Draft Legislation: Disciplinary Process – ASIC and the FSCP Complaints and breach Industry ASIC monitoring **AFCA** AFS licensees TPB Consumers Other associations and surveillance reporting ASIC **ASIC** triage Possible misconduct - matter is progressed for further Matter is not progressed for further investigation as the investigation a frivolous/vexatious complaint; past the statute of limitations; referred to another agency; or clear that there has not been misconduct. NO FURTHER ACTION Investigation ASIC investigates the matter, using information included in the breach report or complaint and any evidence gathered in its enquiries. ASIC reasonably believes that one of the following breaches have occurred: ASIC does not reasonably believe a breach has occurred. AFS license has been suspended or cancelled Not a dequately trained or competent **NO FURTHER ACTION** Likely to contravene a financial services law Likely to become involved in the contravention by a nother person **Banning** Not complied with passport fund requirements Insolvent Fraud Not a fit and proper person Twice linked to refusals to give effect to AFCA determination **Administrative** Officer of two companies that have been unable to pay debts sanctions Breached financial services law Involved in another's breach of financials ervices law etc. Breach of education and training standards Breach of provisional relevant provider/ supervisor obligations **Restricted civil penalty** Breach of Code of Ethics provisions (infringement Breach of FSCP order notices) Providing financial advice while unregistered ASIC considers banning order ASIC does not consider banning appropriate order appropriate ASIC must convene FSCP ASIC banning process (no change) FSCP -**Proposed** Decision* FSCP -The FSCP gives a notice to the adviser of the proposed administrative sanction and/or the proposed infringement notice, whether it will be listed on the Financial Advisers Register and the adviser's rights to a hearing. The administrative sanction/s could include a: THE FSCP DECIDES TO TAKE Notice* **NO FURTHER ACTION** Review* Within 28 days the adviser can The adviser does not Within 28 days the adviser request a hearing or make a can make a submission to the request a hearing with the submission. FSCP. FSCP. FSCP - Final Decision*^ The infringement notice is issued and/or the administrative sanction/s taken. The FSCP decides to ASIC applies to court **ASIC TAKES NO** for civil penalty **FURTHER ACTION** take no further action. **Appeal** The adviser can appeal the administrative sanction/s to the AAT. The adviser can appeal the infringement notice and the civil penalty in court. Reporting If instructed by the FSCP, ASIC must update the Financial Advisers Register to record details of the enforceable ASIC reports publicly on its decision to not pursue civil penalty. No personal information is published. undertaking/administrative sanction/infringement notice. The FSCP's decision to list the sanction on the FAR is reviewable by the AAT.