REGULATORY GUIDE 78

Breach reporting by AFS licensees and credit licensees

December 2023

About this guide

This guide is for Australian financial services (AFS) licensees and Australian credit licensees (credit licensees).

It gives guidance on your obligation to report to ASIC certain breaches of the law under Div 3 of Pt 7.6 of the *Corporations Act 2001* (Corporations Act) and Div 5 of Pt 2-2 of the *National Consumer Credit Protection Act 2009* (National Credit Act).

Note: This guide does not cover certain reporting obligations: see RG 78.12.

About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

Consultation papers: seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

Regulatory guides: give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

Information sheets: provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

Reports: describe ASIC compliance or relief activity or the results of a research project.

Document history

This guide was reissued in December 2023 and is based on legislation and regulations as at the date of issue. In May 2024, we updated RG 78.148(b)(viii) to include mention of Ch 7 of the Corporations Act, and updated the link to the ASIC Regulatory Portal in RG 78.155. In August 2025, we made some minor updates to reflect ASIC's relief that took effect on 24 June 2025, and updated the question numbering in Appendix 2. In February 2026, we made minor changes following the reissue of Regulatory Guide 34 *Auditor obligations: Reporting to ASIC* (RG 34). On 21 October 2026, we updated references to investigations taking more than '30 days' to '60 days' in Figure 1, RG 78.70, Example 11 and Table 8.

Previous versions:

- Superseded Regulatory Guide 78, issued September 2008, reissued February 2014, March 2020, September 2021, April 2023, August 2025; and
- Superseded *Breach reporting by AFS licensees: An ASIC guide*, issued October 2004, reissued May 2006, and known in the *ASIC Digest* as [SGD 190]; rebadged as a regulatory guide 5 July 2007.

Disclaimer

This guide does not constitute legal advice. We encourage you to seek your own professional advice to find out how the Corporations Act and other applicable laws apply to you, as it is your responsibility to determine your obligations.

Examples in this guide are purely for illustration; they are not exhaustive and are not intended to impose or imply particular rules or requirements.

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A Overview

Key points

If you are an Australian financial services (AFS) licensee or an Australian credit licensee (credit licensee), you must comply with your obligation to report certain breaches of the law to ASIC.

This guide explains:

- what you must report to ASIC (see Section B);
- when and how you must report to ASIC, including information about how we deal with the reports we receive and the information we will publish about your reports (see Section C); and
- our expectations and guidance about your compliance systems (see Section D).

Who this guide applies to

RG 78.1 This guidance applies to AFS licensees and credit licensees and their representatives.

Note: In this guide, we refer collectively to AFS licensees and credit licensees as 'licensees'.

RG 78.2 A breach reporting obligation for credit licensees was introduced into Div 5 of Pt 2-2 of the *National Consumer Credit Protection Act 2009* (National Credit Act) by the *Financial Sector Reform (Hayne Royal Commission Response) Act 2020* (Financial Sector Reform Act). This obligation mirrors the breach reporting obligation for AFS licensees in Subdiv B, Div 3, Pt 7.6 of Ch 7 of the *Corporations Act 2001* (Corporations Act) as reformed by the Financial Sector Reform Act. Specific credit guidance is provided throughout this guide where relevant.

What is the breach reporting obligation?

RG 78.3 The breach reporting obligation requires licensees to self-report specified matters to ASIC. As stated in the Explanatory Memorandum to the Financial Sector Reform (Hayne Royal Commission Response) Bill 2020 (Explanatory Memorandum):

> Breach reporting is a cornerstone of Australia's financial services regulatory structure. Breach reports allow ASIC to detect significant non-compliant behaviours early and take action where appropriate. It also allows ASIC to identify and address emerging trends of non-compliance in the industry.

Note: See Explanatory Memorandum, paragraph 11.3.

RG 78.4 Early detection and reporting of misconduct and breaches of regulatory requirements allows ASIC to:

(a) monitor the extent and severity of non-compliance and commence surveillance and investigation when necessary;

(b) take law enforcement and regulatory action when warranted, including administrative action to protect consumers of financial products and services; and

(c) identify and respond to emerging threats, harms and trends within the financial services industry, detect significant non-compliant behaviours early, and take the appropriate regulatory response.

RG 78.5 The regulatory regime acknowledges that, despite an expectation of compliance, breaches will occur and licensees then have an obligation to report these to ASIC. Licensees have a clear role in lifting industry standards as a whole, and part of this is timely identification of their own problems.

RG 78.6 We consider that a licensee's experience with incident and issues management, including breaches, should be a vital source of learning to both reinforce and improve an entity's compliance framework and overall function. Instances of non-compliance highlight a weakness to be understood, so improvements can be made to prevent the recurrence of the breach in the future.

RG 78.7 Breach reporting has been identified as an important aspect of our regulatory regime by:

(a) the ASIC Enforcement Review Taskforce, which made several recommendations for strengthening and clarifying the breach reporting requirements in the Corporations Act and recommended that a comparable breach reporting regime for credit licensees be introduced (Recommendation 2);

(b) the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (Financial Services Royal Commission), which recommended that the Taskforce recommendations should be carried into effect (Recommendation 7.2) and that serious compliance concerns be reported (Recommendations 2.8 and 1.6); and

(c) Report 594 *Review of selected financial services groups' compliance with the breach reporting obligation* (REP 594), which sets out the findings of ASIC's review of AFS licensees' compliance with their breach reporting obligation under s912D of the Corporations Act.

Note: See Treasury, ASIC enforcement review: Taskforce report, December 2017; Financial Services Royal Commission, Final report, February 2019.

Our approach to guidance

RG 78.8 This guide gives guidance on your obligation as a licensee to report to ASIC certain breaches of the law. We explain what information must be provided when reporting to ASIC, and what happens after you report, including what information we will publish as required by law. By explaining how we deal with these breach reports, we seek to enhance the transparency of our processes.

RG 78.9 To help you understand your obligations and how they might apply in different factual circumstances, this guide contains a number of examples and historical case studies drawn from REP 594. These examples and case studies are for illustrative purposes only, and do not purport to limit the types of reportable situations that must be reported to ASIC or the reasons why a particular breach may or may not be considered significant.

RG 78.10 Rather, we provide these examples and case studies to help provide clarity and promote the delivery of consistent and high quality reports. Ultimately, it is your responsibility to decide whether you must report to ASIC under the law, by considering the circumstances of your case.

RG 78.11 This guide should be read in conjunction with our regulatory guides on how we administer Ch 7 of the Corporations Act and Ch 2 of the National Credit Act, including Regulatory Guide 104 *AFS licensing: Meeting the general obligations* (RG 104), Regulatory Guide 105 *AFS licensing: Organisational competence* (RG 105) and Regulatory Guide 205 *Credit licensing: General conduct obligations* (RG 205).

What this guide does not cover

RG 78.12 This guide does not cover the following obligations to report matters to ASIC if you:

(a) are a body regulated by the Australian Prudential Regulation Authority (APRA) and you cease to hold that status—for example, if you are a superannuation trustee and you have your approval as a trustee revoked by APRA (see Pro Forma 209 *Australian financial services licence conditions* (PF 209), condition 11);

(b) become aware of a change in control of the licensee (see reg 7.6.04(1)(i) of the Corporations Regulations 2001 (Corporations Regulations) or reg 9(10) of the National Consumer Credit Protection Regulations 2010 (National Credit Regulations));

Note 1: For more information about a change in control of the licensee, see Change in control of AFS licensee on the ASIC website.

Note 2: In this guide, we use the term 'regulations' when referring collectively to the Corporations Regulations and the National Credit Regulations.

(c) are an auditor whose reporting obligations are imposed by s311, s324CA–CC, 324CE–CG, 601HG, 990K or 1226H of the Corporations Act or s104 of the National Credit Act (see Regulatory Guide *Auditor obligations: Reporting to ASIC* (RG 34); or

(d) are a credit licensee, the obligation imposed by s53 of the National Credit Act to lodge an annual compliance certificate (see Information Sheet 135 *Annual compliance certificates for credit licensees* (INFO 135)).

RG 78.13 You may also have separate obligations to report in addition to the breach reporting obligation. For example:

(a) *Market integrity rules*: A market participant must notify ASIC of certain suspicious activities (see Rule 5.11.1 of the *ASIC Market Integrity Rules (Securities Markets) 2017*, Rule 3.6.1 of the *ASIC Market Integrity Rules (Futures Markets) 2017*, Regulatory Guide 265 *Guidance on ASIC market integrity rules for participants of securities markets* (RG 265) and Regulatory Guide 266 *Guidance on ASIC market integrity rules for participants of future markets* (RG 266)).

(b) *Australian Passport Rules*: Australian passport fund operators must notify ASIC of specified changes and certain breaches of these rules, or of the passport rules of an applicable host economy of the fund (see s12 of the *Corporations (Passport) Rules 2018* and Regulatory Guide 132 *Funds management: Compliance and oversight* (RG 132)).

(c) *Product design and distribution obligations*: These obligations require an issuer to notify ASIC of a 'significant dealing' (see s994G of the Corporations Act and Regulatory Guide 274 *Product design and distribution obligations* (RG 274).

(d) *Internal dispute resolution (IDR) reporting*: The IDR data reporting obligation requires some licensees to report to ASIC information about their IDR processes in operation (see s912A(1)(g)(ii) and 1017G(1)(d) of the Corporations Act, s47(1)(ha) of the National Credit Act, s47(1)(c) of the *Retirement Savings Account Act 1997* (RSA Act) and s101(1)(c) of the *Superannuation Industry (Supervision) Act 1993* (SIS Act).

RG 78.14 The IDR data reporting obligation is separate to the IDR requirements set out in Regulatory Guide 271 *Internal dispute resolution* (RG 271), which licensees must have in place to meet ASIC's standards and requirements. A significant breach of the enforceable IDR requirements may need to be reported under the breach reporting regime (see RG 78.37(c) and Example 4(e) in Table 4).

How our guidance applies

RG 78.15 For both AFS licensees and credit licensees, the breach reporting obligation under the Financial Sector Reform Act as discussed in this guide applies to 'reportable situations' that arose on or after 1 October 2021.

RG 78.16 When an investigation must be reported to us as a reportable situation is discussed at RG 78.48–RG 78.62. Investigations into an incident that happened entirely before 1 October 2021 (i.e. the conduct that is the subject of the incident is not continuing) are not reportable to ASIC, even if the licensee commences an investigation into the incident on or after 1 October 2021, and the incident would have been a reportable situation had it occurred on or after 1 October 2021.

RG 78.17 An investigation that commenced *before* 1 October 2021 became a reportable situation if:

(a) the investigation was still in progress on or after 1 October 2021 and continued for more than 30 days; and

(b) the investigation concerned an incident that started before 1 October 2021 and the conduct that was the subject of the incident was continuing on 1 October 2021.

Credit licensees: Reporting breaches that occurred before 1 October 2021

RG 78.18 Credit licensees are not required to report breaches of the National Credit Act that occurred wholly before 1 October 2021, even if the breach is identified on or after 1 October 2021.

B What you must report to ASIC

Key points

As a licensee, you must report to ASIC a range of conduct that the law describes as 'reportable situations'.

The types of reportable situations that you must report include:

- significant breaches or likely significant breaches of 'core obligations';
- investigations into whether there is a significant breach or likely breach of a 'core obligation' if the investigation continues for more than 60 days;
- the outcome of such an investigation if it discloses there is no significant breach or likely breach of a core obligation;
- conduct that constitutes gross negligence or serious fraud; and
- conduct of financial advisers and mortgage brokers who are representatives of other licensees in certain prescribed circumstances.

What is a 'reportable situation'?

RG 78.19 You must report to ASIC all 'reportable situations': see s912DAA of the Corporations Act, s50B of the National Credit Act. This term has a specific meaning under the law and includes a range of conduct.

RG 78.20 In this guide, we refer to four types of reportable situations (see Table 1):

(a) breaches or 'likely breaches' of core obligations that are significant;

(b) investigations into breaches or likely breaches of core obligations that are significant;

(c) additional reportable situations; and

(d) reportable situations about other licensees.

RG 78.21 When we refer to a 'likely breach', we are referring to a situation where a licensee is no longer able to comply with a core obligation and the breach, if it occurs, will be significant: see s912D(1)(b) of the Corporations Act, s50A(1)(b) of the National Credit Act.

RG 78.22 For example, one of your licence conditions may require you to have professional indemnity (PI) insurance. You become aware that your PI insurance policy will lapse soon and you have been unable to secure a renewed policy. If you are unable to find a new PI insurance policy before it lapses, you will become uninsured and will no longer be able to comply with your licence conditions. You must report to ASIC.

Table 1: Types of reportable situations

Type of situation	Description	Guidance and examples
Breaches or 'likely breaches' of core obligations that are significant	These situations include: • any breach of a 'core obligation' where the breach is significant; and • any 'likely breach' of a 'core obligation' where the licensee or a representative of the licensee is no longer able to comply with a core obligation and the breach, if it occurs, will be significant.	See RG 78.29–RG 78.47 Note: For guidance on determining whether or not a breach is significant, see RG 78.31–RG 78.47.
Investigations into breaches or likely breaches of core obligations that are significant	These situations include: • investigations that continue for more than 60 days into whether there is a breach or likely breach of a core obligation that is significant; and • the outcome of such an investigation if it discloses there is no breach or likely breach of a core obligation that is significant.	See RG 78.48–RG 78.62 Note: For guidance on determining whether or not a breach is significant, see RG 78.31–RG 78.47.
Additional reportable situations	These situations include: • conduct constituting gross negligence; • conduct constituting serious fraud; and • other circumstances prescribed by the regulations.	See RG 78.63–RG 78.67
Reportable situations about other licensees	These situations relate to conduct in certain prescribed circumstances of financial advisers and mortgage brokers of other licensees.	See RG 78.68–RG 78.82

RG 78.23 You must lodge a report with ASIC within 30 days after you first know that, or are reckless with respect to whether, there are reasonable grounds to believe a reportable situation has arisen: see s912DAA(3) of the Corporations Act, s50B(4) of the National Credit Act.

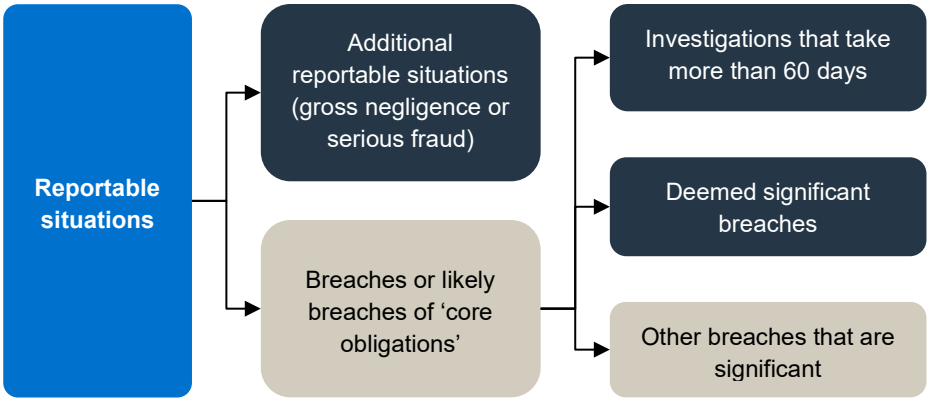
Note: For guidance on when reasonable grounds might arise, and the required timeframes for reporting, see RG 78.83–RG 78.106.

RG 78.24 If a reportable situation arises, failure to report to ASIC in accordance with your obligations is an offence and can lead to criminal or civil penalties: see s912DAA of the Corporations Act, s50B of the National Credit Act.

Note: For guidance on the consequences of failing to report, see RG 78.123–RG 78.126.

RG 78.25 Reportable situations, 'core obligations' and objective determinations of 'significance' are important and interrelated concepts underlying the breach reporting obligation: see Figure 1.

Figure 1: Reportable situations, core obligations and objective determinations of 'significance'



Note: This figure is described in RG 78.25–RG 78.27 (accessible version).

RG 78.26 While we provide guidance on these terms throughout this guide, Figure 1 highlights (with dark shading) three reportable situations that *do not* require a 'determination of significance' before being reported to ASIC. These are:

(a) 'additional reportable situations' (i.e. gross negligence or serious fraud), which must be reported to ASIC and require no determination of significance;

(b) 'deemed significant breaches', which are automatically taken to be significant by operation of law; and

(c) 'investigations that continue for more than 60 days', which require consideration of whether there may be a breach, or likely breach, of a core obligation that is significant, but do not require a determination of significance before being reported to ASIC.

RG 78.27 Breaches or likely breaches of core obligations that do not fall into one of these categories (shown with light shading in Figure 1) require an objective determination of significance before being reported to ASIC.

Breaches by representatives

RG 78.28 A licensee must report breaches committed by the licensee and by its representatives, as this term is defined in the Corporations Act and the National Credit Act:

(a) *for AFS licensees*—representatives include authorised representatives, an employee or director of the licensee or related body corporate, or any other person acting on behalf of the licensee (see s9 of the Corporations Act); and

(b) *for credit licensees*—representatives include an employee or director of the licensee or related body corporate of the licensee, credit representatives of the licensee, or any other person acting on behalf of the licensee (see s5 of the National Credit Act).

Note: See RG 78.132–RG 78.146 for guidance on compliance systems, and monitoring and supervision of representatives (including authorised representatives at RG 78.136).

What is a breach or likely significant breach of your core obligations?

RG 78.29 You must report to ASIC any significant breach (or likely significant breach) of your 'core obligations', as defined in s912D(3) of the Corporations Act for AFS licensees or s50A(3) of the National Credit Act for credit licensees. Appendix 1 to this guide includes a detailed summary of the core obligations for both AFS licensees and credit licensees.

Note: In this guide, references to s912D(3) of the Corporations Act and s50A(3) of the National Credit Act are modified by s6 of *ASIC Corporations and Credit (Breach Reporting—Reportable Situations) Instrument 2024/620*.

RG 78.30 You are only required to report breaches (or likely breaches) of core obligations that are 'significant': see RG 78.31.

What does 'significant' breach mean?

RG 78.31 You must report any breach or likely breach of a core obligation if the breach is 'significant'. There are two ways to determine whether a breach is significant:

(a) *Deemed significant breaches*: In certain situations, a breach or likely breach of a core obligation is taken to be significant (see RG 78.34–RG 78.44); and

Note: Some breaches are excluded from being deemed significant: see section 6 of ASIC Instrument 2024/620.

(b) *Other breaches that may be significant*: In other situations, a breach or likely breach of a core obligation will need to be considered against the factors in s912D(5) of the Corporations Act or s50A(5) of the National Credit Act to determine whether it is significant (see RG 78.45–RG 78.47).

RG 78.32 In determining whether a breach is significant, you should first consider whether a breach is a deemed significant breach. Only if it is not such a breach should you then proceed to determine whether it is significant, having regard to the factors in s912D(5) of the Corporations Act or s50A(5) of the National Credit Act.

RG 78.33 Licensees need an adequate incident and issues management system in place to properly deal with each breach. As a critical part of such a system, an accurate and complete breach register can help with the timely identification of breaches and determination of whether or not an individual breach is significant. For example, if you identify a single, isolated breach that is not significant, it should be recorded in your breach register or risk management system. Although a single breach may not be significant, multiple breaches of the same kind may result in a later breach being considered significant:

see s912D(5)(a) of the Corporations Act or s50A(5)(a) of the National Credit Act (which relate to the number or frequency of similar breaches).

Note: For more information on breach registers and how you can demonstrate compliance with your obligations, see Section D. For guidance on breaches of s912D(5) of the Corporations Act or s50A(5) of the National Credit Act, see RG 78.45–RG 78.47.

What are 'deemed significant breaches'?

RG 78.34 Under s912D(4) of the Corporations Act or s50A(4) of the National Credit Act, certain breaches of core obligations are taken to be significant ('deemed significant breaches'). If a breach is a 'deemed significant breach', no additional steps are needed to determine whether the breach is 'significant' before reporting to ASIC. As stated in the Explanatory Memorandum:

> The purpose of the deemed significance test is to provide greater certainty for industry and to ensure significant breaches are reported to ASIC in a timely manner. For example, where a breach constitutes a contravention of a relevant civil penalty provision or the commission of a relevant offence, the significance of the breach is immediately taken to be satisfied.

Note: See Explanatory Memorandum, paragraph 11.37.

RG 78.35 Deemed significant breaches include:

(a) breaches that constitute the commission of an offence and the commission of the offence is punishable on conviction by a penalty that may include imprisonment for:

  (i) three months or more if the offence involves dishonesty; or

  (ii) 12 months or more in any other case;

(b) breaches of a civil penalty provision (other than a civil penalty provision that is excluded under the regulations);

Note: Certain contraventions of core obligations, including the civil penalty provisions, are not taken to be significant: see RG 78.38.

(c) for credit licensees, breaches that constitute a contravention of a key requirement under s111 of the National Credit Code (Sch 1 to the National Credit Act) (except if the key requirement is exempted under the regulations);

(d) breaches that contravene s1041H(1) of the Corporations Act or s12DA(1) of the *Australian Securities and Investments Commission Act 2001* (ASIC Act) (the ***misleading or deceptive conduct provisions*****);**

Note: Certain contraventions of core obligations, including the misleading or deceptive conduct provisions, are not taken to be significant: see RG 78.38.

(e) breaches that result, or are likely to result, in material loss or damage to:

  (i) *for credit licensees*—a credit activity client of the licensee;

Note: The term 'credit activity client' is defined in s50A(6) of the National Credit Act.

(ii) *for AFS licensees*:

(A) in all cases—a person or persons to whom the AFS licensee or a representative of the licensee provides a financial product or a financial service as a wholesale or retail client;

(B) in the case of a managed investment scheme—a member or members of the scheme; or

(C) in the case of a superannuation entity—a member or members of the entity.

Breaches of civil penalty provisions, key requirements, the misleading or deceptive conduct provisions and relevant exemptions

RG 78.36 Breaches of civil penalty provisions and breaches of key requirements under s111 of the National Credit Act must be reported to us as deemed significant breaches. Breaches of the misleading or deceptive conduct provisions must also be reported to us as deemed significant breaches.

RG 78.37 However, a number of civil penalty provisions and key requirements are **excluded** from the list of core obligations for which a breach is deemed to be significant under s912D(4)(b) of the Corporations Act and s50A(4)(b) of the National Credit Act, as follows:

(a) Regulation 7.6.02A(2) of the Corporations Regulations (AFS licensees) and reg 12A of the National Credit Regulations (credit licensees) specify breaches of civil penalty provisions that do not need to be reported solely because the breach is a contravention of a civil penalty provision.

(b) Regulation 12B of the National Credit Regulations excludes from deeming a number of key requirements under the National Credit Code.

(c) While the enforceable paragraphs of RG 271 are civil penalty provisions, s5 of ASIC Instrument 2024/620 relieves single breaches of these provisions from being deemed significant breaches under s912D(4)(b) of the Corporations Act and s50A(4)(b) of the National Credit Act.

RG 78.38 In addition, s6 of ASIC Instrument 2024/620 provides that certain insignificant contraventions of core obligations are not taken to be significant. These include:

(a) a breach of the misleading or deceptive conduct provisions or the prohibition in s12DB(1) of the ASIC Act (the ***false or misleading representation prohibition***) if the breach meets the following conditions:

(i) the underlying circumstances in relation to the breach must have only given rise, and only be likely to give rise, to a single reportable situation;

Note: Section 6 of ASIC Instrument 2024/620 provides that there is a single reportable situation even if particular conduct constitutes a single contravention of two or more of s12DA(1) or s12DB(1) of the ASIC Act or s1041H(1) of the Corporations Act: see notional s912D(4B)(a) of the Corporations Act and notional s50A(4B)(a) of the National Credit Act.

(ii) the relevant breach must only impact one person or, if the breach relates to a financial product, credit product, consumer lease, mortgage or guarantee that is, or is proposed to be, jointly held by consumers, impact only those consumers; and

(b) the relevant breach must not result in, and be unlikely to result in, any financial loss or damage to any person (regardless of whether that loss or damage has been, or will or may be, remediated);a breach of a core obligation that meets the following conditions:

(i) the underlying circumstances in relation to the breach must have only given rise to a single reportable situation or single group of reportable situations;

Note: A single group of reportable situations means two or more reportable situations that each involve the same or substantially similar conduct other than the identity of the consumer and the date of the conduct, and occur within a period of no more than 60 days.

(ii) the underlying circumstances in relation to the breach must not constitute a contravention of sections 828C or 981M;

(iii) there are no more than 10 persons impacted by the single reportable situation or single group of reportable situations;

(iv) the total financial loss or damage from the single reportable situation or single group of reportable situations results does not exceed $1,000 (regardless of whether than loss or damage has been, or will or may be, remediated); and

(v) the breach must have been rectified (including any remediation to clients) within 60 days after the reportable situation first occurred.

RG 78.39 If a breach is excluded from deeming under s6 of ASIC Instrument 2024/620, but then the underlying circumstances in relation to the breach give rise to further reportable situations or it becomes evident that the breach has given rise to further financial loss so that it no longer meets the conditions of our relief, you must report it and any further breach(es) to us.

RG 78.40 When a breach is excluded from deeming under the regulations or s5 or s6 of ASIC Instrument 2024/620 you must still consider whether it is a deemed significant breach under any of the other criteria in s912D(4) of the

Corporations Act or s50A(4) of the National Credit Act (see RG 78.35), such as when the breach:

(a) is a commission of an offence carrying certain penalties of imprisonment; or

(b) results, or is likely to result in, material loss or damage to a client.

RG 78.41 If you determine that none of those criteria apply, you must also consider whether it is significant in light of the factors in s912D(5) of the Corporations Act or s50A(5) of the National Credit Act (see RG 78.45–RG 78.47).

Breaches that result, or are likely to result, in material loss or damage

RG 78.42 The term 'material loss or damage' is not defined in the legislation. We provide some examples of material loss or damage: see Example 3(a) in Table 2.

RG 78.43 In determining whether there is material loss or damage, licensees should be guided by the Parliamentary intent in the Explanatory Memorandum (as it applies to both the Corporations Act and the National Credit Act provisions):

> 'Loss or damage' in the context of the deemed significance test has its ordinary meaning, which is extensive. The term includes financial and non-financial loss or damage.
>
> Whether a breach results or is likely to result in *material* loss or damage to a person will depend on the person's circumstances. For example, a relevant circumstance may include the person's financial situation.
>
> If a breach affects several people, it is sufficient for significance to be established if the breach is likely to result in material loss or damage to one person. Additionally, where the breach affects several people, licensees should consider the total loss or damage resulting from the breach. For example, even if the breach does not result in a material loss or damage to individual persons, the total loss or damage to persons resulting from the breach may, when aggregated, amount to material loss or damage to persons, thereby satisfying the significance requirement.
>
> Consistent with the common law position, 'likely to result in material loss or damage' is intended to mean that there is a real and not remote possibility that loss or damage will occur as a result of the breach.
>
> Note: See Explanatory Memorandum, paragraphs 11.30–11.33.

RG 78.44 You should consider the financial circumstances of clients (retail and wholesale) affected by a breach in considering whether loss or damage suffered is material. This does not mean you should delay reporting a breach while the specific financial circumstance of each affected client is determined. However, the circumstances of clients who suffer loss or damage as a result of a breach are relevant, particularly when there is a small number of clients who have suffered loss and the loss may be substantial to one or more of them. In this situation, we would expect you to consider information about these clients that is within your knowledge to determine if the loss is material to them.

Table 2: Examples of deemed significant breaches

Example 3(a): Material loss or damage to clients	*Material loss or damage to a debtor* If a debtor with a credit contract surrenders goods to a credit provider under s85 of the National Credit Code and the credit provider fails to comply with its obligations to sell those goods as soon as reasonably practicable to a purchaser nominated by the debtor (or, where a purchaser is not nominated by a debtor, for the best price reasonably obtainable), the debtor may suffer loss or damage. The breach may need to be reported to ASIC when the loss or damage to the debtor is material given: • the value of the goods surrendered; • the length of any delay in the sale of the goods to a purchaser nominated by the debtor (or, where a purchaser is not nominated by the debtor, the difference between the amount the goods are sold for and the best price that could have been reasonably obtained); and • the financial situation of the debtor. *Material loss or damage to consumer credit insurance clients* Over a four-year period, an insurer allowed consumer credit insurance (CCI) to be sold to clients who the insurer knew, or should have known, at the time of the sale were not eligible to claim for unemployment or temporary or permanent disability cover provided by the CCI. While on average the breach meant that the general insurer had collected $153 in unsuitable premiums per client, collectively the breach may amount to material loss, with the insurer refunding over 65,000 clients around $10 million. Separately, consideration of materiality also included the affected clients' financial situation, as they were mostly low-income students or people who were unemployed. *Material loss or damage to members of a superannuation fund* A superannuation fund trustee identifies issues with its operation and control systems that led to overcharging of member insurance premiums. The trustee establishes that the individual loss to members is low (and estimated to be less than $80 per member). However, the breach collectively results in a large cohort of affected members (over 70,000) who suffer a significant collective loss (over $5 million). In assessing whether a breach results, or is likely to result, in material loss or damage to a member or members of a superannuation entity, a superannuation fund trustee should take into account the total and aggregated loss or damage to affected members of the entity, even if the individual loss per affected member is small.
Example 3(b): Dishonestly obtaining client funds (criminal offence)	If a licensee, or a licensee's representative, breaches a core obligation by engaging in conduct that constitutes a criminal offence, the licensee must report this to ASIC. For example, if the licensee identifies, after complaints have been lodged by clients, that an authorised representative has given advice to clients to dishonestly obtain client funds and use them for personal expenses or other purposes, the licensee must report that breach to ASIC.

Example 3(c): Governance failures in a responsible entity (civil penalty provision)	If the licensee is a responsible entity of a registered scheme and it becomes aware that in exercising its powers and carrying out its duties as responsible entity it has not complied with the compliance plan for the registered scheme, it will be in breach of the obligations under s601FC(1)(h) of the Corporations Act (duties of responsible entity) and must report this to ASIC. Because a breach of s601FC(1)(h) contravenes s601FC(5) and incurs a civil penalty under s1317E, such a breach is deemed to be significant and must be reported to ASIC.
Example 3(d): Quality of advice and failure to act in interests of the client (civil penalty provision)	An AFS advice licensee identifies that four of its representatives have failed to comply with their best interests duty (in breach of s961B of the Corporations Act) and to provide appropriate advice to multiple clients (in breach of s961G of the Corporations Act). As a result, the advice licensee may be in breach of its obligation to take reasonable steps to ensure that its representatives comply with the best interests duty (s961L)—a civil penalty provision. There may also be breaches of the licensee's core obligations to comply with the relevant financial services laws (s912A(1)(c)—licensees must ensure compliance) in relation to s961L. There may also be a failure to take reasonable steps to ensure that its representatives comply with those laws: see s912A(1)(ca). The advice licensee must report the breach to ASIC.
Example 3(e): Contraventions of the misleading or deceptive conduct provisions or false or misleading representation prohibition	If a licensee or representative contravenes the misleading or deceptive conduct provisions or the false or misleading representation prohibition, and the contravention does not meet the conditions for relief in s6 of ASIC Instrument 2024/620, the licensee must report this to ASIC. *Credit licensees* A licensed mortgage broker conducts an audit of one of its representatives and identifies a loan application containing false information, which indicates that its representative made false representations to a number of potential lenders that are likely to cause financial loss or damage to those lenders. Based on this information, the mortgage broker has reasonable grounds to believe a reportable situation has arisen (misleading or deceptive conduct in contravention of s12DA of the ASIC Act), and it must report this to ASIC. *AFS licensees* An AFS licensee identifies that a representative has contravened the misleading or deceptive conduct provisions by asking clients to sign blank forms, signing clients' names on an authority to proceed (part of the SOA), and falsely declaring to have witnessed forms. As the conduct has impacted multiple clients, the licensee has reasonable grounds to believe that a reportable situation has arisen (misleading or deceptive conduct in contravention of s1041H of the Corporations Act) and it must report this to ASIC.
Example 3(f): Charging prohibited fees to a debtor (key requirement under the National Credit Code)	A contravention of a key requirement, as defined for the purposes of the National Credit Code, must be reported to ASIC, except when excluded by the regulations: see s50A(4)(c) of the National Credit Act. For example, a credit licensee conducts a review of its credit contracts and identifies that it is imposing a fee or charge that is prohibited under s23(1) (prohibited money obligations) of the National Credit Code. The licensee must report this to ASIC, even if the fee or charge is imposed on only one debtor.

Example 3(g): Efficiently, honestly and fairly (civil penalty provision)	Under its general licence obligations, an AFS licensee must do all things necessary to ensure that the financial services covered by its licence are provided efficiently, honestly and fairly: see s912A(1)(a) of the Corporations Act. If it contravenes this obligation, it must report this to ASIC. A licensee is undertaking a large remediation as a result of discovering that customers had been overcharged fees for a particular financial product for over 10 years. The licensee failed to establish and maintain adequate systems, processes and procedures to ensure that the product was delivered as promised, and to identify the failure when it occurred. As a result of this failure, customers have suffered loss and the licensee understands that it is obliged to compensate them for that loss. Due to a significant decrease in the number of new customers over the last two years, the licensee is experiencing a sizeable downturn in revenue. As a result of this, and following discussions with the executive committee, its customer remediation unit has altered its remediation timetable to effectively adopt a 'go slow' approach to paying remediation to these customers. The licensee's conduct in overcharging fees and the resulting decision to go slow on remediation is systemic because it affects many of its customers, it continued over an extended period, and highlights failings in its systems, processes and procedures. We consider this conduct would be in breach of the licensee's obligation to do all things necessary to ensure financial services covered by its licence are provided efficiently, honestly and fairly, and it therefore has an obligation to report this conduct to ASIC.

Other breaches that are significant

RG 78.45 Except for deemed significant breaches and additional reportable situations, a breach (or likely breach) of a core obligation needs to be assessed to determine whether it is significant having regard to certain factors in s912D(5) of the Corporations Act or s50A(5) of the National Credit Act. These factors are:

(a) the number or frequency of similar breaches;

(b) the impact of the breach or likely breach on the licensee's ability to supply the financial services or engage in credit activities covered by the licence;

(c) the extent to which the breach or likely breach indicates that the licensee's arrangements to ensure compliance with those obligations are inadequate; and

(d) any other matters prescribed by the regulations.

RG 78.46 Whether a particular breach is significant should be determined objectively: see RG 78.25. Table 3 explains how each of these factors may be applied to determine whether a breach is significant. Table 4 gives examples of

breaches we consider may be significant, while Table 5 gives examples of breaches we consider may not be significant.

Note: As noted earlier, these examples are for illustrative purposes only; a determination of significance for a particular breach, or likely breach, will depend on the licensee's individual circumstances: see RG 78.9–RG 78.10.

RG 78.47 You must have regard to all of the factors in RG 78.45 when determining whether a breach (or likely breach) is significant. A breach may be significant even if only one of the factors applies to your circumstances, or when there is a combination of factors.

Table 3: Factors that determine whether a breach (or likely breach) is 'significant' under s912D(5) of the Corporations Act or s50A(5) of the National Credit Act

Factor	How it may be applied to determine whether a breach is significant
The number or frequency of similar breaches: see s912D(5)(a) of the Corporations Act, s50A(5)(a) of the National Credit Act	The greater the number or frequency of similar breaches, the more likely it will be that the new breach will be significant. The repeat of a breach may also indicate a continuing underlying systemic problem. If minor breaches of a technical or administrative nature repeatedly occur, you may become aware that you can no longer comply with your obligations under the financial services laws or credit legislation (e.g. because you have inadequate compliance arrangements, risk management systems, or technological or human resources). This may be a reportable situation under s912D(1)(b) of the Corporations Act or s50A(1)(b) of the National Credit Act. It would also amount to a deemed significant breach, as the following sections are civil penalty provisions: • s912A(1)(d) of the Corporations Act (obligation to have adequate resources to provide financial services covered by your licence); • s912A(1)(h) of the Corporations Act (obligation to have adequate risk management systems); • s47(1)(k) of the National Credit Act (obligation to have adequate arrangements to ensure compliance with the general obligations under s47); and • s47(1)(l) of the National Credit Act (obligation to have adequate risk management systems and adequate resources to provide credit activities covered by your licence).
The impact of the breach or likely breach on your ability to supply the financial services or engage in credit activities covered by your licence: see s912D(5)(b) of the Corporations Act, s50A(5)(b) of the National Credit Act	If a breach or likely breach reduces your ability or capacity to supply the financial services or engage in the credit activities covered by your licence, it is likely to be significant. For example, we consider that a breach of the financial requirements of your licence conditions may be significant. If these minimum requirements are not met, you may not have the financial ability or capacity to supply the financial services or credit activities covered by your licence. If the breach or likely breach will not affect your ability or capacity to supply the financial services or credit activities covered by your licence, it may still be significant having regard to one or more of the other factors.

Factor	How it may be applied to determine whether a breach is significant
The extent to which the breach or likely breach indicates that the licensee's arrangements to ensure compliance with those obligations are inadequate: see s912D(5)(c) of the Corporations Act, s50A(5)(c) of the National Credit Act	If the breach or likely breach indicates that your arrangements to ensure compliance failed to prevent the breach in an isolated and specific instance, it may not be significant. However, if it indicates broader inadequacies in your compliance arrangements, it is more likely to be significant and, if so, you should report it to ASIC. We recognise that compliance arrangements are unlikely to ensure full compliance with every aspect of the law at all times, and occasional and minor breaches do not of themselves mean that your compliance arrangements are inadequate. However, this factor requires you to consider whether a breach or likely breach indicates that your compliance arrangements are inadequate. We expect that under this factor you would ask yourself questions such as the length of time the incident went undetected, to what extent the compliance arrangements helped in identifying the breach, and the timeframe it took to investigate and assess the incident as a breach. We consider that, when systems are appropriately resourced, used and audited, they should identify instances of non-compliance in a timely manner.
Any other matters prescribed by the regulations: see s912D(5)(d) of the Corporations Act, s50A(5)(d) of the National Credit Act	You should check to see whether the regulations have prescribed any further factors.

Table 4: Examples of breaches that may be significant under s912D(5) of the Corporations Act or s50A(5) of the National Credit Act

Example 4(a): Failure to notify ASIC of changes in key persons	If a licensee is required as a condition of its licence to report to ASIC when a person ceases to be an officer or perform duties on behalf of the licensee, and it fails to inform ASIC within the required time period and lodge information in relation to the replacement of that key person, there may be a significant breach. If the departure of one or more key persons will impact on the licensee's ability to provide the financial services or credit activities covered by its licence, that is a breach of s912A(1)(b) of the Corporations Act or s47(1)(c) of the National Credit Act. A failure to inform ASIC and appoint an appropriate replacement person should be reported to ASIC if the breach is significant under s912D(5) of the Corporations Act or s50A(5) of the National Credit Act.

Example 4(b): Failure to follow disclosed investment mandates	If a fund is promoted as following a particular investment mandate or as having particular characteristics, we would expect a failure of the responsible entity to ensure that the scheme complies with the mandate or has the promoted characteristic (which in certain circumstances will be a breach of s601FC(1)(c) of the Corporations Act) to be a significant breach, even when the breach may not have resulted in material loss or damage to members. For example, if a scheme is promoted as having an investment mandate that compels the scheme to invest in certain ethical investments (e.g. 'green energy') or investment types and to avoid others (e.g. tobacco, fossil fuels), a failure to comply with this would adversely affect the interests of members and may mean the promotional material issued to investors is misleading. It may not cause material loss and damage if the returns generated by the scheme were the same or higher than would have been achieved under the disclosed mandate. This would nevertheless be morally unacceptable to many of them. Note: If you identify that the promotional material for the scheme is potentially misleading, this will constitute misleading or deceptive conduct and therefore be a deemed significant breach: see Example 3(e) in Table 2.
Example 4(c): Breach of ASIC market integrity rules	Operators of licensed markets and participants in financial markets must comply with the ASIC market integrity rules made under s798G of the Corporations Act. Failure to comply with these rules (which in certain circumstances may be a breach of s798H of the Corporations Act) is a civil penalty provision excluded from deemed significance. However, such a breach may still need to be reported to us if one of the other circumstances of deemed significance in s912D(4) applies, or if it is otherwise significant under s912D(5) of the Corporations Act. For example, dealing in a financial product by the participant on account of a client when a market participant ought reasonably suspect that the client has placed the order with the intention of creating a false or misleading appearance of the price of a financial product: see Rule 5.7.1 of the *ASIC Market Integrity Rules (Securities Markets) 2017*. The same dealing may also constitute a breach of Rules 5.6.1 or 5.6.3 if the dealing was conducted through the market participant's automated order processing system.
Example 4(d): Breach of IDR requirements	If a licensee breaches the IDR standards outlined in the enforceable paragraphs of RG 271, it will not be a deemed significant breach despite being a breach of a civil penalty provision. This is because s5 of ASIC Instrument 2024/620 excludes such a breach from being deemed significant under s912D(4)(b) of the Corporations Act or s50A(4)(b) of the National Credit Act. However, the breach may still be reportable. For example, a licensee identifies that a pro forma letter sent by the licensee in response to complaints for the past three months as part of the IDR process did not inform the complainants that they can take their complaint to the Australian Financial Complaints Authority (AFCA). This failure to inform is in breach of the enforceable paragraphs of RG 271: see RG 271.53–RG 271.54. This breach would likely be significant due to the number of clients impacted and may also indicate that a licensee's arrangements to ensure compliance are inadequate and must be reported to us: see s912D(5) of the Corporations Act.

Table 5: Examples of breaches that may not be significant

Example 5(a): Isolated failure to give a disclosure document (Financial Services Guide (FSG) or Credit Guide)	A licensee identifies an isolated instance of an authorised representative or credit representative failing to give a client a copy of an FSG or Credit Guide in contravention of s941B of the Corporations Act or s113(1) of the National Credit Act, which are civil penalty provisions excluded from deemed significance by the regulations. The licensee must still consider whether the breach is significant under any of the other deeming categories, or otherwise significant under s912D(5) of the Corporations Act or s50A(5) of the National Credit Act: see RG 78.45. If, for example, the licensee determines that there are no further contraventions or losses arising from the contravention, it is unlikely to be required to report to ASIC. However, if it identifies multiple breaches of the same nature, or issues surrounding the contravention that suggest that there are deficiencies in its compliance systems, it may be required to report the breach to ASIC.
Example 5(b): Isolated failure to provide a statement of account	If a licensee fails to give a periodic statement of account to an individual client in the time period required by the National Credit Code in an isolated instance, the breach is not likely to be significant and the licensee is unlikely to be required to report to ASIC. However, if the licensee identifies that the breach relates to multiple clients or multiple breaches relate to individual clients, the breach will likely be significant and must be reported to ASIC.

What is a reportable investigation?

RG 78.48 Investigations into whether a significant breach (or likely significant breach) of a core obligation has occurred, and that continue for more than 60 days, must be reported to ASIC as a 'reportable situation': see s912D(1)(c) of the Corporations Act, s50A(1)(c) of the National Credit Act as modified by s6A of ASIC Instrument 2024/620.

RG 78.49 If the investigation commences and concludes within 60 days and there are no reasonable grounds to believe that a reportable situation has arisen, the investigation is not a 'reportable situation'. If an investigation that concludes within 60 days identifies reasonable grounds to believe that a reportable situation has arisen, you must report to ASIC notifying us of the reportable situation that has arisen within 30 calendar days.

> Note: An investigation becomes a reportable situation on day 61 of the investigation, and you must lodge a report within 30 days of this date. See RG 78.83–RG 78.106 for guidance on when you must report a reportable situation to ASIC, including RG 78.102–RG 78.106 on how to report investigations.

RG 78.50 The term 'investigation' is not defined. As stated in the Explanatory Memorandum:

> The term 'investigation' is not defined in the legislation and has its ordinary meaning. What constitutes an investigation is likely to vary significantly depending on the size of the licensee's business, their internal systems and processes, and the type of breach.

The Macquarie Dictionary defines 'investigation' as 'a searching inquiry in order to ascertain facts.' Accordingly, if a … licensee is considering whether it has conducted an investigation, a relevant factor would be whether there has been some information gathering or human effort applied by the licensee to determine whether a breach has occurred or will occur. Examples of information gathering may include:

- communicating with representatives or staff of the licensee who may have been involved in the relevant conduct;
- communicating with potentially affected clients; or
- seeking specialist or technical advice.

Note: See Explanatory Memorandum, paragraphs 11.43–11.44.

RG 78.51 Licensees must also have regard to the guidance set out in the Explanatory Memorandum as follows:

(a) *Entry into risk management systems:*

Merely entering a suspected compliance issue into a risk management system is unlikely to amount to a searching inquiry to ascertain facts, although this will depend on the circumstances in each case.

Note: See Explanatory Memorandum, paragraph 11.45.

(b) *Description of investigation*:

The intention is that the term 'investigation' applies irrespective of how the licensee describes an investigation in its internal processes, as long as it satisfies the ordinary meaning of the term.

Note: See Explanatory Memorandum, paragraph 11.46.

(c) *Outsourcing investigations:*

[A] licensee is also considered to have conducted an investigation if it outsources the investigation, or if a related entity (such as a parent company) conducts the investigation.

Note: See Explanatory Memorandum, paragraph 11.48.

RG 78.52 Table 6 sets out some examples of investigations that must be reported to ASIC as reportable situations.

RG 78.53 For the commencement of an investigation, as stated in paragraph 11.47 of the Explanatory Memorandum, the time at which an investigation commences is a matter of fact and is not a matter for subjective determination by the licensee.

RG 78.54 For the investigation to be reportable to us under s912D(1)(c) of the Corporations Act or s50A(1)(c) of the National Credit Act, the investigation must at least in part be into whether there is a breach (or likely breach) of a core obligation that is significant, and that investigation must continue for more than 60 days.

RG 78.55 Depending on the specific facts of each case, and excluding scenarios where investigations are not required as set out in RG 78.62, we consider that:

(a) the mere receipt of a detective control such as a complaint, a whistleblower disclosure or a regulatory request is not an investigation that must be reported to us;

(b) preliminary steps and initial fact-finding inquiries into the nature of the incident, which are completed over a short timeframe and conducted as an initial response to detective controls (such as the receipt of a complaint), would not generally be reportable to us (see Example 6(d) in Table 6); and

(c) 'business as usual' inquiries, such as routine audits, quality assurance monitoring, or other internal compliance review processes, are only reportable to us if they are triggered by an incident or assess, or will be, assessing a possible breach of a core obligation (see Examples 6(a) and 6(c)).

RG 78.56 Particularly for larger licensees, the person or team within the licensee that commences an investigation (e.g. a compliance team) is not determinative of whether a reportable investigation has commenced: see RG 78.104 for further guidance, including Example 10.

Table 6: Examples of investigations that are reportable situations

Example 6(a): Internal audit of unit pricing	A routine internal audit of unit pricing functions identifies that there is a risk that unit pricing errors have occurred as a result of inadequate manual systems being used for the calculation of unit prices. After the potential pricing errors are identified by the internal audit team, a separate investigation is undertaken into the extent and cause of the pricing errors and potentially affected clients. The licensee must report the investigation into the nature and extent of the unit pricing errors if it has continued for 60 days. If the investigation concludes in less than 60 days and there are not reasonable grounds to believe that a reportable situation has arisen, the investigation does not need to be reported to ASIC. As the internal audit itself is routine and not directed at identifying whether a significant breach of a core obligation has arisen, it does not constitute an investigation.
Example 6(b): Client complaints about fees for no service	A licensee receives several client complaints that clients have been charged for financial advice without having received any advice. In light of those complaints, the licensee reviews its client books and fee arrangements and identifies a large number of additional clients who are being charged ongoing advice fees but who are not attached to a financial adviser. From the initial review, which has now been ongoing for longer than 60 days, it appears that the issue is likely to be systemic and impacting a large number of clients. It also appears that it may involve multiple breaches of the licensee's obligations under s12DI(3) of the ASIC Act (accepting payment without being able to supply services), and possible breaches of the licensee's obligation to provide financial services efficiently, honestly and fairly under s912A(1)(a) and to comply with the financial services laws under s912A(1)(c) of the Corporations Act. The licensee must report the review of fee arrangements to ASIC as an investigation after the review has continued for more than 60 days. The investigation commenced when the licensee conducted a review of its client books.

Example 6(b): Client complaints about fees for no service (continued)	Once the investigation identifies reasonable grounds to believe that a reportable situation has arisen (i.e. that there are reasonable grounds to believe a contravention of a relevant civil penalty provision has occurred), this must also be reported to ASIC as a reportable situation. If the investigation identifies this reportable situation within 60 days, the investigation does not need to be reported at this time. However, if the investigation is ongoing in regard to possible additional breaches, the licensee must report the investigation once it continues for more than 60 days, as well as any further reportable situations revealed by the ongoing investigation. Note: If further reportable situations are revealed by the ongoing investigation, they must be reported to ASIC within 30 days unless the reportable situations have underlying circumstances that are the same as, or substantially similar to, underlying circumstances of the previously reported reportable situation. In such cases, the licensee has up to 90 days to report the reportable situation to ASIC: see RG 78.84.
Example 6(c): Annual compliance audit	An advice licensee undertakes an annual compliance audit of Adviser X and identifies five client files where Adviser X has failed to comply with the best interests duty and related obligations in Div 2 of Pt 7.7A of the Corporations Act. The main concern identified was that Adviser X recommended that these five clients invest in complex products, using a 'cookie-cutter' advice approach, without properly identifying or taking into account each client's goals and objectives, personal circumstances or risk profile. The licensee undertakes a detailed review of Adviser X's client files to further investigate the concerns identified in the compliance audit, including whether there was a potential breach of: • the licensee's obligation under s961L of the Corporations Act to take all reasonable steps to ensure that during the relevant period its representative, Adviser X, has complied with the best interests duty and related obligations; and • the licensee's core obligations to: – do all things necessary to ensure that the financial services covered under its licence are provided efficiently, honestly and fairly; – comply with the financial services laws (being s961L in this example); and – take reasonable steps to ensure that its representatives comply with the financial services laws (being s961B and 961G of the Corporations Act in this example). If the licensee's detailed review of Adviser X's files continues for more than 60 days, it must be reported to ASIC as an investigation.

Example 6(d): Receipt of a customer complaint	A licensee receives a customer complaint and promptly begins some factual inquiries in respect of the complaint in order to resolve it on the spot or send an acknowledgement of receipt to the customer. In entering the complaint into its internal systems, the licensee verifies basic information about the customer, and has a preliminary conversation with staff of the licensee. Up to this point, there is no reportable investigation. In identifying that the complaint appears to involve a possible breach of the law, the licensee takes steps towards ascertaining whether a significant breach has occurred. This includes initial factual and legal analysis of the complaint, including a request for further information from the customer, and further information gathering to determine whether a breach has occurred. In identifying that the complaint appears to involve a possible breach of the law, and taking steps towards ascertaining whether a significant breach has occurred, an investigation has commenced. If this investigation continues for more than 60 days, the licensee must report this to ASIC.

RG 78.57 We expect that investigations into whether a reportable situation has arisen will be commenced in a timely manner and without unreasonable delay. Further, while there is no statutory timeframe for completion of an investigation, we expect that investigations will be conducted in a timely way. Delays in initiating, recording, escalating or conducting an investigation may suggest inadequacies of a licensee's compliance arrangements (see s912D(5)(c) of the Corporations Act, s50A(5)(c) of the National Credit Act), and may constitute a breach of s912A of the Corporations Act or s47 of the National Credit Act.

RG 78.58 Timely investigations reduce the risk of continuing breaches or breaches that reoccur by helping to identify the root or systemic cause of the breach. If a deficiency in a system or process is identified before the investigation is completed, you should not wait for it to be completed to implement steps to rectify the deficiency and limit its adverse impact: see Case study 1.

Case study 1: Remedying a breach before the completion of an investigation

A licensee identified that nearly 200 consumer complaints received within one year through their IDR process were about home loan offset arrangements.

During the investigation, the licensee identified approximately 2,000 active accounts with offset account linkage errors, resulting in a number of these consumers not receiving the benefits of an offset account and paying too much interest on their home loan.

While the investigation of the offset account linkage error was ongoing, system enhancements were implemented to improve the overall consumer experience, and show all consumers details of their linked offset account and the amount of interest saved on their home loan through the offset arrangement.

RG 78.59 Your policies and procedures should set out expectations for the completion of investigations and circumstances when additional reporting or oversight is required for ongoing investigations to ensure that they are progressing and being appropriately prioritised.

Note: See Section D for guidance on compliance systems and identifying, recording and reporting breaches.

RG 78.60 If, before the end of an investigation, you are satisfied, or have reasonable grounds to believe, based on the information at hand, that the breach was significant and a reportable situation, you must not wait until the investigation is complete to report the matter to ASIC: see Case study 2.

Case study 2: Unreasonable delay in reporting

An AFS licensee reported a significant breach relating to account opening errors that occurred over an eight-year period. This systemic issue affected over 100,000 clients who could not access the full benefits of their account.

The licensee had been receiving complaints for four years before making the breach report to ASIC. An initial investigation identified only part of the root causes and the complaints continued.

A second investigation revealed more account opening errors, and led to the breach report to ASIC. However, by this stage the licensee had received over 120 complaints.

The licensee's decision to report to ASIC should not have been delayed while awaiting completion of the second investigation because there were reasonable grounds to believe that a reportable situation had arisen after the initial investigation.

As the two investigations had the same subject matter, the investigation effectively commenced at the start of the initial investigation, and became a reportable situation after 60 consecutive days.

RG 78.61 In certain prescribed situations, you must commence an investigation into the nature and extent of certain breaches and loss arising from a reportable situation within set timeframes: see s912EB of the Corporations Act (financial advisers), s51B of the National Credit Act (mortgage brokers).

Note: For information about the investigation, notification and remediation obligations that apply to AFS licensees and credit licensees, see Information Sheet 259 *Complying with the notify, investigate and remediate obligations* (INFO 259).

RG 78.62 Except for the circumstances described in RG 78.61, there is no express requirement to investigate, and not all circumstances will require an investigation before reporting to ASIC. In some cases, a reportable situation should be clear to you without an investigation.

What are additional reportable situations?

RG 78.63 You must also report to ASIC certain additional reportable situations: see s912D(2) of the Corporations Act, s50A(2) of the National Credit Act. If an additional reportable situation arises, you must report it to ASIC irrespective of whether or not it is 'significant'. Additional reportable situations include when you or your representative:

(a) engage in conduct constituting gross negligence in the course of providing a financial service or engaging in a credit activity; or

(b) commit serious fraud.

Note: Section 9 of the Corporations Act and s5 of the National Credit Act define serious fraud as an offence involving fraud or dishonesty against an Australian law or any other law that is punishable by imprisonment for life or for a period, or maximum period, of at least three months.

RG 78.64 As noted in the Explanatory Memorandum:

> Conduct that constitutes gross negligence or serious fraud must be reported to ASIC because of the potentially considerable detriment that could be caused to a person as a result of that conduct. This kind of conduct also goes to the licensee or representative's character and suitability to engage in credit activities [or to provide financial services].

Note: See Explanatory Memorandum, paragraph 11.53 (AFS licensees) and paragraph 11.164 (credit licensees).

RG 78.65 Additional reportable situations are intended to capture the 'serious compliance concerns' identified by Recommendation 2.8 of the Financial Services Royal Commission:

> Serious compliance concerns are where the licensee believes and has some credible information in support of the concerns identified that a financial adviser may have engaged in dishonest, illegal, deceptive and/or fraudulent misconduct or any misconduct that, if proven, would be likely to result in an instant dismissal or immediate termination; or deliberate non-compliance with financial services laws or gross incompetence or gross negligence.

Note: See Financial Services Royal Commission, Final report, February 2019, p. 204.

RG 78.66 Example 7 illustrates a situation where you may need to report an additional reportable situation to us.

Example 7: Gross negligence

A consumer applies for a home loan using the services of a mortgage broker. The lender requests further documentation from the mortgage broker to enable the lender to complete the approval. The lender makes repeated requests for the documentation, and the consumer has separately been consistently pressing the broker to ask whether anything else is required, telling the broker that any delay will result in them losing the property.

> The mortgage broker acknowledges the requests and is aware of the impending deadline for finance approval. The consumer would qualify for the loan; however, without the additional documentation, the lender will be unable to process the approval.
>
> The mortgage broker fails to take any action to obtain the required documentation from the consumer or even inform the consumer of the request. As the lender does not receive this information, the finance is not obtained in the required period. Consequently, the consumer suffers loss by losing the opportunity to purchase the property, and the property is subsequently sold to another party.
>
> The failure of the mortgage broker to act on the repeated requests by the lender and respond to repeated contact from the consumer is conduct constituting gross negligence that must be reported to ASIC.

RG 78.67 Additional reportable situations may also arise in other circumstances as prescribed by the regulations: see s912D(2)(c) of the Corporations Act, s50A(2)(c) of the National Credit Act. You should check to see whether the regulations have specified any further additional reportable situations.

Reportable situations about other licensees: Financial advisers and mortgage brokers

RG 78.68 In certain circumstances, under s912DAB of the Corporations Act or s50C of the National Credit Act, you may be required to lodge a breach report in relation to a reportable situation about another licensee.

RG 78.69 This category of reportable situation relates to individuals who provide personal advice to retail clients about relevant financial products (as defined in the Corporations Act) or who are mortgage brokers.

RG 78.70 You must report to ASIC if you have reasonable grounds to believe that a reportable situation, other than a reportable situation arising from an investigation conducted for more than 60 days, has arisen in relation to an individual who:

(a) provides personal advice to retail clients about relevant financial products (as defined in the Corporations Act) or is a mortgage broker; and

(b) is any of the following:

(i) another AFS licensee or credit licensee;

(ii) an employee of another AFS licensee or credit licensee (or a related body corporate of another licensee), acting within the scope of the employee's employment;

(iii) a director of another AFS licensee or credit licensee (or a related body corporate of another licensee), acting within the scope of the director's duties as director; or

(iv) a representative of another AFS licensee or credit licensee, acting within the scope of the representative's authority given by the licensee.

RG 78.71 Table 7 sets out some examples of when a licensee must report to ASIC reportable situations in relation to other licensees.

RG 78.72 As discussed at RG 78.84, 'reasonable grounds to believe' that a reportable situation has arisen is an objective standard. It exists when there are facts or evidence to induce, in a reasonable person, a belief that a reportable situation has arisen. In the context of reportable situations about other licensees, the Explanatory Memorandum states:

> In practice, a reporting licensee will likely have [or a credit licensee will likely develop] reasonable grounds to believe that a reportable situation has arisen in relation to another financial adviser [about another mortgage broker] through a relationship of proximity between the two parties. For example, this may occur because of business dealings between the two parties or through mutual clients.
>
> Note: See Explanatory Memorandum, paragraphs 11.94 (AFS licensees) and 11.202 (credit licensees).

RG 78.73 Although licensees do not need to proactively investigate any possible misconduct of other licensees, they must not turn a blind eye to facts that are before them. This may include, for example, if information comes to light through usual practices or processes, such as a due diligence process as part of a business transfer. To meet the threshold of 'reasonable grounds to believe', you do not need facts or evidence amounting to certain proof that there is a breach. The fact that other possible innocent explanations can be thought of to explain a situation (e.g. customer mistake or misconduct) does not automatically rule out the need to report. The test is whether you have reasonable grounds to believe a reportable situation has arisen.

RG 78.74 Except as set out in RG 78.80, within 30 days after you first know that, or are reckless with respect to whether, there are reasonable grounds to believe such a reportable situation has arisen, you must:

(a) lodge a report with ASIC; and

(b) provide a copy of the report to the other licensee.

> Note 1: For example, if a financial adviser or mortgage broker who is the subject of your report operates under their own AFS licence or credit licence, you should give a copy of the report directly to the financial adviser or mortgage broker. If the financial adviser or mortgage broker is a representative or employee of an AFS licensee or credit licensee, you should give a copy of the report to the licensee even if that financial adviser or mortgage broker is no longer involved with the licensee (e.g. previous employer).
>
> Note 2: For credit licensees, if a lender has reasonable grounds to believe that there is a reportable situation in relation to a mortgage broker and lodges a report with ASIC, there is no obligation to provide a copy of the report to the mortgage broker's aggregator unless the mortgage broker is a representative of the aggregator.

RG 78.75 Licensees must report to ASIC in the prescribed form through the ASIC Regulatory Portal. Table 8 sets out the content of the prescribed form, but with respect to reports about other licensees, licensees are only required to include information on the first seven items (the date of the reportable situation, the nature of the reportable situation, description of the reportable situation, why the breach is significant, how the reportable situation was identified, how long the breach lasted, and information about representatives).

RG 78.76 When the other licensee receives a copy of the report, we expect they will make inquiries into whether a reportable situation has arisen, unless they have already commenced an investigation. If that investigation continues for 60 days or more or reveals that there are reasonable grounds to believe a reportable situation has arisen, the other licensee will be required to report to ASIC.

> Note: Depending on the nature of the reportable situation, a licensee who is a financial adviser or mortgage broker and who receives the report may also have to consider their obligations to notify, investigate and remediate clients: see INFO 259.

RG 78.77 Failure to lodge a report with ASIC in the circumstances set out in RG 78.70 and provide a copy to the other licensee can attract civil penalties: see s912DAB(8) of the Corporations Act, s50C(1) and 50C(5) of the National Credit Act.

RG 78.78 If you are a reporting entity under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act), the relevant conduct underlying the reportable situation reported to ASIC may also trigger your obligation to submit a suspicious matter report (SMR) to the Australian Transaction Reports and Analysis Centre (AUSTRAC) under s41(2) of the AML/CTF Act. If a reporting entity is required to submit an SMR, they must not disclose any information about the report, except in certain limited circumstances: see s123(1) of the AML/CTF Act.

RG 78.79 Relevantly, if a licensee provides a report to ASIC and a copy to the other licensee in compliance with its obligations under s912DAB of the Corporations Act or s50C of the National Credit Act, this will not breach s123 of the AML/CTF Act. Providing this report under the licensee's obligations at law falls within the exemption in s123(9) of the AML/CTF Act (compliance with a requirement under a law of the Commonwealth, state or territory).

RG 78.80 If there are reasonable grounds to believe that ASIC is aware of the reportable situation and all the information that is required in a report, you do not need to lodge a report: see s912DAB(4) of the Corporations Act and s50C(4) of the National Credit Act. The Explanatory Memorandum notes this is a 'high threshold':

> This is a high threshold that is primarily intended to reduce reporting of matters to ASIC that are publicly well known about an individual financial adviser [mortgage broker] operating under another financial services licence.

Note: See Explanatory Memorandum, paragraph 11.107 (AFS licensees) and paragraph 11.214 (credit licensees).

RG 78.81 For example, if you know that the other licensee or another third-party licensee has lodged a breach report with ASIC in relation to the reportable situation, because for example you have noted a relevant ASIC media release about an enforcement action, you are not required to lodge a further report with ASIC.

Qualified privilege

RG 78.82 In providing a copy of the report to ASIC or the other licensee as required, you may have the benefit of qualified privilege under s1100A or 912DAB(6) of the Corporations Act or s50C(6) of the National Credit Act in an action for defamation if you had no malice. You may also not be liable for an action based on breach of confidence in relation to that conduct: see s912DAB(7) and 1100A of the Corporations Act, s50C(7) of the National Credit Act.

Note: If you lodge a false report about another licensee with ASIC with ill will or an improper motive (e.g. to undermine a competitor), you will not have the benefit of qualified privilege in an action for defamation.

Table 7: Examples of reportable situations about other licensees

Example 8(a): Falsification of loan application documents	A lender becomes aware of an individual mortgage broker falsifying information in their loan application documents after seeking to verify income statements used to support a client's loan application. The client provides the lender with a copy of the income statement they had provided to the mortgage broker, which contains a lower figure than that provided by the mortgage broker to the lender. The lender conducts an audit of documents submitted by the same mortgage broker for several clients that identifies additional instances of falsified documents. On that basis, the lender has reasonable grounds to believe that a reportable situation has arisen because the mortgage broker has engaged in conduct that is likely to contravene s12DA of the ASIC Act (misleading or deceptive conduct), and the relief in s6 of ASIC Instrument 2024/620 will not apply, and/or s160D(2) of the National Credit Act. Further, the mortgage broker may have engaged in serious fraud, which of itself is a reportable situation for the purposes of s50A(2)(b) of the National Credit Act. The licensee must lodge a report with ASIC and with the licensee of the individual mortgage broker within 30 days.

Example 8(b): Advisers transfer from Licensee A to Licensee B	Three advisers transfer from Licensee A to Licensee B on 15 October 2021. Licensee B has an onboarding policy for advisers, which includes, among other things, training and a pre-vetting process of client files. Shortly after the transfer, Licensee B receives a client complaint about the conduct of Adviser X (one of the transferred advisers), in relation to conduct that occurred when Adviser X was authorised by Licensee A. As a result of this, Licensee B carries out an in-depth audit of that client file and becomes aware that Adviser X did not provide appropriate advice to the client (as is required under s961G of the Corporations Act), which occurred when the adviser was authorised by Licensee A. Licensee B undertakes a targeted audit of client files from the other advisers who transferred from Licensee A, and discovers similar conduct. As a result of the breaches that Licensee B has discovered in relation to all three advisers who transferred from Licensee A, Licensee B reasonably believes that a reportable situation may have arisen during the period in which the three advisers were authorised by Licensee A, and has a reasonable belief that Licensee A may not have met its core obligation to take reasonable steps to ensure that its representatives comply with financial services laws under s912A(1)(ca) of the Corporations Act. Licensee B must report this to ASIC and provide a copy to Licensee A. Licensee A investigates the possible reportable situation reported by Licensee B. As a result of this investigation, Licensee A confirms a reportable situation did occur, which it reports to ASIC.

C When and how to report to ASIC

Key points

As a licensee, you must tell ASIC in writing within 30 calendar days after a reportable situation has arisen or, in limited circumstances, you may tell ASIC within 90 calendar days after a reportable situation has arisen if you have already notified ASIC of a reportable situation.

The reporting period starts on the day you first know that, or are reckless with respect to whether, there are reasonable grounds to believe that a reportable situation has arisen.

You must report to ASIC in the prescribed form, through the ASIC Regulatory Portal.

In certain circumstances, you may be able to notify us of multiple reportable situations in one report and meet your reporting obligations under the law.

Failing to report to ASIC when a reportable situation has arisen can attract both civil and criminal penalties.

When must you report a reportable situation?

RG 78.83 You must report to ASIC within 30 days after you first know that, or are reckless with respect to whether, there are reasonable grounds to believe a reportable situation has arisen: see s912DAA of the Corporations Act, s50B of the National Credit Act.

RG 78.84 In limited circumstances, where you have already notified ASIC of a reportable situation, you may notify ASIC of a further reportable situation that has the same, or substantially similar, underlying circumstances as the previous reportable situation within 90 days after you first know that, or are reckless with respect to whether, there are reasonable grounds to believe that the further reportable situation has arisen: see s7 of ASIC Instrument 2024/620.

> Note 1: ASIC retains a right to direct the reporting of a reportable situation that would otherwise qualify to be reported within 90 days, within a shorter period. For example, ASIC may take this approach where the further reportable situation is relevant to an active investigation.
>
> Note 2: In this guide, we use the term 'reporting period' to refer collectively to the standard 30 day period and the limited circumstances in which reports to ASIC may be made within 90 days.

RG 78.85 'Reasonable grounds to believe' that a reportable situation has arisen exist when there are facts or evidence to induce, in a reasonable person, a belief that a reportable situation has arisen.

RG 78.86 As stated in the Explanatory Memorandum, 'reasonable grounds to believe' ensures that the breach reporting obligation is clearly objective. This objective standard gives effect to Recommendation 1 in the ASIC Enforcement Review Taskforce, which describes a reasonable belief as follows: 'A "reasonable belief" will be formed if a reasonable person would expect the matter to be reported to the regulator.'

Note: See Explanatory Memorandum, paragraphs 11.39, 11.40, 11.58 and 11.62; Treasury, *ASIC enforcement review: Taskforce report*, December 2017.

RG 78.87 You must report to us if there are sufficient facts or information to found an objectively reasonable belief. That is, you may have reasonable grounds to believe a reportable situation has arisen when other possible explanations are available, and this legal threshold does not require facts or evidence amounting to certain proof that there is a breach: see Case study 3.

Case study 3: Reasonable grounds for a reportable situation

A licensee produced a progress report that was created during the course of its investigation into whether a breach was significant.

The report noted that while the root causes of the breach were still being determined, they included poor detective controls (lack of exception reporting), multiple manual processes, multiple hand-off points, grandfathered packages, complicated product design, and staff oversight and error.

The report also noted that the licensee was 'currently sizing up the number of affected clients and the dollar value of any remediation'. Preliminary estimates indicated that affected clients made up 20% of all packages distributed, with around $5 million overcharged.

In these circumstances, despite the fact that the licensee had not yet finally determined the number of clients affected and the calculation of the total loss, a reasonable person would be satisfied that a reportable situation had arisen and must be reported to ASIC.

RG 78.88 Subsections 912DAA(8), 912DAB(9), s912EA(6) and 912EB(12) of the Corporations Act and s5(1) of the National Credit Act apply the Criminal Code definitions of 'recklessness' (see s5.4 of the Criminal Code) and 'knowledge' (see s5.3 of the Criminal Code) to the breach reporting provisions.

Note: The definitions are set out in the Criminal Code at the schedule to the *Criminal Code Act 1995*.

RG 78.89 The definition of 'knowledge' is set out at s5.3 of the Criminal Code as follows: 'A person has knowledge of a circumstance or a result if he or she is aware that it exists or will exist in the ordinary course of events.'

RG 78.90 With respect to 'recklessness', the Explanatory Memorandum states:

> A licensee knows of reasonable grounds to believe a reportable situation has arisen if the licensee knows of facts and/or evidence sufficient to induce in a reasonable person a belief that a reportable situation has arisen.

The term 'reckless' is intended to capture circumstances where the licensee does not know that there are reasonable grounds to believe a reportable situation has arisen, but:

- is aware of a substantial risk that there are reasonable grounds to believe a reportable situation has arisen; and
- having regard to the circumstances known to the licensee, it is unjustifiable to take the risk that there are reasonable grounds to believe a reportable situation has arisen.

While the licensee must have knowledge of, or be reckless with respect to whether, there are reasonable grounds to believe that a reportable situation has arisen for the reporting timeframe to commence, the question of whether those reasonable grounds exist remains objective.

Note: See Explanatory Memorandum, paragraphs 11.61–11.62.

RG 78.91 Example 9 is an example of how we consider 'recklessness' to apply.

Example 9: Recklessness

Following a significant business continuity event leading to resourcing constraints, the legal and compliance area of a licensee faced a significant backlog of work. As a result, there were significant delays to process and investigate suspected breaches. A memo was circulated to senior management stating that matters that were being escalated to the legal and compliance team were not being considered for at least six months.

A scheduled software review of new underwriting software finds a technical error. A draft report is prepared, identifying significant overcharging of some clients. It also finds that the full extent and impact of the error (including the total number of clients affected and the amount of overcharging per client) is unclear. The draft report is reviewed by the head of the retail underwriting business unit. The report is shared with the legal and compliance area. No further action is taken by the retail underwriting business unit and the legal and compliance team do not consider the report (or its findings). No further investigative action is taken.

Such conduct amounts to recklessness on the part of the licensee as to whether there are reasonable grounds to believe that the reportable situation has arisen.

When does the licensee first know that a reportable situation has arisen?

RG 78.92 In determining when the licensee first knows that, or is reckless with respect to whether, there are reasonable grounds to believe a reportable situation has arisen—and whose knowledge within the licensee is attributable to the licensee for the purposes of s912DAA(3) of the Corporations Act or s50B(4) of the National Credit Act—licensees must consider s769B of the Corporations Act or s324 of the National Credit Act.

Note: The Explanatory Memorandum, paragraph 11.81, states: 'In accordance with section 769B(3) of the Corporations Act, for a licensee that is a body corporate, the state of mind of a director, employee or agent of the licensee (or certain other persons) will

be attributed to the licensee where that person was engaged in the relevant conduct within the scope of their actual or apparent authority.'

RG 78.93 Section 769B(3) of the Corporations Act states:

> If, in a proceeding under this Chapter in respect of conduct engaged in by a body corporate, it is necessary to establish the state of mind of the body, it is sufficient to show that a director, employee or agent of the body, being a director, employee or agent by whom the conduct was engaged in within the scope of the person's actual or apparent authority, had that state of mind. For this purpose, a person acting as mentioned in paragraph (1)(b) is taken to be an agent of the body corporate concerned.

RG 78.94 Section 324(3) of the National Credit Act states:

> If, for the purposes of this Act (other than the National Credit Code), it is necessary to establish the state of mind of the body corporate in relation to particular conduct, it is enough to show:
>
> (a) that the conduct was engaged in by a person referred to in paragraph (1)(a) or (b); and
>
> (b) that the person had that state of mind.

RG 78.95 When an employee (or agent) may not have been granted actual authority within their employment by the licensee to make a decision to lodge a breach report, s769B of the Corporations Act or s324 of the National Credit Act can still apply. If the employee knows (or is reckless) that there are reasonable grounds to believe a reportable situation has arisen, provided that they acquire this knowledge within the scope of their apparent authority within their employment, the reporting period will commence.

RG 78.96 The application of these principles is particularly relevant when a licensee delegates the decision whether to lodge a breach report to a particular person or committee as part of its breach reporting process. Regardless of any such delegation under s769B of the Corporations Act or s324 of the National Credit Act, if any employee (or agent) knows (or is reckless) that there are reasonable grounds to believe a reportable situation has arisen, and they acquire that knowledge within the scope of their actual or apparent authority within their employment, the reporting period will commence.

RG 78.97 Case study 4 demonstrates delays in escalating or reporting breaches due to internal breach reporting processes that may lead to a contravention of s912DAA(1) or (7) of the Corporations Act or s50B(1) or (2) of the National Credit Act, especially when considered alongside s769B of the Corporations Act or s324 of the National Credit Act.

Case study 4: Unreasonable delays due to inadequate processes

An AFS licensee had a three-step process that delayed reporting a breach to ASIC until the chief executive level had been advised of the breach. After the compliance area submits a report:

- the matter is considered at a meeting of the licensee's breach committee, which makes an informal recommendation;

- the informal recommendation is put to an email vote via a 'circular resolution'—each breach committee member is required to vote on whether they agree or disagree with the recommendation; and
- if the vote passes, an email is sent to the licensee's CEO seeking confirmation that they are comfortable to confirm the recommendation.

The reporting period commences when the compliance area first knows that there are reasonable grounds to believe a reportable situation has arisen in relation to the licensee, not from when the CEO confirms the recommendation.

RG 78.98 When you have reasonable grounds to believe that a reportable situation has arisen, you should **not** wait until after the following events to lodge your report if to do so would take you beyond the reporting period:

(a) consideration of the reportable situation by your board of directors;

(b) receipt of legal advice on reportability;

(c) you have rectified (when appropriate), or you have taken steps to rectify, the breach (or likely breach) of a core obligation or additional reportable situation; or

(d) in the case of a likely breach, the breach has in fact occurred.

RG 78.99 We consider that licensees are best placed to determine whether or not legal advice is required before reporting to us. However, we expect that licensees will not need to obtain legal advice for every case, and as stated in RG 78.98(b), licensees should *not* wait for further sign-off from internal or external legal advisers before reporting to ASIC if they have reasonable grounds to believe a reportable situation has arisen.

RG 78.100 The law allows 30 or 90 calendar days to complete any internal processes before reporting to us (as discussed at RG 78.83–RG 78.84). We consider that adopting an overly legalistic approach may lead to unnecessary delay and failure to comply with the timeframes for reporting set out in s912DAA(3) of the Corporations Act, s50B(4) of the National Credit Act (as modified by s7 of ASIC Instrument 2024/620).

RG 78.101 Avoiding delays is consistent with the concerns referred to in paragraph 11.5 of the Explanatory Memorandum, that breach reporting is largely inconsistent among licensees in terms of the timeliness of reports.

When must you report investigations to us?

RG 78.102 In the case of investigations, you must lodge a report only in relation to investigations that have continued for more than 60 days. The investigation becomes a reportable situation on Day 61 of the investigation and you must lodge a report within 30 days of this date: see s912DAA(3) of the Corporations Act, s50B(4) of the National Credit Act (as modified by s7 of ASIC Instrument 2024/620).

RG 78.103 At any stage, if the investigation identifies that a reportable situation has arisen, you must report this to ASIC within the reporting period.

RG 78.104 As noted at RG 78.53, the time at which an investigation commences is not a subjective determination, but rather is a matter of fact in all the circumstances. As discussed at RG 78.51(b), an investigation is reportable irrespective of how the licensee labels the activity in its internal processes. We recognise that compliance, risk and legal arrangements, and structures may differ across licensees. Whether an investigation has started depends on the nature of activities being conducted, and not where or by whom they are conducted: see Example 10.

Example 10: Commencement of an investigation

A business division in a large insurance licensee notices a system error that they believe may have resulted in customers not receiving their insurance renewal documents. They log the incident in the licensee's incident management system.

The incident is escalated to a risk team in Line 1 who make some preliminary inquiries as to the nature of the incident (what was the systems issue, when they think this started happening, and how many customers they believe may not have received their renewal documents).

Based on this information, the risk team escalates the matter to a compliance team in Line 2 for further review.

The compliance team in Line 2 commences an assessment to consider whether this type of incident could result in any breach of potential laws, codes, or other applicable regulatory requirements. They also liaise with the risk team and the relevant business division to understand more of the facts around whether customers did not receive their documents at all, or whether it was simply a delay. They make inquiries about the kinds of insurance products or brands that may have been impacted.

The compliance team in Line 2 notifies the legal team of the incident and asks them to conduct a 'breach reporting investigation'. The legal team considers the information available and determines that the business has breached its obligations under s58 of the Insurance Contracts Act and may have failed to comply with financial services laws.

In this scenario, when the compliance team in Line 2 commenced its assessment, a reportable investigation arose, and the licensee must report this to us if it continues for more than 60 days. The licensee must also report to us if the investigation takes less than 60 days if, at any stage, the licensee determines that a core obligation has been breached and that breach is significant.

The licensee in this example has both Line 1 and Line 2 risk and compliance functions. However, such structures are likely to vary significantly across licensees, and the time at which an investigation commences is not a subjective determination, but a matter of fact in all the circumstances. What is critical is the nature of the activities being conducted, not which team is conducting them.

RG 78.105 If the outcome of an investigation that continues for more than 60 days is that there are no reasonable grounds to believe a reportable situation has arisen, you must report this to ASIC: see s912D(1)(d) of the Corporations Act, s50A(1)(d) of the National Credit Act. You must report to ASIC within 30 days after you first know that, or are reckless with respect to whether, there are reasonable grounds to believe that the investigation disclosed there is no breach (or likely breach) of a core obligation.

Example 11: Investigation that continues for more than 60 days

Licensee A suspects a reportable situation may have arisen in relation to conduct by one of its authorised representatives. Licensee A commences an investigation on 2 July 2023. On 31 August 2023 (60 days later) the investigation is still ongoing.

On 21 September 2023, the investigation concludes and on that day Licensee A determines that there is no reportable situation.

The investigation became a reportable situation on 1 September 2023. Licensee A must lodge a report about the investigation within 30 calendar days (i.e. by 1 October 2023). The outcome of the investigation that there is no significant breach of a core obligation must also be reported to ASIC. Licensee A must report this within 30 calendar days (i.e. by 21 October 2023).

Licensee A may notify ASIC of the commencement and outcome of the investigation concurrently between 21 and 30 September 2023.

RG 78.106 As noted at RG 78.60, if before the end of an investigation, you are satisfied, or have reasonable grounds to believe, based on the information at hand, that the breach was significant and a reportable situation, you must not wait until the investigation is complete to report the matter to ASIC.

How do you report a reportable situation?

RG 78.107 You must report to ASIC using the prescribed form, through the ASIC Regulatory Portal: see s912DAA(2) of the Corporations Act, s50C(2) of the National Credit Act. See Table 8 for an overview of the content of the prescribed form, and Appendix 2 for guidance on specific questions in the prescribed form.

Note: For more details, see How to submit a reportable situation on the ASIC website.

RG 78.108 ASIC's prescribed form asks licensees a series of questions about the nature of what is to be reported, as reflected in Table 8. Depending on your answers, it generates questions that are relevant to what you are reporting to us.

RG 78.109 If you are a licensee regulated by APRA, you may also comply with your obligation by lodging a report with APRA: see s912DAA(5) of the

Corporations Act, s50B(6) of the National Credit Act (as modified by s7A of ASIC Instrument 2024/620). Your report must:

(a) be lodged in the required timeframes in RG 78.83–RG 78.106; and

(b) contain all the information required under s7A of ASIC Instrument 2024/620.

Note: Licensees can report to APRA, where relevant, through APRA's website: see notify a breach.

Table 8: Overview of content of the reportable situation prescribed form

What to include	Description of content
Date of the reportable situation	You must include: • the date that the reportable situation arose or the date you anticipate that you will no longer be able to comply with your obligations; and • the date you first knew that there were reasonable grounds to believe that a reportable situation had arisen. Note 1: If there is a reportable situation, you must report it to ASIC within the reporting period from the date you first know that, or are reckless with respect to whether, there are reasonable grounds to believe a reportable situation arose. You will need to have a record of that date to ensure timely reporting. Note 2: Your breach register might also include the date that the breach was reported to ASIC and rectified.
Nature of the reportable situation	You must state whether the report relates to: • a significant breach of a core obligation; • a likely significant breach of a core obligation; • an additional reportable situation (serious fraud or gross negligence); • an investigation into whether a breach (or likely breach) of a core obligation has occurred that has continued for more than 60 days; • an investigation into whether a breach (or likely breach) of a core obligation has occurred that has continued for more than 60 days that discloses that no reportable situation has occurred; or • a reportable situation about another licensee.
Description of the reportable situation	You must describe the reportable situation, including the section of the relevant law that sets out the relevant obligation, including any relevant financial services law or credit legislation and any relevant licence condition.
The extent or magnitude of the reported breach (if relevant)	You must specify how many reportable situations relate to the breach or likely breach you are reporting. In certain circumstances you may group related reportable situations in a single report. Note: See RG 78.110–RG 78.115 for guidance about grouping multiple reportable situations.
Why the breach is significant (if relevant)	When relevant, you must identify why the breach is significant. This may involve identifying: • that the reportable situation relates to a deemed significant breach; or • the factors in s912D(5) of the Corporations Act or s50A(5) of the National Credit Act that you consider apply in determining whether the breach (or likely breach) is significant and required to be reported to ASIC.

What to include	Description of content
How the reportable situation was identified	You must provide details of how you found out about the reportable situation. For example, the reportable situation may have been identified through your compliance arrangements, an audit or review, or as a result of a client complaint.
How long the breach lasted	You will need to include details as relevant, including whether the breach is still continuing.
Information about representatives	If an authorised representative or credit representative is involved, you must include: • that representative's name and number; • if the representative's authorisation has been revoked or suspended; and • if the representative's work is being monitored or supervised.
Whether and how the reportable situation has been rectified	If relevant, you must provide details of plans to rectify the breach (or likely breach). This includes: • when you expect to complete the rectification (or complete a plan for rectifying the breach); and • how the rectification will be achieved. If ongoing steps are being taken to rectify the breach (or likely breach), indicate when you expect to send ASIC a report on your progress in rectifying it, as well as a notification that rectification is complete.
Whether and when affected clients have been compensated—Remediation	You must provide details of any remediation program (including preventative measures) that has been or is being developed to compensate clients who have suffered a loss. Include relevant dates or expected dates for the start and conclusion of the remediation program. You should also provide information about completion of remediation.
Future compliance	You must describe any steps that have been, or will be, taken to ensure future compliance with the obligation.

When can multiple reportable situations be grouped together in a single report (the 'grouping test')?

RG 78.110 In certain circumstances, you may be able to notify us of multiple reportable situations in one report and meet your reporting obligations under the law.

Note: Each individual reportable situation must be reported within the reporting period after you first know that, or are reckless with respect to whether, there are reasonable grounds to believe a reportable situation has arisen—see s912DAA of the Corporations Act, s50B of the National Credit Act and s7 of ASIC Instrument 2024/620. For example, if you choose to report 15 reportable situations (being separate contraventions of a civil penalty provision) that occurred over a 30-day period on various dates in one single report, you must ensure that you have met the reporting period for each individual reportable situation.

RG 78.111 Reportable situations may be grouped and reported in a single report when both limbs of the following 'grouping test' are met:

(a) there is similar, related or identical conduct—this means conduct involving the same or very similar factual circumstances (e.g. similar representations made about the same type of product(s) and/or service(s)); and

(b) the conduct has the same root cause—this means the underlying cause of the breach (e.g. a specific systems error or process deficiency).

Note: Reportable situations that satisfy both limbs of this 'grouping test', will amount to reportable situations with 'underlying circumstances that are the same as, or substantially similar to, the underlying circumstances relating to the reportable situation' for the purposes of the relief in s7 of ASIC Instrument 2024/620.

RG 78.112 You should exercise your professional judgement to determine what situations are appropriate to report together. Table 9 provides examples that apply the grouping test.

RG 78.113 You may group individual reportable situations on the basis that they involve similar, related or identical conduct even when each reportable situation involves a separate occasion of staff negligence or human error as the root cause. However, when there are multiple reportable situations attributable to human error by different staff members, licensees should be satisfied that there is no broader failure or other relevant root cause (e.g. relating to training, policy, process and/or systems) that is the actual underlying cause of the breach. For examples applying this approach, see Examples 12(a), 12(d) and 12(e) in Table 9.

RG 78.114 If you are reporting a reportable situation on behalf of one or more related entities, and provided that the conduct relates to the same root cause, there is an opportunity in the prescribed form to identify and list the relevant licensees and their licensee numbers. The related entities do not need to separately report to us. Similarly, if you are reporting for both an AFS licensee and a credit licensee, this can be specified in the form and two separate reports are not required.

RG 78.115 After you have lodged your breach report, you may identify further reportable situations that relate to similar, related or identical conduct and arise from the same root cause. These reportable situations may be reported within 90 days after you first know, or are reckless with respect to whether, there are reasonable grounds to believe a reportable situation has arisen. Rather than submit a new report, you may report these to us in one update: see Example 12(c) in Table 9.

RG 78.116 You may provide us with this update using the update functionality available on the ASIC Regulatory Portal provided that the original reportable situation does not yet have an event status of complete. This update functionality is accessible from the original reportable situation event created when you lodged the initial report, and will prompt you for appropriate information depending on what is being reported.

Note: For further information on other circumstances in which you should use the update functionality, see Q5 in Appendix 2.

Table 9: Determining whether you may group multiple reportable situations in a single report

Example 12(a): Reportable situations identified by a quality assurance process that involve similar, related or identical conduct	A bank conducts a routine quality assurance process over its assessment of home lending applications. It identifies 20 files (out of 1000 files reviewed) where the bank failed to verify liabilities in line with the bank's policy. For each of those files, the failure was caused by staff members missing a key detail provided in the customer's documentation. The bank determines that 17 of these failures resulted in reportable contraventions of the licensee's responsible lending obligations. The bank must report these 17 reportable situations to ASIC. This scenario may be grouped into a single report and reported to ASIC as both limbs of the grouping test are met. *Similar, related or identical conduct* The contravention in question relates to identical conduct—failure to verify a customer's liabilities. Even if the 17 contraventions were made by different representatives at different points in time, this conduct would still be considered similar or related. *Same root cause* As above, the licensee investigated the root cause and determined that these 17 contraventions were caused by human error. Further investigation revealed that training provided to those staff members was adequate, the underlying policy and process in place was sound, and the errors were isolated mistakes.
Example 12(b): Reportable situations that involve different products but similar, related or identical conduct	A fee for Product A is charged in error due to a system deficiency. The licensee identifies that the same fee-charging error occurs for Product B. The conduct can be grouped into a single report if both limbs of the grouping test are met. The licensee should consider: • *whether it is similar, related or identical conduct*—for example, does the fee-charging error relate to the same type of fee, and does the error occur in similar circumstances? • *whether it is the same root cause*—for example, is the fee-charging error on Product B caused by the same system deficiency as Product A?
Example 12(c): Using the update functionality to report multiple additional reportable situations related to an ongoing or continuous breach	A licensee identifies a systems error that resulted in a customer being overcharged a particular fee and reports this to ASIC. The licensee is not able to immediately stop overcharging the fee and 25 additional customers are overcharged. The licensee determines based on the specific facts involved that each occasion of overcharging represents a reportable situation. As each subsequent reportable situation involves identical conduct, and has the same systems error as its root cause, both limbs of the grouping test are met. *Similar, related or identical conduct* The additional customers were overcharged the same fee in the same circumstances as the original reportable situation. It is therefore similar, related or identical conduct.

Example 12(c): Using the update functionality to report multiple additional reportable situations related to an ongoing or continuous breach ***(continued)***	*Same root cause* The root cause for all of the additional customers being overcharged was the same systems error as for the original reportable situation, and therefore involves the same root cause. As the licensee may group the 25 subsequent reportable situations (with each other, and with the initial reportable situation already reported to ASIC), the licensee may use the update functionality to notify us of these further 25 reportable situations in one update. In so doing, as the licensee has determined that each occasion of overcharging is a reportable situation with substantially similar underlying circumstances for the purposes of s7 of ASIC Instrument 2024/620, the licensee may report each subsequent situation within 90 days rather than the standard 30 days.
Example 12(d): Reportable situations related to a claims handling review	A claims handling review is conducted by a licensee following a recent natural disaster event. The review finds several instances of staff members incorrectly applying an additional excess, resulting in the customer paying a higher excess. The review also finds other instances of staff members incorrectly calculating the claim settlement amount, resulting in the customer being underpaid for their claim. The licensee determines that each instance represents a reportable situation (because they are deemed significant breaches that result, or are likely to result, in material loss or damage to clients). The licensee finds that these breaches were caused by human errors in the claims handling process. However, the licensee does not check whether there are other underlying causes. In this case, both limbs of the grouping test are *not* met (see details below). The collective findings from the claims handling review cannot, therefore, be grouped into a single report and reported to ASIC. *Similar, related or identical conduct* The review identified reportable situations involving different types of conduct (underpaid claims and incorrect application of excesses). These two types of conduct do not involve similar, related or identical conduct and cannot, therefore, be grouped. It is not sufficient that the breaches are related to policies and claims affected by the same disaster event. It is also not sufficient that they may all involve a failure to provide claims handling efficiently, honestly and fairly. However, depending on the circumstances, the individual instances that relate to underpaid claims and those that involve the incorrect application of excesses may be grouped. *Same root cause* It is not clear that there is the same root cause for all the findings of the review. In order for the licensee to group on the basis that human error is the root cause, then as stated above at RG 78.113, the licensee would need to be satisfied that there is no broader failure or other relevant root cause(s) that is the actual underlying cause of the breaches (e.g. some underpaid claims arising from staff not being appropriately trained, and others arising from a lack of clarity in supporting policies/procedures).

Example 12(e): Grouping reportable situations where there have been misleading statements	A licensee discovers five occasions where different staff members mistakenly quoted incorrect information during calls with prospective customers. The misrepresentations were in relation to the terms and conditions of their credit products. This included misrepresentations relating to the maximum loan amount, interest rate, the circumstances in which certain fees are payable, and eligibility criteria. The licensee's investigation into the matter concluded that the misrepresentations were all attributable to human error. This scenario may be grouped into a single report and reported to ASIC as both limbs of the grouping test are met—see details below. *Similar, related or identical conduct* Although the representations are not identical, it is open to the licensee to determine that they involve 'similar' conduct because all of the misrepresentations were about the terms and conditions of their credit products. *Same root cause* In order for the licensee to group on the basis that human error is the root cause, then as stated above at RG 78.113, the licensee would need to be satisfied that there is no broader failure or other relevant root cause that is the actual underlying cause of the breaches (for example, a failure for the staff members to receive adequate training about the licensee's products). In this scenario, the licensee determines that human error is the root cause for each of the five reportable situations, and after due consideration, is satisfied that there is no broader failure or other relevant root cause(s).

What will ASIC do after we receive your report?

RG 78.117 Generally, we will take the following steps when we receive a report:

(a) *Confirmation*—When you lodge the report, you will receive confirmation of your submission.

(b) *Request for more information*—We may contact you if we need further information about the report that you have lodged. We will generally contact you through the ASIC Regulatory Portal.

(c) *Next steps*—After we receive all the information we need, we will only contact you if we consider it necessary to do so.

RG 78.118 We do not take action on all matters reported to ASIC. We will only contact you if we consider it necessary to do so. While we may decide not to take action in response to a single report, we may decide to take action in circumstances where multiple reports lodged over a period of time suggest more significant or systemic compliance issues.

Our regulatory and enforcement response to reports

RG 78.119 We may contact you to discuss how to improve your compliance systems or to determine how to remedy or minimise any damage resulting from the breach. In appropriate circumstances, we may resolve outstanding compliance concerns by conducting a formal surveillance to test your compliance procedures or check whether there is a systemic compliance problem.

RG 78.120 The legislation for which we have jurisdiction sets out the remedies available to us, including criminal action, civil action and administrative action. We can use these remedies in combination. Guidance about factors underlying our decisions about whether to take enforcement action are set out in Information Sheet 151 *ASIC's approach to enforcement* (INFO 151).

RG 78.121 Reporting to ASIC in accordance with your legal obligations will not influence the action we may take. However, we may take into account a situation where a report should have been made to ASIC and you failed to do so, as this is a further contravention and may indicate your general approach to compliance.

RG 78.122 We may make further inquiries to ensure there is ongoing compliance with your licence obligations and that you take reasonable steps to ensure that you comply with the law. Depending on the outcome of any inquiries, we may take administrative action. For example, we may seek to address any issues identified by imposing additional conditions on your licence.

> Note: For guidance on procedures for monitoring, supervision and training of representatives, see RG 104 and RG 105 for AFS licensees and RG 205 for credit licensees. For further guidance about our approach to taking administrative action against financial services industry participants, see Regulatory Guide 98 *ASIC's powers to suspend, cancel and vary AFS licences and make banning orders* (RG 98) and Regulatory Guide 218 *Licensing: Administrative action against persons engaging in credit activities* (RG 218).

What are the consequences of failing to report to ASIC?

RG 78.123 If there are reasonable grounds to believe that a reportable situation has arisen, you must lodge a report with ASIC. This is a legal obligation. Failing to report to ASIC when a reportable situation has arisen can attract both civil and criminal penalties.

RG 78.124 The maximum civil penalty for not reporting a reportable situation in accordance with your obligation as a licensee is:

(a) *for an individual*—the greater of 5,000 penalty units, and three times the benefit derived and detriment avoided; and

(b) *for a body corporate*—the greatest of 50,000 penalty units, three times the benefit derived and detriment avoided, and 10% of the annual turnover for the 12-month period ending at the end of the month in

which the body corporate contravened, or began to contravene (capped at 2.5 million penalty units).

Note: See Fines and penalties on the ASIC website for more information about penalties, including the value of a penalty unit.

RG 78.125 Failure to report to ASIC in accordance with your obligation (except for the obligation to notify ASIC of a reportable situation about another licensee) is also a criminal offence.

RG 78.126 The maximum penalties are:

(a) a fine of 240 penalty units for an individual or 2,400 penalty units for a body corporate;

(b) two years imprisonment; or

(c) both (a) and (b).

What information will ASIC publish?

RG 78.127 We have a statutory obligation to publish information about reports lodged with ASIC each financial year. We must publish the information on our website within four months after the end of the financial year: see s912DAD of the Corporations Act, s50D of the National Credit Act.

RG 78.128 The information we publish must include information about breaches and likely breaches of core obligations reported to ASIC and APRA for the financial year: see s912DAD(1) of the Corporations Act, s50D(1) of the National Credit Act. We may also include the kinds of information stated in the Explanatory Memorandum—for example, the name of the licensee and the volume of reported breaches.

Note: See Explanatory Memorandum, paragraph 11.225.

RG 78.129 The information we publish may include or exclude information as prescribed by the regulations. You should check to see whether the regulations have specified any further factors.

RG 78.130 In identifying the information we publish, we will take into consideration the Parliamentary intent set out in the Explanatory Memorandum:

> This supplements ASIC's existing reporting framework to enhance accountability and provide an incentive for improved behaviour. It will also assist industry and consumers to identify areas where significant numbers of breaches or likely breaches are occurring, and allow licensees to target their efforts to improve their compliance outcomes in those areas.

Note: See Explanatory Memorandum, paragraph 11.233.

RG 78.131 In publishing this information, we will include any important context to understanding the data—for example, acknowledging that a large number of reports does not necessarily suggest a higher incidence of non-compliance (rather, it may reflect stronger compliance systems).

D Compliance systems and identifying, recording and reporting breaches

Key points

You should have a clear, well-understood and documented process for identifying, recording and reporting breaches to ASIC in a timely manner.

Based on our experience, we have set out some examples of what we consider is good practice for licensees in identifying, recording and reporting breaches.

What arrangements should you have in place for recording and reporting breaches?

RG 78.132 Under your general obligations as a licensee, you must maintain adequate risk management systems and have available adequate resources (including financial, technological and human resources) to ensure compliance with your licensee obligations: see s912A(1) of the Corporations Act, s47(1) of the National Credit Act.

Note 1: For further information on compliance with your general obligations, see RG 104 for AFS licensees and RG 205 for credit licensees.

Note 2: If you are a body regulated by APRA, you are not required to comply with these general obligations for licensees. However, there are similar obligations in legislation administered by APRA and in prudential standards and rules determined by APRA under that legislation: see RG 78.150–RG 78.151.

RG 78.133 Having robust breach reporting systems, processes and procedures in place to meet the breach reporting obligation is a critical element of a licensee's compliance and risk management framework. We consider that failure to report a significant breach (or likely breach) is likely, in itself, to be a significant breach of your obligation to comply with the financial services laws or credit legislation. This is because it indicates that your arrangements to ensure compliance with your obligations may be inadequate: see s912D(5)(c) of the Corporations Act, s50A(5)(c) of the National Credit Act.

RG 78.134 In the case studies it considered, the Financial Services Royal Commission found licensees did not always report within the time required. There were failures to report issues, inadequate records of consideration whether to report, and broader concerns about the adequacy of systems to ensure compliance with breach reporting. In the final report, Commissioner Hayne stated:

> Unwillingness to recognise and to accept responsibility for misconduct explains the prolonged and repeated failures by large entities to make breach reports required by the law.

Note: See Financial Services Royal Commission, Final report, vol. 1, p. 409.

RG 78.135 To ensure compliance with the breach reporting obligation, you should have a clear, well-understood and documented process for:

(a) identifying and recording incidents (e.g. suspected or possible reportable situations);

(b) assessing and determining whether an identified incident is a reportable situation, including timely and appropriately resourced investigations as required;

(c) reporting to ASIC all incidents identified as reportable situations within the reporting period in the form prescribed;

(d) when appropriate, rectifying loss or damage as required; and

(e) ensuring that arrangements are in place to prevent the recurrence of the breach (or likely breach).

RG 78.136 Licensees must have robust arrangements in place with their authorised representatives and credit representatives and persons acting on behalf of the licensee that are effective in identifying, recording and escalating possible breaches by an authorised representative or a credit representative, and ensure appropriate supervision in respect of these arrangements.

Note 1: See Appendix 4 of Report 515 *Financial advice: Review of how large institutions oversee their advisers* (REP 515), which provides practical guidance on 'key risk indicators' for monitoring advisers (including authorised representatives) in the personal advice context. We consider that these indicators are relevant for consideration by AFS licensees and credit licensees. As stated in REP 515, we expect that using these key risk indicators will help licensees to identify potentially high-risk advisers and non-compliant advice.

Note 2: *ASIC Corporations (Record-Keeping Requirements for Australian Financial Services Licensees when Giving Personal Advice) Instrument 2024/508* clarifies record-keeping obligations for AFS licensees in the context of personal advice. Authorised representatives who are advisers must keep records, and give the records to their authorising licensee if the licensee requests the records for the purposes of complying with financial services laws.

RG 78.137 Whatever processes you adopt, you must ensure that breaches are escalated promptly. To meet your obligations to report all reportable situations when there are reasonable grounds to believe they have arisen, we expect that your internal systems ensure that incidents, the findings of an investigation into whether a breach has occurred, and reporting to ASIC, are all escalated to the relevant people in a timely and efficient manner. Unreasonable delays may be an indicator that you do not have adequate compliance processes, systems and resources in place, and may suggest a breach of your obligations under s912A of the Corporations Act or s47 of the National Credit Act.

Developing your approach to the breach reporting obligation: Some practical insights

RG 78.138 REP 594 sets out the findings of ASIC's review of AFS licensees' compliance with their breach reporting obligations, and some high-level expectations in relation to the obligations.

RG 78.139 What you need to do to comply with your breach reporting obligation will vary according to the nature, scale and complexity of your business. We consider that the high-level expectations outlined in REP 594 remain relevant and should be considered by all licensees (including credit licensees) as you develop or improve your approach to the breach reporting obligation.

RG 78.140 This includes that you:

(a) fully comply with the breach reporting obligation;

(b) have capacity and speed in identifying and investigating incidents, and reporting to ASIC;

(c) demonstrate a sound breach management culture that makes:

(i) reporting a priority;

(ii) consumer remediation a priority; and

(d) make the most of the lessons learned and opportunities that each breach presents.

Note: For more information about our expectations, see REP 594, Table 4.

RG 78.141 In relation to RG 78.135(c), and as stated in REP 594, this includes an approach that will:

(a) prioritise and support the ability of licensees to meet their breach reporting obligations, including clear end-to-end senior accountability of breach reporting processes and procedures; and

(b) provide an environment where:

(i) staff can raise concerns about risks, including incidents (and are vigilant about these);

(ii) investigations, rectification and remediation are prioritised—and overseen and championed by senior management; and

(iii) transparent communication about breaches and incidents promotes identification, rectification and reporting.

RG 78.142 In relation to RG 78.135(d), we consider that ensuring fair consumer outcomes should be a priority across the organisation. When something goes wrong, licensees should take responsibility for their actions—treating consumers in a manner that is consistent with the licensee's stated values and legal requirements. The importance of remediation therefore should not *only* be a

consideration within a licensee's breach management culture, but should also be a consideration across various aspects of a licensee's business and compliance processes.

Note: See Regulatory Guide 277 *Consumer remediation* (RG 277) for further guidance on remediation.

RG 78.143 Some other practices that we consider will help licensees in meeting the breach reporting obligation are set out in Table 10.

Table 10: Other helpful practices for meeting the breach reporting obligation

Practice	Description
Review	A regular review or audit of breach reporting processes, including the operation of the breach reporting process and internal benchmarking on: • the number of incidents assessed and their outcomes; • any trends; and • timeliness, including for ongoing investigations, remediation and incident identification.
Oversight of lengthy investigations	A process for oversight of lengthy investigations that enables: • an understanding of the investigation to date; • reasons for any current delays, if applicable; • appropriate management of the investigation moving forward; and • consideration of the significance of the breach.
Analysis	Robust systems and processes for analysing root causes and systemic issues to proactively detect significant or emerging issues and ensure that existing issues are adequately addressed.
Accountability	Appropriate accountability checks after a significant breach is recorded and reported to ASIC, including: • considering appropriate 'consequence management' (i.e. learning opportunities to stop a breach continuing or recurring, involving real and meaningful consequences for staff and management responsible for oversight); and • prioritising the mitigation of consumer detriment once a breach is identified.
Governance structures	Robust governance and accountability structures around the breach reporting obligation, including (where relevant) harmonised breach reporting practices and procedures across the organisation to mitigate institutional silos and promote information and intelligence sharing across the whole organisation.
Resourcing	Sound resourcing forecasts for the breach reporting framework, including consideration of the adequacy of IT platforms and, where relevant, challenges associated with legacy systems.

Do you need a breach register?

RG 78.144 A breach register records actions in identifying, reporting and resolving breaches. As a licensee, you are not expressly required to maintain a breach register under the Corporations Act or the National Credit Act. However, we consider that, in practice, you will need a breach register to ensure that you have adequate arrangements in place to comply with your obligation to identify and report all reportable situations. This includes your obligation under s912D(5)(a) of the Corporations Act or s50A(5)(a) of National Credit Act to have regard to the number or frequency of similar breaches when determining whether a breach (or likely breach) of a core obligation is significant: see RG 78.45–RG 78.47.

RG 78.145 To ensure that you can satisfy yourself and ASIC that you have done all things necessary to properly identify, record and report to ASIC reportable situations, including systemic breaches, we consider that your breach register should contain the information in the reportable situations prescribed form (as summarised in Table 8).

Note: For a discussion of breach registers, including the types of information they might include and good compliance practices for breach registers, see REP 594.

RG 78.146 You will need to consider how best to keep these documents or records. Keeping documents and records helps you to demonstrate to ASIC and to yourself that you know whether or not you are complying with your obligations as a licensee, including the obligation to report all reportable situations to ASIC.

Note: For more information, see RG 104 and RG 105 for AFS licensees and RG 205 for credit licensees.

Appendix 1: Summary of core obligations for licensees

RG 78.147 You must report to ASIC any significant breach (or likely significant breach) of your 'core obligations' which are defined in s912D(3) of the Corporations Act (for AFS licensees) or s50A(3) of the National Credit Act (for credit licensees).

What are the core obligations for AFS licensees?

RG 78.148 If you are an AFS licensee, the following are core obligations under s912D(3)

(a) your general obligations under s912A or 912B other than the obligation under s912A(1)(c) of the Corporations Act, which are your obligations to:

(i) do all things necessary to ensure that the financial services covered by your licence are provided efficiently, honestly and fairly;

(ii) have in place adequate arrangements for the management of conflicts of interest;

(iii) comply with the conditions of your AFS licence;

(iv) take reasonable steps to ensure that your representatives comply with the financial services laws;

(v) if you are the operator of an Australian passport fund, or a person with responsibilities in relation to an Australian passport fund—comply with the law of each host economy for the fund;

(vi) comply with the ASIC reference checking and information sharing protocol;

Note: See Information Sheet 257 *ASIC reference checking and information sharing protocol* (INFO 257) and *ASIC Corporations and Credit (Reference Checking and Information Sharing Protocol) Instrument 2024/647*.

(vii) have adequate resources to provide the financial services covered by your AFS licence and to carry out supervisory arrangements (unless you are a body regulated by APRA—see RG 78.150–RG 78.151);

(viii) be competent to provide the financial services;

(ix) have trained and competent representatives;

(x) have an IDR procedure for retail clients that complies with standards and requirements made or approved by ASIC in accordance with the regulations;

Note 1: This includes a licensee's IDR obligations in s912A(1)(g), which through the operation of *ASIC Corporations, Credit and Superannuation (Internal Dispute Resolution) Instrument 2020/98* includes the enforceable parts of RG 271 (IDR Standards).

Note 2: This obligation has been modified by s5 of ASIC Instrument 2024/620.

(xi) give ASIC information relating to your IDR procedure for retail clients and the operation of the procedure specified in the *ASIC Corporations (Internal Dispute Resolution Data Reporting) Instrument 2022/205*;

(xii) have adequate risk management systems (unless you are a body regulated by APRA—see RG 78.150–RG 78.151);

(xiii) have compensation arrangements in accordance with s912B; and

(xiv) comply with any other obligations prescribed by Corporations Regulations, including the requirement to cooperate with AFCA;

(b) the obligation upon the AFS licensee or its representative under s912A(1)(c) of the Corporations Act to comply with the 'financial services laws' as defined in s9 of the Corporations Act, but only those parts that are set out in s912D(3)(b) and s912D(3)(e), which are as follows:

(i) Ch 5C of the Corporations Act (managed investment schemes);

(ii) Ch 5D of the Corporations Act (licensed trustee companies);

(iii) Ch 6 of the Corporations Act (takeovers);

(iv) Ch 6A of the Corporations Act (compulsory acquisitions and buy-outs);

(v) Ch 6B of the Corporations Act (rights and liabilities about Ch 6 and 6A matters);

(vi) Ch 6C of the Corporations Act (information about ownership of listed companies and managed investment schemes);

(vii) Ch 6D of the Corporations Act (fundraising);

(viii) Ch 7 of the Corporations Act (financial services and markets)

(ix) Ch 8A of the Corporations Act (Asia Region Funds Passport);

(x) Ch 8B of the Corporations Act (corporate collective investment vehicles)

(xi) Ch 9 of the Corporations Act (miscellaneous), but only as it applies to the chapters of the Corporations Act listed above;

(xii) a provision of the Passport Rules for this jurisdiction; and

(xiii) Div 2 of Pt 2 of the ASIC Act (unconscionable conduct and consumer protections for financial services; and

(c) in relation to financial services, other than traditional trustee company services provided by a licensed trustee company, the obligations under the Commonwealth legislation administered by APRA and specified in reg 7.6.02A of the Corporations Regulations, which are as follows:

(i) *Australian National Registry of Emissions Units Act 2011*;

(ii) *Banking Act 1959*;

(iii) *Carbon Credits (Carbon Farming Initiative Act) 2011*;

(iv) *Financial Sector (Collection of Data) Act 2001*;

(v) *Financial Sector (Shareholdings) Act 1998*;

(vi) *Financial Sector (Transfer and Restructure) Act 1999*;

(vii) *Insurance Acquisitions and Takeovers Act 1991*;

(viii) *Insurance Act 1973*;

(ix) *Insurance Contracts Act 1984*;

(x) *Life Insurance Act 1995*;

(xi) RSA Act;

(xii) SIS Act; and

(d) in relation to traditional trustee company services provided by a licensed trustee company, the obligation under s912A(1)(c) of the Corporations Act to comply with financial services laws so far as they are Commonwealth, state or territory legislation or the common law or equity that relate to the provision of financial services and traditional trustee company services (see paragraphs (e) and (f) of the definition of 'financial services law').

What are the core obligations for credit licensees?

RG 78.149 If you are a credit licensee, the following are core obligations under s50A(3) of the National Credit Act:

(a) your general obligations under s47 of the National Credit Act other than the obligation under s47(1)(d), which are your obligations to:

(i) do all things necessary to ensure that the credit activities covered by your licence are provided efficiently, honestly and fairly;

(ii) have in place adequate arrangements to ensure that clients of the licensee are not disadvantaged by any conflict of interest that may arise wholly or partly in relation to credit activities engaged in by the licensee or its representatives;

(iii) comply with the conditions of your licence;

(iv) take reasonable steps to ensure that your representatives comply with the credit legislation;

(v) comply with the ASIC reference checking and information sharing protocol;

Note: See INFO 257 and ASIC Instrument 2024/647.

(vi) be competent to engage in the credit activities covered by your credit licence;

(vii) have trained and competent representatives;

(viii) have an IDR procedure that complies with standards and requirements made or approved by ASIC in accordance with the regulations;

(ix) give ASIC information relating to your IDR procedure for retail clients and the operation of the procedure specified in ASIC Instrument 2022/205;

(x) be a member of AFCA;

(xi) have compensation arrangements in accordance with s48 of the National Credit Act;

(xii) have adequate arrangements and systems to ensure compliance with your obligations under s47 of the National Credit Act, and a written plan that documents those arrangements and systems;

(xiii) have adequate resources available to engage in the credit activities covered by your credit licence and carry out supervisory arrangements (unless you are a body regulated by APRA—see RG 78.150–RG 78.151);

(xiv) have adequate risk management systems (unless you are a body regulated by APRA—see RG 78.150–RG 78.151); and

(xv) comply with any other obligations prescribed by the National Credit Regulations;

(b) your obligation under s47(1)(d) of the National Credit Act to comply with the 'credit legislation' (as defined in s5) so far as it relates to all provisions of the National Credit Act (including the National Credit Code), *National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009* (Transitional Act), and Div 2 of Pt 2 of the ASIC Act (unconscionable conduct and consumer protections for financial services) and related regulations under the *Australian Securities and Investments Commission Regulations 2001* (ASIC Regulations); and

(c) your obligation under s47(1)(d) of the National Credit Act to comply with Commonwealth legislation that:

(i) is covered by paragraph (d) of the definition of 'credit legislation', being legislation that covers conduct relating to credit activities, but only in so far as it relates to such conduct; and

(ii) is specified in ASIC Instrument 2024/620, which are as follows:

(A) *Banking Act 1959*;

(B) Corporations Act;

(C) *Financial Sector (Collection of Data) Act 2001*;

(D) *Financial Sector (Shareholdings) Act 1998*;

(E) *Financial Sector (Transfer and Restructure) Act 1999*; and

(d) an obligation of your representative under the National Credit Act (including the National Credit Code), Transitional Act, and Div 2 of Pt 2 of the ASIC Act (unconscionable conduct and consumer protections for financial services) and related regulations under the ASIC Regulations.

Bodies regulated by APRA

RG 78.150 Under Commonwealth legislation regulated by APRA and in accordance with APRA's prudential standards and rules, if you are a body regulated by APRA, you must have adequate resources and risk management systems. The obligations in s912A(1)(d) and (h) of the Corporations Act and s47(1)(l) of the National Credit Act will not, or are unlikely to, apply to you.

RG 78.151 The obligation to comply with Commonwealth legislation, including legislation administered by APRA, constitutes a core obligation insofar as the legislation covers conduct relating to the provision of financial services and is specified in regulations: see s912D(3)(c) of the Corporations Act, s50A(3)(c) of the National Credit Act. This is part of your obligation to comply with financial services laws: see s912A(1)(c) of the Corporations Act, s47(1)(d) of the National Credit Act.

Note: For AFS licensees, see RG 78.148(c) for a list of the Commonwealth legislation specified in reg 7.6.02A of the Corporations Regulations. For credit licensees, see RG 78.149(c) for a list of Commonwealth legislation specified in ASIC Instrument 2024/620.

Appendix 2: Frequently asked questions about how to complete ASIC's reportable situations form

RG 78.152 ASIC has prescribed a form that licensees must use when reporting reportable situations to ASIC: see RG 78.107. The form is available via the ASIC Regulatory Portal. The information gathered through this prescribed form provides regulatory intelligence to ASIC, and is used to consider what action, if any, will be taken in response to the report: see RG 78.117–RG 78.122. This appendix addresses some FAQs about how to answer questions on this form.

Q1: What information am I required to provide to ASIC as part of a reportable situation?

RG 78.153 Conditional logic in the ASIC Regulatory Portal generates only relevant questions depending on the nature and type of reportable situation being lodged. AISC requires minimal free text information and does not require additional attachments.

RG 78.154 The following 'wireframes' contain all the questions that appear in the prescribed form available from the ASIC Regulatory Portal together with the conditional logic that is applied:

(a) Reportable situation by licensee (PDF 1.4 MB)

(b) Reportable situation by another licensee (PDF 767 KB).

RG 78.155 There is also information available from the ASIC Regulatory Portal, including step-by-step guidance, FAQs and videos.

Q2: Does the ASIC Regulatory Portal have bulk/batch upload capability?

RG 78.156 Yes, ASIC has released the Reportable Situations Application Programming Interface (API), which provides a machine-to-machine interface solution to submit reportable situation transactions: See Application Programming Interface (API) for Reportable Situations.

Q3: What information should I provide in the free-text field 'Describe the reportable situation'?

RG 78.157 You should adopt an approach that:

(a) takes into account the impact, nature and complexity of the reportable situation, including by providing a greater level of detail for reportable situations involving customer loss or other client or market integrity impact that are not one-off or isolated breaches; and

(b) considers whether further or more detailed information, beyond what is captured through the structured data fields in the prescribed form, would assist ASIC's understanding of the reportable situation.

Note: For an overview of the content of ASIC's prescribed form, see Table 8.

RG 78.158 Taking into account the principles in RG 78.157, you should consider including the following information in the 'describe the reportable situation' field:

(a) details about what happened;

(b) an explanation of how the reportable situation is a breach of your obligations, serious fraud or gross negligence;

(c) details of how the reportable situation was identified;

(d) details about why the reportable situation occurred (including the root cause);

(e) details about impact to clients and/or licensees (including non-financial impact);

(f) any information about remediation or rectification not otherwise covered by structured data fields;

(g) what steps have been or will be taken to address the underlying root cause and ensure a similar issue does not occur;

(h) details about anything unusual about the report—for example, why it took an extended time to identify the issue, commence an investigation; and

(i) any other relevant context that is not otherwise provided in the structured data fields.

Q4: How should I respond to the question 'Have any similar reportable situations previously occurred'?

RG 78.159 You will need to apply professional judgement to both determine whether two or more reportable situations are *similar*, and the length of the time you should look back to identify similar reportable situations.

RG 78.160 Factors that you should take into account when determining whether a reportable situation is similar include:

(a) the nature of the issue and/or breach;

(b) the legislative provisions contravened (if applicable);

(c) the underlying root cause of the reportable situation;

(d) the compliance arrangements or controls involved; and

(e) the nature of any client impact.

RG 78.161 When considering the length of time to look back, licensees should consider the purpose of the question, specifically, whether there may be a repeat issue or a broader systemic issue. We expect that licensees will consider the impact, nature and complexity of the reportable situation(s) in undertaking this task. You can provide further contextual information for your response in the free-text 'Describe the reportable situation' field.

Q5: When does ASIC expect an update to a report that I have lodged?

RG 78.162 We expect that you will provide an update to a report if:

(a) *six months have passed and no other update has been provided to ASIC*—in this case, you should provide a status or progress update (e.g. on your investigation, rectification and/or remediation activities);

(b) *there are any material changes to your understanding of the nature, impact or extent of the reportable situation(s)*—in this case, you should provide details about the relevant changes. These changes could include, for example, your becoming aware of a different underlying root cause, or a revised expected completion date of remediation or rectification activities. This also includes updates to estimates previously provided to ASIC on the amount of financial loss and number of clients affected;

(c) *you have completed:*

(i) your investigation (i.e. when you have determined the root cause(s) of the reportable situation and you are satisfied that you have identified all affected clients and all instances of the reportable situation);

(ii) rectification of the root cause or causes; and

(iii) your consumer remediation process.

RG 78.163 If you have notified ASIC of a continuous or ongoing breach (i.e. after the initial report, further reportable situations are likely to arise), you can use the update functionality to notify ASIC of these further reportable situations,

rather than lodging a new report: see Example 12(d) in Table 9 and RG 78.115.

Note: As these are new reportable situations, licensees must report them to ASIC within the reporting period unless the change is in relation to something that does not amount to a new 'reportable situation' so the reporting period does not apply.

RG 78.164 In addition to this general guidance, you may use the update functionality in any other way as you consider appropriate to keep ASIC informed on the progress of reportable situations.

Q6: How should I respond to the question 'What are the root causes of the breach—or likely breach'?

RG 78.165 The root cause refers to the underlying cause of a reportable situation. The prescribed form asks you to report the root cause by selecting from a number of common root cause categories.

RG 78.166 You should select categories corresponding with the root cause you have identified. You may select one or more, and you should select all root cause options that are applicable. For example, you may determine that the root cause of a breach was that you failed, as part of a regulatory change program, to update an internal policy or process to reflect a new regulatory requirement. In this instance, the most appropriate options may include 'policy or process deficiency' *and* 'failed change initiative'.

RG 78.167 We expect that you will have robust processes in place to investigate and determine the root cause of a breach.

RG 78.168 You will need to apply professional judgement to determine which root cause categories to select. Where the root cause is unclear from the options that you select, or if you have further information about the root cause, you should provide that additional information in the free-text field 'Describe the reportable situation': see RG 78.157.

RG 78.169 Table 11 provides guidance on how to interpret each of the root cause category options in the prescribed form.

Table 11: Guidance on root cause category options

What to select	Description of root cause
Policy or process deficiency	The reportable situation was caused, wholly or in significant part, by a gap or error in a licensee's internal policies, processes and/or procedures. This includes, for example, when a staff member correctly follows each step of a process, but due to an error or gap in the design of that policy or process, the client is incorrectly charged a fee.

What to select	Description of root cause
System deficiency	The reportable situation was caused, wholly or in significant part, by an error in either the design or the operation of a technology system. This includes, for example: • a system logic error leading to clients being mischarged interest; or • a system outage leading to a failure to provide disclosure documents. There may be circumstances when a reportable situation is caused by a system deficiency in conjunction with other root causes. For example, if the system requires manual 'workarounds' to be applied for the correct outcome to be achieved, and the policy, processes and management controls do not exist or do not support this to be undertaken consistently.
Staff—negligence or error	The reportable situation was caused, wholly or in significant part, by a mistake made by a staff member (e.g. a well-trained staff member who fails to read a general advice warning, or makes a keying error when issuing a client a product that leads them to be overcharged). This should be reported as the sole category of root cause only when the licensee is satisfied that there is no broader failure or other relevant root cause (e.g. relating to training, policy, process and/or systems) that is the actual underlying cause of the breach, particularly for repeat reportable situations. For example, if there are multiple breaches involving staff error associated with the execution of a specific step in a policy or process, we expect that the licensee will consider whether there is one or more underlying cause for the execution errors (e.g. a review of the specific policy/process step to identify issues with the policy, process or training).
Staff—inadequate supervision or lack of training	The reportable situation was caused, wholly or in significant part, by a staff member: • not being subject to adequate supervision (particularly for staff members new to a particular task or process); or • not receiving training or adequate training.
Staff—fraud and/or misappropriation	The reportable situation was caused, wholly or in significant part, by an intentional act by a staff member to obtain an unjust or illegal advantage (usually by deception).
Staff—misconduct	The reportable situation was caused, wholly or in significant part, by a staff member deliberately or recklessly failing to follow a policy, process or procedure, or otherwise engaging in misconduct (e.g. acting outside of company values or policies). This should be selected instead of 'Staff—fraud and/or misappropriation' if the staff member *did not* engage in that misconduct to obtain an unjust or illegal advantage.
Failure to comply with breach reporting requirements to ASIC	The reportable situation was caused, wholly or in significant part, by a failure to meet any requirement(s) under the breach reporting obligation.
Failure to comply with other statutory reporting requirements to ASIC	The reportable situation was caused wholly by a licensee's failure to comply with one or more of their statutory requirements to ASIC (other than breach reporting).

What to select	Description of root cause
Misunderstanding of obligation(s)	The reportable situation was caused, wholly or in significant part, by a licensee's failure to be aware of obligations that apply, or their failure to correctly interpret how the obligations apply to a business. This would include when the reportable situation was caused by reliance on outdated or incorrect legal advice. Other root causes that may be relevant instead of (or in addition to) this option include: • 'failed change initiative' (e.g. if the misunderstanding occurred as part of a regulatory change program); and • 'inadequate compliance measures' (e.g. if you do not have adequate measures in place to enable you to identify and understand your compliance obligations).
Inadequate management controls	The reportable situation was caused, wholly or in significant part, by: • a lack of controls in relation to a process, risk or obligation; • a gap in those controls; or • an issue with the adequacy of the controls (e.g. detective controls where preventative ones were needed, or manual controls where automated ones were needed). Depending on the nature and extent of the controls' inadequacy, you should consider whether there are inadequate risk management arrangements.
Inadequate risk management Inadequate compliance measures Inadequate human resources Inadequate technological resources	The reportable situation was caused, wholly or in significant part, by inadequate risk management, compliance measures, human resources or technological resources. The licensee does not need to form the view that there has been a breach of a corresponding licence obligation or condition. What we mean by adequacy of risk management arrangements, compliance measures, human resources, and technological resources for AFS licensees is covered by RG 104 and for credit licensee is covered by RG 205.
Inadequate financial resources	The reportable situation was caused, wholly or in significant part, by inadequate financial resources. What we mean by adequacy of financial resources is covered by Regulatory Guide 166 *AFS licensing: Financial requirements* (RG 166) and in Regulatory Guide 207 *Credit licensing: Financial requirements* (RG 207).
Failed change initiative	The reportable situation was caused, wholly or in significant part, by a change initiative. This includes all types of change initiatives, large and small, including: • regulatory change programs; • technology change (e.g. system migration or update); • organisation change (e.g. restructures); and • business process changes.
Other	The root cause of the reportable situation cannot be explained by any one or combination of the other root cause categories in this list. To further explain any one or more root cause categories selected from this list, you should provide that additional information in the free-text field 'Describe the reportable situation': see RG 78.157. Selecting this option will provide a free-text field for your response.

Q7: How should I calculate and report the number of clients affected by a reportable situation?

RG 78.170 You should include the number of clients that, at the time of lodging the report, you believe have been or are likely to have been impacted. This includes financial and non-financial loss or damage (e.g. inconvenience, distress).

RG 78.171 When calculating the number of affected clients, you should count each holder of a joint account individually. If your systems do not allow you to disaggregate joint account holders in this way, you may count joint accounts as a single client. However, this should be disclosed in the free-text field 'Describe the reportable situation', along with a description of why you are not able to disaggregate joint account holders.

RG 78.172 Examples 13–14 show our expectations of how the number of clients affected should be calculated.

Example 13: Broadly advertised incorrect offer

A licensee advertises an incorrect discount offer for motor vehicle insurance on their website for one week. Once the licensee becomes aware of the issue, they immediately publish a correction on their website.

The licensee identifies that:

- there were 1,000 views of the webpage containing the incorrect discount offer during the period; and
- 200 people applied for motor vehicle insurance during the period.

Due to the location of the offer on the website and the limits of the underlying technology in monitoring website user behaviour, the licensee has no way of knowing which customers viewed the discount before applying for a product.

Based on its investigation, the licensee has reasonable grounds to believe that there was no financial or non-financial impact to customers who may have accessed the webpage containing the incorrect information but did not apply for motor vehicle insurance.

The licensee should report the total number of clients affected as 200, being the number of customers that it believes have been or are likely to have been affected (in this case, financially).

The number of views of the incorrect discount offer are the number of instances to be reported (1,000). Any other relevant contextual information can be provided in the free-text field 'Describe the reportable situation'.

Example 14: An error in a disclosure document

An AFS licensee providing superannuation services sent an annual statement to members that disclosed how fees had been charged in relation to its products. Several months later, the licensee identified that the disclosure was potentially misleading, as it failed to include a certain type of fee. The licensee found the error in statements sent to 5,000 members.

The licensee identified that there was no direct financial impact on any members as a result of the statement because the fee had been correctly charged in accordance with the Product Disclosure Statement and terms and conditions. However, they considered that the issue affected customers non-financially by causing them to misunderstand what fees were being charged. They also considered that there was an impact on any customers who may otherwise have decided to change product or provider if the fee information had been presented correctly.

As all 5,000 members were affected by the disclosure error, the licensee should report the total number of clients affected as 5,000. The number of instances to be reported will also be 5,000.

Q8: How should I respond to the question 'What triggered the investigation or made you aware of the matter'?

RG 78.173 You should select the option that corresponds with how you (or one of your staff members or representatives) *first* became aware of the matter, or how the investigation *first* started (the investigation trigger). This may be earlier than the date on which you commenced a reportable investigation (see RG 78.48–RG 78.62).

RG 78.174 Table 12 provides guidance on each of the investigation triggers in the prescribed form.

Table 12: Investigation trigger definitions

What to select	Description of investigation trigger
Internal—audit function	The issue was identified or an investigation commenced as a result of inquiries made, work undertaken, or a finding by a licensee's internal audit function.
Internal—compliance	The issue was identified or an investigation commenced as a result of inquiries made, work undertaken, or a finding as part of the licensee's compliance and assurance activities (except audit or adviser assurance). This would include issues identified as a result of quality assurance activities and compliance reviews.
Internal—adviser assurance	The issue was identified or an investigation commenced as a result of inquiries made, work undertaken, or a finding as part of the licensee's activities to monitor the compliance of financial advice given by the licensee and/or its representatives.

What to select	Description of investigation trigger
Internal—staff report or Business unit report	The issue was identified or an investigation commenced as a result of work undertaken or inquiries made by staff *not* undertaking a compliance or assurance function (e.g. staff involved in the design or delivery of financial products and services). This includes where a staff member is servicing a customer and identifies an issue that is not the subject of a complaint (e.g. a customer calls to ask for a lower interest rate, and a staff member identifies issues with the way interest or fees are being charged to the account). This option does not apply if the issue was raised or identified through a licensee's whistleblower processes, or the issue was identified by staff following a complaint.
Internal—whistleblower	The issue was identified or an investigation commenced as a result of a disclosure by a whistleblower under s1317AA of the Corporations Act.
External—client complaint(s)—internal dispute resolution	The issue was identified or an investigation commenced as a result of a client making a complaint to the licensee. This includes where a client makes a complaint that causes a staff member to make further inquiries into the cause of the issue, which leads to discovery of the underlying reportable situation. A complaint should be interpreted broadly in line with the definition outlined in RG 271: 'An expression of dissatisfaction made to or about an organisation—related to its products, services, staff or the handling of a complaint—where a response or resolution is explicitly or implicitly expected or legally required.'
External—client complaint(s)—external dispute resolution (EDR)	The issue was identified or an investigation commenced as a result of a customer making a complaint to an EDR body (e.g. AFCA). This should be used where a complaint to a licensee's IDR function does not lead to identification of or investigation into a reportable situation, but a follow-up complaint made to the EDR body is accepted and investigated.
External—audit	The issue was identified or an investigation commenced as a result of inquiries made, work undertaken or findings by an external audit or review. This includes audits undertaken under Pt 2M of the Corporations Act, as well as any other audits undertaken by someone external to the licensee (e.g. a professional services firm).
External—media	The issue was identified or an investigation commenced as a result of media coverage (traditional media or social media), or media making inquiries of the licensee (e.g. requests for comment before release of a story).
External—industry Codes	The issue was identified or an investigation commenced as a result of inquiries made, work undertaken or findings by a body whose function includes monitoring compliance with an industry code.
External—committee or industry association	The issue was identified or an investigation commenced as a result of inquiries made, work undertaken or findings by an industry association or similar body (but not while carrying out the function of monitoring compliance with an industry code).
External—AFCA systemic	The issue was identified or an investigation commenced as a result of inquiries made, work undertaken or findings by AFCA in relation to a potential systemic issue or definite systemic issue (within the meaning of AFCA's Rules of Complaint Resolution Scheme).

What to select	Description of investigation trigger
Regulator—ASIC Regulator—APRA Regulator—AUSTRAC Regulator—other	The issue was identified or an investigation commenced as a result of inquiries made, work undertaken or findings by a regulator. This includes where a regulator requests that a licensee undertake a review in relation to a particular matter, and that review results in the licensee becoming aware of or commencing an investigation into the reportable situation.
Other	The issue was identified or an investigation commenced for reasons that cannot be explained by any one or combination of the other investigation trigger categories in this list. Selecting this option will provide a free-text field for your response.

Q9: Can I withdraw or correct a report that I have submitted to ASIC?

RG 78.175 Once you submit a breach report to ASIC, there are limited circumstances in which you may withdraw or correct that report. The ASIC Regulatory Portal does not allow you to correct a submitted report. These limits are intentional. We expect licensees to lodge complete and accurate reports.

RG 78.176 For examples of breach report correction requests that we will consider, see Table 13–Table 14. When we correct a report, we will remove it from the ASIC Regulatory Portal view. While information from the transaction that was originally submitted will not be published (see RG 78.127–RG 78.131), the original, uncorrected version of reports will be retained in ASIC's systems.

RG 78.177 If the limited circumstances for correction apply to your situation, you may request a correction by emailing feedback.breach@asic.gov.au. These requests are considered on a case-by-case basis and, if approved, will be processed manually.

RG 78.178 To minimise delays, a request for correction must include the:

(a) submission ID of the report;

(b) date of submission; and

(c) basis for the correction request, in line with the examples listed in Table 13, with specific details of the nature of any errors that have been made.

RG 78.179 Typically, we will acknowledge such request(s) within three business days, and if approved, we will endeavour to process such request(s) within two weeks.

Table 13: When ASIC may approve a request to correct a report

Example 15(a): Material factual errors on a report	This includes scenarios such as: • the incorrect licensee has been selected; • duplicate notifications have been submitted; and • an incorrect selection on a key field has been made (e.g. specifying the type of reportable situation) We will not process a change to a discrete field. Rather, we may remove the incorrect report from the ASIC Regulatory Portal view and ask the licensee to submit a new report with the correct information. If the error is minor in nature, see Example 16(b).
Example 15(b): A change is required to a field that has been greyed out	The update functionality is available on the ASIC Regulatory Portal in certain circumstances. However, there are a range of fields that will appear 'greyed out' (unavailable for selection) and licensees will not be able to make amendments to these fields. These limits are intentional. We consider them to be appropriate controls reflecting our expectations regarding information that licensees should be aware of at the time of reporting. If you would like to view all of the questions and their response options in the sequence they appear on the form, together with the conditional logic (which includes the sequencing of the questions that will be posed), see the wireframes at RG 78.154. If you require an amendment to a field that is now locked and inaccessible via the update functionality, you may request this in the manner set out above in Example 15(a).
Example 15(c): Additional or more accurate information comes to light	Licensees should not mark their investigations as 'complete' until all required information is available and provided to ASIC. If after your investigation is marked complete, you uncover additional or more accurate information, and you are unable to access the update functionality, you will need to make a correction request to ASIC to notify us of these changes. In these circumstances, we may cancel the most recent transaction from the ASIC Regulatory Portal view and ask you to submit an update with the correct information.

Table 14: When ASIC may not approve a request to correct a report

Example 16(a): A matter is determined as no longer reportable	We will not approve a request to withdraw a report on the basis that the licensee later deemed the matters reported to not be a reportable situation. Licensees must report to ASIC when they first know that, or are reckless with respect to whether, there are reasonable grounds to believe a reportable situation has arisen. They must report based on the facts available to them at the time of reporting. For guidance on when reasonable grounds might arise, see RG 78.83–RG 78.106. Subsequent factual findings do not remove this legal obligation and are not a basis for withdrawing a report.
Example 16(b): Minor factual error	If licensees discover minor factual errors in submitted reports (e.g. typographical errors), a request to withdraw or amend a report is not necessary. In these circumstances, if the update functionality is available, licensees may amend the free-text field 'Describe the reportable situation' to note the error. Licensees must determine whether or not the error is 'minor'. If the update functionality is not available to licensees, or the error is *not* minor in nature, licensees can submit a request to ASIC to correct the report: see Example 15(a).

Key terms

Term	Meaning in this document
additional reportable situation	A reportable situation as set out in s912D(2) of the Corporations Act or s50A(2) of the National Credit Act, including when the licensee or its representative: • engages in conduct constituting gross negligence in the course of providing a financial service or engaging in a credit activity; or • commits serious fraud
AFS licence	An Australian financial services licence under s913B of the Corporations Act that authorises a person who carries on a financial services business to provide financial services Note: This is a definition in s9 of the Corporations Act.
AFCA	Australian Financial Complaints Authority
AFS licensee	A person who holds an AFS licence under s913B of the Corporations Act
AML/CTF Act	*Anti-Money Laundering and Counter-Terrorism Financing Act 2006*
APRA	Australian Prudential Regulation Authority
ASIC	Australian Securities and Investments Commission
ASIC Act	*Australian Securities and Investments Commission Act 2001*
ASIC Instrument 2024/620 (for example)	An ASIC instrument (in this example numbered 2024/620)
ASIC Regulations	*Australian Securities and Investments Commission Regulations 2001*
authorised representative	A person authorised by an AFS licensee, in accordance with s916A or 916B of the Corporations Act, to provide a financial service or services on behalf of the licensee Note: This is a definition in s9 of the Corporations Act.
Ch 7 (for example)	A chapter of the Corporations Act (in this example numbered 7)
client	May refer to a retail client of financial services, a consumer of credit products or a member of a superannuation fund
consumer	Includes an existing, potential or prospective client

Term	Meaning in this document
core obligation	A core obligation has the meaning given to it by s912D(3) of the Corporations Act or s50A(3) of the National Credit Act. For a summary of the core obligations for AFS licensees and credit licensees, see Appendix 1 to this guide
Corporations Act	*Corporations Act 2001*, including regulations made for the purposes of that Act
Corporations Regulations	*Corporations Regulations 2001*
Credit Guide	A document that must be provided to a consumer by a credit provider, credit service provider, credit representative or debt collector under the National Credit Act
credit licence	An Australian credit licence under s35 of the National Credit Act that authorises a licensee to engage in particular credit activities
credit licensee	A person who holds an Australian credit licence under s35 of the National Credit Act
credit representative	A person authorised to engage in specified credit activities on behalf of a credit licensee under s64(2) or 65(2) of the National Credit Act
Criminal Code	Schedule to the *Criminal Code Act 1995*
deemed significant breach	A breach or likely breach of a core obligation that is taken to be significant under s912D(4) of the Corporations Act or s50A(4) of the National Credit Act
Explanatory Memorandum	Explanatory Memorandum to the Financial Sector Reform (Hayne Royal Commission Response) Bill 2020
Financial Sector Reform Act	*Financial Sector Reform (Hayne Royal Commission Response) Act 2020*
Financial Services Royal Commission	Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry
FSG	A Financial Services Guide—a document required by s941A or 941B to be given in accordance with Div 2 of Pt 7.7 of the Corporations Act Note: This is a definition in s9 of the Corporations Act.
grouping test	Refers to the test described at RG 78.111 to help licensees identify the circumstances in which multiple reportable situations may be grouped together in a single report
IDR	Internal dispute resolution
INFO 151	An ASIC information sheet (in this example numbered 151)

Term	Meaning in this document
Insurance Contracts Act	*Insurance Contracts Act 1984*
licensee	An AFS licensee or credit licensee
likely breach	The situation where a licensee or a representative of the licensee is no longer able to comply with a core obligation and the breach, if it occurs, will be significant Note: See s912D(1)(b) of the Corporations Act or s50A(1)(b) of the National Credit Act.
National Credit Act	*National Consumer Credit Protection Act 2009*
National Credit Code	National Credit Code at Sch 1 to the National Credit Act
National Credit Regulations	*National Consumer Credit Protection Regulations 2010*
PI insurance	Professional indemnity insurance
reg 7.6.04(1)(i) (for example)	A regulation of the Corporations Regulations or National Credit Regulations (or other regulations) as specified (in this example numbered 7.6.04(1)(i))
registered scheme	A managed investment scheme that is registered under s601EB of the Corporations Act
regulations	Corporations Regulations and National Credit Regulations
REP 594 (for example)	An ASIC report (in this example numbered 594)
reportable situation	Has the meaning given by s912D of the Corporations Act or s50A of the National Credit Act
reporting period	Means the 30 or 90 day period that a licensee has to tell ASIC in writing after first knowing that, or being reckless with respect to whether, there are reasonable grounds to believe a reportable situation has arisen. Note: See s912DAA(3) of the Corporations Act, s50B(4) of the National Credit Act and s7 of ASIC Instrument 2024/620.
representative (of an AFS licensee)	Means: • an authorised representative of the licensee; • an employee or director of the licensee; • an employee or director of a related body corporate of the licensee; or • any other person acting on behalf of the licensee Note: This is a definition in s9 of the Corporations Act.

Term	Meaning in this document
representative (of any other person)	Means: • an employee or director of the person; • an employee or director of a related body corporate of the person; or • any other person acting on behalf of the first person Note: This is a definition in s9 of the Corporations Act.
responsible entity	A responsible entity of a registered scheme as defined in s9 of the Corporations Act
RSA Act	*Retirement Savings Account Act 1997*
RG 104 (for example)	An ASIC regulatory guide (in this example numbered 104)
s912A (for example)	A section of the Corporations Act or the National Credit Act, unless otherwise specified (in this example numbered 912A)
s912D(3)	Means the Corporations Act section numbered 912D(3), including modifications that s7 of ASIC Instrument 2024/620 makes
serious fraud	Has the meaning given by s9 of the Corporations Act and s5 of the National Credit Act
significant breach	Means: • a deemed significant breach; or • a breach or likely breach of a core obligation that is significant having regard to the factors in s912D(5) of the Corporations Act or s50A(5) of the National Credit Act
SIS Act	*Superannuation Industry (Supervision) Act 1993*
the misleading or deceptive conduct provisions	Means s1041H(1) of the Corporations Act or subsection 12DA(1) of the ASIC Act
Transitional Act	*National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009*

Related information

Headnotes

AFS licensee, breach, breach reporting, compensation, core obligations, credit licensee, deemed significant breach, financial services, likely breach, reportable situation, self-reporting, significant breach

Regulatory guides

RG 34 *Auditor obligations: Reporting to ASIC*

RG 98 *ASIC's powers to suspend, cancel and vary AFS licences and make banning orders*

RG 104 *AFS licensing: Meeting the general obligations*

RG 105 *AFS licensing: Organisational competence*

RG 132 *Funds management: Compliance and oversight*

RG 166 *AFS Licensing: Financial requirements*

RG 205 *Credit licensing: General conduct obligations*

RG 207 *Credit licensing: Financial requirements*

RG 218 *Licensing: Administrative action against persons engaging in credit activities*

RG 265 *Guidance on ASIC market integrity rules for participants of securities markets*

RG 266 *Guidance on ASIC market integrity rules for participants of futures markets*

RG 271 *Internal dispute resolution*

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Information sheets

INFO 135 *Annual compliance certificates for credit licensees*

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