



<b>Committee</b>	Parliamentary Joint Committee on Corporations and Financial Services
<b>Inquiry</b>	Oversight of ASIC, the Takeovers Panel and the Corporations Legislation
<b>Question No.</b>	084
<b>Topic</b>	Status of briefs with the CDPP
<b>Reference</b>	Spoken, 30 April 2024, Hansard page 21
<b>Committee member</b>	Senator SCARR

### Question

Senator SCARR: ... Chair Longo, I'm not in any way suggesting that ASIC is not very active in the criminal law jurisdiction. I think the figures which are presented on page 7 of the submission evidence that quite clearly, with 32 individuals charged by the CDPP in criminal proceedings, a total of 306 criminal charges in the 2022-23 year, and 35 criminal convictions, including 21 custodial sentences. Those are extremely serious offences to have resulted in custodial sentences. But perhaps, if you have any further thoughts with respect to the year-on-year change in that data contained in table, you'd like to provide that on notice. I invite you to do that.

Mr Mullaly: Could I just clarify one aspect of that table? It doesn't take away from the concerns that you've raised but, for the number of individuals and companies charged, where it says two, that's out of the briefs referred this financial year to date—so two out of seven. You'll see in table 5 that the number of new criminal actions commenced this year to date is 21. It does take time for assessment to be undertaken. There's always a degree of delay. A brief that's referred to the DPP one year is more likely than not to result in charges in the following financial year.

Senator SCARR: Okay. Any further information you can provide on notice in relation to that matter would be appreciated.

...

Senator SCARR: ... if there's any further information that can be provided in relation to those figures I quoted from table 4—as to the current status of briefs referred to the CDPP, including criminal actions commenced and completed; any further flavour, as to any trends in that regard; and any additional observations—that would be very helpful.

### Answer

The statistics set out in Table 4 and Table 5 of the ASIC submission to the Parliamentary Joint Committee on Corporations and Financial Services (**ASIC PJC submissions**) record a change in the trend as to the number of individuals/companies charged with criminal offences.

Based on our updated figures (updated Table 4) provided to the Committee on 20 May 2024, of the 9 briefs of evidence referred to the CDPP in the current financial year 2023-24 (up to 31 March), three individuals have been charged.

Table 5 of the PJC submission shows that in the financial year 2023-24 (up to 31 March) a total of 21 individuals have been charged from briefs of evidence referred to the CDPP by ASIC, irrespective of the year in which the brief was referred.

In considering that information, there are several factors to be taken into account.

The assessment of briefs of evidence by the CDPP can take time, depending on the complexity of the brief and the complexity of the issues involved. As at 31 March 2024 the CDPP had on hand 29 ASIC briefs under assessment. Those briefs had been referred to the CDPP in the period 2018-19 through to 31 March 2024.

ASIC provides considerable ongoing support to the CDPP during the assessment of our briefs. This includes continuing to engage with witnesses, obtaining further evidence, and responding to requests for ASIC to conduct further enquiries or investigation or to provide further information.

Once the brief assessment is complete and charges are laid, the court process through to final determination by the court may take several years to complete. Again, during this period, ASIC provides continuing support to the CDPP in relation to the criminal prosecutions (referred to as criminal actions).

As at 31 March 2024, there were 86 active ASIC prosecutions before the courts. In these, the defendants had been charged in respect of briefs of evidence referred to the CDPP from 2015-16 through to 2023-24 (up to 31 March 2024). These prosecutions are at various stages including committal, pre-trial applications, trial, plea, sentence, appeal. In a number, ASIC and the CDPP are responding to collateral proceedings taken by defendants. ASIC continues to provide ongoing support to the CDPP in all stages of criminal prosecution, by conducting further enquiries and providing input on various issues as they arise and obtaining additional statements from witnesses. ASIC officers involved in an investigation may be called to give evidence at various stages of a criminal prosecution, including the committal and trial.

Table 5 of ASIC's PJC submissions set out the number of completed criminal actions during the relevant periods. In the 2022-2023 period 44 criminal actions were completed, an increase over the previous years.