cent target.⁸⁷

Committee view

5.81 The committee considers that ASIC has fulfilled its annual reporting responsibilities during the 2017–18 financial year.

5.82 The committee will continue to use annual reports and other mechanisms to monitor ASIC's performance. The committee thanks ASIC for its contributions at hearings and responding to questions on notice.

The Hon Mr Michael Sukkar MP
Committee Chair

87 Australian Securities and Investments Commission, *Annual Report 2017–18*, p. 54.