



## Improving ASIC's capabilities

### PEOPLE, POWERS, PROCESS and TECHNOLOGY

We see that there are eight areas where ASIC's capabilities can be improved without additional funding.

#### 1. Budget

- 1.1. The annual Government budget process and the budget rules place a serious brake on ASIC's ability to be flexible and agile in shifting our allocation of resources and to engage in long term planning.
- 1.2. ASIC's flexibility and agility in allocating resources and long term planning would be significantly improved if ASIC had the capacity and flexibility to:
  - Move unspent operating budget in a given year to fund capex in the same year;
  - Set aside unspent operating budget in a given year to fund operating expenses meeting agreed criteria in the following year; and
  - Advance of funds for specific capital projects yielding future savings in operating and capital budget, with those amounts being taken out of future budget allocations to repay the amount advanced.

#### 2. People

- 2.1. Our workplace flexibility is currently limited by the requirement to employ staff under the Public Service Act. Our partner financial services regulators, APRA and the RBA, are not required to employ staff under the Public Service Act.
- 2.2. The requirement to employ staff under the Public Service Act presents a number of challenges for ASIC:
  - **Leadership** — Approximately half of ASIC's Senior Executive Service are employed under s120(3) of the ASIC Act, not under the Public Service Act. As a consequence, these senior executives do not have staffing delegations to lead and manage ASIC's staff, all of whom are public servants.
  - **Competing for talent** — ASIC competes for talent from the legal, business and financial services sectors in Sydney and Melbourne. ASIC's enterprise agreement sets the remuneration structure for ASIC staff and caps the remuneration. This limits ASIC's ability to attract and retain experienced staff from the private sector. ASIC also competes for talent with the RBA and APRA - organisations that are not constrained by the Public Service Act. Although ASIC's remuneration is at the median of the Australian public service, ASIC does not generally compete with the broader public sector pool for talent.
  - **Decision making** — Engaging staff under the Public Service Act directly and indirectly influences decisions that ASIC can make about, among other things:
    - the number of senior executives employed by ASIC and how they are remunerated;
    - the classification and grading of all staff;
    - the length of employment of temporary staff



- 2.3. We have undertaken a **review** to determine the **capabilities we will need in the future**. We will then decide which **capabilities to develop** in our current team, and which **capabilities to recruit** from the market. However, ASIC being subject to the **Public Service Act** is a **brake on our flexibility in recruiting staff** to meet short term and specialist demands.

### 3. Process and technology

- 3.1. A large amount of ASIC's Regulatory business runs on very old, disparate Lotus Notes Systems and applications on the mainframe. We are currently undertaking Regulatory Transformation projects across ASIC which aim to transform and streamline the way that we capture, share and use information. In summary, these projects are about improving the efficiency and effectiveness of the business of regulation. The transformation will build our capabilities, improve our processes and deliver smarter data and better tools for regulation.

### 4. FSI recommendations

#### *Industry Funding Model*

- 4.1. **The right economic incentives:** An industry funding model will provide economic incentives to drive the regulatory outcomes set by Government. By proper pricing (i.e. price signals) of the use of ASIC's resources, business can identify the cost of regulation to achieve these outcomes and thereby have an incentive to reduce the costs allocated to them. In turn, ASIC can direct its resources to those areas that pose greater risks to investor trust and confidence and fair, orderly and transparent markets.
- 4.2. **Greater certainty and stability:** An industry funding model could provide ASIC with greater certainty and stability in the funding we need to deliver more effectively on our regulatory mandate. It will strengthen ASIC's budget and operational independence which, in turn, gives ASIC the ability to build better forward-looking capabilities, plan strategically and commit to longer-term outcomes.
- 4.3. **Accountability:** The possible introduction of an industry funding model can further increase ASIC's accountability to Government and industry.

#### *Product design and product intervention powers*

- 4.4. Current regulation is focussed on the provision of formal disclosure documents. However, as noted by the Financial System Inquiry, disclosure is of limited effectiveness. Product design and intervention powers (as recommended by the FSI) will overcome some limitations of disclosure and enhance ASIC's ability to address the interests and needs of consumers in a more timely and effective way. They will allow ASIC to look across the financial product value chain and take action where needed, rather than simply disclosure at the point of sale.

#### *Penalties*

- 4.5. Effective regulation depends on achieving enforcement outcomes that act as a genuine deterrent to misconduct. The public expect ASIC to take strong action against corporate wrongdoers. Effective enforcement is therefore critical for ASIC in pursuing our strategic priorities of promoting fair and efficient financial markets, and ensuring confident and informed investors and financial consumers. Central to effective enforcement are penalties set at an appropriate level, and having a range of penalties available for particular breaches of the law. Having a range of penalties allows ASIC to calibrate our response with sanctions of greater or lesser severity commensurate with the misconduct. This aims to deter other contraventions, and promote greater compliance, resulting in a more resilient financial system.



## 5. Market licensing review

- 5.1. For a number of years, ASIC has been working with Treasury to institute legislative reforms to support the type of more flexible (tiered) market licensing arrangement, seen in other major jurisdictions. ASIC believes this reform is critical to the ongoing support of market innovation and de-regulation in Australia.
- 5.2. The legislative framework for Australian markets, prescribes that the Minister must make decisions on a range of 'operational-type' matters relating to the administration and development of market platforms (including ASX) in this country. If like its international regulatory counterparts, ASIC had responsibility for these operational decisions, the length of time and expense taken for our markets for these matters to be implemented would reduce considerably. The reduction in cost and time periods will help our markets innovate and compete more effectively.

## 6. Co-operation with other Government agencies

- 6.1. We see that there is significant opportunity for Government agencies can leverage from each other's' resources and capabilities. Intelligence gathering and sharing is a key area where we have built strong relationships with other agencies. We are focused on the potential of shared services, domestically and internationally to bring greater efficiencies.
- 6.2. ASIC's Operations team has included the potential for shared services in its 2015/2016 business plan as follows: "**identify and act on opportunities to offer our services, partner with others or procure services from others**".

## 7. Cooperation with industry

- 7.1. ASIC has established a number of panels and committees to assist us to gain a better understanding of developments and systemic risks in the financial system and markets. There are three ways we could further our cooperation with industry:
  - Broaden scope of existing panels
  - Introduce financial services disciplinary panel
  - Approved codes of conduct

## 8. Focus: registry separation

- 8.1. The separation of the Registry from ASIC will allow ASIC to focus on its core regulatory functions. It is anticipated that such a separation will enable ASIC:
  - To divest itself of expensive legacy registry IT systems; and
  - To implement more modern applications for the regulatory business based on commercially available software and positioned to exploit maturing advances in technology such as cloud based technology.

