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By email: ashly.hope@asic.gov.au

Dear Ashly

ASIC REPORT 224: FACILITATING ELECTRONIC FINANCIAL SERVICES DISCLOSURES

The Australian Finance Conference (AFC) appreciates the opportunity to provide input on proposals to remove barriers to enhance the ability for our Member to utilise electronic means to communicate with their customers in the provision of financial services, including consumer credit. By way of background, AFC Members (list attached) operate in both the consumer and commercial finance market and include credit providers, deposit-takers, receivables managers and credit reporting entities. Our feedback has considered implications with the proposals from both sides of the balance sheet: investment/deposit-taking and credit provision.

As a general position, in principle, AFC welcomes and supports ASIC's proposals to facilitate the electronic delivery of disclosures for financial services and credit products as the default method, available for take up at the provider's option. Electronic methods of customer interface are pervasive and preferable to many if not most consumers.

As recognised in CP 224, electronic delivery has significant potential benefits for customers and industry participants alike. It enables a provider to combine numerous media – text, graphics, sound, video – into a single message. It also facilitates interactive, real-time communication between a customer and provider. The result can be far more meaningful communications tailored to the nature of particular customer segments and / or products and allowing consumers to be informed wherever they are. Compliance benefits also result (including cost savings on paper / postage together with more efficient record-management and auditable delivery/receipt). There would appear to be no potential consumer disadvantage or detriment from the proposal given that a key aspect of it is that customers would retain the ability of electing to receive a printed disclosure document.

In providing feedback we recognise that any proposed de-regulatory initiatives should not undermine the strategic priorities of ASIC.

As a general position, the AFC supports ASIC's proposal:

1. in relation to financial services: to progress options 1-3 including: providing an additional option for financial services providers to publish disclosures electronically and then notify the client that the disclosure is available; to make clear that if a financial services provider has an email address for its customer, it does not need to obtain any further or additional consent to use that address to deliver disclosures electronically; and to facilitate the use of more innovative PDSs.
2. for NCC-regulated credit: to facilitate the same approach for electronic financial services disclosures (including any necessary class order relief) to apply to disclosures required under

the National Consumer Credit Protection Act 2009 (including the National Credit Code NCC) for consumer credit products. This would lead to consistency in the way that our Members communicate with their customers who take out financial services and credit products which brings a range of benefits for consumer and industry alike. We acknowledge that there would appear to be a range of inhibitors particular to consumer credit regulation which impacts on the ability to achieve this outcome, but we would be happy to work with ASIC to assist clearly identify what these are and what may be required to alleviate them to facilitate the ability for consumer credit providers to meet customer expectations of dealing electronically with them.

Further comment on the proposals and the specific questions is detailed in an attachment to this letter.

Please feel free to contact me (by phone 02 9231 5877 or via email) to discuss our comments further.

Kind regards.

Yours truly

Helen Gordon
Regional Director & Corporate Lawyer

Attachments:

1. AFC Responses to ASIC CP 224
2. AFC Membership List

**AFC RESPONSE TO ASIC CP 224: Facilitating
Electronic Financial Services Disclosures**

A BACKGROUND TO THE PROPOSALS	
<p>A1: We are considering the threshold options set out in paragraph 18. Depending on feedback, we propose to implement Options 1–3 to further facilitate electronic disclosure. This feedback seeks your overarching views; more detailed questions on the particular proposals are in Sections B and C.</p>	
ASIC Question	AFC Comments
<p>A1Q1: Do you agree that we should further facilitate electronic disclosure, or take Option 5 (i.e. no change)? Please provide reasons.</p>	<p>AFC supports ASIC’s proposal to explore Options 1- 4 to facilitate electronic disclosures as the default method of delivery because of the potential benefits including:</p> <ul style="list-style-type: none"> (1) better alignment to meet customers’ needs; (2) environmental benefits; (3) greater opportunity for better record-management (eg e-storage / e-recall for future reference); (4) reduced compliance costs to our Members (printing and mailing costs); and (5) consistency and alignment to other service industries. <p>Option 5 – retain status quo - is not supported.</p>
<p>A1Q2: What benefits do you consider will result from our proposed approach?</p>	<p>The AFC considers the following are benefits from ASIC’s proposed approach:</p> <ul style="list-style-type: none"> (1) reduced compliance costs to AFC members (printing / mailing costs; and record-management); (2) faster, real-time delivery / receipt by customer of disclosure documents; (3) simpler to update disclosures if information is in electronic format; (4) flexibility in allowing the financial services provider to make a decision on the default method of delivery (e.g. print or electronic); (5) elimination of a double-layered inefficient process that imposes a positive obligation on a provider to obtain consent from customers to electronic disclosure when they have effectively done so by providing an email address for contact; (6) innovative disclosure documents that are able to combine various media to have an end-product that may be more engaging and informative to different customer segments (e.g. PDS).
<p>A1Q3: What disadvantages do you consider will result from our proposed approach?</p>	<p>The AFC considers there to be minimal disadvantages resulting from ASIC’s proposed approach.</p> <p>As we understand, it is intended that the customer will retain the option of selecting printed and posted</p>

ASIC Question	AFC Comments
	<p>delivery as their preferred method – which for consumers that have limited internet access or IT familiarity enables them to retain the ability to select a method of delivery of material in a form that they may be more comfortable with.</p>
<p>A1Q4: Are there any other options we should consider to meet our regulatory objective of further facilitating electronic disclosures and encouraging the use of more innovative PDSs, while ensuring that consumer choice about the method by which they receive disclosures is not removed?</p>	<p>The AFC suggests that in developing a proposal ASIC should ensure a future-proofed solution. In short, a solution should, where possible, be framed to achieve a principles-based outcome without being tied to any particular form of digitization to facilitate technologically neutral outcomes to cater for potential new technological developments (eg either software or hardware).</p>

B1: ENABLING ELECTRONIC DISCLOSURE TO BE THE DEFAULT METHOD	
<p>B1: We are proposing to update our guidance in RG 221 to make it clear that, if a financial services provider has an email address for a client, they do not need consent to use that address to deliver disclosures electronically, in the same way that the provision of a postal address is sufficient consent for the delivery of disclosures to that postal address.</p> <p>Providers should still be satisfied that if the relevant provision requires the address to be ‘nominated’, that the email address has been nominated. We think in most circumstances this would be clear from the context (see draft updated RG 221.33), such as when a client provides an email address as part of an application.</p>	
ASIC Question	AFC Comments
<p>B1Q1: Do you agree with this proposal? Please give reasons for your answer.</p>	<p>AFC supports ASIC’s proposal to make it clear that if our Member has been given an email address by a customer, that it does not need anything further before being able to use that email address as the default delivery address for disclosure of material to that customer. In short, by giving his/her email address the customer is effectively consenting to an electronic delivery method (ie implied consent).</p> <p>By removing or not requiring express consent as a pre-condition to use of a customer-provided email address, the outcome also aligns the process with that for printed material delivery – in short, by providing a postal or mailing address a customer effectively consents to receiving material from the provider at that address without any further or additional requirement to expressly give consent as a pre-cursor to the provider being permitted to send printed material to that address.</p> <p>Given the widespread use of the internet (including electronic mail as a standard method of information-delivery), we are of the view that any requirement to impose a further layer of express consent as a pre-cursor to use of an email address provided by a customer does not serve any</p>

ASIC Question	AFC Comments
	<p>consumer protection purpose and merely adds to the compliance processes and therefore cost for our Members with no off-setting consumer protection benefit.</p>
<p>B1Q2: Are there other barriers to using email addresses for delivery of disclosures?</p>	<p>The key inhibitor or barrier is as outlined above – any real [or perceived] mandatory requirement to obtain express consent from a customer prior to being able to deliver information to an email address provided by the customer.</p> <p>As we understand, there are legislative inhibitors that operate to prevent our Members being able to use email addresses as the default compliant delivery method for some information or customers relating to NCC-regulated consumer credit products. This is discussed on more detail below – at D.</p> <p>We recognise that a process of email delivery brings with it compliance challenges for our Members, though arguably these are the same as for other delivery methods (eg postal delivery) merely magnified because of the greater ease of change / immediacy of notification of inaccuracies (eg a need to have (i) internal validation processes in place to ensure accurate emails are held / used given the potential for a customer to change his / her email address more frequently than their address for postal service and to have multiple operational email addresses; (ii) a clear understanding of risk – legal vs. operational – what are the implications for a provider where legally the customer may have the obligation to notify any change of email address but operationally provider may have information of incorrect/not-up-to-date email address following non-delivery/ undeliverable messaging?).</p>
<p>B1Q3: What are the consequences of making this change? For example, are there significant numbers of clients who have supplied email addresses and who currently do not have disclosures delivered to those email addresses, but who would be able to under this proposal?</p>	<p>Our Members have indicated that they have collected / hold email addresses for an extensive number of customers and acknowledge that in the event of ASIC facilitating utilisation would likely need to have confidence of their currency pre-use and a process of updating and re-delivering if required. This is likely given current customer interface processes also see Members undertaking such verification (ie currency of contact information and phone contact / updating in the event of non-delivery) as a normal part of their business when in contact with a customer.</p>
<p>B1Q4: Do you agree that the provision of an email address means a client or potential client is comfortable with all forms of disclosure being</p>	<p>Yes, all forms, though we acknowledge that there may be some customers who prefer not to receive email attachments (due to a perceived virus risk).</p>

ASIC Question	AFC Comments
<p>delivered to that email address? If yes, are there any consumers or groups of consumers for whom this might not be the case?</p>	<p>However this can be alleviated by providing a secure link within the email to facilitate the customer downloading the document directly from a secure website / portal.</p> <p>We would suggest that the key differentiator would be the method of delivery (eg some customers preferring to continue to receive printed material rather than electronic material) rather than differentiation based on the types of documentation for those within the customer base that prefer electronic delivery.</p> <p>We recognise that personalised material delivered electronically potentially raises possible concerns around security / privacy but suggest that customer service and regulatory requirements are likely to see our Members largely having cyber-security protocols and processes in place to appropriately manage these risks; arguably providing a more secure delivery method than for standard postal delivery of paper equivalents.</p>
<p>B1Q5: When a provider is seeking an address from a client or potential client, should there be any information, warnings or advice given about the potential ways the address might be used?</p>	<p>We note current obligations within the Privacy Act around transparency of personal information collection (including of an email address) as a precursor to use / disclosure post-collection by our Members (or third parties that they utilise). For example, Members are obliged to either notify a customer or otherwise ensure why personal information is being collected, what it is to be used for and why / to whom it is to be disclosed.</p> <p>Together with reasonable customer expectations based on knowledge around existing email usage for a variety of reasons / market segments we suggest that there is currently a high level of customer understanding associated with email disclosure / collection and potential use by our Members. To the extent that anything further might be required, we suggest that this could be addressed via scripting or on-line disclosure messages. ASIC could assist with some general wording to assist licensees so that the same message is provided to consumers for consistency, though use should not be mandated.</p>
<p>B1Q6: Are there particular kinds of disclosure for which consumers might be more or less likely to prefer electronic delivery?</p>	<p>We do not believe so for reasons given earlier in response to B1Q4.</p>
<p>B1Q7: Does it matter to whom the consumer provided the email address?</p>	<p>Recognising the potential for capture from a range of distribution or origination channels, the AFC suggests that it should not matter to whom the consumer provided the email address. The context in which the email has been collected becomes</p>

ASIC Question	AFC Comments
	<p>important and whether the customer is reasonably aware of who will be provided with his / her email address and for what purpose. In the example given in the draft revised RG 221 at para 221.35 for example – the circumstances of capture / disclosure are, and should be relevant, to the customer’s knowledge / expectation for email collection/use by our Members through the various origination channels. We also again note the relevance of the Privacy Act requirements in this regard.</p>
<p>B1Q8: Do you have comments or views on our example in draft updated RG 221: see Example 1 at RG 221.35?</p>	<p>We suggest that the example provides a useful illustration. See our comments above.</p>
<p>B1Q9: For providers, how do you currently determine that an address (postal or email) has been nominated for the purposes of delivery of disclosures such as PDSs and Financial Services Guides (FSGs)?</p>	<p>Whether a particular address (ie residential or email) has been nominated appears to be determined by a range of factors. These include:</p> <ul style="list-style-type: none"> - the type of product and how it is offered (eg for internet banking, availability of terms and conditions may be web-based and delivered on-screen rather than by email or post); - current ASIC guidance and perceived limitations around use of an email address even if provided by the customer together with a postal address. Postal address appears to be the utilised delivery option despite customer preferring addresses to facilitate either postal or electronic delivery; effectively nominating either address for delivery.
<p>B1Q10: Do you think that emailed disclosures are more or less likely to be lost (e.g. through changes to email addresses or misdelivery) than posted disclosures? Please provide supporting evidence if possible.</p>	<p>As noted in earlier responses – the immediacy and ready availability of processes of notification of non-delivery of electronic messages coupled with the customer / regulatory requirements around cyber-security for electronic information transfers see e-means of delivery arguably less likely to result in information loss / non-delivery than traditional postal delivery means. For example, on receipt of a non-delivery or undeliverable message our Member could make immediate contact with the customer (e.g. via phone) to confirm the correct email address prior to re-delivery.</p> <p>There is arguably no equivalent notification to the Member of non-delivery, within the control of the Member, in the printed / postal context for standard mail. We accept a Member may be notified by having mail returned to it in the event of an incorrect / out of date address. However, this rests on action by an unintended recipient outside the control of the Member.</p>

ASIC Question	AFC Comments
<p>B1Q11: Do you think that there is an issue with frequency of change of email addresses? Do you have any data to show frequency of change of email addresses?</p>	<p>Our Members recognise that there are challenges with the ease with which customers are able to change email addresses and that customers do change addresses. One member has indicated that for several hundred thousand active internet banking customers, approximately 0.6% change their email addresses / month. But they do not suggest that this is or should be an issue to prevent ASIC facilitating e-means as the default method of delivery.</p> <p>If the customer fails to notify of the change and information is sent to the old email address which is no longer valid resulting in an undeliverable / non-delivery notification – our Member would then follow the process outlined above (ie contact the customer via phone to confirm the correct email address and update its records / re-deliver).</p>
<p>B1Q12: Are there any particular contexts in which the current requirement for a client to ‘nominate’ an address would provide a barrier to efficient electronic disclosure—for example, obtaining an address for clients who acquire products through a third party such as an employer or other agent?</p>	<p>No – for reasons given earlier in response to B1Q7 – in our view whether the email address was obtained through a third party or direct from the customer – would not provide a barrier to efficient electronic disclosure. What appears critical is if a customer has provided an email address that this can be seen as the customer effectively nominating e-means as the delivery method by our Members (without any adverse compliance risk consequences).</p> <p>We understand that, subject to any limitations with a particular product (eg online / web-based products), it is likely that it will remain at the customer’s option to revert to postal delivery by contacting the Member (eg via phone or through an on-line portal) to change its nominated means of delivery going forward. The customer consequently maintains control of the selected default method delivery at any point in time.</p>
<p>B1Q13: Where there is a provision allowing a disclosure to be notified, sent, given, provided or delivered electronically, do you need any further guidance on whether you can use an email address, that you hold, to satisfy such a requirement?</p>	<p>No – assuming there is no legislative or other impediment to prevent our Members from doing so – we suggest that appropriate clarification in the ASIC guidance (ie through the re-issue / revision of RG 221 + media release accompanying release) should facilitate email communication to satisfy disclosure obligations either with existing or future customers.</p> <p>In relation to NCC-regulated credit – we suggest some change to address legislative inhibitors may also be required in parallel with the RG 221 revision. This is discussed further at D.</p>

ASIC Question	AFC Comments
<p>B1Q14: Is there any other guidance or relief required to facilitate the delivery of disclosures by email to clients?</p>	<p>Appreciating the purview of regulator responsibility is outside ASIC, it may nevertheless be useful for the Spam Act implications to be taken into account in the revision of RG 221.</p>
<p>B1Q15: Please estimate any cost savings your business would expect to realise from this change.</p>	<p>While the actual savings vary between Members and are impacted on whether the proposal is confined to financial services or equally applicable to NCC-regulated consumer credit products (which is AFC preference), all Members recognise that there would be a substantial saving on printing / handling costs (eg in the financial services context for PDSs + FSGs) coupled with postage savings if they could utilise delivery via electronic means of requisite information disclosure going forward.</p>
<p>B1Q16: Please estimate any additional costs that consumers might be expected to incur as a result of this change.</p>	<p>We do not anticipate that there will be significant additional costs incurred to customers as a result of ASIC facilitating electronic delivery of disclosures.</p>

B2: PROVISION OF DISCLOSURES ON A WEBSITE OR OTHER ELECTRONIC FACILITY	
<p>B2: We propose to give class order relief to provide an additional method of delivery for most Chapter 7 disclosures (where not already permitted), allowing providers to make a disclosure available on a website or other electronic facility, provided clients:</p> <ul style="list-style-type: none"> (a) are notified (e.g. via a link or a referral to a web address or app) that the disclosure is available; and (b) can still elect to receive that disclosure via an alternative method of delivery, on request. 	
ASIC Question	AFC Comments
<p>B2Q1: Do you support this additional method of disclosure? Please give reasons for your answer.</p>	<p>In the absence of a change to the Act or regulations underpinning it through normal parliamentary and Cabinet processes, AFC supports ASIC's proposal to give class order relief to provide an additional method of disclosure.</p> <p>The ability to provide a disclosure on a website is standard for most service industries and has many advantages including providing cost savings in printed hard copies and mailing costs but also to provide a facility whereby disclosures can be more interactive for consumers. For instance a consumer has the ability to easily navigate through an online tool and click straight through or search for the content that they want to read.</p> <p>The class order relief would provide the benefit of:</p> <ul style="list-style-type: none"> • overcoming the pre-access consent process inhibitor thereby facilitating consumer preferred e-means as the default delivery method. Consumers are not disadvantaged in any way as they can, if they prefer, elect to obtain hard copy disclosures. This is similar to the approach provided in the

ASIC Question	AFC Comments
	<p>Privacy Act as amended from March 2014 to achieve technological neutrality in compliance.</p> <ul style="list-style-type: none"> • for SOAs, facilitates the provider satisfying its obligation (under Reg 7.9.02A) to be satisfied (on reasonable grounds) that the customer (or their agent) has received the Statement. <p>[However, at the higher level we reiterate concerns expressed previously in submissions that see ASIC challenged with a range of functions: regulator, enforcer and quasi-legislator. Our preference remains that these functions are separated and that the Parliament fulfills its policy-making / legislative function, leaving ASIC with the role of regulator].</p>
<p>B2Q2: Should clients be notified each time (via their existing method of communication) of the availability of the disclosure on a website or other electronic facility?</p>	<p>A provider should notify (eg via existing methods of communication) or otherwise ensure that customers are aware of the availability of the disclosure (or updates to it) on a website or other electronic facility.</p>
<p>B2Q3: What are acceptable methods of notification (e.g. letter, email, SMS, voice call, or other)?</p>	<p>All those listed should be acceptable means of notification and the particular means determined by the provider and what is appropriate for its customer taking into account the particular circumstances.</p>
<p>B2Q4: How should notifications be made? Are there any design considerations you would suggest in the notice to help ensure clients do not miss the opportunity to access their disclosures? What guidance should ASIC give on this issue?</p>	<p>We reiterate our above comment. Should email notification be adopted, emails could be issued alongside alerts in online portals or platforms.</p> <p>The key issue is that, whatever form it takes, the notification should be clear and concise and direct the consumer to the content of the electronic disclosure. The notification should not be lost in other information e.g. marketing material and should be prominent.</p> <p>The content of the disclosure may be included in a link or attachment where it can be easily opened (e.g. PDF). ASIC's good practice guidance for electronic disclosure provides a useful tool in developing a disclosure document.</p>
<p>B2Q5: Do you have any data on the likelihood of clients printing their own copies of relevant disclosures when they are made available online?</p>	<p>No specific data. We would suggest that factors including customer age, familiarity and preference with reading information in electronic form and environmental responsibility will impact the answer to this. We also question the relevance of this data to ASIC's consideration – we would suggest that the issue is about facilitating a more efficient and effective means of information delivery – namely via electronic access to the data thereby appropriately giving customers the choice of</p>

ASIC Question	AFC Comments
	whether to read it in that electronic form or to print a paper copy rather than the inefficient and costly process of requiring a print copy to be mailed to every customer.
B2Q6: Do you think we should restrict the use of hyperlinks in notifications?	We are not aware of any reason that would justify ASIC restricting the use of hyperlinks in notifications. Hyperlinks have developed over time to become a useful and acceptable way of efficiently and effectively directing a consumer to specific information (eg a disclosure statement).
B2Q7: Please provide feedback on the costs to your business of: (a) developing or modifying an electronic facility; (b) printing and mailing disclosures (including, where possible, volumes and expected changes in volumes based on the proposal); and (c) any savings you would expect to make were this proposal implemented.	Our Members have not been able to provide specific figures but have generally indicated that the savings from facilitating electronic means of delivery would be significant. This takes into account the need for Members to maintain a capability of providing paper-based disclosures for customers who prefer that type of communication.
B2Q8: Please estimate any costs that consumers might be expected to incur as a result of this change.	We do not anticipate that there will be any additional costs incurred to customers as a result of this change.

C1: FACILITATING USE OF MORE INNOVATIVE PDSs – Class Order Relief	
<p>C1: We propose to facilitate more innovative PDSs, such as interactive PDSs, by giving relief:</p> <p>(a) from various provisions requiring a copy of a PDS to be given to a person on request and instead allowing a provider to give a copy of any current PDS for the relevant product or offer—meaning a provider can give a different printed PDS, even if technically it is not a ‘copy’;</p> <p>(b) from the shorter PDS regime, provided the PDS communicates the same information that is required by that regime; and</p> <p>(c) from the requirements for certain language to be included on the cover or ‘at or near the front of’ a PDS so they can equally apply to a more innovative PDS.</p>	
ASIC Question	AFC Comments
C1Q1: Do you have any comments on our proposals for relief in proposal C1(a) regarding copies of the PDS?	<p>AFC supports this proposal, i.e. having the option of providing innovative PDSs and the provider being able to send a copy of any current PDS to a consumer.</p> <p>We suggest that if the content is consistent and contains all the relevant material required of a PDS, it should not matter on the format it is being delivered.</p> <p>In practice it may be difficult to send an interactive PDS to a consumer (eg because interactive PDSs may require certain software to be run which is not generally available to the public; or the file may be too large for a consumer’s email inbox). For these reasons, it may be more practical for the provider</p>

ASIC Question	AFC Comments
	to be able to send to the consumer a static copy of the PDS rather than the interactive version.
<p>C1Q2: Do you have any comments on the relief from the shorter PDS regime in proposal C1(b)? Do you have any other suggestions as to how this might be achieved? Do you think communicating ‘the same information’ is an appropriate limitation on a more innovative PDS?</p>	<p>No comments or suggestions. As noted above, in our view, the issue is consistency in substance rather than form and therefore the focus of regulation should be on communication of “the same information”.</p>
<p>C1Q3: Do you think that our proposed requirement in proposal C1(c) that the mandated language be included ‘at or near the front of the PDS’ will accommodate more innovative PDSs?</p>	<p>Yes. The requirement for the title “Product Disclosure Statement” to be included in the cover or at or near the front of the document did not appear to contemplate PDSs to be in electronic or interactive format. Providing relief so that the title “Product Disclosure Statement” can appear at a point where a proposed reader is likely to commence to read / interact with the information serves the same purpose, that is, to alert the consumer to the important character of the content of the disclosure.</p>
<p>C1Q4: Are there any further legislative barriers to your use of more innovative PDSs, including interactive PDSs?</p>	<p>Not that we are currently aware of.</p>
<p>C1Q5: Do you think any of our proposed relief should be extended to other types of disclosure, such as FSGs and SOAs?</p>	<p>Yes, in our view, the principles underlying the proposed relief [subject to our general comments about whether modification is a matter for ASIC or the Parliament / Cabinet] equally apply to FSGs and SOAs.</p>

C2: FACILITATING USE OF MORE INNOVATIVE PDSs – Updated Regulatory Guide	
<p>C2: We propose to update our guidance in RG 221 to: (a) make it clear that we think Pt 7.9 operates to allow a provider to have more than one PDS for a single financial product or offer, such as a version able to be printed and an interactive version; (b) make it clear that the requirement that a consumer can identify the information that is part of the PDS is particularly important in the case of more innovative PDSs; and (c) include further guidance on the use of more innovative PDSs and update our ‘good practice guidance’ on electronic disclosure to help ensure consumers receive clear, concise and effective information when disclosures are delivered electronically and in electronic form (see Section D of draft updated RG 221).</p>	
ASIC Question	AFC Comments
<p>C2Q1: Do you agree with this proposal? Please give reasons.</p>	<p>AFC supports further guidance from ASIC in the form of revision of RG 221 to facilitate electronic financial services disclosures including via interactive means. We are of the view that interactive PDSs have a greater ability to personalise the information, making it more relevant and engaging for a consumer.</p>

ASIC Question	AFC Comments
	We also agree with ASIC's view that the law does not restrict a financial services provider from providing more than one PDS for the same product, provided it satisfies the requirements of Pt 7.9. For the reasons provided in C1Q1, a printed version and an interactive version may need to be developed. This will further facilitate or encourage the development of more interactive PDSs while also facilitating the availability of a static version to be accessible by a customer.
C2Q2: Do you consider that there are any other areas where a lack of clarity of our view would prevent or discourage you from producing a more innovative PDS?	No
C2Q3: Are there any other risks to consumers that may be more apparent in the electronic environment?	No, the main risks of distraction and navigability have already been identified by ASIC. We think that the key principle of 'clear, concise and effective' disclosure is the overarching requirement and applies regardless of form of disclosure. We are also of the view that the best practice guidance on disclosure given in RG 168 equally applies to the electronic environment.
C2Q4: Do you think, where it does not already, any of our proposed updated guidance should be extended to other types of disclosures, such as FSGs and SOAs?	Where possible because of the benefits, we think that the principles underlying ASIC's proposed guidance could also apply to other types of disclosures (eg to FSGs and SOAs).
C2Q5: Do you agree with our updated good practice guidance in Section D of draft updated RG 221?	Yes
C2Q6: Do you think complying with our updated good practice guidance would be too onerous?	In theory, it would not appear to be so but we would appreciate being able to work through any operational difficulties that may arise when our Members look to revisit their processes to take the benefit of the revised guidance.
C2Q7: Is there anything else you think would be usefully covered in our good practice guidance?	No

D: ELECTRONIC DELIVERY OF CREDIT DISCLOSURES	
<p>D: We are considering aligning the treatment of financial services disclosures and credit disclosures in the future.</p>	
ASIC Question	AFC Comments
<p>D1Q1: Do you agree we should align the treatment of financial services disclosures and credit disclosures? Please give reasons for your answer.</p>	<p>AFC supports ASIC’s proposal to provide a consistent approach across all product disclosures, including NCC-regulated consumer credit.</p> <p>In our view there would also be value in ASIC’s proposal looking at removing all restrictions on electronic communications with credit consumers.</p> <p>E-means should be the default method for giving documents and information, with no restrictions – (e.g. remove the requirement for NCC s 88 default notices to be sent by post or given personally to consumers). In this regard we note the further challenge for our Members with postal delivery and managing timeframes for enforcement / collection purposes that have potentially arisen from the proposal by Australia Post to reduce the number of days for postal delivery of mail, adding to the timelines for giving of documents via the post.</p> <p>Other reasons for promoting development of the ASIC proposal to facilitate electronic means of communication with consumer credit consumers as the default means include:</p> <ul style="list-style-type: none"> - Consumers receive consistent means of communication from their providers of finance and insurance, for example, offered as part of a single transaction (eg a motor vehicle sale on finance); - Message can be delivered in a way that enhances the customer experience and understanding of either the financial service or credit product; - Reduced compliance costs for our Members through utilisation of a more efficient and effective delivery channel; - Consent is not required for any other method of giving documents. In our view, there is no reason to substantiate why electronic means should be any different for communications with a consumer credit customer.
<p>D1Q2: Have you encountered barriers to the electronic provision of credit disclosures? If so, what are those barriers?</p>	<p>By way of background there are various provisions that are relevant to ASIC’s consideration in relation to NCC regulated consumer credit and that may operate to provide barriers to e-communication between a consumer credit provider and its customer:</p> <p>Electronic Communications & NCC Obligations The NCC s 187, makes it clear –</p>

ASIC Question	AFC Comments
	<ul style="list-style-type: none"> • a regulated contract, etc, can be made; and • the giving of documents, signing of documents, etc, can be done, <p>in accordance with the Electronic Transactions Act (ETA).</p> <p>The Electronic Transactions Regulations (ET Regs) set out the key obligations and exclusions, which impact on the operational processes and other legislative compliance, particularly the NCC which has an inconsistent approach to electronic communications.</p> <p>In addition, the National Consumer Credit Protection Regulations (NCCP Regs) contain requirements for giving pre-contractual documents and credit guides by electronic means.</p> <p>General Requirements & Restrictions</p> <p>The ET Regs, in conjunction with the NCC, set out the compliance requirements for electronic communications to be in place with the customer.</p> <p>They are:</p> <ol style="list-style-type: none"> 1. Most NCC documents can be given electronically, e.g. email or via accessing a credit provider's website: <ul style="list-style-type: none"> - The contract (or mortgage*) can be formed electronically (NCC s. 182), but not a guarantee (ET Reg 4 Schedule 1 Item 86 + NCC s. 8). (* we note that separate from the NCC - real property laws impact e-mortgages); 2. To give documents electronically, the borrower's written consent must be obtained first [ET Reg 10]. In our view, the requirement for consent to be provided in writing is an unnecessary barrier to the provision of electronic disclosures. 3. Before obtaining the consent, the borrower must be advised of specified information and rights about: <ol style="list-style-type: none"> a. they may not receive hardcopies of documents; and b. electronic communications should be checked regularly for documents; and c. they can withdraw their consent at any time [ET Reg 10]. 4. The documents that can be given electronically, while consent is in place, include pre-contractual statements, contracts, statements of account, hardship documents etc, [ET Reg 10] and credit guides [NCCP Reg 28L]. 5. For some documents, giving, or dealing with, them electronically is not valid service [ET Regs Sch 1, Items 86 & 86A]. The documents which

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	<p>must be given either by post or personal delivery relate to –</p> <ul style="list-style-type: none"> a. obtaining guarantees, giving copies of documents to guarantors, extension of guarantee, increase in guarantor liability (NCC s 8; 57(1)(b); 59(2)(a); 61(1)(a)); b. NCC s 88 default notice (though we note that there is a disconnect in the section numbering between the NCC & ETRs following the Enhancement Act amendments) c. NCC s. 99(1)(b) information pre-entry to residential premises to repossess mortgaged goods + occupier’s consent to entry (NCC s. 99(2) NCCP Reg 87 + Form 13) d. NCC s. 102(1) Form 14, given after repossession of mortgaged goods e. NCC s. 130(5)(a)(6)(a) enforcement of linked liability judgment debts f. NCC 178(1) notice of intention to take possession of leased goods <p>6. While these documents must be given by post or personally, as we understand, they can in addition be emailed if the credit provider wishes.</p> <p>Other Relevant Provisions NCC s 194 deals with the giving of NCC notices:</p> <p>Relevant key implications:</p> <ul style="list-style-type: none"> • The general rule is each person who is a borrower, guarantor or mortgage must be each given NCC-required documents. There are exceptions to the general rule (and exceptions to those.) • Joint borrowers can nominate one of them or another person to receive documents on behalf of all – though: <ul style="list-style-type: none"> o This does not apply to s 88 default notices, requiring each borrower & guarantor to be given the notice individually o There are other limitations on joint giving when it comes to the giving of s 16 pre-contractual statements <p>NCC s. 195 deals with the manner of giving NCC notices:</p> <p>Relevant implication / potential impediment:</p> <ul style="list-style-type: none"> - While the customer is able to nominate an email address for NCC documents to be given (subject to the ETA/ETR written consent requirements) – NCC s. 195(3) makes it difficult for a customer to change their nominated email address as there is also a requirement for the change to be in writing. In many instances, customers have phoned our Members via their call centre to request a change to their email address but the Member is obliged to request the customer to send their request in

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	writing (via email or letter) for them to be able to action the request for changed nominated address.
D1Q3: Please estimate any compliance cost savings you would expect to realise if provisions for credit disclosures were aligned with our proposals for financial services disclosures.	While our Members have not been able to give specific numerics around potential compliance savings, the clear response is that they would be significant taking into account savings on printing, postage and third party service provider costs (including mailing houses; legal services firms).

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AFC MEMBER COMPANIES

Alleasing
AlliedCredit
American Express
ANZ t/as Esanda
Automotive Financial Services
Bank of Melbourne
Bank of Queensland
BMW Australia Finance
Branded Financial Services
Capital Finance Australia
Caterpillar Financial Australia
Classic Funding Group
CNH Industrial
Commonwealth Bank of Australia
Credit Corp Group
De Lage Landen
Dun & Bradstreet
Experian Asia Pacific
FlexFleet
FlexiGroup
GE Capital
Genworth
HP Financial Services
HSBC Bank
Iden Leasing Services
Indigenous Business Australia
International Acceptance
John Deere Financial
Kubota Australia Finance
Komatsu Corporate Finance
Leasewise Australia
Liberty Financial
Lombard Finance
Macquarie Equipment Rentals
Macquarie Leasing
Max Recovery Australia
Mercedes-Benz Financial Services
MetroFinance

Nissan Financial Services
Once Australia t/as My Buy
PACCAR Financial
Pepper Australia Pty Ltd
RABO Equipment Finance
RAC Finance
RACV Finance
Ricoh Finance
Service Finance Corporation
Sharp Finance
SME Commercial Finance
St. George Bank
Suncorp
SunPower
Suttons Motors Finance
Team Leasing
Technology Leasing
Thorn/Radio Rentals
Toyota Financial Services
Veda
Volkswagen Financial Services
Volvo Finance
Westlawn Finance
Westpac
Wex Australia
Wingate Consumer Finance
Wide Bay Australia
Yamaha Finance

Professional Associate Members:

CHP Consulting
Clayton Utz
Dibbs Barker
Henry Davis York
NetSol Technologies
White Clarke