MORTGAGE & FINANCE ASSOCIATION OF AUSTRALIA
GPO Box 144
Sydney NSW 2001
1300 554 817
enquiries@mfaa.com.au

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

The MFAA is pleased to have the opportunity to comment on ASIC's proposals outlined in CP309 to update RG209.

About the MFAA

With more than 13,500 members, the MFAA is Australia's leading professional association for the mortgage broking industry with membership covering mortgage and finance brokers, aggregators, lenders, mortgage managers, mortgage insurers and other suppliers to the mortgage broking industry. The stated purpose of the MFAA is to advance the interests of our members through leadership in advocacy, education and promotion. To achieve this aim, the MFAA promotes and advances the broker proposition to a range of external stakeholders including governments, regulators and consumers, and continues to demonstrate the commitment of MFAA professionals to the maintenance of the highest standards of education and development.

Introduction

We provide some key observations below. We address the questions raised in CP309 in Schedule 1 at the end of this letter.

These responses by the MFAA are made primarily from the perspective of finance brokers as distinct from lenders. However, we believe most comments apply equally to our lender members.

1. Executive summary

1.1 Further guidance should have the dual objectives of good customer outcomes while maintaining competition. Competition is essential for good customer outcomes especially in relation to price and service.

1.2 RG209 should specify 'base inquiries and verifications' for specific product/customer types. This guidance is essential to resolve the significant uncertainty facing industry about what is required for different product types and to ensure brokers can continue to deal with a broad range of lenders (due to the resulting increased consistency) to maximise good outcomes for consumers. Licensees should be able to conduct a greater or lesser due diligence having regard to the customer's financial position and experience, including by reference to their debt commitment to income ratio and/or credit score. This recognises that the law sets a standard of 'reasonable' inquiries and verification.

1.3 Income and fixed liabilities (loan repayments, rent etc) are reasonably easy to ascertain and verify and should form part of most assessments. Detailed verification (as distinct from inquiries) of other expenses is imprecise and costly and is not relevant to the extent these expenses are discretionary and are likely to be reduced or eliminated once the new credit is taken on. At least for products where the risk of substantial hardship is remote, and perhaps for other products based on customer profile, it is appropriate to have regard to reasonable estimates of living expenses using such tools as scaled HEM for verification. In our view, doing so is likely to ensure that approval costs and delays are not excessive and so provide better consumer outcomes. The guidance in the United Kingdom's FCA 'Consumer Credit sourcebook' dated April 2019[1] is relevant and useful: *'the firm may take into account statistical data unless it knows or has reasonable cause to suspect that the borrower's* ***non-discretionary*** *expenditure is significantly higher than that described in the data or that the data are unlikely to be reasonably representative of the borrower's situation.'* ***[Our bolding]***

1.4 If brokers are satisfied that a lender's due diligence requirements are reasonable and appropriate, the new RG209 should state that brokers who comply with that lender's responsible lending regime will generally be considered to have conducted appropriate due diligence.

2. Key observations

2.1 Responsible lending provides valuable protection for consumers

The MFAA has required its members to adopt responsible lending principles well before responsible lending became mandatory in 2010. Our Code of Practice has required members to ensure that finance was 'appropriate',[2] arguably a higher standard than adopted in the *National Consumer Credit Protection Act* (**NCCP Act**). Indeed, our standard was a key starting point for work by Treasury to draft that law.

As such, our members are all strong supporters of appropriate consumer focussed processes. Our comments on CP309 should be read in that context.

---

[1] Financial Conduct Authority, *Consumer Credit sourcebook,* Chapter 5, 18 April 2019, see https://www.handbook.fca.org.uk/handbook/CONC/5/?view=chapter.
[2] Mortgage & Finance Association of Australia (MFAA), *Code of Practice'*, Clause 7.1, see: https://www.mfaa.com.au/sites/default/files/About%20Library/MFAA%20Code%20of%20Practice%20160904.pdf.

2.2 Responsible lending is complex and there will always be grey areas

It is well recognised that the factors impacting on making a responsible lending assessment are numerous, complex and 'scalable' (to use the term in RG209). As a result, the current RG209 adopts a principles-based approach rather than prescribing specific or measurable procedures.

Unfortunately, but necessarily, this means that there will always be 'grey areas' that require licensees to apply reasonable standards when assessing in a particular case what amounts to:

- reasonable inquiries about the consumer's requirements and objectives;
- reasonable inquiries about the consumer's financial situation; and
- reasonable steps to verify the consumer's financial situation;

referred to as '**due diligence**' in this submission.

2.3 RG209 should provide as much guidance as possible, particularly for home loans

Many lenders have made changes over the last few years regarding:

- living expenses inquiries and verification;
- consideration of a consumer's requirements and objectives;
- considerations such as the impact of interest only loans, the three-year full repayment of credit card debt, and interest rate buffers.

An unfortunate side effect of these changes is that the requirements of individual lenders have changed from being reasonably consistent to being quite diverse. This is causing significant cost, confusion, and delay for consumers as well as for brokers. This is not a good consumer outcome because it has become very difficult for brokers to be familiar with the requirements of multiple lenders whose credit policies vary considerably. This may result in brokers dealing with a smaller panel of lenders – not a good consumer or industry outcome.

It is important that RG209 provides as much guidance as possible specifically dealing with the five most common finance types (home loans, residential investment loans, car loans, credit cards, and personal loans – excluding small amount credit contracts [SACCs]) to assist consistency in consumer accessibility to these products while supporting the spread of credit access across the market through the enhanced clarity of regulatory expectation.

We envisage that within each of these five loan types, RG209 should specify 'base' inquiries and verifications because current industry standards are often quite similar across the product range.

2.4 Scalability can be better described

The law requires 'reasonable' due diligence reflected in RG209 by the term 'scalable'. In our view, this must mean scalable for both:

- product type; and
- consumer type.

RG209 should therefore specify:

- ‘base’ inquiries for the five principal product types; and
- ‘base’ verifications for the five principal product types.

Principal product types are:

- home loans;
- residential investment loans
- car loans;
- credit cards; and
- personal loans (excluding SACCs).

It is important that base inquiries and verifications are specified to address the significant inconsistency between lenders that has emerged particularly over the past few years and which has been further exacerbated by the recent Hayne Royal Commission hearings and its recommendations. Because lenders are unable to make arrangements or agree to provide consistent (or agreed) lending standards, the only option available to attain industry consistency is via legislation, which is problematic, or by regulatory guidance that steers the industry toward a relatively uniform position. This clarity will not only benefit the industry but, more importantly, it will relieve consumers of much of their uncertainty about the likelihood of meeting lenders’ credit standards and therefore deliver better customer outcomes.

Lesser due diligence is generally appropriate for car loans, credit cards, and personal loans (excluding SACCs) because usually the potential for substantial hardship is less due to generally lower debt levels and the impact that has on the consumer’s financial position and consequently the consumer’s family. A reduced due diligence requirement is essential for these products to ensure due diligence costs are not prohibitive which will drive up the cost of credit and reduce its availability.

Licensees should be able to make less or more than the base inquiries and verifications having regard to a consumer’s financial position and financial literacy. There is support for either exempting loans to sophisticated investors (in a similar way as allowed under Chapter 6D and 7 of the *Corporations Act* in relation to the provision of financial services) from excessive due diligence obligations, or at least recognising that a significantly lower level of inquiry and verification is appropriate for these individuals.

Licensees who conduct less due diligence than the base requirement should record why a lower level of due diligence is considered appropriate in those particular circumstances. This record might be made on:

- a case by case basis having regard to the customer’s financial condition or financial literacy; or
- a general basis having regard to particular characteristics of the product; or
- a combination of these two factors.

There are reports that in some cases AFCA has set a very high (near perfect and full audit style) standard for the amount of due diligence that must be conducted in circumstances that the industry generally considers were reasonably made. This is undesirable and does not reflect the legal standard of ‘reasonable’.

What is an appropriate level of due diligence?

Income and fixed liabilities (loan repayments, rent etc) are reasonably easy to ascertain and should form part of most assessments. The relevant information and evidence will usually be available from consumers.

The cost, delays, and aggravation for consumers and industry primarily arise from a lack of consistency amongst lenders and clarity of what is required in relation to the due diligence of so called 'living expenses' and the treatment of discretionary expenses, especially in relation to home loans.

At least for products where the risk of substantial hardship is remote, there is significant support for the view that it is appropriate, after making suitably detailed inquiries, to limit verification to comparing the declared expenses against reasonable estimates of living expenses (possibly with a 'scaled' HEM). Scaled HEM should be reliable evidence that people can live reasonably and without substantial hardship for the relevant cost.

There may have been problems in the past where scaled HEM was the sole determinant, but that is not what we propose. Our proposal is that all fixed expenses are taken into account and then in appropriate cases a reasonable estimate of living expenses is applied instead of a forensic investigation.

A forensic examination of bank statements and other evidence of living expenses is costly and may result in customers being denied credit that they can in fact afford with reasonable (and in many cases, expected) lifestyle adjustments. The significant cost of an extensive due diligence has the potential to increase costs of credit while creating unnecessary frustration and aggravation for consumers. This additional cost and likely delay is a poor consumer outcome.

Home loans usually impose larger liabilities and repayment obligations than other consumer loans. If something goes wrong, consumer stress can be much greater and the consumer risks losing their home. A higher level of due diligence is appropriate for home loans than would apply for lower risk products.

It is important that there is significant competition. Finance brokers are an essential driver of that competition. However, as noted above, unless there is greater consistency in lenders' requirements which would enhance that competition, it will be more difficult for brokers and consumers to deal with a broad range of lenders.

In Schedule 2 we have provided the current LIXI inquiries into living expenses[3] and in Schedule 3 a widely used inquiry into requirements and objectives. These are designed for real estate secured loans. All items in Schedule 2 should not need to be verified if there is a clear indication of surplus cash flow.

2.5 Preliminary credit assessment

The law provides that licensees who provide credit assistance (other than credit providers) must make a preliminary credit assessment. The meaning of the word preliminary is not discussed in RG209. The industry needs more clarity about the relationship between a broker's preliminary credit assessment and the credit assessment made by a lender on whether or not it will make a loan. The broker's

[3] LIXI Limited, *Living expense category changes*, 13 May 2019, see https://lixi.org.au/living-expenses-and-the-lixi-standards/.

preliminary assessment should establish that, in the broker's view, a loan is likely to meet the consumer's requirements and objectives and is not considered likely to result in substantial hardship for that particular borrower.

If a broker's assessment was acknowledged as a final assessment by the lender meaning that the lender did not need to complete its own assessment, loans introduced by brokers would be less likely to be declined. Because that is not the case, a clear differentiation of the two assessment requirements should be specified to clarify this anomaly.

We understand that ASIC's and AFCA's approach is that a preliminary credit assessment should be as complete as that conducted by lenders, whilst conceding that brokers may not have access to the same resources as lenders (e.g. no direct access to credit reports, no access to other data held by lenders, and perhaps in the future data derived through open banking and positive credit reporting). RG209 should make it clear that brokers are not required to access Open Banking data or credit reports (in particular, comprehensive credit reporting). Brokers should be expected to consider only information that is reasonably accessible to make inquiries and verify a customer's financial situation.

Today's broking industry is a professional industry with established barriers to entry and minimum experience and education requirements. Further, aggregators often supply valuable tools to brokers to assist them to conduct responsible lending. However, an equally or more important part of a broker's job (probably the most important from the consumer's perspective) is to locate an appropriate loan for the particular consumer.

The collection and verification of information to enable the preliminary assessment provides two functions:

- it assists brokers to select an appropriate lender and an appropriate loan; and
- it provides a valuable service to lenders by obtaining and collating this preliminary data.

To a material extent, when an appropriate lender and product is identified, the nature of the due diligence prior to lodgement of the application with a lender will be driven by that particular lender's requirements (see our comments above about the desirability of greater consistency in lenders' requirements). **If brokers are satisfied that a lender's due diligence requirements are reasonable and appropriate, the new RG209 should state that brokers who comply with that lender's responsible lending regime will generally be considered to have conducted appropriate due diligence.** This will avoid the unnecessary inconvenience of consumers being required to provide information that is not in fact used in the lender's assessment and will promote competition because brokers will be able to access more lenders.

3. Other observations

3.1 It is important that guidance does not lose sight of the ultimate goals – consumer protection and facilitating an efficient financial system. It will never be possible to prevent consumer hardship completely, and all lenders are required to consider hardship requests made by borrowers, meaning that borrowers are well supported in this regard. Any guidance should not be so onerous as to crush the ambitions of aspiring Australians or to deprive credit from those who have a fair chance of being able to meet their financial obligations.

3.2 There is concern in the industry about whether the proposed ‘if not, why not’ approach is appropriate. This appears to shift the balance of proof from the balance of probabilities to an assumption of wrongdoing.

3.3 Complete removal of benchmarks as a tool is unjustified. In line with regulatory requirements in other jurisdictions, like the United Kingdom,[4] there is a place for scaled benchmarks in appropriate cases as a test of the reasonableness of declared expenses, and to estimate expenses should they not be known by the consumer (for example, first home owners living with parents or a newly single person who was previously in a spousal relationship).

3.4 RG209 should more strongly recognise that the assessment is a point in time inquiry. Licensees should not be held liable because of unpredictable adverse future events such as interest rate increases in excess of buffers, reduction in value of security, and other life events including divorce, loss of job, jail, and death.

3.5 RG209 should specifically address the fact that consumers may make lifestyle and spending changes to better afford their repayments, and that such adjustments are not only reasonable, but should be expected in order to cover liabilities that the customer proactively applied for.

3.6 RG209 should specify what comprises ‘unable to pay or not able to pay without substantial hardship’. We have received reports that AFCA has found breaches of responsible lending when the shortfall is, in our view, relatively small. A re-working of an affordability assessment producing small shortfalls (arising from a different approach or using additional information) should not be the basis of a decision that a licensee failed in its due diligence if a fair attempt was made to assess. There is a need to distinguish between situations where hardship relief may be appropriate and finding that the responsible lending assessment was defective.

3.7 Further, RG209 should provide guidance on what amounts to substantial hardship. Members have reported a number of AFCA decisions where, in AFCA’s analysis, the consumer did not have sufficient surplus to meet repayments. This analysis appears to us to be made without taking into account that the consumer could have changed their discretionary expenditure. If the consumer reduced their discretionary expenditure, the repayments could have been made and this would occur without substantial hardship. A useful formulation appears in the UK’s FCA guide at 5.2A.18: ‘Non-discretionary expenditure … includes payments needed to meet priority debts and other essential living expenses and other expenditure which it is hard to reduce to give a basic quality of life. [and includes contractual/mortgage payments]’.[5]

3.8 RG209 should specify what consequences flow from not meeting a consumer’s stated requirements and objectives. There are many scenarios here. For example, a broker may recommend a product that meets all but one requirement (of many) of a consumer

[4] Financial Conduct Authority, *Consumer Credit sourcebook*.
[5] Ibid.

– e.g. great rate, etc but no offset. Clarification is needed about in what circumstances this would be deemed as an unsuitable loan and how, and whether or not, the consumer can decide to accept that and what steps are necessary for the broker to note the customer's acceptance and willingness to accept a loan that fails to deliver one or more requirements or objectives.

If the broker has no product that meets the R&Os, the broker should state that. If the consumer accepts some 'lesser' product, that should be noted. The broker shouldn't suffer subsequently (in particular via an AFCA dispute) because the consumer accepted the original product that did not deliver all of the R&O(s) originally stated.

3.9 RG209 should make it clear that licensees are not responsible if information provided by consumers is misleading, incorrect, or fraudulent and licensees are not aware of this deception despite taking reasonable steps. This issue is related to the extent of due diligence licensees must undertake. For example, a licensee should be able to rely on a consumer's representation that they have two children without having to undertake further forensic due diligence. It may assist the industry if guidance included that loan writers are encouraged to include a written requirement by the borrower(s) that all information supplied by them is true and correct and that no relevant information that the loan writer, or lender, may need to make an appropriate assessment of loan suitability has been withheld.

3.10 A review of bank statements should not be notice of everything. The law does not require a full audit of a customer's affairs. The review should be limited to verifying key information and noting any major discrepancies and making an assessment of the consumer's cash flow. It is unnecessarily invasive to inquire into the meaning of every entry. We already have reports of problems arising when the examination is too detailed (e.g. one spouse finding out about 'secret' transactions conducted by the other spouse).

3.11 The recent requirement to expense credit card limits over three years is producing incorrect outcomes, and inappropriate loan rejections. RG209 should make it clear that this is not mandatory when there is a history of not using a full credit card limit, of paying off in full on a regular basis, or other conduct that makes this treatment inappropriate.

3.12 If repayments will not increase significantly, a history of good loan performance with no material adverse change in circumstances should be sufficient due diligence for internal (switching) and external refinances to another lender.

3.13 Additional clarification about consumers who rely on income from others would be valuable. There are a number of situations where joint income or income of others should be able to be considered in making the assessment, including if the person who is not a borrower:

- guarantees a loan;
- is a spouse or de facto;
- contributes on an ongoing basis to living expenses (e.g. shared accommodation, parental help).

Guidance about in what circumstances an assessment of, or acknowledgements from, the contributing party should be obtained, would greatly assist industry.

Clarity around joint expenses and liabilities would also be helpful. For example, consumer A may be making a loan application in their name only, but may have joint liabilities with person B. If A declares that they only pay 25% of the liabilities that they have with B due to a personal arrangement with B (despite being jointly and severally liable) can the loan be assessed on the basis that A is only liable for 25% of those payments?

3.14 BCOP 54 and 55 – substantial benefit

EDRs have in the past indicated that industry codes such as the new Banking Code of Practice (**BCOP**) will be applied as evidence of what is appropriate conduct.[6]

The provisions of clause 54 of BCOP have an important impact on responsible lending.

BCOP 54 provides that: '*If, on the information that you have provided to us in the course of applying for this loan, you will not receive a* ***substantial benefit*** *from the loan, we will not approve you as a co-borrower unless …*' [certain procedures are followed].

BCOP 55 provides that '*A substantial benefit includes where:*

(a) *you acquire a* ***reasonably proportionate legal or equitable interest*** *in assets purchased with the loan funds; or* [Note: In our view, this should be read as 'legal **and** equitable', as a purely legal interest is of no commercial value]

(b) *a* ***reasonable portion*** *of the loans funds are used to repay your debts, or other obligations owed by you.'*

It is arguable that a loan should be assessed as unsuitable if a borrower does not receive a 'substantial benefit'. It would be helpful if RG209 more clearly describes what comprises a 'substantial benefit'.

Parents offering to be joint borrowers to support the borrowing ability of their children is a common occurrence. In some cases, parents acquire a share of the property being purchased by their children in order to be accepted as borrowers. In some cases, this ownership will not be genuine because often behind the scenes the parents may be holding their share as bare trustee for their children. RG209 should specify what is good practice when a trust forms part of the loan transaction.

If the parents are genuinely purchasing a share of the real estate (that is, acquiring a beneficial interest and not just an equitable interest), our understanding is that 20% has been accepted by lenders in the past to justify taking the joint owners' income into account. This was an increase from 10% previously utilised. We are not aware of any science behind the choice of 20% as an appropriate proportion.

[6] See, for example, Australian Financial Complaints Authority, *Operational Guidelines*, A.14.2, pp. 82-83, https://www.afca.org.au/about-afca/rules-and-guidelines/afcas-operational-guidelines/.

Clarity is desirable as to whether the borrower's requirements and objectives are met if burdened with 100% of the debt in exchange for 20% ownership. Many are concerned about whether or not 20% real ownership is a substantial benefit.

BCOP55 provides that **'substantial benefit'** is satisfied by acquiring a **'reasonable share'**. This could mean 50% - because liability for the whole debt without owning at least 50% may be unreasonable. Setting an arbitrary limit such as 20% may satisfy neither responsible lending nor BCOP 55. It is important to industry for ASIC's view to be made clear.

3.15 Issue 2 – BCOP 154 – notice of change of repayments

EDRs have in the past indicated that industry codes such as the new Banking Code of Practice (**BCOP**) will be applied as evidence of what is appropriate conduct.

Although the NCCP regime does not require a responsible lending assessment to be undertaken when loans are varied without increasing the principal sum, there has been some commentary that it is best practice to conduct some form of review for some variations to credit contracts (e.g. a switch to interest only).

Against that background, we note with concern that BCOP 154 which provides that apart from changes to interest rates, notice of at least 30 days must be given of unfavourable changes to credit contracts. This means that if BCOP is considered best practice, more than 20 days' notice will need to be given for repayment changes.

When interest rates increase, if this longer notice is required, borrowers will be disadvantaged because they will pay more interest because the increased repayments commence later. A change to this notice period presents serious systems issues because it is usual to re-set repayments from the next monthly repayment date after interest rate changes.

We request that ASIC should make it clear that lenders are not required to give more than 20 days' notice of changes to repayments as specified in s65 of the Credit Code.

3.16 In respect of guidance issued by APRA, we appreciate that this prudential guidance is driven by a different regulatory concern and as a result cannot always be in step with ASIC's guidance focussed more directly on consumer protection. However, AFCA and its predecessor schemes have taken APRA's guidance on buffers and applied it industry wide. To the extent that regulatory guidance differs, AFCA or ASIC or both should, when providing guidance, make it clear whether the guidance has industry wide application or is specific only to limited sectors or industry participants such as ADIs.

Conclusion

Regulatory Guides may not have the force of law, but RG209 in particular has shown, and we believe will continue to have, a major impact on the provision of regulated credit in Australia.

It is critical that the correct balance is struck between consumer protection, access to credit, and an appropriate level of competition between lenders.

The MFAA appreciates the opportunity to provide input on this very important project and looks forward to continuing to work with ASIC to achieve good consumer outcomes and to maintain a viable and valuable finance broking profession.

Your sincerely

Mike Felton
Chief Executive Officer
Mortgage & Finance Association of Australia

SCHEDULE 1 – RESPONSES TO QUESTIONS RAISED IN CP309

These responses by the MFAA are made primarily from the perspective of finance brokers as distinct from lenders. We believe that some questions, including those related to the costs faced by businesses to deal with their due diligence and costs related to licensees' compliance with their obligations, are best responded to by licensees.

B1 – Verification of consumer's financial situation

B1Q1 Would it be useful for licensees if ASIC were to identify the inquiries and verification steps that we consider should be taken? Why or why not?

Yes, ASIC should identify the due diligence required but in doing so recognise that the requirements are scalable. We strongly support the establishment of 'base requirements' for different product classes as discussed in our covering letter.

It is far from optimal for licensees when there is uncertainty of what is required, particularly when a breach carries significant penalties and risk of financial compensation.

That risk has a direct impact on consumers because they are not receiving consistent service and may be paying higher interest rates because funders are pricing this not insignificant risk into their interest rates.

Many of our members consider that making review of bank statements mandatory is inappropriate. Often bank statements will not present a complete picture of a borrower's financial position.

It is a poor consumer outcome if consumers are denied credit that they can afford without hardship simply because their discretionary spending has been over inflated. Clarity in the area of verification of living expenses and discretionary vs non-discretionary expenses and the use of benchmarks is essential.

Single Borrowers with joint accounts

Another clarification ASIC could address is how to discharge responsible lending obligations with respect to single borrowers that conduct joint bank accounts or in households in which an income earned by a third party contributes to household expenses.

Some lenders apportion income (i.e. apply a proportion based on income split), but it is not clear whether that is an appropriate means of verifying a single borrower's expenses. It would benefit the industry if ASIC would include guidelines relating to these circumstances.

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

We have provided suggested inquiries for living expenses (Schedule 2) and for requirements and objectives (Schedule 3) in each case for residential real estate lending.

We consider that data aggregation services are a practical means for licensees to make inquiries, and take verification steps, about a consumer's financial situation. They can be a readily available means to provide current, accurate information about how consumers are managing their finances. However, they are not a service that should be mandated for brokers. If lenders require bank statements, brokers should not be required to review them because that is an unnecessary and inappropriate duplication of work and does not sit well with the concept of a ‘preliminary’ credit assessment. This review process can also add significantly to the time the consumer and broker must devote to the process and in many cases, without delivering any tangible benefit to the consumer (or the broker).

B1Q3 Are there any kinds of credit products, consumers or circumstances for which you consider it may be reasonable to undertake fewer inquiries and verification steps? Please identify the kinds of products, consumers and circumstances and particular features you think are relevant.

Yes. As described in our letter above, there should be a different base level of inquiry and verification specified for the five main consumer product types. Lesser inquiry and verification is appropriate for car loans, credit cards, and personal loans (other than SACCs) compared to home loans because the consequences of hardship arising from those products is much less.

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.

Licensees should always inquire into income and fixed outgoings (e.g. debt repayments, rent, home loan repayments). These are usually easily ascertainable and are key to assessing a consumer’s financial situation.

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

Licensees should always verify income. This is usually easily ascertainable and is key to assessing a consumer’s financial situation. It may be appropriate to verify outgoings in some cases, but not always. Licensees should not need to verify consumers’ ability or commitment to dispense with discretionary expenses. Discretionary expenses that are found to align to a benchmark should not require further enquiry.

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?

Para 12 of the consultation paper noted the risk that less scrupulous licensees might limit their due diligence to items listed by ASIC. We consider that this is not a material risk and is unlikely to change industry behaviour given the significant penalties and other consequences arising from licensees being found not to have taken reasonable steps. It will remain necessary for licensees to satisfy regulators, AFCA, and courts that, in any particular circumstances, the inquiries they make and the verification steps they take are reasonable for a particular consumer.

As noted in our covering letter, we submit that identifying particular inquiries and verification steps for the five most common credit products will produce significant consumer, industry, and regulatory benefits, so long as licensees are entitled to take more or fewer steps having regard to the financial position and literacy of the borrower.

B1Q7 What would be the effect on business costs of ASIC identifying particular inquiries and verification steps? Please provide details of the effect on compliance costs for the licensee, and any factors that are likely to affect the level of cost or cost savings.

So long as the base requirements are reasonable and consistent for each product type, the identification of particular inquiries and verification steps should reduce cost and risk to industry.

B1Q8 In your view, what would be the effect (either positive or negative) on competition

Greater consistency across lenders will have a positive effect on competition because brokers will more easily be able to work with a wider panel of lenders.

C1 – Verification of consumer's financial situation

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?

See Schedule 2 (living expense inquiry) and Schedule 3 (requirements and objectives) for residential lending.

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

As noted in our letter, there is a strong case for less rigorous due diligence for certain product types.

A key issue is whether bank account statements should be reviewed in all cases, and if so, for what purpose they should be reviewed. We consider that review of bank statements (which can be an intrusive and expensive manual task) is only appropriate where the risk of substantial hardship is real. Compulsory review of all accounts and items in the accounts is not necessary to form a reasonable assessment of a consumer's financial situation.

This raises the question whether it serves any regulatory purpose for bank statements to be reviewed twice – once by brokers and then again by lenders, especially given that those licensees may reach different conclusions, apply different parameters, or have access to different sets of data. RG209 should specifically state that brokers are not required to review bank statements, credit reports, or open banking data but rather, confirm that reasonable steps are required to meet the licensee's due diligence obligations.

C1Q3 Are there particular issues with using data aggregation services that you consider should be raised in our guidance? Please provide details of those issues, and information that you consider should be included in our guidance. For example, would it be useful to include specific guidance on matters the licensee could, or should, raise with the consumer before obtaining the consumer's consent to use this kind of service?

It would be reasonable for ASIC to recommend that licensees deal only with data aggregation services that meet and maintain minimum privacy security requirements.

C2. Obtaining and having regard to all readily available information

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?

Note: these proposals are:

- if information is received (e.g. bank statements), the licensee is on notice of all information in those documents; and
- licensees who decide not to obtain forms of readily available verifying information must be able to explain why it was not reasonable to obtain and review that information.

These two proposals considerably extend the licensees' work. They change the task from making *reasonable* inquiries and verifications into a complete audit of a consumer's affairs.

Depending on the type of product/consumer, obtaining bank statements should not be compulsory.

If bank statements are obtained, it is unfair and unnecessary for licensees to be deemed on notice of everything in the statement. This is an unwarranted intrusion into the privacy of consumers. It is not acceptable for licensees to have to review in detail every document received especially bank statements which contain a vast amount of information without much context. The description of many debts will not disclose the nature of the expense without further enquiry. Arguably, asking consumers about what they require in terms of discretionary spending to maintain their lifestyle to an acceptable level provides a better result.

If this proposal proceeds, the guidance should specify:

- what information ASIC considers is reasonably available;
- the period for which that information must be collected and reviewed is specified (e.g. the previous three months)

This raises the question of whether it serves any regulatory purpose for bank statements to be reviewed twice – once by brokers and then again by lenders, especially given that those licensees may reach different conclusions, apply different parameters, or have access to different sets of data. RG209 should specifically state that brokers are not required to review bank statements, credit reports, or open banking data but rather, confirm that reasonable steps are required to meet the licensee's due diligence obligations.

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

An 'if not, why not' approach is not appropriate. It is a matter of considering whether the inquiry and verification steps a licensee takes are reasonable considering the consumer with whom they are dealing, the sources of information available to them, and the product type.

There is concern in industry about whether the proposed 'if not why not' approach is appropriate. This appears to shift the balance of proof from the balance of probabilities to an assumption of wrongdoing.

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)?

There are already comments from consumers that the enhanced due diligence recently adopted by industry is unnecessarily intrusive. We expect considerable resistance from consumers to any increased requirements and indeed there is significant support for some current practices to be relaxed.

Already there are regular reports that current practices are making credit for ordinary Australians unnecessarily difficult to access.

As a result, whilst we strongly support clarification of guidance, we do not support any increase in the standards required for broker due diligence. More information is not necessarily better information. A skilled overview of all the consumer's circumstances and the purpose of a loan remain paramount in determining what is appropriate for the consumer.

It is important to remember that the vast majority of consumers (in particular in relation to home loans) repay their loans without material default.

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

Any increased requirements may have a negative effect on competition because the additional costs and resources may cause some licensees to quit the market. Amalgamation of broker groups and closer alliance with a smaller panel of lenders may emerge to provide the resources and understand the requirements of those lenders. Some members consider that increased requirements would benefit the big four banks because they have economies of scale that would make it easier and cheaper for them to comply with ASIC guidelines that impose a higher level of obligations.

As is well appreciated, there is a delicate balance here. Added guidance is welcome, but additional requirements are not necessary or desirable from both industry's and consumers' viewpoint.

C3. Use of benchmarks

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

Yes, the guidance would be useful. We do think that appropriately scaled HEM may be sufficient for verification of living expenses for low risk products being provided to financially strong and financially sophisticated consumers.

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)?

Consumers may be inconvenienced and the cost, availability, and speed of delivery of credit may increase if assessment is **unnecessarily** detailed. A forensic review of discretionary expenses is not appropriate.

It has already been widely reported that the shift to **very detailed** inquiry and verification has caused some consumer frustration, reduced the availability of credit, and introduced expensive and slow manual systems. This is an undesirable outcome for both the industry and consumers.

There needs to be a strong appreciation that consumers' expenditures often change materially when they take on financial obligations, particularly home loans. Working out that rationalisation is an awkward and imprecise task. The fact is that almost all consumers understand their home loan repayment obligations and make such adjustments as are necessary to make their home loan repayments without hardship. The list of expenses in paragraph 46 of the CP includes many expenses which may change or disappear when new financial obligations are taken on.

The proposed guidance may be awkward for digitised models. It may necessitate a manual process to capture or verify information.

C4 – Consumer's requirements and objectives

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?

Similarly to our request for RG209 to specify 'base' inquiries and verification for product types, we request that RG209 set out 'base' inquiries for requirements and objectives for product types.

We have provided suggested R&Os for residential lending in Schedule 3.

We note para 68 referring to REP493 that it would be good practice to give consumers a summary statement of the licensee's understanding of the consumer's requirements and objectives for confirmation of that understanding. We consider that this is good practice but should not be mandatory.

D2 – Fraud risks and impact on responsible lending obligations

D2Q1 Would specific guidance about loan fraud and the impact on responsible lending obligations of the licensee be useful? Would guidance encourage broader improvements in processes for identifying fraud and reduce the risk of consumers entering unsuitable credit contracts as a result of fraud? Why or why not?

Guidance is likely to be useful and appreciated.

D4 – Records of inquiries and verification

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

Guidance is likely to be useful and appreciated. Prescription in this area would not be appropriate because of the different systems and processes adopted by the broking industry. In relation to brokers, increasingly aggregators (especially when they are the licensee) require brokers to lodge the entire file in the aggregator's system.

It is important that any guidance is not overly focussed on loan applications that are managed manually because of increasing use of digitised systems.

D5-Content of written assessment

D5Q1 Would it be useful for ASIC to provide an example of a written assessment to illustrate the level of information that we think should be included? Why or why not?

We understand that this question is directed at the form of written assessment provided to consumers on request as distinct from the written assessment made for internal purposes. This distinction is important because the document given to consumers should set out the type of information shown in Appendix 2 of the CP (but not necessarily in that format).

On the other hand, the internal assessment is usually a simple statement in accordance with the law that the loan or lease has been assessed as being not unsuitable and a statement of the time for which the assessment is valid (usually 90 or 120 days). This written record is created at the end of a process of checks and balances which is often system driven.

Guidance is likely to be useful and appreciated. Prescription in this area would not be appropriate because of the different systems and processes adopted by the broking industry.

D5Q2 Please provide any comments on the example set out in Appendix 2.

The example form is only helpful if designed to indicate the type of things to be covered in the written assessment.

SCHEDULE 2 – LIXI LIVING EXPENSE INQUIRIES – RESIDENTIAL REAL ESTATE LOANS

Expense Category Headings	Items including These items might be displayed in a pop-up box to prompt customers
Childcare	Childcare including nannies
Clothing and personal care	Clothing, footwear, cosmetics, personal care
Education	Public and private education fees and associated costs (preschool, primary, secondary and tertiary) including books and uniforms, etc.
Groceries	Typical supermarket shop for groceries including food and toiletries
Insurance	All insurance including health, home and contents, motor vehicle, life, income protection
Investment property utilities, rates and related costs	Housing and property expenses on investment property including rates, taxes, levies, body corporate and strata fees, repairs and maintenance, other household items and utilities (excluding insurance, telephone, internet and pay TV as they are categorised separately)
Medical and health	Medical and health costs including doctor, dental, optical and pharmaceutical, etc. (excluding health insurance which is categorised under insurance)
Other	Unique items not covered in above categories (must be explained further)
Owner occupied property utilities, rates and related costs	Housing and property expenses on owner occupied property including rates, taxes, levies, body corporate and strata fees, repairs and maintenance, other household items and utilities (excluding insurance, telephone, internet and pay TV as they are categorised separately)
Recreation and entertainment	Recreation and entertainment including alcohol, tobacco, gambling, restaurants, membership fees, pet care, holidays
Telephone, internet, pay TV and media streaming subscriptions	Telephone accounts (home and mobile), internet, pay TV and media streaming subscriptions (such as Netflix and Spotify)
Transport	Public transport, motor vehicle running costs including fuel, servicing, parking and tolls (excluding motor vehicle insurance which is categorised under insurance)

SCHEDULE 3 – REQUIREMENTS AND OBJECTIVES INQUIRIES – RESIDENTIAL REAL ESTATE LOANS

1. Requirements

- ❑ Principal and Interest
- ❑ Interest Only
- ❑ Line of Credit
- ❑ Construction loan with progress payments
- ❑ Interest capitalisation (e.g. bridging loan and ‘reverse mortgage’)
- ❑ Ability to make additional payments
- ❑ Ability to ‘switch’ from fixed to variable (without having to refinance the loan)
- ❑ Electronic banking (internet, mobile device) including access to redraw and offset
- ❑ Redraw
- ❑ Offset
- ❑ Credit card/debit card
- ❑ No monthly or annual fees
- ❑ Mortgage and product bundle
- ❑ Debt consolidation (Feedback loan purpose not requirement)
- ❑ Interest in advance
- ❑ No specific requirement
- ❑ Reduce overall commitments

Interest only reasons

- ❑ To accommodate a temporary reduction in income
- ❑ To accommodate anticipated non-recurring and/or large expense items
- ❑ Variable or unpredictable income
- ❑ To maximise cash flow
- ❑ To create funds for investment purposes
- ❑ Principal reductions in an offset facility
- ❑ Taxation, Financial or Accounting reasons
- ❑ Plan to convert to "investment" property in future.
- ❑ Other reason and/or additional detail [Free text] to expand on option(s) selected above.