



Committee	Parliamentary Joint Committee on Corporations and Financial Services
Inquiry	Oversight of ASIC, the Takeovers Panel and the Corporations Legislation
Question No.	078
Topic	CDPP referrals
Reference	Spoken, 30 April 2024, Hansard page 14
Committee member	Mr Hawke and Senator O'NEILL

Question

Mr HAWKE: When you go back to your criminal matters, you charge some and then some are not charged. What is happening? Is it a lack of evidence, or is it a DPP decision? You've got the briefs under consideration by the DPP. As I understand your system, all of them have to be decided by the DPP. You've got to take everything to the DPP.

Mr Mullaly: That's right. The DPP might form the view that there's insufficient evidence to proceed to a prosecution, or—

Mr HAWKE: Do you then contemplate other action?

Mr Mullaly: We can. Often there might be some other action, either administrative action or—less likely and less frequently—civil action.

CHAIR: Can you take on notice to fill out the space that Mr Hawke is asking about so that we can get a sense of what's advanced where the DPP reject what you have advanced, what you then do and what other responses there are from the DPP, so we can get a fuller picture of what's actually going on there?

Answer

As stated in ASIC's PJC submission at paragraphs 6 - 17, ASIC uses a broad enforcement toolkit in a targeted and proportionate way to address matters and reduce the risk of misconduct in the markets and sectors we regulate. Decisions we make about investigations and enforcement action are based on the conduct and evidence in each matter and are informed by our strategic priorities. Decisions to take enforcement action can occur at various times during an investigation. It is often appropriate to undertake multiple enforcement or administrative actions in a matter and in deciding what actions to take we apply our expertise and judgement to assess the evidence, benefits and risks of available enforcement action, including the available resources and the necessary priorities.

Where a brief of evidence is referred to the CDPP, the CDPP will independently determine whether a criminal prosecution should be pursued in accordance with the *Prosecution Policy of the Commonwealth*.

As shown in the tables below, a matter may involve multiple entities and individuals and different enforcement options.

Table 1 shows for the financial years 2021-22 and 2022-23 the number of briefs of evidence referred where the CDPP determined to not lay criminal charges and what other enforcement action, if any, was taken by ASIC.

Table 1: Other actions on matters where at least one brief was referred to the CDPP and a decision was made not to lay criminal charges

	Individuals/ companies not charged*	Matters**	Administrative action	Criminal action (against other subjects on the matter)	No further action
2021-22	10	9	2	2	5
2022-23	4	4	N/A	2	2

Table 2 shows for the financial years 2021-22 and 2022-23 the number of briefs of evidence referred where the CDPP determined that criminal prosecution be pursued and what other enforcement action, if any, was taken by ASIC.

Table 2: Other actions on matters where at least one brief was referred to the CDPP and a decision was to lay criminal charges

	Individuals/ companies charged*	Matters**	Administrative action	Civil action / Civil interim orders
2021-22	37	30	5	5
2022-23	17	15	5	4

* These numbers are reflected in updated Table 4 of our recent submission, provided to the Committee on 20 May 2024

** 'Matters' reflects formal investigations undertaken by ASIC. Note that it is not uncommon for a matter to relate to more than one subject (individuals/companies) and result in more than one type of enforcement action.