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20th May 2019

Fleur Grey, Senior Specialist

Credit, Retail Banking and Payments Financial Services

Australian Securities and Investments Commission

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

Dear Fleur,

NAB RESPONSE TO CONSULTATION PAPER 309

We refer to your consultation paper titled Consultation Paper 309 (CP309) Update to RG 209: Credit Licensing: Responsible Lending Conduct dated February 2019.

NAB appreciates the opportunity to contribute to ASIC's consultation and have provided our responses to ASIC's questions in this document.

In addition, we recognise that there are currently many other consultations and reviews underway across the industry as well as new legislation that relate to elements of CP309 and NAB recommends ASIC consider alignment of guidance for licensees:

- **APS220 Credit Risk Management Prudential Standard Consultation:** content contains a section related to credit standard requirements and covers topics such as capacity to repay, effective verification of income and how valuations are undertaken.
- **Consultation Paper 310 Review of the ePayments Code**: Potentially unauthorised payments for customers who disclose their identifiers to the providers of data aggregation services.
- **Combined Industry Forum:** NAB is involved in consultations including providing insight into the design of a best interest duty, broker **governance and enforcement.**
- **Design and Distribution Obligations (DDO) and Product Intervention Powers (PIP):** Legislation introducing Product Intervention Powers and obligations requiring issuers and distributors to have defined target markets for most financial products and that those products are only distributed to customers within the defined target market.

Credit providers and credit assistance providers

NAB would recommend that ASIC consider that any changes proposed take into account the differences between credit providers and credit assistance providers - for example, a credit provider may have access to information about its customers that a credit assistance provider may not which may require further consideration when proposing a standardised approach to activities within regulatory guidance.

Financial inclusion

NAB would also recommend that ASIC consult further with credit providers on how we ensure the updated responsible lending guidelines address the needs of vulnerable customers who may be at risk of financial exclusion. NAB has community partnerships and financial inclusion products for vulnerable customers and would appreciate consultation with ASIC on how we ensure we can continue to meet the needs of financial vulnerable customers in a responsible manner.

Yours sincerely,

Angus Gilfillan

Executive General Manager Banking Products Consumer Lending

National Australia Bank Ltd

NAB RESPONSE TO ASIC CONSULTATION PAPER CP309

Update to RG209 Credit licensing: Responsible lending conduct

20th May 2019

National Australia Bank Limited ABN 12 004 044 937 AFSL and Australian Credit Licence 230686

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SECTION B

B1 ASIC Proposal

We are considering whether to identify particular inquiries and verification steps in RG 209 that we think would generally be reasonable to provide greater certainty to licensees about complying with their obligations.

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

- NAB welcomes ASIC's intention to identify particular inquiries and reasonable verification steps - the additional guidance will provide greater certainty to credit providers but will also drive greater industry consistency.
- The proposed changes in CP309 imply that ASIC may move to a 'minimum standard' for inquiry and verification.
- NAB is supportive of this approach to address any deficiencies within industry. However, NAB is also supportive of the concept of scalability in RG209 and considers that it should be retained.
- Scalability allows credit providers to tailor systems and processes to achieve appropriate customer outcomes. It also gives credit providers flexibility to innovate with the customer experience, whilst still meeting their responsible lending obligations.
- It is unclear how scalability might operate in the context of a minimum standard and the requirement to have regard to certain information sources through an 'if not why not approach' (section C2). Therefore, it is important to NAB that ASIC provides clarity on how scalability will work in this context.
- Finally, we recommend ASIC consider how a minimum standard would operate and impact different industry participants including licensees (credit providers and smaller Australian credit licensees) and individual credit assistance providers.

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

- There is a varied approach to the following industry practices and we consider that industry would benefit from updated guidance, for example:
  - Circumstances where it may be appropriate to meet repayments from the sale of assets. This is particularly relevant for high net worth customers who have a material asset that will be used to pay out the loan (for example, the sale of shares or sale of an investment property).
    - RG 209 does not currently provide clarity on when this approach will be appropriate.
      - RG 209.107 states that consumers should be able to meet their payment obligations from income rather than equity in an asset.
      - Yet RG 209.99 references factors that may be considered in determining whether a loan is not unsuitable (including the sale of an asset).
  - Circumstances where it may be appropriate to rely on indirect income from relationships outside of spousal (e.g. parent/child).
    - Where indirect income is accepted, can it be for a significant portion of the repayment (i.e. 50-100% of the loan repayment) and for the whole loan term.
    - RG 209.33 references indirect income sources (such as income from a spouse) where that income is reasonably available to the consumer, considering the history of the relationship and the expressed willingness of the earning person to meet repayment obligations.

- The treatment of joint financials and how to apportion individual commitments in a fair manner when determining suitability (see C2Q1): is it appropriate for a credit provider to assess serviceability:
  - Using the customer's declared share of repayments for existing liabilities (notwithstanding they may have joint liability for the existing debt)?
  - Using the customer's declared share of expenses and, if so, what verification steps are required to verify the customer's share of expenses?
- How to verify more complex income sources and structures (including positive changes to income/earnings).
- NAB considers that it would help drive efficiency and alignment across industry if ASIC provided a best practice view on the types of expense categories that credit providers should use or have regard to (in consultation with credit providers) that all licensees should use. Currently there is inconsistency in the expenses categorisation methodology amongst credit providers leading to:
  - Major inefficiencies for credit assistant providers because they have to vary their expense capture processes for each credit provider
  - An unfair competitive advantage for those credit providers that adopt a high-level/less rigorous categorisation approach.

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.

- We consider that *RG209 Table 3: Factors relevant to scalability of the reasonable inquiries and verification obligations* adequately addresses the relevant factors to consider when assessing if fewer inquiries or verification steps are required.
  - Potential impact on the consumer of entering into an unsuitable credit contract
  - Complexity of the credit contract (e.g. secured loans vs. unsecured credit)
  - Capacity of the customer to understand the credit contract
  - Whether the consumer is an existing or new customer
  - Sophisticated borrower/ Ultra High Net Worth Individuals
- It is not unreasonable for consumers to expect that fewer inquiries and verification steps may be required as per the factors in RG 209 Table 3 (listed above) as doing so enables providers to minimise customer effort.
- In the context of a potential 'minimum standard' (see B1Q1), NAB would appreciate further guidance as to the lower level of inquiry and verification that may be applicable for variations to existing loans where there is no increase in the customer's overall liability.
  - RG209 generally applies to any increase in credit or if there is a new credit contract.
  - The requirement to carry out responsible lending when the customer is meeting their repayments but varying their loan account in a way that triggers responsible lending does not necessarily improve customer outcomes and creates poor customer experience and inefficiency for licensees.
  - For example, a loan consolidation where the overall limit stays the same for the customer but:
    - There is a notional increase to the credit limit on one loan account or
    - Splitting a loan account that may generate a new account number.

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.

- NAB's view is consistent with RG 209.32, which generally states what inquiries are required by credit providers in all circumstances:
  - Income (nature and length of employment)
  - Liabilities
  - Fixed and variable living expenses (and drivers of such expenses).
- NAB also considers it generally appropriate to inquire if the customer
  - Has experienced financial difficulty
  - Foresees changes in their circumstances.
- NAB would appreciate ASIC's guidance on how the nature of this query may vary for existing customers. For example, if a credit provider were to hold existing customer information from a recent previous credit application, is it sufficient for a credit provider to inquire as to whether there has been any change in relation to the customer's financial situation or does a credit provider need to re-inquire each element.

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.

- NAB generally considers it appropriate to verify the following in all circumstances
  - Income
  - Liabilities
  - Fixed and recurring expenses (including through validation against an appropriately calibrated benchmark)
- However, current industry practice is varied when it comes to the verification of liabilities and expenses.
- Comprehensive Credit Reporting (CCR) has better enabled identification of some undisclosed debts for certain credit providers, whilst verification of variable living expenses still poses practical problems for industry.
- Credit providers are reliant on CCR data maturing and in the future, are also dependent on data aggregation and open banking technology to enable efficient and consistent verification of variable living expenses across industry.
- It is unclear from CP309 how ASIC expects credit providers to manually verify a customer's variable expenses through a customer's bank/credit card statements, prior to the adoption of emerging technologies or in circumstances where customers do not wish to use such technologies - this is not as simple as checking a customer's declared figure against a line item in a bank statement.
  - Variable expenses are likely across multiple transaction accounts or credit cards and potentially include the use of cash.
  - Manual review by a credit provider may not produce accurate categorization or identification of inconsistencies.
  - We recommend that ASIC clarify its guidance in this regard.

B1Q6: What would be the effect on consumers of ASIC identifying particular inquiries and verification steps? For example, what would be the effect on access to and cost of credit for consumers?

- It is difficult for NAB to provide a meaningful impact assessment without further details regarding the particular inquiry and verification steps that ASIC may identify (including any impacts to scalability).
- Assuming the inquiries and verification steps are aligned to those currently in RG209 (as described in B1Q3 and B1Q4 above) and scalability is retained, we do not anticipate that this would have a material impact to access or cost of credit for customers.
- However, if credit providers were required to verify all readily available information in all circumstances this would impact NAB's distribution and operations business units, particularly in relation to processes that are currently scaled.
- This may increase operational costs for credit providers and, in turn, potentially impact the cost of credit for customers as well as increase assessment time for loan approvals.

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.

See B1Q6 above.

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

- NAB welcomes competition in terms of customer experience and innovation which we believe are key differentiators for industry.
- NAB does not consider competition between credit providers, with respect to responsible lending obligations, to be a positive for customers.
- Therefore, NAB welcomes the opportunity for credit providers to compete in how we manage and execute the inquiry and verification processes for customers rather than the standards by which verification occurs.

SECTION C

C1 ASIC Proposal

We propose to amend the current guidance in RG 209 on forms of verification to:

(a) clarify our guidance on kinds of information that could be used for verification of the consumer's financial situation, and provide a list of forms of verification that we consider is readily available in common circumstances; and

(b) clearly state that views on what are 'reasonable steps' will change over time, as different forms or sources of verifying information become available. For example, developments in open banking and data aggregation services will assist licensees to efficiently confirm the financial situation of a consumer (including allowing simultaneous inquiry about and verification of some information).

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?

- NAB supports ASIC's proposal to clarify guidance on the kinds of information that could be used for verification and the readily available forms of verification identified in Appendix 1.
- NAB would welcome additional guidance from ASIC on scenarios where the customer may have strong servicing capacity but limited verifiable income through standard sources (i.e. statements or pay slips).
- NAB also seeks further guidance on ASIC's approach to self-employed customers and the types of documentation that can be relied upon to establish a customer's capacity to service and repay a loan and, in turn, ensure that the loan is not 'unsuitable'. Appendix 1 identifies a non-exhaustive list of evidence that may be used to verify income. For self-employed customers, this includes appropriate examples such as financial statements for related business entities and information from the borrower's accountant. It may be commonplace for a self-employed customer to provide information to a credit provider (as set out in Table 1) showing that the borrower's financial position will change. For example, a small business owner provides information from their accountant evidencing a new income source based on a contract with a third party for the supply of goods or services **or** the customer's financial statements show a confirmed investment in income generating plant and equipment. It would be helpful if ASIC provide additional guidance regarding how this requirement might operate in relation to expected changes to the customer's financial situation.

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

- NAB generally considers the examples in Appendix 1 to be appropriate.
- However, as discussed in B1Q5, NAB has some concerns with the documents identified in table 4 regarding variable living expenses and how credit providers are expected to verify such information in the absence of new technologies or if a customer does not consent to open banking in the future. In particular:
- Historic expenses may not necessarily reflect/predict future expenses: for example, customers may make lifestyle changes to meet loan repayments, particularly in relation to discretionary expenses.
- Categorisation of expense types: credit providers will generally capture expenses based on certain categories. Bank statements will need to be filtered to provide a reconciliation against the customer's declared expenses. Accuracy will depend on the correlation between the registered account name of the payee versus the category of expense. For example, "Woolworths" may be easily categorized, whereas the trading name of local IGA may not correlate.

- Complete and accurate expense information: a customer may use cash and/or multiple accounts, which makes it difficult to verify against the customer's declared position.
- Comprehensive spending patterns: depending on the time period, customer's may have one off expenses or a period of low expenditure which gives an artificial understanding of customer's position and potentially inconsistent approach to evaluating customer's expense history.

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?

- NAB welcomes the emergence of new technologies that support credit providers in meeting responsible lending obligations, as well as delivering better outcomes for customers.
- However, we consider that there are several key issues for industry to resolve until credit providers can use data aggregation services - in particular:
  - Liability for data breaches
  - Unauthorised transactions.
- NAB's terms and conditions do not generally permit provision of password or user IDs to third parties (i.e. data aggregation services).
- We consider this is likely to be the case across most of industry and doing so may contravene the ePayments Code, in turn creating potential liability for credit providers.
- Therefore, we would welcome ASIC's guidance particularly with respect to the sharing of customer identifiers in the context of data aggregation services.

C2 ASIC Proposal

We propose to expand our guidance on what are reasonable steps to verify the financial situation of a consumer by:

(a) More clearly stating that it is not sufficient merely to obtain verifying information but not have regard to it, or to use a source of information to verify only one aspect of the consumer's financial situation if it contains other (potentially inconsistent) information about other aspects of the consumer's financial situation; and

(b) Including an 'if not, why not?' approach— that is, if a licensee decides not to obtain or refer to forms of verifying information that are readily available, they should be able to explain why it was not reasonable to obtain or refer to those forms of verification in the circumstances of the particular consumer involved.

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?

- NAB welcomes ASIC's further guidance to address inconsistencies in the source of information used to verify the consumer's disclosed financials (e.g. materials difference in the customer's disclosed figures vs statements related to childcare expenses).
- We recommend ASIC consider whether there should be any materiality threshold in relation to the level of inconsistency to ensure a reasonable approach can be implemented by credit providers.
- We also support ASIC's view that credit providers:
  - Should only have regard to information they have reason to believe is true
  - Should not need to make further enquiry regarding information that is incomplete or fraudulent when they had no reason to believe otherwise.
- As set out in B1Q5 and C1Q2, identification of inconsistency is challenging with respect to variable living expenses.
- We would appreciate ASIC's guidance on how credit providers ought to have regard to variable living expense information as described in Table 4 to ensure consistency of approach and customer outcomes.
- In addition to the examples in C1Q1, other aspects of ASIC's guidance on verification that would be useful are:
  1. Expense verification in relation to variable expenses: NAB would welcome ASIC's view on how variable expenses ought to be verified by credit providers using the readily available information sources.
     - This is not as simple as checking a customer's declared figure against a line item in a bank statement.
     - Variable expenses are likely across multiple transaction accounts or credit cards and potentially include the use of cash.
     - Manual review by a credit provider may not produce accurate categorization or identification of inconsistencies.
     - Accuracy may depend on the correlation between the registered account name of the payee vs the category of expense. For examples, "Woolworths" may be easily categorized whereas the trading name of local IGA may not correlate.
  2. Expense verification in relation for joint financials: NAB would welcome ASIC's view on the treatment of joint financials and how to apportion shared liabilities and expenses to an individual customer in a fair manner. (See B1Q2)
  3. Income from indirect sources: NAB would welcome ASIC's view on scenarios other than income from a spouse (as considered in RG209.33), such as from a parent, where it may be appropriate to rely on indirect income and whether there needs to be any 'materiality/proportionality' of the amount of indirect income required to meet repayments

and/or limitations on the period for which this would be acceptable (i.e. could it be for the whole loan term).

4. Foreseeable changes in relation to a customer's circumstances: NAB would welcome clarity on the steps a credit provider is required to take with respect to verification of changes in a customer's circumstances (for example, a customer's ability to repay if their retirement pre-dates their loan term expiry).
5. Customer commitments regarding future activity/behaviours: NAB would welcome clarity on what is reasonable with respect to the ability for a credit provider to rely upon the customer's commitments regarding future changes (for example, sale of material assets) and how this commitment would be verified.

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

- It is unclear how an 'if not why not' approach would improve current verification practices and may not align with a 'minimum standard' and 'scalable' approach.
- If ASIC has a view that certain information should be obtained in all scenarios, then we consider that this expectation can be set by uplifting guidance (noting our concerns regarding scalability) as outlined in B1Q1.
- Requiring credit providers to justify why they had regard to certain information does not provide credit providers with clarity on ASIC's expectations and potentially creates another layer of operational complexity for credit providers to manage.
- It is also not clear how a justification would improve verification practices.
- It is unclear whether a 'why not' justification would operate at a banker/broker level or a portfolio/segment level.
  - For example, would an individual banker be required to have a file note describing why they took a different approach on a secured or unsecured product?
  - This approach would be difficult to implement at a banker level and would create oversight issues to review quality of justifications.
  - This would require significant banker training as well as the introduction of new manual processes.
- As a general rule, responsible lending controls operate better if they are centralised and automated.
- This reduces operation risk and improves the consistency of customer outcomes.
- Finally, NAB recommends ASIC consider how an 'if not, why not' approach might work for credit assistance providers (brokers) vs credit providers (banks) given that what information is readily available is different and that access to information (including open banking or other services like CCR) will not necessarily be available to all in a uniform way.
  - For example, a broker would not know if a customer is behind in utilities services unless the customer openly discloses it because they do not readily have access to CCR information.
- NAB's view is that verification practices can be appropriately uplifted by ensuring a minimum expectation on inquiry and verification, whilst also retaining scalability.
- Emerging technologies will assist for large customer segments; however, we do not consider that an individual justification would materially improve customer outcomes.
- If there are scenarios that ASIC has in mind then it should address those in guidance.

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 clear benefits to consumers by ensuring that information sources used by the credit provider are consistent with what the customer has disclosed.

- There is little downside risk, however the level of manual review in relation to fixed and variable expenses may increase operational cost to credit providers and the potential cost of credit for consumers as a result.
- The benefits of an 'if not why not' approach are less clear, however they arguably provide a written record of why the credit provider only requested certain information. In other words, the credit provider is required to justify their scaled approach.
- We are unsure if this would have any particular benefits for customers, however it would likely introduce a process that would require significant oversight and management.
- This would increase operational cost to credit providers and potentially the cost of credit for consumers as a result.

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

- As outlined in C2Q2, if ASIC intends this approach to apply at an individual customer level then this would be highly problematic as it would result in significant operational impacts and the introduction of additional operational risk for credit providers.
- There would be technology and process changes required as well as a significant uplift in banker capability and additional resourcing in back office and quality assurance teams to ensure bankers were providing appropriate justifications.
- Such justifications would still require interpretation and may result in follow up inquiry which may have an adverse impact upon the customer experience and efficiency for industry.
- NAB notes that whilst emerging technology for data categorisation will support credit providers addressing RG 209, there will still be subjectivity and potential inconsistency in how credit providers categorise expense data and how it can be used in verification processes.

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

- NAB notes that this additional administrative burden may impact utilisation of credit assistance providers and online channels and in particular adversely impact upon those licensees, potentially smaller licensees, who rely upon manual processes rather than those who are able to implement automation.
- NAB is also concerned that these guidelines may encourage credit assistance providers to submit applications for a customer to their non-bank to avoid the additional inquiry and verification the customer's bank would make based upon the information held about that particular customer's circumstances.

C3 ASIC Proposal

We propose to clarify our guidance in RG 209 on the use of benchmarks as follows:
(a) A benchmark figure does not provide any positive confirmation of what a particular consumer's income and expenses actually are. However, we consider that benchmarks can be a useful tool to help determine whether information provided by the consumer is plausible (i.e. whether it is more or less likely to be true and able to be relied upon).
(b) If a benchmark figure is used to test expense information, licensees should generally take the following kinds of steps:
(i) Ensure that the benchmark figure that is being used is a realistic figure, that is adjusted for variables such as different income ranges, dependents and geographic location, and that is not merely reflective of 'low budget' spending;
(ii) If the benchmark figure being referred to is more reflective of 'low budget' spending (such as the Household Expenditure Measure), apply a reasonable buffer amount that reflects the likelihood that many consumers would have a higher level of expenses; and
(iii) Periodically review the expense figures being relied upon across the licensee's portfolio—if there is a high proportion of consumers recorded as having expenses that are at or near the benchmark figure, rather than demonstrating the kind of spread in expenses that is predicted by the methodology underlying the benchmark calculation, this may be an indication that the licensee's inquiries are not being effective to elicit accurate information about the consumer's expenses."

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

- NAB considers that ASIC's proposed clarification of the use of benchmarks would be useful.
  - Currently RG 209 permits the use of benchmarks after information has been gathered as part of a process to verify the consumer's financial situation. It is unclear whether ASIC will still consider this to be appropriate.
  - We note that ASIC proposes to use the term 'plausibility' with respect to use of benchmarks.
  - However, we consider that RG 209 could provide industry with greater certainty regarding when the use of a benchmark will be considered appropriate and adequate to satisfy reasonable partial verification (for example, where the credit provider has made reasonable inquiry about a customer's income, liabilities and expenses, has taken reasonable steps to verify income, liabilities and does not have inconsistent information with respect to a customer's expenses).
  - Additionally, benchmarks are a useful tool to measure the reasonableness of the information provided when some information sources are not readily available (as noted in B1Q1, readily available information varies between industry participants) and help promote further conversation with the customer.
- In relation to the application of an expense buffer, NAB considers this should be dealt with through APRA guidance rather than responsible lending.
  - NCCPA requires that the loan is not unsuitable – that is the customer can meet their repayments without substantial hardship.
  - NAB manages this through a number of prudential controls described in C3Q2. ASIC should have regard to these other overlays before considering an additional buffer on expenses.
  - If ASIC considers a buffer to still be appropriate, NAB recommends ASIC provide further guidance to industry on what ASIC defines as marginal surplus and what ASIC's expectations are for credit providers with respect to additional inquiry and verification of the customers financial circumstances in these scenarios.
- NAB wishes to clarify that the Melbourne Institute does not provide information on the distribution of HEM figures.
  - NAB only receives the absolute values, across 3 data sets.
  - This limits the information available to address ASIC's proposed guidelines with respect to understanding expense distribution for our customers.

- In addition, HEM is income calibrated for the broad Australian population, and not specifically for mortgage or unsecured product customers only, even though this is this population to whom NAB apply the benchmark.

C3 Q2: Please provide information on what buffer amounts you currently apply, or would otherwise consider to be reasonable.

- NAB does not apply an expense buffer given other buffers that are applied in our serviceability calculations.
- As outlined above in C3Q1, NAB does not consider it reasonable to apply a buffer to expenses given that our serviceability calculations in totality provide sufficient buffers for customers.

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)?

- The potential benefit for consumers with this approach is that customers who underestimate their expenses have an additional buffer to ensure they can meet their repayments.
- The downside risk for consumers is that the benchmark would become more conservative which will likely impact upon access to credit for customers with genuinely low expenses. Any change to the calibration of the benchmark which is intended to align to actual expenses for a higher percentage of the population would curtail access to credit to those whose expenses are below that updated figure given the use of the benchmark in serviceability assessments. NAB notes that the intention of the benchmark is not to predict expenses for individual customers but provide validation for customers who may disclose expenses lower than the benchmark.
- NAB considers that benchmarks, when properly calibrated, periodically reviewed and combined with appropriate customer inquiry, provide for a prudent and consistent manner for understanding and assessing a customer's expenses at scale.

C3Q4: What additional business costs would be involved in this approach?

- Positive verification of variable expenses in marginal surplus scenarios will likely mean additional business costs through operational impacts to manage further inquiry particularly until such time as there is broad customer adoption of Open Banking and categorisation technology to allow both access and meaningful categorisation of expense information.
- This may cause a negative customer experience and create a tiered process for customers that are straight through and those customers at margins or with more complex circumstances who will experience a slower assessment process.
- Given this, NAB considers that the use of a properly calibrated benchmark, alongside appropriate inquiry, provides efficiency for industry and appropriate customer outcomes.

C4 ASIC Proposal

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

C4Q1: Do you consider that the proposed clarification of guidance about understanding the consumer's requirements and objectives would be useful? Why or why not?

- NAB is generally supportive of ASIC's proposed approach to clarify guidance about understanding the consumer's requirements and objectives.
- With regards to the best interest duty for credit assistance providers, the proposed duty on brokers is likely to require the collection of additional information and documented when making inquiries. NAB would appreciate further guidance on how the proposed duty would interact with RG209.
- NAB is assuming that ASIC's guidance on the limited requirement to understand the consumer's requirements and objectives for a credit card (as stated in RG 209.37) will not change.

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)?

NAB considers that ASIC's proposed approach would be beneficial to consumer by providing greater transparency and understanding as to how the credit provider determined that the particular loan was not unsuitable.

C4Q3: What additional business costs would be involved in this approach?

- NAB notes that there would be significant upfront costs to uplift technology systems and banker capability to align to ASIC's guidelines.
- Notwithstanding these costs, NAB considers ASIC's approach is generally reasonable.

SECTION D

D1 ASIC Proposal

We propose to include new guidance in RG 209 on the areas where the responsible lending obligations do not apply.

D1Q1: Are there any forms of lending where the responsible lending obligations are being used by licensees in situations where the law does not require the responsible lending obligations in the National Credit Act to apply? Please describe the situations where this takes place.

NAB generally does not apply the National Credit Act in scenarios that are not regulated by the Act, other than where, for reasons of operational efficiency, it may apply the same home lending processes for applications from non- regulated entities (i.e. company / company as trustee).

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.

NAB has identified scenarios where it is presently unclear for our bankers as to whether the responsible lending obligations apply:

- The most common scenario involves a Sole Trader or simple Trust, which has a registered A.B.N (Australian Business Number), where the Borrower asserts the purpose of the loan is for business purposes, which is clearly aligned to the Borrower's GST intent and capital gains tax perspective to claim and report as a business but further analysis of the loan's 'predominate' purpose (greater than 50%) identifies that it is for consumer purposes, and as such the loan and therefore the borrower are entitled to the protections of the responsible lending obligations of the National Credit Act.
- Common examples where predominant purpose is particularly relevant relate to small scale farms where the lending may include funding the home and land for residential purposes as well as funding for plant, equipment and livestock at the property.
- Other examples relate to split use commercial zoned dwellings (for example professional service small business downstairs with residential premises upstairs) and small- scale property development.

D2 ASIC Proposal

We propose to include new guidance in RG 209 on:
(a) The role of the responsible lending obligations, and in particular the obligation to take reasonable steps to verify information provided about the consumer's financial situation, in mitigating risks involved in loan fraud; and
(b) Risk factors that might indicate that additional verification steps should be taken.

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

- NAB supports ASIC clarifying the responsibilities and obligations of credit providers where customers have misrepresented their financial position as well as providing further clarity on its definition of fraud aligned to its guidance.
- We note that fraud will continue to evolve therefore any guidance will also need to keep pace with changes in fraud practices.
- NAB considers there may be value in providing guidelines that encourage exploration of emerging technologies, drive greater consistency in financial and reporting treatments and provide standards around the sharing of information in relation to 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.

- NAB considers that generally the risk factors relate to customers inflating their income and employment details and falsifying the purpose of the loan.
- Credit providers will generally verify a customer's income via supporting documentation and may also verify a customer's employment and/or the purpose of the loan.
- Less common risk factors include illegal activity, piggybacking an additional applicant to improve the application and loan stacking when individuals apply for multiple loans from different credit providers.
- These are problematic to detect via additional verification steps.
- Generally, the above risk factors also reflect the difference between fraud for property where the customer deceives the credit provider in order to get approved for a loan which the customer intends to repay compared to fraud for profit where the customer has no intention to repay whatsoever.
- NAB would recommend ASIC consider if this difference should be reflected in its guidance.

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)?

- Depending upon the guidance and additional verification steps required, credit providers would likely incur increased costs associated with the application of up-front controls.
- However, these may be offset by savings achieved in costs associated with investigation, recovery and losses.
- It is not anticipated that any costs would be passed onto customers and the introduction of any new controls would likely be designed in a manner to avoid impacting the customer experience.

D2Q4: What additional business costs would be involved in this approach?

- The additional business costs involved in this approach are likely to be associated with progressive investment into system development and costs to both anticipate and respond to changes in typologies of lending fraud.

D3 ASIC Proposal

We propose to include guidance in RG 209 to clarify how repayment history information may be used, including that:
(a) The occurrence of repayment difficulties on one product will not necessarily mean that a new credit product will in all cases be unsuitable for that consumer; and
(b) This information should instead trigger the licensee to make more inquiries to enable it to understand those repayment difficulties, and the likelihood that the circumstances of the consumer leading to those difficulties will mean that the consumer would also be unable to meet financial obligations under the new product being considered.

D3Q1: 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?

- NAB is generally supportive of ASIC providing further guidance with respect to negative repayment history and hardship but we note that there are a complex range of factors credit providers consider in assessing applications for credit.
- NAB also notes that there was a review conducted by the Attorney General's Department to determine whether hardship information should be added to the credit reporting regime.
- Given this, how lenders may or may not consider this information in the credit assessment process in the future will require careful consideration.
- A key consideration will be ensuring that customers who experience financial difficulty are not discouraged from asking their financial institution for assistance if subsequent reporting of the hardship event is seen as being punitive.
- NAB does support ASIC's intent to ensure customers with a poor repayment history are not unfairly treated in accessing credit and NAB is supportive of doing the right thing to support our customers who are experiencing hardship. However, NAB also considers that for commercial and prudential reasons credit providers should retain ultimate discretion in determining whether or not to offer credit.
- We would welcome further consultation on this issue with ASIC informed by the review undertaken by the Attorney General's Department.
- In addition, NAB considers that Comprehensive Credit Reporting (CCR) provides a useful tool to assist a lender to better understand a customer's full lending exposure, in particular where those exposures are not disclosed by customers during the application process.
  - We note however that the current credit reporting regime as governed by the Privacy Act is somewhat limited, in that (while credit limits on accounts are shared with the credit bureaus) current balances & repayment amount on those accounts are not.
  - While the credit limit is sufficient to understand a customer's repayment obligations for a credit facility, visibility of the account balance & repayment amount would improve a credit provider's ability to understand a customer's financial repayment obligations in an automated fashion.

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

- NAB acknowledges ASIC's intention to improve access to credit however NAB is concerned that this approach may create added administrative burden without improving customer outcomes.
- As outlined in D3Q1 NAB does consider that credit decisioning should be based on the credit providers' credit risk appetite and consideration of a complex range of factors.

D3Q3: What additional business costs would be involved in this approach?

- NAB considers that ASICs approach would likely necessitate large business costs related to additional banker training, technology and process changes across multiple origination systems and channels.

D4 ASIC Proposal

We propose to include new guidance in RG 209 about maintaining records of the inquiries made and verification steps taken by the licensee, reflecting our findings and recommendations on good recording practices included in REP 493.

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

- NAB supports ASIC providing guidance to industry on how inquiries and verification activities are recorded by the credit provider.
- If the credit provider scales their inquiry verification then the evidence should relate to the actual process undertaken rather than confirmation of steps/verification that are not relevant to the particular assessment.

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

- Action 3of REP493 recommends capturing all records of inquiry in on location. NAB would recommend that it is sufficient if information is able to be collated, if required, rather that stored in one place given NAB has multiple systems in place across the bank and across different channels which makes it difficult to have records in one location.
- We also recommend that ASIC's guidance allow for the fact that an application may move through processes, some of which may be automated.

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)?

NAB considers that there are benefits to customers, regulators and credit providers in having a documented record of how credit provider arrived at its decision. However, NAB recognises that the application process is not always linear so it will be important to ensure that the approach captures the end to end application process in a manner that is easy for the customer to understand.

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

- Given that the application process can involve multiple systems across different application channels NAB expects that there will be significant technology and operational costs to ensure this information is available to be presented in a single source document that provides a narrative on the application process.
- Noting as outlined in D4Q3 that the application process is not always a simple linear process so the solution would be required to capture this complexity of all relevant customer interactions.

D5 ASIC Proposal

We propose to provide additional guidance in RG 209 on what information we think should be included in a written assessment.

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

- NAB supports ASIC providing additional guidance to credit providers regarding the information that must be provided to customers in a written assessment.
- We would recommend that each credit provider be allowed to present this information in their own format.
- To ensure this information helps a customer understand the basis on which the contract was assessed as 'not unsuitable' we would recommend that credit providers only document the information relied upon and how that information was verified and not the information that was not used by the credit provider.

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

- NAB is generally supportive of the written assessment example provided in Appendix 2.
- As outlined in D5Q1 we would recommend that each credit provider be allowed to present this information in their own format.

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)?

- NAB considers that there are benefits to customers, regulators and credit providers in having a documented record of how a credit provider determined that the loan was not unsuitable for a customer.

D5Q4: What additional business costs would be involved in this approach?

- NAB provides customers with a written assessment today but would need to consider if there are additional technology changes required to aligned to ASIC’s updated guidance. Notwithstanding this potential cost, NAB is supportive of ASIC’s approach.