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Tuesday 19 October 2021

## 21-276MR Colonial First State to pay \$20 million penalty for misleading superannuation members

The Federal Court has ordered Colonial First State Investments Limited (Colonial), as trustee for the Colonial First State FirstChoice Superannuation Trust (FirstChoice Fund), to pay a penalty of \$20 million for misleading communications with members.

The Court noted this to be a substantial penalty for serious contraventions of the law.

The Court previously declared Colonial had breached the ASIC Act and Corporations Act when communicating to members on at least 12,978 occasions ([21-237MR](#)). The misleading or deceptive conduct by Colonial included:

- telling its members that legislative changes required Colonial to contact them and obtain an investment direction to stay in the FirstChoice Fund when that was not the case; and
- failing to tell members that if Colonial did not receive an investment direction from the member, it was required to transfer the member's superannuation contributions into a MySuper product.

The Court found that the misleading communication was intended to encourage members to stay with the FirstChoice Fund rather than move to the MySuper product.

ASIC Deputy Chair Sarah Court said, 'The \$20 million penalty handed down to Colonial is a timely reminder to superannuation trustees not to mislead members for their own benefit. Trustees have an obligation to provide their members with balanced and accurate information that enables them to make informed decisions about their retirement savings.

'Superannuation represents the future financial security of all Australians. We want to see funds operate in a way that is fair for members and promotes confidence in superannuation,' concluded Deputy Chair Court.

In his decision, Justice Murphy found that Colonial's conduct 'involved false or misleading representations made to approximately 13,000 members of the fund, in a concerted campaign which went on for more than two years' and that 'its contravening conduct involved, in effect, seeking to take advantage of members whose interests it was, as trustee of the fund, duty-bound to protect.'

The Court acknowledged Colonial's consent to the declarations of liability and its ongoing remediation program, and said that without the remediation program the penalty would have been higher.

Colonial was also ordered to publish an Adverse Publicity Order and to pay ASIC's costs.

### Download

[Judgment \(PDF 362 KB\)](#)

[Orders \(PDF 226 KB\)](#)

[Statement of Agreed Facts \(PDF 3 MB\)](#)

### Background

Colonial has paid more than \$67 million to remediate losses to 5,815 members who had received calls. These members comprised the 70 members impacted by the misleading calls in the proceeding and 5,745 members who received calls with similar features to those which the Court found contravene the above laws and for other related conduct and suffered a loss. Colonial's remediation program is continuing and will remediate the losses to members who were sent the 12,911 letters found to be misleading by the Court. The total remediation figures are expected to increase.

The 'MySuper' provisions required trustees such as Colonial to:

- pay default contributions from 1 January 2014 into a MySuper product; and
- transfer 'accrued default amounts' from 1 July 2017 to a MySuper product.

Trustees were exempt from these requirements where they had received a valid investment direction from a member to retain them in a superannuation product rather than transitioning to a MySuper product.

Colonial's conduct was the subject of a case study by the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry. Part of that conduct was referred to ASIC in the Final Report ([Volume 2 - Part 2](#), p 91).

As conduct regulator for the superannuation industry, ASIC is committed to ensuring superannuation trustees deliver on their commitments to members and treat them fairly. ASIC aims to deter any future misconduct and prevent consumer harm by taking appropriate action against wrongdoing.

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