



**ASIC**  
Australian Securities &  
Investments Commission

# **Submission by the Australian Securities and Investments Commission**

**Response to the Parliamentary  
Joint Committee on Corporations  
and Financial Services on  
ASIC's approach to enforcement**

26 April 2024

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## Overview

- 1 We thank the Committee for the opportunity to explain our enforcement approach. The questions posed by the Committee go to the heart of ASIC's role in enforcement of laws within our remit. To answer these questions, this submission explains our enforcement processes, governance and decision-making. The submission sets out:
  - (a) Our recent enforcement outcomes, and the way in which our approach is guided by our strategic priorities to target the greatest harm to consumers and markets (Part A)
  - (b) Our governance and decision-making, and the way we are improving the quality of our decisions and the time taken for reports to ASIC to be progressed to enforcement and compliance action (Part B)
  - (c) Our criteria for assessing enforcement matters, and the use of our enforcement toolkit (Part C)
  - (d) The stages in our enforcement process (Part D)
  - (e) Our budget and resourcing for investigation and enforcement action (Part E).
- 2 We would welcome the opportunity to discuss our work in further detail with the Committee at a hearing and in camera (as appropriate).

## We aim to target the greatest harms and deter misconduct

- 3 As a law enforcement agency, we dedicate our expertise, resources and time to maximise regulatory impact and reduce harm to consumers and markets by detecting, investigating, disrupting, and responding to unlawful conduct.
- 4 We do not, and cannot, investigate and litigate every instance of alleged misconduct that comes to our attention—no regulator can be resourced to do so. Similarly, not every matter requires investigation, formal or otherwise. This means we must make strategic and often difficult choices, informed by the evidence in each matter and our strategic priorities.
- 5 As our enforcement outcomes show, we pursue court-based outcomes and substantial penalties when we find evidence of serious misconduct and it is in the public interest to do so. We do this to hold to account those who contravene the law and to deter similar misconduct occurring in the future. We regularly pursue difficult cases where the outcome is not guaranteed but we consider it important to test the law.

## **We flexibly apply a broad enforcement toolkit**

- 6 We use a broad enforcement toolkit in a targeted and proportionate way to address the matter at hand and, importantly, to reduce the risk of misconduct in the markets and sectors we regulate.
- 7 We balance litigating the most egregious and harmful conduct with using less time-consuming and costly enforcement tools to address less serious conduct. Non-litigious outcomes can serve important protective purposes and deter or prevent serious misconduct from arising in the first place; in the right circumstances, they can also complement and run concurrently with litigation.
- 8 Our willingness to take the most serious kind of enforcement action when required enhances the effectiveness of the less coercive tools used to encourage compliance.

## **Our governance supports appropriate and flexible decision making**

- 9 The decisions we make about our investigations and enforcement actions depend on the conduct and evidence in each matter, and are informed by our strategic priorities. The factors we consider when determining the appropriate action to pursue include the nature and seriousness of the suspected misconduct, the strength of the case, and the expected public benefit or deterrence effect of our action.
- 10 Our internal governance framework ensures end-to-end oversight and management of our enforcement function, including initial assessment, investigation, and the pursuit of appropriate enforcement or compliance outcomes. It also allows us to re-assess actions as matters evolve and evidence is gathered.
- 11 The findings of our 2023 organisational review presented an opportunity to streamline our decision-making, and improve the quality of those decisions and the time taken for reports of alleged misconduct to be progressed where appropriate to enforcement and compliance action.
- 12 We continuously seek to improve the framework that underpins and supports our decision-making. Doing so ensures our framework remains responsive to changes in the market, technology, and industry, as well as supporting our people to make decisions that align with community expectations.

## **We apply our enforcement expertise to achieve outcomes in the face of complexity**

- 13 Decisions to take enforcement action can occur at various times during an investigation, and it is often appropriate to undertake multiple enforcement or administrative actions in a matter, sometimes at the same time.
- 14 This can be a complex task. We apply our expertise and judgement to assess the evidence (which can be voluminous), the benefits and risks of available enforcement actions, the available resources and the necessary priorities.
- 15 A matter may involve multiple entities and individuals, and different enforcement options may arise or be dismissed as evidence is gathered.
- 16 As illustrated in this submission, and throughout the case studies provided, we evaluate possible enforcement actions at the outset of an investigation, and continue to make assessments iteratively as the investigation progresses. Our investigations benefit from input from internal and external legal expertise that help shape the case.
- 17 Ultimately, the specific actions we pursue will depend on the laws that govern the particular misconduct, the sufficiency of evidence available to us, and our regulatory priorities and objectives.

## **Our approach to this submission**

- 18 Throughout this submission, we provide responses to the questions posed by the Committee:
- (a) Steps in ASIC's enforcement and prosecution process – Details of our process is set out in Part D. This section includes our process from the scoping of the investigation and available enforcement actions to final outcomes (criminal, civil and administrative).
  - (b) ASIC's decision making processes and assessment criteria – Our governance and decision-making arrangements are set out in Part B. Part C sets out our assessment criteria for how we prioritise and determine enforcement and prosecution actions.
  - (c) Details of participants involved in each step and how we manage caseloads and resources – Participants involved in our governance, matter management and decision making throughout the enforcement process are set out in Part B. Part D describes the participants involved in each stage of ASIC's enforcement and prosecution process. In Part E, we describe how we resource our investigations and litigations, including the challenges we face against well-resourced defendants.
  - (d) ASIC's budget for supporting enforcement and prosecution action – This is set out in Part E.

- (e) Opportunities for pursuing increased enforcement action and likelihood of increased outcomes if more resources were available – ASIC’s funding is a matter for government. Additional resources would allow ASIC to undertake further enforcement action, but there will always be cases we will not be resourced to pursue.
- (f) ASIC’s processes when overseas regulators are involved – Part D includes an outline of how we cooperate with overseas regulators.
- (g) Data on investigation and enforcement outcomes – In Appendix 1 of this submission, we provide a range of data relating to our investigations and enforcement activities for the past five financial years and the current year to 31 March 2024. We note that while this data can provide a sense of trends over time, it does not fully capture the complexity of our work, nor does it measure our regulatory impact (which, as noted above, is our focus).
- (h) Selection of case examples - In Parts A, C and D, we have included case studies to demonstrate how we apply our enforcement processes and assessment criteria to address issues that can cause significant consumer or market detriment, using our regulatory and enforcement toolkit.
- (i) Percentage of initial referrals/complaints that proceed to investigation – Our data is set out in Appendix 2. We note that we do not seek to commence investigations on a fixed proportion of referrals/complaints. ASIC is not a complaint resolution body—its purpose is not to resolve individual consumer disputes and complaints, but to gather information from many sources and use it to make strategic decisions about when to intervene and how to do so. This is explained in Part C.

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In this submission:

- (a) ‘enforcement action’ includes compliance action, being the broad spectrum of action that our enforcement and compliance teams can and do take to address serious non-compliance and misconduct; and
- (b) ‘investigations’ includes investigations that may or may not include the formal exercise of our powers.

## A Our approach to enforcement

### Key points

We continue to be an active law enforcement agency and achieve strong enforcement outcomes across our regulatory remit. Our enforcement record shows we pursue litigated outcomes and secure substantive penalties where appropriate.

Our strategic and enforcement priorities guide how we direct our resources to maximise our impact on the identified area of risk or harm and to effectively address serious and harmful conduct.

Our new organisational structure is designed to support ASIC to achieve our strategic and operational ambitions.

## Our recent enforcement outcomes

Figure 1: 2022–23 enforcement activities

### 2022 - 2023 enforcement activities



20 ASIC continues to be an active law enforcement agency and litigator. Our enforcement outcomes in 2022–23 included:

- (a) 32 individuals being charged by the Commonwealth Director of Public Prosecutions (CDPP) in criminal proceedings with a total of 306 criminal charges;

- (b) 35 criminal convictions (21 custodial sentences and 14 non-custodial sentences);
- (c) 245 individuals charged with strict liability offences in summary prosecutions with a total of 622 summary charges;
- (d) 210 individuals prosecuted for strict liability offences, resulting in \$1.6 million in fines;
- (e) 26 civil proceedings commenced (involving actions against 62 defendants);
- (f) \$185.4 million in civil penalties imposed by the courts;
- (g) 77 individuals or companies removed or restricted from providing financial services and 28 removed or restricted from providing credit; and
- (h) 32 individuals disqualified or removed from directing companies, with 4 related to illegal phoenix activity.

Note: See [ASIC Annual Report: 2022–23](#), October 2023, and [Summary of enforcement outcomes: January to June 2023](#).

- 21 We pursue litigated outcomes and substantive penalties, where supported by the available evidence, to hold to account those who contravene the law and to maximise deterrence of similar misconduct in the future.
- 22 Our actions are directed at both individuals and corporations across our regulatory remit including insurance, credit, superannuation, financial advice, managed investments, markets and auditing sectors.
- 23 In addition to litigation, we use a range of enforcement tools to respond to instances of misconduct in a proportionate and targeted way. To extend our impact, we address less serious conduct through less time-consuming and less costly enforcement tools and outcomes.
- 24 Appendix 1 contains information on our enforcement actions and outcomes over the past five financial years and the current year to 31 March 2024.

## **Our strategic priorities guide our enforcement work**

- 25 To effectively address serious and harmful conduct, we set strategic and enforcement priorities.
- 26 Our strategic priorities reflect our views on the most significant threats and harms in our environment and guide how we use the full suite of our regulatory tools to help prevent and respond to wrongdoing. Our priorities enable us to coordinate our regulatory and enforcement activities to maximise our impact in the identified area of risk or harm.



- 27 Our enforcement priorities are aligned to give effect to our strategic priorities. Together, these priorities assist us to prioritise reports of alleged misconduct, the investigations we undertake and the regulatory and enforcement outcomes we pursue.
- 28 **Case Study 1** illustrates how we persistently undertook a range of regulatory and enforcement activities over many years to respond to various business models used by entities connected to Cigno. This work reflects our focus (as articulated in our priorities) on addressing harms arising from non-compliance with new consumer protections relating to small amount credit contracts.
- 29 We determine our priorities through a strategic planning process which identifies areas of the most significant threat and harm to Australian consumers and markets where ASIC has laws and remit to effect change. This process draws on a range of information, including insights from our own surveillance activities, consultation with our external ASIC Consultative Panel and ASIC Consumer Consultative Panel, Treasury and other regulators, and information captured from reports of alleged misconduct. The identified threats and harms then inform the development of our priorities.
- 30 To ensure transparency, we publish our strategic priorities, as set out in the [ASIC Corporate Plan 2023–27: Focus 2023–24](#) and our [enforcement priorities](#). We monitor emerging threats and harms throughout the year and remain flexible to adapt to such developments.

## We continually look for ways to improve

- 31 We operate in a complex, evolving environment and we regularly reflect on, and seek to improve, how we do our work. Our new organisational structure, which came into effect on 1 July 2023, is designed to support ASIC to achieve our strategic and operational ambitions. Through the new structure, we wanted to improve:
- how we align our strategic priorities with resource allocation;
  - collaboration and coordination across the organisation and to bring a whole-of-ASIC approach to issues of concern; and
  - our timeliness in decision making.
- 32 We are also making significant progress in enhancing our digital capabilities to achieve our aim of being a leading digitally enabled, data-informed regulator.

## Case Study 1: Unlicensed credit activity by the Cigno Group, BHFS/BSF and their directors

### **Persistent, coordinated regulatory and enforcement actions against harmful business models**

Enforcement action alone may not always be effective in responding to and deterring those who are committed to avoiding the requirements of the law.

We have observed entities that have consistently introduced new business models with different corporate entities which appear to be designed to circumvent our regulatory interventions.

We will continue to utilise both our regulatory and enforcement tools to stop harmful conduct involving business models for small amount credit that are designed to avoid consumer protection laws and to enable the charging of significant fees to consumers, many of whom are vulnerable and in financial distress.

### **Short term credit and continuing credit contracts**

We frequently receive complaints from consumer advocates and individual consumers about consumer harm caused by unlicensed short term and continuing credit contracts.

Providers of these products often charge significant fees and the products are often targeted at vulnerable consumers who are in financial difficulty, have previously applied for and been declined regulated credit and/or

require loans for basic living expenses. This is particularly concerning in the context of the rising cost of living pressures on consumers.

Our experience is that some providers of small amount credit design business models deliberately intended to avoid the legislative framework and thereby the required consumer protections. These providers will often incorporate new entities and change business models when we commence action to address alleged misconduct.

### **Initial surveillance – Cigno and GSSF**

As early as 2016, we began receiving reports relating to Cigno Pty Ltd (Cigno) and its role in managing loans for a short term credit provider, Gold-Silver Standard Finance Pty Ltd (GSSF). These reports suggested consumers were being charged higher fees for service than permitted by the National Consumer Credit Act.

In 2017, we commenced a surveillance despite previous failed 2015 litigation against the same lending model (see *Australian Securities and Investments Commission v Teleloans Pty Ltd* [2015] FCA 648).

### **Introduction of Product Intervention Orders (PIO)**

In April 2019, new product intervention powers were introduced enabling ASIC to intervene in relation to harmful financial and credit products.

### **Short term credit PIO**

In September 2019, we made an industry wide short term credit PIO. The PIO sought to protect consumers by effectively banning entities from charging fees and charges in excess of a permitted short term exemption. In July 2022, we made a new PIO in substantially the same terms, which will now, after it has been extended, remain in place until 2032, unless it is revoked sooner.

### **New business model - Cigno and BHFS**

In September 2019, Cigno and BHF Solutions Pty Ltd (BHFS) began operating a new high-cost business model offering continuing credit to consumers under the exemption of s6(5) (continuing credit exemption) of the National Credit Code. We were concerned that this model was designed to avoid the application of the short term credit PIO and in a manner that resulted in detriment to consumers.

### **Investigation and Full Federal Court decision**

In February 2020, we commenced an investigation into the new Cigno continuing credit business model for a breach of the National Credit Act regarding engaging in unlicensed credit activities.

In September 2020, we commenced civil proceedings against Cigno and BHFS for unlicensed credit conduct. These proceedings were initially dismissed by the Federal Court.

In June 2022, we were successful on appeal to the Full Federal Court. The High Court dismissed special leave applications from Cigno and BHFS.

The Federal Court subsequently declared that Cigno and BHFS contravened s29 of the National Consumer Credit Act and granted injunctions against the entities from issuing new contracts under its credit model and from collecting repayments under existing contracts.

### **Further PIO – Continuing credit**

In July 2022, we made a continuing credit PIO to cap the fees and charges that could be charged to consumers, to the maximum limits provided for in the continuing credit exemption. In December 2023, this PIO was extended to remain in force until 2032.

### **New business model – Cigno Australia and BSF – and new investigation**

On 2 March 2023, we commenced an investigation into suspected unlicensed credit activity and the charging of excessive fees in relation to a further business model by Cigno Australia Pty Ltd (Cigno Australia) and BSF Solutions Pty Ltd (BSF). These are separate but related entities to Cigno and BHFS.

The investigation scope was later expanded to consider suspected misconduct by directors of Cigno Australia and BSF.

We were concerned that there appeared to be a repeated and systemic pattern of similar conduct that was the subject of the civil proceedings against Cigno and BHFS.

The lending model operated by Cigno Australia and BSF began shortly after we made the second short term credit PIO and continuing credit PIO, of

which the latter effectively prohibited the lending model that was the subject of the Full Federal Court decision.

### **Current civil penalty proceedings**

On 3 October 2023, we commenced civil penalty proceedings against Cigno Australia, its director, Mark Swanepoel, and BSF and its director, Brenton James Harrison, for allegedly providing credit without a licence. The lending model in question provided small amount credit to more than 100,000 consumers between July 2022 and December 2022 and continued to charge substantial fees. The fees charged as a result of the alleged unlicensed conduct total over \$70 million.

On 10 November 2023, we were unsuccessful in seeking the Federal Court to restrain Cigno Australia and BSF from enforcing loan fees against its customers. The Court considered the potential harm to Cigno Australia and BSF, including the real risk of insolvency, outweighed the potential harm to consumers.

Hearing on liability issues began on 22 April 2024 and is listed for 9 days.

- 33 We are also making significant progress in enhancing our digital capabilities to achieve our aim of being a leading digitally enabled, data-informed regulator.
- 34 We use technology to analyse and draw valuable insights from the large volume of data we have.
- 35 In our enforcement work, we process, analyse and review growing volumes of electronic data as part of our investigations each year. Emerging trends involving scams, crypto-assets, blockchain technology and cyber resilience will continue to test our capabilities to take effective action against digitally enabled misconduct, while still allowing innovation to occur.
- 36 By way of example, we adopted novel approaches when investigating greenwashing misconduct. Through a pilot approach, we carried out analytics across private and public data sets to identify investments that may not have been screened in accordance with representations made to investors. We built and shared data sets to expedite investigations and quickly incorporate learnings across multiple streams of work to fine tune evidence to a forensic standard required for Court action. This enabled us to take enforcement action quicker and send a clear deterrence message.
- 37 As a further example of our innovation to address these trends, in 2022 ASIC trialled, with another regulator and a third-party, a service to disrupt investment scam and phishing websites. Following the success of the three-week trial, ASIC implemented an investment scams website takedown capability in July 2023. Using this capability, ASIC has disrupted online scam activity by taking down more than 3,500 investment scam and phishing websites between July to December 2023. This stopped links to such websites in fraudulent emails and other communications to consumers from working. We will continue to explore the use of disruptive measures like this to prevent loss and harm to consumers.

Note: See [24-037MR ASIC shuts down nearly 3,500 scam websites, steps up surveillances in push to protect consumers | ASIC](#)

## B Enforcement governance and decision making

### Key points

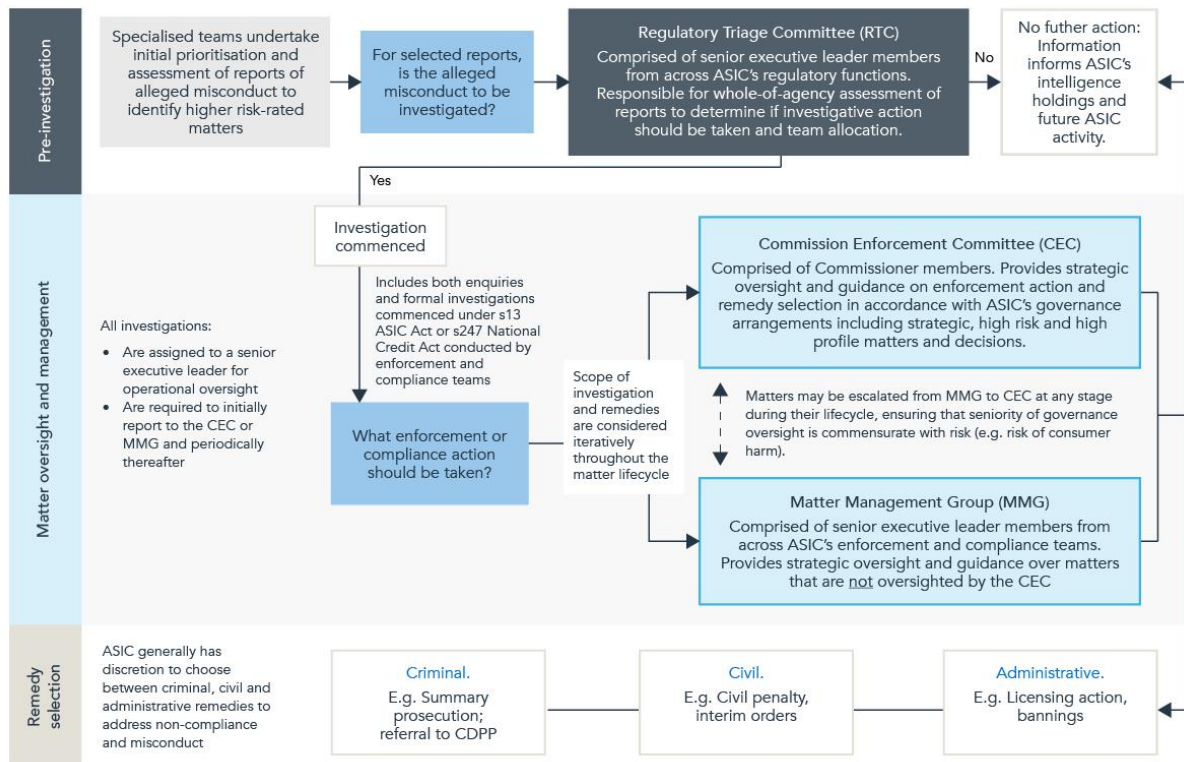
Our governance framework ensures effective enforcement matter oversight and management. It allows us to make appropriate decisions, from selecting and prioritising matters for investigation, to making important enforcement decisions throughout the life of an investigation.

The organisational review we undertook in 2023 presented an opportunity to streamline and improve the effectiveness of our decision-making.

### Our governance supports appropriate and flexible decision making

- 38 Our internal governance framework ensures end-to-end oversight and management of our enforcement function, including initial assessment, investigation, and the pursuit of appropriate enforcement or compliance outcomes.
- 39 Like all domestic and international regulators, we can only undertake a fraction of the potential regulatory and enforcement actions that are brought to our attention. Many reports of alleged misconduct do not need action by ASIC, are not within ASIC's powers, or in fact do not involve a breach of the laws we administer. Our focus is on choosing the regulatory and enforcement actions that will maximise our regulatory impact in reducing harm to consumers and markets. The factors we consider are set out in Information Sheet 151 *ASIC's approach to enforcement* ([INFO 151](#)).
- 40 Figure 2 below provides an overview of our enforcement matter oversight and management process.

**Figure 2: ASIC enforcement matter oversight and management**



## Regulatory Triage Committee

- 41 The organisational review we undertook in 2023 presented an opportunity to streamline our decision-making, and improve the quality of those decisions and time taken for matters to be progressed to enforcement and compliance action.
- 42 The Regulatory Triage Committee (RTC) was established to ensure a centralised whole-of-organisation approach to assessing and making decisions about what matters are selected for enforcement and compliance action. The RTC does this by leveraging its cross-functional and senior membership, comprising senior executives from across ASIC's regulatory business, including enforcement, supervisory and intelligence functions.
- 43 The RTC considers reports from various sources, including:
- reports of alleged misconduct, including those we receive from the public, whistleblowers and the regulated population; and
  - our proactive regulatory activities, such as intelligence gathered by ASIC and targeted supervision programs.
- 44 Prior to reaching the RTC, each of these reports is first subject to assessment by the specialised team with carriage of the particular report to determine

whether enforcement and compliance action should be considered in respect of the alleged misconduct.

45 Through the RTC, we further triage reports of alleged misconduct to prioritise reports that are likely to relate to our strategic or enforcement priorities, involve the most serious conduct and may cause the most widespread harm.

46 The approach taken by the RTC:

- leverages the regulatory expertise of specialised teams in their area while also drawing on a wider range of expertise in decision making;
- better enables reports of egregious conduct to be progressed directly to our enforcement and compliance teams. Since 1 July 2023, about a quarter (25%) of matters have been brought before the RTC within 14 days of a report of misconduct from the public being received by ASIC;
- promotes consistency of decisions across ASIC's remit about what action ASIC should take in response to reports of alleged misconduct, and reduces double handling of matters by different teams;
- incorporates an intelligence-driven approach to patterns of conduct; and
- ensures cross-agency accountability for enforcement decisions based on reports of misconduct.

### **Senior executive oversight of investigations**

47 Once a decision is made by the RTC that further action is warranted, it is referred to established enforcement and compliance teams for investigation. Investigation in this context includes both:

- (a) formal investigations under s13 of the *Australian Securities and Investments Commission Act 2001* (ASIC Act) or s247 of the *National Consumer Credit Protection Act 2009* (National Consumer Credit Act); and
- (b) enquiries that may or may not include the use of available statutory powers, such as those that enable us to compel the production of documents. Such enquiries may later lead to a formal investigation.

48 For all investigations, a senior executive is appointed to oversee the conduct of the investigation, including resource allocation and ensuring engagement with ASIC's Legal Services group, as required.

49 Key decisions in the investigation are made in accordance with ASIC's governance protocols, by either the Commission Enforcement Committee or the E&C Matter Management Group.



## **Commission Enforcement Committee and E&C Matter Management Group**

- 50 The Commission Enforcement Committee (CEC) is a Commission-level committee that provides guidance and oversees the making of strategic decisions about significant enforcement matters, and decisions to commence litigation.
- 51 In the case of these significant enforcement matters, the CEC will generally confirm the initial scope of an investigation and make decisions regarding:
- (a) the outcome of an investigation, including whether ASIC should commence civil litigation or whether an investigation should end without action;
  - (b) a major change in the direction or scope of an investigation or civil litigation;
  - (c) the penalty and period of disqualification to be sought in civil penalty litigation;
  - (d) settling civil litigation or criminal proceedings (including providing comments on a settlement proposed by the CDPP); or
  - (e) appealing a court or AAT decision.
- 52 Enforcement teams may escalate other enforcement matters to the CEC for guidance or decision when considered appropriate.
- 53 The E&C Matter Management Group (MMG) is a decision-making forum which comprises senior executive leaders of enforcement teams who provide collective oversight and strategic guidance on matters that are not overseen by the CEC. The MMG makes decisions such as:
- (a) the initial scoping of investigations and/or inquiries;
  - (b) significant matter scope changes; and
  - (c) decisions to take no further action.
- 54 The MMG may also give guidance on the conduct of inquiries and investigations.
- 55 All investigations must periodically report on progress to the MMG or CEC.



## C Criteria for assessing enforcement matters and enforcement toolkit

### Key points

Our criteria for prioritising matters for enforcement action enables us to target issues that can cause significant consumer or market detriment. The factors we consider when determining the appropriate action to pursue include the nature and seriousness of the suspected misconduct, the strength of the case and the expected public benefit or deterrence effect of our action.

We use our broad regulatory and enforcement toolkit. We balance litigating the most egregious and harmful conduct with addressing less serious conduct using less time-consuming and less costly enforcement tools. Non-court-based outcomes can serve important protective purposes and deter or prevent serious misconduct from occurring in the first place. They can also complement, and run concurrently to, litigation.

### Our prioritisation and assessment criteria

- 56 The factors we consider when prioritising matters for enforcement action are set out in INFO 151. While our specific processes can vary depending on the nature of the matter and the circumstances in which it came to our attention, in general we consider the following four factors together with our strategic and enforcement priorities:
- (a) preventing or addressing significant harm to consumers, markets or the financial system;
  - (b) the benefits to the public from enforcement, including where there is significant public interest or concern;
  - (c) whether there are issues specific to the case that warrant us pursuing action (such as whether the matter is within ASIC’s jurisdiction, or at an edge that needs to be tested; the nature, impact and age of the misconduct; whether the misconduct is repeated or continuing, and whether reliable evidence is likely to be available to prove the alleged misconduct); and
  - (d) whether there are any appropriate alternatives to formal enforcement action or investigation that would, on balance, be more efficient—such as engagement with stakeholders, surveillance, guidance and education.
- 57 We consider the circumstances of each case in deciding which enforcement action to pursue. INFO 151 sets out details about the range of enforcement

actions available to ASIC and factors that we may take into account in determining the appropriate action to pursue, including:

- (a) nature and seriousness of the suspected misconduct;
- (b) conduct of the person or entity after the alleged contravention, such as whether the misconduct was self-reported or what remedial steps have been taken;
- (c) strength of our case;
- (d) expected public benefit in taking enforcement action;
- (e) likelihood of behavioural improvement and deterrence from our enforcement action; and
- (f) any aggravating or mitigating factors such as whether the misconduct was deliberate or inadvertent.

58 The flowchart in Figure 3 shows our general approach to taking enforcement action, taking into account the factors set out in INFO 151. This flowchart is contained in INFO 151.

## **We strategically select matters for investigation and enforcement action**

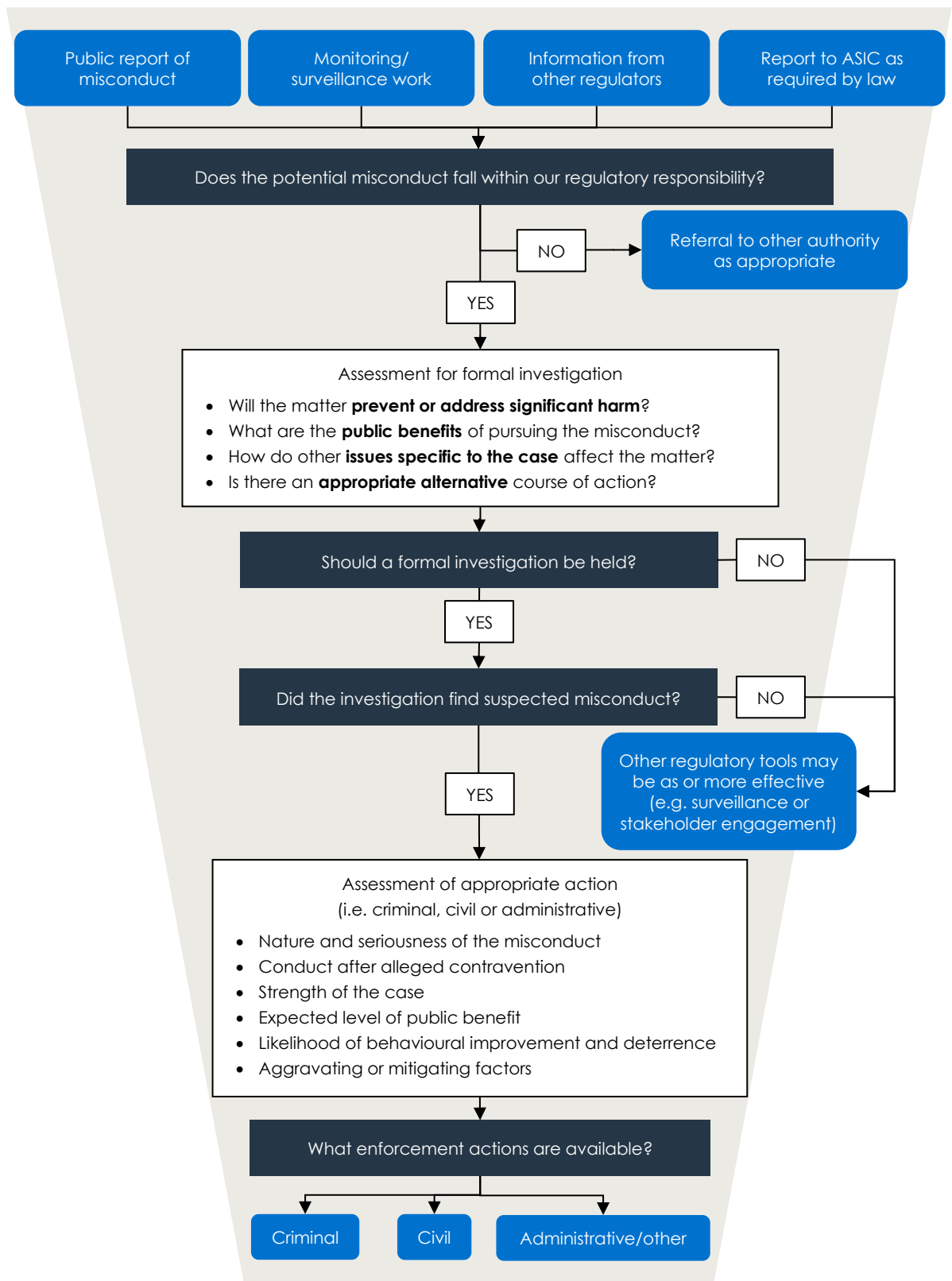
59 Given they are resource intensive, our investigations and enforcement actions are necessarily targeted at the most serious misconduct and where our actions are likely to have broader public benefit, such as by strategically deterring future misconduct, addressing significant consumer harm or clarifying important legal obligations.

60 We do not, and cannot, investigate and litigate every instance of alleged misconduct that comes to our attention—no regulator can be resourced to do so. Similarly, not every matter requires investigation, formal or otherwise, due to a range of factors and other more appropriate responses or referrals to other bodies. Our focus is using our broad regulatory toolkit to take targeted and proportionate action that maximises our regulatory impact.

61 Regardless of whether a report is progressed to a formal enforcement action, the intelligence value we capture from matters raised with us will continue to inform our supervisory activities—for example, in the identification of issues for thematic reviews across an industry sector.

62 The selection of matters for investigation involves difficult choices about what we investigate and, necessarily, what we do not investigate. **Case Study 2** provides an example of where we carefully considered and made deliberate decisions to target and focus our resources towards investigating a particular matter involving high-risk property investment schemes that impacted retail, rather than wholesale, consumers.

Figure 3: ASIC’s approach to investigation and enforcement



## Case study 2: Continuing investigation into Mansa Group

### Strategic enforcement selection

An important aspect of our role is selecting the right matters to investigate and to continue to investigate, and making strategic decisions about taking enforcement action.

We strategically select matters to progress, based not only on the particulars of the matter itself, but having regard to comparable matters before us and our priorities. This often involves us making difficult but necessary choices.

### High risk investment schemes

An important focus for ASIC is to protect everyday Australians from high-risk property investment schemes that may be illegal or poorly managed.

Through our enforcement action we seek to protect retail investors from loss or further loss of investment funds. This includes deterring poor scheme governance and mismanagement, and related inappropriate financial advice, to protect investors now and into the future.

### Mansa Investigation

In July 2023, we were notified of the appointment of a voluntary administrator to a company that formed part of the 'Mansa Group', a group of more than 30 property development companies.

Within a week, we commenced our initial investigation, which focused on whether:

- substantial funds from around 150 investors in a local community were involved in an unlawful high-risk property scheme; and
- investor funds were at risk or actually being dissipated via numerous related entities that were still operating in the Mansa Group.

Given the potential risk to investor funds, we prioritised our resources to ensure the Mansa Investigation progressed quickly through its initial phases.

### Strategic enforcement selection

In August 2023, the MMG considered the Mansa Investigation in light of other investigations also on foot in relation to similar schemes.

Unlike the Mansa Investigation, these other investigations involved wholesale scheme investors, who are generally more sophisticated, well-resourced, and better placed to take their own action if the schemes collapsed.

In one of those other investigations, while the allegations were serious, there had been media reports about the relevant schemes, placing the wholesale investors on notice.

A second separate investigation into other similar schemes that involved both retail and wholesale investors was progressing, and anticipated to result in enforcement action.

Accordingly, we determined that the continued focussing of our resources on the Mansa Investigation, given retail investors were involved, was better aligned to the underlying purpose of ASIC targeting high-risk property schemes: that is, addressing mismanagement in relation to risky property schemes that expose retail investors to significant loss (including governance and responsible entity failures and inappropriate financial advice).

### Subsequent court action and ongoing investigation

Our investigation into Mansa Group is continuing.

In March 2024, ASIC sought and successfully obtained travel restraint orders against current and former directors of the Mansa Group. We applied for these orders due to concerns that the individuals may leave the country while our investigation continues.

## **We do not commence investigations on a fixed proportion of reports of alleged misconduct**

- 63 Our investigations may arise from a number of sources, including reports of misconduct received from the public or regulated entities, our market surveillance activities, and proactive or thematic surveillances undertaken by our supervisory teams (which may themselves be informed by reports of alleged misconduct and other intelligence that we receive).
- 64 ASIC is not a complaint resolution body; its purpose is not to resolve individual consumer disputes and complaints. ASIC's purpose is to gather information from many sources, across the range of entities that we regulate, and use it to make strategic decisions about when to intervene and how to do so.
- 65 We assess each matter on its own merits and we do not have a fixed quota of how many cases may be escalated to investigation or targets about the types of enforcement action we will take. However, we are obviously limited in the number of investigations we can undertake by our resources. Further, the number of formal investigations is not a complete measure of ASIC 'enforcement' action because it does not reflect the full range of ASIC's enforcement outcomes and interventions. Product intervention orders, stop orders, Australian financial services (AFS) licence cancellations and bannings are all enforcement outcomes that may be achieved without the need for the commencement of a formal investigation.
- 66 Appendix 2 contains data on finalised reports of alleged misconduct from the past five financial years and the current year to 31 March 2024.

## **We flexibly apply a broad enforcement toolkit**

- 67 We use a broad enforcement toolkit in a targeted and proportionate way to both address the matter at hand, but also, and importantly, reduce the risk of misconduct in the markets and sectors we regulate. Our capacity to take strong enforcement action when the circumstances warrant it lies at the heart of our effectiveness as a regulator.
- 68 The broad range of criminal, civil and administrative sanctions and associated penalties available to ASIC enables us to calibrate our response, applying sanctions of greater or lesser severity commensurate with the misconduct. We will often use a combination of regulatory tools to stem harm and/or disrupt misconduct.

- 69 We pursue litigated outcomes and substantial penalties where this is supported by the available evidence and where we consider it is in the public interest to do so. Litigated outcomes send a strong message denouncing particular conduct and deter both the contravener and others from engaging in similar misconduct in the future.
- 70 We balance litigating the most egregious and harmful conduct with addressing less serious conduct using less time-consuming and less costly enforcement tools. Non-court-based outcomes can serve important protective purposes and deter or prevent serious misconduct from occurring in the first place. They can also complement, and run concurrently to, litigation.
- 71 The laws administered by ASIC carry a broad range of potential criminal, civil and administrative consequences for contraventions. These include:
- (a) terms of imprisonment or fines imposed by a court after conviction for criminal offences;
  - (b) civil pecuniary penalties imposed by a court after civil proceedings for contravention of civil penalty provisions. A court may also make orders including injunctions restraining certain conduct, adverse publicity orders, orders requiring the disgorgement of profits and/or payment of compensation;
  - (c) automatic disqualification from managing a corporation if a person is convicted on indictment of certain offences; and
  - (d) protective administrative actions that may be taken by ASIC, such as issuing infringement notices, stop orders, product intervention orders, banning orders, imposing licence conditions, cancelling or suspending licences, issuing public warning notices, or accepting court enforceable undertakings.
- 72 Many provisions in these laws provide for ‘dual-track’ and sometimes ‘tri-track’ regulation, by which the same conduct may be subject to a fault-based criminal offence, civil penalty liability, and/or a strict liability criminal offence. For example, insider trading can be prosecuted as a criminal offence or as a civil penalty contravention. The form of action taken in such a case depends on the evidence available, i.e. whether it is likely to meet the higher standard required for a criminal prosecution. If it does not, consideration is given to whether it meets the somewhat lower standard of a civil penalty action.
- 73 We may also seek court orders in the nature of asset preservation orders, orders appointing receivers to particular property or businesses or the winding up of a company or scheme.

## D Stages in our enforcement process

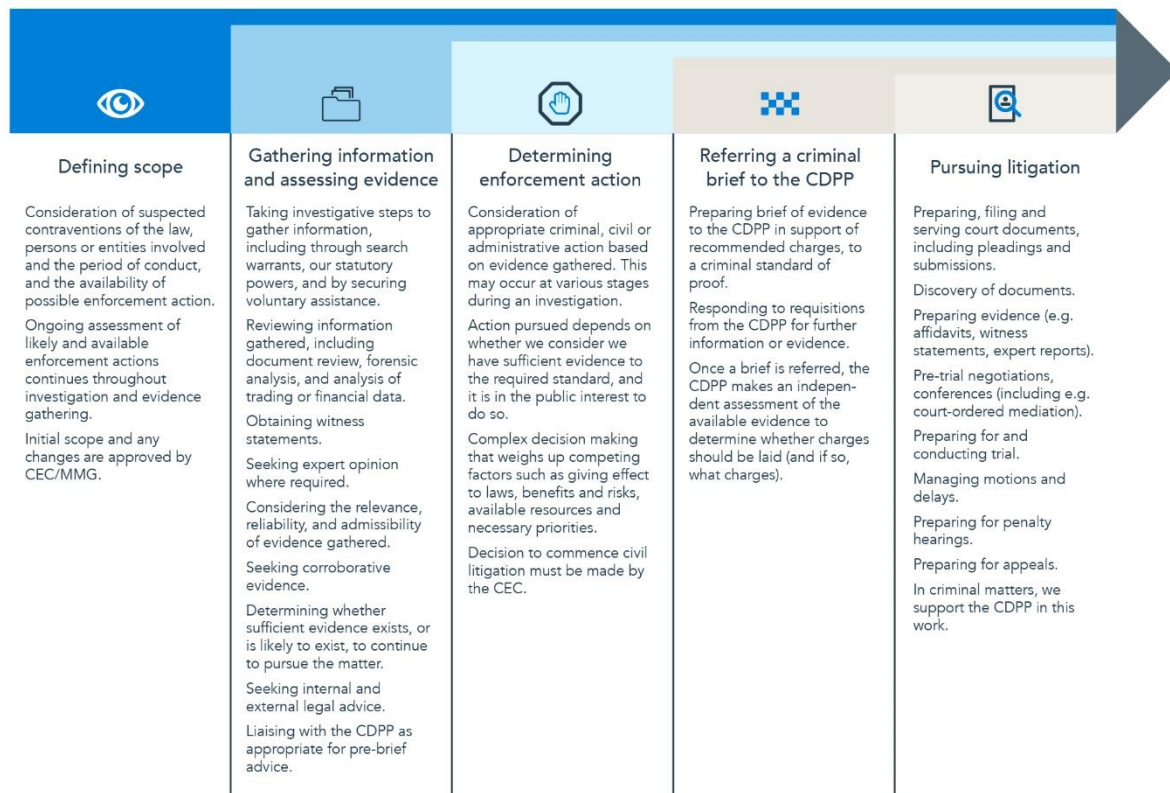
### Key points

This section sets out the stages in our enforcement process and illustrates the often complex decisions we need to make, how we use our expertise and judgement to assess the evidence, benefits and risks of available enforcement actions, available resources and necessary priorities.

Decisions to take enforcement action may occur at various times during an investigation, and it is often appropriate to undertake multiple enforcement or administrative actions in a matter, sometimes at the same time.

74 Figure 4 provides an overview of the key stages in an enforcement matter, noting that, in practice, this is not a linear process.

Figure 4: Key stages in an enforcement matter





## Defining scope and assessing available enforcement actions

- 75 At the time that a formal investigation is commenced, we identify the scope of the investigation including the specific provisions of the legislation administered by ASIC that are suspected to have been contravened, the persons or entities suspected of engaging in the contravening conduct and the period of any suspected contraventions. This investigation scope is approved by the CEC or MMG as appropriate.
- 76 The scoping and initial planning of the investigation inherently requires:
- consideration of what enforcement actions are available (for example, whether the suspected contravention is likely to give rise to civil, criminal or administrative actions if the evidence bears out); and
  - assessment of which of the available actions are preferred based on ASIC’s strategic priorities, the facts known at that time and early analysis of the legal strengths and weaknesses of particular courses of action.
- 77 This in turn informs the investigative steps to be undertaken. In larger and more complex matters involving multiple individuals and entities and conduct taking place over many years, not every potential instance of misconduct may be pursued—to do so would take many years and require significant resources that are likely to outweigh the deterrence impact that could be achieved.
- 78 Throughout each matter we continue to make ongoing assessment of the likely and available enforcement actions as the investigation progresses and evidence is gathered, applying our expertise and judgement. This can be a complex task. Our investigations usually involve reviewing large volumes of documentary material, conducting interviews and compulsory examinations of multiple witnesses and persons of interest, analysing trading data and financial information, and engaging with experts and counsel.
- 79 Our policies and processes support discipline and rigour in how this assessment is conducted by requiring that:
- (a) our investigations comply with the recently amended Australian Government Investigation Guidelines (applicable from 31 October 2022);
  - (b) our enforcement teams follow an Enforcement Case Management Methodology in planning and managing investigations;
  - (c) any amendment to the scope of an investigation is documented and approved in accordance with the governance framework outlined in Part B; and



- (d) periodic consideration of the status and direction of an investigation by the MMG and/or CEC, as part of which available and likely enforcement actions are discussed.

## Gathering information and assessing evidence

- 80           Once the scope of an investigation has been determined, we consider the evidence that is required to establish the suspected contraventions. The evidence required to prove the contraventions might be available from a number of sources. Generally, we will seek to obtain evidence from a direct source where available.
- 81           We gather information from people and entities that are the subject of our investigation, and also from people and entities who are not suspected of any wrongdoing but may have information that is relevant to our investigation. We seek to do so on both a voluntary basis and by using our compulsory information-gathering powers to collect documents and information. A formal investigation enables us to use additional compulsory powers, including the power to conduct compulsory examinations of people who may have information that can assist in our investigation.
- 82           When determining what sources of evidence to pursue, we consider questions including:
- (a) Is there a risk of destruction of evidence? If so, are search warrants appropriate?
  - (b) If consumers/clients need to be contacted, what is the best approach?
  - (c) Will witnesses be cooperative or will compulsory powers be required to compel the production of documents or the giving of oral evidence?
  - (d) Will there be any delays to obtaining the evidence (e.g. is the evidence located overseas)?
  - (e) Will there be any admissibility issues with the evidence?
- 83           Documents obtained during an investigation are processed and managed through various storage and document management tools. Once processed, we analyse the documents and information gathered to determine what material will be relevant to the contraventions under investigation. We keep an open mind when analysing material obtained to ensure any exculpatory material is identified.
- 84           We continually assess whether the evidence gathered in an investigation supports or disproves the contraventions under investigation, whether the evidence supports a change in investigation scope, and whether any enforcement action is required.

## Involvement of ASIC's Legal Services group

- 85 It is our practice to allocate a dedicated civil litigation or criminal law specialist from our Legal Services group at an early stage of each investigation where it is identified that civil or criminal proceedings are a potential outcome.
- 86 This enables:
- (a) early input from civil and criminal litigation experts to inform the strategy and direction taken in the matter, including by providing advice on key legal and evidentiary issues;
  - (b) steps to be taken to prepare for litigation (particularly civil litigation) in parallel with the investigative process; and
  - (c) compliance with ASIC's obligations under the *Legal Services Directions 2017*, as applicable.
- 87 The collaborative relationship between the enforcement teams and Legal Services group during the investigative process leads to a stronger, clearer and more cohesive case, and more timely outcomes.

## Determining enforcement action

- 88 Decisions to take enforcement action are not necessarily linear; that is, they may occur at the conclusion of an investigation, or while the investigation is still ongoing, or both.
- 89 For example, we might decide to commence urgent injunctive proceedings to freeze assets or restrain a person from leaving Australia at an early stage in our investigation, or to refer a person or entity for administrative action while the investigation continues to gather evidence to support potential civil penalty or criminal proceedings. In complex investigations that involve multiple entities and individuals, different actions may be required for different entities and individuals at different times.
- 90 **Case study 3** describes the various enforcement actions we pursued during our investigation of a retail OTC derivatives provider, AGM Markets, and its authorised representatives.
- 91 Specific actions we pursue depend on the laws that govern the particular misconduct, as well as the evidence available. We may also pursue more than one remedy. We seek to ensure that any action we pursue is proportionate and targeted to the alleged misconduct, so that we are able to focus our resources to best achieve the intended regulatory outcome and impact.

## Case study 3: OTC derivative issuer AGM Markets and its authorised representatives OT Markets and Ozifin

### Multiple and concurrent enforcement actions

ASIC can take a range of regulatory and enforcement action at various stages of a matter and we often do so. We draw on our broad toolkit to calibrate appropriate responses to the harms we identify.

Throughout an investigation, we continually assess whether to take enforcement or regulatory action to protect consumers and markets from harm and deter misconduct from occurring.

### High risk, speculative products

Over-the-counter (**OTC**) retail derivatives such as margin FX, binary options and contracts for difference (**CFDs**) are speculative, high-risk products that can be complex and difficult to understand. They are often aggressively marketed to retail investors.

Investigations into these products can involve dealings with a large number of vulnerable investors who have been subject to extreme pressure to trade in products they did not necessarily understand and suffered significant losses as a result.

### Initial investigation

On 7 February 2018, we commenced an investigation into the suspected provision of unlicensed personal financial product advice, false or misleading statements and unconscionable conduct by an AFSL holder, AGM Markets Pty Ltd (AGM) and its authorised

representatives OT Markets Pty Ltd (OT) and Ozifin Tech Pty Ltd (Ozifin).

The suspected misconduct had come to our attention after we started receiving reports of misconduct from retail investors who described being subjected to high pressure sales tactics and misleading statements about the potential profitability of entering particular trades.

### Injunctive orders

Within a week of commencing our investigation, we commenced injunctive proceedings in the Federal Court of Australia and on 12 February 2018 we obtained interim court orders against AGM, OT and Ozifin. We obtained these orders to secure investor funds before they were transferred outside Australia, and to prevent individuals involved with AGM and OT from leaving Australia, while our investigation continued.

Approximately \$40 million was frozen across 44 accounts and we were later able to ensure redress for approximately 10,000 former clients of these entities through the court's orders.

### Public warning

On 13 February 2018, we issued a public warning notice under s12GLC(1) of the ASIC Act for consumers to not to deal with AGM, OT or Ozifin in relation to trading in margin FX CFDs and bitcoin CFDs.

### Licence cancellation and banning orders

In November 2018, while our investigation and the civil proceedings were still on foot, we:

- cancelled the AFS licence of AGM; and

- banned AGM's former director and CEO, Yossef Ashkenazi, from providing financial services for 8 years.

In September 2018, AGM unsuccessfully brought an interlocutory application before the Federal Court to prevent ASIC from proceeding with its administrative licensing action.

### Civil penalty proceedings

On 22 November 2018, we amended our civil proceedings to seek declarations of contraventions of civil penalty provisions by, and penalties against, AGM, OT and Ozifin.

On 26 February 2020, the Court found that AGM, OT and Ozifin had:

- engaged in systemic unconscionable conduct while providing OTC derivative products to retail investors in Australia; and
- engaged in thousands of contraventions of the Corporations Act and the ASIC Act, including misleading and deceptive conduct, the provision of unlicensed personal advice, and the provision of advice that was not in the best interests of their clients.

The Court found that this conduct resulted in Australian investors losing over \$30 million.

On 16 October 2020, the Court ordered that AGM, OT and Ozifin pay a total of \$75 million in pecuniary penalties (and pay refunds to former clients). This was the highest cumulative penalty imposed in an ASIC proceeding at the time.

- 92 We evaluate available remedies from the outset of an investigation, and iteratively at key points of the investigation. This periodic evaluation ensures we avoid pursuit of ineffective remedies, use resources effectively, and where necessary, discontinue matters where the evidence reveals that remedies are not likely to be available or effective.

## Referring a criminal brief to the CDPP

- 93 ASIC will pursue criminal action by referring a brief to the CDPP where, in our view, our investigation establishes a case that meets the two-stage test set out in the CDPP's *Prosecution Policy of the Commonwealth* ([Commonwealth Prosecution Policy](#)). The policy applies to all Commonwealth prosecutions and is based on principles of fairness, openness, consistency, accountability and efficiency.
- 94 The Commonwealth Prosecution Policy provides a two-stage test that must be satisfied before a prosecution is commenced:
- (a) there must be sufficient evidence to prosecute the case; and
  - (b) it must be evident from the facts of the case, and all the surrounding circumstances, that the prosecution would be in the public interest.
- 95 In respect of sufficiency of evidence, criminal prosecutions require a higher standard of proof ('beyond reasonable doubt') than is required in civil matters ('balance of probabilities'). The Commonwealth Prosecution Policy provides further guidance as to the sufficiency of evidence to justify the commencement or continuation of a Commonwealth prosecution, including that there be admissible, substantial and reliable evidence that a criminal offence has been committed by the alleged offender.
- 96 It is not ASIC's role to simply gather evidence and then refer that evidence (no matter its sufficiency) to the CDPP, and for the CDPP to provide 'legal advice' on that evidence. Instead, our role is to investigate and refer a brief to the CDPP when, and only when, we have formed the view that there is sufficient evidence to meet the criteria set out in the Commonwealth Prosecution Policy. In forming this view, we apply our significant experience and expertise in financial services and markets crime, and work closely with criminal litigation specialists within our Legal Services group. We also access external legal advice (including from senior counsel) as and when required.

Note: See [Memorandum of Understanding between ASIC and CDPP](#), para 5.1–5.2

- 97 Once a brief is referred, the CDPP makes an independent assessment of the available evidence in accordance with the Commonwealth Prosecution Policy to determine whether charges should be laid and if so, what charges

are appropriate. The CDPP may decide to prosecute different charges or, perhaps, not to prosecute all the people or entities that ASIC identified as potential defendants.

98 **Case study 4** provides an example of where ASIC took timely and decisive enforcement action against a person for insider trading, including to arrest them before they left Australia.

99 **Case study 5** contains examples of where, after conducting extensive enquiries and carefully considering the evidence, we formed the view that there was insufficient evidence to refer a brief of evidence to the CDPP.

100 ASIC consults where appropriate with the CDPP prior to the referral of a brief of evidence to obtain pre-brief advice on particular legal and evidentiary matters to improve the referral and assessment of briefs of evidence. Similarly, we assist the CDPP with any further information or evidence they require to inform their assessment following a referral.

101 A decision to refer a brief of evidence to the CDPP is made by the responsible senior executive leader or the CEC.

102 If charges are laid, the CDPP is responsible for the conduct of any prosecution. However, ASIC as the informant in the matter, must support the CDPP in the prosecution. This includes continuing to liaise with witnesses and providing the CDPP with subject matter knowledge and expertise, particularly as our matters are often complex, involve extensive amounts of documentary evidence and may have multiple potential defendants.

103 ASIC will generally be consulted by the CDPP in respect of key decisions in the prosecution, such as amendments to charges, consideration of plea deals and any decision to discontinue a prosecution.

104 ASIC conducts its own criminal prosecutions in relation to certain strict liability offences as agreed by the CDPP. In circumstances where ASIC conducts a summary prosecution, it follows the Commonwealth Prosecution Policy.

105 Table 4 in Appendix 1 contains data on the number of referrals to the CDPP over the past five financial years and the current year to 31 March 2024, and the status of those briefs as at 31 March 2024.

106 Table 5 in Appendix 1 contains data on the criminal actions we commenced and completed over the past five financial years and the current year to 31 March 2024.

## Case study 4: Insider trading by Cameron Waugh

### Timely and decisive enforcement action

ASIC is often required to take urgent action in the face of changing circumstances.

We move rapidly to prioritise our resources to protect investor funds or prevent an alleged offender from leaving Australia.

Taking timely and decisive action in these circumstances requires us to draw on the deep experience of our people and coordinate with other agencies such as the CDPP.

### Insider Trading

Protecting market integrity from misconduct such as insider trading is an enduring priority for ASIC. Insider traders abuse an unfair information advantage that erodes trust in the fairness and efficiency of the market.

### Initial investigation

In March 2022, we commenced an investigation into suspected insider trading in Genesis Minerals Limited (Genesis) shares by two unrelated individuals. A suspicious activity report submitted by a market participant triggered a surveillance and subsequently our investigation.

One of those individuals was Cameron Waugh. Mr Waugh worked for Omnia Company Pty Ltd (Omnia), a company hired to advise on a proposed share placement and board restructure of Genesis.

We conducted a covert investigation into Mr Waugh, including examining the Omnia directors

and compelling the production of relevant documents in August and September 2022.

### Further intelligence

From the commencement of the investigation, Mr Waugh, a South African national, was residing overseas. In late September 2022, our intelligence confirmed Mr Waugh had entered Australia with a plane ticket to South Africa scheduled for departure in mid-December 2022. We had no intelligence which suggested Mr Waugh would return to Australia in the future.

This led us to prioritising and expediting our investigation with the aim of securing charges against Mr Waugh before he was due to depart Australia.

### Arrest warrant and prosecution

We referred our brief of evidence to the CDPP in relation to Mr Waugh's suspected insider trading on 18 November 2022.

We liaised with the CDPP to ascertain whether they could lay charges before the scheduled departure date to prevent Mr Waugh from leaving Australia and thereby potentially avoiding prosecution. On 7 December 2022, the CDPP advised that they were not able to lay charges before the scheduled departure date.

Accordingly, ASIC prepared for the execution of an arrest warrant. We charged Mr Waugh with offences relating to insider trading, and the AFP subsequently executed an arrest warrant on Mr Waugh on 16 December 2022.

The same day, Mr Waugh appeared before the Bunbury Magistrates' Court and the CDPP took

carriage of the prosecution. Mr Waugh was granted bail on conditions including that he could not leave Australia.

We continued to assist the CDPP in support of the prosecution, including obtaining expert evidence, and subsequently engaged in plea negotiations after Mr Waugh indicated a willingness to plead guilty in December 2023.

### Guilty plea and sentencing

On 24 January 2024, Mr Waugh pleaded guilty to insider trading in shares of Genesis between 14 and 21 September 2021, from which he made a profit of \$57,256.44.

On 26 March 2024, the Supreme Court of Western Australia sentenced Mr Waugh to 2 years imprisonment with a non-parole period of 9 months.

This was the first matter to be sentenced in WA under the new penalty provisions for insider trading where the maximum penalty increased from 10 to 15 years imprisonment.

### Second investigation ongoing

Our investigation in relation to the second individual suspected of insider trading in Genesis shares is ongoing.



## Case study 5: Insider trading in shares of Nuix Limited

### Carefully considered decision to not pursue certain enforcement action

Insider trading is a serious criminal offence. ASIC generally conducts investigations into insider trading with a view to referring a brief to the CDPP for criminal prosecution, provided the requisite standard of proof is met.

We dedicate significant expertise, time and resources to detecting, investigating and pursuing insider trading. Sometimes, despite an exhaustive investigation, the evidence simply does not provide sufficient basis for taking enforcement action.

### First investigation

Between May 2021 and September 2022, we conducted an investigation into suspected insider trading by Nuix's former CFO Stephen Doyle, his brother Ross Doyle (collectively the persons of interest) and a company controlled by Ross Doyle.

The trading by the persons of interest came to ASIC's attention through a suspicious activity report submitted to ASIC by a market participant and a suspicious matter report submitted to AUSTRAC.

In August 2021, we expanded our insider trading investigation to also investigate suspected breaches of continuous disclosure obligations and directors' duties by Nuix and its board,

relating to market announcements about Nuix's results for the first half of 2020–21.

### Investigative steps

Commensurate with the seriousness of the suspected misconduct, we dedicated significant resources to conducting a comprehensive investigation. We employed a range of investigatory tools including:

- obtaining ex parte restraint of travel orders for a person of interest from the Federal Court;
- executing search warrants at multiple residential and business addresses,
- issuing 21 statutory notices to 9 entities,
- conducting compulsory examinations of the persons of interest and a further 9 witnesses,
- obtaining information from other domestic and international regulators,
- reviewing and analysing a large volume of evidence, including 50,000 documents and information on 14 electronic devices.

### Final assessment of the evidence

In September 2022, we concluded, after careful consideration of the necessary evidentiary thresholds, that the evidence obtained during our investigation was not sufficient to institute criminal or civil penalty proceedings.

Critically, to establish the communication of inside information and insider trading, we would need to prove to a court that (among other things) Stephen Doyle both:

- was in possession of inside information, which he knew or ought to have known was not generally available and was material; and
- either communicated the inside information to Ross Doyle, who he knew or ought to have reasonably known was likely to sell shares in Nuix, or procured Ross Doyle to dispose of Nuix shares.

Without direct evidence, any allegation that Stephen Doyle communicated inside information to Ross Doyle would depend on an entirely circumstantial case. That is, we would be asking a court to draw an inference that such communication occurred based on the evidence available, but without any direct evidence of the communication.

In such a case, we would need to exclude—either beyond reasonable doubt in a criminal prosecution or to the Briginshaw standard of proof in civil penalty proceedings—all reasonable hypotheses consistent with innocence.

We determined that the evidence obtained during our investigation was not sufficient to exclude alternative explanations for the communications between the persons of interest and other notable characteristics of the trades to the necessary evidentiary threshold. There was also documentary evidence to support aspects of the explanations provided by the persons of interest about their trading and the structure of their holdings of Nuix shares.

## Continuous disclosure investigation and proceedings

The investigative steps we took between July 2021 and July 2022 also involved an ongoing assessment of the evidence against suspected continuous disclosure and directors' duties breaches.

As a result of our investigation, on 28 September 2022, we commenced civil penalty proceedings in the Federal Court against:

- Nuix for alleged continuous disclosure breaches and misleading or deceptive conduct; and
- Nuix's then board for breaches of their directors' duties.

A contested trial took place from 20 November 2023 to 15 December 2023. No decision has yet been handed down.

## Second investigation

Between September 2022 and April 2024, we conducted an investigation into suspected insider trading in Nuix shares by the CEO of Nuix, Jonathan Rubinsztein, between 5 and 8 September 2022 in the context of a proposal by a US entity to acquire Nuix's assets.

Our investigation did not identify evidence to suggest that Mr Rubinsztein became aware of any approach from the US entity until after he had acquired Nuix shares. This was consistent with information provided by Nuix to the ASX in its response dated 14 September 2022. The evidence also indicates that Mr Rubinsztein's trading occurred during a permitted trading window, and he requested and obtained prior

approval to purchase Nuix shares before the proposal was received.

Our investigation was comprehensive, including conducting numerous compulsory examinations of key Nuix officers. We spoke, on a voluntary basis, to a former Nuix employee who had made various public statements about the conduct under investigation. We also issued multiple statutory notices and conducted an exhaustive review of Nuix internal records, including communications between relevant Nuix officers, and material obtained from other sources. Search warrants were not utilised in this investigation as the conduct was already the subject of media attention and given the fact that Mr Rubinsztein had disclosed, via the ASX, his share purchase.

Prior to finalising our investigation, we obtained external legal advice from Senior Counsel. The advice confirmed ASIC's assessment that there was insufficient evidence to establish any offending.



## Pursuing litigation

- 107 A decision to commence civil proceedings is made by the CEC. Before making this decision, ASIC would normally have obtained written legal advice from counsel on the prospects of the proceedings and which address the applicable aspects of the *Legal Services Directions 2017*.
- 108 A decision to commence litigation involves weighing up the prospects of success based on legal advice, our regulatory objectives in pursuing the alleged misconduct, the benefits and risks of litigation, and available resources and necessary priorities.
- 109 It can also be a complex decision as to the precise ambit of the litigation to be commenced, including consideration of the following:
- (a) What is ASIC's key regulatory objective in taking the matter? How does this align with our strategic priorities and complement other regulatory and enforcement actions?
  - (b) What are the relative strengths and weaknesses of pursuing action for each possible contravention, and key litigation risks, based on the available evidence and legal advice?
  - (c) If multiple contraventions are available, should proceedings be commenced in relation to all or only some of the available contraventions?
  - (d) How do the available contraventions align with ASIC's core regulatory message in relation to the conduct of concern, and if there are multiple contraventions, do the multitude of contraventions support a clear and cohesive case?
  - (e) If multiple potential defendants are identified, should proceedings be commenced in relation to all or only some of the possible defendants?
  - (f) What regulatory message might ASIC be sending in commencing proceedings against a corporate entity and not against any individuals (such as the entity's directors or employees) for the conduct, or vice versa? What risks and complexities might arise in the proceedings by involving both individual and corporate defendants?
  - (g) What are the risks of proceedings being stayed or adjourned due to parallel or concurrent proceedings that arise from the same conduct?
- 110 In practice, the investigation team undertakes ongoing assessments of these factors in consultation with civil and criminal litigation specialists in ASIC's Legal Services group throughout the investigation. Advice from these specialists influences the investigation strategy and investigative steps that are taken. Guidance may also be provided by the MMG and/or CEC. This

ongoing assessment culminates in the recommendation provided to the CEC or MMG for a decision on the enforcement action to be taken.

111 The CEC may nominate a senior executive leader or Commission member to provide final instructions on the documents initiating proceedings.

112 Once proceedings are commenced, the CEC will generally make decisions about the conduct of civil proceedings regarding any major change in the direction or scope, the penalty or remedy sought, proposed resolution and proposed appeal of a court decision.

113 The relevant senior executive leader continues to be responsible for the day-to-day carriage of the matter and for ensuring that significant decisions during the proceedings, including in relation to penalties and appeals, are appropriately escalated to CEC for decision or consideration.

114 Table 3 in Appendix 1 contains data on civil actions we commenced and completed over the past five financial years and the current year to 31 March 2024.

## Taking administrative action

115 ASIC is empowered to take administrative action to protect consumers and financial investors. Examples include:

- (a) imposition of licence conditions or the cancellation of a licence issued by ASIC;
- (b) banning a person from practising in the Australian financial services or credit industry;
- (c) making a product intervention order;
- (d) giving a direction to a market to suspend dealing in a financial product if it is necessary or in the public interest to protect people;
- (e) issuing an infringement notice, such as in relation to misleading and deceptive conduct for breach of continuous disclosure requirements; or
- (f) issuing a stop order, such as for a breach of relevant design and distribution obligations.

116 While mostly protective in nature, these actions can carry very real consequences by preventing entities and persons from continuing their business or profession, stopping fundraising, or restricting the distribution of a product.

117 Depending on the administrative action, ASIC has in place different arrangements for how our powers will be exercised. In many cases, such as for licence cancellations and bannings, when an investigation team forms a

belief that there is enough evidence, they will refer a brief to an ASIC Hearings Delegate who will conduct an administrative hearing in accordance with Regulatory Guide 8 *Administrative hearings: Principles and conduct* ([RG 8](#)). RG 8 sets out the principles and procedures we adopt in conducting administrative hearings held for the purpose of giving a person their statutory right to be heard. For other actions, such as for issuing of infringement notices, appropriate senior ASIC staff are delegated the decision making power.

118 Persons subject to an ASIC order may have the right to seek a review of the decisions by the Administrative Appeals Tribunal (AAT). The AAT may affirm, vary or set aside ASIC's decision.

119 There may be other avenues of administrative enforcement action open to us including referring matters to specialised panels composed of eminent individuals (often industry experts) independent of the investigation team. For example, the Market Disciplinary Panel considers breaches of the market integrity rules, the Financial Services and Credit Panel considers alleged misconduct relating to financial advisers, and the Companies Auditors Disciplinary Board considers alleged misconduct of registered auditors.

120 Tables 8 and 9 in Appendix 1 provides data on administrative actions and other outcomes in the past five financial years and the current year to 31 March 2024.

## Matters involving overseas regulators

121 Where evidence we need for an investigation and subsequent enforcement action is outside our jurisdiction and cannot be obtained voluntarily, we may require assistance from overseas regulators or law enforcement agencies.

122 We often obtain assistance from our overseas counterparts at the investigative stage or just prior to the commencement of court proceedings. In 2022-23, we made 225 international cooperation requests to overseas regulators, of which 59 were for the assistance of enforcement matters.

123 ASIC is a signatory to the IOSCO Multilateral Memorandum of Understanding ([MMoU](#)) and IOSCO Enhanced Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information ([EMMoU](#)). These arrangements are the primary mechanisms through which we obtain assistance from foreign regulators during our investigations.

124 ASIC also has multiple memoranda of understanding or agreements (MOUs) with various international counterparts, which often include information-sharing and cooperation agreements specific to the parties.

- 125 MOUs generally impose requirements about the permissible use and confidentiality of information we obtain. As the information we receive from overseas regulators is sometimes obtained using their compulsory powers and is potentially confidential, it is often provided to us on the basis that we use it only for our investigations and subsequent civil or administrative proceedings. Should we require the use of the information for another purpose, we may seek consent from the overseas regulator.
- 126 Where we seek to use evidence obtained from overseas regulators in the subsequent proceedings, further steps may be required to ensure it is in admissible form. These further steps may result in delay and added costs to a matter.
- 127 For criminal matters, it is generally more efficient and timely to obtain information from overseas for our investigations or for inclusion in the brief to the CDPP by using regulator-to-regulator processes such as bilateral MOUs or the EMMoU. One of the processes we (and the CDPP) use to obtain evidence from overseas in an admissible form is ‘mutual assistance’ under the *Mutual Legal Assistance in Criminal Matters Act 1987* (MACMA). MACMA requests must be made on our behalf by the Australian Attorney-General or a delegated officer through a mutual legal treaty process. The time taken to obtain information depends on the nature and size of request and the jurisdiction.
- 128 As noted in **Case study 3**, in our case against AGM Markets and its authorised representatives, ASIC received assistance from our overseas peers at the US Securities and Exchange Commission, US Commodity Futures Trading Commission, Cyprus Securities and Exchange Commission and the Israel Securities Authority.

## E Budget and resourcing for investigations and enforcement actions

### Key points

The budgets relating to ASIC's enforcement work are allocated by ASIC's Commission as part of the annual business planning process. This process considers ASIC's strategic priorities including ASIC's enforcement priorities.

A broad range of considerations can inform how individual investigations are resourced and progressed, including the type of enforcement action being contemplated and the scope and complexity of the matter.

ASIC can and does face significant challenges when seeking criminal and civil outcomes against defendants with access to extensive legal and financial resources. This can present barriers that put additional pressure on those proceedings and require additional time and resources to complete.

### Budget allocated to our enforcement work

- 129 ASIC allocates budget to the Enforcement & Compliance Group and the Markets Enforcement team which encompasses all of the work undertaken by those teams. This includes inquiries, compliance actions, investigations and enforcement actions. Considerable support is also provided by our Legal Services, Intelligence and International and Communications teams.
- 130 We do not separately allocate budget for litigation or prosecution actions.
- 131 Budgets are allocated to ASIC teams each year by ASIC's Commission as part of the business planning process. This process considers ASIC's strategic priorities including ASIC's enforcement priorities.
- 132 ASIC's total budget allocation in 2023-24 for enforcement is \$74.7 million. The budget allocated to Legal Services is approximately \$18 million in total, and some of this contributes to enforcement work.
- 133 ASIC's total Average Staffing Level (ASL) allocation as at March 2024 for enforcement is 485. A portion of the ASL allocated to Legal Services also contributes to enforcement work, as well as resources from Intelligence and International and Communications teams.
- 134 These budget allocations are funded from ASIC's core appropriations. ASIC also has available the Enforcement Special Account (ESA) which can be used to fund enforcement actions which meet particular criteria regarding the

likely overall cost of the matter. The purpose of this account is to fund investigations and subsequent proceedings for matters which ASIC is unable to absorb the costs without significantly prejudicing its existing, ongoing enforcement activities, and/or those matters which are critical to continued community confidence in the financial system. As noted below, a matter can only be funded from the ESA if the costs exceed, or are reasonably expected to exceed, \$750,000.

135 These budget allocations cover internal staff costs and external costs including solicitors, counsel and experts.

136 Figure 5 sets out the actual expenditure and average staffing level of our enforcement this year to 31 March 2024.

**Figure 5: Actual expenditure and average staffing level of enforcement YTD to 31 March 2024**

YTD costs as at 31 March 2024			
	Core funded	ESA funded	Total
Staff costs (\$'m)	43.5	9.9	53.4
Counsel fees & external solicitors (\$'m)	3.3	17.5	20.8
Other supplier costs (\$'m)	6.5	5.9	12.4
<b>Total (\$'m)</b>	<b>53.3</b>	<b>33.3</b>	<b>86.6</b>
YTD Average Staffing Level as at 31 March 2024			
Average staffing level	424	61	485

Note: 'Enforcement' refers to teams in the Enforcement & Compliance Group and Markets Enforcement

## Resourcing of individual matters

- 137 A broad range of considerations can inform how individual investigations are resourced and progressed. These include:
- the type of enforcement action(s) contemplated which informs the relevant evidentiary standards that need to be met (administrative, civil or criminal);
  - the scope of the investigation including timeframe and breadth of the alleged misconduct under investigation, and the number of suspects and witnesses;
  - the immediate investigative steps to be taken. For example, the planning and execution of search warrants require the commitment of significant resources from ASIC, as well as resources from the relevant partner agency (e.g. the Australian Federal Police or state or territory police);
  - the volume of electronic or documentary evidence required to be processed and reviewed;

- (e) alignment with our strategic and enforcement priorities as well as factors such as risk of ongoing harm and objective characteristics of the seriousness of the misconduct; and
- (f) considerations about whether resources should be directed to taking on new investigations or focusing on progressing existing matters in a timely manner, especially where they may cover or explore similar areas or types of possible misconduct.

138 Similarly, a range of considerations can inform how individual litigations are resourced and progressed. These include:

- (a) the type of proceeding (civil, administrative, or criminal) and whether ASIC is responsible for conducting the proceeding;
- (b) the scope and complexity of the proceeding including the amount of documentary evidence, the nature and extent of expert evidence required, and number of witnesses;
- (c) the timetable set by the court or tribunal requiring action by the parties; and
- (d) the need to respond to interlocutory or other applications and issues raised by the defendant to the proceeding.

139 The resourcing of individual investigations and matters in litigation are the subject of ongoing discussions between the responsible senior executive and the relevant team members on the matter. We have tools that display a dashboard of current matters across our Enforcement teams and the resources allocated to each matter, which can support assessments about available resources and whether matters are adequately resourced by reference to their alignment with our strategic priorities and the complexity and status of the matter.

140 As noted above, ASIC can access the ESA to pursue enforcement action without the need to seek funding on a case-by-case basis. Investigations and proceedings may be funded from the ESA if they are:

- (a) individual public interest enforcement activities involving matters of importance for continued community confidence in the financial system; and
- (b) have costs exceeding, or reasonably expected to exceed, \$750,000.

### **Well-resourced defendants**

141 ASIC can and does face significant challenges when seeking criminal and civil outcomes against defendants with access to extensive legal and financial resources.

- 142 These challenges often require disproportionate allocation of our resources, divert us from other critical enforcement action and ultimately, can delay the course of justice.
- 143 An **in-camera case study** will be provided to provide an example of some of the challenges faced by ASIC in one such instance.
- 144 Examples of strategies previously employed by well-resourced and sophisticated defendants include one or more of the following:
- (a) Utilisation of administrative mechanisms to seek voluminous, detailed or broad ranging information, such as through freedom of information laws.
  - (b) Pre-trial motions and appeals of a technically demanding nature, which can significantly prolong litigation and force ASIC to incur significant costs.
  - (c) Enhanced complexity of substantive proceedings, such as through expert evidence.
  - (d) Technical challenges to the laws ASIC administers, often requiring ASIC to engage external counsel of significant seniority.
  - (e) Sophisticated public relations campaigns, including the public naming of ASIC staff, aimed at undermining the credibility of our enforcement activities or ASIC itself.



## Appendix 1: Data on ASIC investigations and enforcement actions and outcomes

- 145 This appendix sets out information about the formal investigations we commenced and completed in the past five financial years and the current year to 31 March 2024 (see Table 1 and Table 2).
- 146 This appendix also sets out data over the same period in response to the Committee's requests:
- Civil proceedings (Table 3)
  - Referrals to the CDPP, including cases accepted and rejected (Table 4)
  - Criminal proceedings (Table 5)
  - Cases won and lost (percentage of successful civil and criminal cases provided in Table 3 and Table 5 and total value of fines and costs achieved in summary prosecutions provided in Table 6)
  - Proceeds of crime cases (Table 7)
  - Administrative actions (Table 8)
  - Other outcomes (data relating to infringement notices, court enforceable undertakings and public warnings is provided in Table 9)
  - No further action (see Table 2).
- 147 Data relating to the following items cannot be readily extracted from our systems:
- cases proceeding to appeals
  - interventions in private litigations
  - referrals to other enforcement bodies
  - breakdown of the data across small versus large firm numbers
  - breakdown of data across Australian versus multinational firms.
- 148 We have not undertaken any representative class actions under section 50 of the ASIC Act over this period.

### Investigations commenced and completed

- 149 Table 1 and Table 2 set out information about the formal investigations we commenced and completed in the past five financial years and the current year to 31 March 2024.
- 150 Investigations referred to in the following two tables are formal investigations that meet the definition in s13 of the ASIC Act and/or s247 of the *National Consumer Credit Protection Act 2009*.

**Table 1: Total number of investigations commenced and completed**

Investigation status	2018–19	2019–20	2020–21	2021–22	2022–23	2023–24 (to 31 Mar)
Investigations commenced	151	134	110	107	134	129
Investigations completed	126	103	132	158	139	125

Note 1: ASIC's [Annual Report 2019–20](#) indicated, in error, that 126 new investigations were commenced in the previous year (2018–19). The correct number of new investigations commenced in 2018–19 is 151.

Note 2: ASIC's [Annual Report 2018–19](#) indicated, in error, that 103 investigations were completed in 2018–19. The correct number of investigations completed in 2018–19 is 126.

- 151 In the period 2018-19 to 2023-24 (to 31 March 2024), ASIC commenced 765 investigations. Of this:
- 340 (44%) ended with no further action;
  - 190 (25%) resulted in an enforcement outcome;
  - 171 (22%) are currently under investigation; and
  - 58 (8%) have progressed to enforcement action.

**Table 2: Current status of investigations commenced as at 31 March 2024 (by year commenced)**

	2018–19	2019–20	2020–21	2021–22	2022–23	2023–24 (to 31 Mar)
<b>Total investigations commenced</b>	<b>151</b>	<b>134</b>	<b>110</b>	<b>107</b>	<b>134</b>	<b>129</b>
<b>Investigations and actions completed</b>						
Investigations ended with no further action	76 (50%)	80 (60%)	61 (55%)	54 (50%)	55 (41%)	14 (11%)
Investigation and enforcement action completed	66 (44%)	42 (31%)	29 (26%)	22 (21%)	25 (19%)	6 (5%)
<b>Investigations and actions underway as at 31 March 2024</b>						
Investigations underway	3 (2%)	6 (4%)	5 (5%)	13 (12%)	38 (28%)	106 (82%)
Enforcement action underway	6 (4%)	6 (4%)	15 (14%)	18 (1%)	16 (12%)	3 (2%)

Note: The numbers and percentages represent the current status of investigations commenced in the relevant financial years. For example, in 2018-19, ASIC commenced 151 investigation and of this, 76 (50%) have ended with no further action, 66 (44%) resulted in an enforcement outcome, 3 (2%) are currently under investigation and 6 (4%) have progressed to enforcement (litigation or administrative) action which remain underway.

## Civil actions commenced and completed

152 Table 3 sets out information about the civil actions we commenced and completed in the past five financial years and the current year to 31 March 2024.

**Table 3: Total number of civil actions commenced and completed**

Civil action	2018–19	2019–20	2020–21	2021–22	2022–23	2023–24 (to 31 Mar)
New civil actions commenced	55	50	83	75	62	51
Civil actions completed	75	37	46	61	52	29
Civil actions completed successfully (as a percentage)	96%	97%	93%	100%	94%	79%
<b>Outcomes</b>						
Total dollar value of civil penalties	\$12.69m	\$24.90m	\$189.43m	\$229.92m	\$185.44m	\$62.74m

Note: Values presented may differ marginally from those indicated in ASIC's annual reports because of number rounding in the annual reports.

## Referrals to the CDPP

153 Table 4 below sets out the number of briefs referred to the CDPP each year for the past five financial years and the current year to 31 March 2024, and the status of those briefs as at 31 March 2024.

154 The number of referrals we make to the CDPP varies from year to year depending on the nature of the matters and whether we consider criminal proceedings as the appropriate type of enforcement action to address the contravention of the law. As explained in Part D, our role is to refer a brief when we have formed the view that there is sufficient evidence to meet the criteria set out in the Commonwealth Prosecution Policy.

155 The number of briefs referred in 2018–19, 2019–20 and 2020–21 included briefs relating to individuals and companies investigated as part of the Financial Services Royal Commission. The conclusion of this work has also contributed to the decrease in the number of referrals to the CDPP. We continue to support the prosecutions conducted by the CDPP.

**Table 4: Current status of briefs referred to the CDPP as at 31 March 2024 (by year referred)**

	2018–19	2019–20	2020–21	2021–22	2022–23	2023–24 (to 31 Mar)
<b>Total number of briefs referred to the CDPP (individuals/companies)</b>	<b>40</b>	<b>53</b>	<b>84</b>	<b>52</b>	<b>37</b>	<b>7</b>
Individuals/companies charged	38	41	55	37	17	2
Individuals/companies not charged	2	10	18	11	3	-
Briefs still under consideration by the CDPP	-	2	11	5	17	5

Note 1: The number of briefs referred to the CDPP represents a count of individuals and companies referred for assessment. There may be instances where more than one individual or company is referred to the CDPP following an investigation, therefore the number of briefs should not be interpreted as the number of investigations or matters.

Note 2: Criminal actions commence when the CDPP lay criminal charges.

Note 3: Individuals/companies not charged reflects where the CDPP has made a formal recommendation to close the matter and not lay criminal charges.

## Criminal actions commenced and completed

**Table 5: Total number of criminal actions commenced and completed**

<b>Criminal action</b>	2018–19	2019–20	2020–21	2021–22	2022–23	2023–24 (to 31 Mar)
New criminal actions commenced	14	41	53	52	32	21
Criminal actions completed	33	35	29	38	44	18
Criminal actions completed successfully (as a percentage)	89%	91%	100%	89%	90%	88%
<b>Outcomes</b>						
People and/or companies convicted	27	30	29	34	35	14
Custodial sentences (including fully suspended)	14	22	10	13	21	5

<b>Criminal action</b>	<b>2018–19</b>	<b>2019–20</b>	<b>2020–21</b>	<b>2021–22</b>	<b>2022–23</b>	<b>2023–24 (to 31 Mar)</b>
Non-custodial sentences and/or fines	16	8	19	21	14	9
Total dollar value of fines	\$266,050	\$731,650	\$151,100	\$2.111m	\$189,640	\$936,000
Total dollar value of reparation orders	N/A	N/A	\$1.80m	N/A	N/A	N/A
Total dollar value of pecuniary penalties	N/A	N/A	N/A	\$102,175	\$28,884	N/A

Note 1: ASIC's [Annual Report 2021–22](#) indicated that 50 new criminal actions were commenced in 2021–22. This figure has been amended to 52 in the above table and in ASIC's [Annual Report 2022–23](#), to include two further criminal actions commenced that were omitted due to delays in record keeping at the end of financial year.

Note 2: ASIC's [Annual Report 2021–22](#) indicated that there were 20 Non-custodial sentences and/or fines in 2021–22. This figure has been amended to 21 in the above table and in ASIC's [Annual Report 2022–23](#), to include a result that was omitted due to delays in record keeping at the end of financial year.

Note 3: ASIC's [Annual Report 2021–22](#) indicated that a total of 33 people and/or companies were convicted in 2021–22. This figure has been amended to 34 in the above table and in ASIC's [Annual Report 2022–23](#), to include a further criminal conviction that was omitted due to delays in record keeping at the end of financial year.

Note 4: In 2015–16, the reporting outcome 'Custodial sentences (including fully suspended)' in ASIC's annual report changed from previous years (for 'number of imprisonments') to take into account custodial sentences that have been fully suspended. As a result, previous year figures for 'Custodial sentences (including fully suspended)' and 'Non-custodial sentences and/or fines' (from 2012–13 to 2014–15) were adjusted in ASIC's [Annual Report 2015–16](#) and these adjustments are reflected in the table above.

Note 5: Values presented may differ marginally from those indicated in ASIC's annual reports because of number rounding in the annual reports.

Note 6: Pecuniary penalties reflect orders made under s320(d) of the Proceeds of Crime Act 2002, where the defendant is ordered to pay the benefits obtained from committing their offence.

## Summary prosecutions

**Table 6: Summary prosecutions for strict liability offences completed**

<b>Outcome</b>	<b>2018–19</b>	<b>2019–20</b>	<b>2020–21</b>	<b>2021–22</b>	<b>2022–23</b>	<b>2023–24 (to 31 Mar)</b>
Number of defendants in summary prosecutions for strict liability offences completed	369	248	224	181	210	114
Total value of fines and costs	\$1.6m	\$793,670	\$669,906	\$1.02m	\$1.6m	\$802,185

Note: Summary prosecutions for strict liability offences predominantly arise from reports of alleged misconduct that are referred to the Small Business Engagement and Compliance team.

## Proceeds of crime

- 156 In the period 2018-19 to 2023-24 (to 31 March 2024), as a result of ASIC investigations 8 people were convicted of criminal offences dealing in the proceeds of crime.
- 157 As at 31 March 2024, there are 4 matters currently before the court where the defendants have been charged with at least one charge of dealing with proceeds of indictable crime.

**Table 7: Number of criminal actions/outcomes related to proceeds of crime**

Actions/outcomes	2018–19	2019–20	2020–21	2021–22	2022–23	2023–24 (to 31 Mar)
People/companies convicted	N/A	2	N/A	3	3	N/A
Custodial sentences (including fully suspended)	N/A	2	N/A	3	3	N/A
Non-custodial sentences and/or fines	N/A	N/A	N/A	N/A	N/A	N/A
Total dollar value of pecuniary penalties	N/A	N/A	N/A	\$70,179	N/A	N/A

Note 1: Includes criminal actions where the defendant was charged with at least one charge of dealing in the proceeds of crime or were ordered a pecuniary penalty under the *Proceeds of Crime Act 1992*.

## Administrative actions

**Table 8: Number of administrative actions/outcomes**

Administrative actions/outcomes	2018–19	2019–20	2020–21	2021–22	2022–23	2023–24 (to 31 Mar)
New administrative actions commenced	305	179	197	131	178	68
Administrative actions completed	315	165	211	136	174	83
<b>Outcomes</b>						
People disqualified/removed from directing companies	59	51	49	58	32	25

<b>Administrative actions/outcomes</b>	<b>2018–19</b>	<b>2019–20</b>	<b>2020–21</b>	<b>2021–22</b>	<b>2022–23</b>	<b>2023–24 (to 31 Mar)</b>
People/Companies removed, restricted or banned from financial services	85	79	49	39	77	40
People/Companies removed, restricted or banned from credit services	97	29	46	18	28	9

Note: Administrative actions commenced and completed reflects the number of administrative matters referred to an ASIC Hearing Delegate following an investigation. This includes referrals for director disqualification, and financial services and credit bannings. The total number of actions will not correlate with the administrative outcome statistics reported in the ASIC Annual Report, because there are instances where the hearing results in more than one outcome, no order is made, or the banning order could not be served and therefore, the outcome is not counted.

## Other outcomes

**Table 9: Total number of infringement notices, court enforceable undertakings and public warning notices**

<b>Other outcomes</b>	<b>2018–19</b>	<b>2019–20</b>	<b>2020–21</b>	<b>2021–22</b>	<b>2022–23</b>	<b>2023–24 (to 31 Mar)</b>
<b>Infringement notices</b>						
Infringement notices issued	14	4	3	3	20	19
Total dollar value of infringement notices	\$731,700	\$671,000	\$392,000	\$136,890	\$6.7m	\$3.2m
<b>Court enforceable undertakings</b>						
Court enforceable undertakings accepted	10	1	3	1	3	5
<b>Public warning notices</b>						
Public warning notices issued (s12GLC ASIC Act)	N/A	N/A	N/A	N/A	1	N/A



## Appendix 2: Data on finalised reports of alleged misconduct

- 158 This appendix sets out data on finalised reports of alleged misconduct from the past five financial years and the current year to 31 March 2024.
- 159 We note that we do not seek to commence investigations on a fixed proportion of referrals/complaints. ASIC is not a complaint resolution body—its purpose is not to resolve individual consumer disputes and complaints, but to gather information from many sources and use it to make strategic decisions about when to intervene and how to do so. This is explained in Part C.
- 160 A report of alleged misconduct is considered ‘finalised’ when its assessment is complete and it has an assessment outcome.

### Total number of reports finalised

- 161 Table 10 shows the total number of reports of alleged misconduct finalised over past five financial years and the current year to 31 March 2024.
- 162 The reportable situations regime commenced on 1 October 2021:
- (a) in 2021–22, we received 14,038 reportable situation notifications from licensees and 137 from licensees about another licensee; and
  - (b) in 2022–23, we received 28,493 reportable situation notifications from licensees and 160 from licensees about another licensee.
- 163 The ‘reportable situations (previously breach reports)’ number for 2021–22 includes:
- (a) the number of breach reports finalised in 2021–22 (i.e. before the reportable situations regime commenced); and
  - (b) the number of initial assessments of reportable situation notifications completed by ASIC’s Misconduct and Breach Reporting team in 2021–22.
- 164 The ‘reportable situations (previously breach reports)’ number for 2022–23 includes the number of initial assessments of reportable situation notifications completed by ASIC’s Misconduct and Breach Reporting team.
- 165 We use the reports to immediately assess the specific issues reported and we also collate the data to more broadly consider the trends and issues arising in our regulated population and to inform ASIC’s priorities.

**Table 10: Total reports of alleged misconduct finalised**

Report of alleged misconduct type	2018–19	2019–20	2020–21	2021–22	2022–23	2023–24 (to 31 Mar)
Reports of misconduct from the public and AFCA notifications	10,249	12,355	10,711	8,688	8,149	8,640
Reportable situations (previously breach reports)	2,173	2,721	2,435	1,969	1,313	644
Auditor breach reports	705	1,172	1,174	1,393	1,968	2,070
Statutory reports (initial and supplementary)	8,621	8,560	5,083	4,645	6,073	5,690
<b>Total reports of alleged misconduct finalised</b>	<b>21,748</b>	<b>24,808</b>	<b>19,403</b>	<b>16,695</b>	<b>17,503</b>	<b>17,042</b>

Note 1: The total number of auditor breach reports shown separately in the table is included in the total number of breach reports finalised figure in ASIC's annual reports.

Note 2: Statutory reports (initial and supplementary)—statutory reports (initial) from a liquidator are automatically triaged and assessed using digital tools, and we may request a further statutory report (supplementary).

Note 3: 818 reports of the 'Reportable situations (previously breach reports)' figure for 2021–22 relate to the initial assessment of reportable situation notifications completed by ASIC's Misconduct and Breach Reporting team.

Note 4: 1,275 reports of the 'Reportable situations (previously breach reports)' figure for 2022–23 relate to the initial assessment of reportable situation notifications completed by ASIC's Misconduct and Breach Reporting team.

Note 5: 601 reports of the 'Reportable situations (previously breach reports)' figure for 2023–24 relate to the initial assessment of reportable situation notifications completed by ASIC's Misconduct and Breach Reporting team

## Assessment outcomes

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Table 11–Table 13 set out the assessment outcomes of our finalised reports of alleged misconduct which include reports of misconduct from the public, AFCA notifications, reportable situations (previously breach reports) and statutory reports (supplementary) over the past five financial years and the current year to 31 March 2024. The outcomes are categorised as follows:

- referred for action by ASIC—the report of alleged misconduct is referred to an enforcement and compliance team or regulatory and supervision team for further evaluation. The matters we take into account when deciding whether or not to commence a formal investigation are set out in more detail in INFO 151;
- resolved—this can involve ASIC providing information to the reporter about the external dispute resolution (EDR) scheme, issuing a warning letter to the party that it may be in breach of the Corporations Act, providing assistance to the reporter in the form of guidance and information about how best to resolve the matter themselves or taking action to achieve compliance;

- analysed and assessed for no further action—with these matters, we have made preliminary inquiries and may have requested further information, and then determined that no further action is required. This is usually due to insufficient evidence or another reason, such as that another agency, law enforcement body or third party (e.g. a liquidator) is better placed to appropriately deal with the underlying issues or is already taking action;
- no jurisdiction—where relevant, we direct reporters to the appropriate agency or solution; and
- no breaches or offences identified.

**Table 11: Reports of misconduct from the public and AFCA notifications finalised—by outcome (percentage distribution)**

Outcome	2018–19	2019–20	2020–21	2021–22	2022–23	2023–24 (to 31 Mar)
Referred for action by ASIC	21%	19%	15%	13%	14%	15%
Resolved	12%	10%	9%	11%	8%	13%
Analysed and assessed for no further action	54%	61%	65%	66%	63%	60%
No jurisdiction	9%	8%	9%	9%	14%	9%
No breaches or offences	4%	2%	2%	1%	1%	3%
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

Note: We merge reports about the same entity and issue (such that one finalised referral for action may represent multiple initial reports of misconduct received).

**Table 12: Reportable situations (previously breach reports) finalised—by outcome (percentage distribution)**

Outcome	2018–19	2019–20	2020–21	2021–22	2022–23	2023–24 (to 31 Mar)
Referred for action by ASIC	22%	18%	11%	10%	7%	4%
Analysed and assessed for no further action	78%	82%	89%	90%	93%	96%
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

Note: Includes assessment outcomes for auditor breach reports.

**Table 13: Statutory reports (supplementary) finalised—by outcome (percentage distribution)**

Outcome	2018–19	2019–20	2020–21	2021–22	2022–23	2023–24 (to 31 Mar)
Referred for action by ASIC	24%	23%	18%	20%	34%	17%
Analysed and assessed for no further action	76%	77%	82%	80%	66%	83%
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

Note 1: No assessment outcomes have been attributed to Statutory reports (initial). For reporting purposes, outcomes are recorded for statutory reports (supplementary) finalised. We may request supplementary statutory reports following receipt of an initial statutory report.

## Reports referred for further action

**Table 14: Total reports of alleged misconduct finalised and referred for action by ASIC—by team (percentage distribution)**

Team	2018–19	2019–20	2020–21	2021–22	2022–23	2023–24 (to 31 Mar)
Enforcement team	5%	7%	13%	9%	15%	43%
Small Business Engagement and Compliance team	61%	57%	44%	49%	50%	53%
Supervisory team	25%	24%	34%	32%	33%	3%
Existing surveillance or investigation	3%	2%	0%	0%	0%	0%
Other	0%	1%	1%	1%	2%	0%
Registry	6%	10%	9%	10%	0%	0%
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

Note 1: 'Other' team primarily comprises the Chief Legal Office and, to a much lesser extent, the Licensing, Property and Unclaimed Monies teams.

Note 2: Following a change to ASIC's systems in 2017, where reports of alleged misconduct referred were previously recorded as 'Existing surveillance or investigation', these are now reported in the 'Enforcement team', 'Small Business Engagement and Compliance team' and 'Supervisory team' numbers directly.

Note 3: The figures have been derived using a data source that is different from that of Table 10–Table 13.

Note 4: In April 2021, ASIC Registry staff and functions moved to the Australian Business Registry Services (ABRS) within the Australian Taxation Office through a machinery of government change. Direct referrals continued to Registry as the transition of functions progressed through 2021–22. In 2022–23, new processes were implemented and direct referrals ceased.

Note 5: The sum of the 'Team' percentages may not total to 100% due to rounding of figures in the table.

Note 6: In July 2023, a new organisational structure came into effect, streamlining our enforcement and supervision functions to improve coordination across the agency. As a result of these changes, a larger proportion of referrals are directed to our Enforcement team.