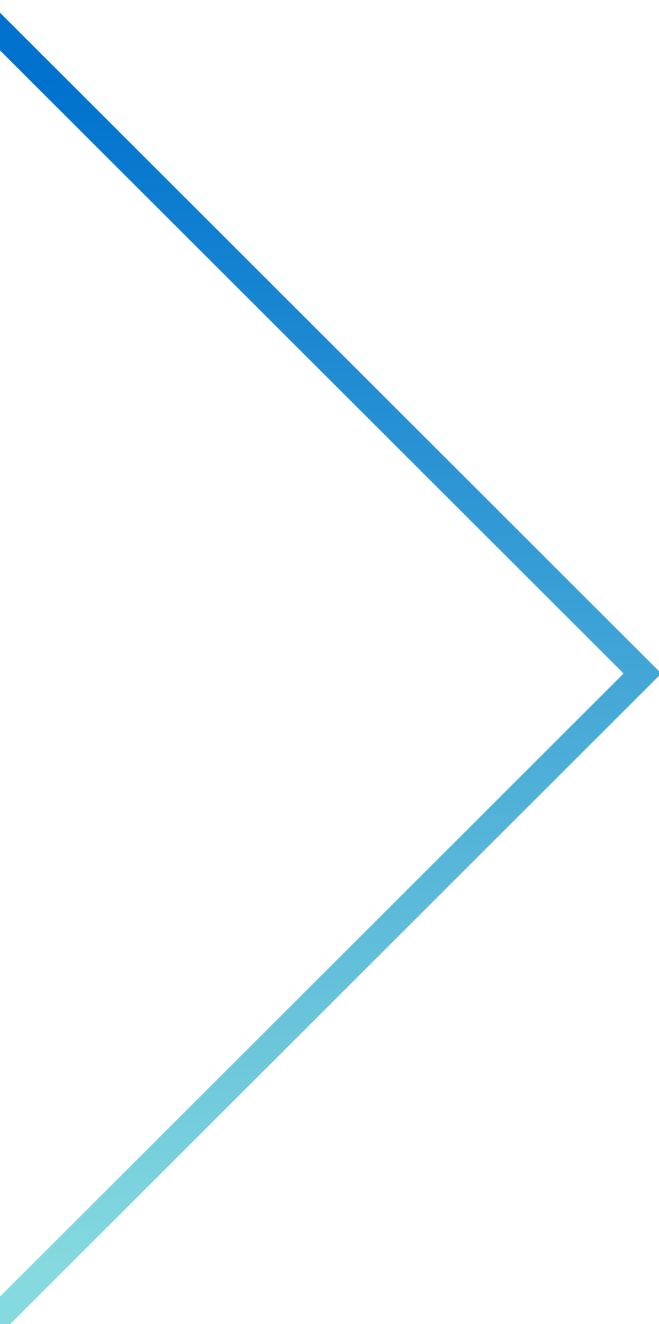




**ASIC**  
Australian Securities &  
Investments Commission

A large, stylized blue arrow graphic pointing to the right, composed of two parallel lines that converge to a point.

# ASIC quarterly update: April to June 2021

**Report 697 | August 2021**

## **About this report**

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

# Maintaining focus on economic recovery

During this quarter, ASIC welcomed new Chair Joseph Longo and Deputy Chair Sarah Court, and maintained focus on supporting Australia's economic recovery from the impacts of the COVID-19 pandemic.

On 11 June 2021, ASIC met with Government, industry and fellow regulators on the Council of Financial Regulators (see the Council's [Quarterly Statement](#)). Our close working relationships with other regulators is vital as we continue to support economic recovery.

This quarter also saw ASIC monitor how our regulatory actions affect business's ability to both withstand and recover from the impacts of the pandemic, and extend relief measures where necessary. We also continued our vigilance against harms and misconduct to protect consumers and investors.

“ASIC will have regard to how its regulatory actions impact on business's ability to withstand and recover from the impacts of the pandemic, while continuing to be vigilant for harms and misconduct.”

– Chair Joseph Longo

## Extended relief measures for financial advice industry

On 15 April 2021, ASIC extended record of advice relief to help the financial advice industry provide consumers with affordable and timely advice during the COVID-19 pandemic.

The temporary relief measure allows financial advisers to provide a record of advice (rather than a statement of advice) to existing clients requiring financial advice due to the impact of the pandemic. This followed consultation with industry, confirming that some financial advice practices found this relief measure helpful.

### Read more

[ASIC extends temporary financial advice relief measure in COVID-19 instrument](#)

## Deadline extensions and 'no action' position

On 23 April 2021, ASIC extended the deadline for listed and unlisted entities to lodge financial reports by one month. The extension helps smaller entities experiencing pandemic-related resourcing pressures, such as travel restrictions and increased staff turnover.

We also extended our 'no action' position on annual general meetings (AGMs) where public companies do not hold their AGM within five months after the end of financial years—ending up to 7 July 2021.

We continue to monitor how market conditions and COVID-19-related developments affect financial reporting, audit and AGM obligations.

### Read more

[ASIC to extend deadlines for 30 June 2021 financial reports and amends 'no action' position for AGMs](#)

## Setting expectations for insurers on hardship

In April 2021, we advised insurance company directors of our expectations after reviewing insurers' responses to consumers experiencing financial hardship during the COVID-19 pandemic.

We were pleased with insurers' responsiveness to consumer needs on hardship during the pandemic, and to ASIC's work in this area. We were also pleased that all travel insurance providers we engaged with offered to refund premiums paid by consumers whose travel was affected by the pandemic.

However, ASIC expects insurers to integrate hardship arrangements into their ongoing operations for a more complete and robust hardship framework.

This will enable insurers to respond effectively to consumers who experience heightened financial vulnerability from other events including natural disasters such as floods and bushfires.

### Read more

[ASIC's expectations of life and general insurers](#)

## Next steps

In the remainder of 2021 we will conduct our regular reviews of the full-year financial reports of selected larger listed entities and other public interest entities as at 30 June 2021. Our reviews will focus on entities and industries most affected by the pandemic.



# Protecting investors and strengthening market integrity

This quarter we continued our work to protect investors and act against misconduct. We took enforcement action to address reckless investment promoters and conflicted remuneration structures that are not in the best interests of investors.

We also continued to focus on ensuring the market operates in a way that is fair, informed and transparent and introduced new rules to strengthen market integrity.

Investor activity has increased during the pandemic and people are taking on riskier investments in the search for higher returns in a low-yield environment.

The number of scams has increased as people spend more time at home and use more online services, and as scammers take advantage of heightened uncertainty.

We are also aware of the rise of so-called 'finfluencers' – online personalities and social media groups that are influencing retail investors.

## Penalties for misconduct

On 2 June 2021, the Federal Court ordered Forex Capital Trading Pty Ltd (Forex CT) 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.

For breaching his duties as a director and aiding Forex CT's unconscionable conduct, the Federal Court ordered the company's sole director, Mr Shlomo Yoshai, to pay a \$400,000 penalty and disqualified him from managing corporations for eight years.

### Read more

[Forex CT ordered to pay \\$20 million penalty and sole director disqualified, fined \\$400,000](#)

“If corporations disregard the law and their client obligations, ASIC will take action and the consequences can be severe.”

– Commissioner Cathie Armour

## Ban on sale of binary options to retail clients

On 1 April 2021, ASIC banned the issue and distribution of binary options to retail clients using a product intervention order.

We have found that binary options have resulted in, and are likely to result in, significant detriment to retail clients. ASIC reviews in 2017 and 2019 found that approximately 80% of retail clients lost money trading binary options.

The ban brought Australian requirements into line with prohibitions in force in comparable markets.

### Read more

[ASIC bans the sale of binary options to retail clients](#)

## Holding reckless promoters to account

In June 2021, ASIC moved to shut down an unlicensed mortgage lender. ASIC successfully obtained interim orders and injunctions from the Federal Court against Mr Brent Lindsay Smith, Mr Mahmoud Khodr and Mr Trevor Leota (the Defendants) and Remedy Housing Pty Ltd (Remedy Housing).

Remedy Housing advertises on its website and social media platforms that it can provide customers with 'interest free mortgages' upon receipt of a \$10,000 deposit.

Between 7 November 2019 and 10 March 2021, approximately 123 potential customers deposited a total of \$1,484,250 into a bank account in Remedy Housing's name.

ASIC's investigation remains ongoing.

### Read more

[ASIC obtains Federal Court orders against Remedy Housing](#)

## Information on activist short selling

To maintain a fair, informed and transparent market, on 1 June 2021 we released an information sheet on activist short selling in Australia.

The information sheet outlines the practice of activist short-selling campaigns in Australia and ASIC's expectations to promote market integrity during these campaigns.

### Read more

[Information Sheet 255 Activist short selling campaigns in Australia \(INFO 255\)](#)

## New market integrity rules for capital

To simplify and strengthen the current regime, in June 2021 we introduced new market integrity rules for capital. By considering the risks associated with operating a market-participant business, the new rules provide protections for investors while also simplifying the capital framework for market participants.

### Read more

[ASIC makes new market integrity rules for capital](#)

[ASIC Market Integrity Rules \(Capital\) 2021](#)

[Report 692 Response to submissions on CP 302 Proposed changes to ASIC's capital requirements for market participants \(REP 692\)](#)

## Consultation on crypto-asset ETPs

On 30 June 2021, ASIC opened consultations on exchange-traded products (ETPs) and other investment products that provide retail investors with exposure to crypto-assets: see [Consultation Paper 343 \(CP 343\)](#).

The proposals in CP 343 set out good practices for market operators and product issuers on crypto-asset ETPs and other investment vehicles that provide retail investors with exposure to crypto-assets.

Given the unique, evolving characteristics and risks involved with crypto-assets, we consulted widely on the proposals in CP 343. Our consultation closed on 27 July 2021.

### Read more

[ASIC consults on crypto-asset based ETPs and other investment products](#)

[Consultation Paper 343 Crypto-assets as underlying assets for ETPs and other investment products \(CP 343\)](#)



## Next steps

The COVID-19 pandemic continues to create uncertainty. In the remainder of 2021 we will therefore focus on maintaining efficient and transparent markets to support economic growth and recovery.

To uphold investors' confidence in the financial system, we will continue our work with regulated entities to ensure they understand and abide by their obligations. We will use all regulatory tools at our disposal to take action against bad actors seeking to exploit or cause harm to investors.



# Protecting consumers

During this quarter we maintained our ongoing commitment to protecting consumers, as set out in our Corporate Plan 2020–24. We accounted for the heightened vulnerability, elevated debt levels and increased hardship experienced by Australians during the pandemic.

In April and May 2021, we commenced civil penalty proceedings against financial services companies for alleged breaches of laws we administer.

Our Scams Working Group continued to monitor and identify scams, and published warnings and alerts. Meanwhile, our Enforcement teams took swift action against wrongdoing.

ASIC's efforts using new regulatory tools were tested in the courts, with our first product intervention order upheld by the Full Federal Court in June 2021.

## ASIC sues AMP for charging deceased customers

On 27 May 2021, ASIC commenced civil penalty proceedings in the Federal Court against five companies that are, or were, part of the AMP Limited group. ASIC alleges that these entities were involved in charging life insurance premiums and advice fees to more than 2,000 customers despite being notified of their death. On 15 June 2021, a further case management hearing was set for 12 October 2021.

We continue to monitor remediation for fees-for-no-service failures by financial services institutions, including AMP.

### Read more

[ASIC sues AMP for charging deceased customers](#)

[ASIC update: Compensation for financial advice-related misconduct as at 31 December 2020](#)

## ASIC commences proceedings against Westpac

On 8 April 2021, we commenced civil penalty proceedings in the Federal Court against Westpac Banking Corporation (Westpac), alleging it mis-sold consumer credit insurance with credit cards, and other credit facilities, to customers who had not agreed to buy those policies.

Our action relates to Westpac's Credit Card Repayment Protection and Flexi-Loan Repayment Protection insurance policies, which are add-on insurance products sold with credit cards and lines of credit.

### Read more

[ASIC commences proceedings against Westpac for alleged misleading and unfair sales of consumer credit insurance](#)

“ASIC will continue to take action where we identify potential breaches of the law where the design and sale of financial products to consumers fails the litmus test of section 912A [of the Corporations Act] – efficiency, honesty and fairness.”

– Deputy Chair Karen Chester



## Scam alerts, warnings and court action

The number of investment scams has increased dramatically during the COVID-19 pandemic. The number of scams is increasing as people spend more time at home and use more online services, and as scammers take advantage of heightened uncertainty.

In early 2021, ASIC received nearly 10 times as many reports of misconduct about investment scams, compared to the pre-pandemic average. Over 75% of these reports were in relation to crypto-asset scams.

ASIC issued consumer warnings to address the increase in scam-related activity. ASIC also released a podcast about crypto-assets for first-time investors. The episode outlines ways Australians can distinguish legitimate businesses from unscrupulous operators, or scammers, who are seeking to capitalise on the hype around crypto-assets to steal people's money. ASIC's Moneysmart website outlines information for consumers and investors about [crypto-assets and what to look out for](#).

On 13 April 2021 we successfully applied to the Federal Court of Australia to wind up two NSW-based companies, SA Services & PW Pty Ltd (SA Services) and Orphans Asia Pty Ltd (Orphans Asia), following a scam investigation.

### Read more

[ASIC takes action to wind up SA Services & PW Pty Ltd and Orphans Asia Pty Ltd following scam investigation](#)

[Scam alert: Self-managed super fund rollover](#)

[Scammers taking advantage of COVID-19 to target small businesses](#)

[ASIC warns against fake news articles promoting investment scams](#)

[The ASIC Podcast Episode 65: Crypto-assets for first time investors](#)

## Full Federal Court upholds first ASIC product intervention order

On 29 June 2021, the full Federal Court dismissed an application by Cigno Pty Ltd and upheld ASIC's first product intervention order in relation to short-term credit.

ASIC made the industry-wide order in September 2019 to address what we considered to be a significant detriment in the short-term credit market. It was the first product intervention order made by ASIC under these important new powers.

### Read more

[Full Federal Court upholds first ASIC product intervention order](#)

“ASIC has been steadfast in its efforts to address consumer harm from high-cost credit products. We made this product intervention order to put a stop to the significant detriment we saw from predatory lending.”

– Deputy Chair Sarah Court

## Internal dispute resolution (IDR)

This quarter we continued preparations for the commencement of [Regulatory Guide 271 Internal dispute resolution \(RG 271\)](#). This included reminding entities of the significant legal issues that need to be addressed before October 2021 to meet the guide's enforceable standards.

We encourage entities to take a comprehensive approach to identify, record and respond to customer complaints, and to ensure their staff are empowered and encouraged to do the same. IDR-related processes should be run efficiently, honestly and fairly – from the handling of complaints to managing identified systemic issues to internal reporting.

### Read more

[ASIC's expectations about new internal dispute resolution requirements for superannuation trustees](#)

[Regulatory Guide 271 Internal dispute resolution \(RG 271\)](#) (July 2020)

## Next steps

The remainder of 2021 will see ASIC continue to identify, disrupt and review pervasive scam activity. This work will include education, communications and social media campaigns to raise investor awareness of how to avoid money scams and ASIC will take enforcement action, where appropriate.

ASIC will also check-in at various stages of the implementation of the new IDR requirements and assess whether expectations about preparation are being met by industry.



# Reforms and new regulatory requirements

New unfair contract laws apply from 5 April 2021 and the protections now apply to insurance contracts. We have conducted targeted supervisory work, worked directly with insurers to ensure they adopt the new laws and outlined our expectations of the sector.

We continued to provide guidance to industry to prepare for the introduction of new laws in October 2021 – expanded breach reporting requirements, and the product design and distribution obligations. The new design and distribution obligation laws enable ASIC to take proactive action to improve standards and achieve fairer consumer outcomes in the financial services sector.

## Breach reporting reforms

Between April and June 2021, ASIC gathered feedback on proposed updates to our draft guidance on upcoming breach reporting reforms.

The reforms, which commence in October 2021, clarify and strengthen the existing obligation on AFS licensees to self-report certain breaches of the law to ASIC. The reforms also extend the obligation to credit licensees.

ASIC will release updated regulatory guidance in the third quarter of 2021.

### Read more

[ASIC consults on draft guidance on breach reporting reforms](#)

[Consultation Paper 340 Breach reporting and related obligations \(CP 340\)](#)

“While focus in the current macro-economic environment is to ensure credit flows quickly and efficiently to borrowers, please remember that consumers will always expect to be treated fairly, and for their interests to be placed first.”

– Commissioner Sean Hughes

## Product design and distribution

The product design and distribution obligations commence in October 2021. To comply with the obligations, entities are required to introduce and maintain effective product governance arrangements focused on consumer outcomes.

In this quarter we focused on the superannuation industry, with Commissioner Danielle Press and Australian Prudential Regulation Authority (APRA) Deputy Chair Helen Rowell co-hosting the first ASIC-APRA Superannuation CEO Roundtable. Discussion focused on the design and distribution obligations and APRA's [Member Outcomes obligations](#) – both of which should be considered in tandem.

### Read more

[ASIC and APRA release notes on inaugural Superannuation CEO Roundtable](#)

[Regulatory Guide 274 Product design and distribution obligations \(RG 274\)](#) (Dec 2020)

“ASIC will continue to address conduct of concern, including working together with APRA as appropriate, with ASIC's particular focus being poor conduct affecting outcomes for consumers.”

– Commissioner Danielle Press

## Unfair contract terms protections

From 5 April 2021, unfair contract terms protections apply to insurance contracts, following Government reforms passed in early 2020. The protections apply to new insurance contracts that are entered into or renewed on or after 5 April 2021.

In readiness for this reform, ASIC conducted targeted supervisory work by reviewing a range of insurance contracts and has worked with insurers to encourage them to remove or qualify potential unfair terms. Through ASIC's work, many insurers have made important changes to insurance policies to help make them fairer.

### Read more

[Are you ready? Laws on unfair contract terms apply to insurance from 5 April 2021](#)

[Information sheet 210 Unfair contract term protections for consumers \(INFO 210\)](#)

(October 2020)

[Information sheet 211 Unfair contract term protections for small businesses \(INFO 211\)](#)

(October 2020)

## Next steps

We will continue to monitor insurance contracts for unfair terms. Where we are concerned about non-compliance and consumer harm, we will consider the range of regulatory powers available to us.

ASIC previously engaged with numerous industries in developing guidance and will continue to support the implementation of the obligations.

We will continue to work closely with APRA on the Financial Accountability Regime implementation to facilitate information sharing in the new co-regulatory arrangement.