



**ASIC**

Australian Securities &  
Investments Commission

# ASIC update: September 2019 to February 2020

February 2020

## **About this update**

This update sets out ASIC's work in the period from September 2019 to February 2020, including in response to the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, a year since the Final Report of the Royal Commission.

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## Overview

This update sets out ASIC's work in the six-month period from September 2019 to February 2020, including our response to the referrals and recommendations of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (the Royal Commission). It follows our previous updates on ASIC's response to the Royal Commission's recommendations in [February](#) and [September](#) 2019.

Since September 2019, ASIC has remained focused on a range of initiatives that we commenced prior to or in response to the Royal Commission's recommendations, including the application of our 'Why not litigate' operational discipline through our Office of Enforcement.

ASIC continues to provide input to the Australian Government's regulatory reform program and is using new regulatory powers given to it by the Parliament.

ASIC remains focused on enhanced supervision of the financial services sector, to promote enduring cultural and behavioural change and fair outcomes for consumers.

We are also responding to emerging issues as they arise—for example, in our coordinated response to the recent bushfire crisis.

Our work since September 2019 includes:

- operationalising and expanding our Office of Enforcement—a significant part but by no means all of ASIC's enforcement work remains focused on Royal Commission referrals and case studies that came before the Royal Commission, and contraventions of the financial services laws by the major banks, superannuation trustees and insurers. The Office of Enforcement has also focused on using ASIC's expanded toolkit, including new and increased civil and criminal penalties, to take action in response to market, corporate and financial sector misconduct;
- continuing our enhanced supervision program across large listed entities in the financial services and other sectors, focusing on non-financial risk management and oversight;
- completing our implementation of four of the 10 recommendations by the Royal Commission that were directed at ASIC, and providing significant input to Government on its legislative reform program in response to the Royal Commission's recommendations; and
- continuing to implement and use ASIC's new regulatory powers to identify and address misconduct and poor consumer outcomes.

More broadly, we continue to take action to protect consumers and improve the standard of conduct and governance in the financial services sector—in particular, in relation to superannuation, financial advice, insurance and credit. All of this work advances our objective of creating a fair, strong and efficient financial system for all Australians.

# 1. Update on ASIC's enforcement activities

While ASIC has made significant progress in responding to referrals and case studies from the Royal Commission, our increased enforcement activity is not limited to Royal Commission-related matters. We will continue to put other cases of misconduct before the Court, applying our 'Why not litigate?' approach to effectively deter similar, new or emerging forms of misconduct across the financial services sector.

## Royal Commission referrals and case studies

We are expediting the finalisation of our Royal Commission-related enforcement work through the strategic use of increased funding from the Government. We have significantly increased the resources dedicated to referrals and case studies from the Royal Commission, which focus on contraventions of the financial services and credit laws by a range of financial institutions, superannuation trustees and insurers. In expediting these matters, we have also strategically deployed resources through the use of external counsel and law firms.

The Royal Commission made 13 referrals to ASIC, of which:

- two are the subject of civil penalty litigation ([Nulis Nominees \(Australia\) Limited and MLC Nominees Pty Ltd](#), and [TAL Life Limited](#));
- one is being considered by the Commonwealth Director of Public Prosecutions (CDPP) for potential criminal action following our investigation;
- seven remain under investigation; and
- three have been concluded with no further action being taken.

The Royal Commission also examined 32 case studies. From these case studies:

- one, relating to NAB, was [recently finalised](#)—a former branch manager was sentenced to 12 months imprisonment to be served by way of an intensive corrections order;
- four are the subject of civil penalty litigation ([Select AFSL Pty Ltd](#), [Dover Financial Advisers Pty Ltd](#), [Doyle](#) and [NAB unlicensed home loan introducers](#));
- two are being considered by the CDPP for potential criminal action;
- seventeen are under investigation (some with external counsel involvement); and
- eight have been concluded with no further action being taken.

## Other key enforcement work

Apart from its focus on Royal Commission-related work, since its inception in July 2019 the Office of Enforcement has continued to increase its capacity to investigate and take action in response to market, corporate and financial sector misconduct. It is working to strengthen the governance and effectiveness of ASIC's enforcement, including by accelerating court-based enforcement.

As at 1 January 2020, ASIC had 316 investigations on foot covering a range of misconduct across ASIC's full breadth of jurisdiction. These existing investigations relate to, among other things, directors' and officers' breaches, insider trading and market manipulation, auditor and liquidator breaches, and breaches of licensing obligations (including of Australian financial services (AFS) licence obligations).

From January 2019 to January 2020, there has been:

- a 10% increase in the number of ASIC enforcement investigations; and
- a 52% increase in enforcement investigations involving CBA, NAB, Westpac, ANZ and AMP (or their officers or subsidiary companies).

ASIC will continue to use the courts to clarify the law where there is uncertainty, and thereby support and guide industry to understand their obligations.

In addition to Royal Commission referrals and case studies, ASIC's Office of Enforcement is currently prioritising:

- misconduct related to superannuation and insurance;
- cases that engage ASIC's new powers or provisions that now carry penalties or higher penalties;
- illegal phoenix activity;
- auditor misconduct; and
- new or emerging types of misconduct, including misconduct carried out online or with the use of emerging technologies.

ASIC will also always prioritise taking action on certain types of misconduct:

- significant market misconduct;
- misconduct that is serious either by its nature or extent of harm or that involves a large market participant or licensed entity;
- misconduct that involves a high risk of significant consumer harm, particularly involving vulnerable consumers; and
- misconduct by individuals, particularly criminal conduct, or governance failures at board or executive level.

ASIC will shortly publish our six-monthly enforcement update for July to December 2019.

## 2. Response to Royal Commission recommendations

Where the Royal Commission's recommendations were directed at ASIC or where ASIC can take initiative, we have acted as a matter of priority. Details of our actions to respond to the Royal Commission and further related regulatory activities are set out in Table 1 and Table 2.

### Supporting Government legislative reform

We continue to provide advice and input to support the large-scale program of law reform agreed by the Government in its response to the Royal Commission's recommendations, including contributing to government consultation with stakeholders, to meet the timeframes in the Government's Royal Commission implementation roadmap. The Government released 15 exposure draft bills and two consultation papers in December 2019 and January 2020. Together they address 35 of the Government's responses to the Royal Commission final report.

We are also now focusing on implementation arrangements for new laws as they commence, including developing and consulting on supporting legislative instruments and issuing regulatory guidance to meet industry demand.

Industry consultation is identifying where there is a need for ASIC to issue regulatory guidance and the focus of that guidance.

For example, ASIC will develop guidance in the areas of breach reporting, reference checking and information sharing by financial advisers and mortgage brokers, to reflect the [exposure draft legislation](#) released by the Government.

Further details of ASIC action are set out in Table 1 and Table 2.

### ASIC as conduct regulator for superannuation

The Government has released for [consultation proposed legislation](#) about ASIC's role as conduct regulator in superannuation, addressing several Royal Commission recommendations. The proposed legislation also responds to the Productivity Commission's report *Superannuation: Assessing Efficiency and Competitiveness*, which recommended clarifying the regulators' roles and powers, including their respective areas of focus.

ASIC has provided significant support to the development of the proposed legislation.

On 14 February 2020, ASIC and APRA issued a joint letter to superannuation trustees about how regulatory oversight will operate should the proposed legislative reforms become law. The letter explains how ASIC and APRA will work together to support the aims of the proposed legislation and more effectively promote better outcomes for members.

ASIC and APRA are committed to working together effectively to create better outcomes for superannuation members, consistent with the principles in the revised [APRA–ASIC Memorandum of Understanding \(MOU\)](#), referred to below.

The agencies recently cooperated on fee deductions and enforcement action against [MobiSuper Fund](#), a division of the Tidswell Master Superannuation Plan.

## Banking Code approval

In December 2019, ASIC approved an updated version of the Australian Banking Association's (ABA's) [Banking Code of Practice](#), which will commence on 1 March 2020. This followed extensive review and consultation on the draft Banking Code by ASIC.

The updated Banking Code is intended, among other things, to implement the Royal Commission's recommendations relating to accessibility of banking products and services and easing the burden on agricultural borrowers affected by drought and natural disaster.

Together with the Banking Code amendments approved in June 2019, these decisions implement the Royal Commission's recommendations 1.8 and 1.13.

## APRA–ASIC coordination

On 29 November 2019, APRA and ASIC [released an updated MOU](#), delivering on the Royal Commission's recommendation 6.10.

The MOU facilitates more timely supervision, investigations and enforcement action and deeper cooperation on policy matters and internal capabilities.

It also supports additional measures to increase engagement between APRA and ASIC, including regular meetings of ASIC Commissioners and APRA Members under a revised

engagement structure and working together on areas of common interest, including data, thematic reviews, governance and accountability.

Under the framework established by the revised MOU, APRA and ASIC are using dedicated cross agency working groups to progress a number of areas of shared interest, including superannuation, enhanced supervision, corporate governance and culture, and policy considerations relating to the proposed Financial Accountability Regime.

ASIC is continuing to work with APRA to put in place arrangements to strengthen cooperation and information sharing, consistent with the commitments in the MOU.

## ASIC's Management Accountability Regime

On 19 December 2019, ASIC implemented the Royal Commission's recommendation 6.12 by introducing a fit-for-purpose accountability regime that applies key features of the Banking Executive Accountability Regime (BEAR) to our Commission and senior staff. We also published an updated [internal governance framework](#) at the same time.

[ASIC's Management Accountability Regime](#) details the accountabilities of ASIC's Chair, Commission members and accountable executives. It includes an updated committee structure to strengthen oversight of executive actions and assist the Commission in the performance of its responsibilities, as well as accountability statements for Commissioners and accountable executives that identify core responsibilities and individual accountabilities.

Strengthening governance and accountability measures are part of ASIC's strategic change program. The updated framework articulates how ASIC's Commission collectively exercises its functions and powers to deliver ASIC's statutory objectives.



### 3. Update on ASIC's regulatory activities

This section provides further details of key activities from ASIC's broader supervisory and regulatory work between September 2019 and February 2020.

Consistent with ASIC's strategic priorities 2019–20, we continue to call out instances of harm or unfair outcomes for consumers and take action to address these concerns using our full regulatory toolkit. Some of our actions provide interim consumer protections ahead of broader legislative reform being considered by Parliament.

#### Remediation

Where misconduct by financial services entities leads to losses for consumers, in addition to targeted use of our regulatory tools, we have a strong focus on remediation and the monitoring of remediation programs.

ASIC monitors some significant remediation programs, but given their large number and great variation in size and complexity, many are administered by licensees without ASIC's direct supervision. ASIC does not have an explicit power to direct that remediations be carried out or that they be conducted in a particular way. We may seek information from licensees about a remediation, but there are no general obligations for licensees to provide data about these programs to ASIC or to the public. Improved transparency will be a focus of our upcoming consultation on revised [Regulatory Guide 256](#) *Client review and remediation conducted by advice licensees* (RG 256).

Some examples of ASIC's current and recent monitoring and other work on remediation include:

**Financial advice-related remediation:** ASIC is monitoring remediation programs by six of Australia's largest banking and financial services institutions in relation to loss or detriment suffered by consumers due to non-compliant advice or fee-for-no-service (FFNS) conduct. As at 31 December 2019, a total of \$749.7 million in compensation has been paid or offered by those institutions.

**Insurance related-remediation:** ASIC's earlier work in consumer credit insurance led to a remediation program expected to exceed \$100 million, paid to over 300,000 consumers. To date, over \$51 million has been paid to over 186,000 consumers, and we are working to secure further compensation. ASIC also earlier obtained remediation for consumers from providers of add-on insurance products, with refunds totalling over \$130 million. Most recently, in November 2019 CommInsure conducted a remediation program refunding over \$12 million to customers sold a range of life insurance products via telemarketing calls.

**Regulatory tools and obligations:** Government is consulting on a number of law reforms that create new obligations for licensees and enhance ASIC's ability to intervene in relation to remediation. ASIC is providing assistance and advice to support draft legislation that would allow us to direct licensees to establish a remediation program in relation to misconduct, and new laws that would require licensees to investigate and remediate misconduct by financial advisers and mortgage brokers.

**Regulatory guidance:** We are currently reviewing and revising our existing remediation policy in RG 256. Updated guidance will be released for consultation before June 2020, informed by our recent monitoring of significant remediation programs.

While much of ASIC's work in areas such as superannuation, insurance and consumer credit remain focused on issues highlighted during the Royal Commission, we are also responding to emerging issues as they arise.

Where law reform completed by Parliament has given ASIC new regulatory powers, we are working with stakeholders on their implementation and identifying cases where use of the new powers is needed.

## Strengthened supervision

Our enhanced and intensive supervisory initiatives have progressed significantly between September 2019 and February 2020.

ASIC has completed on-site reviews at the five major financial institutions—AMP, ANZ, CBA, NAB and Westpac.

Our close and continuous monitoring supervisory program was developed to directly encourage enduring cultural and behavioural change, and to promote the earlier identification of practices and processes that may cause financial harm to consumers and erode community confidence in the integrity of Australia's major financial institutions. This accords with ASIC's obligation to strive to maintain, facilitate and improve the performance of Australia's financial system and the entities within it.

The on-site reviews focused on the institutions' approaches to detection of and response to incidents (breach reporting), and their internal dispute resolution (complaints handling) arrangements, including processes, practices, resourcing, governance and reporting.

Between October 2018 and December 2019, ASIC staff were on-site at the major banks and AMP for 216 days, and conducted 739 meetings with banking staff at all levels.

We will shortly report on our key observations relating to incident and issue management, internal dispute resolution and broader non-financial risk management. Transparency is an important regulatory tool to deploy following targeted supervisory programs, to more broadly influence and inform the governance and conduct of entities.

As part of our focus on corporate governance, ASIC also undertook a targeted supervisory program to review the oversight of non-financial risk by directors and officers in seven of Australia's largest financial services entities<sup>1</sup> and identify any shortcomings.

We communicated our findings in a [report on director and officer oversight of non-financial risk](#), released on 2 October 2019. It reflects ASIC's observation that boards were challenged by important elements of non-financial risk management and their oversight was less mature than required, which resulted in some instances of systemic and significant misconduct.

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<sup>1</sup> AMP, ANZ, CBA, Insurance Australia Group Ltd, IOOF Holdings Ltd, NAB and Westpac.

ASIC will also shortly communicate the findings of our supervisory review of board oversight and discretion in relation to executive variable pay schemes. That work focused on the practices of 21 large listed Australian entities (including the seven entities the subject of the initial report, as well as ASX-listed non-financial services entities).

These reviews are core to ASIC's statutory mandate to monitor and promote market integrity and consumer protection in the Australian financial system. Our findings seek to change behaviour so as to prevent harm resulting from corporate misconduct, by addressing the oversight of key risks and the use of a key influencer of conduct—variable pay.

These reviews of oversight of non-financial risk and variable pay schemes have been informed by an analysis of over 43,000 documents and 97 interviews with boards and management.

For all of these targeted supervisory programs, in addition to the broader public findings, we have directly communicated entity specific findings to the CEO and board of each entity.

ASIC is also focusing on audit quality in our supervisory work. We have adopted a broader, more intensive supervisory and enforcement approach to our work program on audit, which includes:

- reviewing how conflicts of interest are managed in the six largest audit firms, as well as firm culture and accountability mechanisms in relation to audit quality;
- analysing the processes that underpin audit quality and the effectiveness of director oversight of financial reporting, in particular the use of root cause analysis in audit firms, as identifying the root causes of an adverse finding enables corrective action to be taken;
- increasing transparency by publishing the level of adverse findings for large audit firms, as well as broader measures and indicators of audit quality; and
- implementing our 'Why not litigate' approach in relation to auditor conduct matters.

## Use of new regulatory tools and powers

### Product intervention power

Following extensive consultation, ASIC will shortly release guidance on our approach to the exercise of our product intervention power. Our guidance will outline the scope of the power, when and how ASIC expects to use the power, and how a product intervention order is made.

We used this power for the first time in September 2019 to [ban a short-term credit model](#).<sup>2</sup> We are also consulting on further proposed interventions on a number of issues where we have concerns about significant consumer detriment—over-the-counter (OTC) binary options and contracts for difference (CFDs), and the sale of add-on financial products through caryard intermediaries.

Details of each use, or proposed use of our product intervention power, are set out in Table 2.

## Design and distribution obligations

On 19 December 2019, ASIC initiated [consultation on draft guidance](#) for the new financial product design and distribution obligations, which come into effect in April 2021. Our consultation, which closes on 11 March 2020, has been extensive, with roundtables being convened in addition to the receipt and consideration of submissions.

The design and distribution obligations address the causes of much of the misconduct examined by the Royal Commission. They require financial product firms to develop and distribute products that meet the needs of the consumers in their intended target market.

These reforms bring Australia into line with comparable jurisdictions, including the United Kingdom, Netherlands and European Union, where similar product governance regimes are already in place. We will support industry as they prepare to meet the new requirements.

## Mortgage broker best interest duty

On 6 February 2020, [Parliament passed legislation](#) to give effect to the Royal Commission's recommendation that mortgage brokers be subject to a duty to act in their consumers' best interests.

On 20 February 2020, ASIC released [Consultation Paper 327 Mortgage brokers: Best interests duty](#) (CP 327), with proposals for ASIC guidance on the new best interests duty and related obligations. Consistent with the Government's legislation, the draft guidance is principles based, but incorporates practical examples. The consultation closes on 20 March 2020.

## New licensing and banning powers

On 6 February 2020, [Parliament passed legislation](#) to strengthen ASIC's licensing and banning powers and enhance ASIC's investigatory capability. The legislation implements a number of recommendations from the ASIC Enforcement Review Taskforce and will provide ASIC with additional tools to support our enhanced supervision and enforcement work. Key measures include:

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<sup>2</sup> The short term credit product intervention order is subject to judicial review proceedings in the Federal Court. The hearing is set down for 30 March 2020. The order remains in force while the matter is before the court.

- expanding the grounds for banning orders and enabling ASIC to prohibit a person from controlling or performing key functions in a licensee;
- introducing a ‘fit and proper person’ standard for applicants for an AFS licence (replacing the current ‘of good fame and character’ test), and enhancing ASIC’s ability to refuse or suspend a licence; and
- harmonising and enhancing ASIC’s search warrant powers in line with those in the *Crimes Act 1914* and allowing ASIC to use telecommunications intercept material in its own investigations and prosecutions of serious offences.

We are incorporating the new powers into our supervision and enforcement processes.

We are also providing input to Treasury on proposed legislation to implement additional Enforcement Review Taskforce reforms, including reforms to breach reporting and introduction of a directions power for ASIC. These are currently subject to consultation.

## Superannuation

ASIC is providing significant input to the Government on regulatory reform relating to superannuation.

ASIC and APRA have welcomed reforms increasing ASIC’s role in superannuation, and ASIC is taking steps to ensure we are well-positioned to use this proposed expanded regulatory remit.

We have reviewed how financial advice is provided through superannuation funds and the overall quality of this advice. Our findings are set out in [Report 639 \*Financial advice by superannuation funds\*](#) (REP 639), released on 3 December 2019.

We have also continued to emphasise the need for industry to focus on consumer outcomes in relation to insurance in superannuation.

In our review of communications material from superannuation funds expected to be significantly impacted by the Protecting Your Superannuation Package (PYSP) reforms, we identified communications of varying quality and intervened to prevent further dissemination of problematic communications. We have warned trustees that we will be monitoring further communications. Our findings and expectations are reflected in [Report 655 \*Review of member communications: Protecting Your Superannuation Package \(PYSP\) reforms\*](#) (REP 655), published on 12 February 2020. As a result of our review, we expect to see better, more consumer-focused communication by trustees.

We have also scrutinised industry’s implementation of the Insurance in Superannuation Voluntary Code of Practice. There has been some improvement in practices as a result of adoption of the code by a significant number of trustees, but further work needs to be done by trustees to achieve the high standards that consumers expect. Our findings are set out in [Report 646 \*Insurance in superannuation: Industry implementation of the Voluntary Code of Practice\*](#) (REP 646), released on 13 December 2019.

On 29 November 2019 we released updated [Regulatory Guidance 97](#) *Disclosing fees and costs in PDSs and periodic statements* (RG 97) to clarify disclosure obligations for superannuation trustees, which should result in more transparent and useable fees and costs information. This work involved public consultation, external expert review of the guidance and consumer testing of the proposed presentation of fees and costs.

As outlined above, our Office of Enforcement is also prioritising misconduct related to superannuation, and we are using persistent underperformance as a key indicator to help target our work to identify misconduct.

## Insurance

ASIC's work in insurance has focused on the design and sale of inappropriate products, particularly to vulnerable consumers, and on using our new regulatory powers to act on issues highlighted by the Royal Commission.

As noted above, we have proposed to use our product intervention power to reform the sale of add-on insurance and warranty products by car yards, to address ongoing concerns about consumer harms from the sale of these products. On 1 October 2019 we released [Consultation Paper 324](#) *Product intervention: The sale of add-on financial products through caryard intermediaries* (CP 324) on our proposal to intervene.

We have also found significant industry-wide problems with the design of total and permanent disability (TPD) insurance and the claims handling process, which mean many consumers cannot rely on this cover when they need it most. We have called on insurers and trustees to take steps to implement changes to their claims handling practices and to redesign TPD products so that they offer significantly better value for consumers.

[Report 633](#) *Holes in the safety net: A review of TPD insurance claims* was published on 17 October 2019.

We also [implemented a ban](#) on unsolicited telephone sales of direct life insurance and consumer credit insurance, following consultation in July 2019. The ban took effect on 13 January 2020.

On 19 November 2019, we announced that following concerns raised by ASIC, the Colonial Mutual Life Assurance Society Limited (trading as CommInsure) [conducted a remediation program](#) refunding over \$12 million to Commonwealth Bank customers. CommInsure also pled guilty to 87 counts of offering to sell insurance products in the course of unlawful, unsolicited telephone calls. Some of the customers subject to these calls were compensated in the remediation program.

Legislation to extend the unfair contract terms (UCT) regime to insurance contracts will take effect from 5 April 2021, bringing insurance into line with all financial products. The bill will help ensure that consumers and small businesses have confidence that the standard form insurance contracts they are offered are fair. ASIC will review insurers'

policies and consult with relevant stakeholders to identify key areas of concern. We expect that insurers will take a proactive approach to reviewing their contracts.

#### Highlight: ASIC's response to natural disasters

ASIC has established a dedicated working group to triage issues arising from natural disasters and events such as the recent bushfire crisis, and to coordinate our response to those issues that ASIC can assist with. The working group focuses on reinforcing the [expectation of fair and effective insurance claims handling](#) for people affected by the bushfires. In particular, we have been:

**Monitoring:** Proactively monitoring emerging issues, based on information from the banking and insurance sectors, consumer groups and the public.

**Relief:** [Providing relief](#) for bushfire-affected companies, including incorporated small businesses, by (on application) reviewing ASIC fees incurred, considering alternative payment options and in some circumstances potentially waiving fees.

**Cooperation:** Working cooperatively with other regulators to coordinate our response to consumer and regulatory issues.

**Information:** Providing information for consumers about what to do after a natural disaster, by way of the media and ASIC's [moneysmart website](#).

**Warning:** Warning against unscrupulous insurance claims management 'service providers'—unlicensed for-profit businesses that sign up policy holders and, for a fee, undertake the administrative work on an insurance claim.

**Protection:** To the extent our current jurisdiction allows, we will seek to take regulatory action that would provide interim consumer protections ahead of broader legislative reform to be considered by Parliament.

## Responsible lending and credit

ASIC's work in this sector has focused on responsible lending and ensuring that consumers are sold products appropriate to their needs.

On 9 December 2019, we released updated [Regulatory Guide 209](#) *Credit licensing: Responsible lending conduct* (RG 209). The updated guidance follows extensive consultation and provides greater clarity and support to lenders and brokers in meeting their statutory obligations. Importantly, we have maintained principles-based guidance that reinforces discretion for lenders.

The guidance clarifies the scope of the responsible lending obligations, and the areas that are not subject to those obligations—such as small business lending, irrespective of the nature of the security used for the loan. We have also updated RG 209 to reflect technological developments, including open banking and digital data capture services.

We are also continuing to monitor the ‘buy now pay later’ sector, following release of our [Report 600](#) *Review of buy now pay later arrangements* (REP 600) in 2018 and will release an updated review shortly.

## Financial advice

ASIC has continued to focus on improving the quality of financial advice using our full range of regulatory tools, including enforcement action, banning advisers engaging in misconduct, remediating consumers and oversight of licensee compliance.

We are taking action against adviser misconduct. From 1 September 2019 to 14 February 2020, we banned 14 AFS licensees, suspended three AFS licences and cancelled one AFS licence.

As noted earlier, compensation paid or offered by six of Australia’s largest banking and financial services institutions to customers who suffered loss or detriment because of non-compliant advice or ‘fees for no service’ misconduct totalled \$749.7 million as at 31 December 2019: see our [update](#) of 11 February 2020 for details.

Our compliance assessments of fee disclosure statements and renewal notices issued by 30 randomly sampled AFS licensees and their representatives found that over half did not have effective processes to remind them when renewal notices were due or when to stop ongoing fees. We reported on these findings on 28 November 2019, and provided practical tips for licensees and representatives to improve their compliance in [Report 636](#) *Compliance with fee disclosure statement and renewal notice obligations* (REP 636).

We are also investigating a number of advice licensees for potential breaches of the fee disclosure statement and renewal notice obligations, and will determine whether court action is appropriate at the end of these investigations. On 17 December 2019, ASIC announced commencement of [court action against NAB](#) for fee disclosure statement and fees for no service failures.

As noted earlier, we have also reviewed how advice is provided through superannuation funds and the overall quality of this advice: see [REP 639](#).

We have also conducted an end-to-end examination of the experiences of consumers who received personal advice to purchase timeshare memberships from one of the five main points-based timeshare operators in Australia, from the initial approach and sale through to membership use and the exit process. Our research found that many consumers were not getting the expected value from their membership and were experiencing financial stress because of unexpected changes to membership fees or to their personal circumstances. Our findings were released on 6 December 2019 in [Report 642](#) *Timeshare: Consumers’ experiences* (REP 642).

We also undertook a targeted review of personal advice given by timeshare operators, to inform our work on updating the regulatory settings for timeshare. We plan to release an update of [Regulatory Guide 160](#) *Time-sharing schemes* (RG 160) in the first half of 2020.



## Market supervision and market infrastructure

We have strengthened our supervision of wholesale market operators by completing the licensing of previously exempt operators of trading platforms. Seven such licences have been granted since September 2019, resulting in heightened supervision and reporting requirements. We continue our in-depth assessments of governance, supervision and cyber resilience arrangements of professional trading platforms, with the [report on Bloomberg Trading Australia](#) published in October 2019.

We have scrutinised the practices of wholesale foreign exchange (FX) market participants, highlighted some poor practices and asked participants to consider how they might improve their practices in order to enhance their management of conduct risk. Our findings are set out in [Report 652 Wholesale FX practices in Australia](#) (REP 652) that was released on 18 December 2019.

We also continue to focus on the cyber resilience capabilities of firms operating in Australia's financial markets. Our [Report 651 Cyber resilience of firms in Australia's financial markets: 2018-19](#) (REP 651), released on 18 December 2019, identifies new and emerging trends, as well as challenges that have emerged over the past two years. ASIC will continue to monitor, assess and measure improvement over time.

## ASIC communications, guidance and regulatory reports

In addition to the initiatives highlighted above, since September 2019 we have published the results of our regulatory and guidance work in key areas as set out in Table 2.

Three highlights are:

- To assist financial services providers to meet their forthcoming design and distribution obligations, ASIC published joint work with the Dutch Authority for Financial Markets (AFM) on [Disclosure: Why it shouldn't be the default](#), on 14 October 2019. This work presents three decades of research and evidence to explain why financial services disclosure and warnings have failed to deliver good consumer outcomes, or in some cases, have contributed to consumer harm. The report's observations complement the findings of the Financial System Inquiry and the Royal Commission and will assist financial services providers to meet their design and distribution obligations from next year.
- Our guidance to assist entities that must have a whistleblower policy under recent amendments to the *Corporations Act 2001* (Corporations Act), including public companies, large proprietary companies and propriety companies that are trustees of registerable superannuation entities. [Regulatory Guide 270 Whistleblower policies](#) (RG 270) was released on 13 November 2019 and gives guidance to help entities establish and maintain a whistleblower policy that complies with their legal obligations.
- Our work to improve audit quality, including findings from our audit inspections and future focus areas for auditors, in [Report 648 ASIC audit inspections 2018-19](#) (REP 648), as well as measures and indicators relevant to understanding audit quality, in [Report 649 Audit quality measures, indicators and other information: 2018-19](#) (REP 649). These were jointly released on 12 December 2019.

## Response to Royal Commission recommendations and further actions since September 2019

Table 1: A. Response to Royal Commission recommendations directed at ASIC

Royal Commission recommendations	ASIC action
Recommendations 1.8, 1.10, 1.13, 1.16—Amendments to the Banking Code	<p>In December 2019, ASIC approved an updated version of the ABA's Banking Code of Practice, which will commence on 1 March 2020.</p> <p>Among other things, the March 2020 code is intended to implement recommendations from the Royal Commission relating to accessibility of banking products and services, and easing the burden on agricultural borrowers affected by drought and natural disaster.</p> <p>ASIC's decision to approve the March 2020 code is on the understanding that the ABA will make further changes to the Code in 2021, including changes relating to the informal overdrafts, as well as other stakeholder feedback.</p> <p>In relation to the Royal Commission recommendation about the definition of small businesses in the code, ASIC is collecting quarterly small business loan data from ABA member banks, and the ABA must commission an independent review of the definition by 1 January 2021. These activities will help ASIC assess whether the current definition is covering an appropriate proportion of Australian businesses.</p> <p>See <a href="#">19-358MR</a>.</p>
Additional government commitment in response to Recommendation 2.4—End of grandfathered commissions	<p>The Royal Commission recommended that grandfathering provisions for conflicted remuneration should be repealed as soon as is reasonably practicable. The <a href="#">Treasury Laws Amendment (Ending Grandfathered Conflicted Remuneration) Act 2019</a> was passed in October 2019, implementing this recommendation to end grandfathered conflicted remuneration as of 1 January 2021. As directed by the Treasurer, ASIC is investigating the extent to which grandfathering is being voluntarily ended before 1 January 2021, including the extent to which the benefits are being passed on to affected clients.</p> <p>ASIC is conducting both quantitative and qualitative reviews. For the quantitative review, ASIC is surveying entities known to pay grandfathered conflicted remuneration to AFS licensees or their representatives and requiring them under notice to provide data initially for a 12-month period (from 1 July 2018 to 30 June 2019), and thereafter on a quarterly basis for the review period (for example, reporting for the period from 1 July to 30 September 2019 will be in October 2019). The qualitative review will include a smaller sample of entities that pay and receive grandfathered remuneration and will involve more detailed engagement and analysis during the review period.</p> <p>ASIC will analyse the information from both reviews and report to the Treasurer by 30 June 2021. The report will also be released publicly. ASIC expects to provide an update on its investigation to the Treasurer and industry as appropriate during the review period.</p>

Royal Commission recommendations	ASIC action
Recommendation 2.5— Life insurance commissions review	<p>The Royal Commission recommended that, when ASIC conducts its review of conflicted remuneration relating to life risk insurance products and the operation of the <a href="#">ASIC Corporations (Life Insurance Commissions) Instrument 2017</a>, ASIC should consider further reducing the cap on commissions in respect of life risk insurance products. Unless there is a clear justification for retaining those commissions, the cap should ultimately be reduced to zero.</p> <p>In 2018, ASIC commenced collecting recurring data from the life insurance industry. The data being collected will help ASIC understand whether the industry is complying with the law (i.e. whether commission caps and clawbacks are being complied with) and whether the life insurance framework reforms are likely to be improving consumer outcomes (i.e. whether lapse rates and/or premiums rates are decreasing); as well as identify unintended consequences (i.e. changes in riders, premiums or distribution). ASIC has collected four rounds of data, which will continue until 2021 (nine rounds in total).</p> <p>This year ASIC will also commence two new streams of work: a review of a sample of life insurance advice and a review of underinsurance. ASIC is currently consulting with Government, industry and consumer groups about the design of these workstreams.</p>
Recommendation 4.9— Enforceable code provisions	<p>ASIC will continue to work with industry to give effect to the Government's commitment to allow for greater sanctions to be imposed following a breach of an industry code of conduct. We have provided input to the Government's proposed legislative reform in relation to industry codes, scheduled to be introduced into Parliament before 30 June 2020.</p>
Recommendation 6.2— ASIC's approach to enforcement	<p>The Royal Commission recommended that ASIC should adopt an approach to enforcement that:</p> <ul style="list-style-type: none"> <li>• takes, as its starting point, the question of whether a court should determine the consequences of a contravention;</li> <li>• recognises that infringement notices should principally be used for administrative failings by entities, will rarely be appropriate for provisions that require an evaluative judgment and, beyond purely administrative failings, will rarely be an appropriate enforcement tool where the infringing party is a large corporation;</li> <li>• recognises the relevance and importance of general and specific deterrence in deciding whether to accept an enforceable undertaking and the utility in obtaining admissions in enforceable undertakings; and</li> <li>• separates, as much as possible, enforcement staff from non-enforcement related contact with regulated entities.</li> </ul> <p>ASIC has established an Office of Enforcement, which is working to strengthen the governance and effectiveness of ASIC's enforcement work, focusing on expediting enforcement matters across ASIC's jurisdiction, including accelerating court-based enforcement, and leading the application of ASIC's 'Why not litigate?' operational discipline, including by developing enforcement policies.</p>

**Royal Commission recommendations**

**ASIC action**

Recommendation 6.10—  
Cooperation memorandum

The Royal Commission recommended ASIC and APRA should prepare and maintain a joint memorandum setting out how they intend to comply with their statutory obligation to cooperate. It further recommended the memorandum should be reviewed biennially and that ASIC and APRA should report each year on its operation and steps taken under it, in their annual reports.

A revised [Memorandum of Understanding \(MOU\)](#) was released on 29 November 2019, facilitating more timely supervision, investigations and enforcement action and deeper cooperation on policy matters and internal capabilities between ASIC and APRA. The MOU is accompanied by a revised engagement structure to strengthen cooperation on areas of common interest, including data, thematic reviews, governance and accountability.

Recommendation 6.12—  
Application of the BEAR to  
regulators

The Royal Commission recommended APRA and ASIC should be subject to accountability principles consistent with the BEAR. In its response, the Government noted that the Financial Conduct Authority in the UK has adopted a similar regime to enhance its own internal accountability.

ASIC delivered on this recommendation on 19 December 2019 by publishing our [Management Accountability Regime](#), including an accountability map and accountability statements for Executive Directors and Commissioners that identify core responsibilities and individual accountabilities.

Table 1: B. ASIC action on other Royal Commission recommendations being implemented in legislation

Royal Commission recommendations implemented in legislation	Details and ASIC action
<p>Recommendation 1.2 and 1.3—Best interests duty and remuneration for mortgage brokers</p>	<p>The following legislation has been passed by Parliament since September 2019:</p> <ul style="list-style-type: none"> <li>• <i>Treasury Laws Amendment (Ending Grandfathered Conflicted Remuneration) Act 2019</i>, which received Royal Assent on 28 October 2019, implements the recommendation that grandfathering provisions for conflicted remuneration be removed as soon as is reasonably practicable.</li> </ul>
<p>Recommendation 2.4—Ending grandfathered conflicted remuneration in relation to financial advice provided to retail clients</p>	<ul style="list-style-type: none"> <li>• Financial Sector Reform (Hayne Royal Commission Response—Stronger Regulators (2019 Measures)) Bill 2019 received Royal Assent on 17 February 2020. The Bill implements the commitment made by Government to implement a number of the outstanding recommendations of the ASIC Enforcement Review Taskforce.</li> </ul>
<p>Recommendation 4.2—Extending consumer protection provisions to funeral expenses policies</p>	<ul style="list-style-type: none"> <li>• Financial Sector Reform (Hayne Royal Commission Response—Protecting Consumers (2019 Measures)) Bill 2019 received Royal Assent on 17 February 2020. The Bill extends the existing protections of the unfair contract terms regime under the ASIC Act to insurance contracts governed by the <i>Insurance Contracts Act 1984</i> and extends the application of consumer protection provisions under the ASIC Act to funeral expense policies, addresses conflicted remuneration for mortgage brokers and introduces a requirement for mortgage brokers to act in the best interests of consumers.</li> </ul>
<p>Recommendation 4.7—Extending UCT to contracts under the <i>Insurance Contracts Act</i></p>	<p>ASIC provided significant input to Treasury in preparing the legislation.</p> <p>ASIC has begun to implement these reforms. In particular:</p> <ul style="list-style-type: none"> <li>• In relation to recommendations 1.2 and 1.3, ASIC is consulting on draft regulatory guidance relating to mortgage brokers best interest duty.</li> </ul>
<p>Recommendation 7.2 (additional commitment)—Implementation of outstanding ASIC Enforcement Review Taskforce recommendations</p>	<ul style="list-style-type: none"> <li>• In relation to recommendation 4.2, ASIC is preparing for the end of the transition period after which all providers of funeral expenses facilities will be required to have an AFS licence. Providers that do not currently hold an AFS licence will need to be licensed from 1 April 2020. Providers that currently hold an AFS licence will need to have appropriate authorisations and comply with relevant obligations from 1 January 2021.</li> <li>• In relation to recommendation 4.7, ASIC welcomes the extension of the UCT regime to insurance contracts, to bring insurance into line with all financial products. ASIC will review insurers' policies and consult with relevant stakeholders to identify key areas of concern. We expect that insurers will take a proactive approach to reviewing their contracts.</li> </ul>

Royal Commission recommendations with exposure draft legislation	Details and ASIC action
<p>Recommendation 1.15—Enforceability of financial services industry codes</p> <p>Recommendations 1.6, 2.7, 2.8, 2.9 and 7.2—</p> <p>Strengthening breach reporting</p>	<p>ASIC is providing extensive advice and input to support the large-scale program of law reform agreed to by the Government in response to the Royal Commission's recommendations.</p> <p>For all of these exposure draft bills, ASIC has provided input to the Treasury on the draft legislation.</p> <p>ASIC has also attended consultation roundtables held by the Treasury in relation to a number of exposure drafts.</p> <p>The exposure draft legislation contemplates ASIC making legislative instruments to implement the following recommendations. ASIC proposes to consult on draft legislative instruments to support the implementation of the reforms:</p> <ul style="list-style-type: none"> <li>• recommendation 1.6—reference checking and information sharing obligations for mortgage brokers;</li> <li>• recommendations 2.1 and 3.3—content requirements for the express written authority for deduction of fees for ongoing fee arrangements and deduction of non-ongoing fees from choice superannuation accounts;</li> <li>• recommendation 2.2—the requirements for the lack of independence disclosure to be included in a financial services guide;</li> <li>• recommendation 2.7—reference checking and information sharing obligations for financial advisers;</li> <li>• recommendation 4.3—prescribed deferred sales model information statement and products that will be exempted from the deferred sales model; and</li> <li>• recommendation 4.4—products to which the vehicle dealer commission cap will apply and the level of the cap.</li> </ul>
<p>Recommendations 3.2 and 3.3—Advice fees in superannuation</p> <p>Recommendations 3.4 and 4.1—No hawking of superannuation and insurance products</p> <p>Recommendations 3.8, 6.3, 6.4 and 6.5—</p> <p>Superannuation regulator roles</p>	<p>ASIC also plans to issue guidance and information to explain our expectations on issues arising from the following recommendations:</p> <ul style="list-style-type: none"> <li>• recommendation 4.8—who is required to apply for the new licence or authorisation, the process for applications, and meeting the general obligations under s912A of the Corporations Act;</li> <li>• recommendation 1.6 and 2.7—reference checking and information sharing obligations for financial advisers and mortgage brokers;</li> <li>• recommendation 1.6, 2.8 and 7.2—the expanded breach reporting regime for AFS and credit licensees;</li> <li>• recommendation 1.6 and 2.9—investigating financial adviser and mortgage broker misconduct and remediating clients who have suffered loss or damage;</li> <li>• recommendation 4.1—the application of anti-hawking reforms to specific sectors; and</li> <li>• recommendation 4.9—aspects of the enforceable industry codes reforms that will be administered by ASIC.</li> </ul>

Royal Commission recommendations with exposure draft legislation	Details and ASIC action
<p>Recommendation 4.2—Restricting use of the term ‘insurer’ and ‘insurer’</p>	<p>For recommendations 3.8, 6.3, 6.4 and 6.5, ASIC has issued a joint letter with APRA to industry about how ASIC and APRA will carry out their roles under the proposed legislation. ASIC may communicate further about this after commencement of the legislation.</p>
<p>Recommendation 4.3—Deferred sales model for add-on insurance</p>	
<p>Recommendation 4.4—Cap on vehicle dealer commissions</p>	
<p>Recommendation 4.5—Duty to take reasonable care not to make a misrepresentative to an insurer</p>	
<p>Recommendation 4.6—Limiting avoidance of life insurance contracts</p>	
<p>Recommendation 4.8—Removal of claims handling exemption</p>	
<p>Recommendation 4.9—Enforceable code provisions</p>	
<p>Recommendations 6.10 and 6.12—Financial regulator coordination and information sharing</p>	
<p>Recommendation 6.14—Financial Regulator Assessment Authority</p>	

**Royal Commission recommendations with policy consultation**

**Details and ASIC action**

Recommendations 3.9, 4.12, 6.6, 6.7 and 6.8—Financial Accountability Regime (FAR) consultation

ASIC has provided extensive input to the Treasury and continues to provide advice and input to support the large-scale program of law reform agreed to by the Government in response to the Royal Commission's recommendations.

ASIC has attended consultation roundtables held by the Treasury for these reforms.

The proposals paper for the FAR contemplates APRA and ASIC prescribing various matters, including classification of entities, responsibilities for accountable persons, the circumstances in which entities may be exempted from the regime, notification timeframes, and content to be included in accountability maps and statements.

The proposals paper also contemplates APRA and ASIC providing guidance. The agencies are working on high-level principles governing ASIC and APRA's joint approach to APRA-regulated entities who also hold an ASIC licence, as well as guidance on various issues including prescribed responsibilities and the approach entities could take to satisfy the requirement to provide accountability maps and statements.

ASIC will continue to provide input to Treasury on the proposed regime and is working with APRA to ensure the agencies are ready to implement and jointly administer the regime. A key component is coordination between APRA and ASIC.

Recommendation 7.1—Compensation scheme of last resort (CSLR) consultation

ASIC continues to work with Treasury and to provide technical input on key issues relating to the CSLR. Treasury's 2019 discussion paper contemplates various possible governance models for a CSLR, including one that follows the framework for AFCA, with a legislative framework providing an oversight role for ASIC to ensure the CSLR is fulfilling its objectives.



Table 2: Actions and regulatory publications since September 2019

Regulatory powers	ASIC action
Product intervention power/design and distribution obligations—Guidance and application	<p>ASIC has used the product intervention power for the first time in relation to <a href="#">short term credit products</a>. The product intervention order was issued on 12 September 2019 by way of legislative instrument and published on the Federal Register of Legislation.</p> <p>This followed the publication of ASIC's <a href="#">consultation paper</a> on 9 July 2019 in relation to our proposed intervention and concerns about significant consumer detriment in the short-term credit market. ASIC will continue to monitor the effectiveness of the short-term credit product intervention order and any further significant consumer detriment occurring in this space.</p> <p>The short-term credit product intervention order is subject to judicial review proceedings in the Federal Court of Australia, with a hearing set down for 30 March 2020.</p> <p>A second consultation relating to the issue and distribution of <a href="#">OTC binary options and CFDs</a> was issued on 22 August 2019.</p> <p>A third consultation relating to the sale of <a href="#">add-on financial products through caryard intermediaries</a> was issued on 1 October 2019.</p> <p>ASIC is also currently consulting on guidance for ASIC's use of the <a href="#">design and distribution obligations</a>, which became law on 5 April 2019 and will commence in April 2021.</p>
<b>Lending</b>	<b>ASIC action</b>
Responsible lending	ASIC published updated <a href="#">regulatory guidance</a> on the responsible lending obligations on 9 December 2019 following extensive consultation, including a consultation paper, public hearings and roundtable discussions.
Mortgage broker best interest duty	On 20 February 2020, ASIC released <a href="#">Consultation Paper 327 Mortgage Brokers: Best interests duty (CP 327)</a> . CP 327 contains proposals for ASIC guidance on the new best interests duty. Attached to the paper is draft guidance, which reflects our views on what the reforms may require. The consultation period closes on 20 March 2020.
<b>Insurance</b>	<b>ASIC action</b>
Anti-hawking of insurance	<p>On 4 December 2019, ASIC announced the implementation of a <a href="#">ban on unsolicited 'cold call' telephone sales</a> of direct life insurance and consumer credit insurance (CCI), following consultation in July 2019. The ban addresses poor sales practices that led to unfair consumer outcomes, through the use of ASIC's modification powers under the <i>Corporations Act</i>. The ban took effect on 13 January 2020.</p> <p>Following concerns raised by ASIC about unfair telephone sales of life insurance, the Colonial Mutual Life Assurance Society Limited (trading as CommInsure) <a href="#">conducted a remediation program</a> refunding over \$12 million to Commonwealth Bank customers. CommInsure also pleaded guilty to 87 counts of offering to sell insurance products in the course of unlawful, unsolicited telephone calls. Some of the customers subject to these charges were compensated in the remediation program.</p>

TPD Insurance

ASIC found significant industry-wide problems with the design of TPD insurance and the claims handling process that mean many consumers cannot rely on this cover when they need it most. We have called on insurers and trustees to take steps to implement changes to their claims handling practices and to redesign TPD products so that they offer significantly better value for consumers. In October 2019, we [published a review](#) reflecting our findings and recommendations.

ASIC committed to further action in 2020–21 to monitor improvements by industry in line with ASIC’s recommendations.

**Superannuation, financial advice and disclosure**

**ASIC action**

Insurance in superannuation

Following our review of communications material from superannuation funds expected to be significantly impacted by the PYSP reforms, we have warned trustees that their focus needs to be firmly on member interests. Our findings and expectations are reflected in [Report 655 \*Review of member communications: Protecting Your Superannuation Package \(PYSP\) reforms\*](#) (REP 655), released on 12 February 2020. Some of the communications material reviewed by ASIC was overly technical, and did not provide enough context for the reforms or adequately explain what the changes meant for members. In some cases, trustees had not considered members’ behavioural biases and needs when designing communications or they had insufficient data to provide tailored information.

Given these findings, ASIC has also warned trustees to improve the standard of communication to fund members about the recent Putting Members’ Interests First (PMIF) reforms impacting member insurance arrangements.

We have also scrutinised industry’s implementation of the Insurance in Superannuation Voluntary Code of Practice. Our [Report 646 \*Insurance in superannuation: Industry implementation of the Voluntary Code of Practice\*](#) (REP 646), released on 13 December 2019, observes that some improvements in practices are being introduced as a result of adoption of the code by a significant number of trustees. However, further work needs to be done to achieve the high industry standards consumers expect.

Financial advice in superannuation

ASIC has examined the ways in which superannuation funds provide advice to their members, and the overall quality of advice provided. We surveyed 25 superannuation funds and examined personal advice provided to members of 21 of those funds. Overall, we found that 51% of the files we reviewed did not demonstrate full compliance with the best interest’s duty and related obligations, and 15% of the files indicated that a member was at risk of suffering financial or non-financial detriment as a result of following the advice provided. Our findings are set out in [Report 639 \*Financial advice by superannuation funds\*](#) (REP 639), released on 3 December 2019.

The findings from [REP 639](#) will inform our engagement with advice licensees. For the files that indicated a member was at risk of suffering financial or non-financial detriment, we have contacted the licensee about our expectation that they will review the advice and where required, remediate those affected members. REP 639 provides practical tips for trustees, advice licensees and advice providers to improve the quality of advice.

With APRA, ASIC has also been undertaking work seeking to address the erosion of superannuation balances as a result of members paying inappropriate or excessive advice fees from their superannuation accounts. We have communicated to trustees in a [joint letter issued by ASIC and APRA](#) about the need for strong governance, risk management and oversight processes to ensure that only authorised and appropriate fees and charges are deducted from the members’ superannuation accounts. This work is ongoing.

Update to guidance on fees and costs disclosure

On 29 November 2019, ASIC released updated [Regulatory Guide 97](#) *Disclosing fees and costs in PDSs and periodic statement*, (RG 97), explaining how product issuer and platform operators should disclose fees and costs for superannuation and managed investment products.

Our guidance provides greater clarity about disclosure obligations for superannuation trustees, which should result in more transparent and useable fees and costs information being produced. The release followed public consultation after an external expert review, as well as consumer testing of proposed changes to the presentation of fees and costs.

Improving compliance with financial advice fee disclosure obligations

On 28 November 2019, ASIC reported on our compliance assessments of fee disclosure statements and renewal notices issued by 30 randomly sampled AFS licensees and their representatives. The results of these assessments are set out in [Report 636](#) *Compliance with fee disclosure statements and renewal notice obligations* (REP 636). REP 636 provides practical tips on how industry can comply with the FDS and RN obligations.

Separately, we are also investigating a number of advice licensees for potential breaches of the fee disclosure statement and renewal notice obligations, and ASIC will determine whether court action is appropriate at the end of these investigations. On 17 December 2019, ASIC announced commencement of [court action against NAB](#) for FDS and fees for no service failures.

Addressing consumer harm from timeshare schemes

ASIC has examined the experiences of consumers who received personal advice to purchase timeshare memberships. We commissioned this research from Heartward Strategic, an independent research agency. The results of the research are set out in [Report 642](#) *Timeshare: Consumers' experiences* (REP 642), released 6 December 2019,

ASIC's broader work on timeshare includes a targeted review of personal advice given by timeshare operators, to inform the updates to our policy settings. We will release an update [Regulatory Guide 160](#) *Time-sharing schemes* (RG 160) in the first half of 2020.

Reinforcing better self-managed super funds (SMSF) outcomes for consumers

On 11 October 2019, ASIC published a fact sheet, [Self-managed super funds: Are they for you](#), for consumers and SMSF trustees deciding or reassessing if an SMSF is appropriate for them.

This follows research set out in [Report 575](#) *SMSFs: Improving the quality of advice and member experiences* (REP 575) and [Report 576](#) *Member experiences with self-managed superannuation funds* (REP 576), which found that SMSFs are not an appropriate investment option for people who want a simple superannuation solution, particularly if they have a low level of financial literacy or limited time to manage their own financial affairs. The fact sheet was sent to all newly registered SMSF trustees as a pilot in November 2019.

Markets	ASIC action
Wholesale FX practices	On 18 December 2019, ASIC issued <a href="#">Report 652 Wholesale FX practices in Australia</a> (REP 652). This report summarised our work in wholesale FX markets during 2018 and 2019. The report highlights our observations of better practices and some poor practices used by participants operating in the market. We requested participants review these observations and practices and consider how the better practices may be applied in their own FX businesses to enhance their approach to managing conduct risk.
Cyber resilience	ASIC has continued to focus on the cyber resilience capabilities of firms operating in Australia's financial markets. On 18 December 2019, we published <a href="#">Report 651 Cyber resilience of firms in Australia's financial markets: 2018–19</a> (REP 651) identifying new and emerging trends, and particularly any challenges that have emerged over the past two years.
Financial reporting	On 6 December 2019, <a href="#">ASIC announced</a> our financial reporting focus areas for 31 December 2019 financial reports of listed entities and other entities of public interest with many stakeholders. The focus areas include new requirements that can materially affect reported assets, liabilities and profits.
Dispute resolution and other issues	ASIC action
Financial services disclosure	On 14 October 2019, ASIC <a href="#">published a joint report</a> with the Dutch AFM on financial services disclosure, to assist financial services providers to meet their forthcoming design and distribution obligations. The report focuses on the real-world context in which disclosure operates. It shows that, and explains why, disclosure and warnings can be less effective than expected, or even ineffective, in influencing consumer behaviour. In some instances, it shows that disclosure and warnings can backfire, contributing to consumer harm.
Whistleblower policies	On 13 November 2019, ASIC <a href="#">issued guidance</a> to help companies meet their obligation to have a whistleblower policy. As part of the corporate sector whistleblower reforms, public companies, large proprietary companies, and proprietary companies that are trustees of registrable superannuation entities must have a whistleblower policy available to their officers and employees by 1 January 2020.
Enforcement	ASIC action
ASIC enforcement updates	ASIC issues six-monthly enforcement updates that provide an overview of ASIC enforcement outcomes, priorities and cases. The most recent update covers the period <a href="#">January to June 2019</a> . ASIC will shortly issue the update for the period July to December 2019.