



ASIC
Australian Securities &
Investments Commission



ASIC Enforcement Update

July to December
2019

Report 660

Contents

Foreword	3
ASIC's enforcement work	4
Summary of enforcement results	5
Corporate governance	6
Financial services	8
Markets	10
Small business	12

Disclaimer

This report does not constitute legal advice. We encourage you to seek your own professional advice to find out how the *Corporations Act 2001* 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.

© Australian Securities and Investments Commission ASIC
Report 660
Published April 2020
Reissued 22 May 2020 to correct data in Tables 2, 4 and 6.

Foreword

In the course of preparing this Enforcement Update, the community that we regulate has been severely affected by the COVID-19 crisis.

Although this Update looks back at our work over six months at the end of last year, it would be remiss of me not to mention how we will change ASIC's approach in the face of this crisis.

We have recalibrated ASIC's regulatory priorities to focus on challenges created by the crisis and other highly significant or urgent matters.

You can read more about ASIC's response in [ASIC media release 20-086MR](#).

Our enforcement work will continue, however some of that work will also be delayed or affected by the crisis. We are committed to performing our work in a manner that is considerate to industry participants who may be facing significant disruption.

In the last Enforcement Update, published in August 2019, I outlined the establishment of ASIC's Office of Enforcement in July 2019. I also set out its focus on deterrence, public denunciation and punishment, particularly in applying our 'Why not litigate?' enforcement discipline.

In the six months to December 2019, we:

- › developed our enforcement strategy and priorities for 2019–21
- › continued to increase our capacity to investigate market, corporate and financial sector misconduct
- › used our additional resources to take on more enforcement work and to do it faster
- › made very significant progress in responding to matters related to the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (Royal Commission).

In the six months between 1 July and 31 December 2019, ASIC achieved enforcement outcomes in the following priority areas:

- › misconduct by individuals, particularly criminal conduct or governance failures, at board or executive level (see Case study: Former Leighton Holdings executive sentenced, [page 7](#))
- › misconduct that is serious either by its nature or extent of harm, or that involves a large market participant or licensed entity (see Case study: Westpac ordered to pay \$9.15 million penalty for 22 contraventions of the Corporations Act, [page 9](#))
- › serious market misconduct (see Case study: Former director convicted of market manipulation, [page 11](#))
- › illegal phoenix activity (see Case study: Pre-insolvency adviser sentenced to four and a half years imprisonment for money laundering, [page 12](#)).

This Enforcement Update summarises that work and provides a number of case studies as specific examples of the conduct we investigated and the outcomes achieved.

These outcomes include substantial financial penalties and significant terms of imprisonment.

As I have emphasised over the past year, ASIC has a clear resolve and the Office of Enforcement is delivering on the public's expectation that we hold wrongdoers to account.



Daniel Crennan QC
Deputy Chair

ASIC's enforcement work

ASIC is Australia's corporate, markets, financial services and consumer credit regulator. Our vision is for a fair, strong and efficient financial system for all Australians.

To realise our vision we use all our regulatory tools to:

- › change behaviours to improve outcomes for consumers and investors
- › act against misconduct to maintain trust and integrity in the financial system
- › promote strong and innovative development of the financial system
- › help Australians to be in control of their financial lives.

ASIC's enforcement strategy and priorities

ASIC's enforcement teams are committed to meeting the strategic priorities and addressing the focus areas outlined in [ASIC Corporate Plan 2019–23: Focus 2019–20](#).

ASIC's enforcement strategy for 2019–21 is to:

- › identify, prioritise, and act quickly and decisively on the most important enforcement matters to obtain criminal and civil court-based outcomes that discourage and punish misconduct
- › use ASIC's expanded enforcement toolkit, including new and increased civil and criminal penalties
- › use emerging technologies to enhance ASIC's enforcement capabilities
- › better communicate ASIC's enforcement priorities, outcomes and performance.

Drawing on ASIC's strategic priorities, the Office of Enforcement will prioritise these types of matters in 2019–21:

- › Royal Commission referrals and case studies
- › misconduct related to superannuation and insurance
- › cases that engage ASIC's new powers or provisions that carry new or higher penalties
- › illegal phoenix activity
- › auditor misconduct
- › new or emerging types of misconduct, including misconduct carried out online or with the use of emerging technologies.

In addition, ASIC will always prioritise the following types of misconduct:

- › significant market misconduct
- › misconduct that is serious either by its nature or extent of harm, or that involves a large market participant or licensed entity
- › misconduct that involves a high risk of significant consumer harm, particularly involving vulnerable consumers
- › misconduct by individuals, particularly criminal conduct or governance failures, at board or executive level.










In response to the COVID-19 crisis, we are in the process of revising ASIC's enforcement priorities to ensure we can deal with our most significant and urgent matters, and also respond quickly to:

- › serious market misconduct and abuse
- › instances of immediate consumer harm, including predatory lending
- › other egregious unlawful conduct.

Summary of enforcement results

Figure 1 summarises all enforcement results recorded between 1 July and 31 December 2019, including those that have not been reported in public announcements. For example, results arising from summary prosecutions for strict liability offences are not generally announced in ASIC media releases.

Figure 1: Summary of enforcement results (July to December 2019)

PROSECUTIONS		
17	individuals charged in criminal proceedings	
279	criminal charges laid	
10	custodial sentences (8 people imprisoned)	
4	non-custodial sentences	
154	individuals charged in summary prosecutions for strict liability offences	
297	criminal charges laid in summary prosecutions for strict liability offences	
CIVIL PENALTIES		
\$12.9m	in civil penalties imposed by the courts	
9	civil penalty cases commenced	
22	civil penalty cases currently before courts	
BANNINGS		
48	individuals removed or restricted from providing financial services or credit	
29	individuals disqualified or removed from directing companies	
INFRINGEMENT NOTICES, COMPENSATION AND COURT ENFORCEABLE UNDERTAKINGS		
1	infringement notice issued	
\$70,000	in infringement penalties paid	
\$22.2m	in compensation and remediation for consumers and investors	
INVESTIGATIONS		
60	investigations commenced	
40	investigations completed	

Note: No court enforceable undertakings and no community benefit payments were made in this reporting period.

Corporate governance

ASIC is responsible for regulating behaviour that influences company performance. We work to ensure that public companies are properly accountable to their investors by regulating the conduct of companies, their officers and their auditors in Australia.

This includes ensuring public companies understand their obligations to:

- › treat investors and consumers fairly
- › be accountable to investors through accurate, timely and clear disclosure
- › adopt sound corporate governance practices.

Corporate governance results

In the six months between 1 July and 31 December 2019, ASIC recorded 25 corporate governance related results (see Table 1).

As at 1 January 2020, ASIC had 14 criminal and 17 civil corporate governance related matters still before the courts (see Table 2).

Table 1: Corporate governance enforcement results by misconduct and remedy type (1 July to 31 Dec 2019)

Misconduct type	Criminal	Civil	Administrative	Court enforceable undertaking	Remediation outcome	Total
Action against auditors	0	0	20	0	0	20
Action against liquidators	0	0	1	0	0	1
Action against directors	1	1	2	0	0	4
Total	1	1	23	0	0	25

Note 1: The outcomes in this table have been reported in ASIC media releases and include court determinations (criminal and civil), administrative remedies, remediation outcomes and acceptance of court enforceable undertakings.

Note 2: One criminal result and one administrative result in the 'action against directors' category were under appeal as at 1 January 2020.

Table 2: Corporate governance enforcement litigation in progress as at 1 January 2020

Misconduct type	Criminal	Civil
Action against liquidators	0	2
Action against directors	11	9
Misconduct related to insolvency	1	0
Other corporate governance misconduct	2	6
Total	14	17

Note: The data in this table for 'action against liquidators', 'action against directors' and 'other corporate governance misconduct' was corrected on 22 May 2020.



Case study: Former Leighton Holdings executive sentenced

On 29 August 2019, Peter Allan Gregg, a former director and chief financial officer of Leighton Holdings Ltd (LHL), was sentenced to two years imprisonment to be served by way of an intensive correction order, with 12 months of that term to be served in home detention. Mr Gregg was found guilty by a jury of two counts of contravening s1307(1) of the *Corporations Act 2001 (Corporations Act)* by engaging in conduct that resulted in the falsification of LHL's books.

The first count concerned a written instruction from Mr Gregg in August 2011, directing that two payments totalling US\$15 million be made to Asian Global Projects and Trading FZE (Asian Global), a company incorporated in the United Arab Emirates. During the course of trial, the Crown alleged that the payment instruction was false because it did not describe the true purpose of the payments.

The second count concerned a written agreement between LHL – executed by Mr Gregg on its behalf – and Asian Global in December 2011 (but backdated to August 2011) for the provision of steel procurement services by Asian Global. His Honour Judge Lakatos, found that the agreement was signed 'in order to legitimise the payment of US\$15 million'.

In his decision regarding the sentence, Judge Lakatos stated: 'I conclude that the offender benefited in avoiding reputational damage to himself and Leighton Holdings, and that it was avoiding financial and reputational damage to his employer which primarily motivated him to engage in his conduct.'

Mr Gregg has lodged an appeal against his conviction and sentence with the New South Wales Court of Criminal Appeal, and that appeal is listed for hearing in April 2020. This matter was prosecuted by the Commonwealth Director of Public Prosecutions (CDPP). For more information, see [ASIC media release 19-196MR](#).

This result aligns with ASIC's enforcement priority to address misconduct by individuals, particularly criminal conduct or governance failures, at board or executive level.

Financial services

ASIC regulates the conduct of financial services and credit providers. Our work in financial services is focused on improving consumer outcomes. We do this by addressing practices that result in consumer harm or create a risk of harm, particularly for vulnerable consumers.

This includes ensuring that:

- › financial services and credit providers act in the best interests of consumers and investors
- › financial services company directors and their officers are held to account as important gatekeepers who have a duty to ensure the company acts lawfully.

Financial services results

In the six months between 1 July and 31 December 2019, ASIC recorded 55 financial services related results (see Table 3).

Additionally, as at 1 January 2020, ASIC had 16 criminal and 68 civil financial services related matters still before the courts (see Table 4).

Table 3: Financial services results by misconduct and remedy type (1 July to 31 December 2019)

Misconduct type	Criminal	Civil	Administrative	Court enforceable undertaking	Remediation outcome	Total
Credit	1	0	8	0	1	10
Dishonest conduct, misleading statements	3	4	4	0	0	11
Misappropriation, theft, fraud	2	2	1	0	0	5
Other financial services misconduct	1	1	24	0	3	29
Total	7	7	37	0	4	55

Note 1: The results in this table have been reported in ASIC media releases and include court determinations (criminal and civil), administrative remedies, remediation outcomes and acceptance of court enforceable undertakings.

Note 2: One criminal and two administrative results in the 'credit' category, one administrative result in the 'other financial services misconduct' and one criminal result in the 'misappropriation, theft, fraud' category were under appeal as at 1 January 2020.

Table 4: Financial services enforcement litigation in progress as at 1 January 2020

Misconduct type	Criminal	Civil
Misconduct related to provision of credit	1	6
Dishonest conduct, misleading statements	12	22
Misappropriation, theft and fraud	2	0
Unlicensed conduct	0	3
Other financial services misconduct	1	37
Total	16	68

Note: The data in this table for all misconduct types was corrected on 22 May 2020.



Case study: Westpac ordered to pay \$9.15 million penalty for 22 contraventions of the Corporations Act

On 19 December 2019, the Federal Court ordered Westpac Banking Corporation (Westpac) to pay a penalty of \$9.15 million for 22 contraventions of s961K of the Corporations Act, and to pay ASIC's costs of the proceedings.

The court case related to poor financial advice provided by a former Westpac financial planner, Sudhir Sinha, in breach of the best interests duty and related obligations under the Corporations Act. Westpac is directly liable for these breaches because the law imposes a specific liability on licensees for breaches by their financial advisers.

In its decision, the Federal Court found Mr Sinha failed to act in the best interests of his clients, provided inappropriate financial advice and failed to prioritise the interests of his clients.

In June 2017, ASIC banned Mr Sinha from providing financial services for five years: see [ASIC media release 17-178MR](#).

For more information, see [ASIC media release 19-368MR](#).

This result aligns with ASIC's enforcement priority to address misconduct that is serious either by its nature or extent of harm or that involves a large market participant or licensed entity.



Case study: Former NAB branch manager sentenced for making false and misleading statements

In November 2019, Western Sydney National Australia Bank Limited (NAB) branch manager Mathew Alwan was sentenced to 12 months imprisonment to be served by way of an intensive correction order for making false and misleading statements to NAB about 24 home loan applications.

Mr Alwan pleaded guilty after he told NAB that an introducer had referred borrowers to make loan applications. In reality, the NAB introducer was Mr Alwan's uncle, operating under the business name 'Suit Club'.

In delivering the sentence, Magistrate Atkinson remarked that the Royal Commission had made very strong statements about the need for accountability and strong general deterrence, so that people in the industry understand how important it is to comply with the regulations.

ASIC previously permanently banned Mr Alwan from providing financial services: see [ASIC media release 18-302MR](#).

ASIC has taken further action regarding NAB's Introducer program, launching civil proceedings in the Federal Court against NAB in August 2019: see [ASIC media release 19-222MR](#).

The matter was prosecuted by the CDPP. For more information, see [ASIC media release 19-315MR](#).

Markets

ASIC investigates market misconduct and acts to ensure Australia's financial markets are fair and efficient. This includes addressing issues relating to:

- › *insider trading* – if prevalent, insider trading represents a failure of the market and damages trust in market fairness and transparency
- › *market manipulation* – undermines fair, orderly and transparent markets, and can have the effect of creating an artificial price for trading in financial products on a financial market
- › *market integrity rules* – impose obligations on market participants that are designed to ensure the fairness and efficiency of Australia's financial markets.

Markets results

In the six months between 1 July and 31 December 2019, ASIC recorded seven market-related results (see Table 5).

In addition, as at 1 January 2020, ASIC had 10 criminal and 14 civil market-related matters still before the courts (see Table 6).

Table 5: Markets results by misconduct and remedy type (1 July to 31 December 2019)

Misconduct type	Criminal	Civil	Administrative	Court enforceable undertaking	Remediation outcome	Total
Continuous disclosure	0	1	0	0	0	1
Market integrity rules	0	0	1	0	0	1
Market manipulation	1	0	0	0	0	1
Other market misconduct	0	3	1	0	0	4
Total	1	4	2	0	0	7

Note: The results in this table have been reported in ASIC media releases and include court determinations (criminal and civil), administrative remedies, remediation outcomes and acceptance of court enforceable undertakings.

Table 6: Markets-related enforcement litigation in progress as at 1 January 2020

Misconduct type	Criminal	Civil
Continuous disclosure	0	5
Insider trading	3	0
Market manipulation	2	0
Other market misconduct	5	9
Total	10	14

Note: The data in this table for 'other market misconduct' was corrected on 22 May 2020.



Case study: Former director convicted of market manipulation

Benjamin Amzalak was sentenced in the District Court of New South Wales to two years imprisonment, to be served by way of an intensive correction order, including a condition that he perform 300 hours of community service. Mr Amzalak pleaded guilty to an offence of market manipulation.

Mr Amzalak was sentenced for his part in transactions that had or were likely to have had the effect of creating an artificial price for trading in shares of Precious Metal Resources Limited (PMR) on ASX.

In sentencing, His Honour Acting Judge Madgwick remarked that these types of offences undermine the public's confidence in the integrity of the market and that investors are entitled to have a fair chance to trade on honest market information.

ASIC commenced an investigation into trading in the shares of PMR and associated companies following detection by our surveillance system.

The matter was prosecuted by the CDPP. For more information: see [ASIC media release 19-245MR](#).

This result aligns with ASIC's enforcement priority to address serious market misconduct.

Small business

ASIC focuses on helping small businesses understand and comply with their legal obligations under the Corporations Act, and conducts surveillance, enforcement and policy work.

When necessary, ASIC takes administrative, civil or criminal action against companies, directors and other officeholders who fail in their duties. By doing so, ASIC helps to ensure that all market participants can benefit from a level playing field.

Small business results

In the six months between 1 July and 31 December 2019, ASIC recorded 190 small business related results (see Table 7).

Additionally, as at 1 January 2020, ASIC had 162 small business related criminal matters still before the courts (see Table 8).

Table 7: Small business-related enforcement results by misconduct and remedy type (1 July to 31 December 2019)

Misconduct type	Criminal	Administrative	Total
Action against persons or companies	155	30	185
Efficient registration and licensing	5	0	5
Total	160	30	190

Note 1: The results from our Small Business Engagement and Compliance team are not generally announced in ASIC media releases.

Note 2: Two administrative results in the 'action against persons or companies' category were under appeal as at 1 January 2020.

Table 8: Small business-related criminal prosecutions in progress as at 1 January 2020

Misconduct type	Criminal
Action against persons or companies	157
Misconduct related to registration and licensing	5
Total	162



Case study: Pre-insolvency adviser sentenced to four and a half years imprisonment for money laundering

In November 2019, former pre-insolvency adviser John Narramore was sentenced to four and a half years in prison, with a non-parole period of 20 months, for intentionally dealing in proceeds of crime worth \$100,000 or more.

Mr Narramore advised Richard Ludwig, a former director of Cap Coast Telecoms Pty Ltd (Cap Coast Telecoms), to engage in activity that would involve the illegal removal of company assets to prevent creditors from having access to these assets.

Mr Narramore and Stephen O'Neill issued fictitious invoices from companies under their control to Cap Coast Telecoms and arranged for \$743,050 to be transferred from Cap Coast Telecoms bank accounts to the bank accounts of companies under their control. Mr Narramore and Mr O'Neill then transferred the funds to Mr Ludwig or his associates. Once funds had been transferred, Cap Coast Telecoms was wound up on 19 January 2019. At the time, it owed creditors \$2,955,128.

In delivering the sentence, Judge Everson found that Mr Narramore's conduct was a serious example of money laundering, being a sophisticated scheme involving a significant amount of money and motivated by financial gain.

The matter was prosecuted by the CDPP. For more information, see [ASIC media release 19-307MR](#).

This result aligns with ASIC's enforcement priority to address illegal phoenix activity.

asic.gov.au