

SERC Submission summaries

March-May 2023

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Emerging themes

Sources	Theme
Capacity and capability: ASIC's remit is too large to be effective across its remit	
Shipton	Separate civil enforcement agency. Separate superannuation regulator
Schmulow, Harris, Medhurst	Dedicated litigation and prosecution unit in a new agency
Brand/Tutton; Sub 65, 147	More focus needed on whistleblower protection. Separate whistleblower body.
ASBFEO; ARITA; Shipton	Single insolvency regulator
Effectiveness: Inability to measure ASIC's effectiveness	
CA ANZ	'ASIC does not report outcomes, only outputs'
Shipton	Proposed regulatory objectives-capability-capacity-coverage (ROCCC) framework
Enforcement action: Inadequate enforcement, particularly for insolvency and small business issues (although some acknowledgement of more active enforcement approach since FSRC)	
ARITA; CA ANZ	ASIC is slow to respond to misconduct and outcomes are not timely
Individual investors	ASIC doesn't adequately warn investors about 'red flags' it is aware of, and doesn't protect existing investors/consumers from the impact of its enforcement actions (eg. Mayfair, Courtenay House, Sterling, Papalia, Prime Trust)
SBDC	Lack of action for illegal phoenixing
Niall Coburn (on behalf of farmers), Sub 92	Lack of action on bank predatory lending
ARITA; Harris; Keenan; Carter	ASIC achieves limited successful outcomes (mostly administrative) against directors relating to external administration
Harris	Activities of SBE&C 'something of a black box'
Harris; Nehme; Keenan	Reporting of ASIC's enforcement outcomes need more detail, consistency and clarity - use of different groupings and categories and timeframes over time that obfuscates useful comparisons, over-reliance on case studies
ABA; FSC; Law Council; FPA, AFA	Different views about ASIC's use of enforcement tools – recognise increase in litigation in recent years; support appropriate use of enforceable undertakings and infringement notices; clear guidance and more industry engagement and education.
AFA	ASIC is too vigorous, seeks to enforce its regulatory guidance as law
Walden, subs 153	Criticism of ASIC's enforcement of market integrity rules and prevention of market manipulation

Sources	Theme
Use of AI and automation: Lack of transparency about how ASIC handles reports of misconduct and makes decisions about its enforcement activities	
ASBFEO; ARITA	ASIC should be more transparent about its decision making and automated algorithms – allow practitioners to better target investigation efforts to assist ASIC identify behaviour of concern, minimise costs
CALC; SBDC	Support for ‘super complaints’ process
Schmulow	ASIC’s legal advice should be subject to review by Parliament
SBDC; Adams	General concern about very low proportion of reports of misconduct being actioned
Dispute resolution and compensation for consumers	
CALC	Support for the important role of AFCA and proposed CSLR;
Individual investors	Some confusion about ASIC’s role in assisting consumers to obtain compensation for losses; criticism of CDDA scheme and Act of Grace applications; some dissatisfaction with AFCA
Maurice Blackburn	Role for class actions
Culture and transparency	
General	Concerns related to enforcement posture, quality of data and reporting; disclosure of ROMs received and ‘red flags’
General	ASIC governance / Commission
Individual investors	Indifference and inaction
Unnecessary regulatory burden	
ASBFEO; FSC; Law Council; ARITA; CA ANZ	Reporting requirements are too broad and onerous; money being spent on reporting that is not even considered by ASIC; ASIC should consider reducing reporting requirements
FSC; CA ANZ; SIAA; Adams	Criticisms of industry funding model – regulated populations should not have to fund activities that have broader public benefit
Millhouse; Nehme; Institute of Public Accountants; Law Council of Australia	Legislative framework should be reviewed to reduce complexity and duplication

Submission Summaries

Num	Submitter	Summary
1	ASIC	
2	AFCA	Sets out AFCA's role and responsibilities, and the oversight role of ASIC, noting regular engagement and reporting. Outlines AFCA's systemic issues outcomes and ASIC action from AFAC referrals (p8). Refers to multiple reviews on the components needed to support effective and efficient financial market outcomes (Summarised in Appendix 1). Appendix 2 sets out AFCA's complaints and systemic issue process, and Appendix 3 summarises Treasury's 2021 Independent Review.
3	ASBFEO	<p>Focuses on ASIC acting on insolvency practitioners' reports of suspected illegal director activity. ASIC only takes on 'a fraction' of enforcement in this area but this would benefit small businesses, their creditors, and the broader Australian public.</p> <ul style="list-style-type: none"> References ASIC's submission and hearing at the PJC inquiry into corporate insolvency - ASIC estimates receiving 3,767 initial statutory reports in 2021-22. Of the initial reports received, about 16-19% progress to the supplementary reports stage. The majority receive a 'no further action' automated response within 40 seconds. 82,000 voluntary company deregistrations and 65,000 involuntary (ASIC-initiated) deregistrations since 2012, and that these are not investigated by ASIC, which means it is unclear whether they were deregistered due to misconduct or illegal activity such as phoenixing. Advocates for the establishment of a Federal Small Business and Codes List in the Federal Circuit Court of Australia, which would enable small businesses to pursue their own commercial interests rather than relying on regulator-initiated litigation (p3) Recommendations: <ol style="list-style-type: none"> ASIC should be more transparent about its decision-making and automated algorithm in acting on reports of corporate misconduct – Argues this would allow practitioners to target their investigation efforts, which would minimise costs to the businesses and their creditors, and result in greater enforcement action against illegal phoenixing. Though they acknowledge 'total transparency' may enable malfeasant businesses to avoid ASIC's detection. ASIC should ensure adequate legislative flexibility to adopt a tailored approach to responding to disputes – This includes the 'availability of operator support where automated support is not appropriate or helpful'. They observe a gap in practitioners being able to escalate reports and for small business owners to raise disputes. They argue ASBFEO should act as super-complainants to raise and escalate systemic issues with ASIC.

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		<p>Example of Viewable Media provided to illustrate their view that ASIC was 'slow to act' and small businesses were impacted</p> <ol style="list-style-type: none"> 3. ASIC should consider reducing the reporting requirements of insolvency practitioners in the legislation to ensure reporting prioritises cases which will result in ASIC investigation – focusing on the more material matters with greater returns, or matters with most severe misconduct would likely result in fewer reports to ASIC. 4. The Australian Government should consider establishment of a single insolvency regulator 5. ASIC should improve the quality and useability of its data <ul style="list-style-type: none"> - this includes ASIC publishing user-friendly data in its insolvency series statistics on the estimated size of the business, extent of phoenixing activity, the outcomes of liquidations, insolvency-related fees per appointment type, and financial positions of deregistered companies (including cause of company failure) - suggest ASIC creates a data portal, data inventory or data dictionary to assist ASIC's internal staff and external users to understand their data holdings. - welcome ASIC's release of the Review of small business restructuring process report on 17 January 2023, and encourage ASIC to continue this series and suggest future reports include a comparison of outcomes from restructuring versus liquidation 6. ASIC should play a greater role in encouraging financial acumen among businesses – Praise ASIC's National Insolvency Trading Program (NITP) which ran between 2005 and 2010, and would welcome its reintroduction. They say the program encouraged directors to seek professional advice at an early stage to address solvency issues.
4	Maurice Blackburn	<p>Focus is on the role of class action lawsuits. Submission is split into two sections – effectiveness of the regulatory framework (focusing on compensation as a deterrent) and the extent to which the tools available have been effectively employed by ASIC in practice (arguing for a role of private litigation in enforcement).</p> <ul style="list-style-type: none"> • Effectiveness of the regulatory framework <ul style="list-style-type: none"> - The payment of compensation mitigates the effects of information asymmetry and the impact of moral hazard by going some way to ensuring that the costs of wrongdoing are internalised by wrongdoers rather than "visited upon market participants". - Where maximum penalties available to ASIC do not match the quantum of the damage caused by misconduct, compensation can be a more effective deterrent than civil penalties. - Support a mechanism for ASIC to apply for disgorgement of profits in the course of civil penalty proceedings (2017 ASIC Taskforce Report), but argue it should be applied to redress for victims and aligned with the existing equitable mechanism. An appropriate disincentive would be for Court to be able to deprive wrongdoers of profits obtained from misconduct.

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		<ul style="list-style-type: none"> - There needs to be an objective standard of liability to prevent an enforcement gap arising due to subjective liability being too onerous, which can promote profitable unlawful conduct. • Extent to which the tools available have been effectively employed (by ASIC) in practice <ul style="list-style-type: none"> - Concern that the August 2021 Statement of Intent shows that “enforcement has again taken a back seat” at ASIC. - Close working relationships with regulated entities can result in underenforcement. Consumers are more likely to be dispersed and have no cohesive bargaining power and little access to technical information. - This problem can be solved by an equal role for third parties, with the class action regime as a vehicle. Refer to ASIC, ACCC and Senate comments about the role of private litigation. - “Strongly support the adoption of a regulatory strategy that expressly recognises the parallel roles of public and private enforcement, and facilitates information sharing and cooperative action between participants in both spheres.”
5	ABA	<p>Focus on the need for timely resolution of matters.</p> <p>Quote ASIC’s 2022 Annual Report (p30) - the average total time to complete a criminal investigation and reach a court decision was 43 months and for civil action it took 33 months. However, acknowledge that the timelines of such actions are subject to Court processes and not within ASIC’s direct control.</p> <p>Recommend ASIC be given funding to do comprehensive data analytics of complaints and breach reporting to better target matters for investigation and reduce timeframes.</p> <p>Recommend ASIC has direct and timely engagement and dialogue with market participants, such as through in-person meetings, conference calls, phone calls to resolve issues in their early stages.</p> <p>Support a proportionate approach with appropriate use of enforceable undertakings and infringement notices to reduce uncertainty and drive faster industry change.</p>
6	CALC and consumer	<p>Supportive of ASIC, with recommendations on added transparency about complaints.</p> <ul style="list-style-type: none"> • Joint submission authors: Consumer Action Law Centre, CHOICE, Consumer Credit Legal Service (WA) Inc, Indigenous Consumer Assistance Network, Financial Counselling Australia, Financial Rights Legal Centre and Super Consumers Australia. • Explain ASIC’s range of accountability mechanisms, noting that “increasing layers of oversight across multiple committees and the FRAA seems to detract from ASIC’s core functions as we have observed that it requires ASIC to allocate significant resourcing internally to report to these committees” (p11). • Consumer groups recognise there can be an ‘expectation gap’ about ASIC’s role in dispute resolution and enforcement and misunderstanding about what ASIC can do in relation to individual complaints. They endorse the recommendations by the Commonwealth Ombudsman in its submission to the 2014 Senate Economics References

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		<p>Committee into ASIC's performance, which are about explaining the role at the beginning of the reporting process and more detailed explanation of decision making to not investigate.</p> <ul style="list-style-type: none"> • They also explain ASIC's role in remediation (p14) • They suggest we review the Consumer Consultative panel (p12) and potentially adopt the Financial Services Consumer Panel model hosted by the UK's FCA, which is an independent statutory body. • They note ASIC faces a challenge in enforcing matters at the regulatory perimeter and recommend a mechanism to address this (Rec 13). They note one alternative power sometimes available to ASIC for dealing with companies at the regulatory perimeter is to use the product intervention power (PIP) (p17). • Support for ASIC regulatory outcomes and appropriate use of its toolkit: <ul style="list-style-type: none"> - ASIC has completed a significant amount of meaningful enforcement work that has been targeted at unethical, unprofessional and/or unlawful businesses causing harm to consumers. Their interventions have improved consumer outcomes in financial services, provided valuable guidance to industry on the laws that apply to their businesses, and led to a more competitive marketplace. - ASIC's use of the various forms of enforcement powers in their toolkit is generally appropriate for the circumstances. We encourage ASIC to continue to use the variety of powers at their disposal and take a campaign approach toward compliance and enforcement. In particular, we encourage ASIC to continue to expand its thematic and detailed reviews of the industries it regulates, particularly higher risk areas. - Consumer Action's 2020 report, Regulator Watch: the enforcement performance of Australia's consumer protection regulators rated ASIC highly. - They note our enforcement work has increased, particularly in relation to civil penalty proceedings: <table border="1"> <thead> <tr> <th></th><th>FY 2020-21</th><th>FY 2021-22</th></tr> </thead> <tbody> <tr> <td>Criminal litigation completed</td><td>29</td><td>37</td></tr> <tr> <td>Civil litigation completed</td><td>46</td><td>61</td></tr> <tr> <td>Bannings, suspensions etc</td><td>193</td><td>180</td></tr> <tr> <td>Infringement notices</td><td>3</td><td>3</td></tr> <tr> <td>Enforceable undertakings</td><td>3</td><td>1</td></tr> </tbody> </table> - The submission refers to our enforcement action about practices affecting vulnerable consumers (from our media releases): Rent4Keeps and Layaway Depot, Sunshine Loans, ACBF/Youpla, Cigno, OnePath Life, Amex, Ultiqa, Latitude and Harvey Norman, ClearLoans, A&M Group (Debt Negotiators), Finfluencer Tyson Scholz, greenwashing infringement notices, DDO stop orders. - They support the role of litigation in testing the limits – Eg. Cigno/BCF, CBA and Colonial First State. 		FY 2020-21	FY 2021-22	Criminal litigation completed	29	37	Civil litigation completed	46	61	Bannings, suspensions etc	193	180	Infringement notices	3	3	Enforceable undertakings	3	1
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		<ul style="list-style-type: none"> - They support our thematic reviews – pointing to our work on small amount credit contract providers, buy now pay later, and credit cards. They note ASIC has reduced thematic compliance reviews in recent years and encourage us to focus on this again. - They support our Indigenous Outreach Program and call for us to get additional funding for this (Rec 6). • Recommendations (a list is provided on page 20): <ul style="list-style-type: none"> - ASIC should continue to: prioritise court-based enforcement action and appeals, undertake thematic reviews, adopt a ‘campaign approach’ to enforcement priorities which involves taking a range of complementary actions and strategic enforcement (proactively, rather than just dealing with misconduct as it occurs) (Recs 1-3) - ASIC should develop a vulnerability strategy and publish industry guidance on treatment of vulnerable consumers. Government should also amend ASIC’s legislative objectives to specifically reference its role in promoting fair treatment for consumers experiencing vulnerability (Recs 4 and 5). - ASIC should make reporting of misconduct simpler, and publish all reports of misconduct and reasons for not pursuing, replicating the Complaint Database of the Consumer Finance Protection Bureau in the US. (Recs 8 and 9) (See short outline of what this database does, below.) - The Government should increase ASIC funding to allow it to do more ongoing data collection and analysis (Rec 14) - The Government should provide specific funding to expand ASIC’s Indigenous Outreach Program and enforcement work (Rec 6) - The Government should issue a new Statement of Expectations that emphasises ASIC’s role in enforcement of consumer protection laws and contribution to policy debates (Rec 7) - Government should legislate to introduce: <ul style="list-style-type: none"> - an unfair trading prohibition in the ASIC Act and give ASIC the power to enforce this provision in relation to financial services (Rec 10) - ASIC directions power to direct a licensee or issuer of a financial product or financial services under the ASIC Act to establish a remediation program in appropriate circumstances (Rec 11) - a super-complaints function for ASIC similar to one in the UK (Rec 12). This involves designated bodies being able to raise systemic consumer harms with regulators which would need to respond in a certain period of time. They note Federal Government has committed to establishing this. - increase penalties for breaches of consumer protection provisions in the ASIC Act to align with penalties in the Australian Consumer Law (ACL) (Rec 15). - The Government should develop a mechanism by which ASIC and Treasury can proactively identify and respond to any problematic conduct that falls on the edge of ASIC’s regulatory perimeter (Rec 13).

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		<ul style="list-style-type: none"> US Consumer Financial Protection Bureau Consumer Complaint Database (referenced in Rec 8): searchable database of redacted consumer complaints on certain financial products and services (eg. bank accounts, credit cards, payday/personal/student/vehicle loans, credit reports, debt collection, money transfer and mortgages). They send these to the company once they verify the consumer has a confirmed relationship with them and the company must reply. They have a consumer video explaining how it works.
7	Financial Services Council	<p>Focused on overlaps, AFCA/CSLR issues; suggest adjusted policy settings for breach reporting, FAR, and some super issues; ASIC doing more to 'meet expectations', not straying into policy, and striking 'a better balance' in the use of our tools (support enforceable undertakings and collaborative approaches to enforcement), as well as suggesting a reassessment of industry funding, ASIC relationship managers, and saying our review work should be more coordinated and include more representative cross-sections of regulated sectors. Industry should not be paying for increased ASIC resourcing.</p> <ul style="list-style-type: none"> On the potential for dispute resolution and compensation schemes to distort efficient market outcomes and regulatory action, the submission discusses the role of dispute resolution (AFCA) and compensation (CSLR): AFCA recommendations (p7-8): <ul style="list-style-type: none"> it is important for AFCA to be independent and be a consumer advocate AFCA should not compensate consumers for unsuccessful financial investment where a financial business has acted within the law – this encourages investors to take on more risk than they otherwise would and adds unnecessary cost to industry AFCA should triage case that are out of jurisdiction before documents are required to be produced AFCA should be limited to dispute resolution, not judgments on law or policy creation AFCA's jurisdiction should not overlap with others AFCA should refer systemic issues to ASIC and should not conduct its own systemic investigations In limited circumstances, AFCA's decisions should be subject to an independent and binding review mechanism AFCA charges should be adjusted based on the merits of the case and the financial firm's conduct AFCA should be subject to Parliamentary scrutiny and accountability like ASIC and APRA (p8). CSLR recommendations (p9): <ul style="list-style-type: none"> consumers should not be compensated for unsuccessful financial investment where a financial business has acted within the law minimum capital requirements should be phased in for Advice Licensees oversight of Professional Indemnity Insurance should be enhanced greater steps should be taken to prevent phoenixing, and those responsible prohibited from obtaining another AFSL administrative costs of the CSLR should be reduced

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		<ul style="list-style-type: none"> - the CSLR cost recovery process should be aligned with the annual ASIC levy. • Recommendations on four issues where policy settings could be materially adjusted to enhance efficiency of the market and more effectively deter poor behaviour: <ul style="list-style-type: none"> - breach reporting – they recommend further reducing the number of minor breaches that must be reported, improving regulatory guidance (noting ASIC is working on a revised RG78), improving the ASIC portal (p9-10) - proposed Financial Accountability Regime – individual civil penalties should not be included (p10-11) - superannuation trustee investment switching needs law reform to deter and punish behaviour which is materially similar to that covered by insider trading laws. (p11-12) - superannuation funds amending trust deeds – recommend amending SIS Act to better protect members, noting that as drafted the law will not deter poor behaviour if the trustee is able to seek recourse to a risk reserve to pay for the trustee’s wrongdoing. They note the discrepancy between s56 and 57 which do not permit indemnities in favour of a trustee for penalties imposed for wrongdoing but do permit the establishment of a risk reserve to meet those penalties (p12). • ASIC can do more to meet expectations of government, business and the community: <ul style="list-style-type: none"> - For government: ASIC has strayed into areas of policy more properly left to the Parliament (for class orders and legislative instruments made in connection with the Foreign Financial Services Provider regime, positive obligations imposed through class orders in relation to custody and investment platforms). (p12-13) - For business, FSC supports FRAA Report recommendations on page 3 regarding data, engagement with stakeholders, measuring effectiveness and ensuring a broad mix of skill sets to meet future needs. (p13) - For community, FSC asserts ASIC has historically been slow to identify material wrongdoing that harms consumers and has been ineffective at preventing it. Royal Commission and Sterling Inquiry are examples. (p14) • ASIC could strike a better balance in the use of its regulatory tools: <ul style="list-style-type: none"> - Enforceable undertakings - Support ASIC now requiring admission of legislative contravention and public interest, and willingness to use these to deal with remediation and systemic compliance. Submit that EUs should not be an option in criminal conduct or wilful misconduct. Litigation and civil penalties should still be used where there is material harm to consumers or market integrity or deliberate or reckless misconduct. (p15) - Civil penalties – litigation should not be used where reputable financial services businesses have remediated losses or addressed a compliance or minor breach, and businesses should be able to provide input. Recommend more timely enforcement proceedings for serious misconduct. (p15) - Reviews – should be more coordinated and not siloed. Note the example of the review of RE governance. Recommend ASIC consider reviewing fund management and superannuation sectors together in its review. (p16)

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		<ul style="list-style-type: none"> - Monitoring licence conditions – Professional Indemnity insurance – Recommend that ASIC require licensees that rely on PI to meet licensing and compensation obligations to provide ASIC PI insurance data on an annual basis. (p18) • Assert there are too many legislated offences with serious consequences for minor misconduct. Assert that the offences catch a very broad range of misconduct, some not sufficiently serious, for example failure to provide a general advice warning and the requirement under DDO to provide TMDs to the public free of charge. Recommend a review so offence provisions only capture serious misconduct that causes consumer harm. (p19) • Support funding to timely ASIC enforcement action, though this should not be paid by industry. They consider it a moral hazard of the IFM that innocent third parties pay for the wrongdoings of others. Recommend that the industry levy cost burden be reassessed and the industry funding model revisited. (p19) Recommend that an ex-ante model be adopted which has costs determined and recovered before they are expended. (p20) • Recommend that ASIC make material changes to control the internal and third party costs of enforcement activity. (p20) • Opportunities to reduce duplicative regulation could include consolidating into a smaller number of provisions covering the same conduct, though caution care should be taken to not dilute or create other unintended consequences. (p21) • Point to lack of clarity, misalignment and overlap – Example given of different approaches under SIS Act, Corporations Act or proposed FAR. Point to overlap and inconsistency between DDO and IDR requirements. Note overlaps between ASIC and APRA, giving the example of conflict obligations. (p21-22) • Recommend changes to ASIC’s relationship model to allow stakeholder to contact ASIC’s frontline staff as allocated relationship managers for effective and prompt resolution of simple enquiries. (p23) • Suggest ASIC reviews include a more representative cross-section of the relevant regulated sector to ensure identification of risks that may lead to serious consumer harm. Note that ASIC reviews commonly focus on the largest entities in the sector only. (p24)
8	Institute of Pub Affairs Prof Mirko Bagaric (Swinburne Law School) and Morgan Begg	Focus on lack of evidence for the deterrent effect of harsh criminal sanction. Mention what they consider to ASIC prosecutions that have failed to produce public benefit. <ul style="list-style-type: none"> • Do not support the sentiment that ASIC is not conducting enough investigations and prosecutions, and recommend the Committee seek evidence-based recommendations to ensure ASIC’s activities are conducted in a manner which is of greatest utility to the community. • Note the aims and activities ASIC uses to describe its legislative responsibilities as being ‘very broad and somewhat nebulous’. To strip these back to the core elements needed for the market to operate fairly and efficiently, they say two broad key elements need to be satisfied:

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	(Director of Research)	<ul style="list-style-type: none"> - Absence of complex and burdensome compliance and regulatory hurdles – it must be easy for all people and entities to undertake transactions - People should be easily able to access relevant information to enable them to make informed decisions about whether to participate in market transactions. This information should not be free of misleading or deceptive and must be accessible and accurate. • Three findings: <ul style="list-style-type: none"> - Imposing criminal penalties with respect to corporate offending, based on the disproven theory of marginal general deterrence, is not effective at deterring bad behaviour. (p3) - Imposing criminal penalties is a disproportionate response to corporate wrongdoing. They outline data which they use to argue that imprisonment is unsuited as a punishment for white collar offences (p5-6) - White collar offenders should not be incarcerated, but should be made to financially pay for their crimes through restitution. (p6) They suggest offenders who don't have a means to pay should have a portion of their income go towards reparation of amounts stolen from victims. Fines should be imposed on top of restitution. (p7) Restitution and civil fines are more proportionate ways to deal with breaches of reporting obligations. • Acknowledge ASIC's record on enforcement on critical convictions and civil penalties, but note the downside of this is the heavy resource burden. They note that research does not support the belief that harsh penalties deter crime ("general deterrence"). The most effective mechanism for deterrence from criminal behaviour is increasing the likelihood that people will be apprehended and prosecuted if they commit crime. • They say there is no evidence that ASIC's criminal and civil actions involving high-profile offenders produce benefits to the wider community or lead to greater compliance. Two examples given are about insider trading conduct by Lukas Kamay (2015) and misuse of confidential board information by Stephen Vizard (2005). They also point to failed ASIC prosecutions which involved the expenditure of 'millions of dollars of taxpayers money', for example ASIC's civil proceedings against two directors of Tennis Australia for 'technical breaches' (<i>ASIC v Mitchell (No 2)</i> (2020)). (p4-5)
9	Small Business Dev Corp	Focus on lack of action on illegal phoenixing, support Director ID and three strikes model for disqualifying directors of failed businesses. 'Deeply concerned' about John Adams' report and assert ASIC should be undertaking more high-profile white collar criminal prosecutions. Small businesses are subject to heavy penalties for relatively minor indiscretions. Their investigative unit could assist ASIC and ASIC should share information with them. Argue they should be a 'super complaint' entity.

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		<ul style="list-style-type: none"> • ASIC's current policy settings are insufficient to effectively deter poor behaviour, whilst in other areas the financial penalties that apply for minor administrative errors are excessive and harmful for small business operators. • According to ASIC records up until June 2022, 4,912 Australian companies have failed and been wound up, with the Executive Director of insolvency firm SV Partners estimating that one in ten current company collapses are due to illegal phoenixing activity. This number is likely to increase further. • Support Director ID in addressing illegal phoenixing but suggest small businesses have found it complex to set up, citing digital literacy, multicultural background, lack of awareness. (p3) • Strongly support a new 'three strikes and you're out' policy that would disqualify directors of multiple failed businesses, subject to thresholds relating to financial damage. (p3) • Deeply concerned about Mr Adams' report that only 1.7% of ROMs were referred for action. • ASIC should be undertaking more investigations and prosecutions, and these should be more visible, including high-profile prosecutions of white collar crime. (p4) • Businesses are subject to heavy penalties for relatively minor indiscretions because of the vast number of provisions that small businesses must comply with under the Corps Act. • Reform of the IFM is needed to reduce the impact on small business and excessive late payment fees. • SBDC has an Investigations and Inquiry Unit that could assist ASIC in investigating complaints to reduce burden and cost. Suggest establishing a process of enhanced cooperation and information sharing. Critical of ASIC's restrictive privacy policy which focuses on 'enforcement activities' as a criterion for the disclosure of ASIC-held information. Suggest legislative reform to achieve this. • Support the establishment of the 'super complaints' process and suggest they should be included. • Critical of delays in the MBR program and strongly support better information sharing between ASIC and state and local governments. • ASIC should have a dedicated Small Business Support Unit with small business specialists, modelled on the ATO's approach to SME engagement. (p6)
10	Law Council of Aus	Support non-litigious enforcement approaches and acknowledge ASIC's finite resources. Support focus on misconduct affecting vulnerable consumers. Support Director ID and DDO, but Reportable Situations regime will create unreasonable volume and needs a materiality threshold. Support simplifying and streamlining the Corps Act. Note disproportionate impact of infringement notices on small businesses.

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		<ul style="list-style-type: none"> • CSLR will not deter poor behaviour because the persons responsible for the offending conduct will not bear the cost of compensation • ASIC and the government could use their existing regulatory resources to deter poor behaviour by increasing minimum capital requirements and ensuring sufficient insurances are in place • Support ASIC's use of non-litigious dispute resolution outcomes such as court enforceable undertakings which are more tailored and facilitative compared with the 'blunt and very costly instrument of litigation'. • Acknowledges that ASIC's resources are scarce and finite and that ASIC has to make strategic choices about action. Support ASIC's priority of addressing misconduct harmful to vulnerable consumers. • Support new tools of Director ID and DDO. • Consider the effectiveness of the Reportable Situations regime is undermined by the wide variety of incidents deemed reportable. Suggest a materiality threshold would be appropriate (p4). Concerned that the volume will mean ASIC will not be able to investigate serious misconduct and breaches that could cause significant harm. • ASIC needs more sophisticated IT systems to identify scam trends. • Refer to their submission to the ALRC's Interim Report B – Supportive of measures to simplify and streamline the Corps Act and add regulatory coherence and certainty - recommend the establishment of a Corporations Rules Committee • Suggest the UK's Financial Services Regulatory Initiatives Forum as a good model (p5-6), noting it publishes a twice yearly grid of the regulatory pipeline of a range of agencies. • On small business, they note infringement notices target small businesses disproportionately as they are less likely to be fought and are associated with adverse publicity which jeopardises the businesses' ability to trade. They are concerned of limited ASIC guidance on when ASIC will issue these notices and whether they are used for less serious contraventions. Suggest the use of ASIC's infringement notices has declined during the 'relatively short-lived "why not litigate" policy', but expect it will increase again in the near future. Also concerned about inconsistencies between infringement notice provisions – eg ASIC Act and National Consumer Credit Protection Act. (p7)
11	AICD	<p>Note ASIC's enforcement approach has strengthened since the RC but structural limitations need to be addressed, and market integrity and continuous disclosure enforcement needs to be stronger. Support ASIC's enforcement tools including enforceable undertakings, but caution over-reliance on negotiated outcomes and in particular infringement notices at the expense of court action. Civil and criminal action is needed to clarify the law and for deterrent effect. Acknowledge ASIC's increasing breadth of remit requires appropriate funding increases. Recommend ASIC adopt a board structure with majority non-executive independent directors.</p> <ul style="list-style-type: none"> • Overview multiple ASIC reviews and observe a more active ASIC enforcement stance

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		<ul style="list-style-type: none"> Consider ASIC should be doing more to enforce breaches of continuous disclosure laws, noting the low number civil actions compared with private class actions. Concerned about the regulatory settings and commercial incentives driving private securities class actions selected by lawyers and litigation funders based on commercial imperatives rather than the public interest. Give the example of Hong Kong where continuous disclosure laws are not linked to a class action regime. Support mandatory climate reporting. Propose limiting enforcement action to deficient disclosure by ASIC only. ASIC is required to balance ever-increasing demands within a limited budget. Critical that ASIC's resourcing and funding increases commensurately. Notes ASIC did not adopt the 2015 Capability Review recommendation to realign its structure to achieve clear separation of the non-executive and executive roles. Recommend the introduction of a board comprising a majority of non-executive, independent directors. This could improve performance and accountability; bring important external perspectives to the regulator; and a higher degree of executive oversight than its current arrangements. They compare with Financial Conduct Authority and Financial Reporting Council in the UK and Financial Markets Authority in New Zealand. They also point to the board structure of the RBA.
12	Shipton	<p>Sets out a framework for measuring effectiveness. Recommends coordination of oversight, independence from government, appointment, accountability and termination of Commissioners, separate enforcement funding, and reduced remit (potentially separating civil enforcement, superannuation and insurance regulators).</p> <p>Identifies four elements in assessing ASIC's current enforcement capability:</p> <ol style="list-style-type: none"> ASIC's stated strategic approach to enforcement (including enforcement posture). The sufficiency of ASIC's enforcement powers and tools. ASIC's organisational culture, leadership and decision-making processes impacting and enlivening its enforcement powers (on this he notes 'Swiss cheese' governance structure and tension (Rec 4), problematic employment and accountability arrangements for commissioners (Recs 5, 6 and 7), inconsistent approach to independence from government (Rec 8), and ad hoc and uncoordinated oversight) (Rec 10) ASIC's enforcement systems (including data, analytical and technical platforms) and processes. <p>Identifies six factors that determine ASIC's enforcement capacity:</p> <ol style="list-style-type: none"> Extent of ASIC's budget, particularly its enforcement budget – ASIC's ever-expanding jurisdiction without appropriation keeping pace, noting reliance on Enforcement Special Account for large exceptional matters of significant public interest, needing the Treasurer's approval on a case-by-case basis. (Rec 11) Extent of human and professional resources applied to enforcement (and supporting functions). Extent of system, and operational, support given to enforcement. Risk appetite and posture applied to enforcement. Dependencies, contingencies, and constraints relevant to ASIC's enforcement function.

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		<p>vi. Extent that external pressures and perceptions, and internal and external performance indicators, support or inhibit ASIC's enforcement function (Rec 12).</p> <p>Recommendation on assessment framework:</p> <ol style="list-style-type: none"> 1. ASIC, and its oversight bodies, adopt an appropriate, consistent, and long-term assessment framework and consider adopting the regulatory objectives-capability-capacity- coverage (ROCCC) framework: <ul style="list-style-type: none"> - Regulatory objectives – set out in ASIC Act and Government's Statement of Expectations - Capability – ASIC's means (regulatory tools) and skill (talent and proficiency) - Capacity – maximum amount of capability that ASIC can apply based on internal and external constraints - Coverage – depth and breadth of ASIC's ability to fill its regulatory perimeter <p>Regulatory objectives recommendations:</p> <ol style="list-style-type: none"> 2. ASIC's statutory objectives, particularly the prioritisation (and primacy) of its enforcement mandate, be reviewed and restated – Statutory objectives 1 and 6 are difficult to reconcile – there is a conflict between maintaining and improving the financial system and enforcing the law. 3. The Government should issue ASIC with a Statement of Expectations as a matter of priority – It is out of date and should be updated regularly rather than on an ad hoc basis, to remain relevant. <p>Capability recommendations:</p> <ol style="list-style-type: none"> 4. Review ASIC's governance arrangements under the ASIC and PGPA acts to enhance governance structures and clarify the roles and responsibilities of the different governing organs – He briefly notes 'Swiss cheese' governance arrangements and two 'ill-fitting' pieces of legislation (ASIC Act and PGPA), lack of legislative cohesion between the role of Commission, Chair, and Accountable Authority (also the Chair). 5. The employment terms of ASIC commissioners be reviewed and clarified, and that they be provided with employment contracts – he also recommends linking termination provisions to a breach of the code of conduct. Notes because of their statutory rather contractual appointment, commissioners are not readily subject to the same accountability processes as other public sector employees. Notes 'Swiss cheese' arrangement of Remuneration Tribunal and other terms that may apply which are specifically set in legislation or that otherwise exist for ASIC. Commissioners can only be terminated by the Governor-General for statutory extremely serious 'misbehaviour', not for a code of conduct breach. Notes an element of political conflict as this could only happen at the recommendation of Cabinet and hence the Minister who appointed the commissioner. This hampers cohesion and cooperation. 6. Statutory appointments to the ASIC Commission should follow established processes and guidelines. 7. Conduct reviews of statutory appointees, like ASIC commissioners, be performed by an independent body with established procedural guidelines.

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		<p>8. The extent of ASIC's independence from government be reviewed and clarified. Suggests ASIC's enforcement functions be as independent as the DPPs which is not subject to a statement of expectations.</p> <p>9. Consideration be given to what government departmental portfolio(s) ASIC, or its constituent functions, should be allocated. Suggests the economic and policy-oriented mandate does not appear to align neatly with public interest law enforcement, and assets enforcement and possibly other ASIC functions should be moved to the Attorney-General's Department.</p> <p>10. ASIC's oversight arrangements be reviewed and clarified to provide better coordination between the various oversight bodies, and provide a long-term accountability framework (as mentioned in Recommendation 1) for regular systematic reviews of whether ASIC is achieving its regulatory objectives. Observes committees 'have become platforms for politically motivated interventions instead of being forums for interrogating adherence to ASIC's regulatory objectives'.</p> <p>Capacity recommendations:</p> <p>11. All ASIC's enforcement expenditure be funded by an independent 'Enforcement Special Account', and that ASIC's industry funding levies not fund that account. - Recommends all enforcement matters be funded by this special account not just significant ones, and that it not be contingent on the Treasurer's approval, and not reliant on industry levies.</p> <p>12. In the event of intimidatory conduct by a person being investigated by ASIC, ASIC act with priority to deter such conduct and provide immediate support to the affected law enforcement officer – he doesn't suggest such incidents have actually perverted the course of an investigation but the threat of reoccurrence is real. He notes individuals should not have to wait 4 months for health and safety support or 6 months for action to stop the conduct.</p> <p>Coverage recommendation:</p> <p>13. ASIC's jurisdiction be reviewed, and particular consideration be given to the merits of establishing a separate civil enforcement agency (or other regulatory agencies). He says this would 'ringfence' funding for deterrence and allow matters to quickly get to court. He suggests the agency should be within the A-G's portfolio. He also suggests stand-alone superannuation and insurance regulators could be established to deal with both prudential and conduct matters.</p>
13	Dr Millhouse	<p>Argues present regulatory architecture is not fit for purpose and requires substantive reform of the market conduct regulatory framework. Until this happens, ASIC will 'continue to be the scapegoat for a poor and internationally uncompetitive financial products and markets regulatory system'. Has provided the Committee his book 'Corporate Governance in Non-Bank Financial Entities' (comparative jurisdictions set out in Chapters 6 and 7), articles in the <i>Law and Financial Markets Review</i>.</p> <p>Attached 2020 article:</p>

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		<ul style="list-style-type: none"> • The overarching simplification reform recommended by Hayne and proposed 36 Month inquiry by the ALRC has not yet been funded. Notes 'labyrinthine' legislation with differing definitions and concepts for similar conduct. • The differing best interest, responsible lending, DDO and FASEA regimes operate independently and require their own record keeping. Each is fiduciary-like but do not use the term, and the concept of best interest duties is not consistent. Tactical legal reforms over 15 years to legislate for meaningful financial disclosure do not reflect Wallis' market based principles of disclosure and meaningful content. Reforms are spread over hundreds of pages in the Corps Act and its regulations and schedules, ASIC instruments and reg guides. • Lessons from Germany, Canada, US, UK and Singapore illustrate two categories of approaches – strategic policy reforms, tactical statutory reforms. • Strategic reforms will take a decade-long policy approach in four parts – re-establishment of trust in investment chain through fiduciary obligation; architecture for implementation at the financial consumer level (financial planning and wealth management as a profession); market conduct regulation for the 21st century (which ASIC should lead not follow, but setting out a proposed reform agenda based on research, and focus on 'ex ante' regulation rather than 'ex post'); Corporate governance reform (related party transactions and conflicts of interest, based on the German example of which he says has clear division of form and function).
14	Chartered Accountants	<p>Reiterates the concerns raised in their submission to the FRAA, noting there is a lack of information available publicly on ASIC activities and an absence of time periods in relation to ASIC's investigation and enforcement actions. Argue for more targeted reporting by regulated population, publication of successful and unsuccessful action in respect of misconduct, and changes to funding.</p> <ul style="list-style-type: none"> • Support ALRC's review of the Corps Act, which drives ASIC's broadening remit. • Critical of ASIC being too slow to ban directors suspected of misconduct, allowing them to continue to benefit from the misconduct. (p4-5) • Critical of ASIC's conversion rate and suggest this means the tools are not effective to ensuring good market outcomes – in FY 2022: 4017 uses of particular coercive powers resulted in commencement of just 127 (just over 3 per cent) formal actions. Not clear how many actions are about concerning conduct and how many for the public good. (p5-6) • Critical of insufficient allocation of the Assetless Administration Fund (p6) • No data to assess if ASIC complies with the Legal Services Directions 2017, Appendix B – the Commonwealth's obligation to act as a model litigant – that ASIC keep costs of litigation to a minimum; regularly re-assess the prospects of success; and reconsider the most appropriate enforcement action as prospects of success change. • Recommendations: <ul style="list-style-type: none"> - ASIC's regulated population (such as registered liquidators) should only report suspected egregious misconduct where there is, or is likely to be, sufficient evidence for ASIC to take action (not only where there is suspected

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		<p>misconduct as currently required) – acknowledge it is unreasonable for ASIC to investigate thousands of RoMs. (p4)</p> <ul style="list-style-type: none"> - ASIC should publish outcomes of all investigations across the same channels, irrespective of the outcome – currently ASIC only publishes outcomes biased in favour of ASIC – it should also publish outcomes where conduct is not proven. (p4) - Following a director being banned, the remaining and incoming directors be required to make a solvency declaration that states the company is financially stable and able to continue operating responsibly – suggest that banned directors could be operating as shadow directors while their entity continues to operate. (p5) - Investigations undertaken for the broader public benefit should be funded by all taxpayers, not recovered solely from ASIC’s regulated population – argue ASIC’s regulated population pay multiple times for enforcement actions: licence fees, by undertaking investigations on behalf of ASIC, and the annual cost recovery levy. Yet this population have no say in ASIC’s activities and no visibility over the outcomes achieved and any awarded penalties go to consolidated revenue. (p6) - Penalties awarded as a result of enforcement action be offset by ASIC against the costs of those enforcement actions and, where income exceeds costs, the excess returned to general appropriations. (p6) - Maximum time frames should be established for each type of investigation and, where ASIC expects timeframes may be exceeded, an extension should be required with cause shown to an independent, objective body – suggest ASIC investigations typically take 4 years or more, and no cost-benefit analysis is undertaken to ensure ASIC actions are proportionate to the harm. (p7) - ASIC should utilise technology to interrogate reports received for key indicators of financial harm and assess the likelihood of sufficient evidence being available to take enforcement action. (p7)
15	ARITA	<p>Asserts ASIC is not a best practice regulator and support the establishment of a single insolvency agency modelled on AFSA. Consider ASIC has failed to address concerns, prevent illegal phoenixing, adopt a risk-based approach to dealing with misconduct of directors with too much money spent on reporting that is not considered by ASIC and too little enforcement.</p> <ul style="list-style-type: none"> • ASIC’s portfolio is too wide. The small size of the registered liquidator population means ASIC is not focussed on insolvency. However, ASIC is too focused on the activities of liquidators, rather than poor behaviour of directors who lead businesses into insolvency (such as insolvent trading). (p5) • Useful information is hard to find when needed and difficult for directors to understand. It also ‘one size fits all’ and doesn’t distinguish between education needed for directors of small and large companies. (p6) • Support the National Insolvency Trading Program which ran between 2005 and 2009 (p6-7). • Provide a summary table of views against ASIC’s KPIs between 2017-2021 and the same for AFSA (acknowledge that these show some improvement, but that ASIC is not meeting the expectations of the registered liquidator

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		<p>population). Suggest ASIC did not request feedback prior to issuing the most recent report of performance against its KPIs. (p8-9)</p> <ul style="list-style-type: none"> • ASIC's approach to regulation is reactive, contrasted with proactive practice reviews undertaken by AFSA. (p10) • Assert ASIC's consideration of costly reports by liquidators for further action is automated using AI, contrasted with AFSA actively encouraging registered trustees to engage prior to reporting possible offences. (p10) • While the current Disciplinary Committee approach is better than the previous Company Auditors and Liquidators Disciplinary Board, the 11 matters referred have had 'haphazard outcomes', in contrast to AFSA's Disciplinary outcomes (provided on page 11). • Misconduct is rare and only two known examples of liquidator fraud have taken place. Liquidators and trustees are subject to professional oversight by at least one professional body. (p11-12) • Concurs with the ALRC's observation in reviewing the Corps Act that stakeholders found the legislation 'too complex and in need of simplification'. This means directors and managers may not understand their obligations with respect to insolvency. (p12) • Critical of ASIC's record in relation to director misconduct and notes outcomes are mostly administrative. Compares with the UK's Insolvency Service. (p13-14) • Support the use of conventional penalties and sanctions rather than costly and time consuming prosecution by creditors involving insolvent estates. (p14) • Strict liability offences for the conduct of external administrations have resulted in inflexibility and additional costs as they have to seek consent from Court to proceed with actions that would otherwise result in a strict liability offence. Outline examples of funds handling and offence on members of a creditors Committee of Inspection to not directly or indirectly derive a profit or advantage from external administration. (p15-16) • Set out two tables based on ASIC Annual Reports showing 'very little action' is taken against directors where that action is related to external administration. (p17) • Liquidators report receiving automated notices of 'no further action' within 30 seconds of submission, and there is no transparency of ASIC's algorithm or how registered liquidators can best assist ASIC in identifying director behaviour of concern. (p18) • Recommend (p18): <ol style="list-style-type: none"> 1. Review the current arrangements to identify unnecessary burdens – the Productivity Commission has extensive experience in such analyses 2. Make ASIC's filtering algorithm transparently available to registered liquidators, demonstrate its alignment with ASIC's enforcement priorities and align those with the obligations of reporting by registered liquidators, and 3. Introduce more human consideration – the dangers of algorithmic law enforcement are plain to see from the Robodebt matter.

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		<ul style="list-style-type: none"> ASIC takes too long to take enforcement action where there is egregious conduct by a registered liquidator. Example of ASIC v Wily & Hurst (p18-19) Outline overlap between ASIC and AFSA, noting most registered trustees are also liquidators. Support for the AFSA model (p20-21): <ul style="list-style-type: none"> A much higher percentage of offence referrals to AFSA are prosecuted than those reported to ASIC. This could be because of limited exceptions leading to a large number of reports to ASIC, AFSA encouraging registered trustees to contact them prior referring offences, AFSA doesn't have competing priorities for resources AFSA provides excellent comprehensive and easy to access statistics. It is a progressive regulator embracing the move to online reporting, using pictorial representation of statistics, and implementing mental health programs and measures to encourage gender diversity in the profession Support AFSA's categorisation of non-compliance depending on level of seriousness Infringement notice regime is provided for in the Bankruptcy Act - ASIC doesn't have this power AFSA undertakes appointments as Official Trustee, which provides a practical understanding of the implementation of insolvency law. It also has power to approve trustee remuneration, removing the need to involve the Courts AFSA's website is targeted to personal insolvency and is organised well and in easy to understand English, with its other role set out on a separate website
16	Stockbrokers and Investment Advisors Assoc	<p>Focus on ASIC's industry funding model, and the view that the personal advice sub-sector is funding large scale litigation against financial services firms that no longer do financial advice. Little transparency about what enforcement matters are being charged to the sector or reasons behind decisions. Funding model has no flexibility to respond to changes in the markets, sectors and products ASIC has oversight over (eg. crypto regulation should be funded by government). Public funding is important as the benefit of enforcement flows to the whole economy not just the regulated population, and if there is full industry funding there is no incentive for the government or ASIC to reduce costs – significant levy increases are evidence of this. Alternatively, the government should cap ASIC's budget.</p> <ul style="list-style-type: none"> Unsustainable increases in levies, particularly for the personal advice subsector (noting it doesn't take into account that the number of financial advisers on the FAR has fallen, and that ASIC has to fund litigation against large financial institutions post Royal Commission who do not provide financial advice, and do not contribute to the levy). The levy doesn't accurately reflect the firms generating the enforcement and supervisory work. Stockbrokers should not be charged the same fees as in other sectors as the standards are higher; compliance and monitoring systems are stronger; and AFCA complaints are a very small proportion. Summarise their warnings about the funding model when it was introduced, including levy increases and reduction in adviser numbers.

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		<ul style="list-style-type: none"> • There is little transparency or understanding about what enforcement matters are being charged to the sector and the reasons behind decisions. Example of Caddick action being charged to the personal advice sub-sector despite her operating an unlicensed investment scheme, and Westpac being charged. (p6) • Advisers doing the right thing should not fund enforcement costs of someone who isn't (p7) • Funding model has no flexibility to respond to changes in the markets, sectors and products over which ASIC has oversight. Funding of emerging sector regulation (eg. crypto) should be sourced from government. • Legal and compliance costs are increasing also, including the proposed CSLR scheme. • Government should not be aiming for full ASIC cost recovery and should have an obligation to partially fund ASIC from public revenue. The benefit of well-supervised markets does not accrue just to market participants and investors, but the whole Australian business ecosystem and the nation as a whole. If there is full industry funding, there is no incentive for the government or ASIC to reduce costs – significant levy increases are evidence of this. Alternatively, the government should cap ASIC's budget. (p8)
17	Institute of Public Accountants	<p>Focus on a stocktake of each successive set of recommendations (2015 Capability Review, Royal Commission, consultation on ASIC's KPIs and performance, CRIS, FRAA review, PM&C performance assessment, ALRC reviews). Broadly supportive of ASIC's attempts to address concerns and is implement recommendations, however the Corporate Plan aiming for 2030 is too far off. "Government, business and the community cannot be expected to wait for ASIC to evolve into the corporate regulator that it should always have been." Material gaps from 2015 Capability review include ASIC's lack of accountability and transparency, lack of internal efficiency leading to increased levies, inadequacies in stakeholder management (quantity over quality) and lack of adequate use of technology.</p> <ul style="list-style-type: none"> • Support streamlining of ASIC's investigation and enforcement through the Modernisation of Business Registers, Director ID and breach reporting. However, the Financial Services and Credit Panel has not commenced. • Support work on technology and data management, but a 'proactive corporate regulator should be ahead of these issues'. Expect to see ASIC leading the way in the use of regulatory and supervisory technology. • Support the introduction of an open data policy. • Recommendations: <ul style="list-style-type: none"> • 2030 strategy should be accelerated to be implemented within the next couple of years. The cost of acceleration will be outweighed by improved enforcement and increased market confidence. (p4) • Outline ASIC's funding based on Corporate Plan 2022-23, note the need for efficiency given industry is contributing to the funding of ASIC, and recommend that the IFM review by Treasury be completed without delay. (p5) • Cumulative and overlapping regulatory burden should be assessed with genuine consultation with stakeholders rather than a 'tick box' exercise – outline what they say is a co-regulatory model with the objective of improving standards, noting members are subject to overlapping and at times conflicting requirements,

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		<p>creating additional compliance costs. Note overlapping regulation by the ATO, Tax Practitioners Board, FRC, APESB Code of Ethics, Professional Standards Councils, quality assurance audits, mandatory continuous professional development requirements and complaint investigation and disciplinary processes. (p5-6)</p> <ul style="list-style-type: none"> • Government should implement FRAA recommendations (about measuring ASIC's effectiveness and capability), after consultation with stakeholders. (p7) • Government should consider and build on the work of previous reviews and inquiries (specifically the 2015 capability review) – note some material gaps still exist, including ASIC's lack of accountability and transparency, lack of internal efficiency leading to increased levies, inadequacies in stakeholder management (quantity over quality) and lack of adequate use of technology (p7). • Government should give timely and due consideration to the findings and recommendations of the ALRC review on Corps Act and performance of ASIC – acknowledge ALRC's finding that ASIC presides over 'impenetrable' legislation and regulation. Note this means ASIC's enforcement capability, strategy, decision-making, day-to-day functions and operations are under considerable constraint. Note academics have alluded to these factors leading to a blurring of the 'twin peaks' model of financial regulation. (p8)
18	Assoc Prof Marina Nehme, School of Private and Commercial Law, UNSW	<p>Supportive of dispute resolution and considers the timing of the current inquiry is too early. ASIC should be given time to implement successive reviews. However, a review of duplicative legislation is warranted. ASIC needs to be more transparent and consistent in its reporting.</p> <ul style="list-style-type: none"> • Dispute resolution and compensation schemes play a critical role in consumer protection and provide quick effective remedies for losses while freeing up the court system. The risk of distorting efficient markets is negligible, instead they raise the level of accountability and enhance trust in the sector. However, imposing a levy on the financial services in industry may be problematic as it may lead to resentment by good corporate citizens. • Regulatory action should not be impacted by the availability of these schemes. Objective of regulatory action is protecting the public and deterrence, while the schemes' objective is compensating affected consumers for losses suffered due to misconduct. (p2) • Important to reach the right regulatory balance between promoting entrepreneurship, protection of consumers and enforcement. Caution excessive legalism and emphasis on trivial or immaterial matters which can direct attention and resources away from serious potential problems, and foster resentment and non-cooperation in the regulated population. (p3-4) • In the past two years ASIC has been subjected to a range of internal and external reviews and needs time to assess all the recommendations and implement them and 'constant reviews' may divert limited resources from this work. After, a review may be conducted to ascertain whether the implementation of previous recommendations has led to improvements and whether these are making ASIC an effective regulator. (p5) • A wider review of the legislative scheme is needed to remove and/or limit regulatory duplication. (p6)

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		<ul style="list-style-type: none"> Charities limited by guarantee are subject to obligations from both ACNC and ASIC. (p6) ASIC's reporting on enforcement matters is 'mediocre' and should be more detailed and in depth. Contradictions between different ASIC reports 'are rife'. More consistency and clarity are needed on how ASIC data is collected to ensure transparency and accountability. (p6)
19	Assoc Prof Andy Schmulow, School of Law, University of Wollongong	<p>Argues ASIC's remit is too broad and recommends a separate dedicated regulator be established that focuses only on financial services conduct (either as a division of ACCC or a new regulator). Asserts ASIC hides behind legal advice and Parliament should have the means to assess the basis of its decisions not to litigate by having access to advice relied upon, particularly focusing on allegations against Westpac about money laundering. Argues Parliament must determine whether it is the fault of the CDPP or ASIC that only a fraction of Corps Act and ASIC Act provisions are being prosecuted.</p> <ul style="list-style-type: none"> Outlines the reasons behind the twin peaks model and the separate conduct and prudential regulators, and why it is necessary to have a dedicated conduct regulator for the financial industry, separate from other industries. (p5-6) ASIC's remit is too wide. Some of ASIC's multitude of failings, echo the former UK mega-regulator the FSA, whose broad focus impinged on its efficacy. After the GFC, the FCA was created, with a focus on financial services and nothing else. Disagrees with Hayne that with the right ASIC leadership ASIC can successfully discharge its mandate. 'No matter how much success is achieved in rectifying ASIC's culture, that alone will not be enough. ASIC's remit is a problem, and it must be fixed. (p7-8) In ASIC's supervision and regulation of the financial industry, it is a 'capacity regulator'. This is fundamentally different than the SEC, for example, whose jurisdiction is activated when they find the law has been breached. In its licencing functions, ASIC must evaluate a financial firm's capacity to adhere to the law – different to company registration, which does not require an assessment of whether the applicant will be able to meet its reporting obligations. Further, ASIC needs to be pre-emptive, intrusive and educative, as opposed to simply reactive and prescriptive. (p8) ASIC often declines to litigate cases perceived to be strong, and hides behind legal advice saying it doesn't have a case, which can't be scrutinised – for example declining to take on money-laundering allegations about Westpac's Board. Suggests the reason could be that Westpac's litigation budget exceeds that of ASIC's. This is inexplicable when compared to the decision to pursue Star directors. (p9-10) The likelihood that ASIC will lose is not an excuse to not ever litigate. Hayne said that ASIC should litigate if the matter is serious enough even if the prospects of success are small (p10). Untenable that ASIC legal advice cannot be reviewed. Parliament must 'acquire to itself the power to review legal merits advice, provided to ASIC, in camera, such that client confidentiality is not breached. This could be by way of an advisory panel of eminent legal academics and retired judges, possessed of the expertise to understand the

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		<p>advice... and reach a conclusion as to whether the advice is credible and/or whether ASIC's interpretation of the advice is accurate'.</p> <ul style="list-style-type: none"> • In determining whether to bring a case to court, ASIC must satisfy a two-step test: The case must have prospects of success; and the litigation must be on a reasonable basis (including having a public benefit). Quotes ASIC material on this and applies it to the Westpac example. Unable to reconcile this matter with the guidance, re-iterates that advice must be provided to Parliament to determine whether it is reasonable. (p11-13) • Outlines Professor Ramsay's findings in 2021 on CDPP prosecutions over a ten-year period (2009-2018) that penalties were sourced from only 86 unique sections across the Corps Act and ASIC Act (from almost 900 possible sections) (p14-18). Who decides which sections to prosecute, and what is the responsibility between ASIC and the CDPP? There is a lack of expertise across the full gamut of sections available and excessive conservatism. ASIC and CDPP should be required to submit a plan on how they remedy the expertise shortfall. One potential solution would be to appoint a panel of advisors, comprised of eminent academics and retired judges. When the CDPP declines to prosecute, the matter should not die there but be referred back to ASIC for consideration of pecuniary penalty or administrative action. (p14-18) • Recommendations: <ul style="list-style-type: none"> • Dedicated regulator for supervision and regulation of conduct in financial services. Three options: <ol style="list-style-type: none"> 1. A separate division of ASIC (worst option given the broader corporate culture at ASIC) 2. A separate division of the ACCC (excellent track record and culture of enforcement) 3. New independent financial conduct authority (FCA). (para 55) • Establish a dedicated litigation and prosecution unit (either in a new FCA or a division of ACCC) whose purpose would be to gain expertise in, in particular, court enforcements. (para 56) • ASIC must be required to provide to Parliament, in camera if necessary, or to an advisory panel of eminent jurists, merits advice which ASIC purports advised against litigation. At least in respect of the matters recommended for prosecution by Commissioner Hayne, and the potential breach of director's duties at Westpac and CBA, in connection with AML/CTF breaches. (para 57) • Parliament (or an advisory panel to Parliament) must be given mechanisms by which to assess ASIC's refusals to litigate. The current arrangement creates a black hole; an impenetrable and opaque arrangement which is preventing effective Parliamentary oversight. (para 58) • The arguments presented in 57 above, and 58 above, apply mutatis mutandis to public policy / reasonable basis for litigation advice, which ASIC has received: this advice must be made available to Parliament in order to facilitate scrutiny of that advice, and what would often be highly subjective conclusions therein on what would constitute a reasonable basis for litigation. (para 59)

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		<ul style="list-style-type: none"> Parliament must determine whether the CDPP's failure to prosecute anything other than less than 10 per cent of the sections at its disposal in the Corporations Act, and almost none of the ASIC Act, is a failure on the part of the CDPP, or ASIC. (para 60)
20	Prof Jason Harris Sydney Law School	<p>Focuses on ASIC's enforcement of conduct of officers and directors of companies in external administration under Ch 5 of the Corporations Act, which is 'manifestly inadequate'. There is no transparency because enforcement reporting is at too high a level of abstraction' and is part of a 'deliberate strategy of obfuscation so that the public is kept in the dark'. Taking a strategy of focusing on enforcement within particular teams should not mean completely ignoring other areas of misconduct. Critical of ASIC's website. Suggests ASIC should enforce more sections of the Corps Act and lack of books and records (ie. evidence) should not be an excuse to not take action.</p> <ul style="list-style-type: none"> ASIC's annual reports note only a small proportion of reports of potential offences are actually reviewed (20% or less each year). Of these only a small proportion then generate a request to the liquidator for supplementary information, and of these only a small proportion (less than 20%) are referred for further investigation. ASIC's introduction of AI tools may assist in more reports being scrutinised to some degree, but will not result in higher levels of enforcement activity where there is little or no evidence, such as where books and records have been destroyed. Refer to ASIC 2021/22 Annual Report figures and prior Annual Reports, noting lack of information as to how many matters resulted in formal enforcement action and what these results were. (p1) Activities of the small business engagement and compliance team are 'something of a black box' because these matters are not subject to media releases, so there is no way of knowing what action (if any) is being taken. (p2) Acknowledge 'ASIC is entitled to pick and choose how to allocate its limited enforcement resources across its responsibilities and priorities each year, and no regulator is going to enforce every possible breach of the law' however, ASIC is not accountable for its enforcement activity and appears to be ignoring tens of thousands of potential breaches every year. (p2) This may mean a rethink of ASIC's enforcement toolbox is needed – focus on administrative and automated sanctions rather than costly and slow litigation. Enforcement reporting is at too high a level of abstraction' and it is impossible to know which team within ASIC is responsible for what aspect. (p2) Directors of particularly small businesses are systemically not complying and breaking the law across multiple companies over many years, and are well known to liquidators and subject to multiple offence referrals, yet ASIC 'sits on its hands and does nothing'. (p2) ASIC is not more active on misconduct reports because it is either: <ul style="list-style-type: none"> seriously under-resourced and over-committed due to remit being too broad (answer may be to split enforcement into a separate agency)

Num	Submitter	Summary
		<ul style="list-style-type: none"> • too bureaucratic and takes too long (answer may be streamlining law and penalties and allowing automatic disqualification). (p2) • Review of Annual Reports over 24 years shows court enforcement and banning and disqualifications activity has not changed substantially despite increases in funding and resources. Compares to UK where hundreds of directors are disqualified each year (pre-COVID well over 1,200). (p3) • Deliberate strategy of obfuscation in reporting on enforcement activities, which changes from year to year, using different groupings and categories and different timeframes (examples provided). Focus is on case studies and major actions, but tracking activities over multiple years is impossible. (p3) • ASIC's website is poor and not transparent, particularly the search engine which makes it hard to find particular topics. Filters do not allow to search specific Corps Act sections or regulations. Regulatory index is helpful and general information is highly useful, but finding something specific ASIC has done is like 'looking for a needle in a haystack'. (p4) • 12 monthly highlights are too high level and insufficient. Better statistics are needed to show what ASIC is doing with its budgetary allocation. • ASIC tends to bring the same sorts of cases each year. There are 'thousands of provisions' in the Corps Act that appear to have never been enforced by ASIC. 'Relying on inadequate books and records to refuse to bring action is not good enough'.
21	John Adams	<p>Critical of ASIC's investigation and enforcement outcomes and references his own self-funded investigation. Provides two reports showing an 'alarming decline' in ASIC's handling of reports of misconduct and potential criminal contraventions, which he says were the impetus for the Inquiry. The two reports are based on ASIC's Annual Report 2021-2022:</p> <ul style="list-style-type: none"> • Primary report about reports of misconduct, calling for an inquiry (p6-76) • Supplementary report focusing on breach reports, statutory liquidator reports, and whistleblower reports (p77-106). • References the evidence of Mr Michael Brereton on 14 December 2022 to the PJC inquiry into Corporate Insolvency, that his allegations produced an NFA notification within 45 seconds of lodgement. • Outlines his own self-funded investigation into criminal corporate fraud lodged with ASIC on 6 April 2022, noting ASIC commenced an investigation and this remains ongoing. Notes that he was forced to go to extreme lengths in triggering an official ASIC investigation and that this should be the exception and not the rule. • Briefly outlines scrutiny of ASIC and notes that ASIC has failed to demonstrate any discernible improvement and is actually getting worse. • Recommends inquiry interrogate:

Num	Submitter	Summary
		<ul style="list-style-type: none"> a. why, on average, does ASIC commence official investigations in only approximately 1% of cases when reports of alleged misconduct are received; b. the dramatic rise in the number and percentage of reports of alleged misconduct (especially reports from members of the Australian public and breach reports³) which have resulted in no further action; c. the material decline (or trend) in the number of new official ASIC investigations commenced since July 2015 (both in nominal terms as well as a ratio relative to the total number of reports of alleged misconduct received by ASIC); d. why, on average, 91% of whistleblower disclosures since July 2015 have resulted in NFA; and e. how does ASIC make judgements of which reports of alleged misconduct are selected for official investigation.
22-23	Confidential	
24	John Hindle	<p>Mayfair matter. Mr Hindle is a retired solicitor and public notary and an investor in the Mayfair 101 Notes (Mawhinney) and is critical of ASIC's unwanted and unnecessary interference in this matter, as investors are unable to access any of their invested funds until legal proceedings are finalised. Seeks an interim report by the Committee to be presented to the Minister seeking his instruction that ASIC withdraw the proceedings.</p> <ul style="list-style-type: none"> • He had a minor involvement in the LM Mortgage Investment Fund which was placed in administration with the founder Peter Drake said to have taken \$46M by way of loans before its collapse. Criticises ASIC for coming 'to the party far too late', instituting proceedings against directors of the company long after a receiver had been appointed, which were dismissed on the basis the ASIC case had been inadequately presented. Briefly references Sterling. • On Mayfair, he notes the Federal Court overturned the original judgment, but that ASIC 'stated in no uncertain terms to the full bench of the Federal Court, that ASIC made no allegation of dishonesty against Mr Mawhinney'.
25	Peter Keenan, Retired insolvency chartered accountant	<p>Focuses on ASIC's lack of investigation of reports notifying breaches of corporate and insolvency laws and duties or other misconduct by company officers. Submission contains an abridged version of his 9000 word investigation report submitted to ASIC in 2009 as a liquidator under s533(2). He was asked to do so by ASIC and received \$10,000 from the Assetless Administration fund. ASIC decided not to investigate.</p> <p>Suggests based on examination of ASIC's 2006-2010 prosecution reports that ASIC's Victorian office was far less active than the NSW office. Notes ASIC has ceased publishing these reports in 2012, replacing them with 'less-enlightening' enforcement outcome reports and statistical Annual report tables.</p>
26	Dennis Ryle	<p>Sterling New Life matter. Investor made Submissions 58 and 98 to the Sterling Inquiry. Suggest ASIC was aware that information was hidden or misrepresented by the principals of Sterling three years before they entered the investment. ASIC and Sterling met several times to correct the PDS which was nevertheless not released to clients and concealed until after sign-up. ASIC should have publicly communicated its concerns in 2015 when it first had them.</p>

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27	Luba and Laurence Thomas	Sterling matter. ASIC knew of Sterling problems two years before they signed up to the rental leases. ASIC allowed Sterling Directors to continue stealing \$11M from elderly consumers until Jan 2019. ASIC should be made accountable and reimburse all money stolen. Critical of low investigation percentage (0.74%). A new regulator is needed, not responsible to Treasury. Perhaps reporting to the Minister for Police. WA Fraud Squad say they can't investigate because ASIC is. They should be allowed to. Shocked that ASIC and Treasury gave licence to sell the product to Directors of failed companies who went into liquidation owing millions of dollars. Outline failed litigation leading to eviction, despite paying \$241 rent in advance under the scheme. Very critical of ASIC being ineffectual in combatting Ponzi schemes.
28	Name withheld	Life insurance premium increases. ASIC was dismissive of concerns that life insurance policy premiums increased from \$147 per month to over \$2000 per month. Despite appeals to AFCA and ASIC, was unable to retrieve \$136,000 in premiums paid before surrendering the policy as the cost became untenable.
29	Name withheld	Citigroup matter. Had an ASIC complaint for months without resolution regarding \$50,000 in lost investment. AFCA claim was unsuccessful. Requested from ASIC under FOI the criteria for the risky structured investments ASIC had ruled on so he could appeal. This was refused 'claiming that ASIC had made a secret agreement with Citigroup to protect Citigroup's financial interests not mine and justified their actions in a secret deal so as Citigroup may cooperate with ASIC'.
30	Name withheld	Mayfair matter. 2020 investment in Mayfair. She was unable to redeem a \$500K promissory note due to a 'temporary liquidity freeze' placed on redemptions. Monthly payments also ceased after a few months. ASIC's court action is compromising the investment, and have meant no interest payments for three years. Mayfair was not a scam. It was a well planned and managed investment scheme. ASIC has made a poor assessment of Mayfair and a big mistake in its actions. Investors need to know that if ASIC takes an interest in your investment, you can consider it lost. Support a full investigation of ASIC's handling of this matter.
31	Name withheld	Mayfair matter. ASIC action stopped investments in Mayfair notes to protect future investors, rendering existing investors collateral damage. ASIC should review and enhance its dispute resolution and compensation schemes to better serve the public interest while also ensuring efficient market outcomes and regulatory action. It can do this through transparency, communication and ensuring consumers are aware of their rights. When Regulations are to be enforced, ASIC must consider the impact on consumers before proceeding.
32	Name withheld	Mayfair matter. How could ASIC allow this company to operate when they obviously had the company and executive under scrutiny for some time? Would not have invested if ASIC had warned the public of the investigation. ASIC was only interested in achieving a result to hush their critics, not worrying about who gets hurt by their actions. Recommendations:

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		ASIC can use technology to improve efficiency and effectiveness of its investigations, such as using data analytics to identify patterns of misconduct and using machine learning to identify high-risk individuals and companies. ASIC must be forced to consider whether its actions will result in Australian consumers risking the loss of their investment. It can do this by enhancing education and outreach to the public and industry participants about its role and responsibilities, as well as the regulations it enforces. This will ensure consumers are aware of their rights and how to report any misconduct.
33	Name withheld	Mayfair matter. Invested \$500,000 savings and inheritance, from which they have not seen interest for more than two years now. Becoming clearer and clearer that ASIC has let them down and suggest that all leaders within ASIC be reviewed, replaced or fired. ASIC has been given almost unlimited resources to wage their war against them with their investment. Indicates summary of matter attached but not published.
34	Name withheld	General criticism of inability to act on criminal activity and inform the public of breaches of the financial laws in a timely way. This leads to increased losses by investors in unlawful companies. High staff turnover of case investigators lead to a lack of continuity and time required to readvise new case investigators
35	Name withheld	Mayfair matter. Invested savings in Mayfair after relying on ASIC's lack of warnings. Hopes something can be done to return the money.
36	Name withheld	Mr Papalia matter. Invested half their super in an embezzlement scheme. Mr Papalia is a family member and a 'respectable' accountant who ASIC should have held accountable and protect everyday people from someone like Mr Papalia.
37	Name withheld	Courtenay House Capital Trading Group matter. ASIC has utterly failed in their key role by allowing a Ponzi scheme to operate for 7 years under an ASIC financial licence. Contacted ASIC when considering investing and were told ASIC could not advice on performance or make recommendations on investment funds. ASIC could only advise if funds are active and have appropriate licencing to operate, which it confirmed the fund did. The trading group had been reported to ASIC multiple times, and pre-date by years the date that they and other families invested. ASIC's failure to act on those complaints has allowed the Ponzi scheme to go unchecked and unpunished.
38	Name withheld	Courtenay House investment matter. Outraged that ASIC waited 5 years to warn them. There were 9 complaints to ASIC between 2012 and 2017. ASIC also interviewed 2 investors in 2016. Why were no warnings given to investors? Would not have invested if they knew of the warnings.
39	Name withheld	Mayfair matter. Invested majority of their money in Mayfair as trustee for their self-managed super fund. They cannot redeem their money as a result of ASIC interference. Angry that ASIC was negligent in not carrying out

Num	Submitter	Summary
		<p>their duty prior to us investing with James Mawhinney and then taking belated action against him which resulted in freezing our redemptions.</p> <p>Recommendations:</p> <ol style="list-style-type: none"> 1. Establishing a formal process for gathering and assessing data and evidence related to bad behaviour, and providing training for staff on how to effectively gather and analyse this information. 2. Creating an internal review process to ensure that all enforcement actions taken by ASIC are fair, consistent, and in line with the agency's overall mission and goals. This can include an oversight committee or external review. 3. We recommend providing education and resources to consumers to help them understand their rights and the actions they can take to protect themselves from regulatory breaches.
40-45	Confidential	
46	Bank Warriors Michael Sanderson	<p>Advocates for the establishment of a Federal 'Financial Services Law Force' to support access to justice for financial services consumers, small and medium-sized enterprises and farmers. The initiative would require financial services who take legal action to fund legal representation of consumers.</p> <ul style="list-style-type: none"> • Even if ASIC is fit for purpose, it would have to be many times its current size and in any case it would be too late for the majority of affected consumers. • The real problem is the 'abject failure of the upstream judicial system'. Outlines political and parliamentary attempts since 2004 to address the issue of access to justice, however the situation has not improved. • Recommend the introduction of a Federal 'Financial Services Law Force', a semi-autonomous formal legal body under the Attorney General's Department or ASIC if it can be reformed. • Principles and practice attached. In summary: <ul style="list-style-type: none"> • Based on the principle of 'equality of arms' • When initiating a legal instrument, the financial services provider to make a non-refundable contribution equivalent to the plaintiff's internal and external costs/budget. Any escalation would require matching contributions from the provider. The provider would only be able to recoup their cost from the consumer following an outcome in their favour. • These contributions would fund a permanent independent body which would work with existing legal aid and community legal centres to offer consumers legal representation • Systemic issues would be identified and intelligence shared with ASIC and APRA

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		<ul style="list-style-type: none"> • Governance via a board with federal government, consumer, legal aid and community legal centre representation, but no provider, farm debt mediation or EDR representation to avoid 'white anting and inappropriate external influence'.
47	Dr Evan Jones (retired from Dept of Political Economy, University of Sydney)	<p>Focuses on the credit relationship between bank lenders and SME/family/farmer borrowers. His past Parliamentary submissions on this topic criticise ASIC for failure to address unconscionable conduct of banks against these consumers. Considers championing individual disputes in the courts should be ASIC's role. Asserts ASIC's failure points to a more fundamental failure of the whole financial system due to flawed assumptions and asymmetry between the lender and borrower.</p> <ul style="list-style-type: none"> • Considers an 'efficient market' to be a 'utopian fantasy' and the current situation at its root untenable due to asymmetry between lender and borrower. • References his submission to the 2013-14 Inquiry on ASIC's performance. • ASIC has 'a flagrant denial of its legislated obligation regarding the treatment of financial entity victim complainants. ss12C and key parts of ss12D appear to be a dead letter.' • Includes an example M&BR email declining to pursue a reporter's concern • References the Bankwest matter and provides extracts from his submission to the 2018 Treasury inquiry into <i>Reforms to strengthen penalties for corporate and financial sector misconduct</i>. The extracts include Hansard quotes from Warren Day and Michael Sadaat explaining that ASIC doesn't intervene in individual disputes, which he rejects: 'It is precisely ASIC's role to champion individual disputes in the courts because the victims lack the resources to do so. Whatever the outcome, lessons are learned for the more honed pursuit of future litigation.' • Suggests ASIC staff lie to complainants about why they ASIC doesn't pursue their matter. • Suggests AFCA is also complicit with major financial funders • Recommends the return of the oversight of business-to-business unconscionable conduct in financial services to ACCC. • Recommends the establishment of a specialist competent financial fraud investigative arm within the AFP – notes currently victims of financial fraud have to argue their case at the 'local Cop Shop'. • Acknowledges Adams' report but notes the real problem is the very large number of complaints received. Asks 'could any single organisation, no matter how principled and capable, cope with such a flood?' Outlines dysfunction of the financial system at large. • Criticises lack of political will on both sides of politics to deal with the issue (references Stephen Jones' and ASIC's lack of interest in Trio Capital).

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48	Donald Carter (Laharum Bulk Handling Company)	<p>Victim of fraud by directors behind the collapse of a group of companies involved in fertiliser sales, which he says traded insolvent and a 'sham' transaction for the sale of fertiliser. ASIC did not act despite liquidator report and attempts to communicate with ASIC and provide a forensic analysis.</p> <ul style="list-style-type: none"> • Liquidators provided detailed reports to ASIC twice and ASIC did not impose penalties or sanctions on the directors. He wrote to the Chair of ASIC and communicated with an ASIC officer for 6 months, including submitting a forensic analysis from an accountant which appears to have been returned as 'undeliverable'. Suggests ASIC did not conduct further investigation on the basis the case was 'too old'. • Notes during the period that ASIC visited the companies' head office in SA twice to ask why two annual returns had not been lodged. • Suggests ASIC should be able to recoup its costs from perpetrators due to hidden assets in trust accounts and concealed properties. • Questions why ASIC only investigates 'small cases' • Asks why a lot of ASIC staff are ex-bank employees
49	Niall Coburn (barrister and ex-ASIC employee), on behalf of 63 Australian farmers	<p>Submission on behalf of 63 Australian farmers who lost properties to the banks due to alleged predatory lending, fraud and forgery and failure to act efficiently, honestly and fairly, as well as breaches of ASIC licence conditions. Argues ASIC has failed to apply its own criteria in INFO Sheet 151 as the banks' predatory lending practices to vulnerable farmers was systemic and ongoing and should have been investigated.</p> <ul style="list-style-type: none"> • Recommends inquiry conduct a review of these complaints made to ASIC, including the reasons for not investigating and consider any legislative reform to facilitate taking actions against Banks for alleged misconduct involving improper lending practices • Recommends mediation be immediately arranged between the farmers who have grounds for complaint and the banks, with banks to pay for legal representation. • Outlines RC findings that ASIC and APRA were 'asleep at the wheel' but acknowledges that ASIC is still pursuing several banks and has since 2020 initiated several successful penalty proceedings obtaining multi-million- dollar penalties. (para 17) • Notes RC recommendation 1.11 of farm debt mediation has not been implemented. • Outlines how farmers get into difficulty, evidence of bank non-compliance before the RC, predatory lending and serious compliance failures by banks and recent cases concerning banking misconduct. • Includes complaints to ASIC by farmers (p14-18). • Acknowledges limitation issues but considers there are alternate legal pathways which allow for litigation, such as equitable fraud, active concealment, breach of the Banking Code of Practice, and various equitable

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		remedies, such as unconscionable conduct. Considers breaches of banks' ASIC licence conditions are ongoing and provide an opportunity for mediation or litigation.
50	Associate Professor Vivienne Brand and Jordan Tutton (Flinders University)	<p>Considers the extent to which enhanced whistleblowing regulatory structures in Australia could assist corporate regulation.</p> <ul style="list-style-type: none"> • Outlines 2019 reforms to Australia's whistleblower laws and observes a corresponding substantial increase in whistleblower disclosures to ASIC from 278 disclosures (2018–19) to 644 disclosures (2019–20). • Refers to ASIC's 2020 review of compliance with the legislation and the finding that the majority of policies were non-compliant. • Refers to significant data on comparable regimes in the United States and Canada • Refers to empirical research on 'cash for information' programs • Recommend a review of the effectiveness of the legal changes.
51	Prime Trust Action Group Steve O'Reilly and Roger Pratt	<p>Focuses on ASIC's refusal to consider the investors' claim under the Compensation for Detriment due to Defective Administration (CDDA) Scheme. Explained that investors are at an impasse and believe justice has been denied.</p> <ul style="list-style-type: none"> • Outlines the CDDA Scheme, and the lodgement in February 2019 of a claim for \$200M in compensation by 1,800 Prime Trust investors. • Notes ASIC has 'unequivocally stated that it is no longer authorised to determine such claims' and that authorisation by the Assistant Treasurer on 17 March 2015 had lapsed in 2015, despite assurances given by the Department of Finance and ASIC prior to the lodgement of the claim. • Acknowledges AGS view about authorisations, however suggests ASIC has ignored the uncertainty in the legal briefing, and asserts procedural fairness was not accorded. Asserts there has been no attempt by ASIC to rectify the conflicting and unequivocal statements previously provided. • Recommend: <ul style="list-style-type: none"> • ASIC be restored to, or confirmed as a participant of, the CDDA Scheme as a matter of urgency; • the determination of all outstanding CDDA claims against ASIC to be expedited; • a parliamentary investigation be undertaken into ASIC's handling of CDDA claims in recent years.
52	CISA Consulting Peta Stead, Senior Regulatory Advisor	<p>Focuses on ASIC's use of product intervention powers to restrict how contracts-for-difference products are traded in Australia. Suggests ASIC's reaction to these products is disproportionate to the potential harm.</p> <ul style="list-style-type: none"> • Note contracts-for-difference had been successfully traded for decades prior to ASIC's order in October 2020, and extension for another 5 years in April 2022.

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	(former ASIC employee; Markets – Complex Products)	<ul style="list-style-type: none"> • Note a reduction in clients is not an ideal outcome for investors, but observe continued demand for the products, particularly experienced investors requesting wholesale client status, and using offshore trading values. • Recommend instead of focusing on products, ASIC should focus on bad actors and poor conduct. Outline practices that are not representative of the entire industry. Note even after the ASIC order, the scammers and fraudsters continue to target vulnerable clients. • Recommend ASIC avoid restricting investor freedom of choice where there is no clear evidence of investor demand. Suggest majority of consumers understand the risk. • Recommend ASIC limit activities to standard surveillance and enforcement actions, given limited resources and the need to focus those where the impact is greatest and most needed. Outline reasons the potential harm associated with these products is limited. • Recommend independent oversight and assessment of ASIC and its roles and responsibilities to ensure it maintains the right balance, noting the impact of ASIC's broad powers on industries. • Recommend an open dialogue between ASIC and the regulated population, noting repeated focus on one industry without adequate justification can 'seriously impact what should be a cordial relationship'.
53	Sterling First Action Group	<p>Outlines the history of the Sterling matter. Argues for ASIC being responsible for losses incurred due to the collapse, improved registration process for managed investment schemes including vetting of officers, and disqualification action to be taken against Sterling Group officers.</p> <ul style="list-style-type: none"> • Recommendation 1 - ASIC to be held responsible for the losses incurred in the collapse of the Sterling Group due to defective administration in failing to properly regulate the formation and operation of the companies comprising the Sterling Group. Victims who suffered losses as a result to have access to the Scheme for Compensation for Detriment caused by Defective Administration (CDDA Scheme). • Recommendation 2 - More rigorous processes to be implemented for the registration of managed investment schemes (MIS), including vetting of officers appointed to any company associated with the proposed responsible entity. • Recommendation 3 - All officers associated with the Sterling Group (past and present appointments) to be disqualified from managing corporations for 20 years.
54	Denise L Brailey	<p>Has provided past submissions which resulted in the Performance of ASIC Inquiry in 2014, and continues to advocate for older people affected by inappropriate products. Critical of ASIC's failure to prosecute developers of these products.</p>

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		<ul style="list-style-type: none"> • The blame is not on sellers, but on the developers of those products and Ministers who fail to do something about these. • ASIC has a reputation of failing to persuade Government to alter its profound neglect of this issue. • ASIC has failed to prosecute significant numbers of people as it has a conflict of interest between consumers and big business. Handing out regulatory fines is not consistent with good government for 'grand theft'. • Recommends a dedicated regulator to handle complaints from elderly consumers who lose their life savings.
55	Carolyn Read	<p>Focuses on schemes designed to entice consumers into circumstances that give rise to large financial losses (father was a victim of Sterling). Critical of underlying government policy of buyer beware and being concerned with the economy and markets, not consumers. Asserts that ASIC treats everything as a misdemeanour instead of 'grand theft' of large amounts of money since it took over consumer protection. Argues for much harsher penalties for white collar criminals and repeat offenders.</p> <ul style="list-style-type: none"> • Committee must be prepared to address the following white elephants in the room: <ul style="list-style-type: none"> ○ ASIC's performance can only be improved by changes to the 'Caveat Emptor government policy which has ensured that ASIC remains weak and ineffective with no regard for consumer protection; ○ Manufacturers and creators of deliberately defective products are the culprits of crime. Sellers of products are unaware of criminal intent behind the products they are enticed to sell and not to be blamed; ○ Language used to describe criminal activity (white-collar crime) is the crux of ASIC. ASIC treat everything as a misdemeanour instead of grand theft of large amounts of money. ○ Perpetrators of white-collar crime must be sent to criminal courts for prosecution of criminal activities • Argues for more assertive action on criminal activity and ability of victims to be granted compensation. • 'ASIC can never meet the expectations of the public and consumers until the Australian government makes a firm decision to clean up financial products from being weapons of theft within the industry.' • As ASIC has been placed in charge of consumer protection, it should be referring blatant criminal activity by known offenders, including the major banks, to the Australian Federal Police. • ASIC needs a massive budget increase if its regulatory powers are to be strengthened to enable it to become a powerful watchdog and provide the proper protection that consumers deserve. • On Sterling, minimal damage would have been done if ASIC had taken action in the beginning. ASIC had an obligation and duty to advise all tenants about the impending collapse. The regulators refuse to take responsibility which leaves victims 'penniless, homeless and without justice or compensation'.

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56	Jaime Asher	Mayfair matter. Asserts ASIC has been grossly negligent and have failed him as an investor in the Mayfair financial product. Had he known of previous investigations into Mr Mawhinney or his four failed businesses, he would not have invested. Identifies a number of flags he believes ASIC should have picked up.
57	Lindsay David	Focuses on banking corruption and lack of ASIC investigation of mortgage control fraud. He has undertaken macroeconomic research on the quality of enforcement and investigation style of ASIC (primarily focused on enforcement of breaches by mortgage lenders related to the National Consumer Credit Protection Act). Asserts ASIC does not properly investigate serious allegations about mortgage control fraud, never conduct proper interviews with borrowers, do not use viable witnesses and leave mortgage control fraud and tampering with financial information unchecked. Attempts to contact ASIC about illegal misconduct in the mortgage market have not been responded to. Sees ASIC as a 'captured regulator'. Refers to an allegation forwarded to ASIC by a senator, which involved the CEO of a Big 4 Bank flying to Western Australia to allegedly free a borrower from a loan that breached the NCCPA in exchange for the borrower making no comment to the media.
58	Graeme Medhurst	Based on his engagement with ASIC during the 1990s regarding investment in a managed investment scheme, suggesting there was a political element. Recommends ASIC's corporate enforcement role be transferred to a new corporate division within the Federal Police, leaving ASIC to focus on its regulatory role, including registry, compliance and audit functions. <ul style="list-style-type: none"> • ASIC has not successfully balanced the dual roles of corporate regulator and enforcer. Questions ASIC's independence, noting ASIC's board appointments and Statement of Expectations are set by the Treasurer. • ASIC neglects the interests of small business and the public and focuses on the interests of the 'big end of town'. • Recommends ASIC's corporate enforcement role be transferred to a new corporate division within the Federal Police, leaving ASIC to focus on its regulatory role, including registry, compliance and audit functions.
59	Madgwicks	Refers to a report over a thousand pages long submitted to ASIC in July 2022 regarding a listed company. No confirmation from ASIC whether it is investigating. Refers to subsequent concerning conduct by the company relating to sales of undervalued assets. Assert that ASIC needs more transparency, more reporting to complainants as to the progress of the complaint, to ensure that any report of misconduct is investigated properly.
60	Australian Citizens Party	Consider the ASIC to be a product of Australia's modern financial regulation being an 'unmitigated disaster' based the underlying ideologies of self-regulation and the principle of buyer beware. Assert that ASIC must be overhauled. Outline a series of Inquiries and matters that have been reported as ASIC lacking teeth. Criticise self-regulation, lack of Banking Code enforcement, and industry capture of AFCA. Suggest the Treasurer replaced

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		Shipton and Crennan with 'business-friendly' Joe Longo, noting the 'why not litigate' RC recommendation has been dropped.
61	MrLachlan Walden	<p data-bbox="524 317 1944 456">Focuses on enforcement of market integrity rules. ASX investor and trader specialising in smaller companies who has suffered losses from criminal conduct ASIC has failed to deter. Since 2020 has been advising ASIC of systemic criminal on-market conduct, with detailed evidence for ASIC to understand the 'intricacies of the often complicated manipulation techniques deployed'.</p> <ul data-bbox="524 467 1944 1323" style="list-style-type: none"> <li data-bbox="524 467 1944 539">• ASIC is entirely incompetent at enforcing its own Market Integrity Rules because they lack market professionals who can think like an elite trader and understand the complicated intricacies. <li data-bbox="524 544 1944 576">• Passive filters for detecting market manipulation are entirely ineffective. <li data-bbox="524 580 1944 719">• Refers to extensive information and conclusive evidence presented to ASIC in early 2022 showing an upcoming IPO had a fraudulent financial services business model. After investigating, the company made some very minor disclosure improvements that did not address the 'central fraud element' and the IP was allowed to proceed. <li data-bbox="524 724 1944 1323">• Recommendations: <ul data-bbox="568 772 1944 1323" style="list-style-type: none"> <li data-bbox="568 772 1944 911">○ Start enforcing the existing ASIC Market Integrity Rules to the letter. Take action against the individuals/entities and facilitating brokers (breaching part 5.11.1 — notification requirement for suspicious activity reporting). This may involve consulting with and/or employing skilled market professionals to understand the intricacies of the advanced manipulation techniques. <li data-bbox="568 916 1944 1023">○ Make simple logical changes to the ASIC Market Integrity Rules to prevent manipulation of share prices. For example, no trades permitted allowing price changes greater than 2% of ASX securities from transactions worth less than \$1000. <li data-bbox="568 1027 1944 1166">○ Preventative monitoring of all ASX securities by a market professional (with elite trading experience) in real-time for market manipulation. There are hundreds of blatant breaches each week that can be immediately stopped. Once the main culprits are gone from all brokers, there will be minimal ongoing egregious illegal conduct to detect. <li data-bbox="568 1171 1944 1251">○ Monitoring for insider trading where large unusual accumulation/distribution takes place before a material announcement. <li data-bbox="568 1256 1944 1323">○ High-level analysis of company announcements and financial statements for breaches of directors' statutory duties.
62	Bank Reform Now	Comments on the operation of markets. Asserts a properly functioning corporate regulator should have the powers and ability to manage dispute resolution, order compensation where appropriate, and put in place

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		<p>penalties that outweigh the profits of the various forms of misconduct. Concerned about corrupt behaviour by corporations and their links to political parties. Suggest ASIC's role could be expanded to include oversight of corporate interactions with governments, parties, and politicians. Makes a number of general criticisms of ASIC, including regarding effectiveness, accountability, collaboration, complaint management and dealing with whistleblowers. Suggests ASIC should be resourced to deal with market manipulation. Corporate misconduct should be penalised and victims compensated.</p>
63	Financial Planning Association (FPA)	<p>Focus on promoting preventative measures to reduce the risk of consumer detriment via proactive engagement with industry, including on the topic of professional indemnity insurance, education opportunities, improved accessibility to ASIC advice and expertise, clear and consistent regulatory guidance, and public and private rulings.</p> <ul style="list-style-type: none"> • Calls on the government to address the role of professional indemnity (PI) insurance. Note ASIC have confirmed to the FPA that they do no proactive monitoring of PI insurance obligation compliance by AFLs or the effective operation of PI market for financial advice more broadly. • Recommend consumer protections in s912 apply to all financial services, rather than just cases where retail consumers received personal advice. • The current CSLR bill excludes the majority of sectors under ASIC's regulatory remit, such as managed investment schemes, which would leave many consumers without an avenue for compensation. • Examples of significant duplication of requirements for financial planners, noting changes often disregard unintended consequences for existing clients, for which forcing new obligations to be met have little benefit. • On timeliness, financial planners and licensees spend significant time and money to assess and update their systems to ensure compliance with new requirements. Provide four examples of significant ASIC delays on releasing guidance. • On overreach, provide the example of Report 515, an audit and file review which resulted in ASIC mandating additional training standards that went beyond legal requirements and ASIC's own regulatory guidance. • ASIC should spend more on industry engagement, education, guidance and policy advice. Other regulators frequently issue both public and private rulings on matters of regulatory interpretation. Suggest TPB and AUSTRAC are better at providing straight answers to questions. Suggest ASIC should engage with compliance consultants. • Encourage prevention to reduce risk of consumer detriment rather than a hard focus on enforcement. • The style of Information Sheets recently released by ASIC have been welcomed by industry as a marked improvement from historic ASIC regulatory guides.

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		<ul style="list-style-type: none"> Enforcement and penalty regime needs to be tough on the perimeters and should also be tough on offenses of fraud and dishonesty.
64	Name withheld	Pacific First Mortgage Fund matter: Critical of ASIC's lack of action on legislative breaches by City Pacific Ltd and First Mortgage Fund. Note in September 2008, June 2009 and September 2009 KPMG provided ASIC reports relating to contraventions of the law.
65	Name withheld	Main focus on fraud and maladministration identified at Box Hill Institute and SOAR Aviation on behalf of students, which led to a settlement in a class action by Gordon Legal. Critical of ASIC's lack of action due to incorrect legal interpretation. Also critical of lack of accessible whistleblower protections. Notes ASIC advised of legislative rules which were too limiting to enable submitter to take advantage of whistleblower protection, and suggested a civil legal approach was available.
66	Name withheld	ISX investor in 2018 and 2019. ASIC brought a case against the CEO and founder after ASX suspended the shares. Considers ASIC aided ASX in crippling his investment.
67	Name withheld	Mayfair matter. Consider ASIC's involvement and lack of timely action affected their investment. Seek a full return of their capital investment and interest.
68	Name withheld	Mayfair matter. Assisted with ASIC's investigation after being called by an ASIC investigator in 2020 but couldn't redeem their money. ASIC failed to safeguard them and the public from fraud.
69	Name withheld	Mayfair matter. Argues ASIC is negligent as provision of information would have prevented the loss. Was interviewed by an ASIC representative and assured this was routine and there was no need for concern. A few weeks later redemptions were frozen and ASIC took action.
70	Name withheld	<p>Mayfair matter. Critical of ASIC's failure to disclose information about Mawhinney. Recommends:</p> <ul style="list-style-type: none"> ASIC engage with industry stakeholders, including market participants and consumer groups, to understand their perspectives and concerns, and to identify opportunities for collaboration to address poor behaviour. Regulations must also be enforced by ASIC only AFTER ASIC HAS considered the effects of those regulations on consumers. To ensure this happens, any court case brought by ASIC against a company, must include orders on ASIC to consider consumer impact before it is allowed to enforce its regulations.
71	Name withheld	Mayfair matter. Recommend an oversight committee to review ASIC's effectiveness, establish a framework for prioritising regulatory tools. ASIC should prioritise protection of consumer investments. Penalties should be paid to investors.
72	Name withheld	Mayfair matter. Assumed ASIC had vetted Mayfair and its products before allowing them to operate in Australia. Recommends ASIC has increased resourcing and funding to investigate and enforce regulations. ASIC should

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		consider consumers in their enforcement actions, and adopt a principles-based approach to regulation that focuses on overall outcomes and objectives rather than solely compliance.
73	Name withheld	Mayfair matter. Contacted by ASIC and informed that action was being taken due to false advertising. Consider ASIC took action without complaints from investors. ASIC must be encouraged or forced to resolve disputes early on to avoid prolonged and costly litigation, as is the case with Mayfair 101. ASIC should be mindful of impact of compliance action on consumers. Review of guidelines for proceeding with litigation.
74	Name withheld	Sterling matter – Invested retirements funds in Sterling, knowing it was an ‘Australian ASIC approved company’.
75	Name withheld	Mayfair matter – Had been receiving monthly payments from Mayfair until ASIC commenced a ‘heavy handed’ investigation based on a misunderstanding of the scheme, and assets were frozen. Suggests ASIC’s action was unsupported by fact and relied on 3 rd party erroneous reports, and that ASIC made fundamental mistakes in their instructions to an expert witness which it then tried to cover up. Mentions a contact from ASIC ‘fishing’ for Mayfair misconduct and quotes a follow-up email seeking engagement with the investigation in case of a change of mind. Seeks compensation.
76	Name withheld	Mayfair matter – Furious about ASIC’s ‘witch hunt’ for James Mawhinney, which they assert was a ‘seemingly minor transgression involving incorrect advertising terminology’. Suggest a consumer advocate or ombudsman be appointed within ASIC to assess potential impact of enforcement action on consumers.
77	Name withheld	Papalia matter – invested with Mr Papalia under the misconception that he was licensed and registered.
78	Name withheld	LWP Technologies and alleged misconduct and insider trading allegations between 2015 and 2018 – Note this matter was raised at the PJC in August 2018 by former MP Steve Irons and was the subject of media attention in 2017. Suggests organised crime was involved, and that ASIC failed to take action against directors and on share price manipulation prior to a capital raise in July 2015. Mention Graphenera Joint Venture being the subject of most complaints, including about money laundering, but that the witnesses were never contacted by ASIC. Suggest that ASIC often target banks, but leave the smaller end of the ASX to its own devices, and this is where a lot of white collar crimes go unpunished, with the worst punishment for directors being to resign and join another company. Assert ASIC has no mechanism to take swift action, and investors have the false belief they will be protected. Note flaws in the class action system, which make it hard for victims to take directors to court.
79	Name withheld	Papalia matter
80	Name withheld	ASIC declining to action a report of misconduct about an insurance matter on a similar basis to <i>ASIC v Youi</i> . Note that ASIC had been given greater powers following <i>Youi</i> to pursue stricter penalties under the Insurance Contracts Act 1984 so should have been in a good position to conduct an investigation based on the report lodged in January 2021. Instead received a response that the information was ‘useful intelligence’. Provides extracts of ASIC’s

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		responses and expresses concern, including that ASIC is 'picking and choosing which cases to pursue based on very loose criteria'.
81	Name withheld	Prime Trust matter – invested under the impression that illegal operators would be identified and removed from the industry by regulators, and that avenues for redress exist if needed. Have been following the establishment of the CSLR, but is not available to them.
82	Name withheld	Papalia matter – ASIC did not conduct relevant checks on licencing and registration of the scheme.
83	Name withheld	Mayfair matter – Allege ASIC acted without gaining an understanding of the group, relationships, transactions and agreements. Seek ASIC leadership to be replaced, ministerial intervention to discontinue legal action against Mayfair, and retraction of the \$30M fine and lifting of injunction on Mr Mawhinney.
84	Name withheld	Mayfair matter - Invested after doing due diligence as an alternative to low bank returns on their SMSF. Proceedings against Mayfair put their investment in jeopardy. ASIC should take into account consumer impact when taking enforcement action.
85	Name withheld	Prime Trust matter – Outlines a range of criticisms of ASIC regarding this matter from 15 years ago, including the issuing of and failure to suspend/cancel APCH's licence, failure to recognise the significance of concerns raised by unitholders, delaying proceedings and therefore being prevented by the statute of limitations from prosecuting based on ACPH's decision to amend the Constitution, and failing to fully consider criminal prosecution.
86	Name withheld	Papalia matter – Realised it was a Ponzi scheme when cheques started bouncing, which they allege ASIC allowed to continue undetected for 15 years or longer.
87	Name withheld	Mayfair matter – Recommend that ASIC not proceed with enforcement without a damage control plan that ensures the safety of funds regardless of the outcome. ASIC should consider alternative methods for achieving regulatory compliance that does not harm consumers or the company in question. There should be a mechanism which allows consumers to file complaints and grievances against ASIC for not considering consumer impact before enforcing regulations.
88	Name withheld	Courtenay House matter – researched ASIC and other forums, but found nothing untoward about the scheme before deciding to invest. Upset that ASIC allowed the scheme to operate, assert that there were numerous complaints since well before 2017 that were not acted upon.
89	Name withheld	Sterling matter – Suggest when they entered the lease it was backed by ASIC. Upset that ASIC considered they invested the money, when their intention was to enter into a lease.
90	Name withheld	FTX Australia matter – Transferred money from Binance to FTX Australia on the belief it was safe as it had an Australian Financial Service licence. Outlines some of the perceived benefits of FTX Australia, including good

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		liquidity, reasonable fees, tokenised international stocks. Note it did not do fraction reserve banking, so the money should have been safer than in the big four banks.
91	Name withheld	<p>Mayfair matter – critical of ASIC action as interest payments were being made on time and no indication they would stop. They were enticed by advertising in financial magazines, papers and radio and considered the company to be well known in financial circles. The products were stated to be a ‘secure, asset backed and term based investment opportunity’. Critical that ASIC allowed Mr Mawhinney to set up Mayfair despite 5 previously liquidated similar financial companies. Query why ASIC found it necessary to intervene given the real assets remain under the control of McGrath and the lender, NAPLA. Note documents were similar to other fund managers, and suggest ASIC harshly punished Mayfair. Suggest there were no misleading statements or deceptive advertising, and if there were, query why it took ASIC more than 12 months to commence proceedings.</p>
92	Name withheld	<p>Complaint regarding bank misconduct – Set out complaint in 2014 to ASIC about allegedly deceptive letters claiming enforcement action to force repayment of loans, resulting in sales of properties at huge losses. Claim this conduct breached the prohibition against misleading, deceptive and harassing conduct, and the bank failed to comply with the statutory obligation to send notices prior to commencing enforcement action. Note ASIC’s response was that it saw no breaches of the law. Subsequently in 2015, the bank’s lawyers wrote that the letter was false and in 2019 the bank acknowledged breaching the NCCP Act relating to an unsuitable loan. They are waiting to be remediated.</p> <p>Assert ASIC’s indifference and wilful blindness to ‘bank predation’. The response from ASIC was that ‘it does not act for individuals and there needs to be evidence of systemic conduct’. ASIC made confidential inquiries which found insufficient grounds to take further action, appearing to unquestioningly accept the bank’s side of the story. Note that this is in contrast to ASIC taking action against the A&M Group for sending similar misleading, deceptive and harassing letters. Submission identifies a number of breaches, unconscionable conduct and unsuitable lending.</p> <p>Recommendations:</p> <ul style="list-style-type: none"> • Note that any action ASIC were to take is now time-barred. Recommend where a bank lies and covers up misconduct, the limitation period should commence from the date the breach is uncovered, rather than the date of the misconduct. • Criminal prosecutions for indictable offences should have no time bars. Ridiculously short period of three years to bring a criminal prosecution for misleading and deceptive conduct under the ASIC Act should be removed.

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		<ul style="list-style-type: none"> ASIC maintains that it does not act for individuals. It is therefore long overdue that the Government establish a financial regulator that does.
93	Name withheld	<p>Mayfair matter – Assert all investors were sophisticated enough to understand the products being advertised were not term deposits, and critical of ASIC labelling it as false and misleading. Assert everything was going smoothly with interest payments being made on time, and they continued to invest based on positive media releases about the Dunk Island investment - until ASIC froze the assets. View the ASIC action as a ‘personal pre-meditated scheme attack against the CEO and owner’ and ‘picking’ on the Mayfair Group being a small fish for a quick win and to ‘prove their power and competence’. Criticise ASIC for taking action without ‘even communicating’ with Mayfair. Consider no difference between accusations of Mayfair of paying investors from new funds invested and the way banks operate.</p> <p>Contrast LaTrobe which didn’t contest ASIC’s accusation of misleading advertising and instead paid the fine and continued operations. Consider the reason for the difference was that ASIC openly communicated with them and gave them a fair chance to correct their advertising.</p> <p>Argue ASIC has unlimited funds to ‘go back and try to get their case right’. Very angry that the case was remitted for a ‘retrial’ when the Full Federal Court ‘proved that Mr Mawhinney was denied procedural fairness’. Suggest this is because of corruption. Argue ASIC needs to be more accountable so it does its investigative job ‘properly as expected’, and that ASIC needs to act with fairness.</p>
94	Name withheld	Mayfair matter – Lost inheritance invested, with repercussions for family relationships. Argue that if ASIC had done its job in regulating and monitoring investments, none of the problems would have occurred.
95	Name withheld	City Pacific First Mortgage fund matter – Argue ASIC failed to respond to breaches reported by an auditor, leading a director to defraud the fund of approximately \$1 billion dollars of assets. Appear to not be eligible for compensation under CSLR.
96	Name withheld	Courtenay House matter – argue ASIC received complaint after complaint about this being a Ponzi scheme for five years and did nothing about it.
97	Name withheld	Courtenay House matter – argue ASIC received complaint after complaint about this being a Ponzi scheme for five years and did nothing about it.
98	Name withheld	Complaint about insurance and regulation of AFCA – relates to an insurance claim in 2002 for which the insurer admitted liability, but the consumer’s claims of fraud and underpaid benefits were not actioned by either FOS or ASIC. FOS advised they don’t investigate fraud as they are not a regulator, and ASIC advised it does not look at individual complaints. Argue that AFCA and ASIC protect the financial services industry from litigation to recover moneys taken fraudulently from victims. Recommend a new government controlled regulatory authority.

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99	Name withheld	Courtenay House matter – Invested after family members had been successful with the scheme’s forex investments. While they understood the risks of investing, they ‘never expected to be duped like this right under the nose of ASIC’. Argue ASIC’s failure to investigate complaints made from 2012 to 2017 was a key factor in their financial loss.
100	Name withheld	Courtenay House matter – invested two years after seeing someone receive monthly returns from the scheme, having reviewed ASIC’s register, however the scheme collapsed 2 months later. Argue ASIC failed to do the right thing as it received 9 complaints from 2012 which were ignored.
101	Name withheld	Sterling matter – Argue ASIC was negligent in allowing directors to operate as they were known by ASIC to have traded in similar schemes.
102	Name withheld	Report of misconduct in October 2022 about a liquidator. Argues conflict of interest in the provision of a statutory report in relation to a building company engaged by the consumer, and selling of assets in a ‘dubious manner’. ASIC advised it declined to take action in November 2022 and the consumer requested a review. ASIC indicated they will complete a review of the decision by the end of January 2023 but by February this had not yet been provided. Argue this shows ‘dysfunction within Misconduct and Breach Reporting of ASIC’ which needs to be reformed. Includes a table with recommendations to improve monitoring and action on liquidator reports and misconduct by liquidators.
103	Name withheld	Courtenay House matter – argue ASIC took away their rights by not informing investors of ongoing complaints going back to 2012.
104	Name withheld	Papoulias and Courtenay House matter - Argue ASIC failed meet expectations as it received 9 complaints from 2012 and failed to post the fraudulent operation on their website. ASIC needs to be more proactive in warning the public about investment options and suspected scams about which they have received complaints.
105	Name withheld	Bedbrook International FX trading platform (known as the ‘pig butchering scam’) – Argue had ASIC taken more prompt action to address earlier complaints, substantial losses would have been avoided. Assert NSW police made several attempts to contact ASIC to discuss fraud, but had no response from ASIC.
106	Name withheld	Advocates for someone who allegedly was mistreated by a bank and ASIC – implies that ASIC decision to not pursue the matter raised is due to ‘people’ in power being previously employed by banks and other financial entities.
107	Name withheld	Courtenay House matter – Note a ‘total lack of support and information from ASIC for me, the consumer, before, during and after the embezzlement’. Assert ASIC people who responded to complaints in 2017 were unhelpful and obstructive. Upset about the ‘futile and demeaning process’ in which liquidators ‘spin out their work over an extended period of time’ and utilise the remains of the investor funds to pay themselves. Criticise lack of

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		transparency, responsiveness and mechanism by which ASIC is held accountable for failures and financial devastation of individual in the community.
108	Name withheld	<p>RSM and ANZ introducer fee complaint, referencing an article in the Australian, on 31 January 2023 - RSM embroiled in Conduct, ANZ Introducer fee complaint. Assert policy settings encourage poor bank behaviour. Recommendations:</p> <ul style="list-style-type: none"> • ASIC should issue guidance to liquidators and the public about what liquidators are required to advise company directors regarding secured and guaranteed debts prior to the decision to liquidate. • ASIC should require liquidators to investigate and compile a list of such debts prior to liquidation and discuss any risks from those prior to commencement of liquidation • RSM be asked by the Committee about taking commissions from banks for introductions.
109-142	Confidential	
143	Association of Financial Advisers (AFA)	<p>Their view is ASIC is being pressed to be too tough as it was subject to unfair criticism of being a soft touch regulator as part of the fallout from the Hayne Royal Commission. Note ASIC is vigorous in comparison to regulation and penalties in the medical, gambling and construction sectors.</p> <ul style="list-style-type: none"> • ASIC's setting of rules through guidance and information sheets could be deemed to go beyond what the legislation enables. Examples of GR277 Consumer Remediation, IS256 Ongoing Fee Arrangements, IS206 Advice on SMSF Disclosure of Costs (now replaced). • Criticise the approach that ASIC has taken to the use of its powers. Example of an investigation that ran for 2.5 years and involved a 15 hour joint AFP/ASIC raid despite the advisor asserting there was no consumer detriment. Recommend an appeal channel or ombudsman to raise investigations considered to be ineffective or excessive. • Aggressive pursuit of remediation programs has deep and unfair consequences, for example the fee for no service matter was pursued with a very aggressive and 'guilty until proven innocent' approach. • Excessive pursuit of the regulated population without the same level of focus on the unregulated population. More focus should be on serious matters like fraud and Ponzi schemes. • Serious matters are reported to ASIC before they become severe (eg. Storm Financial and Dixon Advisory), but no action is taken. • Funding levy on the financial advice sector has increased despite a declining population of financial advisers. • Repeat comments from submission to ASIC's consultation paper on fee for no service remediation (11 Feb 2022), in which they assert ASIC's actions resulted in overcompensation and costly investigations often where

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		<p>there was no evidence of wrongdoing. Recommend more granular categorised reporting on remediation. While the remediation project was essential, the onus should not have been on financial advisers to prove they had done nothing wrong where there was no evidence to suggest they might have.</p> <ul style="list-style-type: none"> Increasing compliance obligations is one of the drivers of significant increases in the cost of providing financial advice (example of ASIC reports 515 on best interests duty and 636 on fee disclosure and renewal notices). There needs to be a balance. Deterrence should be done in an efficient way rather than creating 'non-productive overheads'. Duplication and triplication of Regulatory oversight has been an issue with financial advice. To some extent this was addressed by the Better Advice Bill 2022, with removal of financial advisers from the TPB regime, however duplication remains (for example with APRA, AUSTRAC, OAIC etc), which cross over on certain issues (i.e. ASIC and APRA on charging advice fees from super accounts and life insurance).
144	Name withheld	<p>Mayfair matter – ASIC's intervention halted the proper functioning of Mayfair, acting with disregard for investors and procedural fairness.</p> <p>Recommendations:</p> <ul style="list-style-type: none"> Establish formal process for gathering and assessing data and evidence and training staff to analyse the information Create internal review process to ensure enforcement is fair, consistent and in line with mission and goals. This can include an oversight committee or external review. Provide of educational resources to consumers to understand their rights and actions they can take to protect themselves from regulatory breaches.
145	Name withheld	<p>Unsecured creditor in a fertiliser collapse in WA in 2015, following similar collapse in SA in 2011. Resulted in individual losses of almost \$15 million with very little or no further investigation and no Director penalties or sanctions enforced by ASIC. Observes that being part of the Creditors Committee was a 'complete waste of time' for unsecured creditors and their only purpose is to protect the interests of secured creditors. Notes an 'obvious conflict of interest' because the liquidator/administrator is appointed to a very lucrative position by the secured creditor (noting a total of \$4 million remuneration for the two fertiliser matters). Asserts that important facts were omitted from the final report, allegedly because of conflicts of interest. Frustrated that ASIC did not read or action the report. Creditor Committees and Committees of Inspection must be given an opportunity to read the reports if requested. Concerned that director fraud is considered a breach of fiduciary duty rather than a criminal offence.</p> <p>Recommendations:</p>

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		<ul style="list-style-type: none"> • Photo ID for directors • Demerit point system for corporate conduct • ASIC information should be more freely available, with further information being available when certain demerit point level is reached • Transcripts from public examinations of Company Directors should be made publicly available if no action is taken • The Committee should report on the use of concealed bank accounts to take unlawful transactions for the benefit of clients. The culture of legal and insolvency professionals engaging in this conduct has been allowed to develop because of lack of enforcement by ASIC. Notes evidence was provided to ASIC by liquidators on two occasions (asserts the first report was lost by ASIC, and the second not actioned because too much time had passed), and also provided to ASIC directly (this was returned unopened). • There should be the ability to do Director searches of all company officers positions associated with a particular Director. Cites B2B Hint application which searches the South African CIPC database and provides results for directors in other jurisdictions. ASIC should evaluate this simple search application immediately, and add it to their company search webpage. • There should be a permanent record of Insolvencies & Administrations with Creditors Reports available on the ASIC website. You can find some Creditors Reports on the web, but very few. It appears that once a company collapses any record of its existence disappears very rapidly which is very unhelpful when trying to identify repeat offenders.
146	Name withheld	<p>Prime Trust matter– Note they unsuccessfully applied under the Compensation for Detriment due to Defective Administration (CDDA) Scheme and are now waiting for an outcome from an Act of Grace application. Allege ASIC knew of the director's lack of good fame and character and allowed corporate misconduct to continue to the detriment of investors. Also assert the superannuation system is failing retired Australians, and that there need to be better safeguards.</p>
147	Name withheld	<p>Previously made whistleblowing disclosures. While ASIC advised it would take no action, the submitter suggests ASIC leaked details of the complaint as multiple non-compliant documents were corrected by the entity in question. ASIC should enforce strict liability offences consistently and give reasons if they decline to pursue these. Responses are too slow. Asserts ASIC is confused about reasons for taking no action, such as lack of powers, and has an all-or-nothing mindset. Publicity should be within the ambit of regulatory action and enforceable undertakings are a practical alternative where naming individuals or entities is difficult.</p>

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		Sets out the experience with ASIC's web form for reporting misconduct, including limited visibility and space to set out concerns, as well as lack of ability to speak to someone. Waited months to hear back. Notes weighing the report against ASIC's other surveillance is 'illogical': 'surely prioritising tweaks to surveillance that failed to uncover regulatory issues (including offences being complained of) for many years over specific misconduct reports is a recipe for long-term mediocrity'. Notes ASIC is aware of 'chronic under-resourcing' and inability to meet minimum requirements statutorily set by Government. Whistleblower reforms have been too slow and too tepid. Suggest alternative whistleblower regimes such as the US Securities Exchange Commission. Mentions the possibility of a separate whistleblower protection body and notes the committee may give consideration to the role and powers of the Commonwealth Ombudsman, Financial Regulator Assessment Authority and other monitors as a further check and balance.
148	Name withheld	Mayfair matter – Assert ASIC adopted a litigative strategy without proper analysis and based on false information, noting investors were satisfied with the investment prior to ASIC's involvement. Dispute resolution and engagement was not sought with Mayfair. Notes the scheme had legal sign off and should have been given the opportunity to review their advertising like other fund managers. Questions vested interests of litigation firms and notes ASIC should have engaged independent forensic accountants.
149	Name withheld	Bank repossession. Previously submitted to Royal Commission and argues ASIC has been instrumental in protecting the kind of fraud which was exposed in the case of so-called "low-doc" home loans from investigation.
150	Name withheld	Withdrawal of bank loan for a dairy farm.
151	Name withheld	Courtenay House matter – Invested due to successful investment by a friend. Would not have invested had ASIC acted faster on 9 official complaints, which took 5.5 years to action.
152	Name withheld	<p>Mayfair matter – ASIC is responsible for the devastation of over 500 investors and ASIC's action is based on false or incomplete evidence. ASIC did not consult with investors. Note Federal Court finding of denial of procedural fairness and ASIC running a 'noncompliant case'. Liquidators were prematurely appointed.</p> <p>Recommendations:</p> <ul style="list-style-type: none"> • ASIC should develop a comprehensive communication strategy with stakeholders, both prior to and subsequent to any enforcement action. They must keep stakeholders informed about progress. • ASIC should conduct regular evaluations of its activities to assess whether it is meeting stakeholder expectations. • ASIC must be held accountable for its actions and its very existence. With increasing staff numbers and declining success rates in protecting the public interest, ASIC staffing numbers and wages should be aligned

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		<p>with their effectiveness. No private entity with a track record like ASIC's in meeting public expectations would still be in business.</p> <ul style="list-style-type: none"> • All current leaders in ASIC should be replaced – demoted or sacked. • My \$100,000 investment, seemingly lost due to the poorly implemented actions of ASIC, the premature wind up of the Mayfair group and the subsequent drawn out costly legal battles and exorbitant fines, should be compensated from government funds.
153	Name withheld	<p>Market manipulation – critical of ASIC not acting on his reports of market manipulation.</p> <ul style="list-style-type: none"> • Experience with lodging a report about 'blatant buying and selling multiple times on the same day (churning), often with the sales being much bigger than the buys'. Queries to ASIC about the legality of certain trading behaviour has not been answered. • Notes 'algorithmic trading' as a primary tool to manipulate markets. References a video 'the dark side of ASX'. • Suggests infringement notices and fines could be the solution to ASIC's funding issues and would slash manipulative algorithmic trades overnight. ASIC has provided no response to this suggestion. • References correspondence about HotCopper, which demonstrates financial loss suffered by investors as a direct result of ASIC's inaction. • Asserts he has experienced 'flash trading' in Australia, but ASIC has denied this.
154	Name withheld	<p>Prime Trust matter – Years after collapse they joined action groups and became aware of corrupt and illegal practices of the directors, and breaches of which ASIC knew and failed to take action.</p>
155	Name withheld	<p>Mayfair matter – relied on ASIC website which did not indicate Mr Mawhinney's previous failures or risks associated with investing in Mayfair between 2014 and 2017. Notes ASIC intervention happened 2 years too late. ASIC also allowed Mayfair to operate from 2018 onwards with false advertising and fraudulent practices, and did not support Mayfair investors with any support following the March 2021 freeze of interest payments and redemptions.</p>
156	Name withheld	<p>Mayfair matter – Invested due to belief it was a secured asset-backed product and found no mention of Mawhinney on ASIC's banned and disqualified persons website. Blames ASIC for acting hastily with no regard for impact on investors, and with incomplete information. Nobody from ASIC sought to speak with Mawhinney prior to action. ASIC needs to look at consumer impact before enforcing any regulations.</p>
157	Name withheld	<p>Mayfair matter – Invested for 5 months before getting a call from ASIC. When asked if they should be worried, the ASIC employee said no, though ASIC shut down Mayfair shortly after. ASIC was investigating for 5 years and information should have been published on the ASIC website to make investors aware.</p>

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158	Name withheld	Courtenay House matter – contacted ASIC in early 2017 to get confirmed verification on authenticity and that directors were not on the disqualified list. By early 2017 they were notified of Courtenay House’s closure and cease of trading. Outraged that from 2012 to 2017 ASIC had 9 complaints regarding Courtney House and did not inform investors of this Ponzi scheme.
159	Name withheld	Courtenay House matter – Invested after attending a property education program. Notes 9 complaints to ASIC between 2012 and 2017 from business and financial professionals who had grave concerns, which ASIC did not investigate. Also, ASIC should have warned investors if they had started investigations.
160	Name withheld	Courtenay House matter – Invested after observing a friend’s success over 2 years and meeting with one of the directors. Outraged with ASIC as they did not suggest it was a Ponzi scheme despite having multiple complaints. Notes Act of Grace application.
161	Name withheld	Mayfair matter – Trusted ASIC for protection. Mawhinney should have appeared on a register and should not have been allowed to continue as a director of a company. ASIC should increase transparency and accountability by providing regular updates on its investigations and enforcement actions to the public, and by making its processes and decision-making more open to scrutiny. Prior to enforcing regulations, ASIC must take into account the effect on consumers. Consumer representatives must be included in ASIC decision-making processes to ensure consumer impact is considered before enforcing regulations.
162	Name withheld	<p>Misconduct of proprietary companies – focuses on ASIC being a toothless tiger in this area. ASIC has made it clear these matters are for shareholders to prosecute, however shareholders have no incentive to prosecute and it’s not cost-effective to do so. Suggest ASIC should at least make enquiries via ‘please explain’ letters that can then be distributed to shareholder complainants to help them determine the appropriate course of action. If the responses indicate a breach of the law, ASIC should have the ‘power and appetite to prosecute at the cost of the offender should the matter be proven’.</p> <p>Identifies the following barriers:</p> <ul style="list-style-type: none"> • Shareholders cannot get access to corporate records nor contact other shareholders to commence joint access. • Poorly governed entities can simply refuse to answer basic Statutory Notices as there is no recourse. If a shareholder can show ASIC a Statutory Notice has not been responded to, ASIC should have the ability to enforce without a shareholder commencing long and costly legal processes. • There should be a mechanism to investigate multiple complaints about a single director.

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		<ul style="list-style-type: none"> Whistleblower protections do not seem effective with regard to smaller proprietary companies. A director can simply threaten or commence breach of confidentiality or defamation proceedings to incapacitate a whistleblower. Notes vast power imbalance.
163	Mayfair 101 / James Mawhinney	Suggests that submissions provided to the committee are false, and that ASIC has not filed proceedings alleging he has had involvement in a ponzi scheme, misappropriation of funds, fraud or dishonesty. Notes damage to his reputation and offers to provide the name of a person he says has provided false statements.
164	CPA Australia	PwC matter and the role of CPA Australia
165	Chartered Accountants Australia and NZ	PwC matter and the role of CA ANZ
166	Tax Practitioners Board	PwC matter and the TPB's role
167	Professor Andy Schmulow, Dr Corinne Cortese, Prof Brendan Lyon and Dr John-Paul Monck	PwC matter, noting that ASIC does have heads of powers over the accounting profession which 'they can and should use now'
168	Confidential	
169	Confidential	
170	Australian Tax Office	PwC matter and the ATO's role. Mentions the ATO/ASIC Liaison Forum.