



**ASIC**

Australian Securities & Investments Commission

# **Senate inquiry into the performance of the Australian Securities and Investments Commission**

## **Initial submission by ASIC on Commonwealth Financial Planning Limited and related matters**

August 2013

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## A Introduction

### Purpose and scope

- 1 The Senate Economics References Committee Inquiry into the performance of the Australian Securities and Investments Commission (ASIC) has terms of reference that cover a wide range of ASIC's functions, powers, activities and resources. ASIC envisages that we will provide several submissions to the Committee:
  - this initial submission, which provides an overview of our actions in relation to Commonwealth Financial Planning Limited (CFPL) as well as some context about our work in the financial advice sector;
  - a more substantial main submission that addresses all of the terms of reference, which we will provide closer to the due date for submissions in October 2013; and
  - any specific responses that may be required arising out of other submissions that are provided to the Committee over the next few months.
- 2 The purpose of this initial submission is to provide information, based on our investigations to date, about the manner in which ASIC dealt with CFPL several years ago and the subsequent outcomes ASIC achieved in this matter. For context we also provide some information on our approach to the regulation of the financial advisory sector. ASIC's investigation and enforcement outcomes for CFPL have been raised by some members of both the Senate Estimates Committee and the Parliamentary Joint Committee on Corporations and Financial Services. Our aim is to provide some key information about ASIC's work on CFPL to assist the Committee and other submitters who may wish to comment on this particular issue.
- 3 This submission provides:
  - the context for ASIC's action against CFPL;
  - a timeline of ASIC's actions and investigation;
  - a summary of ASIC's outcomes against CFPL;
  - an explanation of the compensation arrangements ASIC agreed with CFPL;
  - an explanation of the enforceable undertaking entered into with CFPL; and
  - an outline of some of the actions ASIC has taken to improve our processes, communication and transparency of operations since 2008 that are relevant to CFPL.

- 4 A limiting factor in providing some information is that the Commissioners, Senior Executives and senior staff involved in this matter during its earlier period are no longer at ASIC.
- 5 We will be providing further information on the regulation of the financial planning sector in our main submission.

## **B CFPL and background information**

- 6 There has been a particular focus on ASIC's actions in relation to CFPL from late 2008, when ASIC received information from whistleblowers.
- 7 At that stage ASIC had long-standing, publicly-expressed concerns with the quality of advice provided by the financial planning industry in Australia. ASIC's surveillance work, as well as our industry 'shadow shops' (including in 2003 and 2006), demonstrated that poor quality advice was widespread in the industry: see, for example, ASIC media releases MR03/037 and 06/104.
- 8 ASIC had publicly expressed these concerns prior to the major collapses that occurred in the financial advice sector, such as the collapse of Storm Financial, during the global financial crisis.
- 9 At the heart of these problems were conflicts of interest embedded in financial advice distribution and remuneration that led to poor quality and inappropriate advice. Additionally, ASIC had flagged the need to raise professional standards in the industry.
- 10 Considerably more detail is provided on these issues in ASIC's submission to the PJC Inquiry into Financial Products and Services in Australia (the 'Ripoll Inquiry'), in August 2009.
- 11 Partly as a result of these concerns, ASIC undertook major financial advice surveillance projects on three of the largest industry participants: CFPL, AMP and Professional Investment Services. These surveillance projects ultimately led to enforceable undertakings with all three firms. The enforceable undertakings were designed to lift the quality of advice: see ASIC media releases MR06/251, 10/275 and 11/229. The surveillance project in relation to CFPL commenced in February 2007.
- 12 In the public discussion of the handling of the CFPL matter there has been a misapprehension that, prior to ASIC commencing its formal court enforcement-oriented investigation of CFPL, ASIC was not active in relation to this matter. This view overlooks the wide range of other regulatory tools that ASIC commonly employs – a number of which it was using in the CFPL matter. These tools were being used both in relation to whistleblower complaints and the wider concerns ASIC had about CFPL. This submission seeks to make clear the actions that ASIC was taking.

## C Timeline of ASIC's actions in relation to CFPL

### ASIC's surveillance and CFPL's program for addressing problems

- 13 Between February 2007 and February 2008 ASIC undertook an extensive surveillance of CFPL during which it interviewed various CFPL staff and reviewed 496 pieces of advice provided by 51 advisers. ASIC formed the view that the quality of advice and standards of practice in CFPL were unacceptable.
- 14 At this time CFPL had over 750 representative advisers. The purpose of the surveillance was not to identify problem advisers but to examine the quality of advice and processes overall within CFPL. The surveillance identified significant concerns in relation to supervision, file review procedures, advice templates, breach reporting, record keeping and compliance, and significant and widespread problems with the quality of advice.
- 15 In February 2008 ASIC wrote to CFPL and advised it of ASIC's findings and concerns.
- 16 On 1 April 2008, CFPL implemented a Continuous Improvement Compliance Program (CICP) in response to, and to address, ASIC's concerns. The CICP was also intended to address problems identified by CFPL in a number of reviews it had undertaken itself, including reviews using an external firm. The CICP consisted of eight work streams::
- Strategy and Risk Framework;
  - Breach/Incident Reporting;
  - Advice Documentation;
  - Systems and Management Reporting;
  - Operating Structure;
  - People and Culture;
  - Retrospective Analysis; and
  - Adviser Competence and Supervision.
- 17 While the CICP focused primarily on improving future advice, risk and compliance processes, the CICP also included some retrospective reviews to confirm that appropriate advice had been given to clients. This primarily involved conducting a number of targeted file reviews, particularly focusing on advice from advisers who had been identified as 'critical'.
- 18 The CICP had a very senior project steering committee that reported both to the Board of CFPL and the Board of the Commonwealth Bank of Australia. An independent expert was engaged for the duration of the CICP and the

role of this expert included independent reviews, assessing the effectiveness of current practices, advising on changes and providing an independent level of assurance on the achievement of outcomes.

19 Subsequently, ASIC met with members of the project steering committee on a monthly basis to monitor the program and its effectiveness. As the CICP progressed, CFPL periodically reported breaches to ASIC throughout 2008 and 2009.

20 Consistent with ASIC's practice, at the time, on public comment about regulatory matters, ASIC did not make public that it had obtained CFPL's commitment to the CICP.

## Whistleblower complaint

21 As a matter of policy, ASIC does not publicly discuss whistleblowers and the information they provide. Confidentiality protections for whistleblowers are taken very seriously. However, the facts of this matter are unusual because of the way that whistleblowers have raised matters in public. As a result, ASIC has made a decision to discuss elements of its interactions with these whistleblowers in relation to CFPL.

22 On 30 October 2008, ASIC received an email complaint from anonymous whistleblowers within CFPL. The core of the concerns raised in the complaint was:

- poor quality advice and the failure to carry out risk profiling by an adviser named Don Nguyen;
- the paying of cash incentives by Mr Nguyen to branch staff to divert clients to him rather than to other CFPL planners;
- a 'conspiracy to defraud clients of proper compensation' at management level for the damage caused by Mr Nguyen's poor advice and to 'clean up' files; and
- a poor, sales-oriented, culture within CFPL more generally.

23 There was no allegation of Mr Nguyen or any other adviser perpetrating fraud on clients through forgery and the complaint acknowledged that Mr Nguyen 'may genuinely have believed that this approach (his advice) was best for his clients'.

## Subsequent work within ASIC's Financial Advisers team

24 The complaint was initially assessed within ASIC's Misconduct and Breach Reporting team. It was then passed to specialists in ASIC's Financial

- Advisers stakeholder team (the FA team). The FA team was already dealing with the implementation and monitoring of CFPL's CICIP.
- 25 For context, around this time the FA team was also dealing with emerging problems with Storm Financial, which collapsed at the height of the GFC. ASIC commenced intensive activity in relation to Storm in October 2008 and Storm collapsed in January 2009. The FA team had 12 general surveillance activities and 20 advice-specific surveillance activities in progress by early 2009.
- 26 ASIC decided to handle the complaints raised by the anonymous whistleblowers within the ongoing monitoring of the CICIP program. It was thought better to deal with the complaint as a particular example of the broader problems that ASIC had identified within CFPL and which the CICIP program was designed to address, rather than to treat it as a separate matter.
- 27 ASIC regularly has to make decisions as to whether to put a matter on a formal enforcement-oriented investigation path or to explore whether a licensee is capable of dealing with the matter, including making appropriate inquiries and providing remediation where necessary. Considerations by ASIC in making these decisions include the nature of the conduct involved, ASIC's past experience in dealing with the entity, the entity's capacity to provide compensation and redress where necessary, which approach will best achieve the necessary regulatory outcomes and ASIC's available resources.
- 28 On 4 December 2008 ASIC raised concerns about Mr Nguyen with CFPL and on 5 December ASIC requested that information on Mr Nguyen be provided at the upcoming monthly CICIP monitoring meeting. Discussion took place at that meeting on 18 December and on 24 December CFPL confirmed by email that four complaints had been received about Mr Nguyen, three of these had been resolved and CFPL was dealing with the remaining client, who had legal representation. CFPL also advised that Mr Nguyen was being closely supervised and his advice vetted prior to being provided.
- 29 Thereafter, the handling of the Nguyen matter was dealt with through the regular CICIP update meetings. This included the provision by CFPL in May 2008 of further information on its enhanced supervision arrangements for Mr Nguyen. While ASIC advised the whistleblowers that their complaints were being considered, it did not inform them of the decision about how the matter was handled or of the broader work being done on CFPL.
- 30 On 27 May 2009, ASIC received a letter from an anonymous person who was previously employed at CFPL. This letter was also sent to various media outlets, CFPL and others. The letter raised more general allegations about poor sales-based culture at CFPL, poor compliance by a number of planners

and the breaching of internal rules around referral of clients. There were no new allegations about Mr Nguyen. The letter was added to the existing CFPL matter.

- 31 On 11 June 2009 CFPL lodged a breach report<sup>1</sup> with ASIC in relation to advice provided by an adviser named Mr Gillespie. It raised concerns about the possibility of forgery. ASIC accepts that the breach report was lodged, but we have no record of receiving it<sup>2</sup> until a more extensive report was lodged at the end of August 2010 which referred to the June 2009 report. ASIC then requested, and obtained, a copy of the June 2009 report from CFPL, and both reports were passed to ASIC's Enforcement team for action.
- 32 On 27 July 2009 CFPL lodged a breach report with ASIC in relation to advice provided by Mr Nguyen. The report noted that, following a couple of major complaints from clients, CFPL had done a review of 16 client files and found:
- three client files that demonstrated no reasonable basis for advice;
  - two files where the clients' specific needs had not been addressed; and
  - two client files where recommendations were made to the client and implemented, but documentation was lacking because no Statement of Advice was provided to the client.
- 33 CFPL further advised that Mr Nguyen had resigned and that it was reviewing all affected clients at no cost to the clients. The Nguyen breach report was assessed by ASIC's Misconduct and Breach Reporting team and then passed to specialists in the FA team to be incorporated in the existing matter.
- 34 In October and November 2009 ASIC sought and received further information and updates on CFPL's handling of the Nguyen matter. This included more detail on the review that led to the breach report and the establishment of a CFPL project to deal with complaints by and compensation for Mr Nguyen's customers, with 165 clients in focus for contact reviews, and in some cases new Statements of Advice and/or compensation.
- 35 In December 2009 and January 2010 ASIC received two emails from the original whistleblowers expressing concern that ASIC was not taking action and that this was allowing CFPL to 'reconstruct Nguyen's non-existent files'.

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<sup>1</sup> Under the Corporations Act holders of financial services licences are required to report material breaches of financial services laws to ASIC.

<sup>2</sup> ASIC has recently become aware from documents provided by CBA that a hard copy breach report was lodged at an ASIC service counter. ASIC is now investigating why it was not recorded in ASIC's systems or forwarded to the correct teams.

- 36 On 12 January 2010 ASIC contacted the whistleblowers inviting them to meet with ASIC staff in person. On 15 January 2010 ASIC received a longer complaint from the whistleblowers again raising concerns about Mr Nguyen's advice, the cleaning up of files and that compensation being offered was inadequate. ASIC met with the whistleblowers on 24 February 2010. Staff attending for ASIC included both FA team staff and Enforcement staff.

## Work carried out by ASIC's Enforcement team

- 37 Following the work carried out in 2008 and 2009, ASIC made a decision in March 2010 that the matter should be dealt with by its Enforcement team.
- 38 On 24 March 2010 ASIC served notices on CFPL requiring immediate production of documents relating to Mr Nguyen.
- 39 On 19 July 2010 ASIC referred a brief on Mr Nguyen to a delegate<sup>3</sup> for consideration of banning action.
- 40 On 21 July 2010 ASIC met with CFPL and CFPL provided a commitment to remediate former clients of Mr Nguyen.
- 41 From August to October 2010 there were negotiations between ASIC and CFPL about the adequacy of compensation arrangements proposed by CFPL, resulting in changes agreed to by CFPL in response to concerns raised by ASIC: see Section D for details.
- 42 On 3 November 2010 ASIC issued a media release announcing the remediation program: see ASIC media release 10-226AD.
- 43 ASIC received further breach reports from CFPL regarding named advisers on 17 December 2010, 8 February 2011, 15 February 2011, 21 March 2011, and 6 April 2011. These breach reports identified possible breaches of financial services laws by the named advisers.
- 44 On 10 March 2011 Mr Nguyen was banned for seven years. This was upheld on appeal to the Administrative Appeals Tribunal (AAT) on 19 March 2012.
- 45 On 25 October 2011 ASIC accepted an enforceable undertaking from CFPL. The details of the enforceable undertaking are discussed in Section D.

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<sup>3</sup> ASIC has discretionary powers under the Corporations Act to suspend or cancel financial services licences and to ban individuals from the financial services industry. ASIC is required to provide natural justice, including holding a hearing, before exercising these powers. ASIC maintains a panel of Hearing Delegates to conduct these hearings, and to exercise these powers on behalf of ASIC.

The Delegates make decisions based on evidence put to them by ASIC and the affected person or entity. The Delegates make their decisions in accordance with the law, including relevant decisions made by the AAT and the Federal Court. The Delegates' decisions can be reviewed by the AAT and the Federal Court.

- 46           Following ASIC's investigation, a brief on Mr Gillespie was prepared and referred to a delegate on 1 December 2011 for consideration of banning action.
- 47           After a number of hearings, on 30 October 2012 Mr Gillespie was permanently banned from providing financial services. Mr Gillespie appealed this decision to the AAT; this appeal was withdrawn on 11 July 2013.

## **D Outcomes obtained: Compensation, enforceable undertakings and banning actions**

### **Nature of conduct addressed**

- 48 ASIC's investigations and work with CFPL established that there were systemic problems within CFPL's advice business. ASIC sought to deal with these issues on a systemic basis, including through provision of compensation for affected clients; far-reaching change to CFPL's systems, compliance, management and culture; and the removal of problem advisers through banning actions.
- 49 Conduct by individual advisers that concerned ASIC and was the subject of regulatory action included:
- failing to have a reasonable basis for advice;
  - failing to provide Statements of Advice;
  - making statements that were false or misleading in a material particular;
  - making forecasts that were misleading, false or deceptive;
  - failing to make reasonable inquiries before implementing advice;
  - providing asset allocation advice far above that recommended for the client's risk profile; and
  - failing to complete 'financial needs analysis' documentation.
- 50 In all cases involving individual advisers, ASIC considered whether the circumstances involved and the evidence available supported criminal prosecutions.
- 51 In two cases, ASIC's investigation concluded that advisers had, in specific instances, engaged in more serious dishonest conduct, including forgery and dishonest concealment of material facts. ASIC also concluded that these matters could be established to the necessary standard of proof to be considered in an administrative banning hearing. In these cases ASIC sought and obtained a permanent ban on the advisers involved.
- 52 ASIC incorporated into the resolution arrangements it made with CFPL a mechanism for ensuring that clients of these advisers were compensated for losses resulting from the conduct described in paragraph 49 (detailed in paragraphs 54 and following below).
- 53 More broadly, ASIC was concerned about the adequacy of CFPL's processes and controls, its dealing with misconduct by its representatives in a consistent manner, its capacity for early identification of irregularities in its advice process, the adequacy of controls over its clients' records and the

consistent application of its complaints handling and internal dispute resolution processes.

## Compensation arrangements

- 54 As part of the resolution of the matter, ASIC sought to address concerns that compensation that had been, and was being, offered by CFPL was limited and that it may in some cases have been inadequate.
- 55 On 21 July 2010 CFPL provided an undertaking to ASIC that they would remediate all clients detrimentally affected by the conduct of Mr Nguyen. This was then expanded to cover clients of another planner, Mr Awkar, and was known as Project Hartnett. In August 2010 ASIC set out a range of concerns it had with the proposed compensation approach, in particular around the absence of independent review of the compensation offers. As a result, the compensation arrangements were developed to include the following key elements:
- a review of all relevant client files by CFPL;
  - the ability for clients to obtain independent advice, up to the value of \$5,000 and paid for by CFPL, to assess the compensation offer (in some cases more than \$5,000 was paid);
  - a process whereby clients were informed of dispute resolution options, notably the free Financial Ombudsman Service (FOS), if the compensation was still in dispute; and
  - the appointment of an independent expert to review the adequacy and appropriateness of the compensation processes, including:
    - whether all relevant clients were covered;
    - calculation methodologies for compensation offers; and
    - client communication, including those few cases where clients were unable to be contacted.
- 56 The independent expert reviewed a random selection of cases. To ensure appropriateness and consistency in the treatment and application of compensation assessments, the expert also reviewed some cases where there was a dispute with the client about the amount of compensation.
- 57 ASIC required that clients experiencing hardship were dealt with first, with fast tracking of compensation in such cases where it was appropriate. ASIC also required that all cases where compensation had already been offered be re-opened and reviewed under the newly agreed compensation framework.
- 58 A second wider phase of the compensation program was developed under the enforceable undertaking accepted on 25 October 2011. This program,

known as the Past Business Review Program, extended the compensation framework to a much wider range of advisers, including those that were the subject of breach reports, and beyond this to any adviser about whom CFPL received complaints.

- 59 On 3 November 2010 ASIC issued a media release announcing the remediation program. ASIC has subsequently referred to the ability for clients to obtain compensation in the 2011 media release announcing the enforceable undertaking and in every media release relating to the banning of relevant CFPL advisers.
- 60 ASIC has met regularly with CFPL to discuss the progress of client remediation. Given that the vast majority of cases have been concluded, more recently ASIC has been ensuring that CFPL gives remaining clients that are in dispute clear information about the availability of FOS.
- 61 CFPL has paid to date just over \$50 million in compensation to affected clients. CFPL reviewed around 7,000 client cases, resulting in 1,127 clients receiving compensation. Of this total amount, \$23 million was paid to former clients of Mr Nguyen. Of 201 such cases, only five remain open with one of those presently before FOS.
- 62 For advisers other than Mr Nguyen and Mr Awkar, there are 8 cases still open in relation to the 'Past Business Review' compensation program where the client has either rejected the compensation offer or raised a dispute. Three of these cases are before FOS.

## The enforceable undertaking

- 63 After its investigation, ASIC determined that an appropriate way to address CFPL's conduct was through the enforceable undertaking that was offered by and negotiated with CFPL.
- 64 Enforceable undertakings are a tool that ASIC regularly uses. ASIC is often questioned on why and when it chooses to enter into an enforceable undertaking, including in relation to this matter.
- 65 ASIC's broad policy on enforceable undertakings is set out in Regulatory Guide 100 *Enforceable undertakings* (RG 100). In appropriate cases, enforceable undertakings provide ASIC with a greater capacity to achieve a comprehensive response to systemic conduct than other tools like court action. That comprehensive response generally includes timely and effective compensation arrangements. Compared to court action, enforceable undertakings also provide much greater scope to influence and manage future conduct and, through the requirements for ongoing reporting and supervision by ASIC, to drive changes to systems and culture and to monitor

and judge the effectiveness of those changes. That was ASIC's aim in the CFPL matter. Notably, although entered into in October 2011, the CFPL enforceable undertaking has not yet concluded, and a final report is due in October 2013. ASIC remains engaged with the matter.

66 The enforceable undertaking required CFPL to conduct a comprehensive review of its risk management framework and legal and regulatory obligations regarding the provision of financial services, financial advice and the monitoring and supervision of its representatives.

67 The enforceable undertaking required CFPL to develop an implementation plan to address any unresolved deficiencies identified by the assessment of its risk management framework, including examining, but not limited to, business risk appetite, consequence management, data analytics, monitoring, professional development, recruitment and induction, remuneration and reward, structure and accountabilities, and supervision. The implementation of the plan is the subject of review and ongoing reporting to ASIC over two years by an independent expert (whose engagement was approved by ASIC). The review by CFPL under the enforceable undertaking will address ASIC's concerns noted above in paragraphs 49 and 53.

## Enforcement actions against advisers

68 ASIC has taken enforcement action against seven CFPL advisers. This number includes advisers who have been banned (four actions) and advisers who provided an enforceable undertaking removing themselves from the industry (three actions).

69 The banned advisers are:

- Don Nguyen: banned for 7 years on 3 March 2011, decision affirmed by the Administrative Appeals Tribunal
- Anthony Awkar: permanently banned on 19 April 2012
- Rick Gillespie: permanently banned on 30 October 2012
- Jane Duncan: banned for 3 years on 19 April 2012

70 The advisers who removed themselves from the industry under an enforceable undertaking are:

- Simon Langton: 2 years
- Chris Baker: 5 years
- Joe Chan: 2 years

## E Looking forward from the CFPL matter

### Internal learnings to date

- 71 ASIC will be in a position at the Inquiry to provide further detail on the handling of the CFPL matter.
- 72 ASIC considers that all stakeholders would have been better served if, consistent with its current policy and practice, in April 2008 ASIC had been public about CFPL's agreement to undertake the CICP program in response to the negative findings of ASIC's 2007–2008 surveillance. The public would have been informed, staff within CFPL (including the eventual whistleblowers) would have been aware of ASIC's engagement with the business, and other participants in the industry would have better understood ASIC's expectations and its approach. As the process was not public, ASIC was not in a position to explain to the whistleblowers that the concerns raised about Mr Nguyen had been incorporated within broader work to deal with similar concerns across CFPL involving independent monitoring in addition to monitoring by ASIC.
- 73 Even accepting the non-public nature of the CICP, ASIC considers that its communication with the whistleblowers, up until January 2010 when ASIC sought a meeting with them, was not adequate. Whistleblowers who seek to assist ASIC with information in circumstances where they might fear reprisals have a strong and legitimate interest in what is done with that information and in appropriate outcomes and remedies being obtained. However, whistleblowers are not themselves subject to confidentiality obligations and they may have different or additional motives to those of ASIC. Thus, like all regulators and investigative bodies, ASIC cannot share with a whistleblower the details of what it knows, what it is doing and why a particular regulatory approach has been adopted in relation to a matter that has been reported. In these circumstances, whistleblowers are likely to feel frustrated or conclude that nothing is being done. In the CFPL matter, ASIC could and should have spoken to the whistleblowers earlier, sought more information from them and, within the limitations noted, provided them with some assurance that ASIC was interested and active in the matter, that their report was being dealt with seriously and something was being done.
- 74 As noted in Section 53, ASIC made a decision to incorporate the whistleblowers' complaints into the broader handling of what were serious and similar problems at CFPL. CFPL had acknowledged those problems and had agreed to a program to rectify them. CFPL also acknowledged having complaints about Mr Nguyen which it was addressing and which it agreed to continue to address within the CICP.

- 75 With the benefit of hindsight, ASIC considers that it should not have placed as much reliance on CFPL's ability to identify and rectify all of the problems in its advice business. ASIC subsequently reached this conclusion in late 2009 and early 2010, based on its experience with CFPL and the CICP. This conclusion was also based on information about ongoing problems obtained both from CFPL and the whistleblowers that the CICP was not dealing promptly and effectively with the general issues raised or with the problems regarding Mr Nguyen. ASIC then put the matter on a more formal investigative path which led to the range of outcomes set out in this submission.
- 76 A cause of delay in ASIC's handling of one breach report in the CFPL matter was the loss of the document involved. While this is a very rare occurrence, and it is now also rare for documents to be lodged in hard copy, ASIC is reviewing its processes for hard copy lodgement to ensure that the risk of future problems of this sort is removed to the fullest extent possible.

## Changes to ASIC processes and policies since 2008

- 77 ASIC has made significant changes to aspects of its enforcement and communication practices since 2008 in areas that are relevant to the consideration of our CFPL outcomes.
- 78 Importantly, ASIC has made a greater commitment to transparency. That transparency extends to both its processes for decision-making on regulatory action and what regulatory actions it has taken.
- 79 In 2012 ASIC published for the first time a public enforcement policy that sets out our decision-making framework for enforcement matters.
- 80 We also commenced in 2012 the publication of biannual enforcement reports that provide an overview of our enforcement outcomes and achievements in the previous six months. These reports include commentary on overall outcomes, what we have sought to achieve in particular cases, and upcoming areas of focus.
- 81 ASIC has also made a stronger public commitment to publicising the results of our regulatory actions, even when these do not involve formal court-based outcomes. For example, where we have had significant dealings with firms around compliance issues, or marketing and advertising problems, we will now publish a media release announcing what we have done and why.<sup>4</sup> Where relevant, we will acknowledge cooperation. A program such as the CICP would now be made public on commencement.

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<sup>4</sup> As recent examples, see ASIC media releases MR 13-10 in relation to Macquarie Bank, MR 13-070 in relation to Bank of Queensland, MR 13-155 in relation to Suncorp and MR 13-176 concerning CBA and HSBC.

- 82 ASIC has also made public information on the frequency with which it is able to carry out surveillances of its various regulated populations with its current level of resourcing.
- 83 ASIC has taken a more forward-looking approach to our regulation of the financial services industry. Two examples are:
- In 2012, ASIC established an Emerging Risk Committee that meets regularly to analyse and discuss emerging trends and areas of concern in the markets we regulate.
  - In 2012 we announced a stronger approach to advertising and marketing by financial firms, backed by a regulatory guide on advertising (Regulatory Guide 234) to help reduce the risk that consumers and investors purchase the wrong product or service up front.
- 84 We will expand on these issues in our main submission, in particular on our forward-looking approach to identifying industry risks.

### **Whistleblower policy review**

- 85 We have publicly announced that we are undertaking a review of our whistleblower policy. This will have a particular focus on ensuring communication with whistleblowers is consistent and regular, allowing for the confidentiality requirements under which ASIC operates. We will provide more information on this review in our main submission.

## **The financial planning sector**

- 86 ASIC's experience, both prior to the GFC and subsequent to the collapses during that period, has informed ASIC's arguments for substantial reform of the financial planning industry. In particular, ASIC has consistently argued for the removal of conflicted remuneration structures that were the key drivers of the problems at CFPL.
- 87 Our submissions to the following parliamentary inquiries clearly set out the basis of the problems in the financial advice sector and set out arguments for reform.
- PJC Inquiry into Financial Products and Services (August 2009);
  - Inquiry into the collapse of Trio Capital and any other related matters;
  - Parliamentary Inquiry into the Future of Financial Advice Reforms (two submissions, November and December 2011).
- 88 Following the PJC Inquiry into Financial Products and Services the Government announced the Future of Financial Advice reforms, which are currently being implemented. We will be discussing reform issues further in our main submission.