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20 May 2019

Ms Fleur Grey
Senior Specialist
Credit, Retail Banking and Payments
Financial Services
Australian Securities and Investments Commission

By email to: responsible.lending@asic.gov.au

Dear Ms Grey

**Submission on CP309 – Credit licensing: Responsible lending conduct**

Dentons thanks ASIC for the opportunity to comment on the proposals set out in CP309 regarding ASIC's update to its Responsible Lending Guidance contained in RG209.

**Dentons' approach**

Dentons' is one of the leading financial services law firms in Australia and worldwide, and acts for a wide range of financial services and credit industry participants including big four, medium, small and regional banks, credit unions and mutuals, non-bank lenders, private lenders, securitised programs, aggregators and brokers. Due to this vast experience we have a unique insight into the responsible lending issues plaguing the industry.

Before setting out our submission, Dentons would first like to acknowledge ASIC's role in changing lending practices in a relatively short space of time. We consider that ASIC's approach has been collaborative, efficient and well considered and that ASIC has guided industry to make many changes to lending practices that greatly assist consumers.

In making this submission, rather than answer each question posed by CP309, Dentons would like to raise what we consider to be the four most important matters for ASIC to consider when re-drafting RG209.

**Good consumer outcomes should be paramount**

Competition is vital to the credit industry for delivering good consumer outcomes. As such, maintaining competition should be a high priority for ASIC.

Further, consideration should be given to ***all*** types of consumers. While it is of course important that RG209 takes into account the needs and frailties of the most vulnerable members of society, this must be balanced with sensible outcomes that will not impede the borrowing capacity or privacy of those consumers who are capable of managing their financial affairs without difficulty or hardship.

History, and our low default rates, tell us that most consumers are able to afford their loan repayments by making reasonable lifestyle adjustments. ASIC's guidance should take this into account and not prescribe processes that would unnecessarily complicate and frustrate the process for credit worthy consumers to obtain finance.

**What are 'reasonable inquiries and verification' in terms of product type?**

ASIC should specify what it considers to be 'reasonable' inquires and verification. We envisage that these will vary depending on product type, such as home loans, residential investment loans, personal loans, car loans, and credit cards.

RG209 should also recognise that it may be appropriate to make less or more inquiry and verification than those specified in RG209. As noted above, providing good consumer outcomes is crucial. It does not provide a good consumer outcome if a consumer is not treated as an individual and their individual circumstances, borrowing experience and sophistication cannot be taken into account.

**Living expenses**

Our clients report assessment of living expenses as being by far the biggest issue in responsible lending. ASIC needs to clarify exactly what constitutes a 'living expense'. Obviously, fixed and non-discretionary expenses need to be taken into account when assessing a consumer's expenses. Similarly, basic utilities need to be accounted for. Where confusion arises is with assessing and verifying other living expenses (food, clothing, reasonable discretionary spending etc). We submit that requiring an audit of borrowers' affairs is inappropriate and unnecessarily invasive.

In recent times we have seen lenders analyse bank statements in order to understand a consumer's spending habits. While bank statements may be useful to verify income and fixed expenses, they are not always useful for determining discretionary spending given the significant use of cash and other payment methods.

It is important to recognise that a consumer's current discretionary spending at the time of application may not predict their future discretionary spending. Most consumers can make lifestyle adjustments in order to meet their payment obligations. It would be an unfair result for a consumer to be denied credit solely because their bank statements indicated discretionary spending that meant the lender assumed they could not afford their loan.

Our clients tell us that the legal requirement to make reasonable inquiries and verification is best achieved by asking consumers about their expenses, and how much uncommitted income they require each month to maintain their lifestyle to an appropriate level, and then sense checking this against a reasonable benchmark (like an scaled HEM). Naturally, for any consumers where there is an indicator that they are not sophisticated at managing their finances, more extensive inquiry should be made.

**What constitutes 'substantial hardship'?**

The test for 'unsuitable' is whether the consumer could not repay their loan, or could only repay with 'substantial hardship'. Loan repayments will only cause substantial hardship if the consumer must make changes that are objectively unacceptable. It would help if RG209 better set out when 'substantial hardship' occurs because we have seen examples of EDRs considering that a loan is unsuitable when there are minor shortfalls against calculated income and expenses.

ASIC should also clarify a lender and broker's obligation to discuss discretionary spending with a consumer and to what extent a lender or broker has to alert a consumer to the possibility that they will need to make lifestyle adjustments in order to afford their loan repayments.

**Conclusion**

Dentons' thanks ASIC for the opportunity to comment on CP309 and looks forward to the re-drafted RG209.

Yours sincerely

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Dentons Australia