

Chapter 1

Introduction and Background

Duties of the committee

1.1 The Parliamentary Joint Committee on Corporations and Financial Services (the committee) is established by Part 14 of the *Australian Securities and Investments Commission Act 2001* (the ASIC Act). Section 243 of the ASIC Act sets out the committee's duties as follows:

- (a) to inquire into, and report to both Houses on:
- (i) activities of ASIC or the [Takeovers] Panel, or matters connected with such activities, to which, in the Parliamentary Committee's opinion, the Parliament's attention should be directed; or
 - (ii) the operation of the corporations legislation (other than the excluded provisions); or
 - (iii) the operation of any other law of the Commonwealth, or any law of a State or Territory, that appears to the Parliamentary Committee to affect significantly the operation of the corporations legislation (other than the excluded provisions); or
 - (iv) the operation of any foreign business law, or of any other law of a foreign country, that appears to the Parliamentary Committee to affect significantly the operation of the corporations legislation (other than the excluded provisions); and
- (b) to examine each annual report that is prepared by a body established by this Act and of which a copy has been laid before a House, and to report to both Houses on matters that appear in, or arise out of, that annual report and to which, in the Parliamentary Committee's opinion, the Parliament's attention should be directed; and
- (c) to inquire into any question in connection with its duties that is referred to it by a House, and to report to that House on that question.¹

Conduct of the inquiry

1.2 The committee advertised this oversight inquiry on its webpage and held the following public hearings:

- 25 November 2016 in Sydney;
- 16 June 2017 in Canberra;
- 11 August 2017 in Mascot, NSW;
- 27 October 2017 in Sydney;

1 *Australian Securities and Investments Commission Act 2001*, s. 243.

- 1 December 2017 in Canberra;
- 16 February 2018 in Mascot, NSW;
- 17 August 2018 in Melbourne;
- 18 October 2018 in Canberra; and
- 19 October 2018 in Canberra.

1.3 A list of witnesses who gave evidence at the public hearings is detailed in Appendix 1. The committee also received a number of private briefings. Details of the inquiry and associated documents including the *Hansard* transcripts of evidence may be accessed through the committee webpage.

1.4 The committee thanks all those who assisted with the inquiry, especially the witnesses who put in extra time and effort to answer written questions on notice and provide further valuable feedback to the committee as it gathered evidence.

1.5 References to the committee *Hansard* are to the proof *Hansard*. Page number may vary relative to the official *Hansard*.

Background

1.6 The performance of the Australian Securities and Investments Commission (ASIC) as the regulator for financial conduct and consumer protections, particularly since the Global Financial Crisis (GFC), has been the subject of much debate and inquiry. While not comprehensive, the committee notes that reports into ASIC's functions and conduct have been undertaken by this committee, the Senate Economics References Committee and, most recently, the Financial Services Royal Commission.

Parliamentary Joint Committee on Corporations and Financial Services

1.7 In previous parliaments, this committee has presented a number of ASIC oversight reports on various issues, including:

- audit quality;²
- emergent behaviours, such as high-frequency trading and dark pools, which have the potential to result in insider trading and market manipulation;³
- penalties;⁴ and

2 Parliamentary Joint Committee on Corporations and Financial Services, *Statutory Oversight of the Australian Securities and Investments Commission*, No. 2 of 43rd Parliament, May 2013; and Parliamentary Joint Committee on Corporations and Financial Services, *Statutory Oversight of the Australian Securities and Investments Commission: the role of gatekeepers in Australia's financial services system*, No. 3 of 43rd Parliament, July 2013.

3 Parliamentary Joint Committee on Corporations and Financial Services, *Statutory Oversight of the Australian Securities and Investments Commission, the Takeovers Panel and the Corporations Legislation*, Report No. 1 of the 44th Parliament, November 2014; and Parliamentary Joint Committee on Corporations and Financial Services, *Statutory Oversight of the Australian Securities and Investments Commission*, No. 2 of 43rd Parliament, May 2013.

- gatekeepers in the financial services system.⁵

Senate Economics References Committee

1.8 The Senate Economics References Committee released a comprehensive report in June 2014 on its inquiry into the *Performance of the Australian Securities and Investments Commission*. The report contained 61 recommendations, including Recommendation 52, relating to the committee's oversight role:

The committee notes that the Parliamentary Joint Committee on Corporations and Financial Services could be well-placed to monitor ASIC's performance against the government's statement of expectations and ASIC's statement of intent. The committee recommends that the Parliamentary Joint Committee consider this as part of its statutory ASIC oversight function.⁶

1.9 The report also queried whether the committee could pivot its oversight function towards emerging risks with a view to limiting the number of minor issues that become major scandals.⁷

Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry

1.10 The Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (the Royal Commission) was established on 14 December 2017.

1.11 Its interim report (released on 28 September 2018) documented a range of misconduct across the financial services sector that affected hundreds of thousands of customers. The interim report was critical of ASIC's efforts to address such an extensive range of misconduct under its regulatory regime.⁸

1.12 The final report (released on 4 February 2019) noted that ASIC's remit is very large and has greatly increased since ASIC was first established.⁹ The final report argued for a change in the enforcement culture within ASIC so that all forms of

4 Parliamentary Joint Committee on Corporations and Financial Services, *Statutory Oversight of the Australian Securities and Investments Commission, the Takeovers Panel and the Corporations Legislation*, Report No. 1 of the 44th Parliament, November 2014.

5 Parliamentary Joint Committee on Corporations and Financial Services, *Statutory Oversight of the Australian Securities and Investments Commission: the role of gatekeepers in Australia's financial services system*, No. 3 of 43rd Parliament, July 2013.

6 Senate Economics References Committee, *Performance of the Australian Securities and Investments Commission*, June 2014, p. 426.

7 Senate Economics References Committee, *Performance of the Australian Securities and Investments Commission*, June 2014, p. 426.

8 Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, *Interim Report*, September 2018, pp. 271–280.

9 Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, *Final Report*, January 2019, vol. 1, p. 421.

regulatory enforcement, including litigation, remain under active consideration when considering misconduct.¹⁰ The final report emphasised that 'adequate deterrence of misconduct depends upon visible public denunciation and punishment'.¹¹ It also recommended that enforcement staff be separated, as much as possible, from non-enforcement related contact with regulated entities.¹²

1.13 The Royal Commission also noted that the joint committee is the principal external oversight body of ASIC but that parliamentary oversight has limitations:

Parliamentary oversight of ASIC and APRA [Australian Prudential Regulation Authority] is essential. It is essential because although broadly independent, regulators form part of the executive government and are therefore accountable to the legislature. But parliamentary oversight necessarily has some limitations. Those limitations include the amount of time that can be devoted to a particular entity or topic, the time available to committee members to prepare for the hearings and the training, skill and experience of the members of the committee, who will sometimes need to review and assess complex information on matters of expertise.¹³

1.14 That said, ways to improve the committee's parliamentary scrutiny of ASIC were discussed:

Mr Shipton [Chairman of ASIC] acknowledged that the current arrangements for parliamentary scrutiny of ASIC could be improved. He suggested that ASIC could develop frameworks, metrics and methodologies for review of its performance. The Joint Committee could then review ASIC's performance against the agreed benchmarks.¹⁴

1.15 The insights and recommendations of the reports of the Royal Commission have implications for ASIC's role and functions, and by extension, for the committee's oversight of ASIC. The committee intends to explore the issues raised by the Royal Commission in more detail during the next parliament.

1.16 The committee was informed by ASIC that its workload has increased significantly due to matters the subject of or arising out of the Royal Commission. ASIC also noted that it expects there to be an 82 per cent increase in the amount of work going from ASIC to the Commonwealth Director of Public Prosecutions.¹⁵

10 Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, *Final Report*, January 2019, vol. 1, pp. 426–7.

11 Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, *Final Report*, January 2019, vol. 1, p. 433.

12 Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, *Final Report*, January 2019, vol. 1, p. 446.

13 Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, *Final Report*, January 2019, vol. 1, pp. 472–3.

14 Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, *Final Report*, January 2019, vol. 1, p. 473.

15 Mr Daniel Crennan QC, Deputy Chair, Australian Securities and Investments Commission, *Committee Hansard*, 19 October 2018, p. 40.

Focus of this report

1.17 This report fulfils the committee's statutory oversight duties in respect of paragraph (a) of section 243 of the ASIC Act.

1.18 Extensive attention has been devoted to ASIC's functions and conduct since the GFC. With the finalisation of the Royal Commission, the committee considers that its oversight role is more important than ever.

1.19 This report focuses on some of the areas of ASIC's role which the committee considers have not been given adequate attention throughout recent investigations—that is, concerns about audit quality and integrity.

1.20 The report also considers whether the Takeovers Panel is working effectively.

Structure of the report

1.21 The report is structured as follows:

- chapter 1 provides information about the oversight process and outlines the scope of the report;
- chapter 2 considers audit quality and ways in which it may be improved;
- chapter 3 examines ASIC's integrity measures; and
- chapter 4 reflects on the conduct of the Takeovers Panel.

