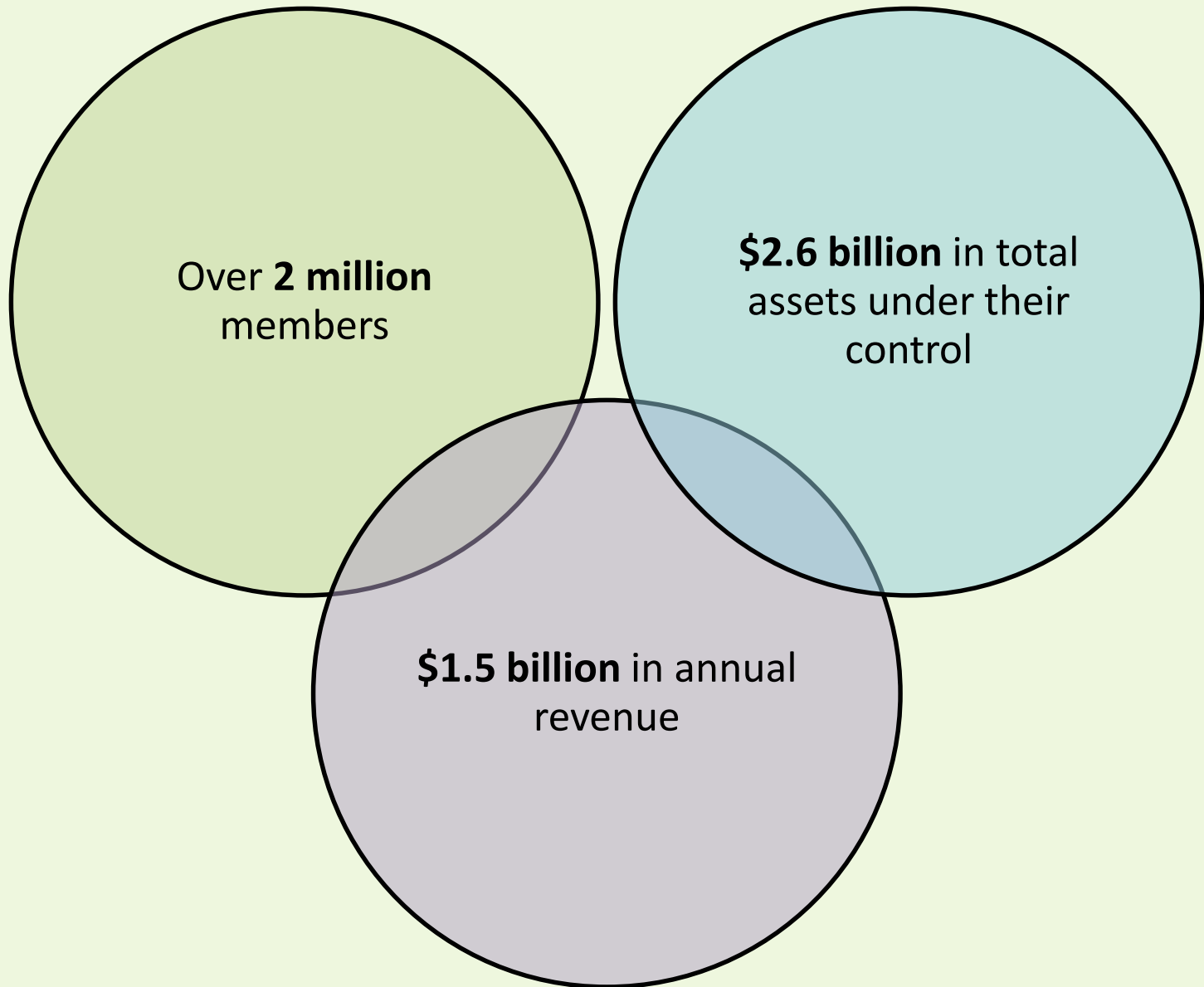




Registered Organisations Commission (ROC)

Assessments, inquiries & investigations

Registered Organisations



- Purpose is to encourage
 - efficient management
 - increased standards of accountability
 - increased culture of voluntary compliance

Encouraging and monitoring compliance

- Starts before compliance team involved
 - education, assistance and support materials
 - giving advice
 - sending reminders
 - early engagement – opportunities to correct or re-lodge
 - encourage self-reporting and proactive remediation

Encouraging and monitoring compliance

- Issues can often be resolved early
 - mere inadvertence
 - genuine attempts to correct or comply





Very broad sources of information

- **Registered organisations** self-reporting, historical reporting
- **Whistleblowers** members, officials, employees, suppliers etc.
- **Agency referrals** assessment of referrals from TURC, FWC, other agencies
- **Internal compliance review** assessment of lodgements, late lodgements
- **Cross-organisational review** pro-active engagement, compliance trends
- **Correspondence** e.g. members of public, members of Parliament
- **Media coverage** e.g. journalists, requests for comment, publications

Step 2 - Assessment

- Understand, prioritise and triage - limited resources
- Federal v State jurisdiction
- Identify any possible contraventions
- Form a view and consider approach



Step 2 - Assessment cont.

- Consider public interest issues, e.g.
 - seriousness of contraventions
 - strength of case
 - time since events
 - remedial action
 - mitigating circumstances
 - risk considerations
 - interests of members
 - any other relevant matters
- Engagement to seek voluntary assistance
 - Avoid surprises
 - There may be a simple explanation



Case study #1

- Adverse media reports about compliance & governance issues
 - complex financial arrangements
 - suggesting ROC was investigating
- Org contacted ROC & wanted to assist voluntarily
- ROC actively engaged with Org
- After assessment of material, identified the matters which would assist in understanding compliance
- Org voluntarily provided documents, material
- Enabled detailed ROC assessment prior to any formal steps

Case study #1 - Outcome

- ROC closed the matter
- Wrote to Org in following terms

...largely thanks to [the org's] voluntary cooperation, the ROC has been able to undertake a detailed assessment of the matters raised to reach the conclusions set out in this letter.

I acknowledge and thank the [org] for its cooperation with respect to the assessment of the relevant matters.

- This allowed the Org to respond to media reports as it wished

- ROC identifies potential issue concerned with absence of a statement of LGD
- Reasonable grounds to commence investigation
- However ROC aims for compliance & collaboration
- As alternative, ROC offers Org opportunity to provide its views
- Org provided documents

Case study #2 - Outcome

- Meeting with Org lawyers & advisors
- Assessment of all information
- ROC requests lodgement of s 237 statement of LGD
- Org volunteers to lodge statement of LGD – positive outcome

Step 3 - Powers of inquiry (s 330)

- Commissioner may make inquiries
- Jurisdiction to inquire about
 - Financial reporting obligations / guidelines
 - Rules of Organisation relating to its finances
 - Possible contraventions of civil penalty provisions
 - e.g. Officer's duties in relation to financial management
- Useful where investigation may be warranted, but insufficient evidence available
- Can take such steps as are necessary
- Cannot compel assistance



- Information received about financial compliance issue
- Early engagement & assessment conducted
- Information provided voluntarily
- Facts & circumstances remained unclear
- Inquiry commenced
- Org voluntarily provided further documents & material

- Detailed analysis undertaken by the inquiry
- ROC wrote to the org in the following terms

I take the opportunity to acknowledge and thank ... the executive of the [org] for the assistance provided in this matter by voluntarily providing documents and other materials in response to requests which enabled the ROC to conduct a thorough and timely inquiry

- Matter closed

Step 4 - Powers of investigation

Four different types of investigations

General investigation power (s 331)

- May investigate – discretionary
- Same jurisdiction as inquiries re financial matters
 - Financial reporting obligations / guidelines
 - Rules of Organisation relating to its finances
 - Possible contraventions of civil penalty provisions



Step 4 - Powers of investigation cont.

Four different types of investigations

Specific investigation powers

- Arising from auditor's report (s 332)
- Arising from a request from members (s 333)
- Referral from FWC following inspection (s 334)

In most cases - Commissioner must investigate



General investigations (s 331)

- Most common form of investigation
- Commissioner *may* conduct investigation
 - reasonable grounds to do so
 - discretion should be exercised
- ROC will consider
 - number, nature and extent of potential contraventions
 - sufficient federal connection
 - the evidence available, or which might be available
 - unreasonable use of resources
 - other public interest considerations

- Powers of compulsion e.g.
 - Documents
 - Assistance
 - Interviews on oath
- Investigation does not have to follow an inquiry
- Scope of investigation can be expanded

ROC will

- act impartially, without bias and avoiding conflicts of interest
- make decisions on best available evidence
 - reasonable prospects of success
 - legal principle and practice
 - public interest considerations
- provide procedural fairness
 - correspond with Orgs and interested parties
 - provide opportunity to respond

Conduct of inquiries and Investigations cont.

ROC will

- act transparently in the interests of members
 - publish inquiries and investigations on our website
- complete investigations as soon as practicable

ROC will not

- form pre-conceptions, pre-judgments or preferences for outcome
- engage in discussion about current matters

Case study #4

- ROC takes consistent regulatory approach as FWC
- Org disclosed serious & inappropriate conduct by one officer to the FWC & the TURC concerning financial administration
- TURC examined & subsequently referred matter to FWC
- Broader approach taken by regulator
- Considered conduct by several officers
- Org was advised & involved at each stage of investigation

Case study #4 - Outcome

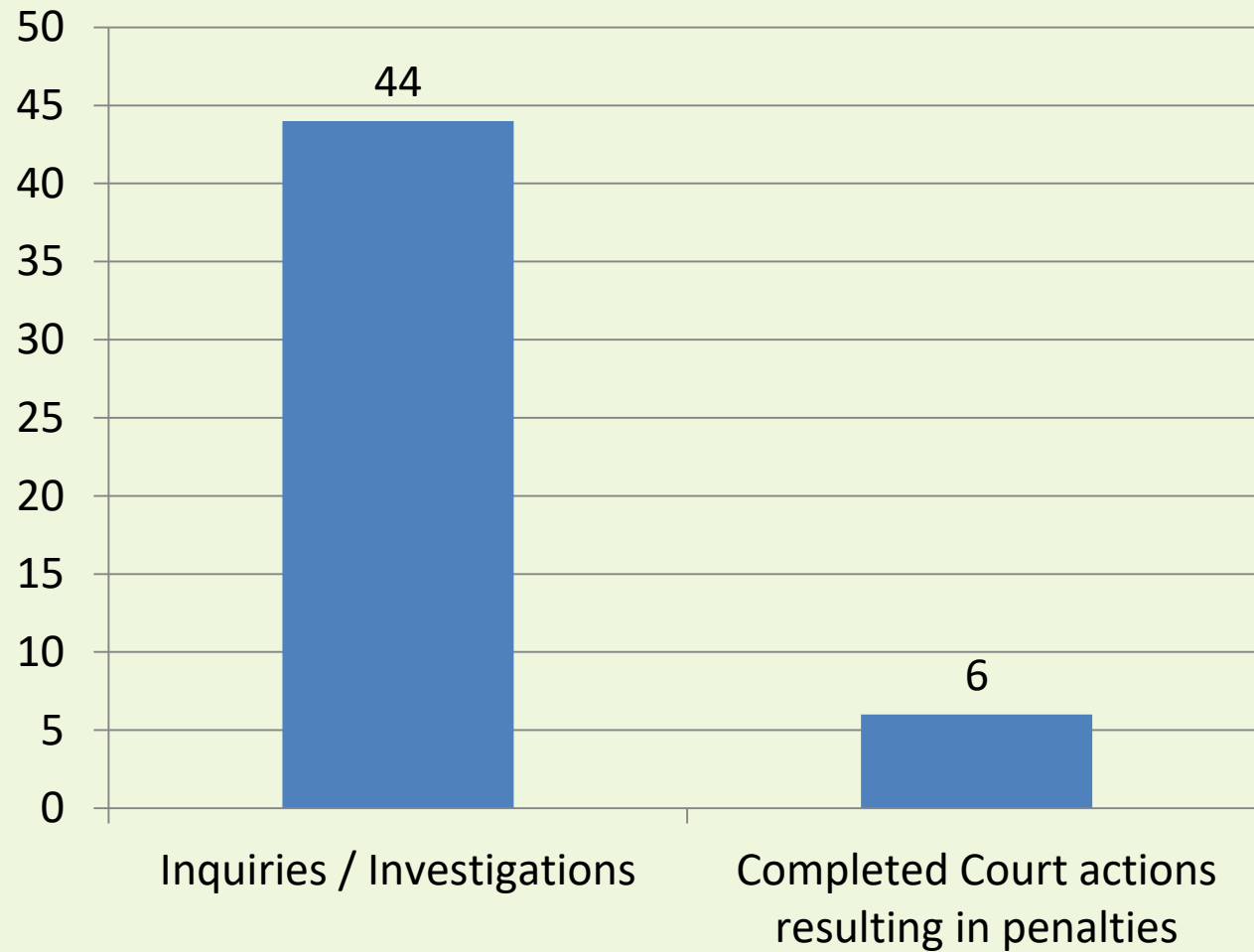
- Civil proceedings instituted
- Outcome against two former Secretaries
- Less than 12 months from start of investigation to penalty outcome
- Compensations orders made in favour of Org
- ROC's vision of collaboration

Compliance can lead to positive outcomes for organisation

- No wrongdoing found
- Improve systems, processes and culture of compliance
- Increase levels of democratic function and accountability
- Increase confidence by members in Org
- Better outcomes for members
- Resolving contentious issues and internal disputes
- Positive messaging to members, media
- Reimbursement
- Compensation



FWC/ROC compliance actions since 2011



Voluntary compliance

- Strongly encouraged – at any stage
- Can take many forms
 - Self-reporting
 - Internal resolution / mitigation / remediation
 - Review and implementation of systems and procedures
 - Cooperation with processes
 - Early admissions
 - Remediation agreements
 - Agreement of statement of facts / submission to penalty
- Voluntary compliance will not necessarily avoid escalation



Why voluntarily comply?

Benefits to your organisation:

- Control the message
 - Media
 - Members
- Faster resolution of disputes
- Possibly avoid escalation – may avoid compulsory tools
- Lean on regulator's experiences of what other Orgs do
- Work with regulator to resolve / remediate
- Improve learnings and culture of compliance
- Reduce costs

Why voluntarily comply?

Benefits to your organisation:

- May allow input into outcome
 - least worst outcomes
- Positive engagement with regulator
- Co-operation, mitigation, contrition are relevant to steps we take
- Avoid unexpected adverse findings
- May allow room to negotiate on agreed facts / penalty position
- Voluntary compliance is relevant to penalties imposed by Court

- Compliance with the law remains paramount
- Recent Court decision:

The imperatives of general deterrence will be obvious.

*Because of the democratic principles underpinning the RO Act ...
record keeping under this legislation is a significant matter. ...*

*It needs to be understood by registered organisations that this is
a serious piece of legislation and the apparently mundane
obligations it imposes are to be obeyed.*

ROC website

www.roc.gov.au

ROC Compliance Policy

ROC phone number

1300 341 665

Service operates between 9am and 5pm Monday to Friday

Email address

regorgs@roc.gov.au