



AUSTRALIAN INSTITUTE of  
SUPERANNUATION TRUSTEES

# ASIC Enforcement Review Self-reporting of contraventions by financial services and credit licensees

**12 May 2017**

## **AIST Submission**



## ASIC Enforcement Review Self-reporting of contraventions

### AIST

**The Australian Institute of Superannuation Trustees** is a national not-for-profit organisation whose membership consists of the trustee directors and staff of industry, corporate and public-sector funds.

As the principal advocate and peak representative body for the \$700 billion profit-to-members superannuation sector, AIST plays a key role in policy development and is a leading provider of research.

AIST provides professional training and support for trustees and fund staff to help them meet the challenges of managing superannuation funds and advancing the interests of their fund members. Each year, AIST hosts the Conference of Major Superannuation Funds (CMSF), in addition to numerous other industry conferences and events.

### Contact

Karen Volpato, Senior Policy Advisor

0419127496

Eva Scheerlinck, Chief Executive Officer

03 8677 3800

## Executive summary

**In brief:**

An effective breach reporting framework is critical for effective enforcement of the financial services regulatory regime. AIST supports the Review’s proposals to strengthen the breach reporting framework, the inclusion of breaches by financial advisers and credit licensees, and requiring ASIC to report annually on breach reporting at the licensee level. Given the nature of regulatory breaches, ASIC’s annual reporting of breaches should be by sector (similar to that used in APRA statistics). AIST would be pleased to work with ASIC to develop guidance.

## Summary of AIST responses

No.	Proposal	AIST response
1	The test for reporting breaches should be objective not subjective	Support – need to preserve materiality threshold
2	Breach reports should be required for FOFA breaches by individuals	Support - additional ASIC guidance required
3	Breaches should be reported within 10 days of obligation to report arising	Support
4,5,6,7	Increase maximum penalties, introduce civil penalty and infringement notice regimes and encourage licensees to report breaches at the earliest opportunity	Support
8	Prescribe content of breach reports and require them to be delivered electronically	Support
9	Introduce breach reporting for credit licensees	Support
10	Maintain qualified privilege for licensees lodging breach reports	Support
11	Remove additional reporting requirements for responsible entities	Support
12	Require annual publication by ASIC of breach report data at licensee level	Support - subject to a threshold and reporting by sector. Expand information captured on Financial Advisers Register

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#### Introduction

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AIST is a longstanding supporter of strong, adequately resourced financial services regulators.

Breach reporting is a critical regulatory tool for ASIC, enabling earlier detection of misconduct. According to the most recent ASIC Annual Report, the regulated population includes 5,511 Australian Financial Services Licensees and over 23,000 individual financial advisers. Given a population of this size and finite ASIC resources, effective breach reporting is the only way ASIC can identify most breaches.

ASIC has repeatedly stated that it has concerns with the regime, particularly within the banking sector. As the regulator administering the regime, this should carry significant weight.

In March 2017, ASIC released a report on the conduct of licensees controlled or owned by the big four banks and AMP.<sup>1</sup> ASIC reviewed the breach reports and other notifications provided to ASIC by the licensees between 2009 and 2015. ASIC found nearly half of the advisers about whom the licensees held serious compliance concerns were not notified to ASIC until directed to do so by ASIC.

This raises serious questions about the culture of the banks, which have sought to exploit deficiencies in the regime to avoid or delay breach reporting rather than adopt an ‘if in doubt, report’ approach which would be consistent with behaviour of good corporate citizens complying with the spirit of the regime.

#### Position 1

**The ‘significance test’ in section 912D of the Corporations Act should be retained but clarified to ensure that the significance of breaches is determined objectively**

#### Questions

**Would a requirement to report breaches that a reasonable person would regard as significant be an appropriate trigger for the breach reporting obligation?**

AIST supports clarifying the ‘significance test’ in s 912D requires licensees to determine significance objectively. The existing test enables large licensees to form a view that a breach that is objectively serious does not meet the threshold for self-reporting, due to the size of the breach relative to the size of the licensee. This is a perverse outcome—larger licensees, such as banks, need to report fewer breaches.

The role of financial loss to consumers in determining whether a breach is significant is also problematic as it ignores the fact that breaches that do not result in consumer financial loss may

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<sup>1</sup> ASIC, REP 515, *Financial advice: Review of how large institutions oversee their advisers*, para 15.

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nevertheless provide useful intelligence about the risk of non-compliance in and culture of a licensee.

There are domestic and international precedents for requiring the significance of breaches to be determined objectively, including the continuous disclosure reporting regime under Chapter 6CA of the Corporations Act and, in the United Kingdom, Principle 11 of the Financial Conduct Authority's Principles for Business.

The 'significance' test was inserted into the current framework to address the problem of licensees being required to report large numbers of immaterial breaches. This materiality threshold must be preserved to prevent increasing the regulatory burden on licensees and ASIC without any corresponding benefit.

### **Would such a test reduce ambiguity around the triggering of the obligation to report?**

AIST's view is that clarifying that the 'significance test' in s 912D requires licensees to determine significance objectively would reduce ambiguity around the trigger for the reporting obligation.

ASIC should also produce additional guidance, including examples. These could be based on instances ASIC has identified that would not have triggered an obligation to self-report under the current law but would do so as a result of clarifying amendments.

AIST notes that the Pensions Regulator in the United Kingdom has developed both a code of practice<sup>2</sup> and code-related guidance. The code of guidance has outlined a 'traffic light' framework to give guidance as to whether a breach is likely to be of material significance. This framework uses the following:

- Red breach situations – these are always of material significance and must be reported.
- Green breach situations – these are not of material significance and do not have to be reported, but must be recorded.
- Amber breach situations are less clear cut.

Examples of what might be 'red, green or amber' situations are provided within the code-related guidance. AIST is citing this example in support of the proposal outlined within the consultation paper that both an objective test and further guidance is needed.

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<sup>2</sup> The Pensions Regulator (2015). Reporting breaches of the law - Regulatory Code of Practice 01. [online] The Pensions Regulator. Available at: <http://www.thepensionsregulator.gov.uk/docs/code-01-reporting-breaches-of-law.pdf> [Accessed 10 May 2017].

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#### Position 2

#### **The obligation for licensees to report should expressly include significant breaches or other significant misconduct by an employee or representative**

AIST strongly supports expanding the breach reporting framework to include significant breaches or other misconduct by employees and representatives. This would be appropriate given the Future of Financial Advice reforms which introduced obligations at the employee/representative level.

It is arguable that the regime already requires such breaches to be reported, because licensees are generally liable for the conduct of employees and are required to take reasonable steps to ensure representatives comply with financial services laws. However, given the culture of exploiting uncertainty in the framework in the banking sector, the framework should be expressly extended.

There are multiple precedents for this - breach reporting requirements in the United Kingdom, the United States, Hong Kong and Singapore all extend to breaches by individual employees and representatives.

AIST also recommends that the duty to report should be extended to those providing advice to the trustees, eg. independent financial advisers, investment consultants, and actuaries.

#### Questions

#### **What would be the implications of this extension of the obligation of licensees to report?**

AIST expects there would be an increase in breach reports relating to financial advice, including breaches of the duty on advisers to act in the best interests of clients.

ASIC Chairman Greg Medcraft has stated that the financial advice industry is a high risk part of the sector. Increased intelligence about this would enable ASIC to act swiftly to remove advisers responsible for poor quality advice from the industry in order to protect consumers.

AIST notes the Consultation Paper also contemplates extending breach reporting to situations where an individual adviser is insolvent, not of good fame or character, or not adequately trained or competent.

Licensees would require ASIC guidance about how to implement this. For example:

- How often would a licensee need to check that an adviser was not insolvent, and could licensees rely on self-reporting by advisers?
- What constitutes failing a good fame and character test, how often would licensees need to check this, could licensees rely on self-reporting by advisers?

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- ASIC would need to confirm a requirement to breach report an adviser who was not adequately trained or competent would reflect (not increase) the professional standards for advisers as they are set from time to time.

AIST would welcome the opportunity to work with ASIC on the development of guidance to address these issues.

#### Position 3

#### Breaches to be reported within 10 business days from the time the obligation to report arises

##### Questions

#### Would the threshold for the obligation to report outlined above be appropriate?

AIST supports requiring breaches to be reported within 10 business days from the date the obligation to report arises. AIST notes that further guidance is needed regarding timeliness of gathering information as to whether there is a need to report: perhaps a 'traffic light' framework as we mentioned earlier might assist.

Some licensees have interpreted the current threshold as requiring completion of extensive internal investigations, and sometimes also obtaining legal advice, before lodging breach reports. This has led to lengthy delays of months or even years before breaches are reported to ASIC.

In March 2017, ASIC observed that there was often a considerable delay between an institution first becoming aware of the suspected non-compliant conduct and the breach report being lodged with ASIC.<sup>3</sup>

Early reporting of breaches is necessary so ASIC can act swiftly to protect consumers. ASIC has recently expressed concerns that delays in breach reporting impede ASIC's ability to take appropriate enforcement or other regulatory action and may also result in an increased risk of customer loss or detriment while non-compliant advisers continue to work in the industry.<sup>4</sup>

Some licensees delay reporting so they can complete remediation without ASIC oversight. The proposal would overcome this, and to give ASIC the opportunity to shape the scope of remediation and oversee the quality of delivery of remediation programs.

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<sup>3</sup> ASIC, REP 515, *Financial advice: Review of how large institutions oversee their advisers*, para 16.

<sup>4</sup> ASIC, REP 515, *Financial advice: Review of how large institutions oversee their advisers*, para 17.

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#### **Should the threshold extend to broader circumstances such as where a licensee ‘has information that reasonably suggests’ a breach has or may have occurred, as in the UK?**

AIST’s view is licensees should be required to report actual and suspected breaches. It is not clear whether requiring licensees to breach report where there is information that reasonably suggests a breach has or may have occurred differs from requiring breach reports for actual and suspected breaches, or if so how.

AIST’s view is that licensees will require qualified privilege to protect against third party action arising from reports of suspected breaches. This will require amendment of s 1100A (see Position 10 below).

#### **Is 10 business days from the time the obligation to report arises an appropriate limit? Or should the period be shorter or longer than 10 days?**

AIST’s view is 10 business days is appropriate. Breach reports must be timely to be effective as a source of useful intelligence.

#### **Would the adoption of such a regime have a cost impact, either positive or negative, for business?**

There will be an increase in breach reports which will involve increased costs. This will be mitigated by greater clarity about when breach reporting is required, prescribing the content of breach reports and mandating electronic lodgement (see Position 8).

AIST’s view is at a system level, the benefits of increased intelligence about breaches will outweigh these costs.

### **Positions 4, 5, 6 and 7**

#### **Increase penalties for failure to report, introduce a civil penalty and an infringement notice regime in addition to the criminal offence, encourage a cooperative approach where licensees report at the earliest opportunity**

Non-compliance with the breach reporting regime is currently a summary offence which attracts a maximum penalty of 50 penalty units (currently \$9,000) and/or 1 year imprisonment for individuals, or 250 penalty units (currently \$45,000) for bodies corporate.<sup>5</sup>

The fact that ASIC has only brought one prosecution for non-compliance with the breach reporting regime since it commenced in 2002 demonstrates that the existing penalties are ineffective.

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<sup>5</sup> *Crimes Act 1914* (Cth) s 4AA.

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#### Questions

#### **What is the appropriate consequence for a failure to report breaches to ASIC?**

The consequences of a failure to report a breach to ASIC should depend on the circumstances, including whether the breach is minor, inadvertent, serious or intentional, and the licensee's prior history of compliance with the breach reporting framework and financial services laws more broadly. AIST reiterates its strong support for the development of further guidance by ASIC which examines the level of seriousness of breaches in an objective manner.

The current penalties do not provide the flexibility required to achieve this.

#### **Should a failure to report be a criminal offence? Are the current maximum prison term and monetary penalty sufficient deterrents?**

The penalties should include a criminal offence. The maximum penalty should be an indictable offence - this is appropriate for serious and intentional non-compliance, particularly for repeat offenders.

#### **Should a civil penalty regime be introduced?**

AIST supports the introduction of a civil penalty. This would enhance the flexibility of the penalty regime, by expanding ASIC's regulatory toolkit.

There is also scope for a civil penalty to provide efficiency gains, because ASIC could seek a civil penalty for a substantive breach and a failure to breach report simultaneously.

However, AIST recognises civil penalty proceedings can be complex and take significant time to resolve. Therefore, AIST also supports the introduction of an infringement notice regime.

#### **Should an infringement notice regime be introduced?**

AIST supports introducing an infringement notice regime for non-compliance with the breach reporting framework. This would give ASIC increased flexibility to deal with minor and inadvertent non-compliance quickly and cost-effectively.

The Consultation Paper notes arguments that infringement notices can encourage non-compliance as the relatively low cost can amount to a minor tax on doing business. This outcome is less likely if the value of infringement notices is set an appropriate level. Publicity around the issue and payment of infringement notices also impacts on the attitude of licensees.

AIST's view is ASIC should have the opportunity to test the value of infringement notices as part of the reach reporting framework.

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#### **Should the self-reporting regime include incentives? What will be effective to achieve this? What will be the practical implications for ASIC and licensees?**

Introducing incentives to encourage breach reporting has the potential to help effect a significant cultural shift towards prompt self-reporting. This is needed given the history of under reporting and delayed reporting of breaches, particularly by banks.

One approach would be express legislative recognition that the consequences of breach reporting may be less severe where a licensee demonstrates its commitment to report at the earliest opportunity.

However, overcoming the culture of under reporting and delayed reporting will also require a genuine commitment to cultural change by the banks.

#### **Position 8**

#### **Prescribe the required content of reports and require them to be delivered electronically**

#### **Questions**

#### **Is there a need to prescribe the form in which AFS Licensees report breaches to ASIC?**

AIST acknowledges ASIC concerns that breach reports vary in quality and comprehensiveness, and do not always include sufficient information for it to assess and action breaches. In our view, the introduction of a prescribed form, content and means of lodgement would help address these issues and ensure ASIC receives the intelligence it needs. We note that the United Kingdom Pension Regulator does have a prescribed form for the reporting of breaches.

In addition, mandating electronic lodgement – as well as a prescribed format - will also improve ASIC's ability to use data analytics to analyse breach reports. We expect this will provide efficiency gains, and improve ASIC's ability to identify trends in non-compliance.

#### **What impact would this have on AFS Licensees?**

While licensees that currently lodge deficient breach reports would incur a cost impact, prescription would make it easier for licensees to lodge compliant breach reports.

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#### Position 9

#### Introduce a self-reporting regime for credit licensees equivalent to the regime for AFS licensees

#### Questions

#### Should the self-reporting regime for credit licensees and AFS licensees be aligned?

AIST supports the harmonisation of breach reporting for Australian financial services and credit licensees. This would extend the benefits of breach reporting to the credit industry.

The Appendix to this submission is a summary of regulatory action relating to credit providers over the last 2 years, including mainstream lenders, finance brokers and payday lenders. In total, over this period, ASIC has taken action on 87 separate instances (on average, over three instances of regulatory action per month). These included banning individuals from the credit industry, criminal proceedings, suspending or cancelling credit licenses, fines for breaches of credit laws, entering Enforceable Undertakings, requiring lenders to refund fees and interest that was overcharged as well as reports designed to address problematic practices in relation to consumer leases and interest only home loans. This record demonstrates there are significant compliance problems in the credit industry.

Annual compliance certificates credit licensees are currently required to lodge do not give ASIC sufficient information to assess and action breaches. Because the certificates are only lodged once a year, the system hampers ASIC's ability to respond swiftly to protect consumers. The certification process also encourages a process-driven, box ticking approach to compliance which does not drive a culture of acting in the best interests of customers and compliance with the spirit of credit laws. According to the 2015-2016 ASIC Annual Report, there are 5,726 credit licensees and 36,650 credit representatives. Given a population of this size and finite ASIC resources, effective breach reporting is the only way ASIC can identify most breaches of credit laws.

Voluntary self-reporting, and intelligence from competitors and FOS is inconsistent and no substitute for a breach reporting regime, supported by strong penalties.

#### What will be the impact on industry?

Requiring credit licensees to self-report breaches would impose additional costs on industry. However, we do not expect this would be significant as these entities are currently required to have adequate compliance systems in place, which would include systems for detecting and responding to breaches. Satisfying these existing obligations also provides the foundation for compliance with a breach reporting framework. Some credit licensees, including banks, also hold Australian financial services licenses, and have breach reporting infrastructure in place to comply with the self-reporting framework under Chapter 7.

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#### Position 10

##### Ensure qualified privilege continues to apply to licensees

Under the current law, licensees are protected by qualified privilege in respect of information provided to ASIC under Chapter 7, including in a breach report.<sup>6</sup> This protects licensees from liability to third parties including parties identified in breach reports.

AIST's view is the scope of the existing qualified privilege should be expanded to reflect the expanded breach reporting regime. In particular, if licensees are required to lodge breach reports about breaches of Part 7.7A by individual financial advisers, they should be protected from action by advisers identified in breach reports.

#### Position 11

##### Remove the additional reporting requirement for responsible entities

Currently licensees that are also responsible entities are subject to two separate breach reporting regimes under Chapter 5C and Chapter 7. The breach reporting obligation on responsible entities under Chapter 5C has a different test and timeframe for reporting. While a breach that is required to be reported under Chapter 5C would usually also trigger the Chapter 7 breach reporting obligation, some breaches that trigger the Chapter 7 breach reporting regime would not trigger the breach reporting regime under Chapter 5C.

#### Questions

##### Should the self-reporting regime for responsible entities be streamlined?

AIST supports streamlining the breach reporting regime for responsible entities. There is no value in requiring a licensee that is also a responsible entity to comply with two parallel breach reporting regimes that serve the same purpose. This is red tape.

##### Is it appropriate to remove the separate self-reporting obligation in s 601FC? If so, should the threshold for reporting be incorporated in the factors for assessing significance in s 912D?

AIST supports removing the separate breach reporting regime for responsible entities. There should be one requirement so responsible entities no longer need to consider two different breach reporting obligations every time they identify a breach.

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<sup>6</sup> *Corporations Act 2001* s 1100A.

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#### Position 12

#### Require annual publication by ASIC of breach report data for licensees

##### Questions

#### **What would be the implications for licensees of a requirement for ASIC to report breach data at the licensee level?**

ASIC currently publishes aggregate breach report data in its annual reports, including the number of breaches reported to ASIC.

Given the extent and nature of breaches (see the Appendix), AIST strongly recommends that the annual reporting of breaches be by sector, using the APRA classifications (eg. not-for-profit, for profit). This level of reporting would also greatly assist in focussing ASIC's work, analysing the success of the regulatory performance framework, as well as being a step towards possible risk-related raising of financial sector levies.

AIST supports requiring ASIC to report more detailed information about breach reports, including licensee-level data. This would:

- subject licensees to scrutiny of their compliance track record,
- enable licensees to benchmark themselves against other, similar, industry participants,
- report in such a way as to assist ASIC focus regulator activities, and
- collate information to assist future risk-related raising of finance sector levies.

#### **Should ASIC reporting on breaches at a licensee level be subject to a threshold? If so, what should that threshold be?**

AIST's view is ASIC should include in its annual reports licensee-level data about licensees that lodge breach reports over a threshold based on number of reports per year.

#### **Should annual reports by ASIC on breaches include, in addition to the name of the licensee, the name of the relevant operational unit or any other information?**

AIST supports this level of reporting. Grouping breach reports by operational unit would provide greater transparency and help identify problem trends.

In addition to expanding the information about breach reporting in ASIC annual reports, AIST also supports expanding the scope of the Financial Advisers Register to include breach reports about breaches of Part 7.7A by individual advisers. Expanding the Financial Advisers Register to include this information is a logical response to the introduction of Part 7.7A which imposes obligations at the individual (rather than licensee) level for the first time.

The Financial Advice Register should also include information about the remuneration model for each adviser. Conflicted remuneration continues to be a feature of the financial advice sector despite the Future of Financial Advice reforms, because there are numerous exemptions from the

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ban. ASIC's regulatory guidance on the ban includes an Appendix summarising 15 of the exemptions, which runs to five pages.<sup>7</sup>

These include significant exemptions that allow banks and retail superannuation funds to continue to pay staff and third parties commissions and other conflicted remuneration, including to recommend that customers and clients stay in, or switch to, a retail superannuation fund. These include:

- A blanket exemption for benefits paid under grandfathering arrangements.<sup>8</sup>
- An exemption for benefits 'given by the client'.<sup>9</sup>
- Different treatment of volume-based benefits, which are not banned but merely presumed to be conflicted remuneration.<sup>10</sup>
- An exemption for benefits with an educational or training purpose.<sup>11</sup>
- An exemption for benefits for information technology software and support.<sup>12</sup>

The relationship between conflicted remuneration and poor quality advice that does not satisfy the obligation to act in the best interests of clients is well established. For example, in 2014, ASIC released a report on its review of retail life insurance advice.<sup>13</sup> The review, which covered advice given before and after the introduction of the FOFA reforms, found more than one third of the advice did not comply with relevant laws. Over 80 percent of advisers were paid under up front commission models. Conflicted remuneration was the principal driver of advice that did not comply with the law – 96 percent of the advice assessed by ASIC as failing to comply with the law was given by advisers paid an upfront commission.<sup>14</sup>

The Financial Advisers Register should be expanded to include information about the remuneration model for each adviser, including the type and quantum of remuneration for

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<sup>7</sup> ASIC, Regulatory Guide 246, *Conflicted Remuneration*, Appendix.

<sup>8</sup> *Corporations Act 2001* s 1528(1) and *Corporations Regulations 2001* reg 7.7A.16.

<sup>9</sup> *Corporations Act 2001* s 963B(1)(d) and 963C(e).

<sup>10</sup> *Corporations Act 2001* s 963L.

<sup>11</sup> *Corporations Act 2001* s 963C(c) and *Corporations Regulations 2001* regs 7.7A.14, 7A.15 and 7.8.11A.

<sup>12</sup> *Corporations Act 2001* s 963C(d) and *Corporations Regulations 2001* reg 7.8.11A.

<sup>13</sup> ASIC REP 413, *Review of retail life insurance advice*, 2014.

<sup>14</sup> ASIC REP 413, *Review of retail life insurance advice*, 2014, para 158.

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specific services, for example, fee for service, asset-based, and commission. This would improve transparency about a key risk factor for breaches of Part 7.7A.

Thirdly, the Financial Advisers Register should also be expanded to draw the distinction between aligned and independent financial planners. This would improve transparency about the structural conflicts of interest in the retail financial advice sector which also drive ongoing problems with quality of advice and breaches of Part 7.7A.

There are international precedents for expanding the scope of the Financial Adviser Register. For example:

- The United Kingdom regulatory framework requires financial advisers to be registered and the register distinguishes between restricted advisers who are confined to advising about products manufactured by a particular provider and independent advisers.
- The United States framework also includes an Advisers Register which includes extensive information including how Advisers are remunerated.

Expanding the Financial Advisers Register would also be consistent with the OECD Principles High level principles on financial consumer protection (the OECD Principles).<sup>15</sup> The OECD Principles were endorsed by the G20 Finance Ministers and Central Bank Governors, including Australia.

The principles include:

- Financial services providers should give consumers material information about financial products. Standardised disclosure should be used where possible, to allow comparisons between products.
- Financial services providers should work in the best interest of their customers. Conflicts of interest should be avoided where possible. Where a conflict cannot be avoided, providers should disclose and manage the conflict, or decline to provide the product or advice. Remuneration should be designed to encourage responsible business conduct, fair treatment of consumers and avoid conflicts of interest.
- Competitive markets should be promoted. Consumers should be able to search, compare, and switch between products and providers easily, and at reasonable and disclosed costs.

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<sup>15</sup> Organisation of Economic Co-operation and Development, *High level principles on financial consumer protection*, 2011.

Appendix

**Summary of regulatory failures of credit licensees, May 2015- May 2017**

Date	Description
2 May 2017	Victorian man convicted of operating a financial services business without a licence. Three breaches of the prohibition against engaging in credit activities without a licence were also taken into account for sentencing: ASIC 17-128 MR
13 April 2017	Book up provider in South Australian indigenous community ordered to pay \$167,500 for exploitation of consumers: ASIC 17-115 MR
10 April 2017	Director of motor finance company convicted of concealing a company debt: ASIC 17-109 MR
7 April 2017	Queensland car yard lender ordered to pay over \$1.2 million after breaching consumer credit laws: ASIC 17-108 MR
3 April 2017	ASIC announces eight lenders examined by ASIC have improved their practices for enquiring about expenses to determine the consumer's financial situation and capacity to make repayments. ASIC also announces targeted industry surveillance to examine whether lenders and mortgage brokers are inappropriately recommending more expensive interest-only loans: ASIC 17-095 MR
31 March 2017	Citibank refunds \$5 million in credit card international transaction fees, ASIC warns consumers about international transaction fees: ASIC 17-093MR
28 March 2017	ASIC cancels credit licences of Emparo Enterprises Pty Ltd and Quick Cash Advance Pty Ltd: ASIC 17-087MR
10 March 2017	Payday lenders fined \$730,000 for diamond trading 'sham': ASIC 17-060 MR
3 March 2017	ASIC acts to address unfair outcomes from flex commissions in car market finance: ASIC 17-050 MR
1 March 2017	ASIC launches civil penalty proceedings against Westpac for breaching home loan responsible lending laws: ASIC 17-048 MR
21 February 2017	Car loan provider Inhouse Finance Group to repay more than \$400,000 to consumers: ASIC 17-037 MR

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9 February 2017	Former Westpac home finance manager sentenced to 3 years' imprisonment after pleading guilty to dishonest use of his position: ASIC 17-025 MR
2 February 2017	Bankwest, a division of CBA, refunds approximately 10,800 customers almost \$5 million for overcharging interest on home loans: ASIC 17-021 MR
27 January 2017	Former Aussie Home Loans mortgage broker permanently banned: ASIC 17-016 MR
4 January 2017	ASIC cancels credit licence of mortgage broker for failing to maintain the competence to engage in credit activities: ASIC 17-001 MR
22 December 2016	Suncorp Metway pays \$530,000 for breaching consumer credit notification laws: ASIC 16-459 MR
21 December 2016	Used car finance broker permanently banned by ASIC: ASIC 16-456MR
9 December 2016	AAT affirms ASIC's decision to permanently ban finance broker for repeated, premediated dishonest conduct: ASIC 16-432 MR
6 December 2016	ASIC permanently bans Perth mortgage broker for providing false documents in support of home loan applications: ASIC 16-419 MR
6 December 2016	BMW finance pays \$77 million in Australia's largest consumer credit remediation program: ASIC 16-417 MR
23 November 2016	ASIC cancels credit licence of appliance rental business Rent to Own Appliances for charging consumers an effective interest rate as high as 208 percent. The licensee agreed to stop collecting payments on outstanding loans and let consumers keep goods being purchased: ASIC 16-403 MR
10 November 2016	Federal Court finds book up practices in South Australian Indigenous community unconscionable: ASIC 16-383 MR
9 November 2016	Cash Converters refunds \$10.8 million to borrowers, pays \$1.35 million penalty and enters Enforceable Undertaking after failure to make reasonable inquiries into customers' income and expenses for 118,000 small amount loans: ASIC 16-380 MR
4 November 2016	ASIC bans payday lenders from charging direct debit fees: ASIC 16-376 MR

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20 October 2016	ASIC permanently bans Aussie Home Loans mortgage broker for submitting false or materially misleading documents, including false payslips, in support of home loan applications: ASIC 16-358 MR
30 September 2016	Federal Court finds Queensland car yard lender engaged in unconscionable conduct when providing loans to vulnerable Indigenous consumers to finance purchase of second hand cars. The sole director of the lender and car dealer were the same person: ASIC 16-335 MR
14 September 2016	CBA pays penalties totalling \$180,000 and agrees to write off \$2.5 million in loan balances for breaches of responsible lending laws: ASIC 16-308 MR
12 September 2016	ASIC permanently bans former Sydney finance broker who pleaded guilty to multiple counts of loan fraud: ASIC 16-302 MR
8 September 2016	Westpac refunds \$20 million to around 820,000 customers for not clearly disclosing the types of credit card transactions that attract foreign transaction fees: ASIC 16-298 MR
6 September 2016	Former Aussie Finance broker convicted of submitting false or misleading documents: ASIC 16-293 MR
30 August 2016	ASIC bans former director of payday lender for 10 years. The lender attempted to avoid the requirement to hold a credit licence by structuring short term loans to avoid the application of the National Credit Code and charged fees on short term loans which were above the limits imposed by the Code: ASIC 16-281 MR
23 August 2016	Federal Court upholds banning of finance broker who provided misleading information and lack of full disclosure on an application for a credit licence: ASIC 16-264 MR
29 July 2016	Former Aussie Home Loans mortgage broker permanently banned for loan fraud: ASIC 16-242 MR
22 July 2016	Former mortgage broker charged with giving misleading information to lender: ASIC 16-232 MR
7 July 2016	Former AUSSIE mortgage broker admits to multiple charges relating to submitting false loan documents: ASIC 16-219 MR
30 June 2016	ASIC targets misleading Chinese language home loan advertising: ASIC 16-212 MR
29 June 2016	Former Sydney finance broker sentenced to intensive correction order: ASIC 16-209 MR

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8 June 2016	Former Aussie Home Loans mortgage broker convicted of loan fraud: 16-186 MR
30 May 2016	On line lender repays over \$35,000 in fees and charges in the range of 56% to 68%, above caps permitted under credit laws: ASIC 16-167 MR
9 May 2016	ASIC permanently bans second former Perth finance broker who misled vulnerable clients to believe they would be approved for vehicle finance if their loan applications were supported by guarantors. He then dishonestly prepared loan applications solely in the names of the proposed guarantors without those persons' knowledge or consent: ASIC 16-132 MR
21 April 2016	ASIC permanently bans Sydney finance broker with a history of conviction for fraud who knowingly submitted false documents for a number of clients who were seeking motor vehicle finance: ASIC 16-122 MR
18 April 2016	ASIC permanently bans former Perth finance broker who misled vulnerable clients to believe they would be approved for vehicle finance if their loan applications were supported by guarantors. She then dishonestly prepared loan applications solely in the names of the proposed guarantors without those persons' knowledge or consent: ASIC 16-116 MR
5 April 2016	Former mortgage broker admits charges relating to home loan fraud: ASIC 16-108 MR
5 April 2016	Westpac car financier pays penalties totalling \$493,000 for breaches of consumer protections relating to the repossession of motor vehicles: ASIC 16-106 MR
30 March 2016	ANZ refunds \$5 million for incorrect late payment and over limit fees on consumer credit cards and overdraft facilities: ASIC 16-098 MR
23 March 2016	Payday lender refunds over 7,000 customers more than \$1.5 million after ASIC concerns about failure to meet responsible lending obligations: ASIC 16-089 MR
22 March 2016	Former Sydney finance broker pleads guilty to multiple charges of loan fraud: ASIC 16-085 MR
7 March 2016	ANZ pays penalties totalling \$212,500 for breaching responsible lending laws in making offers of overdraft facilities: ASIC 16-063 MR
10 February 2016	ASIC bans mortgage broker and cancels credit licence of lender for failure to lodge Annual Compliance Certificates and failure to compensate

## ASIC Enforcement Review

### Self-reporting of contraventions

	customers as ordered by the Credit and Investments Ombudsman: ASIC 16-030 MR
9 February 2016	Payday lender pays \$34,000 in infringement notices for overcharging interest and fees on payday loans: ASIC 16-027 MR
2 February 2016	BMW Finance pays \$391,000 penalty for breaching responsible lending and repossession laws: ASIC 16-019 MR
20 January 2016	Westpac pays \$1 million following ASIC's concerns about credit card limit increase practices: ASIC 16-009 MR
18 December 2015	ASIC permanently bans former Westpac bank manager convicted of fraud: ASIC 15-399 MR
1 December 2015	ASIC permanently bans loan officer for creating false documents in support of loan applications: ASIC 15-360 MR
25 November 2015	CBA refunds \$80 million to around 216,000 borrowers as compensation for failing to apply fee waivers, interest concessions and other benefits since 2008: ASIC 15-355 MR
24 November 2015	ASIC permanently bans former NSW credit representative for multiple, serious breaches of credit laws including dishonesty: ASIC 15-352 MR
20 November 2015	Federal Court awards \$1.25 million penalties against consumer leasing company for breaches of consumer credit laws, including responsible lending laws: ASIC 15-349 MR
10 November 2015	ASIC bans home loan mortgage broker for creating false documents in support of home loan applications: ASIC 15-327 MR
9 November 2015	GE Money changes loan advertising following ASIC concerns that it was potentially misleading: ASIC 15-325 MR
29 October 2015	Westpac offers to refund premiums paid by more than 10,600 insurance customers for loan protection insurance provided while the customers did not have a loan on foot: ASIC 15-318 MR
28 October 2015	ASIC bans Melbourne mortgage broker for submitting false documents in support of loan applications: ASIC 15-316 MR
27 October 2015	Esanda compensates consumers for conduct by finance broker who misled friends and relatives of consumers with poor credit history about the effect of the documents they were signing, for example, by stating they were a guarantor rather than the borrower: ASIC 15-312 MR

## ASIC Enforcement Review

### Self-reporting of contraventions

26 October 2015	NAB changes its debt collection practices following ASIC concerns that some of its debt collection letters may have been misleading, deceptive or unconscionable: ASIC 15-310 MR
22 October 2015	Car financier required to appoint independent compliance consultant after ASIC surveillance uncovered its systems and procedures were not sufficient to ensure it was complying with national consumer credit laws, including responsible lending obligations: ASIC 15-299 MR
13 October 2015	Melbourne-based Chinese mortgage broker agrees to amend advertisements following ASIC concerns about misleading and deceptive advertising: ASIC 15-292 MR
13 October 2015	ASIC report into book-up practices in Indigenous communities finds that some policies and procedures adopted by book up providers can be problematic and in some cases might be unconscionable: ASIC 15-291 MR
6 October 2016	ASIC bans finance broker convicted of fraud: ASIC 15-284 MR
1 October 2015	ASIC imposes licence conditions on finance broker suspected of loan fraud: ASIC 15-281 MR
1 October 2015	Federal Court finds payday lender Fast Access Finance constructed a business model designed to avoid national credit laws designed to protect consumers: ASIC 15-278 MR
21 September 2015	ASIC suspends credit licence of insolvent payday lender: ASIC 15-262
18 September 2016	ASIC bans former car loan broker for 10 years for providing false documents in support of loan applications: ASIC 15-261 MR
11 September 2015	ASIC finds cost of consumer leases can be as high as 884%: ASIC REP 447 <i>Cost of consumer leases for household goods</i>
7 September 2015	ASIC bans broker convicted of creating false loan documents for 4 years: ASIC 15-244 MR
28 August 2015	ASIC cancels credit licence of Financial Broking Consultants for breaching a licence condition by failing to appoint an appropriate and competent person to operate the business: ASIC 15-234 MR
25 August 2015	ASIC bans credit licence of company involved with group promoting advice to investors to establish an SMSF for investment in real estate in Queensland and the arranging of finance for those investments: ASIC 15-228 MR

## ASIC Enforcement Review

### Self-reporting of contraventions

20 August 2015	ASIC report finds lenders providing interest-only mortgages need to lift their standards to meet important consumer protection laws: ASIC REP 45: <i>Interest only home loan review</i>
20 July 2015	ASIC permanently bans Perth finance brokers for dishonest and misleading conduct: ASIC 15-189 MR
7 July 2015	Former credit representative of Aussie Home Loans sentenced on charges relating to \$7 million home loan fraud: ASIC 15-176 MR
1 July 2015	Australia's second largest listed payday lender ceases offering two loan products and agrees to refund more than \$100,000 to consumers following concerns raised by ASIC that it breached consumer credit laws and engaged in misleading conduct: ASIC 15-168 MR
5 June 2015	Consumer leasing company Amazing Rentals enters Enforceable Undertaking following ASIC investigation into concerns about compliance with the credit legislation: ASIC 15-141 MR
2 June 2015	Following an ASIC review, credit card issuers and insurers make improvements to disclosure for travel insurance provided through credit cards: ASIC 15-136 MR
1 June 2015	Former Westpac finance manager faces charges over \$2.5 million fraud: ASIC 15-137 MR
25 May 2015	ASIC concerns prompt Bank of Queensland to improve home loan practices: ASIC 15-125
19 May 2015	ASIC bans finance broker convicted for loan fraud: ASIC 15-115 MR
7 May 2015	ASIC bans Sydney finance broker: ASIC 15-105 MR
6 May 2015	ASIC cancels credit licence of property spruiking firm following concerns about the way the loans and property ownership have been structured: ASIC 15-102 MR
1 May 2015	Federal Court finds white goods and computer rental company Make It Mine Pty Ltd breached consumer credit laws, including its responsible lending obligation: ASAIC 15-093

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