



28 February 2023

Senate Standing Committee on Economics
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Dear Committee

Australian Securities and Investments Commission investigation and enforcement

The Australian Banking Association ('ABA') is pleased to make this submission to the inquiry on the *Australian Securities and Investments Commission Investigation and Enforcement ('the Inquiry')*. In this letter, we limit our feedback to point (d) of the Inquiry's Terms of Reference 'the range and use of various regulatory tools and their effectiveness in contributing to good market outcomes'. As an industry association, the ABA does not become involved with enforcement actions of the regulator against member banks and as such we are not able to comment on the remaining terms.

The Australian Securities and Investments Commission ('ASIC') notes on its website, in respect to its role under the Australian securities and Investments Commission Act 2001 ('ASIC Act'), its role is to '*promote confidence and informed participation by investors and consumers in the financial system*'. Customer confidence in the system extends to the resolution of issues they face. That is, if there comes a point in time when the financial system lets them down, customers need have confidence that action pursued is done so in consideration of the duration and extent to which the transgression is addressed.

Implicitly ASIC recognises these factors (time, extent of resolution) to be fundamental to issue resolution for customers. Paragraph 49 of Regulatory Guide RG271 Internal Dispute Resolution ('RG271') notes 'Timeliness is central to effective complaint management'. Paragraph 51 of RG271 specifies a 24-hour service level to acknowledge a customer complaint by a firm. Further paragraph 56 of RG271 requires a response to the customer no later than 30 calendar days after the complaint is received with some credit-related complaints requiring a response no more than 21 calendar days.

The example of RG271 goes to demonstrate the seriousness with which ASIC holds the speedy resolution of customer complaints by financial institutions. There is a corollary in respect to the role of ASIC to promote consumer confidence in the financial system through speedy resolution of the consequences or changes from transgressions.

One of the considerations for ASIC ought to be the deployment of the best combination of enforcement tools that would bring about early resolution of matters in a way that would promote customer confidence. Unresolved issues which extend for many months are unhelpful to customer confidence. Additionally, extended resolution times can cause uncertainty within the industry as it awaits an outcome. In 2021-22 the average total time to complete a criminal investigation and reach a court decision was 43 months and for civil action it took 33 months ([ASIC AR 2021-22](#), p30). We note that the timelines of such actions are subject to Court processes and not within ASIC's direct control.

There are several measures that might be considered to reduce this timeframe. For example, providing ASIC with funding to introduce comprehensive data analytics of complaints and breach reporting may help better target matters for investigation and reduce timeframes. Further, ASIC having direct and timely engagement and dialogue with market participants, such as through in-person meetings, conference calls, or phone calls, could assist ASIC in their investigations and could help resolve an issue whilst in its early stages.

Emphasising the need for timely outcomes having regard to the relative seriousness of the regulatory issue is also critical. Academic works clearly note the need for regulatory remedies that are



Australian Banking Association

proportionate – see for example the concept of the Regulatory Pyramid outlined by Ian Ayres and John Braithwaite in their work on responsive regulation. That work suggests that litigation should be reserved for the most serious breaches with other (swifter) regulatory tools being used for less serious matters.

The ABA notes that ASIC has a range of regulatory tools at its disposal and that in some circumstances it may be more appropriate and expedient for ASIC to use a tool such as Enforceable Undertakings ('EU') and/or Infringement Notices. We understand EUs can result in faster resolution of issues for customers as they avoid the uncertainty of Court proceedings and, provide clarity to the public and industry regarding ASIC's expectations including the specific requirements for customer remediation. Similarly, the use of Infringement Notices and associated fines can drive faster industry change for the benefit of customers.

In short, EUs and Infringement Notices are particularly useful because they not only punish poor practice, but they also deliver speedier improvements to business practice and customer outcomes.

Thank you for the opportunity to make this submission.

Yours sincerely

Chief Executive Officer

About the ABA

The Australian Banking Association advocates for a strong, competitive and innovative banking industry that delivers excellent and equitable outcomes for customers. We promote and encourage policies that improve banking services for all Australians, through advocacy, research, policy expertise and thought leadership.