

ASIC *Capability* *Review* Evidence report

ASIC Capability Review

*Volume 1:
Evidence report*

November 2015



Karen Chester
Chairperson, Expert Panel, ASIC Capability Review
Level 5
100 Market Street
Sydney 2000

20 November 2015

Dear Karen,

Evidence report for the review of the capability of the Australian Securities and Investment Commissions (ASIC).

Please find enclosed PwC's ASIC Capability Review Evidence report.

The Evidence report has been prepared by PwC in our capacity as advisers to The Treasury in accordance with the 'Order for the provision of support to undertake a capability review of the Australian Securities and Investments Commission' dated 24 July 2015.

ASIC's response to the Evidence report is included on page 92.

We would like to thank the Expert Panel, and the management and employees of The Treasury and ASIC for their cooperation and assistance during our review.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Hugh Harley'.

Hugh Harley
Partner

A handwritten signature in black ink, appearing to read 'Nicole Salimbeni'.

Nicole Salimbeni
Partner

About this review

Context

In June 2015, the Government announced a review to consider the capabilities of the Australian Securities and Investments Commission (ASIC) to ensure it has the skills and culture to carry out its role effectively. The Capability Review was led by an Expert Panel and supported by a secretariat, consisting of public sector personnel from the Treasury and private sector personnel from PwC.

Scope and approach of the review

PwC was engaged to perform research and analysis, provide secretarial support to the Expert Panel, and prepare an evidence report on the capability of ASIC. The Expert Panel led the Capability Review and will be responsible for producing a report to the Government which will contain recommendations underpinned by the evidence in this report. Appendix A explains in detail the background, scope and approach of PwC's involvement.

Our review was structured in line with a review framework which we designed, and included input from:

- interviews and roundtables conducted with both internal staff and external stakeholders
- document reviews
- four surveys of internal staff and stakeholders: the PwC and ASIC staff surveys (PwC's survey supplemented Orima's 2015 ASIC staff survey); the ASIC leadership and stakeholder comparison survey, designed to compare responses to those of the external survey; and an external stakeholder survey, designed and conducted for the review by an independent consultant.

PwC was engaged to gather evidence to assist the Expert Panel in developing its findings. Based on the evidence we gathered, we provided observations by synthesising key findings using a combination of our professional judgement and experience. All findings presented in this report are supported by a strong evidence base arising from the interviews and roundtables with staff, surveys, document review and other analysis we performed. The appendices to this report contain the surveys referred to above, a list of the documents reviewed and a summary of the ASIC staff we met with during our review.

All interviews and roundtables were conducted under Chatham House rules, which precludes PwC from disclosing specific information from these forums in the appendices; however, this evidence has been retained separately by PwC. We have not directly attributed any of our observations to a particular source. We have, however, only raised observations where there was sufficient evidence or consistency of views to support the observation.

There were some inputs into this review where PwC was not directly involved in the work, but we still reviewed the output given to us and have taken it into consideration. These inputs include an external survey which was commissioned by the Expert Panel and performed by Susan Bell Research, some external stakeholder interviews, and also a capability review (as part of a strategic workforce planning project) performed by an external provider.

Where relevant and where information was available, ASIC was compared to the following comparable overseas regulators: FCA, FMA, SFC, MAS, SEC and CFPB. These regulators were selected on the basis that they are leading practice regulators. We have taken elements of these regulators as a best-practice benchmark for ASIC; however, it should be acknowledged no single regulator is considered to be consistently best-practice in all areas. It should also be noted that ASIC's mandate is both different and broader than many of these regulators, and that it operates in different market conditions.

Our report and review framework

This report sets out the findings from our review and contains evidence to assist the Expert Panel in developing its recommendations. In accordance with the agreed scope, this report does not contain any recommendations

or suggestions for improvement. PwC’s evidence review focused on ASIC’s current state, while the Expert Panel’s review and report is forward looking and will contain recommendations to the Government.

Our review framework is shown below. The report is structured in line with the framework.

Figure 1: ASIC Review Framework



This report has been prepared by PricewaterhouseCoopers (PwC) in our capacity as advisers to The Treasury in accordance with the ‘Order for the provision of support to undertake a capability review of the Australian Securities and Investments Commission’ dated 24 July 2015.

There have been some legal and commercial restrictions on certain types of information provided to PwC. Whilst ASIC has worked with us to address these limitations, these are noted in the relevant sections of the report. The information, statements, statistics, material and commentary (together the “Information”) used in this report have been prepared by PwC from publicly available material, from information provided by ASIC and from discussions held with a range of ASIC stakeholders. PwC has relied upon the accuracy, currency and completeness of the Information provided to it by ASIC and ASIC’s stakeholders and takes no responsibility for the accuracy, currency, reliability or correctness of the Information and acknowledges that changes in circumstances after the time of publication may impact on the accuracy of the Information. The Information may change without notice and PwC is not in any way liable for the accuracy of any information used or relied upon by a third party.


Furthermore PwC has not independently validated or verified the Information provided to it for the purpose of the report and the content of this report does not in any way constitute an audit or assurance of any of the Information contained herein.


PwC has provided this advice solely for the benefit of The Treasury and disclaims all liability and responsibility (including arising from its negligence) to any other parties for any loss, damage, cost or expense incurred or arising out of any person using or relying upon the Information.

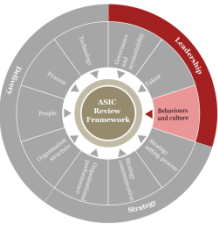

Key findings



This is a summary of our key findings for each component of the ASIC Review Framework. Specific findings are presented in detail in the main report.

All the findings listed below, and the key points made throughout the document, are based on evidence arising from the interviews, roundtables, surveys, document review and other research that we conducted. We have not directly attributed each of these observations to a particular source but have only raised observations where there was sufficient evidence gained or consistency of views to support this finding.

Leadership	Key area	Finding	Ref.
Governance and accountability 	External and internal governance	<ul style="list-style-type: none"> There is no comprehensive mechanism by government to assess the overall performance of ASIC. The FSI concluded that this is not an issue restricted to ASIC, but an issue for all of Australia’s financial regulators. In these agencies, including ASIC, where the statutory officers are accountable for both strategic oversight and executive management, the lack of a comprehensive review mechanism is particularly acute. See internal governance finding below. 	1.1.2.1
		<ul style="list-style-type: none"> ASIC’s governance model was inherited by the current Commission, reflecting evolving government decisions since ASIC’s establishment. ASIC’s governance is the responsibility of ASIC’s Commissioners, who are also the executive management team. At one level these roles complement each other, at another level they conflict. 	1.1.2.1
		<ul style="list-style-type: none"> Internal governance forums are fulfilling their documented terms of reference. Except for the Audit Committee, their mandate is to focus on the core business of ASIC. 	1.1.2.1
	External panels	<ul style="list-style-type: none"> There is overwhelming positive feedback from the Commission regarding the value they see from the external advisory panels. 	1.1.2.2
		<ul style="list-style-type: none"> The effectiveness of external advisory panels has not been formally assessed by ASIC, with the exception of the EAP in 2011. Both internal and external interviews noted that it was not clear what end-value some of the panels deliver to ASIC. However, ASIC has provided examples of where the expertise of the panels has been leveraged. 	1.1.2.2

Leadership	Key area	Finding	Ref.
	Decision-making and delegations	<ul style="list-style-type: none"> Formal employment delegations are only permitted to ASIC staff employed under the PSA. As SES staff are increasingly not being employed under this Act, it has the potential to slow down the decision-making process relating to employment and staff management and put pressure on those who are delegated functions and power. ASIC makes many decisions in a consistent way. Examples include granting of relief, and the issuing of licences and of regulatory guidance. Some concerns were raised about consistency in decision-making, specifically in relation to the selection of which regulatory matters to pursue and how they will be pursued. Some of this could be explained by the inherent trade-off associated with being a regulator. Notwithstanding, better communication appears warranted. 	1.1.2.3 1.1.2.3
<p>Talent</p> 	<p>Recruitment of Commissioners</p> <p>Current leadership capability</p> <p>Succession planning</p> <p>Performance and skills management</p>	<ul style="list-style-type: none"> The current Commission is a mix of internal and external appointments, creating a balance between continuity and fresh ideas. The staff interviews presented a positive view of the current Commission, describing it as the most stable commission in recent tenures. The improved level of diversity of thought in recent years was also a theme from staff interviews and roundtable discussions. The current appointment process for Commissioners is run by government with input from the Chair. It is not documented and there is a lack of clarity around how this process works. Staff have a positive view of the performance of Commissioners and SELs. Further, they rated well on their leadership capabilities in the 2015 State of the Service Census when compared against other regulatory agencies. Work has been done to identify the capability needs of ASIC leaders over the next three to five years. There are plans under way to address these needs. Succession planning for the SES level is mature. Commissioners partake in ongoing skills management and development. This is coordinated by People and Development and includes private Commission-only team coaching through an external service provider. 	1.2.2.1 1.2.2.1 1.2.2.2 1.2.2.2 1.2.2.3 1.2.2.4

Leadership	Key area	Finding	Ref.
		<ul style="list-style-type: none"> In a traditional Westminster-style system, it is not normal practice for statutory office-holders to be subject to performance reviews, nor for a commission as a whole to be subject to such reviews. Consistent with this, there are no such processes in ASIC. 	1.2.2.4
<p>Behaviours and culture</p> 	<p>Activities of Commissioners</p> <hr/> <p>Leadership alignment and collaboration</p> <hr/> <p>Organisation culture and values</p>	<ul style="list-style-type: none"> Notwithstanding the current governance model which expects the Commissioners to play a dual role of strategic governance and executive management, the Commission has driven a number of important strategic initiatives over the past few years. That said, such a model is limiting the perspective and time available to drive the long-term strategic direction of ASIC. <hr/> <ul style="list-style-type: none"> Staff consistently noted there is a strong alignment of views of Commissioners, which permeates through the SELs. <hr/> <ul style="list-style-type: none"> The strength of ASIC’s values and how they are modelled by leadership is having a unifying effect on its culture. 	<p>1.3.2.1</p> <hr/> <p>1.3.2.2</p> <hr/> <p>1.3.2.4</p>
<p>Strategy-setting process</p> 	<p>Establish mandate and identify strategic priorities</p> <hr/> <p>Identify key areas of focus</p>	<ul style="list-style-type: none"> ASIC has a legislated mandate and a set of enduring strategic objectives (ASIC calls these strategic priorities). <hr/> <ul style="list-style-type: none"> The Commissioners’ view that ASIC is primarily an enforcement regulator conflicts with the views of some external stakeholders. This is exacerbated by the government’s broad Statement of Expectations and ASIC’s responding Statement of Intent being generic and high level. <hr/> <ul style="list-style-type: none"> The introduction of the Corporate Plan in 2015 (which supersedes the less comprehensive Strategic Outlook) has been a positive initiative as it communicates ASIC’s market priorities for the year ahead externally. However, external stakeholders, including the regulated population, industry groups and academics, have expressed concern that ASIC does not consult with them enough in determining its market priorities. ASIC has informed us that it is their intention to consult with its stakeholders on its Corporate Plan in the future. <hr/> <ul style="list-style-type: none"> The Strategy Group drives a risk-identification process which is both top-down and bottom-up, informed by an environmental scan. This informs ASIC’s view of the market’s long-term challenges. This is not as advanced (eg the use of data analytics) as that of some other overseas best practice regulators, and there is no overarching documented framework that describes it. 	<p>2.1.2.1</p> <hr/> <p>2.1.2.1</p> <hr/> <p>2.1.2.2</p> <hr/> <p>2.1.2.2</p>

Leadership	Key area	Finding	Ref.
		<ul style="list-style-type: none"> The Strategy Group does not have the resources of comparable overseas regulators, even allowing for market size and complexity. 	2.1.2.2
	Translate strategic priorities and areas of focus into actions	ASIC has taken a deliberate approach to driving strategy development and execution through a series of business plans. There is buy-in to the development, use and value of business plans across ASIC.	2.1.2.3
Strategy communication	External communication	<ul style="list-style-type: none"> The external communications strategy, external communications policy and Corporate Affairs business plan provide valuable guidance over the development and distribution of communications by ASIC generally. However, there is no comprehensive communications strategy or framework. 	2.2.2.1
		<ul style="list-style-type: none"> ASIC communicates regularly and extensively with the market, exceeding many regulators in its use of social media and the number of publications produced. 	2.2.2.1
		<ul style="list-style-type: none"> The outcome sought from communication activity is unclear and Corporate Affairs is under-resourced. Overall effectiveness of communications activity in the market is not measured. 	2.2.2.1
		<ul style="list-style-type: none"> There is a perception amongst the regulated population that ASIC lacks the willingness to engage or give adequate reasons for their decisions, particularly in relation to aspects of enforcement and surveillance. 	2.2.2.1
	Internal communication	<ul style="list-style-type: none"> Internal communication has improved in recent years. Staff still see room for further improvement including more effective updates in regard to organisational and operational changes. 	2.2.2.2
		<ul style="list-style-type: none"> Internal communications are regular and extensive, but not always coordinated. 	2.2.2.2
Organisational performance	Performance measurement framework	<ul style="list-style-type: none"> The ASIC leadership and stakeholder comparison survey showed that there is a significant difference between the way that ASIC views its performance and capability, and the way the regulated population views ASIC's performance and capability. 	2.3.2.1
		<ul style="list-style-type: none"> Like many other regulators, ASIC has limited ability to report on performance at a strategic objective level due to the challenge associated with defining consistent metrics for a regulator, which are based on outputs and outcomes. 	2.3.2.1


Leadership	Key area	Finding	Ref.
		<ul style="list-style-type: none"> ASIC's performance framework is fragmented and incomplete. In part this reflects the need to comply with multiple government reporting obligations. Notwithstanding this, the current performance framework does not clearly demonstrate that strategic objectives are being met. 	2.3.2.1
		<ul style="list-style-type: none"> ASIC is taking action to improve its performance measurement through a number of projects and the introduction this year of a new performance measurement framework based on measuring outcomes and activities. 	2.3.2.1
Organisation structure 	ASIC's organisational structure	<ul style="list-style-type: none"> As recommended by the 2008 Strategic Review of ASIC, ASIC is structured according to stakeholder groups, rather than by activity. This differs from the way other regulators are structured, and there are conflicting views as to whether the structure best enables efficient and effective regulation. 	3.1.2.2
	The Strategy Group	<ul style="list-style-type: none"> The Strategy Group has recently been established, which is consistent with leading practice in overseas regulators. It is still evolving and does not yet drive the future direction or innovation as proactively as it could, although it was noted by ASIC that driving ASIC's strategy is also the responsibility of the Stakeholder teams. 	3.1.2.3
	The Market Integrity Group (MIG)	<ul style="list-style-type: none"> The MIG has developed a different approach to the rest of ASIC, strategically, structurally and operationally. This is working well and is supported by additional funding from the market. 	3.1.2.4
	Resourcing the structure	<ul style="list-style-type: none"> ASIC has a top-heavy structure, which could be expected for a regulator. However, recent budget cuts have reduced more junior staffing levels, which is creating inefficiencies. 	3.1.2.5
	Relationship management with external stakeholders	<ul style="list-style-type: none"> ASIC does not have a stakeholder management framework at all levels of the organisation. 	3.1.2.6
		<ul style="list-style-type: none"> Regulated entities expressed consistent views that ASIC operates in silos, specifically between Stakeholder and Enforcement teams, and for large organisations which have to deal with multiple teams from ASIC. They believe this creates a regulatory burden for them. 	3.1.2.6
People	Workforce planning	<ul style="list-style-type: none"> Some strategic workforce planning exists. Work is underway to improve the maturity of this. 	3.2.2.1
	Employment arrangements	<ul style="list-style-type: none"> ASIC has complex employment arrangements at the SES level, due to the requirements of the PSA. 	3.2.2.2

Leadership	Key area	Finding	Ref.
	Salary band restrictions	<ul style="list-style-type: none"> For SEL positions (both SES and non-PSA SELs), competing with the external market on remuneration is not a significant issue. ASIC stated that it has found that applicants for these senior roles typically want to be ‘regulators’, being more influenced by the type of work ASIC does than by the salary package. 	3.2.2.3
		<ul style="list-style-type: none"> Salary band restrictions are affecting ASIC’s ability to attract and retain staff at the EL1 and EL2 level. 	3.2.2.3
	Performance and talent management	<ul style="list-style-type: none"> There is a performance management framework in place, which has been developed in line with the APSC Best Practice Guidelines as outlined in ‘Strengthening the Performance Framework: Towards a High Performing APS Diagnostic Implementation’. 	3.2.2.4
		<ul style="list-style-type: none"> There are well defined and mature talent management processes within ASIC. 	3.2.2.4
		<ul style="list-style-type: none"> Staff roundtable participants stated that underperformance is tolerated in most teams and perceive that it carries little consequence for the underperformer. 	3.2.2.4
	Current capability	<ul style="list-style-type: none"> External stakeholders view the current capability of leadership positively. There is some perceived variability of skill of staff below this level. Actions have been and continue to be taken to address this variability. 	3.2.2.5
		<ul style="list-style-type: none"> ASIC is undertaking capability-based strategic workforce planning with an external service provider to ensure the organisation will have the capabilities required to support its current and future strategies and organisational objectives. 	3.2.2.5
		<ul style="list-style-type: none"> Staff confirmed ASIC has both formal and informal development programs which they view as both successful and appropriate. There are plans in place to broaden these to ensure that future capability needs, as identified by ASIC in its strategic workforce planning project, are met. 	3.2.2.5
	Employee engagement and motivation	<ul style="list-style-type: none"> In general, ASIC employees have a high level of motivation and willingness to go the extra mile, but feedback from staff consultation suggests their morale has been affected by the recent high levels of government and media scrutiny and criticism. Further, budget cuts have resulted in staff feeling that they have to do more with less. 	3.2.2.6
		<ul style="list-style-type: none"> ASIC participates in an annual employee engagement survey, which is administered by Orima Research. In 2015, Orima reported that ASIC had strong levels of engagement, satisfaction, loyalty and commitment, with widespread improvements since the 2012 survey. 	3.2.2.6

Leadership	Key area	Finding	Ref.
<p>Process</p>  <p><i>Processes performed by Stakeholder teams</i></p>	Regulatory tools	<ul style="list-style-type: none"> There is no one clearly documented strategy or set of decision-making criteria within ASIC that facilitate systematic assessment of which regulatory tool should be used in which circumstance. 	3.4.2
	Engagement processes with industry and stakeholders	<ul style="list-style-type: none"> Although ASIC meets with and presents to external stakeholders regularly, there was a consistent observation from various stakeholder groups that ASIC could improve the quality and extent of its engagement with industry and other regulators. 	3.4.2.1
	Surveillance processes	<ul style="list-style-type: none"> ASIC's surveillance processes have been criticised in the past, most recently through the Senate Inquiry report. ASIC has taken steps to address this through the development of a Risk-based Surveillance Guide, which is in the early stages of being implemented. 	3.4.2.1
		<ul style="list-style-type: none"> There are inconsistent levels of documented policies and procedures across different Stakeholder teams. 	3.4.2.1
	Supervision processes	<ul style="list-style-type: none"> ASIC's automated market surveillance system was consistently referred to by internal and external stakeholders as best practice. 	3.4.2.1
		<ul style="list-style-type: none"> The use of ASIC's supervision tools is more limited than some overseas regulators. Whilst a costly form of supervision, some overseas regulators locate large teams at the regulated entity to conduct real-time supervision. Others perform entity specific reviews of key policies and processes. 	3.4.2.1
	Licensing processes	<ul style="list-style-type: none"> The OneASIC program will improve ASIC's licensing processes. One outcome of this will be a significant reduction in the time taken to process licence applications. 	3.4.2.1
Handover process to enforcement	<ul style="list-style-type: none"> The handover process between Stakeholder and Enforcement teams is inconsistent. Organisations subject to investigation by Enforcement teams commented that they often had to re-explain points and re-provide documentation that had previously been provided to a Stakeholder team as part of a surveillance review. The OneASIC program is aimed at addressing this. 	3.4.2.1	
<i>Processes performed by Enforcement teams</i>	Enforcement processes	<ul style="list-style-type: none"> There is a perception that ASIC's approach to enforcement has become more reactive in recent years. Some of the regulated population noted that this may be a barrier to building more collaborative relationships with the regulated population and that it is also discouraging self-reporting of issues or concerns. 	3.4.2.2

Key findings

Leadership	Key area	Finding	Ref.
<i>Continuous improvement processes</i>	The OneASIC program	<ul style="list-style-type: none"> The OneASIC program is evidence of the focus on process redesign and systems investment to improve regulatory decision-making. 	3.4.2.4
<i>Budgeting processes</i>	Reporting against the budget	<ul style="list-style-type: none"> Recent variability in ASIC's core budget coupled with budget rules has made it difficult for ASIC to plan future resource allocation and undertake forward-looking capex planning for much needed improvements in data, infrastructure, IT, etc. These constraints are exacerbated as ASIC's remit/mandate continues to expand. 	3.5.2.1
		<ul style="list-style-type: none"> There are effective processes in place for monitoring budgets and managing variances. 	3.5.2.1
	Enforcement Special Account	<ul style="list-style-type: none"> The Enforcement Special Account is an important source of funding. During our evidence-gathering, a concern was raised sufficiently often to suggest that the way the process is designed could drive an inefficient allocation of resources. It could provide ASIC with an incentive to encourage staff to work on larger matters for longer periods to meet the \$750K entry level threshold for funding. ASIC notes there are controls in place in relation to the use of ESA funding, including reporting to the Treasurer. 	3.5.2.1
<i>Resource allocation processes</i>	Team-based approach to resource allocation	<ul style="list-style-type: none"> There is broad acknowledgement internally and externally that ASIC is under-resourced. Stakeholders said that even in an industry-funded model ASIC needs more resources. 	3.6.2.1
		<ul style="list-style-type: none"> Resource allocation is considered across the whole of ASIC as part of the business planning and budgeting processes. There are only informal mechanisms in place to support this throughout the year. 	3.6.2.1
	Measuring resource allocation	<ul style="list-style-type: none"> There are no ASIC-wide measures to assess the efficiency and effectiveness of resources. In part, this reflects the challenges all regulators face in establishing such measures; however ASIC has no way of forming a view on the efficiency and effectiveness of its resource allocation process. 	3.6.2.1
<i>Risk management processes</i>	Risk management strategy and framework	<ul style="list-style-type: none"> A more formal and integrated risk management framework was introduced in 2011. It continues to evolve, and requires further maturity and resources to ensure it is effective in driving decision-making within ASIC. 	3.7.2.1
	Risk management system	<ul style="list-style-type: none"> There is no enterprise-wide risk management technology system, which limits the effectiveness of the risk management framework. A system has been procured, with an expected implementation date of May 2016. 	3.7.2.1

Leadership	Key area	Finding	Ref.
<p>Technology</p> 	IT strategy, planning and governance	<ul style="list-style-type: none"> The current 2013-2017 IT strategy is being updated into the 2015-2018 IT strategy. The Commission, particularly the Chair, is emphasising transformation, digitisation, and analytics as core to ASIC achieving its Corporate Plan. However, this emphasis does not always flow through the teams, resulting in a lack of technology ownership. Given the technical nature of IT and the fact that it can be difficult to understand, IT often has to drive the changes rather than being driven 'by the business'. Roundtable participants noted that the culture in a number of the teams does not foster technology innovation and data-driven decision-making. The 2015-2018 IT strategy is close to approval and will represent an ambitious change program, with funding and skills availability both key issues. There is relative confidence within ASIC that it can be delivered but also a recognition that continued investment will be needed to ensure they are a leading international regulator where data and technology are fully harnessed. 	3.8.2.1
	Transformation projects	<ul style="list-style-type: none"> The 2015-2018 IT strategy nests into the OneASIC program (FAST2). Funding for OneASIC for 2015-16 has been approved, with a working prototype available in relation to a significantly improved search engine. An emphasis on improved reporting is also essential to OneASIC. 	3.8.2.2
	IT spend and investment decisions	<ul style="list-style-type: none"> ASIC has made solid progress over the past four years in moving from a low level of technology maturity dominated by unconnected legacy systems to a higher level of maturity and greater connectivity. This is despite reductions in IT spending (-11.7%) due to budgetary constraints and a skew in spending towards BaU. 	3.8.2.3
	IT resourcing and capability	<ul style="list-style-type: none"> Staff noted that ASIC does not have enough resources with technology and analytics skills. However, IT is taking steps to ensure its staff have the appropriate skills and capability to deliver on the IT strategy. 	3.8.2.4
	Data management and analytics	<ul style="list-style-type: none"> It is widely recognised within ASIC that its data analytics capabilities are behind those of some overseas regulators. Steps to rectify this are in train, by leveraging areas of relative strength and connecting skills across the clusters. 	3.8.2.5
		<ul style="list-style-type: none"> Historically, ASIC has not driven changes within data analytics and innovation to the same extent as the ATO (who have a data CoE) and RBA (who have data and analytics defined capability). ASIC believes that funding constraints and legislative access to data have been major factors in its capacity to drive such changes. 	3.8.2.5

Key findings

Leadership	Key area	Finding	Ref.
		<ul style="list-style-type: none">ASIC does not have a Chief Data Officer to lead the data-driven transformation required. This role would include embedding strong information management and data governance procedures across ASIC, driving analytics capabilities and insights across the business, and improving reporting and automation.	3.8.2.5

Contents

About this review	i
Key findings	iii
Context and role of ASIC	1
Part 1 Leadership	5
1.1 Governance and accountability	6
1.2 Talent	14
1.3 Behaviours and culture	19
Part 2 Strategy	23
2.1 Strategy-setting process	25
2.2 Strategy communication	32
2.3 Organisational performance	37
Part 3 Delivery	41
3.1 Organisation structure	43
3.2 People	50
3.3 Process overview	60
3.4 Regulatory processes	61
3.5 Budgeting processes	71
3.6 Resource allocation processes	75
3.7 Risk management processes	79
3.8 Technology	82
Glossary	89
ASIC's response	92

Index of figures

Figure 1: ASIC Review Framework	ii
Figure 2: Increase in ASIC's responsibilities since 1998	3
Figure 3: ASIC's internal governance forums	8
Figure 4: Overview of ASIC internal governance forums	8
Figure 5: Overarching governance models of other regulators	13
Figure 6: Dual roles of the Commissioners	13
Figure 7: General and area-specific capabilities as identified by the strategic workforce planning project	16
Figure 8: Required shift in workforce capabilities as identified by the strategic workforce planning project	17
Figure 9: Strategy-setting at ASIC	26
Figure 10: Annual strategy-setting process	27
Figure 11: Comparison of external communications – ASIC, APRA and FCA (UK)*	36
Figure 12: Comparison of regulators' performance measures	40
Figure 13: ASIC's organisational structure	44
Figure 14: ASIC's resourcing levels	47
Figure 15: Organisation structure of other regulators	48
Figure 16: Stakeholder relationship models of other regulators	49
Figure 17: ASIC vs APRA non-executive salaries, 2013	53
Figure 18: Process overview	60
Figure 19: Enforcement actions and corresponding regulatory tools	68
Figure 20: ASIC's annual budgeting process	72
Figure 21: IT expenditure 2014-2016	86

Context and role of ASIC

The following has been sourced from publicly available information or information provided to us by ASIC. We have included what we considered to be the key relevant facts and observations in relation to the context and role of ASIC.

ASIC – Overview

ASIC is Australia’s corporate, markets, financial services and consumer credit regulator. It has existed as an independent Commonwealth government body since 1991, when the Australian Securities Commission, as it was then known, began operations.

Vision and strategy

ASIC’s vision is to “allow markets to fund the real economy and, in turn, economic growth. This contributes to improved standards of living for all Australians”.

Ensuring Australians have trust and confidence in the financial system remains at the heart of everything ASIC does. This is why ASIC’s strategic objectives are to:

- promote investor and financial consumer trust and confidence
- ensure fair, orderly, transparent and efficient markets
- provide efficient and accessible registration.

ASIC’s strategic objectives are critical to the operation of a free-market system in Australia, which is based on the principles of investor responsibility, gatekeeper responsibility and the rule of law.

Organisation structure

ASIC’s current structure splits its Regulatory function into 11 Stakeholder teams, five Enforcement teams, and a Small Business Compliance and Deterrence Team, within three clusters:

- Markets
- Investors & Financial Consumers
- Registry.

ASIC is headed by a full-time Commission, whose terms and conditions of appointment are set out in the *Australian Securities and Investments Commission Act 2001* (the ASIC Act). There are currently five Commissioners, including the Chair. The Commission takes responsibility for ASIC’s strategic direction and priorities.¹ It makes decisions on matters within ASIC’s regulatory functions and powers that have strategic significance, and oversees the management and operations of ASIC as a government agency.

ASIC currently has around 1600 full-time employees. The average tenure of staff is 7.9 years, with 89% of Executive Level 1 (EL1) and above holding a tertiary qualification in law.

Regulatory tools

ASIC regulates Australian companies, financial markets, financial services organisations, auditors, liquidators and professionals who deal and advise in investments, superannuation, insurance, deposit-taking and credit.

¹ The Commission has pointed out to us that the ASIC Act does not use the word strategic when setting out the responsibilities of the Commission.

It uses a range of regulatory tools to enforce or promote compliance with the laws it administers, as well as to improve consumer understanding and decision-making. The regulatory tools available to ASIC are engagement with industry and stakeholders; education; policy advice and guidance; supervision; surveillance; and enforcement.

Scope of activities

In performing its functions and exercising its powers, ASIC is required by government to:

- maintain, facilitate and improve the performance of the financial system and its constituent entities
- promote confident and informed participation in the financial system by investors and consumers
- administer the law effectively and with minimal procedural requirements
- enforce and give effect to the law
- receive, process and store information, efficiently and quickly
- make information about companies and other bodies available to the public as soon as practicable
- monitor and promote market integrity and consumer protection in relation to the Australian financial system and the payment system.

For a full list of laws as administered by ASIC and ASIC's powers, see Volume 2.

The Treasurer issued a Statement of Expectations to ASIC in April 2014. For the full Statement of Expectations issued, see Volume 2.

The evolution of ASIC's mandate

ASIC began regulatory operations in January 1991 (when it was called The Australian Securities Commission (ASC)). Before that, corporate regulation was performed by a number of state and federal bodies. Australia's constitution provides for the Commonwealth and state governments to legislate for foreign corporations and financial or trading corporations formed within the Commonwealth, which previously was done under a cooperative scheme between these governments. Subsequently, the states referred their residual power in this area to the Commonwealth so that regulation of all corporations is now done by ASIC under the *Corporations Act 2001* and associated regulations. ASIC is also empowered by other Commonwealth statutes to regulate a range of specific corporate activities, relying on the Corporations power or the Trade and Commerce power in the constitution.

ASIC's current mandate covers the following key areas:

- financial markets, financial services and corporate regulation
- business and company registration (out of scope for this review)
- credit and insolvency practitioners.

It was consistently raised by stakeholder groups that ASIC's mandate is broad and more extensive than those of financial conduct regulators in other jurisdictions. Responsibilities regarding the first area are mostly aligned with those of overseas conduct regulators; however, other overseas conduct regulators do not generally have responsibilities regarding the regulation of credit and insolvency practitioners, nor do they oversee business and company registration.

Stakeholders also noted that the mandate has grown considerably since inception, generally in response to major reform processes and reviews, but also from policy reforms designed to ensure greater consistency in regulation for both consumers and businesses. For the most significant mandate changes, see Volume 2.

Figure 2 captures the extent to which ASIC's responsibilities have increased since 1998 (when the significant changes to its mandate began) and the government's response in terms of increasing funding and headcount.

Figure 2: Increase in ASIC’s responsibilities since 1998

Metric	1998	2015
Total companies	1,088,922	2,245,364
AFS licensees	N/A	5,198
Credit licensees	N/A	5,799
Authorised financial markets	N/A	43
Licensed clearing and settlement facilities	N/A	7
Fees collected for the Commonwealth	\$326m	\$824m
Headcount	1,152	1,609
Appropriation revenue from the government (funding)	\$122.7m	\$311.9m

Source: ‘History of ASIC: Changes in regulatory perimeter and regulated population’, provided by ASIC.

The current funding model

ASIC is currently funded by the Commonwealth Government, with the Treasurer responsible for determining the amount of funding ASIC will receive as part of the Budget. The Commission is given an annual amount, and is not able to retain unused funding allocations for future years, or shift funding between years.

The Commission is then responsible for deciding how ASIC’s funding is allocated. The *Public Governance, Performance and Accountability Act 2013* (the PGPA) requires ASIC to submit an annual budget estimate to the Finance Secretary, detailing the financial impacts of all its activities.

During our review ASIC noted that while it engages in a number of revenue-raising activities, all revenue is collected for and on behalf of the government, and cannot be used by ASIC as an additional source of funding. A significant portion of this revenue is raised through ASIC’s Registry function, particularly annual fees paid by small proprietary companies as part of the registry business. Revenue is also raised through ASIC’s enforcement actions, such as civil and criminal financial penalties. In its first year of operation in 1991, ASIC’s expenses were approximately equal to the revenue it collected for the government. Revenue has steadily increased at a faster rate than expenses, and for the 2015 financial year, revenue raised (\$824m) was more than double its expenses (\$354m).

Oversight and accountability of ASIC

ASIC is ultimately accountable to the Commonwealth Parliament for its operations and performance. The Minister responsible for ASIC is the Treasurer, assisted by the Minister for Small Business and Assistant Treasurer.

The Commission reports through ASIC’s annual report and through briefings, submissions and meetings with both the Treasurer and the relevant Minister. ASIC also meets with, and provides briefings to, officers of Treasury.

As a regulatory agency, ASIC is subject to:

- the government’s best practice regulatory requirements
- the requirements of the PGPA
- annual assessment by the Office of Best Practice Regulation
- an annual financial statements audit by the Auditor-General, supported by the Australian National Audit Office
- performance audits by the Auditor-General
- regular public hearings with the Parliamentary Joint Committee on Corporations and Financial Services, to provide updates on ASIC’s activities and to answer questions
- appearances before the Senate Standing Committee on Economics as part of the budget estimates process

- appearances before, and participation in, other government inquiries
- relevant reviews by the Commonwealth Ombudsman
- the potential for challenge of ASIC's decisions through merits review in the Administrative Appeals Tribunal
- judicial review through the courts system.

ASIC is also accountable to the general public, beyond its formal legislative obligations; for example, through its interactions with the media or through its service charter which sets out its engagement protocols.

Relationship between ASIC, other Australian regulators and government organisations

It was consistently raised by stakeholder groups that ASIC's sizeable regulated population and breadth of powers means there is the potential for overlap of statutory functions with other Australian regulators and government organisations. To ensure all parties' roles and responsibilities are clearly delineated, ASIC has signed a number of bilateral Memorandums of Understanding (MoUs). Each MoU specifies how the parties will work together to ensure mutual assistance and cooperation, as well as reducing duplication and inefficiency where there are overlaps or gaps in regulatory obligations.

ASIC's relationship with other Australian regulators and key government organisations is set out in Volume 2.

Improving capability with an eight-point plan

One of the consistent themes throughout this report has been the extent of change within ASIC in recent years, reflecting changes in market environment and emerging risks, funding reductions, and strategic initiatives driven by the Commission.

ASIC has identified initiatives within eight areas to improve capability. These initiatives are at different stages or planning, implementation, or discussion with government and are outlined below:

- **Budget:** seeking increased flexibility in funding provided to ASIC, including the ability to move funding between years and between opex and capex.
- **People:** talent management programs; workforce planning, including capability assessments to determine current and future skillsets required. Workforce planning is being performed in conjunction with external service providers.
- **Process and Technology:** regulatory transformation projects that aim to transform and streamline the way that ASIC captures, shares and uses information. For more information about the OneASIC program, see Section 3.4.2.4.
- **FSI recommendation:** an industry funding model for ASIC (itself a major strategic initiative of the Commission); product design and product intervention powers; penalties set at an appropriate level; and having a range of penalties available for particular breaches of the law.
- **Market licensing review:** changes to the market licensing framework, including legislative reforms to support the type of more flexible (tiered) market licensing.
- **Cooperation with other government agencies:** including the potential of shared services to bring greater efficiencies.
- **Cooperation with industry:** broaden scope of panels, establish Financial Services Disciplinary Panel, enhanced focus on industry Codes of Conduct.
- **Registry Separation:** this has been a major strategic focus by the Commission over a number of years.

Part 1

Leadership

1.1	Governance and accountability	6
1.2	Talent	14
1.3	Behaviours and culture	19



1.1 Governance and accountability

All the findings listed below, and the key points made throughout this section, are based on evidence arising from the interviews, roundtables, surveys, document review and other research that we conducted. We have not directly attributed each of these observations to a particular source but have only raised observations where there was sufficient evidence gained or consistency of views to support this finding.

The governance and accountability component of the ASIC review framework is defined as “leaders establish and manage the right internal governance to enable the strategy”.

For the purposes of the Leadership section, ‘leaders’ generally refers to the Commission, SESs and SELs, but also includes EL1s and EL2s as appropriate.

Key points

- There is no comprehensive mechanism by government to assess the overall performance of ASIC. The FSI concluded that this is not an issue restricted to ASIC, but an issue for all of Australia’s financial regulators. In these agencies, including ASIC, where the statutory officers are accountable for both strategic oversight and executive management, the lack of a comprehensive review mechanism is particularly acute. See internal governance finding below.
- ASIC’s governance model was inherited by the current Commission, reflecting evolving government decisions since ASIC’s establishment. ASIC’s governance is the responsibility of ASIC’s Commissioners, who are also the executive management team. At one level these roles complement each other, at another level they conflict.
- Internal governance forums are fulfilling their documented terms of reference. Except for the Audit Committee, their mandate is to focus on the core business of ASIC.
- There is overwhelming positive feedback from the Commission regarding the value they see from the external advisory panels.
- The effectiveness of external advisory panels has not been formally assessed by ASIC, with the exception of the EAP in 2011. Both internal and external interviews noted that it was not clear what end-value some of the panels deliver to ASIC. However, ASIC has provided examples of where the expertise of the panels has been leveraged.
- Formal employment delegations are only permitted to ASIC staff employed under the PSA. As SES staff are increasingly not being employed under this Act, it has the potential to slow down the decision-making process relating to employment and staff management and put pressure on those who are delegated functions and power.
- ASIC makes many decisions in a consistent way. Examples include granting of relief, and the issuing of licences and of regulatory guidance. Some concerns were raised about consistency in decision-making, specifically in relation to the selection of which regulatory matters to pursue and how they will be pursued. Some of this could be explained by the inherent trade-off associated with being a regulator. Notwithstanding, better communication appears warranted.



1.1.1 Criteria we considered



There are adequate governance and accountability mechanisms in place for the regulator, which include:

- external oversight of the regulator as a whole
- clearly defined roles and responsibilities for the executive team, which link to the strategic objectives of the organisation
- effective governance and management structures to support the executive
- external consultation on key issues
- clearly defined accountabilities, decisions rights and delegations of authority for executives and other members of staff
- where appropriate, consistent and transparent decision-making.

1.1.2 Description of current state at ASIC

The following comments on external and internal governance have been made with the acknowledgement that there is ongoing and continued debate globally as to the best governance model for a regulator. Information on other regulators in Section 1.1.3 is provided for comparative purposes and not to demonstrate best practice.

1.1.2.1 External and internal governance

ASIC is ultimately accountable to the Commonwealth Parliament. As it forms part of Treasury's portfolio, the Treasurer, Minister for Small Business and Assistant Treasurer have responsibility for overseeing ASIC. The *Public Governance Performance and Accountability Act 2013* (the PGPA) specifies ASIC's reporting requirements to the Treasurer. However, there is no regular mechanism by government to assess the overall performance of ASIC. The FSI concluded that this is not an issue restricted to ASIC, but an issue for all of Australia's financial regulators.

ASIC also does not have an external governance board. This is consistent with most other Australian regulators and with the conclusions of the Royal Commission into HIH (in relation to APRA) and the findings of the Uhrig Review, but contrasts with some overseas regulators. It is apparent there is no perfect model. See Section 1.1.3 for more information. The responsibility for strategy, along with other facets of governance, lies with ASIC's Commission and internal governance forums, which are described below.

There are a number of external accountability mechanisms in place for ASIC, but they are not necessarily regular or comprehensive. These accountability mechanisms include:

- regulator KPIs and regular external reviews within the recently introduced Regulator Performance Framework (including the extent to which ASIC's actions reduce the regulatory burden)
- planning and accountability requirements of the PGPA to prepare a Corporate Plan and Annual Performance Statement in the Annual Report
- performance audits by the Auditor-General
- administrative review of decision-making by the Administrative Appeals Tribunal (AAT)
- appearance before regular and ad hoc parliamentary committees
- parliamentary scrutiny of the legislative instruments made under the *Legislative Instruments Act 2003*.



Commissioners

ASIC’s five Commissioners ‘wear two hats’ in their role – that of an executive who oversees operations, and that of a board member who sets strategic objectives and exercises ASIC’s function and powers. This model was inherited by the current Commission, reflecting evolving government decisions since ASIC’s establishment. There are two challenges associated with such a model:

- An internal evaluation of ASIC’s performance might effectively be a self-review
- It requires Commissioners to perform management functions and maintain overarching governance of ASIC simultaneously.

ASIC Commissioners note that to manage these dual roles, many management functions have been transferred to SELs. They also note that they bring a strategic perspective to the executive management functions. The current model holds the Commissioners ultimately accountable for both roles.

Internal governance forums

ASIC has a number of internal governance forums to oversee the strategy and operations of the Commission, as shown in the diagram below.

Figure 3: ASIC’s internal governance forums



* Has external members

Figure 4 provides a summary of how the forums operate.

Figure 4: Overview of ASIC internal governance forums

Forum	Purpose	Members	Frequency
ASIC Commission	<ul style="list-style-type: none"> • Make decisions on matters within ASIC's regulatory functions and powers that have strategic significance • Oversee the management/operations of ASIC as a Commonwealth agency including the approval of business plans and delegations 	The five Commissioners	Formally – Monthly Informally - Weekly
Audit Committee	<ul style="list-style-type: none"> • Provide independent assurance on ASIC's financial and performance reporting responsibilities, risk oversight and management, and system of internal control 	One Commissioner, one SES and three external independent members	Quarterly
Risk Committee	<ul style="list-style-type: none"> • Make recommendations to the Commission on improvements in ASIC's risk management framework and practices 	Commissioners and 10 SESs	Quarterly
Regulatory Policy Group	<ul style="list-style-type: none"> • Make decisions on new or revised regulatory policy, law reform, and novel applications for relief 	Commissioners and five SESs	Every 2-3 weeks
Enforcement Committee	<ul style="list-style-type: none"> • Make decisions on behalf of the Commission 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 on behalf of the Commission about significant policy in relation to ASIC enforcement initiatives, including managing risk in the Enforcement teams 	Commissioners and five SESs	Twice a month (except January)



Forum	Purpose	Members	Frequency
Emerging Risks Committee	<ul style="list-style-type: none"> Monitor and advise on systemic and product/sector risks relevant to ASIC's regulatory mandate Review the perimeter of ASIC's regulatory responsibilities for any regulatory gaps not subject to appropriate regulation 	Commissioners, four SESs, and four other representatives	Every 6 weeks
Technology Governance Board	<ul style="list-style-type: none"> Provide oversight and strategic direction for ASIC's major technology programs in order to ensure delivery of the functionality and service Govern the technology components of NPP projects and programs and significant ASIC projects 	Commissioners and seven SESs	Monthly

Some of these internal governance forums, namely the Audit Committee, the Risk Committee, and the Technology Governance Board, are equivalent to those seen in the governance structure of a corporation. The remainder of the forums – the Regulatory Policy Group, the Enforcement Committee, and the Emerging Risks Committee – have purposes that make them unique to a regulator.

We note the following:

- The forums all have a clear purpose, including their interactions with each other.
- Attendance at the forums is usually strong, with the exception of the Risk Committee. This strong attendance suggests the forums are seen as a priority, and enables the right people to be involved in the decision-making process.
- There are agendas and a large number of meeting papers. Many are for noting rather than requiring a decision.
- The forums are making decisions and resolutions in a timely manner. Further, where actions are taken, these are in the vast majority closed at the next meeting or before the due date.

Through our interviews and our review of charters and minutes, it is clear that internal governance forums are fulfilling their documented terms of reference. Except for the Audit Committee, their mandate is to focus on the core business of ASIC.

Further detail on key ASIC internal governance forums is provided in Volume 2, Section 1.1.1.



Key points

- There is no comprehensive mechanism by government to assess the overall performance of ASIC. The FSI concluded that this is not an issue restricted to ASIC, but an issue for all of Australia's financial regulators. In these agencies, including ASIC, where the statutory officers are accountable for both strategic oversight and executive management, the lack of a comprehensive review mechanism is particularly acute. See internal governance finding below.
- ASIC's governance model was inherited by the current Commission, reflecting evolving government decisions since ASIC's establishment. ASIC's governance is the responsibility of ASIC's Commissioners, who are also the executive management team. At one level these roles complement each other, at another level they conflict.
- Internal governance forums are fulfilling their documented terms of reference. Except for the Audit Committee, their mandate is to focus on the core business of ASIC.



1.1.2.2 External panels

External advisory panels

There are a number of external panels that advise ASIC. Most of these ‘advisory panels’ were set up as a result of the 2008 McKinsey review to help ASIC gain a better understanding of developments and systemic risks in the financial system and markets. The panels are:

- External Advisory Panel
- Consumer Advisory Panel (established pre 2008)
- Director Advisory Panel
- Digital Finance Advisory Panel
- Market Supervision Advisory Panel (set-up as a result of ASIC taking responsibility for market supervision in 2010)
- Registry and Licensing Business Advisory Panel
- Australian Government Financial Literacy Board (established pre 2008).

Details about these panels are provided in Volume 2, Section 1.1.2.

There is overwhelming positive feedback from the Commission regarding the value they see from the external advisory panels.

The advisory panels are provided with funding for secretarial functions and catering. The External Advisory Panel (EAP) and the Consumer Advisory Panel (CAP) also have funding for reasonable travel costs. Meetings are held at ASIC offices via videoconference, allowing for participants from across Australia.

Through review of charters and our interviews it is clear that the panels are delivering against their terms of reference. However, ASIC has not reviewed the effectiveness of these panels since their inception to determine if they are achieving what they were set up to do as an outcome of the 2008 McKinsey review. An exception to this is that the format of the EAP was reviewed in 2011, which led to changes to the terms of the EAP and composition of its membership.

Both internal and external interviews noted that it was not clear what end-value some of the panels deliver to ASIC. However, ASIC has provided examples of where the expertise of the panels has been leveraged.

An example of an external panel providing useful input to its regulator is the FCA’s Practitioner Panel, which is made up of senior level representatives from each of the major regulated sectors. The Practitioner Panel conducts an annual survey of regulated organisations to provide professional and independent feedback to the FCA. It should be noted that this panel has Statutory Status under the UK’s *Financial Services Act 2012*.

The CAP is seen to provide valuable insight into perspectives and issues of consumers, and drives ASIC’s approach in achieving its strategic objective of confident and informed investors and consumers. The Market Supervision Advisory Panel (MSAP) is also viewed by ASIC as providing valuable insight in relation to competition between equity exchanges and issues relating to the rapid pace of change and innovation. ASIC was able to evidence tangible example of where the MSAP has provided advice which has resulted in influencing ASIC’s approach to regulation.

Market’s Disciplinary Panel

The Market’s Disciplinary Panel (MDP) is a peer enforcement body, which was set up as a result of ASIC taking responsibility for market supervision in 2010. Members of the MDP have delegated authority by the Commission to consider potential breaches of ASIC’s market integrity rules and issue infringement notices where they have reasonable grounds to consider a rule has been breached.

ASIC is currently reviewing the efficiency of its processes for matters determining by the MDP. As part of this ASIC will be considering proposals to enhance the efficiency of the MDP.



Key points

- There is overwhelming positive feedback from the Commission regarding the value they see from the external advisory panels.
- The effectiveness of external advisory panels has not been formally assessed by ASIC, with the exception of the EAP in 2011. Both internal and external interviews noted that it was not clear what end-value some of the panels deliver to ASIC. However, ASIC has provided examples of where the expertise of the panels has been leveraged.

1.1.2.3 Decision-making and delegations

Responsibilities for decision-making

Decision-making within ASIC can be broadly classed into two categories:

- Decisions invoking ASIC's statutory powers
- Operational decisions.

Decisions invoking ASIC's statutory powers

The Chair and the Commissioners have statutory powers to make decisions under a number of Acts. Decisions invoking ASIC's statutory powers are required on a daily basis. Decisions are therefore frequently devolved to ASIC staff using formal delegations of authority. There are three areas where statutory powers are delegated to staff:

- **Legal delegations:** Delegations of ASIC's, the Chair's and the Commissioners' regulatory statutory powers under the Corporations Act, the ASIC Act and other legislation that ASIC is responsible for. This includes decisions about enforcement actions such as enforceable undertakings and civil and criminal prosecution.
- **Financial delegations:** Delegations in relation to spending money, drawing cheques, or other financial matters. These are delegated by the Chair under the PGPA. Limits are determined by the Chair, rather than by the relevant Acts.
- **Employment delegations:** Delegations in relation to employment and employment terms and conditions are made by the Chair under the various public service Acts.

The monetary value of delegations and/or the extent to which the delegation can be exercised depends on the nature of the delegation, the grade of the person, and the team they sit within.

Regulatory restrictions mean employment delegations are only permitted to ASIC staff engaged under the *Public Service Act 1999* (the PSA). 22 of the 45 SES staff are not employed under the PSA. This is a source of frustration in the decision-making process relating to employment and staff management – it was noted by ASIC staff in our interviews that this puts increased pressure on those who can be delegated functions and powers, and creates inefficiency.

See Volume 2, Section 1.1.3 for further information on each of the above categories of delegations.

Operational decisions

Operational decision-making occurs at every level within ASIC:

- The Commission oversees the management and operations of ASIC, including the approval of business plans and delegations. It is supported in this by internal governance forums.
- Internal governance forums, such as the Enforcement Committee and RPG, are responsible for making decisions and/or making recommendations to the Commission relevant to their terms of reference.



- SELs are responsible for the delivery of their business plans. Business plan projects could be necessitated by government initiatives (for example FOFA) or ASIC-initiated (for example the payday lending review). The SELs are also responsible for implementing the decisions of the Commission or their particular Commissioner.
- Programs and projects are responsible for making decisions relevant to their purpose; for example, in an investigation project, which witnesses will be interviewed.
- Individual staff may determine responses to, for example, reports of misconduct/breaches.

Consistency in decision-making

As a regulator, ASIC makes many decisions. Examples include determining:

- if and when exemption from or modification to the law will be granted
- the interpretation of regulations through the issuance of regulatory guidance
- regulatory action in relation to matters of misconduct
- the suitability of organisations to operate in the financial system through the issuing of licences.

In compiling this report, the following evidence was gathered:

- In PwC's ASIC staff survey, 74% of staff believed ASIC was consistent in decision-making, while 15% neither agreed nor disagreed.
- In the ASIC leadership and stakeholder comparison survey, 79% of ASIC Commissioners and SELs felt ASIC were consistent in decision-making and 15% were neutral.
- In the external stakeholder survey the following was noted:
 - 31% of regulated agreed ASIC was consistent in decision-making, and 33% neither agreed nor disagreed
 - 40% of related stakeholders agreed ASIC was consistent in decision-making, and 25% neither agreed nor disagreed
 - 31% of consumers, investors and small business agreed ASIC was consistent in decision-making, and 29% neither agreed nor disagreed.

During external stakeholder interviews and internal roundtables, concerns were raised around consistency in decision-making, specifically in relation to the selection of which regulatory matters to pursue and how they will be pursued. No concerns were raised with respect to consistency in relation to decision-making about the granting of relief, or the issuance of regulatory guidance or of licences.

When staff were probed further during internal round-tables on the above inconsistency, a few reasons were proposed:

- Legacy IT systems and confidentiality constraints make it difficult to share information across clusters. (One objective of the OneASIC program is to reduce these systems constraints.)
- How ASIC perceives the decision will be viewed by external parties.
- Financial and resourcing limitations at the time a decision is made. Reduced funding requires ASIC to be more selective and agile in its decision-making, as not every initiative or case can be pursued.
- The different culture and tone of each regional office.

It needs to be acknowledged that ASIC should not be held to an absolute (100%) standard of consistency in all regulatory matters. At one end of the spectrum, licensing decisions and relief decisions require a very high degree of consistency. In contrast, decisions about supervision and enforcement involve a range of trade-offs, including the most effective use of available resources and maximising the signalling of ASIC's intent to the broader market.



Key points

- Formal employment delegations are only permitted to ASIC staff employed under the PSA. As SES staff are increasingly not being employed under this Act, it has the potential to slow down the decision-making process relating to employment and staff management and put pressure on those who are delegated functions and power.
- ASIC makes many decisions in a consistent way. Examples include granting of relief, and the issuing of licences and of regulatory guidance. Some concerns were raised about consistency in decision-making, specifically in relation to the selection of which regulatory matters to pursue and how they will be pursued. Some of this could be explained by the inherent trade-off associated with being a regulator. Notwithstanding, better communication appears warranted.

1.1.3 Comparison with other regulators

The following tables show the approaches to governance of selected overseas regulators. It is evident that there are different approaches, and from our evidence-gathering process it was apparent that there is no perfect model, and that challenges remain. As noted above, the Australian approach reflects the conclusions of the HIH Royal Commission (in relation to APRA) and the Uhrig Review.

Figure 5: Overarching governance models of other regulators

	ASIC	FCA (UK)	FMA (NZ)	SFC (HK)	MAS (Singapore)	SEC (US)	CFPB (US)
Board?	X	✓	✓	✓	✓	X	X
Composition	N/A	<ul style="list-style-type: none"> • Non-executive Chair • Acting Chief Executive • Bank of England Deputy Governor for prudential regulation • six additional non-executive directors • one additional executive director 	<ul style="list-style-type: none"> • Non-executive Chair • eight additional non-executive directors 	<ul style="list-style-type: none"> • Non-executive Chair • Chief Executive Officer • seven additional non-executive directors • four additional executive directors 	<ul style="list-style-type: none"> • Chair (Deputy Prime Minister) • Managing Director • eight additional non-executive directors (primarily government ministers) 	N/A	N/A

Figure 6: Dual roles of the Commissioners

Regulator	Function		Overlap of members?
	Primary accountability for strategic oversight	Primary accountability for executive management	
ASIC	Commission	Commission	total
FCA (UK)	Board	Executive committee	two members of executive committee sit on the board
FMA (NZ)	Board of Directors	Executive team	none
SFC (HK)	Board	Executive committee	four members of the executive committee sit on the board
MAS (Singapore)	Board of Directors	Management team	one member of the management team sits on the board
SEC (US)	Commissioners	Office of the Executive Director, Office of the Chief Operating Officer and divisional directors	none



1.2 Talent

All the findings listed below, and the key points made throughout this section, are based on evidence arising from the interviews, roundtables, surveys, document review and other research that we conducted. We have not directly attributed each of these observations to a particular source but have only raised observations where there was sufficient evidence gained or consistency of views to support this finding.

The talent component of the ASIC review framework is defined as “leaders have the right skills and capability to perform their role”.

For the purposes of the Leadership section, ‘leaders’ generally refers to the Commission, SESs and SELs, but also includes EL1s and EL2s as appropriate.

Key points

- The current Commission is a mix of internal and external appointments, creating a balance between continuity and fresh ideas. The staff interviews presented a positive view of the current Commission, describing it as the most stable commission in recent tenures. The improved level of diversity of thought in recent years was also a theme from staff interviews and roundtable discussions.
- The current appointment process for Commissioners is run by government with input from the Chair. It is not documented and there is a lack of clarity around how this process works.
- Staff have a positive view of the performance of Commissioners and SELs. Further, they rated well on their leadership capabilities in the 2015 Service Census when compared against other regulatory agencies.
- Work has been done to identify the capability needs of ASIC leaders over the next three to five years. There are plans under way to address these needs.
- Succession planning for the SES level is mature.
- Commissioners partake in ongoing skills management and development. This is coordinated by People and Development and includes private Commission-only team coaching through an external service provider.
- In a traditional Westminster-style system, it is not normal practice for statutory office-holders to be subject to performance reviews, nor for a commission as a whole to be subject to such reviews. Consistent with this, there are no such processes in ASIC.

1.2.1 Criteria we considered



There are adequate procedures in place to ensure the regulator has a high-performing leadership team, which include:

- appointing executives who have the right skills and capability for the role, including strategy, development, delivery and change management
- succession planning that ensures that executives continue to have the right skills and capabilities expected of a regulator
- regular performance management and skills assessment of leaders.



1.2.2 Description of current state at ASIC

1.2.2.1 Recruitment of Commissioners

Section 9 of the ASIC Act sets out the recruitment process for ASIC Commissioners, including that the positions must be full-time roles and that there must be at least three and no more than eight Commissioners at any time. It also specifies that they must have knowledge of or experience in one or more of the following fields:

- business
- administration of companies
- financial markets
- financial products and financial services
- law
- economics
- accounting.

Responsibility for Commissioner appointments lies with the appropriate Minister, being the Treasurer.

The selection criteria are broad, with no guidance as to the skills and capabilities required of the Commissioners for either their role as part of the Commission or in their role as cluster leaders. The application of the legislation to the recruitment process is consequently open to interpretation. Treasury does not have a documented process for managing the selection of Commissioners (this also applies for the reappointment of standing Commissioners). See Volume 2, Section 1.2.1 for information about the current Commissioners' qualifications and experience.

In practice, the roles are publicly advertised, allowing both ASIC staff and external candidates to apply. Treasury provides candidate profiles to the People and Development group (P&D). The Chair is also involved in the interview process and makes a recommendation to Treasury. Treasury/the Minister is not bound by the Chair's recommendation.

Appointments are for up to five years. Appointments can be renewed at the end of the term at the discretion of the Minister. We understand that capability requirements are identified by the Chair and/or the Minister.

The current Commission is a mix of internal and external appointments, creating a balance between continuity and fresh ideas. Long-tenured staff consistently commented that when internal experience is not present at a Commissioner level the effectiveness of the organisation is reduced. The unique function of ASIC in the Australian market requires a continuity of ideas gained from internal experience.

The staff interviews presented a positive view of the current Commission, describing it as the most stable commission in recent tenures. The improved level of diversity of thought in recent years was also a theme in staff interviews and roundtable discussions.



Key points

- The current Commission is a mix of internal and external appointments, creating a balance between continuity and fresh ideas. The staff interviews presented a positive view of the current Commission, describing it as the most stable commission in recent tenures. The improved level of diversity of thought in recent years was also a theme from staff interviews and roundtable discussions.
- The current appointment process for Commissioners is run by government with input from the Chair. It is not documented and there is a lack of clarity around how this process works.



1.2.2.2 *Current leadership capability*

The following comments relate to ASIC's leadership. For the purposes of this section, 'leadership' is defined as Commissioners and SES level staff.

Good employment and talent management processes for SELs have given ASIC the means to appropriately recruit and retain capable and talented senior executives.

Orima's 2015 ASIC staff survey found that 67% are satisfied overall with the effectiveness of the Commission (and 26% are neither positive nor negative). While ASIC has flagged this as an area for improvement, the response has improved significantly since 2010, when only 42% were satisfied. Similarly, the proportion of staff who are satisfied with the effectiveness of the SELs also increased from 63% in 2010 to 76% in 2015 (and 16% are neither positive nor negative).

The staff interviews presented a positive view of the capabilities of the Commission and SELs. There was an overwhelming view that ASIC leaders are smart and highly intellectual. This perception strongly aligns with the qualifications cited in SEL profiles and leadership qualification data provided by ASIC. Further, it was noted by ASIC that in the 2015 State of the Service Census, ASIC leadership was rated more highly when compared against other regulatory agencies.

There was broad agreement in both interviews and roundtables that there is a gap in terms of people management skills and understanding of the role and use of data analytics. With the Corporate Plan's increased focus on data, analytics and behavioural economics, interviewees saw this as a capability gap for leaders and ASIC alike. At an operational level, the ability to articulate technological needs and requirements or to use data to support decision-making was identified as being an important and required skillset for the future.

ASIC has a formal training and development framework and program for all staff, as well as a formal program for the SES level. The SES program offers a range of training opportunities for leaders. See Volume 2, Section 1.2.3 for more information about this.

ASIC has a very strong level of gender diversity across the senior levels (EL1, EL2 and SES). For 2015 and beyond, it has set a target of 50% women in EL1, EL2 and SES roles. Currently ASIC has achieved this for EL1 roles, and is close to achieving it for EL2s (47%). ASIC is continuing to work towards its target of 50% for the SES level (currently 36%).

As discussed above, ASIC recruits at leadership levels to bring in new skills and market experience. P&D has already begun to broaden its qualifications/experience criteria to include more mathematicians, statisticians and social science backgrounds. The APSC Integrated Leadership System ensures that competencies are embedded in job descriptions and the talent and learning frameworks. However, ASIC currently does not use a formal capability-based approach to employment and other key HR processes.

Such an approach is currently being developed. An external service provider was contracted by ASIC in April 2014 to conduct a capability review of ASIC's Regulatory teams, to assess and define the capabilities required over the next three to five years across the Regulatory function (see the tables below). Parts of this review are already complete and being actioned, including the capability-based talent management and recruitment approach now in place in the Market Integrity Group. The work is at advanced stages of roll-out in other Regulatory teams. For more information about the strategic workforce planning project review and findings, see Volume 2, Section 1.2.2.

Once this review is completed, the findings will provide the P&D team with data for building a capability-based approach to talent management in the Regulatory function.

Figure 7: General and area-specific capabilities as identified by the strategic workforce planning project

This table identifies the general and area-specific capabilities required of ASIC in the next three to five years. It is noted by ASIC that some of these capabilities already exist within the organisation while others either need strengthening or require development.



Area of focus	Future capabilities required
Core (general)	<ul style="list-style-type: none"> • Regulatory expertise • Analytical skills • Learning agility • Technological adeptness • Legal acumen • Surveillance and investigative skills • Project management
Market Integrity Group	<ul style="list-style-type: none"> • Understanding of market behaviour • Stakeholder management
Investors & Financial Consumers (including Financial Literacy)	<ul style="list-style-type: none"> • Behavioural insights • Understanding of business models and consumer life stages • Stakeholder management and communications
Markets	<ul style="list-style-type: none"> • Accounting and auditing skills

Figure 8: Required shift in workforce capabilities as identified by the strategic workforce planning project

From primarily ...	Towards ...
Legalistic approach	Taking action that is proportional to the risk of harm
Compliance with existing processes, methodology focus	Analytical approach which takes into account behavioural economics, psychology, social sciences and economic history
Technology used primarily as a database	Systems skills used to identify solutions and industry activities
Single area of specialisation	Applying specialist knowledge to ASIC's broad regulatory objectives
Reactive, singular event focus	Proactive, consolidating individual events to identify emerging trends and misconduct
Single transactional problem-solving	Driven by pattern recognition, data mining, drawing from past historical events, identifying risks in the system or culture
Local focus	Global focus, understanding different cultures and their nuances
Functional, specialist teams	Cross-functional and collaborative
Technical experts as leaders	Management experts and visionary leaders



Key points

- Staff have a positive view of the performance of Commissioners and SELs. Further, they rated well on their leadership capabilities in the 2015 State of the Service Census when compared to against other regulatory agencies.
- Work has been done to identify the capability needs of ASIC leaders over the next three to five years. There are plans under way to address these needs.



1.2.2.3 Succession planning

ASIC maintains formal succession plans for SES roles and the plans were most recently updated in 2015. ASIC informs us that succession plans have been developed to identify potential successions within each team. We reviewed a sample of these plans from the Regulatory teams. A list of 'utility players' has also been drafted of high performing individuals with potential to be promoted to SEL/SES positions outside their own area if required.

ASIC also looks to prepare staff identified as potential successors. This is primarily done by working with them to build development and support opportunities into their annual development plans. There are a range of development activities available, some internal and others provided by well-respected service providers.

These succession plans have been used for several appointments to the SES level over recent years.



Key point

- Succession planning for the SES level is mature.

1.2.2.4 Performance and skills management

Performance and skills management of leadership are mechanisms that encourage and reinforce the desired diversity of thought and constructive communication, influencing corporate culture from the top down.

Commissioners partake in ongoing skills management and development. This is coordinated by P&D and includes private Commission-only team coaching through an external service provider, as well as ongoing peer feedback.

In a traditional Westminster-style system, it is not normal practice for statutory officers to be subject to performance reviews, nor for a commission as a whole to be subject to such reviews. Consistent with this, there are no such processes in ASIC.

In relation to performance reviews of individual commissioners, as a matter of principle, high-performing individuals can always benefit from constructive and balanced performance feedback. Further, best practice corporate governance would suggest that a structured process to obtain feedback on the operation of the governing body is beneficial.

For information on skill development opportunities provided to leadership, see Volume 2, Section 1.3.1.



Key points

- Commissioners partake in ongoing skills management and development. This is coordinated by People and Development and includes private Commission-only team coaching through an external service provider.
- In a traditional Westminster-style system, it is not normal practice for statutory office-holders to be subject to performance reviews, nor for a commission as a whole to be subject to such reviews. Consistent with this, there are no such processes in ASIC.



1.3 Behaviours and culture

All the findings listed below, and the key points made throughout this section, are based on evidence arising from the interviews, roundtables, surveys, document review and other research that we conducted. We have not directly attributed each of these observations to a particular source but have only raised observations where there was sufficient evidence gained or consistency of views to support this finding.

The behaviours and culture component of the ASIC review framework is defined as “leadership behaviours drive the desired culture and enable the strategy day-to-day”.

For the purposes of the Leadership section, ‘leaders’ generally refers to the Commission, SESs and SELs, but also includes EL1s and EL2s as appropriate.

Key points

- Notwithstanding the current governance model which expects the Commissioners to play a dual role of strategic governance and executive management, the Commission has driven a number of important strategic initiatives over the past few years. That said, such a model is limiting the perspective and time available to drive the long-term strategic direction of ASIC.
- Staff consistently noted there is a strong alignment of views of Commissioners, which permeates through the SELs.
- The strength of ASIC’s values and how they are modelled by leadership is having a unifying effect on its culture.

1.3.1 Criteria we considered



There is a framework in place to ensure the appropriate behaviours and culture permeate throughout the organisation, which includes:

- a clear direction, which links to strategy and is set by leadership
- alignment and collaboration of the leadership team
- open communication from leadership
- alignment to and embedding of the values.

1.3.2 Description of current state at ASIC

1.3.2.1 Activities of Commissioners

As noted in Section 1.1.2.1, Commissioners effectively perform two roles, first as a member of the Commission, and second as a cluster leader.

In their Commissioner role, they are responsible for:

- making decisions on matters of strategic significance within ASIC’s regulatory functions and powers
- overseeing the management and operations of ASIC as a Commonwealth government body.

In their cluster leader role, they have executive responsibility for their team, including team-related decision-making and management of the operations of their area of responsibility.



The Chair is also the current Chair of the International Organization of Securities Commissions (IOSCO), meaning that his time and focus is split between these two commissions. While there is obvious overlap and benefit to ASIC from this role, the Chair spends approximately 20% of his time on activities that relate to engaging with international stakeholders including IOSCO.

Commissioners preside over numerous internal and external forums and committees, weekly cluster meetings with their SELs, weekly or fortnightly one-on-one meetings with SELs, and other ongoing projects. Commissioners also receive weekly/fortnightly reports on the various teams they oversee.

As part of this review, we surveyed the Commissioners and asked them to apportion their time to 15 activities (estimated for an average month). The table below provides a summary of these results.

Work activity	Percentage of time spent by ASIC Commissioners*
Meetings/engagement activities with external stakeholders, including addressing inquiries/complaints	21%
Prepare papers for and attend ASIC Committee and Governance meetings	14%
Prepare materials for and attend internal team meetings or ASIC senior management meetings	12%
Prepare and participate in ASIC strategic planning/risk activities	11%
Review of work, quality assurance, and coaching	8%
Conduct of a project or matter	7%
Engagement with international stakeholders, including overseas regulators and IOSCO	5%
Reviewing processes and implementing process improvements	5%
Preparing for and attending industry seminars/external board meetings	5%
Talent/performance management of your team including strategic workforce planning, recruitment and annual reviews etc	4%
Monitor, track, forecast and report on budget	3%
Prepare for and attend ASIC-wide staff briefings or events	3%
Continuous education (own performance reviews/leadership training/development activities)	2%
Analyse/report on the activity of your team	1%
Admin – including emails, travel coordination, expense claims, photocopying, data entry	1%

* Percentages have been rounded – therefore, these do not add up to 100%.

Some of these activities could be classified as either ‘strategic oversight’ activities or ‘executive management’ activities. Depending on this classification Commissioners apportion their time in the following ways:

- between 23% and 42% fulfilling their strategic oversight role
- between 58% and 77% fulfilling their executive management role.

Given the dual role that the Commissioners play, ASIC noted that while performing their various activities they bring both a strategic and executive management focus.



Despite being required to operate under such a model, the current Commission has focused on many important strategic initiatives aimed at enhancing the operation of ASIC. These include driving the User Pays Funding model, the Registry Separation project and the OneASIC program.

During internal staff interviews and roundtables, while the performance of the Commission was praised it was noted that time spent on executive management activities maybe limiting the time and capacity Commissioners have to focus on activities such as:

- setting and/or communicating the broader, long-term vision for ASIC (ie developing a long-term strategic plan on a whole-of-ASIC basis)
- clarifying ASIC's direction as a regulator
- reshaping and reinforcing ASIC's culture to align to ASIC's goals and priorities
- managing expectations of external stakeholders such as the government, media and the broader market.



Key point

- Notwithstanding the current governance model which expects the Commissioners to play a dual role of strategic governance and executive management, the Commission has driven a number of important strategic initiatives over the past few years. That said, such a model is limiting the time the Commission has available to spend on driving the long-term strategic direction of ASIC.

1.3.2.2 Leadership alignment and collaboration

There is a strong alignment between the Commission and the SES level, particularly in regard to ASIC's focus on bringing the strategic objectives to the heart of everything ASIC does, as described in the Corporate Plan. In PwC's ASIC staff survey, there was unanimous (100%) agreement with the statement "I am clear about ASIC's strategic priorities as they relate to my role and team" at the leadership level (SES and Commissioner). The interviews and roundtables also identified strong relationships between SELs and Commissioners, which has led to a high level of collaboration between both levels. Furthermore, the staff interviews and roundtables described the Commission as being open, flexible, very accessible and actively involved, particularly in high-profile matters being conducted within particular team portfolios.

From a bottom-up perspective, Orima's 2015 ASIC staff survey showed strong alignment of views across the organisation in terms of understanding the strategic objectives and how they relate to teams and individual roles. The following questions in the survey returned very high levels of agreement across the organisation:

- I have a clear knowledge and understanding of my team's business – 94% agree and 5% neutral
- I am clear about ASIC's strategic priorities as they relate to my role and team – 93% agree and 6% neutral
- I have a clear understanding of how my team's role contributes to ASIC's strategic priorities – 91% and 6% neutral
- I clearly understand what is expected of me in this job – 91% agree and 7% neutral
- ASIC has clear strategic priorities – 82% agree and 13% neutral



Key point

- Staff consistently noted there is a strong alignment of views of Commissioners, which permeates through the SELs.



1.3.2.3 Communication from the leadership

For details on communication see Section 2.2.

1.3.2.4 Organisational culture and values

ASIC's values of accountability, professionalism and teamwork are clearly documented on its website and reinforced through formal mechanisms, such as inclusion in all staff performance agreements.

Orima's 2015 ASIC staff survey provides evidence that the SES level of leadership is modelling the values strongly. When the survey asked whether "My Senior Executive models behaviour consistent with the ASIC Values", 78% of staff agreed and 16% were neutral. By measuring this in the staff survey, ASIC is holding SES staff accountable for role-modelling the right behaviours, and thereby reinforcing the values to ASIC staff.

This same question was not asked regarding the behaviour of Commissioners. This does not mean that Commissioners are not modelling the values. Combined with the absence of performance reviews, the Commissioners are not receiving regular formal feedback or formally and transparently being held accountable for how they model ASIC's values.



Key point

- The strength of ASIC's values and how they are modelled by leadership is having a unifying effect on its culture.

Part 2

Strategy

2.1	Strategy-setting process	25
2.2	Strategy communication	32
2.3	Organisational performance	37



2.1 Strategy-setting process

All the findings listed below, and the key points made throughout this section, are based on evidence arising from the interviews, roundtables, surveys, document review and other research that we conducted. We have not directly attributed each of these observations to a particular source but have only raised observations where there was sufficient evidence gained or consistency of views to support this finding.

The strategy-setting component of the ASIC review framework is defined as “the strategy is developed through a collaborative, evidence-based, forward-looking approach”.

Key points

- ASIC has a legislated mandate and a set of enduring strategic objectives (ASIC calls these strategic priorities).
- The Commissioners’ view that ASIC is primarily an enforcement regulator conflicts with the views of some external stakeholders. This is exacerbated by the government’s broad Statement of Expectations and ASIC’s responding Statement of Intent being generic and high level.
- The introduction of the Corporate Plan in 2015 (which supersedes the less comprehensive Strategic Outlook) has been a positive initiative as it communicates ASIC’s market priorities for the year ahead externally. However, external stakeholders, including the regulated population, industry groups and academics, have expressed concern that ASIC does not consult with them enough in determining its market priorities. ASIC has informed us that it is their intention to consult with its stakeholders on its Corporate Plan in the future.
- The Strategy Group drives a risk-identification process which is both top-down and bottom-up, informed by an environmental scan. This informs ASIC’s view of the market’s long-term challenges. This is not as advanced (eg the use of data analytics) as that of some other overseas best practice regulators, and there is no overarching documented framework that describes it.
- The Strategy Group does not have the resources of comparable overseas regulators, even allowing for market size and complexity.
- ASIC has taken a deliberate approach to driving strategy development and execution through a series of business plans. There is buy-in to the development, use and value of business plans across ASIC.

2.1.1 Criteria we considered



There are adequate processes in place to set a cohesive, organisation-wide regulator strategy. This includes:

- a clearly documented mandate
- identification of overarching strategic objectives
- identification of key areas of focus identified through a risk identification process that includes a comprehensive assessment on the external environment and engagement with key internal and external stakeholders
- translation of the strategic objectives and key focus areas strategy into actions that drive allocation and prioritisation of resources at an organisation level.

2.1.2 Description of current state at ASIC

ASIC described to us that in recent years it has refined its strategy-setting approach, and the process continues to evolve and improve each year. The steps in the current process are summarised below, and more detail on each step is provided in Volume 2, Section 2.1.



Figure 9: Strategy-setting at ASIC



2.1.2.1 Establish mandate and identify strategic priorities

ASIC's mandate is captured in three documents:

- The *ASIC Act 2001*
- The Government's Statement of Expectations
- ASIC's Statement of Intent, which responds to the Statement of Expectations.

More detail on these statements is provided in Volume 2, Section 2.1.1.

The Statement of Intent includes three objectives (which ASIC calls 'strategic priorities'). These are the reference point for everything the organisation does. They are to:

- promote investor and financial consumer trust and confidence
- ensure fair, orderly, transparent and efficient markets
- provide efficient and accessible registration.

The strategic objectives are well known and embedded throughout the organisation. See Section 2.2.

There is wide acknowledgement within the market that, consistent with other financial regulators, the government's Statement of Expectations is broad rather than specific, and that ASIC's responding Statement of Intent is generic and high level.

The Commissioners' view, as publically communicated, is that ASIC is primarily an enforcement regulator. As noted in ASIC's 2013-14 annual report, around 70% of ASIC's regulatory resources are allocated to either enforcement or surveillance. The focus on enforcement is consistent with the emphasis on credible deterrence in the IOSCO regulatory principles.

However, there are a number of important activities that ASIC performs which do not relate to enforcement or surveillance. These include issuing regulatory guidance and improving financial literacy.

During the review, there were varying views as to whether a primary focus on enforcement is warranted.

Specifically in the external stakeholder survey:

- 39% of the regulated population believes ASIC has the balance between enforcement and other tools right
- while 28% has the view that ASIC places too little emphasis on enforcement.



This is in contrast to the evidence gathered through the external stakeholder engagement process, whereby the majority of the regulated population, the peak, industry and professional bodies, and the academics believe ASIC focuses too heavily on enforcement. See Section 3.4.2.2 for more information on this.

It is evident that there are many and varying views on ASIC’s focus on enforcement, which are exacerbated by the fact that the government’s Statement of Expectations is broad and ASIC’s responding Statement of Intent is generic and high level.



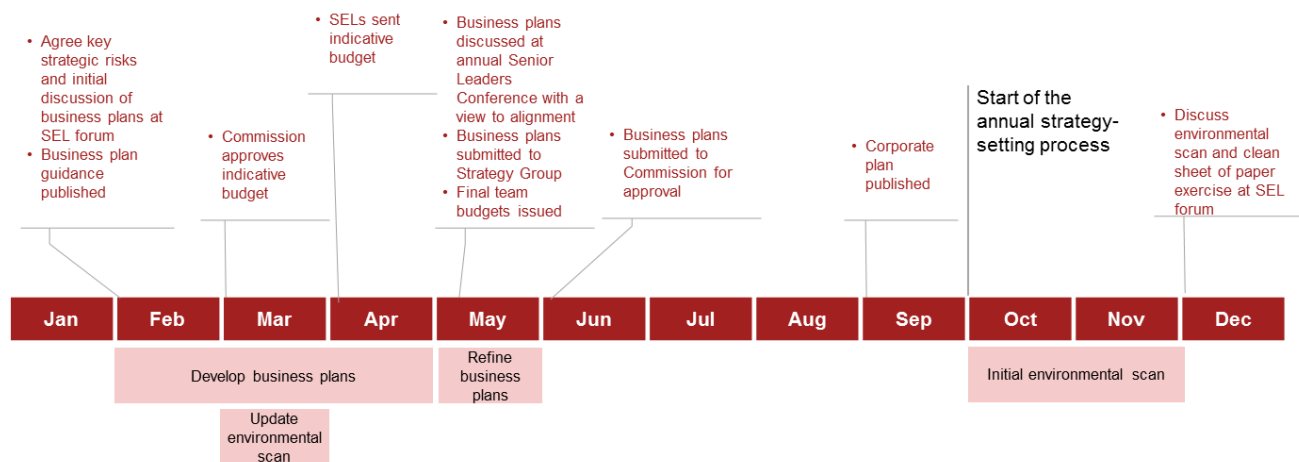
Key points

- ASIC has a legislated mandate and a set of enduring strategic objectives (ASIC calls these strategic priorities).
- The Commissioners’ view that ASIC is primarily an enforcement regulator conflicts with the views of some external stakeholders. This is exacerbated by the government’s broad Statement of Expectations and ASIC’s responding Statement of Intent being generic and high level.

2.1.2.2 Identify key areas of focus

In 2015, ASIC published its first Corporate Plan, which outlines its view of the market’s long-term risks and ASIC’s key activities in response. In 2014 key risks were identified in the Strategic Outlook 2014-15, and before 2014 ASIC did not publish key risks and responses externally.

Figure 10: Annual strategy-setting process



ASIC’s risk-identification approach continues to evolve each year. The process includes a range of ‘top-down’ and ‘bottom-up’ activities and is informed through ASIC’s liaison with other regulators and tailored by them to reflect their mandate.

Risks are identified using a blend of data-based and other inputs:

- Data-based inputs
 - environmental scan (see Volume 2, Section 2.1.3 for more detail)
 - outcomes of regulatory actions, including surveillance
 - trends in misconduct reporting
- Other inputs
 - A **‘clean sheet of paper’ exercise**, in which each SEL is asked to identify their top three risks; the responses are then consolidated, and the Commission and SELs are asked via a survey and ASIC’s



defined risk management definitions to choose what they think should be prioritised across ASIC as a whole based on assessments of likelihood and consequences of risks materialising.

- **External panels:** There is no formal channel to feed advisory panel discussions back into the strategy-setting process, and not all panel meetings are minuted (although action items are taken). See Section 1.1.2.2.
- **External stakeholder engagement** (with the regulated population, government agencies and other regulators, both domestically and internationally). As with the external panels, there is no formal channel through which external stakeholder feedback is incorporated into the strategy-setting process, but SELs may be influenced by what they hear from external stakeholders.

The results of the risk identification process are the basis of a discussion at the December SEL forum and then an updated version is presented to and approved by Commissioners in January. The basis for this final prioritisation is largely judgement and experience, and informed by the environmental scan. Further, this process is not as mature as some other overseas regulators such as the FCA. For more information about this, see Section 2.1.3.

Access to and quality of data is a challenge in the risk identification process. Currently, the environmental scan is conducted twice a year, and the Strategic Intelligence team (which are part of the Strategy Group) advised that there is no point doing a scan more often than six-monthly because some of the data used is not updated frequently enough to affect the findings. The Strategic Intelligence team acknowledges that it is difficult to be forward looking with historic data and there is some data they would like to have access to but do not. This is attributed to limitations of ASIC's internal systems (see Section 3.8) and external data availability and quality. For example, ASIC informed us that they receive data from asset managers annually, and it is not always accurate, whereas the Securities and Exchange Commission of Brazil gets data feeds from asset managers on a daily basis.

Likewise, we have been advised by ASIC that they cannot give data to academics without charge. We have been advised by some academics that they are currently unwilling to pay these charges because they question the timeliness and quality of data they would receive.

The data-based component of the process to identify key areas of focus is owned by the Strategic Intelligence team, which provides specialist research capabilities, advice and support to all of ASIC. It has evolved from the Office of the Chief Economist. The team currently has 15 full-time employees. It is supported by two small analytics teams within MIG, who provide specialised expertise to analyse complex sets of market data. As noted by ASIC staff in interviews, ASIC has fewer resources, relative to other overseas regulators, dedicated to using data to identify trends relevant to ASIC and the regulated population (see Section 2.1.3).

In the ASIC leadership and stakeholder comparison survey, ASIC's leaders were highly confident (greater than 89% positive endorsement) that ASIC is forward thinking, proactive and responsive to emerging risks and developments in the financial system. Further, ASIC noted that there are a number of factors supporting their view:

- the Emerging Risk Committee
- the range of forward-looking issues ASIC has addressed (eg cyber resilience).

However, in the external stakeholder survey, the regulated population lacked the same level of confidence:

- 18% of the regulated population agreed that ASIC is forward thinking, 30% disagreed, 40% neither agreed nor disagreed and 12% did not know
- 20% of the regulated population agreed that ASIC proactive in identifying risks in the financial system, 34% disagreed, 39% neither agreed nor disagreed and 7% did not know
- 22% of the regulated population agreed that ASIC is responsive to emerging risks and development in the financial system, 25% disagreed, 45% neither agreed nor disagreed and 8% did not know.

External stakeholders, including the regulated population, industry groups and academics, believe they should be consulted more broadly when ASIC is setting its strategy and identifying risks. To the extent that the contribution of external stakeholders is currently influencing the development of strategy, the lack of formal



mechanisms to capture input means there is no transparent way of demonstrating this to the market. ASIC has informed us that it is their intention to consult with its stakeholders on its Corporate Plan in the future.



Key points

- The introduction of the Corporate Plan in 2015 (which supersedes the less comprehensive Strategic Outlook) has been a positive initiative as it communicates ASIC's market priorities for the year ahead externally. However, external stakeholders, including the regulated population, industry groups and academics, have expressed concern that ASIC does not consult with them enough in determining its market priorities. ASIC has informed us that it is their intention to consult with its stakeholders on its Corporate Plan in the future.
- The Strategy Group drives a risk-identification process which is both top-down and bottom-up, informed by an environmental scan. This informs ASIC's view of the market's long-term challenges. This is not as advanced (eg the use of data analytics) as that of some other overseas best practice regulators, and there is no overarching documented framework that describes it.
- The Strategy Group does not have the resources of comparable overseas regulators, even allowing for market size and complexity.

2.1.2.3 Translate strategic priorities and areas of focus into actions

ASIC has taken a deliberate approach to driving strategy development and execution through a series of business plans. The business plans have three key elements: the team's priorities/planned activities for the upcoming year; an assessment of strategic and operational risks; and an 'FTE snapshot' which provides an overview of resource allocation by reference to regulatory tools (discussed in Section 3.6). Teams who are responsible for surveillance activities must also complete a summary of planned surveillance in their business plan. Each activity in the business plans is required to align to ASIC's view of the market's long-term strategic risks.

Business plans are developed by each SEL, with input from their team as required. Alignment of plans within clusters is encouraged by the Commissioners, who discuss the development of business plans with their SELs both individually and as a group. To further promote alignment, business plans are presented by cluster rather than by team at the annual Senior Leaders Conference. This is a two-day offsite attended by Commissioners and SELs, and dedicated to the strategic considerations of the external environment and ASIC's assessment of risks and responses. The plans are submitted to the Strategic Policy team for review, to ensure that they align to strategic objectives and risks, before they go to the Commissioners for approval. There is also a process for amalgamating the parts of the business plans to determine if ASIC's view of the market's long-term risks is being adequately addressed. The outcomes of this process are presented to the Commission for review and approval.

The business plans are not aggregated into a single organisation-wide plan, other than the summary of activities provided in the Corporate Plan. The 'Actions' in 2015-16 and 'Key activities' in the Corporate Plan are a distillation of activities documented in business plans and key focus areas for each cluster.

The use of business plans is well embedded through ASIC. 94% of staff indicated that they have a clear understanding of their own team's business plans and they were referred to by staff of all levels in a range of contexts in interviews and roundtables throughout the review.

From review of the business plans, the quality of business plans across teams varies. The level of detail is inconsistent, and because they align to the strategic objectives and long-term challenges, which are high level and not specific, it is difficult to determine whether the activities drive towards intended outcomes.

They are shared informally among SELs, but there is no consistent process for communication imposed across clusters, other than via publication on the ASIC intranet. This observation was reinforced by staff during roundtables, who expressed concern that clusters work in silos to define how the organisational strategy can be achieved, and that more formal interaction is required to ensure accountability, consistency and comprehensiveness.



The business plans are produced by each team and signed off by the Commission. The SELs report to the Commission against the activities in their business plans fortnightly (by exception), and the measures in the plans are the primary measures of accountability for SELs. The Chair goes through each business plan line-by-line with his direct reports and Commissioners have additional regular meetings with their SELs to discuss progress against the plan.



Key point

- ASIC has taken a deliberate approach to driving strategy development and execution through a series of business plans. There is buy-in to the development, use and value of business plans across ASIC.

2.1.2.4 Allocate resources to actions

Resource allocation is done through the budget-setting and business planning process. See Section 3.6 for more detail.

2.1.3 Comparison with other regulators

It is worth noting that market conduct regulators overseas have broader data-collecting powers than ASIC. The origins of this lie in decisions taken when ASIC was first established related to ASIC's responsibilities relative to APRA, and to a lesser data-rich world than today. While ASIC has tried to address this (and indeed been supported by the RBA and APRA for instance in relation to the National Consumer Credit Protection), the government has decided not to change these powers on the basis that they could add to the regulatory burden. To give one example of contrast with an overseas regulator, ASIC receives no data on credit card usage, where the US Consumer Financial Protection Bureau receives detailed monthly data (including transactions, repayments, fees and delinquency) covering 80% of all US credit cards.

While ASIC has tried to address this, government decisions have been made in the past not to change these powers as they could create a regulatory burden.

The FCA is considered leading practice in relation to identifying and communicating market risk. It has invested significant resources to improve this in recent years.

FCA process for identifying market risks

The FCA is very transparent in its approach to strategy-setting and identification of market risks. It undertook a strategic review in 2014, and the report that was produced to summarise the results for FCA staff, 'Our Strategy', was also made publicly available. This document outlines seven practical actions that the FCA will take to enact its overarching strategic objectives, some of which relate specifically to how it identifies and prioritises risk. For example:

- restructuring its risk division to take a more strategic approach to risk
- more closely aligning strategy and policy teams and the CEO's office to the communications function, to engage and influence more strategically
- agreeing a common 'house view' of each of the markets and key sectors the FCA regulates.

House view

The FCA acknowledges the need to make better use of the data, information and intelligence it collects, so has developed a process to use inputs and insights from across the organisation to agree a single perspective and facilitate consistency and risk prioritisation. While this process has not been made publicly available it was provided for the purpose of this review, and is both proactive and comprehensive.

It includes:



- structuring the risk prioritisation around eight sectors, which are groupings of one or more broad economic markets
- elevating sector issues (approximately five per sector) to a senior committee which identifies the main priorities and parks other risks
- drawing on views of supervisors, enforcement, competition and data (including purchased external analysis and data; input from consumer bodies; better contact report analysis; and pattern-spotting algorithms).

The priorities are monitored during the year and when new issues come up, early intervention teams are responsible for assessing what analysis or attention is required (which avoids multiple teams being distracted by emerging issues).

The FCA will continue to publish its list of top 40 risks to provide the market with a sense of other potential issues and concerns.

Overseas equivalents of the Strategy Group

The FCA stated an intention to build out its Strategy and Competition division with a greater focus on market intelligence, data and analysis following its strategic review in 2014.

The SEC is broadly acknowledged as leading the way in the use of data by a regulator. Its Division of Economic and Risk Analysis (DERA) was established in 2009 to integrate financial economics and rigorous data analytics into the organisation's core mission. The SEC refers to DERA as its 'think tank'. DERA relies on a variety of academic disciplines, quantitative and non-quantitative approaches, and knowledge of market institutions and practices to help the Commission approach complex matters in a fresh light. It has a mix of permanent positions and term/visiting appointments for economic fellows, visiting academic scholars and other experts. We have been advised that DERA has approximately 160 FTEs. Its staff develop and use sophisticated tools and data analytics to support the risk assessment activities of various offices and divisions across the SEC. We note that the USA is a larger economy and it could be suggested that there is a greater depth of academia available.



2.2 Strategy communication

All the findings listed below, and the key points made throughout this section, are based on evidence arising from the interviews, roundtables, surveys, document review and other research that we conducted. We have not directly attributed each of these observations to a particular source but have only raised observations where there was sufficient evidence gained or consistency of views to support this finding.

The strategy communication component of the ASIC review framework is defined as “the strategy is communicated and understood within ASIC and externally”.

Key points

- The external communications strategy, external communications policy and Corporate Affairs business plan provide valuable guidance over the development and distribution of communications by ASIC generally. However, there is no comprehensive communications strategy or framework.
- ASIC communicates regularly and extensively with the market, exceeding many regulators in its use of social media and the number of publications produced.
- The outcome sought from communication activity is unclear and Corporate Affairs is under-resourced. Overall effectiveness of communications activity in the market is not measured.
- There is a perception amongst the regulated population that ASIC lacks the willingness to engage or give adequate reasons for their decisions, particularly in relation to aspects of enforcement and surveillance.
- Internal communication has improved in recent years. Staff still see room for further improvement including more effective updates in regard to organisational and operational changes.
- Internal communications are regular and extensive, but not always coordinated.

2.2.1 Criteria we considered



There is a process in place to clearly and consistently communicate the regulator’s strategy and framework for achieving this, both internally and externally. This includes:

- an external communications strategy for presenting the strategy to the market and processes to measure the effectiveness of this communication
- ensuring staff understand the strategy and their role within it.

2.2.2 Description of current state at ASIC

Key aspects of communication, both internal and external, are discussed below and so these comments are not confined to communication in relation to strategy.

2.2.2.1 External communication

External communications strategy

ASIC’s external communications strategy contains five guiding principles for external communications and associated controls to ensure that communications are coordinated and consistent.

This is supported by two key documents:

- the external communications policy



- the Corporate Affairs business plan.

For more information on these documents, see Volume 2, Section 2.2.3.

These documents are further supported by specific procedures and policies, and a social media strategy. None of these documents identify channels for external stakeholders to provide feedback on communication, other than ASIC's external stakeholder survey and general website feedback.

While the external communications strategy, external communications policy and Corporate Affairs business plan provide valuable guidance over the development and distribution of communications by ASIC generally, they do not constitute a comprehensive communications strategy. There is no evidence of an assessment of key audiences, their communication needs, key messages and objectives of communications, how those needs will be met, or an assessment of effectiveness against those objectives. These are all items that would generally be expected to form the basis of a communications strategy and plan. Further, there is a gap between the goals of ASIC's external communications (outlined in the external communications policy) and the tactical communications activities outlined in the Corporate Affairs business plan.

In some instances a supplementary communications strategy is developed to meet the needs of a specific project. Where these have been provided they are of a high quality – outlining objectives, key messages, stakeholders and their specific needs, appropriate channels, some evaluation measures and a schedule of activities – but they are not prepared consistently. In some instances the communications approach is agreed informally between Corporate Affairs and the Commission, and not documented.

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 external stakeholder survey
- a target of 70% overall satisfaction in Orima's annual ASIC staff survey
- quantification of media clips and broadcast coverage per quarter, with 80% positive or neutral coverage.

For more information about these, see Volume 2, Section 2.2.2.

While ASIC undertakes significant volumes of communication, the outcome sought from each activity and its effectiveness in the market is unclear. None of these indicators measure whether the communications are achieving their intended outcome. In most instances the lack of a communications strategy means that activities do not align to an intended outcome which they could then be assessed against. The external stakeholders survey notes that 33% of the regulated population agree that ASIC clearly communicates what it is doing (33% neither agree nor disagree), and 34% agree that ASIC is transparent in the way it operates (30% neither agree nor disagree).

Communication with the market

The key publications in which ASIC's strategic objectives and key areas of focus are documented are the Statements of Expectations and Intent, Strategic Framework, Strategic Outlook (published 2014), Corporate Plan (published 2015), and the annual report. On ASIC's website and in the documents themselves, there is no clear explanation as to how they have been developed, and how they link together.

In addition to its formal publications, as is to be expected, ASIC references its strategy, priorities and key areas of focus throughout the year through a range of communications and channels. An overview of these communications is provided in Volume 2, Section 2.2.4. All of these materials are available on ASIC's website.

ASIC also has a structured program of meetings with key industry bodies, boards and individual stakeholders. This is another channel to communicate strategy, provide guidance, build relationships and help stakeholders to understand and meet their obligations, as well as receive feedback.

This aligns to the communications activities of comparable regulators in most respects, and exceeds many in terms of social media and the number of publications produced (see Section 2.2.3 for information about other regulators).



Despite the range of communications which ASIC produces, feedback suggests a degree of dissatisfaction that ASIC lacks transparency and that stakeholders do not understand ASIC's priorities and market risk identification process, including how it identifies, prioritises and targets market risks. External interviews and roundtables indicated that ASIC does not have a reputation for communicating transparently regarding its strategic plans each year. The Corporate Plan is used to communicate market priorities; however, feedback suggested that this document is not clear enough for the market to understand where ASIC's focus will be (see Section 2.2.3 for a comparison with other regulators' approaches). We note from discussions with ASIC that, given this is the first Corporate Plan, ASIC intends to learn from the feedback and improve on the Corporate Plan in the future.

A further theme from the external stakeholder survey and roundtables was that the regulated population would welcome more transparency over ASIC's decision-making process in relation to the regulatory actions, with clear reasons for the decisions it makes.



Key points

- The external communications strategy, external communications policy and Corporate Affairs business plan provide valuable guidance over the development and distribution of communications by ASIC generally. However, there is no comprehensive communications strategy or framework.
- ASIC communicates regularly and extensively with the market, exceeding many regulators in its use of social media and the number of publications produced.
- The outcome sought from communication activity is unclear and Corporate Affairs is under-resourced. Overall effectiveness of communications activity in the market is not measured.
- There is a perception amongst the regulated population that ASIC lacks the willingness to engage or give adequate reasons for their decisions, particularly in relation to aspects of enforcement and surveillance.

2.2.2.2 Internal communication

The staff interviews revealed that communication from the Chair to the rest of ASIC has been a more significant focus of the current Chair than of previous Chairs, and that current communication methods include using video messages to communicate with ASIC staff. When this was explored further in the roundtables, it was apparent that a large amount of communication filters down through the SELs, relying heavily on SELs to understand, interpret and re-communicate the message clearly and consistently to staff.

In the roundtables with staff, several insights were discussed regarding communications within ASIC:

- A large volume of communication is cascaded from the Commission to the SELs, and then through to the broader organisation. Effectiveness of the communication therefore relies on how well SELs understand and communicate the information to achieve consistency.
- Strong communication skills were identified as one of the key areas that leadership will need to further enhance within the next three to five years.
- The internal communication function within Corporate Affairs consists of one person, who is in charge of managing staff events where the Chair speaks, managing content for intranet communications, and video conferences. Communications could be further enhanced with additional staff.
- While ASIC's strategy is well communicated from the Chair and the SELs, information regarding ASIC's operational issues is not communicated to the same extent.

Specifically in relation to the communication of strategy, the key publications, primarily the Strategic Framework, Strategic Outlook (published 2014) and Corporate Plan (published 2015), are also the key documents used to promote ASIC's strategy internally. They are regarded as the 'statement of truth' for internal communications including the Chair's newsletter, leader presentations and intranet articles.



The strategy is translated into actions and success measures for teams through their business plans, and these plans form the basis for individual performance agreements. Each team's business plan is available on the intranet so they can be accessed organisation-wide.

In Orima's 2015 ASIC staff survey, 82% of staff agreed that ASIC has clear strategic priorities and 13% neither agree nor disagree, while 72% agree that the Commission provides clear priorities, vision and direction for the future and 20% neither agree nor disagree. Staff reported in roundtables that references to the strategy in internal and external speeches and presentations, on the intranet, and in Chair and Commission communications (such as the Chair's Bulletin and SEL emails) are effective. This, combined with the fact that business plans and performance agreements are structured around strategic objectives, means that the three priorities are well known and embedded through ASIC.

However, while 76% of staff report that they have a clear understanding of ASIC's strategy (and 15% are neutral), PwC's ASIC staff survey found that only 40% agree that they can articulate that strategy to others (and 25% are neutral).



Key points

- Internal communication has improved in recent years. Staff still see room for further improvement including more effective updates in regard to organisational and operational changes.
- Internal communications are regular and extensive, but not always coordinated.

2.2.3 Comparison with other regulators

2.2.3.1 External communication

As noted above, ASIC's Corporate Plan is a fundamental tool of communication to the market. Overall however, ASIC's corporate publications contrast with the consolidated approach to the documentation of strategy taken by some other regulators. For example, APRA communicates its strategy simply through a Corporate Plan, which outlines specific strategic objectives, provides an explanation, actions, outcomes and performance indicator against each, and includes a high-level overview of risk.

New Zealand's FMA clearly states the role of each of its corporate publications and signposts how the statement of intent, statement of performance expectations and strategic risk outlook link to and support one another, presenting them as a single set of complementary documents.

The UK's FCA produces a business plan which consolidates risk identification and planned activities for the coming year in a much more comprehensive and logical way than ASIC's Corporate Plan. There is a clear flow – from the risks, to the high-level strategic and operational objectives, to the key priorities for the year, to specific activities, and then to ongoing activities and deliverables. This linkage is signposted in the plan itself: "We decide our activities for the year ahead based on the risks we see to our objectives. Our annual Business Plan sets out what these are and how we will integrate new responsibilities, improve our systems, develop our people and ensure that our priorities are focused on achieving our objectives."

The FCA incorporates a risk outlook section in its annual business plan, which sets out the most important areas of focus for the FCA in each financial year and includes its framework for how it assesses risk. The FCA also discloses its approach to risk management and how it supervises firms on its website.

The SEC's Division of Economic and Risk Analysis discloses information on its risk assessment programs, including how it detects market misconduct and how it assesses market-wide risks.


Figure 11: Comparison of external communications – ASIC, APRA and FCA (UK)*

Channel	ASIC	APRA	FCA (UK)
<i>Mandate</i>	<ul style="list-style-type: none"> Statement of expectations Statement of intent 	<ul style="list-style-type: none"> Statement of expectations Statement of intent 	Not applicable
<i>Corporate publications</i>	<ul style="list-style-type: none"> Strategic framework Corporate plan Annual report 	<ul style="list-style-type: none"> Corporate plan Annual report 	<ul style="list-style-type: none"> Our strategy Business plan Annual report
<i>Regulatory guidance</i>	✓ <i>Regulatory guides (extensive) and info sheets (overview)</i>	✓ <i>Fact sheets, supervision blueprint (providing detailed overview of supervision), regulatory impact statements</i>	✓ <i>Handbook and associated notices, updates, fact and info sheets</i>
<i>Regulatory action</i>	✓	✓	✓
<i>Newsletters</i>	Numerous, including: <ul style="list-style-type: none"> Consolidated guidance updates and regulatory activity Small business initiatives, services and developments Developments and issues affecting market intermediaries News/ guidance for SMSFs auditors Credit regulation “MoneySmart tips” for consumers 	<ul style="list-style-type: none"> Letters to industry Key industry issues and topics of current relevance 	Numerous, including <ul style="list-style-type: none"> “Dear CEO” letter Regulation Round-up Market Watch Data Bulletin Primary Market Bulletin
<i>Reports</i>	✓ <i>Compliance/relief activity, research project results and results of thematic reviews/surveillance projects</i>	✓ <i>Research working papers, statistics</i>	✓ <i>Market studies, research papers, view on policy</i>
<i>Media releases</i>	✓	✓	✓
<i>Updates/alerts</i>	<ul style="list-style-type: none"> Regulatory document update tables, including updates not notified in media releases (monthly) ASIC Policy Alert (fee-based, published by Reuters) 	<ul style="list-style-type: none"> Letters to industry (ADI, general insurance, superannuation, life insurance and friendly societies) 	✓
<i>Consultation papers (seeking feedback)</i>	✓	✓	✓ <i>Includes policy statements resulting from consultation</i>
<i>Speeches</i>	✓	✓	✓
<i>Response to media articles</i>	✓	✓	-
<i>Consumer education/ support</i>	✓	-	✓
<i>Public events</i>	One currently advertised – no details of past events	-	Six held so far in 2015, six more currently advertised 12 held in 2014
<i>Social media</i>	Twitter	✓	✓
	LinkedIn	✓	✓
	Facebook	✓	✓
	YouTube	✓	✓
<i>“Dear CEO” letters</i>	-	✓	✓

* APRA and the FCA have been chosen as comparators because both have received positive feedback on their communication in external stakeholder surveys.



2.3 Organisational performance

All the findings listed below, and the key points made throughout this section, are based on evidence arising from the interviews, roundtables, surveys, document review and other research that we conducted. We have not directly attributed each of these observations to a particular source but have only raised observations where there was sufficient evidence gained or consistency of views to support this finding.

The organisational performance component of the ASIC review framework is defined as “the strategy is delivering the intended outcomes”.

Key points

- The ASIC leadership and stakeholder comparison survey showed that there is a significant difference between the way that ASIC views its performance and capability, and the way the regulated population views ASIC’s performance and capability.
- Like many other regulators, ASIC has limited ability to report on performance at a strategic objective level due to the challenge associated with defining consistent metrics for a regulator, which are based on outputs and outcomes.
- ASIC’s performance framework is fragmented and incomplete. In part this reflects the need to comply with multiple government reporting obligations. Notwithstanding this, the current performance framework does not clearly demonstrate that strategic objectives are being met.
- ASIC is taking action to improve its performance measurement through a number of projects and the introduction this year of a new performance measurement framework based on measuring outcomes and activities.

2.3.1 Criteria we considered



There is a framework in place to assess and communicate the achievement of strategic objectives. This includes:

- a set of clearly defined, outcomes-based measures
- regular reporting on strategic performance, both internally and externally.

2.3.2 Description of current state at ASIC

There is broad consensus among regulators, academics and the regulated population that it is extremely challenging to measure the success of a regulator. Of particular relevance is the difficulty that regulators have in measuring outcomes rather than activities and outputs. Different regulators have tried to address this in different ways, with varying degrees of success. It is broadly acknowledged that the general challenge persists. For more information, see Section 2.3.3.

There is an expectation gap between the way that ASIC views its performance and capability and the way the market views it. This was highlighted in the ASIC leadership and stakeholder comparison survey.



2.3.2.1 Performance measurement framework

Government requires ASIC to operate under multiple performance measurement frameworks, including:

- the *Public Governance, Performance and Accountability Act* (the PGPA), which took effect on 1 July 2015. It provides a legislative framework to raise the prominence and standard of non-financial performance information on programs and services used and reported by Australian government entities. The PGPA's performance measures are outcomes-based and considered to be the most developed, comprehensive set of measures that ASIC is required to report on in an Annual Performance Statement.
- portfolio budget statements, which inform government of the proposed allocation of resources relative to outcomes that ASIC is required to report against in an Annual Performance Statement from 2016-17.
- the Regulator Performance Framework, which came into effect on 1 July 2015, and requires regulators to undertake an annual externally validated self-assessment of their performance, with the intention of minimising the burden on regulated populations.

ASIC has created additional reporting frameworks, such as its Enforcement and Market Surveillance Reports.

ASIC's current performance measurement framework is fragmented and does not demonstrate that its strategic objectives are being met. There is no single framework that covers all aspects of ASIC's performance, linking from strategic objectives to outputs produced (by business unit) to desired regulatory outcomes. This makes it difficult to form an integrated, overarching view of ASIC's performance.

The indicators used to measure outputs and outcomes are not, in themselves, effective measures of performance. Best practice indicators would be compared to an external factor (such as a target or a historical benchmark) and accompanied by thoughtful qualitative analysis of what those indicators actually mean. For example, a reduction in the number of enforcement cases that ASIC takes on may reflect greater compliance in the regulated population, an increase in the resource-intensity of ASIC's existing enforcement cases or a shift in ASIC's regulatory stance.

It is a statutory requirement for ASIC to report on activities and it does this formally through its annual report and informally through its engagement with the market. For example the following outcomes and outputs have been publicly noted:

- \$36.5m in compensation awarded to consumers and businesses
- 24 criminal convictions
- 88 people banned
- 20 enforceable undertakings implemented.

ASIC has also contributed to the government's red tape reduction targets. Since September 2013, ASIC has noted it achieved almost \$470m in compliance savings for business.

The quantitative measures in the 2013-14 annual report do not clearly tie ASIC's outputs to its desired regulatory outcomes. For example, one of the key outcomes in the 2013-2014 portfolio budget statements in relation to "confident and informed investors and financial consumers" is "90,000 people accessed MoneySmart Rookie resources, ASIC's flagship financial education program for young people". This outcome is not linked to any activity or output within ASIC. It is presented alongside the key performance indicator "investors and consumers can make informed decisions", but the statement does not provide any indication of how performance against this indicator is measured or commentary what this means in the context of ASIC's view of the market's long-term challenges.

The Corporate Plan includes a sample of measures from the performance evaluation framework, as well as some specific measures relevant to current projects. Where quantitative indicators are included, targets have not been set (or no explanation has been provided as to why targets are not appropriate). Although ASIC has noted they may look to set additional sector-specific targets in the future.



ASIC has explained to us, and we have reviewed documentation to support this, that it is taking steps to address its performance management challenge, with a number of projects and reviews under way and the introduction of the performance evaluation framework this year.

The performance evaluation framework is still under development. ASIC has stated its intent to define all of performance evaluation measures into a single document that provides a meaningful view of performance.

Similarly, work is under way to address performance measurement in specific areas of ASIC. For example, the Markets cluster has recently implemented a common set of KPIs to apply across the cluster. These have not been finalised, but draft versions included measures such as:

- 60% of all MIG activities to have some form of tangible regulatory outcome
- 70% of Market Conduct investigations (including MET IAP investigations) completed within 12 months of referral to MI Enforcement or MET
- 50 disruptive or behavioural change regulatory outcomes.

It will be important for ASIC to do this work and communicate the outcomes to the market. The ASIC leadership and stakeholder comparison survey showed that there is a significant difference between the way that ASIC views its performance and capability and the way the market views it. ASIC's leaders were highly confident in the skills and capabilities of leaders to carry out the role of ASIC; however, this confidence was not as apparent in the market responses.

At a team and individual level, performance is assessed fortnightly against business plans measures (for teams), and regularly against metrics in individual performance agreements (for individuals). Horizontal alignment across teams is not consistently evident in the plans and they are inconsistent in their use of outputs and indicators that will demonstrate performance against outcomes and objectives.



Key points

- The ASIC leadership and stakeholder comparison survey showed that there is a significant difference between the way that ASIC views its performance and capability, and the way the regulated population views ASIC's performance and capability.
- Like many other regulators, ASIC has limited ability to report on performance at a strategic objective level due to the challenge associated with defining consistent metrics for a regulator, which are based on outputs and outcomes.
- ASIC's performance framework is fragmented and incomplete. In part this reflects the need to comply with multiple government reporting obligations. Notwithstanding this, the current performance framework does not clearly demonstrate that strategic objectives are being met.
- ASIC is taking action to improve its performance measurement through a number of projects and the introduction this year of a new performance measurement framework based on measuring outcomes and activities.



2.3.3 Comparison with other regulators

Figure 12: Comparison of regulators' performance measures

Function	ASIC Annual Report Annual Report 2013-14	ASIC Corporate Plan ASIC Corporate Plan 2015-16 to 2018-19	FMA (NZ) Statement of Performance Expectations 2015-16	FCA (UK) Annual Report 2014-15	SEC (US) Strategic Plan 2014-2018	CFTC (US) Annual Report 2014 & Performance Plan 2016	SFC (HK) Annual Report 2014-15
Enforcement	<ul style="list-style-type: none"> *criminal and civil litigation administrative actions completed *percentage of actions completed successfully *new criminal and civil actions commenced *investigations commenced *investigations completed *criminal proceedings completed *number of people convicted *number of people imprisoned *non-custodial sentences/fines *civil proceedings completed *illegal schemes shut down *enforceable undertakings accepted *people/companies banned 	<ul style="list-style-type: none"> *number of investigations and criminal and civil litigations and administrative actions completed *percentage of successful criminal and civil litigation cases *number of enforceable undertakings accepted 	<ul style="list-style-type: none"> *percentage of inquiries and investigations conducted within standard timeframe *percentage of misconduct reports acknowledged within two working days of receipt by FMA 	<ul style="list-style-type: none"> *average length and cost of cases that concluded as a result of settlement *average length and cost of cases referred to Regulatory Decisions Committee *average length and cost of cases referred to Tribunal *average length and cost of all cases *average length and cost of criminal cases in the Wholesale area *average length and cost of criminal cases in the UBD area *average length and cost of all criminal cases *segmented data on cases open and closed in the year *tribunal outcomes by type of case *number and total value of fines *number of prohibitions *cases by type of power used 	<ul style="list-style-type: none"> *percentage of enforcement actions in which the commission obtained relief on one or more claims *percentage of first enforcement actions filed within two years of opening an investigation *average months between opening a matter under inquiry or an investigation commencing an enforcement action *percentage of debts where either a payment has been made or a collection activity has been initiated within 180 days of the due date of the debt *percentage of Fair Fund and disgorgement fund plans that have distributed 80 per cent of the available funds for distribution within 24 months of the approval of the distribution plan 	<ul style="list-style-type: none"> *percentage of enforcement investigations concluded within one year *percentage of case filings that include referrals to domestic civil and criminal cooperative authorities 	<ul style="list-style-type: none"> *number of trading inquiries *investigations started *investigations completed *percentage investigations completed within 7 months *persons charged in criminal proceedings *criminal charges laid *notices of proposed disciplinary actions *decision notices *persons/corporations subject to ongoing civil proceedings *percentage advice letters issued
Monitoring and compliance	<ul style="list-style-type: none"> *number of takeover bids monitored *number of trading alerts raised and inquiries conducted *number of high-intensity surveillances completed *instances of potentially misleading or deceptive promotional material withdrawn or amended 	<ul style="list-style-type: none"> *number of failures to comply with conduct obligations identified and addressed *number of potential cyber-attacks identified and addressed *number of surveillances completed *percentage of misconduct reports resolved resulting in changes to changes to systems, processes or procedures, or corrective disclosures made *number of relief applications received and approved 	<ul style="list-style-type: none"> *percentage of risk-assessments completed within 5 days of a new PDS lodgement *percentage of high-risk regulated offers are reviewed post-registration or lodgement *percentage of cases where FMA has identified issues and disclosures and offer information are improved or withdrawn 	<ul style="list-style-type: none"> *outcomes of authorising applications *time to process applications *market cleanliness statistics *number of CASS audits and qualifications 	<ul style="list-style-type: none"> *time to complete SEC review of SRO rules that are subject to SEC approval *number of industry outreach and education programs targeted to areas identified as raising particular compliance risks *percentage of firms receiving deficiency letters that take correct action in response to all exam findings *percentage of investment advisers, companies and brokers examined during the year *percentage of compliance exams conducted in accordance with statutory deadline *number of joint exams, information sharing agreements and formal meetings with other regulators 	<ul style="list-style-type: none"> *time to assess and respond to violations of CEA or Commission regulations *time to examine compliance by exchanges with CEA core principles and Commission regulations *percentage of derivatives for which trader data can be matched across CFTC datasets *number of tests on DCOs to assess sufficiency of margin requirements *percentage of clearing members assessed for ability to fund variation and initial margin requirements in hypothetical market scenarios *breadth of monitoring of aggregate swap positions *time to conduct review of DCO operations following market disruptions *percentage of high-risk registrants monitored for signs of financial stress *number of oversight reviews of SDs and FCMs 	<ul style="list-style-type: none"> *breaches identified during 'on-site' inspections *number of enquiries raised following company announcements *findings of mystery shopper program published *inspected licensed corporations to review oversight
Education and engagement	<ul style="list-style-type: none"> *number of meetings with industry groups and stakeholders *number of credit outreach events *number of consultation papers, regulatory guides, information sheets published *number of relief applications received, approved, refused *number of visits to MoneySmart and percentage of users who took action following visit *number of TrackMysPEND app downloads *number of education and training sessions *number of visits by Indigenous Outreach team to urban, regional and remote locations 	<ul style="list-style-type: none"> *number of unique visitors to MoneySmart who took subsequent action on their finances *number of financial literacy products produced and delivered *number of new or revised regulatory guides published 	<ul style="list-style-type: none"> *percentage of enquiries receiving a substantive response from the FMA within 20 working days *number of industry presentations or speeches *percentage of website visitors who rate the content as useful 	<p><i>The FCA does not report on education and engagement activities in its Annual Report</i></p>	<ul style="list-style-type: none"> *number of industry outreach and education programs targeted to areas identified as raising particular compliance risks *percentage of public companies and investment companies with disclosures reviewed each year *number of page views of online investor education content *number of in-person events *timeliness of responses to investor contacts *customer satisfaction rating of OIEA's online investor education *number of new investor education materials designed primarily to help investors protect themselves from fraud 	<ul style="list-style-type: none"> *percentage of derivatives activity covered by regularly published Commission reports *number of published economic research reports to inform public about market structure of derivatives markets *percentage of registrant annual and quarterly reports on which feedback was provided 	<ul style="list-style-type: none"> *investor education materials released *number of publications, papers and press releases *average number of daily page views

Part 3

Delivery

3.1	Organisation structure	43
3.2	People	50
3.3	Process overview	60
3.4	Regulatory processes	61
3.5	Budgeting processes	71
3.6	Resource allocation processes	75
3.7	Risk management processes	79
3.8	Technology	82



3.1 Organisation structure

All the findings listed below, and the key points made throughout this section, are based on evidence arising from the interviews, roundtables, surveys, document review and other research that we conducted. We have not directly attributed each of these observations to a particular source but have only raised observations where there was sufficient evidence gained or consistency of views to support this finding.

The organisation structure component of the ASIC review framework is defined as “the structure enables delivery of the strategy”.

Key points

- As recommended by the 2008 Strategic Review of ASIC, ASIC is structured according to stakeholder groups, rather than by activity. This differs from the way other regulators are structured, and there are conflicting views as to whether the structure best enables efficient and effective regulation.
- The Strategy Group has recently been established, which is consistent with leading practice in overseas regulators. It is still evolving and does not yet drive the future direction or innovation as proactively as it could, although it was noted by ASIC that driving ASIC’s strategy is also the responsibility of the Stakeholder teams.
- The MIG has developed a different approach to the rest of ASIC, strategically, structurally and operationally. This is working well and is supported by additional funding from the market.
- ASIC has a top-heavy structure, which could be expected for a regulator. However, recent budget cuts have reduced more junior staffing levels, which is creating inefficiencies.
- ASIC does not have a stakeholder management framework at all levels of the organisation.
- Regulated entities expressed consistent views that ASIC operates in silos, specifically between Stakeholder and Enforcement teams, and for large organisations which have to deal with multiple teams from ASIC. They believe this creates a regulatory burden for them.

3.1.1 Criteria we considered



There is an organisation structure in place that drives the delivery of the strategy and supports collaboration, which includes:

- clear governance
- documented roles and responsibilities for all positions
- teams comprised in ways that enable efficient and effective activity
- prioritised investment in roles or areas of the business which will enable delivery of the strategic priorities
- adequate resourcing at all levels
- means for ensuring consistency for external stakeholder relationships across different teams.



3.1.2 Description of current state at ASIC

3.1.2.1 The Commission structure

ASIC is headed by a full-time Commission, currently comprised of five Commissioners (including the Chair and Deputy Chair).

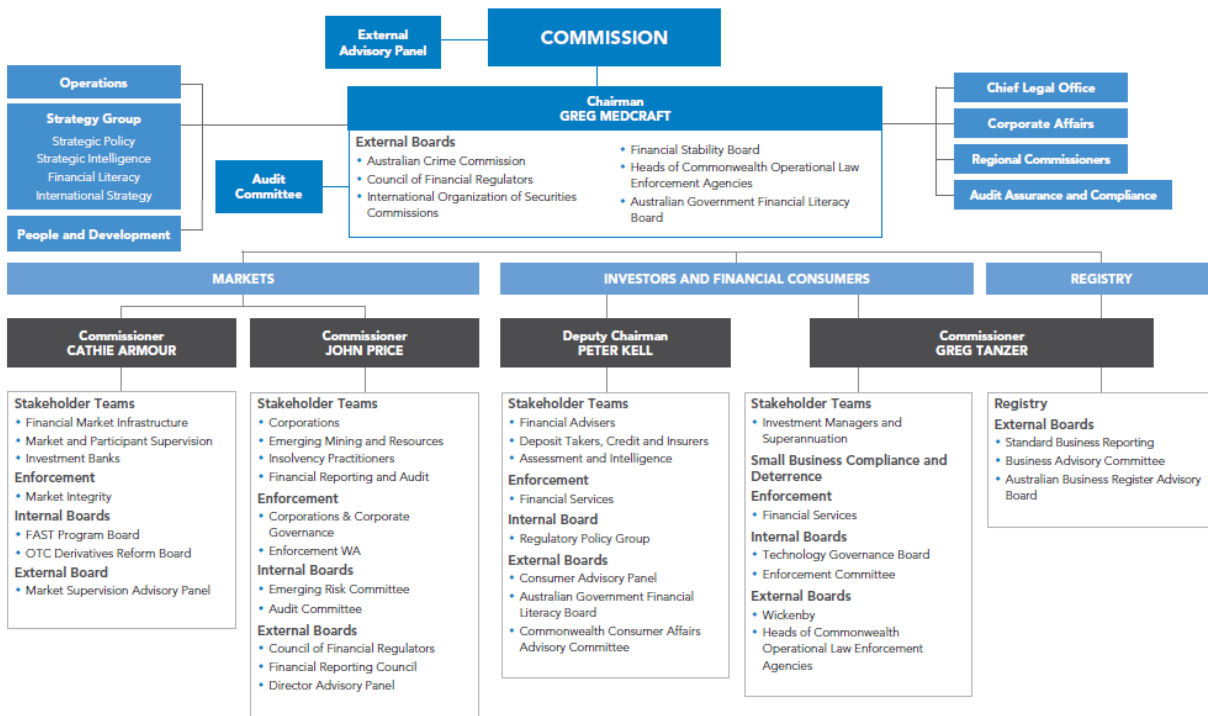
There are nominally 20 direct reports to the Chair:

- four Commissioners who sit across ASIC’s Regulatory and Registry functions
- eight Regional Commissioners (one representing each state; while they do not necessarily report to the Chair in their substantive roles, they do in their role of Regional Commissioner)
- eight primarily enabling roles (Operations; Strategy Group; Strategic Policy; International Strategy; People and Development; Chief Legal Office; Corporate Affairs; Audit, Assurance and Compliance). Note that the Strategic Policy and International Strategy SELs report to the Head of the Strategy Group and also have a dotted line to the Chair (see Section 3.1.2.3 for information about the Strategy Group).

In practice, these roles interact with the Chair to varying degrees. For example, there is very little interaction between the Chair and the Regional Commissioners (this is explained in more detail in Volume 2, Section 3.1.1.).

3.1.2.2 ASIC’s organisational structure

Figure 13: ASIC’s organisational structure



ASIC splits its Regulatory function into 11 Stakeholder teams, five Enforcement teams and a Small Business Compliance and Deterrence team, spread across four groups within three clusters: Markets; Investors & Financial Consumers; and Registry. Government is deceptively considering selling the Registry function and it is out of scope for this review.

The current structure was established following the 2008 McKinsey review, with the intention of breaking down the silos that existed between the (former) four directorates (Enforcement, Consumer Protection, Compliance



and Regulation). It transitioned ASIC from a function-based structure to a stakeholder-based, outward-focused structure. This involved a deliberate move towards a decentralised model.

This organisational focus on groupings of the regulated population rather than on activity differs from that of other regulators. See Figure 15 in Section 3.1.3.

ASIC informed us that there are position descriptions in place for every position in the organisation. We have received a sample of these to confirm this.

Conflicting views were raised in the interviews with ASIC staff as to whether ASIC's current structure best enables efficient and effective regulation. The following points were made:

- Some staff believe that the 2008 restructure effectively broke down silos, and as a result ASIC is now more collaborative and efficient. In some clusters, particularly Markets, the structure (and additional initiatives – see the discussion of MIG below in Section 3.1.2.4) reportedly facilitates more flexible resourcing. Resource-sharing has increased, and is more common within than between clusters.
- Others feel that the restructure has simply established new (and more) silos. A number of staff report that the flattened structure has resulted in duplicated activity across teams, and legacy issues of territorial behaviour and reluctance to share information are affecting efficiency. The extent to which staff believe this is a problem varies between teams and between office locations. Staff acknowledge that breaking the barriers between silos depends on formal (eg SEL reporting) and informal (eg posting of information on the intranet and internal networks) communication channels, which are more effective in some sites than others.
- There was a concern that not all Stakeholder teams have the capability to provide the inputs that Enforcement needs. Stakeholder teams look for evidence of potential wrongdoing, whereas a higher standard of evidence is required to take enforcement action and progress a case to prosecution. Staff identified that this is partly a capability issue, and also attributed it to the structural separation of Enforcement and Stakeholder teams making collaboration more difficult. This came up frequently in discussion with Enforcement teams, some of whom have developed informal collaboration processes with Stakeholder teams to ensure that evidence-gathering is of the required standard, and only done in instances that will lead to enforcement action. Interviewees consider that day-to-day operations between the Enforcement and Stakeholder teams work well and collaboration within clusters appears to be strong, but believe that separation of the two teams inhibits knowledge-sharing.
- Despite the fact that business plans are shared and agreed within clusters, staff still report misalignment in business plans. Stakeholder teams referred to a disconnect between their strategic objectives and surveillance focus, and the types of activities the Enforcement teams pursue.
- Small Business Compliance and Deterrence is the only vertically integrated (Stakeholder and Enforcement) team outside MIG, and this appears to be working well.



Key point

- As recommended by the 2008 Strategic Review of ASIC, ASIC is structured according to stakeholder groups, rather than by activity. This differs from the way other regulators are structured, and there are conflicting views as to whether the structure best enables efficient and effective regulation.

3.1.2.3 The Strategy Group

Given the points raised in Section 2.1 regarding ASIC's strategy and the fact that the Strategy Group is an area of the business that enables the delivery of ASIC's response to its view of the market's long-term challenges, it is relevant to include information about the Strategy Group here.

The Strategy Group was formed by the consolidation of several teams from across ASIC in 2013-14, and the function continues to evolve. In recent years, the group has led a range of forward-looking projects, including ASIC's submissions to the FSI, the development of ASIC's behavioural economics capabilities, and work on



cyber resilience. Notwithstanding recent programs, it does not yet drive innovation and proactivity to the extent that it could. It was noted by ASIC that driving ASIC's strategy is also the responsibility of the Stakeholder teams, and not just the Strategy Group.

The Strategy Group currently consists of four teams:

- **Strategic Policy (~13 FTE)**
The Strategic Policy team is involved in policy development and law reform which touches more than one industry sector. This includes writing regulatory guides, playing an advisory role and leading organisational strategy (for example, identifying strategic risks, managing business planning and producing the Corporate Plan and annual report). It also leads ASIC's response to major government initiatives and inquiries (such as the FSI).
- **Strategic Intelligence (~15 FTE)**
Strategic Intelligence has developed from the former Office of the Chief Economist. It provides specialist research capabilities, advice and support to all of ASIC. It receives requests directly from throughout ASIC, and is involved in strategy development through production of the environmental scan.
- **International strategy (~12 FTE)**
This team supports ASIC leadership roles in international forums, leads ASIC's contribution to international standard-setting, leads bilateral engagement (including cooperation, technical assistance and secondments) and monitors international regulatory developments.
- **Financial Literacy (~32 FTE)**
This team develops and delivers ASIC's national financial literacy strategy, which helps stakeholders to be more informed and participate in financial markets more confidently. This includes (among other things) managing the MoneySmart website for consumers and investors, and promoting financial education in schools.

The Strategy Group contains two SELs (Strategic Policy and International Strategy) who report to the Head of the Strategy Group and also have a dotted line to the Chair. Some SELs reported that these multiple reporting lines make it more difficult to operate as a unit.



Key point

- The Strategy Group has recently been established, which is consistent with leading practice in overseas regulators. It is still evolving and does not yet drive the future direction or innovation as proactively as it could, although it was noted by ASIC that driving ASIC's strategy is also the responsibility of the Stakeholder teams.

3.1.2.4 The Market Integrity Group

The Market Integrity Group (MIG) has developed its own structure.

It is the consolidation of three market-focused Stakeholder teams (Financial Market Infrastructure, Market and Participant Supervision, and Investment Banks) and the Market Integrity Enforcement team. It sits within the Markets cluster, and has four SELs who all report to a Commissioner.

MIG was formed following the transfer of responsibility for the supervision of real-time trading on Australia's securities and derivatives market from the ASX to ASIC in 2010. It has more funding flexibility than the rest of ASIC and a greater volume of funding, resulting in more sophisticated IT systems and access to market-risk data sets. In part, this has allowed it to take a different approach to other teams, strategically, structurally and operationally:

- It has developed its own target operating model to ensure operational alignment (consistency of approach and avoidance of gaps), optimal resourcing and regulatory outcomes, and flexibility to anticipate and respond to emerging risks and challenges.



- The Stakeholder and Enforcement teams are strongly aligned in their approach to regulating the financial markets (ie they collaborate on matters of strategic priority resourcing and KPIs).
- Two hybrid Stakeholder/Enforcement teams have been established: the Markets Misconduct Enforcement Team and the Participant Misconduct Enforcement Team, made up of staff with both enforcement and surveillance skills to increase collaboration and capability. These teams report jointly to the Market and Participant Supervision and Market Integrity Enforcement SELs.
- It has developed its own systems and processes to capture data (eg real time market monitoring through the Market Analysis and Intelligence System).
- It has developed a Communications Strategy and Schedule (in consultation with Corporate Affairs) which sets out an approach to communicating market issues to industry and the media.

We have received feedback from across ASIC that the creation of MIG has been a resounding success. In particular, interviewees felt that strong leadership combined with more funding flexibility has contributed to this success. Further, interviewees stated that the combined surveillance and enforcement approach has improved MIG’s flexibility, resource-sharing and skills. They also emphasised the value in having dedicated training, knowledge and communications roles in the group to communicate internally and ensure a consistent understanding of ASIC’s view of the market’s long-term challenges.



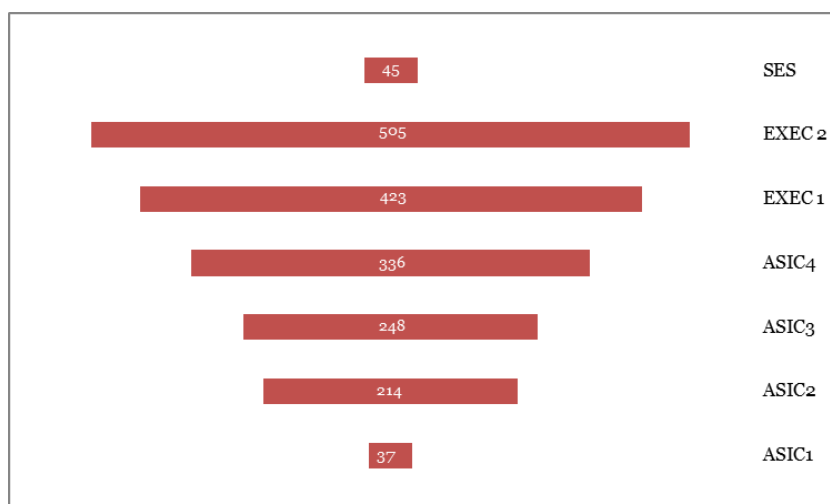
Key point

- The MIG has developed a different approach to the rest of ASIC, strategically, structurally and operationally. This is working well and is supported by additional funding from the market.

3.1.2.5 Resourcing the structure

Typically, the number of staff at each grade in an organisation approximates a triangle, with fewer people at the senior levels and more at the lower levels. ASIC’s structure is the opposite, with most staff at EL1 and EL2 levels (see Figure 14).

Figure 14: ASIC’s resourcing levels



This is not unexpected for a regulator. Given the breadth of ASIC’s remit and the fact that its work requires senior subject-matter experts to engage with senior external stakeholders and legal counsel, the inverted triangle shape may be appropriate. Further, the number of senior positions may have evolved as a way of allowing ASIC to pay more people more, and therefore better compete with the external market to attract and retain talent. Overseas, many regulators have had to create roles and pay structures that allow them to attract talent from the external market, creating a ‘drift’ toward the top of the organisation.



However, in ASIC’s case the inverted triangle has reportedly been amplified because most parts of ASIC have reduced the number of administrative roles in response to recent budget cuts, rather than operational roles. Staff now report inefficiencies as senior resources spend a significant amount of time completing administrative duties.



Key point

- ASIC has a top-heavy structure, which could be expected for a regulator. However, recent budget cuts have reduced more junior staffing levels, which is creating inefficiencies.

3.1.2.6 Relationship management with external stakeholders

There are some Stakeholder teams with relationship managers allocated to key regulated entities or stakeholder groups. This includes the MIG as well as a number of other Stakeholder teams within Investors & Financial Consumers. However, ASIC does not have a stakeholder management framework at all levels of the organisation and there is no formal and consistent approach to engaging with the regulated population across Stakeholder teams. A theme that was raised consistently in external interviews was that ASIC functions in silos, particularly regarding the handover from Stakeholder to Enforcement teams, and in relation to large organisations where there are multiple matters under way at any one time, which involve multiple Stakeholder teams. Stakeholders express concern that this increases the regulatory burden, as information requests are not coordinated across different parts of ASIC, and feedback loops break down.

ASIC has appointed relationship managers in the past, but found that these they were not close enough to the range of issues raised with them. As a result, ASIC moved away from this model. We have not been able to determine if this is a problem with the model or a capability issue, however we note that a number of overseas regulators (eg the FCA and SEC) have had a more positive experience.



Key points

- ASIC does not have a stakeholder management framework at all levels of the organisation.
- Regulated entities expressed consistent views that ASIC operates in silos, specifically between Stakeholder and Enforcement teams, and for large organisations which have to deal with multiple teams from ASIC. They believe this creates a regulatory burden for them.

3.1.3 Comparison with other regulators

Figure 15: Organisation structure of other regulators

ACCC	FCA (UK)	FMA (NZ)	SFC (HK)	MAS (Singapore)	SEC	CFPB (US)
<i>Market facing</i>	<i>Market facing</i>	<i>Market facing</i>	<i>Market facing</i>	<i>Market facing</i>	<i>Market facing</i>	<i>Market facing</i>
<ul style="list-style-type: none"> • Merger and authorisation review • Competition enforcement • Consumer enforcement • Consumer, small business and product safety 	<ul style="list-style-type: none"> • Supervision – retail and authorisations • Supervision – investment, wholesale and specialists • Enforcement and market oversight • Markets policy 	<ul style="list-style-type: none"> • Primary markets and investor resources • Enforcement and Investigations • Compliance 	<ul style="list-style-type: none"> • Enforcement • Investment products • Supervision of markets • Intermediaries 	<ul style="list-style-type: none"> • Monetary policy and investment • Development and international • Fintech and innovation • Financial supervision 	<ul style="list-style-type: none"> • Corporation finance • Trading and markets • Investment management • Enforcement 	<ul style="list-style-type: none"> • Consumer education and engagement • Supervision, enforcement and fair lending • Research, markets and regulations



ACCC	FCA (UK)	FMA (NZ)	SFC (HK)	MAS (Singapore)	SEC	CFPB (US)
<ul style="list-style-type: none"> Infrastructure regulation Australian Energy Regulator 	and international					
<i>Operations/support</i>	<i>Operations/support</i>	<i>Operations/support</i>	<i>Operations/support</i>	<i>Operations/support</i>	<i>Operations/support</i>	<i>Operations/support</i>
<ul style="list-style-type: none"> Legal and economic People and corporate services 	<ul style="list-style-type: none"> Strategy and competition Risk and compliance oversight General Counsel Internal audit Operations 	<ul style="list-style-type: none"> Governance policy and strategy Corporate operations External communications 	<ul style="list-style-type: none"> Corporate finance Legal services Corporate Affairs 	<ul style="list-style-type: none"> Managing director's office Corporate development 	<ul style="list-style-type: none"> Economic and risk analysis A number of supporting 'offices' 	<ul style="list-style-type: none"> Operations Legal External affairs

Figure 16: Stakeholder relationship models of other regulators

	No relationship model	Relationship model*
ASIC	✓	
FCA (UK)		✓
FMA (NZ)		✓
SFC (HK)	No information available	
MAS (Singapore)	No information available	
SEC (US)		✓
CFPB (US)		✓

* This may not be a pure relationship model, but is some form of a relationship model – it could be designated 'relationship supervisors' for the 50 largest entities or having teams who work with particular entities.



3.2 People

All the findings listed below, and the key points made throughout this section, are based on evidence arising from the interviews, roundtables, surveys, document review and other research that we conducted. We have not directly attributed each of these observations to a particular source but have only raised observations where there was sufficient evidence gained or consistency of views to support this finding.

The people component of the ASIC review framework is defined as “ASIC’s people have the skills, capabilities and motivation necessary to perform their role effectively”.

Key points

- Some strategic workforce planning exists. Work is underway to improve the maturity of this.
- ASIC has complex employment arrangements at the SES level, due to the requirements of the PSA.
- For SEL positions (both SES and non-PSA SELs), competing with the external market on remuneration is not a significant issue. ASIC stated that it has found that applicants for these senior roles typically want to be ‘regulators’, being more influenced by the type of work ASIC does than by the salary package.
- Salary band restrictions are affecting ASIC’s ability to attract and retain staff at the EL1 and EL2 level.
- There is a performance management framework in place, which has been developed in line with the APSC Best Practice Guidelines as outlined in ‘Strengthening the Performance Framework: Towards a High Performing APS Diagnostic Implementation’.
- There are well defined and mature talent management processes within ASIC.
- Staff roundtable participants stated that underperformance is tolerated in most teams and perceive that it carries little consequence for the underperformer.
- External stakeholders view the current capability of leadership positively. There is some perceived variability of skill of staff below this level. Actions have been and continue to be taken to address this variability.
- ASIC is undertaking capability-based strategic workforce planning with an external service provider to ensure the organisation will have the capabilities required to support its current and future strategies and organisational objectives.
- Staff confirmed ASIC has both formal and informal development programs which they view as both successful and appropriate. There are plans in place to broaden these to ensure that future capability needs, as identified by ASIC in its strategic workforce planning project, are met.
- In general, ASIC employees have a high level of motivation and willingness to go the extra mile, but feedback from staff consultation suggests their morale has been affected by the recent high levels of government and media scrutiny and criticism. Further, budget cuts have resulted in staff feeling that they have to do more with less.
- ASIC participates in an annual employee engagement survey, which is administered by Orima Research. In 2015, Orima reported that ASIC had strong levels of engagement, satisfaction, loyalty and commitment, with widespread improvements since the 2012 survey.

3.2.1 Criteria we considered



There is a framework in place to ensure the regulator has the right people to deliver on its mandate, which includes:

- a well-defined workforce plan
- effective processes for employing staff
- effective performance management of people, including talent management as well as underperformance



- a skills and capability framework to support development of skills to meet both current and future needs
- a means of creating strong staff engagement and motivation.

3.2.2 Description of current state at ASIC

3.2.2.1 Workforce planning

There is a defined process and detailed document which outlines ASIC's current workforce at a role and employee-specific level (using role and staff matrices). It also clearly identifies the importance of each role and the risks to ASIC associated with losing individuals from the organisation. However, it does not yet extend to a documented workforce plan in that the following is still required to be completed:

- the current skills and capabilities for each role (although this has been done for groups of roles)
- any gaps in these skills and capabilities given the requirements of ASIC over the next three to five years (this has already been completed for Investors & Financial Consumers, and MIG)
- a capability-based talent management, training and recruitment plan to address the gaps.

As previously noted, ASIC is working with an external service provider to complete the above steps.

ASIC has pointed out that workforce planning is very difficult in an environment where budget cuts have been consistently applied over successive years. Budget cuts have ultimately led to workforce reduction strategies.

In 2013-2014, when ASIC received a 15% budget cut, the Commission considered several options in relation to reducing costs, and ultimately decided to pursue a voluntary redundancy program. While this could have led to skills gaps within certain teams, ASIC noted that it did not, because it was managed with access to talent maps as well as role and staff matrices. Given the timing of the budget cuts, the redundancies were carried out in isolation from the budgeting and business planning process, which identified any role and skills gaps separately. See Section 3.6 for information about this.



Key point

- Some strategic workforce planning exists. Work is underway to improve the maturity of this.

3.2.2.2 Employment arrangements

Employment under the PSA

ASIC's staff are primarily employed under the *Public Service Act 1999* (PSA). The Act states:

- (1) *Subject to this Part, ASIC's staff must be persons engaged under the Public Service Act 1999.*
- (2) *For the purposes of the Public Service Act 1999:*
 - (a) *ASIC and the APS employees assisting ASIC together constitute a Statutory Agency; and*
 - (b) *the Chairperson of ASIC is the Head of that Statutory Agency.*
- (3) *In addition to the staff referred to in subsection (1), the Chairperson may, on the Commonwealth's behalf, employ under written agreements such persons as the Chairperson thinks necessary for the performance or exercise of any of its functions and powers.*
- (4) *The terms and conditions of employment of persons employed under subsection (3) are such as the Chairperson determines from time to time with the Minister's written approval.*



Employment contracts under the PSA are subject to terms and conditions that are agreed in Enterprise Agreements (EAs). The current active agreement is Enterprise Agreement 2011-2014. At the time of writing a new Agreement has not been voted up by staff.

Below SES level, there is a defined hiring process, see Volume 2 section 3.2.3.

Operating under the PSA means the following for ASIC:

- a cap on the number of SES to 25. Currently ASIC employs 45 staff at the SES level, of whom 23 are employed under the PSA with the remaining 22 employed under the ASIC Act (the latter are not counted towards the cap). The 23 appointed under the ASIC Act do not have Human Resource delegations and functions outlined under section 78(7) of the Public Service Act and related regulations, directions and rules
- a remuneration cap for SES who are employed under the Public Service Act
- salary increases, terms and conditions for all non-SES staff are subject to government's Workplace Bargaining policy
- Recruitment and management of on-going and non-ongoing staff appointments subject to Commissioner regulations. ASIC was subject to the PSA 18 month 'interim recruitment arrangements' from November 2013 to June 2015.

Employment under the ASIC Act

ASIC is also able to hire staff under s120(3) of the ASIC Act. This enables the Chair to employ, under a written agreement, anyone they think necessary for the performance or exercise of ASIC's functions and powers. Traditionally, ASIC has only used this power for SES, in keeping with the intent of the legislation, *ASIC's staff must be persons engaged under the Public Service Act 1999*. While there is the ability under the ASIC Act to offer remuneration outside the SES remuneration cap, to maintain internal relativities the cap is applied across the whole cohort.

Employment under Individual Flexibility Agreements

The current EA enables the Chair to create Individual Flexibility Agreements (IFA) with staff members to vary the effect of the EA's terms and conditions; for example, in such matters as remuneration, allowances, leave etc. This is relatively uncommon – currently outside the SES levels there are only 27 instances of IFAs.

- IFAs are typically used to advance EL2s to 'substantive EL2s' (ie acting in an SES role) when they cannot be promoted to SES level due to the SES cap restriction.
- There are currently 28 IFAs in place at the EL1 (5), EL2 (14) and SES (9) levels. IFAs are ongoing, but can be terminated with 28 days written notice.
- While IFAs can be used as a mechanism for increasing remuneration or changing other terms and conditions, this can affect efficiency given the complexity of managing and administering employee contracts and salary arrangements. It also affects the transparency and consistency of remuneration arrangements across the organization.



Key point

- ASIC has complex employment arrangements at the SES level, due to the requirements of the PSA.

3.2.2.3 Salary band restrictions

For SEL positions (both SES and non PSA SELs), competing with the external market on remuneration is not a significant issue. ASIC stated that it has found that applicants for these senior roles typically want to be 'regulators', being more influenced by the type of work ASIC does than by the salary package. SES remuneration packages are also relatively competitive with industry, particularly for Special Counsel roles.



However, staff interviews frequently raised remuneration as an issue for attracting and retaining talent at the EL1/EL2 band.

At the EL1 and EL2 level, ASIC is unable to compete with remuneration packages from industry or comparator agencies such as APRA and the RBA. This either reduces ASIC’s ability to recruit effectively at these levels (and means it must rely on internal promotions to fill vacant positions), or obliges it to recruit staff into a higher position (eg an EL2 role instead of an EL1 role) in order to offer a more competitive remuneration package.

APRA and the RBA are no longer required to employ staff under the PSA and are not bound by the APSC’s governance framework.

A comparison of salaries for non-executive roles at ASIC and APRA is set out below, based on 2013 data. Note that ASIC and APRA structure their levels differently and therefore do not align exactly on a one-to-one basis. However, the range of APRA salaries provided below (from Level 1 Lower to Level 4 Upper) covers the equivalent range within ASIC (from ASIC 1 (APS1) to Executive Level 2). For example, an experienced ASIC EL2 is the equivalent of an APRA Level 4 Upper, while the closest equivalent to an ASIC 4 (APS6) is the APRA Level 2 Upper banding.

Figure 17: ASIC vs APRA non-executive salaries, 2013

ASIC		APRA	
Level	Salary range	Level	Salary range
ASIC 1 (APS1)*	\$42,409 – 46,872	Level 1 Lower	\$38,600 – \$51,500
ASIC 2 Lower (APS 2)*	\$49,321 – \$53,225	Level 1 Upper	\$51,501 – \$64,400
ASIC 2 Upper (APS 3)*	\$54,669 – \$59,007	Level 2 Lower	\$58,200 – \$77,600
ASIC 3 Lower (APS 4)	\$62,867 – \$66,158	Level 2 Upper	\$77,601 – \$97,000
ASIC 3 Upper (APS 5)	\$67,960 - \$72,063	Level 3 Lower	\$84,400 – \$112,500
ASIC 4 (APS 6)	\$75,225 – \$84,318	Level 3 Upper	\$112,501 – \$140,600
ASIC 4 (previously AWA)	\$78,062 - \$85,160	Level 4 Lower	\$119,900 – \$159,900
Executive Level 1	\$98,583 – \$114,032	Level 4 Upper	\$159,901 – \$199,900
Executive Level 2	\$111,677 – \$156,488		

*Note: 251 ASIC staff are employed across the ASIC 1-2 bands, 140 of whom are in the Registry cluster

Similar to APRA, the approach taken by overseas regulators has also been to benchmark salary bands against the market they regulate, in order to ensure their salaries remain competitive.

The restrictions also appear to be affecting ASIC’s ability to retain staff at this level. The current tenure of EL1 and EL2 level staff is 8 and 9 years respectively, compared to the APS average of 12 and 15 years respectively. Their average tenure is also lower than those of the DPP, ACCC and Treasury.



Key points

- For SEL positions (both SES and non-PSA SELs), competing with the external market on remuneration is not a significant issue. ASIC stated that it has found that applicants for these senior roles typically want to be ‘regulators’, being more influenced by the type of work ASIC does than by the salary package.
- Salary band restrictions are affecting ASIC’s ability to attract and retain staff at the EL1 and EL2 level.



3.2.2.4 Performance and talent management

Managing and measuring performance

According to the ASIC Performance Management Presentation of June 2015, a series of new Performance Management Directions from the APSC were signed into law and are effective from 1 July 2015.

These directions require supervisors to manage the performance of employees under their supervision and work to improve their own performance management skills and capability. Additionally, employees are explicitly required to engage constructively in clarifying work expectations and in resolving issues related to unsatisfactory performance.

According to P&D, the directions are consistent with ASIC's existing approach to performance management. The formal annual cycle for performance management is as follows:

- **July – August:** Individuals develop their performance agreement that aligns to the business plan and establishes individual deliverables and the focus for the year. This document is intended to provide clarity and build agreement on how performance contributes to the team's priorities.

The performance agreement is comprised of four sections (1. Objectives, Measures and Targets; 2. ASIC Values and Behaviours; 3. Development Plan; 4. Career Aspirations) and also includes self-assessment, rating and review.

- **December – January:** Mid-point review discussions, feedback and rating.
- **June:** Self-assessment, follow-up meeting, discussion and feedback.
- **June – July:** Calibration of results, managers discuss indicative ratings and process for team and organisation consistency-checking.
- **July:** Final review, where manager meets with team members to discuss and provide feedback on the performance rating/bonus eligibility/salary advancement (end of August).

The formal process is underpinned by regular, planned one-on-one conversations for ongoing feedback, all of which should be documented in myPeopleSoft HR.

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 and guidance on how to develop those measures further. Further information about this is provided in Volume 2, Section 3.2.2. Further, ASIC's performance management framework has been developed to align with the APSC Best Practice Guidelines as outlined in 'Strengthening the Performance Framework: Towards a High Performing APS Diagnostic Implementation'. Interview and roundtable participants agreed that a formal, online performance management process is in place and every member of staff is required to take part, but there was also widespread agreement that commitment to the process varies.

The performance agreement templates allow for a clear articulation of the link between each individual's identified development needs, feedback, and future coaching and training requirements; however, many commented that the real value in the process comes from the quality of the conversations the individual has with their team leader about their feedback and development opportunities. Many roundtable participants commented that their team leaders are excellent technical specialists, but many have inconsistent levels of the leadership and coaching skills required for conducting high quality performance feedback and development conversations.

Talent management

ASIC has a structured and defined process for talent management for EL1s/ELs2 and SES/SEL levels. This includes both identifying and assisting with career development of talented individuals as well as determining the application of reward and recognition strategies. This process has been in place since 2012.

The Commission and P&D (the Talent Council) meet on a six-monthly basis to oversee this process.



Managing underperformance

ASIC's Performance Management Policy (2015) includes a comprehensive section on the responsibilities and process for managing underperformance. The process includes steps to address underperformance fairly and to improve on it. If underperformance remains unresolved despite plans, support and interventions, the process allows for final decisions such as reassignment of duties, reduction in work level or termination of employment.

Despite having a process for managing underperformance, leaders across the clusters report that in reality it is difficult to manage underperformers out of ASIC. Interviewees said this is because the multi-stage process is cumbersome for the manager who initiates it and also because many have an underlying fear of unintentionally causing workplace disputes.

Roundtable participants were unanimous that underperformance carries little consequence for the underperformer and that it is tolerated in most teams. There was also widespread perception that performance management is difficult in the public sector.



Key points

- There is a performance management framework in place, which has been developed in line with the APSC Best Practice Guidelines as outlined in 'Strengthening the Performance Framework: Towards a High Performing APS Diagnostic Implementation'.
- There are well defined and mature talent management processes within ASIC.
- Staff roundtable participants stated that underperformance is tolerated in most teams and perceive that it carries little consequence for the underperformer.

3.2.2.5 Current capability

In compiling this report, the following evidence was gathered:

- 92% of ASIC leaders feel ASIC understands the markets it regulates
- 44% of the regulated population feel that ASIC understands the industries and sectors it regulates, while 33% neither agree nor disagree
- 42% of ASIC staff feel their team is made up of people with the right skill and capability, while 24% recorded a neutral response
- 69% of staff feel that they have the right skills and capabilities to perform their roles, while 18% recorded a neutral response.

During the external stakeholder interviews, the following points were noted:

- The current capability of leadership (Commissioners and SELs) is viewed positively.
- There is a perception of greater variability of skills in staff in the next layers (EL1/EL2).

In some instances, this variability related to staff's understanding of the stakeholder's businesses and in other instances it related to technical points of understanding (eg the relevant laws and regulations.)

Some external stakeholders also noted that EL1 and EL2 staff's ability to explain their decisions was also variable. This was contrasted with the ability of Commissioners and SELs to communicate the same decisions. The emphasis on variability was particularly evident – some examples noted there were individuals who do display the necessary capabilities.

In the internal roundtables and staff interviews, staff suggested that ASIC faces the following challenges:



- Supervision of the EL1/EL2 group by SELs is variable.
- While there are specific performance values in relation to external stakeholders, KPIs have not been consistently implemented.
- The nature of the work undertaken at EL1/EL2 level requires significant interaction with very senior staff of the regulated population, who accordingly have very high expectations and supporting resources. This is amplified by salary band restrictions.
- There are varying levels of documentation to support regulatory processes (less in some Stakeholder teams, more in Enforcement), which places considerable weight on the staff member's skills and experience in their work.
- There has been positive emphasis on training and culture change at the EL1/EL2 level, but there is still room for improvement.

Qualifications of ASIC's workforce

ASIC's current workforce (EL1 and above) hold the following primary qualifications (noting many staff have multiple formal qualifications):

- 62.3% have a law degree
- 26.7% have a commerce degree (including finance, economics and accounting)
- 4.6% have an arts degree
- 6.3% have other degrees.

Where staff have been externally recruited into EL1 and above levels, they have the following experience:

- 80% have industry experience (49% of that in financial services); and/or
- 49% have worked in law firms.

Industry experience is defined by ASIC as experience in either/or financial services, law firms, large corporations/institutions, small business and professional services firms.

Recent recruitment at ASIC has included some people with strong capability in data, analytics and behavioural economics.

Identifying future required capabilities

In 2014 ASIC began a strategic workforce planning project with an external service provider across the Regulatory clusters (Markets and Investors & Financial Consumers) to understand how their capability should evolve if they are to continue to operate as an effective regulator over the next three to five years.

The key outcomes of the project were to:

- identify the capabilities that are important now and for the future
- enhance workforce planning, recruitment and talent practices to resource for future needs
- enable ASIC staff to use the capabilities to identify appropriate development opportunities to meet the skill requirements for the future.

An implementation plan for the project was then agreed across the Regulatory clusters. Further details are in Volume 2, Section 3.2.1.

ASIC's efforts to evolve the maturity of the strategic workforce planning have been applied to the Regulatory clusters and the Financial Literacy team, but do not extend to its enabling functions (Strategy –with the exception of Financial Literacy; Operations; People and Development; Chief Legal Office; Corporate Affairs;



and Audit, Assurance and Compliance). There are plans in place to extend to strategic workforce planning to these enabling functions.

The SEL leadership interviews and roundtables identified some perceived capability gaps, many of which are validated by the findings of the capability review, which identified the following gaps. Detail about each gap is provided in Volume 2, Section 1.2.2.

- Data analysis
- Behavioural economics
- Industry/commercial/market knowledge and experience
- Product knowledge
- Evidence-gathering in surveillance
- Project management.
- Ability to use technology
- Business analysis.

ASIC is developing a plan and approach for addressing these gaps.

Over the years, ASIC has developed many ways for staff to develop their skills and capabilities. This includes professional networks, which are underpinned by technical learning frameworks developed with P&D. These frameworks outline the key technical capabilities required for each of the following areas of practices:

- regulatory practice
- accountant/auditor
- enforcement
- legal (which has some overlap with enforcement).

Other ways for staff to develop their skills and capabilities include:

- internal learning and development courses
- coaching and on-the-job training
- internal secondments to other ASIC teams
- external secondments (eg AFP, ASC, Treasury, ACCC, overseas regulators, investment banks)
- external learning courses
- various ASIC communities of practice.

Learning against the frameworks is tracked through the Learning Management System (LMS). Programs are regularly evaluated for effectiveness. The 2015 State of the Service census results shows ASIC performs well in this area when compared to other regulators. 75% of ASIC staff strongly agreed/agreed that ASIC's learning programs were effective, which was 12% higher than the average for regulatory agencies, and 14% higher than the APS overall.

Staff confirmed that ASIC has both formal and informal development programs, at which attendance is monitored and evaluations completed, which they view as both successful and appropriate. There are plans in place to broaden these to ensure that future capability needs, as identified by the strategic workforce planning project, are met.



Key points

- External stakeholders view the current capability of leadership positively. There is some perceived variability of skill of staff below this level. Actions have been and continue to be taken to address this variability.
- ASIC is undertaking capability-based strategic workforce planning with an external service provider to ensure the organisation will have the capabilities required to support its current and future strategies and organisational objectives.
- Staff confirmed ASIC has both formal and informal development programs which they view as both successful and appropriate. There are plans in place to broaden these to ensure that future capability needs, as identified by ASIC in its strategic workforce planning project, are met.

3.2.2.6 Employee engagement and motivation

ASIC conducts an annual organisation-wide employee engagement survey, which is managed externally by Orima Research. It captures feedback, issues and opportunities across a range of areas, and includes comparisons to ASIC's trend data to show how responses have changed from year to year.

Many participants in the staff interviews said that Orima's data and reporting not only gave them valuable information about improvement focus areas, but that because trends in the data following the implementation of change initiatives could be compared to historical benchmarks, it also helped them develop measurable action plans.

In 2015, Orima reported that ASIC had solid levels of engagement, satisfaction, loyalty and commitment, with widespread gains from the 2012 survey, including that:

- overall satisfaction was rated at 73 index points (up from 70 in 2014)
- employee engagement was rated at 74 index points (consistent with 75 in 2014)
- loyalty and commitment was rated at 72 index points (up from 70 in 2014).

Orima also noted that the greatest opportunities for improvement are in the following two categories:

1. Career Progression and Development (which, according to the Orima model, is a key driver of 'employee engagement')
2. Recognition and Feeling Valued (which, according to the Orima model, is a key driver of 'overall satisfaction').

The 2015 report also explained that the two categories mentioned above have a causal relationship to 'loyalty and commitment', which is a driver of improved organisational performance. The report provides several benchmarks to other (anonymous) agencies for several questions (1. rating of overall job satisfaction, 2. rating of satisfaction with ASIC as an employer, and 3. likelihood to recommend ASIC as an employer).

The Orima report provides ASIC with useful comparisons with earlier years' responses. In addition, the master data includes comparisons between clusters, geographic locations, demographics (eg gender, age, tenure). However, the reports and master data do not appear to include more widespread external benchmarks. These can be extremely useful for understanding and contextualising results. For example, many providers can offer:

- broader industry benchmarks – comprised of a weighted average of survey results from employees from similar public service organisations, and responses from parallel private sector industries of interest, such as the financial services industry
- a performance benchmark – comprised of companies with strong financial and people management performance over several consecutive years.



However, ASIC noted that it does not believe private sector external benchmarks are relevant given Orima uses benchmarks that include other APS regulators.

PwC's ASIC staff survey results indicate that ASIC employees have a high level of motivation and willingness to go the extra mile:

- 97% of staff reported they are willing to put in the extra effort required to get a task or project completed when required, and 21% neither agree nor disagree
- 83% of staff agree that they are motivated to do the best possible work they can, and 11% neither agree nor disagree.

When these findings were probed in the roundtable process, the following broad themes emerged:

1. ASIC's culture has improved in recent years, but the level of government and media scrutiny and criticism has had an effect on morale; many participants also commented that ASIC employees are becoming more resilient as a result.
2. Budget restraints mean that teams now have to do more with less, and team workloads are not usually altered to reflect changes in budget/resource allocation. Many participants expressed concern that this may be leading to unsustainable work practices in some teams. (This theme is also supported by the survey findings, where the answers to four open questions included 258 unique references that ASIC's capacity reflected the limited level of resources available.)



Key points

- In general, ASIC employees have a high level of motivation and willingness to go the extra mile, but feedback from staff consultation suggests their morale has been affected by the recent high levels of government and media scrutiny and criticism. Further, budget cuts have resulted in staff feeling that they have to do more with less.
- ASIC participates in an annual employee engagement survey, which is administered by Orima Research. In 2015, Orima reported that ASIC had strong levels of engagement, satisfaction, loyalty and commitment, with widespread improvements since the 2012 survey.

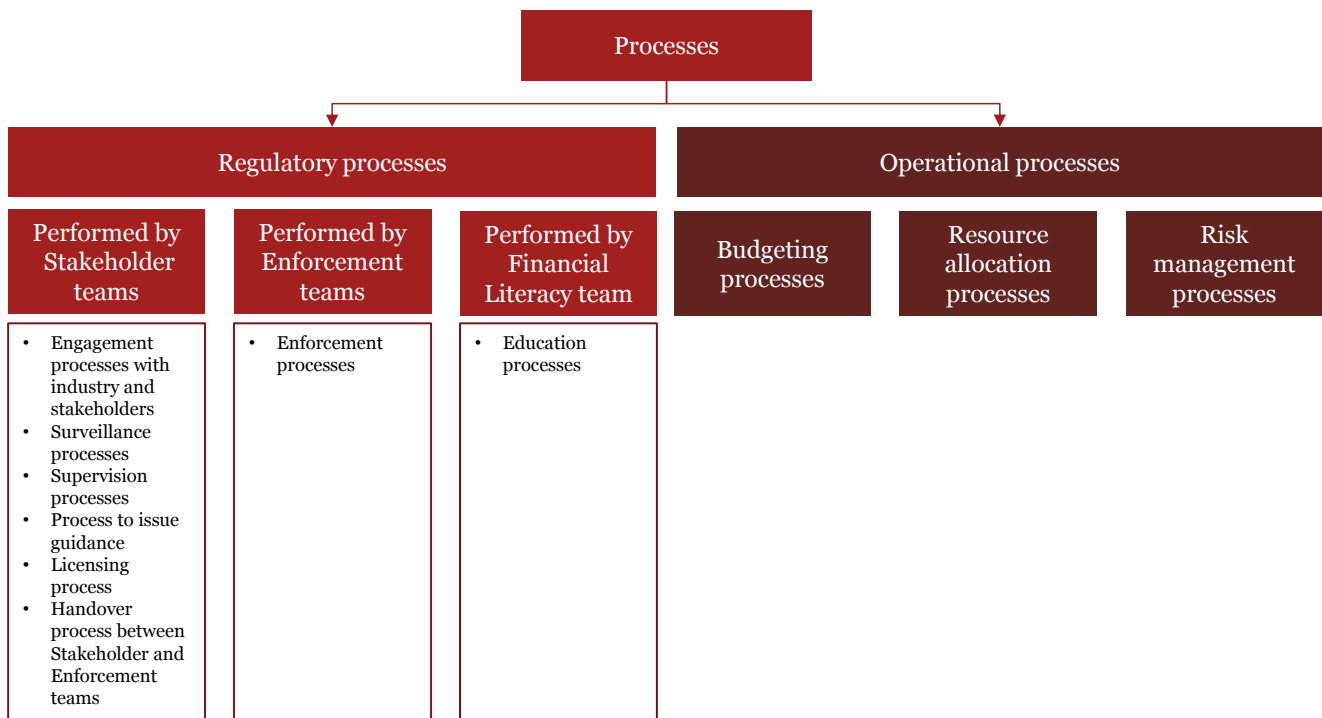


3.3 Process overview

We were consistently informed by various stakeholder groups that ASIC’s mandate, stakeholders and activities are broad; and a number of processes need to function efficiently and effectively for the organisation to achieve its strategic objectives.

This section looks at those processes in two groups: regulatory processes and operational processes.

Figure 18: Process overview



Regulatory processes are those that support the use of ASIC’s regulatory tools (ie the actions and methods ASIC uses in its work). Regulatory processes and tools are at the core of ASIC’s business, with 75% of its operating expenditure being allocated to its regulatory tools in 2013-14.

Operational processes are those that support the market-facing teams (ie Stakeholder teams, Enforcement teams and Financial Literacy team) in day-to-day operations.



3.4 Regulatory processes

All the findings listed below, and the key points made throughout this section, are based on evidence arising from the interviews, roundtables, surveys, document review and other research that we conducted. We have not directly attributed each of these observations to a particular source but have only raised observations where there was sufficient evidence gained or consistency of views to support this finding.

The process component of the ASIC review framework is defined as “key processes are efficient and effective and enable continuous improvement within ASIC”.

Key points

- There is no one clearly documented strategy or set of decision-making criteria within ASIC that facilitate systematic assessment of which regulatory tool should be used in which circumstance.

Processes performed by Stakeholder teams

- Although ASIC meets with and presents to external stakeholders regularly, there was a consistent observation from various stakeholder groups that ASIC could improve the quality and extent of its engagement with industry and other regulators.
- ASIC’s surveillance processes have been criticised in the past, most recently through the Senate Inquiry report. ASIC has taken steps to address this through the development of a Risk-based Surveillance Guide, which is in the early stages of being implemented.
- There are inconsistent levels of documented policies and procedures across different Stakeholder teams.
- ASIC’s automated market surveillance system was consistently referred to by internal and external stakeholders as best practice.
- The use of ASIC’s supervision tools is more limited than some overseas regulators. Whilst a costly form of supervision, some overseas regulators locate large teams at the regulated entity to conduct real-time supervision. Others perform entity specific reviews of key policies and processes.
- The OneASIC program will improve ASIC’s licensing processes. One outcome of this will be a significant reduction in the time taken to process licence applications.
- The handover process between Stakeholder and Enforcement teams is inconsistent. Organisations subject to investigation by Enforcement teams commented that they often had to re-explain points and re-provide documentation that had previously been provided to a Stakeholder team as part of a surveillance review. The OneASIC program is aimed at addressing this.

Processes performed by Enforcement teams

- There is a perception that ASIC’s approach to enforcement has become more reactive in recent years. Some of the regulated population noted that this may be a barrier to building more collaborative relationships with the regulated population and that it is also discouraging self-reporting of issues or concerns.

Continuous improvement processes

- The OneASIC program is evidence of the focus on process redesign and systems investment to improve regulatory decision-making.

3.4.1 Criteria we considered



There are processes in place across the regulator to ensure it is able to run efficiently and effectively and enable continuous improvement, which include:

- processes for effective engagement with the regulated population



- documentation of core activities across all regulatory tools to ensure consistency in practices
- a framework for determining the relevant application of each regulatory tool
- clear processes for how matters are handed between teams such that there is no duplication of effort either internally or externally.

3.4.2 Description of current state at ASIC

ASIC has 11 Stakeholder teams, and a vertically integrated Small Business Compliance and Deterrence team. These teams are spread across two clusters: Markets, and Investors & Financial Consumers.

ASIC's Strategic Outlook confirms it takes a 'detect, understand, respond' approach to regulation:

- Detect – ASIC detects misconduct and the risk of misconduct by gathering intelligence through surveillance (proactive and reactive); breach reports; reports from whistleblowers and the public in general; and data analysis.
- Understand – Intelligence gathered in 'detect' is analysed to assess risks, which informs 'respond'.
- Respond – Depending on resources and powers, ASIC's response could be any of the following: disrupting harmful behaviour; taking enforcement action; engaging with industry and stakeholders; educating investors and financial consumers; providing guidance; providing policy advice to government.

Stakeholder teams are involved in all three parts of the 'detect, understand, respond' approach. Their role is to survey the markets to identify potential wrongdoing, and either respond to it themselves or refer it to the associated Enforcement team. This handover process is discussed in Section 3.4.2.1.

There is no one clearly documented strategy or set of decision-making criteria within ASIC which facilitates the systematic determination of which regulatory tool should be used in which circumstance. This results in a strong bias towards the use of enforcement as the primary regulatory tool. Consistent feedback both internally and externally suggested that other regulatory tools could be used instead of enforcement which would result in more efficient and effective regulation. Feedback from overseas regulators supported this view.



Key point

- There is no one clearly documented strategy or set of decision-making criteria within ASIC that facilitate systematic assessment of which regulatory tool should be used in which circumstance.

3.4.2.1 Processes performed by Stakeholder teams

Engagement processes with industry and stakeholders

ASIC engages with industry formally and informally. ASIC confirmed that this engagement is to influence behaviour, improve compliance and identify industry's issues and concerns.

Formal engagement can take the form of publications and media releases (for a list of these, see Figure 11) or more targeted activity such as warning or no-action letters and formal notices. There was a common view, consistently provided in staff interviews and roundtables, that the more both good and bad practice is communicated, the greater influence ASIC can have on market behaviour. Staff told us they felt that ASIC does a good job of publicising outcomes and decisions, and that this is an effective form of deterrence. However, industry roundtable participants agreed that the increased volume of communication still lacks the detail they want, particularly regarding ASIC's focus on proactive surveillance each year. Multiple stakeholders also expressed frustration that ASIC communicates industry self-reported issues as though it has detected them itself.



ASIC also meets with and presents to key stakeholders regularly. Despite this, external stakeholders continue to raise ASIC's lack of consultation with the regulated population.

The key themes from the external stakeholder interviews (including other regulators) on ASIC's engagement with industry were as follows:

- ASIC could respond quicker to emerging risks and trends if it improved the extent and quality of dialogue it is prepared to have with industry. ASIC appears unwilling to partner with industry.
- ASIC does not have a formal process regarding how to engage with external stakeholders, and many expressed a preference that ASIC run a relationship management model to ensure that engagement with the same entity across Stakeholder teams is better managed (this is discussed in Section 3.1).
- The quality of communications is also a concern. Many stakeholders reported that in their view some communications can be overly legalistic and poorly written and that this detracts from their effectiveness.
- There is an opportunity for ASIC to coordinate better with other regulators to avoid overlapping or overlooking regulatory issues.

We were informed through staff interviews and roundtables that each Stakeholder team engages with industry in different ways using different tools. These can range from communicating themes via media releases, to individual engagement directly with stakeholders. Some examples of how ASIC has recently communicated in different ways are the Conduct Risk Calculator and Cyber resilience initiatives. See Volume 2, Section 3.3.1 for details on the Conduct Risk Calculator.



Key point

- Although ASIC meets with and presents to external stakeholders regularly, there was a consistent observation from various stakeholder groups that ASIC could improve the quality and extent of its engagement with industry and other regulators.

Surveillance processes

Surveillance is a primary tool used by the Stakeholder teams. It refers to activities where ASIC gathers and analyses information to test compliance with regulatory requirements. That information could be in relation to a targeted sample of the regulated population, or a specific entity, transaction or product.

ASIC informed us that it does two types of surveillance:

- reactive, which is prompted by a complaint, breach report or 'tip-off'
- proactive, which is a result of ASIC's internal processes, for example a periodic inspection program or a risk assessment of the regulated population. Proactive surveillance is typically done to give ASIC a better understanding of either what is happening in the regulated population, or how certain entities are dealing with particular issues; to undertake a detailed examination of issues practices or products producing poor consumer or investor outcomes; and more broadly to examine instances of market failure.

The Senate Inquiry report on ASIC's performance made several recommendations in relation to surveillance activity. In particular, recommendation 10 advised that ASIC "review its surveillance activity with a view to making it more effective in detecting deficiencies in internal compliance arrangements". In the report, Dr Vicky Comino was quoted as suggesting that "ASIC has generally behaved in a reactive rather than a proactive fashion" and that the "discovery of corporate breaches is often almost accidental".

There are inconsistent levels of documented policies and procedures across different Stakeholder teams. The Risk-based Surveillance Guide acknowledges that in the past, ASIC's surveillance approaches have not been consistent or clearly documented. In the year since the Senate Inquiry report was released, ASIC has taken



steps to address the concerns raised in it, by developing the guide and developing a central repository for surveillance-related information.

However, while the Risk-based Surveillance Guide includes overarching principles for performing surveillance, translating these into policies and procedures is the responsibility of individual Stakeholder teams. This is done to varying degrees and results in inconsistent approaches to surveillance across ASIC and a view by the regulated population that ASIC is inconsistent in its decision-making.

During external stakeholder interviews and roundtables it became clear that industry requires more transparency over ASIC's risk-based approach to surveillance (see Section 2.2 for further information). External stakeholders also believe ASIC's focus is only at the 'big end' of town.

See Volume 2, Sections 3.3.2 and 3.3.4 for further information on ASIC's risk based approach to surveillance, and external perception of ASIC's surveillance process.

Some parts of ASIC (including Stakeholder and Enforcement teams) have introduced 'lessons learned' reviews. The review is typically done in a workshop, and includes an overview of the project/work, identification of what went well and what could have been improved, and recommendations for future projects. A 'lessons learned' review following a large surveillance campaign in 2014 was the catalyst for ASIC to develop a central repository of surveillance-related information. The review identified that ASIC's Technical and Procedures Library and Precedent Collection were largely enforcement focused, and there was a need to raise awareness of what risk-based surveillance entails. As a result, a Surveillance Resources page has been built into the Technical and Procedures Library to improve access to surveillance guidance, tools, reports, subject matter experts, lessons learned and tips.



Key points

- ASIC's surveillance processes have been criticised in the past, most recently through the Senate Inquiry report. ASIC has taken steps to address this through the development of a Risk-based Surveillance Guide, which is in the early stages of being implemented.
- There are inconsistent levels of documented policies and procedures across different Stakeholder teams.

Supervision processes

As noted in the Risk-based Surveillance Guide, supervision differs from surveillance in that it is a continuous process, whereas surveillance is discrete and non-continuous.

ASIC is responsible for supervising real-time trading on Australia's domestic markets and Australian Financial Services Licence holders. To support the transition of responsibility for market supervision from the ASX to ASIC, the Corporations Amendment (Financial Market Supervision) Act 2010 provides for ASIC to make market integrity rules (with ministerial consent). Market integrity rules are legislative instruments which apply to market operators, market participants, other prescribed entities and financial products traded on the relevant markets. ASIC supervises compliance with these rules.

ASIC's supervisory activities are primarily managed by the Market and Participant Supervision team within MIG. In teams which do both surveillance and supervision, staff report that this is managed through a formal process.

ASIC has invested heavily in new technologies and systems to support its supervisory activities. In 2013 MIG introduced the Markets Analysis and Intelligence (MAI) surveillance system. This enables real-time surveillance and the interrogation and analysis of large sets of data. ASIC reports that the MAI system has significantly reduced the time taken to conduct searches of trading activity, and resulted in a reduction of three staff. The use of ASIC's supervision tools are more limited than those of overseas regulators, many of which locate large teams at the regulated entity to conduct real-time supervision.



Areas of focus for supervision are documented in the monthly Market Integrity Update Statement.

ASIC reports that the time taken to identify market misconduct and begin a formal investigation has reduced from three months (before 2010) to six weeks, and there has been a 23% reduction in the time between ASIC first becoming aware of potential criminal misconduct to handing the matter over to the Commonwealth Director of Public Prosecutions.

In ASIC's 2013 external stakeholder survey, 51% of stakeholders rated ASIC's supervision of the financial markets as excellent or good, 32% rated it fair and 10% poor or very poor.



Key points

- ASIC's automated market surveillance system was consistently referred to by internal and external stakeholders as best practice.
- The use of ASIC's supervision tools is more limited than some overseas regulators. Whilst a costly form of supervision, some overseas regulators locate large teams at the regulated entity to conduct real-time supervision. Others perform entity specific reviews of key policies and processes.

Process for issuing guidance and policy advice

ASIC issues guidance to help industry stakeholders interpret legislation and apply the legislative principles in particular circumstances. ASIC staff noted the guidance is intended to improve compliance and reduce the need for subsequent surveillance and enforcement activity. For example, guidance may be developed where:

- new legislation is passed
- ASIC is asked for guidance or there is uncertainty about how the existing law applies to a particular/new situation
- there is systemic lack of compliance, suggesting that industry may not understand what the law requires
- ASIC wants to communicate a specific message. For example, to promote high standards of disclosure or identify efficiency gains from technology (as part of the government initiative to reduce the regulatory burden on business).

Guidance takes the form of information sheets, regulatory guides and reports, which are all available on the ASIC website.

ASIC staff noted that it goes through a consultation process with industry; investors and financial consumers; and other government departments and agencies to develop guidance. Guidance must also comply with the government's Best Practice Regulatory Requirements, set out in the Best Practice Regulation Handbook. These requirements set standards for the development of new regulation, including undertaking appropriate consultation and regulatory impact assessment.

26% of the regulated population rate ASIC's ability to be proactive in its policy guidance as good or excellent, 40% as fair, and 24% poor or very poor.

Licensing process

ASIC issues Australian Financial Services Licences and Australian Credit Licences. A Licensing team sits within the Assessment and Intelligence Stakeholder team to issue and vary licences, and all Stakeholder teams can impose licence conditions as a regulatory tool.

Recently, ASIC has released its second report on licensing, providing trends and data. We are informed by ASIC that this initiative will be continued on a six-monthly basis. In the six months to 30 June 2015:



- ASIC assessed approximately 2050 applications: 35% relating to a new licence application, 47% relating to variations to existing licences, and 18% related to professional registration (liquidators and auditors)
- 48% of all applications assessed were approved
- 35% of all applications were ongoing at 30 June 2015
- 10% of applications were withdrawn
- 7% of applications were rejected
- nine AFS licences were suspended, 98 AFS licences were cancelled and 192 credit licences were cancelled.

Currently 48% of the regulated population rates ASIC's performance in meeting its objective for efficient registration and licensing for the financial services industry as good or excellent, 32% rate it as fair and 11% poor or very poor.

Continuous improvement is being addressed in ASIC in a number of ways. Most significantly, ASIC has initiated the OneASIC program to address a number of key risks including that:

- key IT systems fail or do not support ASIC business activities
- ASIC is unable to access data in an efficient manner.

See Section 3.4.2.4 for an explanation of the OneASIC Program.

The program is organisation wide (excluding Registry) and business driven rather than systems driven. It will look at processes and tools, opportunities for improvement, ways of simplifying and sharing information, and how to position ASIC for the future. Key benefits are expected to be increased resource efficiency and productivity, and cross-functionality of resources. For example, time and motion studies have estimated that the time taken to perform background checks for licence applications will decrease from 37 to 10 minutes.

ASIC staff reported that the efficiency and effectiveness of licensing could be improved if there was greater legal clarity about what licensees need to do and what the role of ASIC is. For example, staff and licensees often disagree about the interpretation of s912D of the Corporations Act, which requires licensees to notify ASIC of certain matters.



Key point

- The OneASIC program will improve ASIC's licensing processes. One outcome of this will be a significant reduction in the time taken to process licence applications.

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.

The handover between teams is also a consistent theme of feedback from external stakeholders. In particular, stakeholders expressed that:

- often they are not informed that a matter has moved from surveillance to enforcement until the Enforcement team contacts them to request documentation and information
- in some instances, the same documents have already been provided to a Stakeholder team. Even when Enforcement teams are made aware of this, they may not attempt to source the documents from the relevant team



- they have to ‘start again’ when a matter is moved to Enforcement.

External stakeholders agreed that ASIC appears to lack adequate governance mechanisms for matters which require cross-team surveillance and investigations. In practice, this means the person or entity being reviewed may have to resolve a single issue with two or more Stakeholder or Enforcement teams in order to get an outcome. Participants agreed that the reviews are important and the matter must be resolved; but that doing so repeatedly for a single matter with the same regulator is difficult for the subject of the investigation, and also an inefficient use of ASIC’s resources (double and triple-handling information and tasks). External stakeholders consistently said that having a relationship manager or key contact at ASIC would help support the different requests they receive from various teams, and make a significant difference to the handover process. See Section 3.1.2.6 for more information on external stakeholder relationship management.

Volume 2, Section 3.3.4 contains more information on the handover process.



Key point

- The handover process between Stakeholder and Enforcement teams is inconsistent. Organisations subject to investigation by Enforcement teams commented that they often had to re-explain points and re-provide documentation that had previously been provided to a Stakeholder team as part of a surveillance review. The OneASIC program is aimed at addressing this.

Process for granting relief

ASIC is able to grant exemption from or modification to the law in certain situations, which are set out in ASIC’s Regulatory Guide 51 *Applications for Relief*. Companies or persons can apply to ASIC for relief from the:

- *Corporations Act 2001* (Corporations Act)
- *Superannuation Industry (Supervision) Act 1993*
- *National Consumer Credit Protection Act 2009* (National Credit Act)
- *National Consumer Credit Protection (Transitional and Consequential Provisions Act 2009* (Transitional Act).

ASIC most frequently exercises this discretionary power in relation to accounting, takeovers, fundraising, managed investment schemes, licensing, and disclosure.

Applications for relief fall into three categories:

- Standard applications: seek relief precisely in line with the terms of published ASIC policy and pro forma instruments.
- Minor and technical applications: these are not complete standards but are clearly within the policy of the Corporations Act or existing ASIC policy. While they may involve applying existing policy to new situations, the issues are not so significant as to require extensive consideration by ASIC.
- Novel applications: require ASIC to formulate substantive new policy. This may be because they raise new policy considerations, involve more than minor or technical variation to existing policy, or involve a significant change to (or reversal of) existing policy.

3.4.2.2 Processes performed by Enforcement teams

Enforcement processes

We were informed by ASIC that for confidentiality reasons, we could not review the full Enforcement Manual. Instead, the Treasury Secretariat reviewed it on PwC’s behalf and did not identify any material concerns with its structure or content. We also confirmed that it can be accessed by Enforcement teams on the MyASIC portal.



‘Enforcement action’ is one of several regulatory tools available to ASIC. ASIC informed us that its enforcement powers are used to detect and deal with unlawful conduct, to recover money in appropriate circumstances, and sometimes to prevent unlawful conduct before it happens. ASIC responds to breaches of laws within its regulatory responsibility – breaches can range from minor regulatory offences through to serious misconduct – and by doing so it sends clear signals to the regulated population about how consequences for misconduct will be applied, which in turn acts as a deterrent for future misconduct. As publicly noted by ASIC, this deterrent impact is an underlying consideration for any enforcement outcome sought by ASIC.

As explained in Section 2.1.2.1, ASIC has a very broad regulatory mandate. As noted in its Information sheet 151 – ASIC’s Approach to Enforcement, the degree to which it uses its enforcement powers effectively has a direct impact on its reputation as a credible regulator in each segment of the regulated population.

In response to a potential breach of the law, ASIC may undertake an investigation that may in turn lead to enforcement action. ASIC has the power to administer many state and federal laws. See Volume 2, Section 3.3.5 for the list.

ASIC can pursue a variety of types of enforcement actions, falling into the broad categories of criminal, civil and administrative. An action is defined as an enforcement remedy related to a specific area of misconduct.

Figure 19: Enforcement actions and corresponding regulatory tools

Type of action	Regulatory tools
Criminal	<ul style="list-style-type: none"> Punitive action (working with the CDPP for criminal prosecutions), including prison terms, criminal financial penalties)
Civil	<ul style="list-style-type: none"> Civil penalties Injunctive relief Preservative action to seek a court order to protect assets Corrective action to seek a court order to make a corrective disclosure Compensatory action to recover damages or property for consumers that have suffered loss
Administrative*	<ul style="list-style-type: none"> Protective action (eg disqualification from managing a corporation) Bannings – directors and persons from providing financial or credit services Stop orders for defective disclosure Give direction to a market to suspend dealing in a financial product Infringement notices Refer matters to the Markets Disciplinary Panel Application to the Companies Auditors and Liquidators Disciplinary Board
Negotiated	<ul style="list-style-type: none"> Enforceable Undertakings

Source – Senate Inquiry into the performance of ASIC, p.114-122

* Can be undertaken by other teams in various circumstances (eg prospectus stop orders)

ASIC considers that its set of regulatory tools is relatively narrow, and the FSI recommended that ASIC be provided with stronger regulatory tools (recommendation 29).

See Volume 2, Section 3.3.6 for the following detail about ASIC’s enforcement process: Structure of the Enforcement group; Reporting and referral of matters; Phases of matters; Enforcement governance; Resourcing decisions; Other meetings and checkpoints; and Performance.

‘Lessons learned’ reports are an effective way of identifying continuous improvement opportunities. The practice of using ‘lesson learned’ reviews appears to be more firmly embedded into Enforcement teams than Stakeholder teams. When asked in roundtables, Enforcement teams easily articulated the ‘lessons learned’ approach, and referred to processes for circulating and storing final reports, using people from other



Enforcement teams to facilitate workshops, and including lessons on regular SEL bulletins and team meeting agendas.

Despite the enforcement outcomes listed above, according to the external stakeholder survey 29% of the regulated population participants gave ASIC a good/excellent rating for the question “Overall, how would you rate ASIC’s effectiveness in enforcement?”. 43% rated it fair and 24% poor or very poor. ASIC has noted that the regulated population may bring negative experiences to this question where they have been the subject of ASIC action.

In the roundtables with external stakeholders, attendees perceived that ASIC does not appear to select the right enforcement tools, which leads to the impression that there is an overemphasis on litigation.

External interviews and roundtables with the regulated population, lawyers and academics discussed the criticism ASIC has faced from the Senate and the media in recent years. There was a perception that this has shifted ASIC’s behaviour towards enforcement actions of a high profile nature, resulting in public perceptions that ASIC is reactive in its approach. Interviewees further noted that this is acting as a barrier to building more collaborative relationships with the regulated population and is in some instances discouraging the self-reporting of issues or concerns.

In interpreting this feedback, allowance should be made for the fact that the regulated population may have some conscious or unconscious bias against enforcement.



Key point

- There is a perception that ASIC’s approach to enforcement has become more reactive in recent years. Some of the regulated population noted that this may be a barrier to building more collaborative relationships with the regulated population and that it is also discouraging self-reporting of issues or concerns.

3.4.2.3 Processes performed by Financial Literacy team

Education processes

Financial Literacy is a division of the Strategy Group. It works to promote investors’ and financial consumers’ understanding of financial markets and market risk. Of primary importance in its work is the MoneySmart website which it operates, and which is aimed at educating financial consumers and investors. 28% of consumers, investors and small businesses surveyed rated ASIC’s performance in helping the general public become more financially literate as good or excellent, and 32% as fair. See Volume 2, Section 3.3.7 for more information about Financial Literacy’s work.

3.4.2.4 Continuous improvement – the OneASIC program

The OneASIC program is a major initiative designed to improve regulatory decision-making, processes and tools. It is a business improvement program, supported by technology. The objective is to transition ASIC’s processes and systems closer to a newly specified target operating model, while addressing some of the most pressing issues in the current state. Those issues include:

- improving end-to-end monitoring of regulatory matters, by consolidating work-flow systems
- streamlining data capture and reporting, by moving to a common data language and better systems connectivity
- improving the efficiency and effectiveness of decision-making, by redesigning processes and introducing different decision-making criteria.



Key elements of this process simplification include:

- one name for things
- one way of doing things
- common systems and technology
- one governance framework for processes and technology.

A specific example of simplification is the development of a new search tool across the diverse range of ASIC databases. This is currently in prototype and due for release across 17 separate databases by June 2016. ASIC estimates that, once implemented, it will save in the order of two hours a day for many staff.

OneASIC is sponsored at Commission level. There are formal program governance processes in place and it seeks to take the learnings from the recent improvements within MIG and apply them across ASIC.

The current estimate of costs over three years is \$56m, of which \$4.7m in 2015-16 has been approved to date. There are processes in place within ASIC to focus on approval for the additional required funding.

The OneASIC program is evidence of the focus on process redesign and systems investment to improve regulatory decision-making.



Key point

- The OneASIC program is evidence of the focus on process redesign and systems investment to improve regulatory decision-making.



3.5 Budgeting processes

All the findings listed below, and the key points made throughout this section, are based on evidence arising from the interviews, roundtables, surveys, document review and other research that we conducted. We have not directly attributed each of these observations to a particular source but have only raised observations where there was sufficient evidence gained or consistency of views to support this finding.

The process component of the ASIC review framework is defined as “key processes are efficient and effective and enable continuous improvement within ASIC”.

Key points

- Recent variability in ASIC’s core budget coupled with budget rules has made it difficult for ASIC to plan future resource allocation and undertake forward-looking capex planning for much needed improvements in data, infrastructure, IT, etc. These constraints are exacerbated as ASIC’s remit/mandate continues to expand.
- There are effective processes in place for monitoring budgets and managing variances.
- The Enforcement Special Account is an important source of funding. During our evidence-gathering, a concern was raised sufficiently often to suggest that the way the process is designed could drive an inefficient allocation of resources. It could provide ASIC with an incentive to encourage staff to work on larger matters for longer periods to meet the \$750K entry level threshold for funding. ASIC notes there are controls in place in relation to the use of ESA funding, including reporting to the Treasurer.

3.5.1 Criteria we considered



There are processes in place across the regulator to ensure it is able to run efficiently and effectively and enable continuous improvement, which include:

- a process that enables the regulator to plan longer term and shift resources flexibly in line with strategic priorities
- budgets are monitored on a regular basis and variances are managed.

3.5.2 Description of current state at ASIC

3.5.2.1 Budgeting processes

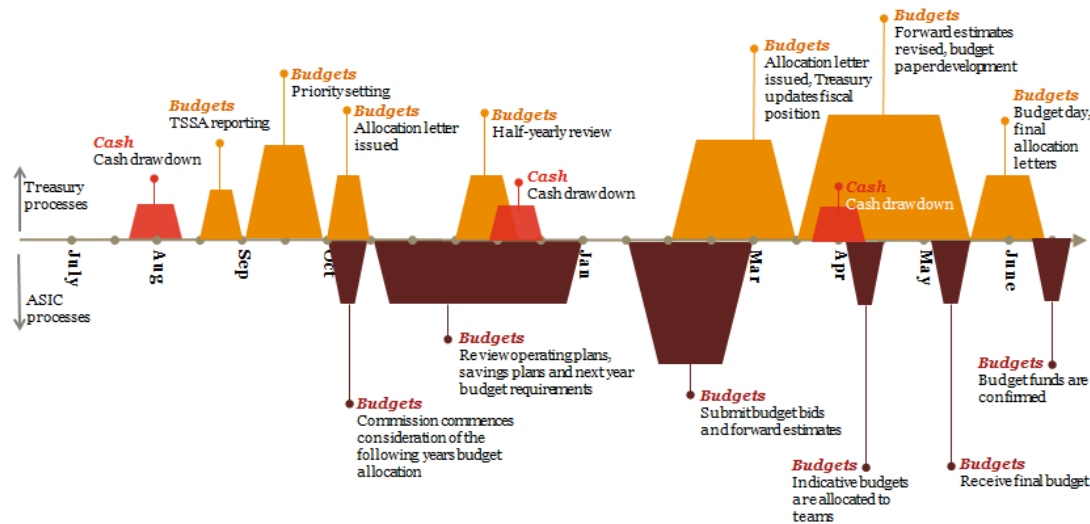
There are four components to ASIC’s funding:

- *BaU funding*: This process is outlined in Figure 20 and discussed in more detail below. Budgets are managed by SELs, in collaboration with the relevant Commissioner, and the funding primarily accounts for salaries, travel and some learning and development activities.
- *New Policy Proposals (NPP) funding*: ASIC can apply for NPP funding for new projects. The preparation and negotiation process begins in mid-September and we were informed that this can take up to almost six months.
- *Special funding*: Special funding is the only money that ASIC can hold indefinitely, but it requires compliance with specific conditions. The Enforcement Special Account is an example of this. The Enforcement Special Account receives \$26.325m a year for enforcement outside ASIC’s normal enforcement activity.



- **Strategic initiative reserve:** This is not an additional source of funding, but a mechanism to harvest any budget surplus (operating or capital) and reallocate it across teams/clusters. It typically happens quarterly and requires Commission approval.

Figure 20: ASIC’s annual budgeting process



Source: PwC, confirmed by ASIC.

Consistent with other Commonwealth budget-funded agencies, ASIC’s budget for the coming year is based on:

- the previous year’s budget, per the portfolio budget statements
- less the efficiency dividend or other government-decided cuts
- plus any specific purpose funding agreed by government through the NPP process.

We confirmed that in the past two years, where the Commission has been subject to large general budget cuts, it has allocated these to four clusters (Markets, Investors & Financial Consumers, Commission Specialist teams and Operations) on a pro rata basis according to the forward estimates of the portfolio budget statements for the coming financial year. Targeted budget cuts or budget increases (such as through the commencement or run-off of NPPs) are allocated directly to the relevant team or cluster.

In determining the allocation of budget cuts, Finance prepares a detailed scenario analysis on a number of alternatives for consideration by the Commission. These alternatives consider the impact any funding cuts may have on ASIC’s ability to achieve its priorities and retain its service levels.

Having decided the allocation to the four clusters, the allocation within the cluster is determined by the relevant Commissioners and SELs differentially between teams within their Clusters.

Our review of documents has confirmed that the Commissioners attempt to quarantine or partly quarantine certain teams from the budget cuts, which results in other teams taking more substantial cuts. Staff confirmed these decisions are made in light of ASIC’s view of the market’s long-term challenges. Staff also pointed out that in a progressively shrinking budget environment (as has been the case for the last two financial years) it has been increasingly difficult to address all short-term and long-term challenges and risks in the market.

Having determined team allocations within their cluster, each Commissioner reports back to the Commission as a whole, detailing the allocation for each team, the rationale for movements of budget within each cluster and the implications of the movement (including the impact on priority activities, mandatory activities and staffing). The Commission collectively discusses the impact which also provides an opportunity to re-assess whether there should be any final adjustments between the clusters.



There is general consensus within ASIC that the government's annual budget process and budget rules affect ASIC's ability to plan longer term and shift its resource allocation flexibly. ASIC cannot easily move funding between years, reallocate operating budget to fund capital expenditure (with the exception of ESA), or carry forward any unspent operating budget to fund operating expenditure the following year. This is particularly challenging for big projects such as the OneASIC program.

The FSI recommended that a three-year funding model be adopted to increase budget stability, and the need for this was raised repeatedly by both ASIC staff and stakeholders throughout our review, as was the need for more flexible budget rules.

Reporting against the budget

Staff interviews and document reviews confirmed that Finance provides:

- support to SELs in monthly year-to-date reporting and monthly forecasting. Each SEL has a designated management accountant to assist with monthly variance reporting and forecasting
- regular reports to the Commission and Audit Committee
- a finance section for inclusion in all significant project and Technology Governance Board reports. This covers performance for the month and year to date, and variance analysis against budget and forecast (including an explanation for major variances). A member of the Finance team also attends the meetings of key boards (such as the Technology Governance Board and FAST project board) to provide a verbal update as required.

SELs reported consistently that the budget is managed effectively across ASIC. There are rarely overruns, and the relationship between Finance and the rest of ASIC was confirmed by many SELs as working well.



Key points

- Recent variability in ASIC's core budget coupled with budget rules has made it difficult for ASIC to plan future resource allocation and undertake forward-looking capex planning for much needed improvements in data, infrastructure, IT, etc. These constraints are exacerbated as ASIC's remit/mandate continues to expand.
- There are effective processes in place for monitoring budgets and managing variances.

Enforcement Special Account

Interviews with staff confirmed that ASIC has set criteria in place for awarding ESA funding. Staff confirmed that in addition to the matter exceeding \$750K it must also be in the public interest, involve a matter of importance for continued community confidence, and be beyond the scale of activities ordinarily undertaken by ASIC. The Chair also needs to:

- be satisfied that the criteria are met
- formally approve accessing ESA for each matter
- advise the Treasurer each time he approves funding from ESA.

Without the ESA, ASIC would be unable to pursue any large matters. Further, SELs confirmed that there would be less incentive to pursue larger organisations which could afford the legal support to keep the matter in the courts for a lengthy period.

However, SELs noted that only a very limited number of matters each year are above the \$750K threshold required to access the ESA. They commented that this encourages them to plan ahead to roll matters on to and off ESA management and to reallocate resources to likely ESA projects in order to push the project cost above



\$750K. ASIC notes there are controls in place in relation to the use of ESA funding, including reporting to the Treasurer.



Key point

- The Enforcement Special Account is an important source of funding. During our evidence-gathering, a concern was raised sufficiently often to suggest that the way the process is designed could drive an inefficient allocation of resources. It could provide ASIC with an incentive to encourage staff to work on larger matters for longer periods to meet the \$750K entry level threshold for funding. ASIC notes there are controls in place in relation to the use of ESA funding, including reporting to the Treasurer.



3.6 Resource allocation processes

All the findings listed below, and the key points made throughout this section, are based on evidence arising from the interviews, roundtables, surveys, document review and other research that we conducted. We have not directly attributed each of these observations to a particular source but have only raised observations where there was sufficient evidence gained or consistency of views to support this finding.

The process component of the ASIC review framework is defined as “key processes are efficient and effective and enable continuous improvement within ASIC”.

Key points

- There is broad acknowledgement internally and externally that ASIC is under-resourced. Stakeholders said that even in an industry-funded model ASIC needs more resources.
- Resource allocation is considered across the whole of ASIC as part of the business planning and budgeting processes. There are only informal mechanisms in place to support this throughout the year.
- There are no ASIC-wide measures to assess the efficiency and effectiveness of resources. In part, this reflects the challenges all regulators face in establishing such measures; however ASIC has no way of forming a view on the efficiency and effectiveness of its resource allocation process.

3.6.1 Criteria we considered



There are processes in place across the regulator to ensure it is able to run efficiently and effectively and enable continuous improvement, which include:

- a top-down coordinated approach to resource allocation to ensure strategic priorities are being met at organisation-wide level
- a risk-based approach to allocating resources to regulatory tools
- assessment of the efficient of use of resources and the effectiveness of resource allocation.

3.6.2 Description of current state at ASIC

3.6.2.1 Resource allocation processes

There is a broad acknowledgement, both internally and externally, that ASIC is under-resourced. In fact, 54% of the regulated population say that ASIC needs more resources, even if it is industry funded in the future (and only 4% say ASIC needs fewer resources if industry funded).

Staff identified numerous circumstances where lack of resources is an issue; for example:

- responding to local issues in regional offices
- gathering and managing evidence to support enforcement
- resource-intensive court processes
- reviewing and enforcing enforceable undertakings
- project management.



ASIC's expense budget is made up of approximately 70% employee costs and 30% supplier costs. In recent years ASIC had to determine how to respond to general budget cuts imposed by government in a restricted time period. The majority of supplier costs are committed in the short term (eg property costs and IT supplier costs) which means they cannot be reduced immediately, and ASIC therefore has to make resourcing (ie staffing) cuts to address any significant reductions to its budget.

For example, with the most recent budget cuts in 2014, ASIC had around four weeks from learning about the budget cut to starting a voluntary redundancy process. This exercise had to be completed within a compressed time period to ensure its cost base was reduced before the end of the financial year, to avoid running at a deficit in the following financial year.

In staff interviews we were told that resourcing cuts have been applied consistently across the organisation. Staff formed this view based on internal communications.

However while this may be the perception of staff, we were provided with additional evidence which confirmed that resourcing cuts were applied in a manner consistent with the budgeting process described in Section 3.5.2.1. That is, the starting point was a pro rata dollar reduction across the four clusters, with subsequent discretion applied within clusters, and then a whole-of-ASIC review by the Commission. It is clear that these resource allocation decisions were based on detailed financial and risk information, ASIC's view of the market's long-term challenges, and each team's current and projected workload arising from addressing these challenges.

Outside the annual budgeting process, resource allocation tends to be managed flexibly within the clusters and includes input from the talent management process. There is discussion by the Commission about budget matters and resource allocation as part of the weekly management process.

Team-based approach to resource allocation

As part of each team's business plan, they are required to provide an 'FTE snapshot', which identifies the number of FTEs allocated to each regulatory tool in the coming year. This is a clean-slate exercise which is performed each year and is based on indicative FTEs budgeted and team structures.

When business plans are submitted, SELs consider resource allocation to each regulatory tool at an aggregate level (across all of ASIC). There are no specified targets or boundaries for this allocation. However, the Corporate Plan states that ASIC dedicates around 70% of its regulatory resources to surveillance and enforcement. The roles performed by teams within those clusters are explained in Volume 2, Section 3.4.1. The Strategic Policy team advised that this allocation is considered acceptable and appropriate based on experience.

Each team has the autonomy to direct resources where it believes they will be most effective, and to flex that allocation as required. Staff interviews and roundtables noted that the Stakeholder and Enforcement teams typically apply a risk-based approach to ensure that the available resources have maximum impact in the market. For example:

- Surveillance activities are supported by the Risk-based Surveillance Guide developed by the Strategic Policy team in March 2015 to "direct scarce surveillance resources towards the entities, products and transactions within ASIC's regulated population that pose the greatest threats to its strategic priorities".
- The Deposit Takers, Credit and Insurers Stakeholder team (DCI) has targeted payday lenders. We were informed by staff that the DCI team usually determines its areas of focus based on the intelligence it receives and concerns raised by the regulated population.
- Small Business Compliance and Deterrence focuses surveillance on high-risk areas to identify 'bad eggs'. The team has prioritised enforcement in relation to illegal phoenix activity (the intentional transfer of assets from an indebted company to a new company to avoid paying creditors, tax or employee entitlements), which has been identified as a potential key risk for ASIC. Lower-risk compliance issues are addressed primarily through education programs.

This focusing of resources on targeted activities and organisations may contribute to the regulated population's perception that ASIC's regulatory activities lack coordination and could benefit from improved communication. ASIC staff also feel that better resource allocation may be required in order to 'detect, understand and respond'



appropriately across all industry segments. 50% of staff agree that resourcing reflects ASIC's strategic priorities (and 23% are neutral) and 39% of staff agree that ASIC quickly adapts its resource allocation in accordance with its strategic priorities (29% neutral).

Allocating resources to regulatory tools

Staff within some teams report that allocating resources to regulatory tools would be more efficient and effective if there was clearer accountability and policy regarding the application of each regulatory tool.

Further, because decisions regarding the use of regulatory tools are made within each team, there is the potential for teams to sit across many areas of the regulatory spectrum. For example, Small Business Compliance and Deterrence prioritises proactive surveillance and engagement to reduce the need for enforcement. We were informed that approximately 60% of its total resources are allocated to surveillance and supervision and 30% are allocated to enforcement (90% in total). This contrasts with the allocation across ASIC more generally, where 70% of regulatory resources are allocated to surveillance and enforcement. ASIC informed us that the specific purpose of this team is to conduct high volume investigations across a large population of small companies, including working with in-house prosecutors pursuing a variety of summary offences.

Measuring resource allocation

We were not provided with any ASIC-wide measures that assess the efficiency of resources or effectiveness of resource allocation. In part, this reflects the challenges all regulators face in establishing such measures. ASIC is required to prepare portfolio budget statements to inform the government of its allocation of resources to government outcomes, but they are done at a very high level.

Enforcement teams use timesheets to record their activity, but this practice is not applied ASIC-wide. Some time and motion studies have been done in high volume, process-driven parts of ASIC (Registry, and Assessment and Intelligence) and as part of ASIC's OneASIC program, but these have not focused specifically on resource allocation.

Without a clear picture of how staff are spending their time and what outcomes are being achieved across the organisation, it is not possible for ASIC to assess how effective the risk-based allocation is.



Key points

- There is broad acknowledgement internally and externally that ASIC is under-resourced. Stakeholders said that even in an industry-funded model ASIC needs more resources.
- Resource allocation is considered across the whole of ASIC as part of the business planning and budgeting processes. There are only informal mechanisms in place to support this throughout the year.
- There are no ASIC-wide measures to assess the efficiency and effectiveness of resources. In part, this reflects the challenges all regulators face in establishing such measures; however ASIC has no way of forming a view on the efficiency and effectiveness of its resource allocation process.

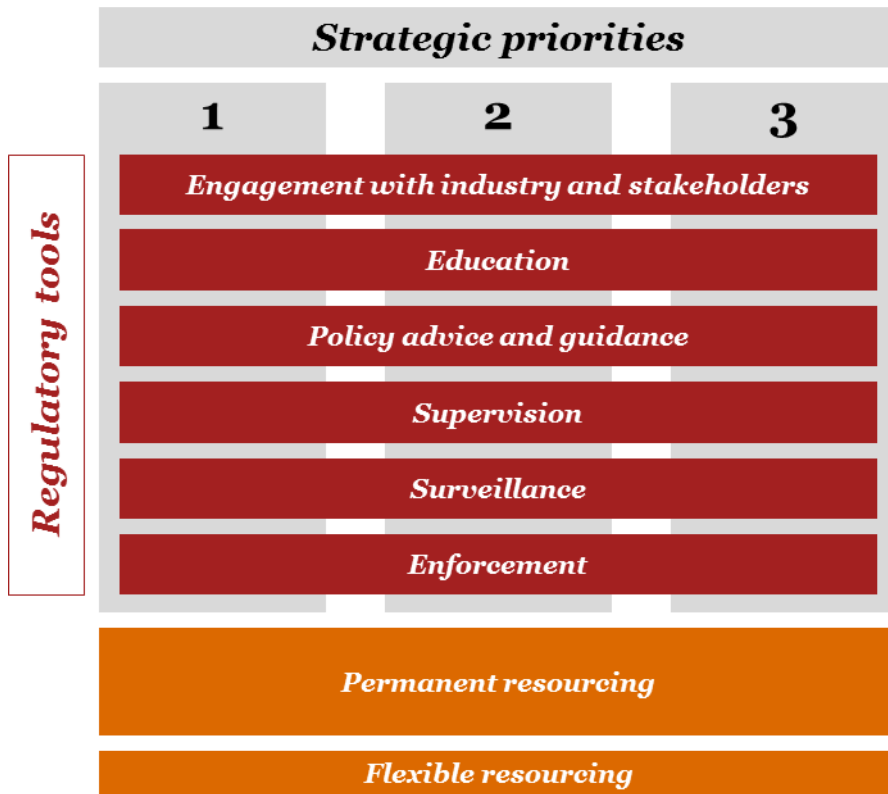
3.6.3 Comparison with other regulators

ASIC's approach to resource allocation differs from the approach taken by the UK's FCA, which has both permanent resources and flexible resources. The flexible resources are used on a dynamic basis and moved between strategic priorities to ensure that resources are allocated in an efficient and effective way.

Below is a diagrammatic representation of such a resourcing model.



Fig 24 Resource allocation aligned to strategic priorities and regulatory tools





3.7 Risk management processes

All the findings listed below, and the key points made throughout this section, are based on evidence arising from the interviews, roundtables, surveys, document review and other research that we conducted. We have not directly attributed each of these observations to a particular source but have only raised observations where there was sufficient evidence gained or consistency of views to support this finding.

The process component of the ASIC review framework is defined as “key processes are efficient and effective and enable continuous improvement within ASIC”.

Key points

- A more formal and integrated risk management framework was introduced in 2011. It continues to evolve, and requires further maturity and resources to ensure it is effective in driving decision-making within ASIC.
- There is no enterprise-wide risk management technology system, which limits the effectiveness of the risk management framework. A system has been procured, with an expected implementation date of May 2016.

3.7.1 Criteria we considered



There are processes in place across the regulator to ensure it is able to run efficiently and effectively and enable continuous improvement, which include:

- a clearly articulated and implemented risk management framework, which ensures that risks are appropriately identified and managed
- appropriate resource allocation to manage risk.

3.7.2 Description of current state at ASIC

3.7.2.1 Risk management processes

Risk management strategy and framework

ASIC’s risk management strategy and framework are defined in its Risk Management Policy. According to the policy, the strategy is to establish a robust risk management framework that ensures ASIC:

- determines and communicates its risk appetite
- identifies and addresses the major market risks that affect consumers, investors and business
- identifies material risks that have the potential to significantly affect ASIC’s operational priorities
- manages residual risk to an acceptable level consistent with ASIC’s risk appetite
- monitors and reports risk information to the Commission in a timely manner.

ASIC’s risk management framework is the cornerstone of its corporate governance framework and day-to-day business operations. Its principal documentary elements are:

- the Risk Management Policy
- the Risk Management Plan
- ASIC Resource Management Instructions



- ASIC Register of Delegations
- ASIC Business Plan
- the Corporate Plan
- Governance Policies
- Risk Management Charter
- Risk Management Process Guidelines.

The risk management framework has continued to evolve since it was introduced in 2011. Over the past year there has been an increased focus on forward thinking, including strategic and emerging risks and the interplay of those risks within ASIC's business planning process.

There are three FTEs in the Risk and Security Services team, with 1.5 FTEs focusing on risk management activities. The Risk team has made good progress in recent years given resource constraints; however the team acknowledges that the risk management framework is still relatively immature.

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.

See Volume 2, Section 3.5.1 for more information.

Risk management process

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.

The Risk Management Process Guidelines set out ASIC's process for managing risk, including its process for assessing, treating and reviewing risk.

See Volume 2, Section 3.5.2 for more information.

Risk management system

ASIC does not have an integrated enterprise-wide risk management technology system, and this limits the effectiveness of its risk management framework. It currently uses Excel spreadsheets to manage risk information, which creates a number of restrictions:

- There is a limited ability to share risk information across different teams in an efficient and effective manner.
- Manual intervention is required to produce insightful management information for boards and committee meetings.
- Data analytics to proactively identify trends cannot be prepared without manual intervention.
- The spreadsheet system cannot interact with other ASIC systems, preventing the automation of certain risk activities.
- The spreadsheet files are susceptible to error in formula and data entry.

In the PwC ASIC staff survey staff were asked to confirm whether "ASIC's internal systems and processes enable us to deliver on our strategic objectives efficiently and effectively". 33% of staff agreed with this statement and 24% were neutral. The current approach to managing risk information using spreadsheets means that risk cannot fully inform the decision-making process at ASIC.



In October 2015 ASIC identified a suitable enterprise-wide risk management IT system. A detailed implementation plan has yet to be developed, however we understand from discussions with the Risk team that the intention is to roll out the new system in late 2015/early 2016. The implementation of the new system could address the shortcomings listed above.

Benchmarking ASIC's risk management framework

ASIC recently participated in Comcover's annual Risk Management Benchmarking Survey for 2015. The self-assessment survey was intended to measure ASIC's current risk management capability and analyse its performance compared to other Australian regulatory entities.

See Volume 2, Section 3.5.3 for further information.



Key points

- A more formal and integrated risk management framework was introduced in 2011. It continues to evolve, and requires further maturity and resources to ensure it is effective in driving decision-making within ASIC.
- There is no enterprise-wide risk management technology system, which limits the effectiveness of the risk management framework. A system has been procured, with an expected implementation date of May 2016.



3.8 Technology

All the findings listed below, and the key points made throughout this section, are based on evidence arising from the interviews, roundtables, surveys, document review and other research that we conducted. We have not directly attributed each of these observations to a particular source but have only raised observations where there was sufficient evidence gained or consistency of views to support this finding.

The technology component of the ASIC review framework is defined as “use of technology facilitates effective decision-making”.

Key points

- The current 2013-2017 IT strategy is being updated into the 2015-2018 IT strategy. The Commission, particularly the Chair, is emphasising transformation, digitisation, and analytics as core to ASIC achieving its Corporate Plan. However, this emphasis does not always flow through the teams, resulting in a lack of technology ownership. Given the technical nature of IT and the fact that it can be difficult to understand, IT often has to drive the changes rather than being driven ‘by the business’. Roundtable participants noted that the culture in a number of the teams does not foster technology innovation and data-driven decision-making.
- The 2015-2018 IT strategy is close to approval and will represent an ambitious change program, with funding and skills availability both key issues. There is relative confidence within ASIC that it can be delivered but also a recognition that continued investment will be needed to ensure they are a leading international regulator where data and technology are fully harnessed.
- The 2015-2018 IT strategy nests into the OneASIC program (FAST2). Funding for OneASIC for 2015-16 has been approved, with a working prototype available in relation to a significantly improved search engine. An emphasis on improved reporting is also essential to OneASIC.
- ASIC has made solid progress over the past four years in moving from a low level of technology maturity dominated by unconnected legacy systems to a higher level of maturity and greater connectivity. This is despite reductions in IT spending (-11.7%) due to budgetary constraints and a skew in spending towards BaU.
- Staff noted that ASIC does not have enough resources with technology and analytics skills. However, IT is taking steps to ensure its staff have the appropriate skills and capability to deliver on the IT strategy.
- It is widely recognised within ASIC that its data analytics capabilities are behind those of some overseas regulators. Steps to rectify this are in train, by leveraging areas of relative strength and connecting skills across the clusters.
- Historically, ASIC has not driven changes within data analytics and innovation to the same extent as the ATO (who have a data CoE) and RBA (who have data and analytics defined capability). ASIC believes that funding constraints and legislative access to data have been major factors in its capacity to drive such changes.
- ASIC does not have a Chief Data Officer to lead the data-driven transformation required. This role would include embedding strong information management and data governance procedures across ASIC, driving analytics capabilities and insights across the business, and improving reporting and automation.

3.8.1 Criteria we considered



There are information technology processes in place across the regulator to ensure it is able to operate as an effective regulator, which include:

- a clearly defined IT strategy in line with the regulator’s strategic priorities



- forward-thinking on investment decisions for future IT needs
- appropriate IT resourcing and capability
- effective capture, use and storage of data.

3.8.2 Description of current state at ASIC

3.8.2.1 IT strategy, planning and governance

The current 2013-2017 IT strategy was approved in 2013 and has three strategic priorities:

1. Delivering on government commitments and reforms – including the OneASIC program and known compliance gaps.
2. Growing business capabilities – including improving ASIC's fragmented information management and workflow systems, and continued investment in the Enterprise Data Warehouse.
3. Optimising IT delivery – including uplifting IT project delivery and the reliability and resilience of core systems.

The execution of the four-year IT strategy has lifted ASIC from a very low level of IT maturity. Improvements have included replacing legacy core infrastructure, enhancing business resilience, introducing end-user computing, addressing cyber security and improving delivery of IT operations and projects. However, while the level of maturity has improved ASIC has acknowledged in the Regulatory BOM that there is still significant room for improvement.

ASIC's investment in a virtual desktop environment provides a flexible, low cost and secure way for employees to access the technology environment. This investment will also support the transition to activity-based working.

The 2015-2018 IT strategy is in draft and is expected to be approved by the end of 2015. It supports the current Corporate Plan, as well as the OneASIC program (see 3.4.2.4 for further details). The 2015-18 IT strategy also reflects:

- the government's digital transformation agenda
- the need to drive innovation in the Regulatory business
- the need to deal with legacy mainframe/Lotus Notes systems.

IT governance is via the Technology Governance Board (TGB), which is chaired by the Chair of ASIC. A subset of Commissioners and SELs, the CIO and COO sit on the TGB. The CIO attends Commission meetings as a standing invitee.

The Commission, particularly the Chair, is emphasising transformation, digitisation, and analytics as core to ASIC achieving its Corporate Plan. However, this does not always flow through the teams, resulting in a lack of technology ownership. Given the technical nature of IT and the fact that it can be difficult to understand, IT often has to drive the changes rather than being driven 'by the business'. Roundtable participants noted that the culture in a number of the teams does not foster technology innovation and data-driven decision-making. Further, a differential approach to technology in different clusters has resulted in the development of ad hoc reporting and analytics solutions (eg within MIG), presenting challenges in IT support, consistency, and resilience.

Delivery of the IT strategy is also driven by a need to mitigate ASIC's key technology operating risks; in particular:

- key IT systems fail or do not support the delivery of ASIC's business activities
- ASIC is unable to access data in an efficient manner.



Participants in the roundtables, one-on-one interviews and PwC's ASIC staff survey expressed views that underpin the importance of technology transformation. For instance, they commented that ASIC's IT is reactive and is still catching up on historical under-investment in infrastructure. Staff also consistently reported that some current systems are antiquated, clunky and difficult to use. This is consistent with responses to Orima's 2015 ASIC staff survey. ASIC note that this survey included Registry staff, who have had challenges within registry systems.

The delivery of the OneASIC program (see section 3.4.2.4) is critical for driving the technology change and also in transforming the Regulatory business and delivering several fundamental improvements, including:

- a common language and standardised data fields for information management
- ASIC 360 (a new search tool and platform for future analytics based on the Microsoft SQL Server)
- common workflows that will simplify and standardise the way ASIC works using Microsoft Dynamics CRM.

The OneASIC program (Fast 2), the regulatory system replacement and the whole-of-government digitisation strategy have been identified as key mitigation strategies for these technology risks.



Key points

- The current 2013-2017 IT strategy is being updated into the 2015-2018 IT strategy. The Commission, particularly the Chair, is emphasising transformation, digitisation, and analytics as core to ASIC achieving its Corporate Plan. However, this emphasis does not always flow through the teams, resulting in a lack of technology ownership. Given the technical nature of IT and the fact that it can be difficult to understand, IT often has to drive the changes rather than being driven 'by the business'. Roundtable participants noted that the culture in a number of the teams does not foster technology innovation and data-driven decision-making.
- The 2015-2018 IT strategy is close to approval and will represent an ambitious change program, with funding and skills availability both key issues. There is relative confidence within ASIC that it can be delivered but also a recognition that continued investment will be needed to ensure they are a leading international regulator where data and technology are fully harnessed.

3.8.2.2 Transformation projects

In addition to the IT strategy and planned IT investments, ASIC has been improving its use of technology and the IT environment through NPP-funded projects. While these projects are business led, IT plays a key role in the scoping and delivery of the projects.

IT has historically had to balance efforts across both the Regulatory and the Registry businesses. The Registry business has been a large focus of IT in recent years. This is in part due to a centralised Registry team working with IT and delivering change and improvements, including digital transformation. However with changes to the Registry business the IT team can focus its investment and effort on supporting and helping transform the Regulatory business.

Legacy systems within the ASIC Regulatory business (RAW, PRIME, Spear) are old and inefficient. These systems are being replaced by the MECS project within the FAST program and the FAST2 program, which is an integral part of OneASIC.

There are three key initiatives driving the transformation of the Regulatory business:

1. FAST program (Flexible Advanced Surveillance Technologies)
2. Regulatory BOM (Business Operating Model)
3. OneASIC program (FAST 2)



FAST program overview

The FAST Program is a four-year, industry-funded multi-million dollar program established in 2012. It will help ASIC better identify, analyse and investigate the integrity of the financial markets. The program is organised into four projects.

- 1 Market Analytics & Intelligence (MAI) System – This project has implemented a new Integrated Market Surveillance System to replace the legacy SMARTs system. Release 1 went live in October 2013 and the last release was in October 2014. It has the flexibility to implement additional advanced surveillance technologies.
- 2 Market Entity Compliance System (MECS) – ASIC’s regulatory compliance portal that provides market entities with tools and information to assist in compliance with a number of regulatory obligations, including those under the ASIC Market Integrity Rules and the Corporations Act 2001. MECS was rolled out to all market entities at the end of July 2015.
- 3 Workflow – This project provides the underpinning for much of the new technology introduced through the FAST program. It delivers end-to-end management and supervision of workflows across the Market Participants team.
- 4 Enhanced Investigative Analytics (EIA) – This project delivers analytic capabilities that will enhance ASIC’s ability to identify relationships across large data sets and help with the consolidation and analysis of intelligence and evidence to support MIG enforcement matters. This will be rolled out before the end of 2015.

Regulatory BOM

The Regulatory Business Operating Model (BOM) is a design document (called a strategic blueprint) that defines ASIC’s Regulatory business’s current-state, drivers for change, target state, and a recommended transformation strategy. The Regulatory BOM was co-sponsored by the ASIC COO and the SEL for Assessment & Intelligence with a high level of IT input and has been used to inform the FAST 2 program.

The Regulatory BOM Phase 2 Deliverables Report previously provided to Commission noted the following technology issues:

- There is no common data strategy across ASIC.
- Disparate systems have emerged to meet user needs on an ad hoc, event-driven basis, demonstrating the need for a greater emphasis on architectural compliance and consistency across ASIC.
- There are skills gaps such as business analyst capability, understanding of information systems and data specialists.
- Taxonomies used across teams differ, affecting the management of information and processes and preventing unified reporting.
- Far too little data is digitised, making regulatory risk identification and assessment a manual process.
- ASIC’s Regulatory business receives a significant amount of paper-based forms and supporting information that can only be analysed manually by reading one document at a time.
- Even if good information is held, it is hard to find.
- An accurate person search and the identification of relationships between entities is difficult and extremely time-consuming.
- Operational reporting is highly manual and time-consuming, and there are issues with its quality.
- When reporting parameters shift a great deal of effort is required to build new reports.
- Ability to undertake enhanced numerical and other analytics is limited (due to poor data/poor information management disciplines, poor data formats, inadequate tools).
- IT systems are not combined seamlessly into an integrated operating platform for users.



OneASIC program (FAST 2)

The FAST 2 Program is a business-led transformation program that responds to issues identified in the Regulatory BOM project. It is part of the OneASIC program that will build ASIC's capabilities and deliver better data and tools for regulation. The overall program of work for FAST 2 includes the following:

1. common language and standardised data fields
2. ASIC 360 – a new search tool based on Microsoft SQL Server
3. common workflows that will simplify and standardise processes across ASIC using Microsoft Dynamics CRM.

The planned technology investment and FAST 2 transformation project will provide ASIC with a strong platform to continue to invest and build from. This will replace the legacy Lotus Notes applications and databases, provide a search capability (ASIC 360), improved reporting and the foundation to build a world-class analytics capability.



Key point

- The 2015-2018 IT strategy nests into the OneASIC program (FAST2). Funding for OneASIC for 2015-16 has been approved, with a working prototype available in relation to a significantly improved search engine. An emphasis on improved reporting is also essential to OneASIC.

3.8.2.3 IT spend and investment decisions

Funding constraints have impacted ASIC's ability to investment in technology and transform the Regulatory and Registry businesses. The total level of IT investment across has ASIC has decreased over the past three years by 11.7%. The majority of spend is related to 'keeping the lights on', i.e. supporting legacy systems. NPP funding has been secured to deliver several major transformation projects, however legacy technology is affecting ASIC's current ability to better leverage data for effective decision-making and management of risk.

Figure 21: IT expenditure 2014-2016

ASIC's IT expenditure	FY2014	FY2015	FY2016
Opex			
Core	45,018,819	42,410,578	40,740,979
Non-core	6,033,606	3,800,182	4,146,776
	51,052,425	46,210,759	44,887,755
Capex			
Core	18,253,380	16,683,276	17,045,000
Non-core	9,089,842	12,149,312	7,255,000
	27,343,222	28,832,588	24,300,000
Total IT spend	78,395,647	75,043,348	69,187,755

IT investment decisions are made through a formal evaluation process. Papers are put forward to the TGB which assesses project investment needs and resources and then rates them across evaluation criteria. Such ratings help determine the prioritisation of projects. Additional funding requests for technology projects are made by the business units through the NPP process to the Department of Finance. In following through on investments, Projects Boards' reports to the TGB on benefits realised for a defined period for each project. Interviews revealed a view that ASIC and IT does benefits management very well; and in a recent government Gateway review IT earned a green rating for its benefits management approach.



Effective investment in technology is essential for ‘future proofing’ ASIC’s ability to meet demands. It should be noted that several technology projects, including FAST, FAR, and NQIW, will have been funded outside the IT budget through NPP funding held by the business units.

FAST received NPP funding of \$43m over four years (before efficiency dividends). Additional sources of funding were also incorporated into the program, resulting in a total budget over four years of \$47m. The estimate for the total FAST 2 program is currently \$56m, with the 2015/2016 capital coming from the IT budget.



Key point

- ASIC has made solid progress over the past four years in moving from a low level of technology maturity dominated by unconnected legacy systems to a higher level of maturity and greater connectivity. This is despite reductions in IT spending (-11.7%) due to budgetary constraints and a skew in spending towards BaU.

3.8.2.4 IT resourcing and capability

As with other public and private sector organisations, ASIC faces challenges in recruiting people with sufficient technology skills. These issues were emphasised in staff roundtables. This is under active consideration by ASIC and there has been considerable IT re-skilling in recent years.

It was noted by ASIC that the salary band restrictions discussed in Section 3.2 are also affecting IT’s ability to attract and retain talented individuals. Over the past five years the IT team has been continually re-skilling as new systems and technologies have been implemented. There is an IT Skills Manager whose role is to help individuals understand the technological skills they might need in the future and also to help them plan their development objectives.

While there are some data analysts in ASIC, there is a general lack of deep analytical capability in virtually all teams (except MIG), limiting the ability to use data analysis to detect risk. This has been recognised by ASIC, and a Data Analyst Network of champions has been formed to examine how to improve the way data is accessed, analysed and used.



Key point

- Staff noted that ASIC does not have enough resources with technology and analytics skills. However, IT is taking steps to ensure its staff have the appropriate skills and capability to deliver on the IT strategy.

3.8.2.5 Data management and analytics

Constraints imposed by immature data management and analytics were a recurrent theme in the review. For instance, in PwC’s ASIC staff survey, staff highlighted the need for better handling and utilisation of data and data analytics to inform risk-based decision-making and undertake surveillance. In interviews and roundtables, staff identified multiple issues associated with data search functionality. The majority of complaints related to the inefficiency of highly manual search processes involving multiple siloed databases, and the use of PDFs rather than digitised data. Participants said there are a large number of Lotus Notes databases, many of which are difficult to navigate. The replacement of these applications has begun, with MECS and CAA having been delivered and FAST 2 in progress.

ASIC leaders are well aware of these issues, especially in the context of the importance of data management and analytics for comparable regulators. Hence the emphasis in the OneASIC program on responding to these issues. As noted above however, this will still leave ASIC with additional investment required to ensure they are a leading international regulator where data and technology are fully harnessed. The review’s roundtable on technology and big data highlighted that ASIC seems to have been slower to recognise the importance of data



analytics and innovation than organisations such as the ATO and RBA, but is now trying to catch up. These regulators' investment in better data management and analytics is ahead of ASIC's by a number of years. However, ASIC is hampered by limitations in the data it can request and the non-digital form of that data under current legislation.

ASIC collects a wealth of information, from a number of sources, about its stakeholder community and its own internal operations. However, the reliance on IBM 3090 mainframe applications and the 100+ Lotus Notes applications across the organisation means that not all information is easily accessible. In addition a lot of information resides in paper records or scanned images of paper records that are not easily searchable. The EIA project currently being implemented and the planned ASIC 360 search project as part of FAST 2 will provide a new reporting and analytics platform that will help make this information more readily available.

A separate program of work that complements and builds on FAST 2 would be required to drive the data management and analytics vision across ASIC. ASIC does not have a Chief Data Officer to lead the data-driven transformation required.

ASIC has established a Data Analyst Network consisting of 75 staff from across the business and IT. Its aim is to increase the knowledge and capability in the areas of understanding the power of data and driving further enhancement of ASIC's data analysis capability. There is, however, no position of Chief Data (or Digital) Officer to lead these efforts, as would be normally be regarded as best practice. MIG possesses strong data analytics skills. Other national and overseas regulators use a Data Analytics Centre of Excellence to drive innovation and improvements across businesses.



Key points

- It is widely recognised within ASIC that its data analytics capabilities are behind those of some overseas regulators. Steps to rectify this are in train, by leveraging areas of relative strength and connecting skills across the clusters.
- Historically, ASIC has not driven changes within data analytics and innovation to the same extent as the ATO (who have a data CoE) and RBA (who have data and analytics defined capability). ASIC believes that funding constraints and legislative access to data have been major factors in its capacity to drive such changes.
- ASIC does not have a Chief Data Officer to lead the data-driven transformation required. This role would include embedding strong information management and data governance procedures across ASIC, driving analytics capabilities and insights across the business, and improving reporting and automation.

Glossary

Term	Definition
AAT	Administrative Appeals Tribunal
ABS	Australian Bureau of Statistics
ACCC	Australian Competition and Consumer Commission
Advisory panels	The external panels that advise ASIC (eg External Advisory Panel, Consumer Advisory Panel, and Director Advisory Panel). The panels do not provide governance and oversight of ASIC, and the panel members do not have any fiduciary duties.
ANAO	Australia National Audit Office
APRA	Australian Prudential Regulatory Authority (Australia's prudential supervisor of ADIs, insurance companies and superannuation funds and trustees)
APS	Australian Public Service
APSC	Australian Public Service Commission
ASIC Act	<i>Australian Securities and Investments Commission Act 2001</i>
ASIC's 2015 internal staff survey	ASIC conducts an annual employee engagement survey which is completed by all ASIC staff. It is administered by the external service provider Orima.
ASX	Australian Securities Exchange
ATO	Australian Taxation Office
AUSTRAC	Australian Transaction Reports and Analysis Centre
Banks Report	<i>Reducing Regulatory Burden on Business, 2006</i>
BaU	Business as usual
Capability review	<i>Our Future Capabilities Today, July 2015</i> . This report forms part of an ongoing capability review being conducted by an external consulting firm.
C-Suite	Generally used to refer to an organisation's top level of management (whose titles usually start with 'C'). In ASIC's case, it consists of the Chief Operations Officer, Chief Legal Officer, Chief Financial Officer, and Chief Information Officer. ASIC does not have a CEO.
CAP	Consumer Advisory Panel
Capex; opex	Capital expenditure; operating expenditure
CFPB	Consumer Financial Protection Bureau (US)

Term	Definition
Cluster	The term used by ASIC to describe how the organisation is structured. There are three clusters: Markets, Investors & Financial Consumers, and Registry.
COBIT	Control Objectives for Information and Related Technology (a framework used internationally for IT management and governance).
the Commission	The body that heads up ASIC. It consists of five Commissioners, including the Chair.
Corporations Act 2001	The principal legislation regulating companies in Australia.
Corporations Agreement 2002 (as amended)	This agreement confers the powers for regulating corporations from the states to ASIC.
Dark pool	A private forum for trading securities.
Davis Review, or Davis Inquiry(UK)	An independent inquiry into the handling of the FCA's announcement of proposed supervisory work on the fair treatment of long-standing customers in life insurance.
DCI	Deposit Takers, Credit and Insurers (an internal ASIC Stakeholder team, which forms part of the Investors & Financial Consumers cluster).
EA	Enterprise Agreement
EAP	External Advisory Panel
EL1, EL2	Executive Level 1, Executive Level 2 (internal leadership staff levels at ASIC).
ERG	Emerging Risks Group (within ASIC).
External stakeholder survey	An externally commissioned survey of ASIC's key stakeholders, including its regulated population, other regulators, and consumers and investors. The survey was administered by Susan Bell Research and formed part of the Treasury Capability Review of ASIC.
FCA	Financial Conduct Authority (the organisation responsible for regulation of capital markets and financial services in the United Kingdom)
FMA	Financial Markets Authority (the organisation responsible for regulation of capital markets and financial services in New Zealand)
FSI, or the Murray Inquiry	Financial System Inquiry (also known as the Murray Inquiry). The government's 2014 inquiry into Australia's financial system. Its purpose was to create a blueprint for the financial system for the next decade.
IFA	Independent Financial Adviser
IOSCO	International Organization of Securities Commissions
MAS	Monetary Authority of Singapore
M&BR	Misconduct and Breach Reporting team (within ASIC)

Term	Definition
2008 McKinsey review	A review of ASIC functions conducted by the external consulting firm, McKinsey & Company.
MIG	Market Integrity Group (an internal group within ASIC's Markets cluster)
MoU	Memorandum of Understanding
NPP	New policy proposal
Oliver Wyman report	<i>Performance Measurement and Reporting - Final Recommendations, August 2015</i>
P&D	People and Development (an internal group within ASIC).
PGPA	<i>Public Governance, Performance and Accountability Act 2013</i>
PSA	<i>Public Service Act 1999</i>
RBA	Reserve Bank of Australia
RPG	Regulatory Policy Group (within ASIC)
SEC	Securities and Exchange Commission (US)
SEL	Senior Executive Leadership
Senate Inquiry	The 2014 inquiry by the Senate Economics References Committee into the performance of ASIC.
SES	Senior Executive Services
SFC	Securities and Futures Commission (Hong Kong)
2015 State of the Service Census	a survey sent to all APS agencies employing 20 or more staff under the PSA, which forms the basis of a report submitted to Parliament by the Public Service Commissioner
TGB	Technology Governance Board (within ASIC)
Uhrig Report	<i>Review of the Corporate Governance of Statutory Authorities and Office Holders, 2003; a report commissioned by the Australian Government</i>
User Pays Funding Model	The model used by ASIC to recover the cost of expended resources from its users.

ASIC's response

ASIC's response to the Evidence report is included below.



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20 November 2015

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Dear Hugh,

Thank you for providing us with the final version of PwC's Evidence Report to the ASIC Capability Review. ASIC has welcomed the opportunity to engage with PwC and provide feedback during the development of the report. We have found this process useful and constructive, and we acknowledge the considerable work that has gone into producing the report.

We particularly welcome the report's acknowledgement of the extent of change within ASIC in recent years, reflecting changes in the market environment and emerging risks, funding reductions, and strategic initiatives driven by the Commission. We also welcome its acknowledgement of the initiatives that ASIC has identified—in eight areas—to further improve our capability into the future.

Methodology and evidence

The Evidence Report has been developed based on a methodology and framework agreed between PwC, the Capability Review Panel and the Treasury. The methodology necessarily has some limitations, including those explicitly acknowledged in the Evidence Report (see 'About this review', p i–iii), and the relatively short timeframes available for carrying out the evidence-gathering process.

Consistent with this methodology, a significant part of the evidence is made up of opinions of various ASIC stakeholders on aspects of ASIC's operations, strategic priorities and mandate. This includes opinions provided during the course of roundtable meetings and interviews, as well as those expressed through surveys.

We do not contest that these opinions were actually provided as reported, or that they provide a useful component within an overall evidence-gathering process.

Nevertheless, it is also important to recognise that such opinions are necessarily subjective. It will be for the Panel to determine what weight should be placed upon them in relation to any particular issue. Overall, we are satisfied that, where opinion evidence is included in the Evidence Report, its source is clearly identified so that the Panel may make this assessment.

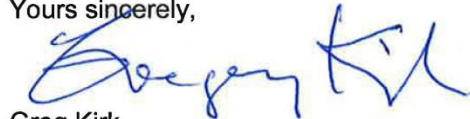
Substantive findings

The Evidence Report makes a number of findings about ASIC, the way it is structured, and its operations and priorities. While we note these findings, we think the most appropriate forum for discussing these substantive issues is with the Panel itself, as it finalises its own report and recommendations, and have not commented on them in detail in this response for that reason.

In some cases, findings in the Evidence Report go to issues ASIC has itself identified, including the need to support ASIC's regulatory business with the best possible data-handling systems and capacity, and, as noted above, the report acknowledges the eight initiatives ASIC has identified to address them. It is useful to explore these issues further in the course of the ASIC Capability Review, as a means to ensure that ASIC builds the capacity it needs for the future.

Thank you again for PWC's work on the report.

Yours sincerely,



Greg Kirk
Senior Executive Leader
Strategy Group

