



ASIC
Australian Securities &
Investments Commission

ASIC immunity policy

February 2021

About this policy

This policy sets out information on applications for immunity from civil penalty or criminal proceedings for a contravention of a provision in Pt 7.10 of the Corporations Act.

It is for individuals who:

- think they may have contravened, with at least one other person, a provision in Pt 7.10 of the Corporations Act;
- wish to apply for immunity from civil penalty or criminal proceedings; and
- intend to cooperate with ASIC in relation to our investigation and any court proceedings regarding the contravention.

Policy ownership

The Office of Enforcement is responsible for the development and implementation of this policy.

Policy application

This policy applies to all individuals who:

- think they may have contravened, with at least one other person, a provision in Pt 7.10 of the Corporations Act;
- wish to apply for immunity from civil penalty or criminal proceedings for the contravention; and
- intend to cooperate with ASIC in relation to our investigation and any court proceedings regarding the contravention.

Policy approval and review

This policy will be reviewed at least every two years. Suggestions regarding this policy should be directed to the Office of Enforcement.

This policy has been reviewed and approved by the following parties on the following dates.

Version	Reviewer	Comments	Approved	Date
1.0	General Counsel and Office of Enforcement	Adoption of the policy	Yes	February 2021

Policy location

This policy is published on myASIC and on ASIC's website.

Privacy and confidentiality

ASIC will only collect, store, use and disclose personal information provided as part of an application for immunity in accordance with the Privacy Act, the Corporations Act and the ASIC Act.

Please refer to [ASIC's Privacy Policy](#) for information about how we handle your personal information, your rights to seek access to and correct personal information, and your rights to complain about breaches of your privacy.

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A Overview

Key points

This policy sets out information on applications for immunity from civil penalty or criminal proceedings for a contravention of a provision in Pt 7.10 of the *Corporations Act 2001* (Corporations Act).

This policy does not cover immunity from administrative or compensation proceedings.

Who this policy is for

- 1 This policy is for individuals who:
 - (a) think they may have contravened, with at least one other person, a provision in Pt 7.10 of the Corporations Act;
 - (b) wish to apply for immunity from civil penalty or criminal proceedings for the contravention; and
 - (c) intend to cooperate with ASIC in relation to our investigation and any court proceedings regarding the contravention.

What this policy is about

- 2 This policy sets out information on applications for immunity from civil penalty or criminal proceedings for a contravention of a provision in Pt 7.10 of the Corporations Act ('misconduct').
- 3 Part 7.10 deals with many of the most serious, complex and difficult-to-detect contraventions in financial markets, including insider trading, market manipulation, false trading and market rigging, and dishonest, misleading and deceptive conduct in relation to financial products and services.

Note: In this policy, all references to Pt 7.10 are to the Corporations Act.
- 4 Under this policy, if you are the first individual to disclose misconduct in which you and at least one other person are (or have been) involved, you may be eligible for immunity from civil penalty and criminal proceedings, subject to conditions: see paragraph 11. These conditions include:
 - (a) you have not coerced any other person(s) to participate in the misconduct;
 - (b) you are willing to self-report that misconduct to ASIC; and

- (c) you fully cooperate by providing valuable information that we can use in our investigations of others involved in the misconduct and in subsequent court proceedings.

5 This policy is based on a recognition that it may be in the public interest to provide an incentive to individuals who have combined with others to break the law, to reveal misconduct that may otherwise have remained undiscovered.

Coverage of this policy

6 This policy covers immunity from civil penalty and criminal proceedings for alleged contraventions of a provision in Pt 7.10. ASIC will not grant immunity from administrative or compensation proceedings: see paragraphs 20–25.

7 Following a recommendation from ASIC, the Commonwealth Director of Public Prosecutions (DPP) can grant immunity from criminal proceedings for alleged contraventions of a provision in Pt 7.10. In determining whether to grant immunity from criminal proceedings, the office of the DPP is guided by ASIC’s recommendation and the principles set out in Chapter 6 and Annexure E of the [Prosecution Policy of the Commonwealth](#).

Outline of this policy

- 8 This policy includes the following topics:
- (a) eligibility for immunity (see Section B);
 - (b) the types of immunity covered by this policy (see Section C);
 - (c) how to apply for immunity (see Section D);
 - (d) consideration and granting of immunity (see Section E); and
 - (e) privacy and confidentiality (see Section F).

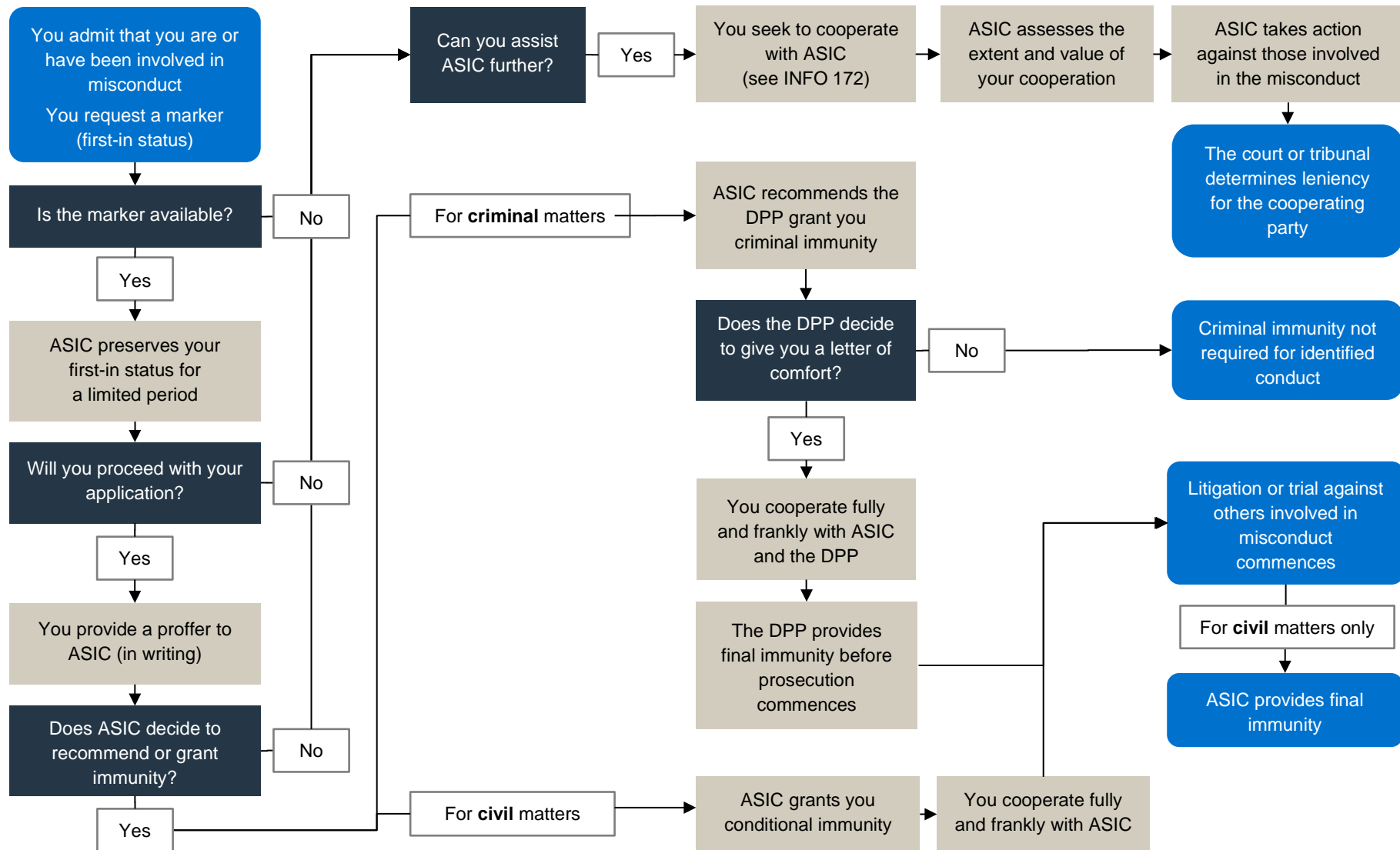
Summary of the immunity process

9 A flowchart summarising the process of seeking immunity is set out in Figure 1.

Where to get more information

- 10 For more information about our immunity policy:
- (a) email a question to immunity@asic.gov.au; or
 - (b) read the [frequently asked questions](#) on our website.

Figure 1: The process of seeking immunity



Note: The information in this figure is contained within the text (accessible version) and in [Information Sheet 172 Cooperating with ASIC \(INFO 172\)](#).

B Eligibility for immunity

Key points

To be eligible for immunity, you must meet a set of conditions: see paragraph 11.

If you are involved in misconduct but do not qualify for immunity, you are encouraged to cooperate with ASIC: see paragraph 12.

Corporate entities are not eligible for immunity under this policy.

Conditions of immunity

- 11 You are eligible for immunity if the following conditions are satisfied:
- (a) you are, or have been, involved in conduct that may contravene a provision in Pt 7.10 of the Corporations Act ('misconduct');
 - (b) you are one of two or more persons who were, or are (if the misconduct is ongoing), involved in the misconduct;

Note: The other person(s) involved in the misconduct can include natural persons or corporate entities.
 - (c) you have not coerced any other person(s) to engage, participate or be involved in the misconduct;
 - (d) ASIC has not already commenced an investigation in respect of the misconduct when your disclosure is made;
 - (e) you admit that you have participated, or are participating, in the misconduct;
 - (f) you are the first person to apply for immunity in respect of the misconduct;
 - (g) you were not the instigator of the misconduct;
 - (h) you have either ceased your involvement in the misconduct or are prepared to immediately cease engaging in the misconduct; and
 - (i) you have provided full, frank and truthful disclosure, have cooperated fully and expeditiously while making the application, and have undertaken to continue to do so throughout ASIC's investigation and any ensuing court proceedings.
- 12 If you are involved in misconduct but do not qualify for immunity, you are encouraged to cooperate with ASIC. [Information Sheet 172](#) *Cooperating with ASIC* (INFO 172) outlines the benefits of cooperating with ASIC.

- 13 An individual who has information about forms of misconduct that ASIC investigates, but who is not involved in the misconduct, should see [Regulatory Guide 108](#) *No-action letters* (RG 108), [Information Sheet 153](#) *How ASIC deals with reports of misconduct* (INFO 153), [Information Sheet 238](#) *Whistleblower rights and protections* (INFO 238) and [Information Sheet 239](#) *How ASIC handles whistleblower reports* (INFO 239).
- 14 Corporate entities are not eligible for immunity under this policy.

C Types of immunity

Key points

The policy covers immunity from civil penalty and criminal proceedings for alleged contraventions of a provision in Pt 7.10: see paragraphs 15–19.

We will not grant immunity from administrative or compensation proceedings: see paragraphs 20–25.

Types of immunity covered by this immunity policy

- 15 ASIC can pursue a variety of enforcement remedies, depending on the seriousness and consequences of the misconduct.

Punitive proceedings

- 16 The policy applies to misconduct by individuals who may be the subject of:
- (a) civil penalty proceedings that may be conducted by ASIC; and
 - (b) criminal proceedings that may be conducted by the DPP.

Civil penalty proceedings

- 17 ASIC conducts civil penalty proceedings against persons alleged to have breached a provision in Pt 7.10. If we are satisfied that you meet the conditions of this policy, we will grant you conditional and final immunity in accordance with the procedures outlined in Section E at paragraphs 45–48 and 55–56.

Criminal proceedings

- 18 When ASIC is of the view that you satisfy the conditions of immunity under this policy, we will make a recommendation to the DPP that immunity from prosecution be granted to you under s9 of the *Director of Public Prosecutions Act 1983* (DPP Act) in relation to the disclosed misconduct. Only the DPP can grant immunity from prosecution for alleged criminal offences against the laws of the Commonwealth.
- 19 For more information about how immunity from criminal proceedings is granted, see Section E.

What this policy does not cover

- 20 This policy does not apply to misconduct that may be the subject of administrative or compensation actions.

Administrative actions

- 21 ASIC also pursues remedies that are primarily designed to protect investors and financial consumers rather than punish those involved in breaching the law. These are known as ‘administrative’ actions.

- 22 Examples of administrative actions are:

- (a) disqualification from managing a corporation or a ban on providing financial services or engaging in credit activities; and
- (b) revocation, suspension or variation of conditions of a licence.

- 23 Given the important protective function of administrative actions, we will not provide immunity to an individual under this policy from any administrative action. In accordance with our cooperation policy, we will take into account any cooperation provided by an individual in determining whether to take administrative action against the individual: see [INFO 172](#).

Compensation actions

- 24 ASIC also has powers under s50 of the *Australian Securities and Investments Commission Act 2001* (ASIC Act) to take representative action to recover damages or property for persons who have suffered loss. ASIC will ordinarily only take action to recover damages or property on a person’s behalf if this would be in the public interest, beyond the interests of the affected persons.
- 25 ASIC will not provide immunity to individuals from any compensation actions.

D How to apply for immunity

Key points

To apply for immunity you need to contact ASIC to request a marker: see paragraphs 26–31.

You can request a marker by:

- completing our [online form](#);
- contacting the ASIC Immunity Policy Hotline on +612 9911 5008; or
- emailing ASIC at immunity@asic.gov.au.

If you are issued with a marker, you will need to provide a detailed description of the misconduct known as a ‘proffer’: see paragraphs 39–42.

As long as you hold the marker for a particular course of misconduct, no other individual will be able to receive a marker for the same misconduct: see paragraph 29.

Requesting a marker

- 26 If you consider yourself to be eligible for immunity under the policy, either you or your legal representative may approach ASIC and request the issue of a ‘marker’. If we issue a marker, it will preserve your status as the first party to apply to ASIC for immunity in respect of the conduct (‘first-in status’).

Note: A request for a marker will automatically be considered as an application for both civil and criminal immunity.

- 27 The marker will be valid for a limited period that we will specify when issuing the marker. This will be a reasonable time period to allow you to gather the information necessary to demonstrate that you satisfy the conditions of immunity.
- 28 To obtain a marker, you must provide a description of the misconduct in sufficient detail to allow ASIC to confirm that no other person has been issued a marker by ASIC in respect of the same misconduct.
- 29 As long as you hold the marker for the particular misconduct, no other individual involved in the same misconduct will be allowed to take that place in the immunity queue, even if another individual can satisfy all conditions immediately.
- 30 You may request a marker on a hypothetical, anonymous basis but your application must disclose sufficient information to enable ASIC to determine whether a marker for the same misconduct has already been issued.

- 31 You can request a marker by:
- (a) completing ASIC's [online form](#);
 - (b) contacting the ASIC Immunity Policy Hotline on +612 9911 5008; or
 - (c) emailing ASIC at immunity@asic.gov.au.

32 We maintain records of all marker requests and applications, regardless of whether the applications are oral or written.

Our approach when multiple people apply for immunity

33 If we have issued a marker to an individual in respect of a particular course of misconduct, no other individual may receive a marker for the same misconduct.

34 If you do not qualify for a marker under this policy, you are encouraged to cooperate with ASIC in our investigation: see [INFO 172](#).

Cancellation and withdrawal of a marker

- 35 We will cancel a marker if:
- (a) you have not provided sufficient information to enable ASIC to determine whether you satisfy the conditions of immunity at paragraph 11, in the time given; or
 - (b) we form the view that you will be unable to satisfy the conditions of immunity at paragraph 11.
- 36 Prior to cancelling the marker we will notify you of our view and invite you to make a submission for our consideration explaining how you satisfy the conditions of immunity at paragraph 11.
- 37 When a marker is cancelled or if you withdraw your application, you or another individual may apply for immunity or request a marker in respect of the relevant misconduct.
- 38 In circumstances where a marker is withdrawn or cancelled, information provided by you (including witness evidence) will not be used by ASIC and/or the DPP directly as evidence against you or any other party in civil penalty and or criminal proceedings. ASIC may use such information indirectly to further our investigation, including to gather evidence that could be used against you, or any other party, in civil penalty and/or criminal proceedings.

Providing a proffer

- 39 After obtaining a marker from ASIC, if you decide to proceed with an immunity application, you will need to provide a detailed description of the misconduct. This is known as a ‘proffer’ and can only be made in writing. The proffer needs to disclose sufficient information for ASIC to determine the nature of the misconduct and the other person(s) involved in the misconduct.
- 40 You will be required to provide specific detail about the type of evidence that can be provided to ASIC. This might include:
- (a) a description of the parties involved, including company structures;
 - (b) information about the relevant product or service, including who the end user is, and the industry;
 - (c) details of the conduct, including time period, its impact, any measures taken to conceal the conduct and whether it is ongoing;
 - (d) a list of persons who could provide information about the conduct; and
 - (e) a description of records available.
- 41 We may also require an interview or the production of certain documents to determine whether you meet the conditions of immunity.
- 42 If you are required to attend an interview, we may record the interview and create a written record of the interview.
- 43 You have an obligation to update your proffered information with new and corrected information. This must be done promptly and on an ongoing basis, regardless of whether or not we have specifically asked for the information.
- 44 If immunity is not granted following the proffer, ASIC may use the proffered information indirectly to further our investigation, including to gather evidence that could be used against you, or any other party, in civil penalty or criminal proceedings.

E Consideration and granting of immunity

Key points

In relation to civil penalty proceedings, ASIC will make the decision to grant:

- conditional immunity (see paragraphs 45–48); and
- final immunity (see paragraphs 55–56).

In relation to criminal proceedings, if we are satisfied that you meet the conditions of immunity, we will make a recommendation to the DPP that immunity be granted. The DPP will make the decision to:

- issue a letter of comfort (see paragraphs 49–54); and
- grant final immunity from criminal proceedings (see paragraphs 57–58).

If you breach the conditions of immunity, your immunity may be revoked: see paragraphs 59–62.

Conditional immunity and letter of comfort

Conditional immunity

- 45 Conditional immunity is the initial immunity that is granted by ASIC from civil penalty proceedings if you have satisfied the conditions of immunity and are cooperating with our investigation. The immunity may relate to a contravention of Pt 7.10 and other contraventions of Commonwealth legislation administered by ASIC that are connected with Pt 7.10 contraventions.
- 46 We will consider all the factual circumstances of the misconduct as well as the role you played in the misconduct before granting conditional civil penalty immunity.
- 47 Unless specified, a grant of conditional immunity is ongoing until final immunity is granted, or the application is withdrawn or revoked.
- 48 If we do not grant conditional immunity, you are encouraged to cooperate with ASIC in our investigation: see [INFO 172](#). Information provided by you (including witness evidence) will not be used by ASIC directly as evidence against the relevant party in civil penalty and/or criminal proceedings. We may use such information indirectly to further our investigation, including to gather evidence that could be used against you, or any other party, in civil penalty proceedings.

Letter of comfort

- 49 When the misconduct may constitute a criminal offence against a provision in Pt 7.10 and we are satisfied that you meet the conditions of immunity, we will make a recommendation to the DPP that immunity from prosecution be granted to you, subject to further conditions. When applicable, we will make this recommendation prior to granting conditional civil penalty immunity.
- 50 If we do not make a recommendation to the DPP to grant immunity from prosecution, you are encouraged to cooperate with ASIC in our investigation: see [INFO 172](#).
- 51 When considering a recommendation from ASIC to grant immunity from prosecution, the DPP will exercise an independent discretion and apply the same conditions as contained in this policy at paragraph 11: see Annexure E to the [Prosecution Policy of the Commonwealth](#), paragraph 3.3.
- 52 When the DPP considers that the conditions in Annexure E are met, the DPP will ordinarily first issue you with a 'letter of comfort'. The letter of comfort will be to the effect that the DPP intends (subject to compliance with certain conditions) to grant you an undertaking under s9 of the DPP Act in relation to a contravention, or contraventions, against a provision in Pt 7.10 of the Corporations Act (and, when relevant, connected Commonwealth offending).
- 53 When applicable, a letter of comfort from the DPP will be issued to the you at the same time as ASIC's decision to grant conditional civil penalty immunity.
- 54 If the DPP does not decide to issue a letter of comfort, you are encouraged to continue to cooperate with ASIC in our investigation: see [INFO 172](#).

Final immunity

Final immunity from civil penalty proceedings

- 55 In order to receive final civil penalty immunity, you are required to satisfy the following conditions:
- (a) maintain eligibility for conditional immunity by meeting the conditions at paragraph 11;
 - (b) provide full, frank and truthful disclosure and cooperate fully and expeditiously throughout our investigation and any ensuing proceedings;

- (c) maintain confidentiality regarding your status as an immunity applicant and details of the investigation and any ensuing proceedings, unless otherwise required by law or with the written consent of ASIC;
 - (d) forfeit the profits of any wrongdoing; and
 - (e) if we consider it appropriate, make restitution to the victims of any wrongdoing.
- 56 If we are satisfied that you meet these conditions, the conditional civil penalty immunity will become final after the completion of any ensuing proceedings against persons involved in the misconduct who do not have conditional civil penalty immunity.

Final immunity from criminal proceedings

- 57 In order to receive final immunity from criminal proceedings, you are required to satisfy certain conditions, such as:
- (a) providing ongoing, full cooperation during our investigation;
 - (b) appearing as a witness for the prosecution as and when requested in any proceedings against the other participants; and
 - (c) giving evidence truthfully, accurately and without withholding anything of relevance.
- 58 When you comply with these and any other specified conditions, the DPP will grant final immunity and provide a written undertaking under s9 of the DPP Act prior to the commencement of a prosecution of another person or persons for the alleged misconduct. The written undertaking would relate to the offence or offences against a provision in Pt 7.10. It may also extend to other Commonwealth offences connected with the Pt 7.10 offence or offences, such as ancillary offences under Pt 2.4 of the Schedule to the *Criminal Code Act 1995* (Criminal Code), breach of directors' duties or false accounting under the Corporations Act, and money laundering offences under the Criminal Code.

Revocation of immunity

- 59 In some circumstances, ASIC and/or the DPP may consider that you have breached the conditions of immunity.
- 60 If you have been granted civil penalty immunity (conditional or final) and ASIC's concerns cannot be resolved with you informally, ASIC will caution you in writing that your immunity may be revoked. The caution will request that you remedy ASIC's concerns and seek an explanation as to why ASIC should not revoke your immunity. You will be afforded a reasonable

opportunity to make submissions to ASIC prior to any decision being made regarding the revocation of your immunity.

61 Should ASIC not be satisfied with your response, ASIC will advise you in writing that you no longer qualify for immunity.

62 When applicable, ASIC will make a recommendation to the DPP that its letter of comfort or written undertaking in relation to criminal proceedings should be revoked.

Withdrawal of an immunity application

63 If we decide to take no further action after investigating an alleged breach of the law, we will advise you (either as an applicant for immunity or an individual granted conditional immunity) of the decision.

64 In circumstances where you were granted conditional immunity by ASIC during the course of our investigation, you may elect to withdraw your application or leave it in place.

65 If you choose not to withdraw the immunity application, you retain your first-in status but the conditions (see paragraph 11) will remain in place—for example continuing to cooperate fully and expeditiously with ASIC.

F Privacy and confidentiality

66 We will use our best endeavours to protect any confidential information provided by you, including your identity, except as required by law. We must take reasonable measures to prevent unauthorised use and disclosure of information that we have received in confidence in connection with our statutory functions: see s127(1) of the ASIC Act. In relation to criminal matters, disclosure obligations will require ASIC and the DPP to disclose such information.

Note: For more information on our obligations to protect confidential information, see [Regulatory Guide 103 Confidentiality and release of information](#) (RG 103). Also see the DPP 'Statement on Disclosure' available at www.cdpp.gov.au.

67 In circumstances when the disclosure of information is required, we will notify you before we release the information. When information provided by you is both confidential and personal, both the ASIC Act and the *Privacy Act 1988* (Privacy Act) will govern its disclosure.

68 ASIC will only collect, store, use and disclose personal information provided as part of an application for immunity in accordance with the Privacy Act, the Corporations Act and the ASIC Act. Please refer to the [ASIC Privacy Policy](#) for information about how we handle your personal information, including how we disclose it, your rights to seek access to and correct personal information, and your rights to complain about breaches of your privacy.

69 You, along with your legal representatives, are required to keep confidential both the fact that you have applied for immunity and any information you have obtained through cooperating with ASIC, except as required by law or with our consent.

Key terms

Term	Meaning in this document
civil penalty immunity	Immunity granted by ASIC in relation to civil penalty proceedings against persons alleged to have breached a provision in Pt 7.10 of the Corporations Act
conditional immunity	Initial immunity that is granted by ASIC from civil penalty proceedings if an individual has satisfied the conditions of immunity and are cooperating with ASIC's investigation
conditions of immunity	The conditions listed at paragraph 11 of this policy
DPP	The Commonwealth Director of Public Prosecutions
DPP Act	<i>Director of Public Prosecutions Act 1983</i>
final civil penalty immunity	A determination by ASIC that conditional immunity will become final, subject to an individual satisfying certain conditions and after the completion of any proceedings against other person(s) for the alleged misconduct
final immunity from criminal proceedings	Immunity granted by the DPP from prosecution for alleged criminal offences against the laws of the Commonwealth in accordance with s9 of the DPP Act. The DPP will grant final immunity from criminal proceedings subject to an individual satisfying certain conditions and prior to the commencement of a prosecution of other person(s) for the alleged misconduct
first-in status	A position given to the first party to apply to ASIC for a marker in respect of a contravention of Pt 7.10 of the Corporations Act
letter of comfort	A letter issued by the DPP stating that it intends to (subject to an individual's compliance with certain conditions) grant an undertaking under s9 of the DPP Act that a person will not be prosecuted for the misconduct for which immunity has been sought
marker	The confirmation given to an immunity applicant that they are the first party to approach ASIC requesting immunity with respect to a contravention of Pt 7.10 of the Corporations Act
misconduct	In this policy, a contravention of a provision in Pt 7.10 of the Corporations Act
proffer	A written statement that provides a detailed description of the misconduct including information sufficient for ASIC to determine the nature of the misconduct and other person(s) involved in the misconduct

Related information

Headnotes

civil penalty immunity, civil penalty proceedings, conditional immunity, criminal immunity, criminal proceedings, final immunity, letter of comfort, marker, proffer

Regulatory guides

[RG 98](#) *ASIC's powers to suspend, cancel and vary AFS licences and make banning orders*

[RG 100](#) *Enforceable undertakings*

[RG 108](#) *No-action letters*

[RG 218](#) *Licensing: Administrative action against persons engaging in credit activities*

Information sheets

[INFO 151](#) *ASIC's approach to enforcement*

[INFO 152](#) *Public comment*

[INFO 153](#) *How ASIC deals with reports of misconduct*

[INFO 172](#) *Cooperating with ASIC*

[INFO 238](#) *Whistleblower rights and protections*

[INFO 239](#) *How ASIC handles whistleblower reports*

Legislation

ASIC Act, s50, 127(1)

Corporations Act, Pt 7.10

Criminal Code, Pt 2.4

DPP Act, s9

Privacy Act

Other documents

[Prosecution Policy of the Commonwealth](#)