



ASIC
Australian Securities &
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Sophie Dunstone
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PO Box 6100
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Our Reference: [CAS-139967-X8D2Z1](#)

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9 January 2024

Dear Ms Dunstone

***Inquiry into the Attorney-General's Portfolio Miscellaneous Measures Bill 2023
[Provisions]***

I refer to the *Attorney-General's Portfolio Miscellaneous Measures Bill 2023 [Provisions]* that was referred to the Legal and Constitutional Affairs Legislation Committee on 30 November 2023.

ASIC strongly supports the introduction of the Bill. The Attorney General's Department has consulted extensively with ASIC since 2019 on the proposed conferral and throughout the drafting of the Bill.

We refer to the [Report](#) of the Royal Commission in the Banking, Superannuation and Financial Services Industry and the [Government's Response](#) to that Report. The Royal Commission emphasised that effective deterrence through judicial decisions relies on the timely institution of proceedings and punishment of misconduct.

The Government committed to extending the Federal Court's jurisdiction to boost the overall capacity within the Australian court system and ensure the prosecution of financial crimes did not face delays as a result of heavy caseloads in the State and Territory courts. In so doing, the Government referred to the considerable expertise of the Federal Court in civil commercial matters enabling the Federal Court to be well-positioned to accommodate the conferral of a greater corporate criminal jurisdiction and therefore to increase the speed with which such matters are dealt with. ASIC agrees.

In the last four financial years, ASIC has commenced 154 proceedings before the Federal Court, demonstrating the significant expertise of the Court in the

legislation ASIC administers. Contraventions of the civil penalty provisions regularly heard by the Court also often attract criminal penalties. Currently ASIC must pursue criminal contraventions in the State and Territory courts.

ASIC's experience is that State and Territory courts must necessarily prioritise the listing of trials of defendants who are in custody awaiting trial, which is uncommon in ASIC's criminal matters.

Further, ASIC's financial crime prosecutions are often complex and document heavy requiring longer trial listings than is necessary for other crime types. These two factors alone can cause lengthy wait times for trial listings in ASIC's criminal matters in addition to the heavy case load of the State and Territory courts.

ASIC's financial crime prosecutions continue to experience some delays before the State and Territory courts. By way of example, the Victorian County Court reported in [October 2023](#) that the time to trial is currently between 12-14 months, having almost returned to pre-pandemic timeframes, however the Court also noted there were some trial matters that had been in the jurisdiction for 24 months or more.

In 2022 the District Court of New South Wales recorded in its [Annual Review](#) that 58% of all registered trials were finalised within the first 12 months. That just under 30% of all registered trials in 2022 had been pending for 1 to 2 years and 10% had been pending for more than 2 years. The Court aims to have 100% of criminal trials (not being sexual assault trials or where the accused person has been refused bail) commenced within 12 months of committal or other event that gives rise to the need for trial.

The District Court of Queensland recorded in its [Annual Report](#) for 2021/2022 that 'of the active cases, 19.2 percent were more than 12 months old (from date of indictment presentation) and 6.1% were more than 24 months old'. The report notes there may be a number of reasons why a case remains active for a long time: COVID-19 interruptions, re-trial ordered, defendant has absconded, pre-trial issues being considered, waiting for a determination in the Mental Health Court or parties waiting for restoration justice process.

For South Australia the [Report of the Judges of the Supreme Court](#) to the Attorney-General for the year ended 30 June 2023 is available. This report provides that in combination for the Supreme Court and District Court for 2022 – 2023 24% of criminal lodgements were more than 12 months old (but less than 24 months old) and 10.9% of criminal lodgements were more than 24 months old. The Courts aim to have 'no more than 10% of lodgements pending completion are to be more than 12 months old' and that 'no lodgements pending completion are to be more than 24 months old'.

Delay is not listed as a specific sentencing factor under s 16A(2) of the *Crimes Act 1914* (Cth). However, delay may be a relevant factor for courts in sentencing corporate crime offenders. The circumstances and the causes of the delay need to be considered in each case.

In the case of the *Commonwealth Director of Public Prosecutions v Pratten (No 2)* (2017) 94 NSWLR 194, Basten JA of the NSW Court of Criminal Appeal noted that by the time the matter reached the Court of Appeal it had been six years since the respondent was arrested and much of that delay was a result of the matter working its way through the criminal justice system, at [105]. In re-sentencing the respondent, Basten JA with whom the other members of the Court agreed imposed sentences that were stated to include 'a degree of leniency' justified by reference to the delay in the running of the criminal process which partly contributed to a deterioration in the respondent's mental state, at [157].

Even a modest reduction in sentences imposed by courts as a result of delays in the criminal justice system, risks diluting the impact of general deterrence, one of the primary purposes for bringing criminal proceedings (see [2.10(k)] of the [Prosecution Policy of the Commonwealth](#)) and in sentencing offenders (s16A(2)(ja) of the *Crimes Act 1914 (Cth)*).

For these reasons, ASIC strongly supports the passage of the *Attorney-General's Portfolio Miscellaneous Measures Bill 2023 [Provisions]* and with it, the extension of the Federal Court's criminal jurisdiction.

Yours sincerely

Chris Savundra
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Australian Securities and Investments Commission