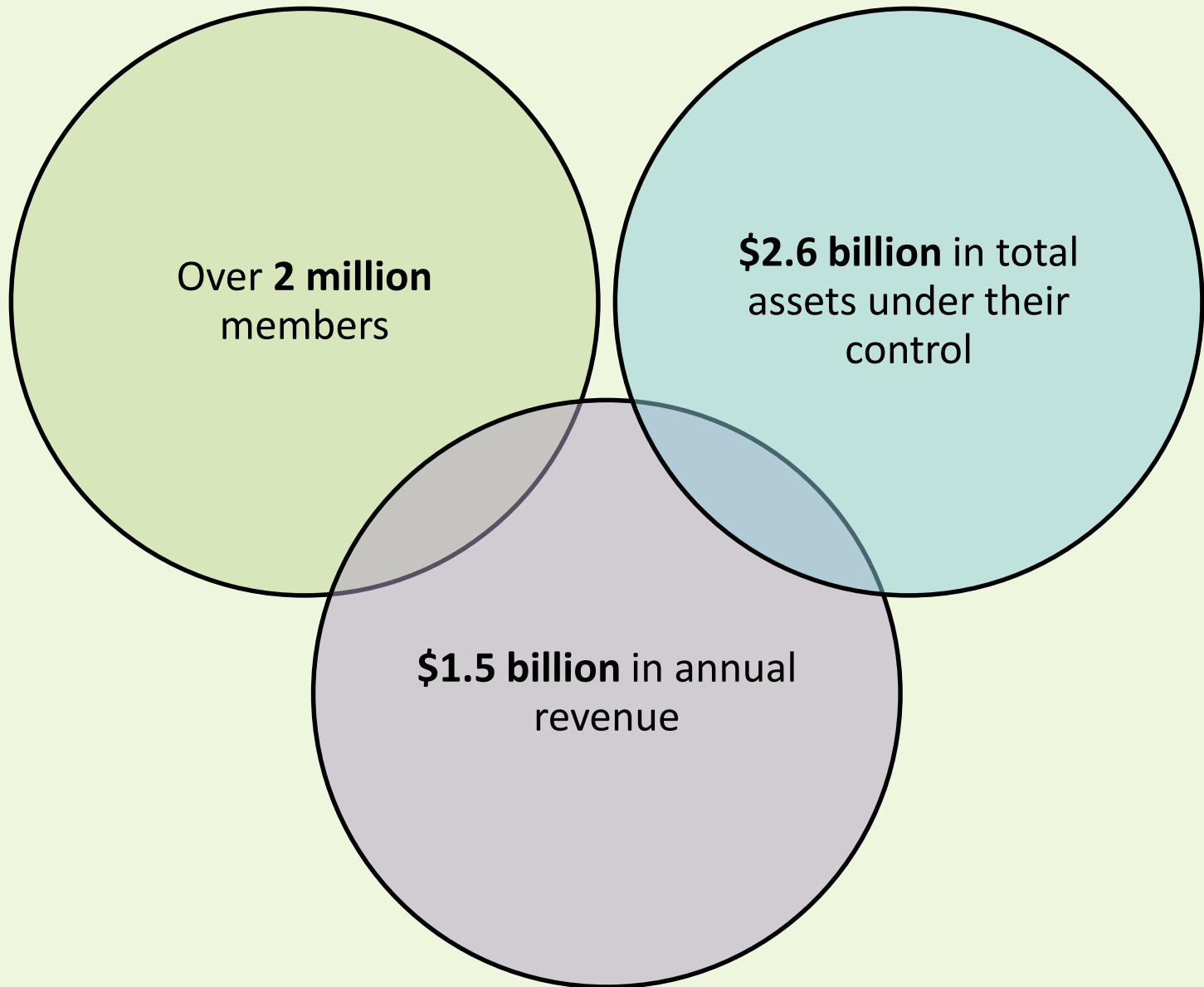




Registered Organisations Commission (ROC)

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



Case study #3

- 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

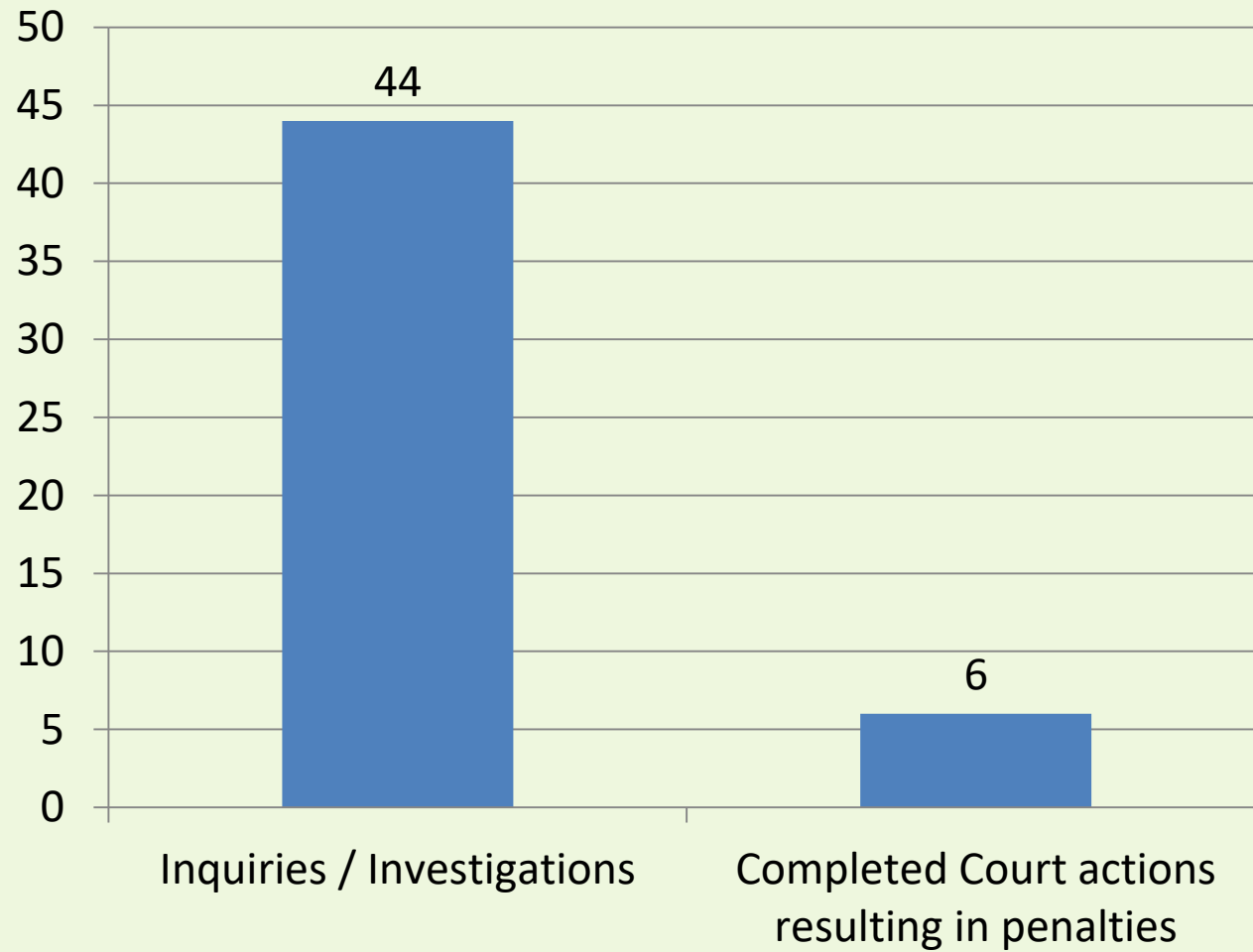
- Civil proceedings instituted
- Outcome against two former Secretaries
- Less than 12 months from start of investigation to penalty outcome
- Compensations orders made in favour of Org
- ROC's vision of collaboration

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