



ASIC
Australian Securities &
Investments Commission

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ASIC quarterly update: October to December 2021

Report 717 | February 2022

About this report

This report provides an update on ASIC's work undertaken between 1 October and 31 December 2021.

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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.

Acting against misconduct

In the final quarter of 2021 we remained committed to enforcing the law using all of our regulatory tools to litigate and act against misconduct.

Our investigations into matters arising from the Financial Services Royal Commission (FSRC) were completed in the quarter. We also commenced six proceedings against Westpac over compliance failures, and disqualified or laid charges against multiple directors for their involvement in failed companies or breaching directors' duties.

We will continue to take considered and proportionate action where we find harm or wrongdoing.

“A strong commitment to targeted, credible corporate law enforcement is a critical feature of effective regulation. By enforcing the law against those who break the rules, we support those who want to do the right thing.”

– Chair Joseph Longo



Finalising FSRC investigations

ASIC filed a number of proceedings following investigations into conduct exposed during the FSRC. Six of these proceedings were either finalised or being litigated in the last quarter of 2021. Our action against Australia and New Zealand Banking Group (ANZ) on 9 December 2021 marks the final civil case for ASIC arising from the FSRC.

Read more

[Financial Services Royal Commission: Summary of ASIC enforcement action](#)

[Colonial First State to pay \\$20 million penalty for misleading superannuation members](#)

[ASIC sues former Freedom Insurance director and consultant over insurance sales incentive programs](#)

[Former Victorian financial adviser sentenced to jail for obtaining financial advantage by deception](#)

[ASIC brings criminal charges against Avanteos Investments for charging deceased superannuation members](#)

[ASIC sues ANZ for misleading customers and failing to provide promised benefits – final Royal Commission investigation](#)

“ A constant theme of these investigations has been the failure of large financial services entities to honour agreements with customers and to ensure proper processes and systems are in place to prevent widespread compliance failures. ASIC will continue to take enforcement action in relation to misconduct of this nature.”

– Deputy Chair Sarah Court

Taking action against system and compliance failures

We commenced six civil penalty proceedings against Westpac in the Federal Court in November 2021. The proceedings, each the result of an individual ASIC investigation, allege widespread compliance failures across multiple Westpac businesses. The alleged conduct occurred over many years and affected many thousands of consumers.

Westpac admitted to the allegations in each of the proceedings and will remediate approximately \$80 million to customers.

It is unprecedented for ASIC to file multiple proceedings against the same respondent at the same time.

Read more

[ASIC launches multiple legal actions against Westpac](#)

Combating consumer credit breaches

We commenced proceedings in the Federal Court against ANZ in November 2021 for breaches of the Credit Act arising from referrals through its home loan 'introducer program' and from unlicensed individuals outside the introducer program. The program involved home loan referrals to ANZ from third party 'introducers' from various professions, such as cleaners and real estate representatives.

Read more

[ASIC sues ANZ over 'introducer program' home loan referrals](#)

Taking action against misleading advertising

In December 2021, the Federal Court ordered four companies in the Mayfair 101 Group to pay a combined penalty of \$30 million after finding the companies engaged in misleading or deceptive conduct and made false or misleading representations when promoting the M+ and M Core Fixed Income Notes. The court also permanently restrained the companies from using certain words and phrases (such as 'term deposit' and 'certainty') in any future advertising.

The court's orders have been stayed while the defendants consider an appeal.

Read more

[Mayfair 101 Group to pay \\$30 million penalty for misleading advertising](#)

[ASIC files contempt application against James Mawhinney](#)

Addressing pricing failures in insurance

ASIC launched civil penalty proceedings in the Federal Court against Insurance Australia Limited (IAL) in October 2021 alleging IAL had failed to honour discount promises made to its customers.

ASIC also commenced Federal Court civil penalty proceedings in November 2021 against MLC Limited (MLC) alleging insurance policy and service failures resulting from poor systems and controls.

Read more

[ASIC launches Federal Court action and calls on general insurers to review pricing practices](#)

[ASIC sues MLC Life Insurance for multiple insurance failures](#)

“Poor conduct has serious financial implications for companies, their investors, and their customers. Not to mention the costly lag and drag of remediation and reputational damage.”

– Deputy Chair Karen Chester

Driving better corporate governance

In the last quarter of 2021 we produced guidance for companies on new and continuing corporate governance obligations, including whistleblowing and illegal phoenix activity.

We also focused on disclosure issues relating to environmental, social and governance issues, and called on companies to focus on some key areas when preparing their financial reports.

Urging action on whistleblower policies

In October 2021, we wrote to CEOs of public companies, large proprietary companies and trustees of registrable superannuation entities urging them to review their whistleblower policies to ensure they comply with the law.

Read more

[ASIC calls on Australian CEOs to review whistleblower policies](#)

[Letter to CEOs](#) (PDF 925 KB)

“ASIC will continue to advocate for whistleblower programs which place at their heart trust, impartiality and protection. With the increased transparency and earlier risk identification and harm prevention arising from an effective regime, we can all have greater confidence – and with that confidence – support the recovery of our community and economy.”¹

– Commissioner Sean Hughes

Deterring illegal phoenix activity

In November 2021, ASIC and the Australian Taxation Office (ATO) jointly announced the results of our director engagement consultations. These results were announced as part of ASIC's broader Phoenix Surveillance Campaign, designed to deter and prevent illegal phoenix activity.

We conducted 21 joint-engagement consultations with directors of selected companies to remind them of their director duties and taxation obligations. The campaign had a positive impact on directors' behaviour, resulting in 80% of the consulted companies lodging their outstanding ATO returns.

Read more

[ASIC and ATO engage with directors as part of ASIC's Phoenix Surveillance Campaign](#)

Highlighting focus areas to be included in 2021 financial reports

The uncertainty created by the COVID-19 pandemic continued to impact operating conditions for businesses. To help guide directors, preparers of financial reports and auditors, we outlined priority areas for companies preparing financial reports for the period ending 31 December 2021.

It remains more important than ever that investors and markets are properly informed through financial reporting and related disclosures about underlying drivers of results, key assumptions, strategies, future prospects and risks in full-year and half-year reports.

Read more

[ASIC highlights focus areas for 31 December 2021 financial reports under COVID-19 conditions](#)

New director ID obligations commence

The final quarter of 2021 saw the arrival of the much-anticipated director ID requirement for company directors. This unique identifier is designed to prevent the use of false or fraudulent director identities.

While the new Australian Business Registry Services is responsible for administering the director ID initiative, ASIC is responsible for enforcing director ID offences set out in the *Corporations Act 2001*.

Read more

[New ID requirement for directors](#)

Supporting climate and sustainability disclosure

On 14 December 2021, ASIC welcomed the establishment of the International Sustainability Standards Board (ISSB). The ISSB will develop high-quality global baseline climate and sustainability disclosure standards to meet investors' information needs.

We will continue to closely monitor developments in climate and sustainability reporting in Australia and internationally, and will provide further updates as ISSB standards develop.

Read more

[ASIC welcomes new International Sustainability Standards Board and updated climate-related disclosure guidance](#)

Upholding market integrity

We remained dedicated to ensuring a fair, orderly and transparent market, with investor protection at the core of our actions.

The adoption of crypto-assets by Australians seeking better investment yields continued to grow during the quarter. We worked with domestic and international counterparts to consider regulatory responses in this fast-shifting landscape and took the first steps towards regulating crypto-assets which underlie exchange traded products.

We also imposed licence conditions on the ASX and created accountability mechanisms for its board and senior management as our investigation on the ASX outage in November 2020 came to an end.

Crypto-asset guidance

ASIC released information for product issuers and market operators in October 2021 on how they can meet their regulatory obligations for crypto-asset exchange-traded products and other investment products.

The information covers good practices for market operators in how they admit and supervise these products, and good practices for product issuers in how they establish and operate these products. Key matters covered by the good-practice guide include admission and monitoring standards, custody of crypto-assets, pricing methodologies, disclosure and risk management.

Read more

[ASIC releases guidance on crypto-asset related investment products](#)

[Information Sheet 225 Crypto-assets](#)

[Information Sheet 230 Exchange traded products: Admission guidelines](#)

ASX Group licence conditions

In November 2021, we imposed additional licence conditions on three licences held within the ASX Group after concluding our investigation and consideration of the November 2020 market outage.

The licence conditions are directed at mitigating risks for future upgrades, with specific emphasis on the oversight of the Clearing House Electronic Subregister System (CHES) Replacement program, due to go live in April 2023.

Read more

[ASIC imposes additional licence conditions on ASX and issues expectations to improve market resilience](#)

Focusing on cyber resilience

We released our latest report on the cyber resilience of firms operating in Australia's financial markets in December 2021. While the report has found Australian financial market firms continue to be resilient against a rapidly changing cyber threat environment, the improvement in their cyber resilience has been small.

The report identified supply chain risks as a key concern, with most firms saying it was a priority despite no material improvement since our last report published two years ago.

Read more

[ASIC reports on cyber resilience assessments of financial markets firms](#)

[Report 716 Cyber resilience of firms in Australia's financial markets: 2020-21](#)

“Disruptions are, and will continue to be, business-as-usual for the foreseeable future. ASIC expects to see a substantial improvement in the management of cyber security risk across Australia's financial market firms when we begin to undertake our next cyber resilience review.”

– Commissioner Cathie Armour

Disrupting pump and dump activity

ASIC took action to disrupt pump and dump activity on social media. We observed blatant attempts to pump share prices using posts on social media to announce a target stock, a designated time to buy and a target price or percentage gain to be reached before dumping the shares.

In light of this, we started using social media platforms to directly engage with people who are involved in this type of activity which may amount to market manipulation.

Read more

[Disrupting pump and dump activity on social media](#)

Releasing audit inspection findings

On 30 November 2021, ASIC released findings of its inspection of 45 audit files for the 12 months to 30 June 2021. The findings revealed an overall increase in the percentage of key audit areas where auditors did not obtain reasonable assurance that the financial reports were free from material misstatement.

ASIC called on audit firms to continue to evaluate the effectiveness of their current initiatives to improve audit quality and revise them or implement new and improved actions if they are not achieving appropriate outcomes.

Read more

[ASIC reports on audit inspection findings for 12 months to 30 June 2021](#)

Helping industry meet new requirements

We provided guidance and important information to industry during the quarter to help them meet new requirements stemming from recent law reforms.

We also launched initiatives to help advice licensees and advisers provide good quality and affordable personal advice to consumers.

Explaining ASIC's additional regulatory responsibilities in financial advice

Drawing to the end of 2021, we published information to explain how ASIC's regulation of the financial advice industry will be broadened after the passage of the Better Advice Act.

Furthermore, we issued information to explain the operation of the Financial Services and Credit Panel, whose role has been expanded starting 1 January 2022. We also gave an account of how the regulation and registration of tax financial advisers will be affected.

Separately, we have taken over the administration of the financial adviser exam from the Financial Adviser Standards and Ethics Authority, which has now been wound up.

Read more

[Better Advice Act broadens ASIC's regulatory responsibilities](#)

[Operation of the Financial Services and Credit Panel](#)

[ASIC issues information for tax financial advisers under Better Advice Act](#)

[How to enrol for the financial adviser exam and where to find important exam information](#)

[Important information for financial advisers yet to pass the exam and their licensees](#)

Financial advice obligations

We continued to respond to feedback from the financial advice industry on how to improve consumer access to affordable advice.

On 5 November 2021, we released an information sheet on records of advice (ROA), which included three ROA examples. It clarifies the obligations of financial advisers and advice licensees when they use ROAs to provide personal advice to retail clients.

On 1 December 2021, we released an information sheet on limited advice, which included an example statement of advice. This information sheet was designed to help advisers comply with obligations when providing limited personal advice to retail clients.

Read more

[ASIC releases guidance and examples on records of advice](#)

[Information Sheet 266 FAQs: Records of Advice](#)

[ASIC releases guidance and examples on limited advice](#)

[Information Sheet 267 Tips for giving limited advice](#)

Superannuation product distribution

On 15 October 2021, we released updated information for employers and trustees on changes affecting the distribution of superannuation products as a result of recent law reforms. The information sheet provided guidance to employers on how to communicate superannuation choices to employees without breaking the law.

In 2021–22 we will conduct a thematic review on how trustees use employers to distribute superannuation products. We will consider regulatory action where we identify misconduct causing consumer harm.

Read more

[ASIC releases updated information about the distribution of superannuation products](#)

[Information Sheet 89 *Communicating with employees about superannuation fund choice: What you can and cannot do*](#)

Reminding trustees to examine outcomes for members

In 2021 we reviewed the practices of the trustees of five funds that provided default income protection insurance on an opt-out basis to their members.

The review again highlighted the need for trustees to examine outcomes for their members, and proactively consider whether their income protection insurance products deliver value for money.

In 2022 we will conduct surveillance on the progress made by industry more broadly in insurance in superannuation. As part of this work, we will ask life insurers for comparable and reliable data relating to income protection offsets.

Read more

[Super trustees offering default income protection insurance urged to check on member outcomes](#)

“ASIC is committed to supporting the advice industry in its efforts to ensure everyday Australians can access quality advice at a reasonable price. We will continue to engage with industry and prioritise initiatives that address its concerns about cost and regulatory uncertainty.”

– Commissioner Danielle Press