

29 January 2021

Financial Services Group
Australian Securities and Investments Commission
Level 7, 120 Collins Street, Melbourne, 3000

referencechecking@asic.gov.au

AFG

100 Havelock Street
West Perth WA 6005

PO Box 710
West Perth WA 6872

Phone 08 9420 7888

Fax 08 9420 7856

www.afgonline.com.au

Dear Sir/Madam

**ASIC Consultation – Reference checking and information sharing
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 2,950 brokers (of which approximately 1400 are credit representatives of AFG) arrange residential mortgages, commercial finance and other loan products through AFG.

AFG welcomes the opportunity to respond to the consultation paper 333 *Implementing the Royal Commission recommendations: Reference checking and information sharing* (the **Consultation Paper**), and the draft *ASIC Corporations and Credit (Reference Checking and Information Sharing Protocol) Instrument 2020/XX* (the **Draft Instrument**) and the draft *ASIC reference checking and information sharing protocol Information Sheet* (the **Draft Information Sheet**) accompanying the Consultation Paper, issued by the Australian Securities and Investment Commission (**ASIC**) on 19 November 2020. For the purposes of this submission, AFG's response is limited to providing some key observations below.

1. The reference checking and information sharing protocol generally

AFG agrees in principle with the majority of the provisions set out in the Consultation Paper and believes the prescriptive approach to setting out the information required to be obtained in the Template Reference Requests in the Schedules to the Draft Instrument will lead to greater consistency of information about mortgage brokers and their conduct in the mortgage broking industry, which will in turn lead to better outcomes for consumers.

2. Application of protocol to persons other than credit representatives of an aggregator

As noted in the introduction of this submission, approximately 50% of the brokers who aggregate through AFG hold their own credit licence or are a credit representative of another credit licensee (**own licensee broker**). Therefore, those own licensee brokers would not fall within the definition of a 'representative' which refers to section 5(1) of the *National Consumer Credit Protection Act 2009* (Cth) (**NCCP Act**) (and therefore 'prospective representative') of AFG under the definition in the section 4 of the Draft Instrument.

This means that there is no requirement on aggregators, such as AFG, to provide a reference check on an own licensee broker that was moving to another aggregator or to a new credit licensee. In turn, it also means that an aggregator has no right to require another aggregator or a credit licensee to provide a reference check to the first aggregator for any new mortgage broker that was proposing to join that aggregator (as a 'member' as it is referred to in the mortgage broking industry).

As you may be aware, most aggregators provide compliance, IT and other services to its members, including own licensee brokers. Aggregators also have access to information about each of its members in relation to conduct matters and complaints. This information is relevant to an aggregator or credit licensee in deciding whether to enter into an arrangement with that broker. If this information is not captured by the Draft Instrument, the broking industry and consumers will likely suffer as the risk of 'rolling bad apples' for this cohort will remain.

In addition, if aggregators (in relation to own licensee brokers) are not included in the reference checking and information sharing protocol, aggregators will not have the benefit of qualified privilege and amnesty in relation to a breach of confidence in relation to any information they voluntarily agree to share with another aggregator or credit licensee about that own licensee broker. In addition to leading to a 'two speed' system where inconsistent information may be provided by brokers depending on whether they are a credit representative of the aggregator or not (because they are not required to provide the specified information in the Annexures to the Draft Instrument), the lack of qualified privilege may lead to aggregators not providing fulsome information to another aggregator. We submit that this is not in the best interests of consumers and may lead to misconduct by mortgage brokers going undetected leading to the reforms proposed by the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry in this area being ineffective.

3. Application of protocol to directors, employees and agents including administrative assistants

The Draft Instrument currently restricts the application of the reference checking and information sharing protocol to *prospective representatives* meaning those individuals that provide credit assistance in relation to credit contracts secured by mortgages over residential property where that individual will be a mortgage broker or a director, employee or agent of a mortgage broker.

There may be some structures for prospective representatives which involve a person, such as an administrative assistant to a mortgage broker who does not fit within the current application of this

definition because they are not a mortgage broker or a director, employee or (arguably) agent of a mortgage broker. For example, an administrative assistant could be employed by a holding company which contracts with, or employs, the individual mortgage broker but the duties of the administrative assistant extend to assisting the mortgage broker with completing credit finance applications.

To ensure there is no 'shadow broking' occurring, AFG submits that the Draft Instrument should clarify that in addition to directors, employees and agents of a mortgage broker, a prospective representative includes individuals employed by a person other than the mortgage broker to assist the mortgage broker to undertake administrative tasks associated with the mortgage broker providing credit assistance.

4. *Provision of information by ASIC to aggregators*

The Consultation Paper, at paragraph 86, also refers to ASIC providing information to a credit licensee about a person who ASIC believes is, or will be, a representative of the credit licensee in accordance with section 73 of the NCCP Act.

A similar issue to outlined above arises for an aggregator in relation to an own licensee broker who is not its representative. Without extending this regime to all members of aggregators, aggregators will not have the benefit of qualified privilege in relation to information provided about those members.

For the reasons stated above, aggregators play a vital role in the governance and compliance of the mortgage broking industry. It is in the interests of all market participants including ASIC, consumers, lenders, brokers and aggregators that there is a full and frank flow of information about mortgage broker conduct issues in the industry. Without the benefit of qualified privilege, we submit that this flow of information will be restricted. Whilst this is an issue contained within the NCCP Act, we submit that ASIC's Draft Instrument could extend the application of these provisions to aggregators in the context of their own licensee broker members as well.

5. *Template Reference Request – Compliance Audits*

AFG submits that in addition to the information provided in Question 2 of Schedules 2 and 3 (*Template Reference Request*) of the Draft Instrument relating to compliance audits, it would assist the recruiting licensee if the Template Reference Request included a field for the recruiting licensee to also request that the referee licensee(s) (or the prospective representative themselves if an own credit licensee) attach a copy of the relevant compliance audit report (if available).

Given each recruiting licensee may interpret the information on compliance audits provided in the answers to the Template Reference Request in a different way depending on their own experience and risk tolerance, it would assist the recruiting licensee greatly to be able to refer to the source material contained in the compliance audit reports.

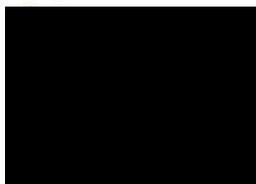
6. *Central database for contact point for reference checking*

AFG agrees with the requirement for licensees to have in place adequate arrangements to ensure they can be easily contacted by recruiting licensees for reference checking and information sharing under the ASIC protocol (Proposal B15 in the Consultation Paper). A contact listed on a licensee's website is a practical and workable solution to this requirement.

AFG submits that it would also be extremely useful for recruiting licensees to be able to access a central database of these contacts, maintained by ASIC. We recognise ASIC's comments in the Consultation Paper that this would be a large database, however we consider that it would greatly benefit licensees and expedite the reference checking process.

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
General Manager Industry & Partnership Development
Australian Finance Group Ltd