

CIVIL PENALTIES AND STRATEGIC REGULATION THEORY: THE GAP BETWEEN THEORY AND PRACTICE

By

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ABSTRACT

When the civil penalty regime was introduced in 1993 it was envisaged that it would provide ASIC with an enforcement mechanism that would comply with strategic regulation theory. Civil penalties would fill the gap in the enforcement pyramid in relation to contraventions of the directors' duty provisions. In theory it is clear where civil penalties sit in the enforcement pyramid. However, an examination of ASIC's use of the civil penalty regime reveals that in practice civil penalties do not comply with the theory. This paper analyses ASIC's use of the civil penalty regime and explores the reasons why there are anomalies between theory and practice.