

Attachment to CS 16: Draft instrument



ASIC
Australian Securities &
Investments Commission

ASIC Corporations and Credit (Breach Reporting—Reportable Situations) Instrument 2025/XX

I, <insert name>, delegate of the Australian Securities and Investments Commission, make the following legislative instrument.

Date 2025

[DRAFT ONLY – NOT FOR SIGNATURE]

<signature>

<insert name>

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Part 1—Preliminary

1 Name of legislative instrument

This is the *ASIC Corporations and Credit (Breach Reporting—Reportable Situations) Instrument 2025/XX*.

2 Commencement

This instrument commences on the day after it is registered on the Federal Register of Legislation.

Note: The register may be accessed at www.legislation.gov.au.

3 Authority

This instrument is made under subsection 926A(2) of the *Corporations Act 2001* and subsection 109(3) of the *National Consumer Credit Protection Act 2009*.

4 Definitions

In this instrument:

Australian credit licence has the same meaning as in section 5 of the Credit Act.

Corporations Act means the *Corporations Act 2001*.

Credit Act means the *National Consumer Credit Protection Act 2009*.

credit licensee means a person who holds an Australian credit licence.

financial services licensee has the same meaning as in section 9 of the Corporations Act.

Part 2—Declaration

5 Reportable Situations

- (1) Part 7.6 of the Corporations Act (other than Divisions 4 and 8) applies in relation to financial service licensees as if section 912D were modified or varied by omitting paragraph 912D(4)(b) and substituting:

“(b) the breach is constituted by the contravention of a civil penalty provision under any law, other than:

- (i) a civil penalty provision prescribed by the regulations for the purposes of this paragraph; or
- (ii) subsection 912A(5A) to the extent that the contravention results from a contravention of subparagraph 912A(1)(g)(ia) as notionally inserted by *ASIC Corporations, Credit and Superannuation (Internal Dispute Resolution) Instrument 2020/98*; or”.

- (2) The provisions to which Part 2-6 of the Credit Act applies apply in relation to credit licensees as if subsection 50A were modified or varied by omitting paragraph 50A(4)(b) and substituting:

“(b) the breach is constituted by the contravention of a civil penalty provision under any law, other than:

- (i) a civil penalty provision prescribed by the regulations for the purposes of this paragraph; or
- (ii) subsection 47(4) to the extent the contravention results from a contravention of subparagraph 47(1)(h)(ii) as notionally substituted by *ASIC Corporations, Credit and Superannuation (Internal Dispute Resolution) Instrument 2020/98*.”.

6 Insignificant contraventions of core obligations

- (1) Part 7.6 of the Corporations Act (other than Divisions 4 and 8) applies in relation to financial service licensees as if section 912D were modified or varied by:

(a) in subsection 912D(4), omitting “For the purposes” and substituting “Subject to subsections (4A) and (4AA), for the purposes”; and

(b) after subsection 912D(4), inserting:

“(4A) A breach of a core obligation constituted by a contravention of subsection 1041H(1) of this Act or subsection 12DA(1) or 12DB(1) of the ASIC Act is not taken to be *significant* if:

- (a) but for this subsection, the underlying circumstances in relation to the breach:
 - (i) would only give rise, and would only be likely to give rise, to a single reportable situation as a result of the following:
 - (A) paragraph (4)(b) in so far as it relates to a contravention of subsection 12DB(1) of the ASIC Act;
 - (B) paragraph (4)(c); and
 - (ii) would not give rise, and would be unlikely to give rise, to a reportable situation other than as specified in subparagraph (i); and
- (b) either:
 - (i) only one person (*client*) is, or is likely to be impacted by the contravention; or
 - (ii) if the contravention relates to a financial product that is, or that is proposed to be, held by more than one person (each a *client*) jointly, those clients are the only persons who are, or are likely to be, impacted by the contravention; and
- (c) the contravention has not resulted in, and is unlikely to result in, any financial loss or damage to any person (for the purposes of this paragraph, financial loss or damage is to be taken into account regardless of whether it is, or will or may be, remediated).

(4AA) A breach of a core obligation is also not taken to be *significant* if:

- (a) but for this subsection, the underlying circumstances in relation to the breach:
 - (i) would only give rise, and would only be likely to give rise, to a single reportable situation as a result of paragraphs (4)(b) and (c); and
 - (ii) would not give rise, and would be unlikely to give rise, to a reportable situation other than as specified in subparagraph (i); and
- (b) the underlying circumstances in relation to the breach do not constitute a contravention of section 828C or 981M; and

- (c) there are no more than five persons (*clients*) who are, or are likely to be, impacted by the breach (where the breach relates to a financial product that is, or that is proposed to be, held by more than one person jointly, those persons are to be treated as a single client for the purposes of this paragraph); and
 - (d) the total financial loss or damage to all persons resulting from, or likely to result from, the breach does not exceed \$500 (for the purposes of this paragraph, financial loss or damage is to be taken into account regardless of whether it is, or will or may be, remediated); and
 - (e) the breach has been rectified (including any necessary remediation to clients) within 30 days after the reportable situation first occurred.
- (4B) For the purposes of:
- (a) subsection (4A)—the circumstances in which there is a *single reportable situation* as a result of particular conduct include circumstances in which the conduct constitutes a single contravention of two or more of the following and does not otherwise give rise to a reportable situation:
 - (i) subsection 1041H(1) of this Act;
 - (ii) subsection 12DA(1) of the ASIC Act;
 - (iii) subsection 12DB(1) of the ASIC Act; and
 - (b) subsection (4B)—the circumstances in which there is a *single reportable situation* as a result of particular conduct include circumstances in which the conduct constitutes a single contravention of two or more provisions referred to in paragraphs (4)(a) and (b) and does not otherwise give rise to a reportable situation; and
 - (c) subsections (4A) and (4B)—a person is *impacted* by a contravention of:
 - (i) subsection 1041H(1) of this Act or subsection 12DA(1) of the ASIC Act if they are misled or deceived as a result of the contravention; and
 - (ii) subsection 12DB(1) of the ASIC Act if they are the recipient of the false or misleading representation to which the contravention relates.

Note: Otherwise, *impacted* has its ordinary meaning.”.

- (2) The provisions to which Part 2-6 of the Credit Act applies apply in relation to credit licensees as if subsection 50A were modified or varied by:
- (a) in subsection 50A(4), omitting “For the purposes” and substituting “Subject to subsections (4A) and (4AA), for the purposes”; and
 - (b) after subsection 50A(4), inserting:
 - “(4A) A breach of a core obligation constituted by a contravention of subsection 12DA(1) or 12DB(1) of the ASIC Act is not taken to be *significant* if:
 - (a) but for this subsection, the underlying circumstances in relation to the breach:
 - (i) would only give rise, and would only be likely to give rise, to a single reportable situation as a result of the following:
 - (A) paragraph (4)(b) in so far as it relates to a contravention of subsection 12DB(1) of the ASIC Act;
 - (B) paragraph (4)(d); and
 - (ii) would not give rise, and would be unlikely to give rise, to a reportable situation other than as specified in subparagraph (i); and
 - (b) either:
 - (i) only one person (*affected consumer*) is, or is likely to be, impacted by the contravention; or
 - (ii) if the contravention relates to any of the following that is, or that is proposed to be, entered into jointly by more than one credit activity client (each an *affected consumer*) of the licensee, those affected consumers are the only persons who are, or are likely to be, impacted by the contravention:
 - (A) a credit contract or proposed credit contract;
 - (B) a consumer lease or proposed consumer lease;
 - (C) a mortgage or proposed mortgage;
 - (D) a guarantee or proposed guarantee; and

- (c) the contravention has not resulted in, and is unlikely to result in, any financial loss or damage to any consumer (for the purposes of this paragraph, financial loss or damage is to be taken into account regardless of whether it is, or will or may be, remediated).

(4AA) A breach of a core obligation is also not taken to be **significant** if:

- (a) but for this subsection, the underlying circumstances in relation to the breach:
 - (i) would only give rise, and would only be likely to give rise, to a single reportable situation as a result of paragraphs (4)(b) and (d); and
 - (ii) would not give rise, and would be unlikely to give rise, to a reportable situation other than as specified in subparagraph (i); and
- (b) there are no more than five persons (**affected consumers**) who are, or are likely to be, impacted by the breach (where the breach relates to any of the following that is, or that is proposed to be, entered into jointly by more than one credit activity client those credit activity clients are to be treated as a single affected consumer for the purposes of this paragraph):
 - (i) a credit contract or proposed credit contract;
 - (ii) a consumer lease or proposed consumer lease;
 - (iii) a mortgage or proposed mortgage;
 - (iv) a guarantee or proposed guarantee; and
- (c) the total financial loss or damage to all consumers resulting from, or likely to result from, the breach does not exceed \$500 (for the purposes of this paragraph, financial loss or damage is to be taken into account regardless of whether it is, or will or may be, remediated); and
- (d) the breach has been rectified (including any necessary remediation to affected consumers) within 30 days after reportable situation first occurred.

(4B) For the purposes of:

- (a) subsection (4A)—the circumstances in which there is a **single reportable situation** as a result of particular

conduct include circumstances in which the conduct constitutes a single contravention of both of the following and does not otherwise give rise to a reportable situation:

- (i) subsection 12DA(1) of the ASIC Act;
 - (ii) subsection 12DB(1) of the ASIC Act; and
- (b) subsection (4AA)—the circumstances in which there is a **single reportable situation** as a result of particular conduct include circumstances in which the conduct constitutes a single contravention of two or more provisions referred to in paragraphs (4)(b) and (d) and does not otherwise give rise to a reportable situation; and
- (c) subsections (4A) and (4AA)—a person is **impacted** by a contravention of:
- (i) subsection 12DA(1) of the ASIC Act if they are misled or deceived as a result of the contravention; and
 - (ii) subsection 12DB(1) of the ASIC Act if they are the recipient of the false or misleading representation to which the contravention relates.

Note: Otherwise, **impacted** has its ordinary meaning.”.

7 Reporting period for additional reportable situations

- (1) Part 7.6 of the Corporations Act (other than Divisions 4 and 8) applies in relation to financial service licensees as if section 912DAA were modified or varied by omitting subsection 912DAA(3) (other than the heading) and substituting:

“(3) The report must be lodged with ASIC:

- (a) within 30 days after the financial services licensee first knows that, or is reckless with respect to whether, there are reasonable grounds to believe the reportable situation has arisen; or
- (b) if:
 - (i) there is a reportable situation (**previous reportable situation**) with underlying circumstances that are the same as, or substantially similar to, the underlying circumstances of the reportable situation (**current reportable situation**); and

- (ii) the financial services licensee has lodged a report under this section in relation to the previous reportable situation with ASIC;

within 90 days after the financial services licensee first knows that, or is reckless with respect to whether, there are reasonable grounds to believe the current reportable situation has arisen.”.

- (2) The provisions to which Part 2-6 of the Credit Act applies apply in relation to credit licensees as if subsection 50B were modified or varied by omitting subsection 50B(4) (other than the heading) and substituting:

“(4) The report must be lodged with ASIC:

- (a) within 30 days after the licensee first knows that, or is reckless with respect to whether, there are reasonable grounds to believe that the reportable situation has arisen; or
- (b) if:
 - (i) there is a reportable situation (*previous reportable situation*) with underlying circumstances that are the same as, or substantially similar to, the underlying circumstances relating to the reportable situation (*current reportable situation*); and
 - (ii) the licensee has lodged a report under this section in relation to the previous reportable situation with ASIC;

within 90 days after the licensee first knows that, or is reckless with respect to whether, there are reasonable grounds to believe the current reportable situation has arisen.”.

8 Core obligations

The provisions to which Part 2-6 of the Credit Act applies apply in relation to credit licensees as if subsection 50A were modified or varied by omitting paragraph 50A(3)(c) and substituting:

- “(c) the obligation under paragraph 47(1)(d), so far as it relates to Commonwealth legislation that is:
 - (i) covered by paragraph (d) of the definition of *credit legislation*; and
 - (ii) one of the following:

- (A) *Banking Act 1959*;
- (B) *Corporations Act 2001*;
- (C) *Financial Sector (Collection of Data) Act 2001*;
- (D) *Financial Sector (Shareholdings) Act 1998*;
- (E) *Financial Sector (Transfer and Restructure) Act 1999*.”.

Part 3—Repeal

9 Repeal

This instrument is repealed at the start of 1 October 2029.