



ASIC
Australian Securities &
Investments Commission

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ASIC quarterly update: January to March 2021

Report 690 | May 2021

About this report

This report provides an update on ASIC's work undertaken between 1 January and 31 March 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.

Supporting Australia's economic recovery

In 2021, ASIC is focusing on supporting Australia's post-COVID-19 economic recovery. Last year we facilitated the raising of much needed capital, acted to stabilise a volatile market, and took practical steps to assist companies conduct meetings which could not be conducted in person. We supported banks, superannuation trustees and insolvency practitioners to understand and comply with changes in the regulatory environment, including temporary measures implemented in response to the COVID-19 pandemic.

ASIC also provided information to consumers impacted by natural disasters, including the 2020–21 bushfires and 2021 floods.

ASIC adopts 'no-action' position for virtual meetings

On 29 March 2021, we announced our 'no-action' position on the convening and holding of virtual meetings. This position is a temporary measure to provide the market with a degree of certainty until measures are passed by Parliament relating to the use of virtual technology in meetings. The 'no-action' position for virtual meetings:

- › supports the holding of meetings using appropriate technology
- › facilitates electronic notice of meetings, including supplementary notices
- › allows more public companies an additional two months to hold AGMs.

Read more

[ASIC adopts 'no-action' position and re-issues guidelines for virtual meetings](#)

“ASIC's position is intended to facilitate businesses to hold their meetings effectively during the ongoing pandemic, where there is still uncertainty around restrictions on gatherings and travel.”

– Commissioner Cathie Armour

Temporary restructuring relief for small business directors

We have provided guidance for small business directors about insolvency reforms for small business, including how to access temporary restructuring relief.

Introduced by the Australian Government on 1 January 2021, the temporary restructuring relief extended measures announced in March 2020 in response to the COVID-19 pandemic.

Read more

[Act now: Temporary restructuring relief for small business directors](#)

Insurance during natural disasters and financial hardship

In 2021, we continued to provide targeted resources for people affected by natural disasters, including bushfires in Western Australia and severe flooding and storms in New South Wales and Queensland.

We provided information for consumers on the Moneysmart website about lodging insurance claims, avoiding scams, and applying for financial assistance after natural disasters.

Our consumer campaign was complemented by continued industry supervision. We reviewed and monitored how life and general insurers responded to customers experiencing financial hardship caused by the COVID-19 pandemic.

This industry supervision work, which began in June 2020, involved direct engagement with major life and general insurers to help ensure they were doing everything possible to help consumers in times of need. It provided insight into the support options and help provided to customers so they could:

- › keep their insurance cover (or make changes where appropriate)
- › obtain insurance cover
- › make a claim.

Read more

[Business interruption insurance claims and COVID-19: What you need to do](#)

[New South Wales and Queensland severe storms and floods: What to do if you are affected](#)

[ASIC's expectations for protecting vulnerable customers](#)

“ASIC's Moneysmart website is used by as many as 10 million Australians to help them plan their finances and obtain information on key financial topics.”

– Chair James Shipton



New responsibilities

On 1 January 2021, Government reforms commenced that [expanded ASIC's role in superannuation](#) to include conduct regulation, while retaining APRA's role as the prudential and member-outcomes regulator for superannuation. The reforms enhance ASIC's ability to act against harmful conduct in superannuation, and promote improved outcomes for consumers. ASIC is working closely with APRA to drive good conduct in the superannuation sector.

Proceedings against Retail Employees Superannuation

On 2 March 2021, we announced that we had commenced civil penalty proceedings against Retail Employees Superannuation (REST), a superannuation trustee.

We are alleging that REST made misleading and deceptive representations to members over eight years, in relation to whether they could transfer out of the REST fund.

Read more

[ASIC commences civil penalty proceedings against REST for misleading and deceptive representations to members](#)

Proceedings against Statewide Superannuation

On 4 March 2021, we announced that we had commenced civil penalty proceedings against Statewide Superannuation for misleading or deceptive correspondence over three years.

We are alleging that, from May 2017 to June 2020, Statewide sent annual statements and warning letters to approximately 12,500 fund members, representing that they held insurance cover when those members did not have cover under a Statewide insurance policy.

We also allege that Statewide deducted monthly insurance premiums (worth a total of approximately \$1.5 million) from superannuation accounts of certain fund members, when those members did not have cover under a Statewide insurance policy.

Read more

[ASIC commences civil penalty proceedings against Statewide Superannuation for misleading or deceptive correspondence](#)

Working with APRA

We are working closely with APRA to ensure guidance to trustees is integrated.

Our cooperation is reinforced by the statutory obligation to cooperate, share information and notify each other of suspected breaches of laws administered by the other. The statutory obligation was recommended by the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (Financial Services Royal Commission) and came into effect in January 2021. It formalised the progress made to date on closer collaboration and information sharing.

Read more

[Update on APRA-ASIC engagement](#)

Protecting consumers and investors

ASIC's [Corporate Plan 2020–24](#) sets out ASIC's ongoing commitment to protecting consumers from harm, particularly at a time of heightened vulnerability, elevated debt levels and increased hardship.

This quarter we continued to focus on misleading and deceptive advertising, false and misleading conduct, predatory lending, acting against scams, and mitigating cyber risk.

Misleading and deceptive advertising

On 23 March 2021, the Federal Court found Mayfair Wealth Partners and Online Investments (trading as Mayfair 101, M101 Nominees and M101 Holdings), engaged in misleading or deceptive conduct and made false or misleading representations about its debenture products.

This case illustrated that we will not only take action where investments are marketed as safer, lower risk, or more liquid than they are, but also where search engines are used in a misleading or deceptive way to entice investors to products they are not searching for.

Read more

[ASIC succeeds in court action against Mayfair 101 for misleading and deceptive advertising](#)

“ASIC's success in court demonstrates that firms need to do the right thing by their investors, even when they are wholesale investors. They need to make sure they accurately describe their products when advertising.”

– Deputy Chair Karen Chester

False and misleading conduct

On 5 March 2021, the Federal Court ordered Dover Financial Advisers to pay a \$1.2 million penalty for engaging in false or misleading conduct, and Terrence McMaster, Dover's sole director, to pay a \$240,000 penalty for being knowingly concerned in Dover's conduct.

Read more

[Dover Financial Advisers to pay \\$1.2 million penalty and its sole director to pay \\$240,000 penalty for false or misleading conduct](#)

“The purpose of Dover's Client Protection Policy was to exclude or limit Dover's liability to clients to its own financial benefit. The significant penalties handed down demonstrate the seriousness of this misconduct and will act as a deterrent to others who believe they can get away with similar behaviour.”

– Commissioner Danielle Press

Predatory lending

Our consumer protection work continues to focus on taking swift and effective action against predatory lending, including to borrowers adversely affected by the COVID-19 pandemic.

On 16 March 2021, we announced that we had commenced proceedings against Membo Finance and its sole credit representative Richmond Group Financial Services, trading as ClearLoans.

These proceedings include allegations of failures by Membo and Richmond Group Financial Services to comply with the *National Consumer Credit Protection Act 2009* when borrowers experienced financial hardship.

Read more

[ASIC commences proceedings against Membo Finance over hardship requests](#)

[ASIC's expectations for protecting vulnerable customers](#)

“ASIC has zero tolerance for predatory behaviour, particularly lenders who offer refinancing options that are nothing more than equity stripping. If you see examples of this behaviour, we urge you to come forward and report it to ASIC.”

– Commissioner Sean Hughes

Acting against scams

Our Scams Working Group continues to conduct environmental scans and monitor ASIC data access points to identify technology-enabled offending.

We have received an exponential increase in investment scam reports of misconduct since the beginning of the COVID-19 pandemic. In March 2021, over 75% of these reports were in relation to crypto scams.

Where appropriate, we are taking swift enforcement action against wrongdoing, and issuing public warnings to protect consumers.

Read more

[First-time trader? Be aware of the risks](#)

[Suspicious website alert: beurax.com](#)

[Financial scams double in 2021: Reporting up more than 200%](#)

[ASIC warns investors of impostor bond scams](#)

“Australians are at risk of being scammed and losing money. Scammers are using age-old tactics in new and sophisticated ways to target people.”

– Chief Operating Officer Warren Day

Mitigating cyber risk

We are focused on improving the cyber resilience of all entities operating in Australia's financial markets through close collaboration with regulated firms, regulators and the Australian Government.

We are working to ensure the regulatory requirements for robust cyber resilience are front of mind for regulated entities. This includes issuing resources for firms including on [cyber resilience good practice](#).

Our work is guided by [Australia's Cyber Security Strategy 2020](#) and includes raising awareness of cyber resilience for our regulated entities. We also work with fellow members of the Council of Financial Regulators to develop ways to address cyber incidents.

We will continue to take enforcement action when we identify entities that fail to take appropriate action to mitigate cyber risk.

New regulatory tools

ASIC continues to use new regulatory tools, such as the product intervention power, and to prepare for new tools introduced by recent law reform. We are also supporting regulated entities as they get ready for the new product design and distribution obligations that come into effect later in 2021.

Product intervention power

The product intervention power (see [RG 272](#)) is a flexible tool that allows ASIC to temporarily intervene in a range of ways, including to ban financial and credit products when there is a risk of significant consumer detriment.

On 23 October 2020, we made a product intervention order imposing conditions on the issue and distribution of contracts for difference (CFD) to retail clients. The order took effect on 29 March 2021. It strengthens protections for retail clients trading CFDs, after we found that CFDs have resulted in, and are likely to result in, significant detriment to retail clients.

On 1 April 2021, we made a product intervention order banning the sale of binary options to retail clients. The ban took effect on 3 May 2021.

Read more

[ASIC's CFD product intervention order takes effect](#)

[ASIC product intervention order strengthens CFD protections](#)

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

Deferred sales model for add-on insurance

In December 2020, the Australian Government passed legislation to amend the *Australian Securities and Investments Commission Act 2001* to introduce a deferred sales model for add-on insurance. This will require a four-day pause between the sale of a principal product or service and the sale of add-on insurance products.

This model was recommended by the Financial Services Royal Commission and will commence on 5 October 2021.

On 11 March 2021, we invited feedback ([CP 339](#)) on:

- › draft regulatory guidance explaining the scope of the deferred sales model, the obligations on add-on insurance providers and ASIC's power to grant an individual exemption
- › our proposals about the communication of information to customers before the deferral period starts.

Read more

[ASIC consults on implementing a deferred sales model for add-on insurance products](#)

Product design and distribution obligations

Product design and distribution obligations (see [RG 274](#)) for regulated entities that issue or distribute financial or credit products, will come into effect on 5 October 2021.

We have urged financial services firms to discuss their approach to design and distribution obligations with distributors as early as possible to ensure preparations are complete before October. This includes the processes supporting the flow of information between issuers and distributors, and ensuring systems can monitor the outcomes of products.

Read more

[ASIC releases regulatory guide on product design and distribution obligations](#)

[Deputy Chair Karen Chester speech, AFR Business Summit, 10 March](#)

[Commissioner Sean Hughes speech, AFIA Risk Summit, 16 February](#)

“The design and distribution obligations are a game changer. They embed a consumer-centric approach and assist industry to deliver better outcomes for consumers, while managing non-financial risks and avoiding costly remediation.”

– Deputy Chair Karen Chester

