

12 May 2017



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

Dear Sir / Madam,

Thank you for the opportunity for Pioneer Credit Ltd (Pioneer) to make comment in relation to *ASIC Enforcement Review Position and Consultation Paper 1 Self-reporting of contraventions by financial services and credit licensees* (the Review Paper).

Pioneer Credit Ltd - Introduction & Organisation Background

Pioneer, through its subsidiaries, is an Australian credit licensee. Members of the Pioneer group participate in multiple market segments, but at this time, primarily specialise in acquiring and servicing retail debt portfolios. Founded in 2009, Pioneer is today one of three publicly listed companies participating in the Australian debt acquisition industry.

Pioneer does not participate in activities requiring an Australian Financial Services License at this time; however we have provided comments on issues relating to financial services throughout this submission, given that the Review Paper recommends the creation of equivalent self-reporting obligations for credit licensees as are in place (and being further considered) for financial services.

We have set out below Pioneer's response to a selection of the questions set out in the Review Paper. Please note we have not provided a response to every section posed in the Issues Paper, but rather those particular sections which we see as most applicable for our input.

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- **Position 1: The ‘significance test’ in section 912D of the *Corporations Act 2001* (Cth) should be retained but clarified to ensure that the significance of breaches is determined objectively.**

We support the position that the ‘significance test’ be maintained, in guiding industry participant’s assessment of whether a breach self-reporting obligation is triggered. Given the finite resources of both ASIC and individual industry participants in credit and financial services; it is counter-productive for either party to invest resource in lodging and responding to reports relating to minor or relatively insignificant breaches.

Where dissatisfied with their experience, consumers have existing redress under the internal dispute resolution and internal compensation arrangements of credit & financial service licensees. Additionally consumers have the ability to refer any grievance to external dispute resolution, which has a range of sanctioning powers where applicable.

Given that these existing mechanisms provide substantial protection to consumers & channels for addressing more minor breaches (or potential breaches), we submit that any obligation to self-report a breach to ASIC should be limited to breaches which may cause significant consumer detriment and/or reflect major systemic failure/s in a licensee’s ability to meet its statutory obligations.

In our view the existing factors set out in 912(D)(1)(b) for assessment of whether a breach is significant are conceptually sound, but any amendment which could minimise ambiguity of application would be beneficial. We would support the suggested amendment in section 25 of the Review Paper.

- **Position 2: The obligation for licensees to report should expressly include significant breaches or other significant misconduct by an employee or representative.**

We do not object to amendment which would expressly specify that misconduct by an employee or representative should be self-reported, provided that the requirement to only self-report significant breaches is preserved in this context.

- **Position 3: Breach to be reported within 10 business days from the time the obligation to report arises**

While we acknowledge the necessity of timely reporting to allow ASIC to be suitably responsive to potential concerns, we are concerned that, in some cases, 10 business days may not be sufficient time to comprehensively investigate, document and report on an actual or likely breach.

We suggest that a multi-staged process to the reporting obligation may strike a better balance i.e. a licensee is obliged to provide a basic notification to ASIC within 10 days of becoming aware of an actual or likely breach, but (where required) has the option of seeking further time to provide a full report.

- **Position 6: Introduce an infringement notice regime for failure to report breaches as and when required.**

We support the introduction of greater flexibility for ASIC in its ability to respond to a failure on the part of a licensee to self-report a reportable breach.

Where there is a compelling case to show that a licensee's failure to self-report was not an attempt on the licensee's part to circumvent its obligations, we believe an infringement notice may be an appropriate response, where ASIC believes that some formal action is necessary.

- **Position 7: Encourage a co-operative approach where licensees report breaches, suspected or potential breaches or employee or representative misconduct at the earliest opportunity.**

We strongly support the position that ASIC adopt a co-operative approach where licensees report breaches or suspected breaches at the earliest opportunity.

To this end we support the proposal set out in section 66 of the Review Paper, which suggests that a formal provision could be implemented, expressly allowing ASIC to not take action in respect of licensees that self-report.

If ASIC were to instead take an oppositional approach in dealing with those licensees which in good faith, self-report applicable breaches on a timely basis, then those licensees will be

disproportionately penalised, particularly in light of the fact that unscrupulous market participants - whose activities are likely of most danger to consumers – will conversely choose not to self-report.

- **Position 9: Introduce a self-reporting regime for credit licensees equivalent to the regime for AFS licensees under section 912D of the Corporations Act**

Credit licensees constitute a broader range of different sized businesses, ranging from major banking institutions right through to small sole traders. As well there is broad range of business models operating under the credit licensing regime. We question whether there is a compelling requirement to amend the credit legislation, whereby this wide gambit of credit licensees would all be subject to an equivalent regime to AFS licenses under section 912D of the Corporations Act.

We respectfully suggest that any reform would benefit from great range of nuance; for example the range of credit activities that can be authorised under an Australian Credit License should be individually considered, and the same regime should not necessarily be applied to all. The administrative burden of meeting additional compliance requirements will be significant for most businesses, and as such we submit that the Taskforce should not apply a 'broad-brush' approach to its recommendations.

If the Taskforce is minded to recommend some form of amendment to the credit legislation for alignment with section 912D of the Corporations Act, we would recommend that:

- The Annual Compliance reporting obligations engaged in by credit licensees be abridged to eliminate duplication of obligations under any new regime; &
- Credit licensees are provided a significant lead-in time before any changes take effect, with accompanying regulatory guidance, around what the new obligations mean in a practical context.

- **Position 12: Require annual publication by ASIC, of breach report data for licensees.**

We concur with the Taskforce's view that the publication of individual business names in ASIC reporting would not be a fair or beneficial outcome, particularly given that licensees are required to report both actual breaches and likely breaches.

Conversely we would not object to the publication of aggregated breach data at industry or licensee level.

Conclusion

We hope the views expressed in this submission are useful to the review.

Should any further information be required in relation to this submission, please do not hesitate to contact the writer on 08 9323 5006 or rbrown@pioneercredit.com.au.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Richard Brown', with a long horizontal flourish extending to the right.

Richard Brown
Senior Manger Compliance