



**ASIC**  
Australian Securities &  
Investments Commission



# ASIC Enforcement Update

January to June 2020

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## About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents: consultation papers, regulatory guides, information sheets and reports.

## 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.

# Foreword

This Update reports on our enforcement progress in the period from January to June 2020 – a period in which the world began confronting the COVID-19 pandemic.

While it remains important to report on our continued progress in enforcement matters, ASIC is conscious that the COVID-19 pandemic has had a significant impact upon the Australian financial system and that few participants have been unaffected by it.

## Enforcement work continues in trying times

In the last Enforcement Update, I outlined how ASIC was adapting its regulatory approach in the face of this crisis. With our enforcement work, this has meant:

- › developing a set of pandemic-related enforcement priorities (see page 5)
- › taking steps to ensure our work does not impose unreasonable burdens upon industry participants
- › greater use of remote technology to progress our work.

We remain committed to continuing our enforcement work as efficiently as possible, despite the delays and challenges caused by the pandemic. This includes using our additional resources to take on more enforcement work and to continue building our capability. At the same time, we are pursuing our pandemic-related priorities by taking swift enforcement action in response to misconduct taking place in the midst of the pandemic. We have obtained urgent orders to protect vulnerable consumers during this trying time, including by:

- › obtaining injunctions to restrain companies in the Mayfair 101 Group from promoting debenture products

- › obtaining the appointment of external administrators to Secure Investments Pty Ltd and Aquila Group Pty Ltd in relation to an alleged illegal managed investment scheme involving self-managed superannuation funds.

## Royal Commission-related enforcement work

In the six months to June 2020, we completed many of the outstanding investigations into referrals and case studies from the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry. This resulted in the commencement of four further civil penalty cases against:

- › CBA over its AgriAdvantage Plus Package
- › CBA in relation to the credit services allegedly provided to a problem gambler
- › Colonial First State Investments Limited (CFSIL) over alleged misleading and deceptive statements made to members of its FirstChoice superannuation fund
- › CBA and CFSIL over alleged conflicted remuneration paid by CFSIL to CBA between 2013 and 2019.

We also had very significant civil penalties imposed on large financial institutions:

- › CBA was ordered to pay a civil penalty of \$5 million and publish a corrective notice regarding its AgriAdvantage Plus Package
- › AMP was ordered to pay a civil penalty of over \$5 million for failing to prevent insurance churn by its financial planners (see case study on page 10).

Civil penalties can only be imposed by the courts in Australia and are an important measure in ensuring that specific and general deterrence is achieved.

## Other enforcement work

We also achieved outcomes in other enforcement priority areas during this period:

### *Misconduct by individuals*

- › Former Kleenmaid director Andrew Young was sentenced to nine years imprisonment for fraud and insolvent trading (see case study on page 8)
- › Former NSW South Coast financial adviser Trevor Martin was sentenced for dishonestly obtaining client funds (see case study on page 11)

### *Misconduct related to superannuation and insurance*

- › Company director George Nowak was sentenced to 10 years imprisonment for deception relating to his dealings with the assets of self-managed superannuation funds

### *Significant market misconduct*

- › Former Sirtex Medical Limited CEO and director Gilman Wong was sentenced for insider trading (see case study on page 13)

### *Illegal phoenix activity*

- › Seven company directors were disqualified for engaging in illegal phoenix activity (see case study on page 15)
- › Pre-insolvency adviser Stephen O'Neill was sentenced to five years imprisonment for money laundering for his role in a scheme to remove the company assets of a company that subsequently went into liquidation.

We pay close attention to judicial comment and decisions on our cases, whether we are successful, successful in part or unsuccessful. We review our completed litigation and apply the lessons learned across our enforcement and regulatory activity. For example, we are re-examining our regulatory guidance on responsible lending conduct ([RG 209](#)) to take into account the majority judgment of the Full Federal Court in our responsible lending case against Westpac Banking Corporation.

## Octaviar and Storm litigation successfully completed

During this period, we also successfully completed enforcement action in two long-running matters, both of which significantly clarified the law in relation to directors' duties in Australia:

- › The High Court of Australia upheld ASIC's appeal in relation to civil penalty proceedings against officers and a fund manager of MFS Ltd (also known as Octaviar Ltd). Those proceedings resulted in civil penalties totalling \$1.89 million being imposed upon five individuals, as well as substantial compensation orders and disqualification orders
- › The Full Federal Court confirmed an earlier decision that the directors of Storm Financial Pty Ltd had breached their directors' duties resulting in civil penalties totalling \$140,000. Each director was disqualified from managing corporations for seven years. The High Court of Australia subsequently denied the directors of Storm special leave to appeal that decision.

As I have emphasised since the Royal Commission, 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 priority areas outlined in the [ASIC Interim Corporate Plan 2020–21](#).

Drawing on ASIC's strategic priorities, we are prioritising the following types of matters:

- › Royal Commission referrals and case studies
- › misconduct related to superannuation and insurance
- › cases that engage ASIC's new powers or provisions that now carry penalties or higher penalties
- › illegal phoenix activity
- › auditor misconduct
- › new types of misconduct (e.g. those carried out online or using emerging technologies).

In addition, we 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.

## Responding to the COVID-19 pandemic










In response to the COVID-19 pandemic's impact on the financial system and the potential for harm that this has created, we have implemented a set of pandemic-related enforcement priorities that will guide our response to misconduct associated with the pandemic. These priorities are to address:

- › misconduct arising from behaviour seeking to exploit the pandemic environment, including predatory lending practices, mis-selling of unsuitable insurance or investment products and poor claims handling
- › opportunistic conduct, such as scams, unlicensed conduct, and misleading and deceptive advertising
- › failures to disclose materially negative information
- › opportunistic and misleading market announcements made to the ASX
- › egregious governance failures within corporations, schemes and superannuation funds.

# Summary of enforcement results

Figure 1 summarises all enforcement results recorded between 1 January and 30 June 2020, 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 (January to June 2020)**

PROSECUTIONS		
18	individuals charged in criminal proceedings	
233	criminal charges laid	
9	custodial sentences (5 people imprisoned)	
4	non-custodial sentences	
94	defendants prosecuted for strict liability offences	
207	criminal charges laid in summary prosecutions for strict liability offences	
CIVIL PENALTIES		
\$12m	in civil penalties imposed by the courts	
4	civil penalty cases commenced	
23	civil penalty cases currently before courts	
BANNINGS		
54	individuals removed or restricted from providing financial services or credit	
20	individuals disqualified or removed from directing companies	
INFRINGEMENT NOTICES, COMPENSATION AND COURT ENFORCEABLE UNDERTAKINGS		
2	infringement notices issued	
\$536,000	in infringement penalties paid	
\$160m	in compensation and remediation for consumers and investors	
INVESTIGATIONS		
99	investigations commenced	
62	investigations and litigation actions completed	



# 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 enforcement results

In the six months between 1 January and 30 June 2020, ASIC recorded 23 corporate governance-related results (see Table 1).

ASIC had 17 criminal and 11 civil corporate governance-related matters still before the courts as at 1 July 2020 (see Table 2).

**Table 1: Corporate governance enforcement results (number of respondents by misconduct and remedy type) 1 January to 30 June 2020**

Misconduct type	Criminal	Civil	Administrative	Court enforceable undertaking	Remediation outcome	Total
Auditor misconduct	0	0	11	0	0	11
Liquidator misconduct	0	0	1	0	0	1
Director misconduct	1	0	1	0	0	2
Insolvency misconduct	1	1	0	0	0	2
Other corporate governance misconduct	2	5	0	0	0	7
<b>Total</b>	<b>4</b>	<b>6</b>	<b>13</b>	<b>0</b>	<b>0</b>	<b>23</b>

**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:** The criminal result in the 'insolvency misconduct' category was under appeal as at 1 July 2020.

**Table 2: Corporate governance enforcement litigation in progress (number of respondents as at 1 July)**

Misconduct type	Criminal	Civil
Liquidator misconduct	1	2
Director misconduct	13	5
Insolvency misconduct	1	0
Other corporate governance misconduct	2	4
<b>Total</b>	<b>17</b>	<b>11</b>



### **Case study: Former Kleenmaid director sentenced to nine years imprisonment for fraud and insolvent trading**

In February, Mr Andrew Eric Young, a former director of the Kleenmaid group of companies, was found guilty by a District Court (Qld) jury of 19 offences arising out of the collapse of the national whitegoods distributor.

Mr Young was convicted on two counts of fraud and sentenced to nine years imprisonment with a non-parole period of four years. The parole eligibility date for the fraud offences was set at 9 January 2024.

Mr Young was also convicted of 17 counts of insolvent trading for which he was sentenced to a total of three years imprisonment to commence from the parole eligibility date for the fraud. After serving 12 months of this imprisonment, Mr Young will be eligible for release upon entering into a recognisance of \$500 to be of good behaviour for two years.

In passing sentence, Judge Devereaux SC said, 'It would be obnoxious and naive to consider these types of offences as victimless' and that 'people in the community must be put on notice that dishonesty will bring with it commensurate punishment'.

The proceedings against Mr Young and his co-accused were the culmination of an extensive and complex investigation by ASIC and prosecution of the charges by the Commonwealth Director of Public Prosecutions (CDPP).

On 7 February 2020, Mr Young filed an application to appeal his conviction. On 6 March 2020, Mr Young filed an application to appeal his sentence.

For more information, see [ASIC media release 20-027MR](#).

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 enforcement results

In the six months between 1 January and 30 June 2020, ASIC recorded 54 financial services-related results (see Table 3).

As at 1 July 2020, ASIC had 11 criminal and 49 civil financial services-related matters still before the courts (see Table 4).

**Table 3: Financial services enforcement results (number of respondents by misconduct and remedy type) 1 January to 30 June 2020**

Misconduct type	Criminal	Civil	Administrative	Court enforceable undertaking	Remediation outcome	Total
Credit misconduct	1	1	2	0	1	5
Dishonest conduct, misleading statements	2	3	3	0	0	8
Misappropriation, theft, fraud	0	1	2	0	0	3
Other financial services misconduct	0	6	32	0	0	38
<b>Total</b>	<b>3</b>	<b>11</b>	<b>39</b>	<b>0</b>	<b>1</b>	<b>54</b>

**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 4: Financial services enforcement litigation in progress (number of respondents as at 1 July 2020)**

Misconduct type	Criminal	Civil
Credit misconduct	1	6
Dishonest conduct, misleading statements	6	23
Misappropriation, theft and fraud	3	0
Unlicensed conduct	0	3
Other financial services misconduct	1	17
<b>Total</b>	<b>11</b>	<b>49</b>



**Case study: AMP to pay \$5.175 million penalty for failing to prevent insurance churn by its financial planners**

The Federal Court ordered AMP to pay a \$5.175 million penalty after the court found AMP failed to take reasonable steps to ensure its financial planners complied with the best interests duty and related obligations under the *Corporations Act 2001* (Corporations Act).

In this case, ASIC alleged that a number of AMP's financial planners engaged in 'rewriting conduct', which is providing advice that results in the cancellation of the client's existing insurance policies and the taking out of similar replacement policies by way of a new application rather than through a transfer. By cancelling insurance policies and advising clients to submit new applications, clients were exposed to a number of significant risks and the planners received higher commissions than they would have by simply transferring the policies.

In its decision, the court noted that the rewriting conduct by one of AMP's financial planners, Mr Rommel Panganiban, was 'morally indefensible'. The court accepted ASIC's case that, having become aware of Mr Panganiban's conduct, to meet its legal obligations it was necessary for AMP to ascertain the extent of similar breaches by other planners. AMP failed to do so, and the court found that 'the lack of an effective response is an illustration of how badly things had gone wrong within the organisation'.

The court found that there were six contraventions of s961L of the Corporations Act and imposed a penalty of \$5.175 million. The court indicated that it will make orders requiring AMP to undertake a review and remediation program to ensure that clients who were subject to rewriting conduct are identified and properly remediated. The court also ordered AMP to implement a forward-looking compliance plan that seeks to prohibit rewriting conduct through improved communication, training and supervision. For more information, see [ASIC media release 20-024MR](#).

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 financial adviser sentenced for dishonestly obtaining client funds

Trevor Martin, a former financial advisor, was sentenced to three years' imprisonment to be served by way of Intensive Corrections Order (ICO), for dishonestly obtaining client funds. Mr Martin was ordered to serve 750 hours of supervised community service as part of the ICO.

Mr Martin had earlier pleaded guilty to offences he committed between June 2011 and April 2015, a period in which he dishonestly obtained \$208,000 of his clients' funds.

Mr Martin was sentenced for three charges of s192E of the *Crimes Act 1900* (NSW), with each resulting in a sentence of two years and three months, 18 months, and nine months respectively, to be served concurrently to make a three-year aggregate sentence of imprisonment. Judge Wass found that Mr Martin was suitable for an ICO based on the type of offending and the subjective features of this case.

Mr Martin was an authorised representative of The Salisbury Group and, later, Charter Financial Planning Limited, which is owned by AMP. He advised his clients of investment opportunities, telling his clients he would invest the monies on their behalf. He convinced clients to transfer money to his business account and went on to use their money for his own personal expenses and other purposes.

In delivering the sentence, Judge Wass remarked that Mr Martin's behaviour was a 'breach of trust completely and grossly betrayed his clients'.

For more information, see [ASIC media release 20-073MR](#).

This action falls within ASIC's Wealth Management Major Financial Institutions Portfolio. The Portfolio focuses on the financial services conduct of Australia's largest financial institutions (NAB, Westpac, CBA, ANZ and AMP) with respect to credit and retail lending, financial advice, fees for no service, superannuation trustees, insurance, unfair contract terms, and other licensee obligations.

# 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* – this damages trust in market fairness and transparency
- › *market manipulation* – this 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.

## Markets enforcement results

In the six months between 1 January and 30 June 2020, ASIC recorded 11 market-related results (see Table 5).

As at 1 July 2020, ASIC had 11 criminal and 6 civil market-related matters still before the courts (see Table 6).

**Table 5: Markets enforcement results (number of respondents by misconduct and remedy type)  
1 January to 30 June 2020**

Misconduct type	Criminal	Civil	Administrative	Court enforceable undertaking	Remediation outcome	Total
Insider trading	1	0	0	0	0	1
Other market misconduct	0	0	9	0	1	10
<b>Total</b>	<b>1</b>	<b>0</b>	<b>9</b>	<b>0</b>	<b>1</b>	<b>11</b>

**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 enforcement litigation in progress (number of respondents as at 1 July 2020)**

Misconduct type	Criminal	Civil
Continuous disclosure	0	4
Insider trading	4	0
Market manipulation	3	0
Other market misconduct	4	2
<b>Total</b>	<b>11</b>	<b>6</b>



### **Case study: Former CEO and director of Sirtex Medical Limited sentenced for insider trading**

Mr Gilman Wong, the former CEO and director of Sirtex Medical Limited, was sentenced in the District Court (NSW) after pleading guilty to an offence of insider trading.

Appearing before Judge Bennett SC, Mr Wong was sentenced to one year and six months imprisonment to be immediately released on recognisance of \$10,000 to be of good behaviour for three years. By reason of his conviction, Mr Wong is also disqualified from managing corporations for five years.

On 26 October 2016, while in possession of inside information concerning Sirtex's sales, Mr Wong sold 74,968 Sirtex shares for an average price of \$28.56 per share, totalling nearly \$2.15 million.

On 9 December 2016, Sirtex released a trading update on the ASX downgrading its growth forecasts for the 2017 financial year in light of sales figures in the year-to-date period. Following the announcement, the opening price of Sirtex shares fell to \$13.01, a decrease of approximately 49% from the previous day's closing price of \$25.49. The value of the Sirtex shares had they been sold at the volume weighted average price (VWAP) on 9 December 2016, would have been just over \$1.12 million.

When Mr Wong sold his Sirtex shares on 26 October 2016, he was aware of the global dose sales of Sirtex's product, SIR-Spheres, for the period July to October 2016. This information was not generally available, but if it had been, a reasonable person would have expected it to have a material effect on the price or value of Sirtex's shares.

The matter was prosecuted by the CDPP. For more information, see [ASIC media release 20-127MR](#).

# 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 enforcement results

In the six months between 1 January and 30 June 2020, ASIC recorded 130 small business-related results (see Table 7).

Additionally, as at 1 July 2020, ASIC had 168 small business-related criminal matters still before the courts (see Table 8).

**Table 7: Small business enforcement results (number of respondents by misconduct and remedy type) 1 January to 30 June 2020**

Misconduct type	Criminal	Administrative	Total
Action against persons or companies	99	31	130
<b>Total</b>	<b>99</b>	<b>31</b>	<b>130</b>

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

**Table 8: Small business criminal prosecutions in progress (number of respondents as at 1 July 2020)**

Misconduct type	Criminal
Action against persons or companies	168
<b>Total</b>	<b>168</b>



### Case study: Directors disqualified for engaging in illegal phoenix activity

As part of ASIC's focus on combating illegal phoenix activity, between 1 January and 30 June 2020 ASIC disqualified seven directors from managing companies.

Andrew Yiasemides from NSW used numerous companies to operate a business that manufactured confectionary products. When the company that operated the business accrued debts, Yiasemides would systematically transfer the business to other companies, allowing him to avoid paying creditors, but continue to operate the business.

ASIC found that Yiasemides improperly used his position as a director for his personal benefit and to the detriment of the company. ASIC also found that he misused the corporate form when he transferred the business to other companies, leaving insufficient assets to pay creditors.

With more than \$6.4 million owed to creditors for five failed companies, Yiasemides was disqualified for the maximum period of five years.

Other persons disqualified between January and June 2020 were:

- › Con and John Demetriou, each for four years
- › Nathan Barnwell, for four years
- › Sean O'Reilly, for four years
- › Damien Harvie, for four years
- › Miroslav Gubas, for five years.

For more information, see ASIC media releases [20-081MR](#), [20-125MR](#), [20-152MR](#) and [20-171MR](#).