



Committee	Parliamentary Joint Committee on Corporations and Financial Services
Inquiry	Oversight of ASIC, the Takeovers Panel and the Corporations Legislation
Question No.	076
Topic	Matters referred to AAT
Reference	Spoken, 30 April 2024, Hansard page 8
Committee member	Mr Hawke

Question

Mr HAWKE: ... I might take the opportunity to put questions on notice about how many matters you are involved in at the AAT, from your perspective—I don't see that data in here; I could be wrong about that—and your experience with the AAT in terms of time and how many decisions are overturned by the AAT, if you've got that data.

Answer

ASIC delegates make many reviewable decisions each year. These include decisions to ban persons from providing financial services or engaging in credit activities, licensing decisions, director disqualifications, approved SMSF auditor disqualifications, business name registrations and FOI applications. Only a very small proportion of these reviewable decisions become the subject of AAT review proceedings.

ASIC is currently (as at 13 May 2024) involved in 32* matters in the AAT.

ASIC has concluded 35* matters in the AAT this financial year. For these matters, the average length of each proceeding was 600.74 days (being the time between an application for review being filed in the AAT and the proceeding being resolved, either by the AAT making a decision or otherwise). The below table sets out the outcomes of these AAT proceedings.

Matters concluded thus far in FY2023-24

Outcome	Matters	%
Primary decision undisturbed **	26	74%
Primary decision varied by AAT	5	14%
Settled	1	3%
Primary decision set aside by AAT	3	9%
TOTAL	35*	100%

* These figures encompass primary decisions made by ASIC delegates, Liquidator Disciplinary Committees as well as a Financial Services and Credit Panel

** "Primary decision undisturbed" is further made up of:

- ~ 15 matters where the applicant withdrew their review application before the final hearing;
- ~ 5 matters where the AAT dismissed the applicant's review application before the final hearing; and
- ~ 6 matters where the AAT affirmed the primary decision under review after the final hearing.

Two further points to note about these figures:

- i) Applicants regularly withdraw their review application after ASIC files its Statement of Facts, Issues and Contentions and its evidence. This is because the applicant can, at that juncture, assess their prospects of success on an informed basis and in detail. If prospects are deemed to be unfavourable, the applicant can choose to withdraw their application rather than proceed to final hearing.

- ii) Because the AAT undertakes de novo merits review, the evidence before the AAT can differ from the material before the primary decision-maker. For example, an unsuccessful licence applicant who did not fulfil a particular requirement when before the primary decision-maker can remedy that deficiency by fulfilling the requirement prior to the AAT hearing.