

8 February 2022

Ms Susanne Noack
Senior Manager, Credit & Banking
Australian Securities and Investments Commission
Level 7, 120 Collins Street
MELBOURNE VIC 3000
By email: susanne.noack@asic.gov.au

Dear Ms Noack

ASIC RELIEF FOR SIMPLE ARRANGEMENTS FOLLOWING A CREDIT HARDSHIP NOTICE

The Australian Finance Industry Association (AFIA) appreciates the opportunity to provide feedback on *Consultation Paper 354: ASIC relief for simple arrangements following a hardship notice: [CO 14/41]* ([CP 354](#)).

AFIA notes that [Class Order \[CO 14/41\]](#) is due to expire on 1 March 2022. The class order provides relief to credit providers and lessors from the obligation to provide written notice to consumers about hardship contract variations of 90 days or less (known as 'simple arrangements').

AFIA members believe it is important for customers to be able to access financial hardship assistance when they are experiencing financial difficulties. These arrangements must be suitable to their personal and financial needs and circumstances, ensuring the type of arrangements available appropriately address the situation without imposing unnecessary burden on the customer or the financier as well as ensuing ease of access for the customer via their preferred channel (i.e. how the customer conducts their day-to-day financial affairs).

Many financiers have largely automated the issuance of written notification in accordance with section 73(1) of the National Credit Code whenever an agreement is made to defer payment obligations in response to a hardship notice and/or as part of the ordinary collections processes. However, there remains situations where often minor, last-minute adjustments to the nature or timing of a payment is agreed where there is a possibility that automated notice may not be triggered. For example, this would typically involve agreeing a further short delay of an already rescheduled payment.

A practical example is a customer notifying their financier that they will not be able to make a payment for a few days because their employer hasn't paid them. The financier agrees to permit the payment being delayed and not charging interest and/or late payment fees in this circumstance, and this is flagged on the account. This example is familiar, especially during the COVID-19 global pandemic, where disruptions to customers' employment arrangements have frequently been immediate and unpredictable.

Experiences in the financial services industry and lessons from the COVID-19 global pandemic have shown the importance of the ability for financiers to respond to customers' needs with flexibility and dynamically in a fast-changing environment. The importance of making it easier for customers to have conversations with their financiers and seek variations has never been more obvious than during the pandemic.

AFIA notes that the consequences of the customer not receiving a written notice in such circumstances are limited or insignificant, whereas the penalty consequences for the credit provider or lessor are significant, despite the financier having supported and/or provided additional support to help their customer through difficult times.

Therefore, we believe there is an ongoing role for CO 14/41, especially because the COVID-19 global pandemic is yet to run its course and financiers are being asked to do more to support their customers, whether they are households or businesses, and support our economic recovery. The more tools available to support customers, the better.

AFIA supports the extension of the class order until 1 April 2024 – our members are concerned that their ability to flexibly administer existing financial hardship arrangements, which have been confirmed via notices issued in conformity with section 73(1)), would require review if CO 14/41 was allowed to expire.

AFIA notes that consumer groups have suggested reducing the period from 90 days to 30 days in CO 14/41. Feedback from AFIA members indicates that the types of arrangements that may not trigger an automated notice would involve short-term delays. Even though this would mostly involve only a few days, it could involve an agreement to defer to the next pay cycle, so we believe that 32 days would be more practical if the period is reduced. We also recognise a customer having written notice of the agreed arrangement over 32 days is a useful record and reminder.

AFIA believes there remains a regulatory purpose for CO 14/41, including:

1. Generally, to support flexibility in the types of financial hardship assistance available to customers, specifically short-term, simple, and temporary financial hardship arrangements.
2. Specifically, to provide certainty for financiers to offer a temporary financial hardship arrangement – a promise to pay that doesn't involve a change to the credit contract, but temporary relief from the repayment obligations and/or consequences of a delayed payment – we note ongoing industry consultation with the Australian Retail Credit Association (ARCA), but also lack of consistency in definitions¹, differences in systems to comply with the requirements in s72(4) and s73(1), and pending operationalisation of hardship reporting (from 1 July 2022).
3. Broadly, to promote flexibility in the types of financial hardship assistance beyond those financiers covered by CO 14/41 – we note that industry practices inform customer expectations, and vice versa, so CO 14/41 will inevitably have a broader application across the finance industry.

ASIC can play an important role in providing certainty while there is currently lack of certainty in the credit laws and credit reporting framework. We ask ASIC to also continue to work with Treasury on modernising and simplifying provision of the written confirmation under section 72(4) of the National Credit Code, noting the importance of promoting greater use of electronic and digital provision of notices.

Yours sincerely

Diane Tate
Chief Executive Officer

¹ AFIA believes there remains different interpretations of the potential impact on the terms and conditions of credit contracts, which is one of the factors influencing lack of consistency in definitions. This is interestingly highlighted in the note to para 20 in CP 354: ASIC considers that where a credit provider acknowledges or represents to the consumer that they will not enforce their rights under the contract if the temporary arrangement is complied with, there is likely to be a change to the credit contract for the purpose of the National Credit Code provisions. Conversely, if the credit provider reserves its right to enforce the terms of the contract, notwithstanding a temporary arrangement that allows non-compliance with the contract, it is less likely that the contract has been changed. Extension of CO 14/41 could help the industry and ARCA commence and operationalise hardship reporting.