

PART III

Investigations and enforcement

Overview of Part III

Of ASIC's many and varied responsibilities, it is ASIC's discretionary role of investigating and taking enforcement action in response to alleged contraventions of the laws it administers that is the most high-profile and controversial aspect of ASIC's work.

This report has already begun examining ASIC's performance in relation to its enforcement responsibilities through the two case studies outlined in Part II. These case studies highlighted issues with specific cases. Some of the concerns identified, however, have wide application; for example, the experience of the CFPL whistleblowers is relevant to all corporate whistleblowers.

This part of the report draws on multiple cases and general observations to undertake a broader study of ASIC's enforcement record. In particular, it considers how ASIC receives and assesses misconduct reports, conducts an investigation, decides whether to pursue a particular case and how its enforcement action is conducted.

A selection of significant enforcement matters that ASIC has been involved in over the past five or more years can be found at Appendix 5. This selection may assist the reader understand ASIC's enforcement record and the varied nature of misconduct that the regulator may need to pursue. The matters outlined are the James Hardie litigation, Australian Wheat Board, Centro, the case against Andrew Forrest and Fortescue, ABC Learning, various collapsed property finance schemes, mortgage funds and debenture issuers, Opes Prime, Storm Financial, Stuart Ariff and Trio Capital. These cases may have been referred to in submissions and by witnesses at the public hearings, and may be noted in the report where relevant, but they are not examined in detail. Many of these cases have already been the subject of a parliamentary inquiry or extensive public discussion.

