



ASIC
Australian Securities &
Investments Commission

REPORT 691

Regulator Performance Framework: ASIC self- assessment 2019–20

May 2021

About this report

The Regulator Performance Framework (Framework) provides a set of six common key performance indicators (KPIs) for Australian Government regulators.

This report sets out ASIC's self-assessment of its performance against the KPIs in 2019–20.

About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

Consultation papers: seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

Regulatory guides: give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

Information sheets: provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

Reports: describe ASIC compliance or relief activity or the results of a research project.

Disclaimer

This report does not constitute legal advice. We encourage you to seek your own professional advice to find out how the Corporations Act and other applicable laws apply to you, as it is your responsibility to determine your obligations.

Examples in this report are purely for illustration; they are not exhaustive and are not intended to impose or imply particular rules or requirements.

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A Introduction

Key points

The Regulator Performance Framework (Framework) is designed to assess one aspect of a regulator’s performance—the extent to which it minimises regulatory burden while fulfilling its objectives and delivering its functions.

The Framework is one component of ASIC’s suite of performance reporting tools.

About the Regulator Performance Framework

- 1 The Framework comprises six mandated, common, outcomes-based key performance indicators (KPIs) set by the Australian Government. We have grouped KPIs together where we consider there is overlap in their nature and purpose. We have set out these grouped KPIs in Table 1.
- 2 The results of ASIC’s achievements against the KPIs are set out in Section B of this report.

Table 1: Framework KPIs

KPI	ASIC’s self-assessment
KPI 1: Regulators do not unnecessarily impede the efficient operation of regulated entities	See paragraphs 15–52 (evidence metrics 1.1–1.3)
KPI 6: Regulators actively contribute to continuous improvement of regulatory frameworks	
KPI 2: Communication with regulated entities is clear, targeted and effective	See paragraphs 53–88 (evidence metrics 2.1–2.4)
KPI 5: Regulators are open and transparent in their dealings with regulated entities	
KPI 3: Actions undertaken by regulators are proportionate to the regulatory risk being managed	See paragraphs 89–132 (evidence metrics 3.1–3.4)
KPI 4: Compliance and monitoring approaches are streamlined and coordinated	

About ASIC

- 3 ASIC is Australia’s integrated corporate, markets, financial services and consumer credit regulator. We are an independent Australian Government body. We are established under the *Australian Securities and Investments Commission Act 2001* (ASIC Act) and we carry out most of our work under

the *Corporations Act 2001* (Corporations Act) and the *National Consumer Credit Protection Act 2009* (National Credit Act).

- 4 Our vision—*a fair, strong and efficient financial system for all Australians*—reflects our purpose as Australia’s conduct regulator for corporations, markets, financial services and consumer credit, and highlights the important role we play on behalf of all Australians.
- 5 To realise our vision, we will use all our regulatory tools to:
- (a) change behaviours to drive good consumer and investor outcomes;
 - (b) act against misconduct to maintain trust and integrity in the financial system;
 - (c) promote the strong and innovative development of the financial system; and
 - (d) help Australians to be in control of their financial lives.
- 6 Our registry mission is to provide efficient and accessible business registers that make it easier to do business.
- 7 Our statutory objectives are to:
- (a) maintain, facilitate and improve the performance of the financial system (including fair and efficient markets);
 - (b) promote the confident and informed participation of investors and consumers;
 - (c) administer the law with a minimum of procedural requirements;
 - (d) take whatever action we can and is necessary, to enforce and give effect to the law and conduct an efficient registry (see s1(2) of the ASIC Act); and
 - (e) consider the effects that the performance of our functions and the exercise of our powers will have on competition in the financial system.
- 8 The Australian Government recognises that ASIC is required to balance several objectives and that the appropriate balance may require trade-offs: see the Government’s [Statement of Expectations](#) for ASIC.

Evaluating our performance

- 9 The Framework is just one component of ASIC’s suite of performance reporting tools. Each year, we publish a corporate plan which includes our performance evaluation framework (in accordance with the Commonwealth Performance Framework under the *Public Governance, Performance and Accountability Act 2013*).

- 10 Our performance evaluation framework sets out how we will measure and evaluate our performance. We have aligned our performance evaluation framework to our regulatory and registry mission. We use qualitative and quantitative measures to evaluate our performance over time. Our performance results, including key performance data and our Service Charter results, are published in our annual report.
- 11 In addition to our annual report, we report on our performance and communicate with our stakeholders in various publications including:
- (a) [enforcement updates](#) (published half-yearly);
 - (b) [market integrity reports](#) (published half-yearly);
 - (c) [reports on relief applications](#) (published half-yearly); and
 - (d) [Cost Recovery Implementation Statement](#) (CRIS) (published yearly).
- 12 In particular, the volume and results of our surveillance and enforcement activities are an important measure of our performance and of significant interest to our stakeholders and the wider community.

Stakeholder feedback

- 13 We value stakeholder feedback as a means of helping us achieve our vision, maintain regulatory standards, and identify and resolve regulatory issues in the market.
- 14 We seek feedback through a range of channels, including regular industry liaison and external panels and committees.

B ASIC self-assessment

Key points

Overall, we demonstrated a strong commitment to meeting our KPIs in 2019–20.

The COVID-19 pandemic presented significant challenges for the Australian community, our regulated population and for ASIC. We responded quickly and strategically to ensure that the financial system, although under stress, continued to be strong and efficient.

KPI 1 and 6: We focused on using targeted and appropriate regulation that minimises regulatory costs, implementing the Australian Government’s legislative agenda, engaging with the sectors we regulate, and enabling business to operate efficiently.

KPI 2 and 5: Communication and transparency are key priorities for ASIC. We regularly communicate our priorities, expectations and approach to our regulated entities and other stakeholders using a variety of channels. We will continue to identify opportunities to enhance our communication delivery, including by adopting new technology.

KPI 3 and 4: We target the highest priority threats and harms in the sectors we regulate (including by leveraging our data capabilities) and take a targeted and outcomes-based approach to our regulatory work. Where we identify emerging harm, significant detriment or poor market outcomes, we will act proportionately to the risk being managed by using the appropriate regulatory tool or combination of tools.

KPI 1 and KPI 6

KPI 1: Regulators do not unnecessarily impede the efficient operation of regulated entities

KPI 6: Regulators actively contribute to continuous improvement of regulatory frameworks

- 15 We consider KPIs 1 and 6 to be complementary. KPI 1 relates to how we administer the regulatory framework. KPI 6 relates to how we contribute to improving the regulatory framework.
- 16 We assess our performance against KPIs 1 and 6 based on how we:
- (a) demonstrate an understanding of the markets in which our regulated population operates, and best practice regulatory approaches in those markets;
 - (b) promote public discussion of market and regulatory developments and engage with stakeholders;
 - (c) make it easier for regulated entities to do business; and

(d) contribute to continuous improvement of regulatory frameworks by providing input to the Australian Government.

17 In paragraphs 18–20, we have outlined our performance against KPIs 1 and 6 according to the following evidence metrics:

- (a) 1.1 Understanding the market;
- (b) 1.2 Making it easier for business; and
- (c) 1.3 Continuous improvement of regulatory frameworks.

1.1 Understanding the market

18 Having a strong understanding of current and emerging issues in the financial sector helps ASIC make decisions that do not unnecessarily impede the efficient operation of business, while ensuring the Australian Government’s regulatory objectives are met and emerging harms, consumer detriment and instances of misconduct are addressed.

Assessing our external operating environment and planning strategically

19 In October 2019, we commenced our strategic planning process by undertaking an environmental scan to:

- (a) analyse our external operating environment, including key economic and sectoral trends;
- (b) identify and prioritise the threats and behaviours that are causing or could potentially cause harm—this included the work of our Emerging Threats and Harms Committee, which identifies and advises on the management of emerging risks in the areas we regulate; and
- (c) test the rigour of our results with our external panels and experts.

20 The most significant harms that we identified as part of our environmental scan shaped our strategic priorities, corporate plan and business planning process (including resource allocation). Insights from our October 2019 environmental scan were included in our corporate plan.

Performance highlights

In response to the COVID-19 pandemic, we adjusted our annual strategic planning process for 2020–21. We focused our efforts on assessing the key vulnerabilities of our regulated sectors in the changing environment, and on developing strategic priorities to underpin our regulatory responses to the immediate risks arising from the pandemic.

In June 2020, we published the [ASIC Interim Corporate Plan 2020–21](#) to outline our strategic priorities in response to the impact of the pandemic (we also more clearly articulated the threats and harms we are addressing,

which will enhance our performance reporting). We reiterated the same five priorities in the [ASIC Corporate Plan 2020–24](#).

Throughout the year, we continued to monitor and assess the key vulnerabilities of our regulated sectors. We also undertook a scenario planning pilot to assess the potential impacts of a prolonged economic downturn and rapid digital transformation on ASIC’s regulated sectors, entities, markets and consumers and investors.

Engaging with stakeholders

- 21 We regularly engage with members of our regulated population across all sectors to better understand market trends and emerging issues. We hold regular meetings with industry representatives, professional bodies, consumer groups and small business. We maintain open working relationships with our regulated entities.

Meetings with stakeholders

- 22 In 2019–20, we held over 2,100 meetings with key stakeholders across our regulated sectors. These included meetings on specific issues and regular scheduled meetings with particular sector representatives.

Stakeholder panels

- 23 We regularly consult our external panels about developments, challenges and emerging threats and harms in the sectors we regulate. This helps us better understand industry, consumer and market developments, consider and address systemic risks or harms, and discover potentially harmful conduct by entities.
- 24 Following a review of our external panels in 2018–19, we revised the composition, format and terms of reference for several panels and enhanced our panel processes to ensure we are engaging with our panels efficiently and effectively.
- 25 Information about our [external panels](#) is available on our website.
- 26 Table 2 summarises the input of our stakeholder consultative panels in 2019–20.

Table 2: Stakeholder panel meetings

Panel	Summary of activity in 2019–20
ASIC Business Advisory Panel	This panel met twice in 2019–20. Issues discussed included modernising business registers, the introduction of a Director Identification Number, and the impact of the COVID-19 pandemic on the registry’s small business customers.

Panel	Summary of activity in 2019–20
ASIC Consultative Panel (replaced the External Advisory Panel)	A subset of members met to discuss emerging threats and harms in the sectors ASIC regulates. Due to the disruption caused by the pandemic, the first formal meeting of the full Panel occurred after the 2019–20 financial year.
Australian Government Financial Literacy Board	This panel met twice in 2019–20. Issues discussed included ASIC's engagement in the formal education sector and the work of the Indigenous Outreach Program. The terms of all members expired in January 2020.
Consumer Advisory Panel (CAP)	CAP meets three times a year. In 2019–20 it focused on the implementation of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (Royal Commission) law reform agenda, ASIC's enforcement priorities and litigation outcomes, and significant research reports.
Corporate Governance Consultative Panel (replaced the Director Advisory Panel)	This panel met once in 2019–20 to discuss regulatory measures adopted in response to the pandemic and key corporate governance challenges in the pandemic environment.
Digital Finance Advisory Panel	This panel met three times in 2019–20 and advised on topics such as issues related to crypto assets and initial coin offerings in Australia, and implementation of reforms such as the consumer data right and the new payments platform.
Financial Advisers Consultative Panel	This panel met three times in 2019–20. Issues discussed included the use of ASIC's product intervention powers and ASIC's ongoing work in relation to unmet advice needs, life insurance, fee disclosure statements and renewal notices.
Markets Advisory Panel	This panel met five times in 2019–20. Issues discussed included the impact of the pandemic on markets and financial services firms, ASX's clearing and settlement system (CHES) replacement, technological, operational and cyber resilience, and retail investor harms.

1.2 Making it easier for business

- 27 We continue to focus on making it easier for business to operate efficiently and productively, including by:
- implementing measures to reduce red tape and compliance burden; and
 - providing regulated entities relief from the law where there is regulatory benefit, or where there is minimal regulatory detriment and this is outweighed by the commercial benefit—thereby facilitating innovations in products, services and transactions.

Reducing red tape and compliance burden

- 28 ASIC complies with the requirements of the regulatory impact assessment framework administered by the Office of Best Practice Regulation, including the requirement to prepare a Regulation Impact Statement when required.
- 29 When publishing new or revised regulatory guidance in response to industry demand, we aim to provide reasonable transition periods to help regulated

entities adjust to updated operating requirements and regulatory conditions. For example, we deferred the commencement of the mortgage broker best interests duty and remuneration reforms to January 2021, and the design and distribution obligations to October 2021, to enable industry to focus on their responses to the pandemic.

- 30 ASIC also has a range of ongoing initiatives that are aimed at making interaction with us simpler or removing unnecessary barriers to business.
- 31 The [ASIC Regulatory Portal](#) continues to improve how stakeholders interact with ASIC. A new suite of regulatory transactions was added to the portal in 2019–20, including breach reporting for Australian financial services (AFS) licensees and registered auditors, and insolvency statutory reporting. Lodgement of applications for relief and corporate finance and fundraising transactions moved to the portal in July 2020.
- 32 [ASIC’s Innovation Hub](#) helps innovative businesses navigate Australia’s financial regulatory system. Our [regulatory sandbox](#) allows eligible financial technology (fintech) companies to test certain products or services for up to 12 months without an AFS licence or credit licence.
- 33 In 2019–20, the Innovation Hub provided informal assistance to 103 fintech businesses (totalling over 550 businesses since March 2015). ASIC granted eight new AFS or credit licences to businesses that had received informal assistance, which were approved faster than those applications that had not sought informal assistance.
- 34 ASIC’s [Small Business Engagement and Compliance team](#) coordinates initiatives to engage and help protect businesses with fewer than 20 employees.
- 35 In 2019–20, we undertook a pilot project in Victoria for culturally and linguistically diverse (CALD) small business owners to help them better understand and fulfil their compliance obligations. We published Small Business resources in other languages on our website, translated our *Running a small business in Australia: What you need to know* booklet into several community languages, and worked with other agencies to deliver small business workshops in community languages.

Performance highlights

Reducing burden on industry in response to the COVID-19 pandemic

ASIC’s response to the COVID-19 pandemic demonstrates our commitment to not unnecessarily impeding the efficient operation of regulated entities. A key consideration in our work in 2019–20 was supporting the Australian Government in facilitating Australia’s economic recovery.

In response to the COVID-19 pandemic, we delayed or deferred a range of regulatory activities that would have imposed a burden on business, including:

- pausing our onsite supervision work;
- delaying various data collection work, including on grandfathered conflicted remuneration and for our review of life insurance advice; and
- delaying consultation on many Royal Commission law reform initiatives.

We regularly published updated [COVID-19 regulatory information](#) on a dedicated ASIC webpage, which included information about ASIC's regulatory work and priorities in response to COVID-19 and links to new and updated regulatory documents (including instruments related to COVID-19).

We operated our business registers and associated services efficiently and without interruption.

Reducing burden on industry in response to natural disasters

Businesses that were having difficulty paying fees or meeting their lodgement obligations due to the impact of bushfires across Australia were encouraged to contact ASIC to discuss payment options, apply for a payment plan, or apply for a fee waiver.

Providing relief from the law

- 36 We regularly publish reports regarding how we have exercised our exemption and modification powers in response to applications for relief from the law, including how we have performed against the relevant service standards.
- 37 In 2019–20, ASIC received 1,308 applications for individual relief and granted relief in response to 919 (70%). We exceeded our targets by making in-principle relief decisions for 78% of applications within 28 days (target: 70%) and 91% of applications within 90 days (target: 90%).
- 38 We published [Report 654](#) *Overview of decisions on relief applications (April 2019 to September 2019)* (REP 654) in February 2020, and [Report 664](#) *Overview of decisions on relief applications (October 2019 to March 2020)* (REP 664) in June 2020.

Performance highlights

In 2019–20, we supported business by:

- helping listed companies raise capital quickly by giving temporary relief to enable certain 'low doc' offers (including rights offers, placements and share purchase plans) to be made to investors, even if they did not meet all the usual requirements; and

- providing relief where appropriate, including to facilitate virtual shareholder meetings, and allow more time to lodge audited financial reports and hold annual general meetings.

1.3 Continuous improvement of regulatory frameworks

- 39 We support Treasury’s work on law reform by providing input on the operational implications of Australian Government policy.
- 40 We provide submissions to parliamentary and Australian Government inquiries on key law reform issues, provide advice to the Minister and Treasury, and work closely with the Council of Financial Regulators (CFR) working groups.
- 41 We implement reforms passed by Parliament, and regularly review and update our regulatory guides and information sheets in response to industry demand.
- 42 We also actively participate in international forums and committees.

Supporting law reform

- 43 During 2019–20, we supported the following Australian Government reforms:
- ASIC’s new product intervention power;
 - the design and distribution obligations;
 - ASIC’s role as conduct regulator in superannuation;
 - the best interests duty of mortgage brokers and remuneration for mortgage brokers;
 - strengthening of the financial sector breach reporting regime;
 - strengthening penalties for breaches of corporate and financial services laws;
 - strengthening ASIC’s licensing and banning powers and enhancing our investigatory capability;
 - extending consumer protection provisions to funeral expenses insurance policies and extending unfair contract terms protections to insurance contracts;
 - ending grandfathered conflicted remuneration in relation to financial advice provided to retail clients;
 - the enforceability of financial services industry codes;
 - the application of anti-hawking reforms to superannuation and insurance products; and
 - the requirement for litigation funders to hold an AFS licence and comply with the managed investment scheme regime from August 2020.

Submissions to parliamentary and Government inquiries

- 44 Throughout the year, we provided submissions to parliamentary and Australian Government inquiries on key law reform issues. For example:
- (a) PJC submission to the inquiry into the regulation of auditing in Australia; and
 - (b) PJC submission on litigation funding and the class action industry.

Advice to the Minister and Treasury on possible improvements to the regulatory framework

- 45 In 2019–20, we continued to inform Treasury Portfolio Ministers of significant issues arising in our areas of responsibility: see ASIC’s statutory function in s11(2)(b) of the ASIC Act.
- 46 The ASIC Chair, Commissioners and senior ASIC officials liaise regularly with the Treasurer and other responsible Ministers. We provide advice to Treasury and the Australian Government, including at ASIC–Treasury liaison meetings, which occur regularly and are attended by the ASIC Chair and the Deputy Secretary, Treasury Markets Group.

Participation in the CFR working groups

- 47 In 2019–20, we actively participated in the CFR working groups: see ‘Cooperation with other Regulators’ at paragraphs 118–132. The cross-agency CFR includes the Australian Treasury, Australian Prudential Regulation Authority (APRA), the Reserve Bank of Australia (RBA) and ASIC.

Participating in international forums and committees

- 48 ASIC participates in numerous international forums and committees to contribute to international regulatory policy and standard setting, learn from peer regulator experiences and share best practice.
- 49 We are a member of the International Organization of Securities Commissions (IOSCO) Board and various IOSCO committees, taskforces and projects: see ‘Cooperation with other regulators’ at paragraphs 118–132.
- 50 In 2019–20, we actively advocated for:
- (a) global regulatory coordination and harmonisation in fintech and regulatory technology (regtech);
 - (b) strengthened global information-sharing arrangements and enhanced cross-border supervisory and enforcement cooperation;
 - (c) deeper regional integration through initiatives such as the Asia Region Funds Passport and stronger regional supervisory cooperation,

particularly on Trans-Tasman issues through closer collaboration with New Zealand regulators; and

- (d) building on our findings in [Report 605](#) *Allocations in equity raising transactions* (REP 605), in which we reviewed market practice for allocations in debt capital market transactions—we are co-leading work with international peers through IOSCO.

51 Our commitments to collaboration with our overseas peer agencies as part of the global COVID-19 pandemic response are set out in ‘Cooperation with other regulators’ at paragraphs 118–132.

Peer review results

52 ASIC publicly reports peer review results against relevant international practices and standards when peer review is undertaken. In 2018–19, the International Monetary Fund completed a Financial Sector Assessment Program review of Australia’s financial sector. We are continuing to contribute to the CFR working group’s monitoring of progress against the review.

KPI 2 and KPI 5

KPI 2: Communication with regulated entities is clear, targeted and effective

KPI 5: Regulators are open and transparent in their dealings with regulated entities

53 KPIs 2 and 5 primarily relate to how effectively we communicate and consult with our regulated population, including in relation to behaviour and conduct in compliance with the law, industry standards and community expectations.

54 We assess our performance against KPIs 2 and 5 based on how we:

- (a) interact with regulated entities;
- (b) communicate our priorities, expectations and approach to our regulated entities and other stakeholders;
- (c) consult with our regulated population on proposals for regulatory guidance that affect them; and
- (d) report to stakeholders on our performance.

55 In paragraphs 56–88, we have outlined our performance against KPIs 2 and 5 according to the following evidence metrics:

- (a) 2.1 Interacting with ASIC;
- (b) 2.2 Communicating ASIC’s expectations;

- (c) 2.3 Consulting with stakeholders; and
- (d) 2.4 Performance measurement and reporting.

2.1 Interacting with ASIC

56 We are focused on improving our services and making it easier for businesses to engage with ASIC and comply with the law.

Providing efficient registry services

57 Throughout 2019–20, we demonstrated our ongoing commitment to:

- (a) delivering our services efficiently through the ASIC Registry; and
- (b) improving the efficiency and effectiveness of our interactions with stakeholders generally.

58 We worked to ensure that the information on our registers is accurate, up to date, easily accessible to all Australians and enables business and consumers to make informed decisions.

59 In December 2019, the Australian Government announced its commitment to progress the registry modernisation program to make it easier and faster for businesses to interact with the Government and start and run a business.

60 We are continuing to work with Treasury and the Australian Taxation Office (ATO) to create a single, accessible and trusted source of business data—by transferring data currently held in existing business registers, which includes 31 ASIC registers and the Australian Business Register, to a modernised platform operated by the ATO.

61 In 2019–20, we:

- (a) registered 2.78 million companies;
- (b) handled almost 3 million registry lodgements, with over 93% made online (while the volume of lodgements submitted by mail decreased 7%); and
- (c) registered almost 610,000 new businesses, comprising approximately 222,000 companies and 387,000 business names, with 99.9% of applications to register made online.

62 The [ASIC service charter](#) covers the most common interactions between ASIC and our stakeholders and sets performance targets for these. In 2019–20, we exceeded most of the performance targets: see results in Table 3 below.

Table 3: 2019–20 ASIC performance against service standards

Service	Performance
New business registrations	Exceeded our target and registered 99.1% of new businesses that submitted an application online within one business day of receiving a complete application (target: 90%).
Auditor registrations	Exceeded our target and registered 88% of auditors within 28 days of receiving a complete application (target: 80%).
Managed investment scheme registrations	Achieved our target and registered 100% of managed investment schemes within 14 days of receiving a complete application (target: 100%).
Credit licence applications	Exceeded our targets by finalising 93% of new applications within 150 days (target: 70%) and 94% within 240 days (target: 90%), and finalising 96% of variation applications within 150 days (target: 70%) and 97% within 240 days (target: 90%).
AFS licence applications	Exceeded our target by finalising 76% of new AFS licence applications and 76% of licence variations within 150 days (target: 70%). We also finalised 89% of new AFS licence applications and 88% of licence variations within 240 days (target: 90%).

Handling complaints

- 63 We have:
- (a) a complaints management framework—this allows us to effectively manage complaints about our services, actions, decisions or staff (see our [Complaint management policy](#)); and
 - (b) policies and procedures about rights of review (see [Information Sheet 9 ASIC decisions: Your rights](#) (INFO 9)).
- 64 In 2019–20, we exceeded our target by resolving 95% of complaints received within three working days of receipt (target: 70%). We aim to resolve a complaint within 28 days.

2.2 Communicating ASIC's expectations

- 65 We regularly communicate our priorities, expectations and approach to our regulated entities and other stakeholders through:
- (a) our four-year corporate plan;
 - (b) reports about our supervision and surveillance work—these reports expose conduct that falls below community standards and aim to drive improved practices across a sector;
 - (c) relief reports summarising where we have exercised, or refused to exercise, ASIC's exemption and modification powers from the provisions of the Corporations Act and the National Credit Act;

- (d) guidance published in response to industry demand, with information about how we will administer the law and our regulatory expectations;
- (e) enforcement reports outlining action taken to deliver against our enforcement priorities by targeting cases of high deterrence value and those involving egregious harm or misconduct, particularly towards vulnerable consumers; and
- (f) market integrity reports highlighting work done to safeguard Australia's financial markets.

Communicating our strategic priorities and expectations

66 ASIC's corporate plan is the cornerstone of our communication with regulated entities. It outlines our strategic priorities and the actions we will take to address what we see as the most significant harms: see [ASIC Corporate Plan 2020–24](#).

67 Despite the challenges posed by the pandemic, we made it clear that we expected entities to treat customers fairly, avoid adding further financial harm or burden to consumers, report material breaches of the law, maintain records of the services they provide, and ensure appropriate supervision of their activities, including where staff are working remotely.

Industry reports

68 In 2019–20, we released 35 reports to outline the findings from our supervision, surveillance and enforcement work. Our reports advance good consumer outcomes by exposing and denouncing conduct that is below community standards and driving changes in industry practices.

69 For example, in October 2019 we published [Report 631](#) *Director and officer oversight of non-financial risk* (REP 631), highlighting findings from our review of the oversight of non-financial risk by directors and officers in seven of Australia's largest financial services entities.

70 Other examples of reports released in 2019–20 include:

- (a) [Report 623](#) *Review of Australian equity market cleanliness: 1 November 2015 to 31 October 2018* (REP 623);
- (b) [Report 627](#) *Financial advice: What consumers really think* (REP 627);
- (c) [Report 632](#) *Disclosure: Why it shouldn't be the default* (REP 632);
- (d) [Report 639](#) *Financial advice by superannuation funds* (REP 639);
- (e) [Report 651](#) *Cyber resilience of firms in Australia's financial markets: 2018–19* (REP 651); and
- (f) [Report 655](#) *Review of member communications: Protecting Your Superannuation Package (PYSP) reform* (REP 655).

Relief reports

- 71 In 2019–20 we published [REP 654](#) and [REP 664](#) to inform prospective applicants for relief about some of our decisions and ASIC publications that may assist them.

Regulatory guidance

- 72 In 2019–20 we published 29 new or reissued regulatory guides in response to industry demand, as well as 31 information sheets, to inform regulated entities about how we will administer the law.
- 73 In June 2020 we released [Information Sheet 245](#) *Board oversight of executive variable pay decisions during the COVID-19 pandemic* (INFO 245) to help boards and remuneration committees of listed entities navigate decisions on executive pay during the COVID-19 pandemic.
- 74 Other examples of guidance published in 2019–20 include:
- (a) [Regulatory Guide 97](#) *Disclosing fees and costs in PDSs and periodic statements* (RG 97) (updated);
 - (b) [Regulatory Guide 105](#) *AFS licensing: Organisational competence* (RG 105) (updated);
 - (c) [Regulatory Guide 176](#) *Foreign financial services providers* (RG 176) (updated);
 - (d) [Regulatory Guide 270](#) *Whistleblower policies* (RG 270);
 - (e) [Regulatory Guide 272](#) *Product intervention power* (RG 272);
 - (f) [Regulatory Guide 273](#) *Mortgage brokers: Best interests duty* (RG 273);
 - (g) [Information Sheet 229](#) *Limited AFS licensees: Complying with your licensing obligations* (RG 229) (updated); and
 - (h) [Information Sheet 241](#) *Prohibition on influencing employers' superannuation fund choice: section 68A of the SIS Act* (INFO 241).

Providing access to ASIC regulatory and registry information

- 75 Regulated entities can access the information they need on ASIC's website. Our website complies with Australian Government accessibility guidelines.
- 76 We regularly enhance our website functionality and use new channels, including our regulatory portal, to communicate directly with regulated entities and stakeholders.
- 77 We also regularly review and update resources in our Customer Contact Centre, for staff to use to respond to inquiries.

- 78 In 2019–20:
- (a) our online service for searching company, business names or other data online was available 99.7% of the time during standard business hours, exceeding our target of 99.5%;
 - (b) our online service for lodging company, business names or other data online was available 99.9% of the time during standard business hours, exceeding our target of 99.5%;
 - (c) there were more than 243.7 million searches of ASIC registers (up from 142.6 million in 2018–19); and
 - (d) our Customer Contact Centre responded to more than 631,000 calls and online inquiries. We exceeded our targets, with 89.6% of telephone inquiries answered on the spot (target: 80%), and 99.8% of general email inquiries answered within three business days (90%).

Performance highlights

In response to the COVID-19 pandemic, we created a dedicated [COVID-19 regulatory information page](#) setting out our responses to the impact of the pandemic. We also published a weekly tracker of regulatory document updates, including links to new and updated regulatory guides, information sheets, consultation papers and legislative instruments.

We also created a tailored [Moneysmart COVID-19 hub](#) in ASIC's Moneysmart website to help Australian consumers and businesses make well informed decisions in the pandemic environment. We continually updated this webpage in 2019–20 to address the common financial decisions many consumers were navigating. As at 30 June 2020, the Moneysmart COVID-19 hub had received 901,000 page views.

2.3 Consulting with stakeholders

- 79 We publish consultation papers to seek industry feedback on proposals for potential regulatory guidance to support Australian Government policy and legislative reform. We aim to have our consultations for major new policies open for eight weeks where possible, with user testing of proposals where appropriate. Feedback from industry consultation is published along with the final regulatory guidance we provide.
- 80 We follow the [Australian Government Guide to Regulatory Impact Analysis](#) when developing proposals for consultation. This includes being clear about the problem being addressed, such as market failure, regulatory failure, or an unacceptable hazard or risk.
- 81 In 2019–20 we published 15 consultation papers. Consultation on one paper was open for 12 weeks, nine were open for 6 weeks, three were open for 4–5 weeks and two were open for 3 weeks. Examples include:
- (a) [Consultation Paper 325](#) *Product design and distribution obligations* (CP 325), released December 2019;

- (b) [Consultation Paper 329](#) *Implementing the Royal Commission recommendations: Advice feed consents and independence disclosure* (CP 329); and
- (c) [Consultation Paper 316](#) *Using the product intervention power: Short term credit* (CP 316), released July 2019.

82 In 2019–20, we published feedback received in response to all key consultation papers, generally in the form of feedback reports. We incorporated comments or suggestions made by industry in response to our proposals and published the non-confidential submissions from industry at the same time as we issued our new or revised regulatory guides or legislative instruments.

83 We also sought feedback through roundtable discussions, open working relationships and regular meetings with our regulated entities and engagement through our external panels.

2.4 Performance measurement and reporting

84 We are committed to evaluating and reporting on our performance. Our performance evaluation framework is set out in our corporate plan. It includes qualitative and quantitative measures that are aligned to ASIC’s regulatory and registry mission. Measures include:

- (a) market outcomes—these reflect the impact of our regulatory work on the markets and sectors we regulate, including on investors and consumers; and
- (b) regulatory outcomes—these include the direct results from using our suite of regulatory tools.

85 We reported against our performance for 2019–20 in the following:

- (a) [ASIC Corporate Plan 2020–24](#), published in August 2020;
- (b) [ASIC Annual Report 2019–20](#), tabled in Parliament and published on the ASIC website in October 2020. We reported the results of our performance against the service charter (see ASIC service charter results: 2019–20) in our annual report;
- (c) our six-monthly enforcement update report in April and September 2020 (see ‘Enforcement and transparency’ at paragraph 113); and
- (d) our market integrity report (the latest report was published in May 2019).

86 Each year we also publish our self-assessment report and feedback received under the Regulator Performance Framework.

87 We are currently working to enhance our performance measurement and reporting framework to:

- (a) better measure and report on our efficiency as an organisation across our mandate; and
- (b) better assess the impact of key projects and regulatory interventions.

88 The proposed Financial Regulator Assessment Authority (Authority) will develop a framework to assess ASIC’s and APRA’s effectiveness. Legislation to establish the Authority is scheduled to be introduced in 2021.

KPI 3 and KPI 4

KPI 3: Actions undertaken by regulators are proportionate to the regulatory risk being managed

KPI 4: Compliance and monitoring approaches are streamlined and coordinated

89 KPIs 3 and 4 primarily concern the proportionality, streamlining and coordination of our approach to acting against misconduct and changing behaviours, including through supervision, surveillance and enforcement.

90 We assess our performance against KPIs 3 and 4 based on how we:

- (a) take a strategic approach to our regulatory activities, by targeting the highest priority threats and harms;
- (b) take a targeted, outcomes-based and less prescriptive regulatory approach;
- (c) adopt a strategic, proportionate and transparent approach to supervision and enforcement;
- (d) minimise the impact on our regulated population when they are required to comply with requests for information; and
- (e) cooperate and coordinate with other regulators, such as with APRA under our enhanced memorandum of understanding (MOU) (see ‘Cooperation with other regulators’ at paragraphs 118–132), when undertaking relevant supervision activities.

91 In paragraphs 92–132, we have outlined our performance against KPIs 3 and 4 according to the following evidence metrics:

- (a) 3.1 Risk-based approach to regulation;
- (b) 3.2 Enforcement and transparency;
- (c) 3.3 Information requests; and
- (d) 3.4 Cooperation with other regulators.

3.1 Risk-based approach to regulation

92 As part of ASIC’s annual strategic planning, we undertake an assessment of our external operating environment to identify the most significant threats

and harms to investors and consumers, and fair and efficient markets. This process drives our strategic priorities and regulatory actions.

- 93 In regulating various sectors, we consider the following factors when deciding how to respond to misconduct and which regulatory tools to use:
- (a) strategic significance (the seriousness of the misconduct or harm, how widespread it is, the importance of deterrence, and our strategic priorities);
 - (b) likelihood of success of using one or more of the tools available to us;
 - (c) issues specific to the case (e.g. availability of evidence);
 - (d) benefits of pursuing misconduct (e.g. the impact of remedies we may be able to obtain to deter misconduct and protect or compensate consumers, and other public interest factors); and
 - (e) availability of resources.

Targeting the highest priority threats and harms

- 94 In 2019–20, we responded quickly to the risks and challenges in the financial sector flowing from the COVID-19 pandemic:
- (a) We adjusted our annual strategic planning process for 2020–21 and recalibrated our regulatory priorities to allow us and our regulated entities to focus on the impact of the pandemic. As noted earlier, we deferred some activities and redeployed staff to address issues of immediate concern, including maintaining the integrity of markets and protecting vulnerable consumers.
 - (b) We worked closely with our domestic and international peers, including on our COVID-19 pandemic response.
 - (c) We worked to ensure that our responses to consumer harm and detriment were targeted and appropriate to the regulatory risk being managed.

- 95 We will continue to focus on identifying, assessing and managing heightened or new risks arising from the changed environment.

Performance highlights

In March 2020, we issued directions requiring large equity market participants to limit the number of trades they executed each day in response to heightened market volatility. In May, once we were satisfied that activity had stabilised, we revoked the directions.

We established three internal working groups to respond to scams, unlicensed advice and misleading advertising linked to the COVID-19 pandemic and warned consumers to be alert to scammers trying to take advantage of the pandemic environment. The number of investment scam reports rose during the pandemic, especially related to fake crypto-assets and offers to access superannuation or high-return investment

opportunities. We directed people to tools and resources to help them stay safe online and protect themselves from misinformation.

Use of data and ASIC’s regulatory tools (including new tools)

- 96 We are leveraging recent investments in our data capabilities to help us identify early warning signs of harm and misconduct and ensure our regulatory interventions are effectively designed and targeted.
- 97 Our review of total and permanent disability (TPD) insurance analysed data from 35,000 TPD claims, and we commissioned an independent research firm to conduct qualitative consumer research. In October 2019, we released [Report 633](#) *Holes in the safety net: A review of TPD insurance claims* (REP 633), building on our earlier review of life insurance, set out in [Report 498](#) *Life insurance claims: An industry review* (REP 498).
- 98 In our recent review of the buy now pay later sector, we analysed aggregated data from providers and commissioned consumer research to help understand consumer behaviour and experiences with buy now pay later arrangements: see [Report 600](#) *Review of buy now pay later arrangements* (REP 600).
- 99 We will intervene when the data (such as reports of misconduct, recurrent industry data, and market intelligence and competition data) indicate significant detriment or poor market outcomes—including actual or likely significant harm to consumers or investors, or an absence of healthy competition leading to potential misconduct.
- 100 Where we identify significant harm or misconduct, we will act proportionately to the risk being managed by using the appropriate regulatory tool or combination of tools. For example:
- (a) Our work on whether fund managers’ investment products were ‘true to label’ (i.e. the product name aligned with the underlying assets) was based on data gathered from over 350 managed funds. We used a combination of tools, including risk-based surveillances (to identify products with inappropriate or confusing product labels), investigation, and intervention (sending letters of concern to regulated entities). We asked 37 funds to take corrective action to ensure their products are ‘true to label’ (see [Media Release \(20-218MR\)](#) *ASIC tells fund managers to be ‘true to label’* (22 September 2020)).
 - (b) Similarly, our work in consumer credit insurance (see [Report 622](#) *Consumer credit insurance: Poor value products and harmful sales practices* (REP 622)) involved surveillance, investigation, intervention (banning unsolicited outbound telephone sales), remediation to consumers, and guidance to industry on product design and sales practices.

101 Parliament has provided ASIC additional regulatory tools so we can address harm arising from evolving products and practices without compromising the potential for competitive disruption and innovation. Our product intervention power (which commenced in 2019) enables ASIC to temporarily intervene where there is significant consumer detriment.

102 Targeted interventions in 2019–20 included ASIC’s use of our product intervention power to ban a short-term credit model that imposed very considerable fees on consumers (see [Media Release \(19-250MR\)](#) *ASIC makes product intervention order banning short term lending model to protect consumers from predatory lending* (12 September 2019)). We also used the power to impose conditions on distribution of contracts for difference to retail investors (see [Media Release \(20-254MR\)](#) *ASIC product intervention order strengthens CFD protections* (23 October 2020)).

Conducting onsite supervision

103 In the last two years we have enhanced key aspects of our supervision and surveillance to focus on onsite supervisory work, aligning our regulatory approach more closely with international peer agencies. Our supervision work is coordinated and targeted to ensure it does not create unnecessary regulatory burden.

104 We established ASIC’s Supervision Group in March 2020, embedding our enhanced supervision model within ASIC following completion of the pilot phases of our close and continuous monitoring program and our targeted reviews of corporate governance practices in large listed entities.

105 In 2019, our onsite reviews focused on the entities’ approaches to the detection of, and response to, incidents (breach reporting) and their complaints handling and internal dispute resolution arrangements. In 2020, our onsite review program aimed to focus on the internal audit functions of these entities. However, from March 2020, our onsite work was put on hold due to COVID-19 restrictions.

106 During the pause of onsite work, we focused on developing our supervisory infrastructure and capability and responding to issues arising from the pandemic. We engaged with the entities subject to the program to test how they were adjusting their non-financial risk oversight and management and to identify any risks emerging from the entities’ COVID-19 pandemic responses. We also ensured that our work was coordinated and targeted, and that it did not create unnecessary regulatory burden.

3.2 Enforcement and transparency

107 We are committed to taking a proportionate approach to enforcement, including being transparent about how we approach our enforcement role

and why we respond to particular types of breaches of the law in different ways: see [Information Sheet 151](#) *ASIC's approach to enforcement* (INFO 151).

Taking action against misconduct

- 108 We use a range of regulatory and enforcement sanctions and remedies, including punitive, protective, preservative, corrective and compensatory action.
- 109 Our enforcement approach is led and coordinated by our Office of Enforcement, established in 2019 to strengthen ASIC's enforcement decision making and capabilities and deliver on our 'Why not litigate?' approach.
- 110 Throughout 2019–20, we focused on cases that have a high deterrence value and those involving egregious misconduct—for example misconduct affecting vulnerable consumers—and we continued to prioritise referrals from the Royal Commission for investigation and litigation.
- 111 We also focused on misconduct that sought to exploit the pandemic environment, including predatory lending practices, mis-selling of products, and poor claims handling, as well as opportunistic conduct such as scams, unlicensed conduct, and misleading and deceptive advertising.
- 112 Although many investigations were significantly delayed in 2020 due to the pandemic, we focused our resources on enhancing our enforcement capability and dealing with matters falling within our enforcement priorities more quickly.

Performance highlights

In 2019–20, there was:

- an 11% increase in the number of investigations;
- a 48% improvement in the time taken to file civil penalty proceedings;
- an increase in the total civil penalties imposed, from \$12.7 million to \$25 million; and
- a 57% increase in the number of custodial sentences imposed (including those fully suspended).

In 2019–20, as a result of our investigations, 30 people were convicted of financial crime, with 22 people receiving custodial sentences (including full suspensions).

There was a greater focus on individual accountability in ASIC's enforcement work in 2019–20, resulting in the number of individuals charged with non-summary criminal offences increasing by 35%, and the number of civil penalty claims against individuals increasing by 40%.

Publishing enforcement reports

- 113 We publish regular reports with information about our enforcement work. In 2019–20, we published:
- (a) *ASIC Royal Commission implementation update* (see [Media Release \(19-249MR\)](#) *ASIC update on Royal Commission implementation* (11 September 2019));
 - (b) [Report 660](#) *ASIC enforcement update: July to December 2019* (REP 660);
 - (c) *ASIC update: September 2019 to February 2020*, an update on enforcement and regulatory work (see [Media Release \(20-047MR\)](#) *ASIC update on enforcement and regulatory work* (26 February 2020)); and
 - (d) [Report 666](#) *ASIC enforcement update: January to June 2020* (REP 666).

3.3 Information requests

- 114 In 2019–20, we applied our compulsory information-gathering powers as set out in [Information Sheet 145](#) *ASIC’s compulsory information-gathering powers* (INFO 145). That is, we limited burden and intrusion on regulated entities and protected confidentiality. Statistics on our use of ASIC’s most significant compulsory information-gathering powers are available in our annual report.
- 115 When making formal requests to regulated entities, we ensure:
- (a) that our requests are targeted and consider other formal requests for information;
 - (b) the requests have formal sign-off, involving senior staff and legal officers; and
 - (c) we use data that is available from other sources, where appropriate.
- 116 Decisions to use ASIC’s compulsory information-gathering powers are subject to a formal sign-off process:
- (a) The decision is made by senior ASIC staff in the context of the particular surveillance or investigation.
 - (b) A senior staff member is required to approve the specific use of a compulsory information-gathering power.
 - (c) An ASIC lawyer performs the final review of a notice exercising a power.
- 117 We have improved our processes around formal notices to ensure that teams coordinate the issuing of notices in cases where numerous notices are issued to large entities. This work aligns with our broader focus on enhancing our data collection processes to optimise the data that supports our regulatory work.

3.4 Cooperation with other regulators

- 118 We are committed to working closely with:
- (a) our domestic peer regulators and Australian Government agencies; and
 - (b) our peer regulators and agencies overseas.

Working with domestic peer regulators and Government agencies

119 We have strong working relationships with Australia’s other financial regulators, including through our shared membership of the CFR.

120 We maintain a close and cooperative relationship with Treasury. We also maintain operational and policy relationships with other Australian Government agencies, including the following:

- (a) APRA;
- (b) Attorney-General’s Department;
- (c) Australian Competition and Consumer Commission (ACCC);
- (d) Australian Charities and Not-for-profits Commission;
- (e) Australian Federal Police;
- (f) Australian Financial Security Authority;
- (g) ATO;
- (h) Australian Transaction Reports and Analysis Centre;
- (i) Commonwealth Director of Public Prosecutions;
- (j) Commonwealth Ombudsman;
- (k) Office of the Australian Information Commissioner; and
- (l) Takeovers Panel.

121 ASIC has an MOU with numerous peer regulators and agencies. Information about our [memoranda of understanding with other regulators](#) is available on our website.

122 We work closely with other agencies on issues where our responsibilities overlap. In particular, in 2019–20 we have enhanced our cooperation and engagement with APRA.

123 In November 2019, APRA and ASIC published an updated MOU to facilitate enhanced cooperation on supervision, investigations and enforcement action. Under the updated MOU, APRA and ASIC are using dedicated cross-agency working groups to progress work in a number of areas of shared interest, including data, thematic reviews, superannuation and corporate governance. The agencies are also working together to put in place systems and processes required to implement the upcoming statutory obligation to cooperate and share information.

124 ASIC also collaborates with other Australian enforcement and regulatory agencies on serious and organised crime, including through the Serious Financial Crime Taskforce, the Fintel Alliance and the Phoenix Taskforce.

Performance highlights

APRA

- In February 2020, ASIC and APRA issued a joint letter to superannuation trustees about how regulatory oversight will operate under the proposed reform to APRA and ASIC's roles in regulating superannuation and the general principles for co-regulation.
- ASIC, along with APRA, engaged with industry to understand how effectively the Insurance in Superannuation Voluntary Code of Practice is improving industry practice.

Council of Financial Regulators

- In the period from March to June 2020, we coordinated our responses to pandemic-related challenges with the CFR Crisis Management Working Group.
- Together with other CFR agencies and the ACCC, we are supervising ASX's project to replace its CHESSE system with a system based on distributed ledger technology.

ATO and ACCC

- Working with the ATO and the ACCC, ASIC identified financial advisers, trustees, fund promoters and unlicensed providers running marketing campaigns based around the provision of 'free' lost superannuation search and consolidation services. ASIC investigated this conduct for suspected contraventions of the law and worked with the ATO to address the issues identified.

Engaging with international peer regulators

125 ASIC engages closely with peer regulators and agencies overseas to develop international regulatory policy, enhance cooperation, and positively influence the operation and regulation of global financial markets. Our participation helps inform the way we address market vulnerabilities and consumer harms and how we support a domestic recovery in an interconnected global financial system. Better alignment between regulators in Australia and overseas also benefits Australian regulated entities operating across jurisdictions, for example by enabling entities to receive recognition of Australian laws and substituted compliance, which results in compliance cost savings.

126 ASIC participates in a range of international forums, for example:

- (a) ASIC is a member of the IOSCO Board and is represented on its policy committees and taskforces, including those examining issues around asset management, sustainable finance, crypto-assets, technology, market fragmentation, enforcement, and standards implementation.

- (b) ASIC is a member of the steering committee for the IOSCO Fintech Network and a member of each of the network's four workstreams on distributed ledger technology, artificial intelligence and ethics, regtech, and approaches to innovation.
- (c) ASIC is one of 11 coordination group members of the Global Financial Innovation Network (GFIN), which consists of 50 national financial sector regulators and supervisors, as well as seven observers, across 21 jurisdictions.

IOSCO

- 127 As part of the global COVID-19 pandemic response, we focused on joint initiatives and sharing information on market developments, regulatory approaches and consumer protection measures—for example:
- (a) working on financial stability issues through IOSCO's Financial Engagement Group;
 - (b) co-leading the newly established IOSCO Retail Market Conduct Task Force, examining measures to address misconduct and retail investor and consumer protection issues;
 - (c) working with IOSCO's Asia-Pacific Regional Committee to bring emerging concerns to the regional level, including common COVID-19 pandemic themes and cross-border spillover effects; and
 - (d) strengthening our ties with IOSCO's Asia-Pacific Regional Committee (APRC) by participating in APRC meetings and co-chairing the APRC Working Group on Enhancing Supervisory Cooperation.

GFIN

- 128 ASIC was a key participant in the GFIN's cross-border testing pilot, an initiative looking to allow firms to simultaneously scale new technologies in multiple jurisdictions. Learnings from the pilot were published by the GFIN in January 2020.

Bilateral cooperation

- 129 In 2019, we delivered an APEC technical workshop in Brunei on the Asia Region Funds Passport to delegates from Brunei, Vietnam and the Philippines.
- 130 We also continued to provide extensive assistance to the Indonesian Financial Services Authority, Otoritas Jasa Keuangan, on emerging regulatory issues.

International cooperation requests

- 131 We make and receive international requests in relation to investigations, compliance and surveillance, policy research, delegations, licensing and due diligence, and general referrals.
- 132 In 2019–20, we made 497 international cooperation requests and received 528 requests (140 requests related to enforcement matters, with 40 requests seeking ASIC assistance to compel third parties to provide material under the *Mutual Assistance in Business Regulation Act 1992*).

C Summary of feedback from consultation

Key points

We consulted on a draft version of this self-assessment against the Regulator Performance Framework. We approached a number of industry, professional and consumer associations that represent the sectors we regulate.

This section highlights the key issues that arose out of the feedback received and our responses to those issues. It is not a comprehensive summary of all submissions received. We have limited this section to the key issues.

Responses to consultation

- 133 We received four responses from the 20 organisations we approached for comment. We are grateful to these stakeholders for taking the time to provide their feedback.
- 134 Broadly, respondents acknowledged that the COVID-19 pandemic presented significant challenges for the Australian community, all sectors of the economy and ASIC. They commended ASIC’s response to the pandemic and highlighted our strong engagement and the guidance and support we provided to industry. Specifically:
- (a) the Australian Banking Association (ABA) commended our performance over 2019–20, especially our agile response to the challenges presented by the COVID-19 pandemic;
 - (b) the Customer Owned Banking Association (COBA) noted that our performance against the KPIs demonstrated a strong commitment to achieving the objectives of the Framework;
 - (c) the Financial Services Council (FSC) acknowledged the important role we played in helping our regulated population navigate the challenges posed by the pandemic. The FSC also commended ASIC for our role in helping companies through the COVID-19 crisis; and
 - (d) the Australian Restructuring Insolvency and Turnaround Association (ARITA) noted that they appreciated ASIC’s guidance to insolvency practitioners during the pandemic.
- 135 As part of their submissions, respondents provided a variety of observations on ASIC’s performance, many of which were sector specific. In this section, we have outlined the key feedback we received against each KPI and our responses to that feedback.

- 136 The key themes that emerged from the feedback we received related to:
- (a) the functionality of the ASIC Regulatory Portal;
 - (b) our engagement and communication with industry bodies and individual firms;
 - (c) the timing of the release of new and updated regulatory guidance, including the timing of our consultation;
 - (d) our enforcement approach; and
 - (e) cooperation and collaboration between ASIC and other regulators, such as APRA and the ATO.
- 137 For a list of stakeholders who made submissions in response to this report, see the appendix.

General feedback

Self-assessment under the Framework

- 138 One submission provided feedback about our self-assessment of our performance under the Framework. Specifically, ARITA raised concerns about the lack of independent assessment of ASIC’s performance under the self-assessment model.

ASIC’s response

We support ongoing regulator accountability. The Framework is just one of several performance and accountability mechanisms for assessing ASIC. It is an assessment regime mandated by the Australian Government, applying to all regulators and designed to assess particular aspects of regulators’ performance. Its self-assessment mechanism is part of the regime as currently designed.

The Australian Government is currently developing a refreshed Regulator Performance Framework. The new Framework will take a more flexible, principles-based approach, with a greater outcomes focus.

The Australian Government also plans to introduce legislation in mid-2021 to establish the Financial Regulator Assessment Authority: see paragraph 88. This new authority will develop a framework to assess ASIC’s and APRA’s effectiveness.

ASIC industry funding model

- 139 Some respondents also provided feedback on our industry funding model.
- 140 ARITA’s members considered that the model impeded the efficient operation of regulated entities. In their opinion, there is a lack of certainty

about how much we will charge regulated entities. They suggested that we should provide comprehensive reporting on the costs we charged to our regulated population. Some ARITA members raised concerns about the level of costs being borne by small insolvency practitioners under the model.

141 COBA suggested that there was an opportunity to improve our communication and transparency on changes in industry funding costs and our cost recovery approach.

ASIC's response

The industry funding model was developed and refined by the Australian Government after extensive consultation. It is prescribed in a number of Acts and regulations.

Each year, we publish a [CRIS](#) that sets out indicative levies based on our cost estimate at the beginning of the financial year. The publication of the 2019–20 CRIS was delayed due to the COVID-19 pandemic, and we provided additional time for industry feedback.

Our CRIS provides a detailed breakdown of regulatory costs for each leviable subsector by activity and type of cost (e.g. direct and indirect). Our goal is to provide a level of detail that ensures there is transparency about how we charge our costs to our regulated population.

Due to ongoing changes to ASIC's operating environment, we necessarily adjust the allocation of our regulatory effort, and therefore cost allocation, to various subsectors during the year. The actual costs that we expend on a particular subsector may decrease or increase year-on-year, for example due to the timing of our enforcement work and the costs associated with undertaking this work. Our CRIS explains the variance between our cost estimates and the actual costs for the previous year, and provides a breakdown of the regulatory activities for subsectors that had material cost variances.

The industry funding model includes a variable and fixed component. The variable component is intended to take into account the level of activity of each registered liquidator. As the number of registered liquidators' appointments vary from year to year, the variable component of the levies charged to registered liquidators will change accordingly.

Amendments to the industry funding model are a matter for the Australian Government and will require legislative reform. From time to time, the Government will review the operation of the model and implement some changes. The submissions we receive on the CRIS will help inform this process.

Feedback on specific KPIs

KPI 1 and KPI 6

KPI 1: Regulators do not unnecessarily impede the efficient operation of regulated entities

KPI 6: Regulators actively contribute to continuous improvement of regulatory frameworks

Understanding the market

Assessing our external operating environment and planning strategically

- 142 Three respondents commended our decision to realign ASIC's priorities to enable industry to focus on addressing the challenges posed by the COVID-19 pandemic, and the information and updates we published on ASIC's priorities and regulatory work in response to the pandemic.

Engaging with stakeholders

- 143 Respondents provided feedback on their engagement with ASIC, including during the COVID-19 pandemic.
- 144 COBA highlighted that they valued their interactions with ASIC through regular liaison meetings, and our engagement during the most challenging period of the pandemic. The ABA also appreciated our responsiveness and cooperation with industry on projects designed to address the circumstances of the pandemic.
- 145 ARITA acknowledged that we were responsive and met regularly with ARITA and the Australian Financial Security Authority to ensure that issues were proactively identified and dealt with where possible.
- 146 The FSC commended ASIC for our strong engagement with the financial services industry during the COVID-19 pandemic, but noted that they had less opportunities to engage with ASIC on superannuation issues than on investment management or financial advice issues.

ASIC's response

We make a concerted effort to engage with industry associations. From time to time there are differences in how we engage with different industries. This is due to a range of factors, including the type of issues about which we are seeking engagement or input and the level of interest on those issues from various industry associations.

Making it easier for business

Reducing red tape and compliance burden

- 147 All respondents acknowledged our work in response to the COVID-19 pandemic to reduce industry burden. This included adjusting the commencement dates of certain reforms, reprioritising data collection and onsite supervision work, and granting relief.
- 148 Some respondents provided feedback on their interactions with ASIC through the ASIC Regulatory Portal. The ABA submitted that the portal's breach reporting functionality needed to be improved, particularly in light of the increased volume of reports expected after commencement of the new breach reporting regime. The ABA also suggested that a functionality allowing secure uploading of documents would be a useful addition.
- 149 ARITA noted that registered liquidators have to use multiple portals when making lodgements with ASIC, and suggested that we should improve the functionality and provide better guidance to help liquidators with their use of the forms lodged in the portal.
- 150 ARITA also submitted that the turnaround times for processing applications to the Assetless Administration Fund could be improved. ARITA suggested that we should consider setting KPIs for ASIC's response times to funding applications, correspondence, offence referrals and report against the KPIs.

ASIC's response

ASIC Regulatory Portal

We appreciate stakeholder feedback on the ASIC Regulatory Portal. Within system and resourcing constraints, we are continuing to develop the design and functionality of the portal to improve user experience.

We are engaging with AFS and credit licensees on changes to the portal that cover the breach reporting reforms. A separate targeted consultation is underway.

We have been supporting registered liquidators' transition to the ASIC Regulatory Portal. We had planned a series of face-to-face workshops in 2020, at various locations, to help liquidators; however, due to the COVID-19 pandemic we were only able to hold one session in March 2020. We intend to develop and circulate additional guidance to help registered liquidators.

Response times for ASIC's work relating to registered liquidators

We will continue to work with industry, including on enhancing the quality of applications, to improve turnaround times. Due to the varied nature of such applications (including, but not limited to, the extent of alleged misconduct, associated parties and proposed funded activities), we do not consider it would be appropriate to set KPIs on the timeframes for completing this work.

KPI 2 and KPI and 5

KPI 2: Communication with regulated entities is clear, targeted and effective

KPI 5: Regulators are open and transparent in their dealings with regulated entities

Communicating ASIC's expectations

Communicating our strategic priorities and expectations

- 151 The ABA acknowledged that the ASIC Corporate Plan was a very useful document, and suggested that the early release of the corporate plan each year would help industry understand ASIC's priorities.
- 152 Some respondents noted that certain ASIC regulatory guidance needed to be updated. The FSC suggested that, to help industry comply with their obligations, our regulatory guidance on financial advice should provide more practical guidance and clarification of statutory requirements. ARITA noted that we should update our guidance and relevant forms to reflect the insolvency reforms that came into effect three years ago. ARITA also requested that we provide more detailed guidance about industry funding levies imposed on companies that had gone into external administration or receivership.
- 153 The FSC noted that delays in the release of our findings from our review of life insurance Product Disclosure Statements (PDSs) meant that life insurers had very limited time to take action before the commencement of the unfair contract terms regime. They also suggested that we should outline our expectations for the individual disability income insurance market. This follows from APRA's changes to their requirements for product design, governance and data capabilities for this market, to address concerns regarding the market's sustainability.
- 154 The FSC also had concerns about our response to their feedback on a data figure referenced in [REP 633](#). They also considered that an issue in our draft information sheet on the removal of the claims handling exemption suggested a lack of industry knowledge.
- 155 ARITA noted that there was inconsistency in our approach to communication with registered liquidators. Some communications were sent to a wide population, while other communications were sent to registered liquidators only.

*ASIC's response***Updates to regulatory guidance**

We acknowledge the feedback from the FSC and ARITA.

We are planning to enhance our guidance for the financial advice industry as part of our work on unmet financial advice, and planning more user testing. We would welcome further feedback from industry on how we can enhance our guidance.

We acknowledge that our guidance (including related forms) for registered liquidators requires updating to reflect changes enacted by law reform. We have been working to update this guidance and note further changes are required as a result of insolvency law reforms that commenced on 1 January 2021.

We have provided preliminary guidance to registered liquidators on the impact of industry funding on external administrations. We are developing further guidance in response to ARITA's request. We note that this work has been delayed due to our resources being diverted to respond to the COVID-19 pandemic and law reform priorities.

Communications with insurers*Individual disability income insurance*

APRA has intervened in this market as part of its regulatory mandate. We work closely with APRA to ensure we apply a consistent regulatory approach. For example, we liaised closely with APRA on its measures to end the sale of agreed value policies (which took effect from 31 March 2020).

We encourage insurers to carefully consider APRA's sustainability measures and their other obligations under financial services and consumer protection laws. Insurers should seek legal advice where appropriate.

We are focused on giving industry clarity about our expectations for compliance with the relevant laws in the context of developing consumer-centric individual disability income insurance products. In addition to guidance and information that are publicly available, we are considering how best to communicate conduct-related matters that will need to be considered alongside APRA's measures.

Unfair contract terms in insurance policies

We consider that insurers have been provided with sufficient information and time to comply with the unfair contract terms regime. We have made it clear that insurers should seek their own advice and that our role was to provide information on the regime, rather than guidance.

To help insurers' readiness, we updated [Information Sheet 210 Unfair contract term protections for consumers](#) (INFO 210) and [Information Sheet 211 Unfair contract term protections for small businesses](#) (INFO 211) in October 2020. These information sheets provide information about how unfair contract terms will

apply to insurance contracts from April 2021. We held roundtables in August 2020 to explain our expectations and our regulatory approach, and engaged directly with insurers covered by our PDS review. We issued letters to the Insurance Council of Australia and the FSC to communicate the general themes we had identified, as well as the issues insurers had identified themselves.

Data used in REP 633

We obtained the figure referenced in REP 633 for the approximate number of Australians covered by a TPD policy from reliable sources. When the FSC raised concerns about statements in [Media Release \(19-281MR\)](#) *ASIC calls on insurers and trustees to take action to improve consumer outcomes from total and permanent disability insurance*, we made minor changes to the media release to provide additional clarity.

Draft information sheet on claims handling and settling

We release draft information sheets for consultation to gather and consider feedback from industry and other stakeholders.

Our information sheet on claims handling and settling was drafted with input from staff with industry experience. The draft information sheet noted that, as an example of transparency and fairness in claims handling, insurers should provide the claimant with procedural fairness. It did not suggest that a procedural fairness process should be followed for all declined claims.

Following feedback from one life insurer, we updated the wording to state that AFS licensees should 'explain any adverse findings to the claimant and give them an opportunity to respond and provide additional information' (i.e. provide procedural fairness): see [Information Sheet 253](#) *Claims handling and settling: How to comply with your AFS licence obligations* (INFO 253).

Communications with registered liquidators

We take a number of factors into consideration when deciding the most appropriate approach for communicating with our regulated population, including our regulatory objectives, the target audience and any time sensitivity.

We acknowledge that there is benefit in sharing information across the industry where possible, but also think it is important that we continue to communicate directly with registered liquidators about their specific obligations and our expectations.

Consulting with stakeholders

- 156 The FSC and ABA provided feedback on our consultation approach. The FSC acknowledged our collaborative approach to consultation—for example, our consultation on scaled advice (also known as limited advice). The ABA noted that our consultations were well conducted and the timeframe for responses was usually reasonable, particularly compared with other Australian Government agencies. However, the ABA noted that our

consultations were sometimes delayed or held back until relatively close to the commencement dates of relevant legislation.

157

The ABA appreciated the deferral of the commencement of regulatory reform projects in response to the COVID-19 pandemic, and acknowledged that consultation on the new design and distribution obligations and updated breach reporting regime was delayed due to the deferral. However, they submitted that it was important that we release documents, such as regulatory guidance, as soon as possible, to allow industry to obtain early insights into our regulatory approach.

ASIC's response

Design and distribution obligations

The primary source of the design and distribution obligations is the amendment made to Chapter 7 of the Corporations Act by the Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Bill 2019. The Bill was introduced into Parliament in September 2018 and received royal assent in April 2019. Our guidance reflects the Corporations Act and the Bill's [Revised Explanatory Memorandum](#).

Our draft guidance was released within eight months of the reforms being legislated. We engaged extensively with industry in developing our guidance. Our consultation included holding roundtables in August and September 2019, issuing [Consultation Paper 325 Design and distribution obligations](#) (CP 325) and draft regulatory guidance in December 2019, holding further roundtables in March 2020 and targeted discussions throughout 2020.

We released [Regulatory Guide 274 Product design and distribution obligations](#) (RG 274) in December 2020, 10 months before the commencement of the obligations. We deferred the commencement of the obligations to 5 October 2021 due to the COVID-19 pandemic. We are continuing to engage with and support industry in relation to these reforms.

Breach reporting

Parliament passed the legislation implementing the breach reporting reforms in December 2020. We released our guidance for consultation in April 2021: see [Consultation Paper 340 Breach reporting and related obligations](#) (CP 340). We plan to publish our final guidance before the commencement of the regime in October 2021.

KPI 3 and KPI 4

KPI 3: Actions undertaken by regulators are proportionate to the regulatory risk being managed

KPI 4: Compliance and monitoring approaches are streamlined and coordinated

Risk-based approach to regulation

- 158 The ABA provided feedback on our approach to industry reviews. Specifically, they suggested that we should engage earlier with entities to minimise the administrative impact and allow industry to have input into the design of notices and setting of timeframes. The ABA also suggested that, on occasion, we had conducted reviews on a less formal basis without clarity of purpose or intention to publish the findings (e.g. our review of powers of attorney). In their view, this limited the utility of the work.
- 159 The FSC suggested that the lack of data across the financial advice industry impeded our compliance monitoring and other regulatory work. They suggested that better access to data would help inform us about how regulation reduced risks to consumers.

ASIC's response

Engagement for industry reviews

We engage early with entities on industry reviews where that is possible. In some circumstances seeking industry input on particular matters would not be appropriate and/or may be impracticable or difficult to coordinate, for example reviews involving many disparate types of entities.

Clarity of purpose and publication of review findings

We do not consider that every review warrants a public report. For some projects, we may finalise the review after completing initial scoping work.

Due to the onset of the COVID-19 pandemic, we made a decision in early 2020 to not prepare a public report on the powers of attorney project. We made this decision to enable banks and ASIC to address the more immediate issues arising from the pandemic. Although we did not publish a report, we provided written, tailored feedback and a list of recommended actions to each bank, to help the banks to improve their systems, policies and processes. We took into account that there were sufficient public materials that were regarded as industry best practice to inform banks about the design and implementation of the recommended changes.

We did not request the banks implement changes in accordance with our recommendations, because their resources were diverted to focus on pandemic-related hardship activities, and

because of the business disruption from the shift to remote work. However, we are aware that the majority of banks have proceeded with work to implement our recommendations.

We also consider the project to be useful in building our knowledge of consumer vulnerability issues, and informing Australian Government policy on powers of attorney issues.

Financial advice industry data

We support access to recurrent data on the financial advice industry by ASIC, industry and other stakeholders. We consider that the data will help improve our regulation of the industry and inform Government decisions about changes to legislative policy settings, and may help industry reduce the cost of advice. Subject to resource availability and other priorities, we would be pleased to work with industry on standardised data definitions and mechanisms to ensure recurrent mandatory collection of data.

This data would be made available to ASIC and, on a de-identified basis, to the public.

Enforcement and transparency

Taking action against misconduct

- 160 Three respondents provided observations on our enforcement work.
- 161 ARITA expressed support for our disciplinary action against registered liquidator misconduct, but was concerned about delays before we took action. ARITA members also raised concerns that we did not actively pursue director misconduct reported by registered liquidators.
- 162 The FSC considered that ASIC’s enforcement approach was inconsistent across the financial sector, noting that we are taking enforcement action against a single superannuation fund, when in their view many superannuation funds had engaged in unlawful conduct by blocking customer rollovers. They also noted that it was unclear whether we had been requiring the superannuation funds to remediate members, and raised concerns that we were allowing superannuation funds to pay for member remediation using trust assets. The FSC also considered that we had not been actively engaging with the FSC on remediation in superannuation, and not working closely with the ATO and APRA.
- 163 The ABA provided feedback on our oversight of various remediation processes. They noted that we had sometimes engaged bilaterally with entities, and that better communication to all entities working on remediation would result in faster, more consistent customer remediation across the industry.

ASIC's response

ASIC's enforcement approach across the financial services industry is to focus on efficient and effective enforcement action, prioritising cases that have a high deterrence value and those responding to egregious conduct.

Enforcement relating to and/or reports by registered liquidators

As outlined in INFO 151, we carefully consider how to respond to all potential breaches of the law, but do not undertake a formal investigation of every matter that comes to our attention. We consider a range of factors when deciding whether to investigate and possibly take enforcement action, to ensure we direct our finite resources appropriately.

As investigations are time and resource intensive, there is usually a lead time between a matter being identified by or reported to ASIC and ASIC taking disciplinary action against a registered liquidator or director.

Superannuation enforcement

Our enforcement approach in superannuation is consistent with our general approach to enforcement set out above.

We are not aware of systemic conduct by superannuation trustees that seeks to restrict members' ability to fully withdraw the balance from their fund, based on members' employment status. In addition to the superannuation fund we are taking enforcement action against, we are aware of one other superannuation fund that, historically, might have had a similar business rule with the effect of blocking or restricting customer rollovers. We made initial inquiries and determined that further action was not warranted.

ASIC has no power to direct superannuation funds to remediate members or to permit trustees to use fund assets in a way that is inconsistent with their legal obligations.

We have had significant recent engagement with the FSC about remediation in superannuation, including as part of our consultation on remediation guidance: see ASIC's response on the oversight of remediation processes below. We will take into account the FSC's feedback as our work on remediation progresses.

Oversight of remediation processes

We agree that there should be greater transparency about the existence, progress and outcomes of remediations. This will help facilitate greater sector-wide understanding about the scale and nature of remediation and provide insights for entities about how their peers design and conduct remediations.

We currently have some level of involvement in about 88 remediations. We note that entities undertake many more remediations that they do not report or communicate to regulators. ASIC currently has no powers to collect or publish

remediation information at a sector-wide level. We issue media releases (including progress reports) about large scale and strategic remediations we are involved in.

In December 2020, we released [Consultation Paper 335 Consumer remediation: Update to RG 256 \(CP 335\)](#), seeking feedback on key issues relating to how remediations are conducted in practice, and on extending the regulatory guidance beyond financial advice. The updated guidance is intended to provide greater certainty about our expectations and help entities conduct remediations consistently, with or without ASIC involvement. We will issue draft updated guidance later in 2021 for further stakeholder feedback.

We are liaising closely with the ATO and APRA on this work, and have done so on issues that have arisen in relation to superannuation and other industry remediation in the past.

We also released [Making it right: How to run a consumer-centred remediation](#) in December 2020 to help industry with the day-to-day design and execution of their remediations.

Cooperation with other regulators

- 164 The ABA commended our engagement across a broad range of domestic and international regulators. However, they suggested that there were opportunities to enhance communication between domestic regulators to reduce duplication and increase efficiency, for example when regulators request data from the same entities or conduct overlapping supervisory activities.
- 165 The FSC also suggested there were opportunities for better coordination and communication between ASIC and other regulators, for example in relation to ASIC's work with insurers to support vulnerable consumers through the COVID-19 pandemic.

ASIC's response

ASIC and APRA have a longstanding commitment to working together, as highlighted in our [annual statement on APRA-ASIC engagement](#) (published in December 2020).

This commitment is reinforced in the [ASIC–APRA Memorandum of Understanding \(PDF 46 KB\)](#), updated in 2019, and underpinned by a revised engagement structure, which includes a Standing Committee on Insurance to address insurance-specific issues and risks.

Our increased engagement is also supported by the recently established statutory obligation to cooperate and share information: see Part 6A of the ASIC Act. We will continue to enhance our collaboration as the engagement processes are bedded down.

We wrote a [public letter to insurers on consumers experiencing financial hardship during the COVID-19 pandemic](#) in April 2021. In this letter, we suggested that life insurers could offer a range of support options to consumers who were experiencing hardship, without prescribing that life insurers provide any particular measure. We liaised with a range of stakeholders, including APRA, about our approach. We also engaged with a group of life insurers (covering over 80% of the Australian life insurance market by gross written premium) before releasing the letter. Since the release of our letter, we understand that at least one life insurer has announced it will waive premiums for three months for policy holders affected by the recent floods in New South Wales and Queensland.

Appendix: List of stakeholders who made submissions

- Australian Restructuring Insolvency and Turnaround Association
- Australian Banking Association
- Customer Owned Banking Association
- Financial Services Council