

ASIC Consultation Paper 309: Update to RG209: Credit licensing: Responsible lending conduct

Submissions by Consumer Credit Legal
Service (WA) Inc.

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1. Introduction

The Consumer Credit Legal Service (WA) Inc. (**CCLSWA**) takes the opportunity to provide submissions to the ASIC Consultation Paper 309: Update to RG 209: Credit Licensing: Responsible lending conduct (**CP 309**).

About CCLSWA

CCLSWA is well placed to provide ASIC submissions in response to the proposals made in CP 309 in regards to clarification of RG 209. Further CCLSWA is well placed to provide feedback to ASIC on how proposed updates to RG 209 set out in CP 309 will impact consumers in the context of responsible lending conduct

CCLSWA is a not-for-profit specialist community legal centre based in the Perth metropolitan area. CCLSWA advises and advocates for consumers on consumer credit issues.

CCLSWA operates a free telephone advice line service which allows consumers to obtain information and legal advice in the areas of banking and finance. CCLSWA provides ongoing legal assistance to consumers by opening case files when the legal issues are complex and CCLSWA has capacity to do so.

CCLSWA also provides:

- (1) assistance to financial counsellors and other consumer advocates who work closely with disadvantaged and low-income individuals for the resolution of their credit and debt related problems;

- (2) community legal education programmes relating to credit and debt issues, including financial literacy programmes to high school students and select groups within the community;
- (3) contributions to relevant policy and law reform initiatives; and
- (4) a training and supervision programme for law students and graduate volunteer paralegals.

In providing these services, CCLSWA aims to create awareness, knowledge and understanding of consumer issues relating to financial services.

CCLSWA's mission is to strengthen the consumer voice in WA by advocating for, and educating people about, consumer and financial, rights and responsibilities.

In these submissions CCLSWA provides its experience and views and makes recommendations as to how the issues may be resolved.

We have incorporated case studies as examples of our experience. In most of these case studies, we have not named the financial service providers. We have made these entities anonymous to protect our clients' confidentiality. We have also made some of the entities anonymous as some matters are ongoing and others are subject to confidentiality agreements. If ASIC would like to know the name of a financial service provider or further detail on a particular case study, CCLSWA can approach the relevant client and seek his or her permission for those details to be provided.

2. Part B: Our general approach

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?

- 2.1. CCLSWA considers that it would be useful for ASIC to identify inquiries and verification steps that should be taken by licensees.
- 2.2. We maintain that the steps should be set out as a non- exhaustive list of minimum requirements.
- 2.3. We note that ASIC has concerns that setting minimum standards would lead to inflexibility in inquiry and verification causing increased costs for businesses. We believe this is a very narrow view. In our experience the cost of unsuitable credit can weigh heavily on consumers, businesses and society at large. Unsuitable credit may perpetuate a consumer into a debt spiral with further personal and financial ramifications for the individuals, their families and ultimately society and the Australian social welfare system. Accordingly, we maintain that the opportunity costs are far greater than any purported increased costs for businesses.

- 2.4. Further, it appears that ASIC is concerned that setting a minimum standard could have the unintended consequence that lenders would only take the minimum inquiry and verification steps and unscrupulous lenders would ignore issues outside of the minimum set of factors prescribed by ASIC. On the contrary, our experience suggests that the absence of minimum requirements has allowed unscrupulous lenders a dangerous discretion with regard to the inquiries and verification steps taken.
- 2.5. Certainty may be provided by prescribing minimum steps of inquiry and verification, without distinction by loan size, type or complexity. Clarity may also be provided by way of example (see B1Q2 below).
- 2.6. CCLSWA observes a number of licensees who do not make satisfactory inquiries to discharge their responsible lending obligations in reliance upon the notion of a 'scaled down' obligation. In our experience, unscrupulous lenders argue in the grey area created by the notion of scalability to fain compliance. Identifying and prescribing required inquiries and verification steps would remove this grey area.
- 2.7. When making claims of irresponsible lending, we are often met with counter arguments from licensees espousing that it is not in their best interests to lend irresponsibly – *"business depends on loans being repaid"*.
- 2.8. The corollary of that is that it is in both the best interests of consumers and licensees to ensure compliance with responsible lending obligations.
- 2.9. Any potential additional compliance costs may be offset against the detriment of 'bad debt' to both consumers and businesses.
- 2.10. Despite licensee's claims that lending irresponsibly is like *"giving money away"*, we maintain that the current remedies for breach of responsible lending obligations amounts to no real penalties for licensees at all.
- 2.11. Currently the Australian Financial Complaints Authority's (**AFCA**) approach for breach of responsible lending is for the consumer to be put back in a position they would have been in if the unsuitable loan had not been granted.
- 2.12. Generally, this means that the consumer will remain liable for the principal amount that they are deemed to have benefitted from. However, the consumer may be relieved of liability for the costs (being interest, fees and charges) associated with the credit contract that the consumer would not have paid if the lender had complied with their responsible lending obligations and not entered into the credit contract.

- 2.13. CCLSWA believes that this does not adequately reflect the loss and detriment suffered by a consumer provided with an unsuitable loan. Nor does it act as a serious enough deterrent to licensees to provide loans that are unsuitable.
- 2.14. We perceive that it is currently the consumer who bears all the risk and all the costs associated with irresponsible lending since regardless of whether the loans were responsible or irresponsible the licensee will still at least maintain their status quo if the consumer remains liable for the principal.
- 2.15. Whereas both consumers and licensees benefit from compliance: businesses get their loan repaid; and consumers avoid the pitfalls of unsuitable loans.

B1Q2 If there are particular examples of industry practice that you consider should be reflected in any guidance, please provide details of those practices.

- 2.16. CCLSWA routinely requests documents from lenders on behalf of our clients in order to provide further advice in relation to potential claims for breaches of responsible lending obligations (**Document Requests**). Our Document Requests include requests for copies of any suitability assessment carried out at the time of the relevant credit application.
- 2.17. Licensees occasionally refuse to provide us with copies of suitability assessments on the basis that the information is “commercially sensitive”. In these instances it often materialises that the failure to provide the information is symptomatic of the licensee’s failure to have carried out and collated the inquiries and verifications at the relevant time.
- 2.18. On other occasions the copy assessments provided are entirely inadequate to comply with responsible lending obligations. This is particularly prevalent in connection with credit cards and credit limit increases where ‘scaled down’ obligations are relied upon by licensees on the premise of their lower values.
- 2.19. We reject this premise as we see clients with multiple credit cards, multiple credit card limit increases, and multiple credit card balance transfers culminate to crippling amounts of total credit card debt. We are currently assisting two clients with accumulated credit card debt of over \$60,000 in one instance and over \$120,000 in the other (see our further submissions regarding Martin’s story and Matthew’s story in response to B1Q3 below).
- 2.20. CCLSWA has been provided with supposed suitability assessments which:
 - 2.20.1. are dated the day we made the Document Request;

- 2.20.2. state that the loan was assessed as not unsuitable with reference to a list of factors, but without evidence of any supporting documentation or information from the consumer;
 - 2.20.3. state a consumer's income as a bracket range with a \$20,000 variance; and
 - 2.20.4. make no reference to substantive figures of existing liabilities or expenses.
- 2.21. Examples of these insufficient "suitability assessments" are provided at Appendix A. We have redacted them to protect our client's privacy, however the relevant licensees remain apparent as we believe it is important to highlight that this issue is prevalent with a variety of lenders. If ASIC would like further details, CCLSWA can approach the relevant clients and seek his or her permission for details to be provided.
 - 2.22. We support ASIC providing guidance to licensees on what constitutes sufficient inquiry and verification with consistency across the industry regardless of the type, size and complexity of the loan. Guidance may benefit from clear examples of what is not sufficient, such as reliance on benchmarking (see our further submissions to Part C below). Further, we believe the "suitability assessments" at Appendix A may be held out as 'what not to do' and clear examples of bad industry practice.

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.

- 2.23. CCLSWA believes that there are no credit products, consumers or circumstances that warrant fewer inquiries and verification steps.
- 2.24. As set out 2.18 and 2.19 above, we reject the premise that lower value loans should have 'scaled down' inquiry and verification requirements as it is our experience that smaller value credit amounts provided without proper inquiry and verification can be just as detrimental to consumers as larger loans, as they are often the catalyst of dangerous debt spirals.
- 2.25. Further, objectively smaller value amounts of credit can be subjectively a significant amount for lower income earners.
- 2.26. Christina's story is illustrative of how a lack of inquiries and verification by a payday lender for an initial loan of an objectively small amount of \$361 kick-started a debt spiral of over \$13,000, a subjectively large amount for Christina, placing this pensioner in substantial hardship.

Case study - Christina's story

Christina is a 74-year-old indigenous Australian whose income is derived from a Centrelink pension and

a superannuation pension. Christina experiences crippling financial difficulty. Christina has extensive expenses, due primarily to her role as legal or de-facto guardian to eight grandchildren. She lives in government housing and struggles to manage her living expenses while taking care of her three children and eight grandchildren.

All the above facts were known to Christina's Lender. Between March 2012 and October 2014, Lender approved 19 small amount credit contracts (**SACCs**) and advanced a total of \$9,800 to Christina.

Christina made repayments totalling nearly \$13,000 on these SACCs. The payments are set out below.

Date Taken Out	Amount	Date Repaid	Total Amount Paid
12/3/12	361	12/4/12	487.35
18/5/12	350	3/7/12	472.50
24/8/12	350	25/9/12	472.50
3/10/12	200	6/11/12	270
8/11/12	350	4/12/12	472.50
3/12/12	350	2/1/13	472.50
3/1/13	400	12/2/13	540
14/2/13	400	12/3/13	540
9/3/13	500	7/5/13	691.50
7/5/13	550	18/6/13	742.50
21/6/13	550	13/8/13	742.50
14/8/13	550	19/9/13	704.00
11/10/13	550	3/12/13	704.00
29/11/13	550	14/1/14	704.00
11/01/14	600	11/2/14	768.00
19/2/14	700	14/4/14	898.00
10/4/14	700	19/6/14	896.00
19/6/14	800	22/9/14	1088.00
13/10/14	960	-	580 at Nov 14
	9771		12215.85

The above table shows where Christina's debt spiral started. It illustrates that, with the exception of loan 1 and 4, each time Christina took out a loan it was greater than or equal to the previous loan.

Christina instructed us that when she went to get another payday loan, the money she received in her hand was much less than what she had requested to borrow. It hadn't been explained to her that part of what she was borrowing was going to payback her previous existing loan. This is evident from the 5th loan for \$350 taken out on 8 November 2012. She repays on 4 December 2012, but the subsequent loan is taken out on 3 December 2012, and so on as the total amount borrowed by Christina grows.

In CCLSWA's view, all 19 SACCs were unsuitable for Christina pursuant to the National Consumer Credit Protection Act (**NCCPA**). Christina could not afford the repayments without suffering substantial hardship. For 2 of the SACCs, Lender failed to obtain any form of supporting documents before it approved and advanced the funds to Christina. Lender ostensibly discharged its obligation to make reasonable enquiries into Christina's financial position for the remaining 17 SACCs.

In CCLSWA's view, Lender's request for and purported review of the documents did not amount to a verification of Christina's financial position at the time of each SACC loan.

Lender also provided Christina with 5 personal loans in addition to the 19 SACCs, between January 2011 and July 2013.

In CCLSWA's view, in four of these five loans, Lender breached their responsible lending obligations. The loans were also unjust transactions.

2.27 Martin's and Matthew's stories below are also indicative of how small incremental credit limit increases, claiming to warrant only 'scaled down' inquiry and verification, may culminate to large scale debt and substantial hardship.

Case study – Martin's story

Martin had a number of credit cards with various lenders. Martin was referred to CCLSWA by a financial counsellor.

Martin had a home loan, personal loan and credit cards with 6 different lenders.

The majority of the credit cards were acquired as a result of 'interest free balance transfer' offers and applications. These were applied for variously in branch, online, over the phone or via postal offers.

When Martin accepted these offers he notified the lender of his intention to pay out all or some of his existing credit card balance. However, it was never a condition of approval that Martin close the other credit card accounts and accordingly the total credit amount available to Martin grew.

Martin works in hospitality with a base salary of approximately \$70,000 - \$75,000 before tax. Additionally Martin took up a second job in a casual capacity with an educational institution in an effort to sustain his repayments.

Currently Martin has credit card debts of over \$100,000

CCLSWA are currently assisting Martin to request and review documents with his various credit card lenders with a view to providing further assistance with any claims that Martin may have against the lenders.

It is evident from the responses we have received to date that the lenders did not undertake proper assessments of unsuitability (see assessments at Item 2 of Appendix A).

Case study- Matthew's story

Matthew and his partner relocated to Perth from Sydney. Matthew and his partner took out loans to

purchase land and build a house. Matthew's partner became ill and was unable to work. As a result Matthew and his partner began to rely on credit cards.

Matthew's cards had an offer of 0% interest-free on any balances he transferred onto his cards, from other cards. Matthew and his partner used his partner's credit cards to meet their general living expenses. Matthew then balance transferred from his partner's cards onto his own cards, to receive the 0% interest-free period on the purchases. This increased the total amount of credit available on his partner's credit cards.

Currently Matthew has credit cards with 3 different lenders with the total cumulative credit limit of over \$60,000. The debt has accumulated from a variety of objectively small credit limit increases and balance transfers, as illustrated in the tables below.

Lender A

Transaction	Assessment Date	Amount Balance Transferred onto the card	Credit Limit Increase amount	Total credit available
Original Credit	Jun-13		\$3,500	\$3,500
Balance Transfer No 1	19/06/2013	\$3,325		
Balance Transfer No 2	29/04/2014	\$3,325		
Balance Transfer No 3	10/05/2014	\$3,325		
Limit Increase No 1	09/06/2014		\$2,500	\$6,000
Limit Increase No 2	24/09/2014		\$3,000	\$9,000
Balance Transfer No 4	25/09/2014	\$3,760.95		
Limit Increase No 3	12/05/2015		\$3,500	\$12,500
Balance Transfer No 5	16/07/2015	\$11,875		
Limit Increase No 4	03/11/2015		\$4,000	\$16,500
Balance Transfer No 6	04/11/2015	\$5,248.75		
Balance Transfer No 7	23/07/2016	\$3,205		
Limit Increase No 5	15/07/2018		\$5,500	\$22,000

Lender B

Transaction	Assessment Date	Amount Balance Transferred onto the card	Credit Limit Increase amount	Total Credit Available
Original Credit	Feb-14		\$4,000	\$4,000
Balance Transfer No 1	Feb-14	\$3,500		
Balance Transfer No 2	Jul-14	\$1,900		
Credit Limit Increase No 1	Aug-14		\$2,000	\$6,000
Credit Limit Increase No 2	Jan-15		\$3,000	\$9,000
Balance Transfer No 3	Feb-15	\$8,750		
Balance Transfer No 4	May-15	\$1,100		
Balance Transfer No 5	Jun-16	\$2,100		
Credit Limit Increase No 3	Dec-16		\$3,000	\$12,000
Balance Transfer No 6	Dec-16	\$5,000		

Lender C

Transaction	Assessment Date	Amount Balance Transferred onto the card	Credit Limit Increase amount	Total credit available
Original Credit limit	Jan-15		\$6,000	\$6,000
Balance Transfer No 1	Jan-15	\$6,000		
Credit Limit Increase No 1	Jul-15		\$3,000	\$9,000
Balance Transfer No 2	Aug-15	\$3,900		
Credit Limit Increase No 2	Jan-16		\$6,000	\$15,000
Balance Transfer No 3	Jan-16	\$7,000		

Credit Limit Increase No 3	Jul-16		\$10,000	\$25,000
Balance Transfer No 4	Jul-16	\$7,500		
Balance Transfer No 5	Sep-16	\$11,000		
Balance Transfer No 6	Sep-16	\$6,610		
Credit Limit Increase No 4	Apr-17		\$5,000	\$30,000
Balance Transfer No 7	May-17	\$1,250		
Balance Transfer No 8	May-17	\$2,750		

His partner also has a number of credit cards.

Matthew has a base salary of between \$45,000-\$50,000 with a take home pay of approximately \$1,500 per fortnight. However, Matthew was working an unsustainable amount of overtime to supplement his base income and it is apparent that some of his lenders assessed his fortnightly take home pay as approximately \$2,500 (i.e. including overtime).

Matthew's mental and physical health was suffering as a result of the overtime. However, Matthew continues to work consistent overtime as without the additional income his capacity to meet his repayments would be reduced even further.

He is struggling to pay the principal and interest on the multiple credit cards and came to CCLSWA to seek advice on his legal options.

The assessments provided to CCLSWA by Matthew's various lenders do not evidence reasonable inquiry or verification steps (see the assessments at Item 3 at Appendix A).

- 2.28. We note ASIC's Rationale set out at paragraph 15 of CP 309 that provides licensees may undertake a lower level of inquiries and verification steps, provided they can demonstrate why they considered it reasonable in the circumstances.
- 2.29. CCLSWA does not agree with this approach. Again, we believe this caveat creates a dangerous discretion that allows licensees to continue to operate in a grey area.
- 2.30. We support the approach encouraged by Commissioner Hayne in the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (**Banking Royal Commission**). We refer to Recommendation 7.3 of the Banking Royal Commission Final Report (**Final Report**):

*As far as possible, exceptions and qualifications to generally applicable norms of conduct in legislation governing financial services entities should be eliminated.*¹

- 2.31. At pages 16-17 of the Final Report the Commissioner makes it clear that “... it is time to start reducing the number and the area of operation of special rules, exceptions and carve outs. Reducing their number and their area of operation is itself a large step towards simplification. Not only that, it leaves less room for ‘gaming’ the system by forcing events or transactions into exceptional boxes not intended to contain them”.²
- 2.32. We believe that the Rationale at paragraph 15 of CP 309 will facilitate the ‘gaming’ to which Commissioner Hayne refers. CCLSWA does not support the inclusion of exceptions or qualifications in the guidance to be provided by ASIC and maintains that minimum inquiries and verification steps should be applied consistently to all credit products.

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.

- 2.33. Determining a consumer’s income and expenses is pivotal to any assessment of a consumer’s ability to comply with their repayment obligations. CCLSWA cannot fathom any aspects of a consumer’s financial situation that would not be relevant to determining the suitability of a credit contract.

Income

- 2.34. With regard to income, CCLSWA recommends that inquiries are made particularly regarding the source and nature of the applicant’s income.
- 2.35. CCLSWA are aware of credit extended on the basis of income which included non guaranteed annual bonuses and unsustainable overtime. Our clients experienced financial difficulty as a result of not being able to maintain repayments once these irregular income streams ceased.
- 2.36. We refer again to Matthew’s story above. Not only was the amount of overtime Matthew worked unsustainable from Matthew’s perspective, its availability was uncertain and not guaranteed by his employer.

¹ Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, Final Report (Volume 1) February 2019, 496.

² Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, Final Report (Volume 1) February 2019, 15-16.

Expenses

- 2.37. With regard to expenses, CCLSWA opposes any reliance on benchmarking (see our further submissions on the use of benchmarks in response to Proposal C3 below)
- 2.38. CCLSWA routinely carries out suitability assessments in order to determine the merits of a client's claim of irresponsible lending. We rely on bank statements and credit files to determine a client's reasonable expenses and pre-existing debt obligations. We can often determine unsuitability from even this most basic inquiry.
- 2.39. If an under-resourced community legal centre (**CLC**) can manually complete such a basic inquiry, then surely licensees with undoubtedly more sophisticated data management systems and data aggregation services can also do so without difficulty.

B1Q5 In your view, what aspects of the consumer's financial situation would a licensee need to verify in all the circumstances? If you think some aspects of the consumer's financial situation do not need to be verified, please explain why.

- 2.40. In our view, all information collected by a licensee in the course of making inquiries about a consumer's financial situation must be verified.
- 2.41. We maintain that making inquiries in isolation is meaningless if the information collected is not verified.
- 2.42. We refer again to Christina's story above and say that while the Lender ostensibly made inquiries, no reasonable assessment of the data collected could have determined that Christina's multiple loans were suitable.
- 2.43. Colin's story is also illustrative of how a licensee taking steps to verify the details of the loan application would have revealed inconsistencies that could have prevented Colin from securing an unsuitable loan, which the licensee ultimately did not recover. Again, it is noted that it is in the best interests of all parties to avoid such scenarios.

Case study – Colin's story

Colin was a recovering drug addict and was unemployed.

Colin got a loan from a small business lender to buy illegal drugs. At the time Colin applied for the loan, he was servicing SACCs with seven different payday lenders.

Colin made an application for credit from a small business lender and signed a business purpose declaration. In our view the Business Purpose Declaration was ineffective pursuant to section 13(3) of

National Credit Code (**NCC**). If the lender had made reasonable enquiries about the purpose for which the credit was provided, it would have known, or had reason to believe, that the credit was in fact to be applied wholly or predominantly for a Code purpose.

Colin's application to the small business lender revealed a number of inconsistencies which should have prompted the lender to make further enquiries. For example, Colin provided an incomplete ABN, the ABN did not match the business name, the small business lender only looked at Colin's personal bank statements and did not obtain a business bank statement and it accepted security over a vehicle which Colin did not own.

As the small business lender was not a member of an EDR scheme, Colin's remedies were limited.

The small business lender sold the debt to another entity which settled the debt with Colin.

- 2.44. Verified information may be relied upon to make a true assessment of an individual consumer's financial situation without reliance on "indicators" and "likelihoods" of hardship resulting from their obligation to repay. The Banking Royal Commission referenced in the Interim Report, and maintained in the Final Report, "...a default measure of household expenditure does not constitute verification of a borrower's expenditure".

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?

- 2.45. CCLSWA believes that ASIC identifying particular inquiries and verification steps would provide certainty to consumers.
- 2.46. Applied consistently across all credit types, minimum uniform inquiries and verification steps may be adopted as a 'norm' by consumers and would become part of consumers' expectations of the credit application process.
- 2.47. A licensee's failure to meet consumer expectations in this regard would be more readily identifiable as a breach of responsible lending obligations, reducing scope for unscrupulous lenders to operate unabated.
- 2.48. Consumers themselves are largely the source of the information to be provided and verified. In this regard, the only additional requirement upon licensees is to seek to inquire and acquire that information.
- 2.49. Increasing availability of, and consumer reliance on, online tools and applications for access to their financial information means that verification information is more readily available with minimum effort and cost to consumers.

2.50. Accordingly, any additional costs to licensees may be limited to the collation and assessment of consumers' data. The costs associated with this for licensees in the wake of advances in methods of data collection and aggregation, the onset of open banking and comprehensive credit reporting should not warrant an increase in the cost of credit.

2.51. As Commissioner Hayne observes in the Final Report:

"...steps taken by banks to strengthen their home lending practices and to reduce their reliance on the HEM – are being taken with a view to improving compliance with the responsible lending provisions of the NCCP Act. If this results in a 'tightening' of credit, it is the consequence of complying with the law as it has stood since the NCCP Act came into operation.

*In saying this, I think it important to refer to a number of aspects of Treasury's submissions in response to the Commission's Interim Report. Treasury indicated that '[t]here is little evidence to suggest that the recent tightening in credit standards, including through APRA's prudential measures or the actions taken by ASIC in respect of [responsible lending obligations], has materially affected the overall availability of credit'. Rather, Treasury considered that 'to the extent that firms are correcting lax credit assessment practices, there has likely been an improvement in the credit quality of marginal borrowers'. As Treasury also said, finding that 'some lenders have not consistently undertaken reasonable inquiries to verify the financial position of potential borrowers, suggests that not all possible information (including quality of information) relevant for differentiating between the quality of borrowers has been fully utilised across the industry'. But, taken together, Treasury said that the considerations it took into account (including the Reserve Bank's analysis indicating that most borrowers in the home mortgage market comfortably meet existing serviceability criteria) 'suggest that the housing market has the capacity to absorb some adjustment in the application of lending standards necessary to meet the requirements of existing [responsible lending obligations] without imposing unwarranted risks to macroeconomic outcomes'. Put another way, **if 'appropriately managed, ensuring the industry consistently meets the requirements of existing laws will likely enhance rather than detract from macroeconomic performance'**. To my mind, these are important observations."*³

B1Q8 In your view, what would be the effect (either positive or negative) on competition between licensees? Please provide details.

2.52. CCLSWA believes that identifying particular inquiries and verification steps would provide certainty for both consumers and licensees. This certainty may reduce the risks associated with unsuitable credit contracts for both consumers and licensees.

³ Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, Final Report (Volume 1) February 2019, 58.

- 2.53. Applying a minimum requirement, without qualification or exception, may level the playing field for consumers and licensees.
- 2.54. A level playing field may encourage competition between licensees – driving higher quality financial products and services to the ultimate benefit of consumers.

3. Part C: updating or clarification of current guidance

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?

- 3.1. We note the Rationale at para 18 of CP 309 that Table 4 of RG 209 (**Table 4**) may not provide sufficient certainty about the kinds of information that licensees should consider to verify a consumer’s financial situation. We maintain certainty may be provided by listing the types of information set out at Table 4 as minimum requirements. (We reiterate our position as set out at 2.4 and 2.5 above).
- 3.2. We further maintain that minimum requirements should apply without qualification. That is, the guidance should require all licensees to make the same minimum inquiries and verification steps, regardless of the type of credit product. (We reiterate our position as set out at 2.24 and the approach of Commission Hayne referenced at 2.30 above, favouring the elimination of exceptions).
- 3.3. We consider all the types of information listed in Table 4 as readily available and, as ASIC acknowledges, developments in open banking and data aggregation services will assist licensees meet their responsible lending obligations efficiently without making the proposed minimum requirements unduly onerous or costly.
- 3.4. We concur that merely collecting required forms of verification does not necessarily equate to a proper assessment of a consumer’s financial situation. We refer again to Christina’s story where the lender had discharged its obligations to make reasonable inquiries, but proceeded to provide unsuitable credit in disregard of the information collected.
- 3.5. Similarly, Trish’s story below illustrates how various lenders continued to provide various unsuitable credit products on the basis of ostensible compliance with inquiry and verification requirements.

Case Study – Trish’s Story

Trish was employed as a management assistant on a full time basis earning approximately \$68,000 gross p.a. Despite her full time employment, she often found herself in a position of financial hardship and

previously utilised the services of a financial counsellor, before contacting CCLSWA.

Trish had obtained multiple pay day loans, credit card limit increases and personal loans subsequent to obtaining an unsuitable home loan.

Personal Loan (Lender A)

In 2004 Trish and her then partner obtained a loan from Lender A.

This loan had been rolled over a total of 12 times as at May 2017. The most recent rollover CCLSWA is aware of occurred in November 2015 for the amount of \$14,800 solely in Trish's name. This loan was secured over her car.

Credit card

In 2007 Trish obtained a credit card from Lender B with an initial limit of \$3,000. Over the next few years, the credit limit of the card was gradually increased to \$22,000 as at 24 December 2015.

Trish struggled to meet minimum repayments and often incurred overdue payment fees. Upon contacting CCLSWA, she had over \$23,450 in credit card debt, consisting mostly of interest.

Home loan

In or around November 2012 Trish approached Lender B to apply for a home loan.

Trish was approved for a home loan in the amount of \$458,802. Under the home loan contract Trish was to pay interest only for the first 5 years with monthly repayments of approximately \$1,900.

Trish used the proceeds of the loan to purchase a house and land package that she intended to rent out once construction was complete.

Trish was unable to find tenants for the property and without receiving rental income, she was unable to meet even her interest only repayments obligations on the loan and fell into default on numerous occasions.

Each time Trish fell into default she was granted a temporary hardship variation but was never offered a long term repayment arrangement.

Personal loan (Lender B)

In August 2014 Trish obtained a personal loan from Lender B.

Trish was initially seeking \$16,000 to buy a car but Lender B told her that she was eligible for up to \$50,000.

The representative of Lender B told her that her credit card debt with Lender B might make it difficult for her to obtain the personal loan - so Lender B offered her the \$50,000 personal loan on the proviso that part of the proceeds of the personal loan would be used to pay off her credit card debt, her credit

card limit would be reduced and her personal loan with Lender A would be paid out. Trish agreed to this and received the \$50,000 personal loan. \$24,000 was used to purchase a car, \$15,192.26 was applied to the credit card debt and the remainder was used to pay for a holiday.

At the time Trish was making repayments on her personal loan with Lender A of \$945 a month.

Subsequently, her credit card limit was not reduced (in fact it increased again!)

Small Amount Credit Contracts (SACCs)

When Trish struggled to make repayments she often availed of 'payday loans' or SACCs.

Trish obtained various cash advances and payday loans from Lender. Lender advanced money to Trish 26 separate times between 3 March 2010 and 15 September 2016. The loans were usually for about \$200-\$300, the highest obtained was for \$900.

Trish also obtained a \$3,000 loan from another lender in or around April 2015. Trish applied for another loan from this lender in April 2016 for \$3,900. This was a continuing credit contract that she was 'topping up' monthly. The balance of the loan as at 22 March 2017 was \$3,217.67.

Once CCLSWA established that Trish's home loan was "unsuitable" and made in breach of Lender B's responsible lending obligations, no sensible assessment could have determined that the succeeding 8 payday loans, 4 credit card limit increases and unsecured personal loans were suitable given that they post dated and helped to service her unsuitable home loan.

Nevertheless, the lenders' suitability assessments we obtained from the various lenders reflected sufficient monthly income to service the credit contracts.

However, when we undertook our own assessments, we found that Trish had no discretionary monthly income and was in a position of financial deficit bar one of the assessments. In the case of the payday loans, this was due mostly to the Lenders' use of benchmarks or default amounts for living expenses (which we noted to be significantly less than Trish's actual expenses or even the HPI).

Documents provided by the lenders showed no evidence of reasonable enquiry into Trish's expenses; nor any reasonable enquiry into Trish's requirements or objectives.

Similarly the assessments carried out in connection with each credit card limit increase were unsatisfactory to meet responsible lending obligations (see assessments at Item 1 of Appendix A).

- 3.6. While we support ASIC identifying minimum verification information and expanding the list as proposed in Appendix 1, in light of Christina's and Trish's stories, we consider that ASIC guidance would also benefit from stipulating an obligation beyond merely collating the data. (We consider this further in response to C1Q2 and C2Q1).

C1Q2 Do you consider that the examples included in Appendix 1 are appropriate? Why or why not?

- 3.7. Generally CCLSWA agrees with the sources of verifying information reflected in Appendix 1 of CP 309. We maintain that the table should be framed as a non-exhaustive list of minimum requirements applying without qualification. We discourage the use of language such as “depends on the circumstances” which we maintain creates ‘grey areas’ and opportunity for ‘gaming’ the system (see paras 2.6, 2.28 - 2.31).
- 3.8. We note that Appendix 1 specifically refers to the likely need for more source documents where a consumer is casually or seasonally employed. We consider that this is appropriate and believe that greater guidance should be provided around minimum verification requirements in relation to all variable and not guaranteed income sources.
- 3.9. We refer again to Matthew’s story where assessments were made on the basis of his income including an unsustainable amount of overtime.
- 3.10. Where inquiries and verification information reveals income from irregular or unguaranteed overtime, bonuses or other similar incentives, further inquiries and verification should be required to obtain a better understanding of that consumer’s financial position.

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?

- 3.11. CCLSWA believes that the proposed clarification of guidance on reasonable verification steps would be useful.
- 3.12. Specifically, we support expanded guidance clearly stating that it is not sufficient to merely obtain verifying information but not have regard to it. (We refer again to Christina’s and Trish’s stories and reiterate our comments at 3.3 – 3.5 & 3.7-3.9 above).
- 3.13. We also support expanded guidance for further verification where inconsistent information is provided (see Colin’s story).
- 3.14. Beverly’s story is also illustrative of a lender’s failure to follow up inconsistent information resulting in an unsuitable home loan and substantial hardship.

Case study – Beverly’s story

Beverly was 68 years old and self employed when she obtained a \$650,000 home loan from Lender C. The home loan was interest only for a term of 10 years, with a final lump sum payment in full of approximately \$654,000 due at the end of the term.

The Lender relied on a borrower income declaration to make its assessment and provide a “Low Doc” loan.

We noted apparent errors in Lender C’s assessment of Beverly’s income. The home loan application stated Beverly’s monthly wages (after tax) as a similar amount to the total annual gross wages reflected in her business accounts. It also showed a gross annual income as an amount similar to the businesses total sales for the period. The similarities suggest that the Lender may have erroneously recorded her annual wage as her monthly wage; and the annual sales as her annual income!

The Lender also made errors in their assessment of Beverly’s assets and liabilities. Beverly’s housing status was noted as “own outright” despite the loan’s purpose being “refinance of existing Home Loan”. There was also confusion in regards to Beverly’s property portfolio. Her leased business premises were included in Lender C’s assessment of her assets as property she owned outright.

These and other inconsistencies on the home loan application would have been apparent, had Lender C taken steps to verification the information.

If Lender C had made even the most limited inquiry it would have ascertained that the information on the application was incorrect.

Good practice dictates that, in the circumstances, a prudent and diligent lender ought to have made further inquiries, even when presented with an income declaration in connection with a low doc loan. Aside from the obvious inconsistencies in the information, Beverly’s circumstances, as a self employed person of retirement age should have alerted a prudent banker to make further inquiries and ensure there was sufficient information and supporting documents provided to demonstrate capacity to service the loan.

If Lender C had made proper inquiries and taken appropriate verification steps, it should have known, or ought to have known, that Beverly could not afford to repay the home loan.

- 3.15. We note the Rationale at paragraph 27 of CP309 and believe that the notion that licensees should only take into account information that they believe is true diminishes the value of requiring inquiries and verification. It begins from the premise that a licensee may discretionarily discount information.
- 3.16. We reiterate our position as set out at 2.40 and 2.41. Verified information may be relied upon as true.
- 3.17. Whether a licensee should assess information provided should not depend on that licensee’s subjective belief regarding the truth of that information. Any inconsistency or doubt regarding the efficacy of the information should trigger further inquiries and verifications to clarify the consumer’s financial position, removing any doubt.

C2Q2 would an 'if not, why not' approach encourage improvements to current verification practices? Why or why not?

- 3.18. CCLSWA believes that an 'if not, why not' approach gives licensees too much discretion in regards to obtaining and referring to forms of verifying information.
- 3.19. We refer to para 3.6 above and maintain the sources of verifying information identified at Appendix 1 of CP 309 should be adopted as the minimum required readily available types of evidence, without exemption.
- 3.20. CCLSWA advocates for no carve outs and the removal of all grey areas around reasonable inquiries and verification steps. The 'if not, why not' approach is contrary to our position.
- 3.21. Again we refer back to the comments of Commissioner Hayne in the Final Report and preference an unqualified uniform application of a *"general principle to entities or transactions that are not different in any material way"*⁴.
- 3.22. We advocate for the need to close loopholes in current guidance and believe the "if not, why not" approach only serves to create them. We believe it would not encourage improvements to the current verification practice, rather that it may lead to uncertainty. As previously espoused, uncertainty creates a grey area and, in our experience, unscrupulous licensees take advantage of ambiguity to provide unsuitable credit.

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)?

- 3.23. We reiterate our position as set out at 2.52 – 2.54 and maintain that consumers and licensees would benefit from certainty.
- 3.24. We believe that minimum requirements adopted as "norms" would establish clear consumer and licensee expectations of the credit application process. The failure of either party to meet expectations would be more readily identifiable, reducing the risk of irresponsible lending.
- 3.25. The pitfalls of unsuitable debt and the benefits of compliance with responsible lending obligations for both consumers and licensees have already been explored in Part B above.
- 3.26. The risks of the "if not, why not" approach is that it may create a loophole in the guidance. Licensees may disregard verifying information rather than clarifying it. It provides opportunity

⁴ Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, Final Report (Volume 1) February 2019, 16.

for licensees to force “events or transactions into exception boxes not intended to contain them”⁵. This risk is averted by removing the exception/carve out.

- 3.27. We refer to our response to B1Q6 above and maintain that a uniform unqualified approach in the guidance to verifying information should not cause an increase in the cost of credit. We also believe that the personal, business and wider community costs associated with irresponsible lending outweigh any cost that may be associated with obtaining and referring to forms of verifying information.

C2Q4 What additional business costs would be involved in this approach?

- 3.28. CCLSWA cannot provide specific comments on the business costs associated with requiring licensees to obtain and refer to minimum standards of verification information. However, we would expect that in an increasingly digitised industry, there would be minimal cost involved in this approach.
- 3.29. The minimum verification information set out in Appendix 1 to CP 309 is all considered readily available and in most instances would be provided by the consumer. The cost to the licensee may be limited to the review and analysis of the data collected, a process further simplified by new and emerging data aggregation services and tools.

C2Q5 In your view, what would be the effect (either positive or negative) on competition between licensees? Please provide details.

- 3.30. CCLSWA maintains that providing clear guidance on minimum verification requirements would provide certainty for both consumers and licensees.
- 3.31. Applying a minimum requirement, without qualification or exception, may level the playing field for consumers and licensees.
- 3.32. A level playing field may encourage competition between licensees – driving higher quality financial products and services to the ultimate benefit consumers.

C3Q1 Do you consider that the proposed clarification of guidance about use of benchmarks would be useful? Why or why not?

- 3.33. Despite current clear guidance providing that use “of benchmarks is not a replacement for making inquiries about a particular consumer’s current income and expenses, nor a replacement

⁵ Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, Final Report (Volume 1) February 2019,17.

*for an assessment based on the consumer's verified income and expenses"*⁶, the Banking Royal Commission revealed licensees' overwhelming reliance on, and misuse of benchmarks, in breach of their responsible lending obligations.

- 3.34. CCLSWA believes the current guidance is sufficiently clear - but, misuse has occurred regardless. Accordingly, CCLSWA does not believe that further clarification is necessary nor will it prevent continued misuse.
- 3.35. CCLSWA opposes any reliance on benchmarking and advocates for the removal of all references to benchmarking from the updated guidance.
- 3.36. We note ASIC's proposal that benchmarks "*can be a useful tool to help determine whether information provided by the consumers is plausible (i.e. whether it is more or less likely to be true and able to be relied upon)*". But, we refer to our above submissions and maintain that required minimum inquiries and verification of all information collected by licensees removes any question of plausibility.
- 3.37. Verified information may be relied upon and accordingly we maintain that benchmarks have no utility in the assessment process.
- 3.38. Permitting the use of benchmarks in any capacity leaves the door open to them being used inappropriately by licensees to ostensibly assess consumers and provide unsuitable loans.
- 3.39. Numerous reports⁷ note that licensees default to benchmark figures and use low-end estimates in place of actual inquiries and verification of a consumer's actual financial situation, which causes deficiencies in the assessment of suitability. This is precisely what occurred in Christina's story above.
- 3.40. While Christina's lender acknowledged in response to our argument that Christina was living below the Henderson Poverty Index (HPI), that the "*Henderson Poverty Index is an estimate of an estimate and does not consider a client's personal circumstance*", they nevertheless proceeded to assess Christina without regard to her personal circumstances.
- 3.41. Christina's lender provided no evidence to show they had verified her expenses. On the contrary, the assessments they provided show that they adopted their own benchmark of her living expenses by applying a default percentage of her monthly income.

⁶ ASIC RG 209 at 209.105 at p 37.

⁷ ASIC Report 445, APRA ASIC Report 516, ASIC Report 493, Prudential Practice Guidance APG 223,

- 3.42. Not only do we oppose the use of universal benchmarks such as the Household Expenditure Measure (**HEM**) and HPI, we also oppose the use of internal benchmarks created by lenders such as Christina's with no transparency surrounding their policy and design.
- 3.43. Judicial decisions also support our opposition to the use of benchmarks.
- 3.44. The decision of the Federal Court in *Australian Securities and Investments Commission v Channic Pty Ltd (No 4)* [2016] FCA 1174 notes that it is not a mere suggestion that benchmarks should not be used in place of actually making proper inquiries and verification, but that it is clear that this should not be done.
- 3.45. Further, while proceedings brought by ASIC against Westpac⁸ remain unresolved, in the proposed settlement Westpac accepted that the use of the HEM in its assessment of loan applications contravened section 128 of the NCCPA. Commissioner Hayne in his final report deferred to Perram J of the Federal Court, but did maintain "*a default measure of household expenditure does not constitute verification of a borrower's expenditure*"⁹.
- 3.46. Commissioner Hayne also noted developments since the Interim Report that banks are reducing their reliance on the HEM.

"During the seventh round of hearings, Mr Matthew Comyn, the CEO of CBA, told the Commission:

[W]e're doing a better job of discovering what a customer's declared living expenses figure actually is, and, therefore, HEM as the prudent floor is being relied on less and less...

*In this comment, Mr Comyn rightly acknowledged that, by improving processes for inquiries and verification, banks' reliance upon the HEM or other benchmarks is likely to reduce."*¹⁰

The post Royal Commission climate is set for the removal of reliance on benchmarks.

- 3.47. In reliance on strengthened guidance around inquiry and verification advocated for in our earlier submissions, ASIC's update to RG 209 should reflect judicial decision and the position as it is now increasingly accepted by licensees, and remove all reference to benchmarks.

⁸ Australian Securities & Investments Commission v Westpac Banking Corporation CAN 007 457 141

⁹ Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, Final Report (Volume 1) February 2019, 56.

¹⁰ Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, Final Report (Volume 1) February 2019, 57.

C3Q2 Please provide information on what buffer amounts you currently apply, or would otherwise consider to be reasonable.

- 3.48. CCLSWA does not endorse the use of benchmarks and does not believe the use of an arbitrary buffer a reasonable substitute of actual inquiries and verifications.

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)?

- 3.49. We maintain that removing reference to benchmarking in reliance on improved processes for inquiries and verifications will reduce the risks of unsuitable lending and the wider detrimental costs to consumers associated with unsuitable credit.
- 3.50. We reiterate our position at 2.51 and the comments of Commissioner Hayne, that any tightening of access to credit is not correlated to reduced reliance on HEM or similar benchmarks, but rather compliance with the law as it has stood since the NCCPA was enacted.

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?

- 3.51. CCLSWA believes that there needs to be more guidance on what constitutes reasonable inquiries into a consumer's requirements and objectives.
- 3.52. Whilst we support the proposed clarification of guidance about understanding the consumer's requirements and objectives, we believe that giving "general" guidance and "suggesting" good practice may not go far enough to ensure that licensees give proper consideration and seek clarification of a consumer's objectives and requirements.
- 3.53. In particular we believe ASIC's guidance should place emphasis on the steps that licensees should take to verify that the credit product meets the stated objectives and requirements of the consumer, and that the stated purpose is an accurate reflection of the genuine intended use for the credit.
- 3.54. CCLSWA believes that if consumers are presented with a credit application form which lists possible objectives and requirements, requiring only that they select from a drop down list or tick a box, then they may perceive the suggested objectives and requirements as more acceptable to the lender and may 'game' the system by ticking the box that they believe is most likely to secure them credit rather than disclose their true intentions.

- 3.55. CCLSWA accordingly advocates for the removal of general lists of seemingly pre-approved objectives and requirements in favour of forms requiring customised responses, and actual inquiry and verification of the consumers intended purpose.
- 3.56. CCLSWA represents many victims of financial abuse, lumbered with liability for loans which serve no purpose for them or that they may not even have been aware of. In many instances, we believe minimum inquiries and verification of objectives and requirements for the loan would have raised red flags and may have revealed that the credit applications were actually made under duress and/or for the benefit of third parties (see for example Verity's story below).

Case study – Verity's story

Verity suffered a history of domestic violence. Her ex-partner used intimidation against Verity and their children.

Verity was coerced into obtaining a car loan from Lender X in her sole name for the benefit of her abusive partner.

Verity had limited English and did not even have a driver's licence.

When her relationship ended, Verity was left with a debt in her sole name and a vehicle that was of no use or benefit to her.

CCLSWA managed to negotiate a waiver of the debt with Lender X (including any other fees and charges arising out of the loan), and the removal of any defaults from Verity's credit file in relation to the car loan.

Verity agreed to surrender the vehicle to the Lender.

- 3.57. CCLSWA identifies payday loans and consumer leases as two particular credit products where specific inquiry and verification of objectives and requirements may not only raise red flags for lenders, but may also alert consumers to unsuitable features of the loans that they may not otherwise be aware of or have brought to their attention.
- 3.58. CCLSWA often receives calls to our telephone advice line in relation to the terms and conditions of consumer leases and we are aware of the common misconception amongst consumers that their repayments are actually paying off their purchase of the good. Our recent outreach road trip identified this as particularly prevalent in rural and remote Western Australia.
- 3.59. Christina's story below is illustrative of how consumers often do not understand that they won't automatically own the leased goods at the end of the term, despite it being their clear intention to obtain ownership of the good when entering into the consumer lease agreement.

Case study – Christina’s story

Christina’s circumstances are already set out in part 2 at para 2.26 above.

In addition to the unsuitable payday loans burdening Christina when she contacted CCLSWA for assistance, she also had two consumer leases.

Christina entered into a consumer lease with Easy Renters R Us, for the rental of a computer.

Approximately 12 months later, Christina entered into a second consumer lease with Easy Renters R Us for the rental of a television.

At the time of each of the leases, in addition to general living expenses, Christina had a number of other debts, including the pay the day loans and personal loans discussed in para 2.26 above.

Christina was told by representatives from Easy Renters R Us that at the end of the lease period, she could make an extra month’s payment and she would own the goods.

At the time Christina came to CCLSWA she had already paid \$2060 for the computer and still owed \$800. For the television, Christina had already paid \$900 and still owed \$1400.

CCLSWA advised Christina that even if she paid an extra month she would still not own the goods, unless her offer to purchase the goods was accepted by Easy Renters R Us.

CCLSWA also advised Christina that Easy Renters R Us would likely require her to pay an amount higher than one month’s repayment.

- 3.60. CCLSWA believes that Christina and many other vulnerable consumers may seek other more suitable forms of credit if it is made clear, where their intention is to own the goods, that a consumer lease will not necessarily achieve this objective.
- 3.61. CCLSWA supports the proposed guidance that requires lenders to identify features and costs of credit contracts and consumer leases that do not meet the consumer’s requirements and objectives and to explain and determine whether the consumer would consider the credit contract to be unsuitable for their requirements and objectives as a result. We support the inclusion of this requirement in the sample assessment at Appendix 2 to CP 309. In particular, we believe that the guidance should call for a specific warning surrounding a consumer’s ownership rights at the end of a consumer lease, similar to the warning notice required for Small Amount Credit Contracts (**SACCs**).
- 3.62. CCLSWA has also represented vulnerable clients who too easily misrepresented their objectives and requirements to obtain credit to support gambling and drug addictions.

- 3.63. We refer again to Colin’s story above and his use of payday loans to support his drug addiction; and we set out below Ryan’s story of debt, spiralling from his gambling addiction.
- 3.64. While will appreciate that a licensee may have no obligation to prevent customers from gambling, we believe that if they are made aware of a consumer’s addiction, further inquiry and verification should be required in order satisfy responsible lending obligations.
- 3.65. In Ryan’s case, his gambling addiction was clearly evident on the face of his bank statements, and his credit card provider was made expressly aware.

Case study – Ryan’s story

Ryan was a 25 year old electrician with a serious gambling addiction. Ryan attended counselling for his addiction and appointed his mother enduring power of attorney to deal with his legal and financial affairs.

Between 2015 and 2017 Ryan obtained:

- a) 43 SACCs; and
- b) 3 credit cards

from 10 different lenders in order to fund his addiction.

Ryan’s mother made his bank aware of his addiction and requested that they cancel his credit card. However, despite Ryan’s mother’s request that the bank refrain from providing him with any further credit, as it would only be used for gambling, within 3 months of closing his original credit card, the bank approved Ryan for two more credit cards (with combined credit facilities totalling \$21,000).

CCLSWA also obtained documents in relation to Ryan’s various SACCs.

Our review of the documents revealed that many of the SACC providers failed to conduct assessments of suitability or take reasonable steps to verify Ryan’s financial situation. In many instances there was no evidence of any attempt by the lenders to verify his objectives and requirements. In other instances Ryan selected his objective and requirement as “rent/bond” or “medical/dental” from a pre-set list of options provided by the lenders. No verifying documents were obtained to support the purported purpose, however, had the licensee taken even minimum steps to verify the information, a simple review of Ryan’s account statements would have revealed numerous gambling transactions and that his actual requirement was to fund his gambling addiction.

- 3.66. Further we would recommend that in line with the current guidance any judicial commentary on the matter to be included in the guidance.

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)?

- 3.67. CCLSWA can only see the benefit to consumers in enforcing a minimum standard of inquiry and verification of a consumer's objectives and requirements when applying for credit.
- 3.68. Our position remains as set out above, i.e. that more specific guidance may reduce the risk of consumers obtaining unsuitable credit and the broader costs associated with it.
- 3.69. Improving the quality of information available for assessment, will allow licensees to align borrowers to the most appropriate financial product for their objectives and requirements. As previously espoused, suitable products aligned with suitable borrowers will work for the betterment of all party's interests.

4. Part D – Additional guidance on specific issues

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.

- 4.1. CCLSWA has not experienced licensees using responsible lending obligations in situations where they are not required, and in fact, has experienced the opposite. We have assisted clients where a licensee has obtained a business purpose declaration to avoid the obligations of the NCC and we refer to Colin's story, above at paragraph 2.43.

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.

- 4.2. CCLSWA is a specialist community legal centre, specialising in consumer credit and consumer law and, as such, business loans generally fall outside the scope of our service. However, CCLSWA often advises individuals in their capacity as guarantors of small business loans. In our view, these individuals are consumers: they are volunteers, who receive no benefit from the business, but receive no consumer protection under the NCC or NCCPA.
- 4.3. The guarantors we advise in this capacity are often elderly parents of adult children or vulnerable victims of financial abuse pressured into guarantees by their perpetrators. They are not usually business savvy and naively expect that they will have the usual consumer protections of the NCCPA and NCC, as their only previous banking experience is in that context. Accordingly, while our limited interaction with small business lenders does not indicate any uncertainty about their

obligations, it does indicate a false expectation amongst consumers that responsible lending obligations and the protections of the NCC will apply to guarantors of small business loans.

- 4.4. We refer to Stella's story below and note that Stella was swayed somewhat by her expectation that that the small business loan and guarantee would not have been provided if it was unsuitable.
- 4.5. Recently, CCLSWA made submissions to the Senate Inquiry into the resolution of disputes with financial service providers within the justice system (**Inquiry**). As an outcome of the Inquiry, it was recommended that small business lending, and individual guarantors for small business loans be brought within the remit of AFCA so that there is an appropriate dispute resolution service for those individuals.¹¹
- 4.6. CCLSWA also recommended in our submissions to the Banking Royal Commission that the NCC be extended to protect individual guarantors for small business loans.
- 4.7. Stella's story is illustrative of how individuals who guarantee business loans may benefit from the application of the NCC and responsible lending obligations to guarantors of small business loans.

Case study – Stella's story

Stella was married to Alan for many years and they had a son together. After 30 years of marriage, the couple separated.

Shortly after Stella separated from Alan, he contacted Stella requesting that she guarantee a \$30,000 loan. Alan assured Stella that the purpose of the loan was to pay off some of his debt, get up to date with his mortgage repayments and to cover travel expenses for a job he had lined up overseas. Stella felt guilty and was pressured into agreeing to sign the guarantee.

There was a meeting at Stella's home, attended by Alan and a solicitor, Mr Bamboo. Stella had not met Mr Bamboo before but the lender later purported Mr Bamboo to be Stella's solicitor for the purpose of providing independent legal advice.

During this meeting Stella realised that the loan was actually for \$100,000 and she did not want to proceed to guarantee the loan. However, once again, Stella felt pressured to sign the deed of guarantee. Stella also provided a mortgage over her own home as security for the guarantee.

Alan and Mr Bamboo convinced Stella that she could trust her ex-partner to repay the loan, and the risk to her was minimal.

Stella did not receive:

- independent legal advice before signing the documents (she did not consider Mr Bamboo to be

¹¹ Senate Legal and Constitutional References Committee, Parliament of Australia, *Resolution of disputes with financial service providers within the justice system* (2019, Recommendation 8 at p 34.

her solicitor and in any event did not receive any independent advice from him – based on their limited interaction she presumed he was a solicitor for Alan or the lender);

- any benefit from the loan; or
- signed copies of the documents executed at the meeting.

Stella later found out that the loan was actually advanced to ‘Upbeats Pty Ltd’, Alan’s company. Furthermore the loan was actually a business kick-starter loan rather than a personal loan.

Alan defaulted on his repayments and has since declared bankruptcy, leaving Stella to deal with the lender.

When asked why she agreed to be guarantor, Stella stated that she felt guilty, and that they still had a child together who at the time was living with Alan. Ultimately, Stella succumbed to Alan’s request and felt deeply pressured into signing the guarantee.

She took some solace from her presumption that the lender would have done “all the usual checks they do before granting a loan” and would not have provided a “risky” loan.

As the loan was for business purposes, the NCC did not apply to the loan or guarantee and the lender was not required to be a member of an EDR scheme. The lender commenced proceedings in the Supreme Court of Western Australia and the matter was transferred from CCLSWA to a private law firm who agreed to act pro-bono.

The matter was ultimately settled in Stella’s favour and she was released from the guarantee nearly three years after the lender commenced proceedings.

If Stella had not been fortunate enough to secure pro-bono representation, she could not have afforded to defend the lender’s Supreme Court proceedings and would almost certainly have lost her home.

Had the NCC applied, the credit provider would have been bound by far more stringent rules, allowing Stella to obtain actual independent legal advice and giving her at least 14 days to read over the guarantee. This would have removed the immediate pressure she felt in the presence of Alan and Mr Bamboo and would have allowed her to have a better understanding of what the guarantee was.

If responsible lending obligations applied to Stella’s guarantee, it is unlikely that it would have been deemed a suitable. Further, if the business lender had been a member of AFCA, a quicker and more efficient outcome may have been reached without recourse to the courts with all their associated costs.

D2Q1 Would specific guidance about loan fraud and the impact on responsible lending obligations of the licensees 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?

- 4.8. CCLSWA believes that specific guidance about loan fraud and the impact on responsible lending obligations would be useful.
- 4.9. CCLSWA reiterates its position that ensuring proper verification of information would likely reduce instances of fraud resulting in unsuitable credit contracts being provided to consumers. We refer particularly to situations where credit is obtained for the benefit of third parties (see Verity's story above) or situations where credit is obtained under duress for undisclosed purpose (see Stella's story above) or even situations where credit is obtained without the knowledge of the "borrower" (see the Smith's story).

Case Study – the Smith's story

Mr and Mrs Smith took out a loan for \$100,000 to purchase their residence several years ago and continued to make regular payments on their mortgage. Both Mr and Mrs Smith were in their 80s and received the aged pension. The residential property was the only asset owned by the Smiths. At the time the property was purchased, the Smiths included their son, John, on the certificate of title for the property. John later passed away.

After John's death, his partner, Sally, remained in touch with the Smiths. Sally had been friends with the Smiths for years and there was a relationship of trust and confidence.

Sally offered to make all the repayments on the loan and although the Smiths had the funds to make the payments, they agreed to her request. There was not a significant amount left to repay on the loan.

Sometime later, Sally took out a loan for \$200,000 and offered to discharge the Smiths' initial loan of \$100,000 which had \$25,000 outstanding. The Smiths declined the offer. The Smiths thought Sally continued to make payments towards the \$25,000 loan.

Sometime later the Smiths were shocked to receive a default notice as co-borrowers in relation to the \$200,000 loan.

The Smiths did not go to the Lender and did not sign any loan documents in relation to this loan. They allege their signatures were forged.

Sally was able to obtain the \$200,000 loan by using the Smiths' property as security for the loan. The Smiths' property was transferred so that Sally was a registered proprietor on the certificate of title. Again the Smiths allege they didn't agree to this.

The same Lender provided both the initial \$100,000 loan and the further \$200,000 loan.

- 4.10. CCLSWA also supports the notion that further guidance and mandatory minimum steps for inquiries and verification would encourage broader improvements in processes for identifying fraud and reduce the risk of consumers entering into unsuitable credit contracts as a result of fraud.
- 4.11. Further, proper verification steps should eliminate any need for licensees to assess whether information is 'reliable' or make subjective assessments as to whether there are indications 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.

- 4.12. CCLSWA considers it would be useful to identify the risk factors associated with credit applications submitted by third parties, including family members, brokers and other credit assistance providers.
- 4.13. In our experience, incorrect or fraudulent information on credit applications is more prevalent where the application is made by a third party. Accordingly, while we advocate for minimum inquiry and verification steps to be applied without qualification, we would assert that verification requirements may be scaled up where a third party submits the application.
- 4.14. We call for specific guidance particularly around verification of identity to avoid situations such as the Smiths' above. Applying formal verification of identity steps to all credit contracts, similar to those required for property transactions, may reduce the risk of identity fraud, and will ensure that the correct person is identified as the borrower.
- 4.15. We consider that applications by third parties for loans of no benefit to the borrower, or loan applications refinancing a loan into the sole name of just one of the joint benefactors, should raise particular red flags for potential financial abuse and should trigger additional inquiries and verification steps.
- 4.16. Margaret's story is illustrative of the serious consequences for victims of financial abuse coerced to apply for credit in their sole name to finance a purchase for the mutual benefit of their perpetrator.

Case study – Margaret's story

Margaret comes from a culturally and linguistically diverse background. Her partner at the time, who was abusive, wanted to purchase a house for them to live in with their children.

Margaret's partner wanted to have the loan taken out in her name because she had "good credit" and he had "bad credit".

Margaret's partner arranged for a broker to come to their house where Margaret signed the paperwork. Margaret has very limited understanding of spoken and written English. She could not understand what the documents said and they were only explained to her by her abusive partner.

Margaret has not worked in Australia, and her partner was responsible for the finances at all times. However, the lender was provided with false payslips in Margaret's name issued by her partner's own business. The loan was approved and Margaret and her partner purchased the property.

Margaret has since left her abusive partner and has taken out a restraining order against him. Margaret's sole income is Centrelink benefits and she is the sole carer for her five children. Margaret is still living in the property. Since leaving her abusive partner Margaret has struggled to make repayments on the home loan as her partner had been making the repayments until they separated.

CCLSWA is currently assisting Margaret to review the home loan.

- 4.17. It does not appear that the lender in Margaret's case took any extra steps to verify the information provided by the broker. Even the most minimum inquiry may have revealed that Margaret did not understand the documents and was not actually working.
- 4.18. Licensees should not have to make a subjective assessment regarding the reliability of the information. CCLSWA recommends that ASIC's guidance set out a clear obligation that licensees must verify all information and thereby reduce the risk of unsuitable credit being provided to consumers as a result of fraud.

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)?

- 4.19. The significant benefit of requiring proper verification and providing additional guidance on loan fraud and the impact on responsible lending is that there should be reduced incidents of fraudulent and unsuitable loans being provided to consumers.

D3 Q1 Would guidance about use of negative repayment history information and hardship indicators reduce the risk that credit providers consider it necessary to refuse applications for further credit products that may in fact be affordable for the consumer? Why or why not?

- 4.20. CCLSWA supports ASIC providing clear guidance on the use of negative repayment history information and hardship indicators.
- 4.21. CCLSWA previously contributed to a joint submission with other consumer advocates to the Attorney-General's Department Review of financial hardship arrangements in March 2018 (**Joint**

Submissions).¹² The Joint Submissions outlined the concerns of consumer advocates in recording hardship arrangements and repayment history information on credit files.

- 4.22. CCLSWA notes the risk that licensees will refuse credit to consumers on the basis that their credit reports show hardship flags or contain other negative repayment history information.
- 4.23. CCLSWA supports ASIC providing clear guidance to licensees that a consumer in hardship is not automatically unsuitable for further or alternative credit.
- 4.24. CCLWA recognises that the ability to refinance on more favourable terms may be pivotal to a consumer overcoming financial hardship and suggests that ASIC's guidance provide clear examples of such circumstances.
- 4.25. CCLSWA advocates for guidance for licensees that makes it clear to lenders that a hardship flag does not equate to unsuitability, rather when confronted with a hardship red flag, they should make inquiries and only then lend to consumers where:
 - 4.25.1. the consumer can demonstrate that the cause of the hardship no longer applies; or
 - 4.25.2. the new credit contract is part of a consolidation or refinance that would reduce the consumer's repayment obligations to an amount they could afford without hardship and reduce their overall cost of credit.¹³

D3Q2 What are the benefits, risks and costs for consumer in this approach (including any effect on access to and cost of credit for consumers)?

- 4.26. The Joint Submissions¹⁴ highlight the risks for consumers in hardship flags being used inappropriately by licensees. The possible consequences include:

¹² Joint Consumer Submission by the Australian Communications Consumer Action Network, Australian Privacy Foundation, Consumer Action Law Centre, Consumer Credit Law Centre SA, Consumer Credit Legal Service WA, Financial Counselling Australia and Financial Rights Legal Centre to the Attorney-General's Department Review of financial hardship arrangements, 28 March 2018 available at <https://www.ag.gov.au/Consultations/Documents/financial-hardship/submission-joint-consumer-lead-by-financial-rights-legal-centre.PDF>.

¹³ Joint Consumer Submission by the Australian Communications Consumer Action Network, Australian Privacy Foundation, Consumer Action Law Centre, Consumer Credit Law Centre SA, Consumer Credit Legal Service WA, Financial Counselling Australia and Financial Rights Legal Centre to the Attorney-General's Department Review of financial hardship arrangements, 28 March 2018 available at <https://www.ag.gov.au/Consultations/Documents/financial-hardship/submission-joint-consumer-lead-by-financial-rights-legal-centre.PDF> p 24.

¹⁴ Joint Consumer Submission by the Australian Communications Consumer Action Network, Australian Privacy Foundation, Consumer Action Law Centre, Consumer Credit Law Centre SA, Consumer Credit Legal Service WA, Financial Counselling Australia and Financial Rights Legal Centre to the Attorney-General's Department Review of

- 4.26.1. discouraging consumers from seeking hardship;
 - 4.26.2. consumers being pushed to riskier and more predatory lending options;
 - 4.26.3. preventing some customers in hardship from refinancing or restructuring to improve their situation;
 - 4.26.4. leading consumers to get credit on worse terms;
 - 4.26.5. consumers finding credit facilities cancelled once other lenders see hardship information listed on a credit report; and
 - 4.26.6. having credit scores negatively impacted with potential implication for access to essential services.¹⁵
- 4.27. CCLSWA believes that clear guidance from ASIC may assist to avoid the above consequences for consumers and thereby reduce the consumer perceived stigma surrounding applying for and obtaining a hardship variation.
- 4.28. Consistent and correct use of repayment history information, coupled with improved processes of inquiry and verification should reduce instances of unsuitable credit. It follows that reducing the provision of unsuitable credit, should ultimately reduce instances of hardship and negative repayment history information.
- 4.29. CCLSWA advocates for the removal of negative repayment history that stems from unsuitable loans. ASIC guidance should provide that where a breach of responsible lending obligations is established, licensees should correct any negative listings on a consumer's credit file.
- 4.30. CCLSWA reiterates its position that compliance with existing responsible lending obligations, albeit with new regulatory guidance, should not increase the cost of nor decrease the availability of credit for consumers.

D4Q1 Do you consider that guidance on industry best practice for recording inquiries and verification steps that have been undertaken would be useful for licensees? Why or why not?

- 4.31. We reiterate our position at 2.16-2.22 that currently there are serious deficiencies in the assessments we are provided by lenders in purported satisfaction of their responsible lending obligations.
- 4.32. Apart from the obvious deficiencies on the face of assessments evidenced at Appendix A, in our experience assessments are also often provided without any supporting documentation.

financial hardship arrangements, 28 March 2018 available at <https://www.ag.gov.au/Consultations/Documents/financial-hardship/submission-joint-consumer-lead-by-financial-rights-legal-centre.PDF>.

¹⁵ Ibid, p 4.

- 4.33. CCLSWA supports ASIC providing guidance to licensees on what is considered best practice when making inquiries and verification, and particularly recording evidence of those steps having been taken.
- 4.34. Our experience suggests that the current absence of guidance on good recording practices has resulted in very lax industry practice.
- 4.35. As our experience suggests that a lender's failure to provide supporting documentation is often symptomatic of a lender's failure to obtain that information, ASIC's guidance should make it clear that negative inference will be drawn where good recording practices are not demonstrated.

D4Q2 Please provide comments on the particular recording practices identified as 'best practice' by ASIC, and whether you consider those practices are generally appropriate for licensees.

- 4.36. CCLSWA's review of credit applications and assessments often reveal incomplete sections. Accordingly, we supports ASIC's rationale at para. 85 of CP 309 that when tools such as application forms are used, all questions must be answered. A section left blank, should be construed as a failure by the lender to make that relevant inquiry, and a question answered "not applicable" should be supported by reasons.
- 4.37. We appreciate the Rationale that subsequent communications may clarify inconsistencies and gaps in an initial credit application. However, unless that communication is properly recorded, the presumption should remain that the lender failed to complete the inquiry.
- 4.38. CCLSWA concurs that contemporaneous file notes may assist to demonstrate compliance with responsible lending obligations, but we have experienced reluctance amongst licensees to share this information. We maintain that any file notes or correspondence that a licensee contends to rely upon to discharge their responsible lending obligations, should be available to consumers requesting a copy of their suitability assessment.
- 4.39. We further contend that 'best practice' should include providing the consumer with a written copy of the assessment before entering into the credit contract (without request).

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)?

- 4.40. Clear guidance around a 'best practice' approach will provide certainty to licensees and consumers and may assist to reduce unsuitable credit resulting from incomplete and incorrect credit applications and assessments.

- 4.41. Providing the consumer with a copy of the assessment prior to entering into the credit contract will make all parties aware of the basis upon which the credit is provided, and will provide licensees and consumers with the opportunity to clarify any inconsistencies or gaps in the forms.
- 4.42. A clear and consistent approach and a presumption of non-compliance where proper records are not available, will assist to more readily identify lax practices and ascertain if a licensee has not complied with their responsible lending obligations.

D4Q4 What additional business costs would be involved in this approach?

- 4.43. CCLSWA cannot provide specific comments on the business costs of requiring licensees to record inquiries and verifications in a certain way. However, we would expect that in an increasingly digitised industry there would be minimal cost involved.
- 4.44. Further CCLSWA believes that the costs of 'best practice' approach that will ultimately reduce the likelihood of irresponsible lending may be offset against the reduced likelihood of credit defaults and the business costs of trying to recover a "bad debt".
- 4.45. Properly recorded and readily retrievable records will assist licensees respond to requests for information and may result in the early resolution of any claims of irresponsible lending.

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?

- 4.46. CCLSWA believes the current 'high-level' guidance is overly general and provides licensees with a wide scope for compliance. This is evident in the assessment **attached** at Appendix A which are devoid of any useful information to assist in determining compliance by the lender with its responsible lending obligations.
- 4.47. It would be useful for ASIC to provide clearer and more concise guidance regarding what should be included in a written assessment, including an example of a written assessment.
- 4.48. CCLSWA supports the additional guidance set out at para. 89 of CP 309 and believes clarifying the purpose of the written assessment will assist in the collation and assessment of relevant information.
- 4.49. However, 89 (a)(iii) is contrary to our earlier submission that licensees must verify all information and not subjectively discount information based on their own assessment of plausibility. Information should only be disregarded when a consumer can not satisfactorily verify their position – rather than based on a licensee's discretionary doubt.

- 4.50. Further, if it is suggested that a consumer's capacity depends upon them taking a particular step to reduce their current liability (eg. cancelling an existing credit card that is being paid out), more than a clear statement of the assumptions that are being made about the action the consumer has stated they will take should be required.
- 4.51. Such conditional credit should require the licensee to follow up and ensure compliance by the consumer. For example, where a credit card is to be paid out and closed, a licensee may ensure compliance by paying the funds directly to the relevant credit card account and obtaining a written instruction from the consumer to close the card, to be actioned upon draw down of the new conditional credit facility.
- 4.52. Such a simple step could have prevented the cumulative debt accrued from credit card balance transfers illustrated in Matthew and Martin's stories above. Similarly, in Trish's story, spiralling credit card debt may have been avoided if steps were taken to ensure compliance with the conditions upon which she obtained the \$50,000 unsecured personal loan.
- 4.53. Para. 89 (b) is also contrary to our submission that a copy of the written assessment should be provided to the consumer (without request) prior to entering into a credit contract. As previously espoused, this may prevent a credit contract proceeding on the basis of incorrect or incomplete information.

D5Q2 Please provide any comments on the example set out in Appendix 2.
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- 4.54. CCLSWA generally supports the examples set out in Appendix 2, but believes sections may benefit from further more specific examples.
- 4.55. With regard to a consumer's current income, as previously submitted, we believe that the source and the nature of the income should be clarified. For example, seasonal or casual employment may require further inquiry or verification. Similarly, irregular or unguaranteed income sources such as overtime or bonuses, should be noted and require further inquiry and verification.
- 4.56. CCLSWA believes guidance around the sources of information used to verify income and expenses should include a minimum time period for consideration. For example, similar to the additional requirements specifically applicable to SACCs, a licensee should be required to obtain and review the bank statements of a consumer for the 90 days prior to the date of assessment.
- 4.57. With regard to "Assumptions dependent on consumer behaviour", we reiterate our position at para. 4.50-4.53.

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)?

- 4.58. CCLSWA maintains that providing clear guidance on the standard of written assessments would provide certainty for both consumers and licensees.
- 4.59. A consumer may benefit from the opportunity to receive and review a copy of the assessment prior to entering into the credit contract.
- 4.60. This approach would reduce the risk of a credit application proceeding on the basis of inconsistent or incorrect information.
- 4.61. We maintain that this approach is consistent with current legislative requirements and will not have a determinative effect on access to and cost of credit for consumers.

Conclusion

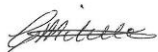
CCLSWA is grateful for the opportunity to provide feedback on ASIC's proposals for updating RG 209.

CCLSWA would be happy to be of assistance in providing further information or detail on CCLSWA's position or in relation to a case study.

If you have any questions or would like to discuss these submissions further, please contact Gemma Mitchell on (08) 6336 7020.

Yours faithfully

Consumer Credit Legal Service (WA) Inc.



Gemma Mitchell
Managing Solicitor

Appendix A – Assessments

See next page

Information about the credit we are offering

Account number: [REDACTED]

On 18/11/2014 the credit we are offering you was assessed as 'not unsuitable' – meaning that it meets your requirements and objectives and you are able to make the contracted repayments.

What you need to know

This report is a summary of all the information you provided to allow the Bank to make the assessment.

Existing Credit

Credit limit	\$18,900.00
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Credit offered

Credit limit	\$18,900.00
--------------	-------------

Your Requirements and Objectives

You provided the following information about your requirements and objectives when applying for credit.

Purpose for seeking credit increase	General Purposes
New limit of credit sought	\$18,900.00

Your recent and future significant changes

You confirmed that you do not know of any future changes in your ability to make repayments without financial difficulty.

Your financial data

To calculate your ability to repay, we took into account information that you provided and which we hold on you from your accounts with us.

You confirmed that you are employed or have another source of steady income. You confirmed that after tax and expenses, you have at least \$567.00 each month to repay your card.

We're here to help

If you have any questions or require more information, please contact 13 2221 or contact your lending specialist directly.

Information about the credit we are offering

Account number: [REDACTED]

On 24/12/2015 the credit we are offering you was assessed as 'not unsuitable' – meaning that it meets your requirements and objectives and you are able to make the contracted repayments.

What you need to know

This report is a summary of all the information you provided to allow the Bank to make the assessment.

Existing Credit

Credit limit	\$18,900.00
--------------	-------------

Credit offered

Credit limit	\$22,600.00
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Your Requirements and Objectives

You provided the following information about your requirements and objectives when applying for credit.

Purpose for seeking credit increase	General Purposes
New limit of credit sought	\$22,600.00

Your recent and future significant changes

You confirmed that you do not know of any future changes in your ability to make repayments without financial difficulty.

Your financial data

To calculate your ability to repay, we took into account information that you provided and which we hold on you from your accounts with us.

You confirmed that you are employed or have another source of steady income. You confirmed that after tax and expenses, you have at least \$678.00 each month to repay your card.

We're here to help

If you have any questions or require more information, please contact **13 2221** or contact your lending specialist directly.

Information about the credit we are offering

Account number [REDACTED]

On 16/07/2013 the credit we are offering you was assessed as 'not unsuitable' – meaning that it meets your requirements and objectives and you are able to make the contracted repayments.

What you need to know

This report is a summary of all the information you provided to allow the Bank to make the assessment.

Existing Credit

Credit limit	\$11,400.00
--------------	-------------

Credit offered

Credit limit	\$14,900.00
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Your Requirements and Objectives

You provided the following information about your requirements and objectives when applying for credit.

Purpose for seeking credit increase	General Purposes
New limit of credit sought	\$14,900.00

Your future significant changes

You confirmed that you do not know of any future changes in your ability to make repayments without financial difficulty.

Your financial data

To calculate your capacity to repay, we took into account information that you provided and which we hold on you from your accounts with us.

You confirmed that you had discretionary income (income less all regular expenses) of at least \$447.00 per month to service your new limit amount.

We're here to help

If you have any questions or require more information, please contact 13 2221 or contact your lending specialist directly.



Information about the credit we are offering

Account number

On 16/11/2012 the credit we are offering you was assessed as 'not unsuitable' – meaning that it meets your requirements and objectives and you are able to make the contracted repayments.

What you need to know

This report is a summary of all the information you provided to allow the Bank to make the assessment.

Existing Credit

Credit limit	\$7,400.00
--------------	------------

Credit offered

Credit limit	\$11,400.00
--------------	-------------

Your Requirements and Objectives

You provided the following information about your requirements and objectives when applying for credit.

Purpose for seeking credit increase	General Purposes
New limit of credit sought	\$11,400.00

Your future significant changes

You confirmed that you do not know of any future changes in your ability to make repayments without financial difficulty.

Your financial data

To calculate your capacity to repay, we took into account information that you provided and which we hold on you from your accounts with us.

You confirmed that you had discretionary income (income less all regular expenses) of at least \$342.00 per month to service your new limit amount.

We're here to help

If you have any questions or require more information, please contact 13 2221 or contact your lending specialist directly

Information about the credit we are offering

Account number: [REDACTED]

On 06/04/2011 the credit we are offering you was assessed as 'not unsuitable' - meaning that it meets your requirements and objectives and you are able to make the contracted repayments.

What you need to know

This report is a summary of all the information you provided to allow the Bank to make the assessment.

Existing Credit

Card type	MasterCard Low Rate
Credit limit	\$3,900.00

Credit offered

Card type	Low Rate MasterCard
Credit limit	\$7,400.00

Your Requirements and Objectives

You provided the following information about your requirements and objectives when applying for credit.

Purpose for seeking credit increase	General Purposes
New limit of credit sought	\$7,400.00 or the maximum the Bank will lend
New card type	Low Rate MasterCard

In applying for this credit you accepted and acknowledged the costs and risks associated with the credit contract.

Your future significant changes

You confirmed that you do not know of any future changes in your ability to make repayments without financial difficulty.

Your financial data

To calculate your capacity to repay, we took into account information that you provided and which we hold on you from your accounts with us.

You confirmed that you had discretionary income (income less all regular expenses) of at least \$222.00 per month to service your new limit amount.

We're here to help

If you have any questions or require more information, please contact 13 2221 or contact your lending specialist directly.

[REDACTED]

[REDACTED]

Appendix A, Item 2

NAB Assist Australia)

GPO Box 4963WW
Melbourne
Victoria 3001
Australia

11 Dec. 18

[REDACTED]
[REDACTED]
[REDACTED]

Written Assessment

Reference:

Product:

Loan Provider:

[REDACTED]
NAB Qantas Rewards Credit Card
NAB

Thanks for contacting us about your assessment. The assessment is below.

We made this assessment on 4/12/2014 and it is valid for 90 days from this date. It relates specifically to the following information:

Applicant(s)' Details

Name	Address
[REDACTED]	[REDACTED]

Information about the responsible lending obligations

Before providing you with a credit contract or a credit limit increase, we are required to assess if the proposed credit arrangement would be unsuitable for you. To make an assessment, we must make reasonable inquiries about your requirements and objectives for the credit contract or credit limit increase. We must also make reasonable inquiries about your financial situation and take reasonable steps to verify this financial information. Details of our assessment are set out below.

Applicant(s)' requirements and objectives

Product Type: NAB Qantas Rewards Credit Card

Income and Expenditure Assessment

Based on the information we already hold about you (including the information you provided below) and the conduct of your existing accounts, we have determined that you have capacity to meet the payment requirements of the proposed credit contract.

Employment status: Full time

Annual income before tax: LMT INCOME 70,000 - 99,999

We therefore assess that the following product(s) is/are 'not unsuitable':

Product Type:

Your previous credit limit was \$4000.00 and you have been approved for a credit limit increase to \$6500.00.

Loan Amount/Credit Limit:\$6500

Application Type: Limit Increase

If you have any further questions, please call us on 13 22 65, 7am - 9pm AEST/AEDT, Monday to Friday or 8am - 6pm AEST/AEDT, Saturday to Sunday, with your NAB identification number and password handy.

If you've requested this assessment before signing the credit contract and any information is no longer accurate, please call us on these contact details immediately.

Sincerely

NAB
National Australia Bank

NAB Assist (Australia)

GPO Box 4963WW
Melbourne
Victoria 3001
Australia

18 December 2018

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Dear [REDACTED]

Written Assessment

Reference: [REDACTED]
Product: [NAB Qantas Rewards Credit Card]
Loan Provider: NAB

Thank you for contacting us about your loan assessment. Details of this loan assessment are set out below.

Your loan was assessed on 12/04/2014. This assessment was valid for 90 days from that assessment date.

Applicant(s)' Details

Name
[REDACTED]

Information about the responsible lending obligations

Before providing you with a credit contract or a credit limit increase, we are required to assess if the proposed credit arrangement would be unsuitable for you. To make an assessment, we must make reasonable inquiries about your requirements and objectives for the credit contract or credit limit increase. We must also make reasonable inquiries about your financial situation and take reasonable steps to verify this financial information.

Applicant(s)' requirements and objectives

Product Type: NAB Qantas Rewards Credit Card

Income and Expenditure Assessment

Applicant(s)' income

Description	Monthly Income (net)
Income	\$4,100.00
Total	\$4,100.00

Applicant(s)' expenses (including other loan repayments)

Description	Monthly Expenses
General living Expenses	\$1,031.00
Other Credit card Payment	\$1,215.00
Home loan payment	\$1,336.00
New Credit card Payment	\$100.00
Total	\$3,682.00

Based on all information provided including your income and expenses, we have determined that you have capacity to meet the payment requirements of the proposed credit contract. We've made this assessment taking into account your requirements and objectives, income and expenses, and other information which we hold or you have provided as part of this loan application.. Our assessment is based on the information provided being accurate and up to date.

We therefore assess that the following product(s) is 'not unsuitable':

Product Type:	NAB Qantas Rewards Credit Card
Loan Amount:	\$4,000
Application Type:	New Loan

If you have any further questions, please call us on 13 22 65, 7am - 9pm AEST/AEDT, Monday to Friday or 8am - 6pm AEST/AEDT, Saturday to Sunday, or call your Relationship Manager with your NAB identification number and password handy.

If you've requested this assessment before signing the credit contract and any information is no longer accurate, please call us on the above contact details immediately.

Sincerely

NAB
National Australia Bank Limited

Covering letter

17 January 2019

[REDACTED]
[REDACTED]
[REDACTED]

Dear [REDACTED]

Re: Your Suitability Assessment for your St George Credit Card [REDACTED]

You have requested your Suitability Assessment for the above product. This is set out on the back of this letter enclosed.

If you have any questions about this, please call St George Assist on 132668

Yours sincerely

Julie
Customer Manager
Customer Solutions, Customer & Corporate Relations,

Suitability Assessment

Re: Borrower(s): [REDACTED]

Product Type: St George Amplify Signature Credit Card

New facility or increase to existing facility: New

Date: 17 January 2019

When we provide you with a loan or an increase to your credit limit on an existing loan, we must first make an assessment that it is not unsuitable for you.

In order to do this, we took into account your financial circumstances as follows:

- you (and if applicable your co-applicant) telling us your liabilities were \$3208.00 per month;
- you (and if applicable your co-applicant) telling us your income was \$8320.00 per month before tax;
- us making an allowance for average living expenses for your household type; and
- Our analysis of other information provided by you and obtained by us.

Based on that information and your selection of:

- the product; and
- your desired credit limit range,

We formed the opinion that you would be able to comply with your obligations without substantial hardship if we provided you with a St George Amplify Signature credit card with a credit limit \$20000.00

This assessment covered a period of 90 days from 13 June 2016.

NAB Assist
GPO Box 4963WW
Melbourne VIC 3001
Australia
Telephone: 13 22 65



19/11/18

[REDACTED]
[REDACTED]
[REDACTED]

Dear [REDACTED]

Written Assessment

Reference: [REDACTED]
Product: NAB LOW FEE VISA CARD [REDACTED]
Loan Provider: NAB
Application Type: Credit Limit Increase

Thank you for contacting us about your credit card assessment. Details of the credit card assessment are set out below.

Your credit card was assessed on 13/12/2016. This assessment was valid for 90 days from that assessment date.

Applicant's Name: [REDACTED]

Information about Responsible Lending obligations:

Before providing you a credit limit increase, we are required to assess if the proposed credit arrangement would be unsuitable for you. To make an assessment, we must make reasonable inquiries about your requirements and objectives* for the credit limit increase. We must also make reasonable enquiries about your financial situation and take reasonable steps to verify this financial information.

Income and Expenditure Assessment

Based on the information we already hold about you (including the information you provided below) and the conduct of your existing accounts, we have determined that you have capacity to meet the payment requirements of the proposed credit contract

Employment status: Full Time
Annual income before tax: \$70,000 – \$99,999

Product: NAB LOW FEE CARD VISA

Your previous credit card credit limit was \$9,000 and you have been approved for a credit limit increase to \$12,000

Therefore based on all information provided including your income and expenses, we have determined that you have capacity to meet the payment requirements. We've made this assessment taking into account your requirements and objectives*, income and expenses, and other information which we hold or you have provided as part of this credit limit assessment. Our assessment is based on the information provided being accurate and up to date.

If you have any further questions, please call us on 13 22 65, 7am – 9pm AEST/AEDT, Monday to Friday or 8am – 6pm AEST/AEDT, Saturday to Sunday, with your NAB identification number and password handy.

Thanks,

NAB

* NCCP Regulation 28JA says we need to make reasonable inquiries about the maximum credit limit a customer requires.