



**ASIC**  
Australian Securities &  
Investments Commission

## Complying with the notify, investigate and remediate obligations

This information sheet (INFO 000) is for Australian financial services (AFS) licensees who are financial advisers and Australian credit licensees who are mortgage brokers (together, 'licensees') and their representatives.

It outlines the obligations for these licensees to investigate certain breaches of the law and notify and remediate clients and consumers in certain circumstances.

These obligations (referred to in this information sheet as the 'notify, investigate and remediate obligations') apply from 1 October 2021.

This information sheet explains:

- [what are the notify, investigate and remediate obligations](#)
- [who must comply with the obligations](#)
- [when the obligations are triggered](#)
- [how to comply with the obligations.](#)

### Overview: What are the notify, investigate and remediate obligations?

The notify, investigate and remediate obligations are set out for:

- **AFS licensees** in Part 7.6, Division 3, Subdivision C of the *Corporations Act 2001* (Corporations Act)
- **credit licensees** in Part 2-2, Division 5, Subdivision C of the *National Consumer Credit Protection Act 2009* (National Credit Act).

The obligations require AFS licensees and credit licensees to notify clients affected by certain breaches of the law, investigate the nature and full extent of those breaches and remediate affected clients within certain timeframes. Licensees must also maintain records to show compliance with these obligations.

In this information sheet, an 'affected client' refers to both a client and a consumer as these terms are defined in the Corporations Act and the National Credit Act.

In considering how the obligations apply, you should also take into account:

- our general guidance in Regulatory Guide 256 *Client review and remediation conducted by advice licensees (RG 256)* (under review). This is because the notify, investigate and remediate obligations should be considered in the broader context of the principles in RG 256, which include, for example, considering whether it is efficient, honest and fair to remediate in circumstances where the notify, investigate and remediate obligations do not apply or have ceased applying
- our general guidance in Regulatory Guide 78 *Breach reporting by AFS licensees and credit licensees (RG 78)* (under review).

## Part A: How do the obligations apply?

**Part A of this information sheet explains who the notify, investigate and remediate obligations apply to and when the obligations are triggered. If this is applicable to your circumstances, please also read Part B, which sets out what the obligations require and how to comply with them.**

### Who must comply with the obligations?

The notify, investigate and remediate obligations apply to AFS and credit licensees whose conduct, or that of their representatives, triggers the obligations.

### When are the obligations triggered?

The obligations will be triggered if the following circumstances exist:

1. **personal advice or credit assistance** – either:
  - an AFS licensee or one of its representatives provides or has provided personal advice to the affected client as a retail client in relation to a 'relevant financial product', or
  - a credit licensee or one of its representatives is a mortgage broker who provides or has provided credit assistance to the affected client in relation to a credit contract secured by a mortgage over residential property
2. **relevant reportable situation** – there are reasonable grounds to believe that a [relevant reportable situation](#) has arisen
3. **loss or damage** – there are reasonable grounds to *suspect* that the affected client has suffered, or will suffer, [loss or damage](#) as a result of the relevant reportable situation
4. **legally enforceable right to recover loss or damage** – there are reasonable grounds to *suspect* that the affected client has a [legally enforceable right](#) to recover the loss or damage from the licensee.

Where all four of these circumstances exist, you must notify the affected client of a 'reportable situation' and investigate. The Explanatory Memorandum to the Financial Sector Reform (Hayne Royal Commission Response) Bill 2020 ([Explanatory Memorandum](#)) gives guidance on the relationship between these triggers. As stated in paragraph 12.31 of the Explanatory Memorandum: 'The loss or damage an affected

client has suffered or will suffer does not need to be the result of the personal advice, but rather, as a result of the reportable situation.'

'Relevant financial products' are financial products other than basic banking products, general insurance products, consumer credit insurance, or any combination of these.

### **Relevant reportable situation**

For the purposes of the notify, investigate and remediate obligations, a 'relevant reportable situation' arises where there is:

- a significant breach of a 'core obligation' (section 912D(1)(a) of the Corporations Act or section 50A(1)(a) of the National Credit Act), or

Note: For a summary of the core obligations, please see the appendix to draft RG 78.

- conduct that constitutes gross negligence or serious fraud (section 912D(2) of the Corporations Act or section 50A(2) of the National Credit Act).

A 'reportable situation' has the meaning given by section 912D of the Corporations Act and section 50A of the National Credit Act. Licensees must report all reportable situations to ASIC as part of their breach reporting obligations. [RG 78](#) gives detailed guidance about the breach reporting obligation, including what constitutes a 'reportable situation' and when and how these must be reported to ASIC.

To fall within the scope of the notify, investigate and remediate obligations, the relevant reportable situation must arise on or after 1 October 2021.

### **Loss or damage**

The term 'loss or damage' is not defined in the legislation. In determining whether there is loss or damage to an affected client for these purposes, it is not relevant to consider whether or not that loss or damage is material.

### **Legally enforceable right to recover loss or damage**

An affected client may have a legally enforceable right to recover loss or damage. This right may exist if there is a potential claim that, if pursued by the affected client, may be enforced as a judgment by the court against the licensee: see paragraph 12.32 of the [Explanatory Memorandum](#).

There are a many circumstances in which an affected client will have a legally enforceable right to recover loss or damage arising from a reportable situation. Examples include a licensee's or representative's negligence, dishonest conduct, breach of contract or breach of fiduciary duty, or where a compensation order is available (e.g. under section 1317HA of the Corporations Act).

Importantly, if an affected client does not have a legally enforceable right (e.g. because a negligence claim is barred by expiry of the statutory limitation period), you must still consider the requirements under the existing remediation framework in deciding whether it is efficient, honest and fair to remediate: see 'Action 4: [Remediate affected clients](#) for the breach' in Part B of this information sheet.

## Part B: How do you comply with the obligations?

**Part B of this information sheet provides guidance on how you must comply with the notify, investigate and remediate obligations. These obligations will apply only if they have been triggered, as set out in Part A.**

Once the four circumstances set out in the subsection '[When are the obligations triggered?](#)' have arisen, you must take the actions summarised in Table 1.

**Table 1: Overview of notify, investigate and remediate obligations**

Action	What you must do	When you must act
Action 1: Notify affected clients of the breach of the law	Take reasonable steps to notify affected clients in writing of the breach	Within 30 days
Action 2: Investigate the breach	Start an investigation into the nature and full extent of the breach	Within 30 days
Action 3: Notify affected clients of the outcome of the investigation	Take reasonable steps to notify affected clients in writing of the outcome of the investigation	Within 10 days of the investigation concluding
Action 4: Remediate affected clients for the breach	If there is loss or damage and an enforceable right to recover, take reasonable steps to pay affected clients remediation of an amount equal to the loss or damage	Within 30 days of the investigation concluding

These actions may overlap and are not necessarily sequential. For example, you may choose to:

- prepare for aspects of the remediation (Action 4) during the investigation (Action 2), or
- triage affected clients so that you notify and remediate some (Actions 3 and 4), while you continue to investigate others (Action 2).

The law allows ASIC to approve a form that licensees must use to notify clients (Actions 1 and 3). While we have not approved a form at this time, we may do so if we become aware of deficiencies in the approach taken by licensees in communicating with affected clients.

## Action 1: Notify affected clients of the breach of the law

You must notify the affected client within 30 days after you first know of, or are reckless with respect to, the circumstances set out in '[When are the obligations triggered?](#)'.

You must notify the affected client within 30 days of you knowing of, or being reckless with respect to, the [relevant reportable situation](#) arising.

The notice to affected clients must be in writing. It should explain the nature of the relevant reportable situation (the breach) and the basis for the suspicion that the affected client may have suffered or will suffer loss or damage.

The types of information we consider are relevant to include in this notice are:

- the date of the relevant reportable situation
- a description of the relevant reportable situation
- the consequences of the relevant reportable situation for the affected client and how they may be affected
- relevant information about the investigation that is to be carried out
- when the affected client should expect to hear from you next
- their relevant consumer rights.

## Action 2: Investigate the breach

You must start your investigation within 30 days after you first know of, or are reckless with respect to, the four circumstances set out in '[When are the obligations triggered?](#)'.

As part of the investigation, you must identify the conduct that gave rise to the relevant reportable situation.

You must also quantify the loss or damage that there are reasonable grounds to believe affected clients have:

- suffered (or will suffer) as a result of the relevant reportable situation, and
- a legally enforceable right to recover.

We expect that your investigation will be thorough, complete and robust, and that you will make whatever inquiries are reasonably necessary to determine the nature and full extent of the breach of the law. For example, in the course of the investigation you may find reasonable grounds to believe that additional relevant reportable situations have arisen. This may trigger obligations to report the additional breach to ASIC, and to notify clients of an additional breach and remediate as required.

Your investigation must be completed as soon as reasonably practicable after it starts. What is a reasonable amount of time for an investigation will depend on the circumstances of the case, including the size of your business, the extent and period of the misconduct and the nature of the loss or damage caused by the licensee: see paragraph 12.58 of the [Explanatory Memorandum](#).

It is prudent for you to keep affected clients informed of the progress of the investigation – for example, with interim updates on the investigation: see paragraph 12.68 of the [Explanatory Memorandum](#).

### Action 3: Notify affected clients of the outcome of the investigation

You must also provide notice, in writing, to affected clients of the outcome of the investigation. You must provide this notice within 10 days of the investigation concluding.

This notice should:

- explain the nature of the breach identified and any related breaches
- describe how the breach affected the client's interests
- assess the loss or damage you reasonably believe the affected client is entitled to seek to recover.

Your investigation may find that an affected client you notified at Action 1 has not suffered or will not suffer loss or damage which they have a legally enforceable right to recover. If this is the case, you must still notify them of the outcome of the investigation as described above.

In satisfying this obligation, a licensee has qualified privilege and is protected from a defamation action in relation to the information contained in the licensee's notice about the outcome of the investigation. The licensee is also not liable for any action based on breach of confidence.

### Action 4: Remediate affected clients

You must take reasonable steps to pay affected clients an amount equal to the loss or damage, within 30 days after the investigation is completed.

The remediation applies to all affected clients who, after the investigation, you have reasonable grounds to believe have:

- suffered or will suffer loss or damage as a result of the relevant reportable situation
- a legally enforceable right to recover that loss or damage.

For clients who fall outside the scope of the obligation to remediate, you must continue to consider the requirements of the existing remediation framework in deciding whether it is efficient, honest and fair to remediate.

As stated in paragraph 12.33 of the [Explanatory Memorandum](#): '... affected clients may still have rights that they are able to pursue through internal dispute resolution and through AFCA. Licensees should take this into account in determining whether they should extend the breadth of their remediation ...'

For affected clients that you remediate, you may consider providing non-monetary remedies alongside the compensation provided. For example:

- rescinding the contract
- helping the client transfer to a more appropriate product
- setting aside all or part of a debt owed by the client (see paragraph 12.83 of the [Explanatory Memorandum](#)).

## Record keeping

You must keep sufficient records to demonstrate your compliance with the notify, investigate and remediate obligations.

See [RG 256](#) for further information about record keeping in the context of remediation.

## What happens if you don't comply?

ASIC can take enforcement action against you if you fail to comply with the notify, investigate and remediate obligations. Examples of compliance failures are:

- failure to take reasonable steps to notify affected clients within the required timeframes
- failure to undertake an investigation in accordance with the requirements
- failure to remediate affected clients as required or within the required timeframes.

A civil penalty applies for non-compliance with the notify, investigate and remediate obligations. Failure to keep adequate records is a criminal offence. We may also take administrative action if you do not comply with the obligations; these actions could include suspending or cancelling your licence, or imposing additional licence conditions.

Note: For an explanation of how we approach our enforcement role, see Information Sheet 151 *ASIC's approach to enforcement* ([INFO 151](#)). For information about penalties, including the value of a penalty unit, see [www.asic.gov.au/penalties](http://www.asic.gov.au/penalties).

## Where can you get more information?

For more information on complying with your obligations, see the following guidance:

- [RG 78](#) *Breach reporting by AFS licensees and credit licensees* (currently under review – see Consultation Paper 340 *Breach reporting and related obligations* (CP 340), which is open for consultation until 3 June 2021)
- [RG 256](#) *Client review and remediation conducted by advice licensees* (currently under review – see Consultation Paper 335 *Consumer remediation: Update to RG 256* (CP 335), which was open for consultation until 26 February 2021)
- [RG 271](#) *Internal dispute resolution*
- [Making it right: How to run a consumer-centred remediation](#) (PDF 2.5 MB)
- [INFO 151](#) *ASIC's approach to enforcement*

You can also call ASIC on 1300 300 630 or [ask a question online](#).

## Important notice

Please note that this information sheet is a summary giving you basic information about a particular topic. It does not cover the whole of the relevant law regarding that topic, and it is not a substitute for professional advice.

You should also note that because this information sheet avoids legal language wherever possible, it might include some generalisations about the application of the law. Some provisions of the law referred to have exceptions or important qualifications. In most cases, your particular circumstances must be taken into account when determining how the law applies to you.

This is draft **Information Sheet 000 (INFO 000)**, issued on 21 April 2021.