

EXPOSURE DRAFT

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Inserts for
**Financial Sector Reform (Hayne Royal
Commission Response—Protecting
Consumers (2020 Measures)) Bill 2020:
FSRC rec 1.6, 2.7, 2.8, 2.9 and 7.2
(Reference checking and information
sharing, breach reporting and
remediation)**

Commencement information

Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Schedule [1.6 and 2.7]	1 July 2020.	1 July 2020
2. Schedule [1.6, 2.8, 2.9 and 7.2]	1 July 2020.	1 July 2020

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Schedule [1.6 and 2.7]—Reference Checking and Information Sharing Protocol

Corporations Act 2001

1 Section 910A

Insert:

Reference Checking and Information Sharing Protocol means
the protocol determined by ASIC under subsection 912A(3A).

2 Before subsection 912A(1)

Insert:

General obligations

3 After paragraph 912A(1)(cb)

Insert:

(cc) comply with the Reference Checking and Information
Sharing Protocol in relation to:

- (i) if the licensee is an individual to whom the Protocol
applies—the licensee; and
- (ii) if a former, current or prospective representative of the
licensee is an individual to whom the Protocol applies—
the representative; and

4 Before subsection 912A(2)

Insert:

Dispute resolution system

5 After subsection 912A(3)

Insert:

Reference Checking and Information Sharing Protocol

(3A) ASIC may, by legislative instrument, determine a protocol for:

- (a) sharing information about any or all of the following:
 - (i) a financial services licensee who is an individual;

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- 1 (ii) individuals who are former, current or prospective
2 representatives of a financial services licensee;
3 by that licensee with another financial services licensee; and
4 (b) sharing information about any or all of the following:
5 (i) a financial services licensee who is an individual;
6 (ii) individuals who are former, current or prospective
7 representatives of a financial services licensee;
8 by that licensee with a licensee within the meaning of the
9 *National Consumer Credit Protection Act 2009*; and
10 (c) keeping and retaining records of information shared, and the
11 circumstances under which the information is shared.
- 12 (3B) The Reference Checking and Information Sharing Protocol must
13 not:
14 (a) require or permit personal information (within the meaning
15 of the *Privacy Act 1988*) to be shared, other than with the
16 consent of the individual to whom the information relates; or
17 (b) require information to be shared in relation to conduct that
18 occurred more than 5 years before the information is shared.
- 19 *Application of Reference Checking and Information Sharing*
20 *Protocol*
- 21 (3C) The Reference Checking and Information Sharing Protocol applies
22 to an individual mentioned in subparagraph (3A)(a)(i) or (ii) if
23 there are reasonable grounds to suspect that the individual will
24 provide personal advice to retail clients about relevant financial
25 products if the individual becomes a representative of the other
26 financial services licensee mentioned in paragraph (3A)(a).
- 27 (3D) The Reference Checking and Information Sharing Protocol applies
28 to an individual mentioned in subparagraph (3A)(b)(i) or (ii) if
29 there are reasonable grounds to suspect that, if the individual
30 becomes a representative of the licensee mentioned in
31 paragraph (3A)(b), the individual will:
32 (a) provide credit assistance in relation to credit contracts
33 secured by mortgages over residential property; and
34 (b) be a mortgage broker or a director, employee or agent of a
35 mortgage broker.
- 36 (3E) Expressions used in subsection (3D) that are also used in the
37 *National Consumer Credit Protection Act 2009* (other than
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1 Reference Checking and Information Sharing Protocol) have the
2 same meaning in that subsection as they have in that Act.

3 *Qualified privilege*

4 (3F) A person has qualified privilege in respect of information shared in
5 accordance with the Reference Checking and Information Sharing
6 Protocol about an individual to whom the Protocol applies.

7 (3G) A person who has qualified privilege under subsection (3F) in
8 respect of conduct is also not liable for any action based on breach
9 of confidence in relation to that conduct.

10 **6 Before subsection 912A(4)**

11 Insert:

12 *Adequate resources to provide financial services—APRA regulated*
13 *bodies*

14 **7 Before subsection 912A(5)**

15 Insert:

16 *Adequate risk management systems—APRA regulated bodies*

17 **8 Before subsection 912A(5A)**

18 Insert:

19 *Civil penalty provision*

20 **9 Subsection 912A(5A)**

21 After “paragraph (1)(a), (aa), (ca),”, insert “(cc),”.

22 **10 Before subsection 912A(6)**

23 Insert:

24 *Definitions*

25 **11 In the appropriate position in Chapter 10**

26 Insert:

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1 **Part 10.42—Application provisions relating to**
2 **Schedule [1.6 and 2.7] to the Financial**
3 **Sector Reform (Hayne Royal Commission**
4 **Response—Protecting Consumers (2020**
5 **Measures)) Act 2020**
6

7 **1669 Application of Reference Checking and Information Sharing**
8 **Protocol**

9 The amendments made by Schedule [1.6 and 2.7] to the *Financial*
10 *Sector Reform (Hayne Royal Commission Response—Protecting*
11 *Consumers (2020 Measures)) Act 2020* apply in relation to
12 information shared on or after 1 April 2021.

13 ***National Consumer Credit Protection Act 2009***

14 **12 Subsection 5(1)**

15 Insert:

16 ***Reference Checking and Information Sharing Protocol*** means
17 the protocol determined by ASIC under subsection 47(3A).

18 **13 After paragraph 47(1)(e)**

19 Insert:

20 (ea) comply with the Reference Checking and Information
21 Sharing Protocol in relation to:

22 (i) if the licensee is an individual to whom the Protocol
23 applies—the licensee; and

24 (ii) if a former, current or prospective representative of the
25 licensee is an individual to whom the Protocol applies—
26 the representative; and

27 **14 After subsection 47(3)**

28 Insert:

29 ***Reference Checking and Information Sharing Protocol***

30 (3A) ASIC may, by legislative instrument, determine a protocol for:

31 (a) sharing information about any or all of the following:

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- 1 (i) a licensee who is an individual;
2 (ii) individuals who are former, current or prospective
3 representatives of a licensee;
4 by that licensee with another licensee; and
5 (b) sharing information about any or all of the following:
6 (i) a licensee who is an individual;
7 (ii) individuals who are former, current or prospective
8 representatives of a licensee;
9 by that licensee with a financial services licensee within the
10 meaning of the *Corporations Act 2001*; and
11 (c) keeping and retaining records of information shared, and the
12 circumstances under which that information is shared.
- 13 (3B) The Reference Checking and Information Sharing Protocol must
14 not:
15 (a) require or permit personal information (within the meaning
16 of the *Privacy Act 1988*) to be shared, other than with the
17 consent of the individual to whom the information relates; or
18 (b) require information to be shared in relation to conduct that
19 occurred more than 5 years before the information is shared.
- 20 *Application of Reference Checking and Information Sharing*
21 *Protocol*
- 22 (3C) The Reference Checking and Information Sharing Protocol applies
23 to an individual mentioned in subparagraph (3A)(a)(i) or (ii) if
24 there are reasonable grounds to suspect that, if the individual
25 becomes a representative of the licensee mentioned in
26 paragraph (3A)(a), the individual will:
27 (a) provide credit assistance in relation to credit contracts
28 secured by mortgages over residential property; and
29 (b) be a mortgage broker or a director, employee or agent of a
30 mortgage broker.
- 31 (3D) The Reference Checking and Information Sharing Protocol applies
32 to an individual mentioned in subparagraph (3A)(b)(i) or (ii) if
33 there are reasonable grounds to suspect that the individual will
34 provide personal advice to retail clients about relevant financial
35 products if the individual becomes a representative of the financial
36 services licensee mentioned in paragraph (3A)(b).
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1 (3E) Expressions used in subsection (3D) that are also used in the
2 *Corporations Act 2001* (other than Reference Checking and
3 Information Sharing Protocol) have the same meaning in that
4 subsection as they have in that Act.

5 *Qualified privilege*

6 (3F) A person has qualified privilege in relation to information shared in
7 accordance with the Reference Checking and Information Sharing
8 Protocol about an individual to whom the Protocol applies.

9 (3G) A person who has qualified privilege under subsection (3F) in
10 respect of conduct is also not liable for any action based on breach
11 of confidence in relation to that conduct.

12 **15 Subsection 47(4)**

13 After “paragraph (1)(a), (b), (e),”, insert “(ea),”.

14 *National Consumer Credit Protection (Transitional and* 15 *Consequential Provisions) Act 2009*

16 **16 In the appropriate position**

17 Insert:

18 **Schedule 15—Application provisions relating** 19 **to Schedule [1.6 and 2.7] to the** 20 **Financial Sector Reform (Hayne Royal** 21 **Commission Response—Protecting** 22 **Consumers (2020 Measures)) Act 2020** 23

24 **1 Application of Reference Checking and Information Sharing** 25 **Protocol**

26 The amendments made by Schedule [1.6 and 2.7] to the *Financial*
27 *Sector Reform (Hayne Royal Commission Response—Protecting*
28 *Consumers (2020 Measures)) Act 2020* apply in relation to information
29 shared on or after 1 April 2021.

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Schedule [1.6, 2.8, 2.9 and 7.2]—Breach reporting and remediation

Corporations Act 2001

1 Paragraph 601FC(1)(I)

Repeal the paragraph.

2 Section 910A

Insert:

core obligation has the meaning given by subsection 912D(3).

reasonably knows has the meaning given by section 912DAA.

reportable situation has the meaning given by section 912D.

3 Before section 912A

Insert:

Subdivision A—General obligations

4 Before section 912C

Insert:

Subdivision B—Providing information and assistance to ASIC

5 Section 912D

Repeal the section, substitute:

912D What are *reportable situations*?

(1) There is a *reportable situation* in relation to a financial services licensee if:

(a) one of the following is satisfied:

(i) the financial services licensee or a representative of the financial services licensee has breached a core obligation;

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- 1 (ii) the financial services licensee or a representative of the
2 financial services licensee is likely to breach a core
3 obligation;
- 4 (iii) the financial services licensee has commenced an
5 investigation into whether the financial services licensee
6 or a representative of the financial services licensee has
7 breached a core obligation; and
- 8 (b) the breach or likely breach is significant.
- 9 (2) There is also a *reportable situation* in relation to a financial
10 services licensee if:
- 11 (a) in the course of providing a financial service, the financial
12 services licensee or a representative of the financial services
13 licensee has engaged in conduct constituting gross
14 negligence; or
- 15 (b) the financial services licensee or a representative of the
16 financial services licensee has committed serious fraud; or
- 17 (c) any other circumstances prescribed by the regulations for the
18 purposes of this paragraph exist.
- 19 (3) Each of the following is a *core obligation*:
- 20 (a) an obligation under section 912A or 912B, other than the
21 obligation under paragraph 912A(1)(c);
- 22 (b) the obligation under paragraph 912A(1)(c), so far as it relates
23 to provisions of this Act or the ASIC Act referred to in
24 paragraphs (a), (b), (ba) and (c) of the definition of *financial*
25 *services law* in section 761A;
- 26 (c) in relation to financial services, other than traditional trustee
27 company services provided by a licensed trustee company—
28 the obligation under paragraph 912A(1)(c), so far as it relates
29 to Commonwealth legislation that is covered by
30 paragraph (d) of that definition and that is specified in
31 regulations made for the purposes of this paragraph;
- 32 (d) in relation to traditional trustee company services provided
33 by a licensed trustee company—the obligation under
34 paragraph 912A(1)(c), so far as it relates to Commonwealth,
35 State or Territory legislation, or a rule of common law or
36 equity, that is covered by paragraph (d) or (e) of that
37 definition;
- 38 (e) in relation to a financial services licensee that is a responsible
39 entity of a registered scheme—an obligation under
40 section 601FC, 601FD or 601FE.
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- 1 (4) For the purposes of this section, a person is *likely to breach* a core
2 obligation if, and only if, the person is no longer able to comply
3 with the obligation.
- 4 (5) For the purposes of this section, a breach or likely breach of a core
5 obligation is taken to be *significant* if:
- 6 (a) the breach is punishable on conviction by a penalty that may
7 include imprisonment for a maximum period of:
- 8 (i) if the offence involves dishonesty—3 months or more;
9 or
- 10 (ii) in any other case—12 months or more; or
- 11 (b) the breach constitutes a contravention of a civil penalty
12 provision; or
- 13 (c) the breach results, or is likely to result, in loss or damage to
14 clients or, in the case of a managed investment scheme,
15 members of the scheme; or
- 16 (d) any other circumstances prescribed by the regulations for the
17 purposes of this paragraph exist.
- 18 (6) Otherwise, for the purposes of this section, a breach or likely
19 breach of a core obligation is *significant* having regard to the
20 following:
- 21 (a) the number or frequency of similar previous breaches;
- 22 (b) the impact of the breach or likely breach on the financial
23 services licensee’s ability to provide financial services
24 covered by the licence;
- 25 (c) the extent to which the breach or likely breach indicates that
26 the financial services licensee’s arrangements to ensure
27 compliance with those obligations are inadequate;
- 28 (d) any other matters prescribed by regulations made for the
29 purposes of this paragraph.

30 **912DAA When does a person *reasonably know* of a circumstance?**

- 31 (1) In this Part, a person *reasonably knows* of a circumstance if:
- 32 (a) the person is aware that the circumstance exists or will exist
33 in the ordinary course of events; or
- 34 (b) each of the following is satisfied:
- 35 (i) the person is aware of a substantial risk that the
36 circumstance exists or will exist;

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1 (ii) having regard to the circumstances known to the person,
2 it is unjustifiable to take the risk.

3 (2) In subsection (1), the question whether taking a risk is unjustifiable
4 is one of fact.

5 **912DAB Obligation to lodge a report—reportable situations in** 6 **relation to the financial services licensee**

7 *Reporting a reportable situation to ASIC*

8 (1) A financial services licensee must lodge a report with ASIC in
9 accordance with this section if there are reasonable grounds to
10 believe that a reportable situation has arisen in relation to the
11 financial services licensee.

12 Note: Failure to comply with this subsection is an offence (see
13 subsection 1311(1)).

14 *Reporting the outcome of an investigation to ASIC*

15 (2) A financial services licensee must lodge a report with ASIC in
16 accordance with this section if:

17 (a) the financial services licensee has commenced an
18 investigation into whether the financial services licensee or a
19 representative of the financial services licensee has breached
20 a core obligation; and

21 (b) the financial services licensee is obliged under subsection (1)
22 to report the investigation; and

23 (c) the investigation discloses no reasonable grounds to believe
24 that the financial services licensee or a representative of the
25 financial services licensee has breached the core obligation.

26 Note: Failure to comply with this subsection is an offence (see
27 subsection 1311(1)).

28 *Report must be in the prescribed form*

29 (3) A report under this section must be lodged with ASIC in writing in
30 the prescribed form.

31 *Period within which report must be lodged*

32 (4) A report under this section must be lodged with ASIC within 30
33 days after the financial services licensee first reasonably knows

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1 that there are reasonable grounds to believe the reportable situation
2 has arisen.

3 Note: **Reasonably knows** is defined in section 912DAA.

4 (5) However, if:

5 (a) the financial services licensee has commenced an
6 investigation into whether the financial services licensee or a
7 representative of the financial services licensee has breached
8 a core obligation; and

9 (b) the financial services licensee is obliged under subsection (1)
10 to report the investigation; and

11 (c) the investigation discloses either that:

12 (i) there are reasonable grounds to believe that the financial
13 services licensee or a representative of the financial
14 services licensee has breached the core obligation; or

15 (ii) there are no reasonable grounds to believe that the
16 financial services licensee or a representative of the
17 financial services licensee has breached the core
18 obligation;

19 the report must be lodged within 10 days after the financial
20 services licensee first reasonably knows the circumstance
21 mentioned in subparagraph (c)(i) or (ii) exists.

22 Note 1: **Reasonably knows** is defined in section 912DAA.

23 Note 2: Under subsection (4), the financial services licensee is obliged to
24 report the existence of the investigation within 30 days after the
25 licensee first reasonably knows that there are reasonable grounds to
26 believe that that reportable situation has arisen.

27 *If report is received by APRA*

28 (6) A report that a financial services licensee is required to lodge under
29 this section in relation to a reportable situation is taken to have
30 been lodged with ASIC if:

31 (a) the licensee is a body regulated by APRA; and

32 (b) the licensee has given a report to APRA that contains all of
33 the information that is required in a report under this section
34 in relation to the reportable situation.

35 (7) Subsection (1) does not apply to a financial services licensee that is
36 a body regulated by APRA in relation to a reportable situation if:

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- 1 (a) the auditor or actuary of the licensee gives APRA a written
2 report about a matter to which the reportable situation relates;
3 and
4 (b) the report is given before, or within 10 business days after,
5 the licensee first reasonably knows that there are reasonable
6 grounds to believe that the reportable situation has arisen.

7 Note: *Reasonably knows* is defined in section 912DAA.

8 *Civil penalty provision*

- 9 (8) A person contravenes this subsection if the person contravenes
10 subsection (1) or (2).

11 Note: This subsection is a civil penalty provision (see section 1317E).

12 **912DAC Obligation to lodge a report—reportable situations in** 13 **relation to other financial services licensees**

14 *Reporting a reportable situation to ASIC*

- 15 (1) A financial services licensee (the *reporting licensee*) must lodge a
16 report with ASIC in accordance with this section if:
17 (a) there are reasonable grounds to suspect that a reportable
18 situation has arisen in relation to another financial services
19 licensee; and
20 (b) an individual who is either:
21 (i) the other financial services licensee; or
22 (ii) if, under Division 6, the other financial services licensee
23 is responsible for conduct of a representative of the
24 other financial services licensee that forms part of the
25 reportable situation—the representative;
26 provides personal advice to retail clients in relation to
27 relevant financial products; and
28 (c) the individual has engaged in conduct that forms part of the
29 reportable situation (whether in the course of providing
30 personal advice to retail clients in relation to relevant
31 financial products or otherwise).

32 Note: Failure to comply with this subsection is an offence (see
33 subsection 1311(1)).

34 *Report must be in the prescribed form*

- 35 (2) The report must be lodged in writing in the prescribed form.
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1 *Period within which report must be lodged*

2 (3) The report must be lodged with ASIC within 30 days after the
3 reporting licensee first reasonably knows that there are reasonable
4 grounds to suspect that the reportable situation has arisen.

5 Note: *Reasonably knows* is defined in section 912DAA.

6 *If report is received by APRA*

7 (4) A report that a financial services licensee is required to lodge under
8 this section in relation to a reportable situation is taken to have
9 been lodged with ASIC if:

10 (a) the licensee is a body regulated by APRA; and

11 (b) the licensee has given a report to APRA that contains all of
12 the information that is required in a report under this section
13 in relation to the reportable situation.

14 (5) This section does not apply to a financial services licensee that is a
15 body regulated by APRA in relation to a reportable situation if:

16 (a) the auditor or actuary of the licensee gives APRA a written
17 report about a matter to which the reportable situation relates;
18 and

19 (b) the report is given before, or within 10 business days after,
20 the licensee first reasonably knows that there are reasonable
21 grounds to suspect that the reportable situation has arisen.

22 Note: *Reasonably knows* is defined in section 912DAA.

23 *If the reportable situation already reported to ASIC*

24 (6) Subsection (1) does not apply in relation to a reportable situation if
25 there are reasonable grounds to believe that ASIC is aware of:

26 (a) the existence of the reportable situation; and

27 (b) all of the information that is required in a report under this
28 section in relation to the reportable situation.

29 *A copy of the report must be given to the other financial services
30 licensee*

31 (7) The reporting licensee must give a copy of any report that the
32 reporting licensee is required to lodge with ASIC under
33 subsection (1) to the other financial services licensee within 30
34 days after the reporting licensee first reasonably knows that there

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1 are reasonable grounds to suspect that the reportable situation has
2 arisen.

3 Note 1: *Reasonably knows* is defined in section 912DAA.

4 Note 2: Failure to comply with this subsection is an offence (see
5 subsection 1311(1)).

6 *Civil penalty provision*

7 (8) A person contravenes this subsection if the person contravenes
8 subsection (1) or (7).

9 Note: This subsection is a civil penalty provision (see section 1317E).

10 **912DAD Obligation to give notice—participants in licensed market** 11 **or licensed CS facility**

12 (1) A financial services licensee must give written notice to ASIC in
13 accordance with this section if the licensee becomes a participant
14 in a licensed market or a licensed CS facility, or ceases to be such a
15 participant.

16 Note: Failure to comply with this subsection is an offence (see
17 subsection 1311(1)).

18 (2) The notice must:

19 (a) say when the event happened and identify the market or
20 facility; and

21 (b) be in the prescribed form.

22 (3) The notice must be given as soon as practicable after the event
23 happened.

24 (4) A person contravenes this subsection if the person contravenes
25 subsection (1).

26 Note: This subsection is a civil penalty provision (see section 1317E).

27 **912DAE ASIC must publish details of certain reports**

28 (1) ASIC must, for each financial year, publish information about:

29 (a) reports lodged with ASIC during the financial year under
30 section 912DAB in relation to reportable situations of the
31 kind mentioned in subparagraph 912D(1)(a)(i) or (ii)
32 (breaches and likely breaches of core obligations); and

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- 1 (b) reports lodged with APRA during the financial year, as
2 described in subsections 912DAB(6) and (7), in relation to
3 reportable situations of the kind mentioned in subparagraph
4 912D(1)(a)(i) or (ii) (breaches and likely breaches of core
5 obligations); and
6 (c) the entities in relation to which those reports are lodged with
7 ASIC or APRA.
- 8 (2) The information must:
9 (a) be published within 4 months after the end of the financial
10 year; and
11 (b) be published on ASIC’s website; and
12 (c) include the information (if any) prescribed by the regulations,
13 which may include personal information (within the meaning
14 of the *Privacy Act 1988*) in relation to a financial services
15 licensee who is an individual; and
16 (d) if the regulations prescribe how the information is to be
17 organised—be organised in accordance with the regulations.
- 18 (3) The regulations may prescribe circumstances in which information
19 need not be included in the information published by ASIC under
20 this section.
- 21 (4) ASIC may correct any error in, or omission from, information
22 published under this section.

23 **6 Before section 912F**

24 Insert:

25 **Subdivision C—Notifying and remediating clients affected by** 26 **reportable situations**

27 **912EA Reporting to clients affected by a reportable situation**

28 *Notifying an affected client of a reportable situation*

- 29 (1) A financial services licensee must take reasonable steps to notify a
30 person (the ***affected client***) of a reportable situation in accordance
31 with this section if:
32 (a) the licensee, or a representative of the licensee, provides or
33 has provided personal advice to the affected client as a retail
34 client in relation to a relevant financial product; and
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- 1 (b) there are reasonable grounds to believe that the reportable
2 situation has arisen in relation to the licensee as mentioned
3 in:
4 (i) subparagraph 912D(1)(a)(i) and paragraph 912D(1)(b)
5 (significant breach of a core obligation); or
6 (ii) subsection 912D(2) (gross negligence or serious fraud);
7 and
8 (c) there are reasonable grounds to suspect that:
9 (i) the affected client has suffered or will suffer loss or
10 damage as a result of the reportable situation; and
11 (ii) the affected client has a legally enforceable right to
12 recover the loss or damage from the financial services
13 licensee.
14 Note: Failure to comply with this subsection is an offence (see
15 subsection 1311(1)).

16 *Form and period for giving notice*

- 17 (2) A notice under this section must be given:
18 (a) in writing; and
19 (b) if ASIC has approved the form in which the notice must be
20 given—in the approved form; and
21 (c) within 30 days after the licensee first reasonably knows of
22 the matters mentioned in paragraphs (1)(a), (b) and (c).
23 Note: *Reasonably knows* is defined in section 912DAA.

24 *Civil penalty provision*

- 25 (3) A person contravenes this subsection if the person contravenes
26 subsection (1).
27 Note: This subsection is a civil penalty provision (see section 1317E).

28 **912EB Obligation to investigate reportable situations that may** 29 **affect clients**

30 *Obligation to investigate*

- 31 (1) A financial services licensee must conduct an investigation into a
32 reportable situation in accordance with this section if:

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- 1 (a) the licensee, or a representative of the licensee, provides or
2 has provided personal advice to a person as a retail client (the
3 ***affected client***) in relation to a relevant financial product; and
4 (b) there are reasonable grounds to believe that the reportable
5 situation has arisen in relation to the licensee as mentioned
6 in:
7 (i) subparagraph 912D(1)(a)(i) and paragraph 912D(1)(b)
8 (significant breach of a core obligation); or
9 (ii) subsection 912D(2) (gross negligence or serious fraud);
10 and
11 (c) there are reasonable grounds to suspect that:
12 (i) the affected client has suffered or will suffer loss or
13 damage as a result of the reportable situation; and
14 (ii) the affected client has a legally enforceable right to
15 recover the loss or damage from the financial services
16 licensee.
17 Note: Failure to comply with this subsection is an offence (see
18 subsection 1311(1)).

19 *Period within which investigation must be commenced*

- 20 (2) The investigation must be commenced within 30 days after the
21 financial services licensee first reasonably knows of the matters
22 mentioned in paragraphs (1)(a), (b) and (c).
23 Note: ***Reasonably knows*** is defined in section 912DAA.

24 *Matters to be considered in the investigation*

- 25 (3) In conducting the investigation, the financial services licensee
26 must:
27 (a) identify the conduct that gave rise to the reportable situation;
28 and
29 (b) quantify the loss or damage that there are reasonable grounds
30 to believe:
31 (i) the affected client has suffered or will suffer as a result
32 of the reportable situation; and
33 (ii) the affected client has a legally enforceable right to
34 recover from the financial services licensee; and
35 (c) do anything else prescribed by the regulations for the
36 purposes of this paragraph.
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Completing the investigation

- (4) The investigation must be completed as soon as is reasonably practicable after it is commenced.

Notifying affected client

- (5) The financial services licensee must take reasonable steps to notify the affected client of the outcome of the investigation:
- (a) in writing; and
 - (b) if ASIC has approved the form in which the notice must be given—in the approved form; and
 - (c) within 10 days after the completion of the investigation.

Note: Failure to comply with this subsection is an offence (see subsection 1311(1)).

Compensating the affected client for loss or damage

- (6) If, after the investigation is completed, there are reasonable grounds to believe that:
- (a) the affected client has suffered or will suffer loss or damage as a result of the reportable situation; and
 - (b) the affected client has a legally enforceable right to recover the loss or damage from the financial services licensee;
- the financial services licensee must take reasonable steps to pay the affected client an amount equal to the loss or damage within 30 days after the investigation is completed.

Note: Failure to comply with this subsection is an offence (see subsection 1311(1)).

Civil penalty provision

- (7) A person contravenes this subsection if the person contravenes subsection (1), (5) or (6).

Note: This subsection is a civil penalty provision (see section 1317E).

Nothing affects right of affected client to pursue legally enforceable rights

- (8) Nothing in this section affects any legally enforceable right of the affected client to recover loss or damage that the affected client suffers, or will suffer, as a result of a reportable situation.

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1 (9) However, a court may take into account the amount paid by the
2 financial services licensee under this section when quantifying the
3 amount of compensation (if any) to be paid by the financial
4 services licensee in relation to that loss or damage.

5 **912EC Obligation to keep records of compliance**

6 (1) A financial services licensee must keep records sufficient to enable
7 the licensee's compliance with this Subdivision to be readily
8 ascertained.

9 Note 1: Failure to comply with this subsection is an offence: see
10 subsection 1311(1).

11 Note 2: For preservation of records, see section 1101C.

12 (2) The regulations may specify records that the financial services
13 licensee must keep as part of the obligation in subsection (1).

14 **Subdivision D—Miscellaneous**

15 **7 Subsection 1317E(3) (table item dealing with** 16 **subsection 912D(3))**

17 Repeal the item.

18 **8 In the appropriate position in subsection 1317E(3)**

19 Insert:

subsection 912DAB(8)	failure by a financial services licensee to report to ASIC a reportable situation in relation to the licensee, or the outcome of an investigation	uncategorised
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subsection 912DAC(8)	failure by a financial services licensee to report to ASIC a reportable situation in relation to another financial services licensee, or to give a copy of the report to the other financial services licensee	uncategorised
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subsection 912DAD(4)	failure by a financial services licensee to notify ASIC that the licensee has become, or ceased to be, a participant in a licensed market or a licensed CS facility	uncategorised
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subsection 912EA(3)	failure by a financial services licensee to notify an affected client of a reportable situation	uncategorised
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subsection 912EB(7) failure by a financial services licensee uncategoryed
to investigate a reportable situation,
notify an affected client of the outcome
of the investigation or compensate an
affected client

1 **9 In the appropriate position in Chapter 10**

2 Insert:

3 **Part 10.43—Application and transitional provisions**
4 **relating to Schedule [1.6, 2.8, 2.9 and 7.2] to**
5 **the Financial Sector Reform (Hayne Royal**
6 **Commission Response—Protecting**
7 **Consumers (2020 Measures)) Act 2020**
8

9 **1670 Definitions**

10 In this Part:

11 *amending Schedule* means Schedule [1.6, 2.8, 2.9 and 7.2] to the
12 *Financial Sector Reform (Hayne Royal Commission Response—*
13 *Protecting Consumers (2020 Measures)) Act 2020.*

14 **1670A Continued application of paragraph 601FC(1)(l) and**
15 **section 912D**

16 (1) Despite the repeal of paragraph 601FC(1)(l) by item 1 of the
17 amending Schedule, that paragraph (as in force immediately before
18 1 July 2020) continues to apply in relation to breaches that occur
19 before 1 April 2021.

20 (2) Despite the repeal of section 912D by item 5 of the amending
21 Schedule:

22 (a) subsections 912D(1) to (1D) and subsection 912D(3) (to the
23 extent that it relates to subsections 912D(1) to (1D)), as in
24 force immediately before 1 July 2020, continue to apply in
25 relation to breaches or likely breaches that occur before
26 1 April 2021; and

27 (b) subsection 912D(2) and subsection 912D(3) (to the extent
28 that it relates to subsection 912D(2)), as in force immediately

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1 before 1 July 2020, continue to apply in relation to financial
2 services licensees who become participants, or cease to be
3 participants, in a licensed market or a licensed CS facility
4 before 1 April 2021.

5 **1670B Reportable situations to which sections 912DAB and 912DAC**
6 **will apply**

7 Sections 912DAB and 912DAC, as inserted by item 5 of the
8 amending Schedule, apply in relation to reportable situations
9 arising on or after 1 April 2021.

10 **1670C Application of section 912DAD**

11 Section 912DAD, as inserted by item 5 of the amending Schedule,
12 applies if a financial services licensee becomes, or ceases to be, a
13 participant in a licensed market or a licensed CS facility on or after
14 1 April 2021.

15 **1670D Application of ASIC's obligations to publish information**
16 **under section 912DAE**

17 Section 912DAE, as inserted by item 5 of the amending Schedule,
18 applies in relation to financial years ending on or after 30 June
19 2021.

20 **1670E Application of provisions dealing with notifying and**
21 **compensating a person affected by a reportable situation**

22 Subdivision C of Division 3 of Part 7.6, as inserted by item 6 of the
23 amending Schedule, applies in relation to reportable situations
24 arising on or after 1 April 2021.

25 **10 Schedule 3 (table items dealing with**
26 **subsections 912D(1B) and 912D(2))**

27 Repeal the items.

28 **11 In the appropriate position in Schedule 3**

29 Insert:

Subsection 912DAB(1)	2 years imprisonment
Subsection 912DAB(2)	2 years imprisonment
Subsection 912DAC(1)	2 years imprisonment

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Subsection 912DAC(7)	2 years imprisonment
Subsection 912DAD(1)	1 year imprisonment
Subsection 912EA(1)	2 years imprisonment
Subsection 912EB(1)	2 years imprisonment
Subsection 912EB(5)	2 years imprisonment
Subsection 912EB(6)	2 years imprisonment
Subsection 912EC(1)	5 years imprisonment

1 ***National Consumer Credit Protection Act 2009***

2 **12 Subsection 5(1)**

3 Insert:

4 *core obligation* has the meaning given by subsection 50A(3).

5 *reportable situation* has the meaning given by section 50A.

6 **13 Before section 47**

7 Insert:

8 **Subdivision A—General obligations**

9 **14 Before section 49**

10 Insert:

11 **Subdivision B—Providing information and assistance to ASIC**

12 **15 After section 50**

13 Insert:

14 **50A What are *reportable situations*?**

15 (1) There is a *reportable situation* in relation to a licensee if:

16 (a) one of the following is satisfied:

17 (i) the licensee or a representative of the licensee has
18 breached a core obligation;

19 (ii) the licensee or a representative of the licensee is likely
20 to breach a core obligation;

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-
- 1 (iii) the licensee has commenced an investigation into
2 whether the licensee or a representative of the licensee
3 has breached a core obligation; and
4 (b) the breach or likely breach is significant.
- 5 (2) There is also a **reportable situation** in relation to a licensee if:
6 (a) in the course of engaging in a credit activity, the licensee or a
7 representative of the licensee has engaged in conduct
8 constituting gross negligence; or
9 (b) the licensee or a representative of the licensee has committed
10 serious fraud; or
11 (c) any other circumstances prescribed by the regulations for the
12 purposes of this paragraph exist.
- 13 (3) Each of the following is a **core obligation**:
14 (a) an obligation under section 47, other than the obligation
15 under paragraph 47(1)(d);
16 (b) the obligation under paragraph 47(1)(d), so far as it relates to
17 this Act, the Transitional Act and Division 2 of Part 2 of the
18 ASIC Act and regulations made for the purpose of that
19 Division;
20 (c) the obligation under paragraph 47(1)(d), so far as it relates to
21 Commonwealth legislation that is covered by paragraph (d)
22 of the definition of **credit legislation**.
- 23 (4) For the purposes of this section, a person is **likely to breach** a core
24 obligation if, and only if, the person is no longer able to comply
25 with the obligation.
- 26 (5) For the purposes of this section, a breach or likely breach of a core
27 obligation is taken to be **significant** if:
28 (a) the breach is punishable on conviction by a penalty that may
29 include imprisonment for a maximum period of:
30 (i) if the offence involves dishonesty—3 months or more;
31 or
32 (ii) in any other case—12 months or more; or
33 (b) the breach constitutes a contravention of a civil penalty
34 provision; or
35 (c) the breach results, or is likely to result, in loss or damage to a
36 credit activity client of the licensee; or
37 (d) any other circumstances prescribed by the regulations for the
38 purposes of this paragraph exist.
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- 1 (6) Otherwise, for the purposes of this section, a breach or likely
2 breach of a core obligation is *significant* having regard to the
3 following:
- 4 (a) the number or frequency of similar previous breaches;
5 (b) the impact of the breach or likely breach on the licensee's
6 ability to engage in credit activities covered by the licence;
7 (c) the extent to which the breach or likely breach indicates that
8 the licensee's arrangements to ensure compliance with those
9 obligations are inadequate;
10 (d) any other matters prescribed by regulations made for the
11 purposes of this paragraph.
- 12 (7) For the purposes of this section, a person is a *credit activity client*
13 of a licensee if the person is a consumer who:
- 14 (a) is a party to a credit contract, or will be a party to a proposed
15 credit contract, in relation to which the licensee, or a
16 representative of the licensee, performs the obligations, or
17 exercises the rights, of a credit provider; or
18 (b) is a person to whom the licensee, or a representative of the
19 licensee, provides a credit service; or
20 (c) is a party to a consumer lease, or will be a party to a proposed
21 consumer lease, in relation to which the licensee, or a
22 representative of the licensee, performs the obligations, or
23 exercises the rights, of a lessor; or
24 (d) is a mortgagor under a mortgage, or will be the mortgagor
25 under a proposed mortgage, in relation to which the licensee,
26 or a representative of the licensee, performs the obligations,
27 or exercises the rights of a mortgagee; or
28 (e) is the guarantor under a guarantee, or will be the guarantor
29 under a proposed guarantee, in relation to which the licensee,
30 or a representative of the licensee, performs the obligations,
31 or exercises the rights, of a beneficiary under the guarantee;
32 or
33 (f) is a person in relation to whom the licensee, or a
34 representative of the licensee, engages in a prescribed activity
35 mentioned in item 6 of the table in subsection 6(1).

36 **50B When does a person *reasonably know* of a circumstance?**

- 37 (1) In this Division, a person *reasonably knows* of a circumstance if:
-

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- 1 (a) the person is aware that the circumstance exists or will exist
2 in the ordinary course of events; or
3 (b) each of the following is satisfied:
4 (i) the person is aware of a substantial risk that the
5 circumstance exists or will exist;
6 (ii) having regard to the circumstances known to the person,
7 it is unjustifiable to take the risk.
- 8 (2) In subsection (1), the question whether taking a risk is unjustifiable
9 is one of fact.

10 **50C Obligation to lodge a report—reportable situations in relation** 11 **to the licensee**

12 *Reporting a reportable situation to ASIC*

- 13 (1) A licensee must lodge a report with ASIC in accordance with this
14 section if there are reasonable grounds to believe that a reportable
15 situation has arisen in relation to the licensee.

16 Civil penalty: 5,000 penalty units.

17 *Reporting the outcome of an investigation to ASIC*

- 18 (2) A licensee must lodge a report with ASIC in accordance with this
19 section if:
20 (a) the licensee has commenced an investigation into whether the
21 licensee or a representative of the licensee has breached a
22 core obligation; and
23 (b) the licensee is obliged under subsection (1) to report the
24 investigation; and
25 (c) the investigation discloses no reasonable grounds to believe
26 that the licensee or a representative of the licensee has
27 breached the core obligation.

28 Civil penalty: 5,000 penalty units.

29 *Offence*

- 30 (3) A person commits an offence if:
31 (a) the person is subject to a requirement under subsection (1) or
32 (2); and
33 (b) the person engages in conduct; and

EXPOSURE DRAFT

-
- 1 (c) the conduct contravenes the requirement.
- 2 Criminal penalty: 2 years imprisonment.
- 3 *Report must be in the approved form*
- 4 (4) A report under this section must be lodged with ASIC in writing in
5 the approved form.
- 6 *Period within which report must be lodged*
- 7 (5) A report under this section must be lodged with ASIC within 30
8 days after the licensee first reasonably knows that there are
9 reasonable grounds to believe that the reportable situation has
10 arisen.
- 11 Note: *Reasonably knows* is defined in section 50B.
- 12 (6) However, if:
- 13 (a) the licensee has commenced an investigation into whether the
14 licensee or a representative of the licensee has breached a
15 core obligation; and
- 16 (b) the licensee is obliged under subsection (1) to report the
17 investigation; and
- 18 (c) the investigation discloses either that:
- 19 (i) there are reasonable grounds to believe that the licensee
20 or a representative of the licensee has breached the core
21 obligation; or
- 22 (ii) there are no reasonable grounds to believe that the
23 licensee or a representative of the licensee has breached
24 the core obligation;
- 25 the report must be lodged with ASIC within 10 days after the
26 licensee first reasonably knows the circumstance mentioned in
27 subparagraph (c)(i) or (ii) exists.
- 28 Note 1: *Reasonably knows* is defined in section 50B.
- 29 Note 2: Under subsection (5), the licensee is obliged to report the existence of
30 the investigation within 30 days after the licensee first reasonably
31 knows that there are reasonable grounds to believe that that reportable
32 situation has arisen.
-

EXPOSURE DRAFT

If report is received by APRA

- 1
2 (7) A report that a licensee is required to lodge with ASIC under this
3 section in relation to a reportable situation is taken to have been
4 lodged with ASIC if:
5 (a) the licensee is a body regulated by APRA; and
6 (b) the licensee has given a report to APRA that contains all of
7 the information that is required in a report under this section
8 in relation to the reportable situation.
- 9 (8) Subsection (1) does not apply to a licensee that is a body regulated
10 by APRA in relation to a reportable situation if:
11 (a) the auditor or actuary of the licensee gives APRA a written
12 report about a matter to which the reportable situation relates;
13 and
14 (b) the report is given before, or within 10 business days after,
15 the licensee first reasonably knows that there are reasonable
16 grounds to believe that the reportable situation has arisen.

17 Note: *Reasonably knows* is defined in section 50B.

18 **50D Obligation to lodge a report—reportable situations in relation** 19 **to other licensees**

20 *Reporting a reportable situation to ASIC*

- 21 (1) A licensee (the *reporting licensee*) must lodge a report with ASIC
22 in accordance with this section if:
23 (a) there are reasonable grounds to suspect that a reportable
24 situation has arisen in relation to another licensee; and
25 (b) an individual who is either:
26 (i) the other licensee; or
27 (ii) if, under Division 4 of Part 2-3, the other licensee is
28 responsible for conduct of a representative of the other
29 licensee that forms part of the reportable situation—the
30 representative;
31 is a mortgage broker; and
32 (c) the individual has engaged in conduct that forms part of the
33 reportable situation (whether in the course of providing credit
34 assistance in relation to credit contracts secured by mortgages
35 over residential property or otherwise).

36 Civil penalty: 5,000 penalty units.

EXPOSURE DRAFT

1 *Report must be in the approved form*

2 (2) The report must be lodged with ASIC in writing in the approved
3 form.

4 *Period within which report must be lodged*

5 (3) The report must be lodged with ASIC within 30 days after the
6 reporting licensee first reasonably knows that there are reasonable
7 grounds to suspect that the reportable situation has arisen.

8 Note: *Reasonably knows* is defined in section 50B.

9 *If report is received by APRA*

10 (4) A report that a licensee is required to lodge with ASIC under this
11 section in relation to a reportable situation is taken to have been
12 lodged with ASIC if:

- 13 (a) the licensee is a body regulated by APRA; and
14 (b) the licensee has given a report to APRA that contains all of
15 the information that is required in a report under this section
16 in relation to the reportable situation.

17 (5) This section does not apply to a licensee that is a body regulated by
18 APRA in relation to a reportable situation if:

- 19 (a) the auditor or actuary of the licensee gives APRA a written
20 report about a matter to which the reportable situation relates;
21 and
22 (b) the report is given before, or within 10 business days after,
23 the licensee first reasonably knows that there are reasonable
24 grounds to suspect that the reportable situation has arisen.

25 Note: *Reasonably knows* is defined in section 50B.

26 *If the reportable situation already reported to ASIC*

27 (6) Subsection (1) does not apply in relation to a reportable situation if
28 there are reasonable grounds to believe that ASIC is aware of:

- 29 (a) the existence of the reportable situation; and
30 (b) all of the information that is required in a report under this
31 section in relation to the reportable situation.

EXPOSURE DRAFT

1 *A copy of the report must be given to the other licensee*

2 (7) The reporting licensee must give a copy of any report that the
3 reporting licensee is required to lodge with ASIC under
4 subsection (1) to the other licensee within 30 days after the
5 reporting licensee first reasonably knows that there are reasonable
6 grounds to suspect that the reportable situation has arisen.

7 Civil penalty: 5,000 penalty units.

8 *Offence*

- 9 (8) A person commits an offence if:
- 10 (a) the person is subject to a requirement under subsection (1) or
 - 11 (7); and
 - 12 (b) the person engages in conduct; and
 - 13 (c) the conduct contravenes the requirement.

14 Criminal penalty: 2 years imprisonment.

15 **50E ASIC must publish details of certain reports**

- 16 (1) ASIC must, for each financial year, publish information about:
- 17 (a) reports lodged with ASIC during the financial year under
 - 18 section 50C in relation to reportable situations of the kind
 - 19 mentioned in subparagraph 50A(1)(a)(i) or (ii) (breaches and
 - 20 likely breaches of core obligations); and
 - 21 (b) reports lodged with APRA during the financial year, as
 - 22 described in subsections 50C(7) and (8), in relation to
 - 23 reportable situations of the kind mentioned in subparagraph
 - 24 50A(1)(a)(i) or (ii) (breaches and likely breaches of core
 - 25 obligations); and
 - 26 (c) the entities in relation to which those reports are lodged with
 - 27 ASIC or APRA.

- 28 (2) The information must:
- 29 (a) be published within 4 months after the end of the financial
 - 30 year; and
 - 31 (b) be published on ASIC's website; and
 - 32 (c) include the information (if any) prescribed by the regulations,
 - 33 which may include personal information (within the meaning
 - 34 of the *Privacy Act 1988*) in relation to a licensee who is an
 - 35 individual; and

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-
- 1 (d) if the regulations prescribe how the information is to be
2 organised—be organised in accordance with the regulations.
- 3 (3) The regulations may prescribe circumstances in which information
4 need not be included in the information published by ASIC under
5 this section.
- 6 (4) ASIC may correct any error in, or omission from, information
7 published under this section.

8 **16 Before section 52**

9 Insert:

10 **Subdivision C—Notifying and remediating consumers affected** 11 **by reportable situations**

12 **51A Reporting to consumers affected by a reportable situation**

13 *Notifying an affected consumer of a reportable situation*

- 14 (1) A licensee must take reasonable steps to notify a consumer (the
15 *affected consumer*) of a reportable situation in accordance with
16 this section if:
- 17 (a) the licensee, or a representative of the licensee, provides or
18 has provided credit assistance to the affected consumer in
19 relation to a credit contract secured by a mortgage over
20 residential property; and
- 21 (b) the licensee, or the representative of the licensee, is a
22 mortgage broker; and
- 23 (c) there are reasonable grounds to believe that a reportable
24 situation has arisen in relation to the licensee as mentioned
25 in:
- 26 (i) subparagraph 50A(1)(a)(i) and paragraph 50A(1)(b)
27 (significant breach of a core obligation); or
- 28 (ii) subsection 50A(2) (gross negligence or serious fraud);
29 and
- 30 (d) there are reasonable grounds to suspect that:
- 31 (i) the affected consumer has suffered or will suffer loss or
32 damage as a result of the reportable situation; and
- 33 (ii) the affected consumer has a legally enforceable right to
34 recover the loss or damage from the licensee.

EXPOSURE DRAFT

1 Civil penalty: 5,000 penalty units.

2 *Form and period for giving notice*

3 (2) A notice under this section must be given:

4 (a) in writing; and

5 (b) if ASIC has approved the form in which the notice must be
6 given—in the approved form; and

7 (c) within 30 days after the licensee first reasonably knows of
8 the matters mentioned in paragraphs (1)(a), (b), (c) and (d).

9 Note: *Reasonably knows* is defined in section 50B.

10 *Offence*

11 (3) A person commits an offence if:

12 (a) the person is subject to a requirement under subsection (1);
13 and

14 (b) the person engages in conduct; and

15 (c) the conduct contravenes the requirement.

16 Criminal penalty: 2 years imprisonment.

17 **51B Obligation to investigate reportable situations that may affect** 18 **consumers**

19 *Obligation to investigate*

20 (1) A licensee must conduct an investigation into a reportable situation
21 in accordance with this section if:

22 (a) the licensee, or a representative of the licensee, has provided
23 credit assistance to a consumer (the *affected consumer*) in
24 relation to a credit contract secured by a mortgage over
25 residential property; and

26 (b) the licensee, or the representative of the licensee, is a
27 mortgage broker; and

28 (c) there are reasonable grounds to believe that a reportable
29 situation has arisen in relation to the licensee as mentioned
30 in:

31 (i) subparagraph 50A(1)(a)(i) and paragraph 50A(1)(b)
32 (significant breach of a core obligation); or

33 (ii) subsection 50A(2) (gross negligence or serious fraud);
34 and

EXPOSURE DRAFT

-
- 1 (d) there are reasonable grounds to suspect that:
2 (i) the affected consumer has suffered or will suffer loss or
3 damage as a result of the reportable situation; and
4 (ii) the affected consumer has a legally enforceable right to
5 recover the loss or damage from the licensee.

6 Civil penalty: 5,000 penalty units.

7 *Period within which investigation must be commenced*

- 8 (2) The investigation must be commenced within 30 days after the
9 licensee first reasonably knows of the matters mentioned in
10 paragraphs (1)(a), (b), (c) and (d).

11 Note: *Reasonably knows* is defined in section 50B.

12 *Matters to be considered in the investigation*

- 13 (3) In conducting the investigation, the licensee must:
14 (a) identify the conduct that gave rise to the reportable situation;
15 and
16 (b) quantify the loss or damage that there are reasonable grounds
17 to believe:
18 (i) the affected consumer has suffered or will suffer as a
19 result of the reportable situation; and
20 (ii) the affected consumer has a legally enforceable right to
21 recover from the licensee; and
22 (c) do anything else prescribed by the regulations for the
23 purposes of this paragraph.

24 *Completing the investigation*

- 25 (4) The investigation must be completed as soon as is reasonably
26 practicable after it is commenced.

27 *Notifying affected consumer*

- 28 (5) The licensee must take reasonable steps to notify the affected
29 consumer of the outcome of the investigation:
30 (a) in writing; and
31 (b) if ASIC has approved the form in which the notice must be
32 given—in the approved form; and
33 (c) within 10 days after the investigation is completed.

EXPOSURE DRAFT

1 Civil penalty: 5,000 penalty units.

2 *Compensating the affected consumer for loss or damage*

- 3 (6) If, after the investigation is completed, there are reasonable
4 grounds to believe that:
5 (a) the affected consumer has suffered or will suffer loss or
6 damage as a result of the reportable situation; and
7 (b) the affected consumer has a legally enforceable right to
8 recover the loss or damage from the licensee;
9 the licensee must take reasonable steps to pay the affected
10 consumer an amount equal to the loss or damage within 30 days
11 after the investigation is completed.

12 Civil penalty: 5,000 penalty units.

13 *Offence*

- 14 (7) A person commits an offence if:
15 (a) the person is subject to a requirement under subsection (1),
16 (5) or (6); and
17 (b) the person engages in conduct; and
18 (c) the conduct contravenes the requirement.

19 Criminal penalty: 2 years imprisonment.

20 *Nothing affects right of affected consumer to pursue legally*
21 *enforceable rights*

- 22 (8) Nothing in this section affects any legally enforceable right of the
23 affected consumer to recover loss or damage that the affected
24 consumer suffers, or will suffer, as a result of a reportable
25 situation.

- 26 (9) However, a court may take into account the amount paid by the
27 licensee under this section when quantifying the amount of
28 compensation (if any) to be paid by the licensee in relation to that
29 loss or damage.

EXPOSURE DRAFT

1 **51C Obligation to keep records of compliance**

2 *Obligation to keep records of compliance*

3 (1) A licensee must keep records sufficient to enable the licensee's
4 compliance with this Subdivision to be readily ascertained.

5 Civil penalty: 5,000 penalty units.

6 (2) The regulations may specify records that the licensee must keep as
7 part of the obligation in subsection (1).

8 *Offence*

9 (3) A person commits an offence if:

10 (a) the person is subject to a requirement in relation to records
11 under subsection (1); and

12 (b) the person engages in conduct; and

13 (c) the conduct contravenes subsection (1).

14 Criminal penalty: 5 years imprisonment.

15 **Subdivision D—Miscellaneous**

16 *National Consumer Credit Protection (Transitional and*
17 *Consequential Provisions) Act 2009*

18 **17 In the appropriate position**

19 Insert:

20 **Schedule 16—Application and transitional**
21 **provisions relating to Schedule [1.6,**
22 **2.8, 2.9 and 7.2] to the Financial Sector**
23 **Reform (Hayne Royal Commission**
24 **Response—Protecting Consumers**
25 **(2020 Measures)) Act 2020**
26

27 **1 Definitions**

28 In this Schedule:

EXPOSURE DRAFT

1 *amending Schedule* means Schedule [1.6, 2.8, 2.9 and 7.2] to the
2 *Financial Sector Reform (Hayne Royal Commission Response—*
3 *Protecting Consumers (2020 Measures)) Act 2020.*

4 **2 Reportable situations to which sections 50C and 50D of the**
5 **National Credit Act will apply**

6 Sections 50C and 50D of the National Credit Act, as inserted by item 15
7 of the amending Schedule, apply in relation to reportable situations
8 arising on or after 1 April 2021.

9 **3 Application of ASIC’s reporting obligations under section**
10 **50E of the National Credit Act**

11 Section 50E of the National Credit Act, as inserted by item 15 of the
12 amending Schedule, applies in relation to financial years ending on or
13 after 30 June 2021.

14 **4 Application of provisions dealing with notifying and**
15 **compensating a person affected by a reportable**
16 **situation**

17 Subdivision C of Division 5 of Part 2-2 of the National Credit Act, as
18 inserted by item 16 of the amending Schedule, applies in relation to
19 reportable situations arising on or after 1 April 2021.