

**Senate Economics Legislation Committee**  
ANSWERS TO QUESTIONS ON NOTICE

**Treasury Portfolio**

Budget Estimates

2016 - 2017

**Department/Agency:** ASIC

**Question:** BET194-209

**Topic:** ASIC

**Reference:** Written – 6 May 2016

**Senator:** Chris Ketter

**Question:**

194. Under what circumstances would a Royal Commission be considered necessary to conduct an investigation into the banking and financial services sector?
195. What could a Royal Commission do that ASIC can't do?
196. Is ASIC best placed to judge its own performance?
197. Could a Royal Commission investigate the performance of ASIC?
198. Why has it taken three years for ASIC's capabilities to be strengthened?
199. On what measures has ASIC's performance improved since 26 June 2014?
200. Is ASIC seen to be tough regulator? By who?
201. The ASIC capability review suggests 'ASIC review ASIC' in a few recommendations. Is ASIC reviewing ASIC?
202. Has ASIC been captured by lobbyists?
203. The Treasurer and Assistant Treasurer announced on 20 April 2016 that the government would implement five of the 34 recommendations made by the Expert Panel review on the capabilities of ASIC – how many of the 34 recommendations does ASIC agree with?
204. Was an extension of the ASIC Chairperson's term one of the 34 recommendations?
205. Which banks have been consulted on these changes? Do the banks support the recommendations?
206. Why would the banks not pass on any costs for the user pays model of funding?
207. Why was the implementation of these measures rushed in?
208. What are the benefits for whistleblowers and victims for ASIC to investigate banks rather than a Royal Commission?

**Senator Ketter** also asked the following additional question:

209. Would you have allocated the extra \$9.2 million to accelerate the implementation had Labor not announced the policy for a Royal Commission?

**Answer:**

194. This is a question which is more appropriately directed to the Parliament of Australia.

195. Please refer to the below media release from the Government:

<http://sjm.ministers.treasury.gov.au/media-release/038-2016/>

196. The performance of ASIC is subject to numerous ongoing external oversight mechanisms, as well as various recent specific inquiries, and ongoing internal review of its performance.

ASIC reports to the Commonwealth Parliament, the Treasurer and the Minister for Revenue and Financial Services, and is subject to the oversight of the Parliamentary Joint Committee on Corporations and Financial Services as well as appearing before the Senate Estimates Committee. It is accountable under the Public Governance Performance and Accountability Act ('PGPA'), the whole of Government performance framework, and is assessed under the Regulator Performance Framework which provides common performance measures to assess how Commonwealth regulators operate including the annual performance statement. In 2013/14 its performance was the subject of a Senate Economics References Committee inquiry, and in 2015/16 its capabilities were assessed by the Capability Review following the Financial System Inquiry.

Through those processes ASIC produces a large range of public documents about its plans and performance including a Corporate Plan, a performance statement under the PGPA and an annual report setting out its activities for the year. ASIC also continually assesses its own performance and has a focus on identifying and using objective and external measures to do so.

197. A Royal Commission can investigate what is in its terms of reference. Its terms of reference are a matter for Parliament.

198. The Capability Review of ASIC in 2015 provided an opportunity for ASIC to assess the capabilities it needs to meet future objectives and challenges. Nevertheless, the Review Panel concluded that "ASIC has done much to improve its capabilities over the last 4 to 5 years" (Capability Review Report, "Fit for the Future", p. 12).

ASIC is continually working to assess and strengthen its capabilities, both as part of its business as usual approach of continuous improvement and in response to particular events. For example in response to the Senate Committee Inquiry into ASIC's performance, ASIC made significant changes including in its approach to obtaining, monitoring and reporting on enforceable undertakings, and in relation to its handling of reports from whistleblowers.

Findings from the recent Capability Review enable us to further develop our capabilities in the areas identified by the Panel, as well as supporting the change agenda that ASIC had already embarked upon to enhance our people, powers, processes and technology. This ongoing change agenda to strengthen our capabilities encompasses, for example:

- regulatory transformation projects which aim to streamline the way we capture, share and use information;
- implementing key recommendations of the Financial System Inquiry including an industry funding model, product design and distribution obligations and product intervention powers, and a review of ASIC's enforcement toolkit;
- cooperation with other government agencies to leverage from each other's resources and capabilities, including through intelligence gathering and sharing;

- the separation of the registry function, to allow ASIC to focus on its core regulatory business; and
- a workforce planning program fully integrated into our recruitment processes and learning and development frameworks.

199. ASIC uses a variety of quantitative and qualitative indicators to measure its performance. Results are reported annually in ASIC's Annual Reports.

Results for the period since 26 June 2014 are reported in ASIC's Annual Reports for 2013-14 and 2014-15, and will be reported in ASIC's Annual Report 2015-16, due to be published in October this year. Those Annual Reports include results against ASIC's Service Charter, which covers the most common interactions between ASIC and its stakeholders, and shows that ASIC is generally meeting or exceeding its service standards.

It is difficult to measure ASIC's impact on markets as opposed to measuring ASIC's activities or outputs. This is a problem regulators world-wide are seeking to confront. ASIC has a wide jurisdictional remit and there is no simple set of metrics that demonstrate whether a particular market is working well or how our activities impact on those markets. Even where change in a market can be identified it is difficult to separate change in market caused by ASIC as opposed to other factors.

We are refining our approach to how we measure impact, for example through the development of a market cleanliness measure of the Australian listed equity markets, which examines timely and profitable trading before material announcements. ASIC's review of Australian equity market cleanliness found a general improvement in market cleanliness for the 10-year period from 1 November 2005 to 31 October 2015. Independent international research ranks Australia market cleanliness favourably compared to other developed equities markets.

200. Perceptions of ASIC as a regulator differ across stakeholder groups and are influenced by many factors, including stakeholders' own experience, expectations and subjective judgement.

For example in the external stakeholder survey undertaken by Susan Bell Research in August 2015 for the Capability Review, ASIC's effectiveness in enforcement was rated more favourably by some stakeholder groups than others:

- 32% of gatekeepers (including accountants) rated ASIC's effectiveness in enforcement as 'excellent' or 'good', and 44% rated it as 'fair';
- 24% of lawyers rated it as 'excellent' or 'good' and 48% rated it as 'fair'; and
- 18% of ADIs and responsible entities rated it as 'excellent' or 'good' and 50% rated it as 'fair'.

201. ASIC welcomes input from external reviews and the insights and feedback they provide. Indeed ASIC proposed that it be the first of the financial regulators to undergo a capability review following the Financial System Inquiry recommendation. Nevertheless, as with all organisations, we consider it appropriate that particular aspects of our work and processes be internally reviewed in between those external reviews. We consider that, read in that context, the Capability Review recommendations requiring such internal reviews are appropriate.

The performance of ASIC is subject to numerous ongoing external oversight mechanisms, as well as various recent specific inquiries, and ongoing internal review of its performance.

ASIC reports to the Commonwealth Parliament, the Treasurer and the Minister for Revenue and Financial Services, and is subject to the oversight of the Parliamentary Joint Committee on Corporations and Financial Services as well as appearing before the Senate Economics Committee. It is accountable under the Public Governance Performance and Accountability Act ('PGPA'), the whole of Government performance framework, and is assessed under the Regulator Performance Framework which provides common performance measures to assess how Commonwealth regulators operate including the annual performance statement. In 2013/14 its performance was the subject of a Senate Economics References Committee inquiry, and in 2015/16 its capabilities were assessed by the Capability Review following the Financial System Inquiry.

Through those processes ASIC produces a large range of public documents about its plans and performance including a Corporate Plan, a performance statement under the PGPA and an annual report setting out its activities for the year. ASIC also continually assesses its own performance, including by way of regular stakeholder survey.

202. No. ASIC has internal procedures and detailed external accountability and transparency mechanisms (noted in the response to Question on Notice BET 196) that mitigate against any risk in this regard.

203. ASIC has provided a public response and implementation plan in relation to the recommendations of the Capability Review (see ASIC Media Release dated 20 April 2016) which sets out the actions ASIC is taking and will take to develop its capabilities in the areas identified by the Panel.

In relation to the small number of recommendations (5 of 34) where ASIC did not support the particular proposals put by the Panel, we have considered the Panel's underlying aims and objectives and sought to advance those in the initiatives we have adopted. This is detailed in our public response and implementation plan.

204. No, the Capability Review did not address this and it was not part of the review's Terms of Reference.

205. ASIC did not consult any banks in relation to its response and implementation plan in respect of the recommendations of the Capability Review.

206. Under an industry funding model for ASIC it is a decision for each regulated entity whether they pass on levy costs to customers.

207. On 20 April, the Government announced that it will implement an industry funding model for ASIC to commence in the second half of 2017, subject to further consultation with industry to settle and refine the model. The decision to implement an industry funding model for ASIC, and the timing for implementation, is a matter for Government.

208. Unlike a Royal Commission, ASIC has the power to initiate civil and criminal proceedings, and pursue prison terms, court orders and fines.

209. This question is a matter for Government.