

Introduction

Background

- 1.1 The House of Representatives Standing Committee on Economics (the committee) is empowered to inquire into, and report on, the annual reports of government departments and authorities tabled in the House that stand referred to the committee in accordance with the Speaker's Schedule.
- 1.2 The Australian Securities and Investments Commission (ASIC) 2018 Annual Report (annual report) stands referred to the committee in accordance with this schedule. The committee resolved at its meeting on 24 July 2019 that it would conduct an inquiry into the annual report.
- 1.3 ASIC is Australia's integrated corporate, markets, financial services, and consumer credit regulator. It is an independent Commonwealth statutory authority and administers the *Australian Securities and Investments Commission Act 2001* (ASIC Act), the *Corporations Act 2001* (Corporations Act), as well as a range of additional legislation.¹
- 1.4 ASIC was established in 1991 as the Australian Securities Commission, replacing the National Companies and Securities Commission and the Corporate Affairs offices of the states and territories. It was renamed ASIC in 1998 when it was given responsibility for consumer protections in superannuation, insurance, and deposit taking. ASIC's responsibilities were expanded in 2010 to regulate trustee companies; consumer credit and

1 ASIC, 'Laws we administer', < <https://asic.gov.au/about-asic/what-we-do/laws-we-administer/> >, accessed 15 October 2019.

finance broking; and for supervising trading on Australian licensed equity, derivatives and futures markets.²

1.5 ASIC's vision is for 'a fair, strong and efficient financial system for all Australians'. To realise this vision, ASIC stated that it will use its regulatory tools to:

- change behaviours to drive good consumer and investor outcomes;
- act against misconduct to maintain trust and integrity in the financial system;
- promote strong and innovative development of the financial system;
- help Australians to be in control of their financial lives; and
- provide efficient and accessible business registers that make it easier to do business.³

Areas of responsibility

1.6 As the corporate, markets, financial services, and consumer credit regulator, ASIC has a wide range of responsibilities. It is required by the ASIC Act to:

- maintain, facilitate, and improve the performance of the financial system and entities within it;
- promote confident and informed participation by investors and consumers in the financial system;
- administer the law effectively and with minimal procedural requirements;
- efficiently and quickly receive, process, and store information it receives;
- make information about companies and other bodies available to the public as soon as practicable; and
- take whatever action it can, and which is necessary, to enforce and give effect to the law.⁴

2 ASIC, 'How we operate: History' <<https://asic.gov.au/about-asic/what-we-do/how-we-operate/history/>>, accessed 15 October 2019.

3 ASIC, 'Our role' <<https://asic.gov.au/about-asic/what-we-do/our-role/>>, accessed 15 October 2019.

4 ASIC, 'Our role' <<https://asic.gov.au/about-asic/what-we-do/our-role/>>, accessed 15 October 2019.

- 1.7 ASIC's service charter further describes its role in relation to corporate, market, and financial system regulation encompassing, among other activities:
- registering companies and managed investment schemes;
 - registering auditors and liquidators;
 - registering business names;
 - licensing financial services and consumer credit businesses; and
 - examining new market license proposals.⁵
- 1.8 ASIC maintains publically accessible registers of companies, and registered and licensed entities, as well as disqualified directors and people who are banned from the financial services industry.⁶
- 1.9 ASIC may also grant relief for companies or individuals from some sections of the Corporations Act and the *National Consumer Credit Protection Act 2009* (National Credit Act).⁷

Enforcement outcomes

- 1.10 ASIC is responsible for pursuing companies or individuals that may have breached the laws it administers. The ASIC Act directs ASIC to 'take whatever action it can take, and is necessary, in order to enforce and give effect to the laws of the Commonwealth that confer functions and powers on it'.⁸
- 1.11 Following the Royal Commission's recommendation regarding ASIC's approach to enforcement, ASIC established an Office of Enforcement. The Office of Enforcement is responsible for carrying out ASIC's key enforcement activities and is functionally separate from ASIC's regulatory teams. It is comprised of ASIC's two specialist enforcement teams Markets Enforcement and Financial Services Enforcement, as well as the Enforcement Oversight Committee.⁹
- 1.12 ASIC advised that the Office of Enforcement will 'strengthen ASIC's enforcement culture and effectiveness' and will lead the application of

5 ASIC, 'ASIC service charter', <<https://asic.gov.au/about-asic/what-we-do/how-we-operate/asic-service-charter/asic-service-charter/>>, accessed 15 October 2019.

6 ASIC, 'ASIC service charter', <<https://asic.gov.au/about-asic/what-we-do/how-we-operate/asic-service-charter/asic-service-charter/>>, accessed 15 October 2019.

7 ASIC, 'ASIC service charter', <<https://asic.gov.au/about-asic/what-we-do/how-we-operate/asic-service-charter/asic-service-charter/>>, accessed 15 October 2019.

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

9 ASIC, *ASIC Enforcement Update: January to June 2019: Report 625*, August 2019, p. 3.

ASIC's 'Why not litigate?' operational discipline, including by developing enforcement policies.¹⁰ ASIC explained that 'this approach does not mean that we take every matter to court but allows us to consider relevant factors to ensure we are doing what we should to punish past misconduct and to deter future misconduct'.¹¹

- 1.13 In August 2019, ASIC advised that its new Office of Enforcement is now in place and that it is working to strengthen ASIC's enforcement effectiveness by accelerating court-based enforcement matters. Between July 2018 and June 2019 ASIC increased:
- the number of ASIC enforcement investigations by 20 per cent;
 - enforcement investigations involving the big six (or their officers or subsidiary companies) by 51 per cent; and
 - wealth management investigations by 216 per cent.¹²

Scope and conduct of the review

- 1.14 ASIC appeared before the committee on 16 October 2019 in Canberra. This was ASIC's first appearance at a public hearing with the committee in the 46th Parliament. Details are provided at Appendix A.
- 1.15 The proceedings of the hearing were webcast through the Parliament's website, allowing interested parties to view or listen to the proceedings as they occurred. The transcript of the hearing is available on the committee's website.¹³
- 1.16 ASIC's responses to the committee's questions on notice and in writing are provided on the committee's website.¹⁴
- 1.17 This report focuses on matters raised at the public hearing.

10 ASIC, *Royal Commission implementation update*, September 2019, p. 10.

11 ASIC, *ASIC Enforcement Update: January to June 2019: Report 625*, August 2019, p. 3.

12 ASIC, *ASIC Enforcement Update: January to June 2019: Report 625*, August 2019, p. 3.

13 House of Representatives Standing Committee on Economics, https://www.aph.gov.au/Parliamentary_Business/Committees/House/Economics/ASICReview2018/Public_Hearings.

14 House of Representatives Standing Committee on Economics, https://www.aph.gov.au/Parliamentary_Business/Committees/House/Economics/ASICReview2018/Documents .