



Statement of Expectations - Australian Securities and Investments Commission April 2018

1. This Statement sets out the Government's expectations for the Australian Securities and Investments Commission (ASIC). The Government expects ASIC to actively exercise its powers and functions to achieve its objectives, as set out in this Statement.
2. More specifically, this Statement outlines the Government's expectations for how ASIC fulfils its role, including how it balances its objectives and responds to changing circumstances. It also outlines expectations for how ASIC manages its relationships with the Government, other agencies, and regulators, and issues of transparency and accountability.
3. The Government recognises and respects the independence of ASIC and its responsibility for market conduct regulation, as provided by the *Australian Securities and Investments Commission Act 2001* (ASIC Act). To maintain confidence in the regulatory framework, it is imperative that ASIC acts, and is perceived to act, independently in performing its functions and exercising its powers, as set out in statute.
4. ASIC is established to administer the regulatory framework that governs corporations generally, and licensed financial firms and financial markets in particular, and the Government therefore expects that ASIC will take into account the Government's policy priorities in performing its role and discharging its responsibilities.
5. ASIC is expected to reply to this Statement with its own Statement of Intent.

ASIC's role

6. ASIC is responsible for facilitating and improving the performance of the financial system (including fair and efficient markets); promoting the confident and informed participation of investors and consumers; and conducting an efficient registry.
7. A key role for ASIC is to reduce the likelihood that consumers will suffer losses as a result of misconduct by corporations and financial services licensees. This is done by ASIC enforcing and promoting expected standards of conduct using the range of regulatory tools at its disposal, including stakeholder engagement, surveillance, guidance, enforcement and policy advice.
8. The Government expects ASIC to use its full regulatory toolkit and to direct a substantial proportion of its resources to surveillance and enforcement. Timely and effective enforcement strategies will deter misconduct and maintain confidence in the financial system. ASIC should clearly articulate, publicly, when it will, and will not, take certain enforcement action, so as to manage the public's expectations and to promote confidence in ASIC.
9. The Government also expects that ASIC will take a risk-based approach to identifying and addressing misconduct. As part of this, ASIC should have regard to the circumstances and extent of the risks involved in each matter and in relation to each industry participant to ensure that any action it takes is appropriately targeted and proportionate.
10. ASIC also plays an important role in advancing financial literacy in the community. The Government considers that improved financial literacy will assist consumers to choose financial products and services that better meet their needs. The Government expects ASIC to continue its efforts towards, and its focus on, improving financial literacy.

11. In performing its role, the Government expects ASIC to monitor the market proactively in order to identify and respond to misconduct efficiently. The identification and prioritisation of market risks should be informed by engagement with industry, as well as through data analytics. Consistent with the additional funding provided to ASIC in 2016 to enhance ASIC's data analytics and data management systems, the Government expects ASIC to apply sophisticated analytical techniques to detect and respond to financial sector misconduct more effectively.

Balancing objectives for the financial system of the future

12. The Government recognises that investor and consumer trust and confidence and fair and efficient markets are a pre-condition for markets to fund economic growth. As a market conduct regulator, ASIC is required to balance several objectives aimed at both facilitating markets and promoting trust and confidence in the financial system.

13. The Government acknowledges that, in performing its role, ASIC is required to balance several objectives. At times, this may not be straightforward and the appropriate balance may require trade-offs.

14. The Government has also committed to require ASIC explicitly to consider competition issues as part of its regulatory function. The Government now expects ASIC, in making its regulatory decisions, to have regard to competition issues to the full extent permitted by its enabling legislation.

15. The Government also expects ASIC to publicly communicate how it has balanced its regulatory responsibilities, including competition aspects, in meeting its objectives. This is necessary to promote confidence in ASIC and to ensure the accountability of ASIC for such decisions.

16. However, ASIC cannot be expected to, and nor should it seek to, eliminate all risk in the financial system. Our free market system, in allocating capital efficiently and funding economic growth, necessarily involves investors assuming some risk in order to make a return. The Government expects ASIC to clearly communicate publicly the parameters of its role and functions, so that the public is aware that ASIC cannot eliminate all risk of loss in the market.

Responding to changing circumstances

17. In achieving its strategic priorities and legislative objectives, the Government recognises that ASIC's priorities are subject to change over time as the regulatory needs of the Australian economy and markets change. The Government expects ASIC to conduct assessments of its operating environment regularly to inform its allocation of resources and to build its capability. In its annual Corporate Plan, ASIC should identify any relevant risks and opportunities that may affect its ability to achieve its mission and articulate clearly how its strategic priorities reflect these risks and opportunities.

18. The Government has announced a number of measures to ensure that ASIC has the requisite skills and resources to carry out its role effectively in changing circumstances. The Government has announced that it will remove ASIC employees from the *Public Service Act 1999* to assist with operational flexibility. ASIC will continue to be required to comply with the APS Workplace Bargaining Policy in relation to ASIC employees.

19. The Government expects ASIC to continue examining its workforce and other capabilities having regard to the initiatives put in place as part of ASIC's Response and Implementation Plan of the Capability Review recommendations (ASIC's Implementation Plan). The Government expects ASIC to report annually on its consideration of capabilities and the actions it is taking to maintain and develop requisite capabilities.

20. In 2017 the Government introduced an industry funding model for ASIC to support ASIC becoming a stronger regulator. Industry funding will provide ASIC with a richer dataset and require ASIC to explain, and engage on, its regulatory priorities and the allocation of resources to regulatory activities. The Government expects that ASIC will maintain a communications strategy that explains to industry and consumers its strategic priorities and choice of regulatory tools or pursuit of particular objectives in making regulatory decisions.

21. The Government will continue to determine ASIC's total budget funding. Consistent with the Australian Government Charging Framework, ASIC will undertake annual consultation on the cost recovery levies necessary to recover ASIC's costs through a Cost Recovery Implementation Statement (CRIS). The CRIS will outline ASIC's forecast regulatory costs and activities for each financial year. The Government expects that the CRIS will increase the transparency of ASIC's

costs, and strengthen its accountability to stakeholders by enabling them to assess whether resources have been allocated appropriately and efficiently.

The Government's policy priorities for the financial system

22. The Government is committed to increasing consumer trust and confidence and combatting misconduct in the financial services industry. The Government has announced that it will provide ASIC with a range of new powers to strengthen its ability to prevent consumer detriment. This includes a product intervention power, augmented by new design and distribution obligations for issuers and distributors of financial products. The Government will establish a new one-stop shop, external dispute resolution scheme, the Australian Financial Complaints Authority, and will empower ASIC to monitor and improve both internal and external dispute resolution services

23. The Government is also committed to improving protections for whistleblowers, including permitting a wider range of disclosures to be made to ASIC, which will cover whistleblower reports across almost all the private sector. This will provide whistleblowers with the confidence to come forward, knowing they will be protected, which in turn will assist with the deterrence, detection and prosecution of misconduct.

24. The Government's financial system agenda will also position Australia's financial system to best respond to the challenges and opportunities of the future. The Government expects ASIC to actively support innovation in the financial system. The Government expects ASIC to continue to develop strategies that address the need for a more innovative approach to regulation in an environment of digital disruption and financial disintermediation.

25. The Government is committed to ensuring that Australia is positioned to benefit from the greater use of data. Increased data has the potential to boost innovation, to help Australia to remain globally competitive. The Government expects ASIC, together with other relevant regulators, to facilitate the greater sharing of Government data, taking into account privacy concerns and other legislative responsibilities. Over time, ASIC is expected to maintain a data policy that is consistent with the Government's commitment to facilitate more effective use of data in the financial services sector, to better serve consumers' needs.

The Government's regulatory reform program

26. The Government is committed to reducing red tape and compliance costs for business and the community as part of broader regulatory reforms that encourage innovation and competition and enhance productivity and economic growth. The Government acknowledges the role ASIC has played in implementing the Government's Regulatory Reform Agenda, including its contributions towards reducing red tape. The Government expects ASIC to continue to reduce red tape and contribute more broadly to the Government's renewed regulatory reform agenda.

27. The Government also expects ASIC to comply with the Government's Regulatory Impact Analysis requirements for all regulatory proposals. These include using the Regulatory Burden Measurement framework when considering the impacts of regulation on business and the community and costing proposals before they are introduced.

28. ASIC should act in accordance with regulatory best practice in making decisions, and adopting policies and processes, and in communicating with stakeholders, to maximise effectiveness, efficiency and transparency, and to minimise compliance costs. The Government expects ASIC to review its policies and procedures regularly to identify improvements to achieve best practice in these areas.

29. ASIC is subject to the Regulator Performance Framework, which requires regulators to make an annual assessment of their performance in the administration of regulation which includes reporting on its red tape reduction activities.

30. The Government's preference is for principles-based regulation, which identifies the desired outcomes and allows industry participants to achieve the outcomes in their own way, rather than prescribing specific conduct. A principles-based approach is more flexible and is likely to accommodate change within the economy, allow for innovation and enterprise, and reduce compliance costs, by allowing regulated entities to determine the best way to meet regulatory objectives.

Relationship with the regulated population and industry stakeholders

31. The Government expects ASIC to have an open and sound working relationship with supervised entities and to ensure that industry participants are encouraged to communicate considered and candid views to ASIC. ASIC must be able to engage with market participants and the public to explain ASIC's actions in a manner consistent with its enabling legislation.

32. The Government expects ASIC to engage with its regulated population, including through the use of its external advisory panels, to understand contemporary market practices, more effective ways for ASIC to perform its functions and emerging trends. The Government expects ASIC to develop stakeholder management capabilities including as set out in ASIC's Implementation Plan and to engage proactively with industry in a way that promotes greater compliance with the law.

33. Where ASIC has powers to make orders or rules, modify the law or make exemptions, it should use those powers to the greatest extent possible, consistent with its enabling legislation. Where the exercise of that power would have significant implications for the market or the regulated population, the Government expects ASIC to consult with stakeholders and provide appropriate time to implement the regulatory change.

34. The Government expects that ASIC will publish regulatory guides in a timely and efficient manner. The Government also expects ASIC to identify opportunities to collaborate with the private sector in regulating and monitoring particular industries where collaboration (including co-regulation, quasi-regulation or self-regulation) can deliver better regulatory outcomes.

Relationship with the government and the responsible ministers

35. ASIC plays an essential role in ensuring that the Government is well placed to respond promptly to issues that may arise in the financial and corporate regulatory policy areas. This includes informing the Government in a timely manner about problems that ASIC has encountered in performing its regulatory functions, as well as significant market developments.

36. The Government expects ASIC to provide Treasury portfolio Ministers with accurate and timely advice on significant issues in ASIC's core areas of responsibility. Examples include matters which the Government may be required to discuss in Parliament, important operational or budgetary issues, and decisions regarding the appropriate action for ASIC to take following substantial problems or disruption in the market.

37. The Minister and the Chair of ASIC will meet at least quarterly to discuss emerging issues and the Chair will provide an annual report to the Minister on strategic regulatory issues, covering ASIC's assessment of emerging trends and risks in all major market segments and the actions ASIC has taken in response.

38. In addition, the Minister and the Chair of ASIC will also meet at least annually to discuss ASIC's performance. This meeting will provide an opportunity to discuss how effective Commissioners have been in engaging with stakeholders and acting strategically to meet ASIC's objectives. The discussion will draw on feedback from the Financial Sector Advisory Council and other stakeholders on ASIC's performance and ASIC's progress in achieving its intended goals, including those articulated in ASIC's Corporate Plan and continuing to operate consistently with actions outlined in ASIC's Implementation Plan.

39. The Minister has delegated to ASIC some of the Minister's powers under the *Corporations Act 2001* and other Acts. The Government expects ASIC to exercise the Minister's delegated powers in accordance with any guidelines that have been issued by the Minister with respect to those powers.

Relationship with the Treasury

40. The Government expects the Treasury and ASIC to maintain a close relationship to support the Treasury's role in advising the Treasury Ministers. This is an important way for ASIC to contribute to policy development.

41. In working with the Treasury, the Government expects ASIC to:

- provide the Secretary to the Treasury with a copy of all information, briefings, press releases and correspondence provided to Ministers;

- keep the Secretary to the Treasury appropriately informed of significant meetings between ASIC and Government Ministers and other Parliamentary bodies; and
- advise the Treasury about changes to legislation that, in ASIC's opinion, would assist in improving the regulatory framework in a manner that minimises compliance costs for business and the community.

Relationship with other government bodies and regulators

42. The Government expects ASIC to meet regularly with and maintain collaborative working relationships with other Commonwealth and State and Territory agencies (including the agencies of the Council of Financial Regulators (CFR)). ASIC is also expected to have a collaborative working relationship with its counterpart regulators in overseas jurisdictions and international regulatory bodies.

43. The Government expects ASIC to work with the CFR and other government bodies to identify and make the Government aware of emerging issues and gaps in regulation that could pose systemic risks.

44. The Government expects ASIC to work collaboratively with other regulators and government bodies and if there are areas of regulatory overlap, to clearly articulate its areas of responsibility. ASIC should also co-operate with other bodies to avoid duplication of supervisory activities and consider whether outcomes could be achieved by using existing regulation administered by another regulator. This is to ensure an integrated regulatory framework and to reduce compliance costs for regulated entities.

45. The Government expects that ASIC consider the outcomes or recommendations of relevant Government established panels, reviews or inquiries.

46. The Government expects the Chair of ASIC to meet regularly with the Financial Sector Advisory Council to provide an update on contemporary regulatory issues and to discuss ASIC's priorities, engagement strategies, ongoing performance and emerging market practices.

Transparency and accountability

47. ASIC operates as part of the Australian Government and is accountable to the Parliament, and ultimately to the public, through the Treasury Ministers, the Parliamentary Committee process and the tabling of its Annual Report.

48. The Government expects ASIC to communicate regularly to the public its key decisions and regulatory outcomes and to demonstrate clearly how those decisions and outcomes align with ASIC's legislative objectives and strategic objectives.

49. The Government expects ASIC to comply with the requirements of the whole-of-government performance management framework under the *Public Governance, Performance and Accountability Act 2013* (PGPA Act). In particular, the Government expects ASIC to integrate performance measures into its Corporate Plan and subsequently report on outcomes against each measure in its Annual Report. In reporting on its performance, ASIC should seek feedback from its external advisory panels and its regulated population. The Government will assess ASIC performance against the measures in its Corporate Plan as part of its oversight function in determining whether ASIC is successfully achieving its objectives.

50. ASIC is required to operate within a budget and this requires choices being made on how resources are used. The requirements for ASIC's financial management are set out in the PGPA Act and the Finance Minister's Orders. The Government expects ASIC aim to ensure efficiency in its operations and demonstrate value for money for the services that it delivers.

Conclusion

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

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