

# *Evidence report* Supplementary information

*ASIC Capability Review*

*Volume 2:  
Supplementary  
information*

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# ***About this document***

This document contains supplementary information for certain sections of the Evidence report (volume 1).



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# *Contents*

About this document	i
Context and role of ASIC	1
Part 1 Leadership	9
1.1 Governance and accountability	11
1.2 Talent	29
1.3 Behaviours and culture	32
Part 2 Strategy	33
2.1 Strategy-setting process	35
2.2 Strategy communication	37
Part 3 Delivery	39
3.1 Organisation structure	41
3.2 People	42
3.3 Regulatory processes	44
3.4 Resource allocation process	60
3.5 Risk management process	61

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# *Index of figures*

Figure 1: Overview of internal governance forums	11
Figure 2: The ASIC Commissioners (2015)	29
Figure 3: MIG's capabilities and sub-capabilities	30
Figure 4: Strength of MIG capabilities	30
Figure 5: Training available for SEL	31
Figure 6: Workforce planning project for the Regulatory clusters	42
Figure 7: Structure of Enforcement teams	47
Figure 8: ASIC's approach to investigations and enforcement action	49
Figure 9: Enforcement Governance Structure	52
Figure 10: Key decision and review points	53
Figure 11: Categorisation of Enforcement matters	58
Figure 12: Breakdown of Regulatory workforce activity	60
Figure 13: Risk maturity model	63

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# Context and role of ASIC

## Laws administered by ASIC

As Australia's corporate, markets and financial services regulator, ASIC administers the following legislation as well as relevant regulations made under it:

- *Australian Securities and Investments Commission Act 2001*
- *Corporations Act 2001*
- *Business Names Registration Act 2011*
- *Business Names Registration (Transitional and Consequential Provisions) Act 2011*
- *Insurance Contracts Act 1984*
- *Superannuation (Resolution of Complaints) Act 1993*
- *Superannuation Industry (Supervision) Act 1993*
- *Retirement Savings Accounts Act 1997*
- *Life Insurance Act 1995*
- *National Consumer Credit Protection Act 2009*
- *Medical Indemnity (Prudential Supervision and Product Standards) Act 2003.*

## ASIC's powers

The laws that ASIC administers give it facilitative, regulatory and enforcement powers to:

- register companies, managed investment schemes, auditors and liquidators
- grant Australian financial services licences and Australian credit licences
- grant relief from various provisions of the legislation which they administer
- make rules aimed at ensuring the integrity of financial markets including in relation to the payment system, and prevent the issue of financial products under defective disclosure documents
- investigate suspected breaches of the law
- issue infringement notices in relation to alleged breaches of some laws
- ban people from engaging in credit activities or providing financial services
- seek civil penalties from the courts
- commence prosecutions – although these are generally conducted by the Commonwealth Director of Public Prosecutions.

## Statement of expectations (April 2014)

The Treasurer issued a Statement of Expectations to ASIC in April 2014, which is set out below.

“The Statement outlines the Government's expectations about the role and responsibilities of ASIC, its relationship with the Government, issues of transparency and accountability and operational matters.

It forms part of the Government's commitment to good corporate governance of agencies and reducing the regulatory burden on business and the community.

ASIC plays a key role in achieving a sound and effective financial and corporate regulatory framework. Its objectives include to:

- maintain, facilitate and improve the performance of the financial system (including fair and efficient markets)
- promote the confident and informed participation of investors and consumers
- conduct an efficient registry.

It is imperative that ASIC act independently and objectively in performing its functions and exercising its powers as set out in the *Australian Securities and Investments Commission Act 2001* (ASIC Act). Nevertheless, the Government expects that ASIC take into account the Government's broad policy framework, including its deregulation agenda, in performing its role and meeting its responsibilities.

### **The Government's deregulation agenda**

The Government is committed to reducing red tape and compliance costs for business and the community as a critical step towards improving Australia's productivity.

The Government is overhauling the process for creating, implementing and reviewing new regulation. This includes a process within Government whereby the costs and benefits of additional regulation are carefully balanced, and the costs of new regulations are offset.

The Government expects that ASIC will look for opportunities to reduce compliance costs for business and the community and contribute to the Government's \$1 billion red and green tape reduction target.

The Government also expects that ASIC will comply with the Government's enhanced Regulatory Impact Analysis requirements for all regulatory proposals, including considering the impacts of regulation on business and the community and costing proposals before they are introduced using the Regulatory Burden Measurement framework.

Enhancing the effectiveness and efficiency of key economic regulators including ASIC will make a major contribution to the deregulation agenda and help to boost productivity.

The Government expects that ASIC will act in accordance with regulatory best practice in its decision-making, policies, processes and communication practices to maximise effectiveness, efficiency and transparency, and minimise compliance costs. ASIC should regularly review its policies and procedures to identify improvements to achieve these goals.

The Government's preference is for principles based regulation that identifies the desired outcomes rather than prescribing how to achieve them. An outcomes based approach is more likely to accommodate change within the economy, allow for innovation and enterprise and reduce compliance costs by allowing regulated entities to determine the best way of meeting regulatory objectives.

The Government also considers that regulators should adopt a risk-based approach to compliance obligations, engagement and enforcement, allowing for proportionate approaches suited to the size, nature, complexity and risk of regulated entities. This allows regulators to achieve their objectives more efficiently and reduce the overall regulatory burden, particularly for small businesses. This approach also recognises that it is not possible or efficient to eliminate all risks and that trade-offs in risk reductions are necessary.

The Government will provide ASIC with further detail about a whole of government risk management framework and expectations for ASIC's performance against specific performance indicators in the second half of 2014.

### **Relationship between ASIC and the Government**

The Government recognises and respects the statutory independence of ASIC and its responsibility for financial and corporate regulation as provided by statute. Confidence in the regulatory framework requires that ASIC is, and is seen to be, exercising independent judgement about the application of the regulatory framework to individual circumstances.



Nevertheless, ASIC was established to administer regulatory frameworks that implement government policies and priorities relating to business regulation generally and financial and corporate regulation in particular. The Government has primary responsibility for setting financial and corporate regulatory policy. ASIC should consider the outcomes or recommendations of relevant Government established panels, reviews or inquiries.

Where ASIC has powers to make orders or rules, modify the law or make exemptions, and the exercise of that power would have significant implications for the market or regulated population, the Government expects that ASIC will consult as appropriate with stakeholders and the Government. ASIC should take into account the Government's broad policy framework and have due regard to minimising costs to business without compromising commercial certainty.

### **Relationship with the responsible Minister**

ASIC plays an essential role in ensuring that the Government is well placed to respond promptly to issues that may arise in financial and corporate regulatory policy, including problems ASIC has encountered in performing its regulatory functions.

Another key role of ASIC is to provide Treasury portfolio Ministers with accurate and timely advice on significant issues in its core area of business. Significant issues might include: matters for which the Government is likely to be accountable in Parliament; important ASIC operational or budgetary issues; and ASIC's decisions regarding the appropriate action for it to take following substantial problems or disruption in the market, including a substantial breach of the corporate regulatory framework.

### **Relationship with Treasury**

Treasury's key role is to support and advise me and other Treasury Ministers in our responsibilities by being the principal source of advice on a wide range of issues including policy development and the performance of the regulatory system.

The Government expects that Treasury and ASIC will maintain a close relationship. Treasury takes into account the views and experience of ASIC when considering and advising on changes to financial and corporate policy and legislation to facilitate consistency between the objectives of legislation and its practical implementation. By advising Treasury on the operational implications of Government policy initiatives, ASIC contributes to policy development.

All information, briefing, press releases and correspondence provided to Ministers by ASIC should be copied by ASIC to the Secretary to the Treasury. ASIC should also keep the Secretary to the Treasury appropriately informed of significant high level meetings between ASIC and Government Ministers and other key policy figures.

ASIC should advise Treasury about changes to legislation that in ASIC's opinion would assist in improving the regulatory framework and minimising compliance costs for business and the community.

### **Regulatory cooperation**

The Government expects that ASIC will maintain robust, effective and collaborative working partnerships with other Commonwealth and State and Territory agencies, as well as ASIC's counterpart regulators in overseas jurisdictions, to ensure the proper functioning of Australia's regulatory framework. ASIC should also avoid the duplication of the supervisory activities of other regulators, and should consider whether outcomes could be achieved by using existing regulation administered by another regulator, in order to ensure an integrated regulatory framework and reduce compliance costs.

### **Transparency and accountability**

ASIC was established as an independent body to administer the financial and corporate regulatory framework. Nevertheless, ASIC operates as part of the Australian Government and is accountable to the Parliament, and ultimately to the public, through the Treasury Ministers, the Parliamentary Committee process and the tabling of its annual report.

The Government expects ASIC to have an open and sound working relationship with the entities that it supervises. It is important that industry participants are encouraged to communicate considered and candid views to ASIC in order to enhance the regulatory framework and outcomes, and minimise compliance costs.

## Organisational governance and financial management

ASIC has capacity to employ staff under the *Public Service Act 1999* (PSA) as well as under the ASIC Act. Under the PSA, agencies are required to uphold and promote the APS Values. All APS employees are required to adhere to the APS Code of Conduct. ASIC is also required to comply with the APS Bargaining Framework in relation to APS employees.

The requirements for ASIC's financial management are set out in the relevant legislation and the Finance Minister's Orders. In this regard, I note that ASIC must comply with the Government's recent requirements in relation to approval for overseas travel. The Government expects that ASIC will continue efforts to secure improved efficiency in their operations and demonstrate value for money for the services that it delivers.

## Conclusion

The Government's vision is for ASIC to be a high performing and responsive agency that administers a principles based regulatory framework in a way that minimises compliance costs for business and the community, provides stability, is efficient and effective, and that balances the objectives of ASIC's statutory objectives set out in the ASIC Act."

## The evolution of ASIC's mandate

The most significant mandate changes are as follows:

- **1998** – The ASC became responsible for consumer protection in superannuation, insurance, and deposit taking. It was also renamed the Australian Securities and Investments Commission to reflect these additional responsibilities.
- **1999** – ASIC assumed responsibility for the former state-regulated credit unions and building and friendly societies.
- **2000** – State and territory governments agreed to refer their powers in relation to corporations and financial services to the Commonwealth.
- **2001** – The new *Financial Services Reform Act 2001* introduced Australian Financial Services Licensing as a concept. The *Corporations Act 2001* and *ASIC Act 2001* were also enacted.
- **2002** – ASIC assumed limited responsibility for credit regulation under the ASIC Act with respect to: unconscionable conduct; misleading or deceptive conduct; and undue harassment and coercion.
  - ASIC assumed responsibility for financial services conduct and disclosure, including for securities, banking, insurance and superannuation (eg licensing, financial advice, product disclosure and specific conduct obligations).
- **2004** – ASIC's oversight of auditors was enhanced.
- **2005** – Superannuation 'Choice of Fund' reforms were introduced.
- **2010** – ASIC became the national regulator for consumer credit and finance broking under the *National Consumer Credit Protection Act 2009*, including responsibility for licensing, conduct and disclosure.
  - ASIC took over responsibility for market supervision from the ASX.
- **2011** – ASIC assumed responsibility for the National Business Names Register (NBNR). ASIC's new statutory duties in regulating consumer credit margin lending providers also took full effect.
- **2012** – ASIC assumed responsibility for regulating emissions units (including licensing those who provide financial services/operate a financial market for emissions units), recognised under legislation as financial products.
  - ASIC built the SMSF Auditor register as part of the Strong Super reforms and took on an increased role in strengthening super governance generally.
  - Some elements of the Future of Financial Advice (FOFA) reforms came into force on 1 July.
- **2013** – Part 7.5A of the Corporations Act became effective, establishing ASIC's rule-making powers in relation to the government's over-the-counter (OTC) derivatives reform agenda.
  - Mandatory compliance with some FOFA elements became effective from 1 July.

## Relationship between ASIC, other Australian regulators and government organisations

ASIC's relationship with other Australian regulators and key government organisations is set out below.

### *APRA*

APRA is Australia's prudential supervisor of authorised deposit-taking institutions (ADIs), insurance companies, and superannuation funds and trustees. While APRA has a very different regulatory role to ASIC, its regulated population is the same. The ASIC/APRA MoU states the parties will:

- notify each other of any proposed changes in regulator policy, guidance or regulatory decisions that may affect the other
- provide each other with assistance in exchange of information, referral of matters, and cooperation in relation to matters of mutual interest
- share information to assist with carrying out obligations.

### *ACCC*

The Australian Competition and Consumer Commission is Australia's competition and consumer law regulator. While consumer protection laws fall within the realm of the ACCC, ASIC has jurisdiction for these where a financial product or service is involved. The ASIC/ACCC MoU states the parties will:

- share information to assist with carrying out obligations
- refer to the other party matters that are more appropriate to the other party's jurisdiction
- establish joint task forces for certain investigations or litigations
- delegate powers to the other party where appropriate.

### *RBA*

The Reserve Bank of Australia is Australia's central bank, and is responsible for Australia's monetary policy. While the RBA does not have the same enforcement role as ASIC, there is significant interaction between them. Both parties are responsible for regulation of clearing and settlement facilities, and their MoU requires each party to inform the other when developing policy in this area.

### *CFR (non-statutory body)*

The Council of Financial Regulators is the coordinating body for Australia's main financial regulatory agencies. Its membership comprises the RBA, APRA, Treasury and ASIC. Its role is to contribute to the efficiency and effectiveness of financial regulation and to promote stability of the Australian financial system.

In addition to the various MoUs signed between members of the CFR, there is an MoU on Financial Distress Management which sets out the objectives, principles and processes for dealing with stresses in the Australian financial system. It identifies the responsibilities of each Council member and is intended to facilitate a coordinated response to stresses in the financial system.

### *ASX*

The Australian Securities Exchange works closely with ASIC in its capacity as a financial market operator, and oversees compliance with its own listing rules, as well as advocating minimum standards of corporate governance for Australia's listed companies. The ASIC/ASX MoU states the parties will:

- notify each other of certain matters in accordance with functions and statutory obligations
- share information to assist with carrying out obligations
- coordinate compliance and enforcement activities

- refer matters relating to significant contraventions of ASX's operating rules or the Corporations Act 2001
- form various joint forums, including an ASIC-ASX Compliance Liaison Committee, in which to exchange information and address at an operational level the arrangements and understandings set out in the MoU.

### *ATO*

The Australian Tax Office is Australia's primary revenue collection agency, responsible for Australia's tax, excise and superannuation systems. The ASIC/ATO MoU states that the agencies will:

- liaise as required to discuss the progress of current matters of common interest
- improve the sharing of information
- attempt to identify opportunities for joint enforcement
- resolve problems that may arise in the investigation or prosecution of particular matters
- develop strategies for closer collaboration in areas of common interests
- collaborate on law reform issues of common concern.

The MoU also states that both agencies will liaise on a national level, with formal national liaison meetings to be held quarterly which will deal with operational and organisational issues, expected workloads and such issues that may warrant law reform.

### *AFP*

The Australian Federal Police is Australia's international law enforcement and policing representative, and the government's chief source of advice on policing issues. Its central role is to enforce Commonwealth criminal law and to protect Commonwealth and national interests from crime in Australia and overseas. The ASIC/AFP MoU sets out the agreement between the two agencies in relation to:

- cooperation on law enforcement issues
- the exchange of information between agencies
- the establishment of an overall framework, mutual objectives and principles.

### *CDPP*

The Commonwealth Director of Public Prosecutions is responsible for the prosecution of offences against Commonwealth laws. The ASIC/CDPP MoU governs the relationship between the two agencies in discharging their respective functions in relation to the investigation and prosecution of corporate and financial services crime. The ASIC/CDPP MoU sets out the agreement between the two agencies in relation to:

- liaison arrangements
- cases involving a criminal offence (ASIC will provide a brief of evidence to the CDPP in a timely manner)
- ASIC's prosecution of summary regulatory offences at the national level
- ASIC's consultation with the CDPP before making an application for a civil penalty order.

### *AUSTRAC*

The Australian Transaction Reports and Analysis Centre (AUSTRAC) is a government agency responsible for regulating anti-money laundering and counter-terrorism financing as well as being a specialist financial intelligence unit. The ASIC/AUSTRAC MoU sets out the agreement between the two agencies in relation to:

- information sharing and the use of this information and the use of this information by the other party
- training and support each party provides to the other
- liaison and cooperation arrangements.

### *Chi-X Australia*

Chi-X Australia operates a licensed market in securities and managed investments and provides a trading facility to wholesale and retail participants as an alternative to trading on the ASX. The ASIC/Chi-X Australia MoU states that the parties will:

- refer matters to each other regarding contraventions or potential contraventions of Chi-X's operating rules or the Corporations Act
- cooperate and share information to promote market integrity.

### *Takeovers Panel*

The Takeovers Panel is a peer review body that regulates and resolves corporate control transactions during the bid period. The Panel also has the power to review the decisions of ASIC regarding whether to grant exemptions or modifications to Corporations Act requirements during the life of a takeover. The ASIC/Takeovers Panel MoU states that the parties will:

- liaise to discuss matters of common interest
- share information to assist with carrying out obligations
- consult on policy development.

### *FOS*

The Financial Ombudsman Service (FOS) provides an external dispute resolution service for consumers, including some small businesses, and member financial service providers. There is no MoU between ASIC and FOS as FOS's operations are governed by a Terms of Reference (ToR) approved by ASIC. The ToR outlines the types of disputes that can be considered, remedies that can be awarded, the dispute resolution process, and reporting obligations. With reference to ASIC, the TOR also stipulates that FOS:

- may provide reports and recommendations and related information about a Financial Service Provider to any regulator such as ASIC
- must report systemic issues and serious misconduct to ASIC in accordance with its obligations
- must provide a comprehensive report to ASIC regarding the disputes it has dealt with.

### *Accounting and auditing bodies*

ASIC also liaises regularly with accounting and auditing industry bodies and agencies with oversight of the profession. There is no MoU with these bodies. ASIC liaises with these stakeholders through a range of forums to discuss financial reporting and auditing issues and to keep the market updated on relevant regulatory initiatives.

#### **AASB**

The Australian Accounting Standards Board (AASB) is a government agency operating under the ASIC Act and is responsible for developing and maintaining financial reporting standards within Australia. ASIC is responsible for enforcing these standards, and may refer significant issues to the AASB for consideration.

#### **AUASB**

The Auditing and Assurance Standards Board (AUASB) is an independent statutory agency. It is responsible for developing and maintaining auditing standards and associated guidance in line with the International Standards on Auditing of the International Auditing and Assurance Standards Board. AUASB actively engages with ASIC to encourage it to ensure its audit and other assurance requirements are aligned with AUASB pronouncements.

#### **APESB**

The Accounting Professional and Ethical Standards Board (APESB) are responsible for setting the code of ethics and professional standards that accounting professionals must comply with. APESB also contributes to these

international standards through submissions to the International Federation of Accountants and other relevant international standard setting boards.

**FRC**

The Financial Reporting Council is a statutory body responsible for the accounting and auditing standard setting process for all sectors. The council provides strategic advice relating to the quality of audits, and advises the government on these and related matters that affect the financial reporting framework.

*Part 1*  
*Leadership*





# 1.1 Governance and accountability

## 1.1.1 Internal governance

Figure 1: Overview of internal governance forums

Forum	Quorum	Standing Agenda items
<b>ASIC Commission</b>	3 members	<ul style="list-style-type: none"> <li>• ASIC international: Travel report</li> <li>• Chief executive delegations exercised</li> <li>• Chief legal officer report</li> <li>• Chief operations officer report</li> <li>• Commission management (ie calendar)</li> <li>• ERC committee minutes</li> <li>• Enforceable undertakings update</li> <li>• Ministerial meetings</li> <li>• Monthly financial report</li> <li>• People, development and culture report</li> <li>• Portfolio commission report</li> <li>• Regulatory policy group</li> <li>• SEL Corporate Affairs report</li> <li>• Service expectations results</li> <li>• Sun setting of class orders project</li> </ul>
<b>Audit Committee</b>	“Majority” of members	<p>No standing agenda items. However, examples of agenda items include:</p> <ul style="list-style-type: none"> <li>• ASIC update</li> <li>• ANAO update</li> <li>• Finance update</li> <li>• IT update</li> <li>• Project management update</li> <li>• PGPA performance reporting update</li> <li>• Internal audit update</li> </ul>
<b>Risk Committee</b>	4 members	<p>No standing agenda items. However, examples of agenda items include:</p> <ul style="list-style-type: none"> <li>• Internal audit update</li> <li>• Annual security framework review</li> <li>• Risk appetite and risk tolerance</li> <li>• Risk management framework review</li> <li>• Policy for internal policy development</li> <li>• Operational issues such as “Clean Desk” policy, Melbourne office infrastructure issues</li> <li>• Strategic risks</li> </ul>



Forum	Quorum	Standing Agenda items
<b>Regulatory Policy Group</b>	3 members	No standing agenda items. However, items discussed are proposed regulatory policy changes.
<b>Enforcement Committee</b>	2 Commissioners and an Enforcement SEL or the Chief Legal Officer	No agendas or minutes provided.
<b>Emerging Risks Committee</b>	4 members	No standing agenda items. However, examples of agenda items include: <ul style="list-style-type: none"> <li>• Presentations from external presenters on emerging risks</li> <li>• Market and Business Risk <i>Quarterly Risk &amp; Trend Report</i></li> <li>• Financial Ombudsman Systemic Issues Update</li> <li>• ERC Risk Register</li> </ul>
<b>Technology Governance Board</b>	4 members, including a Commissioner	<ul style="list-style-type: none"> <li>• Review of open actions arising from previous meetings</li> <li>• Review and discuss the Portfolio Commission Report, including financial status</li> <li>• Review and discuss Project Sponsor Status Updates of the Top 3 Priority Projects</li> </ul>

## ASIC Commission meetings

ASIC's primary internal governance forum is the Commission meetings, which are held formally monthly, and informally weekly. This frequency is designed to give ASIC the flexibility to deal with unexpected issues immediately. The meetings are attended by all the Commissioners – that is, the Chair, Deputy Chair and the remaining three Commissioners – as well as by guest presenters. The purpose of the meetings is to make decisions about ASIC's operations, discuss matters of significance to ASIC, and oversee and ensure that ASIC's objectives are addressed and met. The Commission has oversight of all the internal governance forums, and papers from each of these are presented for noting at Commission meetings.

The forums also bring decisions to the Commission, and the decision taken is, in the vast majority of cases, the one presented. Where actions are required from a paper presented, these are usually minor 'fix-ups' rather than critical insight.

## Audit committee

The Audit Committee meets quarterly, and has oversight of ASIC's internal audit and financial statements. ASIC is not subject to the ASX Corporate Governance Principles for listed entities. However, these principles are generally considered best practice, and the Audit Committee's structure appears to have been designed in line with the recommendations of Principle 4:

- Independent Chair and majority of independent members: The Audit Committee is the only internal governance forum that has independent (external) members – there is an independent Chair and a further independent member.
- Minimum of three members: The Audit Committee has recently reduced in size from five to three due to funding restrictions; however this still meets minimum membership requirements of Principle 4.
- Reporting line of internal audit function: The Head of Audit, Assurance and Compliance, has a dual direct reporting line to the Audit Committee and to the ASIC Chair.



## Risk committee

Chaired by the Chair of ASIC, the Risk Committee meets quarterly, and is responsible for oversight of ASIC's risk management framework and practices. Its membership comprises:

- the Chair, the COO, CFO, CIO, CLO
- the SELs for Strategic Policy, Registry, Enforcement, Investment Managers and Superannuation, Corporations and People and Development
- the Senior Manager for Risk and Security Services
- the SES for Audit, Assurance and Compliance.

We reviewed a sample of meeting minutes and noted that attendance of members is low.

## Emerging risks committee (ERC)

Chaired by a Commissioner, the ERC is a component of ASIC's broader risk management framework. Membership comprises the Commissioners, and SELs from Strategy and Policy, Stakeholder Services, Strategic Intelligence, Internal Strategy, and Enforcement. The ERC identifies, and provides advice regarding the management of, emerging risk within the market. It does this through:

- monitoring and advising on systemic and product/sector risks relevant to ASIC's regulatory mandate
- reviewing the scope of ASIC's regulatory responsibilities for any regulatory gaps not subject to appropriate regulation.

The ERC is regarded by ASIC staff interviewed as functioning well, but the same people questioned whether it handles issues that the Risk Committee could be dealing with if these were included in its charter. However, the overlap of membership between the two committees has allowed the committees to not duplicate matters.

## Enforcement committee

Chaired by any member of the Commission, the Enforcement Committee meets twice a month to discuss enforcement matters. The Committee's membership also comprises the Chief Legal Officer, and SELs from Enforcement, Strategy Group, and Small Business Compliance and Deterrence. The Committee:

- makes decisions about the conduct, strategy and focus of major matters and other significant enforcement litigation and investigations, including the initiation of proceedings
- oversees monitors and makes decisions about significant policy in relation to ASIC enforcement initiatives, including managing risk in the Enforcement teams.

For confidentiality reasons, we were not provided with minutes for the Enforcement Committee. Therefore, we are unable to comment on its effectiveness.

## Regulatory policy group (RPG)

Chaired by the Deputy Chair of ASIC, the RPG is comprised of representatives from Stakeholder teams and ASIC's Chief Legal Officer, who collectively consider submissions recommending new or revised policy and applications for exemptions from the Corporations Act. The RPG also makes decisions on law reform, and on novel applications for relief.

Through review of charters, minutes and our interviews, it is clear that the RPG is delivering against its terms of reference.

## Technology governance board (TGB)

Chaired by the Chair of ASIC, the TGB provides oversight and strategic direction for ASIC's major technology programs to ensure delivery of the functionality and service that the business needs. A 'major' technology program is one whose cost exceeds \$5 million, is strategic or is high risk. Papers reference metrics and KPIs, and generally have better summaries of key messages.



Through review of charters, minutes and our interviews it is clear that the TGB is delivering against its terms of reference.

## 1.1.2 External panels

The key advisory panels are:

### External advisory panel

The EAP enables ASIC to gain a better understanding of developments and systemic risks in the financial system and markets. Members are appointed by ASIC's Chair in conjunction with the EAP Chair. Members are selected based on relevant experience in a range of sectors, including accounting, financial services, law and academia. Meetings have an agenda, which is set by ASIC's Strategy team, with input from the EAP. Action items are taken. No formal minutes are created; however, the rationale for this is that the EAP is an advisory and not a decision-making body.

### Consumer advisory panel

The CAP advises ASIC on current issues faced by retail investors and consumers in the financial services and credit industries. There are two sub-panels, one for investors and one for consumers. CAP members are usually appointed in their organisational capacity. A number of organisations, such as Choice, Australian Shareholders Association, Consumers Federation of Australia, and Financial Counselling Australia, have a standing membership of CAP. New members are appointed by ASIC's Deputy Chair and selected on the basis of relevant expertise and capacity. CAP agendas are constructed around CAP member updates. Each CAP member is invited to provide a short update of issues they have identified among their stakeholders or market trends or issues of concern. ASIC reports back to members on its activities in the investor and consumer space, within operational and confidentiality constraints. Additional agenda items involve ASIC providing opportunities for CAP member feedback on current policy projects or initiatives or reporting back to CAP about the findings from a research report or an enforcement outcome.

### Director advisory panel

The Director Advisory Panel is comprised of company directors of listed entities who provide senior level advice to ASIC on developments and systemic risks within the corporate sector. ASIC's Corporations team, in conjunction with Commissioner Price, is responsible for setting the agenda and preparation of papers for the meeting.

Other external advisory panels include the:

- Market Supervision Advisory Panel, which advises ASIC on its approach to its responsibilities for supervision of the Australian market, as well as broader market developments
- Registry and Licensing Business Advisory Panel, which provides a means of direct consultation with the business community about the impact of current and proposed registry and licensing services. It has a particular emphasis on small business
- Australian Government Financial Literacy Board, which aims to improve the standard of financial literacy in Australia.

## 1.1.3 Delegations of authority

ASIC Commissioners and certain ASIC staff may be delegated ASIC functions and powers. For ASIC to be able to be delegated functions and powers, staff must satisfy the following conditions specified in section 5(1) of the ASIC Act:

- engaged under the Public Service Act 1999
- employed by the Chairman by contract under section 120(3) of the ASIC Act



- engaged by the Chairman as consultants to or to perform services for ASIC under section 121(1) of the ASIC Act
- persons from other Commonwealth agencies or authorities who are assisting ASIC under section 122 of the ASIC Act.

ASIC's staff are required to follow the relevant team's administrative procedures or instructions in exercising those delegated powers. Staff undertaking roles which are purely administrative, such as Executive Assistants or project officers may in some cases have delegations by virtue of their classification. It is not intended that these staff will exercise delegations without express written authority from a senior manager.

## Financial delegations

### *Drawing rights delegations*

The Drawing rights instrument shows the positions within ASIC that are authorised by the Chair to make payments of public money, either by cheque, petty cash or electronic funds transfer. The instrument specifies the limits that authorised officials must operate within.

### *PGPA delegations*

The PGPA Delegations instrument shows the positions within ASIC that the Chair has authorised to approve expenditure and other finance related functions. The instrument also specifies the Finance Minister's requirements delegates must meet when exercising their delegation.

There are two schedules of PGPA delegations – Schedule A and Schedule B. Where a person is covered by both Schedule A and Schedule B, the financial delegation in Schedule B will apply.

#### Schedule A

	Approve commitment of money and enter into arrangements excluding o/s travel and payroll	Authorise indemnities, guarantees or warranties on behalf of the Cth	Approve or authorise the non-recovery of debt owing to the Cth	Waive the Cth's right to fees payable to the Cth under the Corporations Act 2001	To give written approval of a gift of relevant property being made
Commissioner (other than the Chair)	\$5,000,000	\$5,000,000	\$5,000,000	-	\$15,000
SEL	\$150,000	\$5,000,000	\$150,000	\$5,000	\$2,000
ELS	\$80,000	\$5,000,000	-	-	-
Facilities Manager	\$60,000	\$5,000,000	-	-	-
People Manager	\$15,000	\$5,000,000	-	-	-
Executive Assistant	\$5,000	\$5,000,000	-	-	-

#### Schedule B

The schedule specifies for each staff position and delegation within a matrix:

- whether a delegation has been granted
- The monetary limit of each delegation.



Below is a list of delegations in the schedule:

- Approve commitment of money and enter into arrangement excluding overseas travel and payroll
- Approve commitment of money and enter into arrangements for overseas travel
- Approval payroll up to the value of payroll
- Authorize indemnities, guarantees or warranties on behalf of the Commonwealth
- Waive the Commonwealth's right to fees payable to the Commonwealth under the Corporations Act
- Allow the payment by instalments or defer the time for payments of an amount owing to the Commonwealth
- To give written approval of a gift of relevant property being made
- Approve or authorise the non-recover of a debt owing to the Commonwealth
- Authorise the payments of amount owed to person at time of death
- To open and maintain official bank accounts
- For the borrowing of money by the Commonwealth by obtaining credit by way of credit card or credit voucher
- To invest public money in any authorised investment
- To repay money by the Commonwealth.

## Legal delegations

ASIC legal delegations are made to staff at specified classifications within particular teams. Enforcement delegations are explained in the Enforcement Manual; otherwise guidance will be advised by the SEL.

### *Section 102 delegations*

Section 102 of the ASIC Act gives the Commission power to delegate to ASIC staff all or any of its functions and powers under the ASIC Act, the Corporations Act, the Corporations Regulations, *National Consumer Credit Protection Act 2009*, *National Consumer Credit Protection Regulations 2010*, *National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009*, *Insurance Contracts Act 1984*, *Life Insurance Act 1995*, *Retirement Savings Accounts Act 1997*, *Superannuation Industry (Supervision) Act 1993*, *Medical Indemnity (Prudential Supervision and Product Standards) Act 2003*, and the *First Home Saver Accounts Act 2008*.

There are four delegation instruments for Section 102, which relate to the following areas:

- Australian consumer law enforcement powers
- Law enforcement powers (other than Australian consumer law)
- All teams except registry
- Registry (not included below).

#### *Australian consumer law enforcement powers*

This instrument allows ASIC Commissioners and specified staff to be delegated ASIC's functions and powers under the section 12GLC and Subdivision GB and GC of Division 2 of Part 2 of the ASIC Act, which relate to ASIC's Australian Consumer Law enforcement powers.

The instrument of delegation states:

*The Commission delegates to:*

1. *each of the persons mentioned in Schedule A*
2. *each of the persons from time to time holding, occupying or performing any of the duties of an office or position specified in Schedule B...*



*all of the powers and functions conferred on or expressed to be conferred on the Commission:*

- 1. by or under the provision of the Acts and regulations...*
- 2. all of the powers conferred on the Commission by subsection 11(4) and subsection 12A(6) of the ASIC Act insofar as those powers relate to the performance of a function delegated by this instrument, including the power to affix the common seal of the Commission.*

*which powers may be exercised by him or her while he or she is a member of staff member of the Commission.*

Schedule A

- [Commissioner, name removed]
- [Commissioner, name removed]
- [Commissioner, name removed]
- [Commissioner, name removed]
- [Commissioner, name removed]

Schedule B

- Senior Executive Leader
- Enforcement SEL

*Law enforcement powers (other than Australian Consumer Law)*

This instrument allows ASIC Commissioners and specified staff to be delegated ASIC's functions and powers under the ASIC Act (other than section 12GLC and Subdivision GB and GC of Division 2 of Part 2), the Corporations Act, the Corporations Regulations, *Mutual Assistance in Business Regulation Act 1992*, *National Consumer Credit Protection Act 2009*, *National Consumer Credit Protection Regulations 2010*, *National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009*, *Insurance Contracts Act 1984*, *Life Insurance Act 1995*, *Retirement Savings Accounts Act 1997*, *Superannuation Industry (Supervision) Act 1993*, *Medical Indemnity (Prudential Supervision and Product Standards) Act 2003*, and the *First Home Saver Accounts Act 2008*. These include both enforcement powers (other than those relating to Australian Consumer Law), and other powers.

The instrument of delegation states:

*The Commission delegates to:*

- 1. each of the persons mentioned in Schedule A; and*
- 2. each of the persons from time to time holding, occupying or performing any of the duties of an office or position specified in Schedule B*

*all of the powers and functions conferred on or expressed to be conferred on the Commission:*

- 1. by or under the provision of the Acts and regulations...*
- 2. all of the powers conferred on the Commission by subsection 11(4) and subsection 12A(6) of the ASIC Act insofar as those powers relate to the performance of a function delegated by this instrument, including the power to affix the common seal of the Commission,*

*which powers may be exercised by him or her while he or she is a member of staff member of the Commission.*

Schedule A

- [Commissioner, name removed]
- [Commissioner, name removed]
- [Commissioner, name removed]
- [Commissioner, name removed]
- [Commissioner, name removed]
- [Senior Executive, Chief Legal Office, name removed]



- [Senior Executive, Chief Legal Office, name removed]
- [Senior Executive, Chief Legal Office, name removed]
- [Senior Executive, Chief Legal Office, name removed]

#### Schedule B

- Senior Executive Leader
- Enforcement SEL

#### *Conferring of powers onto teams*

This instrument allows specified ASIC staff to be delegated functions and powers under the ASIC Act (other than section 12GLC and Subdivision GB and GC of Division 2 of Part 2), the Corporations Act, the Corporations Regulations, *Mutual Assistance in Business Regulation Act 1992*, *National Consumer Credit Protection Act 2009*, *National Consumer Credit Protection Regulations 2010*, *National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009*, *Insurance Contracts Act 1984*, *Life Insurance Act 1995*, *Retirement Savings Accounts Act 1997*, *Superannuation Industry (Supervision) Act 1993*, *Medical Indemnity (Prudential Supervision and Product Standards) Act 2003*, and the *First Home Saver Accounts Act 2008*. These include all functions and powers, except those relating to enforcement.

The instrument of delegation states:

*The Commission delegates to each of the persons from time to time holding, occupying or performing any of the duties of an officer or position specified in Schedule A...*

- 1. All of the powers and functions conferred on or expressed to be conferred on the Commission by or under the provisions of the Acts and regulations specified in Schedule B*
- 3. All of the powers conferred on the Commission by subsection 11(4) and subsection 12A(6) of the ASIC Act insofar as those powers relate to the performance of a function delegated by this instrument.*

#### Schedule A

	Team	Office or position
<b>Enforcement teams</b>	All Enforcement teams (excluding Small Business Compliance and Deterrence)	Executive Level 2
		Executive Level 1
		ASIC 4
		ASIC 3
<b>Stakeholder teams</b>	Corporations	Executive Level 2
		Executive Level 1
		ASIC 4
	Deposit Takers, Credit and Insurers	Executive Level 2
		Executive Level 1
		ASIC 4
		ASIC 3
	Emerging Mining and Resources	Executive Level 2
		Executive Level 1
		ASIC 4
		ASIC 3
	Financial Market Infrastructure	Executive Level 2
Executive Level 1		
ASIC 4		
Financial Reporting and Audit	Executive Level 2	
	Executive Level 1	





	Team	Office or position
		ASIC 4
	Financial Advisers	Executive Level 2 Executive Level 1 ASIC 4
	Financial Literacy	Executive Level 2 Executive Level 1 ASIC 4 ASIC 3 where their principal place of work is the Northern Territory
	Insolvency Practitioners	Executive Level 2 Executive Level 1 ASIC 4
	Investment Banks	Executive Level 2 Executive Level 1 ASIC 4
	Investment Managers and Superannuation	Executive Level 2 Executive Level 1 ASIC 4
	Maker and Participant Supervision	Executive Level 2 Executive Level 1 ASIC 4
	Small Business Compliance and Deterrence	Executive Level 2 Executive Level 1 ASIC 4 ASIC 3
<b>Assessment and Intelligence Teams</b>	Licensing	Executive Level 2 Executive Level 1 ASIC 4 ASIC 3
	Misconduct and Breach Reporting	Executive Level 2 Executive Level 1 ASIC 4 ASIC 3
	International Cooperation Requests	Executive Level 2 Executive Level 1 ASIC 4
<b>Chief Legal Office</b>	Administrative Law	Executive Level 2 (Senior Manager only)
	Commission Counsel	Senior Executive Specialist
	Hearings Delegates Panel	Senior Executive Specialist Executive Level 2 Executive Level 1
	Litigation Counsel	Executive Level 2



	Team	Office or position
<b>Operations – Specialist Service</b>	Property Law	Executive Level 2 Executive Level 1 ASIC 4 ASIC 3
	Special Counsel	Senior Executive Specialist
	Evidence Services	Executive Level 2 Executive Level 1
	Forensic Accounting Services	Executive Level 2 Executive Level 1 ASIC 4
	Unclaimed Monies	Executive Level 2 Executive Level 1 ASIC 4 ASIC 3
<b>Strategy Group</b>	International Strategy	Senior Executive Specialist
	Strategic Intelligence	Senior Executive Specialist

#### Schedule B

The provisions of the Corporations Act 2001 other than:

- section 65
- subsection 88B(2) and (3)
- subsection 196(3)
- subsection 205G(6)
- subsections 250PAA(1) and (2)
- subsection 257B(7)
- subsections 341(1) and (2)
- paragraph 352(1)(b)
- item 14 in the table in section 611
- section 657EA
- section 659B
- subsection 709(3)
- subsection 765A(2)
- subsection 792B(1)
- subsection 793A(4)
- subsection 794C(6)
- subsection 795A(2)
- section 798B
- subsection 798G (excluding powers conferred on ASIC under a market integrity rule)



- subsection 798J
- subsection 821B(1)
- subsection 822A(4)
- subsection 823C(6)
- subsections 823E(1), (4), (6) and (7)
- subsection 824A(2)
- subsection 827B
- subsection 850D(2)
- subsections 853C (1) and (2)
- subsections 853C (2) and (6)
- subsection 853E(1)
- subparagraph 912A(2)(a)(i)
- subparagraph 912A(2)(b)(i)
- paragraph 912B(2)(b)
- paragraph 914A(4)(a)
- subparagraph 914A(5)(b)(i)
- paragraph 915(1)(a)
- paragraph 915(2)(d)
- subsection 925H(2)
- section 1013DA
- subparagraph 1017G(2)(a)(i)
- subparagraph 1017G(2)(b)(i)
- subsection 1043L(6)
- subsections 1073E(1) and (2)
- paragraphs 10175A(1)(a) and (b)
- subsection 1075A(2)
- section 1101A
- subsections 1280A(1) and (2)
- paragraph 1280(4)(b);subsection 1438(6)
- subsection 1445(1)
- clause 30 of schedule 4.

The provisions of the Corporations Regulations 2001 other than:

- paragraph 7.1.08(3)(c)
- paragraphs 7.2.16(3)(a), (b) and (c)
- paragraphs 7.2.16(4)(a) and (b)
- subregulations 7.2.16(7) and (o)
- Part 7.2A
- paragraphs 7.2.16(11)(a) and (b)



- paragraph 7.6.02(2)(a)
- paragraph 7.6.02(4)(a),(b) and (c)
- paragraph 7.8.16(4)(b)
- paragraph 7.9.08(1)(a)
- paragraph 7.9.77(2)(a)
- paragraph 7.9.77(4)(a), (b) and (c).

Division 2 of Part 2 of the ASIC Act, other than section 12GLC and subdivision GB and GC;

Part 3 and Part 3A of the ASIC Act, other than section 50 of Part 3;

Section 272 of the ASIC Act (being the functions and powers expressed to be conferred on the National Companies and Securities Commission by or under any Act, as in force immediately before the commencement of the ASIC Act, that was a relevant Act for the purposes of the *Companies and Securities (Interpretation and Miscellaneous Provisions) Act 1980* as in force immediately before the commencement of the ASIC Act, of a State or the Northern Territory that corresponds to an Act that was a relevant Act for the purposes of the *Companies and Securities (Interpretation and Miscellaneous Provisions) Act*);

The *Mutual Assistance in Business Regulation Act 1992*;

The *National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009* other than sub-item 41(3) of Schedule 2;

The *National Consumer Credit Protection Act 2009* other than;

- paragraph 46(1)(a)
- subparagraph 46(2)(b)(i)
- subparagraph 47(1)(h)(i)
- paragraph 47(1)(i)
- paragraph 48(2)(b)
- paragraph 56(1)(a)
- paragraph 56(2)(d)
- subsection 109(3)
- subsection 163(3)
- subsection 216(1)
- section 241
- section 268
- section 275
- section 300
- section 301
- section 319.

The *National Consumer Credit Protection Act 2009* Schedule 1(Credit Code) other than;

- subsection 6(17)
- paragraph 79(3)(b)
- subsection 171(6)



- subsection 203A(3).

The National Consumer Credit Protection Regulations 2010 other than:

- paragraph 10(2)(a)
- paragraphs 10(4)(a), (b) and (c)
- paragraph 18(3)(b).

The following Acts and any Regulations made pursuant to those Acts:

1. the *Insurance Contracts Act 1984* other than section 55A
4. the *Superannuation (Resolution of Complaints) Act 1993*
5. the *Life Insurance Act 1995*
6. the *Retirement Savings Accounts Act 1997*
7. the *Superannuation Industry (Supervision) Act 1993* other than section 128Q
8. the *Medical Indemnity (Prudential Supervision and Product Standards) Act 2003*
9. the *First Home Save Accounts Act 2008*.

### **Section 119A delegations**

Section 119A of the ASIC Act allows a member of the Commission to delegate any powers which are vested in him or her personally rather than as part of the Commission as a corporate entity. Commission members have delegated powers in section 58 of the ASIC Act and subsections 284(1), 284(2) and 284(4) of the *National Consumer Protection Credit Act 2009* in relation to conducting administrative hearings, including summoning witnesses, requiring an oath to be taken and requiring questions to be answered.

There are two delegation instruments for Section 119A, which relate to the following areas:

- Members' Hearing Powers
- Engagement of consultants and other persons.

#### *Members' Hearing Powers*

This instrument allows the Commissioners to delegate all of the functions that may be performed and powers that may be exercised under or in relation to subsection 58(1), 58(2) and 58(4) of the ASIC Act and subsections 284(1), 284(2) and 284(4) of the *National Consumer Protection Credit Act 2009* to persons from time to time holding, occupying or performing any of the duties of the below offices or positions:

- Commission Counsel (Senior Executive Specialist)
- Hearings Delegates Panel (Senior Executive Specialist, Executive Level 2, Executive Level 1)
- Special Counsel (Senior Executive Specialist)
- Assessment & Intelligence – Licensing (Executive Level 2)
- Corporations (but only in relation to subsections 58(1), 58(2) and 58(4), of the ASIC Act) (Executive Level 2)
- Deposit takers, credit and insurers (Executive Level 2)
- Emerging mining and resources (Executive Level 2)
- Investment banks (Executive Level 2)
- Investment managers and superannuation (Executive Level 2, Executive Level 1)
- Market and participants and supervision 58(1), 58(2) and 58(4), of the ASIC Act (Executive Level 2).



### *Engagement of consultants and other persons*

This instrument allows the Chair to delegate all of the functions that may be performed and powers that may be exercised under or in relation to section 121 of the ASIC Act to persons from time to time holding, occupying or performing any of the duties of the below offices or positions:

- Chief Legal Office
- Senior Executive Leader, People and Development
- Special Counsel Position Number 6134, Chief Legal Office
- Senior Manager, Markets Disciplinary Panel, Chief Legal Office (limited to the engagement of Markets Disciplinary Panel Members)
- Manager, Performance and Talent.

### **Common seal powers**

Section 8 of the Australian Securities and Investments Commission Act 2001 provides that ASIC is a body corporate and shall have a Common Seal.

The Commission has issued a direction listing Commission members and ASIC officers entitled to affix the ASIC common seal. The direction also refers to the purposes for which the common seal may be affixed.

ASIC staff affixing the common seal to a document must have the appropriate direction from the Commission to do so. Affixing the common seal must be witnessed by another staff member. The ASIC staff member with the direction from Commission to affix the common seal on documents does not need be the holder of the common seal.

Holders of common seals must record usage of the seal on the register immediately after each time it is used.

### **Section 127(5) delegations**

Section 127 of the ASIC Act provides when confidential information may be disclosed. Under section 127(5), the Chairman may delegate powers under subsections 127(2C), (4), (4A), (4B), (4D) or (4FA) to a Commission member or an ASIC staff member to disclose certain information. These powers are delegated to the following persons from time to time holding, occupying or performing any of the duties of an office or position specified:

- Commission member
- Regional Commissioner
- Senior Executive Leader
- Enforcement Senior Executive
- Senior Executive Specialist
- Chief Legal Office – Hearing Delegate
- Chief Legal Office – Senior Manager, Administrative Law Team
- Chief Legal Office – Senior Lawyer, Administrative Law Team
- All Enforcement teams (excluding Small Business Compliance and Deterrence) – Senior Manager
- All Enforcement teams (excluding Small Business Compliance and Deterrence) – Senior Specialist
- Stakeholder teams – Senior Manager, Financial Market Infrastructure
- Stakeholder teams – Senior Manager, Investment Banks
- Stakeholder teams – Senior Specialist, Investment Banks
- Stakeholder teams – Senior Manager, Investment Managers and Superannuation
- Stakeholder teams – Senior Manager, Market Participant Supervision



- Stakeholder teams – Senior Specialist, Market Participant Supervision
- Assessment and Intelligence – Agency Intelligence Coordinator
- Assessment and Intelligence – Senior Manager, Misconduct and Breach Reporting

Chapter 28 of the Enforcement Manual provides guidance on use of these powers.

### **Section 79 Business Names Registration Act delegations**

Section 79 of the *Business Names Registration Act 2011* (BNR Act) gives the Commission power to delegate certain functions and powers under the BNR Act and the *Business Names Registration (Transitional and Consequential Provisions) Act 2011*. These powers are delegated to the following persons from time to time holding, occupying or performing any of the duties of an office or position specified to:

- [Commissioner, name removed]
- [Commissioner, name removed]
- [Commissioner, name removed]
- [Commissioner, name removed]
- [Commissioner, name removed]
- Chief of Operations
- Special Counsel Position Number 1949, Chief Legal Office.

### **Human resources delegations**

Certain executives and senior staff of ASIC have unlimited delegation/authorisation (known as “Code Z”) for Human Resources and can exercise powers and functions in relation to all officers or offices within ASIC:

- Commissioners
- Executive Director, Finance (most delegations)
- Executive Director, HR (most delegations)
- Director HR (most delegations).

Other management may either be able to exercise powers and functions in relation to:

- All officers or offices within the organisations Business Unit for which the delegate is responsible (known as “Code B”)
- National ASIC HR responsibilities (known as “Code N”).

The delegation (if any) conferred will depend on the person, grade, team, and the exact delegation to be exercised.

### **List of delegations**

*Public Service Act 1999*

Impose sanctions for breaches of code of conduct

- Termination of employment
- Reduction in classification
- Reassignment of duties
- Reduction in Salary
- Deductions from Salary by way of fine
- Reprimand



#### Engagement of employee

- Engage person as employees
- Impose conditions on the engagement of employees
- Waive Australian citizenship requirement for engagement
- Extend engagement of non-ongoing employee
- Determine the duties of an employee and the place or places at which they are to be performed
- Make an agreement with an APS employees to move to ASIC from another agency
- Terminate the employment of an employee on grounds specified
- Notify an employee concerning forfeiture of non-Commonwealth remuneration received by the employee for performing duties as an APS employee
- Review of actions
- Offer an SES employee an incentive to retire
- Engage persons overseas to perform duties to perform duties overseas as locally engaged employees
- Create positions in ASIC
- Nominate an employee to occupy a position

#### Miscellaneous

- Approval to engage in outside employment
- Approval or acceptance of gifts
- Recognition of prior service
- Approval of secondment arrangements with organisations outside the APS.

#### *Public Service Regulations 1999*

- Direct employee to attend medical examination and provide report
- Agree to date of effect of promotion
- Agree to date of effect of voluntary movement between agencies
- Suspend an employee from duties
- End suspension
- Review actions
- Refer application for review of actions to Merit Protection Commissioner
- Make deductions from salary to satisfy judgment debts
- Release personal information in prescribed circumstances.

#### *Public Service Commissioners Directions 1999*

- Engage a person who has received a redundancy benefit.

#### *Prime Minister's Public Service Directions 1999*

- Grant leave without pay for prescribed purposes
- Arrange for employees to return after leave for prescribed purposes.

#### *Public Service Classification Rules 2000*

- Allocate classifications to employees





- Allocate classifications to employees on secondment
- Allocate classifications to groups of duties.

*Long Service Leave (Commonwealth Employees) Act 1976 and Maternity Leave (Commonwealth Employees) Act 1973*

- Approval of LSL – full and half pay
- Authorise payment in lieu of LSL
- Authorise payment upon death of employee
- Approval of prior service
- Continuity of service
- Authorising payment in lieu to trustees on death of employee
- Directing that death of employee occurred on specified date
- Authorising payment under transitional provision of LSL Act
- Approve maternity leave
- Continue to perform or resume duty
- Maternity leave – unattach with consent of employee.

*ASIC Industrial Instruments Act*

Employment, appointment and termination

- Authorise salary on commencement at higher pay point

Promotion and transfer

- Authorise salary on promotion at higher pay point

Regular part-time employment

- Approve part-time employment

Home-based employment

- Approval to work part of ordinary hours of duty at home

Allowances – pay related

- Higher duties allowance
- First Aid certification allowance
- Expense related allowances
- Business related travel expenses
- Motor vehicle allowance
- Relocation expense
- Overtime meal allowance

Recreation leave

- Approval full or half pay
- Cashing in
- Extend deeming after 1 October each year
- Approval for non-ongoing staff
- Payment on separation of death



#### Personal leave

- Approve leave
- Conversion from full pay to half pay
- Anticipation of 5 days for fixed terms and short term employees
- Request medical evidence for absence

#### Other leave

- Approval of other leave – paid leave
- Approval of other leave – unpaid leave
- Approval of leave for period in excess of 12 months
- Approval unpaid leave to count as service

#### Studies assistance scheme

- Approve study leave with pay
- Grant leave of absence to a student
- Approve exam/assessment leave
- Revoke approval for study leave
- Approve financial assistance for approved student

#### Attendance and extra duty

- Unauthorised absence
- Overtime –approve arrangement
- Emergency duty
- Restrictions duty
- Shift work
- Flextime – vary flextime or revert to standard day
- Flextime – local agreements for Flexbank

#### Managing underperformance

- Transfer staff member
- Reduce work level
- Retire staff member

#### Redeployment, retirement and redundancy

- Invite voluntary retrenchment
- Declare staff member excess to requirements
- Approve eligible service for severance pay purposes
- Redeploy staff member at lower level with salary maintenance
- Retire excess staff member involuntary/pay lump sum in lieu of notice.

#### *Australian Workplace Agreements*

- Approve AWAs
- Approve ‘Standard’ ASIC AWA (2002-2003) only
- Approve salary at highest point.



## 1.2 Talent

### 1.2.1 Commissioners' qualifications and experience

Figure 2: The ASIC Commissioners (2015)

Name	Qualifications	Industry experience
Greg Medcraft	Bachelor of Commerce (BCom)	<ul style="list-style-type: none"> <li>Chief Executive Officer and Executive Director at the Australian Securitisation Forum (ASF)</li> <li>Co-founder and Chairman of the American Securitization Forum (2005-2007)</li> <li>30 years in investment banking at Société Générale in Australia, Asia, Europe and the Americas</li> <li>Chartered Accountant with KPMG</li> </ul>
Peter Kell	BA (Hons)	<ul style="list-style-type: none"> <li>Deputy Chair of the Australian Competition and Consumer Commission (ACCC)</li> <li>Chief Executive of CHOICE and a board member of the global consumer organisation Consumers International</li> <li>Organisation for Economic Cooperation and Development</li> </ul>
Greg Tanzer	BEC and LLB (Hons)	<ul style="list-style-type: none"> <li>Secretary General of the International Organisation of Securities Commissions (IOSCO)</li> <li>Previously Executive Director, Consumer Protection and International at ASIC (1992 – 2008)</li> </ul>
John Price	BA, LLB (Hons)	<ul style="list-style-type: none"> <li>15 years regulatory experience at ASIC</li> <li>Current member of the Financial Reporting Council and the Council of Financial Regulators</li> <li>Former member of CAMAC (advisory body to government on corporate and markets issues)</li> <li>Corrs Chambers Westgarth (law firm)</li> </ul>
Cathie Armour	BEC, LLB (Hons), LLM	<ul style="list-style-type: none"> <li>18 years' experience in legal counsel leadership roles in international financial institutions</li> <li>General Counsel for Macquarie Capital and an Executive Director of Macquarie Group</li> <li>Held senior compliance and operational risk positions at Macquarie Capital and at JP Morgan in Australia</li> <li>Member of the ASX Tribunal before joining ASIC</li> </ul>

### 1.2.2 Capability review

A capability review assessment is being conducted across ASIC's Regulatory function to include the following areas:

1. Market Integrity Group (assessment completed)
2. Investors & Financial Consumers and Financial Literacy
3. Markets.



An external service provider used an iterative methodology for identifying the capabilities listed in the table above. All Regulatory staff have had the opportunity to participate in the process through a series of engagement activities. All those who participated were invited to complete a self-assessment against the capability matrix developed by an external service provider. Results of these self-assessments are compared to the results of staff interviews, staff focus groups, desktop research and comparative analysis (eg removing capabilities that overlap with the Integrated Leadership System), with the final outputs refined and verified by ASIC leadership. The overall research findings are fed into the capability 'map' for each group, which helps identify the levels of 'bench strength' against each activity. This approach and the research findings are validated with Commissioners and relevant SELs.

An external service provider has also identified sub-capabilities for each core capability and group-specific capability. By the time the review is completed, each group will have been assessed against all the relevant sub-capabilities for their group. The assessment results will show the extent to which the capabilities and sub-capabilities are demonstrated, thereby identifying key capability strengths as well as gaps and development areas that require attention for each group.

MIG has already completed this process and returned the following results under the 'Understanding Market Behaviour' capability.

**Figure 3: MIG's capabilities and sub-capabilities**

Capability	Sub-Capability	Not demonstrated	Developing	Fully demonstrated
<b>Understanding Market Behaviour</b>	Understand the values, culture and conduct of our stakeholders and how this affects their behaviour	6%	39%	56%
	Apply the principles of behavioural economics to assess how market participants perceive risk and make choices	58%	39%	4%

Note: results are rounded to the nearest whole number and therefore exceed 100%.

The above results are a subset only, representing the highest and lowest scoring sub-capabilities for the Understanding Market Behaviour capability (there were 10 sub-capabilities in total for this capability). This subset shows the extent to which the MIG team requires development for each sub-category. As a whole, the Understanding Market Behaviour capability was also the lowest scoring capability of the nine capabilities relevant for the MIG.

The capability review assessment also provided rankings of the nine capabilities for MIG. These are set out below from weakest to strongest (1= weakest, 9= strongest):

**Figure 4: Strength of MIG capabilities**

Capability	Not demonstrated	Developing	Fully demonstrated
1. Understanding of market behaviour	26%	49%	25%
2. Technological adeptness	23%	46%	31%
3. Stakeholder management	15%	41%	45%
4. Surveillance and investigative skills	13%	42%	45%
5. Analytical skills	11%	42%	47%
6. Regulatory expertise	12%	38%	50%
7. Project management	8%	41%	51%
8. Learning agility	5%	39%	56%
9. Legal acumen	7%	34%	60%



Note: results are rounded to the nearest whole number and therefore exceed 100%.

Their results show that there is room for development across all capabilities, with particular attention required to understanding market behaviour and technological adeptness, both of which relate to data, analytics and economic analysis – in other words, the key capability gaps that were identified in the interviews.

While these outputs are for MIG only, the collective outputs will enable P&D to perform capability-driven recruitment and selection, workforce planning for clusters, capability and skill development, and talent and succession planning for all levels (including leadership) across ASIC's Regulatory function.

ASIC noted that the capability review was not commissioned for support functions such as Operations, Strategy Group or Corporate Affairs. If it achieves the desired capability increase across the Regulatory function, the capability requirements of supporting functions may also evolve. Failing to assess the required capabilities of the support functions could create a future capability gap between these teams and the Regulatory teams.

### 1.2.3 Leadership development programs

Figure 5: Training available for SEL

Training type	Description
<b>SES Seminar Series</b>	1.5 hour seminars on current thought leadership and practices. Topics include adaptive problem-solving; innovation and innovative methods; coaching; strategic thinking; leadership resilience; leadership conversations
<b>Unconscious Bias</b>	Program to raise awareness of the biases that affect decision-making and leadership actions, and diversity of thought
<b>Psychological Wellbeing</b>	Program for People leaders addressing how to create a psychologically safe work environment including job design, structure and leadership practices
<b>Leadership Insight Pilot</b>	Program to increase the skills needed to leverage diversity for improved business performance. Topics covered include Managing Conflict, and Innovation and Decision Making
<b>Exec Coaching</b>	Personalised coaching program with a business coach (over approximately 6 months) or a shorter targeted coaching program (over 3 sessions, eg NIDA for communication skills coaching)
<b>APS SES development</b>	A variety of leadership development programs for SES, ranging from orientation to the SES to talent development programs
<b>Executive Development</b>	Australian Institute of Company Directors program, the Cranlana Colloquium program, Harvard Business School Strategic Management of Regulatory and Enforcement Agencies program, ANZOG
<b>360</b>	360 degree feedback assessment, usually conducted with direct reports and stakeholders providing feedback on the leader's leadership capabilities
<b>International/local conferences and speaking engagements</b>	International events and speaking engagements are often effective development opportunities



## 1.3 *Behaviours and culture*

### 1.3.1 Performance and skills management

In relation to skills management, P&D has developed a formal leadership development program specifically for the current Commissioners. The training topics covered include:

- Unconscious bias program (for Commissioners and SES)
- Values and behaviours (experiential half day program for all ASIC staff)
- NIDA media training
- Mandatory compliance training.

In addition, an external service provider was engaged in 2013 to develop a tailored program based on the needs of Commissioners. As a result, a program called the 'Conversation Series' has been developed (and is still being completed), consisting of a series of seminars covering the following topics:

- change leadership
- strategic clarity and coherence
- cultural alignment
- team leadership.

More generally, Commissioners can also seek their own development opportunities through attending various internal and external forums and programs. For example:

- The Chair attends the World Economic Forum and Australian DAVOS Connection
- The Deputy Chair participates in the Cranlana Leadership program and has also plans to attend the Behavioural Economics program at the London School of Economics in 2016
- Commissioners attend domestic and international conferences on a range of topics both as presenters and participants
- Commissioners who are lawyers access ASIC's Legal CPD program and the Business Law Section forum run by the Law Council of Australia
- Additional executive coaching (utilised by previous and current Commissioners at their request).

*Part 2*  
*Strategy*





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## 2.1 Strategy-setting process

### 2.1.1 Establish mandate

ASIC's mandate is captured in three documents:

- *The ASIC Act 2001*
- The government's Statement of Expectations, which outlines the government's expectations of ASIC's role and responsibilities, its relationship with government, issues of transparency and accountability, and operational matters. The first Statement of Expectations was issued by the Treasurer in February 2007, in response to commentary and recommendations in the Uhrig and Banks Reports (*Review of Corporate Governance of Statutory Authorities and Office Holders* and *Taskforce on Reducing Regulatory Burden on Business* respectively). The most recent Statement of Expectations was provided to ASIC in April 2014, and provided a refreshed focus on minimising the regulatory burden on business and the community.
- The Statement of Intent, which is ASIC's response to the Statement of Expectations. The second and current Statement of Intent was issued in July 2014, and includes:
  - ASIC's three strategic objectives
  - a high-level view of forward-looking challenges, which are similar to but do not mirror the key challenges set out in ASIC's Strategic Outlook 2014-2015 published three months later, in October 2014
  - an overview of the 'detect, understand and respond' approach
  - an outline of ASIC's role in advancing the government's deregulation agenda
  - ASIC's view of its relationships with government, the responsible minister, Treasury and peer agencies
  - statements in relation to transparency and accountability, organisational governance and financial management.

### 2.1.2 Develop strategy

Necessary amendments to the strategic objectives are driven by the Commission as required (in consultation with the Strategy Group, primarily the Strategic Policy team). For example, as a result of the FSI process and an acknowledgement that ASIC's role is broader than simply promoting disclosure, the first priority was amended from "confident and informed investors and financial consumers" to its current wording of "trust and confidence".

### 2.1.3 Environmental scan

The environmental scan is the key evidentiary input to the identification of risks, and is undertaken on the premise that ASIC's areas of focus should be driven by evidence to the greatest extent possible.

The scan is a data-gathering and analysis exercise run by Strategic Intelligence, and informed by the entire organisation via Strategic Intelligence relationship managers. Data is sourced through a range of channels, including:

- other government agencies such as the RBA, ABS, APRA and ATO (primarily publicly available information, although supplementary statistics are provided in some instances)
- purchased data from third parties such as Bloomberg, the ASX and Roy Morgan
- data captured and held within ASIC, such as the Insolvency Practitioners Report and the Financial Adviser Register
- international dialogue and analysis such as the IOSCO Emerging Risk Committee's annual risk outlook.



This data is analysed and the most compelling material is collated into an environmental scan report.

The 2015-16 report is 62 pages and the content is divided into 10 sections:

- ASIC's regulatory population
- the economic setting
- financial literacy
- financial advice
- funds management industry
- superannuation and retirement
- insurance
- complex products
- Australian financial market structure
- innovation and technology.



## 2.2 Strategy communication

### 2.2.1 ASIC's Corporate Affairs function

The Corporate Affairs function is responsible for internal and external communications, including media and government relations.

ASIC has a strong social media presence and Corporate Affairs has responded to reduced resources by establishing 'satellite' communications roles in functional teams, which ASIC staff consistently noted are taken on by staff who typically lack formal communications experience but have expressed an interest in contributing in this area. In some instances there is a defined protocol of responsibility and approvals between these satellite roles and Corporate Affairs.

There is a recognition of the value in sharing lessons learnt with other regulators internationally, particularly following the Davis Inquiry in the United Kingdom, and to this end ASIC is in the early stages of initiating an international working group.

### 2.2.2 External communications strategy

ASIC's external communications strategy states that the success of external communications will be measured having regard to:

- *The Office of Corporate Affairs business plan*

The most comprehensive set of performance measures is in the Corporate Affairs business plan, and this also forms the basis for the assessment of the Corporate Affairs function and leadership. As mentioned previously, they measure output rather than impact of communications activities.

- *ASIC's external stakeholder survey*

This is typically conducted every two years and covers the full remit of ASIC activity. The most recent survey (2013) included several questions regarding satisfaction with communications at a high level, but did not include the opportunity to provide any more meaningful feedback. In response to that survey, 28% of stakeholders agreed that ASIC clearly communicates what it is doing and 30% agree it is transparent in the way it operates.

- *A target of 70% overall satisfaction in the annual staff survey*

This measure has exceeded 70% on every occasion (in the 2015 staff survey 74% of staff agreed that they are regularly kept informed about what is happening across ASIC).

- *Quantification of media clips and broadcast coverage per quarter, with 80% positive or neutral coverage.*

Corporate Affairs reviews media coverage each quarter to assess whether 80% or more is positive or neutral, and over the past two years the results have fallen below the 80% level on only one occasion. However, the impact of this coverage on market perception of ASIC is not assessed.

### 2.2.3 Approach to BaU communication

This is supported by two key documents:

- The external communications policy, which outlines roles and responsibilities in relation to external communications, media, speech, presentation and government relations protocols, and guidance in relation to brand management, advertising and use of social media. It also provides the goals for ASIC's external communication, which are that it:
  - is clear, consistent, timely and targeted – aligned with ASIC's strategic objectives
  - promotes ASIC's vision, outcomes and forward agenda



- maximises the impact of key messages
- explains the implications of ASIC's actions
- generates greater community understanding of ASIC and its role
- reinforces ASIC's authority, responsibility and credibility.

The Corporate Affairs business plan, which defines an approach to and metrics for BaU communications (both external and internal). It follows the same template as the other business plans and includes team priorities, each linked to one of ASIC's three strategic objectives (eg intensive management of issues and identification of communications opportunities, especially media), broken down into activities (eg leverage media announcement where appropriate via broadcast interviews) and success measures (eg securing six broadcast interviews per month). The activities listed in the plan are tactical and success measures are output-focused rather than outcome-focused. The business plan does not account for additional project or campaign communications needs.

## 2.2.4 Overview of external communication

ASIC:

- has published a Policy on Public Comment, which outlines ASIC's approach to public comment on investigations and enforcement actions (this fills a similar function to the FCA's Transparency Framework)
- provides regular updates on regulatory activity through a range of publications, including the ASIC Gazette, ASIC Digest and a number of newsletters
- uses social media extensively. ASIC has three Twitter accounts (@ASICMedia, a Corporate Affairs account which targets the regulated population, ~8,200 followers; @ASICConnect, a licensing and registry account, ~10,600 followers, and @MoneySmartTeam focused on consumer education, ~12,200 followers). ASIC also uses Facebook, LinkedIn and YouTube, and plans are under way to start publishing podcasts
- has a strong culture of contestation in communications and is diligent in writing 'letters to the editor' in response to negative media attention (12 have been published to date this year). These responses are also made available on its website and Twitter feed.

*Part 3*  
*Delivery*



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## 3.1 Organisation structure

### 3.1.1 Regional Commissioners

The Regional Commissioner role was previously stand-alone. It is now an additional responsibility added on to an existing role. Outside Sydney and Melbourne, it is typically filled by the most senior person on site. Nominally the role reports to the Chair, but in reality there is little interaction between the Commission and Regional Commissioners (in their Regional Commissioner capacity. A number of Regional Commissioners have extensive contact engagement with the Chair because of their other roles).

There is no position description or formal induction for Regional Commissioners, but each has a business plan tied to the following three priorities:

- Build and maintain effective relationships with key stakeholders in the region, including government, industry, consumers and local media
- Support operational effectiveness and efficient service delivery in regional office
- Contribute to local office staff engagement and staff development to support both individual career advancement and the achievement of ASIC's key outcomes.

While the first of these priorities speaks to strengthening local relationships, this is not a legal requirement of the role (section 96 of the ASIC Act states "For each regional office ... there is to be a different Regional Commissioner ... who must manage the office."). Despite this, some of the Regional Commissioners consider regional engagement to be the most valuable aspect of the role; particularly given the ongoing criticism ASIC has faced from stakeholders.

The business plans outline objectives, activities and success measures aligned to each of the three priorities. Regional Commissioners are not required to report on progress against these measures or undergo any form of performance assessment. Some Regional Commissioners told us that the role can account for up to 50% of their time and those who are not SELs do not receive the same communications and are not entitled to the same administrative support or training that SELs receive. For example, SELs receive media training and Regional Commissioners do not, despite the public speaking and communications component to their role.

### 3.1.2 MIG

The government provides funding for MIG to undertake these new regulatory functions; to develop and implement a framework to support market competition; and implement ASIC's Enhanced Market Supervision program. However, since 2010 ASIC has received funding from the ASX, and ASIC's additional expenditure in relation to the cash equities markets (for ASX-listed equity securities) for the period 1 July 2015 to 30 June 2016 will be recovered from ASX, Chi-X and their market participants.



## 3.2 People

### 3.2.1 Workforce planning

Figure 6: Workforce planning project for the Regulatory clusters

Activity	Timeframe for delivery
Review recruitment and selection processes and implement capability-based selection techniques	March 2015 – February 2016
Assess capability and develop workforce plan for each cluster	April 2015 – February 2016
Embed future capabilities into Learning Frameworks and incorporate them into employees' development planning discussions	October 2015 – December 2015
Embed future capabilities into assessment methodologies for talent/potential identification and succession planning	September 2015 – November 2016

The Capability Review identified the following gaps:

- Data analysis:** ASIC has no organisation-wide data strategy; many SELs interviewed had concerns that several parts of the current workforce are not very data adept or technologically literate. The responses to the Capability Review Survey support this concern. When asked “*What capabilities does ASIC need to help it meet its biggest challenges in the next 2-5 years?*”, there were 93 comments which referred to specific topics such as IT, regulatory/industry/market developments, data analytics or other technical skills and there were an additional 175 comments related to improving the quality of ASIC’s IT infrastructure. However, many stakeholders also noted that where ASIC has focused on developing the required capabilities, this has been effective. For example, the analytical work done in Markets on payday lending and ‘dark pools’ has enabled more effective conversations with the market because the argument was underpinned by data.
- Behavioural economics:** Interviewees and roundtable participants (particularly those from Markets) identified a need for greater capability in behavioural economics, to better understand both consumer decision-making in financial markets, and firms who design products or business models which prey on the predictable and persistent errors made by consumers.
- Industry/commercial/market knowledge and experience:** There was general agreement by the SELs interviewed that ASIC should increase the number of employees who have experience working in the markets they regulate either through lateral hires or secondments. Not only does market experience help employees understand the needs and motivations of the regulated population, but it is also valuable when a team is planning proactive surveillance. Because each proactive surveillance has quite a few unique characteristics which vary depending on the specific entity, transaction or product, it is therefore more efficient when the team has a source of industry ‘know-how’ regarding where to look for the information they require.
- Product knowledge:** External stakeholders identified that ASIC does not have enough staff with in-depth product knowledge, especially when considering non-publicly traded products. The exception to this statement is MIG who are generally highly regarded in the market.
- Evidence-gathering in surveillance:** Handling and gathering evidence is a critical process in Enforcement, and the quality of evidence required to pursue a matter is different from the level of evidence that a Stakeholder team may gather as an indicator of misconduct. Many SELs observed that there is an opportunity to eliminate duplicated effort and increase the efficiency of evidence-gathering by aligning the approaches of the Surveillance and Enforcement teams.
- Project management:** As there is no longer a dedicated project management team, ASIC does not have the capability for organisational change management, project management, project management office and





business analyst support. This will be required for the large-scale programs being planned, such as the OneASIC program and the possible transition to the User Pays Funding Model.

- **Ability to use technology:** Multiple interview and roundtable participants consider that the primary issue with technology relates to capability rather than systems. It was suggested in the interviews and roundtables that if people knew where to look and were able to use the systems appropriately and consistently, there would be much less concern.
- **Business analysis:** In the internal interviews and roundtables, participants noted that clusters lack skills to articulate their technological requirements on the basis of business needs. This can make it difficult for IT to understand what is needed, thus resulting in either no change, or a lack of satisfactory recommendations. Participants in the IT roundtable agreed that employing business analysts who can translate business requirements into technology requirements could benefit both IT and the clusters.

### 3.2.2 Performance measurement

ASIC's 'Guide for Developing a Performance Agreement' contains tools and references to help staff identify individual priorities and measures to include in their performance agreements. The advice includes:

1. Use the *business plan*, as this identifies the priority work of the team that supports ASIC business priorities and key objectives. The business plan would include project and important business as usual work.
2. If not already explicit, identify the *outcomes* or purpose for all items in the business plan, eg Influence key stakeholders to give consumers and investors clear and meaningful information.
3. Develop *possible measures* that will indicate delivery against each priority eg # ads targeting investors reviewed, # actions taken on misleading ads, % decrease in complaints on disclosure documents.
4. *Shortlist the measures* (grouped by the stakeholder) which then become the few measures of performance selected to assess the team or individual's successes.
5. Consider which priorities and measures would apply to the priority and whether particular individuals are expected to contribute to different measures.

The document provides further guidance on how to develop the measures:

1. For each priority, consider what would demonstrate achievement.
2. List the things you could count or measure that would give you evidence that the result was actually occurring.
3. Choose the best measures, which should be expressed wherever possible in terms of:
  - \$, # (number of), or
  - % or % change if measuring changes in behaviours.

TIPS:

- Measures should include a due date or time dimension
- Choose the best measures – don't wait for perfect measures.

### 3.2.3 Recruitment

The recruitment process is managed end to end by an outsourced function which sits on site within the Sydney P&D team. Business leadership approve the commencement of individual and bulk recruitment activities, and approve the final selection of individuals. Recruitment activity generally occurs when there is a vacancy or promotion opportunity in the current structure or New Policy Proposal (NPP) or Enforcement Special Account (ESA) funding for a specific task for project.



## 3.3 Regulatory processes

### 3.3.1 Regulatory tools used by Stakeholder teams – engaging with industry

Another approach to industry engagement is evidenced through the Conduct Risk Calculator developed by the Investment Banks Stakeholder team.

- We were informed through interviews and roundtables that the team did not have sufficient resources to undertake a full review of all investment banks, so it developed an Excel-based survey tool which it distributed to 21 investment banks under notice. Based on the results, a detailed report was put together.
- These benchmark reports were then used by ASIC as an educational tool to talk about what others in the market are doing, what best practice looks like, and to ultimately motivate behaviour changes.
- Findings were provided and presented to each investment bank, and formed the basis of presentations more broadly, including to lawyers and an estimated 2,000 bankers.

We have not received enough information to form a view regarding the efficiency of resource allocation (ie whether the calculator has in fact allowed the team to do more surveillance with fewer resources, as anticipated) or the overall effectiveness of the tool itself. However the Investment Banks Stakeholder team reports that the ranking and benchmarks produced and distributed based on the calculator's findings appeal to the competitive nature of the investment banking industry, and are an effective way of changing behaviour. This is seen as particularly important given the ambiguity of the investment banking sector, and challenge of monitoring and detecting misconduct. ASIC staff informed us that in their view it is more effective if behaviour can be influenced to avoid misconduct, rather than identifying and addressing misconduct retrospectively.

### 3.3.2 Regulatory tools used by Stakeholder teams – surveillance

#### Risk-based approach to surveillance

Key areas of focus for surveillance are identified through the annual strategy-setting process and documented in each surveillance team's business plan. However, a number of SELs note that while they make their best efforts to map out their surveillance approach in their business plan, the unpredictability of reactive surveillance means that often resources intended for proactive surveillance must be reallocated.

Staff interviews and review of the Surveillance Manual confirmed that ASIC prioritises surveillance activity on a risk basis. This takes different forms in different teams. For example:

- The Investment Banks Stakeholder team has divided the market it regulates into three tiers. It actively engages with the first and second tiers (to varying degrees), but only does reactive surveillance of tier three.
- Similarly, the Financial Reporting and Audit Stakeholder team performs proactive inspections of audit firms, focusing on firms with the greatest potential impact on markets. We were informed that this means that approximately 20 audit firms are inspected every 18 months and large firms can be inspected monthly.
- The Investment Managers and Superannuation Stakeholder team is developing a data model, which draws on internal and external data (qualitative and quantitative) to identify red flags in the market.
- MIG also takes a data-driven approach. Central to this is its access to real-time data through the Market Analysis and Intelligence System, which allows it to identify issues and act to address them immediately, rather than relying on retrospective information.

We were informed that to drive greater consistency and embed 'best practice' risk-based surveillance across all Stakeholder teams, the Strategic Policy team produced the Guide to Risk-based Surveillance. It sets out a five-phase process:



1. Resource allocation (done as part of the annual business planning process)
2. Environmental scanning, to establish what ASIC's view of the market's long-term challenges mean for each Stakeholder team and identify potential risks
3. Risk assessment, to confirm if any possible risks identified in phase two exist or are emerging, and analyse and evaluate those risks
4. Surveillance, to plan the surveillance and identify information needs
5. Surveillance outcomes, to address the findings of the surveillance activity.

The guide also contains examples of indicators of potential risk and a template risk-based surveillance planning form. We were informed by ASIC staff that teams are not obligated to use the guide or follow its approach. Adherence to the guide is at the discretion of the individual SELs.

### **3.3.3 Process to translate emerging priorities into surveillance activity**

ASIC identified culture and conduct as a key challenge as well as an important risk driver in its Strategic Outlook 2014-2015 published in October 2014. This is a key challenge that is relevant to many teams within ASIC.

Specific guidelines or procedures for translating this challenge into the day to day activities of the teams within ASIC, are currently being created to ensure a consistent approach is taken across ASIC. This documentation is being developed several months after business plans and targeted surveillance activities were approved. Staff describe the way in which culture has been embedded into the surveillance approach as "organic", given the lack of guidance available.

Where a key long-term challenge drives one-off activity or focus in a specific part of the organisation (eg financial advice), as is the case with several of these identified key challenges, a project plan or inclusion of the activity in relevant business plans is sufficient.

### **3.3.4 Handover process between Stakeholder and Enforcement teams**

When a Stakeholder team finishes a surveillance matter, it needs to decide what regulatory or enforcement action is appropriate. Where there has been a significant contravention of the law and encouraging the organisation to change behaviours and/or improve compliance measures is insufficient, the matter may be referred to the Enforcement team.

Resource constraints mean that not all matters can be transferred to an Enforcement team pursued through enforcement, so generally efforts are concentrated where the biggest impact can be made. All matters being referred from Stakeholder teams to Enforcement teams go through a formal triage process to determine what matters should be taken through to enforcement.

The Enforcement aspect of the referral is documented in the Enforcement Manual. The Risk-based Surveillance Guide states that Enforcement teams should be consulted during the surveillance planning stage and refers Stakeholder teams to the Enforcement Manual and ASIC/team policies for direction on information and evidence gathering. Phase five of the risk-based surveillance approach, 'surveillance outcomes', says that "referral to Enforcement team for action" may be an outcome of surveillance, but does not provide any detail about how that referral should be made.

To progress a matter to enforcement, Stakeholder teams are required to write a scoping memo which outlines why the matter is important and its impact on the market.

The scoping memo is provided to the relevant referral forum. There a number of referral forums run by each of the four primary Enforcement teams. The forums meet fortnightly to assess incoming referrals, available resources and make decisions on which matters will proceed to enforcement. Anything defined as a 'major matter' will be referred to the relevant Commissioner and the Enforcement Committee. The Enforcement



Committee sits across all Stakeholder teams and makes decisions about the conduct, strategy and focus of major matters including the initiation of proceedings. The Enforcement Committee is involved where a decision might result in political interest, be perceived as an ‘ASIC decision’, or have impacts for other areas (such as the Regulatory Policy Group).

When a matter is approved to proceed to enforcement, the relevant Enforcement team has responsibility for planning the investigation and taking it forward. This does not mean that the Stakeholder team has no further involvement in the matter; in some instances their experience and expertise means that they have a continued role. If the matter is not approved, it may be referred back to the Stakeholder team for surveillance or engagement.

Staff informed us that the formal process outlined above is supported by informal communication, and it seems that this informal communication is what determines the efficiency of the handover. Staff attribute challenges when transferring matters from Stakeholder to Enforcement teams due to:

- concern from Enforcement teams that the information gathered by some Stakeholder teams is not adequate for enforcement action, resulting in additional ‘back and forwards’
- the varying level and quality of communication between Stakeholder and Enforcement teams across the organisation
- “territorial” behaviour in some teams, resulting in a need to have a “contact” to obtain documents
- the number of Stakeholder teams that may be liaising with an organisation simultaneously, making it difficult to have a complete understanding of the stakeholder and their priorities.

Staff consistently noted that these factors are less of an issue in areas where there is a stronger relationship between Stakeholder and Enforcement teams. For example, most of the work the Market Integrity Enforcement team receives is from Stakeholder teams who are also in MIG, which makes coordinated activity easier. In the last 12 months MIG has introduced two hybrid Stakeholder/Enforcement teams: the Markets Misconduct Enforcement Team and the Participant Misconduct Enforcement Team, made up staff with both enforcement and surveillance skills to increase collaboration and capability. All matters that the Enforcement team takes on come through the Markets Triage Referral Forum, which meets fortnightly. This is supported by monthly meetings where go/no-go decisions are made based on initial investigations.

### 3.3.5 Processes within Enforcement teams

ASIC has the power to administer the following state and federal legislation:

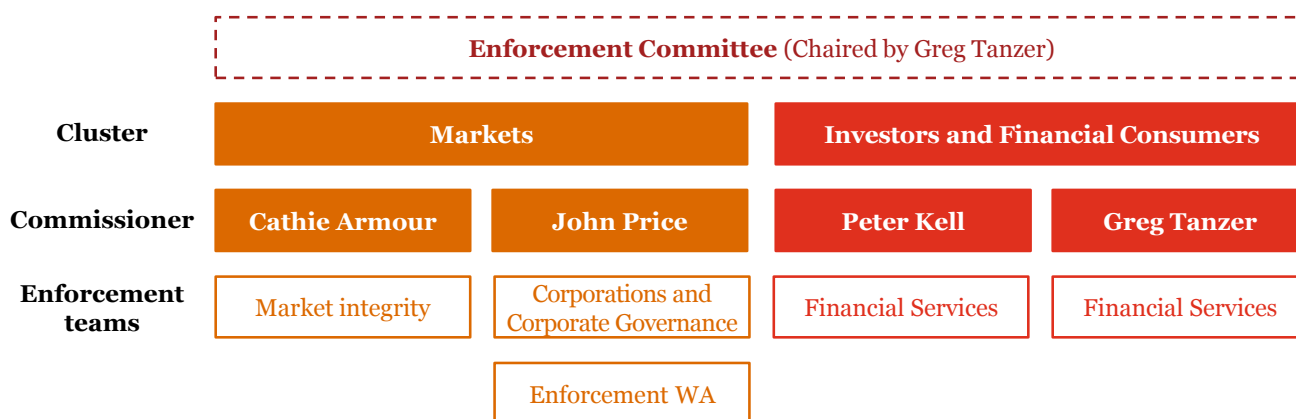
- Australian Securities and Investments Commission Act 2001
- Corporations Act 2001
- Business Names Registration Act 2011
- Business Names Registration (Transitional and Consequential Provisions) Act 2011
- Insurance Contracts Act 1984
- Superannuation (Resolution of Complaints) Act 1993
- Superannuation Industry (Supervision) Act 1993
- Retirement Savings Accounts Act 1997
- Life Insurance Act 1995
- National Consumer Credit Protection Act 2009
- Medical Indemnity (Prudential Supervision and Product Standards) Act 2003
- respective Crimes Acts legislation for each state.



### 3.3.6 Structure of the Enforcement group

ASIC’s Enforcement teams operate under a national structure, with total FTE of ~248 staff. The teams are primarily divided across the two Regulatory clusters of Markets and Investors & Financial Consumers. The Enforcement Western Australia team is the exception, operating across both clusters (except credit enforcements) but it was noted in staff interviews that it has a stronger focus on matters requiring specialist knowledge in mining and resources that are more prevalent in WA than in other areas of the country. The structure of the teams is set out below:

**Figure 7: Structure of Enforcement teams**



(Governance and Decision Making Processes – presentation prepared for Capability Review Panel Sept. 2015)

Each Enforcement team is led by an SEL, all of whom sit on the Enforcement Committee.

As Enforcement teams cover both investigation and litigation, a combination of investigative and legal skills is required within each team. In the Enforcement staff interviews, each leader discussed the capability requirements for their team. Each team has a different market focus area, so the desired skills differ somewhat. Some are focused on core legal and accounting skills, others seek a balance of legal and investigation skills, while others look to introduce broader market experience and data analytics capability.

We were informed through staff interviews and roundtables that recently, some teams have recognised that a closer integration to Stakeholder teams improves efficiency of matter management. The Small Business Compliance and Deterrence team has ‘vertically integrated’ its Stakeholder and Enforcement teams. In other words, it is a hybrid team which engages in both Stakeholder and Enforcement matters. Similarly, the MIG has recently introduced two new hybrid teams to sit across surveillance and enforcement:

- the Markets Misconduct Enforcement team (MET)
- the Participant Misconduct Enforcement team (PET).

#### *Reporting and referral of matters*

The Misconduct and Breach Reporting team (M&BR) is the conduit for information and intelligence referrals to the Stakeholder teams and Enforcement. M&BR assesses and registers all internal referrals of information, intelligence or misconduct to decide whether further action is required. Additionally, all reports and referrals from the public are initially routed through M&BR. These external sources include:

- reports of misconduct from members of the market (eg a whistle-blower, or a complainant)
- referrals from other regulators
- reports directed to ASIC as required by law (statutory reports from auditors, insolvency practitioners and licensees)
- referrals from Stakeholder teams based on results from surveillance and monitoring activities.



When ASIC suspects that there has been a contravention of a law that it administers, it decides whether to begin an investigation under the ASIC Act or the National Credit Act. It has been noted publically that the process for deciding which matters to investigate is as follows:

- M&BR records and assesses every report of misconduct received by ASIC. It aims to acknowledge the receipt of every report of misconduct by contacting the person who reported it within three business days, preferably by telephone
- When a report of misconduct is received, M&BR makes a range of inquiries and conducts an initial assessment to see whether the alleged misconduct suggests a breach of a law that ASIC administers and whether regulatory action is appropriate
- As part of the assessment process, M&BR considers (among other things):
  - a the material provided to it by the person who is reporting the alleged misconduct to ASIC (and will ask for more information if required)
  - b previous reports of alleged misconduct received by ASIC
  - c all publicly available information
  - d information they may be able to obtain from other agencies
  - e information from related third parties
  - f relevant statutory reports (eg in matters where external administrators are appointed)
  - g information derived from third parties through compulsory production notices that they may decide to issue
  - h information provided by their international peer regulators through memoranda of understanding
  - i market and trading data and information from ASX and other market operators
  - j any previous information obtained by ASIC in any of their activities, including surveillances, enforcement actions and investigations.

As noted in staff interviews and roundtables, all reports of misconduct received provide valuable information to ASIC, but not every matter brought to its attention is considered to merit further action. When deciding whether regulatory action is appropriate, ASIC will consider:

1. the strategic significance of the matter
2. the benefits to the market or public of pursuing the misconduct
3. matter-specific issues, including what evidence is available and what outcomes could be obtained using that evidence
4. whether there is an alternative course of action for dealing with the concern.

Potential referrals to Enforcement are considered by various internal committees according to the type of matter being referred. As noted in documents provided by ASIC, once a committee decides a matter should be referred to Enforcement, the SEL of the relevant Enforcement team must advise if the referral will be accepted within five business days (two business days for urgent matters).

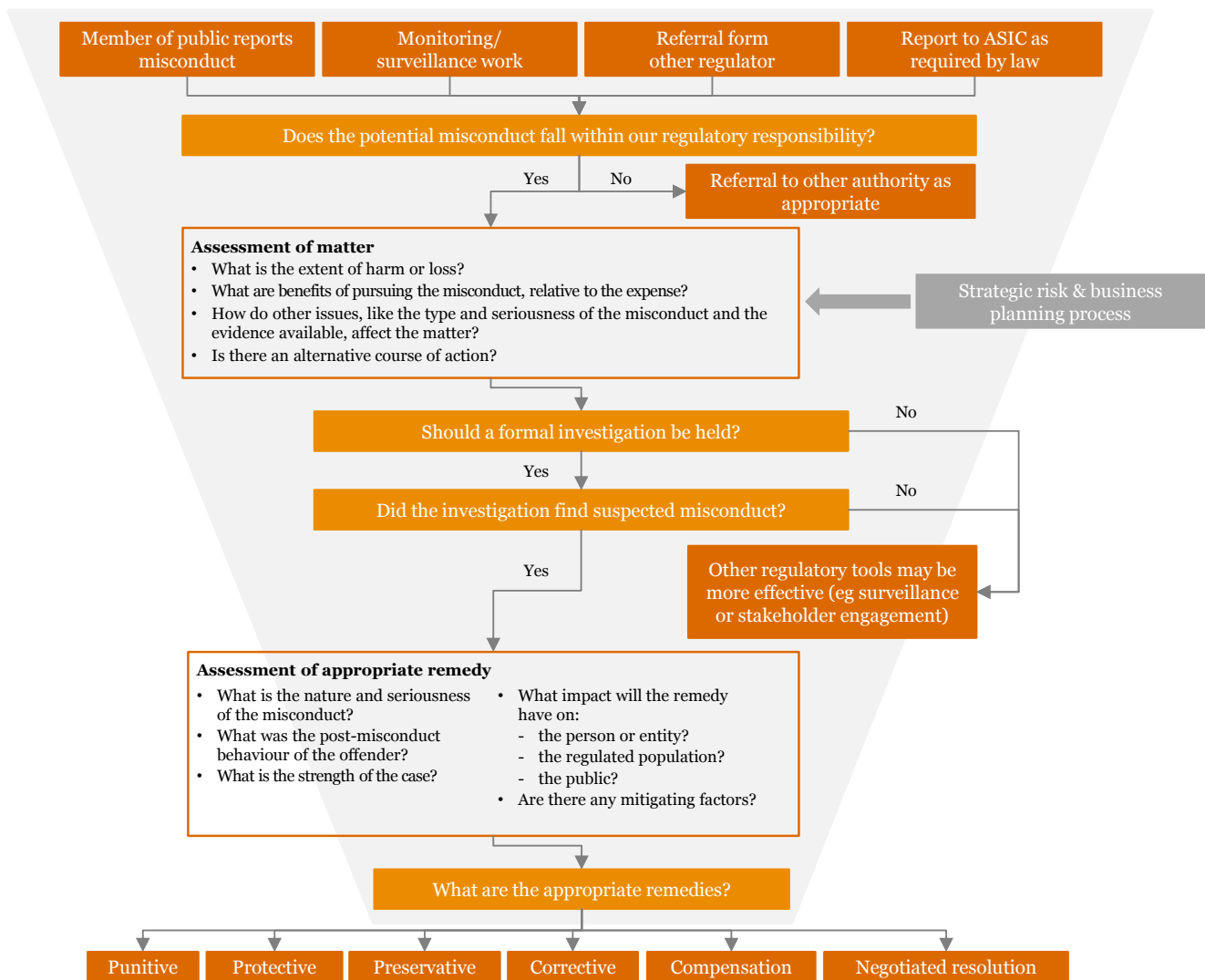
As noted in documents provided by ASIC, when considering whether to accept a referral, the Enforcement SEL will bear in mind the following:

- ASIC's strategic goals as indicated in its business plan
- the merit of the matter
- available resources
- matters the Commission has identified as a priority for action.

If the Enforcement SEL decides the matter does not fall within ASIC's regulatory scope of responsibility, it may be referred to another authority, if appropriate.



**Figure 8: ASIC’s approach to investigations and enforcement action**



(Source – Senate Inquiry into the performance of ASIC, p.110)

### Phases of matters

According to the pre-course information materials for ASIC’s Enforcement Project Management Framework (EPMF) Workshop, the use of the EPMF has been mandated by Enforcement Senior Executives. The term *Senior Executive* in Enforcement comprises the three SELs and the two Senior Executives. The EPMF workshop materials set out the principles and governance for enforcement-related matters. The framework divides matters into four phases, outlined briefly below then described in more detail.

#### 1 Resourcing and planning

- Matter is referred from M&BR or Stakeholder team
- Matter is submitted for Enforcement resourcing
- Matter accepted/rejected
- Initial analysis
- Scoping memorandum drafted
- Project schedule prepared



## 2 Investigation

- Begin investigation
- Gather and analyse evidence
- Recommend whether litigation should be undertaken:
  - If approved, retain and brief experts and/or Counsel
  - If it is decided that a matter should not progress to litigation, the appropriate Enforcement SEL might decide to use other regulatory tools to action the matter further, eg through surveillance or engagement management options

## 3 Litigation

- Compile brief
- Refer brief (brief to CDPP, Counsel Hearing Delegate)
- Undertake pre-litigation tasks, respond to requisitions
- Undertake proceedings, undertake trial

## 4 Closure

- Complete closure actions (disposals, archive materials)
- Conduct ‘Lessons Learnt’ workshop or ‘lite review’
- Report and share findings

The following section provides further detail on the framework described in the EPMF workshop materials, which has been supplemented with further detail from other materials provided by ASIC.

### 1. Resourcing and planning

- Matter is referred from M&BR or Stakeholder team
- Matter is submitted for Enforcement resourcing
  - Referral meeting (attended by SELs from Enforcement and the referring Stakeholder team): Discuss and decide availability of resources, strategic significance, merits of case
- Matter accepted/rejected
  - If accepted, appoint Project Manager and Project Team who set up project management framework and systems
  - Team undertakes initial analysis (review referral material; conduct relevant searches on ASIC systems; undertake searches for intelligence data; consult with referring Stakeholder team, CLO, insolvency experts, accounting experts, etc.)
- Team drafts a scoping memorandum to describe the relevant time period, the alleged misconduct, the persons/subjects of interest and the anticipated regulatory outcomes
- Project Team plans investigation and prepares project schedule, including: assign tasks, plan investigation costs, plan stakeholder management, establish protocols, create risk and issue register and plan mitigation strategies

### 2. Investigation

ASIC has specific investigation powers under s13 of the ASIC Act. These powers include:

- compulsory information-gathering powers
- power to make an application for a search warrant
- power to access telecommunications records
- power to make an application for a stored communications warrant.





ASIC uses these investigative powers to assess whether a suspected contravention has occurred. Evidence-gathering can also include data collected from the Stakeholder teams.

When the evidence has been gathered and analysed, the Project Team provides a recommendation at the monthly Enforcement Senior Executive meeting about the appropriate enforcement actions, including whether to proceed to litigation. Where matters proceed to litigation, the Enforcement team retains and briefs the appropriate experts, Counsel and/or the Chief Legal Office.

Non-litigation enforcement activities, such as protective actions and negotiated outcomes are also used. No further action could also be a decision made at this stage.

ASIC documentation states that throughout the investigation process, the relevant Enforcement SEL should consult with, and report to, the Commissioner responsible for the matter in respect of its scope, priorities and the progress of the investigation, tribunal or board hearing, civil litigation or prosecution.

As noted in the documentation, the following decisions would generally require consultation with, or reporting to, the Commissioner responsible:

- a major change in the scope or direction of an investigation
- ending an investigation
- whether to accept an Enforceable Undertaking
- the settlement of civil proceedings before a court, tribunal or board or the settlement of criminal proceedings.

The documentation also confirms that the extent of consultation or reporting will depend on various factors including:

- the arrangements agreed between the SEL and the Commissioner
- the importance of the matter to ASIC
- the risks to ASIC if the matter is mishandled
- whether it requires departing from the way ASIC would normally handle a matter of a similar nature
- the extent to which decisions are being made by the Commission because the matter is a major matter.

If the Enforcement SEL disagrees with a decision made by the Commissioner responsible for the matter, they may raise the decision with the Chair for possible consideration by the Commission.

### **3. Litigation**

ASIC documentation confirms that the Litigation phase begins with the preparation of briefs for referrals to the CLO and other relevant parties such as the CDPP and Special Counsel. Before beginning proceedings, the CLO, external counsel, CDPP and Evidence Services are engaged, to increase the chances of a positive outcome and to ensure there are grounds to commence proceedings.

### **4. Closure**

Closure actions include disposals, archiving, and reviewing and recording lessons learnt to identify areas for continuous improvement. Closure applies to investigations that do not proceed to litigation, as well as to closure following litigation proceedings. This is outlined in ASIC documentation.

‘Lessons learnt’ workshops are not held for every matter or project; however, they are mandatory for major matters and BaU matters that meet certain criteria. It is mandatory to conduct a lessons learnt ‘lite’ review for all other matters as part of closure, excluding matters where ‘No Further Action’ is considered appropriate. The purpose of the lessons learnt process is to reflect on the experience for continuous improvement, so that mistakes are less likely to be repeated and best practices can be shared.



## Enforcement governance

The approach to governance for Enforcement teams is two-pronged, based on the following governance forums:

- Enforcement Committee (convened by Commission)
- Enforcement Senior Executives meeting (monthly).

The responsibilities for each forum are set out in the following table:

**Figure 9: Enforcement Governance Structure**

Forum	Attendees	Responsibilities
<b>Enforcement Committee</b>	<ul style="list-style-type: none"> <li>• Commissioner, Greg Tanzer (Chair)</li> <li>• Enforcement Senior Executives</li> <li>• Chief Legal Officer, Michael Kingston</li> <li>• SEL SBC&amp;D, Brett Bassett</li> <li>• SEL Strategy Group, Greg Kirk</li> <li>• Commission Secretary, Kevin Foo</li> </ul>	<ul style="list-style-type: none"> <li>• Major matter selection and oversight</li> <li>• Policy issues</li> <li>• ESA and investigation costs budget allocation</li> <li>• Risk assessment of ESA, major matters and regulatory gaps</li> <li>• Resolving case priority deadlines</li> </ul>
<b>Monthly Enforcement SEL meeting</b>	<ul style="list-style-type: none"> <li>• Enforcement Senior Executives</li> <li>• Enforcement Business Manager, Parisa Golchi</li> </ul>	<ul style="list-style-type: none"> <li>• Practice/operational issues</li> <li>• Process and policy issues</li> <li>• Enforcement communication</li> <li>• Recruitment and staffing issues</li> </ul>

(ASIC Enforcement Manual, Ch. 3).

### Role of the Enforcement Committee

As outlined in ASIC documentation, the responsibilities of the Enforcement Committee include the following:

- make decisions about the conduct, strategy and focus of major matters and other significant enforcement litigation and investigations, including the initiation of proceedings
- oversee, monitor and make decisions about significant policy in relation to ASIC enforcement initiatives, including managing risk in the Enforcement teams.

Important strategic decisions for major enforcement matters are made by the Commission or by the Enforcement Committee. As outlined in ASIC documentation, the relevant Enforcement Senior Executive, the responsible Commissioner or the Chair can decide if a matter is ‘major’, based on any of the following factors:

- relevance of the matter in relation to ASIC’s view on the market’s long-term challenges
- the seriousness and public effect of the alleged misconduct
- the general deterrence effect of a successful outcome
- the public profile of the matter
- the resources required to pursue the matter
- the risks to ASIC from the matter being mishandled
- whether it is proposed to depart from the way ASIC would normally deal with a matter of a similar nature; for example, proceeding by way of civil penalty where a criminal prosecution would normally be pursued.



### Role of the monthly Enforcement SEL meeting

As outlined in ASIC documentation, the monthly SEL meeting is used for addressing operational issues, process and policy issues, enforcement communication, and recruitment/staffing issues for the Enforcement teams. This is also where Enforcement teams discuss and make decisions on whether to progress referred matters into initial investigations.

For matters that are not determined to be ‘major’, the Enforcement SEL (in consultation with the relevant Commissioner and the referring Stakeholder team) can make the decision to:

- begin civil litigation
- refer a brief to the CDPD
- appeal a decision from a trial or other final determination.

ASIC documentation confirms that the Enforcement Senior Executives also have a broad responsibility for the strategic direction and performance of Enforcement as a whole. Chapter 3 of the ASIC Enforcement Manual identifies the following responsibilities of the Enforcement Senior Executives:

- day-to-day control of an investigation, tribunal or board hearing and civil litigation
- formal reporting to the Commission in Commission meetings and via the Senior Leaders Forum
- the financial management of, and allocation of funds to, investigations
- attendance at monthly Senior Executive meetings to discuss matters of common interest to Enforcement, including operational issues, budgets and finance
- liaison with other Stakeholder teams
- support for the Commission’s obligations in relation to external forums; for example, being the first point of contact for other agencies such as the ATO, APRA or AUSTRAC.

### Enforcement: standard reporting/decision-making; key decision and review points and KPIs

ASIC has provided the below table regarding enforcement decision points, including what data is used to inform the decisions and how the decisions are reported.

#### Key decision and review points

Figure 10: Key decision and review points

Key decision/review point	Details	Data used to support decision	Reporting on decision
<b>Decision point:</b> to accept or decline a referral for investigation.	<p>Referrals to enforcement are typically received from ASIC Stakeholder teams or the Misconduct and Breach Reporting team</p> <p>Referrals are considered at the appropriate decision forum (depending on the subject matter).</p> <ul style="list-style-type: none"> <li>• Triage (market integrity)</li> <li>• CIC (Credit)</li> </ul>	<p>The decision to accept (or decline) a matter for investigation is informed a range of matters, including the following:</p> <ul style="list-style-type: none"> <li>• A referral document</li> <li>• this document is prepared by the referring team. A typical referral sets out the alleged contraventions and the evidence supporting those contraventions.</li> <li>• <b>The Matter Ranking</b></li> </ul>	<p><b>Reporting on decision to accept a referral for investigation:</b></p> <p>The specialist support team manages the referrals meetings. This team keeps all records of referrals (accepted, rejected, other details) in a central location.</p> <p>If a matter is accepted for formal investigation by the Enforcement team, it is entered onto SPEAR – Enforcement's reporting</p>



Key decision/review point	Details	Data used to support decision	Reporting on decision
	<ul style="list-style-type: none"> <li>• FS referrals committee (financial services)</li> <li>• CCG referrals committee (corporations and corporate governance)</li> <li>• Promotional Materials Group.</li> </ul> <p>The referral meetings are conducted regularly (eg fortnightly) and are attended by the SELs (or senior staff) of the referring team and senior members of the relevant Enforcement team (including Senior Specialists, Senior Managers and SELs). The relevant Commissioner may attend the referral meeting (depending on the team).</p> <p>At the meeting, referrals are discussed and decisions are made to:</p> <ul style="list-style-type: none"> <li>• accept the referral for initial action or investigation by Enforcement team;</li> <li>• send the referral back to the referring team for further work; or</li> <li>• decline the referral.</li> </ul>	<p><b>Guide (MRG) score:</b> refer to previous Enforcement presentations. The MRG includes factors such as the availability of evidence and the strategic significance of a matter.</p> <ul style="list-style-type: none"> <li>• <b>The availability of resources:</b> the availability of resources is a key consideration in the decision to resource a matter or not. In some circumstances, a matter may be so important that it justifies reallocating resources from another matter and either allowing that matter to proceed more slowly, or to discontinue that matter.</li> <li>• <b>An assessment document:</b> such a document is typically prepared for more complex matters. For example, Corporate Governance Enforcement prepares an assessment documents to aid decision-making at the referral meeting: [Note: the recommendation in an assessment document will sometimes not be accepted, as it wasn't in the present case].</li> </ul>	<p>database.</p>
<p><b>Decision point:</b> To commence a formal investigation and decide on the scope of an investigation.</p>	<p>Prior to initiating an investigation or shortly thereafter, 2 documents are prepared:</p> <ul style="list-style-type: none"> <li>• A s 13 filenote; and</li> <li>• A scope document.</li> </ul> <p>The s13 file note is approved by the Project Sponsor after consultation with the</p>	<p>The Project Sponsor must specify (in the filenote) the information that they have used to support the decision to prepare and sign a s 13 filenote</p> <p>Note: Though there is no specific legal requirement to document our decision to begin a formal</p>	<p><b>Reporting on decision to commence a formal investigation:</b></p> <p>The decision to commence a formal investigation (as recorded in the s 13 filenote) is recorded in ASIC's document management system (ECM) and in SPEAR. The same</p>



Key decision/review point	Details	Data used to support decision	Reporting on decision
	<p>Project Manager and the team. If there is a change in the scope of the investigation, an amended s 13 file note is prepared.</p> <p>The scope document is prepared by the project team and is approved by the relevant SEL.</p>	<p>investigation (see <i>Little River Goldfields NL v Moulds</i> (1992) 10 ACLC 121), it is ASIC’s policy that s13 file note be prepared when we commence a formal investigation. The same process applies to investigations under s15 of the ASIC Act and s247 National Credit Act.</p> <p>The SEL uses the information contained in the scope document (as well as the referral document and the assessment document – see above) in order to decide the scope of the investigation.</p>	<p>applies for the decision in relation to the scope of the investigation.</p>
<p><b>Decision point:</b> go/no go</p> <p>A go/no go decision is a decision, based on preliminary inquiries, to proceed with a matter or to recommend that the matter be marked for no further action (<b>NFA</b>).</p>	<p>The KPI for making a go/no go decision is within 8 weeks of accepting a matter for investigation (unless otherwise agreed by the SEL).</p> <p>The go/no meeting is attended by the project team, the team’s SEL and the referring Stakeholder team’s SEL or senior staff member.</p> <p>The purpose of the go/no go decision point is to ensure that – at an early stage – matters which have no or limited prospects of success are not pursued.</p>	<p>A go/no go decision is made after the team has undertaken preliminary inquiries into the matter.</p> <p>The decision is informed by go/no go document (for which there is a template).</p> <p>If the recommendation is to mark the matter for NFA, then the NFA process is followed (see below).</p>	<p><b>Reporting on go/no go decisions:</b> The specialist support team keeps records of all go/no-go decisions.</p> <p>All go/no-go decisions – including NFA decisions – are recorded in SPEAR.</p>
<p><b>Decision point:</b> NFA</p>	<p>The KPI for making a NFA decision is 5 months (unless otherwise agreed by the SEL).</p> <p>A decision to mark a matter for NFA is made by the responsible SEL, in consultation with the relevant Commissioner and the referring Stakeholder team’s SEL.</p>	<p>The NFA decision is informed by a NFA memorandum prepared by the project team.</p>	<p><b>Reporting on NFA decisions:</b> Any decision to NFA a matter is recorded in SPEAR.</p>



Key decision/review point	Details	Data used to support decision	Reporting on decision
<p><b>Review point:</b> Commission review for matters that exceed the KPI for finalisation of an investigation.</p>	<p>The KPI for finalising (ie handing a brief to a delegate) an administrative banning or Market Integrity Rules matter is 6 months. For all other matters, it is 12 months to the first outcome.</p> <p>The Enforcement Committee reviews all matters which exceed this KPI.</p> <p>The Enforcement meeting is attended by the relevant Project Manager and Sponsor, the Enforcement Senior Executives, members of the Commission, CLO and Strategy.</p> <p>(If the matter is not NFA'd at this point), the matter will, thereafter, be under the supervision of the Enforcement Committee. The Committee will approve an action plan and decide when the matter should return to the forum for review.</p>	<p>The list of matters which exceed this KPI is drawn from SPEAR.</p> <p>A template report has been prepared for matters that are being brought before the Enforcement Committee for review.</p>	<p><b>Reporting on decisions arising from the Commission review.</b></p> <p>All decisions are recorded in the Enforcement Committee register of actions and decisions, which is circulated to EC members.</p> <p>Any decision to NFA a matter is recorded in SPEAR.</p>
<p><b>Review points:</b> Commission review of significant matters</p>	<p>Matters are identified as 'significant matters' by the relevant SEL, in consultation with the Project Sponsor. The criteria to be considered in identifying a matter as significant are set out in the Governance Protocol. These criteria include the public profile of the matter and the resources required to pursue the matter.</p> <p>From the time a matter is identified as significant, they come under the monitoring of the Enforcement Committee.</p> <p>A monthly 'significant matters' report is provided to the</p>	<p>The monthly significant matters report is a Casebook report, which includes significant matters only (see explanation above re Casebook reports).</p>	<p>See above.</p>



Key decision/review point	Details	Data used to support decision	Reporting on decision
	<p>Enforcement Committee. The report notes the progress of significant matters and highlights risks and issues.</p> <p>The Enforcement Committee reviews the 'significant issues' report and any matters to be discussed are put on the Committee agenda.</p>		
<p><b>Review point:</b> Individual Commissioner review.</p>	<p>Each Commissioner will review all matters from their Enforcement team periodically.</p> <p>Some do so at key matter milestones; others review all matters quarterly while others have regular meetings (eg fortnightly) where appropriate matters are escalated.</p>	<p>Existing reporting templates are generally used to prevent duplication of reporting. Examples include the Casebook (which is prepared and circulated monthly) and, to the extent that it is relevant, the significant matters report.</p>	<p>The usual reporting and recording of decisions in meeting minutes is used.</p>
<p><b>Review point:</b> lessons learned</p>	<p>Lessons learned workshops are mandatory for major matters and matters that meet certain criteria (eg lengthy matter and stages overall, significant resources expended (eg budget, people)).</p> <p>For all other matters excluding matters that are NFA'd within 5 months, it is mandatory to conduct a lessons learned 'lite' review as part of the closure meeting.</p>	<p>Information on the matter compiled by the lessons learned facilitator as required by the lessons learned framework:</p> <ul style="list-style-type: none"> <li>• project objectives</li> <li>• outcomes</li> <li>• successes</li> <li>• areas of improvement</li> </ul> <p>This process may also consider whether KPIs were met and, if not, identify strategies to improve compliance with KPIs in the future.</p>	<p>Lessons learned findings are reported to the Enforcement Committee. They are also recorded in the Technical and Procedures library on ASICNet.</p> <p>A group of Senior Specialists and subject matter experts (The Review Committee) will review lessons learned reports on a half yearly basis and produce a report which covers:</p> <p>The Review Committee's reports highlights: Recurring themes and key legal/technical issues raised, the associated issues and their impacts, the recommendations and improvement opportunities, Best practices, with key contacts for further information and the appropriate method for actioning recommendations (eg: Guidelines, tools)</p>



## Current enforcement KPIs

- 1.1. Within 8 weeks\* of acceptance of a matter a go/no go recommendation is submitted to the project sponsor
- 1.2. Within 5 months\* of commencement of an investigation, any no further action recommendation is submitted to the project sponsor
- 1.3. Within 6 months\* of commencement of an investigation for administrative banning and MIR matters, the investigation phase is completed (eg the matter is handed over to a delegate for decision)
- 1.4. Within 12 months\* of commencement of an investigation, an outcome is achieved (eg the matter is handed over to the CDP). It includes a NFA in complex matters as agreed with Senior Executive.

\* Or other period approved by SEL.

## Resourcing decisions

ASIC documentation confirms that resourcing of an investigation will depend on whether a matter is considered business as usual, or high priority. Approximately 20% of matters will be considered high priority. Enforcement cases are split into business-as-usual matters (80% of cases) and high-priority matters (20% of cases), each with its own governance structure.

**Figure 11: Categorisation of Enforcement matters**

	Business-as-usual matters (approx. 80%)	High-priority matters (20%)
<b>Reporting</b>	Senior Executive responsible	<ul style="list-style-type: none"> <li>• Commission and Enforcement Senior Executive Group</li> </ul>
<b>Project sponsor</b>	Senior Manager	Senior Executive responsible
<b>Project Manager</b>	ASIC4 to EXEC2 level staff	EXEC2 or Senior Manager/Specialist
<b>Project team size</b>	1 to 6 resources (depending on the phase)	3 to 50 resources (depending on the phase)

(Enforcement Document Pack for Capability Panel – Matter Governance section)

## Other meetings and checkpoints

As noted in documentation, there are a number of other meetings and checkpoints throughout the enforcement matter lifecycle:

- Planning meetings: to draft scope and plan for team
- Checkpoints: to make a go/no decision at regular intervals on whether to continue with the matter. This includes a review by the Commission at six or 12 months for longer investigations
- Regular progress meetings: held with the Project Team and project stakeholders to monitor progress and to track tasks
- Enforcement Committee meetings: reporting on matters flagged as significant, as well as matters running behind schedule.

## Performance

Review of documentation and staff interviews confirmed that ASIC currently measures and reports on its enforcement performance through a variety of mechanisms, including the following:

- ASIC enforcement outcomes (semi-annual report) provides an overview of:
  - Enforcement priorities and themes for the period





- Enforcement action highlights for the period
- Statistics on enforcement outcomes (civil, criminal, administrative, negotiated)
- Schedule of media releases for the period.
- Enforcement Team business plans:
  - Each Enforcement SEL develops a business plan for the year which links team activity to the Strategic Objectives and is used by the SELs and Commissioners to measure progress throughout the year during regular update meetings. (See Section 1.1 for more detail)
- ASIC Stakeholder Survey provides Enforcement SELs with high level feedback from the market about where Enforcement is positively perceived, and where there is opportunity for improvement.

### **Enforcement Outcomes**

Documentation provided by ASIC outlined that ASIC's enforcement action in 2014/2015 resulted in the following outcomes:

- 30 convictions, 14 jailed
- \$174 million in compensation for consumers
- Nearly \$6 million in fines from enforcement matters
- 62 people removed from directing companies
- 23 financial service licences cancelled
- 57 people named from providing financial services
- 167 criminal, civil and administrative actions completed
- 85% of criminal and civil litigation completed successfully.

## **3.3.7 Processes within Financial Literacy**

Financial Literacy is a division of the Strategy Group which works to promote investors' and financial consumers' understanding of financial markets and market risk.

The group:

- has overall responsibility for developing the National Financial Literacy Strategy
- conducts research into international best practices
- maintains the MoneySmart website for educating financial consumers and investors
- runs MoneySmart Week (in collaboration with other government agencies, community organisations and the corporate sector), which involves a range of events to promote the importance of financial literacy
- leads the MoneySmart Teaching initiative, which was developed with the guidance of a national reference group and includes a school curriculum (with teaching aids, activities and other support materials) and a website for parents and teachers
- has established MoneySmart Rookie, an education program which aims to help young people transition to financial independence and to understand the importance of making smart financial decisions
- has an 'outreach' team. This works in partnership with community organisations, consumer advocates and other government agencies to identify problems that people are having with their use of financial services, and to deliver community education and provide support to intermediaries that work with these consumers.

The Financial Literacy team's activity is outlined in its strategic plan. There are no significant processes associated with this regulatory activity, outside the strategy-setting process.



## 3.4 Resource allocation process

### 3.4.1 Scope of ASIC's activity

ASIC dedicates 70% of its Regulatory resources (ie those within the Markets and Investors & Financial Consumers clusters) to surveillance and enforcement. The job roles performed by teams within those clusters are outlined in Figure 12.

**Figure 12: Breakdown of Regulatory workforce activity**

Job family	Regulatory workforce	Investors & Financial Consumers	Markets	Market Integrity Group
Analysis	28%	31%	12%	37%
Legal	27%	26%	33%	24%
People management	19%	18%	21%	20%
Investigations	14%	13%	15%	14%
Administrative support	3%	4%	1%	2%
Policy & research	1%	2%	0%	0%
Project	1%	2%	0%	0%
Graduate	1%	1%	3%	0%
Knowledge management, communications and stakeholder	1%	1%	0%	0%
Customer Service	0%	1%	0%	0%
Information Technology	1%	1%	0%	1%
Forensic accounting	3%	0%	12%	0%
Change management	0%	0%	0%	0%

Source: Breakdown of Regulatory workforce activity, provided by ASIC.



## 3.5 Risk management process

### 3.5.1 Risk appetite and tolerance

ASIC's Risk Management Policy includes a high-level definition of risk appetite. In April 2015 a definition of risk tolerance was added in response to Commonwealth Whole of Government Risk Management Policy requirement for all Commonwealth entities to define risk tolerance as well as risk appetite.

**Risk appetite:** The policy states “the Commission determines appropriate risk appetite in relation to objectives after consideration and assessment of the regulatory environment. Detailed information on ASIC's risk appetite is articulated in ASIC's Strategic Outlook”.

The Strategic Outlook sets out the key risks ASIC sees within the markets it regulates, and how it will respond – prioritising its tools of surveillance and enforcement. There is no specific mention of ASIC's risk appetite in this document, however in setting out its perception of the highest risks to the market it is implied that these are the areas ASIC will operate within.

**Risk tolerance:** The policy states “the Chairman (or delegated officer) determines appropriate risk tolerance in relation to specific objectives and categories of risks after consideration and assessment of operational exposure. Clarification of specific risk tolerance can be found across the risk management framework in ASIC's Resource Management Instructions, operational plans, budgets, delegations and governance frameworks, policies and procedures. Preventative system controls and detective reviews of operational activity monitor adherence to key aspects of ASIC's risk tolerance”.

In developing its approach to risk appetite and risk tolerance, the Risk team obtained information from other Australian government agencies. This was used to compare and contrast how each agency developed its definitions within the context of its sphere of operation, size and level of risk management cultural maturity.

### 3.5.2 Risk management process

#### 3.5.2.1 Risk identification and assessment

ASIC staff have access to the Risk Management Policy and Risk Management Process Guidelines through the MyASIC intranet. During interviews with staff it became evident that they are risk averse and aware of their responsibilities for identifying and assessing risk.

During the annual risk management planning process, SELs will identify risks that could affect the delivery of their proposed business plans. A risk owner is identified and assigned to each risk to ensure proper accountability for managing the risk. Typically, this would be the owner of the business activity.

When risks have been identified, they are analysed to assess their level of inherent risk, then existing controls and mitigation strategies are examined to determine the level of residual risk. Once this exercise is complete all risks are evaluated to compare the overall residual risk against ASIC's risk appetite. This then informs management's decision on how to treat each risk (ie to reduce it, avoid it, or outsource it).

Because risks are dynamic in nature, they are reassessed each quarter. Internal staff interviews confirmed that all Risk Registers across the organisation are reviewed by the Risk team (with input from the SELs) to identify new and emerging risks and re-rate existing risks. Review of the risk registers confirms that they also identify controls and mitigants for each risk. Review of the Risk Committee meeting papers and minutes confirms that the Risk Committee reviews and vets the resulting aggregated risk information, with risks categorised into three types (strategic, operational and emerging). The Risk team then provides these registers to the Commission as part of the quarterly Risk Management Report.

**Strategic risks:** Through review of the strategic risk register we confirmed that all strategic risks are market risks. Internal strategic risks are considered operational risks. The Risk team confirmed that the Strategy Group



is responsible for identifying and assessing ASIC's strategic risks, together with the Commission and the SELs. This includes oversight of the link between strategic risks and regulatory responses in business plans. Strategic risks are communicated externally through ASIC's *Strategic Outlook*.

**Emerging risks:** Through review of the emerging risk register we confirmed that emerging risks are categorised as Firm risk, Product/Sector risk and Systemic risk.

- **Firm risks** are risks faced by individual businesses within the regulated population that may cause them to engage in misconduct or non-compliance, and thereby cause loss of confidence in Australia's financial markets.
- **Product/Sector risk** is the possibility of an event or trend jeopardising confident and informed investors and financial consumers and fair and efficient markets.
- **Systemic risk** is the possibility of an event causing impairment of the financial system that will lead to major economic disruption.

The ERC is responsible for identifying, assessing and providing advice on emerging risks for the Commission and the SELs. The Strategic Policy team is responsible for maintaining an Emerging Risk Register to record the risks addressed in the ERC meetings.

**Operational risks:** From a review of Risk Committee meeting papers we understand operational risks include:

- top-down risks identified as a concern by the Commissioners or Risk Committee
- bottom-up risks that are of particular concern to an individual business unit
- broad administrative risks that would be faced by any business area – fraud, security, workplace health and safety, resourcing, budget, etc
- process risks that reflect the particular business activities conducted by the business teams.

The Risk team confirmed that it is responsible for identifying and assessing operational risks with the SELs. They conduct a formal quarterly risk review with a focus on bottom-up risks and amend the Operational Risk Register (created for the Risk Committee) as required. The top-down view of operational risks was introduced recently to ensure ASIC's operational risk environment does not become a 'silo' view of risks relating to individual business units. Both the top-down and bottom-up Risk Registers are presented to the Risk Committee each quarter for noting.

We reviewed a sample of risk registers from across the business. The quality and level of detail is inconsistent (for example, the articulation of operational risks and controls in each team's risk register differs). The risk registers are not aligned to ASIC's view of risks being strategic, emerging or operational in nature. We understand from discussions with the Risk team that a project was being considered to address these issues; however, it has been delayed to capture the potential efficiencies that will be available with the implementation of the enterprise-wide risk management IT system.

### 3.5.2.2 Risk validation and testing

The Risk team confirmed it prepares a Risk Management Annual Plan for presentation to the Risk Committee in June of each year. From a review of the plan we confirm that it presents the key areas of focus for the Risk function in the following financial year. It does not however include a risk monitoring or testing program. Discussion with the Risk team revealed that there is no formally defined annual program for risk monitoring and controls testing. Instead, ad hoc testing activities are performed throughout the year.

ASIC has confirmed that there is a desire to implement a Control Self-Assessment (CSA) process which would be conducted quarterly and provide a "bottom-up" view of the business unit controls over operational risk. Such a CSA process would help give Leadership assurance that controls are operating effectively.

ASIC has an Audit, Assurance and Compliance function that prepares annual Internal Audit plan for each financial year. The plan is divided into 3 sections:



- Baseline compliance, audit and follow up projects
- Major changes and new initiatives
- IT audit work.

The baseline compliance, audit and follow up projects are performed by ASIC’s Audit, Assurance and Compliance function. The remaining work is completed by ASIC’s internal audit partner, KPMG. The status of all internal audit issues is tracked using spreadsheets. The Internal audit team also confirmed that an enterprise-wide risk management IT system would help improve efficiency and assist with the overall contribution of intelligence to the whole organisation.

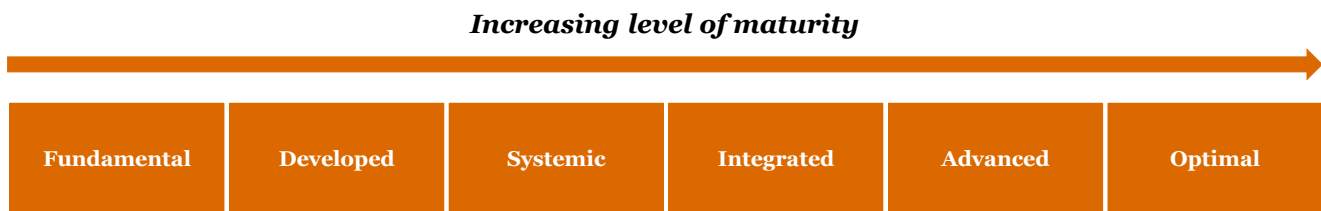
### 3.5.3 Benchmarking ASIC’s risk management framework

With the introduction of the PGPA, “accountable authorities” (of which ASIC is one) are now required to establish and maintain appropriate systems of risk oversight, management and internal control as part of their responsibility for managing risk. These new legislative requirements are supported by the Commonwealth Risk Management Policy, which aims to embed risk management as part of an entity’s culture.

ASIC recently participated in Comcover’s annual Risk Management Benchmarking Survey for 2015, being benchmarked against other Australian regulatory entities. The self-assessed survey was intended to measure ASIC’s current risk management capability and analyse its performance.

The benchmarking program was based on a six-level maturity model, as illustrated below:

**Figure 13: Risk maturity model**



ASIC achieved an overall risk maturity level of ‘integrated’ which was in line with the average maturity level of all survey participants. ASIC also self-selected a group of 11 entities, including APRA, the ACCC and the AFP, to benchmark its risk management capabilities against. ASIC compared favourably against its self-selected group in terms of its current maturity level, with a slightly higher ‘overall’ rating.

During the risk management benchmarking survey ASIC was asked to select an overall target state of risk maturity, representing where it would like to be within the next 12 months in terms of risk management capability. ASIC selected ‘systematic’, which is lower than the “integrated” level it achieved at the date of the survey. The Risk team confirmed that ASIC does not place much emphasis on the Benchmarking survey/target maturity level as a guiding focus in the development of its risk management framework, given it is based on self-assessed results. The Risk team confirmed that ASIC has established a modest target maturity level and continually seeks to exceed it.

