



**Submission re ASIC Consultation Paper 309**

**Update to RG 209:  
Credit licensing: Responsible lending conduct**

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## **About Financial Counselling Australia and Financial Counselling**

Financial counsellors provide advice to people with money and debt issues. Working in community organisations, their services are free, confidential and independent.

Financial Counselling Australia (FCA) is the peak body for financial counsellors in Australia. FCA's members are the State and Territory financial counselling associations.

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## 1 Introduction

Financial Counselling Australia (FCA) welcomes the review by ASIC of Regulatory Guide 209 (RG209). The review is particularly timely following the revelations in the Financial Services Royal Commission (FSRC) about the lending decisions made by financial institutions.

Financial counsellors around Australia repeatedly see clients who have loans that are unsuitable. This is despite the responsible lending laws introduced in 2010 and 2011.

Being given an unsuitable loan is harmful for the people affected as it means they may later experience financial hardship and all that entails, including the resulting stress, impacts on health and relationships and inability to meet daily living expenses.

Financial counsellors have raised many disputes with credit providers about responsible lending. This has resulted in a range of remedies but for the most part, those remedies have not compensated for the harm that has been caused. Financial counsellors however only see a small sample of the very many people who have been given loans that are unsuitable. The majority of this larger group are likely to remain trapped in debt because they are unaware of possible remedies.

Prevention is essential and RG 209 needs to be prescriptive enough to ensure that credit providers lend responsibly in the future. It appears that lending standards have improved recently as a result of the FSRC. This is a good result for consumers. Our concern is that people will forget about the lessons learnt in the push to lend as much as possible (again). Last time, a major problem in RG 209 was the inclusion of the concept “scalability” such that some loans were said to require less rigorous enquiries. This concept has no place in the next RG 209: many credit providers used scalability as an imprimatur to scale down to no or few enquiries and verification. RG 209 must have prescriptive and strong lending standards to have an adequate impact.

This submission has answered the specific questions in each section of the consultation paper and suggests a number of changes to the next version of RG 209.

## 2 RG209 and enforceability

### The role of the Australian Financial Complaints Authority

RG 209 sets out ASIC’s expectations for meeting the responsible lending obligations in Chapter 3 of the *National Consumer Credit Protection Act 2009* (National Credit Act). These expectations are not binding or enforceable in Court. The actual National Credit Act responsible lending provisions are of course enforceable and will be subject to interpretation by a court. A court might interpret the legislation differently to the guidance and detail set out in RG 209.

The majority of responsible lending disputes are not decided in Court. Instead the vast majority of responsible lending disputes are decided in an External Dispute Resolution Scheme (EDR) which is now the Australian Financial Complaints Authority (AFCA). Prior to AFCA there were two EDR schemes being the Financial Ombudsman Service and the Credit and Investments Ombudsman.

AFCA must have regard to the following in its decisions<sup>1</sup>:

- a) Legal principles
- b) Applicable industry codes or guidance
- c) Good industry practice
- d) Previous relevant determinations of AFCA or its predecessor schemes.

It is reasonable to expect that AFCA would apply RG 209 in decision making. RG 209 sets out ASIC's expectations about the responsible lending laws. It is therefore good industry practice to comply with it. RG 209 is also an interpretation of the law.

AFCA however does not have published guidance on responsible lending currently available on its website. In contrast, the Financial Ombudsman Service did publish their approach on responsible lending<sup>2</sup> and the approach does mention provisions of RG 209.

We would expect that AFCA would make it clear that RG 209 will be a relevant factor in resolving disputes about responsible lending. This would provide further support for ASIC's efforts with lifting industry compliance with responsible lending laws.

#### **Recommendation**

We encourage AFCA to make it explicit that RG 209 is applied as both an interpretation of the law and as good industry practice. ASIC is encouraged to discuss this matter with AFCA as part of its oversight role of AFCA.

#### Financial Services Industry Codes

The enforceability of industry codes is currently being considered by Treasury.<sup>3</sup> The FSRC also recommended changes to the Banking Code of Practice (Banking Code) in its Final Report. Industry codes have an important role to play in confirming a commitment to comply with RG 209.

In the most recent Banking Code review, consumer advocates asked for compliance with RG 209 to become a term of the Banking Code, so that the guidance would have more teeth.<sup>4</sup> This was not recommended by the reviewer however. We reiterate that position again. Credit providers should commit to compliance with RG209. This would send a clear message to customers that credit providers take responsible lending seriously.

#### **Recommendation**

Compliance with RG 209 should be a key commitment in industry codes that deal with lending under the National Credit Act. ASIC should insist on this commitment as part of the approval of a code.

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<sup>1</sup> Rule A.14.2 of the AFCA Rules.

<sup>2</sup> Still available at <https://www.fos.org.au/custom/files/docs/3-fos-approach-responsible-lending-industry-codes.pdf>

<sup>3</sup> <https://treasury.gov.au/consultation/c2019-t368566>.

<sup>4</sup> See Recommendation 24 b of the Joint Consumer Submission to the Independent Review of the Code of Banking Practice 2016. Available at <http://cobpreview.crkhoury.com.au/wp-content/uploads/sites/2/2017/01/24-Joint-Consumer-Submission-Review-of-Code-of-Banking-Practice-CCMC.pdf>.

## 3 Reasonable inquiries and verification steps

### 3.1 (B1Q1) Identifying the inquiries and verification steps

It is critical that the necessary inquiries and verification steps are identified in RG 209. This not a matter of setting minimum standards, it is about being clear about what is required to comply with the responsible lending requirements in the National Credit Act.

It is useful to actually specify the inquiries and verification steps because:

- a) It sets clear and unequivocal standards for credit providers;
- b) If a credit provider does not comply with the required inquiries and verification steps, this sets up a procedure for further investigation and possible enforcement by ASIC;
- c) It makes it clear to the credit provider what is required for compliance. This guidance can then be reflected directly in compliance manuals and process design;
- d) It prevents a “race to the bottom” of testing the interpretation of the law by undertaking fewer inquiries and reducing verification steps; and
- e) The public (those who are interested in looking at RG209) and consumer advocates could check the standards of the credit provider they are dealing with and report any problems, or choose not to use that credit provider.

#### **Recommendation**

The necessary inquiry and verification steps must be set out in RG 209. The list must be comprehensive and mandatory.

### 3.2 (B1Q3) Fewer inquiries and verification steps?

We do not support any interpretation of the law that involves fewer inquiries and verification steps. The acceptance that fewer inquiries and verification steps may be required will create a loophole that many credit providers will use.

The harm of irresponsible lending is profound. Many people end up in a debt trap. This harm can be serious regardless of the size or type of the loan. Any type of loan can cause serious problems when the person cannot repay it. Some examples are:

- a) Payday loans (small amount credit contracts). Even though the loan is small, the people who apply for these loans are often on low incomes or have a lot of existing debt. A loan of under \$2,000 can lead to a debt trap.

- b) Credit cards. Credit card debt in Australia is enormous.<sup>5</sup> It can cause problems for many people and those problems can persist over time.<sup>6</sup> In those circumstances, inquiries and verification are essential to ensure people are in the right product and the limit is low enough to prevent problematic debt.
- c) Car loans. The car is used as security for the loan. If the debtor falls into arrears, they are at risk of their car being repossessed. For many people, a car is essential. People need cars to transport children, assist with transporting older people, people with a disability and people who are unwell (among many other uses). Avoiding irresponsible lending is critical to avoid people losing their car. After the car has been repossessed and sold (usually for much less than it was bought for) people are left with a debt and no car (and no ongoing benefit from the car).
- d) Consumer leases. Consumer leases are often very high cost credit products for goods that can be essential household goods, such as a fridge, washing machine or computer. These goods can be repossessed if payments are not made. Once the goods are repossessed, the person is left with a debt and still needing the essential household good.
- e) Home loans and investment property loans. These loans are often very big so unaffordable repayments can lead to rapidly compounding debt and the forced sale of the home or investment property. People can have a profound attachment to their home or even an investment property. Once a home is repossessed this may leave a person homeless and eventually pursued for a shortfall (if there is one).
- f) Overdrafts. The FSRC commented on the detriment caused by unarranged overdrafts.<sup>7</sup>

There is no justification to reduce inquiries and verification for any credit regulated under the National Credit Act.

#### **Recommendation**

Inquiries and verifications in RG209 must not be reduced for any credit products.

### **3.3 (B1Q4) Inquiries in all circumstances**

#### Inquiries on affordability

We support the inquiries currently set out in RG 209 as being the inquiries required in all circumstances.

Inquiries on affordability required in all circumstances are:

- a) Sources of income (including nature and likely stability of the income)

<sup>5</sup> Outstanding balances totalled \$45 billion in June 2017 according ASIC Report 580 Credit card lending in Australia July 2018.

<sup>6</sup> Findings 1 and 2 ASIC Report 580 Credit card lending in Australia July 2018.

<sup>7</sup> See FSRC Final Report at pages 89 to 94 and Recommendation 1.8

- b) Assets (and whether the assets produce income)
- c) Outstanding loans or limits (including if these debts are to be repaid from the loan)
- d) Other debts
- e) Number of dependants
- f) Circumstances such as age, health and any foreseeable changes in circumstances
- g) Other ongoing expenses (to be asked about in detail including fixed and variable expenses)
- h) Discretionary spending
- i) Geographical factors such as remoteness
- j) Indirect income (which should be part of inquiries but not relied on for affordability)
- k) Credit report

#### **Recommendation**

We support the current inquiries listed in RG209 for affordability.

#### Inquiries on requirements and objectives

See 5.6 below.

### **3.4 (B1Q5) Verification**

The verification should match the inquiries. The financial situation to be verified should include:

- a) Completed application form
- b) Income (pay slips or other evidence)
- c) Bank account statements to verify expenses
- d) Credit report (to check liabilities)
- e) Further verification if the information is inconsistent or missing

### **3.5 (B1Q6) The effect on consumers**

It would enhance protection for consumers to have ASIC identify particular inquiries and verification steps. People would then know what steps need to be taken in responsible lending. We do not believe access is an issue to be considered. People should not be given credit that is unsuitable. There is no reasonable argument that granting unsuitable credit is in the interests of borrowers.

### **3.6 (B1Q8) Competition**

Competition between credit providers should never be based on responsible lending. Lending responsibly should be a standard that is met by all credit providers. All credit providers, should have the same obligations and meet the same standards.



### 3.7 Audit

ASIC needs to randomly audit the responsible lending process including the extent of the inquiries undertaken and verification steps. It is not enough to be specific in RG209 - ASIC needs to check compliance regularly. This is necessary because it is very likely that credit providers will seek to cut down necessary inquiries and verification to save time and costs.

#### **Recommendation**

ASIC needs to check compliance with RG 209 by auditing credit providers on a regular basis.

## 4 Updating or clarification of current guidance

We support the plans to update RG 209 to provide clarification on the types of information that could be used for verification. We also support the proposition that reasonable steps will change over time.

We understand that credit providers want to automate the lending process as much as possible. We remain concerned that, at this stage, some automation is not rigorous enough to “see” problems that a human can clearly find. This is a particular problem for people who are, or may be, vulnerable at the time of the loan. People need to look at the “whole situation” as sometimes it is obvious that further inquiries are necessary and/or the loan should be refused.

### 4.1 (C1Q1) Readily available forms of verification and (C2Q2). Examples in Appendix 1

We support the examples given in Appendix 1 for the sources of verifying information. We would add that bank account statements should be a standard and mandatory part of the process for verifying expenses and income. Most people receive their income into a bank account and pay money out of a bank account for expenses. People do have multiple bank accounts and copies of the statements on each bank account should be requested. Asking for bank account statements should be a standard and accepted part of the verification process. Consumers usually have easy access to all of their bank account statements through online banking. We also note that this process of verification may be easier under open banking.

Financial counsellors may review bank account statements as part of doing their work, as they usually provide very clear data on income and expenses. The review of those account statements is critical in determining the affordability of the loan. It is not sufficient to look at only a few weeks of bank account statements. This is because expenses can be monthly, quarterly or even yearly. An effective snapshot is at least three months of bank account statements. For home loans and investment property loans (which are usually large loans), 6 months of account statements should be reviewed.

### **Recommendations**

Appendix 1 is supported with a specific inclusion that checking bank account statements for savings and transaction accounts is a mandatory part of the verification process.

The bank account statements required are:

- 6 months account statements for home loans and investment property loans
- 3 months account statements for all other loans.

## **4.2 (C1Q3) Data aggregation services**

We note that a number of credit providers, particularly payday lenders, ask people to use their online banking username and passwords so the credit provider can access their bank account statements. It is a breach of the terms and conditions of the account to disclose the passwords to a third party. We consider this is inappropriate and RG 209 should specifically provide guidance on this point, discouraging it at least. It would be preferable for people to use open banking if there is any difficulty getting their own information.

## **4.3 (C2Q1) Verification and review and (C2Q2) “if not, why not”**

Financial counsellors have raised many disputes on the grounds of a breach of responsible lending where the credit provider had obtained all of the information but failed to actually look at it. A review of the information clearly shows that the borrower could not afford the loan and it was simply ignored. We strongly support the ASIC proposal to clarify that the verifying information must be reviewed. This clarification needs to include details on what is required to effectively review the verifying information.

An example, is “screen scraping” expenses information off account statements only to make totals but to have no regard to what expenses are included in the total. The nature of the expenses is relevant. Constant cash advances indicating a possible gambling addiction is relevant. It is not possible to review expenses properly without considering the level of, and interplay of fixed and variable expenses.

We do not agree with the proposal in C2(b). The “if not, why not” approach would be an improvement but we remain concerned that this will become yet another loophole. The loophole would be created whether the credit provider designs an excuse for “why not” which they rely on to avoid getting information. A more appropriate approach is to be crystal clear about the standards required.

### **Recommendations**

RG209 should provide clear guidance on how to review the verifying information and how to deal with inconsistent information.

We do not support an “if not, why not” approach. Standards should be set on what verifying information is required.

## **4.4 C2Q3, 4 and 5**

We refer to our responses under C1.

## **4.5 Automation**

Responsible lending cannot be a fully automated process at this time. Automation is not sophisticated enough to detect the patterns of spending that indicate financial difficulty. However, a human reviewing the entire financial position can detect those issues and ask further questions. An example of our concerns is with payday lenders (Small Amount Credit Contracts). There are payday lenders who provide loans through an ATM type machine (instant cash loan machine).<sup>8</sup> Financial counsellors are concerned that this type of machine provides loans that a person cannot afford. It is unclear how the responsible lending process works with this type of machine. We remain convinced that whatever process is being used, it is failing to lend responsibly.

There is evidence that automation does not work effectively for responsible lending and the instant cash loan machines are one example. A second example, is the systemic responsible lending failures identified in the Financial Services Royal Commission which involved some level of automation.

RG209 must take a clear position on automation and what standards needs to be met. That position should make it clear about what parts of the process could be automated and what standards need to be met. It should also clearly state that the overall review of the loan needs to be completed by a person who can evaluated and look at the person’s whole situation.

### **Recommendations**

RG209 must specifically address the issue of automated decision making. It must make it clear that a person must make the final assessment considering all of the evidence provided.

RG209 should specifically state that an instant loan cash machine or similar cannot meet the requirements in RG209.

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<sup>8</sup> See for example <https://www.abc.net.au/news/2018-04-26/rise-of-instant-cash-loan-machines-in-disadvantaged-nsw-areas/9696134>

## 4.6 Specific conduct that requires further clarification in RG209

### Debt consolidation loans

RG209 currently includes one example (RG209.25) on the issues surrounding debt consolidation and responsible lending. This is not enough guidance for this very commonly used financial strategy. Credit providers offer debt consolidation and advertise debt consolidation. A search on debt consolidation reveals many credit providers specifically offer this service.<sup>9</sup>

It is often used for people to “access equity” and make “repayments manageable”. Financially, debt consolidation is often a very poor choice for the person and not in their best interests.<sup>10</sup> RG209 does not provide sufficient or detailed guidance to protect people from debt consolidation which arguably almost always is a financially irresponsible decision and would not meet their requirements and objectives. The complication here is that the advertising on debt consolidation is very effective in getting people to think that is the best solution for their circumstances when in fact they are far better off without it.

Debt consolidation loans are a common solution people turn to when they are in financial hardship. The reasoning is that if all the debt is consolidated at a lower interest rate then they would no longer be in financial hardship. Even if that works short term, there are significant risks:

- turning short term debt into longer term debt and paying a lot more;
- paying out credit cards that are not closed and then drawing up the debt again so the overall debt increases significantly;
- there is a risk of turning unsecured debt into secured debt. If further financial hardship occurs the risk of losing the family home increases; and
- it may not change spending behaviour so the financial hardship may reoccur even with debt consolidation.

It is also noted that many debt management firms (including debt negotiators and brokers of Debt Agreements) offer debt consolidation loans. This rings alarm bells.

RG209 needs to provide specific guidance about when debt consolidation would not meet the requirements and objectives of the borrower. The borrower is usually better served not going into a debt consolidation. If there are very limited circumstances where it would meet the requirements and objectives of the borrower, RG209 needs to set out those very limited circumstances.

### **Recommendations**

RG209 must specifically deal with the risks of debt consolidation and how it will usually be unsuitable as it does not meet the requirements and objectives of the borrower.

<sup>9</sup> For example, see Bluestone [https://bluestone.com.au/AU/Mortgages/Customer/Consolidate-Debt?source=GoogleSearchNetwork&device=c&campaign=1628449868&adgroup=62278658592&keyword=%2Bdebt%20%2Bconsolidate%20%2Bmortgage&matchtype=b&placement=&adposition=1t1&location=1000157&gclid=EAlaIqObChMImZ7k6u-h4glVTIqPCh2ffgVnEAAYASAAEgKMgfD\\_BwE](https://bluestone.com.au/AU/Mortgages/Customer/Consolidate-Debt?source=GoogleSearchNetwork&device=c&campaign=1628449868&adgroup=62278658592&keyword=%2Bdebt%20%2Bconsolidate%20%2Bmortgage&matchtype=b&placement=&adposition=1t1&location=1000157&gclid=EAlaIqObChMImZ7k6u-h4glVTIqPCh2ffgVnEAAYASAAEgKMgfD_BwE)

<sup>10</sup> For example, see *Why debt consolidation loans are often financially irresponsible*, The Sydney Morning Herald, 26 January 2018 by Noel Whittaker available at <https://www.smh.com.au/money/borrowing/why-debt-consolidation-loans-are-often-financially-irresponsible-20180125-h0oi9h.html>.

### Credit cards for buying goods

People are sold credit cards when they buy goods interest free. This is an option provided by the retail sector.<sup>11</sup> The problem is that the credit card limit provided is not related to the cost of the goods. A person seeking finance to buy goods should get sufficient credit to make that purchase. This is their requirement and objective. When a credit card limit is approved for an amount above the cost of the goods being purchased it would appear that this does not meet their requirements.

#### **Recommendation**

RG209 should provide specific guidance that the limit on a credit card when purchasing a good in a retail store must be within \$1000 of the cost of the good.

### Credit card balance transfers

This submission has already identified the risks to a person when a credit card is paid out by debt consolidation and the credit card is not cancelled. Essentially the person can end up with two debts as they use the credit now available on the repaid credit card. For any person in financial difficulty, they will want to use the repaid credit card to meet living expenses.

Responsible lending should mean that if the person intends to repay the credit card and close it that this means it must be closed. A mechanism must be in place so that the credit card is closed after it is repaid in full.

#### **Recommendation**

RG209 needs to provide specific guidance on how the credit provider must have a process in place to close a fully repaid credit card (if the decision to lend was made on the basis that the credit card would be closed).

### Home loans and credit card bundling

It has been standard practice in banking that when a person applies for a home loan, a credit card is bundled into the transaction. There are several problems with this practice:

- if a person comes in for a home loan, it is very unclear how a credit card meets those requirements and objectives. A credit card is not a home loan;
- this is a form of upselling which is about profit for the bank and not the needs of the borrower;
- a credit card debt can make it harder to repay the home loan; and
- if the borrower asks to borrow the maximum amount, they can to buy a home (which is a common practice), how can they afford extra debt?

RG209 should specify that this practice is not appropriate. This conduct is inconsistent with responsible lending.

#### **Recommendation**

RG209 should make it clear that bundling a credit card with a home loan or investment property loan is not consistent with responsible lending.

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<sup>11</sup> For example, <https://www.harveynorman.com.au/customer-service/payment-options/interest-free>

## 4.7 Use of benchmarks

We strongly support the proposed clarification at C3 on the use of benchmarks. Benchmarks were being widely misused as a replacement for actually inquiring about and verifying expenses. Benchmarks were invented that were completely unrealistic. This needs to stop. People can have expenses that far exceed benchmarks.

We recommend the following additional changes to the clarification on the use of benchmarks.

- a) That benchmarks are not a substitute for asking about expenses at all. Inquiries and verification on expenses is mandatory.
- b) Benchmarks can be used to “stress test” expenses. A benchmark can be a useful way to check if the expenses are realistic. The process should be to inquire and verify expenses, check against a suitable benchmark then take the higher of the benchmark or a person’s actual expenses.
- c) Benchmarks can be unrealistic for people on low incomes. For example, the Household Expenditure Measure is lower than a poverty line (like the Henderson Poverty Index) for people who are not working. It is hard to understand how a poverty line could be higher than a household expenditure measure. This nonsensical situation does need to be addressed.
- d) A poverty line benchmark or similar is not an acceptable way to work out expenses. The benchmark needs to be generous on expenses and not expecting people to be on the border of poverty.
- e) ASIC needs to provide detailed guidance on the realistic use of benchmarks. Benchmarks cannot be invented. Any benchmark being used needs to be approved by ASIC. ASIC should work with the groups that issue benchmarks (HEM) to work on different categories of benchmark suited to responsible lending.

### Recommendations

We support the additional clarification proposed on the use of benchmarks. The additional clarifications outlined above should be included in RG209.

## 4.8 Consumer’s requirements and objectives

We strongly support the additional clarification on requirements and objectives outlined at paragraph 67 of the consultation paper.

The experience of financial counsellors is that credit providers are very poor at asking about the requirements and objectives of the borrower. In our experience, the only inquiry that occurs is purpose (and only the desired limit for credit cards).

We are concerned that every credit provider is not complying with RG 209.34 to 209.45. We are extremely concerned that table 3 on page 13 of RG 209 has had no effect at all.

It is almost as if the entire industry has forgotten that ascertaining requirements and objectives is the critical second part of ascertaining whether the loan or lease is “not unsuitable.” It is understandable how this happened, given the focus has been almost exclusively on affordability. Another reason, is that credit providers see “scalability” and interpret this to mean that they only need to ask about purpose and if there is no obvious purpose (like a credit card) then there is no need to ask anything at all.

The implications and harm of not complying with the loan not meeting the requirements and objectives of a person are serious. Even if the borrower can afford the repayments the product can still be completely unsuitable.

Some examples of unsuitable lending (in addition to the examples in RG 209) are:

- a) Asking a person who is in effect a guarantor (who is not receiving a benefit) to be a co-borrower;
- b) Transferring ownership of a property so a home loan can have matching borrowers and owners;
- c) Selling a car loan with a balloon payment that the borrower will not be able to pay (both unaffordable and unsuitable);
- d) Putting a borrower into a lease when they want to own the goods and should get a loan;
- e) Refinancing a group of short-term debts into a 30-year home loan which means the actual costs of those debts are now much higher;
- f) Unnecessary and useless consumer credit insurance refinanced into the loan;
- g) Approving a credit card when the purpose was to buy a car; and
- h) A high interest and fee credit card when the person is doing a balance transfer which clearly shows they are carrying ongoing debt.

The list above is not exhaustive and is missing many more examples. It would be helpful to be more specific about:

- How the credit provider would comply with the process in paragraph 67; and
- A list of examples about where the loan is likely to be unsuitable; and
- How to deal sensitively and fairly with borrowers who may be vulnerable.

The process outlined in paragraph 67 of the consultation paper represents a vast improvement. However, we remain very concerned that without specificity it will be read down to a level which will leave people unprotected and at risk of unsuitable loans.

We specifically and strongly disagree with the conclusions in RG 209.37 which does not require inquiries about requirements and objectives for credit cards apart from the desired limit. ASIC has specifically identified as a finding in Report 508 that “Some consumers have credit cards that are not well suited to their behaviours and needs”<sup>12</sup>. This finding contradicts the inquiries relating to credit cards set out in RG 209.37. Credit providers should be making inquiries about the needs of the consumer and how they use credit cards. If the consumer is carrying a debt then a balance transfer to a high interest credit card would be unsuitable. Preventing this type of conduct would be a significant step to protect consumers.

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<sup>12</sup> Paragraph 19 of ASIC Report 580: Credit card lending in Australia July 2018.

The review of RG209 is an opportunity to prevent further systemic problems caused by putting people in loans that do not meet their requirements and objectives. RG209 should have more specific detail and guidance on the meaning of requirements and objectives with the above list of examples as a starting point.

### **Recommendations**

RG209 should contain more detail on making inquiries and verifying requirements and objectives that covers:

- How the credit provider would comply with the process in paragraph 67; and
- A list of examples about where the loan is likely to be unsuitable; and
- How to deal sensitively and fairly with borrowers who may be vulnerable

## **5 Additional guidance on specific issues**

### **5.1 Areas where the responsible lending obligations do not apply**

We consider that the responsible lending requirements represent good practice even if the National Credit Act does not apply. Credit provided outside the National Credit Act can be found to be “not prudent” or “maladministration” in AFCA. If guidance is provided, these points should be noted.

RG 209 should also clearly state that the responsible lending requirements do not apply for financial hardship arrangements. In our experience, there are many lenders that are confused about the relationship between financial hardship and responsible lending. We are aware of instances where a lender will not restructure a loan (where no extra credit is provided) because of their “responsible lending obligations”. Clarification would assist credit providers to understand that loans can be restructured on the grounds of financial hardship without a “refinance” or similar.

### **5.2 Fraud risks and impact on responsible lending**

We support the inclusion of specific guidance about loan fraud and the impact on responsible lending in RG209.

### **5.3 Use of repayment history information**

We are not concerned about “automatic refusal” being a problem for people with negative RHI. Refusing credit for people in financial difficulty would indicate that responsible lending is working. We are far more concerned that people with negative RHI will be preyed on by dodgy credit providers offering to “restore their credit rating and give them a loan with lower repayments” or words to that effect.

The two main risks of exploitation are:

- a) Being sold higher interest rate products (risk-based pricing); and/or
- b) Debt consolidation which reduces repayments by lengthening the term.



Both of these outcomes are poor outcomes because the person ends up in a worse position and further in debt.

People can be very vulnerable about negative information on their credit report. It can cause them to make very poor decisions to protect their “good credit” or restore their “good credit”. We have already seen the credit repair industry explode based on people being very concerned about their credit report and their ability to get credit.

The other important issue with financial difficulty is that almost everyone comes out of financial difficulty still struggling. Even if income is restored there are arrears to pay and debts that have been neglected. It can often take many months to get back on track even if minimum repayments are being made.

Finally, and more importantly, it is preferable and (almost always) in the best interests of the consumer to work with their credit provider to resolve their financial hardship rather than refinancing or getting extra credit.

We acknowledge that there will be a tiny minority of people who may return from default with extra money and needing credit for some reason. However, the vast majority of people are left at risk of exploitation from credit providers seeking to refinance people at a higher interest rate with the promise of lower repayments and credit repair.

If the proposal was to proceed, much stronger additional protections need to be included to reduce the risk of harm. These would include:

- a) A referral to a financial counsellor as standard practice to explore a person’s options. Often the best option will be to continue with the current credit provider;
- b) An acknowledgment that people can be, and are likely to be, vulnerable when in financial difficulty;
- c) A consideration of whether the most suitable decision is to refuse the loan; and
- d) A presumption that the loan will be unsuitable if there is a refinance with a higher interest rate or significantly longer term.

#### **Recommendations**

RG 209 should contain specific extra protections for people who have had negative RHI to protect them from exploitative lending.

#### **5.4 Records of inquiries and verification**

We strongly support this proposal.

#### **5.5 Content of a written assessment**

We strongly support this proposal. Financial counsellors have received so many assessments that do not contain enough information on how the decision was made that the loan was not unsuitable. Many credit providers just use a precedent and change a few figures each time. This is completely inadequate. We support the proposed format in Appendix 2.

### **Recommendation**

RG209 should include additional guidance on the detail required in an assessment.

## **5.6 The assessment**

Financial counsellors are aware that some credit providers do not generate the assessment until someone asks for it. This defeats the purpose of the assessment process. The credit provider should be generating an assessment for every loan (approved or declined).

It would also be useful for every credit provider to provide a copy of the assessment to each borrower at the time the loan is approved or declined. This would assist because:

- the borrower can review it and check the details are correct;
- borrowers would be able to identify systemic problems with the assessment process (if there is a systemic issue); and
- the credit provider would have to do the assessment at the time because a copy would go to the borrower.

### **Recommendations**

RG209 should specifically state that the assessment must be made at the time of the loan.

Credit providers should automatically provide the assessment to the borrower.