



LEND ASSESS

Submission to ASIC Consultation Paper 309

Update to RG209: Credit Licensing: Responsible Lending conduct

This submission is made by:

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Lend Assess is a Reg Tech business involved in the development of a cloud based responsible lending software solution.

The Lend Assess system had been developed specifically to help Credit Licensees meet their responsible lending obligations under the National Consumer Credit Protection Act 2009, the National Consumer Credit Code and ASIC's Regulatory Guideline 209 (RG209).

Therefore, any changes to RG209 could have a significant impact on our business. We would therefore like to provide our feedback as part of the consultation process.

So that our response was not repetitive, we have not answered every specific question. We have however, ordered our response to follow your sections.

Section B – General Approach

ASIC to identify inquiries and verification steps to be taken

Yes, ABSOLUTELY!

We believe that it would be of significant benefit to Credit Licensees if ASIC were to identify the inquiries and verification steps that you consider should be taken.

As it stands, RG209 is very brief and vague as to how a Credit Licensee can meet their responsible lending obligations. Each licensee must devise their own system. They have no peace of mind that their system is correct. Nor will ASIC provide any further guidance. Each licensee therefore operates

in a void. It is only once ASIC commences an investigation into their operations that they find out that ASIC does not consider they are meeting their obligations in this area.

ASIC investigations often go back many years, meaning Credit Licensees are being punished for actions they took 4, 5 or 6 years ago. Even if their intentions were good, they thought they were doing the correct thing and their Customer was happy with their credit contract, this is no excuse for ASIC.

If ASIC were to provide details of what steps they require to be taken as part of an update of RG209, this would give much greater clarity to the Credit Assessment process. Credit Licensees would then be able to follow these steps instead of guessing and hoping they are doing the right thing.

Lend Assess believe that this is the key change that ASIC should make in RG209.

Aspects of the Consumer’s financial situation to be considered in all circumstance

This is a matter that Lend Assess has considered in great detail in the development of our system.

We initially referred to RG209 to obtain some clarity on this issue. However, as mentioned, above, there is very little information provided by ASIC. We have therefore focused on what we believe is best practice in this area. We have tried our very best to develop a system that looks at EVERY ASPECT of a Consumer’s Financial Situation.

We believe that any attempt to limit what a Credit Licensee considers when assessing a Consumer’s financial situation could lead to an incorrect assessment of the Customer. Just as each Customer is unique, so their Financial Situation is unique. Any attempt to generalise or “leave parts out” does not, in our mind, allow a Credit Provider to fully meet their Responsible Lending Obligations.

Effect on Consumers

If ASIC were to identify particular inquiries and steps, this would be of great benefit to the Consumer, as well as the Credit Licensee. It would provide CONSISTENCY for the whole process. This would enable a more streamlined process, which will be much more transparent and less stressful experience for the Consumer.

As a personal example, late last year, my partner and I purchased a property using a mortgage broker. We initially went through the Customer Assessment process with one bank. After providing the bulk of the information, they then came back with “Now we need this”, then a few days later “Now we need something else”. This went on for several weeks. The loan officer at the first bank then went on holiday and we started to run out of time. The Mortgage Broker then approached another bank. I felt confident as we already had provided him with all the many documents the first bank required. However, this second bank had a completely different Customer Assessment process. In addition, we went through the “Now we need this” process for another 2 weeks.

As the end Consumer myself in this instance, I was annoyed and frustrated by the process. Neither bank seemed to have a clear process on what information they needed.

Therefore, I can personally attest that many Credit Licensees, including the major banks, are chasing their tails at the moment. Post the Royal Commission, many of them are frantically trying to put

new processes in place. But as mentioned above, they are trying their best while receiving very little guidance from ASIC on how to do this.

The way things are currently, it is ultimate the consumer who is suffering.

Effect on Compliance Costs

Following on from above, credit licensees are very busy trying to come up with new Customer Assessment systems that they HOPE will satisfy ASIC's responsible lending requirements. However, with very little guidance, they are doing their best but can't be sure.

Many Credit Licensees have already spent countless hours and thousands of dollars upgrading their systems. However, as reported in the press almost every day now, the general opinions are that things have gone "too far", credit is now "too tight". Credit Licensees are knocking back loans. This is affecting their bottom line and also causes even more frustration to their Customer when they are being knocked back for a loan.

I therefore believe that ASIC updating RG209 to provide clarity in this area will be of assistance to credit licensees. It will allow them to fine tune their systems and KNOW what they need to do to be complaint in this area.

Competition

Lend Assess feels that such changes to RG209 would have a positive effect on competition between credit licensees.

At the moment, this whole area is very unclear, and many organisations are "running scared". The large organisations have the resources to deal with this issue. For example, the large banks have in-house legal teams, in house- compliance teams, and can afford to hire outside consultants and large (and expensive) law firms.

The small organisations cannot. As well as not having the resources, they often simply do not know where to turn. We have seen firsthand how some Credit Licensees have simply thrown up their hands, said "This is all too hard" and closed their doors.

Every time a small Credit Licensee shuts off shop, there is less competition in the market. At this rate, there will only be the 4 larges banks, AMP and a handful of multi nationals left in Australia.

Even though Lend Assess is suitable for ALL credit licensees, we are hoping that our straight-forward and cost-effective solution will allow these small Credit Licensees to continue to operate and to give them peace of mind that they are meeting their responsible lending obligations.

Section C – Updating or clarification on guidance

Yes, it would be helpful if ASIC could provide additional guidance on what kinds of information could be used for verification purposes.

The examples provided in Appendix 1 are a start but need to be much more detailed.

What ASIC has outlined in Appendix 1 in Tables 3, 4 and 5 focus on a very simplified and perfect world scenario.

However, out in the real world, there are many different variations and anomalies to consider. ASIC needs to provide guidance on how such variations are to be treated in order to ensure a consistent approach to responsible lending across all credit providers.

This is particularly the case with variable living expenses. From a theoretical point of view, it seems a simple matter to assess a Customer's financial position using the following or similar format. It would simply be a matter of obtaining 90 days of bank/credit card statements and allocating to them the various categories;

Customer Assessment in a PERFECT WORLD

Customer's Income per month		\$6,000.00
Less: Fixed or recurring living expenses		
Rent/Mortgage payments	\$2,000.00	
Telephone/Internet	\$ 200.00	
Insurance	\$ 150.00	
Child Care	\$ 500.00	
Less: Variable Essential living expenses		
Utilities	\$ 250.00	
Entertainment/Netflix	\$ 20.00	
Clothing	\$ 100.00	
Less: Variable Discretionary Expenses		
Take away food	\$ 100.00	
Alcohol	\$ 100.00	
Total Expenses		\$3,420.00
What Customer has available per month		\$2,580.00

Customer Assessment in the REAL WORLD

In 99% of cases, when assessing a Customer's bank/credit card statements there are multiple items that do not fit neatly in such categories.

As they say,

“The devil is in the detail”

This is the crux of Responsible Lending as far as Lend Assess is concerned. It is critical that ASIC provides additional guidance for these variations.

Here are some of the variations that do not fall neatly into the standard expense categories. ASIC needs to provide additional guidance on how these should be treated and verified.

Cash Withdrawals

Many Customers, particularly those from lower socio-economic groups, withdraw large amounts of cash from their bank account. How should such cash deposits be assessed? The obvious answer is to “make further enquiries of the customer” but how does ASIC envisage that this information be verified?

Buy Now Pay Later (BNPL) expenses

As ASIC is aware, BNPL providers are increasing in popularity every month. How does ASIC advise such amounts to be assessed? Are they “loans”? Or should they be classified according to what the money was spent on eg clothing? What if there is only one payment left to be made, and the Customer is being assessed for a 25 year mortgage?

Gifts paid into a bank account

Say a Customer receives a gift of \$2,000 paid into their bank account. In terms of the money coming in, this obviously cannot be included as regular “Income”. But it is actually money coming in, which may then be spent in the assessment period. So in the assessment period, the Customer may spend \$2,000 more than they normally do. But they were only able to do this because they received a one-off amount of \$2,000. How would ASIC treat such a gift? And how would ASIC treat the expense that the \$2,000 was spent on?

Refunds

How does ASIC consider refund should be treated? Once again, it is clearly NOT income, however, it is money coming IN to the bank account. Should it be netted off with the original expenses? What if the original expenses occurred prior to the assessment period?

There are many more of these variations. How such items are treated can be the difference between a Customer having affordability or not for their loan/credit contract. ASIC must provide additional guidance on such items.

Data Aggregation Services

It is our understanding that there are several “Data Aggregation Services” that are being used by some credit licences.

Lend Assess believes that the use of Data Aggregation to assess a Customer’s financial situation may result in that Licensee failing in their Responsible Lending Obligations.

Part of the reason is due to the many variable detailed above. A data aggregation system cannot determine what a Customer spent their cash withdrawals on. Nor what their Afterpay amounts were for.

Even in what may initially appear to be straightforward cases, data aggregation could give a false idea of the Customer’ financial position.

By way of example, let’s consider 3 different Customers who each spend \$100.00 at Coles express. On their bank statement, they all had exactly the same entry showing:

07/05/2019	Coles Express	\$100.00
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Sally Smith

Spends

\$100.00 on petrol	Category:Fuel	\$100.00
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Nancy Morris

Spends

\$20 on petrol	Category: Fuel	\$20.00
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\$30 on cigarettes	Category: Tobacco	\$30.00
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\$50 on pies and soft drinks for family	Category: Take away food	\$50.00
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Barry James

Spends

\$20 on Optus phone card	Category: Telephone	\$20.00
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\$80.00 on basic groceries	Category: Food	\$80.00
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3 Customers with the SAME item on their bank statement but 3 very different expenditure patterns.

How can a data aggregator service allocate this correctly?

Even the most sophisticated algorithm or machine learning cannot solve the issue that EACH Customer has UNIQUE spending habits.

We therefore feel that ASIC must make it very clear whether or not a data aggregator service can be used in the Customer Assessment process.

Section D – Additional guidance on specific issues

Lend Assess does not have any feedback on the following points

- Areas where responsible lending obligations do not apply
- Mitigating risk in loan fraud
- Negative repayment history

Records of inquiries and verification

Yes, we definitely consider that guidance by ASIC on industry best practice for recording the inquiries and verification steps that have been undertaken would be of great benefit.

Lend Assess believes that this approach would not lead to additional business costs. As stated above most credit licensees are trying hard in this area, however, without clarification they are somewhat “flying blind”. Additional guidance by ASIC in this area would provide clarity and consistency to licensees.

This would in turn lead to a more efficient and streamlined approach, which will ultimately be of benefit to the Consumer.

Content of a Written Assessment

Yes, we consider it useful for ASIC to provide a written example of a written assessment to illustrate the level of information that should be included.

Appendix 2 is a good start, however, we feel that it needs to be much more extensive. Referring back to my comments above, ASIC needs to provide guidance on more than just a “Perfect World” scenario. They need to provide several different examples. One is not enough.

ASIC’s examples need to take into account the many variations that can occur in the real world.

Summary

As you can see from comments above, Lend Assess considers that the more guidance that ASIC can give in the area of Responsible Lending Conduct the better. It will enable credit licensees to have additional clarity and certainty in this area.

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