



Senate Economics Legislation Committee Additional Estimates

ASIC Chair Joe Longo

Opening Statement

Thursday, 17 February 2022

Good morning Chair and Committee members.

I would like to take the opportunity at this last hearing of the Committee for the term of this Parliament to make some brief introductory remarks.

I will summarise some key parts of ASIC's work in recent months, before outlining our organisation's priorities in the year ahead.

Starting with **enforcement**.

Between October and December 2021, ASIC completed investigations into matters arising from the Financial Services Royal Commission.

Of the 13 referrals from the Royal Commission to ASIC, one is in civil litigation, two are under prosecution by the CDPP with charges laid, and five have concluded with no further action.

One matter has received judgment with a \$20 million civil penalty, one matter has received judgment with a \$57.5 million civil penalty, one matter has received judgment with a \$1.5 million civil penalty and two other matters have received judgment with declarations made.

ASIC has also successfully investigated and litigated a large number of the case studies explored during the Royal Commission.

In October 2021, ASIC launched civil penalty proceedings in the Federal Court against Insurance Australia Limited (IAL), alleging IAL had failed to honour discount promises made to its customers.

In November, we commenced six civil penalty proceedings against Westpac in the Federal Court in November 2021. The proceedings, each the result of an individual ASIC investigation, allege widespread compliance failures across multiple Westpac businesses. The alleged conduct occurred over many years and affected many thousands of consumers. It is unprecedented for ASIC to file multiple proceedings against the same respondent at the same time.

Also in November, ASIC commenced proceedings in the Federal Court against ANZ for breaches of the Credit Act arising from referrals through its home loan 'introducer program' and from unlicensed individuals outside the introducer program. We also commenced Federal Court civil penalty proceedings against MLC Limited (MLC) alleging insurance policy and service failures resulting from poor systems and controls.

In December 2021, the Federal Court ordered four companies in the Mayfair 101 Group to pay a combined penalty of \$30 million after finding the companies engaged in misleading or deceptive conduct and made false or misleading representations. The companies have appealed against these penalties.

Turning now to **regulatory efficiency**.

In November 2021, ASIC established a Regulatory Efficiency Unit (REU) to promote better regulation by removing unnecessary frictions and making it easier for business to get things done.

ASIC is meeting with a wide range of external stakeholders, including business, industry associations, academics and other interested stakeholders who engage with ASIC. More than 70 external stakeholders have been

consulted already. The REU will identify a set of initiatives this year that aim to improve the efficiency of ASIC's interactions with its regulated population.

We are also working hard to assist the Financial Regulator Assessment Authority with its important work.

ESG and **Crypto** and **cyber-resilience** have been three areas of focus that will no doubt remain of the highest order this year.

On 14 December 2021, ASIC welcomed the establishment of the International Sustainability Standards Board (ISSB). The ISSB will develop high-quality global baseline climate and sustainability disclosure standards to meet investors' information needs.

ASIC released information for product issuers and market operators in October 2021 on how they can meet their regulatory obligations for crypto-asset exchange-traded products and other investment products. The information covers good practices for market operators in how they admit and supervise these products, and good practices for product issuers in how they establish and operate these products. Key matters covered by the good-practice guide include admission and monitoring standards, custody of crypto-assets, pricing methodologies, disclosure and risk management.

We released our latest report on the cyber resilience of firms operating in Australia's financial markets in December 2021. While the report has found Australian financial market firms continue to be resilient against a rapidly changing cyber threat environment, the improvement in their cyber resilience has been small.

We have also been **helping industry meet new requirements**.

Drawing to the end of 2021, we published information to explain how ASIC's regulation of the financial advice industry will be broadened now that the Better Advice Act has commenced. Furthermore, we issued information to

explain the operation of the Financial Services and Credit Panel, whose role has been expanded starting 1 January 2022. We also gave an account of how the regulation and registration of tax financial advisers will be affected. Separately, we have taken over the administration of the financial adviser exam from the Financial Adviser Standards and Ethics Authority, which has now been wound up.

We continued to respond to feedback from the financial advice industry on how to improve consumer access to affordable advice. On 5 November 2021, we released an information sheet on records of advice (ROA), which included three ROA examples. It clarifies the obligations of financial advisers and advice licensees when they use ROAs to provide personal advice to retail clients.

In 2021 we reviewed the practices of the trustees of five funds that provided default income protection insurance on an opt-out basis to their members. The review again highlighted the need for trustees to examine outcomes for their members, and proactively consider whether their income protection insurance products deliver value for money. In 2022 we will conduct surveillance on the progress made by industry more broadly in insurance in superannuation. As part of this work, we will ask life insurers for comparable and reliable data relating to income protection offsets.

On 15 October 2021, we released updated information for employers and trustees on changes affecting the distribution of superannuation products as a result of recent law reforms. The information sheet provided guidance to employers on how to communicate superannuation choices to employees without breaking the law. In 2021–22 we will conduct a thematic review on how trustees use employers to distribute superannuation products. We will consider regulatory action where we identify misconduct causing consumer harm.

Sterling

A few brief comments on the Sterling matter.

Late last week, the Senate Committee handed down the final report in its Inquiry into the collapse of the Sterling Income Trust. ASIC is considering the report findings and recommendations, in particular the two addressed to ASIC.

The Committee recommended that ASIC investigate and, if appropriate, commence legal proceedings against AFSL holders that are alleged to have breached section 917B of the Corporations Act but have not consented to participate in relevant AFCA processes. We are considering this recommendation.

The Committee also recommended that ASIC develop a framework to develop to promote greater awareness and understanding among retail investors and financial consumers in relation to buying financial products and services.

We note that ASIC and Treasury already invest a considerable amount in financial literacy and consumer awareness work, including through Moneysmart. However we are reviewing the financial literacy material in light of the Committee's report, in particular in relation to supporting consumers having reasonable expectations of the regulatory regime and of ASIC.

2022

Looking ahead to the 2022, we are preparing our strategic priorities for the coming financial year as we speak, and of course have established our Corporate Plan, and our published our Statement of Intent. But there are some things that are a continuing thread through our work at this time.

ASIC will be seeking remedies that deliver quicker outcomes, in cases that are chosen more carefully, following investigations that are more timely.

ASIC is also focused on raising awareness of new and continuing regulatory obligations.

ASIC and the RBA, with the Council of Financial Regulators (CFR) and ACCC, continue to closely monitor and engage with ASX on the CHES replacement program, particularly now the program is in key testing and readiness phases.

Work also continues on our internal priorities – including our digital uplift, improving our communication with stakeholders and other regulatory agencies, improving infrastructure and systems, better use of data and cyber resilience.

We look forward to taking the Committee's questions.

ENDS
