

14 April 2021

Mr Jason Michael  
Assistant Director, Regulatory Powers and Accountability Unit  
Financial System Division  
The Treasury  
Langton Crescent  
Parkes ACT 2600  
Email: [Breach.Reporting@TREASURY.GOV.AU](mailto:Breach.Reporting@TREASURY.GOV.AU)

Dear Mr Michael

## **AFIA COMMENTS ON THE BREACH REPORTING REGULATIONS**

The Australian Finance Industry Association (AFIA) appreciates the opportunity to provide feedback to the consultation on the Breach Reporting Regulations (the Regulations).

As context to this submission, AFIA<sup>1</sup> is a leading advocate for the Australian financial services industry. We support our members to finance Australia's future. We believe that our industry can best support Australia's economy by promoting choice in and access to consumer and business finance, driving competition and innovation in financial services, and supporting greater financial, and therefore social, participation across our community. These principles guide our recommendations in this and other consultations.

AFIA represents over 100 providers of consumer, commercial and wholesale finance across Australia. These banks, finance companies, and fleet and car rental providers, and fintechs provide traditional and more specialised finance to help businesses mobilise working capital, cashflow and investment. They are also at the forefront of financial innovation in consumer finance.

## **OUR SUBMISSION**

AFIA notes that our members support our guiding principles and the outcomes of the matters raised in our submission, however, individual members may have particular views about specific compliance aspects. Each member is responsible for ensuring they comply with their individual legal and regulatory obligations reflecting the nature, scale and complexity of their businesses.

In principle, we support Treasury's draft amendments to the breach reporting rules in *Schedule 11 of the Financial Sector Reform (Hayne Royal Commission Response) Act 2020*, and the explanatory materials for those changes.

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<sup>1</sup> [Australian Finance Industry Association \(afia.asn.au\)](http://www.afia.asn.au)

In addition to detailed recommendations on civil penalty provisions to not be taken to be significant if contravened, there are three general issues related we wish to highlight.

Consistency with other regulation - It will be critical that the full list of civil penalty provisions 'to not be taken to be significant if contravened', is consistent with other regulatory regimes, such as ASIC's RG 271<sup>2</sup>, the proposed Financial Accountability Regime (FAR) and Treasury's current review of Australian Financial Complaints Authority's (AFCA) Terms of Reference<sup>3</sup>. The impact of these regulatory regimes should not be underestimated and the intersection between the regulations and these regimes to ensuring standards and processes are proportionate and appropriate for financial institutions of different sizes, business models, and capabilities.

Implementation of 'significant' breaches regime - We note the ASIC Enforcement Review and its intention that there be a more objective 'significant breach' reporting regime, allowing ASIC to receive quality data intelligence. The implementation of these Regulations will be important to ensuring balance, evidenced-based, legislation that supports growth of financial businesses as well as competition and innovation across the financial services industry, and conversely, does not create barriers of entry. The 'significance' test provides a threshold for matters to be reported to ASIC. Originally, licensees were required to report all breaches to ASIC, but the influx of minor and insignificant reports placed a tremendous regulatory burden on licensees and administrative burden on ASIC for breaches that were unlikely to cause any harm.

Alignment of timeline and processes with other 'inflight' - We note Treasury's intention to release the final legislative instrument later this year, ahead of the 1 October 2021 commencement date. Given the cumulative impact of changes underway in the financial services industry, including legislative, regulatory, compliance, and technology changes, it is critical that the Explanatory Statement adequately covers the extensive civil penalty provisions, provides clarity, and can be dovetailed into our members' current processes as much as possible. The compliance burden and costs involved in implementing the incoming breach reporting regime should not be underestimated.

#### **OUR 'CIVIL PENALTY PROVISIONS' RECOMMENDATIONS**

AFIA notes that the draft amendments have been adapted in response to our initial feedback from AFIA, industry and other key stakeholders. We also welcome the rationale used by Treasury in excluding civil penalty provisions that are not taken to be significant if contravened if:

- a breach of these provisions may be minor, technical or inadvertent in nature
- given the frequency with which these documents must be provided, it is possible minor, technical or inadvertent breaches (that would not otherwise be significant) would result in a large regulatory burden if they were deemed automatically significant, and
- more material breaches of these provisions would be captured by the other limbs of the deemed significant test in subsection 912D(4) or by the test in subsection 912D(5) of the *Corporations Act 2001* (Corporations Act).

However, we believe that the efficiency of the incoming breach reporting regime would be improved by combining Treasury's rationale above and the following recommendations:

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<sup>2</sup> [ASIC Regulatory Guidance 271 Internal Dispute Resolution](#)

<sup>3</sup> [Review of the Australian Financial Complaints Authority – Terms of Reference](#)

**1. Civil penalty provisions that are documentary and/or procedural in nature should be excluded from the deeming regime.**

We note that on the proposed list of excluded provisions there are a number that are documentary and/or procedural in nature (e.g. subsection 941A(3) - Obligation on financial services licensee to give a Financial Services Guide if a financial service is provided to person as a retail client). It is important that all provisions of this kind (e.g. subsection 133BD - Credit provider not to enter into credit card contract unless Key Facts Sheet has been provided etc) are treated consistently, and excluded from the deeming provision.

These types of provisions have various options available where an error can be easily rectified, and where an isolated inadvertent breach has a low level of likelihood of triggering the materiality threshold by the other limbs of the significant test in subsections 912D(4) and 912D(5) of the Corporations Act.

Consideration should be given to provisions which are documentary in nature and contain specific timing requirements. For example, subsection 71 of the *National Consumer Credit Protection Act 2009* (Credit Act) requires licensees to notify ASIC of a change in details within 15 business days. In this instance, failure to notify ASIC of a change in details and revocation of an Authorised Representative's status presents a low risk to consumers. As credit assistance providers or Authorised Representatives are only permitted to submit credit applications to the licensee, the licensee is able to identify and stop unauthorised applications from being submitted/processed, particularly in the case of revocation of Authorised Representative status. In practice, providing notification/disclosure a short time after the required timeframe is unlikely to amount to a significant breach.

It is important that potential scope is considered for documentary type provisions where a technical breach could result in huge regulatory burden for the financial firm, despite the fact that there has been no material harm caused. For example, subsection 133BU of the Credit Act requires licensees to allow consumers to request credit card terminations online. In the event there was a technical issue whereby customers were unable to access the online portal to request termination online for a period of time, it could result in a huge regulatory burden for the licensee to determine the consumers affected and report multiple significant breaches, although there is likely to have been no material harm. In the event there was material harm caused to consumers, the breach would be captured under the other limbs of the subsection 912D test.

Additionally, the lower penalty unit values generally associated with documentary type provisions, compared to other civil provisions with significantly higher civil penalties or jail time, should also be taken into consideration, as this reflects their lower level of harm and being of less significance.

**2. Civil penalty provisions that contain subjective requirements and can be determined by appropriate external parties should be excluded from the deeming regime.**

We note the ASIC Enforcement Review's recommendation that the significance test be retained, but that it be applied objectively. However, there are various civil penalty provisions which are subjective in nature, and therefore, have high likelihood of being applied inconsistently across the industry.

These types of provisions largely relate to the responsible lending obligations, where the complex nature of a proposed breach is determined by an external party that has the capability and skills to make an appropriate decision. In practice, AFCA is the body that most commonly considers whether the responsible lending obligation has been applied appropriately, and the recourse available to a consumer, through AFCA, is in most cases larger than the civil penalty provision prescribed.

These provisions remain judicially untested and, as seen in the case of *Australian Securities and Investments Commission v Westpac Banking Corporation (Liability Trial)* [2019] FCA 1244, ASIC was unsuccessful in seeking judicial clarification on the legal obligation of credit providers to make reasonable inquiries about a borrower's financial circumstances and capacity to service a loan. The courts have purposefully allowed these obligations a reasonable degree of subjectivity, stating that a lender 'may do what it wants in the assessment process'.

This is of particular concern for our members, especially given the current situation whereby there are proposed changes to the credit laws currently before the Parliament, including the removal of the responsible lending obligation, and ASIC's *Regulatory Guide 209: Credit licensing: Responsible lending conduct* [RG 209] remains in place yet inconsistent with current statements of the courts and ASIC itself about compliance expectations in this regard.

Section 912A(1)(a) – the obligation to do all things necessary to ensure that the financial services covered by the licence are provided efficiently, honestly and fairly is another key example of a provision that should be excluded from the deeming regime due to its broad subjectivity.

Further, it will be important that this provision is excluded, as in practice it could mean a large 'catch all', as provisions that are excluded from the deeming provision could come back in under the same limb for being a contravention of Section 912A(1)(A). For example, if Subsection 1012A(5) - Obligation to give Product Disclosure Statement - personal advice recommending a particular financial product is excluded from the deeming regime, then it shouldn't come back as being deemed automatically as significant because it is caught as being a contravention of 'efficiently, honestly and fairly'. It should only be able to be deemed as a 'significant breach' by meeting either of the other limbs of the 'significance test' (e.g. by not providing the Product Disclosure Statement the consumer suffered material harm and therefore captured under the 912D(5)(c) limb of the test).

### **3. Civil penalty provisions that already provide for or are accompanied by notification to ASIC should be excluded from the deeming regime.**

We note that there are a number of provisions that require notification to ASIC due to the nature of the breach, where ASIC would already have been notified (e.g. subsection 53- failure to lodge annual compliance certificate). In order to reduce regulatory burden for the licensee, and administrative burden for ASIC, it is important that any duplication be removed.

It is important to have Section 912A(1)(g)(i) and (ii)(i) of the Corporations Act excluded. These provisions relate to internal dispute resolution (IDR) obligations. Under the updated IDR regime coming into effect in October 2021, licensees will be reporting complaints to ASIC. The complaint

definition which ASIC has adopted<sup>4</sup> has broad implications and does not take into account the material level of harm of the complaint. In practice, this could mean that a failure to report an IDR complaint to ASIC would also result in a significant breach report.

**Attachment A** provides the list of civil penalty provisions that we believe should be excluded from the deeming regime to ensure clarity of legal obligations and simplicity of compliance expectations.

## CLOSING COMMENTS

AFIA recognises the importance of a significant breach reporting regime in rebuilding trust in the financial services industry and ensuring compliance systems, processes and procedures align with good governance and culture across all financial institutions.

However, we believe the legislation should be implemented in a proportionate and scalable manner, taking into consideration that the vast majority of financial businesses comply with their legal and regulatory obligations and maintain adequate financial requirements to compensate their consumers. Legal and compliance requirements should support good practice and not penalise all financial institutions for the misconduct of the very few financial businesses that do not maintain good practices and/or behave badly.

AFIA represents larger and smaller lenders, ADI and non-ADI lenders. Many of the contributing members to this submission would be available for a roundtable or further discussion to assist Treasury to better understand our feedback. It is critical that as Australia recovers from the impact of the COVID-19 pandemic that households and businesses continue to have access to credit from a range of lenders. Additional complexity and unnecessary compliance costs has a direct impact on competition and innovation in the financial services industry.

We would appreciate the opportunity to continue our engagement with Treasury on these Regulations and to provide further information about the specialised products, services and technologies offered by our members, including our smaller lenders.

Should you wish to discuss our submission or require additional information, please contact me or Chalisa Parekowhai, Associate Director Policy at [chalisa@afia.asn.au](mailto:chalisa@afia.asn.au) or 02 9231 5877.

Yours sincerely



Diane Tate  
**Chief Executive Officer**

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<sup>4</sup> <https://download.asic.gov.au/media/5720607/rg271-published-30-july-2020.pdf> at RG 271.27- 271.32

**ATTACHMENT A – List of Civil Penalty Provisions to be excluded for the purposes of paragraph 912D(4)(b) of the Corporations Act**

**CORPORATIONS ACT 2001**

| <b>Civil Penalty Provision</b>   |
|--|
| <p>Subsection 912A(5A) - General obligations of a financial services licensee</p> <ul style="list-style-type: none"> <li>• Subsection 912A(1)(a) ) - Do all things necessary to ensure that the financial services covered by the licence are provided efficiently, honestly and fairly</li> <li>• Subsection 912A(1)(g)(i) and (ii) (i) - have a dispute resolution system complying with subsection (2); and (ii) give ASIC the information specified in any instrument under subsection (2A)</li> </ul> |
| Subsection 941B(4)- Obligation on authorised representative to give a Financial Services Guide if financial service provided to person as a retail client  |
| Subsection 946A(4) -Obligation to give client a Statement of Advice  |
| Subsection 948C(2) -Obligation to give client a Cash Settlement Fact Sheet   |
| Subsection 952E(9) -Giving a defective disclosure document or statement (whether or not known to be defective)   |
| Subsection 952H(3) -Financial services licensee failing to ensure authorised representative gives disclosure documents or statements as required   |
| Subsection 962P -Charging ongoing fee after termination of ongoing fee arrangement   |
| Subsection 1012A(5) -Obligation to give Product Disclosure Statement--personal advice recommending particular financial product  |
| Subsection 1012B(6) – Obligation to give Product Disclosure Statement--situations related to issue of financial products   |
| Subsection 1012C(11) - Obligation to give Product Disclosure Statement--offers related to sale of financial products   |
| Subsection 1021E(8)- Preparer of defective disclosure document or statement giving the document or statement (whether or not known to be defective)  |
| Subsection 1021G(3) - Financial services licensee failing to ensure authorised representative gives etc. disclosure documents or statements as required  |
| Subsection 1101AC - Failure to comply with an enforceable code provision   |

## NATIONAL CONSUMER CREDIT PROTECTION ACT 2009

| Part 2-2: Division 2—Unlicensed credit activities  | Non-Compliance Penalty                 |
|--|--|
| Subsection 31(1) Prohibition of licensee conducting business with unlicensed persons                                       | 5,000 pu civil penalty<br>2 years jail |
| Part 2-2: Division 5 – Licensee Obligations  |  |
| Contravention of general licensing obligations   | 5,000 pu civil penalty                 |
| Subsection 52 Fail to cite licence number  | 5,000 pu civil penalty<br>20 pu fine   |
| Subsection 53 Fail to lodge annual compliance certificate  | 5,000 pu civil penalty<br>60 pu fine   |
| Part 2-3: Division 2 – Credit Representatives  |  |
| Subsections 71(1), (2), & (4) - Obligation to notify ASIC etc. about credit representatives                                | 5,000 pu civil penalty<br>60 pu fine   |
| Part 2-5: Licensee Financial Records   |  |
| Subsection 88 Licensee must keep financial records   | 5,000 pu civil penalty<br>5 years jail |
| Chapter 3 – Responsible Lending  |  |
| Part 3-1: Credit Assistance Providers  |  |
| Subsection 113(1) failure by credit assistant to give a credit guide   | 5,000 pu civil penalty<br>50 pu fine   |
| Subsection 114(3) Failure by credit assistant to give quote before providing credit assistance                             | 5,000 pu civil penalty                 |
| Subsection 116 failure to make preliminary assessment  | 5,000 pu civil penalty                 |
| Subsection 117 Fail to make reasonable inquiries, verification etc   | 5,000 pu civil penalty                 |
| Subsection 118 Fail to assess contract as unsuitable when required   | 5,000 pu civil penalty                 |
| Subsection 120 Fail to give consumer copy of preliminary assessment when requested   | 5,000 pu civil penalty                 |
| Subsection 121 Provide credit proposal disclosure with the required disclosures at the time of providing credit assistance | 5,000 pu civil penalty                 |

| <b>Part 3-2: Credit Providers</b>   |  |
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| Subsection 126 and 127 Failure by credit provider or assignee to give a credit guide with the required disclosures                          | 5,000 pu civil penalty<br>50 pu fine   |
| Subsection 128 Fail to assess unsuitability   | 5,000 pu civil penalty                 |
| Subsection 130 Fail to make reasonable inquiries, verification etc  | 5,000 pu civil penalty                 |
| Subsection 131 Fail to assess contract as unsuitable when required  | 5,000 pu civil penalty                 |
| Subsection 132(1) Fail to give consumer copy of credit assessment when requested  | 5,000 pu civil penalty                 |
| Subsection 133 Enter into, or increase credit limit of, unsuitable contract   | 5,000 pu civil penalty<br>2 years jail |
| Subsection 133BH Fail to notify consumer when exceeding credit limit  | 5,000 pu civil penalty<br>50 pu fine   |
| Subsection 133BJ Fail to keep records of consents and withdrawals   | 5,000 pu civil penalty<br>50 pu fine   |
| Subsection 133 BU Fail to allow consumer to request credit card termination online  | 5,000 pu civil penalty                 |
| Subsection 133BW Fail to implement termination request ASAP   | 5,000 pu civil penalty<br>50 pu fine   |
| <b>Part 3-2A: Key Fact Sheet for Standard Home Loans</b>  |  |
| Subsection 133AC - Fail to provide key fact sheet via website or other means, or provide additional information when a consumer requests it | 5,000 pu civil penalty<br>50 pu fine   |
| Section 133BD - Credit provider not to enter into credit card contract unless Key Facts Sheet has been provided etc.                        | 5,000 pu civil penalty<br>50 pu fine   |
| Section 133AE - What if more information is needed from the consumer?   | 5,000 pu civil penalty<br>50 pu fine   |
| Section 133AD - Credit provider to provide Key Facts Sheet in other situations  | 5,000 pu civil penalty<br>50 pu fine   |
| <b>Part 3-2B: Credit Card Additional Rules</b>  |  |
| Subsection 133BC Application to include key fact sheet  | 5,000 pu civil penalty<br>50 pu fine   |

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| Subsection 133BD Enter credit card contract without giving key fact sheet                            | 5,000 pu civil penalty<br>100 pu fine |
| Subsection 133BFA Must allow consumer to reduce credit limit online                                  | 5,000 pu civil penalty                |
| Subsection 133BFC Fail to implement limit reduction request ASAP                                     | 5,000 pu civil penalty<br>50 pu fine  |
| Subsection 133BH Fail to notify consumer when exceeding credit limit                                 | 5,000 pu civil penalty<br>50 pu fine  |
| Subsection 133BJ Fail to keep records of consents and withdrawals                                    | 5,000 pu civil penalty<br>50 pu fine  |
| Subsection 133BU Fail to allow consumer to request credit card termination online                    | 5,000 pu civil penalty                |
| Subsection 133 BW Fail to implement termination request ASAP   | 5,000 pu civil penalty<br>50 pu fine  |
| <b>Part 3-4: Lessors</b>   |                                       |
| Subsection 150 Failure by lessor or assignee to give a credit guide with the required disclosures    | 5,000 pu civil penalty<br>50 pu fine  |
| Subsection 151 Fail to assess unsuitability  | 5,000 pu civil penalty                |
| Subsection 153 Fail to make reasonable inquiries, verification etc                                   | 5,000 pu civil penalty                |
| Subsection 154 Fail to assess contract as unsuitable when required                                   | 5,000 pu civil penalty                |
| Subsection 155 Fail to give consumer copy of credit assessment when requested                        | 5,000 pu civil penalty                |
| <b>Part 3-5: Credit Representatives</b>  |                                       |
| Subsection 158 Failure by credit representative to give a credit guide with the required disclosures | 5,000 pu civil penalty<br>50 pu fine  |

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| <b>Schedule 3: Modifications for special purpose funding entity</b>                    |                        |
| Subsection 126(1) - requirement for servicer to give credit guide                      | 5,000 pu civil penalty |
| Subsection 127(1) - requirement for servicer to give credit guide following assignment | 5,000 pu civil penalty |

**NATIONAL CONSUMER CREDIT PROTECTION ACT 2009 - SCHEDULE 1 National Credit Code**

| <b>Part 2—Credit contracts</b>   | <b>Non-Compliance Penalty</b>         |
|--|---------------------------------------|
| <b>Division 1—Negotiating and making credit contracts</b>                      |                                       |
| Subsection 14 Form & expression  | 100 pu fine                           |
| Subsection 16 Precontractual disclosure  |                                       |
| Subsection 17 Matters that must be in the contract document                    |                                       |
| Subsection 19 Amendments/alterations   |                                       |
| Subsection 20 Copies – customers/guarantors                                    |                                       |
| Subsection 21 Termination  |                                       |
| <b>Division 2—Debtor’s monetary obligations</b>                                |                                       |
| Subsection 23 Prohibited monetary obligations                                  | 5,000 pu civil penalty<br>100 pu fine |
| Subsection 25 Loan to be in money or equivalent                                | 100 pu fine                           |
| Subsection 26 Early payments and crediting of payment                          | 100 pu fine                           |
| <b>Division 3—Interest charges</b>   |                                       |
| Subsection 26 Early payouts & crediting of payments                            | 100 pu fine                           |
| <b>Division 5—Credit provider’s obligation to account</b>                      |                                       |
| Subsection 33 Statements of account  | 100 or 50 pu fine                     |
| Subsection 34 Information required   |                                       |
| Subsection 35 Opening balance not to exceed previous statement closing balance |                                       |
| Subsection 36 Statement of amount owing and other matters                      |                                       |
| Subsection 38 Disputed accounts  |                                       |
| Subsection 39 Dating and adjustments of debits and credits                     |                                       |
| <b>Part 3—Related mortgages and guarantees</b>                                 |                                       |
| <b>Division 1—Mortgages</b>  |                                       |
| Subsection 42 Form of Mortgage   | 50 pu fine                            |
| Subsection 43 Mortgage copies  |                                       |

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| Subsection 44 Mortgage limits – all property mortgages void                   |            |
| Subsection 45 Future property mortgage restrictions                           |            |
| Subsection 46 Mortgages and continuing credit contracts                       |            |
| Subsection 47 All accounts mortgages  |            |
| Subsection 48 Third party mortgages prohibited                                |            |
| Subsection 49 Secured amount limitations                                      |            |
| Subsection 51 Assignment or disposal of mortgaged property                    |            |
| Subsection 52 Consent conditions for assignment/disposal                      |            |
| <b>Division 2—Guarantees</b>  |            |
| Subsection 55 Form  | 50 pu fine |
| Subsection 56 Disclosure  |            |
| Subsection 57 Document copies   |            |
| Subsection 58 Guarantor withdrawal  |            |
| Subsection 59 Guarantee extensions  |            |
| Subsection 60 Guarantor liability limitations                                 |            |
| Subsection 61 Guarantor increased liabilities                                 |            |
| <b>Division 3—Changes on grounds of hardship and unjust transactions</b>      |            |
| Subsection 73 Give notice of changes  | 50 pu fine |
| <b>Part 5—Ending and enforcing credit contracts, mortgages and guarantees</b> |            |
| <b>Division 1—Ending of credit contract by debtor etc</b>                     |            |
| <b>Subdivision A—Paying out contract etc.</b>                                 |            |
| Subsection 83 Payout Statement  | 50 pu fine |
| Subsection 85 Mortgage goods/sale by instalments goods surrender              |            |
| <b>Subdivision C—Notice of first direct debit default</b>                     |            |
| Subsection 87 One off notice to be given on first time D/D default            | 50 pu fine |
| <b>Division 2—Enforcement of credit contracts, mortgages and guarantees</b>   |            |
| Subsection 88 prior to commencing enforcement                                 | 50 pu fine |
| Subsection 89 Hardship notices & effect on enforcement                        |            |
| Subsection 90 Requirements before enforcing against the guarantor             |            |

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| Subsection 91 Requirement prior to repossession   | 100 pu fine   |
| <b>Division 3—Postponement of enforcement proceedings</b>   |               |
| Subsection 94 Postponement of exercise of rights  | 30/50 pu fine |
| Subsection 95 Effect of negotiated postponement   |               |
| Subsection 96 Postponement by Court   |               |
| Subsection 97 Applications for variation of postponement order  |               |
| <b>Division 4—Enforcement procedures for goods mortgaged</b>  |               |
| Subsection 99 Residential property entry without consent or court order   | 50 pu fine    |
| Subsection 102 Post repo procedures prior to sale   |               |
| Subsection 103 Mortgagor right to nominate purchaser  |               |
| Subsection 104(3) Statement of account post sale  |               |
| <b>Division 6—Mortgagor's remedies</b>  |               |
| Subsection 108 Application to regain possession of mortgaged goods  | 30 pu fine    |
| Subsection 109 Orders for possession  |               |
| <b>Part 7—Related sale contracts</b>  |               |
| <b>Division 4—Termination of related transactions</b>   |               |
| Subsection 136 Termination of linked maintenances services if credit contract terminated  | 50 pu fine    |
| <b>Part 8—Related insurance contracts</b>   |               |
| Subsection 143 Require debtor or guarantor to take out insurance or with particular insurance                                       | 100 pu fine   |
| Subsection 144 Financing mortgaged property insurance with > 12 coverage  |               |
| Subsection 145 Consumer Credit Insurance commission   |               |
| Subsection 146 Copy of policy if covered by group insurance   |               |
| Subsection 147 Credit related insurance rejection – refund or credit to account   |               |
| Subsection 148 Notice given when credit contract terminated that mortgaged property insurance no longer required by credit provider | 50 pu fine    |
| <b>Part 9—Advertising and related conduct</b>   |               |
| Subsection 153 Interest rate & fee disclosures  | 100 pu fine   |

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| <b>Part 10—Comparison rates</b>  |                                       |
| Subsection 160 Comparison rate mandatory in advertisements containing annual percentage rate   | 100 pu fine                           |
| <b>Part 11—Consumer leases</b>   |                                       |
| Subsection 173 Form  | 100 pu fine                           |
| Subsection 174 Disclosure in lease   | 5,000 pu civil penalty<br>100 pu fine |
| Subsection 174 Copy of lease   | 50 pu fine                            |
| <b>Division 5—Lessor’s obligation to account</b>   |                                       |
| Subsection 175C Ongoing statements of account<br>Subsection 175 D Information required<br>Subsection 175E Statement of amount owing and other matters<br>Subsection 175H End of lease statements | 100 pu fine                           |
| Subsection 175G Disputed accounts  | 50 pu fine                            |
| <b>Division 7—Changes to obligations under consumer leases</b>   |                                       |
| Subsection 177A Changes by agreement   | 100 pu fine                           |
| Subsection 177C Give notice of changes   | 50 pu fine                            |
| <b>Division 8—Repossession, termination and enforcement of consumer leases</b>   |                                       |
| Subsection 178 Repossession notice<br>Subsection 179A Statement of amount payable on termination<br>Subsection 179C Direct debit default notice – first time default                             | 50 pu fine                            |
| <b>Subdivision C—Enforcement of consumer leases</b>  |                                       |
| Subsection 179D Pre-enforcement requirements to be met<br>Subsection 179F Hardship notices & enforcement   | 50 pu fine                            |
| <b>Subdivision D—Postponement of enforcement proceedings</b>   |                                       |
| Subsection 179H Postponement of exercise of rights<br>Subsection 179K Court postponement<br>Subsection 179L Lessor may apply for variation   | 30/50 pu fine                         |
| Subsection 179J Effect of negotiated postponement – notice   | 100 pu fine                           |
| <b>Subdivision E—Enforcement procedures for goods hired under a consumer lease</b>   |                                       |

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| Subsection 179N Entry to residential property for repossession purposes without consent or court order       | 50 pu fine  |
| <b>Part 12 - Miscellaneous</b>   |             |
| <b>Division 2: Documentary Provisions</b>  |             |
| Subsection 184 Legibility and language   | 100 pu fine |
| Subsection 185 Copies of documents when requested  | 30 pu fine  |
| <b>Division 3: General Provisions</b>  |             |
| Subsection 190 Appropriation of payments   | 30 pu fine  |
| Subsection 191 Contracting out effect of Code  | 100 pu fine |
| Subsection 199 Credit provider or lessor, or associate, cannot be agent of debtor etc to enter into contract | 50 pu fine  |

#### AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION ACT – PART 2 - DIVISION 2

|  |                               |
|--|-------------------------------|
| <b>Division 2—Unconscionable conduct and consumer protection in relation to financial services</b> | <b>Non-Compliance Penalty</b> |
| <b>Subdivision BA—Unfair contract terms</b>  |                               |
| All contract terms must be fair and reasonably necessary<br>Unfair contract terms prohibited       | Legal Action -Court judgment  |
| <b>Subdivision C—Unconscionable conduct</b>  |                               |
| Unconscionable conduct prohibited  | Civil Penalty provisions      |