

Inquiry	Parliamentary Joint Committee on Corporations and Financial Services, Oversight of the Australian Securities and Investments Commission, the Takeovers Panel and the Corporations Legislation No. 1 of the 46th Parliament
Agency	Australian Securities and Investments Commission
Question No.	018
Reference	Spoken, 18 June 2021, Hansard page reference 50
Committee members	Mr Julian Hill MP

Mr HILL: This is a more general invitation to you as the new head of the regulator. Should people listening and companies interested in this discussion now expect more of the same? Sorry, I should be clear. There were significant changes, I understand, post the royal commission's work, some of them as a result of, I think, the work that Kelly O'Dwyer initiated. There was a Treasury-led task force. So there have been changes. But, with you coming into this role in the last few weeks, should people now expect more of the same, in terms of approach, or are you planning a change in approach to enforcement?

Mr Longo: I think they should continue to expect an active approach to enforcement. I'll ask Deputy Chair Court to speak to this, because she's leading this area within the commission. But our commitment to dealing with serious misconduct, egregious misconduct that causes harm, is clearly going to continue.

Mr HILL: Perhaps in the interests of time, unless there's anything in particular you want to add, Ms Court, this is an opportunity to signal any change in approach or any review activity going to your approach. If it's simply a restatement of what's currently in your enforcement guide, I've got that. I'm just mindful of the time share—

Ms Court: I might just elaborate very briefly, because when you say 'a continuation of the approach', there are two time frames that you could be referring to. We've got the pre-royal-commission approach, which, as you say, Commissioner Hayne took issue with in relation to ASIC's use of enforceable undertakings in particular. Then we've got the 'Why not litigate?' regime that has been in place over the last couple of years.

I'm very new to ASIC. I come from the ACCC. I'm very much feeling my way, but my approach to litigation is that litigation is an important enforcement tool. It will remain so at ASIC going forward. There's no doubt in my mind about that. But litigation is one of a number of tools that you can use in a broader enforcement spread, if you like. We might use infringement notices. We might use undertakings. We might use some of the other new powers ASIC has recently been given. We may go criminal and refer to the DPP. We may take civil litigation. Every matter is one for the commissioners to look at, have a think about, assess, look at the potential conduct and how egregious the harm is, and make a choice within that range. It needs to be proportionate, and it needs to be an efficient and a timely use of our resources.

Yes, we're going to continue to be in the courts, if that's what's at the heart of your message, but I would also hope we can look flexibly at our full enforcement toolbox to achieve outcomes for the public.

Mr HILL: I notice you publish a six-monthly regulatory and enforcement report. Is that data available in a longitudinal format for, say, the last four years?

Ms Court: I will have to take it on notice.

Mr HILL: If you could prepare and provide that, that would be helpful.

Ms Armour: We have data that goes to criminal, civil, administrative infringement notices and enforceable undertakings for a period from July 2011—

Mr HILL: That would be terrific. It might be of interest to people to have a bit of a look. My final topic, Chair—

Answer

ASIC publishes six-monthly reports outlining enforcement outcomes. These reports are available via this link: [ASIC enforcement outcomes](#).

ASIC's enforcement results from 1 July 2011 are attached.

ASIC enforcement results

As at 31 May 2021

		Financial year to date ¹	Since July 2011 ²
		1 Jul 2020 – 31 May 2021	1 Jul 2011 – 30 Apr 2021
Criminal actions	People convicted	22	240+
	Custodial sentences (including fully suspended)	8	160+
	Non-custodial sentences/fines	19	80+
Civil actions	Civil proceedings completed	43	210+
	Amount (\$) in civil penalties	\$169.0m	\$268.7m+
Administrative actions	People/companies removed or restricted from providing financial services or credit ³	51	1120+
	People disqualified or removed from directing companies	38	530+
Infringement notices	Infringement notices issued	2	390+
	Amount (\$) in infringement notices paid	\$192,000	\$13.5m+
Court enforceable undertakings	Court enforceable undertakings secured	2	160+
	Amount (\$m) in remediation (approx.) ⁴	\$9.1m	\$2.9bn+

Table notes:

1. Current financial year figures are subject to change. This is due to appeals and delays in data capture.

2. Results since July 2011 have been rounded to significant figures.

3. Results do not include bannings that have not been served. Includes instances where conditions were imposed on a licence.

4. Compensation and remediation ordered, paid or agreed to be paid arising from Court Enforceable Undertakings.

ASIC enforcement results, by financial year¹

		2020-21 ¹	2019-20	2018-19	2017-18	2016-17	2015-16	2014-15	2013-14	2012-13	2011-12
		As at 30 Apr 21									
Criminal actions	People convicted	22	30	27	22	20	22	23	30	22	27
	Custodial sentences (including fully suspended)	8	22	14	13	13	18	17	23	17	25
	Non-custodial sentences/fines	19	8	16	13	7	4	6	7	5	3
Civil actions	Civil proceedings completed	43	37	25	29	28	20	19	13	15	24
	Amount (\$) in civil penalties	\$169.0m	\$24.9m	\$12.7m	\$42.2m	\$5.2m	\$1.2m	\$18.9m	\$2.7m	\$817,500	\$30,000
Administrative actions	People/companies removed or restricted from providing financial services or credit ²	51	108	182	133	209	140	92	117	88	54
	People disqualified or removed from directing companies	38	51	59	50	51	39	40	62	72	84
Infringement notices	Infringement notices issued	2	4	14	55	74	109	83	40	18	4
	Amount (\$) in infringement notices paid	\$192,000	\$671,000	\$731,700	\$2m	\$4.3m	\$2.3m	\$1.3m	\$1.4m	\$543,300	\$120,000
Enforceable undertakings	Court enforceable undertakings secured	2	-	10	27	16	22	20	26	20	22
	Amount (\$m) in remediation (approx.) ³	\$9.1m	-	\$22.8m	\$351.6m	\$837.7m	\$210.5m	\$35.2m	\$172.6m	\$203.9m	\$11.4m

Table notes:

1. Current financial year figures are subject to change. This is due to appeals and delays in data capture.

2. Results do not include bannings that have not been served. Includes instances where conditions were imposed on a licence.

3. Compensation and remediation ordered, paid or agreed to be paid arising from Court Enforceable Undertakings.