



ASIC
Australian Securities &
Investments Commission



ASIC enforcement and regulatory update: April to June 2022

Report 733 | July 2022

About this report

This report provides an update on ASIC's work between 1 April and 30 June 2022.

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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.

Acting against misconduct

ASIC is an active litigant against misconduct. A key outcome this quarter was the order by the Federal Court for Westpac to pay penalties of \$113 million for widespread compliance failures.

We also remain vigilant against insider trading. This quarter ASIC for the first time successfully brought charges against an individual for dissemination of information about illegal transactions under the *Corporations Act 2001* (Corporations Act).

We will continue to use our range of regulatory tools, including enforcement action, to address misconduct and maintain trust and integrity in the financial system.

'A fundamental theme, from the commencement of my term, is wanting ASIC to be ambitious and confident in discharging its regulatory and enforcement responsibilities, to serve and advance the public interest.'

– Chair Joseph Longo

Taking action against insider trading and market manipulation

On 6 June 2022, Gabriel Govinda (known online as 'Fibonarchy') pleaded guilty to manipulation of stocks listed on ASX and illegal dissemination of information relating to the manipulation. This is the first time a person has been convicted of charges under section 1041D of the Corporations Act.

In the same month, Sigma Healthcare Limited's (Sigma) former general manager Michael Story and Jin Xi Li were each sentenced for insider trading. The court found Mr Story sold Sigma shares while he was in possession of inside information. Separately, Mr Li was found to have traded in contracts

for difference (CFDs) of PanAust Limited while he was in possession of inside information.

Read more

[22-133MR](#) Gabriel Govinda pleads guilty to market manipulation

[22-157MR](#) Former Sigma Healthcare general manager sentenced for insider trading

[22-149MR](#) Caloundra man sentenced for insider trading

'Investigating and pursuing insider trading is an enduring priority for ASIC to ensure our markets are strong and fair.'

– Deputy Chair Sarah Court



Case study: Multiple Westpac legal actions lead to combined \$113 million penalty

In April 2022, the Federal Court ordered Westpac to pay penalties of \$113 million for its widespread compliance failures across multiple Westpac businesses, spanning its banking, superannuation, wealth management and insurance brands.

ASIC launched an unprecedented six civil penalty proceedings against Westpac businesses in November 2021 after extensive investigations found repeated harms, impacting more than 70,000 customers over 13 years.

Westpac admitted to the allegations in all six cases and agreed to remediate approximately \$80 million to customers.

On 8 April 2022, Westpac subsidiary and superannuation trustee, BT Funds Management Limited, was ordered to pay a \$20 million penalty for incorrectly charging commission payments to members of one of its superannuation funds. This is the first matter to receive judgment among the six civil penalty proceedings.

ASIC brought these actions to underline the key obligation on all Australian financial services (AFS) licensees to be honest and fair when providing financial services. These cases highlight the need for firms to prioritise and fund systems upgrades to remove poor systems and processes, and to improve governance.

For more information, see [22-097MR](#) *Westpac penalised \$113 million after multiple ASIC legal actions* and [22-087MR](#) *Westpac subsidiary BT Funds Management penalised \$20 million for incorrectly charging commissions for insurance in superannuation*.



Penalty for mis-selling consumer credit insurance

On 7 April 2022, in separate proceedings, the Federal Court ordered Westpac Banking Corporation to pay a \$1.5 million penalty for mis-selling consumer credit insurance with its credit cards and Flexi Loans to customers who had not agreed to buy insurance policies.

Read more

[22-084MR](#) *Westpac to pay \$1.5 million penalty for mis-selling consumer credit insurance*

Addressing breaches of consumer credit provisions

On 28 June 2022, ASIC won its appeal before the Full Federal Court in relation to the 'financial supply fee' charged by Cigno Pty Ltd, with the full court finding unanimously that that the fee was a charge 'made for providing credit'. That decision reversed the outcome in the Federal Court in June 2021.

The court found that legislation must be looked at in a way that 'ensures that the remedial provisions of the [National Credit Code] are not easily avoided by carefully structured credit arrangements'.

Read more

[22-158MR](#) *ASIC wins appeal on Cigno and BHF Solutions Federal Court decision*

[21-144MR](#) *ASIC's application against Cigno and BHF Solutions dismissed by Federal Court*



Case study: Cryptocurrency lender faces criminal charges

In April 2022, Melbourne-based cryptocurrency lender Helio Lending Pty Ltd (Helio Lending) was charged with falsely claiming that it held an Australian credit licence when it did not.

Helio Lending offered cryptocurrency-backed loans to consumers, using the cryptocurrency as security over the loan.

ASIC alleges that Helio Lending falsely represented on its website that it held Australian credit licence 391330, when it did not. The maximum penalty for a breach of section 30 of the *National Consumer Credit Protection Act 2009* (National Credit Act) is \$252,000.













Action against Helio Lending was followed by civil action to freeze the assets of company director Sasha Hopkins and two of his companies, The A Team Property Group Pty Ltd and Sash Investment Holdings Pty Ltd, which included freezing various crypto-assets.

ASIC will continue to investigate and take action against unlicensed financial services businesses, with a focus on misconduct involving crypto-assets.

For more information, see [22-085MR](#) *Cryptocurrency lender charged for false Australian credit licence claims* and [22-138MR](#) *Court freezes funds and assets of Sasha Hopkins, The A Team Property Group*.

Summary of enforcement outcomes

Figure 1: Summary of enforcement outcomes (1 January to 30 June 2022)

PROSECUTIONS		
25	individuals or companies charged in criminal proceedings	
132	criminal charges laid	
7	custodial sentences, including fully suspended sentences (two people imprisoned)	
10	non-custodial sentences	
81	defendants prosecuted for strict liability offences	
171	criminal charges laid in summary prosecutions for strict liability offences	
CIVIL PENALTIES		
\$145.8m	in civil penalties imposed by the courts	
7	civil penalty cases commenced	
40	civil penalty cases currently before the courts	
BANNINGS		
31	individuals removed or restricted from providing financial services or credit	
26	individuals disqualified or removed from directing companies	
INFRINGEMENT NOTICES		
2	infringement notices issued	
\$26,640	in infringement penalties paid	
INVESTIGATIONS		
60	investigations commenced	
148	investigations ongoing	

Note: Figure 1 summarises all enforcement outcomes recorded between 1 January and 30 June 2022, including those that have not been reported in public announcements. For example, outcomes arising from summary prosecutions for strict liability offences are not generally announced in ASIC media releases.

Read more

For more information, see [summary of enforcement outcomes: January to June 2022](#).

Protecting consumers and investors

During the quarter, we remained focused on protecting consumers and investors against misconduct and harms relating to financial products and services.

We launched proceedings in the Federal Court against various entities where we allege that consumers had been misled or charged excessive fees. For the first time, we took action against a timeshare provider for breaches of the financial services laws.

We called for improved resilience during market outages, warned investors to look out for green bond scams, and extended our product intervention order imposing conditions on the issue and distribution of CFDs.

Enforcing consumer protections in credit

ASIC sued Rent4Keeps and Layaway Depot in separate proceedings for alleged breaches of various consumer protections under the National Credit Act. We are concerned that both businesses operated business models designed to avoid consumer protections for financially vulnerable consumers, including the annual cost rate cap under the National Credit Act.

We also commenced civil penalty proceedings in the Federal Court against Sunshine Loans Pty Ltd for collecting over \$320,000 in fees that it was allegedly prohibited from charging when providing small amount credit contracts.

Separately, two former directors of Rent 2 Own Cars Australia Pty Ltd were ordered to pay a combined penalty of \$228,000, after an earlier finding that they were involved in illegally providing high-cost credit to buyers of used cars.

Read more

[22-090MR](#) ASIC sues Rent4Keeps and Layaway Depot for alleged breaches of Credit Act

[22-132MR](#) ASIC sues Sunshine Loans for charging prohibited fees

[22-105MR](#) Former Rent 2 Own Cars directors to pay \$228,000 penalty for their involvement in misleading consumers

Calling for improved resilience during market outages

In June 2022, we called on market operators and participants to continue to implement our expectations to improve the resilience of the Australian equity market during outages, including by facilitating trading on alternative markets.

[Report 708](#) ASIC's expectations for industry in responding to a market outage was published in November 2021 in response to the ASX equity market outage. ASIC will continue to monitor progress by market operators and participants against these expectations.

Read more

[22-159MR](#) ASIC calls on industry to continue to improve resilience during market outages

Addressing misconduct: Accounts, withdrawals and fees

In April 2022, we commenced civil penalty proceedings against Macquarie Bank Ltd (Macquarie) for failing to adequately monitor and control transactions by third parties, such as financial advisers, on their customers' cash management accounts. The impact on Macquarie's customers includes \$2.9 million in unauthorised withdrawals by now convicted former financial adviser, Ross Andrew Hopkins.

In May 2022, we commenced civil penalty proceedings against Australia and New Zealand Banking Group Ltd (ANZ) for allegedly misleading its customers about available funds and balances in their credit card accounts.

Read more

[22-078MR](#) ASIC takes action against Macquarie Bank for alleged failures to properly monitor third party withdrawals from customer accounts

[22-122MR](#) ASIC sues ANZ for overstating account balances and charging fees

Taking action against 'fees for no service'

In June 2022, we commenced civil penalty proceedings against Mercer Financial Advice (Australia) Pty Ltd for allegedly making false or misleading representations to its customers about fees charged and services that were not provided, and for failing to provide fee disclosure statements.

Read more

[22-165MR](#) ASIC sues Mercer Financial Advice for misleading customers about fees for no service and fee disclosure statement failures

Addressing failure to act in clients' best interests

Following an ASIC investigation, the Federal Court made declarations in May 2022 that timeshare company Ultiqa Lifestyle Promotions Ltd breached financial services laws by failing to ensure that financial advice given to consumers was in the clients' best interests.

Read more

[22-111MR](#) Federal Court finds timeshare company Ultiqa failed consumers with multiple breaches of financial services laws

'This is an important decision for consumers and ASIC's first financial advice action against a timeshare provider.'

– Deputy Chair Karen Chester

ePayments Code updated to strengthen consumer protection

On 2 June 2022, we published the updated [ePayments Code](#) (Code) to clarify and enhance protections for consumers. The changes extend the Code to cover payments made using the New Payments Platform, remove ambiguity and, where appropriate, expand protections.

ASIC is responsible for administering and reviewing the Code.

Read more

[22-125MR](#) ASIC releases updated ePayments Code



Case study: ASIC extends product intervention order on CFDs

Extension of the product intervention order will help ensure that CFD protections in Australia remain in line with those in comparable markets.

On 6 April 2022, we extended our product intervention order imposing conditions on the issue and distribution of CFDs for a further five years to 23 May 2027. We also released [Report 724 Response to submissions on CP 348 Extension of the CFD product intervention order](#). The report summarises our analysis of the impact of the order, using data from over 60 CFD issuers.

Since 29 March 2021, the product intervention order has strengthened protections by reducing CFD leverage available to retail clients and by targeting product features and sales practices that amplify retail clients' CFD losses. We found that the order has been effective in reducing the risk of significant detriment to retail clients resulting from CFDs.

For more information, see [22-082MR](#) ASIC's CFD product intervention order extended for five years.

Separately, on 26 May 2022, we released [Consultation Paper 362 Extension of the binary options product intervention order](#) to seek feedback on a proposal to extend our product intervention order banning the issue and distribution of binary options to retail clients until it is revoked or sunsets on 1 October 2031.

Warning on green bond scams

In May 2022, we alerted investors about fake green bonds. We reminded investors to look out for scammers who represent themselves as well-known financial services firms and invite people to invest in fictitious 'environmentally sustainable green bonds'.

Read more

[Warning: Scammers offering fake green bonds](#)

Improving industry's financial reporting and risk management

This quarter we announced new financial reporting requirements for AFS licensees, highlighted key focus areas to be included in financial reports, and called for better disclosure of business risks and asset values.

Following a court finding against RI Advice for failure to adequately manage cybersecurity risks, we reminded AFS licensees of the obligation to effectively manage cybersecurity risks.

New financial reporting requirements for AFS licensees

On 3 June 2022, we announced new financial reporting requirements for AFS licensees, following changes to the standards set by the Australian Accounting Standards Board (AASB).

Under the new requirements, AFS licensees' financial reports must contain disclosures consistent with those of other for-profit entities, prepared under accounting standards set by the AASB.

Read more

[22-128MR](#) ASIC announces financial reporting changes for AFS licensees

Highlighting focus areas to be included in financial reports

In June 2022, we urged directors, preparers of financial reports and auditors to assess whether companies' 2022 annual and half-

year financial reports provide useful and meaningful information for investors and other users. We also highlighted key focus areas for reporting by companies for the reporting period ending 30 June 2022.

Read more

[22-124MR](#) ASIC highlights focus areas for 30 June 2022 reporting

Calling for better disclosure in financial reports

In June 2022, we called for better disclosure of business risks and asset values in financial reports. This followed our latest review of listed entities' financial reports, which resulted in inquiries mostly related to insufficient disclosure of business risks in the operating and financial review and impairment of assets.

Read more

[22-153MR](#) ASIC calls for better disclosure of business risks and asset values following financial reports review



Case study: Australian-first finding of failure to adequately manage cybersecurity risks

In May 2022, AFS licensee RI Advice was found to have breached its licence obligations to act efficiently and fairly when it failed to have adequate risk management systems to manage its cybersecurity risks.

In an Australian first, the Federal Court found there were a number of inadequate risk management practices across the RI Advice network. This included some of its authorised representatives failing to have up-to-date antivirus software, system backups, email filtering or quarantining, and poor password practices. In one of the incidents, an unknown malicious agent obtained unauthorised access to an authorised representative's file server, resulting in the potential compromise of confidential and sensitive personal information of several thousand clients.

The outcome demonstrates the importance of having adequate cybersecurity systems in place to protect against unauthorised access to information.

ASIC's article, [What a Federal Court ruling on cybersecurity means for AFS licensees](#), provides further guidance about the importance of good cybersecurity. We also remind listed entities to continue to improve cyber resilience in our article [Cyber safety a company culture matter](#).

RI Advice was ordered to pay \$750,000 towards ASIC's costs. For more information, see [22-104MR Court finds RI Advice failed to adequately manage cybersecurity risks](#).



Engaging with industry on new and existing obligations

During the quarter, we provided guidance and information to help industry understand and comply with new and existing obligations, including information about the new corporate collective investment vehicles (CCIVs) regime, information for superannuation and investment funds on how to avoid 'greenwashing', and guidance under the Better Advice Act.

We also reminded superannuation trustees to be transparent in their communications to members about underperformance.

Implementing new responsibilities under the Better Advice Act

This quarter we released a range of information and guidance as part of our responsibilities under the *Financial Sector Reform (Hayne Royal Commission Response—Better Advice) Act 2021* (Better Advice Act).

In June 2022, we released [Information Sheet 270](#) *Warnings and reprimands* to explain the requirement for ASIC to give warnings and reprimands to financial advisers in specified circumstances under the Better Advice Act.

In the [Financial advisers quick reference guide](#), released in June 2022, we provided an overview of eligibility to sit the financial adviser exam, deadlines for completing approved degrees, requirements for completing a professional year, and education standards for providing financial advice.

We also released exam results of the 17th financial adviser exam cycle held in May. We reminded industry that from 1 October 2022, all financial advisers must have passed the exam to continue to provide personal advice.

In May 2022, we published information about the eligibility for new financial advisers and foreign advisers to sit the financial adviser exam, as well as notification obligations relating to professional year arrangements.

Read more

[22-139MR](#) ASIC releases information sheet on warnings and reprimands given to financial advisers

[Information about the exam and professional year arrangements for new financial advisers, their licensees, and foreign advisers](#)

[ASIC releases May 2022 financial adviser exam results](#)

Implementing the CCIVs regime

In June 2022, we released a range of documents, including [Report 728](#) *Response to submissions on CP 360 Corporate collective investment vehicles: Preparing for the commencement of the new regime* and [Information Sheet 272](#) *How to register a corporate collective investment vehicle and sub-fund*.

We provided guidance about registering and operating CCIVs and sub-funds, as well as constitution and compliance plan requirements. The regime commenced on 1 July 2022.

Read more

[22-152MR](#) ASIC releases new and updated guidance for corporate collective investment vehicles

Driving better governance among super trustees

Trustees in Australia's superannuation industry have revised their internal policies and procedures after ASIC surveillance found significant deficiencies in their conflicts management arrangements, and a lack of oversight and control measures in relation to investment switching.

We wrote to the 23 trustees we reviewed, outlining our concerns and asking them to improve their policies and procedures. In response, the trustees have committed to implement a range of changes to improve arrangements for managing conflicts.

Read more

[22-081MR](#) *Superannuation trustees strengthen governance practices following ASIC surveillance of investment switching*

Warning trustees to improve transparency

In June 2022, we released the findings of our review of superannuation trustees' communications with members following the first annual performance test for MySuper products.

Our review found that trustees whose products failed generally complied with the legal obligations to notify members of the failed test and disclose the failed test on their website. However, the communication strategies of some trustees may have risked confusing or misleading members about their product's performance.

We reiterated that trustees should communicate performance test results to members in a balanced, clear and factual way.

Read more

[22-154MR](#) *ASIC warns super trustees to be transparent in their underperformance communications to members*

'Appropriate governance is integral to maintaining consumer trust and confidence in the superannuation industry.'

– Commissioner Danielle Press



Case study: ASIC releases information sheet on 'greenwashing'

In June 2022, we released an information sheet to help issuers avoid 'greenwashing' when offering or promoting sustainability-related products.

The release of [Information Sheet 271](#) *How to avoid greenwashing when offering or promoting sustainability-related products* (INFO 271) followed our review of a sample of superannuation and investment products that identified some areas for improvement.

INFO 271 is aimed at helping issuers comply with their existing regulatory obligations. It sets out nine questions for issuers to ask themselves. We expect issuers to review their practices against the questions to ensure that investors have adequate information to make informed investment decisions.

For more information, see [22-141MR](#) *How to avoid 'greenwashing' for superannuation and managed funds*.

Separately, we encouraged all relevant stakeholders to make a submission to the International Sustainability Standards Board's consultation on global baseline climate and sustainability disclosures. See [22-161MR](#) *ASIC encourages submissions to the International Sustainability Standards Board consultation on global baseline climate and sustainability disclosures*.

'This is and will remain a priority area of focus. ASIC is continuing to monitor the market and will be looking for misleading claims about environmental, social and governance (ESG) and sustainability.'

– Commissioner Sean Hughes