

26 February 2021

Amanda Fairbairn, Policy Lawyer  
The Behavioural Unit  
Australian Securities and Investments Commission  
GPO Box 9827, Brisbane QLD 4001

[remediation@asic.gov.au](mailto:remediation@asic.gov.au)

**AFG**

100 Havelock Street  
West Perth WA 6005

PO Box 710  
West Perth WA 6872

Phone 08 9420 7888  
Fax 08 9420 7856

[www.afgonline.com.au](http://www.afgonline.com.au)

Dear Ms Fairbairn

**ASIC Consultation – Consumer Remediation: Update to RG 256  
Submission by Australian Finance Group Ltd ACN 066 385 822**

Australian Finance Group Ltd (**AFG**) was founded in 1994, was listed on the Australian Securities Exchange in 2015, and has grown to become one of Australia’s largest mortgage broking groups. Approximately 2,975 brokers (of which approximately 1400 are credit representatives of AFG) arrange residential mortgages, commercial finance and other loan products through AFG. AFG also operates a white label and securitised lending division through AFG Home Loans.

AFG welcomes the opportunity to respond to the consultation paper 335 *Consumer Remediation: Update to RG256* (the **Consultation Paper**) issued by the Australian Securities and Investment Commission (**ASIC**) on 3 December 2020. For the purposes of this submission, AFG’s response is limited to providing some key observations below.

**1. Two-tiered approach to initiating a remediation – Proposal B1**

In relation to the obligations on Australian Credit License (**ACL**) holders in connection with the provision of credit or credit assistance, AFG does not agree with the two-tiered approach to initiating remediation.

ACL holders are subject to a robust regulatory regime and legal obligations contained in the *National Consumer Credit Protection Act 2009* (Cth) (**NCCP Act**) and associated Regulations including the National Credit Code (**NCC**) and ASIC Regulatory Guides. These currently include the responsible lending obligations<sup>1</sup>.

Authorised Deposit-taking Institution (**ADI**) credit providers are also regulated by the Australian

---

<sup>1</sup> The Government has proposed amending the NCCP Act to simplify the credit regulatory regime *National Consumer Credit Protection Amendment (Supporting Economic Recovery) Bill 2020: A new regulatory framework for the provision of consumer credit* and *National Consumer Credit Protection Amendment (A New Regulatory Framework for the Provision of Consumer Credit) Regulations 2020*.

Prudential Regulatory Authority (**APRA**) under a number of prudential standards and guidance, most notably CPS 220 (Risk Management) and APG 223 (Residential Mortgage Lending). Non-ADI credit providers are proposed to be regulated by ASIC under similar credit standards<sup>2</sup>.

In addition from 1 January 2021, credit assistance providers who are mortgage brokers<sup>3</sup> have been subject to best interests duties and a prohibition on accepting conflicted remuneration.

This extensive regulatory regime on ACL holders provides a clear roadmap for the application of the first tier of initiating a consumer remediation.

The introduction of the second tier approach to initiating a remediation, with its nebulous references to ‘certain standards, expectations or values’ with minimal explanation in the Consultation Paper on the breadth or practical application of these items, is not likely to be workable for the majority of ACL holders. For example:

- **... industry codes of conduct** - Which industry codes would apply? Would these only be those codes approved by ASIC? Would the ACL holder need to be a member of the relevant industry group for the codes to apply? Would there be a mandatory requirement to be a member of an industry group? For example, non-ADIs (such as AFG Home Loans) are currently not governed by the Banking Code of Practice.
- **... your business values** - Would this item relate to only publicly disclosed statements of values by an ACL holder? How would this be tested? Would this change over time as an ACL holder’s business operations change?
- **... your consumers’ standards and expectations** - What objective standard are the consumer’s standard and expectations to be judged against? Or is this expected to be a subjective standard and if so, how is an ACL holder able to establish these standards?
- **... other external standards and expectations** - What ‘other external standards and expectations’ are being referred to? How is an ACL holder able to establish these standards? Will there be some further ASIC guidance on which external standards and guidance are captured by this item?

The risk with including these uncertain and unlimited obligations is that an ACL holder has no option but to treat every complaint or event (no matter how trivial or unsubstantiated) as a potential remediation circumstance falling within the second tier, or risk breaching the provisions. We recognise the reference in the Consultation Paper to the Tier 2 considerations *not going beyond what is reasonable to expect* however the references, in particular to a ‘consumers’ standards and expectations’, implies a subjectively reasonable test which leaves the ACL holder in the same end position.

In addition, as evidenced by the lack of examples in the Consultation Paper relating to credit provision or credit assistance for credit products, the risk of consumer harm from removing this second tier for

---

<sup>2</sup> *National Consumer Credit Protection (Non ADI Credit Standards) Determination 2020.*

<sup>3</sup> *The National Consumer Credit Protection Amendment (Supporting Economic Recovery) Bill 2020: A new regulatory framework for the provision of consumer credit* proposes to expand the best interest duty obligations to all finance brokers in relation to consumer finance.

ACL holders is likely to be marginal. Debt instruments, such as mortgages, were not the focus of Commissioner Hayne's findings in the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (**Banking Royal Commission**) in the context of consumer remediation reforms. The Banking Royal Commission report focuses on poor financial product advice or financial planning advice in the wealth businesses of the larger financial services companies i.e. the 'fees for no service' examples.

In addition, some non-ADI lenders (such as AFG Home Loans) do not distribute their credit products directly to consumers, with their credit products distributed 100% by mortgage brokers. Therefore, a consumer already has the opportunity and access to the internal dispute resolution regime of both the broker and the lender to seek adequate compensation for a breach of a Tier 1 obligation.

AFG submits that the expansion of the Tier 1 remediation threshold in the Consultation Paper to include even a single incidence or simple errors and removing the reference to systemic issues, will provide consumers with additional adequate protection.

AFG further submits that extending the consumer remediation reforms to Tier 2 for ACL holders will not achieve the goals of a consistent, efficient, honest and fair approach to remediating consumers and should not apply to ACL holders in relation to the provision of credit or credit assistance.

## **2. Settlement deeds - Proposal H1**

In relation to question H1Q1 *In what circumstances, if any, are settlement deeds essential to protect your legitimate interests?* AFG submits that settlement deeds are an important and essential part of its internal dispute resolution (**IDR**) and remediation regime. They provide certainty to AFG and our brokers in relation to the resolution of any complaints. If settlement deeds are removed, we also expect that a greater number of small or minor complaints will escalate to AFCA thereby putting more pressure on their systems and potentially extending the period for resolution of all AFCA complaints.

AFG also submits that if the certainty of settlement deeds are removed for remediation or resolution of customer complaints, it is likely that the professional indemnity insurance premiums for ACL holders will increase as underwriters seek to offset additional potential unlimited liability.

In the context of ACL holders providing credit assistance, there is less likely to be large-scale remediation programs, due to the personal nature of the credit assistance provided. This has been enhanced by the introduction of the broker best interests duty. Brokers' customers are involved in any IDR or remediation process from the outset and a customer's individual circumstances are considered. In our experience, there have been no issues or onerous burdens on our brokers' customers by taking the action of signing and returning a deed of settlement.

However, AFG does agree that it would be reasonable for there to be a minimum threshold below which a deed of settlement would not be required. We submit that a reasonable threshold would be \$500.

### ***3. Remaining provisions of the Consultation Paper***

Subject to our comments above in relation to the two tiered approach to initiating a remediation and deeds of settlement, AFG agrees with the other recommendations contained in the Consultation Paper.

Please do not hesitate to contact AFG if you require any further detail about the matters raised in this submission or if AFG can provide any further assistance in the development of alternative proposals.

Yours sincerely

**General Manager Industry & Partnership Development  
Australian Finance Group Ltd**