ASIC

Australian Securities & Investments Commission

REPORT 513

ASIC enforcement outcomes: July to December 2016

March 2017

About this report

This report outlines the enforcement results achieved by ASIC during the period from 1 July to 31 December 2016 (the relevant period). The report provides a high-level overview of some of our enforcement priorities and highlights some important cases and decisions during this period.

About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

Consultation papers: seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

Regulatory guides: give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

Information sheets: provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

Reports: describe ASIC compliance or relief activity or the results of a research project.

ASIC's reports on enforcement outcomes

Year	July to December	January to June
2016	REP 513 (March 2017)	REP 485 (August 2016)
2015	REP 476 (March 2016)	REP 444 (August 2015)
2014	REP 421 (January 2015)	REP 402 (July 2014)
2013	REP 383 (January 2014)	REP 360 (July 2013)
2012	REP 336 (April 2013)	REP 299 (September 2012)
2011	REP 281 (March 2012)	N/A

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.

Contents

Overview

ASIC's role and the scope of this report

1 ASIC investigates and enforces the law to give effect to our strategic priorities of:

(a) promoting investor and financial consumer trust and confidence;

(b) ensuring fair, orderly and transparent markets; and

(c) providing efficient and accessible registration.

2 The following questions inform ASIC's assessment of whether to investigate a matter:

(a) What is the extent of harm or loss?

(b) What are the regulatory benefits of pursuing the misconduct, relative to the expense?

(c) How do other issues, like the type and seriousness of the misconduct and evidence available, affect the matter?

(d) Is there an alternative course of action?

3 This report considers our enforcement activities and results achieved during the period from 1 July to 31 December 2016 (the relevant period).

4 This report covers:

(a) Section A—ASIC's enforcement priorities, including:

(i) our areas of focus and how we aim to support *ASIC's Corporate Plan 2016–17 to 2019–20: Focus 2016–17* (ASIC's Corporate Plan); and

(ii) our priorities for the next six months, including our pending matters before the court;

(b) Section B—key actions that we have taken to enforce the law and support our priorities; and

(c) Appendix 1—statistics about our enforcement results.

5 We are committed to transparency about our enforcement work. Previous enforcement outcomes reports are available on our website (www.asic.gov.au).

Summary of key results

6 Figure 1 summarises our key enforcement results in the relevant period. The pie graphs show the proportion of total activity represented by different categories of misconduct in each enforcement area.

Figure 1: Summary of key enforcement results by misconduct type

98 investigations commenced

5 persons charged in criminal proceedings

102 investigations completed

47 criminal charges laid

39 individuals removed from financial services

194 persons charged in summary prosecutions for strict liability offences

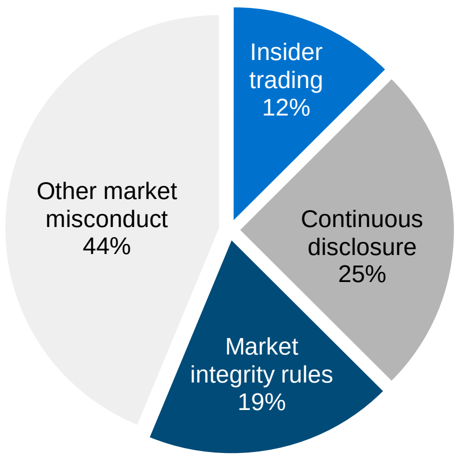
63 infringement notices issued

382 criminal charges laid in summary prosecutions for strict liability offences

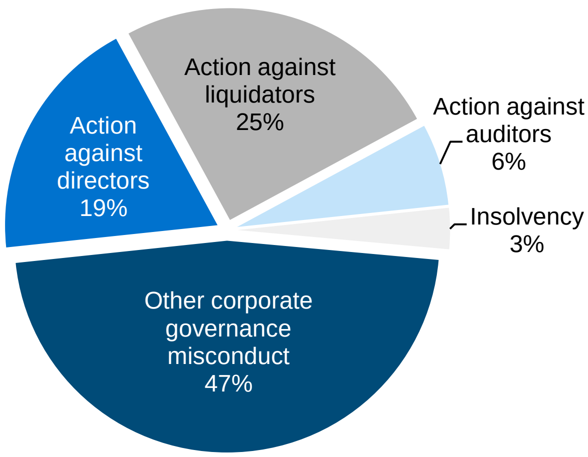
$2.9m infringement notices paid

$159.4m compensation/remediation

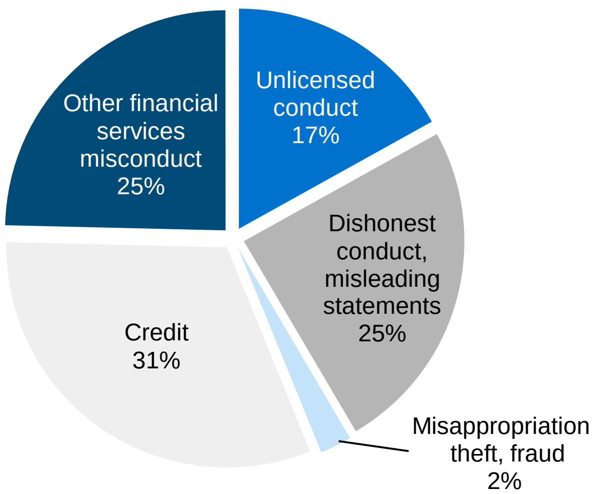
Market integrity results by misconduct type



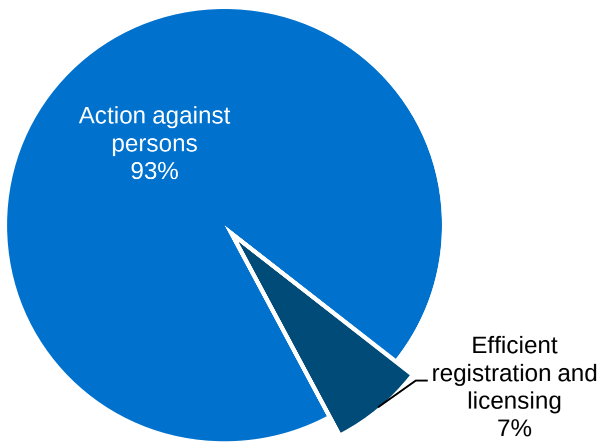
Corporate governance results by misconduct type



Financial services results by misconduct type



Small business results by misconduct type



Note 1: Percentages are rounded to the nearest unit.

Note 2: See Table 9 to Table 13 in Appendix 2 for the data shown in this figure (accessible versions).

A Enforcement objectives

Key points

This section focuses on our enforcement priorities and how these support ASIC's Corporate Plan.

In line with ASIC's Corporate Plan, we are addressing the long-term challenges of:

- aligning conduct in a market-based system with investor and consumer trust and confidence;
- digital disruption and cyber resilience in our financial services and markets;
- structural change in our financial system through market-based financing, which is led by growth in superannuation;
- complexity in financial markets and products, driven by innovation; and
- globalisation of financial markets, products and services.

We have also set out our focus for addressing other challenges over the next six months.

Key risks 2016–17

7 ASIC's Corporate Plan has been developed and published, spanning across four financial years—from 2016–17 to 2019–20. The plan forms the foundation for our areas of focus.

8 The priorities for our Enforcement teams, during the period covered by the corporate plan, are set out in paragraphs 9–14. These are based on addressing the plan's key risks in regulating a broad number of industries.

Gatekeeper culture and conduct in financial services and credit

9 We are focusing on culture and incentives that result in poor financial advice, irresponsible lending and mis-selling to retail investors and consumers, which can undermine trust and confidence in the financial system.

Gatekeeper culture and conduct in markets

10 We continue to focus on culture and incentives that drive poor conduct, which can undermine good governance practices and risk management systems and threaten market integrity.

Digital disruption

11 We are focusing on managing the risks that result from structural change and disruption in financial markets and services. This change and disruption arises from the rapid pace of technological developments—including new products and service delivery models that, if poorly implemented and operated, can undermine market integrity and trust and confidence.

Cyber threats

12 We continue to focus on the risks from cyber threats. The greater incidence, complexity and reach of cyber attacks can undermine increasingly digital businesses, destabilise markets, and erode trust and confidence in the financial system.

Misalignment of retail product design and distribution with consumer understanding

13 We are focusing on the risk from misalignment between people's understanding of financial products and how these products are designed, disclosed and marketed to them. We are targeting undesirable collective industry practices that jeopardise financial outcomes.

Cross-border businesses, services and transactions

14 We are focusing on the increasing volume of cross-border businesses, services and transactions, and the interconnectedness of markets across jurisdictions. These may compromise market integrity and trust and confidence in the global financial system.

Next six months

15 The focus of ASIC's enforcement activity over the next six months—from 1 January to 30 June 2017—will be on the following key risk areas for misconduct.

Market integrity

16 Conduct risk and the integrity of financial market benchmarks remain a high enforcement priority. We remain committed to ensuring that failure to meet disclosure obligations by entities and market abuse (e.g. insider trading and market manipulation) are addressed through enforcement action.

Corporate governance

17 We will continue to ensure that gatekeepers—company directors and officers, auditors, insolvency practitioners, and business advisers—adhere to the high standards required by law. Where necessary, we will take action against those who fail to meet these standards.

18 We will focus on serious breaches where these indicate:

(a) poor corporate culture;

(b) poor governance/management systems that result in the market not being properly informed;

(c) poor listing standards, especially of emerging markets issuers;

(d) misuse of cross-border services and transactions;

(e) failure by corporations to respond appropriately to the threat of malicious cyber activity;

(f) misalignment between company disclosures, product design, and investor understanding and expectations; and

(g) rogue insolvency practitioners and others who facilitate serious illegal ‘phoenix’ behaviour and improper transactions in the face of insolvency.

Financial services

19 Over the next six months, we will continue to focus on enforcing higher standards in the financial services industry, paying particular attention to:

(a) responsible lending practices in the credit industry, including an emphasis on systemic breaches by licensees;

(b) financial advisers’ compliance with their best interests duty and obligation to provide appropriate advice to clients;

(c) licensees’ failure to deliver ongoing advice services to financial advice customers who are paying fees to receive those services—for more information, see Report 499 *Financial advice: Fees for no service* (REP 499); and

(d) instances where licensees claim to provide general advice to retail clients during the sale of financial products (and therefore do not need to comply with the best interests duty and related obligations), but are actually providing personal advice.

20 ASIC’s Wealth Management Project will continue to be a focus for our enforcement activity. The project seeks to improve the standards of major financial advice providers in terms of quality of advice and remediation. We intend to build on the significant number of investigations and surveillances we have undertaken within this project in the last six months, which have resulted in a number of key outcomes.

Matters before the courts as at 1 January 2017

21 Table 1 to Table 4 show the number of defendants in matters pending before the courts as at 1 January 2017. In some of these cases, the court has determined liability but not yet determined penalty and/or final orders, or a plea of guilty has been entered but a decision on sentence is yet to be made. In other cases, the court is yet to determine if a breach of the law or an offence has been committed.

Table 1: Market integrity—Pending enforcement matters by misconduct type

Type of misconduct	Criminal	Civil
Insider trading	3	–
Market manipulation	1	2
Continuous disclosure	1	4
Market integrity rules	–	1
Other market misconduct	4	9
Total	**9**	**16**

Table 2: Corporate governance—Pending enforcement matters by misconduct type

Type of misconduct	Criminal	Civil
Action against directors	9	22
Insolvency	2	2
Other corporate governance misconduct	–	1
Action against liquidators	1	3
Total	**12**	**28**

Table 3: Financial services—Pending enforcement matters by misconduct type

Type of misconduct	Criminal	Civil
Unlicensed conduct	1	1
Dishonest conduct, misleading statements	10	14
Misappropriation, theft, fraud	2	–
Credit	6	2

Type of misconduct	Criminal	Civil
Other financial services misconduct	–	40
Total	**19**	**57**

Table 4: Small business—Pending enforcement matters by misconduct type

Type of misconduct	Criminal	Civil
Action against persons	188	–
Efficient registration and licensing	6	–
Total	**194**	–

B Key matters completed over the past six months that support our enforcement objectives

Foreign exchange supervision

Area of focus

Balancing a free market-based system with investor and financial consumer protection

ASIC remains focused on addressing the conduct risk presented by the culture of gatekeepers to the financial markets.

Confidence in financial markets can be undermined where conduct and oversight issues subvert a fair and orderly market.

Enforceable undertakings by National Australia Bank Limited and the Commonwealth Bank of Australia

22 We accepted enforceable undertakings from the National Australia Bank Limited (NAB) and the Commonwealth Bank of Australia (CBA) in relation to the banks' wholesale spot foreign exchange businesses.

23 As a result of our investigations, we were concerned that between 1 January 2008 and 30 June 2013, both banks failed to ensure that their systems and controls were adequate to prevent, detect and respond to inappropriate conduct.

24 Our investigation into NAB and CBA identified a number of instances of inappropriate conduct, such as:

(a) disclosing confidential details of pending client orders to external parties, including identifying the client by code name;

(b) inappropriately exchanging confidential and potentially material information about the bank's client flow or proprietary positions;

(c) acting together with an employee of another Australian bank to enter offers into the trading platform without any apparent legitimate commercial reason for placing the offers;

(d) on two occasions, acquiring proprietary positions after coming into possession of knowledge of large fix orders in that currency; and

(e) on at least two occasions, trading in a manner that may have been intended to cause the trigger price for a stop-loss order to trade when it might not have traded at that time.

25 Under the enforceable undertaking, NAB and CBA will each develop a program of changes to their existing systems, controls, training, guidance

and framework for monitoring and supervision of employees within their foreign exchange businesses. The purpose of these changes is to ensure compliance with the banks' obligations to provide financial services efficiently, honestly and fairly.

26 Both NAB and CBA also made community benefit payments of $2.5 million for advancing financial literacy education related to the aged care sector.

Insider trading

Area of focus

Balancing a free market-based system with investor and financial consumer protection

Insider traders are unfairly exploiting, for their financial benefit, the inherent information asymmetries between well-informed insiders and less well-informed investors, including retail investors.

Insider trading destroys trust in market fairness and transparency, and represents a market failure if it is prevalent.

Hochtief Aktiengesellschaft

27 On 8 December 2016, the Federal Court found German construction group holding company Hochtief Aktiengesellschaft (Hochtief AG) to have engaged in insider trading and ordered Hochtief AG to pay a financial penalty of $400,000 and ASIC's legal costs of $50,000.

28 Hochtief Australia is the controlling shareholder of Leighton Holdings Limited (LEI) (now CIMIC Group Limited) and a subsidiary of Hochtief AG.

29 The contravention concerned Hochtief AG instructing Hochtief Australia to acquire 200,000 LEI shares for $3.2 million while Hochtief AG's chief financial officer had information about LEI's expected financial result for the year ended 31 December 2013.

30 We commenced proceedings in February 2016. Hochtief AG admitted the alleged insider trading contravention in a Statement of Agreed Facts.

31 Under an enforceable undertaking, Hochtief AG has also made voluntary contributions (representing a forfeit of notional profits gained by Hochtief Australia) of $103,400 to each of:

(a) the Australian Shareholders' Association, for the advancement of shareholder education in Australia or company monitoring, or both; and

(b) the First Nations Foundation for its initiatives with the Financial Services Council on My Moola, the foundation's Indigenous financial literacy program.

[redacted]

[redacted] [redacted]

[redacted] [redacted]

[redacted] [redacted]

Continuous disclosure

Area of focus

Ensuring fair, orderly and transparent financial markets

Where senior officers of publicly listed companies fail to ensure that the published financial results of listed companies are true and accurate and do not mislead the market, investor trust and confidence in the market is undermined.

Padbury Mining Limited

35 Directors of Padbury Mining Limited (Padbury), Gary Stokes and Terence Quinn, were each disqualified from managing corporations for three years for breaching their duties as directors regarding the company's continuous disclosure obligations.

36 The penalties were imposed by the Federal Court on 19 September 2016 after ruling with the parties' consent that Padbury's announcement on 11 April 2014—that it had secured $6 billion in funding for the Oakajee port and rail project in Western Australia—was misleading and deceptive.

37 The court also ordered each of the directors to pay a penalty of $25,000 and a combined total of $200,000 towards ASIC's costs in conducting the proceedings.

38 Padbury's share price was $0.02 before the announcement, but hit a high of $0.052 cents during the four hours between the announcement and a trading halt—more than 200 million shares were traded.

Poor listing standards

Area of focus

Balancing a free market-based system with investor and financial consumer protection

Investors rely on the integrity of information in disclosure documents when deciding to invest in companies that are proposing to list, and on the timeliness and accuracy of listed company announcements when deciding to trade.

False or misleading information—or accurate information that is announced late—results in uninformed investments and trading, reducing investor trust in market fairness and transparency.

Sino Australia Oil and Gas Ltd

39 In December 2016 the Federal Court of Australia ordered that Sino Australia Oil and Gas Ltd (Sino Australia) pay a pecuniary penalty of $800,000 and that its former chairman, Tianpeng Shao, be disqualified from managing corporations for 20 years.

40 Those orders followed findings by the court in August 2016 that Sino Australia—an Australian holding company of a Chinese subsidiary involved in the oil and gas services industry in China—had, among other things, made false and misleading representations in its prospectus documentation and failed to make timely disclosure of variations in its profit forecasts. The court had also found that Mr Shao:

(a) was involved in Sino Australia's contraventions;

(b) failed to inform himself about Sino Australia's disclosure obligations;

(c) failed to understand Sino Australia's prospectus documentation; and

(d) attempted to transfer $7.5 million from Sino Australia's Australian bank accounts to accounts in China for the purpose of advancing a loan to a Chinese-based subsidiary, in circumstances where the loan would have been irrecoverable.

41 Sino Australia is being wound up by a liquidator under orders made by the court following an application by ASIC.

Consumer credit

42 Failing to comply with consumer protection provisions can result in significant penalties. We continue to monitor compliance with these provisions.

43 In the relevant period, we issued 54 infringement notices for breaches of the consumer credit provisions, requiring payment of penalties totalling $1.8 million.

Area of focus

Balancing a free market-based system with investor and financial consumer protection

ASIC will target credit providers who fail in their obligations to financial consumers.

Cash Converters

44 We commenced an investigation into payday lender Cash Converters as a result of concerns that it had failed to make reasonable inquiries into consumers' income and expenses when processing small amount credit contracts through its website, particularly when the loan was unsuitable under the *National Consumer Credit Protection Act 2009* (National Credit Act). We were also concerned that Cash Converters did not take reasonable steps to verify consumers' expenses in accordance with its responsible lending obligations, instead merely applying an internally generated benchmark with no relationship to the actual expenses of individual consumers.

45 Cash Converters paid infringement notice penalties of $1.35 million for this conduct. In addition, we accepted an enforceable undertaking from Cash Converters which requires it to:

(a) refund eligible consumers fees totalling $10.8 million through a consumer remediation program overseen by an independent expert; and

(b) engage the independent expert to review its current business operations and compliance with the consumer credit regime and report to ASIC.

Mintabie stores

46 In May 2014, we issued proceedings against Lindsay Kobelt, the owner of Nobby's Mintabie General Store—which is located in the Aṉangu Pitjantjatjara Yankunytjatjara lands in the north of South Australia. The proceedings concerned the store's system of providing credit (known as 'book up') to Indigenous consumers.

47 We alleged that Mr Kobelt's book up practices were unconscionable and that he had also engaged in credit activity without an Australian credit licence (credit licence). Consumers were required to provide Mr Kobelt with debit cards, personal identification numbers (PINs) and income details, which he used to withdraw the majority or all funds from consumers' bank accounts.

Between 1 July 2010 and 30 November 2012, Mr Kobelt withdrew just under $1 million from the accounts of 85 book up customers.

48 On 9 November 2016, the Federal Court found that Mr Kobelt had engaged in unlicensed credit activity and unconscionable conduct. It further found that Mr Kobelt's customers were particularly vulnerable due to environmental, socio-economic and cultural circumstances, specifically their remoteness of living, limited education and poverty. The court found that Mr Kobelt was aware of and took advantage of his customers' vulnerability in implementing a system that provided considerable financial benefit to his business to the customers' detriment. Mr Kobelt has appealed against this decision.

Protecting retail investors and financial consumers

Area of focus

Balancing a free market-based system with investor and financial consumer protection

Financial advisers are required to discharge the obligations that are integral to their position of responsibility and trust.

21st Century

49 In August 2015, we commenced proceedings in the Federal Court against various companies associated with Jamie McIntyre and the 21st Century Group regarding the promotion and sale of interests to investors in five land banking developments. We alleged that the developments amounted to unregistered managed investment schemes (unregistered schemes) and/or financial products, and that the 21st Century Group, Jamie McIntyre and his brother Dennis McIntyre had been unlawfully carrying on an unlicensed financial services business.

50 Justice Bromwich found that the developments were unregistered schemes and that the corporate defendants had contravened the *Corporations Act 2001* (Corporations Act) by carrying on a financial services business without an Australian financial services (AFS) licence. On 17 October 2016, Justice Bromwich ordered that:

(a) Jamie and Dennis McIntyre be banned from managing corporations and carrying on a financial services business for 10 years; and

(b) the unregistered schemes be wound up.

51 Justice Bromwich considered that:

> It is apparent that both Mr Jamie McIntyre and Mr Dennis McIntyre are, at the very least, completely financially incompetent. Unless they acquire new

> skills and the capacity for diligence and competence in the 10 years during which they are now disqualified and therefore banned from managing corporations (whether formally or informally) and in the 10 years that they are now prohibited from providing financial advice or dealing in financial products, each of them will be a menace to the investing public. There is no evidence to suggest that such successful reform is likely.

52 Jamie and Dennis McIntyre agreed to the orders.

Holding gatekeepers to account

Area of focus

Balancing a free market-based system with investor and financial consumer protection

Directors and registered liquidators are important gatekeepers in the financial systems. Company directors, senior executives, auditors and liquidators hold positions of responsibility and trust, and they are required to discharge the obligations that these positions carry.

Illegal phoenix activity

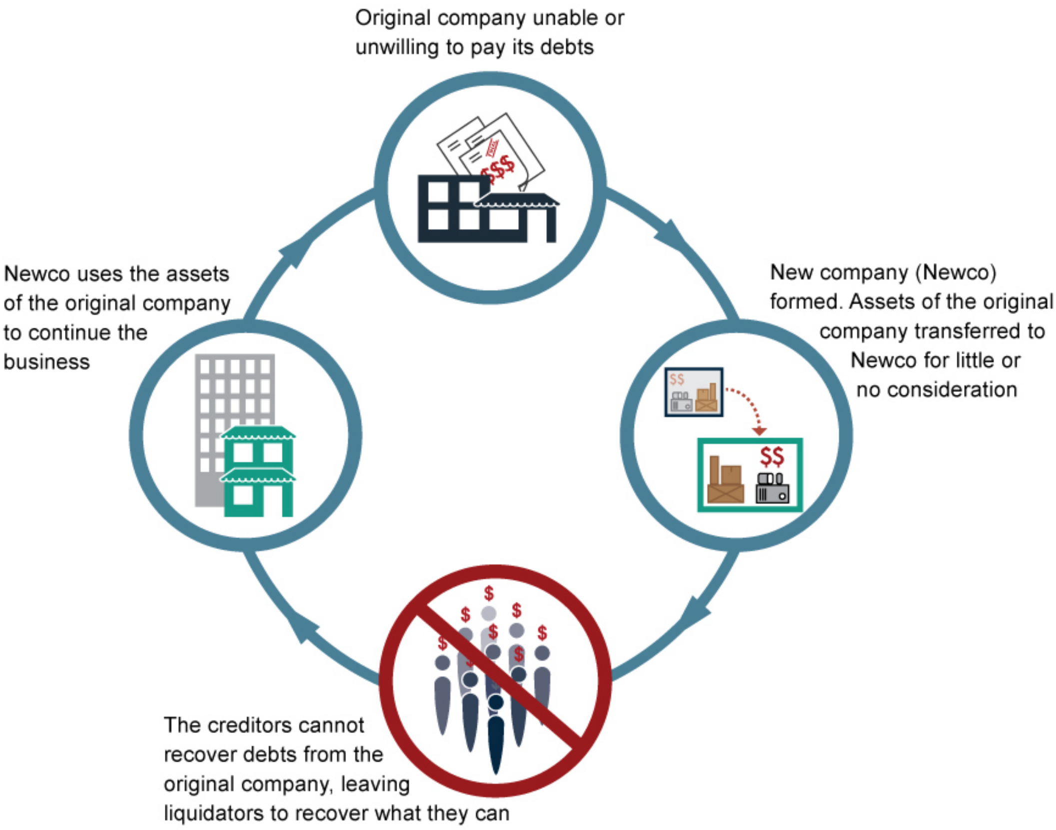
53 Illegal phoenix activity occurs when a company suffers financial distress and cannot pay its debts (or is simply unwilling to pay its debts), and the directors defeat the creditors' interests by transferring assets to a new company for little or no consideration before an external administrator's appointment. This means that creditors cannot access assets or recover debts, the company avoids paying tax or employee entitlements, and a liquidator is left to see what they can recover.

54 Meanwhile, the new company uses the original company;s assets and staff.

55 Given the similarities in business operations between the new company and the original company, there is a risk that the new company will fail and the cycle begins again.

56 Figure 2 sets out the typical lifecycle of an illegal phoenix company, and highlights an estimate of the immediate costs to affected parties.

Figure 2: Typical lifecycle of an illegal phoenix company



Note: The process shown in this flowchart is set out in paragraphs 53–55 (accessible version).

57 In addition to taking enforcement action, we aim to disrupt the business models and facilitators underlying illegal phoenix activity using a whole-of-ASIC plan and cross-agency collaboration.

Phoenix surveillance campaign

58 In 2013, we implemented a new and innovative campaign to deter illegal phoenix activity. It takes a proactive approach by focusing on future, rather than past, conduct and concentrating on the construction, labour hire, transport, security and cleaning industries—as they display disproportionately higher levels of corporate failures, which can indicate illegal phoenix activity.

59 Our surveillance activities target directors with a history of conduct that may constitute illegal phoenix activity, as an indicator for predicting future behaviour.

Liquidator assistance program

60 An indicator of illegal phoenix activity is directors failing to assist liquidators by providing books and records and a report as to affairs of a company. In 2016, we received 1,476 requests from liquidators for

assistance; we achieved compliance in 556 matters and undertook 404 prosecutions of persons for failing to provide books and records.

Assetless Administration Fund

61 We funded a liquidator to pursue litigation against a company that allegedly illegally disposed of its business and assets to a related company prior to the first company's winding up.

Cross-agency operational matters

62 ASIC continues to assist the Australian Taxation Office and the Department of Employment in ongoing operational matters involving alleged illegal phoenix activity. We expect these matters to result in formal enforcement action.

Registered liquidator independence and disciplinary action

63 We reviewed declarations of independence and indemnities in formal external administrations where illegal phoenix activity might exist. ASIC action resulted in liquidators resigning their appointment or changing their declarations so that creditors were better informed about relationships between the appointed liquidator and those who referred them for the appointment.

64 We filed an application with the Companies Auditors and Liquidators Disciplinary Board (CALDB) concerning registered liquidator Stan Traianedes. The CALDB suspended Mr Traianedes' registration for three years, after finding that he failed to adequately and properly carry out his duties as a liquidator for three companies. Indications of illegal phoenix activity existed in the liquidation of one of the three companies.

65 In October 2016, the Federal Court (Vic.) made orders prohibiting Melbourne liquidator, Ross McDermott, from accepting any new appointments as a registered liquidator (including appointments as a controller or administrator) for three years.

66 The orders followed ASIC's application to the court for an inquiry into Mr McDermott's conduct of 26 external administrations between 2009 and 2014.

67 The court considered that, while Mr McDermott's conduct was not dishonest, he failed to carry out and perform adequately and properly his:

(a) duties as liquidator; and

(b) duties and functions as administrator and deed administrator.

It also considered that each aspect of his conduct was serious and occurred across multiple appointments.

Kleenmaid

68 In addition to the results of our investigation into Kleenmaid (see Report 476 *ASIC enforcement outcomes: July to December 2015* (REP 476) at paragraphs 57–60), in August 2016 the District Court (Qld) found Bradley Wendell Young, a former director of one of the Kleenmaid group of companies, guilty of 18 charges. The charges related to criminal insolvent trading totalling $3.5 million and dishonestly gaining loan facilities totalling $13 million. He was sentenced to nine years imprisonment.

69 The sentence follows the imprisonment in October 2015 of Garry Collyer Armstrong, also a former director, for seven years after being convicted of criminal insolvent trading and fraudulently obtaining bank finance. It also follows CALDB suspending the registration of Kleenmaid's former auditor, Wayne John Wessels, for three years after it found in November 2013 that:

(a) Mr Wessels failed to carry out and perform adequately and properly his duties as lead auditor of Kleenmaid's financial report for the year ended 30 June 2008;

(b) Mr Wessels should have brought a higher degree of professional scepticism to his consideration of Kleenmaid management's assumption of the company's going concern; and

(c) there were deficiencies in the standard of Mr Wessel's evidence and documentation of audit work conducted.

70 The trial of another former director, Andrew Eric Young, has been set to commence in the District Court (Qld) on 21 August 2017.

Andrew Sigalla

71 In November 2016, Andrew John Sigalla, a former director of TZ Limited, was found guilty by a Supreme Court (NSW) jury of 24 counts of dishonest conduct.

72 The court found that Mr Sigalla had used his position as a director dishonestly by transferring $8.7 million in company funds to himself, his related entities and other parties. The funds transferred to Mr Sigalla's various accounts were then predominantly used to reduce his debt with bookmaker Tom Waterhouse or to make mortgage payments on behalf of one of his personal companies.

73 Mr Sigalla was sentenced to 10 years imprisonment, with a six-year non-parole period. As a result of the sentencing, Mr Sigalla is automatically disqualified from managing corporations for five years from the date on which he is released from prison.

Appendix 1: Summary of enforcement results from the relevant period

74 Table 5 to Table 8 show the results of our enforcement activity. Each table sets out the results of a specialist enforcement team, which are grouped by category of misconduct. Results achieved include court determinations (criminal and civil), administrative remedies, criminal guilty pleas yet to receive sentencing decisions by the court, and the acceptance of enforceable undertakings.

75 These tables also include:

(a) any regulatory action taken to secure compliance, which we have reported in public announcements; and

(b) a number of outcomes in our Small Business Compliance and Deterrence team, which we do not generally announce in media releases.

76 We also undertake a significant number of surveillances and investigations that lead to less formal or unpublicised results (e.g. a negotiated agreement), which may not be covered in this report.

Table 5: Market integrity—Results by misconduct type

Type of misconduct	Criminal	Civil	Admin	Enforceable undertaking	Negotiated outcome
Insider trading	1	1	–	–	–
Continuous disclosure	–	3	1	–	–
Market integrity rules	–	–	3	–	–
Other market misconduct	1	2	2	2	–
Total	**2**	**6**	**6**	**2**	**–**

Note: One administrative remedy in the 'other market misconduct' category is currently under appeal.

Table 6: Corporate governance—Results by misconduct type

Type of misconduct	Criminal	Civil	Admin	Enforceable undertaking	Negotiated outcome
Action against directors	3	2	1	–	–
Insolvency	1	–	–	–	–
Action against auditors	–	–	2	–	–
Action against liquidators	–	–	2	1	5

Type of misconduct	Criminal	Civil	Admin	Enforceable undertaking	Negotiated outcome
Other corporate governance misconduct	–	1	14	–	–
Total	**4**	**3**	**19**	**1**	**5**

Table 7: Financial services—Results by misconduct type

Type of misconduct	Criminal	Civil	Admin	Enforceable undertaking	Negotiated outcome
Unlicensed conduct	–	–	1	–	21
Dishonest conduct, misleading statements	2	7	22	–	1
Misappropriation, theft, fraud	1	–	2	–	–
Credit	2	2	34	2	1
Other financial services misconduct	–	5	18	2	7
Total	**5**	**14**	**77**	**4**	**30**

Note: One administrative remedy in the ‘unlicensed conduct’ category, five administrative remedies in the ‘dishonest conduct, misleading statements’ category and one civil remedy in the ‘credit’ category are currently under appeal.

Table 8: Small business—Results by misconduct type

Type of misconduct	Criminal	Civil	Admin	Enforceable undertaking	Negotiated outcome
Action against persons	227	–	12	–	–
Efficient registration and licensing	17	–	–	–	–
Total	**244**	–	**12**	–	–

Note: One of the 12 administrative remedies in the ‘action against persons’ category is currently under appeal.

Appendix 2: Accessible versions of figures

77 This appendix is for people with visual or other impairments. It provides the underlying data for figures included in this report.

Summary of key enforcement results by misconduct type

78 Table 9 to Table 13 show the data contained in Figure 1.

Table 9: Summary of enforcement results

Type	Number (or value)
Investigations commenced	98
Investigations completed	102
Persons charged in criminal proceedings	5
Criminal charges laid	47
Individuals removed from financial services	39
Persons charged in summary prosecutions for strict liability offences	194
Criminal charges laid in summary prosecutions for strict liability offences	382
Infringement notices issued	63
Infringement notices paid (value)	$2.9m
Compensation/remediation (value)	$159.4m

Table 10: Market integrity results by misconduct type

Type of misconduct	Proportion of total
Insider trading	12%
Continuous disclosure	25%
Market integrity rules	19%
Other market misconduct	44%

Note: Percentages are rounded to the nearest unit.

Table 11: Corporate governance results by misconduct type

Type of misconduct	Proportion of total
Action against directors	19%
Action against liquidators	25%

Type of misconduct	Proportion of total
Action against auditors	6%
Insolvency	3%
Other corporate governance misconduct	47%

Note: Percentages are rounded to the nearest unit.

Table 12: Financial services results by misconduct type

Type of misconduct	Proportion of total
Unlicensed conduct	17%
Dishonest conduct, misleading statements	25%
Misappropriation, theft, fraud	2%
Credit	31%
Other financial services misconduct	25%

Note: Percentages are rounded to the nearest unit.

Table 13: Small business results by misconduct type

Type of misconduct	Proportion of total
Action against persons	93%
Efficient registration and licensing	7%

Note: Percentages are rounded to the nearest unit.

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Key terms

Term	Meaning in this document
AFS licence	An Australian financial services licence under s913B of the Corporations Act that authorises a person who carries on a financial services business to provide financial services Note: This is a definition contained in s761A.
ASIC	Australian Securities and Investments Commission
ASIC's Corporate Plan	*ASIC's Corporate Plan 2016–17 to 2019–20: Focus 2016–17*
CALDB	Companies Auditors and Liquidators Board
Corporations Act	*Corporations Act 2001*, including regulations made for the purposes of that Act
credit activities	Has the meaning given in s6 of the National Credit Act
credit licence	An Australian credit licence under s35 of the National Credit Act that authorises a licensee to engage in particular credit activities
enforceable undertaking	An enforceable undertaking that may be accepted by ASIC under reg 7.2A.01 of the Corporations Regulations
enforcement result	Any formal action to secure compliance, about which ASIC has made a public announcement
financial service	Has the meaning given in Div 4 of Pt 7.1 of the Corporations Act
market integrity rules	Rules made by ASIC, under s798G of the Corporations Act, for trading on domestic licensed markets
National Credit Act	*National Consumer Credit Protection Act 2009*
relevant period	1 July 2016 to 31 December 2016
REP 485 (for example)	An ASIC report (in this example numbered 485)
s180 (for example)	A section of the Corporations Act (in this example numbered 180), unless otherwise specified

Related information

Headnotes

ASIC's strategic priorities, banning, credit activities, enforceable undertaking, enforcement result, financial service, gatekeepers, infringement notice, misleading or deceptive conduct

Legislation

Corporations Act, s180–184 and 588G

National Credit Act

Other documents

ASIC's Corporate Plan

REP 476 *ASIC enforcement outcomes: July to December 2015*

REP 485 *ASIC enforcement outcomes: January to June 2016*

REP 499 *Financial advice: Fees for no service*