



ASIC
Australian Securities &
Investments Commission



ASIC Enforcement Update

January to June 2021

Report 699 | September 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. Examples in this report are purely for illustration; they are not exhaustive and are not intended to impose or imply particular rules or requirements.

Overview of our enforcement work

This report provides an update on our enforcement action between 1 January and 30 June 2021. During this period, we continued to pursue our enforcement priorities and a fair, strong and efficient financial system for all Australians.

Outcomes to deter misconduct

A number of significant enforcement outcomes were recorded, including:

- › **more than \$20 million in penalties** imposed on over-the-counter (OTC) derivatives provider Forex Capital Trading Pty Ltd, including for unconscionable conduct, demonstrating that derivatives providers need to behave appropriately towards clients when dealing in high-risk financial products (see page 10)
- › **\$7 million penalty imposed on the Commonwealth Bank** for overcharging interest – the outcome of one of our Royal Commission matters (see page 6)
- › **criminal penalties, including imprisonment** for a financial adviser and a company director (see pages 8 and 15), each convicted of fraud, and an intensive corrections order for a former CFO of a listed company convicted of market manipulation (see page 11)
- › **\$750,000 penalty imposed on GoGetta Equipment Funding Pty Ltd**, highlighting the importance of consumer leasing providers being licensed (see page 7).

Court action in priority areas

In this period, we commenced court action in the following enforcement priority areas:

















- › **Insurance misconduct:** ASIC v Westpac Banking Corporation (see [21-066MR](#))
- › **Superannuation misconduct:**
 - ASIC v Retail Employees Superannuation Pty Ltd (see [21-034MR](#))
 - ASIC v Statewide Superannuation Pty Ltd (see [21-037MR](#))
- › **Significant market misconduct:**
 - ASIC v Westpac Banking Corporation for alleged insider trading, unconscionable conduct and breaches of obligations as an Australian financial services licence holder (see [21-093MR](#))
 - ASIC v Austal Limited for alleged continuous disclosure contraventions (see [21-128MR](#))
- › **Auditor misconduct:** Criminal charges against EC Audit Pty Ltd and Robert James Evett for alleged breaches of auditing standards (see [21-126MR](#))
- › **Credit misconduct during pandemic:** Civil action against Membo Finance Pty Ltd for alleged contraventions of the *National Consumer Credit Protection Act 2009* when its borrowers experienced financial hardship (see [21-049MR](#)).

Our Corporate Plan

For more information about ASIC's regulatory tools and enforcement priorities for 2021–22, read our latest [Corporate Plan](#).

Summary of enforcement outcomes

Figure 1: Summary of enforcement outcomes (January to June 2021)

PROSECUTIONS		
19	individuals charged in criminal proceedings	
143	criminal charges laid	
5	people imprisoned	
5	non-custodial sentences	
133	defendants prosecuted for strict liability offences	
256	criminal charges laid in summary prosecutions for strict liability offences	
CIVIL PENALTIES		
\$29.6m	in civil penalties imposed by the courts	
12	civil penalty cases commenced	
36	civil penalty cases currently before courts	
BANNINGS		
70	people or companies removed or restricted from providing financial services or credit	
19	individuals disqualified or removed from directing companies	
INFRINGEMENT NOTICES AND COURT ENFORCEABLE UNDERTAKINGS		
3	infringement notices issued	
\$392,000	in infringement penalties paid	
1	court enforceable undertaking	
INVESTIGATIONS		
52	investigations commenced	
204	investigations ongoing	

Note: Figure 1 summarises all enforcement outcomes recorded between 1 January and 30 June 2021, 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.

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 outcomes

In the six months between 1 January and 30 June 2021, ASIC concluded 50 financial services enforcement matters (see Table 1).

As at 1 July 2021, ASIC had 26 criminal and 18 civil financial services-related matters still before the courts (see Table 2).

Table 1: Financial services enforcement outcomes (number of respondents by misconduct and remedy type) 1 January to 30 June 2021

Misconduct type	Criminal	Civil	Administrative	Court enforceable undertaking	Total
Credit misconduct	4	5	5	0	14
Financial advice misconduct	0	3	7	0	10
Investment management misconduct	0	3	2	0	5
Superannuation misconduct	1	1	0	0	2
Other financial services misconduct	0	0	19	0	19
Total	5	12	33	0	50

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

Note 2: One civil outcome in the 'Investment management misconduct' category was under appeal as at 1 July 2021.

Table 2: Financial services enforcement litigation in progress (number of respondents as at 1 July 2021)

Misconduct type	Criminal	Civil
Credit misconduct	6	3
Financial advice misconduct	4	5
Insurance misconduct	3	3
Investment management misconduct	5	2
Superannuation misconduct	8	5
Total	26	18



Case study: CBA ordered to pay \$7 million penalty for mischarging interest to more than 1,500 customers

ASIC's action against the Commonwealth Bank of Australia (CBA) underlines the importance of having appropriate systems in place to ensure customers are not overcharged interest.

In April 2021, the Federal Court ordered CBA to pay a \$7 million penalty for charging a rate of interest on business overdraft accounts that was substantially higher than what its customers had been advised.

ASIC alleged, and CBA admitted, that between 1 December 2014 and 31 March 2018, the bank charged over 1,500 customers a different interest rate from that provided in its terms and conditions, due to a systems error. This meant over \$2 million in higher interest was charged to customers' overdraft accounts.

Justice Lee held that CBA had not acted expeditiously to remedy the error and that CBA's delay was troubling given the commercial nature of the relationship between a bank and its customers. His Honour emphasised that the delay in remediating customers following the systems error was an aggravating factor determining the overall penalty figure.

ASIC brought this case because it identified that CBA did not have the appropriate systems, governance and controls in place to ensure that it delivered on promises made to its customers and to protect them from harm.

'When financial institutions discover overcharging, they must take immediate action to remediate impacted consumers ... CBA is now making investments in its systems as a matter of priority. All financial services institutions should make similar commitments to rebuild trust in our financial system ...'

– Commissioner Sean Hughes

This case was a Financial Services Royal Commission case study. For more information, see [Media Release 21-065MR](#).



Case study: Unlicensed consumer leasing results in \$750,000 penalty and \$9 million in remediation

The outcome of a case against GoGetta Equipment Funding Pty Ltd (GoGetta) sends a strong message on unlicensed credit activity and highlights the harm to consumers that such activity can cause.

In April 2021, the Federal Court ordered GoGetta to pay a \$750,000 penalty for engaging in unlicensed consumer leasing.

GoGetta was a subsidiary of SIV Capital Ltd, a business equipment finance company. In 2015 and 2016, GoGetta entered into rental agreements with consumers who hired motor vehicles for personal or domestic reasons. GoGetta then charged fees to these consumers. However, GoGetta did not hold an Australian credit licence to enter into consumer leases or charge fees.

ASIC commenced this action because it considered that the contraventions by GoGetta, while not deliberate, were serious because GoGetta failed to have appropriate systems in place to ensure that it did not lease to consumers.

'All firms and financial institutions must ensure they have the systems, governance and controls in place to ensure they comply with the law and provide the required consumer protections to their customers.'

– Commissioner Danielle Press

As part of ASIC's action, in August 2020, ASIC accepted a court enforceable undertaking from GoGetta to ensure remediation of affected consumers. By 7 April 2021, GoGetta had remediated consumers by providing over \$9.1 million in refunds, write offs and interest waivers.

For more information, see [Media Release 21-086MR](#).



Case study: Former financial adviser sentenced to six years imprisonment for misappropriating client funds

The imprisonment of former financial adviser Ross Hopkins demonstrates the serious consequences for financial advisers who behave dishonestly. The case highlights that clients of financial advisers should have direct access to information about their investments.

In May 2021 Ross Andrew Hopkins was sentenced in the District Court of New South Wales to a maximum period of six years imprisonment, with a non-parole period of four years, for using client funds for his own benefit.

Following an ASIC investigation, Mr Hopkins, a former financial adviser, was convicted of 15 dishonesty offences under the *Corporations Act 2001*. The offences were committed when he was the sole director of QWL Pty Ltd (QWL). He pleaded guilty to all charges.

Mr Hopkins was trusted by his clients to manage their self-managed superannuation accounts. He had almost complete control of his clients' superannuation, which allowed him to make transactions on their behalf.

Over a period of nearly three years, Mr Hopkins misappropriated approximately \$2.9 million of his clients' funds without their knowledge. He used these funds for his own benefit, such as holidays, rent, paying credit card debts and repaying personal loans.

The case highlights the importance of clients having access to information about their investments.

'Financial advisers should always allow clients to have direct access to information about their own investments. If this is not occurring, clients should contact ASIC with their concerns.'

– Commissioner Danielle Press

In delivering the sentence, Acting District Court Judge Woods QC found Mr Hopkins was a 'trusted financial adviser, managing funds pretending it was business-like, lawful and profitable.' His Honour remarked that Mr Hopkins' behaviour was 'deeply stupid' but that 'being stupid is no defence or mitigation'.

For more information, see [Media Release 21-114MR](#).

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
- › *continuous disclosure* – compliance with continuous disclosure obligations ensure that markets are fully informed.

Markets enforcement outcomes

In the six months between 1 January and 30 June 2021, ASIC concluded 17 market-related enforcement matters (see Table 3).

As at 1 July 2021, ASIC had 14 criminal and seven civil market-related matters still before the courts (see Table 4).

Table 3: Markets enforcement outcomes (number of respondents by misconduct and remedy type) 1 January to 30 June 2021

Misconduct type	Criminal	Civil	Administrative	Court enforceable undertaking	Total
Continuous disclosure	0	0	2	0	2
Market manipulation	2	0	0	0	2
Other market misconduct	0	2	10	1	13
Total	2	2	12	1	17

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

Table 4: Markets enforcement litigation in progress (number of respondents as at 1 July 2021)

Misconduct type	Criminal	Civil
Continuous disclosure	0	2
Insider trading	6	1
Market manipulation	3	0
Emerging misconduct (cyber, crypto)	2	0
Other market misconduct	3	4
Total	14	7



Case study: OTC retail derivatives provider ordered to pay \$20 million penalty and sole director disqualified and penalised \$400,000

The penalties imposed upon OTC derivatives provider Forex Capital Trading Pty Ltd (Forex CT) is an example of ASIC taking strong regulatory action to protect consumers and discourage unconscionable conduct towards investors.

In June 2021, the Federal Court ordered Forex CT to pay a \$20 million penalty for engaging in systemic unconscionable conduct, paying conflicted remuneration to its team leaders and account managers, and failing to act in the best interests of its clients.

Forex CT's sole director, Shlomo Yoshai, was also ordered to pay a \$400,000 penalty and disqualified from managing corporations for eight years for breaching his duties as a director and aiding Forex CT's unconscionable conduct.

ASIC's investigation revealed that Forex CT had a trading floor culture geared towards maximising trading volume and client deposits rather than complying with the law. A bell or gong was rung when clients deposited funds of certain amounts into their trading accounts. Account managers could participate in incentive 'games' such as 'wheel of fortune', roulette tables and dice games to win cash if certain client deposit targets were met.

'Forex CT had "systemic compliance deficiencies" and a culture of non-compliance ... The vast losses incurred by clients support the imposition of a significant pecuniary penalty.'

– Justice Middleton

The size of the Australian market for OTC retail derivatives has grown considerably over recent years; however, these complex financial products are not suitable for all investors and involve high risks.

For more information, see [Media Releases 21-120MR](#) and [21-051MR](#).



Case study: Former CFO sentenced for market manipulation and fraud offences

The conviction of a former CFO of a listed company demonstrates the serious consequences of engaging in market manipulation.

In May 2021, Zhonghan Wu (also known as John Wu), the former CFO of Traditional Therapy Clinics Limited (TTC) was sentenced in the NSW District Court to an intensive corrections order for 1 year and 10 months, which included a condition that he perform 200 hours of community service.

ASIC's investigation found that between 8 September and 30 November 2015, Mr Wu carried out, and attempted to carry out, multiple share transactions in TTC shares using four different trading accounts. The trading had the effect of creating an artificial price for TTC shares on the Australian Securities Exchange (ASX). When trades in one trading account were rejected for suspicious trading, Mr Wu used another trading account to continue trading in TTC shares.

In sentencing, His Honour Judge Buscombe found Mr Wu's trading undermined the integrity of the market and that he engaged in a brazen campaign of price manipulation that he knew was wrong and illegal.

In addition to the market manipulation offence, Mr Wu was found guilty of fraud. In 2012 and 2015, Mr Wu obtained loans from the Commonwealth Bank of Australia for mortgages to purchase various properties. In support of his loan applications, Mr Wu provided false and misleading documents. The loan applications resulted in Mr Wu receiving funds totalling \$360,000. Mr Wu was sentenced to a Community Corrections Order for a period of two years and six months after pleading guilty to these fraud offences.

For more information, see [Media Release 21-103MR](#).

Corporate governance

ASIC is responsible for regulating conduct that influences company performance. We work to ensure that public companies are properly accountable to their investors, 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 outcomes

In the six months between 1 January and 30 June 2021, ASIC concluded 20 corporate governance enforcement matters (see Table 5).

ASIC had 13 criminal and two civil corporate governance-related matters still before the courts as at 1 July 2021 (see Table 6).

Table 5: Corporate governance enforcement outcomes (number of respondents by misconduct and remedy type) 1 January to 30 June 2021

Misconduct type	Criminal	Civil	Administrative	Negotiated outcome	Total
Directors duties and governance failures	0	1	0	0	1
Auditor misconduct	0	0	11	8	19
Total	0	1	11	8	20

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

Table 6: Corporate governance enforcement litigation in progress (number of respondents as at 1 July 2021)

Misconduct type	Criminal	Civil
Directors duties and governance failures	10	1
Auditor misconduct	2	0
Other corporate governance misconduct	1	1
Total	13	2



Case study: Liquidator Peter Ivan Macks held accountable for providing false documents to ASIC

ASIC action against misconduct by registered liquidators upholds public trust in our insolvency system and ensures insolvency professionals are held accountable for their conduct.

In February 2021, liquidator Peter Ivan Macks' registration as a liquidator was suspended for three years after a court inquiry found that he dishonestly provided fabricated documents to ASIC.

The court found that, in February 2010, Mr Macks dishonestly fabricated memoranda and placed on them the initials of other persons working at his firm, in order to deceive ASIC during its own investigation into Mr Macks' conduct as liquidator of Bernsteen Pty Ltd and Newmore Pty Ltd.

The fabricated documents, given to ASIC by Mr Macks in response to a statutory notice, were provided to create the false impression that Mr Macks and other members of his firm agreed that there was a justification for commencing and continuing certain litigation in the course of a liquidation.

As a result of the court's finding, Mr Macks' registration as a liquidator was suspended by the court for three years and Mr Macks was ordered to pay 50% of ASIC's costs of the proceedings.

ASIC brought the action to ensure that only suitable people carry out the responsibilities of a registered liquidator and to maintain public confidence in the important role played by liquidators in our financial system.

'The position of liquidator is a repository of public trust; the public is entitled to trust a liquidator to perform their functions to a high standard and with scrupulous attention to obligations of candour, honesty and integrity.'

– His Honour Justice Doyle

For more information, see [Media Release 21-026MR](#).

Small business

ASIC helps small businesses understand and comply with their legal obligations and directors' duties. We help protect small businesses from harm by:

- › providing support to company directors and advisers through education and surveillance
- › deterring poor behaviour and misconduct through the use of enforcement action against harmful conduct.

Small business enforcement outcomes

In the six months between 1 January and 30 June 2021, ASIC concluded 180 small business-related enforcement matters (see Table 7). These matters include:

- › 123 persons convicted for failing to help liquidators under the external administrator program
- › 3 persons convicted of criminal offences, of which two were custodial sentences
- › 10 companies were prosecuted for failing to lodge their annual financial reports with ASIC
- › 16 persons were disqualified from managing corporations of which one related to illegal phoenix activity
- › 27 Australian credit licences were cancelled or suspended.

Additionally, as at 1 July 2021, ASIC had 142 small business-related criminal matters still before the courts (see Table 8).

Table 7: Small business enforcement outcomes (number of respondents by misconduct and remedy type) 1 January to 30 June 2021

Misconduct type	Criminal	Administrative	Total
Action against persons or companies	136	44	180

Note: The outcomes 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 2021)

Misconduct type	Criminal
Action against persons or companies	142
Misconduct related to registration and licensing	0
Total	142



Case study: Former company director convicted of fraud and sentenced to four years imprisonment

The conviction of a former company director demonstrates that fraudulent use of company funds can have serious consequences.

An ASIC investigation found that between December 2016 and July 2017, Jaicome Spinella, former director of Bauen Concrete Pty Ltd, fraudulently used a company credit card to access \$3.1 million from the Bauen Concrete bank account, which he used to wager bets using a digital gambling account.

As a result of Mr Spinella's conduct, Bauen Concrete was unable to pay its liabilities and was placed into liquidation owing 166 creditors over \$6.7 million.

In June 2021, Mr Spinella was convicted of obtaining a financial advantage by deception and sentenced to four years imprisonment.

As a consequence of the conviction, Mr Spinella is automatically disqualified from managing corporations for five years upon his release from prison.

For more information, see [Media Release 21-127MR](#).