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Australian
**Small Business and
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Ombudsman

12 May 2017

ASIC Enforcement Review
Financial System Division
The Treasury
Langton Crescent
PARKES ACT 2600

By Email: ASICenforcementreview@treasury.gov.au

Dear Sir/Madam

**SELF-REPORTING OF CONTRAVENTIONS BY FINANCIAL SERVICES AND
CREDIT LICENSEES**

Thank you for the opportunity to make a submission to this ASIC enforcement review into self-reporting of contraventions by financial services and credit licensees.

We strongly support measures to ensure effective enforcement of obligations held by financial services licensees. The obligations on financial services licensees include taking all necessary steps to ensure services are provided efficiently, honestly and fairly; that conflicts of interests are managed; comply with licence conditions, to adequately train and supervise staff; have risk management systems and internal and external dispute resolution for retail clients as well as other obligations.

This office completed an Inquiry into Small Business Loans in December 2016. The findings of the Inquiry identified patterns of unreasonable conduct by a number of financial services licensees and their employees. The cases closely examined in the Small Business Loans Inquiry showed significant impacts to small business and the individuals operating the businesses. In some cases the conduct of financial services licensees resulted in almost catastrophic financial and personal impacts on the businesses showing patterns of conduct that failed to meet community standards of fairness.

We support efforts by ASIC to implement a more effective enforcement system for financial services licensees including the proposals to improve the operation of Section 912D of the *Corporations Act 2001 (Cth)*.

This office considers that the preliminary position reached by the taskforce to adopt an objective test similar to that used in the United Kingdom for determining if a breach is significant is appropriate. This change will significantly decrease the scope

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for large licensees to choose not to report on the basis that any breach is not 'significant' to its business (as it is large). We consider that an objective test will increase self-reporting by licensees. We support the taskforce position to extend self-reporting obligations to employees or representatives of the licensee.

We remain advocates of proactive regulatory measures by ASIC particularly for the conduct of large financial services licensees. There are real and lasting impacts where licensees fail to act within their obligation to 'do all things necessary to ensure that financial services covered by the licence are provided efficiently, honestly and fairly' - section 912A(1)(a). As we learnt through our small business loans inquiry, large financial services licensees can use the imbalance of power in their business relationships to their advantage, often affecting individuals and small businesses. In principle, we also support measures to extend similar regulation to credit licensees; to introduce civil penalties and infringement notices.

Overall, we support measures to ensure compliance with obligations on financial services licensees and measures to ensure legislative requirements are followed and enforced. The financial wellbeing of small businesses, and their owners, is vital for continued growth, investment and innovation in the economy.

We hope these comments assist you and we would be pleased to discuss these matters further with you. Please feel free to contact either myself or Mr James Strachan by telephone 02 6263 1537 or email james.strachan@asbfeo.gov.au.

Yours sincerely,

Anne Scott
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