

3 June 2021

Niki De Mel, Strategic Policy Adviser
Strategy Group
Australian Securities and Investments Commission

By email: BR.submissions@asic.gov.au

Dear Ms De Mel

**ASIC Consultation – Breach reporting and related obligations
Submission by Australian Finance Group Ltd ACN 066 385 822**

Australian Finance Group Ltd (**AFG**) was founded in 1994, was listed on the Australian Securities Exchange in 2015, and has grown to become one of Australia's largest mortgage broking groups. Approximately 2,975 brokers (of which approximately 1400 are credit representatives of AFG) arrange residential mortgages, commercial finance and other loan products through AFG. AFG also operates a white label and securitised lending division through AFG Home Loans.

AFG welcomes the opportunity to respond to the consultation paper 340 *Breach reporting and other obligations* (the **Consultation Paper**) issued by the Australian Securities and Investment Commission (**ASIC**) on 22 April 2021. For the purposes of this submission, AFG's response is limited to providing some key observations below.

1. Principles based approach with examples

We agree with the principle based approach to guidance in the Consultation Paper and draft Regulatory Guide 78 (**RG 78**). The use of examples of how the obligations apply in particular situations in conjunction with the broad principles based guidance is also very helpful. However, we note a lack of examples and situations relating to credit products and assistance.

In particular, more examples or case studies related to mortgage brokers or other consumer finance brokers and circumstances when a reportable situation would arise in the context of providing credit assistance, would be very helpful to our 2,975 affiliated brokers.

2. Significant breach of core obligation

Similarly, specific examples of where ASIC would consider a breach or likely breach of a core obligation is 'significant', in the context of a broker assisting its customers to find and apply for a credit product, would clarify the guidance.

For example, if a broker caused a delay to a settlement of a property because the broker did not provide all the information required by the lender or the information was incorrect and needed to be corrected and resubmitted, would this be deemed a 'significant' breach of a core obligation? If this is not considered a significant breach of a core obligation, would ASIC consider this gross negligence i.e. an additional reportable situation?

Further in the above situation, if the delay impeded the settlement and the customer lost their deposit on the property, is there a threshold monetary amount at which this loss would be deemed a 'material loss or damage' and therefore a 'deemed significant breach'?

We note the reference in RG 78.38 and 78.39 to taking into account the financial circumstances of clients affected by the breach. We submit that there will be a large variation in the financial circumstances of our broker's customers and therefore explicit guidance on when the relevant loss is material, for example, a minimum percentage or range of a customer's total assets or financial position, would clarify this requirement.

RG 78.39 refers to 'people experiencing vulnerability'. AFG requests that ASIC expand this guidance to give specific examples of the types of vulnerability and how the significant breach and material loss obligations would apply to these situations.

Without further guidance on this requirement, it may lead licensees to report any instance where there is even a remote chance a customer may be considered vulnerable. Unnecessary reports may undermine the aims of the updated breach reporting regime to ensure ASIC receives reports in a timely and consistent manner and will provide greater certainty for industry participants.

We note Example 2(3) in Table 2 under RG 78.41 refers to quality of advice and failure to act in interests of the client in the context of financial advisers. It would be helpful to our mortgage brokers if you could expand this example to mortgage brokers in relation to their duty to act in the best interest of their clients/customers.

In addition, in the context of credit products and credit assistance, it would be helpful if RG 78 set out examples which would *not amount* to a significant breach of a core obligation, for example, common complaints our brokers receive from consumers relate to a shortfall in settlement funds at settlement which result from the consumer not understanding or being aware of additional costs that are required to be funded (despite this being set out in the credit proposal and other documentation).

Another common complaint credit providers receive (through brokers some of the time), is a customer requesting a hardship arrangement where their circumstances do not fit in the relevant hardship criteria (or customers cannot provide the required documentation or evidence that this is the case). These cases are often elevated to an AFCA complaint that AFCA finds in favour of the credit provider or broker as the customer cannot substantiate the claim for hardship or has misunderstood what constitutes hardship.

3. *Serious fraud*

There are currently no examples in RG 78 of what ASIC would consider a 'serious fraud', and therefore an additional reportable situation.

It would be helpful if RG 78 provided examples of 'serious' fraud and instances ASIC would not consider as 'serious' fraud, in particular those relevant to the provision of credit and credit assistance.

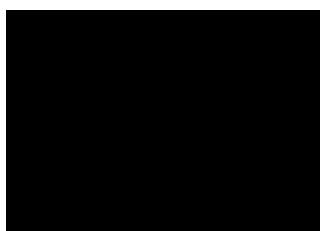
4. *Reportable situations about other licensees*

In circumstances where two licensees both lodge a breach report about the same reportable situation (i.e. one licensee self-reporting and the other licensee reporting about the first licensee), we expect that the other licensee would provide information to the self-reporting licensee about the breach, as is usually the case in circumstances where, for example, a lender is providing information to an aggregator about a credit representative.

In this case, we would expect the self-reporting entity to undertake an investigation based on its own evidence and the evidence provided by the other licensee. Therefore, there could be a time lag between the breach report by the other licensee and the self-reporting licensee. It would be helpful if ASIC would update RG 78 to take this time lag into account.

Please do not hesitate to contact AFG if you require any further detail about the matters raised in this submission or if AFG can provide any further assistance in the development of alternative proposals.

Yours sincerely



Mark Hewitt
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Australian Finance Group Ltd