

REGULATORY RUMBLINGS – QUARTERLY UPDATE JULY 2024

ASIC ENFORCEMENT NEWS AND INSIGHTS FOR BUSY PEOPLE

Your quarterly round-up of the key enforcement developments and updates that ASIC-regulated entities and individuals need to know about, packaged up in a five-minute read and brought to you by Gilbert + Tobin's Disputes and Investigations team.

Want to know more or need advice? Get in touch with us!



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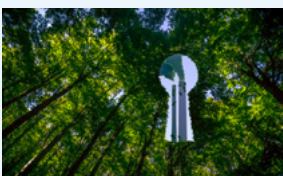
KEY THEMES OF THE QUARTER – MAY TO JULY 2024

It's been a busy three months from May to July 2024 for ASIC. Not only has a **challenging Senate report** into ASIC's performance been published (which is particularly critical of ASIC's approach to investigation and enforcement), but on 30 June 2024, ASIC **announced** an expanded program of work to **enhance the integrity and quality of financial reporting**. And then at the end of July 2024, Chair Joe Longo said that ASIC would be prioritising a review of (the less transparent) **private markets**, which would include whether the compliance requirements of listed entities were nudging capital away from public markets.

However, it has also been business as usual for ASIC and it is ramping up its efforts on the enforcement front. **As reported by the AFR**, ASIC commenced around 180 new investigations in 2023-24 (an increase of around 33 per cent on the previous year) and Chair Joe Longo has made clear that an investigation means "*by definition we suspect a contravention of the law*". Based on enforcement activity to date, we see three key themes emerging:

Combatting greenwashing remains a key priority:

ASIC makes clear it remains committed to combatting greenwashing with successful cases in the Federal Court against Mercer and Active Super and an infringement notice against Fertoz Limited.



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Cyber, AI + Technology:

a landmark Federal Court decision relieved Block Earner from liability to pay a penalty, despite ASIC successfully establishing Corps Act contraventions; and the first judgment relating to a non-cash payment facility involving crypto assets, found that BPS had engaged in unlicensed conduct when offering the "Qoin Wallet" to consumers.

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Accountability and FAR:

with the Financial Accountability Regime (FAR) now in place for authorised deposit-taking institutions, and ASIC having just (on 11 July) released its FAR **information package** for the insurance and superannuation industries, accountability is squarely in the spotlight. Against that background, we consider what action ASIC has announced for directors in this quarter.

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What else did I miss?

ASIC v Noumi Ltd lead to a surprising decision on the use of ASIC's Voluntary Disclosure Agreements; and take note if the design and distribution obligations apply to you, with two judgments finding Firstmac and American Express both contravened their DDO obligations.



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Look out for our next issue of Regulatory Rumbings at the end of October 2024. Otherwise, please do get in touch if you have any questions or need advice. In the meantime, for an in-depth, weekly overview of regulatory matters more broadly, see our Financial Services team's excellent publication [here](#).