



ASIC
Australian Securities &
Investments Commission

Committee	Parliamentary Joint Committee on Corporations and Financial Services
Inquiry	Oversight of ASIC, the Takeovers Panel and the Corporations Legislation No.1 of the 46th Parliament
Question No.	19
Topic	ASIC 2021-2022 Annual Report
Reference	Written, 20 December 2022
Committee member	Senator Deborah O'Neill

Question 1 – ASIC’s Governance Structure

1. The governance section of the 2021-22 Annual Report states on page 11 that 'ASIC’s Commission has a **non-executive board structure**.'
 - a. Can you confirm that the reference to a 'non-executive board structure' is a deliberate change from the way ASIC's governance was described in previous annual reports?
 - b. When was the decision made and by who for the Commission to adopt a non-executive board structure and what are the implications of the change?

Is it sufficiently clear to the private sector that the annual report is referring to an *internal* rather than an *external* non-executive board structure? The reason for asking is that the committee's [report on ASIC in the 46th Parliament](#) considered a range of evidence and many previous reviews on ASIC's governance arrangements, including whether a board structure was appropriate (see pages 26-28), the committee concluded that 'While the idea of an external board may be superficially attractive, it is manifestly inappropriate for an independent statutory authority such as ASIC and would create far more problems than those it purports to solve'.¹

Answer

The non-executive board structure has been in place since ASIC implemented its current governance framework in 2019 (see [ASIC’s correspondence to the Committee dated 16 February 2022](#)). The changes to the governance framework were reported in the 2019/20 and 2020/2021 Annual Reports.

The description of ASIC’s governance arrangements in the Annual Report 2021/22 was changed to state 'ASIC’s Commission has a non-executive board structure' to make the language in the Annual Report consistent with the language in [ASIC’s Statement of Intent](#) which states at paragraph 11 “ASIC’s Commission will act as a strategic non-executive body focusing on high-level regulatory and statutory decision-making and stakeholder management, and continue to provide support to the Chair on organisational oversight” (issued August 2021) and [ASIC’s Governance Framework](#). The inclusion of the term “non-executive -board structure” in the description of the governance arrangements is for consistency of language only, the underlying governance arrangements are as described in the 2019/20 and 2020/21 Annual Reports.

It is clear from the Annual Report that ASIC does not have an external non-executive board structure.

¹ PJC CFS, *Oversight of ASIC, the Takeovers Panel and the Corporations Legislation No.1 of the 46th Parliament*, March 2022, p. 28.

Question 2 - Australian Commission for Law Enforcement Integrity (ACLEI)

2. The Annual Report notes on page 12 that **ASIC is under the jurisdiction of the Australian Commission for Law Enforcement Integrity (ACLEI)**. To establish a baseline before the new Integrity Commission is set up can you advise:
 - a. How many issues have been referred to ACLEI about ASIC?
 - b. How many ACLEI investigations have begun and/or concluded about ASIC?
 - c. If ACLEI has concluded any investigations about ASIC what were the findings?

Answer

- a. Since coming under ACLEI's jurisdiction in January 2021, ASIC has made a total of 8 notifications to ACLEI under section 19 of the *Law Enforcement Integrity Commissioner Act (LEIC Act)*. Four (4) in 2021 and four (4) in 2022. ACLEI are also able to receive reports directly from members of the public. ASIC is not always made aware of these reports and therefore we cannot confirm the total number of issues that may have been referred to ACLEI about ASIC.
- b. Since January 2021, ACLEI has not undertaken any investigations in respect of ASIC. However, following a notification by ASIC, ACLEI did refer one matter to ASIC to conduct an unsupervised investigation under s26(1)(b)(iii) of the LEIC Act (**ASIC Investigation**)
- c. ASIC's Professional Standards Unit undertook the ASIC Investigation and found no evidence to substantiate the allegation of corruption. ACELI had no comments or recommendations to make and considered the matter closed.

Question 3 - ASIC Regulatory Efficiency Unit

3. Page 22 of the Annual Report indicates that the ASIC **Regulatory Efficiency Unit** identified themes and challenges that business face when dealing with ASIC.
 - a. Would you please provide the committee with information on those themes and challenges and what is being done to address them?
 - b. Will any of those challenges be addressed by the ALRC's recommendations?

Answer

- a. The key themes raised in ASIC's external consultation were:
 - Clearer communication and messaging from ASIC of its priorities and more broadly from the financial services agencies;
 - Regulatory development implementation process and opportunities for engagement to better understand operational needs;
 - Increased engagement opportunities; and
 - More targeted information requests that are not time burdensome.

Based on this feedback, we now have three initiatives under way. They focus on:

- development and maintenance of ASIC's regulatory guidance;
- use of information gathering powers and scene setting investigation meetings; and
- stakeholder engagement and user experience.

These initiatives are being implemented alongside existing work on enhancing ASIC's systems and user experience.

More information on each of these initiatives is available on our website: [ASIC's regulatory efficiency work | ASIC](#).

- b. Noting that the ALRC Review of the Legislative Framework for Corporations and Financial Services Regulation is ongoing, it appears a common theme between ASIC's regulatory efficiency work and the ALRC review is improving accessibility and navigability for corporations and financial service providers in a complex regulatory environment.

Question 4 - Review of ASIC's infrastructure by PWC

4. The **review of ASIC's infrastructure** by PWC is discussed on page 22 of the Annual Report.
 - a. Would you provide a copy of the review to the committee please?
 - b. The annual report mentions that the infrastructure review made recommendations on service level standards for internal stakeholders and creating a customer service charter. I note the [Customer Service Charter](#) is on the ASIC website:
 - i. Who is covered by the customer service charter – does it include consumers?
 - ii. Who was consulted on the development of the customer service charter?
 - iii. Are the service level standards publicly available?
 - iv. Who are the internal stakeholders and are there service levels standards for *external* stakeholders?

Answer

- a. Please see our letter to the Committee Secretary dated 30 January 2023, enclosing a copy of the report (excluding appendices) and requesting that it be treated as confidential.
- b.
 - i. The internal customer service charter covers all ASIC employees. The link you note is the external Customer Service Charter which is a different document and scope.
 - ii. The internal Customer Service Charter was developed by Deloitte in consultation with our Senior Executive Leaders.
 - iii. No. This is an internal document.
 - iv. The internal stakeholders are ASIC employees. The service level standards for external stakeholders are set out in the external Customer Service Charter.

Question 5 - Complaints about ASIC's handling of matters

5. The Annual Report describes external scrutiny of ASIC starting on page 206. The Commonwealth Ombudsman has a role in providing an external review mechanism to hear **complaints about ASIC's handling of matters**.
 - a. Would it be appropriate for the Commonwealth Ombudsman's role to be identified in the external scrutiny section of the ASIC Annual Report?
 - b. Do ASIC's international peers have similar mechanisms for reviewing complaints about their handling of matters?
 - c. Would you provide the committee with information on:

- i. How many complaints about ASIC's handling of matters were referred to the Commonwealth Ombudsman each year for the last ten years.
- ii. The breakdown of those matters according to how many the Commonwealth Ombudsman declined to investigate, how many were investigated and how many resulted in an adverse finding against ASIC.

Answer

ASIC can include information about the Commonwealth Ombudsman's role in its Annual Report and will consult with the Ombudsman's office on its view of the appropriateness of doing so.

While not identical, ASIC is aware that most of its international peers have similar mechanisms for reviewing complaints about their handling of matters.

ASIC is aware of the following number of Requests for Information, Preliminary Inquiries and Investigations from the Ombudsman's office:

2016	2017	2018	2019	2020	2021	2022
10	8	15	19	29	16	8

ASIC is not aware of any adverse finding by the Ombudsman in that period. Further information on complaints lodged with the Ombudsman but not subsequently notified by the Ombudsman to ASIC should be sought from the Ombudsman's office directly.

Question 6 – Annual Report – Key Results

6. The Annual Report lists **Key Results** for two years starting on page 29. Looking at changes over just two years can give an unclear picture of results due to natural variation in the properties being measured. Data over a ten-year period reduces that problem and allows trends to be identified.
 - a. Would ASIC be willing to commit to providing a 10-year data span for key results in its future annual reports?
 - b. Could 10-years of data also be provided on service charter results?

Answer

a. Would ASIC be willing to commit to providing a 10-year data span for key results in its future annual reports?

There are challenges in providing comparable information over a 10 year period for ASIC's Key Results table. This is due to a number of factors, including that what is captured, as well as definitions and categories in our recording of data points, have changed over time and as our data systems have become more sophisticated. These changes are designed to improve the accuracy and usefulness of the data we provide. However, these changes do present issues for maintaining a consistent approach over time: in presenting the data over a longer term, we do not want to suggest comparability between figures if that is not the case, nor provide data which is so qualified by notes as to no longer be useful.

ASIC will take the Committee's views and other factors into account as we consider and make decisions on the design of our annual report and on future data collection.

b. Could 10-years of data also be provided on service charter results?

As with the response above, we note that there can be difficulties in providing comparable information over a 10 year period. What is captured in the service charter has changed over time, particularly as new measures have been added to our ASIC Service Charter for certain Registry services. These services include registering a company or business name online,

registering a company via paper application and registering a business name via paper application.

Nevertheless, ASIC will consider the Committee's views on reporting data over a longer time period when determining future data collection and reporting of the service charter results.

Question 7 – Enforcement Actions

7. Starting on page 42, the Annual Report discusses ASIC's enforcement actions.
 - a. For ASIC's successful enforcement actions, how was the initial identification of the cases spread across:
 - i. ASIC's surveillance and data collection;
 - ii. self-reported breaches by entities; and
 - iii. complaints and misconduct reports by consumers and other parties?

Answer

Methodology

The table below sets out the data parameters for grouping the initial identification of successful criminal and civil actions completed in 2021-22, into the three broad categories:

Category	Data parameters
ASIC's surveillance and data collection	Reflects actions originating from a surveillance case, actions referred from an external body (e.g. Financial Services Royal Commission), and actions commenced following other data collection activities (e.g. information arising from an existing investigation).
Self-reported breaches by entities	Reflects actions originating from a breach report or reportable situation form lodgement from licensees.
Complaints and misconduct reports by consumers and other parties	Reflects actions originating from a report of alleged misconduct by a company or individual.

Criminal actions

In the period 2021-22, ASIC's work resulted in 34 criminal convictions. Two thirds (68%) of the successful criminal actions originated from a report of alleged misconduct by consumers and other parties, and a third (32%) originated from surveillance or data collection.

Table 1: Initial source of successful criminal actions completed in 2021-22

	Number of criminal convictions	Percentage distribution
ASIC's surveillance and data collection <i>(a)</i>	11	32%
Self-reported breaches by entities	0	0%
Complaints and misconduct reports by consumers and other parties	23	68%
Total	34 <i>(b)</i>	100%

Table notes:

- (a) Note that some surveillance activities may have commenced from a report of alleged misconduct. While we have been able to identify the initial source of most actions, there are some instances where the referral source is not available. This is because prior to 2019-20 ASIC's enforcement and stakeholder teams used different case management systems that were not integrated.

- (b) In the 2021-22 Annual Report, we reported that 33 people/companies were convicted. This number has been corrected to 34, to include a further criminal conviction that was omitted due to delays in record keeping at the end of the financial year. This number will be adjusted in the 2022-23 Annual Report.

Civil actions

In the period 2021-22, ASIC completed 61 civil actions. Almost half (49%) of the successful civil actions originated from surveillance or data collection, 33% originated from a report of alleged misconduct by consumers and other parties, and 18% originated from self-reported breaches by entities.

Table 2: Initial source of successful civil actions completed in 2021-22

	Number of civil actions	Percentage distribution
ASIC's surveillance and data collection <i>(a)</i>	30	49%
Self-reported breaches by entities	11	18%
Complaints and misconduct reports by consumers and other parties	20	33%
Total	61	100%

Table note:

- (a) Note that some surveillance activities may have commenced from a report of alleged misconduct. While we have been able to identify the initial source of most actions, there are some instances where the referral source is not available. This is because prior to 2019-20 ASIC's enforcement and stakeholder teams used different case management systems that were not integrated.