



**ASIC**

Australian Securities & Investments Commission

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# ASIC enforcement outcomes: July to December 2017

Report 568

February 2018

## About this report

This report outlines the enforcement outcomes achieved by ASIC during the period from 1 July to 31 December 2017 (relevant period). The report provides a high-level overview of some of our enforcement priorities and highlights some important cases and decisions during this period.

### About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

**Consultation papers:** seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

**Regulatory guides:** give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

**Information sheets:** provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

**Reports:** describe ASIC compliance or relief activity or the results of a research project.

## Disclaimer

This report does not constitute legal advice. We encourage you to seek your own professional advice to find out how the Corporations Act and other applicable laws apply to you, as it is your responsibility to determine your obligations.

Examples in this report are purely for illustration; they are not exhaustive and are not intended to impose or imply particular rules or requirements.

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# Overview

## ASIC's role and the scope of this report

ASIC investigates and enforces the law to give effect to our vision to allow markets to fund the economy and, in turn, economic growth. In doing so, we contribute to the financial wellbeing of all Australians. We do this by:

- promoting investor and consumer trust and confidence;
- ensuring fair and efficient markets; and
- providing efficient registration services.

Our vision reflects the objectives of the *Australian Securities and Investments Commission Act 2001* (ASIC Act).

This report provides a high-level overview of our enforcement activities and outcomes achieved during the period 1 July to 31 December 2017 (relevant period).

This report covers:

- our enforcement objectives;
- the key enforcement outcomes in the relevant period;
- a summary of enforcement outcomes by enforcement area; and
- case studies of key actions we have taken to enforce the law and support our priorities.

[Previous enforcement outcomes reports](#) are available on our website.

## Enforcement objectives

ASIC's enforcement teams are committed to addressing the key risks outlined in the [ASIC's Corporate Plan 2017–18 to 2020–21: Focus 2017–18](#) (Corporate Plan).

The plan sets out our vision, long-term challenges, key risks and strategy for the period from 2017–18 to 2020–21.

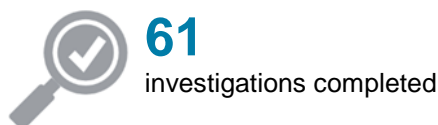
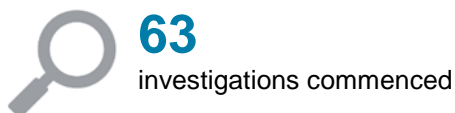
The key risks identified in the Corporate Plan are:

- poor culture and conduct in financial services and credit, resulting in poor outcomes for investors and consumers;
- poor culture and conduct in markets, undermining market integrity;
- financial vulnerability of consumers at key decision points;
- misalignment of retail product design and distribution with consumer needs;
- inadequate risk management of technological change, including digital disruption and cyber threats; and
- cross-border businesses, services and transactions in a continually evolving regulatory environment.

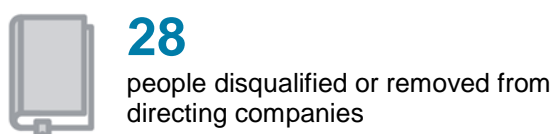
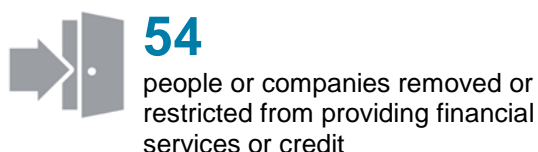
## Summary of key outcomes

Figure 1: Summary of key enforcement outcomes

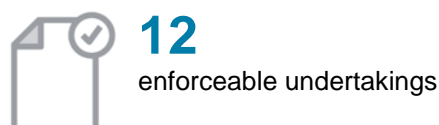
### Investigations



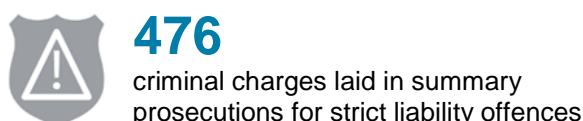
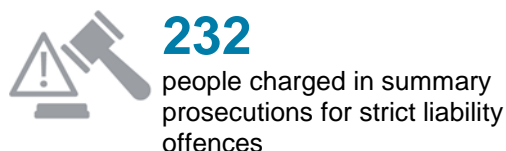
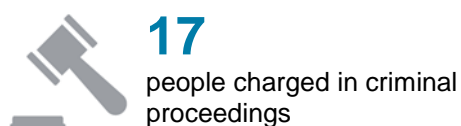
### Bannings and disqualifications



### Infringement notices, compensation and enforceable undertakings



### Prosecutions



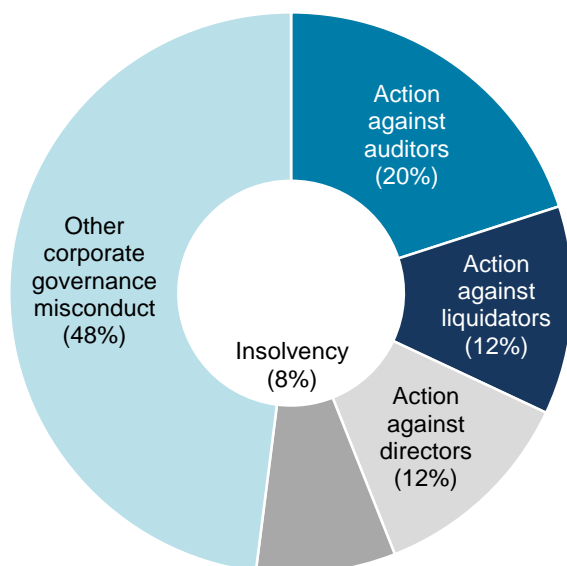
## Corporate governance

Our work in corporate governance ensures that public companies are properly accountable to their investors, by regulating disclosure by and conduct of corporations and their officers in Australia. Where there are practices that undermine market integrity and investor outcomes, we take enforcement action to protect investors and consumers.

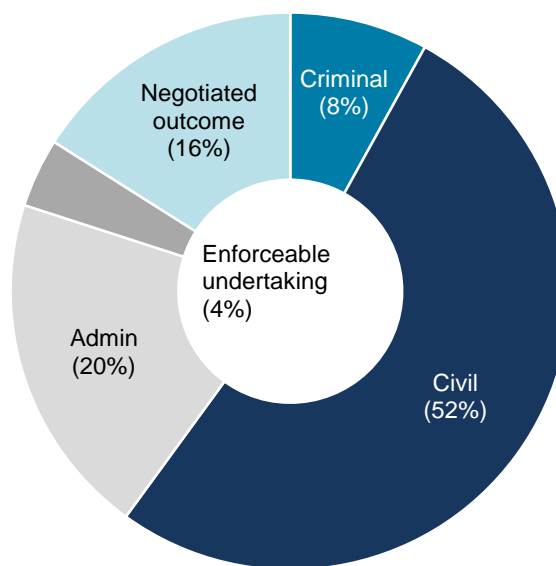
### Enforcement outcomes

This section provides a summary of corporate governance related enforcement outcomes in the relevant period.

**Figure 2: Corporate governance outcomes by misconduct type**



**Figure 3: Corporate governance outcomes by remedy type**



Note: See Table 5 for the data shown in these two figures (accessible version).

**Table 1: Pending corporate governance matters before the courts as at 1 January 2018**

Misconduct type	Criminal	Civil
Action against liquidators	0	8
Action against directors	8	19
Insolvency	1	0
Other corporate governance misconduct	2	0
<b>Total</b>	<b>11</b>	<b>27</b>

Note: These matters have yet to achieve a final result because the court or tribunal has determined liability but has not yet decided the penalty or made the final orders, a plea been entered but a decision on conviction or sentence has yet to be made, or the court has yet to determine whether a breach of the law or an offence has been committed.

**Area of focus:**  
**Holding gatekeepers to account**

Company directors, senior executives and officers are important gatekeepers who hold positions of responsibility and trust, and who are required to lawfully discharge the obligations that these positions carry.

**Case study: Bradley Sherwin**

On 14 November 2017, the Brisbane District Court sentenced Bradley Thomas Sherwin to a total of 10 years imprisonment on 25 charges. The charges related to 24 counts of dishonestly causing a detriment of nearly \$10 million to a number of clients of Sherwin Financial Planners, and one count of dishonestly breaching his duties as a director of Wickham Securities.

At the time of committing the offences, Mr Sherwin was the principal of Sherwin Financial Planners and chairman of Wickham Securities Ltd. In December 2012, Wickham Securities collapsed, owing more than \$27 million to around 300 debenture holders. One month later, in January 2013, Sherwin Financial Planners collapsed, owing more than \$30 million to its clients.

Our investigations into the collapse of the Sherwin group of companies found that Sherwin Financial Planners recommended their clients establish a self-managed superannuation fund into which their existing superannuation funds would be rolled. These funds were then held in a bank account and used by Mr Sherwin and another authorised officer at the company to meet their ongoing financial commitments, not those of their investor clients.

Prior to the collapse of Sherwin Financial Planners and Wickham Securities Ltd, the property development financing aspects of Mr Sherwin's business began to suffer financial difficulties, after borrowers began to default on loan repayments. When Mr Sherwin was unable to recover the loaned money, he arranged the transfer of client funds to be invested into the other companies he owned.

*'Crimes of this nature will not be tolerated and the strength of our law enforcement agencies working collaboratively with federal prosecutors to detect and breakdown sophisticated fraudulent conduct can, and will, result in strong penalties.'*

– Shane Kirne, Deputy Director, Commercial, Financial and Corruption  
 Commonwealth Director of Public Prosecutions  
*'Financial director sentenced for serious financial fraud',  
 media release, 14 November 2017*

## Case study: Patrick Godfrey

On 22 December 2017, the Federal Court of Australia ordered that Patrick John Godfrey, the former managing director of Banksia Securities Limited (Banksia), pay a penalty of \$25,000 and be disqualified from managing corporations for five years.

Banksia was an unlisted public company involved in raising money from the public for property investment and development, by issuing debentures and lending the funds to borrowers. As at October 2012, the company had raised around \$663 million from 15,622 investors. On 24 June 2017, the Supreme Court of Victoria appointed liquidators to Banksia.

The disqualification order follows a joint statement of facts submitted by ASIC and Mr Godfrey, which declared that Mr Godfrey had failed to:

- ensure that Banksia's financial reports for the periods ending 30 June 2011 and 30 June 2012, and the half-year ending 31 December 2011, presented a true and fair view of the company's financial position and performance;
- have sufficient understanding of Australian Accounting Standard [AASB 139 \*Financial instruments: Recognition and measurement\*](#);
- recommend the appropriate provision or allowance for bad and doubtful debts in the financial reports; and
- take all reasonable steps to ensure Banksia was compliant with the AASB 139.

## Looking ahead

We will continue to focus on the conduct of gatekeepers—company directors and officers, liquidators and auditors, and business advisers—to ensure they meet the standards of conduct required by law. Where necessary, we will take action against those who fail to meet these standards.

Over the next six months, we will have a particular focus on:

- companies with poor corporate governance;
- undisclosed associations and substantial holdings in shares in public companies (including benefit tracing and corporation fraud);
- related party transactions involving public companies;
- poor financial reporting by listed companies;
- auditing standards and audits of public companies;
- insolvency practitioners and others who facilitate serious illegal 'phoenix' activity and improper transactions in the face of insolvency;
- debenture issuers and other companies exposed to risk as a result of a declining property market; and
- company directors and officers who fail to stop their companies making illegal payments to officials of overseas governments.



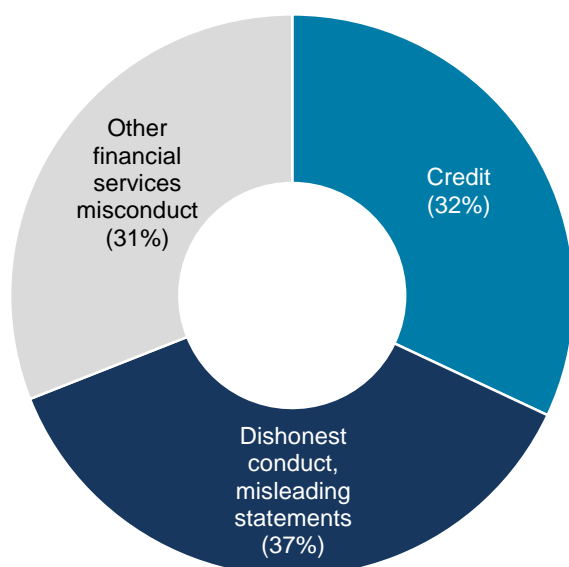
## Financial services

Our work in financial services is focused on improving consumer outcomes by regulating the conduct of financial services and credit providers. Where there are practices that result in consumer harm or create a risk of harm, particularly for vulnerable consumers, we take enforcement action to protect the public.

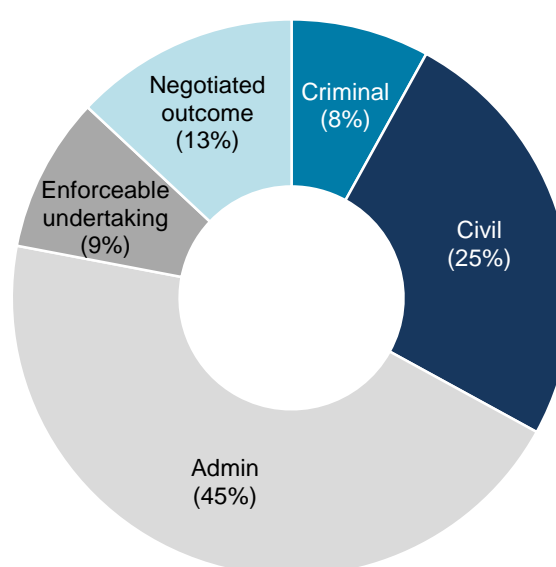
### Enforcement outcomes

This section provides a summary of financial services related enforcement outcomes in the relevant period.

**Figure 4: Financial services outcomes by misconduct type**



**Figure 5: Financial services outcomes by remedy type**



Note: See Table 6 for the data shown in these two figures (accessible version).

**Table 2: Pending financial services matters before the courts as at 1 January 2018**

Misconduct type	Criminal	Civil
Credit	2	3
Dishonest conduct, misleading statements	10	19
Other financial services misconduct	0	31
Theft, fraud, misappropriation	1	3
Unlicensed conduct	1	0
<b>Total</b>	<b>14</b>	<b>56</b>

Note: These matters have yet to achieve a final result because the court or tribunal has determined liability but has not yet decided the penalty or made the final orders, a plea been entered but a decision on conviction or sentence has yet to be made, or the court has yet to determine whether a breach of the law or an offence has been committed.

**Area of focus****Dishonest, misleading and deceptive conduct**

Dishonest, misleading and deceptive conduct by financial advisers undermines trust and confidence in the financial services industry.

**Case study: Shane Thompson**

On 27 October 2017, Shane Thompson pleaded guilty in the Melbourne Magistrates' Court to two charges that he forged and submitted financial planning documents for financial advantage. The court convicted Mr Thompson on both charges and fined him a total of \$1000, with \$293.30 in costs.

Mr Thompson was employed by National Australia Bank Limited (NAB) as a financial planner during the time the alleged misconduct took place.

Our investigations found that, between 27 December 2012 and 1 March 2013, Mr Thompson completed 22 false 'Change of Adviser' forms and submitted them to MLC Ltd (part of NAB at the time) to transfer NAB clients to his personal financial planning client list. Mr Thompson forged client signatures on each form and undertook this process without clients' knowledge or authorisation so that he could receive additional financial planning remuneration from his employer, NAB.

We banned Mr Thompson from providing financial services and credit activities for seven years in February 2016. We imposed the ban after finding his conduct in this case contravened financial services laws and the he was not a fit and proper person to engage in credit activities.

**Area of focus****Protecting investors and consumers**

The provision of efficient, honest and fair financial services is vital to the integrity of the financial services industry, and the trust and confidence of consumers and investors.

**Case study: NSG Service Pty Ltd**

On 30 October 2017, the Federal Court of Australia imposed a civil penalty of \$1 million on Melbourne-based financial advice firm NSG Services Pty Ltd (currently named Golden Financial Group Pty Ltd) (NSG) for breaches of their obligation to act in the best interests of the client (best interests duty), introduced under the Future of Financial Advice (FOFA) reforms.

The court imposed the penalty because of financial advice NSG's representatives provided to retail clients on eight occasions between July 2013 and August 2015. The clients were sold insurance and advised to roll over superannuation accounts that committed them to costly, unsuitable and unnecessary financial arrangements.

The court found that the failures by NSG to ensure compliance by its representatives were systemic in nature and reflected deficiencies in NSG's processes and procedures. NSG's representatives failed to take reasonable steps to ensure that they provided advice that complied with the best interests duty and was appropriate to NSG's clients.

In addition to the penalty, the court ordered NSG to pay \$50,000 in legal costs to ASIC. The company must also pay \$50,000 towards investigation costs, under s91 of the ASIC Act.

## Area of focus

### Tackling loan fraud

Loan fraud damages the integrity of the lending industry and risks borrowers obtaining loans that they cannot afford. It is a deliberate act to falsify documents in support of loan applications, often involving mortgage brokers.

#### Case study: Najam Shah and Myra Home Loans

On 9 October 2017, Najam Shah was sentenced to five years imprisonment after pleading guilty to conspiring to defraud financial institutions. Mr Shah is required to serve three years and three months before being eligible for parole.

Our investigations into Myra Home Loans Pty Ltd, a Footscray-based finance broking company that traded as Myra Financial Services (Myra), found that Mr Shah conspired with others to defraud financial institutions by providing false documents in support of loan applications submitted on behalf of the company's clients. Between about March 2008 and August 2010, Myra submitted false documents for more than 500 loan applications, valued at approximately \$170 million, to numerous financial institutions.

Many of the loan applicants were from vulnerable groups and various backgrounds, particularly applicants of Indian and African descent. Under normal conditions, these applicants would have had difficulty applying for a home loan because of their lack of savings, the amount they earned or their employment status.

We found significant levels of sophistication in the intricate work the enterprise undertook to complete the fraud, including:

- using over 400 different employer names in at least 350 payslips;
- replicating entries in false bank statements, which purported to represent either completely fabricated employment or bona fide employment with increased salary amounts;
- producing and using false verification and certification stamps to indicate proper certification of documents;
- creating false bank stamps;
- using false Australian citizenship certificates, false payslips and false bank statements that contained a false credit figure and account; and
- using false statutory declarations for applicants, including many who were unemployed and had no money saved in a bank account.

Among the employer names used were a number of well-known companies, such as Oracle, Bostik, St Vincent's Hospital, Jayco Caravans, Visy Recycling, Crown Plaza, a number of banks, and other smaller enterprises in manufacturing, accounting, retail, cleaning, electrical contractors, plumbers, nursing homes and insurance companies.

On 6 November 2017, Mr Shah filed an application for leave to appeal his sentence.

*'Mortgage fraud, as it may be generally termed, [...] damages the integrity of the financial system and the significant process of commercial loan applications. As in this case, such damage is not only potential but actual. The fraud did not only potentially undermine the loan approval process, it enabled in fact its utter corruption. This was its intent and such intent was achieved on numerous occasions over a period which extended over years in a brazen, audacious and sophisticated process of criminal conduct.'*

– Gucciardo J  
Director of Public Prosecutions v Najam Shah [2017] VCC 1448 at [47]

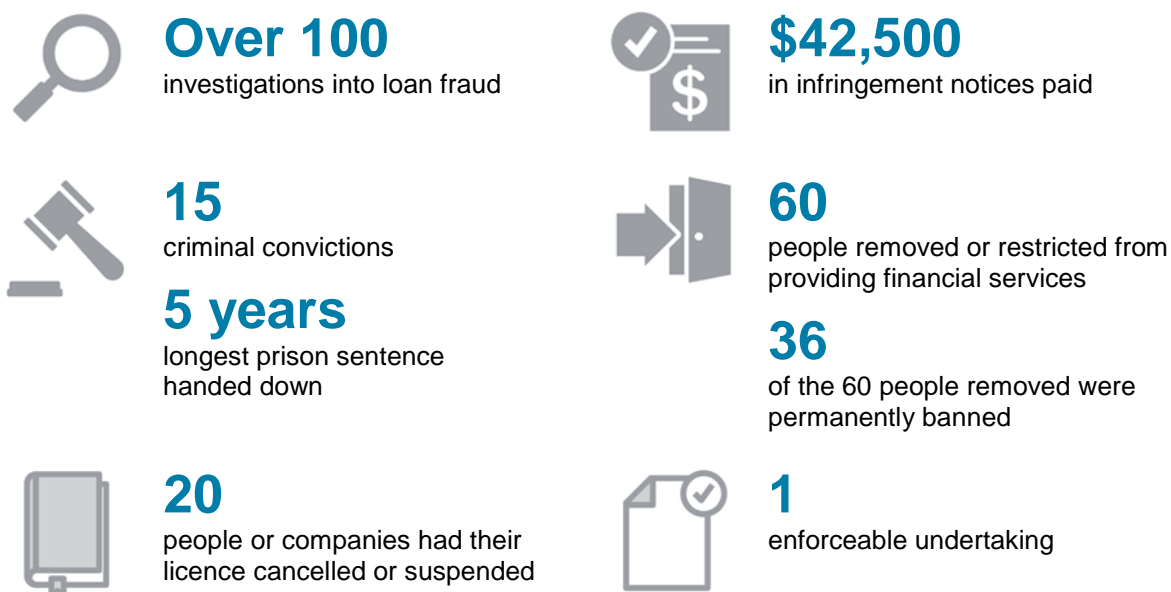
### Summary of outcomes relating to loan fraud since 2010

Since becoming the national consumer credit regulator in 2010, we have made tackling loan fraud a priority to help ensure trust and confidence in the lending industry.

Document fraud in support of loan applications has a detrimental effect on the lending industry. It damages the reputation of lenders and brokers, increases the cost of lending and creates affordability risks for borrowers.

Figure 6 sets out our enforcement outcomes relating to loan fraud since 2010.

#### Figure 6: Enforcement action in relation to loan fraud since 2010



## Looking ahead

Over the next six months, we will continue to focus on enforcing higher standards in the financial services industry, paying particular attention to:

- responsible lending practices in the consumer credit industry;
- financial advisers' compliance with the best interests duty and their obligation to provide appropriate advice to clients;
- Australian financial services (AFS) licensees' failure to deliver ongoing advice services to financial advice customers who are paying fees to receive those services—for more information, see [Report 499](#) *Financial advice: Fees for no service* (REP 499);
- conduct in the credit repair industry that results in consumers being deceived or misled, either about the effectiveness of the services that they pay for, or about the credit repair firm's ability to improve their credit history; and
- instances where AFS licensees claim to provide general advice to retail clients during the sale of financial products (and therefore do not need to comply with the best interests duty and related obligations), but are actually providing personal advice.

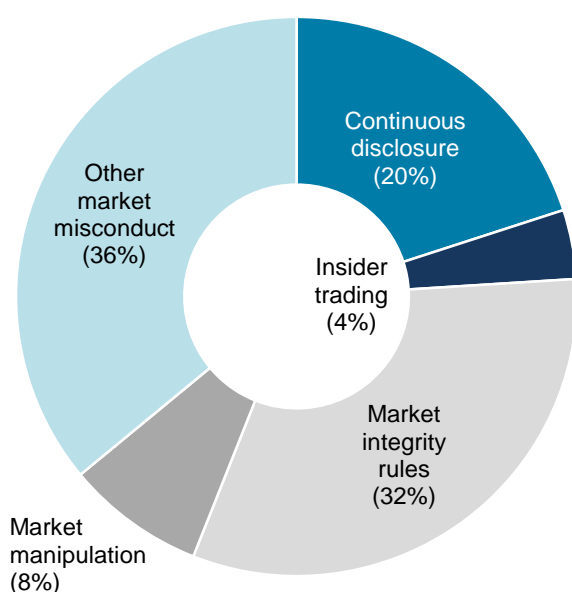
## Market integrity

Robust market integrity ensures Australia's financial markets are fair and efficient, so that firms can thrive and investors can participate with confidence. We undertake investigations and take enforcement action where misconduct threatens market integrity and investor confidence.

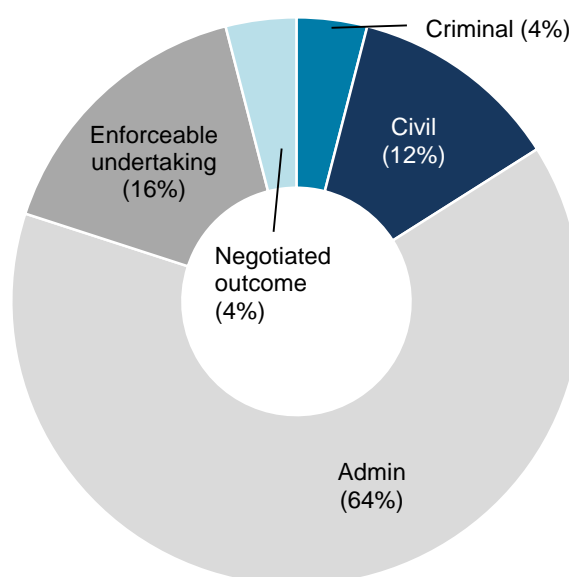
### Enforcement outcomes

This section provides a summary of enforcement outcomes for market integrity in the relevant period.

**Figure 7: Market integrity outcomes by misconduct type**



**Figure 8: Market integrity outcomes by remedy type**



Note: See Table 7 for the data shown in these two figures (accessible version).

**Table 3: Pending market integrity matters before the courts as at 1 January 2018**

Misconduct type	Criminal	Civil
Continuous disclosure	0	6
Insider trading	2	0
Market integrity rules	0	1
Market manipulation	3	3
Other market misconduct	3	0
<b>Total</b>	<b>8</b>	<b>10</b>

Note: These matters have yet to achieve a final result because the court or tribunal has determined liability but has not yet decided the penalty or made the final orders, a plea been entered but a decision on conviction or sentence has yet to be made, or the court has yet to determine whether a breach of the law or an offence has been committed.

## Area of focus

### Financial benchmarks

Financial benchmarks are critical to market integrity because they are used as the reference price for a wide range of financial products. Manipulation of benchmarks can undermine their reliability and damage trust and confidence in Australia's financial markets.

### Case study: BBSW—ANZ and NAB

On 10 November 2017, the Federal Court of Australia imposed penalties of \$10 million each on Australia and New Zealand Banking Group Limited (ANZ) and NAB, for attempting to engage in unconscionable conduct by seeking to influence the bank bill swap reference rate (BBSW), a key Australian interest rate benchmark. The court also declared that each bank had failed to do all things necessary to ensure they provided financial services honestly and fairly.

In 2016 we brought civil penalty proceedings against ANZ and NAB for their role in the setting of the BBSW. Both ANZ and NAB agreed to settle proceedings.

On 20 November 2017, we accepted enforceable undertakings from ANZ and NAB requiring them to make changes to their existing policies, procedures, systems, controls, training and guidance, and to the framework for monitoring and supervising employees within their BBSW businesses. Independent experts appointed by ASIC will assess these programs.

ANZ and NAB have also agreed to each make a community benefit payment of \$20 million to a financial consumer protection fund to be nominated by ASIC, and pay \$20 million each towards our investigations and other costs.

*'The public should be shocked, dismayed and indeed disgusted that conduct of this kind could have occurred. The conduct involved attempts to corrupt a fundamental component of the entire Australian financial system for mere short term commercial advantage. The conduct involved a repeated failure to fulfil what would generally be perceived as the most basic standards of honesty, fairness and commercial decency, let alone the standards that would properly be expected of these two banks. The conduct tends to undermine public confidence in the entirety of the Australian financial system.'*

– Jagot J  
*Australian Securities and Investments Commission v National Australia Bank Limited [2017] FCA 1338 at [115]*

**Area of focus:**  
**Continuous disclosure**

Compliance with continuous disclosure obligations is essential to ensuring fair and efficient markets and confident and informed investors. If an entity becomes aware of market-sensitive information, it must disclose that information to the market in a timely manner.

**Case study: MG Responsible  
Entity Limited**

On 15 December 2017, the Federal Court of Australia declared that MG Responsible Entity Limited (MGRE) had failed to comply with its continuous disclosure obligations between 22 March 2016 and 8.48 am on 27 April 2016, and ordered that MGRE pay a penalty of \$650,000.

Murray Goulburn Co-operative Co. Limited (MG) is one of Australia's largest dairy foods companies and is owned and controlled by dairy farmers. MG established the MG Unit Trust as a special purpose funding vehicle. The MG Unit Trust issues units to external investors and is listed on ASX. MGRE is a wholly-owned subsidiary of MG, and is the trustee and responsible entity for the MG Unit Trust.

MGRE admitted that it had not complied with its continuous disclosure obligations by failing to notify ASX that MG was unlikely to achieve the forecast as stated in ASX announcements dated 29 February 2016.

*'The penalty is towards the higher end of the statutory maximum but a penalty towards the higher end is warranted, reflecting the gravity of the contravention, the market impact and prejudice caused by the contravention, the involvement of the senior level of management in the contravention and failure of governance, and the inadequacy of MGRE's compliance policies at the time and the duration of the contravention.'*

*–Davies J  
Australian Securities & Investments Commission, in the matter of  
MG Responsible Entity Limited v MG Responsible Entity Limited [2017]  
FCA 1531*



**Area of focus:**  
**Market integrity rules**

The market integrity rules impose obligations on market participants, which are designed to ensure the fairness and efficiency of Australia's financial markets.

**Case study: Bell Potter Securities Limited**

On 16 November 2017, Bell Potter Securities Limited (Bell Potter) paid a \$358,000 infringement notice penalty issued by the Markets Disciplinary Panel (MDP).

The MDP found that, in July 2015, Bell Potter had made bids for shares in DirectMoney Limited (DirectMoney) to support the price of DirectMoney shares during the first two weeks of its backdoor listing on ASX. Bell Potter had acted as lead manager and underwriter for DirectMoney's capital raising.

The MDP found that conduct was coordinated between the equity capital markets division of Bell Potter and their Hong Kong division, and was carried out by an experienced trader who—despite being put in a position of conflict—was a willing participant.

The MDP also considered that Bell Potter's notification to ASIC of the suspicious trading in May 2016 was too late. The MDP found that Bell Potter had formed reasonable suspicions of the conduct in July 2015, when concerns were raised by their internal compliance area.

**Looking ahead**

Conduct risk and the integrity of financial benchmarks remain a high priority. We are committed to addressing market abuse (e.g. insider trading and market manipulation) and failures to meet disclosure obligations through enforcement action.

Over the next six months, we will continue to focus on conduct risk. We will also pay particular attention to:

- technology-enabled offending and/or malicious cyber activity in the context of rapid technological developments; and
- the banks' implementation of their enforceable undertakings, to ensure the adequacy and robustness of the systems and controls in their bank bill trading and foreign exchange businesses.

## Small business

Our work in small business compliance and deterrence is focused on helping small businesses understand and comply with their legal obligations under the *Corporations Act 2001* (Corporations Act). We do this by:

- engaging with small businesses, industry groups and associations, and other government agencies; and
- providing resources and guidance to small businesses.

We also help protect small business by working to level the playing field. Where necessary, we may take administrative, civil or criminal action against companies, directors and other office holders who fail in their duties.

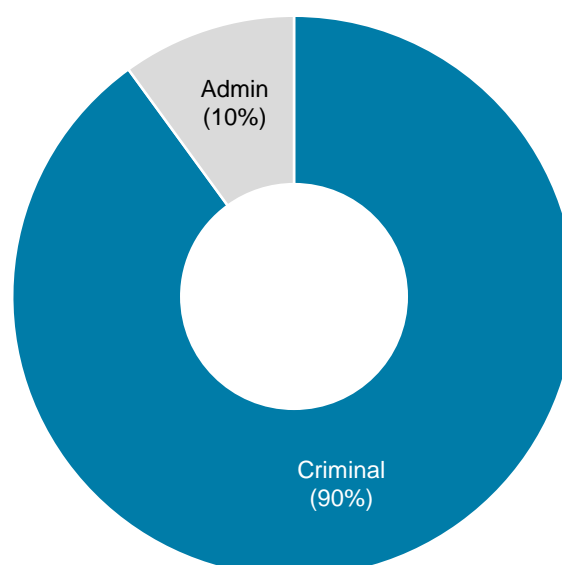
### Enforcement outcomes

This section provides a summary of enforcement outcomes for the protection of small business in the relevant period.

**Figure 9: Small business outcomes by misconduct type**



**Figure 10: Small business outcomes by remedy type**



Note: See Table 8 for the data shown in these two figures (accessible version).

**Table 4: Pending small business matters before the courts as at 1 January 2018**

Misconduct type	Criminal
Action against persons	101
Efficient registration and licensing	5
<b>Total</b>	<b>106</b>

Note: These matters have yet to achieve a final result because the court or tribunal has determined liability but has not yet decided the penalty or made the final orders, a plea been entered but a decision on conviction or sentence has yet to be made, or the court has yet to determine whether a breach of the law or an offence has been committed.

**Area of focus****Illegal phoenix activity**

Illegal phoenix activity occurs when a company suffers financial distress and cannot (or is simply unwilling to) pay its debts, and the directors transfer assets to a new company for little or no consideration before an external administrator's appointment. This means that creditors cannot access assets or recover debts, the company avoids paying tax or employee entitlements, and the liquidator is left to see what they can recover.

**Case study: James Meaden**

On 12 December 2017, James Meaden appeared in the Ballarat Magistrates Court where he was convicted and fined \$5,000 for dishonestly using his position as a director of a company under the Corporations Act. Mr Meaden was the former sole director of Brimarco Pty Ltd (Brimarco), a trailer manufacturing business in Ballarat, Victoria.

Our investigation arose from a report received from the liquidator of Brimarco. We found that Mr Meaden engaged in illegal phoenix activity by transferring \$34,800 from Brimarco to a related company called Tough As Pty Ltd, of which he was also the sole director. The transfer occurred one day before a scheduled court hearing to wind up Brimarco. The effect of the transfer meant that the company had no funds to pay employees' wages and other entitlements, and owed more than \$2 million to numerous other creditors.

As a consequence of his conviction, Mr Meaden was automatically disqualified from managing corporations for a period of five years.

**Looking ahead**

Over the next six months, we will continue to focus on small business issues that affect the regulatory environment, and support compliance programs that inform credit providers of obligations to lodge documents.

We will have a particular focus on:

- credit lenders who do not lodge annual compliance certificates in accordance with the *National Consumer Credit Protection Act 2009* (National Credit Act); and
- addressing illegal phoenix activity and minimising the effects of this activity on companies suffering financial distress.

# Law and policy

## Investigation costs recovery

Information Sheet 204 *Recovery of investigation expenses and costs* (INFO 204) states that, wherever possible, we will seek to recover investigation expenses and costs from persons who have caused those expenses and costs to be incurred.

Under s91 of the ASIC Act and s319 of the National Credit Act, ASIC has the power to make an order to recover our costs where, as a result of an investigation, a person is convicted, a judgement is awarded, or a declaration or other order is made.

The types of costs we can recover include:

- salary costs for our staff who have worked on the investigation;
- travel expenses associated with the investigation, such as to interview witnesses;
- the costs of external legal counsel;
- the costs of employing an expert to perform an analysis; and
- investigation expenses and costs, other than litigation costs, that may be awarded by a court.

Our approach is to consider making an order for the recovery of our investigation expenses and costs in each case where the legislative requirements are met.

For example, in November 2017, we made an order requiring NSG to pay investigation costs of \$50,000, after the Federal Court of Australia found that NSG representatives had contravened the Corporations Act. NSG had failed to take reasonable steps to ensure that its representatives provided advice to its clients that complied with the best interests duty and was appropriate. This was in addition to an order made by the court that NSG pay \$50,000 for our legal costs incurred in the proceedings.

## Appendix: Summary of enforcement outcomes

**Table 5: Corporate governance—Outcomes by misconduct and remedy type**

Type of misconduct	Criminal	Civil	Admin	Enforceable undertaking	Negotiated outcome	Total (misconduct)
Action against auditors	0	0	4	0	1	5 (20%)
Action against liquidators	0	0	0	0	3	3 (12%)
Action against directors	2	0	1	0	0	3 (12%)
Insolvency	0	2	0	0	0	2 (8%)
Other corporate governance misconduct	0	11	0	1	0	12 (48%)
<b>Total (remedy)</b>	<b>2 (8%)</b>	<b>13 (52%)</b>	<b>5 (20%)</b>	<b>1 (4%)</b>	<b>4 (16%)</b>	<b>25 (100%)</b>

Note 1: One civil matter in the 'insolvency' category is currently under appeal.

Note 2: This table sets out the data in Figure 2 and Figure 3.

**Table 6: Financial services—Outcomes by misconduct and remedy type**

Type of misconduct	Criminal	Civil	Admin	Enforceable undertaking	Negotiated outcome	Total (misconduct)
Credit	2	0	23	2	7	34 (32%)
Dishonest conduct, misleading statements	4	23	8	2	2	39 (37%)
Other financial services misconduct	2	3	17	5	5	32 (31%)
<b>Total (remedy)</b>	<b>8 (8%)</b>	<b>26 (25%)</b>	<b>48 (45%)</b>	<b>9 (9%)</b>	<b>14 (13%)</b>	<b>105 (100%)</b>

Note 1: Two criminal matters and one civil matter in the 'dishonest conduct, misleading statements' category are currently under appeal. One administrative remedy in the 'other financial services misconduct' category is currently under appeal.

Note 2: This table sets out the data in Figure 4 and Figure 5.

**Table 7: Market integrity—Outcomes by misconduct and remedy type**

Type of misconduct	Criminal	Civil	Admin	Enforceable undertaking	Negotiated outcome	Total (misconduct)
Continuous disclosure	0	1	4	0	0	5 (20%)
Insider trading	0	0	1	0	0	1 (4%)
Market integrity rules	0	0	6	1	1	8 (32%)
Market manipulation	0	0	2	0	0	2 (8%)
Other market misconduct	1	2	3	3	0	9 (36%)
<b>Total (remedy)</b>	<b>1 (4%)</b>	<b>3 (12%)</b>	<b>16 (64%)</b>	<b>4 (16%)</b>	<b>1 (4%)</b>	<b>25 (100%)</b>

Note 1: One administrative remedy in the 'market manipulation' category is currently under appeal.

Note 2: This table sets out the data in Figure 7 and Figure 8.

**Table 8: Small business—Outcomes by misconduct and remedy type**

<b>Type of misconduct</b>	<b>Criminal</b>	<b>Admin</b>	<b>Total (misconduct)</b>
Action against persons	232	27	259 (97%)
Efficient registration and licensing	9	0	9 (3%)
<b>Total (remedy)</b>	<b>241 (90%)</b>	<b>27 (10%)</b>	<b>268 (100%)</b>

Note: This table sets out the data in Figure 9 and Figure 10.

## Key terms

<b>AFS licence</b>	An Australian financial services licence under s913B of the Corporations Act that authorises a person who carries on a financial services business to provide financial services Note: This is a definition contained in s761A.
<b>AFS licensee</b>	A person who holds an AFS licence under s913B of the Corporations Act Note: This is a definition contained in s761A
<b>ANZ</b>	Australian and New Zealand Banking Group Limited
<b>ASIC</b>	Australian Securities and Investments Commission
<b>ASIC Act</b>	<i>Australian Securities and Investments Commission Act 2001</i>
<b>BBSW</b>	Bank bill swap reference rate
<b>best interests duty</b>	The duty to act in the best interests of the client when giving personal advice to a client as set out in s961B(1) of the Corporations Act
<b>Corporate Plan</b>	<i>ASIC's Corporate Plan 2017–18 to 2020–21: Focus 2017–18</i>
<b>Corporations Act</b>	<i>Corporations Act 2001</i> , including regulations made for the purposes of that Act
<b>enforceable undertaking</b>	An enforceable undertaking that may be accepted by ASIC under reg 7.2A.01 of the Corporations Regulations 2001
<b>financial service</b>	Has the meaning given in Div 4 of Pt 7.1 of the Corporations Act
<b>FOFA</b>	Future of Financial Advice
<b>INFO 204</b> (for example)	An ASIC information sheet (in this example numbered 204)
<b>market integrity rules</b>	Rules made by ASIC, under s798G of the Corporations Act, for trading on domestic licensed markets
<b>MDP</b>	Markets Disciplinary Panel—ASIC's Markets Disciplinary Panel, through which we exercise our powers to issue infringement notices and to accept enforceable undertakings in relation to breaches of market integrity rules
<b>NAB</b>	National Australia Bank Limited
<b>National Credit Act</b>	<i>National Consumer Credit Protection Act 2009</i>
<b>REP 499</b> (for example)	An ASIC report (in this example numbered 499)
<b>relevant period</b>	1 July 2017 to 31 December 2017
<b>s180</b> (for example)	A section of the Corporations Act (in this example numbered 180), unless otherwise specified

## Related information

### Legislation

ASIC Act, s91

Corporations Act

National Credit Act, s319

### Other documents

[AASB 139](#) *Financial instruments: Recognition and measurement*

[Corporate Plan](#)

[INFO 151](#) *ASIC's approach to enforcement*

[INFO 204](#) *Recovery of investigation expenses and costs*

[REP 499](#) *Financial advice: Fees for no service*