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Ms Fleur Grey 20 May 2019

Senior Specialist

Credit, Retail Banking and Payments

Financial Services

Australian Securities and Investments Commission By email: responsible.lending@asic.gov.au

Dear Ms Grey

Consultation Paper 309 – Update to RG209: Credit Licensing; Responsible Lending Conduct

The Australian Finance Industry Association [AFIA] welcomes the opportunity to provide feedback on ASIC's Consultation Paper 309 [the **Paper**].

AFIA Background

AFIA is the voice of a diverse Australian finance industry. AFIA supports our Members to ensure a fair, equitable and competitive market for customers through representation, insights and connectivity.

AFIA is uniquely placed to respond given our broad and diverse Membership of over 100 financiers operating in the consumer and commercial markets (including small-medium business and agri-finance). AFIA Members:

- include banks (major, regional and mutual/community-owned) and non-banks;
- range from ASX-listed public companies through to small businesses providing finance;
- operate via a range of distribution channels including bricks and mortar premises, intermediaries (finance brokers, dealerships, suppliers) through to online / digital access
- collectively operate across all states and territories in Australia in capital cities through to regional and remote areas: the majority operating across at least one border;
- have customers from all demographics, all age groups (legally able to borrow) in support of Australia's diverse and multi-cultural community with:
    - consumers ranging from high to low-income earners (including some whose main income source may be government welfare); many with substantial assets, others with few; single borrowers through to blended families; covering the whole range of employment scenarios, full-time, part-time, seasonal or casual employment.

    - commercial entities ranging from sole traders and partnerships through to the more complex corporates (eg trusts, corporate group) and government-entities some with no employees through to others with hundreds (if not thousands) of employees.
- provide a broad range of finance products:
    - consumer: from personal unsecured loans, revolving products (including credit cards and interest free products coupled with lines of credit), loans secured by land or personal property; consumer leases of assets (including household/electrical/IT or cars);
    - commercial: asset or equipment finance (finance/operating lease, secured loan or hire-purchase agreement or novated leases); working capital solutions (online unsecured loans; debtor and invoice finance; insurance premium funding; trade finance; overdrafts; commercial credit cards) together with more sophisticated and complex finance solutions.

To examine this key issue and provide ASIC with some in depth analysis and commentary to inform revision of the guidance on responsible lending contained in RG209, AFIA commenced a project involving over 30 Full Members (credit providers) and Associate Members (providers of goods or services (e.g. law firms; accounting firms) to support the finance industry) in August 2018.

A governance steering group structure was introduced and participants were broken into 5 Working Groups based around products, namely:

- credit cards
- consumer lease
- personal loans
- motor finance
- mortgages

Member representatives from our major institutions led discussion in each product group.

Each Working Group reviewed Consultation Paper 309 (CP 309) through their specific product lens to tease out nuances that were unique and could get missed if a product agnostic approach was adopted. They also were challenged to come up with some 'blue sky' thinking to see if there was a different way of lending responsibly.

Finally, to inform our position on ASIC guidance on the expenses component of a customer's financial circumstance data collection and verification, a survey was undertaken with members' participating on a de-identified basis to understand the current and potential future compliance settings.

AFIA's Position on Responsible Lending

From their inception, AFIA (at that time known as the Australian Finance Conference [AFC]) understood that the responsible lending provisions were seen by the Government and the Parliament as a critical component to achieving the consumer protection policy underpinning the National Consumer Credit Protection Act [NCA] while still enabling consumers to access credit. The provisions were designed with this objective, as reflected in the RIS attached to the Revised Explanatory Memorandum[1] that accompanied the introduction of the Bill containing the provisions,

From RIS: Objectives

9.122 The key objective is to establish a regulatory framework for responsible lending conduct (in accordance with the decisions of the Australian Government and COAG) in a manner that strikes a reasonable balance between the goals of minimising the incidence of consumers entering unsuitable credit contracts, and the goal of maximising access to credit for consumers who have the desire and ability to service it.

As part of supporting a cost/benefit analysis of the responsible lending framework that was to be enacted, it was also recognised by the Government, that the provisions were not being enacted in a 'vacuum' and that responsible or prudent industry participants were likely to already have in place frameworks to provide credit in a way that minimised risk to consumers and the provisions were designed to work within the context of that existing framework. This was recognised in various paragraphs in the Revised Explanatory Memorandum, for example:

Reasonable steps to verify

3.146 In undertaking the assessment, credit providers are required to take into account information about the client's financial situation and other matters required by the regulations that they either already possess, or which would be known to them if they made reasonable inquiries and took reasonable steps to verify it. This provision means that credit providers must ask the client about their financial situation and the other matters prescribed in the regulations, and must make such efforts to verify the information provided by the client as would normally be undertaken by a reasonable and prudent lender in those circumstances. Conducting a credit reference check is, for instance, likely to be an action that would be reasonable to undertake in most transactions. Credit providers are not expected to take action going beyond prudent business practice in verifying the information they receive.

And:

[1] Revised Explanatory Memorandum – National Consumer Protection Bill 2009

When a credit contract must be assessed as unsuitable

3.153 The standard for the consumer being likely to meet the financial obligations in the contract is an objective one. It is not directly linked to the credit provider's own internal standards and guidelines regarding assessing a capacity to repay. Such internal standards and guidelines would be expected to factor in the credit provider's own policies on risk exposures and may vary from time to time, in line with changes to the risk appetite of the credit provider, and the commercial and economic environment. Accordingly, the fact that an application for credit satisfied a credit provider's own policies for affordability does not necessarily mean that it met the standard in the legislation. However, it is expected that the types of inquiries made and assessments conducted for the purposes of the credit provider's internal standards and guidelines on affordability would, in most cases, be very similar to those that are required in order to assess the likelihood that a consumer can meet the financial obligations under the proposed contract.

It was envisaged that ASIC would assist industry participants with compliance design through the development of guidance as noted in the Explanatory Memorandum, for example:

Reasonable inquiries etc. about the consumer

3.137 + 3.147 ASIC also expects to provide guidance where appropriate to set out further detail about reasonable inquiries and verification process in particular circumstances.

When ASIC commenced consultation to develop its guidance (which became RG209), AFIA (then known as AFC) regarded informing the consultation as a key priority given the guidance would determine the shape of credit provision going forwards.

AFIA's strategic objective in representations made to shape the consultation aligned with the Government's policy underpinning the responsible lending provisions; namely balancing consumer protection from the risks of entering unsuitable credit contracts while enabling continued access to credit.

AFIA welcomes the opportunity to again inform the revision of ASIC's responsible lending guidance. As with our representation on earlier consultation, our objective in providing this submission is to assist ASIC to achieve the Government's objective of consumer protection in a way that balances access to credit.

We acknowledge the challenge for ASIC and industry participants alike in arriving at guidance that achieves this outcome particularly given the broad range and variation in products offered, and the providers offering them. This includes significant changes in the market in the last 10 years since the original RG209 was published and the need to issue revised guidance that is future-proofed to cater for the continuation of market innovation and disruption going forwards.

We further acknowledge ASIC's disclaimer in its current responsible lending guidance, that
This guide does not constitute legal advice. We encourage you to seek your own professional advice to find out how the credit legislation and other applicable laws apply to you, as it is your responsibility to determine your obligations.

Examples in this guide are purely for illustration; they are not exhaustive and are not intended to impose or imply particular rules or requirements.

We anticipate the disclaimer will be maintained in the revised guidance. However, we note despite the disclaimer that, in practice, ASIC's guidance is seen to establish the benchmark for compliance; effectively operating as the default or proxy for a safe-harbour against findings of breach of the responsible lending provisions.

In consequence, AFIA sees the revised guidance proffered by ASIC as being critical to the compliance framework under which our members (and others that offer NCA-regulated credit) will offer their products going forwards. It will also be critical to consumer access to credit.

The key challenge that existed in the development of the earlier guidance and with the current revision is striking an appropriate balance between guiding industry participants without prescribing overly complex compliance settings that do not reflect the appropriate balance of protecting consumers while maximising continuing access to credit for customers that have the desire and ability to service it.

In this regard we note economic modelling that AFIA commissioned and included as an attachment to support our submission to the *Interim Report of the Royal Commission into Misconduct in the Banking and Financial Services Industry* encouraging regulation proportionate and targeted to address identified consumer risk to minimise unintended macro-economic outcomes for credit provision. A copy is available from here

We encourage ASIC to consider this work in settling the compliance guidance in its revision of RG209 and look forward to working with them to see this balanced outcome reflected in the next revision.

We also acknowledge the potential impacts of the Federal Court Case (ASIC vs Westpac Banking Corporation [2019]) and understand ASIC will look to consult further on any ramifications flowing to its guidance that will likely flow.

To assist inform ASIC's guidance development, our submission consists of three parts:

- a consolidated product response to CP 309 – this captures all the common areas of agreement from the various streams – Attachment 1
- additional unique product insights – Attachment 2
- the initial outcome of 'blue sky thinking' designed to focus on the key objective of minimising consumer risk from entering unsuitable credit contracts while maximising access by customers that have the desire and ability to service credit, which we would welcome exploring further with ASIC

Finally, while members have contributed to the discussion, from an organisational view the position being put by AFIA may not reflect their specific position on all the issues. These will get captured through the relevant member's organisationally-targeted submission.

Outcome of Blue-Sky Thinking

- The great insights derived through the product deep dives allowed Members the liberty of finding potential different and new ways to design compliance settings to meet the responsible lending obligations enabling access to credit in a manner which minimised risk to the customer. It highlighted that:
  - There is, and there needs to continue to be, scalability when looking at how to implement a compliance responsible lending framework
  - Members identified 2 key areas where scalability should apply:
    - At a customer level
    - At a product level
  - All our Members place the customer at the centre of their thinking; scalability at a customer level recognises and caters for differing probability of defaults; no member wants to place a customer at risk of detriment with the consequent exposure to risk of loss

  - With this context in mind, Credit Provider Full Members with the help of our Associate Members (including from the various consumer credit bureaus) started to identify potential customer detriment indicators such as their own proprietary risk models, bureau risk scores, expenditure relative to benchmark, debt-to-income, age etc that would be agnostic of product and could help define a 'safe harbour' of debt. Above a safe harbour threshold, Members agreed that more extensive inquiries and verification would be required; below this threshold, Members suggest that reduced inquiries and verification occur
  - Members also recognised that their products were not homogenous and that there seemed to be a product ranking by complexity – in part driven by the average loan size, term, features of the product (e.g. balloon, security cover/LVR, nature of the product or asset being financed etc.)
  - Credit Provider Full Members with the help of our Associate Members (from established and highly-regarded legal firms) started to explore the notion that potentially the degree of inquiry and verification could vary by product and the data captured in the expense categorisation survey could help define the future level of inquiry and verification that could be warranted
- Initial outcomes arising from the Credit Provider Full Member and Associate Member Working Group discussions was that:
  - There is the potential to minimise detriment at origination through use of a credit risk score – either proprietary or bureau driven – the logic being, the higher the probability of default, the worse the score, the more chance of detriment
  - Significant detriment / hardship at origination could be argued as therefore an 'output' of a poor initial credit risk assessment
  - Simpler products (by reference to product structure, average $ limit, term, conditions etc) could be classified as credit cards/consumer leases; more complex products classified as motor finance / personal loans; even more complex products could be home loans
  - Requirements and Objectives assessment aligns to product complexity not customer detriment indicator
- In relation to these outcomes, it is important to note that:
  - This was just an initial discussion
  - Members would welcome the opportunity to discuss the concept further with ASIC as an alternate option to consider
  - It does not commit a Member to change any of their current policies or processes
  - There may be other ways and metrics of looking at this issue with a 'fresh set of eyes'
  - Use of any score, if determined moving forward to be a material detriment indicator:
    - Would be set by the Member's governance framework and risk appetite

  - Would only be considered at origination
  - Would not negate the need for in life monitoring – this still needs to occur to ensure customers do not move into potential detriment and Members have the ability to monitor a credit file over the life of a loan to ensure this occurs
  - Would not negate the need to undertake any Requirement and Objectives assessment, (R&O), undertake Inquiries (I) and Verify (V)
  - Could be a starting point on which to undertake:
    - A R&O assessment
    - A 'standard' set of Inquiries based on the complexity of the product
- Depending on the answer to the initial I and V, more or less (i.e. scalability) could then occur
- Such an approach, could be complementary to developments in Comprehensive Credit Reporting (CCR) and Open Banking – especially if 'balance' as well as limit is able to be recorded

Visually, the net outcome to define scalability by reference to customer indicators and product complexity could be considered as follows

	Product complexity →		
Customer detriment indicator	**Simpler products – Credit card, Consumer Lease**	**More complex products – Motor finance, Personal Loan**	**More complex products - Mortgage**
Below 'low' detriment indicator	Based off the box below and further discussions around whether this is a practical alternative define reduced R&O, reduced further I and reduced further V (noting that one option could be that where consumers fixed expenses are in line with a benchmark, we may not go further in verification requirements)	To be defined, subject to further discussions with ASIC and other stakeholders around whether this is a practical alternative, as for simple product+..	To be defined, subject to further discussions with ASIC and other stakeholders around whether this is a practical alternative, as for medium complex product +..

<table>
<tr><td rowspan="7">At or around ‘low’ detriment indicator - (e.g. proprietary risk score, bureau score, information disclosed by customer on the application form such as age)</td><td>Std Inquiry being made on</td><td>Std Verification</td><td rowspan="7">To be defined, subject to further discussions with ASIC and other stakeholders around whether this is a practical alternative, as for simple product +..</td><td rowspan="7">To be defined, subject to further discussions with ASIC and other stakeholders around whether this is a practical alternative, as for medium complex product +..</td></tr>
<tr><td>Income</td><td>Yes, but can use alternate verification methods – to be discussed at upcoming discussions</td></tr>
<tr><td>Fixed expenses (to be defined)</td><td>Customer stated information compared to income adjusted benchmark – can use higher than stated if want to</td></tr>
<tr><td>Liabilities (including accommodation costs)</td><td>Fixed product commitments by way of CCR</td></tr>
<tr><td>Dependents</td><td>No</td></tr>
<tr><td>Is customer aware of any undisclosed information that may lead to a likely inability to repay debt in the future</td><td>No – customer attestation</td></tr>
<tr><td>Marital status</td><td>No</td></tr>
<tr><td>Above ‘low’ detriment indicator</td><td colspan="2">Based off the box above, and further discussions around whether this is a practical alternative, define increased R&O, further I and further V</td><td>To be defined, subject to further discussions with ASIC and other stakeholders around whether this is a practical alternative, as for</td><td>To be defined, subject to further discussions with ASIC and other stakeholders around whether this is a practical alternative, as for</td></tr>
</table>

		simple product +..	medium complex product +..

- Outcome of expense survey:
  - 30 Members on a de-identified basis provided answers to an expense categorisation survey
  - Across the 5 product streams, Member engagement was very strong
  - At a high level, the outcomes were:
    - The number of expense categories being captured varied by product with home loans being the highest – this supports the previous commentary around product ranking by complexity and the scalability
    - There is inconsistency in language (general living expenses, fixed, variable, basic, discretionary, non-discretionary) which is causing differences and ambiguity in the definition and interpretation of expense categorisation (i.e. what goes into what category)
    - LIXI standards are being used to help form the basis of expense categorisation
    - Nearly all Members are looking to change the way expenses are captured
    - The use of buffers varies by product, which supports the notion mentioned earlier of a 'risk ranking' of products - in product deep dives, buffers were also applied to income side as well as expense side.
    - Scaling (i.e. making more or less inquiries and verification) currently occurs based on a number of factors but primarily driven off customer and product nuances – the next version of RG209 could enhance industry practices by bringing greater consistency where this occurs and is warranted
    - Nearly everyone participating in the survey use the higher of stated expenses or HEM
    - HEM is usually updated frequently
    - Different degrees of the application of 'belt tightening' and how foreseeable changes in expenditure are considered

The variability and inconsistency in practice across the industry creates an opportunity, as part of this revision and consultation process, for ASIC to clarify its expectations and potential reduce regulatory arbitrage (i.e. subjectivity and inconsistency in application) as some of the tools aimed at assisting in this process, such as comprehensive credit reporting, account scraping, open banking are not sufficiently mature.

Proposed ASIC, AFIA, other Stakeholder Roundtable

The 30+ Members have built up some good momentum on how and where potential changes could be made to RG209, outside of the formal questions being posed.

As part of ASIC's consideration of these responses and to facilitate a process that maximises value from impacted key stakeholders to inform next steps, we would like to propose that ASIC consider inviting some of the Members of the AFIA Steering Group and Working Groups (who would provide insights on behalf of their product peers, not their own organisation, as we did with the recent ASIC/AFIA Credit Card Reform Implementation Roundtables) along with other stakeholders (including AFCA, CALC, ABA, COBA, ARCA and representatives from providers of small amount credit contracts) to join a Roundtable to enable further detail and discussion on these issues (or relevant others).

We have explored this proposal with other industry-representative stakeholders and understand they are supportive in principle.

Potential topics for discussion could be:

- The key findings from the blue sky thinking and expense survey; for example:
  - Is there appetite to explore further scalability by customer and product as set out in this submission – if so, how could this look?
  - Should industry look at defining the attributes of a 'vulnerable' customer (leveraging off the UK Cards Association's work here, FCA's work here, the ACDBA Hardship Register here and the ABA's consultation paper) and in parallel, define the attributes of a 'sophisticated' customer and then discuss and share them with ASIC
  - How do we drive greater consistency on the definitions of various expense types– again, should industry develop a solution and then discuss the output with ASIC?
  - How can we standardise the appropriate use of benchmarks more?
  - The concept of belt tightening as a valid explanation for changes in pre and post loan behaviour?
  - How do regulatory requirements/expectations for the industry evolve as CCR, account scraping, and open banking etc develop and are more frequently used?

- How CP 309 supports and dovetails into APRA's guidance in APS 220 on *Credit Risk Management* that is due to be implemented from 1 July 2020 and in APG223 on *Residential Mortgage Lending?*
- How CP 309 supports and dovetails into newly recently introduced legislation around ASIC's new *Design, Distribution Obligations and Product Intervention Powers* – and potentially, target market definitions?
- Some of the key issues that have emerged from completing the product deep dives namely:
    - Privacy related issues – potential inconsistency with consumer's rights under the e-Payments Code and issues associated with CP 309 and Consumer Data Right principles
    - The treatment of non borrower contributions (e.g. spousal income rather than borrower approach, verification required for third party contributions (e.g. a parent contributing a deposit for their child's house)
    - The distinction between validation and verification of expenses and how this applies to discretionary expenses
    - How to navigate / minimise impacts to Customer Experience / User Experience [CX/ UX] that arise from potential changes to responsible lending, particularly in the context of consumer expectations of simple and seamless interactions with financial institutions, and rapid times to credit decisions
    - How to improve financial literacy across consumers
    - Transitional arrangements as we work through more and more product data becoming available through CCR
    - Whether it is timely to revisit the need to include balance as well as limit (which for some Members is the calculated as balance plus redraw) in CCR reporting
    - How to minimise potential arbitrage based on system sophistication which may favour newer entrants or larger players a data advantage
    - The notion of responsible borrowing and mutual/contractual obligations - if a customer conceals, provides false information, or paints an inaccurate picture, how is this to be interpreted by ASIC of AFCA
    - How to ensure engagement, buy in and potential alignment in approach with AFCA to bring more certainty to customers and financiers
    - A clearer definition of 'substantial hardship'
    - The reporting of RHI when accounts are in collections and subject to a payment arrangement (indulgence) or hardship
    - How a significant increase in inquiry and verification requirements will impact access to / availability of credit
    - The treatment of unregulated credit products in terms of serviceability assessments

- Management of complaints internally and by AFCA to ensure the compliance benchmark is time-appropriate. For example, for complaints relating to conduct pre-revision of RG209, the complaint is assessed against the regulatory settings in place at that time. Inclusion of an application provision in the revised RG209 guidance that incorporates a reasonable period to implement compliance settings that align with the new guidance would be a critical part of this.

The benefits of such a Roundtable would be to:

- Achieve the Government / Parliament's underlying policy objective with the enactment of the responsible lending provisions that operate "*in a manner that strikes a reasonable balance between the goals of minimising the incidence of consumers entering unsuitable credit contracts, and the goal of maximising access to credit for consumers who have the desire and ability to service it.*"
- Improve understanding and consistency across the industry, including in the complaints management and determinations by AFCA
- Deliver better customer outcomes and afford customers more transparency into how their credit applications will be managed
- Enable a fit for purpose solution that optimises the outcome for customers in a way that appropriately balances the needs of financial services providers to operate prudently and commercially
- Provide greater clarity on some of these 'corner stone aspects' leading to a more consistent and smoother transition towards execution of any final recommendations
- Reduce potential regulatory arbitrage (i.e. subjectivity and inconsistency in application) and improve competition.

Next steps

AFIA welcomes the opportunity to discuss our feedback further, or to provide additional information.

If you have any questions, please contact me at helen@afia.asn.au or Karl Turner, Executive Director, Policy and Risk Management at karl@afia.asn.au or both via 02 9231 5877.

Kind regards

Helen Gordon
Chief Executive Officer

ATTACHMENT 1

Part B - General Approach

CP309 Proposal	**CP309 Feedback Questions**	**Member comment:**
Proposal B1 We are considering whether to identify particular inquiries and verification steps in RG 209 that we think would generally be reasonable to provide greater certainty to licensees about complying with their obligations.	B1Q1 Would it be useful for licensees if ASIC were to identify the inquiries and verification steps that we consider should be taken? Why or why not?	Yes. Why: • Gives clarity without restricting lenders from using discretion • Removes the regulatory arbitrage • Provides more certainty to industry participants and consumers • Helps development of compliance frameworks • Helps Board oversight and governance • Provides safe harbour with scope to scale based on individual circumstances or prescribes some minimal steps to be taken in all circumstances However, need to: • Allow for some form of transition given not every product / institution is in an open banking / CCR world • Ensure methods identified do not stifle innovation and competition • Still be able to exercise lender discretion • Recognise that verification for fixed commitments is more easily undertaken than verification for variable commitments such as say living expenses • Accommodates the significant role played by intermediaries (be they ACL-holders, ACRs of ACL-holders or operating under one of the NCCP exemptions) as the greater the level of clarity and consistency for R&O and

		I&V (by product and customer character) the better the experience will be for the customer and it will likely reduce regulatory arbitrage
	B1Q2 If there are particular examples of industry practice that you consider should be reflected in any guidance, please provide details of those practices.	• Requires clarification as to: o when it is appropriate to obtain bank statements – noting different financiers have different risk appetites which may determine how much data they capture o exactly what needs to be verified using those statements o to what extent analysis of the statement is needed (for instance, a line by line categorisation / use of screen scraping technology (noting that not all Members involved in this submission support screen scraping) / verification of fixed expenses only, with discretionary not examined as closely o how this will impact on e-payments code – please refer to commentary on C1Q3 o how 'belt-tightening' can continue to be recognised as a means of explaining why customers change historical behaviour o whether a different approach is required for a credit provider versus a credit assistance provider • Industry and other stakeholders could: o Share with ASIC their future definitions of a sophisticated and vulnerable customer (noting that the current ABA consultation paper on this issue may assist with a consistent approach) – and then scale more or less enquiries and

		more or less verification off these cohorts
	B1Q3 Are there any kinds of credit products, consumers or circumstances for which you consider it may be reasonable to undertake **fewer inquiries and verification steps**? Please identify the kinds of products, consumers and circumstances and particular features you think are relevant.	Yes, depending on: • The recency of interaction/other applications • Whether it is an existing customer with their main financial institution or those with whom they have a banking history • Whether the customer meets the definition of a 'sophisticated borrower' – (e.g. say, high net worth customers that are relatively familiar with credit products, have demonstrated good financial behaviour, and significant assets/inflows to rely on), but this will obviously depend on the customer's circumstances and the credit product they're applying for • If the customer is replacing / restructuring existing facilities with same or similar – i.e. no new money • Where the customer sits on 'potential detriment indicators' (e.g. customers with a higher credit score or credit risk grading) • The 'risk ranking of the product' • Whether the product term or financial limit is captured by legislation / ASIC guidance – (e.g. SACC contracts / credit card amortisation period defined to 3 years - please refer to response to C4Q1) • History of loan increase requests (the more requests, the greater the verification)
	B1Q4 In your view, what aspects of the consumer's financial situation would a licensee need to	For new customers • Income • Employment information and type • Liabilities (home loan, rent, personal loans, credit cards, leases)

	inquire about in all circumstances? If you think some aspects of the consumer's financial situation do not need to be inquired about, please explain why.	• Non-discretionary expenses – as mentioned above, given the survey results highlighted a degree of inconsistency in language (eg general living vs fixed vs non-discretionary) and then definition, (i.e. what goes where), we welcome the opportunity to work with ASIC and others on an agreed glossary of terms that will help drive consistency from a customer, regulator and member perspective • Unique payments – (e.g. maintenance, payments to nursing homes, child support, private school fees) • Any missed payments in RHI - noting we are yet to be in a fully Open Banking / CCR world so adequate time and guidance for the transition period is important • Where the customer sits on 'potential detriment indicators' (e.g. customers with a lower credit score or credit risk grading) • Any likely foreseeable changes • Personal circumstances (e.g. age, dependents etc) Existing customers • Rely on existing data and inquire whether circumstances have changed or will be changing in the foreseeable future via conversations with customers • Level of inquiry would also depend on the 'risk rating' of the product ASIC's help would be welcomed in the treatment of 'special cases'; For example: • Non-borrower spousal contributions

		• Buy Now Pay Later products in the context of serviceability assessments, namely, whether these should be considered as liabilities or expenses
	B1Q5 In your view, what aspects of the consumer's financial situation would a licensee need to **verify in all circumstances**? If you think some aspects of the consumer's financial situation do not need to be verified, please explain why.	The context behind this question is important: • Not all financiers have access to the same technological solutions • There is a transition to open banking / CCR by product type and financier – CCR will allow for undisclosed debts to be verified, not all Members are part of CCR • There is a distinction between 'validation' and 'verification' (i.e. you cannot verify expense which are discretionary). • The notion of 'belt tightening' exists and should continue to exist as a means of supporting pre and post loan customer behaviour and ability to demonstrate serviceability • Instead, the focus could be on validation of what is a reasonable expense and the best approach is to use an appropriate benchmark to validate whether a customer's declarations are reasonable – potentially HEM broken down into its constituent elements • As mentioned above, one option we would like to explore further with ASIC is to verify only non-discretionary expenses, noting the comments at the start of this submission that Industry would welcome the opportunity to work with ASIC on agreed definitions of what is and should go into such categories

	B1Q6 What would be the **effect on consumers** of ASIC identifying particular inquiries and verification steps? For example, what would be the effect on access to and cost of credit for consumers?	It depends, it
		May:
		• Deliver better outcome for consumers as expectation are clearer and ensures customers can expect consistency across Members
		• Reduce the risk of consumers being placed in hardship which was not caused by a change in circumstances (e.g. loss of job, sickness) but due to incorrect information
		May also:
		• Increase the price for products as additional costs are incurred in setting up the product due to increased manual due diligence
		• Increase friction, and drive drop outs in the credit application process
		• Reduce CX / UX – for example, 'I've had a great track record for 20 years and now you're asking me all these questions'; 3 years I gave you the same information and got a loan for 'y'; why is it now 'y' – 20%?
		• Increase time to decision
		• Be harder for good credit to get credit
		• Restrict access to credit for:
		    o 'more vulnerable' cohorts who may be pushed to more unscrupulous credit providers
		    o asset rich but cashflow poor customers
		    o customers with a higher than average discretionary expenditure which may not be maintained going forward
		• Depend on take up of CCR/Open Banking
		• Members note that CP 309 should consider the recent Senate Inquiry on Hardship

		which explored avenues to improve access to credit for more vulnerable cohorts
	B1Q7 What would be the **effect on business costs** of ASIC identifying particular inquiries and verification steps? Please provide details of the effect on compliance costs for the licensee, and any factors that are likely to affect the level of cost or cost savings.	• Higher initial costs of re-tooling • Higher initial costs to train the front line • Higher costs relating to system changes (which can be expensive, even if the changes are simple, due to legacy issues) • Creates potential arbitrage based on system sophistication which may favour newer entrants or larger players a data advantage • Negative impact on morale as staff become disengaged in a process that is seen to be moving away from recent advances in CX / UX • Reduces less complex / more vanilla lending as organisations / Boards / risk appetite retreats to 'in the box' lending leading to falling economic impact • Potentially higher cost of credit for consumers • May not significantly reduce impairment • Increase time to decision (at conception and ongoing) – for example, in the motor space, modelling indicates, assuming an average staff wage of $42/hr, for every additional 10 minutes of manual intervention, an extra $1.3m in additional costs per annum is incurred • May increase fraud, as prescription will allow fraudsters to target holes in the process
	B1Q8 In your view, what would be the **effect (either positive or negative) on competition** between	Competition may improve as: • Regulatory arbitrage reduces by providing licensees with clarity on the steps required to meet their regulatory obligations

	licensees? Please provide details.	• It creates more certainty in the process for consumers who therefore maybe more confident in their engagement with Members • Consistency in validations standards improves Competition may reduce as: • Decreased product returns lead to certain products being withdrawn from market • This may favour organisations with strong technological / risk / analytical capabilities that can analyse/consume the data and conduct inquiries and verifications in a more efficient and sophisticated manner • There is reduced access to mainstream credit leading more exposed customers going to 'alternate' financiers • Changes are perceived as moving from the current approach of 'not unsuitable' to 'suitable' even though the legislation was deemed to be appropriate (as determined in the Royal Commission Final Report)

Part C – Updating or clarification of current advice

CP309 Proposal	CP309 Feedback Questions	Member comment:
Proposal C1 ASIC proposes to amend the current guidance in RG 209 on forms of verification to: (a) clarify our guidance on kinds of information* that could be used for verification of the	C1Q1 Please provide details of any particular types of information that you consider should be reflected in the guidance as being appropriate and readily available forms of verification?	• As per B1Q5

consumer's financial situation, and provide a list of forms of verification that we consider is readily available in common circumstances (b) clarify our guidance on kinds of information that could be used for verification of the consumer's financial situation, and provide a list of forms of verification that we consider is readily available in common circumstances *Sources of information: 1. recent payslips 2. confirmation of employment by employer 3. recent income tax returns 4. bank statements	C1Q2 Do you consider that the examples included in Appendix 1 (listed in column one) are appropriate? Why or why not?	Yes, they are all relevant but • Building the necessary information (e.g. data sets for over 12months) is costly and challenging for some businesses • There needs to be flexibility to use multiple methods of verification- Members should have the ability to treat individual consumers as individuals and assess them based on their unique and individual needs • Further, any item used for living expense verification should not be taken as a definite figure unless it (a) cannot be varied i.e. it is fixed; or (b) has been confirmed by the customer is an expense that will continue to be paid after the loan is made. • Consumers should have the opportunity to state whether they expect their discretionary spending to reduce, and if they state that they are willing to reduce discretionary spending, this should be recorded and taken into account (i.e. the concept of 'belt tightening'). Further, ASIC's guidance on what is sufficient to demonstrate this (e.g. signed declaration) would be very helpful • Engagement and agreement with AFCA on the definition of appropriate verification will be important to improve certainty around external dispute resolution schemes and should help address the ability to rely on borrower's honest and fulsome disclosure • Again, scalability becomes important so that it accommodates various situations such as when obvious capacity is evident e.g. very high-income earners

<table>
<tr>
<td rowspan="2">5. financial statements for self-employed
6. business account statements
7. business activity statements
8. a statement from the consumer's accountant
9. credit reports
10. information/reports from other Members
11. Centrelink statements
12. housing (rental, council rates)
13. communication expenses (telephone/internet plans);
14. child support and spousal maintenance
15. insurance
16. regular school fees/child care
17. utility bills
18. regular entertainment or recreation services bills or gambling accounts
19. transaction statements (deposit and credit)</td>
<td></td>
<td>• Review of bank statements in its entirety and at transaction level is impractical and arguably less necessary for less complex products
• In addition, bank statements may not the most appropriate method to:
o Verify income as they do not include all necessary information and may result in Members asking for payslips to confirm details such as the ABN, Year to Date figures etc.
o Verify living expenses given they only look at historical habits which are not necessarily reflective of future circumstances</td>
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<td>C1Q3 Are there particular issues with using data aggregation services that you consider should be raised in our guidance? Please provide details of those issues, and information that you consider should be included in our guidance. For example, would it be useful to include specific guidance on matters the licensee could, or should, raise with the consumer before obtaining the</td>
<td>Yes:
• A clear position from ASIC in relation to data aggregation services and the impact of these services on the consumer's rights under the e-Payments Code which relies on client consent will be important as will guidance on whether a lender cannot proceed if consent is not given
• In addition, clarity is sought as, there seems to be a potential inconsistency between CP 309 and developments in privacy law (e.g. ACCC inquiry into digital platforms and CDR privacy safeguards) and consumer expectations about the use of data - particularly where ASIC expects Members to use data they receive for purposes it was not collected for – (e.g. collecting account data for checking affordability but using it to identify and manage vulnerable customers / customers in hardship).</td>
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20. data aggregation reports (e.g. proviso).	consumer's consent to use this kind of service?	• The Draft CDR Rules also make clear that use and collection of data collected under the CDR should be minimised wherever possible in clear contrast to how data should be used in CP309, which will create a compliance issue for Members • This issue of primary vs secondary privacy consent under the Privacy Act is important – particularly if the secondary use of data identifies potential vulnerability indicators/hardship. For example, a Member can see very personal information (e.g. oncology costs or marriage counselling costs) on a bank statement where the data was collected for an affordability assessment rather than for vulnerability checking • Guidance from ASIC would be welcome on how should a Member deal with this – at origination and in life – and for in life, what's the impact on current facilities / any requests for 'new money'; as it potentially blurs the line between being a financier and an advisor and will likely lead to higher drop off rates / decrease in CX, potentially marginalising customer cohorts and driving customers to Credit Providers with a lower and poorer reputation • Standardised data attributes for expense categorisation from providers is suggested to improve consistency as well as clarity from ASIC that Members should be able to rely on a summary of client spending from data service providers

Proposal C2 ASIC proposes to expand our guidance on what are reasonable steps to verify the financial situation of a consumer by: (a) more clearly stating that it is not sufficient merely to obtain verifying information but not have regard to it, or to use a source of information to verify only one aspect of the consumer's financial situation if it contains other (potentially inconsistent) information about other aspects of the consumer's financial situation; and (b) including an 'if not, why not?' approach— that is, if a licensee decides not to obtain or refer to forms of verifying information that are readily available, they should be able to explain why it was not reasonable	C2Q1 Do you consider that the proposed clarification of guidance on reasonable verification steps would be useful? Are there any other aspects of our guidance on verification that you consider would be useful?	Guidance should continue to be offered as non prescriptive to allow industry flexibility and innovation. It would be helpful to clarify requirements previously mentioned for: • Defining general living • Verifying discretionary expenses • Defining substantial hardship
	C2Q2 Would an 'if not, why not' approach encourage improvements to current verification practices? Why or why not?	No - while it may create greater certainty, there may be significant unintended consequences as the "if not why not" approach involves elements of subjectivity – particularly in terms of how past expenses are reflected in expenditure going forward. It does not reflect reality which is a customer's ability and willingness to belt tighten. We suggest that a forensic investigation to discharge the 'if not why not' test will not necessarily impact the quality of credit decisioning because past expenses do not necessarily reflect future expenses. Such a test may not necessarily add greater certainty for the customer as it still seems inherently subjective and could result in inconsistencies. For example, one individual representative may include a piece of information pertinent to future expenses and the loan is declined, while another representative in another distribution channel may choose not to include and approve the same loan.

to obtain or refer to those forms of verification in the circumstances of the particular consumer involved.		If the focus is on 'if not, why not' then the unintended consequences maybe: • A reduction in competition • Board's likely to set appetite at 'no if nots' which may impact innovation / choice
	C2Q3 What are the benefits, risks and costs for consumers in this approach (including any effect on access to and cost of credit for consumers)?	As per B1Q6
	C2Q5 What additional business costs would be involved in this approach?	As per B1Q7
Proposal C3 ASIC proposes to clarify our guidance in RG 209 on the use of benchmarks as follows: (a) A benchmark figure does not provide any positive confirmation of what a particular consumer's income and expenses actually are. However, we consider that benchmarks can be a useful tool to help determine whether	C3Q1 Do you consider that the proposed clarification of guidance about use of benchmarks would be useful? Why or why not?	Members strongly support the continued use of benchmarks – please also refer to answers on C3Q3. In relation to this question, it depends: • The test for servicing is that the consumer cannot only repay with 'significant hardship' • The test is not 'can repay the loan while maintaining pre-loan spending habits' Consumers should be asked about their fixed or general living expenses and reasonable discretionary expenses needed to maintain an 'acceptable lifestyle' (which of itself, is subjective in nature) and it is reasonable that declared living expenses be compared to a benchmark.

information provided by the consumer is plausible (i.e. whether it is more or less likely to be true and able to be relied upon). (b) If a benchmark figure is used to test expense information, licensees should generally take the following kinds of steps: (i) ensure that the benchmark figure that is being used is a realistic figure, that is adjusted for variables such as different income ranges, dependants and geographic location, and that is not merely reflective of 'low budget' spending; (ii) if the benchmark figure being referred to is more reflective of 'low budget' spending (such as the Household Expenditure Measure), apply a reasonable buffer amount that		This ensures that the amount used for assessment is not too low (i.e. validated as plausible), especially where a customer has underestimated their usual spend. Verifying general living expenses, whether discretionary or non-discretionary can be challenging – benchmarks provide guidance of what it is likely a 'must have to live'. If declared living expenses are very high, further inquiry can be made. In between these 'book ends', some element of flexibility should be permitted. In addition: • Benchmarks should be reviewed regularly – for example utilisation reviewed against customer declared information, benchmarks are updated on a timely basis etc • There must be a notion of responsible borrowing (as in New Zealand) - if a customer conceals, provides false information, or paints an inaccurate picture, and the lender has no reasonable facility to verify and potentially pick this up, the lender should not be judged on the fact they did not verify information that a customer has declared to be true. Customers need to have a level of accountability for being truthful to ensure provision of credit in a way that does not potentially impact on Australia's financial stability • Further guidance on the definition of 'substantial hardship' and the level of

reflects the likelihood that many consumers would have a higher level of expenses; and (iii) periodically review the expense figures being relied upon across the licensee's portfolio—if there is a high proportion of consumers recorded as having expenses that are at or near the benchmark figure, rather than demonstrating the kind of spread in expenses that is predicted by the methodology underlying the benchmark calculation, this may be an indication that the licensee's inquiries are not being effective to elicit accurate information about the consumer's expenses.		'sacrifice' that is acceptable, will be important as the law clearly intends that a degree of belt tightening to repay their commitment is acceptable. AFIA would welcome the opportunity to develop what is entailed by this concept through the Roundtable process suggested in our covering letter.
	C3Q2 Please provide information on what buffer amounts you currently apply, or would otherwise consider to be reasonable.	• Varies by product – please see Attachment 2

	C3Q3 What are the benefits, risks and costs for consumers in this approach (including any effect on access to and cost of credit for consumers)?	We believe that benchmarks are a reasonable, cost efficient, and robust proxy to guide inquiries and verification.
		
		Benchmarks can:
		• Help reduce the cost to serve customers
		• Improve consistency of treatments
		• Help reduce regulatory arbitrage
		• Assist to establish a baseline as most customers struggle to articulate/recall exact figures
		• Help Members navigate and deal with the facts that:
		  o expenses are challenging to verify
		  o customers find it difficult to estimate their living expenses with any reliable degree of completeness and / or accuracy

		o past expenses are not an indicator of future expenses o actual expenses can be manipulated in the months leading up to a credit application • Are more equitable given larger ADIs have significant transactional data advantages As mentioned earlier, Members would welcome the opportunity to discuss how to standardise the use of appropriate benchmarks more. If there is likely limited forward use for benchmarks, there will be a higher cost of due diligence to verify and question information (particularly expenses) which will generally be borne by all customers. This may involve initial manual processes or third-party vendor costs to procure tools to automate processes. If automated approvals are based on "as is spend", approval rates could be lower and some customers not dealt with correctly due to "new expenses" such as insurance costs and land/strata rates
	C3Q4 What additional business costs would be involved in this approach?	See B1Q7
Proposal C4 ASIC proposes to update the	C4Q1 Do you consider that the proposed	While Report 493 is the context for interest only (IO) home loans, there needs to be consideration

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<td>current guidance in RG 209 on reasonable inquiries about the consumer's requirements and objectives to reflect the findings and guidance in Report 493 Review of interest-only home loans: Mortgage brokers' inquiries into consumers' requirements and objectives (REP 493).

Please see appendix 1 below on further details on what ASIC specifically proposes on what reasonable inquiries.</td>
<td>clarification of guidance about understanding the consumer's requirements and objectives would be useful? Why or why not?</td>
<td>of product nuances and complexity – for example the use of the Combined Industry Forum broker interview guide for home loans. We would be happy to provide further detail.

In addition:
• R&O should be scalable by product. IO mortgages should not be the baseline - basic feature products (e.g. no fee credit cards) should not require further inquiry
• ASIC should also clarify what lenders (as opposed to intermediaries) are obliged to do should a customer express a requirement or need that the lender cannot fulfil (for example, based on current practices, where a customer is seeking say 3 specific features and the product the Member has only 2, they would advise the customer of this position and let them decide if they wish to take the product. Confirmation that this is acceptable or that the Member should inform the customer they cannot help would be beneficial
• ASIC should clarify the position regarding switching where the new contract may result in additional cost (which may not be captured as part of R&O), but the new credit contract better meets the consumer's requirements and objectives (e.g. because restructuring debts matches their incomes with their longer- term wealth objectives)
• An alternate solution could be to categorise objectives as products that fit into one of the following categories:
o Transport</td>
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		o Accommodation – including renovation and investment o Recreational goods / services o Lifestyle goods / services o Educational / health / professional / trade services Such categorisation would help simplify and provide increased consistency in treatment • Members and AFIA welcome the opportunity to work with ASIC and other stakeholders on improving financial literacy
	C4Q2 What are the benefits, risks and costs for consumers in this approach (including any effect on access to and cost of credit for consumers)?	See answer to B1Q6

	C4Q3 What additional business costs would be involved in this approach?	See answer to B1Q7

Part D – Additional guidance on Specific Issues

CP309 Proposal	**CP309 Feedback Questions**	**Member comment:**
Proposal D1 ASIC proposes to include new guidance in RG 209 on the areas where the responsible lending obligations do not apply.	D1Q1 Are there any forms of lending where the responsible lending obligations are being used by licensees in situations where the law does not require the responsible lending obligations in the National Credit Act to apply? Please describe the situations where this takes place.	Members: • support the outcomes from the Royal Commission namely that NCCP should not apply to small business lending • would be concerned if ASIC was to consider issuing "guidance" on SME lending as it may create potential confusion and unintended consequences In preference to including ASIC's views on unregulated products in revised RG209, it may be useful for AFIA to work with ASIC to develop guidance specific to areas where Members have been challenged with how the compliance obligations in the NCA might be managed. These include for example: • 'non-personal/domestic/household - business use' meaning • commercial entities which involve 'individuals' (e.g. sole traders, partnerships)
	D1Q2 Are there any forms of small business lending where licensees are unsure about whether the responsible lending obligations in the National Credit Act apply? Please describe	As above + combinations (e.g. where we have a sole trader/self-employed person and a PAYG person applying for a loan for a vehicle - is it a predominantly business or personal purpose)

	the situations which give rise to this uncertainty.	
Proposal D2 ASIC propose to include new guidance in RG 209 on: (a) the role of the responsible lending obligations, and in particular the obligation to take reasonable steps to verify information provided about the consumer's financial situation, in mitigating risks involved in loan fraud (b) risk factors that might indicate that additional verification steps should be taken.	D2Q1 Would specific guidance about loan fraud and the impact on responsible lending obligations of the licensee be useful? Would guidance encourage broader improvements in processes for identifying fraud and reduce the risk of consumers entering unsuitable credit contracts as a result of fraud? Why or why not?	Yes. Such guidance should: • Clearly articulate fraud flags / indicators to maximise value (AUSTRAC and Australian Payments Network insights might be useful to support ASIC's work in this area) • Ensure that consumer accountability for their declarations is important and cannot be diluted down • Ensure it does not breach privacy regulations (e.g. checking with an employer about an employee) AFIA also notes that too much guidance may offer criminals a blueprint of what to focus on and may disadvantage clients who inadvertently go to a broker suspected of fraud
	D2Q2 Please provide details of any risk factors that you consider it would be useful to identify, and additional verifying steps you consider to be reasonable in those circumstances.	• Payslip fraud – it is often difficult to verify income with the employer due to privacy. • Bank statement fraud – Open banking relies on the consumer's consent to access transaction data. Members would welcome the opportunity to work with ASIC on education and improving consumer awareness of the benefits and use of Open Banking • Where loan proceeds are paid to unexpected third parties or anyone not associated with a transaction.
	D2Q3 What are the benefits, risks and costs for consumers in	• Refer B1Q6

	this approach (including any effect on access to and cost of credit for consumers)?	
	D2Q4 What additional business costs would be involved in this approach?	• Refer B1Q7
Proposal D3 ASIC proposes to include guidance in RG 209 to clarify how repayment history information may be used, including that: (a) the occurrence of repayment difficulties on one product will not necessarily mean that a new credit product will in all cases be unsuitable for that consumer (b) this information should instead trigger the licensee to make more inquiries to enable it to understand those repayment difficulties, and the likelihood that the circumstances of the consumer leading to those difficulties will	D3Q1 Would guidance about use of negative repayment history information and hardship indicators reduce the risk that Members consider it necessary to refuse applications for further credit products that may in fact be affordable for the consumer? Why or why not?	Customers would benefit from ASIC working with AFIA and other key external stakeholders to resolve with the incoming Government at the earliest opportunity how hardship can be notified to inquiring credit providers to manage applications and minimise risk of creating financial difficulty for customers in the absence of this information. Industry would also benefit from ASIC guidance on the reporting of RHI when accounts are in collections and subject to a payment arrangement (indulgence) or hardship. It is important that any guidance: • acknowledges that Members need to retain the ability to make prudent risk decisions (i.e. guidance should provide additional clarity for industry while also acknowledging that Members have different risk appetites when it comes to things such as RHI) • should permit Members to make decisions on arrears data taking into account, where relevant, the requirements of APRA in managing credit risk (including for accounts in hardship)

mean that the consumer would also be unable to meet financial obligations under the new product being considered.		• should include the treatment of under disclosure and simultaneous I and V of liabilities
	D3Q2 What are the benefits, risks and costs for consumers in this approach (including any effect on access to and cost of credit for consumers)?	• Refer B1Q6
	D3Q3 What additional business costs would be involved in this approach?	• Refer B1Q7
Proposal D4 ASIC proposes to include new guidance in RG 209 about maintaining records of the inquiries made and verification steps taken by the licensee, reflecting our findings and recommendations on good recording practices included in REP 493. See appendix 2 for further detail.	D4Q1 Do you consider that guidance on industry best practice for recording the inquiries and verification steps that have been undertaken would be useful for licensees? Why or why not?	Yes, but it should not be too prescriptive and should allow multiple ways of maintaining records and allow for innovation
	D4Q2 Please provide any comments on the particular recording practices identified as 'best practice' by ASIC, and whether you consider those practices are generally appropriate for licensees.	Guidance around a 'default minimum' as opposed to best practice would be welcome

	D4Q3 What are the benefits, risks and costs for consumers in this approach (including any effect on access to and cost of credit for consumers)?	• Refer B1Q6
	D4Q4 What additional business costs would be involved in this approach?	• Refer B1Q7
Proposal D5 ASIC proposes to provide additional guidance in RG 209 on what information we think should be included in a written assessment.	D5Q1 Would it be useful for ASIC to provide an example of a written assessment to illustrate the level of information that we think should be included? Why or why not?	A 'blue print' / minimum standard for a written assessment that ASIC expect to see in all written assessments would be helpful, but Members suggest leaving the form, substance and additional aspects to each player to design Any minimum standard should: • Not underestimate the impact on the front line of undertaking such an assessment • Be clear that the front line are not financial advisers or providing pseudo advice • Not force lenders to provide any commercially sensitive information • Not require an extensive assessment with unnecessary information.
	D5Q2 Please provide any comments on the example set out in Appendix 2 of CP309.	• The sample assessment template suggests that Members must ask the customer whether there are particular features of the credit contract that the customer does not want/are not necessary. We suggest that for some products the features will be obvious and this level of interrogation may not be relevant.

		• As above, it should not be overly burdensome on frontline staff such that they would require additional expertise/ time/ resources above what can be reasonably expected of them • In line with the consideration by Commissioner Hayne in his final Report, it should not move away from the current 'not unsuitable' test • It should balance the benefit in fields like 'type of verification document' with the significant development Members may need to undertake of legacy systems to deliver this field • Members believe the information about third party contributions are not practicable and may cause issues in implementation. For example. it is not practicable to make further inquiries and verification on third party financial support – not only are there are issues in relation to privacy, but where reliance is placed on a third party who is not party to the credit contract, will the licensee have to also conduct a full responsible lending check on the third party to ensure that they are able to provide that credit. The corollary of this is how far are the obligations going to extend? • Finally, Members note that including information to the extent required in Appendix 2 would also substantially add to the credit assessment time while it is unclear whether customers would find that level of detail valuable. AFIA suggests consumer-testing may be a valuable means to arrive at

		an outcome that achieves the policy objective while maximising the consumer benefit.
	D5Q3 What are the benefits, risks and costs for consumers in this approach (including any effect on access to and cost of credit for consumers)?	• Refer B1Q6 • There are potential fraud implications with providing the level of prescription in the example written assessment as it may provide a blueprint for fraud to be committed as the expectations in the documentation to obtain credit is provided in great detail.
	D5Q4 What additional business costs would be involved in this approach?	• Refer B1Q7

ATTACHMENT 2 – Responses to CP 309 highlighting more unique product insights that arose through Product Working Group Discussions

Part B - General Approach

CP309 Proposal	**CP309 Feedback Questions**	**Member comment:**
Proposal B1 We are considering whether to identify particular inquiries and verification steps in RG 209 that we think would generally be reasonable to provide greater certainty to licensees about complying with their obligations.	B1Q1 Would it be useful for licensees if ASIC were to identify the inquiries and verification steps that we consider should be taken? Why or why not?	
	B1Q2 If there are particular examples of industry practice that you consider should be reflected in any guidance, please provide details of those practices.	
	B1Q3 Are there any kinds of credit products, consumers or circumstances for which you consider it may be reasonable to undertake **fewer inquiries and verification steps**? Please identify the kinds of products, consumers and circumstances and	• Where product has a guaranteed future value – such as a car loan *(Motor, Personal Loan)* • Where there is a requirement to collect bank statements for SACC *(Consumer lease)* • Where the loan is secured by an asset with a defined residual value or guaranteed future value *(Motor)*, • If a Current or new customer has applied in say the last 30 days, and no circumstances have changed *(Consumer lease)* • Products with smaller credit commitments (credit cards/personal loans) compared to mortgages *(Consumer lease)*

	particular features you think are relevant.	• Emergency situations / domestic violence / natural disasters *(Home loans)*
	B1Q4 In your view, what aspects of the consumer's financial situation would a licensee need to **inquire about in all circumstances**? If you think some aspects of the consumer's financial situation do not need to be inquired about, please explain why.	
	B1Q5 In your view, what aspects of the consumer's financial situation would a licensee need to **verify in all circumstances**? If you think some aspects of the consumer's financial situation do not need to be verified, please explain why.	
	B1Q6 What would be the **effect on consumers** of ASIC identifying particular inquiries and verification steps? For example, what would be the effect on access	• On "concise narrative summary", broker needs to explain choice • Lenders' position is different and may not need "concise narrative summary *(Home Loans)*

	to and cost of credit for consumers?	
	B1Q7 What would be the **effect on business costs** of ASIC identifying particular inquiries and verification steps? Please provide details of the effect on compliance costs for the licensee, and any factors that are likely to affect the level of cost or cost savings.	• Broker interaction likely to increase *(Personal loans)* • Look at value add in product – how much will extra verification 'move the dial' – focus on large value add / material expense categories not verify all *(Home loans)*
	B1Q8 In your view, what would be the **effect (either positive or negative) on competition** between licensees? Please provide details.	• Creates imbalance for the Buy Now Pay Later segment which will mean this will grow as it is harder and will take longer to complete an app for a regulated product *(Personal Loans)* • As APRA has raised standards for ADIs, there is no longer a level playing field as between them and non-ADIs *(Home loans)*

Part C – Updating or clarification of current advice

CP309 Proposal	**CP309 Feedback Questions**	**Member comment:**
Proposal C1 ASIC proposes to amend the current guidance in RG 209 on forms of verification to: (c) clarify our guidance on kinds of information* that	C1Q1 Please provide details of any particular types of information that you consider should be reflected in the guidance as being appropriate and	

could be used for verification of the consumer's financial situation, and provide a list of forms of verification that we consider is readily available in common circumstances (d) clarify our guidance on kinds of information that could be used for verification of the consumer's financial situation, and provide a list of forms of verification that we consider is readily available in common circumstances *Sources of information: 21. recent payslips 22. confirmation of employment by employer 23. recent income tax returns 24. bank statements	readily available forms of verification?	
	C1Q2 Do you consider that the examples included in Appendix 1 (listed in column one) are appropriate? Why or why not?	
	C1Q3 Are there particular issues with using data aggregation services that you consider should be raised in our guidance? Please provide details of those issues, and information that you consider should be included in our guidance. For example, would it be useful to include specific guidance on matters the licensee could, or should, raise with the consumer before obtaining the consumer's consent to use this kind of service?	

25. financial statements for self-employed 26. business account statements 27. business activity statements 28. a statement from the consumer's accountant 29. credit reports 30. information/reports from other Members 31. Centrelink statements 32. housing (rental, council rates) 33. communication expenses (telephone/internet plans); 34. child support and spousal maintenance 35. insurance 36. regular school fees/child care 37. utility bills 38. regular entertainment or recreation services bills or gambling accounts 39. transaction statements (deposit and credit)		

40. data aggregation reports (e.g. proviso).		
Proposal C2 ASIC proposes to expand our guidance on what are reasonable steps to verify the financial situation of a consumer by: (c) more clearly stating that it is not sufficient merely to obtain verifying information but not have regard to it, or to use a source of information to verify only one aspect of the consumer's financial situation if it contains other (potentially inconsistent) information about other aspects of the consumer's financial situation; and (d) including an 'if not, why not?' approach— that is, if a licensee decides not to obtain or refer to forms of verifying information that are readily available, they should	C2Q1 Do you consider that the proposed clarification of guidance on reasonable verification steps would be useful? Are there any other aspects of our guidance on verification that you consider would be useful?	• Treating partner expenses when say reviewing joint bank statements *(Personal Loans)* • Given the additional laws now in place, should credit cards have a different and potentially lower verification threshold *(Credit Cards)* • Customers who are asset rich, cashflow poor and clarification on income vs asset *(Home loans)*
	C2Q2 Would an 'if not, why not' approach encourage improvements to current verification practices? Why or why not?	
	C2Q3 What are the benefits, risks and costs for consumers in this approach (including any effect on access to and cost of credit for consumers)?	
	C2Q5 What additional business costs would be involved in this approach?	

be able to explain why it was not reasonable to obtain or refer to those forms of verification in the circumstances of the particular consumer involved.		
Proposal C3 ASIC proposes to clarify our guidance in RG 209 on the use of benchmarks as follows: (c) A benchmark figure does not provide any positive confirmation of what a particular consumer's income and expenses actually are. However, we consider that benchmarks can be a useful tool to help determine whether information provided by the consumer is plausible (i.e. whether it is more or less likely to be true and able to be relied upon). (d) If a benchmark figure is used to test expense information, licensees should generally take the	C3Q1 Do you consider that the proposed clarification of guidance about use of benchmarks would be useful? Why or why not?	It depends: • The test for servicing is that the consumer cannot only repay with 'substantial hardship' • The test is not 'can repay the loan while maintaining pre-loan spending habits' • Further guidance on the definition of **'substantial hardship'** and the level of hardship or sacrifice that is acceptable, will be important as the law clearly intends that a degree of hardship to repay their commitment is acceptable *(all Personal Loans)*
	C3Q2 Please provide information on what buffer amounts you currently apply, or would otherwise consider to be reasonable.	• Remote area buffer *(Motor)* • Boarding, Renting and Living with Parents buffer *(Motor)* • Buffer for unexpected expenses or increases in living expenses covered under foreseeable change *(Motor)* • Credit card buffer *(Motor)* • Buffers vary by %, surplus servicing capacity, expense category *(Consumer Lease)* • Buy Now Pay Later *(Personal Loans)* • Buffer above HEM doesn't always work as some people who have a modest lifestyle would be willing to adopt one in order to buy a house *(Home Loans)*

following kinds of steps: (i) ensure that the benchmark figure that is being used is a realistic figure, that is adjusted for variables such as different income ranges, dependants and geographic location, and that is not merely reflective of 'low budget' spending; (ii) if the benchmark figure being referred to is more reflective of 'low budget' spending (such as the Household Expenditure Measure), apply a reasonable buffer amount that reflects the likelihood that many consumers would have a higher level of expenses; and (iii) periodically review the expense figures being relied upon across the licensee's portfolio—if there is a high proportion of		• General living expenses *(Home loans, motor, consumer lease, credit cards, personal loans)* • Income *(Home loans, motor, consumer lease, credit cards, personal loans)* • Consideration should be given to dividing HEM up into buckets. This could provide useful guidance particularly on less discretionary categories *(Home Loans)*
	C3Q3 What are the benefits, risks and costs for consumers in this approach (including any effect on access to and cost of credit for consumers)?	• Low income earners may be subject to more questioning about their financial situation and likely to be declined more leading to potential reduced access to credit *(Consumer Lease)*
	C3Q4 What additional business costs would be involved in this approach?	

consumers recorded as having expenses that are at or near the benchmark figure, rather than demonstrating the kind of spread in expenses that is predicted by the methodology underlying the benchmark calculation, this may be an indication that the licensee's inquiries are not being effective to elicit accurate information about the consumer's expenses.		
Proposal C4 ASIC proposes to update the current guidance in RG 209 on reasonable inquiries about the consumer's requirements and objectives to reflect the findings and guidance in Report 493 Review of interest-only home loans: Mortgage brokers' inquiries into consumers' requirements and objectives (REP 493).	C4Q1 Do you consider that the proposed clarification of guidance about understanding the consumer's requirements and objectives would be useful? Why or why not?	• Whilst report 493 is the context for interest only home loans, there needs to be consideration of product nuances. For example: o For car loans, customers select the term, payment structure, features – is the output a sufficient record of meeting their R&O objectives *(Motor)* • With Personal Loans there is a need to capture R&Os as they change; however, is there a need for credit cards as the Explanatory Memorandum is very clear that the only question is about the limit *(Credit cards)* • There needs to be a balance as too many questions may result in an advisory position and moving towards what is more 'suitable'

Please see appendix 1 below on further details on what ASIC specifically proposes on what reasonable inquiries.		versus 'not unsuitable'. Even for R&Os, it needs to be not unsuitable and the RC report confirmed that is sufficient *(Personal loans, Motor, Credit Cards)* • One size fits all is not suitable for R&O – depends on the nature of product and its features / options – mortgages have a lot of options and so would typically require a more detailed R&O discussion *(Home Loans)* • Outcome of Channic needs to be considered and included – e.g. add on insurance *(Home Loans)*
	C4Q2 What are the benefits, risks and costs for consumers in this approach (including any effect on access to and cost of credit for consumers)?	
	C4Q3 What additional business costs would be involved in this approach?	

Part D – Additional guidance on Specific Issues

CP309 Proposal	**CP309 Feedback Questions**	**Member comment:**
Proposal D1 ASIC proposes to include new guidance in RG 209 on the areas where the responsible lending	D1Q1 Are there any forms of lending where the responsible lending obligations are being used by licensees in situations	

obligations do not apply.	where the law does not require the responsible lending obligations in the National Credit Act to apply? Please describe the situations where this takes place.	
	D1Q2 Are there any forms of small business lending where licensees are unsure about whether the responsible lending obligations in the National Credit Act apply? Please describe the situations which give rise to this uncertainty.	
Proposal D2 ASIC propose to include new guidance in RG 209 on: (a) the role of the responsible lending obligations, and in particular the obligation to take reasonable steps to verify information provided about the consumer's financial situation, in mitigating	D2Q1 Would specific guidance about loan fraud and the impact on responsible lending obligations of the licensee be useful? Would guidance encourage broader improvements in processes for identifying fraud and reduce the risk of consumers entering unsuitable credit contracts as a result of	• Payslips are becoming increasingly less useful and more open to fraud – aggregated data is proving a better source *(Consumer Lease)*

risks involved in loan fraud	fraud? Why or why not?	
(b) risk factors that might indicate that additional verification steps should be taken.	D2Q2 Please provide details of any risk factors that you consider it would be useful to identify, and additional verifying steps you consider to be reasonable in those circumstances.	
	D2Q3 What are the benefits, risks and costs for consumers in this approach (including any effect on access to and cost of credit for consumers)?	
	D2Q4 What additional business costs would be involved in this approach?	
Proposal D3 ASIC proposes to include guidance in RG 209 to clarify how repayment history information may be used, including that: (a) the occurrence of repayment difficulties on one product will not necessarily mean that a new credit	D3Q1 Would guidance about use of negative repayment history information and hardship indicators reduce the risk that Members consider it necessary to refuse applications for further credit products that may in fact be affordable for the	• If a customer is noted as being in hardship with another lender, ASIC should recognise further lending may not be appropriate *(Personal Loans, Motor)* • In the credit card space, a customer may have missed one repayment over 24 months but this would not impact on their ability to service repayments *(Credit cards)* • Guidance should consider the situation where a customer may be refinancing to reduce overall debt burden? E.g. move to lower cost card? *(Credit cards)*

product will in all cases be unsuitable for that consumer	consumer? Why or why not?	• Need to be wary that minor negative history does not inappropriately limit access to credit *(Home Loans)*
(b) this information should instead trigger the licensee to make more inquiries to enable it to understand those repayment difficulties, and the likelihood that the circumstances of the consumer leading to those difficulties will mean that the consumer would also be unable to meet financial obligations under the new product being considered.	D3Q2 What are the benefits, risks and costs for consumers in this approach (including any effect on access to and cost of credit for consumers)?	
	D3Q3 What additional business costs would be involved in this approach?	
Proposal D4 ASIC proposes to include new guidance in RG 209 about maintaining records of the inquiries made and verification steps taken by the licensee, reflecting our findings and recommendations on good recording practices included in REP 493.	D4Q1 Do you consider that guidance on industry best practice for recording the inquiries and verification steps that have been undertaken would be useful for licensees? Why or why not?	
	D4Q2 Please provide any comments on the particular recording practices identified as 'best practice' by ASIC,	

See appendix 2 for further detail.	and whether you consider those practices are generally appropriate for licensees.	
	D4Q3 What are the benefits, risks and costs for consumers in this approach (including any effect on access to and cost of credit for consumers)?	
	D4Q4 What additional business costs would be involved in this approach?	
Proposal D5 ASIC proposes to provide additional guidance in RG 209 on what information we think should be included in a written assessment.	D5Q1 Would it be useful for ASIC to provide an example of a written assessment to illustrate the level of information that we think should be included? Why or why not?	• Appendix 2 maybe too detailed for credit cards *(Credit cards)*
	D5Q2 Please provide any comments on the example set out in Appendix 2 of CP309.	
	D5Q3 What are the benefits, risks and costs for consumers in this approach	

	(including any effect on access to and cost of credit for consumers)?	
	D5Q4 What additional business costs would be involved in this approach?	