



ASIC

Australian Securities & Investments Commission



S01877277

## INFRINGEMENT NOTICE

### Section 12GXA of the *Australian Securities and Investments Commission Act 2001*

Day of issue: 31 May 2018

Unique identification code: S01877277

TO: Bananacoast Community Credit Union Ltd (BCU)  
ACN 087 649 750  
69 Park Beach Road  
COFFS HARBOUR NSW 2450

1. ASIC issues this infringement notice under section 12GXA of the *Australian Securities and Investments Commission Act 2001* (Cth) (ASIC Act).
2. ASIC has reasonable grounds to believe that, in the period 25 September 2017 to 2 October 2017 (the **Relevant Period**), you contravened section 12DB(1)(g) of the ASIC Act by, in trade or commerce, in connection with the supply or possible supply of financial services, or in connection with the promotion by any means of the supply or use of financial services, making false or misleading representations with respect to the price of services.

### Particulars

During the Relevant Period, the BCU "OMG Home Loan" product (the **Product**) was advertised on a webpage located at URL [www.bcu.com.au/home-loans/omg](http://www.bcu.com.au/home-loans/omg). The advertisement is reproduced in full at Attachment A to this Notice.

The advertisement contained the representation that the Product had a variable interest rate of 3.60% (**Representation**). The Representation was misleading because:

- (i) the advertised variable rate of 3.60% was only available if a consumer obtained consumer credit insurance for a period of five years; and
- (ii) if a consumer did not obtain consumer credit insurance for a period of five years, the applicable interest for the Product would be higher than the advertised rate.

Contained at the bottom of the advertisement, within the body of the fine print disclaimer was the following footnote (The advertisement is reproduced in full at Attachment A to this Notice. We have inserted a red arrow pointing at the disclaimer):

*"3. – Minimum loan amount is \$100,000 and maximum loan amount is \$1,000,000; for a maximum terms of 30 years. A minimum of 5 years Consumer Credit Insurance is mandatory on this product, and salary or income must be credited to a bcu access account. An Annual Fee of \$198.00 applies."*

The disclaimer failed to correct the misleading Representation because it was in fine print which lacked prominence relative to the rest of the advertisement.

### **Penalty under this notice**

3. The penalty payable under this notice in relation to the alleged contravention is \$12,600. This penalty is payable to ASIC on behalf of the Commonwealth. This penalty can be paid using one of the methods detailed in the enclosed invoice.

### **Consequences of complying with this notice**

4. If you pay the penalty stated in this notice within the time for payment mentioned below then (unless this notice is subsequently withdrawn and any penalty paid refunded):
  - (a) no proceedings (whether criminal or civil) will be brought against you by the Commonwealth or ASIC for the alleged contravention of the infringement notice provision or an offence constituted by the same conduct; and
  - (b) you will not be regarded as having contravened the infringement notice provision or having been convicted of an offence constituted by the same conduct.

### **Consequences of failing to comply with this notice**

5. If you do not pay the penalty specified in this notice within the time for payment mentioned below, and the notice is not withdrawn, the Commonwealth or ASIC may bring proceedings under Subdivision G of Division 2 of Part 2 (the consumer protection provisions of the ASIC Act) (whether criminal or civil) against you for the alleged contravention of the infringement notice provision or offence constituted by the same conduct.
6. The maximum pecuniary penalty that a court may order you to pay for the alleged contravention is \$2.1 million.

### **Time for payment**

7. The time for payment is:
  - (a) within 28 days after the day on which the notice is issued to you; or
  - (b) if ASIC extends, by notice in writing the compliance period for this notice, within that further period allowed.

### **Applying for more time to pay the penalty under this notice**

8. ASIC may extend the compliance period for this infringement notice if ASIC is satisfied that it is appropriate to do so. The extension must not be for longer than 28 days.
9. If you wish to apply for an extension of time to pay the penalty specified in this notice, you should do so in writing within 28 days after the day the notice is issued to you (see paragraph 15).

### **Applying to have this notice withdrawn**

10. Within 28 days after the day on which this notice is issued, you may apply to ASIC in writing to have this notice withdrawn.
11. Evidence or information that you or your representative gives to ASIC in the course of applying for this notice to be withdrawn is not admissible in evidence against you or your representative in any proceedings (other than proceedings for an offence based on the evidence or information being false or misleading).

### **Withdrawal of this notice**

12. ASIC may, by written notice given to you, withdraw this infringement notice if ASIC is satisfied that it is appropriate to do so, whether or not you have applied to have this notice withdrawn.
13. A withdrawal notice must be given to you within the time for payment of this infringement notice to be effective.
14. If the withdrawal notice is given after you have paid the penalty specified in this infringement notice, ASIC will refund to you the amount paid under the infringement notice.

### **Requirements for applications**

15. An application to have this notice withdrawn, or for more time to pay the penalty under this notice:
  - (a) must be in writing; and
  - (b) must include the unique identification code set out at the top of this notice; and
  - (c) must include your reasons for making the application; and
  - (d) may be made by forwarding your application to ASIC at the address in paragraph 16.
16. You may contact ASIC in relation to this notice by contacting:

**Yon Astar or Simon Le Poidevin  
Australian Securities and Investments Commission  
GPO Box 9827  
SYDNEY NSW 2000**

**or by email: [yon.astar@asic.gov.au](mailto:yon.astar@asic.gov.au) or [simon.lepoidevin@asic.gov.au](mailto:simon.lepoidevin@asic.gov.au)**



Peter Kell  
as a delegate of the Australian Securities and Investments Commission

