



**ASIC**  
Australian Securities &  
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**To: Credit providers and consumer lessors**

8 July 2022

Dear credit providers and consumer lessors

**No-action letter – Notifying joint account holders (family violence)**

It has come to ASIC's attention that compliance by credit providers and consumer lessors with sections 72(4), 73(1), 177B(4) and 177C(1) (the notifying provisions) of the National Credit Code (at Schedule 1 to the *National Consumer Credit Protection Act 2009* (National Credit Act)) could potentially raise risks for consumers (debtors) affected by family violence.

ASIC considers that more detailed policy consideration needs to be given to the application of the notifying provisions when a debtor may be, is or was a victim of family violence, and to any appropriate adjustments to those provisions to minimise the risk of adverse outcomes for those persons. However, in the interim, ASIC does not intend to take regulatory action in relation to breaches of certain requirements under the notifying provisions in the circumstances outlined in this letter. This no-action position is temporary (to allow time for more detailed policy consideration to occur).

The position outlined in this letter applies to both credit providers and lessors. This letter uses 'credit provider' to cover both credit providers under credit contracts and lessors under consumer leases.

**Relevant law**

If a credit provider is given a hardship notice from a debtor under sections 72 or 177B of the National Credit Code, the credit provider can respond by either:

- a) *agreeing to change the contract* – if this occurs, the credit provider must give the debtor a written notice stating that the change has been agreed and setting out the details of the change (sections 72(4)(a), 73(1), 177B(4)(a) and 177C(1)), or

- b) *not agreeing to change the contract* – if this occurs, the credit provider must give the debtor a written notice that includes reasons for their decision, contact details for the Australian Financial Complaints Authority scheme and the debtor's rights under that scheme (sections 72(4)(b) and 177B(4)(b)).

Section 194 of the National Credit Code sets out the requirements for giving notices or other documents that must be given for the purposes of the Code. It contains specific rules for giving notices or other documents to joint debtors: sections 194(3)–(6).

### **No-action position**

Subject to the [conditions](#) set out below, ASIC does not intend to take regulatory action in relation to a credit provider's failure to comply with obligations to provide to the other joint debtor(s) a notice or document required to be given under sections 72(4), 73(1), 177B(4), 177C(1) and 194 when:

- a) the requesting joint debtor may be, is or was the victim of family violence, and
- b) the family violence may be, is or was being perpetrated by the other joint debtor(s) under the credit contract that is the subject of the hardship notice.

ASIC also does not intend to take regulatory action in relation to a credit provider's failure to comply with the obligation to report significant breaches (under section 50A(1) of the National Credit Act) in respect of the conduct described above, as it relates to sections 72(4), 177B(4) and 194 of the National Credit Code.

In this no-action letter:

- a) 'requesting joint debtor' means the person who has given a hardship notice in relation to a credit contract that is held jointly with one or more other persons, and
- b) 'other joint debtor(s)' means a person who:
  - i) is a debtor under a credit contract that is held jointly with the requesting joint debtor, and
  - ii) has not given a hardship notice in relation to the credit contract.

ASIC's no-action position is effective from the date of this letter.

The purpose of ASIC's no-action position is to help protect debtors who may be victims of family violence and to enable credit providers to support these debtors. Consistent with this purpose, we use 'family violence' in its broadest sense and include behaviour that is abusive, threatening, coercive or controlling.

This no-action position does not affect credit providers' obligations to give notices and documents under the provisions to:

- a) the requesting joint debtor, or
- b) joint debtors in circumstances where it does not appear that the requesting joint debtor is a victim of family violence or that the other joint debtor is a perpetrator of family violence.

### **Conditions**

ASIC's no-action position is subject to the following condition:

1. Credit providers must keep a written record of the number of accounts in relation to which the credit provider has relied on the no-action position to avoid supplying a notice or document required to be given under the notifying provisions of the National Credit Code.

Note: ASIC may request or require deidentified and aggregated information from credit providers in relation to these records to assist the further policy consideration mentioned above.

Further, as described in [Regulatory Guide 108](#) *No-action letters* (RG 108):

2. The decision to issue this no-action letter is a statement of ASIC's present regulatory intentions.
3. ASIC reserves the right to withdraw or revise this no-action letter at any time, or to take action in relation to the matters set out in it if further or other information becomes available, or if ASIC reconsiders its view of the relevant legislation or administrative policy. In doing so, ASIC will give due allowance to the consequences for credit providers who have acted in reasonable reliance on this letter.
4. This no-action letter is specific to its subject matter. It should not be viewed as a de facto 'rulings system' to indicate ASIC's view of whether conduct is legal. It is not to be relied on as a precedent.
5. This no-action letter does not preclude third parties (including the Commonwealth Director of Public Prosecutions) from taking legal action in relation to the conduct ASIC has said it will not take action on. This letter will not prevent a court from holding that the conduct ASIC will not take

action on infringes the relevant legislation. ASIC does not represent that the conduct will not be held to contravene the relevant legislation, nor does it undertake to intervene in an action brought by third parties in respect of such conduct.

6. ASIC reserves its rights to make publicly known its regulatory outcomes, including no-action letters.

Yours sincerely

Tim Gough  
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