REGULATORY GUIDE 209

Credit licensing: Responsible lending conduct

December 2019

About this guide

This is a guide for credit licensees and credit applicants.

It sets out ASIC's views on what the responsible lending obligations in Ch 3 of the *National Consumer Credit Protection Act 2009* (National Credit Act) require, and steps you can take to minimise the risk of non-compliance with these obligations.

About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

Consultation papers: seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

Regulatory guides: give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

Information sheets: provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

Reports: describe ASIC compliance or relief activity or the results of a research project.

Document history

This version was issued in December 2019 and is based on legislation and regulations as at the date of issue. In March 2025 we added two paragraphs—RG 209.68–RG 209.69—to provide additional guidance on the treatment of HELP debts. As a result, the numbering of all subsequent paragraphs changed and we also amended RG 209.70 (previously RG 209.68). We also added a cross-reference to the new paragraphs at RG 209.67(a)(ii). In November 2026 we amended two paragraphs (RG 209.64(a) and RG 209.80) and added a new example (Example 16A) to provide clarity on the application of the responsible lending obligations to retirees. The numbering of the subsequent examples did not change.

Previous versions:

- Superseded Regulatory Guide 209, issued February 2010, reissued June 2010, March 2011, February 2013, September 2013 and November 2014

Disclaimer

This guide does not constitute legal advice. We encourage you to seek your own professional advice to find out how the credit legislation and other applicable laws apply to you, as it is your responsibility to determine your obligations.

Examples in this guide are purely for illustration; they are not exhaustive and are not intended to impose or imply particular rules or requirements.

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A Overview

Key points

Credit licensees must comply with certain responsible lending obligations. The key concept of these obligations is that credit licensees must not enter into or assist a consumer with a credit product that is unsuitable for them.

As a credit licensee, you must decide how you will meet the responsible lending obligations. This guide sets out ASIC's views on what the obligations require and steps you can take to minimise the risk of non-compliance.

This section of the guide outlines the responsible lending obligations and gives an overview of our guidance.

It also explains what kinds of lending and credit activities are not covered by the responsible lending obligations.

The responsible lending obligations

RG 209.1 The responsible lending obligations, contained in Ch 3 of the *National Consumer Credit Protection Act 2009* (National Credit Act), were made to:

(a) introduce standards of conduct to encourage prudent lending and leasing to continue, and impose sanctions in relation to irresponsible lending and leasing; and

(b) curtail undesirable market practices, particularly where intermediaries are involved in lending.

Note: See the Explanatory Memorandum to the National Consumer Credit Protection Bill 2009 (Explanatory Memorandum) at paras 3.11 and 3.16.

RG 209.2 The primary outcome sought by these obligations is to minimise the risk that consumers:

(a) enter into, or are encouraged to enter into or remain in, an unsuitable credit product; or

(b) increase the credit limit of an existing credit product to a limit that is unsuitable.

RG 209.3 To achieve this outcome, the responsible lending obligations apply:

(a) to all credit licensees, including credit providers (i.e. lenders, such as banks, credit unions, small amount lenders and finance companies), lessors under consumer leases and credit assistance providers (e.g. mortgage and finance brokers); and

(b) at different stages of the consumer's process of applying for credit products (depending on whether the consumer seeks help from a credit assistance provider or deals directly with the credit provider or lessor).

Note: If the credit provider or lessor is an exempt special purpose funding entity, the obligations are modified to apply to that entity (even though it is not a licensee). A

licensee that acts on behalf of the exempt entity under a servicing agreement is not required to comply with obligations that would ordinarily apply to it as a credit assistance provider: see Sch 3 to the National Consumer Credit Protection Regulations 2010 (National Credit Regulations).

RG 209.4 The obligations apply only in relation to credit products that are regulated under the consumer credit regime—that is, products provided to individuals and strata corporations (both referred to as ***'consumers'***) for personal, domestic and household purposes or for the purchase or improvement of residential investment property. This includes credit products such as home loans, reverse mortgages, residential investment loans, personal loans, credit card contracts, medium and small amount credit contracts and consumer leases.

RG 209.5 In this guide, we use the following terms (except where otherwise specified):

(a) ***'credit product'*** to refer to both credit contracts and consumer leases;

(b) ***'lender'*** to refer to the provider of a credit product (i.e. both credit providers and lessors); and

(c) ***'broker'*** to refer to a licensee that provides credit assistance.

RG 209.6 The responsible lending obligations apply when you engage in the following conduct (referred to in this guide as the ***'regulated conduct'***):

(a) *if you are a broker*—suggesting or assisting a consumer to apply for a credit product, or an increased credit limit, or suggesting the consumer remain in a credit product; or

(b) *if you are a lender*—entering into a credit product with a consumer, increasing a credit limit of an existing credit product, or making an unconditional representation to the consumer that you consider they will be eligible to enter into a credit product or increase a credit limit.

RG 209.7 The responsible lending obligations set out several requirements that work together to help minimise the likelihood of consumers entering into unsuitable credit products or increasing a credit limit to a level that is unsuitable. These requirements are that:

(a) licensees are prohibited from engaging in the regulated conduct in relation to unsuitable credit products and credit limit increases;

(b) before engaging in the regulated conduct, licensees must assess whether a credit product or credit limit increase is unsuitable;

(c) before making the assessment or engaging in regulated conduct, licensees must gather certain information about the consumer, by making reasonable inquiries and taking reasonable steps to verify the information obtained; and

(d) if requested, licensees must give the consumer a written copy of the assessment (whether that request is made before or after the regulated conduct has been engaged in).

RG 209.8 The National Credit Act prescribes a test for unsuitability. A credit product will be unsuitable if is likely that:

(a) the consumer will be unable to comply with their financial obligations under the product (e.g. they would not be able to make repayments as they fall due for the term of the product); or

(b) the consumer will only be able to comply with their financial obligations under the product with substantial hardship; or

(c) the product will not meet the consumer's requirements or objectives,

if the product is entered into or the credit limit under the product is increased.

RG 209.9 If the prescribed test is met, you must assess the credit product as being unsuitable, and you must not enter into that product with the consumer, suggest the consumer apply for it, or assist the consumer to apply for it.

RG 209.10 These requirements are contained over a number of different sections, which are separately described for lenders and brokers. Table 6 in Appendix 1 summarises the legal obligations.

> Note: Table 6 includes references to each provision of the National Credit Act that sets out these requirements. As some requirements have applied from different times, the table also includes information about the commencement dates for each requirement.

RG 209.11 While the requirements work together to support the objective of reducing the instances of consumers entering into unsuitable credit products, they are separate civil penalty provisions. You could breach the prohibition if you engage in regulated conduct in relation to a credit product or credit limit increase that is in fact unsuitable even if you have complied with the obligation to make an assessment.

RG 209.12 In addition to the responsible lending obligations outlined in RG 209.7–RG 209.11, you are required to provide certain documents to consumers at particular stages of the credit process.

> Note: For guidance on the documentation requirements in Ch 3 of the National Credit Act, see Information Sheet 146 *Responsible lending disclosure obligations: Overview for credit licensees and representatives* (INFO 146).

Additional requirements for certain credit products

RG 209.13 Additional requirements that supplement the general obligations have been made in relation to certain types of credit products—small amount credit contracts, reverse mortgages and credit cards. The additional requirements have been made to address particular risks for consumers in relation to these products: see Appendix 1 for more details about these requirements.

Small amount credit contracts

RG 209.14 Additional requirements were imposed because of a concern that the repeated or continued use of credit provided through this form of credit contract will result in consumers entering into multiple contracts where the overall level of indebtedness increases over time so that:

(a) an increasing proportion of the consumer's income will need to be used to meet the repayments; and

(b) the capacity of the consumer to use the credit to improve their standard of living is diminished.

Note: The additional requirements to address these risks include enhancements to the responsible lending obligations, requirements to give warnings to consumers before providing this form of credit, and additional requirements under the provisions in the National Credit Code (Sch 1 to the National Credit Act) relating to charges for providing credit. For more information, see Ch 4 of the Explanatory Memorandum to the Consumer Credit and Corporations Legislation Amendment (Enhancements) Bill 2011. See also our guidance on additional inquiries and verification steps at RG 209.150–RG 209.161 and on presumptions that apply to assessments at RG 209.227–RG 209.234.

Reverse mortgages

RG 209.15 The Government determined that targeted regulation was appropriate for reverse mortgages because these contracts differ from other credit contracts, and involve different risks, in particular because:

(a) they are marketed exclusively to seniors or people approaching an age where they will retire from the workforce;

(b) interest is capitalised as there is no obligation on the consumer to make regular repayments, meaning the amount owing increases over time;

(c) at the time they are considering taking out the loan, consumers have no way of accurately determining the value of the equity in their home over time; and

(d) the consumer may be required to repay more than the value of the mortgaged property at a stage in their life when they may no longer have the financial resources to be able to do so.

Note: The additional requirements to address these risks include enhancements to the responsible lending obligations and also requirements under provisions in the National Credit Code relating to the terms of those contracts, precontractual disclosure and steps to be taken in the event of default. For more information, see Ch 3 of the Explanatory Memorandum to the Consumer Credit and Corporations Legislation Amendment (Enhancements) Bill 2011. See also our guidance on additional inquiries and verification steps at RG 209.162–RG 209.171 and on presumptions that apply to assessments at RG 209.235–RG 209.238.

Credit card contracts

RG 209.16 The Government has identified problems in relation to the selection and entry into credit card contracts, noting that too many Australians are 'revolving'

credit card debt for extended periods of time while paying high interest charges. This problem arises when a consumer consistently fails to pay their outstanding credit card balance in full by the payment due date, using their card for borrowing, rather than as a facility to manage transactions.

> Note: For more information, see the consultation paper released by Treasury in August 2017, *Credit cards: Improving consumer outcomes and enhancing competition*, and the Explanatory Memorandum to the Treasury Laws Amendment (Banking Measures No. 1) Bill 2017.

RG 209.17 These problems have been addressed by changes to the law to require that the assessment of whether a credit card is unsuitable consider whether the consumer could repay the proposed limit of the credit card within a three-year period, and a presumption of substantial hardship if they cannot. See our guidance on this presumption at RG 209.239–RG 209.240.

> Note: ASIC prescribed a three-year period by a legislative instrument: see ASIC Credit (Unsuitability—Credit Cards) Instrument 2018/753. See also Report 580 *Credit card lending in Australia* (REP 580) and Report 590 *Response to submissions on CP 303 Credit cards: Responsible lending assessments* (REP 590).

Our general approach to administering the obligations

RG 209.18 The National Credit Act sets out a clear prohibition on certain outcomes—being a prohibition on:

(a) the provision of credit assistance in relation to an unsuitable credit product or increased credit limit, and

(b) entry into an unsuitable credit product or increased credit limit.

RG 209.19 However, the legislative requirements about the information gathering steps that must be taken before assessing whether a credit product or credit limit increase is unsuitable provide flexibility, as the obligation is to make inquiries and undertake verification steps that are 'reasonable'.

RG 209.20 The views set out in this guide are provided only as guidance, and do not mandate particular behaviour. The legislation allows licensees flexibility to determine what is appropriate in individual circumstances. The purpose of our guidance is to set out our view of conduct which is more likely to help you:

(a) avoid the prohibited outcomes;

(b) determine what steps you may take to minimise the risk of the prohibited outcomes occurring; and

(c) demonstrate that you have complied with your obligations.

RG 209.21 Our guidance aims to promote the objectives of the responsible lending obligations, which were intended to operate 'in a manner that strikes a reasonable balance between the goals of minimising the incidence of

consumers entering unsuitable credit contracts, and the goal of maximising access to credit for consumers who have the desire and ability to service it'.

Note: See the Explanatory Memorandum, Regulatory Impact Statement, para 9.122.

RG 209.22 We will also have regard to other obligations that apply to licensees, including the general conduct obligations you are required to meet under s47 of the National Credit Act, the consumer protection provisions in Div 2 of Pt 2 of the *Australian Securities and Investments Commission Act 2001* (ASIC Act) and other relevant credit legislation.

Note: Our guidance regarding the general conduct obligations is set out in Regulatory Guide 205 *Credit licensing: General conduct obligations* (RG 205).

RG 209.23 We will have regard to the following general principles when considering whether you are complying with the responsible lending obligations:

(a) you should have regard to what the obligation is intended to achieve and what consumer harm it is intended to address;

(b) you should have regard to the circumstances of the individual consumer you are dealing with;

(c) you should have regard to whether the credit product involves a higher risk of harm to the individual consumer if it is unsuitable;

(d) the obligations are not static—what is 'reasonable' will be affected by the broader professional and regulatory environment in which you operate. For example, legislative developments (e.g. open banking and comprehensive credit reporting) and other developments and innovations adopted by the credit industry will affect the measures you could reasonably be expected to undertake.

RG 209.24 We consider our guidance should have the effect that licensees are less likely to compete on the amount of information they have regard to when assessing an application. That is, a consumer who applies for a particular type of product should expect a similar level of information will be considered regardless of who they choose to deal with. However, the way the information is gathered may depend on the processes and capabilities of the licensee and whether the consumer has had previous engagement with it, so there should continue to be competition on service delivery and consumer experience.

RG 209.25 This guide sets out our views about:

(a) the kinds and amount of information you may need to enable you to make an informed assessment of whether a credit product or credit limit increase is unsuitable for a particular consumer, and the kinds of individual circumstances that may affect the amount of information that is needed or the way in which that information is gathered (see Section B);

(b) when a credit product will be unsuitable and matters you should have regard to when making an unsuitability assessment (see Section C); and

(c) the purpose of giving the consumer a written copy of the assessment, information the written assessment should include to achieve that purpose, and recording practices that may help you to demonstrate compliance with your obligations (see Section D).

Face-to-face vs online applications

RG 209.26 It is up to you to determine how you want to accept and process applications for credit products. The way we administer the responsible lending obligations is the same, regardless of the way that you engage in your credit activities.

RG 209.27 We consider that you can meet your responsible lending obligations using an online or face-to-face approach. While our guidance is technology neutral, you may need to adjust your processes to ensure compliance.

Circumstances where the obligations do not apply

RG 209.28 The responsible lending obligations only apply to credit provided to individuals and strata corporations for the following purposes (***'consumer purposes'***):

(a) personal, domestic and household purposes (this includes buying or improving a home to live in); and

(b) residential property for investment purposes (this includes buying or improving, or refinancing credit to buy or improve, residential property for investment purposes).

Note: Where credit is provided to an individual for residential property investment purposes, for investment in multiple residences, and the total amount is more than $5 million, the credit is not regulated as consumer credit: see reg 65C of the National Credit Regulations.

RG 209.29 Credit for other investment purposes is not a 'personal, domestic or household' purpose. This means, for example, credit to purchase investment products like shares and interests in managed funds is not regulated and the responsible lending obligations do not apply to such loans.

RG 209.30 Loans to individuals or strata corporations that are predominantly for a purpose that is not a consumer purpose (e.g. to be used for a business purpose) are not regulated and the responsible lending obligations do not apply to such loans.

RG 209.31 'Predominant' (as defined in s5(4) of the National Credit Code) means:

(a) the purpose for which 'more than half' of the credit is intended to be used (e.g. if $300,000 of a $500,000 loan is to be used for establishing a small business, and the remainder for making improvements to the borrower's home, the loan is not regulated); and

(b) if the credit is intended to be used to obtain goods or services—the purpose for which the goods or services are intended to be 'most used' (e.g. if a small business operator obtains a loan to purchase a motor vehicle which is to be used 60% of the time for work purposes but will also be available for personal use, the loan is not regulated).

RG 209.32 Loans to companies (including small proprietary companies), other than strata corporations, for any purpose are not regulated and the responsible lending obligations do not apply to such loans.

RG 209.33 The responsible lending obligations also do not apply in other circumstances, including the following:

(a) A loan is consumer credit, but the licensee does not engage in the kind of conduct that triggers the obligations. For example, a licensee may provide the credit service of 'acting as an intermediary' (for which a credit licence authorisation is required) but does not provide 'credit assistance' to the consumer.

Note: An example of this situation is where the licensee tells the consumer about some options that are available but does not proceed to provide credit assistance by suggesting the consumer apply for a particular product until the consumer has decided on a particular lender and product.

(b) The person who engages in the credit activity is able to rely on an exemption from the requirement to hold a credit licence.

Note 1: See Regulatory Guide 203 *Do I need a credit licence?* (RG 203) for guidance about the predominant purpose test in the National Credit Code, the meaning of 'suggesting' and 'assisting' and exemptions from the requirement to hold a licence.

Note 2: The responsible lending obligations have been modified to apply to exempt special purpose funding entities despite those entities having an exemption from the requirement to hold a credit licence: see Sch 3 to the National Credit Regulations.

Small business loans

RG 209.34 Some licensees have indicated they are uncertain about treatment of these loans because:

(a) small businesses are often operated by individuals, who may use personal property (including their home) as security for a loan, and may obtain loans for mixed business and personal purposes; and

(b) small business borrowers are entitled to a range of additional protections, unrelated to responsible lending, that are also available to consumers.

RG 209.35 In addition, we note that Australian deposit taking institutions (ADIs), as prudentially regulated entities, are required to comply with prudential standards for the whole of their business, including both small business and consumer lending. Prudential standards and guidance on risk management

require ADIs to take steps to manage the quality of their credit portfolios and risks of failure by counterparties to credit contracts (i.e. the borrowers). These standards may require particular inquiries or verification steps to be taken, separately to any consideration of the responsible lending obligations.

> Note 1: See Australian Prudential Regulation Authority (APRA), Prudential Standard APS 220 *Credit quality,* Prudential Standard CPS 220 *Risk management,* Prudential Practice Guide CPG 220 *Risk management* and Prudential Practice Guide APG 223 *Residential mortgage lending*.
>
> Note 2: Some of these standards are being reviewed. For release of updated versions, see Prudential and reporting standards for authorised deposit-taking institutions.

Consider the purpose of the loan; not the kind of borrower or security

RG 209.36 If the loan is wholly or predominantly for a business purpose the responsible lending obligations do not apply, even if the borrower is an individual and the loan is secured over that person's home or other personal assets. For example, a loan to a farmer to cover essential farm repairs and purchase feed for stock is for business purposes and is not regulated, regardless of whether it is secured over the farmer's home.

RG 209.37 In some cases, a borrower may give a declaration that credit is to be applied wholly or predominantly for a purpose that is not a consumer purpose. These declarations will be ineffective if the lender:

(a) knew or had reason to believe; or

(b) would have known, or had reason to believe, if the lender or a prescribed person had made reasonable inquiries about the purpose for which the credit was provided, or intended to be provided,

that the credit was in fact to be applied wholly or predominantly for a consumer purpose.

> Note: See s13 of the National Credit Code and the list of prescribed persons in reg 67 of the National Credit Regulations.

RG 209.38 The borrower's declaration is not irrefutable evidence of the purpose of the loan. Due to a concern about business practices to misuse declarations to avoid the requirements of the national consumer credit regime and prevent borrowers exercising rights as consumers, the effect of a consumer declaration has been limited in the National Credit Code to circumstances where it is reasonable to believe the declaration is true.

RG 209.39 The purpose for credit should be known or ascertainable by reasonable inquiry, and 'credit providers who do not make any reasonable inquiries into the use of credit will find it difficult to rely on a declaration where the credit was in fact applied for a Code purpose': see the Explanatory Memorandum at paras 8.56–8.66.

Example 1: Ineffective business purpose declaration

A lender receives an application submitted through a broker seeking a loan of $50,000 for business purposes. The application is signed by the borrower and states that the borrower has obtained an Australian Business Number shortly before the application.

The application gives no details of the business. In fact, the borrower uses the money to pay arrears on their home loan. It is unlikely that the lender or the broker (who is a 'prescribed person') would meet the criteria for making reasonable inquiries if they failed to verify the existence of any business said to be carried on by the borrower. In these circumstances, the declaration is likely be found to be ineffective.

Broader protections available to small business borrowers

RG 209.40 Although the responsible lending provisions in the National Credit Act do not apply to small business borrowers, those borrowers do have the benefit of a range of other protections. This includes statutory protections through the consumer protection provisions in Div 2 of Pt 2 of the ASIC Act, including protections in relation to unfair contract terms, rights under the Banking Code of Practice and the right to raise disputes with the Australian Financial Complaints Authority (AFCA)—the external dispute resolution scheme for the financial industry—if the lender involved is a member of AFCA.

RG 209.41 These additional protections have no effect on the application of the responsible lending obligations. However, licensees do need to be aware of the broader range of rights and protections that apply to small business borrowers, and comply with the separate laws and obligations that apply.

Margin loans

RG 209.42 The *Corporations Act 2001* (Corporations Act) includes a separate responsible lending obligation for margin loans. This guide does not deal with the responsible lending requirements in relation to margin lending.

Note: See Div 4A of Pt 7.8 of the Corporations Act and Information Sheet 100 *Margin lending: Getting or varying an AFS licence* (INFO 100).

B Making reasonable inquiries and verifications

Key points

The purpose of the requirements to make reasonable inquiries and take reasonable steps to verify certain information about the consumer is to provide you with sufficient reliable information to enable you to make an informed assessment about whether a credit product or credit limit increase is unsuitable for the consumer you are dealing with.

For a properly informed assessment, you need sufficient information about the consumer's financial situation, requirements and objectives to enable you to:

- understand what the consumer wants or needs in relation to the credit product, and assess whether the product being considered will meet those requirements and objectives; and
- understand the consumer's financial situation, and assess whether the consumer has capacity to meet the financial obligations of the credit product (either at all or without substantial hardship).

The amount of information you need, and the kinds of steps you need to take to obtain sufficient information, will depend on the circumstances.

This section of the guide outlines the kind of information you are likely to need, circumstances that affect how much information you need or how you obtain information, sources of information that may be available to you and our views about use of benchmarks as a tool in your process of deciding whether the information you hold is reliable.

What are your obligations?

RG 209.43 The National Credit Act requires you to:

(a) make reasonable inquiries about the consumer's requirements and objectives in relation to the credit product;

(b) make reasonable inquiries about the consumer's financial situation; and

(c) take reasonable steps to verify the consumer's financial situation.

Note: See s117, 130, 140 and 153. See also regs 28HA and 28JA of the National Credit Regulations for prescribed inquiries that must be made.

RG 209.44 You are required to undertake these inquiries and steps within 90 days (or 120 days for a home loan) before you assess whether the credit product or credit limit increase is unsuitable for the consumer and within 90 days (or 120 days for a home loan) before you engage in the regulated conduct. This requirement ensures your assessment, and the information taken into account in the assessment, is reasonably current and likely to still reflect the consumer's financial situation, requirements and objectives at the time the

credit product or credit limit increase is entered, or the credit assistance is provided.

Note: Regulation 28J of the National Credit Regulations prescribes the longer 120 day period for home loans only for credit providers.

RG 209.45 By complying with these requirements to gather information about the consumer you are dealing with, you should obtain reliable information to enable you to meet your obligations to:

(a) assess whether a credit product or increased credit limit is unsuitable for that consumer consistently with the prescribed test of unsuitability; and

(b) not engage in the regulated conduct if the credit product or increased credit limit is unsuitable.

Note: In *Australian Securities and Investments Commission v Westpac Banking Corporation (Liability Trial)* [2019] FCA 1244 (*ASIC v Westpac*), Perram J observed at [59] that 'ASIC is correct to submit that the purpose of s130 is to ensure that credit providers put themselves in an informed state about the financial position of the consumer before making an assessment of the suitability or otherwise of the loan'.

The inquiry requirements

RG 209.46 The purpose of these requirements is to obtain information you need to understand:

(a) why a credit product is sought by the consumer, and what terms and features are important to them, so that you can determine whether the type, length, rate, terms, credit limit, special conditions, charges and other aspects of the proposed contract meet this purpose, or suggest contracts that do match the purpose for which the consumer has sought credit; and

(b) the consumer's ability to meet all repayments, fees, charges and transaction costs under the proposed credit product.

Note: See the Explanatory Memorandum at paras 3.68–3.69 and 3.138–3.139.

The verification requirements

Ensure the licensee is taking into account reliable information

RG 209.47 The provisions dealing with unsuitability assessments limit the kinds of information that can be taken into account when deciding whether a credit product or credit limit increase is unsuitable under the prescribed test of unsuitability. For the purpose of the prescribed test, information is only to be taken into account if:

(a) the information is about the consumer's financial situation, requirements or objectives (or other prescribed matters); and

(b) at the time of the assessment, the licensee had reason to believe the information was true, or would have had reason to believe that the

information was true if the licensee had made the inquiries or verification that was required.

Note: See s118(4), 119(4), 131(4), 141(4), 142(4) and 154(4) and discussion in RG 209.209–RG 209.214.

Reduce risk of unsuitable contracts resulting from mistake or fraud

RG 209.48 The requirement for licensees to take reasonable steps to verify information that is obtained about a consumer's financial situation recognises that information provided as part of the application process may not, in all cases, be reliable. This may be for a range of reasons, including:

(a) overstatement of income or understatement of expenses by the consumer due to a mistake or misunderstanding;

(b) mistake or negligence by a person who is assisting the consumer to make an application; and

(c) deliberate fraud by the consumer or a person who is assisting the consumer to make an application.

Note: One of the undesirable market practices sought to be addressed by the responsible lending obligations was 'brokers misrepresenting the applicants' financial details so that the loan is approved, and the broker receives commissions, when, if the lender was aware of the borrower's actual financial position, they would reject the application': see the Explanatory Memorandum at para 3.11.

RG 209.49 There is an obligation on all parties to a credit transaction–including consumers and brokers, as well as lenders and their representatives–not to make a false or misleading representation in relation to matters that are material to entry into the credit product or in attempting to induce another person to enter a credit product.

Note: These obligations are in s154 and 179U of the National Credit Code. They provide protection for the lender, because the consumer or broker may be liable for loss or damage caused, and any compensation to the consumer or other order in relation to loss or damage can be mitigated, if the consumer or broker made a false or misleading representation in order to obtain the credit product.

RG 209.50 The separate verification requirement means that, despite this obligation on other parties to the transaction, it is not sufficient merely to rely on other persons providing true information about their financial situation. Reasonable steps should also be taken to ensure the information that is taken into account is true. For example, if other circumstances or information raise doubt about the information provided, it is reasonable to take steps to verify the true situation.

Note: The Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (Financial Services Royal Commission) noted in its interim report at para 2.2.3 that 'Verification calls for more than taking the consumer at his or her word.'

Information about the consumer's requirements and objectives

RG 209.51 You are likely to need information about:

(a) the amount of credit the consumer needs or the maximum amount of credit sought (e.g. the desired limit for a credit card);

(b) the timeframe for which the credit product is required;

(c) the purpose for which the credit product is sought;

(d) whether the consumer seeks particular features or flexibility, the relative importance of different features to the consumer, and whether the consumer is prepared to accept any additional costs or risks associated with these features; and

(e) whether the consumer requires any additional expenses, such as premiums for insurance related to the credit, to be included in the amount financed, and whether the consumer is aware of the additional costs of these expenses being financed.

RG 209.52 We consider the information that you seek needs to be sufficiently specific to enable you to understand what is important to the consumer in relation to the credit product.

Note: This issue has been highlighted by the Federal Court in the following cases:

- In *ASIC v The Cash Store (in liquidation)* [2014] FCA 926 (*ASIC v TCS*), Davies J considered that the description of the consumer's reason for requiring the provision of credit needs to be sufficiently specific and consistent with the amount of credit that is sought, to enable the licensee to understand the consumer's objectives and requirements. For example, it was considered that general descriptions of the purpose of a loan (e.g. 'personal' or 'living expenses') would not be sufficient.
- In *Australian Securities and Investments Commission v Channic Pty Ltd (No 4)* [2016] FCA 1174 (*ASIC v Channic)*, Greenwood J considered that it was not sufficient that the licensee knew that the consumer required finance to purchase a motor vehicle. It was noted [1806] that 'Channic could not possibly have conducted reasonable inquiries into the requirements and objectives of the consumer in relation to the particular credit contract and the various elements of its terms and the obligations each consumer would assume under it', because it did not discuss with the consumer, until the time the contract was entered, information about key features of the contract, such as the amount of credit which was actually being provided under the relevant contract, the interest rate, the total amount of interest payable, the total number of weekly or fortnightly payments, the amount of those payments, the total repayments under the credit contract, the fees and charges and the amount of brokerage payable to the credit assistance provider and brought within the credit contract as an amount to be financed by credit.

Continuing credit contracts

RG 209.53 Inquiries about the consumer's requirements and objectives in relation to continuing credit contracts, such as credit cards, should include the maximum credit limit required.

Note: Regulation 28JA prescribes that credit providers must make reasonable inquiries about the maximum credit limit that a consumer requires. The Explanatory Statement to

that regulation states that this provision 'requires credit card credit providers to ask a potential customer about the credit limit they seek when applying for a credit card. The credit provider is not obligated to provide the full amount of the credit limit requested by the consumer but should not provide more. This is an additional step to meet responsible lending obligations under [s]130 of the [National] Credit Act'.

Example 2: Store card with high maximum limit

A lender offers a credit card which is distributed through retailers as an option for consumers wanting to finance purchases from the retailer. As part of considering the consumer's requirements and objectives, the lender should find out the maximum credit limit that is wanted. If the consumer only wants enough credit to finance a particular purchase, a credit card with a higher limit is likely to be unsuitable (even if the customer could afford repayments on a higher maximum limit).

RG 209.54 More recent reforms have recognised problems relating to the inappropriate selection and provision of credit cards as well as certain patterns of credit card use.

Note: See the Explanatory Memorandum to the Treasury Laws Amendment (Banking Measures No. 1) Bill 2017 at para 4. 7, and information on concerns about misalignment between credit card contracts and the consumer's objectives in ASIC's REP 580.

RG 209.55 Consistent with those concerns, we consider it is reasonable to recognise that credit cards may be sought and used for different purposes and for you to make inquiries that enable you to understand the consumer's requirements and objectives, and assess whether the card applied for meets those requirements and objectives (or if it will only meet those if the consumer understands the terms of the contract and uses it in a certain way).

RG 209.56 For example, a consumer may want:

(a) a basic, low cost credit card;

(b) access to additional benefits when making purchases, such as loyalty scheme benefits and shopper protection; or

(c) to transfer the balance on an existing card to obtain the benefit of a reduced rate to enable the consumer to more effectively manage and pay down the existing debt.

Affordability of the credit product

RG 209.57 The affordability of the credit product is likely to be an important requirement for most consumers, and many consumers will need to reduce their current expenditure to afford the repayments and other financial obligations they will be committing to. If the consumer will need to make spending reductions and lifestyle changes to meet the financial obligations of the credit product, you may need additional information to enable you to determine whether the credit product will meet the consumer's requirements or objectives. There may be some lifestyle changes the consumer would not be prepared to make to afford credit.

Example 3: Discussion about priority requirements

Sarah applies for a home loan and asks for a 20-year term.

After the licensee gets information about Sarah's financial situation, it decides that she will not be able to afford repayments on this loan unless she is able to make some significant changes to her current expenditure.

The licensee identifies that Sarah could afford the loan if she moves her children to a public school. When asked, Sarah indicates that a change to her children's school is not a lifestyle change she is prepared to make.

The licensee then discusses with Sarah whether the 20-year term is a requirement in relation to the loan that is a priority for her. They discuss the change that increasing the term of the loan will make to the repayment amounts, and also to the overall amount of interest that will be paid on the loan. Following this discussion, Sarah decides that although she would pay more interest over the term of a longer loan, the 20-year term originally specified was not a priority and could be changed.

Example 4: Discussion about a smaller loan

Leah applied for a small amount credit contract to pay her car registration costs of $720. Leah provides information on her income and expenses to the lender who also obtained 90 days of account statements.

When the lender reviewed Leah's statements, they saw that she had limited spending on non-essential items and that for the past 90 days, although her account had not been overdrawn, Leah had spent her full income every pay cycle. After discussing with Leah concerns over her ability to finance the small amount credit contract, Leah told the lender that she could cancel her monthly streaming services, which would cover the monthly repayment amount on the proposed loan.

The lender requested an email from the subscription service confirming cancellation of the account and as Leah's account statements showed no evidence of Leah overdrawing her account or default fees, continued to approve the credit application and offer Leah the loan.

Information about the consumer's financial situation

RG 209.58 The information you gather about the consumer's financial situation should enable you to:

(a) understand the consumer's ability to meet all the financial obligations they will commit to if they enter a credit product or increase the credit limit of an existing credit contract; and

(b) assess whether the credit product or increased credit limit will be unsuitable because either:

(i) the consumer lacks the capacity to meet those financial obligations (either at all or without substantial hardship); or

(ii) the credit product will not meet the consumer's requirements or objectives if it is only affordable if the consumer makes reductions to current outgoings that they are not willing to make (even if those reductions would not necessarily place the consumer in circumstances of substantial hardship).

RG 209.59 The information required to understand a consumer's financial situation has been considered by the Federal Court in *ASIC v TCS*. Davies J observed (at [42]) that:

> Assessing whether there is a real chance of a person being able to comply with his or her financial obligations under the contract requires, at the very least, a sufficient understanding of the person's income and expenditure. It is axiomatic that 'reasonable inquiries' about a customer's financial situation must include inquiries about the customer's current income and living expenses. The extent to which further information and additional inquiries may be needed in order to assess the consumer's financial capacity to service and repay the proposed loan and determine loan suitability will be a matter of degree in each particular case.

RG 209.60 In *ASIC v Channic*, Greenwood J observed at [1773]:

> The question of whether there is a real chance that a consumer will be unable to comply with his or her financial obligations is to be answered according to all the circumstances of the particular consumer relevant to his or her ability (or not) to perform those forward-looking financial obligations. Those circumstances would, no doubt, comprehend, in the main, a proper and accurate understanding of the consumer's income, the sources of income, any existing and continuing deductions from that income and an accurate understanding of the consumer's actual expenses so as to understand the financial capacity of the consumer, out of available net receipts, to comply with the new financial obligations under the proposed credit contract. The consumer's domestic and family circumstances may well be relevant. The consumer's credit history and whether, by and large, a consumer has demonstrated a pattern of meeting like or other financial obligations would, no doubt, also be relevant. Whether the consumer has a partner, family member, parent or friend who is willing to support the consumer financially in a materially legal way might also be relevant to the consumer's ability to comply with his or her financial obligations

Income

RG 209.61 The consumer's income is a key factor that affects their capacity to meet financial obligations, and how sensitive they may be to errors in the assessment. You will need information about the amount, frequency and source of income, and changes that are reasonably foreseeable.

RG 209.62 We do not think it is sufficient to merely identify how much income the consumer has received in the last pay period. You will need information to determine whether that income is consistent and likely to remain at that level for the term of the credit product being considered. If the consumer has casual or seasonal employment, you will need information about the variations in hours and pay that may be expected.

Example 5: Having regard to 'lumpy' income

Brian's main income is through seasonal work as a fisherman. He earns $40,000 annually, but this is received during the fishing seasons he can work, which only covers nine months of the year. He needs to ensure his income is budgeted to meet all of his outgoings during the three months he is not working.

Having regard to Brian's fortnightly pay during the fishing season will not give a true understanding of his financial position for meeting repayments on a loan that will be in place for a longer term. It would be reasonable to make inquiries to establish the usual patterns of income, and determine the amounts that Brian puts aside to cover outgoings in lieu of periodic (e.g. fortnightly or monthly) income.

The licensee could then have regard to the lower notional amounts to determine available income across the period for which credit is sought.

Example 6: Casual or 'gig' economy

Harvey's main income comes from a food delivery business. The hours he works and income he receives are highly variable. Harvey applies for a credit card. To form a view on an amount of income that Harvey is likely to have available, the lender has regard to the pattern of income shown in Harvey's account statements.

As Harvey's income varies significantly from week to week, the lender decides that the average amount earned per fortnight over a period of several months gives the best indication of his likely income.

Example 7: New employee on probation

Marli has recently started a new job that has a probation period of three months. She has received two fortnightly pays and is applying for a car loan with a five-year term. The amount of income Marli is currently receiving would be sufficient to meet the repayments under the loan.

The probation period means there is a reasonably foreseeable event (the probation review) that could affect Marli's continued income. The lender makes some additional inquiries to form a view on whether keeping the job is likely or if loss of income is reasonably foreseeable. Confirmation from the employer would provide the highest amount of certainty.

One alternative the lender could consider is to make inquiries about Marli's previous employment history that demonstrates she has previously held employment beyond probation periods and has capacity to obtain and maintain employment with an equivalent salary in the event this job does not continue.

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Example 8: Income from small business

Sam runs a small business, which is the sole source of her income. She is seeking a home loan. As the amount of income that Sam receives from the business is not regular (there is not a clear pattern in her personal account statements), the lender considers whether different sources of information can adequately demonstrate what Sam's future available income is likely to be.

Possible sources include the business bank account showing available funds, written advice from Sam's accountant that confirms the profit and loss position of her business and the amount available to Sam as personal income, income tax assessment notices and returns and business activity statements that show amounts generally available to Sam.

RG 209.63 The source of the consumer's income may also be important. For example, you may need to determine whether all or part of the consumer's income is:

(a) comprised of payments under the *Social Security Act 1991* (Social Security Act);

(b) derived from assets and investments (e.g. rental income, dividends or other returns on investments or superannuation); or

(c) dependent on third parties (e.g. maintenance or child support payments, or funds that are voluntarily made available by other persons, such as a spouse or family member, and that are dependent on the expressed willingness of that person to continue to make funds available).

Note: For small amount credit contracts, you need to obtain information about social security payments to enable you to determine whether a specific prohibition will apply. See RG 209.155–RG 209.157 for more information.

RG 209.64 If there are foreseeable reductions to the amount or frequency of income, you are likely to need information to help you determine the potential lower amounts. For example:

(a) if a consumer is approaching retirement, and will still be making repayments on the credit product after their expected retirement age, you will need to determine whether this event is likely to change their income (including any other income sources that may become available on retirement), and information about the amount that is expected to be available; and

(b) if the income is of a kind that has a known end date which will occur during the term of the loan (e.g. family benefit payments that cease when dependants reach a certain age), you should have regard to the effect that change to income is likely to have on the consumer's overall financial situation.

Outgoings

RG 209.65 Information about the consumer's current outgoings, and reasonably foreseeable changes to those outgoings, will help you to determine:

(a) how much of the consumer's income is likely to be available for meeting new financial obligations; and

(b) if there is a shortfall, whether the consumer is likely to be able and willing to reduce some expenditure to meet the new financial obligations.

Note: In Section C, we provide guidance about making an assessment of whether a credit product is unsuitable, and how proposed spending reductions can be considered as part of that assessment. See, in particular, RG 209.196–RG 209.203 and RG 209.222–RG 209.223.

RG 209.66 We recognise that there are different kinds of outgoings, and that some are likely to be more important than others for the consumer you are dealing with. You are likely to need enough information to determine how much of the consumer's income is, and will continue to be, needed for outgoings the consumer is unable or unwilling to reduce or forego.

Note: In *ASIC v Westpac*, Perram J observed that:

- 'the mandatory matter which must be taken into account is the consumer's financial situation viewed overall and not any particular integer of which it consists' [at 68].
- 'the only way one or more declared living expenses can be shown to be necessarily relevant to the issue of whether the consumer can afford to make repayments is by identifying some living expenses which simply cannot be foregone or reduced beyond a certain point' [at 76].
- 'Without additional information, I do not consider that it is possible to accept that the consumer's declared living expenses tell one anything about their capacity to meet repayments under the loan. I do accept that with additional information, it may be possible to do so… Depending on what is known about the other declared living expenses, it may then be possible to conclude that the repayments cannot be met' [at 77].

RG 209.67 Kinds of outgoings that a consumer is less likely to be able to reduce or eliminate include:

(a) *Existing debts and liabilities*—These are commitments that a consumer cannot choose to reduce or eliminate (unless the new credit will be used to repay a debt or liability) and should generally be capable of being identified with a reasonable amount of certainty. Examples include:

(i) repayment obligations for other credit (including regulated consumer credit and obligations on the individual to make repayments on unregulated credit such as business or investment loans and existing 'buy now, pay later' arrangements);

(ii) Higher Education Loan Program (HELP) debts, such as HECS-HELP and FEE-HELP (see RG 209.68–RG 209.69 for particular guidance);

(iii) spouse or child maintenance payments;

(iv) land tax/rates/body corporate fees on real property owned by the consumer (either the consumer's residence or other property); and

(v) if the information you have for income is gross income—any tax commitments or other deductions from that income (e.g. superannuation contributions and salary sacrifice arrangements).

(b) *Essential items*—Some expenditure is essential to a person living and participating in modern Australian society, such as:

(i) housing/rental;

(ii) food, clothing and personal items;

(iii) utilities;

(iv) transport and related costs such as registration and compulsory insurance;

(v) health and education (despite being publicly funded there are additional costs for those who use these services);

(vi) childcare; and

(vii) communication and connectivity.

Note: In *ASIC v Westpac*, Perram J observed at [43] that 'Westpac submitted, and if it were necessary I would be inclined to accept, that the HEM benchmark captures expenses of a modest level that would *permit individuals to participate in society*' (emphasis added).

RG 209.68 HELP debt, such as HECS-HELP or a FEE-HELP loan, is different from other debt, because whether a consumer needs to start repaying the loan and the amount that is repaid, are both contingent on the consumer's income. These loans may therefore be considered differently by a lender from other consumer debts.

Note: The Compulsory Repayment Income Thresholds (CRIT) and repayment rates, set by the Government and administered by the Australian Taxation Office, provide a formula for calculating a consumer's minimum repayment. If a consumer's income meets (or exceeds) the minimum CRIT, the applicable repayment amount will be deducted from the consumer's gross income. However, if the consumer's income falls below the minimum CRIT, they are not required to make any repayments.

RG 209.69 Lenders may also choose to consider the circumstances of the consumer's outstanding HELP debt. In particular, after taking into account the remaining HELP debt the consumer owes, the expected time period to repay the debt and the anticipated term of the proposed loan, a lender may consider it appropriate not to factor in an applicant's HELP debt when calculating a consumer's outgoings.

RG 209.70 We recognise it may not be possible to identify with certainty the extent to which current expenditure on items in RG 209.67 are essential or if the consumer would be able to make some reductions if needed. You are likely

to need additional information to determine whether the consumer has higher levels of essential spending, which cannot be reduced or eliminated, because of their particular circumstances.

RG 209.71 For example, a consumer may have higher expenditure for reasons such as:

(a) the number and kind of dependants (e.g. children or adult dependants) they support;

(b) they live in a location that involves higher prices for goods and services or that necessitates additional travel; or

(c) they or their dependants have special medical needs.

RG 209.72 The consumer may also have other expenditure that is higher because of lifestyle or other choices of the consumer. You are likely to need additional information to determine whether it is important to the consumer that this expenditure continue, and whether new financial obligations that affect their ability to maintain the expenditure would mean the credit product or credit limit increase would not meet the consumer's requirements or objectives.

RG 209.73 Examples of this kind of expenditure include:

(a) private schooling;

(b) personal, life and health insurance;

(c) non-compulsory asset insurance (e.g. motor vehicle and home and contents), especially if maintenance of the asset is important for maintaining the consumer's income;

(d) additional superannuation contributions; and

(e) memberships/subscriptions.

RG 209.74 You should ensure the way in which you are asking for a response is not confusing or ambiguous to the consumer, or creates a risk that their expenses will be understated.

RG 209.75 For example, if you are asking about motor vehicle expenses:

(a) you need to be clear as to whether or not your query is restricted to running costs or also includes ongoing-costs, such as registration and insurance, if these are not requested separately; and

(b) if you are only asking about motor vehicle running costs on a fortnightly or monthly basis, whether this may lead the consumer to ignore or not turn their mind to servicing costs (which occur on a less frequent basis).

RG 209.76 We note that participants in the credit industry have undertaken work in recent years to improve the amount and quality of information that is obtained about the consumer's outgoings, and how this data is used by licensees.

Note: Many lenders and brokers have participated in the development of data message standards for the Australian lending industry. These standards support licensees by providing

the lending industry with standard data definitions and structures for transmitting data electronically from brokers and aggregators to lenders. We understand that the categories of outgoings currently included in the data standards were deemed by a majority of participants to be suitably granular to support efforts to meet the responsible lending obligations and comparison of a consumer's declared expenses with the Household Expenditure Measure (HEM). For more information about HEM, see RG 209.142–RG 209.147.

Outgoings shared with another person

RG 209.77 Many consumers who apply for credit are in shared living situations, including as spouses, partners or housemates, and may share some liabilities and expenses. You could obtain reasonable information in different ways to confirm the proportion of outgoings that the consumer you are dealing with is responsible for.

RG 209.78 For example, you could ask the consumer to provide confirmation of their explanation of the sharing arrangements or, if this raises privacy concerns for the consumer or those other persons, you could consider whether the pattern of outgoings in the consumer's transaction statements supports their statement that they only need to meet a portion of larger overall outgoings.

Example 9: Shared outgoings

Dave is a university student and applies for a personal loan of $5,000. He lives in shared rental accommodation. Dave provides the lender with a copy of the lease but his name is not on the lease. The lease shows the monthly rent for the share house is $3,000; however, only two names are shown on the agreement.

Dave says he lives in a share house with three other friends and that the rent, groceries and power bills are split four ways. Dave does not want to bother his housemates to get confirmations of this arrangement. The lender decides it would be appropriate to obtain transaction statements to check that the amounts that are regularly being paid by Dave are consistent with this arrangement.

If Dave's name was on the lease, in this same situation, but some of the other housemates were not, the lender would need to consider whether it would be reasonable to use a higher amount for outgoings. Although Dave is not currently paying those amounts, as the lessee he would still be liable to meet them if any of the other housemates were to leave.

Example 10: Error in apportioning shared outgoings

Chris applies for a small amount credit contract in the amount of $1,400. He provides the lender with his income and expense information along with his current bank statements. As part of the application Chris notes that he has four children and is married.

The only income that Chris' wife, Betty, receives is a Centrelink payment, as shown in the bank statement. The lender assumes that Chris and Betty split the expenses evenly as they both have an income. The lender approves the loan as it appears that Chris has sufficient available income

to meet the repayments when a lower amount is considered as being required for outgoings. The loan falls into default immediately.

If the lender had contacted Betty to confirm whether the living expenses were evenly split, it would have become clear that Betty had loans of her own to repay, which used most of her income. Because of this, all of the household expenses need to be met from Chris' income and it was not reasonable to only have regard to half of the household outgoings.

Example 11: Appropriate information to apportion outgoings

Michael applies for a car loan. He tells the lender that he is an engineer and earns a salary of $150,000 a year, has two mortgages (one held jointly held with his partner, and one held with his brother on an investment property) and a credit card. He receives some additional income from leasing the investment property. The lender determines that Michael does not have sufficient surplus to meet the repayments on the car loan.

Michael tells the lender that his partner, Xiu, earns $200,000 a year and they split all of their household expenses and their joint liabilities evenly. Michael and Xiu have separate accounts, and there is no indication from the bank statements provided what Xiu's income is.

The lender asks Michael to have Xiu contact them. Xiu confirms that the household expenses and liabilities are split evenly, she has been a lawyer for nine years with the same law firm and agrees to email the lender a copy of her last payslip.

Michael also provides documents to show that both he and his brother consistently make equal payments on the loan for the investment property, and that they receive an equal share of the rental income.

Based on this additional information, the lender reassesses the car loan, attributing only 50% of the household expenses and joint liabilities under the mortgages to Michael. On this basis, the lender determines that Michael has sufficient available income to afford the new car loan repayments.

Assets

RG 209.79 Although the general position is that consumers should be able to meet the financial obligations from income rather than equity in an asset, assets are an important part of the consumer's financial situation—they may contribute to both the consumer's income and their expenditure. If you have regard to income produced by an asset, it will be important that you also have information about any expenditure that is necessary to maintain that asset.

RG 209.80 Assets may also, in some cases (including for retirees), be available to be sold by the consumer to enable them to meet financial obligations under a credit product if needed. You may need additional information to determine whether the consumer is expecting to use assets in this way to support their ability to meet new financial obligations, and whether those assets will be sufficient, together with any available income, to meet repayments. This may involve

consideration of whether the assets can be readily accessed to meet repayments and whether doing so would meet the consumer's requirements and objectives.

> Note: Care should be taken when having regard to assets. The Explanatory Memorandum indicates, at para 2.9, that one of the undesirable market practices considered in developing the responsible lending obligation was the practice of 'equity stripping', by making high cost loans in the expectation that the borrower would transfer equity in a primary asset to meet fees, charges and default interest. It also indicates, at paras 3.69 and 3.139, that the general position is that consumers should be able to meet the financial obligations from income rather than equity in an asset.

What kinds of inquiries and verification steps are 'reasonable'?

RG 209.81 The National Credit Act requires that you make inquiries about the consumer you are dealing with, and verify information about their financial situation, to a reasonable standard. We consider that what you need to do to meet these obligations in relation to a particular consumer will vary depending on a range of different circumstances relevant to their particular application.

RG 209.82 Some circumstances may mean that the consumer you are dealing with is at a higher risk of entering an unsuitable credit product and harm as a result of relying on incomplete or inaccurate information. Other circumstances may mean these risks are more remote and that it may be reasonable to take fewer steps to gather additional information.

RG 209.83 The process of determining the kinds of inquiries and steps that are reasonable has been described as 'scalability'. You need to apply your own judgment in determining what is reasonable in the individual circumstances.

> Note: In relation to inquiries about a consumer's financial situation, the Explanatory Memorandum states that the significance and extent of inquiries will depend on the circumstances: see paras 3.71 and 3.140.

RG 209.84 This section provides guidance on a range of circumstances that we consider are likely to affect your decision about the level of inquiries and verification steps that are reasonable. This is not intended to be an exhaustive list of potentially relevant circumstances that you can or should consider. You need to consider the entirety of the consumer's circumstances. The presence or absence of one of the circumstances discussed in RG 209.86–RG 209.116 is not determinative.

RG 209.85 We have included a number of examples to illustrate our view of how different circumstances may affect the level of information you consider is reasonably required to enable you to be more likely to appropriately complete your assessment. These examples are for illustration, and are not exhaustive or intended to impose or imply particular rules or requirements.

Circumstances that affect inquiries about the consumer's requirements and objectives

RG 209.86 You are likely to need more information to complete an assessment in accordance with the law if you cannot form a view on:

(a) what the consumer wants the credit product for;

(b) whether the consumer has any particular requirements or needs in relation to the credit product; and

(c) whether the consumer understands what they will be required to do to meet their obligations under the contract, or what they need to do to get the benefit of special features of the contract.

Circumstances where more information may be needed

RG 209.87 It is likely you will need to make more inquiries where:

(a) the consequences for the individual consumer if they don't understand the credit product, or their obligations under the contract, are likely to be relatively serious;

(b) the credit product is more complex, or has terms that the consumer may find difficult to understand;

(c) the consumer has options about features that may be available under the credit product that will affect the cost of the product for the consumer;

(d) the consumer will obtain no or limited benefit from the credit product, (e.g. a loan to purchase in asset in the name of another person), or there are other indicators the consumer may be the subject of financial abuse (e.g. the consumer seeks a loan secured over previously unencumbered assets to obtain funds for another person or appears to be acting at the direction of a third party); or

(e) it appears to you that the consumer you are dealing with may have difficulty in understanding the credit product (regardless of how complex it is). For example, circumstances where you should question whether the consumer properly understands the contract being considered include:

(i) it is apparent that the consumer faces barriers that may limit their capacity to understand the contract, and their obligations under the contract—for example, poor literacy, numeracy or limited English-language skills (where the contract is written in English);

(ii) the consumer is unclear or confused about their objectives, or has difficulty in articulating what is important to them; and

(iii) the consumer has conflicting objectives.

Example 12: Reverse mortgages

Reverse mortgages involve a more complex type of credit contract. Consumers acquiring a reverse mortgage usually intend to repay the credit contract by the sale of the property subject to the reverse mortgage, rather than by ongoing repayments. Consumers who acquire reverse mortgages are often seniors who are using their primary residence, and only significant asset, to obtain credit. If a reverse mortgage is unsuitable for the consumer, the consequences for the consumer may potentially be significant and severe.

We would expect a high standard of investigation and verification to ensure that a reverse mortgage meets the consumer's requirements and objectives. For example, because of the potential impact of a reverse mortgage on a consumer's eligibility for Centrelink payments, we consider that an inquiry into a consumer's eligibility to receive these payments is an essential component of this investigation and verification.

The legislation requires that inquiries must be made about the consumer's requirements and objectives in relation to certain future needs, including the possible need for aged care accommodation and whether the consumer prefers to leave equity in their dwelling or land to the consumer's estate. However, these are minimum requirements and we would also expect a high standard of investigation and verification as to the consumer's understanding of the contract and its possible consequences.

Note: Before making an assessment of whether a reverse mortgage is unsuitable, a credit assistance provider or credit provider must give the consumer equity projections that relate to the value of the dwelling or land that may become reverse mortgaged property, and to the consumer's indebtedness, over time, if the consumer were to enter into a contract for a reverse mortgage. Discussions with the consumer about the projections may form part of your consideration of whether the consumer fully understands the contract, and whether it is likely to meet their requirements and objectives over time. The credit assistance provider or credit provider must also give the consumer a reverse mortgage information statement: s133DB. For more information about these additional disclosure requirements, see RG 209.165–RG 209.171 and Information Sheet 185 *Using ASIC's reverse mortgage calculator* (INFO 185).

Example 13: Consumer lease

Ben wants to buy a washing machine and a smart phone. At the store he is given the option of consumer leases over these goods.

The licensee is likely to need information about what Ben wants to achieve for these different goods—for the washing machine, Ben simply wants a good quality machine that he will own; for the phone, he is interested in being able to upgrade to a new model after a year or two.

This information helps the licensee to decide that the consumer lease would be unsuitable for the washing machine, because Ben wants to own it, but would not be unsuitable for the phone because the terms of the lease that is available allow for upgrades to newer models.

Example 14: Consumer does not receive benefit of credit

Sally and Kevin are looking to purchase a car and are arranging finance with the lender through the car dealer.

The car will be in Kevin's name, but he was told that he would be refused a loan because he couldn't afford it. Sally has been asked to apply for a loan instead. The paperwork that is being prepared for the car purchase shows that the car is to be in Kevin's name, however Sally will be the sole borrower under the loan.

The lender is likely to need information about whether Sally understands that she will have all the repayment obligations, even though she is not getting the benefit of this purchase, to enable the lender to assess whether the loan will meet her requirements and objectives.

Circumstances where less information may be needed

RG 209.88 There may be circumstances where it will be reasonable for you to decide that fewer inquiries about the consumer's requirements and objectives are needed. For example:

(a) you are aware the consumer has previously had a credit product of a similar kind and amount, and they used it in a way that was consistent with their requirements and objectives;

(b) the consumer is a strata corporation seeking a kind of credit product commonly obtained by such entities (e.g. credit for renovations or correction of defects of the strata property); or

(c) you have previously had dealings with the consumer and reasonably consider they have an appropriate level of experience or understanding in relation to financial matters (e.g. a financial institution may deal with clients in relation to their savings and investments and form a reasonable view about their ability to articulate their requirements and objectives in relation to a credit product and understand their obligations under that product).

Circumstances that affect inquiries about, and verification of, the consumer's financial situation

Risk of consumer harm

RG 209.89 The risk or likelihood that a consumer will be harmed by taking on new financial obligations under a credit product will be higher where the amount of the new financial obligations would be *a proportionately significant part of the consumer's available income*. In these circumstances, errors such as overestimating income or underestimating outgoings may mean that your assessment does not identify that the credit product or credit limit increase being considered is in fact unsuitable for the consumer.

RG 209.90 If the information provided in response to initial inquiries indicates a higher risk of harm due to underestimation of expenditure and actual inability to meet new financial obligations, further inquiries or more robust verification steps may be needed. For example, 'red flags' of potential harm include:

(a) the consumer's estimated expenditure is at a level that leaves little or no available income after new financial obligations are added;

(b) the consumer has, or indicates they have only recently ended, multiple credit-related debts (e.g. a number of other personal loans, small amount credit contracts, credit cards or other continuing credit contracts, consumer leases, or other forms of unregulated credit such as 'buy now, pay later' arrangements);

(c) the consumer's credit history shows an increasing net debt position;

(d) the consumer's savings account is regularly overdrawn or direct debit transactions reversed;

(e) most or all of the consumer's income is withdrawn in a small number of transactions early in the income period; and

(f) the consumer has payment delinquencies on essential utilities and services.

RG 209.91 In contrast, if it is apparent that the amount of credit and new financial obligations do not comprise a material amount of the consumer's available income, it may be less likely that a mistake or oversight in the estimate will mean the credit product is unsuitable, and fewer steps may be reasonable. For example, this may be the case where the consumer has a comfortable surplus available after the new financial obligations are added to the consumer's reasonable estimate of their current outgoings, has a known savings history, or is known to be a person in a 'high net worth' financial situation and is seeking a relatively immaterial amount of credit.

Example 15: A consumer with a savings history

Ahmed is applying for a home loan. He is currently paying $1,000 a week in rent but will stop paying this if he is able to purchase a property to live in. He has also kept his spending low for the last year, putting extra money away each week for a year to save a deposit. Together, his fortnightly rental and savings amounts are higher than the fortnightly repayments that he will be required to make under the loan.

The lender has verified that Ahmed has a clear repayment record on his rental agreement and can see from bank statements that his saving history is regular and consistent. The lender decides that with this information it is able to determine that Ahmed has capacity to meet repayments under the loan.

The lender has checked Ahmed's credit history, which is clear, and there are no obvious inconsistencies or omissions apparent on a check of the bank statements provided with the application (e.g. undisclosed liabilities).

As Ahmed will not need to reduce his current expenditure to meet repayments, the lender is satisfied that it does not need to consider further information about outgoings.

Example 16: A high net-worth consumer

Alexandros is applying to increase his current home loan to undertake extensive renovations in the home he lives in. Alexandros is a former CEO and has in the past held a number of senior board positions in a variety of companies. Alexandros is now semi-retired doing sporadic consultant work. Over time he has developed a considerable investment portfolio including investments in Australian and international shares, indexed funds and managed funds.

The lender considers that Alexandros' income from his work as a consultant will be insufficient to meet repayments for the proposed new loan limit. However, following a discussion, and Alexandros providing further information about his investments, Alexandros indicates that as needed he is prepared to sell investments to meet loan repayments. The lender identifies that the value of Alexandros' investments far exceeds the value of the loan increase and could be sold down to meet loan repayments—a significant portion of the investments are of a type that can be expected to be sold easily for a reasonable value.

Example 16A: A retired consumer

Sandra is applying for a new credit card to use when she travels. She is fully retired and has a significant superannuation balance from which she is paid a regular monthly pension payment.

In accordance with RG 209.63, the lender reviews Sandra's income. The lender considers that this income is likely to be sufficient to repay the proposed new credit card within three years (in accordance with RG 209.239) if Sandra uses her full credit card limit. The lender also considers that the proposed credit card limit is immaterial compared to the value of Sandra's superannuation balance.

Following a discussion, and after Sandra has provided further information, the lender identifies that she:

- receives a monthly pension payment from her superannuation fund and has been receiving this amount since she retired. A conversation with Sandra reveals that she intends to maintain the same amount and frequency of the payments;
- does not receive the age pension; and
- is prepared to withdraw a lump sum from her superannuation to repay the credit card within three years, if required.

Kind of credit product

Larger, longer-term loans

RG 209.92 Larger loans, such as home loans, will usually represent a large and longer-term financial commitment for most consumers. Repayments on these kinds of loans are likely to be a proportionally significant part of the consumer's available income. For most consumers, it would be reasonable for the information that is obtained to be relatively detailed to ensure that the consumer's financial situation is understood and the effect of adding new financial obligations can be appropriately assessed.

> Note: Other circumstances of the consumer you are dealing with may indicate that the consumer is at a lower risk of the credit product or credit limit increase being unsuitable.

Personal loans and credit card contracts

RG 209.93 In the absence of indicators (red flags) that the consumer may be in a financial situation involving higher risk that they could not afford the credit product, it may be reasonable to obtain less information or take fewer steps to verify information.

RG 209.94 However, we also recognise that consumers that are in or entering financial difficulties may often seek these kinds of products to help manage their situation. If the information provided in response to inquiries raises 'red flags' that indicate that the consumer may be operating at or near the limits of their available income, and therefore at greater risk of harm, more robust information may be required.

Example 17: Increasing debt to a 'tipping point'

Nikolai applies for a personal loan. He has a reasonably high income, and while he also has a current home loan, he appears to be managing repayments on that loan. His credit history shows that Nikolai also has two credit cards, one of which has been obtained recently.

Nikolai has an increasing net debt position, which is a red flag and indicator of potential harm, and the lender decides more detailed information is needed to get a better understanding of his financial situation. A review of his transaction statements shows that Nikolai has been meeting the home loan repayments by using his credit cards. He had obtained the second credit card to get the benefit of a balance transfer but did not cancel the first card and has increased his overall debt.

With this additional information, the licensee decides not to grant the personal loan as the likelihood that the loan is unsuitable is high.

Higher-cost credit products

RG 209.95 Some credit products, such as small amount credit contracts, some continuing credit contracts and consumer leases, can involve relatively small amounts of credit and higher costs.

RG 209.96 Although the repayment amounts may not be large, those amounts may be a proportionally significant part of the available income of consumers to whom these products are often provided.

RG 209.97 The Government has specifically recognised the potential for particular types of small loans to cause harm for some consumers, and sought to address that risk by additional requirements for small amount credit contracts: see RG 209.150–RG 209.161 for more information.

RG 209.98 For consumer leases, the financial obligations may, over the full term of the lease, be high compared to the value of the goods that are being leased and do not result in ownership of the goods by the consumer. The extent of these obligations may not be fully understood by consumers, and there may be a higher risk that the consumer will commit to financial obligations without appreciating the longer-term effect on their financial situation.

RG 209.99 We are aware that some lessors offering consumer leases of household goods rely on Centrepay to receive payments directly from the consumer's income. This does not reduce or replace the obligation to make reasonable inquiries, even if the consumer has a good payment history for payments under a previous lease with that lessor.

RG 209.100 The ability to obtain priority access to the consumer's income can cause downstream pressures on other payments (particularly where a Centrelink payment is the consumer's primary or predominant source of income). This may be evident from a review of transaction account statements (e.g. if the consumer's account is consistently overdrawn or has direct debits reversed).

Example 18: Consumer leases on multiple products

A licensee makes household and electronic goods available to consumers in remote areas. The licensee brings a truckload of goods into town—consumers can sign up to consumer leases on the spot and have the goods delivered to them that day.

Jackson needs a fridge and finds one on offer for $15 a week. With the range of goods available, he also decides to get a new couch ($15 a week), television ($10 a week) and phone ($20 a week).

The weekly payments for each product in isolation do not seem too much, but together are a significant proportion of Jackson's income. He has not come to the truck expecting to make a large, longer-term financial commitment, and does not immediately understand that over the term of the leases he will be paying around twice the value of the goods and that he won't own the goods at the end of those payments.

The licensee discusses the terms of the leases with Jackson to make sure he understands the amount of repayments he is committing to and that he won't have the right to own the goods. During this discussion, the licensee notes that there are some indications that Jackson may be close to the limits of his income—he mentions taking out most of his money on pay day and running short of money towards the end of his pay period.

The licensee decides that more information will be needed to work out whether Jackson can afford the leases. After looking at bank statements, the licensee decides that Jackson can afford the fridge lease (which also meets Jackson's requirements and objectives), but not the other leases.

Are 'credit risk' factors relevant?

RG 209.101 We recognise that:

(a) lenders will maintain their own policies on risk exposures, and these policies will affect the level of information the licensee obtains for managing its own credit risk (i.e. loss in the event of default). For ADIs, these policies will also be affected by prudential standards; and

Note 1: See APRA, APS 220 and APG 223.

Note 2: Some of these standards are being reviewed. For release of updated versions, see Prudential and reporting standards for authorised deposit-taking institutions.

(b) risk indicators, such as debt-to-income ratios and credit scores, may be considered to determine the likelihood that a consumer will default.

RG 209.102 We recognise that the objectives of these measures—to minimise the risk of default and loss for the lender—will in many cases be similar to the objectives of the responsible lending obligations (to minimise the risk to the consumer of entering a contract they cannot afford, and suffering hardship as a result). They may assist to determine whether the likelihood of default on repayments is real or remote, and this may be a factor in the amount of information you reasonably need to appropriately make an assessment.

RG 209.103 However, application of these policies and measures should still be subject to consideration of the circumstances of the consumer you are dealing with and whether those circumstances indicate they are at higher risk of entering an unsuitable contract. Different lenders will have different risk appetites and tolerances, and their own risk policies will not necessarily meet the standards in the legislation which are focussed on the individual consumer.

Note 1: See the Explanatory Memorandum at para 3.153.

Note 2: The Financial Services Royal Commission noted in its interim report at paras 2.2.1–2.2.2 that 'The responsible lending provisions of the [National Credit Act] introduced new and additional requirements. They require more than the lender being satisfied that the loan is an acceptable credit risk … [A]s the case studies examined in the first round of hearings show, credit licensees too often have focused, and too often continue to focus, only on 'serviceability' (which is to say credit risk) rather than making the inquiries and verification required by law.'

Example 19: Car loan with other 'revolving' debts

Chanthavy is applying for a $20,000 secured car loan. Her credit score and credit history report are good. However, Chanthavy holds three credit cards, two of which are near their maximum balance and she has been revolving this debt for some time, paying only minimum required payments. She has also more recently started using 'buy now, pay later' arrangements and has several arrangements under which she is paying instalments.

The lender considers that Chanthavy's history of revolving credit debt and her increasing net debt position indicate there is a higher risk that she is operating at the margins of her available income, and more information should be obtained to enable the lender to determine whether she can afford the repayments on the car loan.

Example 20: Personal loan with a guarantor

Scott is struggling to meet his expenses and goes online to see if he can borrow some money to help. He finds a lender who offers smaller amounts of money to people who have a family member or friend who will act as a guarantor and applies for $2,500.

Scott gives the lender access to 90 days of account statements and advises that he does shift work for the local council. He calls out to his girlfriend that he is getting some money to help with the bills, and he needs to put down her details as guarantor because she has a full-time job. Claire agrees and provides the lender with her 90-day account statements and employment information via the online application form.

The next day Scott phones the lender to answer some questions about his spending patterns as the lender is concerned that Scott withdraws his pay when it hits his account and his account is often overdrawn. Scott says he will be fine to make the repayments and if he can't, Claire will pay. Although access to a guarantee from Claire would reduce the lender's credit risk, it doesn't affect Scott's capacity to meet his financial obligations. The lender still needs information to determine whether Scott can meet the repayments.

Hardship indicators and negative repayment history information

RG 209.104 The consumer's credit history information may indicate that they have experienced, or are experiencing, difficulty in meeting financial obligations on other credit products. We do not consider that the occurrence of repayment difficulties on one product will necessarily mean that a new credit product will in all cases be unsuitable for that consumer (if the lender is willing to lend to the consumer).

RG 209.105 Where the consumer has experienced repayment difficulty, from a responsible lending point of view it will be appropriate to make more inquiries to enable you to understand those 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.

RG 209.106 For example, you could inquire about:

(a) the cause of the difficulty in meeting obligations under the other credit product;

(b) whether this is a short-term problem that is being, or has been, addressed, or whether it is ongoing;

(c) whether the consumer has taken active steps to manage that problem and negotiate changes to the obligations under their existing product; and

(d) if so, whether the consumer has complied with those changed obligations.

RG 209.107 The responsible lending obligations on their own should not have the effect that a consumer who has experienced repayment difficulty in the past cannot get an appropriate loan.

Example 21: Temporary unemployment

Jiemba is applying for a personal loan. He already has a home loan, which he has declared in his application. The lender becomes aware that Jiemba had a hardship arrangement for his home loan about six months ago. The lender asks Jiemba about this.

Jiemba explains that he had been made redundant from his previous job and had difficulties meeting the full amount of his home loan repayments. He had an arrangement with his bank to make reduced payments for a short period of time while he was looking for another job.

Jiemba is now back in employment, has completed the hardship arrangement, and is back on track with his home loan. The lender is satisfied that this past repayment difficulty is not a barrier to giving the personal loan. The lender keeps a record of the explanation provided by Jiemba.

Refinancing

RG 209.108 Consumers may seek to refinance existing credit products for different reasons. For example, they may want to:

(a) switch to a new product that has better terms or features that they do not currently have access to;

(b) switch to a new lender;

(c) upgrade goods under a consumer lease; or

(d) manage repayment difficulties by consolidating multiple debts into a single loan.

Note: In Section C, we provide guidance on making an assessment of whether a credit product is unsuitable. For guidance about assessing whether a new credit product is unsuitable in a switching or refinancing situation, see RG 209.241–RG 209.250.

RG 209.109 The purpose for refinancing an existing credit product is likely to affect the level of risk involved for the consumer.

Note: The Explanatory Memorandum at paras 3.73 and 3.148 indicate that the level of inquiries necessary to meet the level of 'reasonable inquiries' is likely to be greater where the consumer is refinancing, particularly where they are having difficulties meeting repayments of are in arrears. It notes that in this circumstance a new contract will be prima facie unsuitable if the repayments are at the same or a similar level.

RG 209.110 Refinancing will generally involve a range of costs for the consumer in addition to the financial obligations under the new product. You will need to find out and have regard to the costs of paying out the existing product (e.g. discharge fees or break fees), and associated costs (e.g. brokerage or other service fees). This may involve additional inquiries where you are not the existing credit provider.

Note: See the Explanatory Memorandum at paras 3.74 and 3.149.

Example 22: Debt consolidation

A licensee offers a debt consolidation service to consumers, which includes a review of current debts and advice on how these could best be structured. This licensee is likely to need more information to gain a more comprehensive understanding of the consumer's financial situation, the terms of the consumer's existing contracts and the consumer's objectives in consolidating their current debts.

The licensee will need this information to enable it to consider whether entering into the new credit contract and terminating the existing contracts would meet the consumer's objectives (e.g. by being more affordable and easier to manage that the existing contracts).

If the new contract is unsuitable for the consumer, the consequences for the consumer are potentially serious, and may result in the consumer being exposed to higher costs and risk of default or hardship.

Switching 'like for like' or to a lower cost product

RG 209.111 If the consumer is currently meeting repayments under a credit product at the same, or a higher, level you may be able to determine their ability to meet financial obligations under the new product by confirming those repayments have previously been comfortably met (e.g. you may be able to obtain this information through loan statements, rather than needing information about income and outgoings to determine ability to meet repayments).

RG 209.112 However, you are likely to need some additional information. Examples of additional information may include the following:

(a) *Confirmation that there are no other indicators of financial difficulty (e.g. through a credit history report)*—Consumers may prioritise repayment of a loan, especially for a principal asset such as a home, over other necessary outgoings (e.g. paying for utilities) or they may

obtain other credit products to meet repayments, resulting in additional debt and potential financial stress. It would usually be reasonable to seek information to determine whether these circumstances exist.

(b) *Confirmation that the existing repayment obligations have been met over a period of time*—The time period should be sufficient to demonstrate consistent repayment practices and reduce the likelihood that circumstances of financial stress are being disguised by continued repayments (e.g. 12 months).

(c) *Confirmation that the consumer's financial situation has not changed significantly*—You should seek information about recent or foreseeable changes (e.g. impending retirement or extended leave that will change the consumer's income, or changes to household composition that will affect the consumer's outgoings).

(d) *Confirmation that the new product meets the consumer's requirements and objectives*—If the repayments under the new product are lower because the overall term of the loan will be longer (and ultimately may cost more for the consumer in interest charges), you should find out whether the consumer understands this and that it is consistent with their requirements and objectives.

Note: A similar position has been taken by the Financial Conduct Authority (FCA) in the United Kingdom, see Policy Statement PS19/27 *Changes to mortgage responsible lending rules and guidance: Feedback on CP19/14 and final rules*.

RG 209.113 If a consumer is applying to you as their existing lender to switch to a new loan that has more favourable terms, and is not seeking additional credit, you may not need to make as many inquiries. Because of your existing relationship, you will already have some information about the consumer's requirements and objectives and their financial position. From your own records, you will have information about the consumer's past financial situation and their repayment history on their current loan. Some inquiries may still be needed to update or otherwise check the information is still correct and identify any changed circumstances (e.g. changes to income, new liabilities or new drivers for expenditure, such as additional dependants).

Example 23: Switching to loan with lower interest rate

Ngoc has a home loan which she has been in for 10 years. It has a remaining term of 15 years and she wants to switch to a new lender who is offering a lower interest rate and lower repayments. The new lender confirms that she has a clear repayment history, with no defaults or late payments.

The new lender has verified that Ngoc continues to be employed and that there has been no reduction to her salary. They have also asked whether there are any foreseeable changes to her income or outgoings and been advised that there are not—there are no planned changes.

In these circumstances, the new lender decides that it is reasonable to rely upon the existing capacity to meet repayments on the current home loan as evidence of her ability to meet the lower repayments on the new home loan, without seeking further information about her outgoings.

If the information obtained showed indicators that Ngoc may be experiencing financial stress (e.g. a credit history report showing an increasing net debt position), it is more likely that the new lender would need further information about Ngoc's outgoings to enable an informed assessment of her capacity to continue to meet the repayments when she enters the new loan.

Example 24: Refinancing credit card debt with a personal loan

Duncan wants to obtain a personal loan to pay off his credit card debt, as this will enable him to have the benefit of a lower interest rate over the outstanding debt and help him to manage his repayments.

The lender confirms that there have been no defaults in repayments. As the minimum required repayments under the credit card are lower than they will be under the personal loan, the lender also needs information to understand whether Duncan has the capacity to meet the higher repayments. As the credit card statements show he is currently repaying a higher amount each month, which is equivalent to the amount he will be repaying under the personal loan, the lender is satisfied that Duncan does have capacity to meet the repayments.

The lender also obtains confirmation from Duncan that he will be cancelling the credit card once the lender has disbursed the loan amount to clear the existing balance. If Duncan intends to maintain the credit card and does not authorise the new lender to pay the loan directly to the credit card provider to pay out the existing debt it is less likely the lender could be satisfied about his capacity to meet repayments under the loan without more information about his income and outgoings.

Existing relationship with the consumer

RG 209.114 If you have an existing relationship with the consumer—for example, the consumer holds their transaction accounts with you—you may already hold significant amounts of information about their financial situation, making it reasonable to obtain less additional information. You will still need to make some inquiries to confirm that the information you already hold is:

(a) complete (e.g. confirmation that they do not hold accounts, or have credit products, with any other financial institutions);

(b) still relevant (e.g. if the information was provided as part of a previous credit application, you should confirm the information is still correct and that there have not been material changes to the consumer's circumstances since the information was provided); and

(c) accessible (e.g. if you have information but are unable to effectively access it, for example because of system limitations, you may need to make inquiries to obtain that information again).

Example 25: Private banking customer

Moksha is a barrister earning more than $1,000,000 a year. She holds deposit and trading accounts with ABC Bank as well as credit products including a credit card, line of credit, overdraft facility and a home loan. ABC Bank has allocated a private banker to manage its relationship with Moksha which includes periodic reviews of Moksha's facilities and discussions with Moksha about her banking, investment and credit needs.

Moksha decides to purchase a new home and contacts her private banker. As the private banker has access to significant amounts of information about Moksha's financial situation, inquiries and verification are largely limited to confirming Moksha's credit facilities with other institutions.

Example 26: First home buyer (a new customer with less experience)

Henry and Ari are in their early thirties and are looking to purchase their first home. They approach a broker who makes some initial inquiries. The broker learns that they have been saving for three years and have saved a 10% deposit with other funds to cover stamp duty and other home purchase costs. Henry and Ari have no history of meeting substantial financial obligations.

Based on this information, the broker decides to seek more detailed information. Upon request Henry and Ari provide their lease and bank statements showing consistent and on time rental payments. The statements also show their regular savings activity while they have been saving their deposit and their usual income and outgoing patterns.

With this additional information, the lender is satisfied it has reliable information about their financial situation that enables it to determine that they can meet repayments on the loan.

Circumstances that raise doubt about whether information that has been provided is true

RG 209.115 You should not rely on information if you have reason to believe it is not true. You may need to seek further information to determine the true position.

RG 209.116 Particular circumstances that may raise doubts about the reliability of information provided include:

(a) where there are obvious inconsistencies; and

(b) where the licensee receives applications through third-party intermediaries and has reason to believe that a particular third-party is supplying, or has supplied, false or altered information.

Note: See further information at RG 209.132–RG 209.134.

How the obligations apply to lenders and brokers

RG 209.117 The responsible lending obligations for lenders and brokers are set out in different provisions of the National Credit Act, which reflects the fact that these groups of licensees have different roles in the credit application process. However, as many of the responsible lending obligations for these functionally distinct groups of licensees are identical, we consider it appropriate to provide consistent guidance where possible.

> Note: The general responsible lending provisions that relate to brokers are in Pt 3-1 (for credit contracts) and Pt 3-3 (for consumer leases); the provisions for lenders are in Pt 3-2; and the provisions for lessors are in Pt 3-4.

RG 209.118 The assessment that is made by a broker is referred to as a 'preliminary' assessment. The Explanatory Memorandum indicates, at para 3.67, that this does not diminish a broker's responsibilities with regard to making reasonable inquiries and undertaking reasonable verification of the information they can access. It recognises that a broker may not have access to some information that is available to a lender (e.g. credit reports and data arising from a banking relationship) and that their assessment does not also take into account the commercial risk of being the lender.

RG 209.119 The services that lenders and brokers offer to consumers are different. You should apply this guidance in the context of the services you provide, which may affect what you consider to be a 'reasonable level of inquiries' and taking 'reasonable steps to verify'.

RG 209.120 It may be reasonable for a broker to make more detailed inquiries about the consumer's requirements and objectives in relation to obtaining credit—part of the service offered by brokers is to identify lenders and products for the consumer, help the consumer to make a decision about which to apply for and then assist the consumer to apply.

RG 209.121 As brokers assist consumers to make an application to lenders, it is reasonable for brokers to have regard to the kind of information the selected lender requires. However, the broker still needs to be satisfied that the information obtained is sufficient to enable the broker's assessment of whether the credit product is unsuitable for the consumer, as well as meeting the selected lender's preferences about documentation.

Example 27: Inquiries by a broker

Steve is a broker helping a customer to find a home loan. The customer says they want a loan of $450,000 at the cheapest rate they can access, so that they can pay off the loan as quickly as possible. Steve has made some more detailed inquiries and found that they would also like access to a redraw facility, so they can make additional payments to keep their interest charges low but still be able to access the extra amounts paid to deal with

any unexpected emergencies. With this information, Steve finds options from his panel of lenders to present to the customer.

Once the customer has selected their preferred loan, Steve completes a fact find document, which records the customer's stated requirements and objectives and requires information about their income and outgoings. The selected lender requires bank statements to confirm income and outgoings, so he obtains these. He asks the customer whether they have any other liabilities or unpaid bills and is satisfied with the customer's response that they do not. He makes a record of this response. He does not obtain a credit history report.

When the lender is making its own inquiries, it obtains a credit history report that shows unpaid utilities bills. This does not mean that Steve had failed to comply with his obligations. It was reasonable for him to rely upon the customer's statement that they had no unpaid bills where this was not apparent from a general review of the bank statements.

Verifying the consumer's financial situation

RG 209.122 You should consider the range of information that may be available to you when considering what steps are reasonable to verify the financial situation of the consumer you are dealing with.

RG 209.123 We consider that steps that are considered 'reasonable' will change over time as different forms or sources of verifying information become available or more easily accessible.

RG 209.124 Developments in relation to open banking and digital data capture services will affect the accessibility, and cost of obtaining, transaction information and an overall view of the consumer's financial situation. These kinds of services may also help licensees to streamline their process—for example, potentially enabling licensees to complete both inquiries and verification of consumer information.

RG 209.125 To assist licensees, we have outlined in the following tables a range of different information sources that may be available, and what information they may provide. These tables are not intended to provide an exhaustive or mandatory list of documents you could use to verify information provided by a consumer, or a statement that you are expected to use particular sources of information—it is intended to provide you with guidance on the kinds of information that may be available. What amounts to taking 'reasonable steps to verify' information depends on the circumstances and you will need to make a judgment about what steps are reasonable.

Table 1: Income

Source of information	What can be confirmed through this source?	Where can this information be accessed?
For PAYG ('pay as you go') employees: • recent payroll receipts/payslips; • confirmation of employment with the employer (subject to requirements of the *Privacy Act 1988* (Privacy Act)); • recent income tax returns; and • bank statements recording incoming payments.	Amount of net income, frequency of payments and possibly duration of employment Note: For casual or seasonal employment, you are likely to need more source documents covering a wider period to determine if there are variable income patterns (e.g. to obtain an understanding of the average or seasonally adjusted income for the consumer, rather than relying on an overestimated income based on an untypical period of higher hours or pay rates).	This information is available from the consumer.
For persons receiving Government benefits—Centrelink statements and bank account statements	Amount of income and frequency of payments	This information is available from the consumer.
For self-employed consumers: • recent income tax returns; • Business Activity Statements; • a statement from the consumer's accountant setting out details of the consumer's actual or likely income levels; • financial statements for related business entities; • business account statements; and • bank statements recording incoming payments.	Amount of net income and variable income patterns will generally be shown	This information is available from the consumer.
For strata corporations—financial statements for the strata corporation showing levies that are payable, and an aged debtors list showing outstanding levies	Available budget for meeting repayments	This information is available from the consumer

Table 2: Existing debts/liabilities

Source of information	What can be confirmed through this source?	Where can this information be accessed?
Credit reports Note: The range of information available through credit history reports will be improved through the comprehensive credit reporting reforms, and participation of a wider range of credit providers.	Information on the following: • *Credit listings*—Listings of any credit or loans the consumer has applied for, defaults (overdue payments of 60 days or more where collection activity has started) and any other credit infringements (infringements can be listed for up to five years after they occurred, or seven years for serious infringements) • *Repayment history*—Dates that credit payments were due, whether or not payments were made by the due date, and whether payments were missed • *Other information*—Bankruptcies (for up to seven years after they occurred), court judgments, debt agreements and personal insolvency agreements (for up to five years after they occurred)	For lenders—this information is available from credit reporting bureaus. Brokers do not have a right to access credit history reports (although some may choose to ask consumers for consent to obtain these reports as the consumer's agent).
Information/reports from other credit providers (subject to requirements of the Privacy Act), including statements	Information about total amount of debt outstanding, and the amount and frequency of repayments	This information may be available from the consumer, or from financial institutions with the consumer's consent.
Centrelink statements	Liabilities that are paid directly from Centrelink income using Centrepay	This information is available from the consumer.

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Table 3: Outgoings—Fixed or recurring expenses (amount does not change significantly for a known period)

Source of information	What can be confirmed through this source?	Where can this information be accessed?
Contracts, invoices or accounts, or bank statements recording relevant transactions, for example: • housing (rental, council rates); • communication expenses (telephone/internet plans); • child support and spousal maintenance; • insurance; and • regular school fees/child care.	Information about the amount and frequency of payments	This information is available from the consumer. Note: Consumers are generally likely to maintain separate records of these kinds of expenses.

Table 4: Outgoings—Variable (amount and/or frequency subject to change)

Source of information	What can be confirmed through this source?	Where can this information be accessed?
Contracts, invoices or accounts, or bank statements recording relevant transactions, for example: • utilities (water, electricity, gas); and • regular entertainment or recreation services (pay tv, sports activities, telephone/internet costs outside plan schedule, gambling accounts).	Usual usage and amount, frequency of payments Note: Some invoices may show historical usage comparisons.	This information is available from the consumer. Note: Some consumers may not maintain separate records of these kinds of expenses.

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Table 5: Overall financial situation

Source of information	What can be confirmed through this source?	Where can this information be accessed?
Transaction account statements (both for deposit accounts and credit accounts)	Regular and variable income and spending patterns Identify existing debts/liabilities—amount and frequency of required payments Identify types of usual expenditure, amount and frequency of payments May demonstrate savings and positive management of debts, such as full monthly payment of credit card balances May identify some 'red flag' circumstances, such as regular overdraw fees and default fees on existing debts/liabilities	Statements are available to: • the consumer's current financial institution from its own records; and • other licensees, from the consumer, or from other institutions with the consumer's consent. Note 1: For small amount credit contracts, the licensee is required to obtain and consider account statements that cover at least the immediately preceding 90 days. Note 2: The ease and cost of access to this information will be improved by developments in open banking.
Digital data capture and analysis	Regular income, spending and saving patterns; investment assets; debts and liabilities These reports may cover and analyse a potentially broader range of accounts	These reports are available from providers of these services with the consumer's consent.

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RG 209.126 We recognise that licensees need to take into account a range of matters in deciding what information it is reasonable to obtain in individual circumstances. For example, it is appropriate for licensees to take into account the privacy rights of the consumer, need for informed consent from the consumer for access to some documents and information, and data security.

RG 209.127 However, we do not think licensees should consider these matters to be a barrier to obtaining information. It may be reasonable for licensees to provide consumers with choice about the way they provide information to support an application for credit, complete due diligence on external service providers and manage privacy issues in accordance with the privacy legislation and their own privacy policies.

Example 28: Transaction statements (choice for the consumer)

A lender has decided that transaction statements are the most convenient and efficient way for it to obtain, and for the consumer to provide, information about their overall financial situation. They give the consumer a choice about the way to provide this information:

- The lender has engaged, as an outsourced service provider, a digital data capture service, which the consumer can use to enable the service provider to access the consumer's records with other financial institutions.
- Recognising that not all consumers will be willing to allow the service provider access to their records, consumers can also provide either digital or hard copies of the transaction statements.

The lender is able to analyse the data contained in statements—either through the service provider or by converting the statements to a digital form (using optical character recognition tools) and using its own analysis tools to identify patterns in income and outgoings.

As for any other outsourced service provider, the lender has undertaken a due diligence process to satisfy itself of the appropriateness of the service provider (e.g. in relation to the quality of the information it provides and the appropriateness of its practices to be consistent with the lender's own privacy and data security policies).

Example 29: Joint account, single borrower

Yoshiko shares a home with her partner, and they have a joint account to which both of their salaries are paid and out of which they pay all household outgoings. They each have an individual account, which they transfer money into for their private use. Yoshiko is applying for a car loan in her name only. She provides statements for the joint account and her separate account.

From the pay information in the statements the lender can see that Yoshiko has the higher income (about 70% of their combined income) and decides that it would be reasonable to apportion the amount of the outgoings paid from the joint account in the same way.

If Yoshiko's partner received pay into their separate account but transferred money into the joint account for household use, the lender could confirm

> that the regular transferred amounts represent the partner's contribution to household outgoings and apportion the outgoings between them on that basis. The lender does not consider that it would be necessary or reasonable to require statements for the partner's separate account.

Using information provided by a broker

RG 209.128 If a consumer is given credit assistance before making their application to the lender, a licensee (the broker) will have already made inquiries about the consumer's financial situation and verified the information obtained. The broker will also have made a preliminary assessment that the credit product or credit limit increase is not unsuitable for the consumer.

Note: The broker is prohibited from suggesting, or assisting the consumer to apply for, a credit product or credit limit increase if it is unsuitable for the consumer.

RG 209.129 The obligations on these two groups of licensees are separate. A broker is required to make inquiries, verification steps and assessments to meet its own obligations to reduce the chance it will suggest or assist with an unsuitable credit product; not merely to support the lender's ability to make a final assessment.

Note: In the development of the responsible lending obligations, changes were made to the Bill to remove provisions that excused lenders from having to verify information where a preliminary assessment had been made by a broker in the previous 90-day period. This change was made in response to a concern that those provisions could be deliberately misused: Supplementary Explanatory Memorandum (Senate: Amendments to be moved on behalf of the Government) at paras 1.18–1.19.

RG 209.130 As the lender, you need to form your own view on whether information that is provided to you by a broker, or any other third party that is involved in the application, is reliable and up-to-date. If you have reason to believe that is it not, you should undertake your own inquiries and verification steps to confirm that it is complete and accurate to meet your own obligations.

RG 209.131 You should have processes in place to ensure the reliability of any information collected by third parties, including information contained in a preliminary assessment. This could include a combination of approaches such as:

(a) conducting 'spot checks' on some of the information by re-verifying it yourself;

(b) ensuring you only use information in preliminary assessments from intermediaries that you are reasonably satisfied have robust compliance arrangements; and

(c) having processes to actively discourage inappropriate practices (e.g. ensuring that any incentives offered to intermediaries encourage, rather than discourage, appropriate information collection practices).

Note 1: In *ASIC v TCS*, the credit provider was found to have breached its responsible lending obligations where it relied on a broker to complete inquiries, verifications and

assessments on its behalf and the broker failed to do so. Davies J also referred to the lack of any recorded supervision by the lender as an important factor in determining what had taken place.

Note 2: In *ASIC v Channic*, the lender was found to have breached its responsible lending obligations where it relied on material provided by a broker. Greenwood J noted [1804] that 'Channic simply relied upon the CBPL material. Channic needed, as a matter of statutory obligation, to bring its own inquiring mind to the relevant statutory matters, first, because it had a duty to do so under the NCCP Act and second, because Mr Hulbert needed to ensure that each contract was not unsuitable for the consumer having regard to the potentially distorting remuneration incentives operating within CBPL.'

RG 209.132 You should not rely on information if, despite having appropriate processes in place, you have reason to doubt the reliability of the information. For example, the following circumstances may raise doubts about the reliability of information provided:

(a) you are aware that another licensee is investigating fraud by the consumer or the third party;

(b) you have suspicions of misconduct by the third party based on reasonable grounds (e.g. discussion with another person such as a customer or employer);

(c) high default rates from loans sourced through a particular third party;

(d) complaints about the third party, especially relating to false or altered information or duress in relation to entering credit contract or consumer lease;

(e) false information previously included in applications provided by the third party.

Note: In *Australian Securities and Investments Commission v Australia and New Zealand Banking Group Limited* [2018] FCA 155 Middleton J found that ANZ failed to take reasonable steps to verify the income of the consumer (as an essential component of the consumer's financial situation) where it relied solely on a document (a purported payslip) in circumstances where ANZ:

- knew that payslips were a type of document that was easily falsified;
- received the document(s) from a third-party intermediary who introduced the application which resulted in a credit contract being entered into by ANZ; and
- by reason of knowledge held by one or more employees within the organisation, it had reason to doubt the reliability of information received from that third-party intermediary.

RG 209.133 If doubts are raised about the reliability of information provided due to these kinds of circumstances, it would be reasonable to:

(a) not have regard to that information, until additional steps have been taken to confirm its accuracy; and

(b) take additional steps to confirm the information provided, for example:

(i) by obtaining a separate source of information (e.g. a transaction statement that contains information about income to confirm whether a pay slip is true or not); or

(ii) by checking the doubtful information with another person (e.g. by requesting information directly from the consumer, or obtaining the consumer's consent to verify the information through a direct source, such as their employer, or by using other verification tools, such as digital data capture services).

RG 209.134 If you receive applications through third parties you should have processes in place to enable you to identify recurring circumstances that raise doubts about information, and to take additional steps to ensure that information provided by such third parties is genuine and reliable.

Using statistical benchmarks

RG 209.135 Benchmarks (and in particular expense benchmarks) are commonly used by lenders as a part of their assessment of the credit risk to them of lending to a consumer. Licensees have also sought to rely on expense benchmarks as a way of streamlining the verification steps undertaken for the responsible lending obligations.

RG 209.136 You should be aware that income and expense benchmarks do not provide any information about the individual consumer, and do not confirm or verify that the information that has been obtained about the consumer is true. In *ASIC v Channic*, Greenwood J noted [at 1736] that:

> The section [dealing with verification of financial situation] directs attention to the particular financial circumstances of the particular consumer. … [The benchmark figure used] … is ultimately a notional figure in substitution for making reasonable inquiries. The adoption of the notional figure is not conduct of "making" reasonable inquiries about the consumer's financial situation or conduct of "verifying" the consumer's financial situation. In truth, it is a substitute for doing either of those things.

RG 209.137 Expense benchmarks generally give an idea of a conservative amount of expenditure that could be expected for a household with a defined range of characteristics (e.g. number of adults and dependants, income range and location).

RG 209.138 Benchmarks have a role in the broader verification and assessment processes. Comparison of the information obtained about the consumer to a reasonable benchmark can be useful in the following circumstances:

(a) if you cannot reasonably confirm some information (e.g. some general living expenses)—to test whether the information is plausible because it is within the range that is expected for a person in broadly similar circumstances to the consumer (alternatively, the comparison could indicate there is reason to believe the information provided is not true);

(b) if a consumer does not currently have expenses but will have some after the loan is entered into—to help estimate likely outgoings (e.g. for a first home buyer that will be moving out of their parents' home); and

(c) if the consumer needs to reduce their current expenditure to afford the credit product—to test whether the type and amount of reductions proposed by the consumer are plausible.

RG 209.139 If you use benchmark comparisons in this way, you should ensure that the benchmark you use is adequate and appropriate, and that its use is regularly monitored and reviewed.

RG 209.140 When using expense benchmarks, you should:

(a) ensure the benchmark you are using is the most up-to-date version available;

(b) ensure that the benchmark figure that is being used is a realistic figure, that is adjusted for different income ranges and that is not merely reflective of 'low end' spending;

(c) if the benchmark figure being referred to is more reflective of conservative spending, consider whether it is appropriate to apply a buffer amount that reflects the likelihood that many consumers would be expected to have a higher level of expenses;

Note: We recognise that assessments may be calibrated so that the buffers that licensees use elsewhere in their processes are sufficient to address this risk. However, this will need to be considered in the context of the original purposes of those buffers and to what extent they can manage those original risks together with the risk of a benchmark being reflective of conservative spending, and if not whether further calibration is needed.

(d) ensure that you are aware of what expenses are included in the benchmark calculation, make inquiries to ascertain whether the consumer has any kinds of expenses that are not included, and that you have separately taken reasonable steps to verify those expenses; and

(e) periodically review the expense figures being relied upon across your 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 your inquiries are not being effective to elicit accurate information about the consumer's expenses.

Note: For example, if more than half of the consumer borrowers in your portfolio have expenses at or lower than the benchmark figures it may be an indication that the information you are receiving represents an underestimation of most consumers actual outgoings.

RG 209.141 For the purposes of the responsible lending obligations, it is not necessary to use a benchmark as a minimum level of expenditure for an individual consumer. We recognise that some consumers will spend less than a benchmark figure, and that it is reasonable to use a lower amount if you are satisfied that it is a true statement of the consumer's financial situation and you have taken steps to appropriately verify the consumer's expenditure.

The Household Expenditure Measure

RG 209.142 The expense benchmark that is most commonly used is the Household Expenditure Measure (HEM). HEM is published by the Melbourne Institute of Applied Economic and Social Research at the University of Melbourne and available by subscription. This measure is updated quarterly.

RG 209.143 A re-developed version was published in August 2018, using data from the Australian Bureau of Statistics Household Expenditure Survey in 2015/16. This version represents an estimate of the spending habits of Australian families. It uses a median expenditure of 'absolute basic' goods and services (e.g. food purchased from a supermarket, children's clothing, home, contents and vehicle insurance, communication and childcare) combined with the 25th percentile of expenditure on 'discretionary basic' goods and services (e.g. adult clothing, bedding and household furnishings, alcohol, eating out and domestic travel). Under this methodology, it could be expected that the majority of households would spend more than the benchmark figure.

> Note: In evidence at a public hearing held in Melbourne, these two 'basic' categories were described as covering 'essentials' (for absolute basic items) and 'things that most people would want to [have] but where you have some discretion with how much you spend on that' (for discretionary basic items): see Transcript of the public hearing, Melbourne, 19 August 2019, p59.

RG 209.144 The HEM figures do not include spending on a range of items that are commonly part of a consumer's overall outgoings. When you compare the consumer's estimates to HEM it is important that you only use the estimates of spending on the kind of items that are included in the benchmark figure, and not a wider estimate of their total expenditure (otherwise the comparison is unlikely to give you useful information about whether the estimate of the consumer's 'basic' expenditure is realistic).

> Note: We understand that data standards that have been developed by industry led innovations have enabled the collection and categorisation of expenditure information in a way that enables a 'like for like' comparison to the HEM benchmark.

RG 209.145 The following spending items are not included in the HEM benchmark:

(a) Some items are referred to in the HEM materials as 'non-basic'. This includes items such as:

  (i) gardening and home help services;

  (ii) hospital, medical and dental insurance (including basic health cover);

  (iii) counselling services;

  (iv) any expenses for recreational vehicles (including motor cycles, boats, and caravans); and

  (v) any expenses for second dwellings and overseas travel.

(b) Some items are referred to in the HEM materials as 'excluded'. These excluded expenses are considered by the Melbourne Institute to be 'absolute basic' where they are incurred but are more variable between households and so have not been included in the calculation of the benchmark figures. The guidelines produced by the Melbourne Institute for use of HEM indicate that it is important lenders separately obtain information about these expenses. The list of excluded expenses is published by the Melbourne Institute with its quarterly updates. Currently, the following items are excluded:

(i) housing costs (rent, mortgage payments, land tax and body corporate fees on own dwelling);

(ii) private school fees;

(iii) life insurance;

(iv) sickness and personal accident insurance;

(v) superannuation;

(vi) alimony/maintenance payments;

(vii) interest repayments on loans;

(viii) lease payments; and

(ix) HECS.

RG 209.146 HEM is a measure of what households actually spend (based on the observations made through the Household Expenditure Survey), rather than a measure of the amount that is expected to achieve a particular quality of lifestyle. As lower income households have less money available to spend, the amounts that are spent are necessarily much lower. For this reason, the HEM figure for some lower income households is less than the Henderson Poverty Line.

Note: See Transcript of the public hearing, Melbourne, 19 August 2019, p60.

RG 209.147 This does not mean that a consumer who has estimated income at or below the level of HEM should be refused credit. As spending at that level is more likely to leave little margin for error in the estimate it may be reasonable to undertake more robust steps to verify the estimate to enable a properly informed assessment.

Additional inquiries and verifications for certain credit products

RG 209.148 Additional requirements have been included in the responsible lending obligations for certain products, because of the particular consumer risks that they involve. These additional requirements are not 'safe harbour' provisions and do not limit what is required to make 'reasonable inquiries' about the consumer's financial situation, requirements and objectives or take 'reasonable steps' to verify the consumer's financial situation.

RG 209.149 If you have completed the minimum requirements, but the information you have obtained raises concerns that you do not have enough reliable information to assess whether the credit product is unsuitable, you may still need to make further inquiries and verifications that are reasonable according to the circumstances of the particular consumer.

Small amount credit contracts

RG 209.150 The additional provisions for small amount credit contracts limit the circumstances in which these products can be entered into and charges that can be made and specify particular steps that must be taken to verify the consumer's financial situation. You will need to obtain information that enables you to be satisfied that those provisions would not be contravened if the consumer enters into a small amount credit contract.

RG 209.151 These requirements do not limit the inquiries you need to make, and the steps you need to take to verify the information obtained, under your usual obligations. For example, if 'red flags' are raised about the consumer which indicate they are at greater risk of harm, further information may be needed.

Other small amount credit contracts

RG 209.152 If the consumer is currently in default under an existing small amount credit contract or has been a debtor under two or more small amount credit contracts in the 90-day period before the assessment, there is a presumption that the consumer could only comply with their financial obligations under a new small amount credit contract with substantial hardship: see s118(3A), 123(3A), 131(3A) and 133(3A) and RG 209.228–RG 209.234.

RG 209.153 To determine whether this presumption applies, you should make reasonable inquiries and verifications about whether the consumer is currently, or has been within the preceding 90-day period, a debtor under any other small amount credit contracts, and whether the consumer is in default in payment of an amount under those contracts.

RG 209.154 There is a restriction on the fees that can be charged for a small amount credit contract where it is used to refinance any amount provided under another small amount credit contract: see s31A(1A) of the National Credit Code. You should make inquiries about whether the credit obtained will be used to repay another small amount credit contract.

Source of income

RG 209.155 A credit licensee must not enter into, or offer to enter into, a small amount credit contract with a consumer who will be the debtor under the contract if:

(a) the consumer receives at least 50% of their gross income as payments under the Social Security Act; and

(b) the repayments in a payment cycle would exceed 20% of the consumer's gross income: see s133CC and reg 28S.

RG 209.156 This additional requirement has been imposed to mitigate 'the risk of borrowers who are dependent on Government benefits for their income entering into a debt cycle, where the amount of repayments relative to their income results in an ongoing need for credit': see the Explanatory Statement to the National Consumer Credit Protection Amendment Regulation 2012 (No. 4).

RG 209.157 In light of this requirement, you should obtain reliable information about:

(a) the source of the consumer's income; and

(b) if the consumer's income includes payments under the Social Security Act, the proportion of the consumer's gross income constituted by those payments.

Account statements

RG 209.158 If you propose to enter into a small amount credit contract with a consumer, or provide credit assistance to a consumer—by suggesting that they apply for a small amount credit contract or by assisting them to apply for a small amount credit contract—and the consumer holds (alone or jointly with another person) an account with an ADI into which the consumer's income is paid, your steps to verify the financial situation of the consumer must include obtaining and considering account statements that cover at least the immediately preceding period of 90 days: s117(1A) and 130(1A). You need to obtain statements for all of the consumer's accounts. You should check with the consumer whether they hold more than one account.

RG 209.159 This requirement does not limit the steps that would otherwise be considered 'reasonable steps to verify the consumer's financial situation' according to the circumstances of the consumer you are dealing with. For example, if a consumer has recently closed an account into which their income was paid, obtaining and considering statements for that account may still be a reasonable step to verify that consumer's financial situation.

RG 209.160 You are required not only to obtain the account statements but to consider the information contained in the statements. Account statements provide information, including transaction histories, which will help the licensee to verify both the consumer's income and the expenses paid out of their income over a period of time. Account statements may also include information that identifies concerns about the consumer's financial situation that warrant further inquiries. For example, a statement may show that the account is regularly overdrawn or may include payments that relate to other credit contracts that have not been referred to by the consumer in their application. A statement may show that most or all of the consumer's income is withdrawn in a single transaction.

RG 209.161 We consider that transaction listings for accounts may be sufficient to meet this requirement. However, we consider that the record of transactions needs to be identifiable as belonging to the consumer. For example, if the record includes only an account number, but not the name and address of the account holder, we consider that you would also need to obtain a copy of a previous statement that identifies the same account details for the consumer, or cross-check information in the transaction listing with details the consumer has provided through another form of proof, such as their income payment.

Reverse mortgages

RG 209.162 For reverse mortgages, there are additional statutory provisions that specify particular inquiries that must be made about the consumer's requirements and objectives in relation to the reverse mortgage, and that limit the circumstances in which reverse mortgages can be entered into. You will need to obtain information that enables you to be satisfied that those provisions would not be contravened if the consumer enters into a reverse mortgage.

Future needs

RG 209.163 Your inquiries about the consumer's requirements and objectives in relation to a reverse mortgage must include inquiries about meeting possible future needs. The future needs that must be discussed with the consumer include (but are not limited to):

(a) a possible need for aged care accommodation; and

(b) whether the consumer prefers to leave equity in the dwelling or land to the consumer's estate: see reg 28HA of the National Credit Regulations.

RG 209.164 This additional requirement has been imposed to 'require credit licensees to discuss with reverse mortgage applicants, not just the short term effects of the reverse mortgage, but also how the loan may affect the borrower's options as they age, or impact the amount of equity they can leave to their estate': see the Explanatory Statement to the National Consumer Credit Protection Amendment Regulation 2013 (No. 2).

Information needed for preparing equity projections and the presumption of unsuitability

RG 209.165 Before making the assessment of whether the contract is unsuitable, you are required to make, and give to the consumer, equity projections that relate to the value of the dwelling or land that may become reverse mortgaged property, and the consumer's indebtedness, over time, if the consumer were to enter into the reverse mortgage: s133DB.

RG 209.166 A reverse mortgage calculator, which has been approved by ASIC for making these projections, is included on our Moneysmart website at www.moneysmart.gov.au. The equity projections must be made in accordance

with the instructions that are contained in the calculator. For further information about this requirement and how to use the calculator, see INFO 185.

> Note: The instructions for using the calculator require that equity projections include three scenarios, to demonstrate the potential impact of a decrease in house prices, or an increase in interest rates, on the consumer's equity in the property over a 15-year period. You can also use the calculator to make additional projections using different variables that more specifically reflect the consumer's circumstances.

RG 209.167 A reverse mortgage will be presumed to be unsuitable where the loan-to-value ratio in relation to the reverse mortgage over the reverse mortgaged property is higher than a specified amount, which is affected by the age of the youngest borrower under the reverse mortgage: reg 28LC of the National Credit Regulations. For more information on this presumption, see RG 209.235–RG 209.238.

> Note: If you intend to enter into, or provide credit assistance in relation to, a reverse mortgage with a higher loan-to-value ratio than permitted by the reverse mortgage calculator (and you are able to prove that it is not unsuitable in the particular circumstances of the consumer), you need to provide equity projections for the maximum loan-to-value ratio available, and fully explain to the consumer the implications of the higher loan amount on the level of the consumer's indebtedness over time.

RG 209.168 You will need to make initial inquiries about the consumer's requirements and objectives in relation to the reverse mortgage to enable the equity projections to be made. For example, you will need to ask about:

(a) the amount of credit that is required and why it is required;

(b) the preferred form of payment of the credit amount (i.e. lump sum payments, regular payments or both);

(c) the age of each consumer who will be a borrower under the reverse mortgage;

(d) how much equity the consumer would like to retain in their home; and

(e) the current value of the dwelling or land that will become reverse mortgaged property.

RG 209.169 You can verify the current value of the property in different ways, including the use of an independent valuation, council rate assessments or the recent sales history of similar properties in the area.

RG 209.170 The equity projections may prompt further discussion with the consumer about their requirements and objectives in relation to the reverse mortgage and their possible future needs. For example, a discussion about the equity projections may result in the consumer reassessing the amount of credit they require, or their preferred form of payment of the credit amount.

RG 209.171 Your discussions with the consumer about their particular circumstances, requirements and objectives may also identify some circumstances that are

outside those that are assumed in the calculator. You may make some additional equity projections to reflect those circumstances.

RG 209.172 For example, the assumed annual increase in the value of the property is set at 3%. For a particular consumer, it may be appropriate to consider either a lower or higher change to the value of the property (e.g. because of the particular location of the property). However, we expect that you would only use a higher rate of increase if you have made further inquiries and verifications that demonstrate the higher rate is reasonable.

C Assessing whether a credit product is 'not unsuitable' for a consumer

Key points

The purpose of the requirement to assess whether a credit product or credit limit increase is unsuitable for the consumer you are dealing with is to minimise the risk that the consumer will:

- obtain credit that does not meet their requirements and objectives (e.g. it will not achieve the consumer's goals or will not deliver expected benefits); or
- take on new financial obligations that they are unable to meet and cause the consumer harm if they default or because they need to make changes to their current situation that involve substantial hardship for the consumer.

The assessment is made before the credit product is entered or credit limit increased, so you need to consider a 'likely' future position. The information obtained through inquiries and verifications will help to inform you about the consumer's current position, requirements and objectives, identify foreseeable changes and assess whether the credit product will meet what the consumer wants and what effect the new financial obligations will have on them.

This section of the guide outlines our views on:

- matters you should consider when assessing whether the consumer can meet the new financial obligations, including whether use of assets or reductions to current outgoings will involve substantial hardship;
- matters you should consider when assessing whether the consumer's requirements and objectives will be met; and
- different matters that could affect your assessment when the consumer is seeking to refinance or switch from an existing credit product.

What are your obligations?

RG 209.173 As a credit licensee, you are required to assess whether the credit product, or an increase to the credit limit under an existing contract, that is being considered or applied for is unsuitable for the particular consumer you are dealing with.

RG 209.174 You need to make this assessment to be able to determine that the credit product or credit limit increase is 'not unsuitable' and that you are therefore able to engage in any of the following regulated conduct:

(a) suggesting the product or increase to the consumer;

(b) suggesting the consumer remain in the product;

(c) assisting the consumer to apply for the product or increase;

(d) making unconditional representations that the consumer is eligible for that product or increase; or

(e) entering into the product with the consumer, or granting the increase.

RG 209.175 A credit product, or an increase to a credit limit, is unsuitable (and must be assessed as unsuitable) if, at the time of the assessment, it is likely that:

(a) the consumer will be unable to comply with their financial obligations under the product (e.g. they would not be able to make repayments as they fall due for the term of the product); or

(b) the consumer will only be able to comply with their financial obligations under the product with substantial hardship; or

(c) the product will not meet the consumer's requirements or objectives,

if it is entered into or the credit limit is increased in the period of time covered by the assessment.

Note 1: This is a test for what is 'unsuitable' that is prescribed in s118(2), 119(2), 141(2), 142(2) (credit assistance providers), 131(2) (credit providers) and 154(2) (lessors). In *ASIC v Westpac*, Perram J at [70] described these as 'mandatory matters' the licensee must determine.

Note 2: You can also determine that a credit product or credit limit increase is unsuitable for other reasons and decide to refuse the application on that basis: see the note to s118(1), 119(1), 141(1), 142(1) (credit assistance providers), 131(1) (credit providers) and 154(1) (lessors). If you do so, the responsible lending obligations will have no effect, as you will not be engaging in any of the regulated conduct.

RG 209.176 If you assess a credit product as 'not unsuitable', but your assessment is incorrect because the credit product is actually unsuitable for the particular consumer (i.e. it meets the prescribed test of unsuitability), you could breach both:

(a) the requirement to assess the credit product or credit limit increase as unsuitable; and

(b) the prohibition on entering into or assisting with an unsuitable credit product or credit limit increase.

RG 209.177 The assessment you are required to make is necessarily a point in time assessment, but requires a consideration of what is likely to be the case if the consumer enters into the credit product or accepts the credit limit increase, given information currently available to the licensee about the consumer and foreseeable changes to their circumstances (e.g. changes to circumstances that affect the amount of their income or outgoings) or to the obligations under the credit product (e.g. known changes in the financial obligations under the terms of the credit product).

RG 209.178 The Explanatory Memorandum, at paras 3.82 and 3.167, indicates that 'For it to be *likely* that the consumer will be able to comply with the financial obligations under the contract, the [licensee] must take a future view of the reasonable foreseeability of that compliance, given the financial obligations will arise into the future'.

RG 209.179 The ordinary definition (*Macquarie Dictionary*) of 'likely' is 'probably or apparently going or destined (e.g. to do, be): *likely to happen*'. In the context of the responsible lending obligations, the term 'likely' has been considered in judicial commentary to mean 'a real chance or possibility' (*ASIC v TCS* at [23] per Davies J) or 'a real and not remote chance or possibility' (*ASIC v Channic* at [1773] per Greenwood J).

RG 209.180 We do not consider that the term 'likely' should be interpreted in a way that would require you to consider every possibility. We think it is appropriate to consider what is reasonably foreseeable (e.g. known, planned or expected future events).

RG 209.181 When considering whether it is 'likely' that one of the prohibited outcomes will occur (with the effect that the credit product is unsuitable), you should:

(a) have regard to the information you have obtained about the consumer's current financial situation, requirements and objectives;

(b) consider whether changes are foreseeable and make appropriate adjustments to reflect those changes; and

(c) where appropriate, engage with the consumer to confirm whether the future changes you anticipate will be made are realistic and achievable for the consumer.

RG 209.182 We recognise that it is not possible to verify statements by the consumer about some future matters, such as behavioural changes, and that you will need to exercise your own judgment about whether to accept these statements. In exercising your judgment, it would be reasonable to consider whether the changes proposed are realistic and achievable for the consumer you are dealing with (given your understanding of their circumstances).

Note: It is good practice to maintain records of matters that have been discussed with, or asserted by, consumers, and the factors you have had regard to in exercising your judgment.

RG 209.183 For brokers, the assessment is referred to as a 'preliminary assessment'. For lenders, it is referred to as 'an assessment' or a 'final assessment'.

RG 209.184 The description of 'preliminary' was not intended to diminish the responsibilities of the broker, but rather recognises that the broker may not have access to the same information as the lender and does not make the assessment taking into consideration the commercial risk of being the lender: see the Explanatory Memorandum at para 3.67.

RG 209.185 The assessments made by the broker and lender may result in different conclusions. For example:

(a) the broker may make an assessment that a credit product or credit limit increase is not unsuitable for the consumer, and provide credit assistance on that basis; and

(b) the lender may subsequently determine that the credit product or credit limit increase is unsuitable, either because they formed a different view on the prescribed test of unsuitability set out in the legislation, or they considered that the credit product or increase would be unsuitable for other reasons (e.g. having regard to the lender's internal policies for managing its credit risk).

Note: The responsible lending obligations do not impose restrictions on the lender's discretion to refuse an application for any reason. See the note to s131(1).

Can the consumer meet the financial obligations of the product?

RG 209.186 The 'purpose for undertaking reasonable inquiries about the consumer's financial situation is to ascertain a reasonable understanding of the consumer's ability to meet *all* the repayments, fees, charges and transaction costs of complying with the proposed credit contract': see the Explanatory Memorandum at paras 3.69 and 3.139.

RG 209.187 You will need to determine whether the consumer has the capacity to meet the likely maximum amount that would be payable under the credit product (including fees, charges and transaction costs). If the consumer is refinancing an existing credit product, you also will need to have regard to the costs of paying out that contract (e.g. discharge fees or break fees).

RG 209.188 If the credit product is structured to have different repayment amounts at different times, it is less likely that you will fail to identify that the credit product is unsuitable if you consider the consumer's capacity to meet the higher amount. For example, if a credit product has an initial 'interest free' period, you should consider the consumer's capacity to meet the repayments at the end of that period. If a contract includes a balloon payment at the end, you should consider the consumer's capacity to meet that repayment as well as the lower regular repayments under the loan.

Note 1: See Example 3.2 in the Explanatory Memorandum, and commentary at para 8.167 that refers to the conclusion in *Zhang v Mercedes-Benz Financial Services Australia Pty Ltd* [2008] VCAT 1939 at 52 that where the contract involves a balloon payment, the lender should take this into account when it considers the debtor's ability to service the loan. The finance application should be read carefully. It is not enough just to look at the ability to service the other smaller repayments.

Note 2: In *ASIC v Westpac*, Perram J found that Westpac's practice of assessing loans with an initial interest-only period by reference to an average repayment amount across the full term of the loan, rather than by reference to an estimated higher repayment amount that would become payable at the end of the interest only period, did not involve a breach of the assessment requirements. Perram J noted that as the future interest rate was variable, the amount of the future repayments could not be known by Westpac.

Is the consumer 'unable' to meet the financial obligations?

RG 209.189 The consumer would be considered unable to meet financial obligations under a credit product if they have no capacity to meet the new obligations (e.g. where the consumer does not have existing available income and has no capacity to use assets or reduce or eliminate some of their current outgoings).

> Note: In *ASIC v Westpac*, Perram J observed at [73] that this first mandatory question 'concerns the absolute ability of the consumer to make the repayments on the loan. This inquiry is only concerned with the consumer's ability to service the loan and not with any issues as to whether doing so will put the consumer in circumstances of substantial hardship'. At [76] Perram J referred to a 'conceptual minimum'—living expenses which 'simply cannot be foregone or reduced beyond a certain point'.

RG 209.190 We generally consider that in determining a 'conceptual minimum' level of outgoings you should have regard to the amount the consumer needs to:

(a) meet existing financial commitments that the consumer has little or no discretion to reduce, such as existing debts and legal liabilities (e.g. child support or spousal maintenance); and

(b) maintain basic outgoings that are essential to life and participation in modern Australian society, which include expenses for housing, food, clothing, health, education, transport, communication and connectivity for the consumer and their dependants.

Is the consumer only able to meet the financial obligations with 'substantial hardship'?

RG 209.191 The credit product will be unsuitable if the consumer can meet repayments—for example. by using assets or reducing or eliminating some of their current outgoings—but not without being placed in circumstances of substantial hardship.

> Note: In *ASIC v Westpac*, Perram J indicated that this is the second mandatory question to be answered, and observed at [78] that 'the issue is not whether some or all of the declared living expenses can be done without but the even more complex question of whether, if done without, this would give rise to circumstances of substantial hardship'.

RG 209.192 In our view, this test describes something different to (and less than) 'unable' to meet the financial obligations. For example, while being 'unable' to meet repayments may be equated to a circumstance of poverty or bankruptcy, we consider the test of being able to meet repayments 'only with substantial hardship' means that less extreme changes to the consumer's situation could mean the credit product is unsuitable.

RG 209.193 In *ASIC v Channic*, Greenwood J observed at [1773] that 'the term "substantial hardship" means hardship of substance, that is, significant hardship'.

RG 209.194 The concept of 'substantial hardship' is also used in the provisions of the National Credit Code dealing with reopening unjust transactions, and should

be applied similarly for responsible lending: see the Explanatory Memorandum at para 3.154. In the context of those provisions, it has been noted that 'hardship' means 'something that is hard to bear', and that 'substantial' means that Parliament intended to convey 'something more than mere hardship'. It is also noted that the question of the presence of substantial hardship is a factual enquiry.

Note: See *Silberman v Citigroup Pty Ltd* [2011] VSC 514, at [11] and [16]; and *Silberman v Citigroup Pty Ltd* [2011] VSC 426 at [20].

RG 209.195 The National Credit Act prescribes some circumstances in which it is presumed the consumer will only be able to meet the financial obligations under the credit product with substantial hardship. For more information on these circumstances, see RG 209.225–RG 209.240.

Can the consumer reduce their outgoings?

RG 209.196 We recognise that a consumer may be able to reduce their spending and change their lifestyle in order to afford a particular loan and be able to do so without substantial hardship.

RG 209.197 Outgoings that are generally important for consumers to live and participate in modern Australian society, and may often be expected to continue after a new credit product is entered, include:

(a) existing debts and contractual liabilities (which the consumer has no or limited ability to reduce);

(b) housing costs (including insurance);

(c) a reasonable level of spending on general food, drink, clothing and other household items;

(d) transport related costs (including registration and insurance);

(e) utilities;

(f) health related costs (including insurance);

(g) communication and connectivity costs;

(h) education and childcare costs; and

(i) superannuation contributions.

RG 209.198 If the repayments can only be met by the consumer reducing their current level of spending on these kinds of outgoings, and you will make the assessment using a lower amount than the consumer currently spends, you should consider whether those reductions are realistic and achievable for the consumer. If they are not, it is more likely the repayments would involve substantial hardship for the consumer.

Note 1: In *ASIC v Westpac*, Perram J noted [78] that to be relevant to the hardship question posed in the legislation, you need to know at least: (a) that the repayments would require the consumer to cut their budget by a specified amount; (b) that the

amount would have to be cut from the amount the consumer spends on a particular basic outgoing (e.g. food); and (c) if the consumer cuts the amount spent on that outgoing, it would place the consumer in circumstances of substantial hardship.

Note 2: If the consumer does have the ability to reduce their outgoings without substantial hardship, you may still need to consider whether the consumer is willing to do so or whether the credit product would not meet the consumer's requirements and objectives if those reductions were necessary: see RG 209.222–RG 209.223.

RG 209.199 For some consumers the outgoings that must be maintained, and that cannot reasonably be reduced or eliminated, may be high due to their personal circumstances (e.g. due to their location, employment, household composition and dependants, and health issues).

RG 209.200 For some credit products, the consumer's capacity to meet the new financial obligations will also be affected (positively or negatively) by changes to the consumer's outgoings that are reasonably foreseeable because they are a likely consequence of the purchase they are intending to make using credit. For example, if the consumer is obtaining a car loan, you need to consider whether expenses relating to car ownership (e.g. registration, insurance, maintenance, petrol and parking) will be materially different (either higher or lower) to the consumer's current travel expenses (e.g. public transport).

RG 209.201 When considering whether reductions are realistic and achievable, we consider it may be useful to have regard to the following matters:

(a) Whether the changes would mean that the amount available for expenses that are necessary for living and taking part in society would be less than a realistic benchmark figure that covers those expenses.

Note 1: The HEM benchmark may provide a guide to a conservative amount that households with specified characteristics may be expected to spend. However, we understand it is a measure of what households do spend (based on the observations that form the data set for the measure), not an amount that will achieve a certain level of lifestyle. For some lower-income households the HEM figures are less than the Henderson Poverty Line. An amount of spending that represents poverty is less likely to be considered realistic and achievable.

Note 2: In *ASIC v Westpac*, Perram J observed at [43] that 'Westpac submitted, and if it were necessary I would be inclined to accept, that the HEM benchmark captures expenses of a modest level that would permit individuals to participate in society'.

(b) Indications that the spending changes that are needed may be more difficult or unlikely to in fact be made due to the nature of the expenses and/or personal circumstances of the consumer you are dealing with. This could include, for example, where the consumer has particular needs, such as special medical needs or higher expenses due to their location, or spending patterns that are reasonably indicative of an addiction. In these kinds of circumstances, you may need to consider whether those reductions are realistic or achievable for the consumer you are dealing with, or whether any reductions would in fact need to be made from other outgoings.

RG 209.202 There may be some spending reductions you can determine are realistic and achievable without specific discussion with the consumer (e.g. if repayments can be met by reductions of higher expenditure on recreational items). However, if reductions would also need to extend to other kinds of expenditure that are more likely to be important to, or necessary for, the consumer, some engagement with the consumer would be reasonable to determine if those reductions can be made or whether that would involve substantial hardship due to the consumer's circumstances.

RG 209.203 You should ensure the consumer is aware of any assumptions you make about changes to their outgoings which enables you to assess their capacity to meet repayments using a lower figure for their future outgoings. Such engagement enables the consumer to understand the factual basis of your assessment and the lifestyle or behavioural changes you expect the consumer to make and consider whether this is consistent with their objectives and requirements. This also enables the consumer to make more informed borrowing decisions.

Note: Even if spending reductions do not involve substantial hardship, they may mean that the credit product or credit limit increase will not meet the consumer's requirements and objectives. See RG 209.222–RG 209.223.

Example 30: Temporary period of substantial reductions

A consumer wishes to enhance their chances of a promotion in the future by undertaking tertiary study on a vocational course with direct relevance to their chosen job. The consumer seeks credit to pay for the course. Their employer has given assurances that the consumer will be able to take their job back at the end of the course, if they do not obtain a higher paid one within the firm on the basis of the new qualification.

For the duration of the course, the consumer will only be able to meet their repayments under the proposed credit contract by making serious cutbacks on their expenditure. The consumer has indicated they are willing to incur this short-term financial hardship for the purpose of improving their long-term prospects, and they have a realistic plan for economising so that they can still meet their minimum loan repayments.

In this case, the licensee may conclude that the consumer would have the capacity to repay without substantial hardship, even if most other individuals (with a different purpose for the loan funds) would not.

Meeting payment obligations from income, not assets

RG 209.204 In most cases, consumers should be able to meet their payment obligations under a credit product from income rather than equity in an asset. However, there may be circumstances where this is not a reasonable position (e.g. bridging loans and reverse mortgages), or the sale or other use of an asset to meet repayments may be anticipated by the consumer and form part of their strategy for meeting their financial obligations under the new credit product.

Note: The Explanatory Memorandum indicates at paras 3.69 and 3.139 that the general position is that consumers should be able to meet the financial obligations from income

rather than equity in an asset. If repayments could only be met by selling the consumer's home, there is a presumption that this will involve substantial hardship. This presumption is rebuttable. See RG 209.225–RG 209.226.

Example 31: Future plans to sell the principal residence and downsize

Fiona applies for a 25-year principal and interest home loan to purchase a new home. She is currently employed and can demonstrate capacity to meet repayments under the proposed loan—however, she is 55 years old and intends to retire at age 65, with a post-retirement income insufficient to meet repayment obligations without substantial hardship.

As it is likely Fiona could only meet her financial obligations after retirement by selling the home, it appears at first view that the presumption of substantial hardship will apply and, as a result, the loan would be unsuitable.

The licensee's inquiries about Fiona's requirements and objectives reveal that she has planned for her future change in financial circumstances and, at the point that she can no longer comfortably afford repayments, intends to sell the home and downsize. She does not wish to purchase a smaller home until this time.

Given Fiona's expressed intent, if her likely equity position will be such that she can readily pay the outstanding balance of the loan at the time of the planned sale, it is reasonable to assess the loan as 'not unsuitable'.

Example 32: Repayment from superannuation

Mark is aged 65 and applies for a fixed-term loan to purchase a boat. Although he is currently working full time, he intends to retire within a year.

Without further inquiry, it may appear prudent to refuse the application on the basis that his financial circumstances will be very different once he ceases work.

However, the preliminary inquiries undertaken by the finance broker Mark has approached reveal that his superannuation benefit will be sufficient to meet both his ongoing financial needs and repayments under the loan.

What information can you take into account?

RG 209.205 The responsible lending obligations require you to make reasonable inquiries about, and take reasonable steps to verify, the consumer's financial situation before you make your assessment. These information gathering steps are intended to enable you to make an informed assessment: see Section B for guidance on the kind of information you may need, and circumstances that are likely to affect the amount of information you need or steps you need to take to gather that information.

Note: In *ASIC v Westpac*, Perram J observed at [59] that 'ASIC is correct to submit that the purpose of s130 is to ensure that credit providers put themselves in an informed state about the financial position of the consumer before making an assessment of the suitability or otherwise of the loan'.

RG 209.206 You may identify, while you are making the assessment, that it is reasonable to seek additional information to understand the consumer's financial situation, requirements and objectives, or ensure that the information you are using is reliable. However, you must have completed all reasonable inquiries and verification steps before you conclude that the credit product or credit limit increase is not unsuitable for the consumer.

RG 209.207 You should have regard to information about the following matters:

(a) how much of a surplus there is between the money the consumer is likely to have remaining after their ongoing expenses have been deducted from their after-tax income and the proposed additional repayments. This helps indicate how sensitive the consumer is to the effect of:

  (i) foreseeable changes in their obligations, such as an increase in interest rates on their repayments (e.g. as a result of the end of a 'honeymoon' interest rate period) or a requirement to make a balloon payment at the end of a contract;

  (ii) events that are likely day-to-day occurrences that can be expected to affect most consumers (e.g. occasional short-term absences from work for events such as sickness if that will affect their income, or events that raise occasional unavoidable outgoings, such as a car break down);

(b) whether the consumer has a demonstrated savings history, or evidence of good management of credit (e.g. by fully paying the balance of a credit card each month);

(c) the source of the consumer's income (including whether all or part of the consumer's gross income is sourced from payments under the Social Security Act);

(d) how consistent and reliable the consumer's income is (and the size of the payment obligations relative to their income level);

(e) whether the consumer's expenses are likely to be significantly higher than average (e.g. because they live in a remote area);

(f) the consumer's other debt repayment obligations and similar commitments (e.g. child support);

(g) whether the consumer is likely to have to sell their assets, such as a car, to meet their payment obligations; and

(h) whether there are red flags that are signs of financial vulnerability or addiction.

RG 209.208 If two or more consumers jointly apply for a credit product, you may assess each consumer's capacity to meet the payment obligations individually, or consider their combined financial situation.

Consequences of using unreliable information

RG 209.209 You must assess a credit product or credit limit increase as unsuitable for the consumer if it would be unsuitable for the consumer under the prescribed test: see RG 209.175. Under that test, information is only to be taken into account if it is information:

(a) about the consumer's financial situation, requirements and objectives (or other prescribed matters); and

(b) that you have reason to believe is true, or that you would have had reason to believe was true if you had made the inquiries and verifications that were reasonable.

Note 1: See s118(4), 119(4), 141(4), 142(4) (credit assistance providers), 131(4) (credit providers), 154(4) (lessors), and prescribed matters specified in regs 28JA (maximum credit limit) and reg 28HA (future needs for reverse mortgages). The prescribed test of 'unsuitable' is in subsection (2) of each of these provisions.

Note 2: You can also determine that a credit product or credit limit increase is unsuitable for other reasons and refuse an application on that basis. The restrictions on what information you can take into account do not apply to those other reasons (e.g. you could decide the product is unsuitable because of concerns that the consumer poses a high credit risk, and in doing so have regard to information about the consumer's willingness to pay or their credit score).

RG 209.210 This means you must not determine in your assessment that a credit product or credit limit increase is 'not unsuitable' for the consumer if that conclusion would be inconsistent with the prescribed test. Consequently, there is a risk that you will contravene this requirement if you take into account information that is not permitted under the prescribed test, or fail to take into account information that is relevant to the prescribed test.

Information that is not about the consumer's financial situation, requirements or objectives

RG 209.211 Information about security for the credit product (e.g. the value of secured property) is not information about the consumer's financial situation, requirements or objectives unless the consumer anticipates using the secured property as part of their strategy for completing their repayments. You should not have regard to security or funds that are only available in the event the consumer has already defaulted on repayments (e.g. the existence of a guarantee should play no part in the assessment that enables you to determine that the credit product is 'not unsuitable').

Information you do not reasonably believe to be true

RG 209.212 The Explanatory Memorandum indicates that the only information that must be taken into account for the prescribed test of unsuitability has two elements', which are:

(a) first—information you have reason to believe is true, which would include, for example, information that has been provided by the

consumer about their financial circumstances that has been verified or is otherwise reasonably believed to be true; and

(b) second—information you would have had reason to believe if reasonable steps to verify had in fact occurred. The intent of this element is to ensure the prescribed test takes into consideration information that you should have become aware of if the reasonable steps to verify had been taken.

Note: See the Explanatory Memorandum at paras 3.85–3.87 and 3.170–3.172.

RG 209.213 In other words, if there is information (additional information) that could have been obtained through reasonable inquiry and verification steps and that you would have had reason to believe is true, that additional information is also taken into account for the purpose of determining unsuitability under the prescribed test. This may involve weighing up different pieces of information to decide what is a reasonably reliable position.

RG 209.214 This means that if you make an assessment without having undertaken all the required reasonable inquiry and verification steps, a failure to include such additional information in your assessment may increase the risk that you incorrectly assess the credit product or credit limit increase as 'not unsuitable' in circumstances where the product or increase is unsuitable under the prescribed test. Such an assessment would contravene your obligation to assess that product or increase as being unsuitable.

Example 33: Inconsistent information

Kerry applied for a personal loan of $15,000. Kerry provided the lender with a copy of her bank statements and noted her income and expense information in the loan application. Kerry indicated that she had no liabilities other than her credit card.

The lender obtained Kerry's bank statements to confirm her income but did not consider the information contained in the statements for any other aspect of her financial situation. The statements showed that Kerry had recently started making payments to another lender.

It would be reasonable for the lender to identify obvious inconsistencies between the bank statements provided and the application. The lender could not choose to rely on the declaration in the application that Kerry had no other liabilities and ignore the information in the bank statements.

The lender should weigh up both pieces of information to decide what is reliable. If the lender just relied on Kerry's declaration, there would be a higher risk that it would fail to identify that she is unable to comply with the new financial obligations without substantial hardship, and that the lender is therefore required to assess the loan as unsuitable.

Will the product meet the consumer's requirements and objectives?

RG 209.215 A credit product or credit limit increase will be unsuitable if it does not meet either the consumer's requirements or their objectives.

RG 209.216 You will need to understand both the consumer's requirements and their objectives to enable this assessment:

(a) The consumer's *requirements* relate to the features of the credit product or credit limit increase that the consumer needs or that is preferred by the consumer.

Note: For example, the cost of the product, through the interest rate and charges that apply, may need to be within a specified amount or at a level so that the consumer can complete repayments within a certain timeframe, or the contract might need to have, or not have, specified features or conditions.

(b) The consumer's *objectives* are the end the consumer wants to achieve by obtaining the credit product or credit limit increase.

Note: For example, the consumer might want to obtain a loan so they can purchase an asset and repay the loan to achieve unencumbered ownership within a specified time.

RG 209.217 Making an assessment that a credit product meets a consumer's requirements and objectives involves matching the consumer's stated requirements and objectives with a credit product that is 'not unsuitable'. For example, where the consumer's objective is to obtain a loan that can be repaid as quickly as possible then their requirements in respect of the credit product would be that it has features that meet this objective.

RG 209.218 The following example shows how determining the purpose may be insufficient to establish a consumer's requirements and objectives.

Example 34: Insufficient inquiries into requirements and objectives

A broker assesses and records the consumer's objectives and requirements as being to 'obtain credit to purchase a home'.

This description of the purpose for the credit does not include any description of analysis of the consumer's requirements and objectives in respect of the proposed credit. This very brief description would suggest that any credit product that enables the consumer to purchase a home would be not unsuitable, and that the consumer is therefore indifferent to matters such as price or term, or features such as redraw facilities or offset accounts.

RG 209.219 When you assess the consumer's requirements and objectives in relation to a credit product, we consider it is useful to:

(a) obtain sufficient information to enable you to understand the consumer's specific requirements and objectives, and identify specific features, benefits and costs associated with the credit product relevant to whether the consumer's requirements and objectives will be met;

(b) consider whether the identified features, benefits and costs of the credit product will meet the consumer's requirements and objectives;

(c) be able to demonstrate how the identified features, benefits and costs of the credit product meet the consumer's requirements and objectives (particularly features with specific costs or risks);

(d) if some of the identified features, benefits and costs of the credit product are inconsistent with the consumer's requirements or objectives—arrange a credit product without those features;

(e) if certain features or benefits depend on assumptions about future actions by the consumer–consider the extent to which it is reasonable to expect the consumer to undertake or complete those actions, and the consequence, including potential costs, if the required action is not taken (i.e. will those consequences mean the consumer's requirements and objectives will not be met); and

(f) have documented processes to resolve and record the outcome of conflicting consumer requirements and objectives (e.g. specific questions in inquiry tools to identify and record a clear preference).

Note: See Report 493 *Review of interest-only home loans: Mortgage brokers' inquiries into consumers' requirements and objectives* (REP 493) for more information.

RG 209.220 Some examples of factors that you could take into account in assessing whether a credit product meets a consumer's requirements and objectives include:

(a) the features that meet the consumer's requirements and objectives, and any features that are inconsistent with those requirements and objectives;

(b) if the consumer has more than one requirement or objective:

(i) the relative importance of each to the consumer; and

(ii) the way in which any inconsistencies between competing requirements or objectives are resolved;

(c) if the credit is to purchase a specific item, the term of the credit relative to the likely useful life of the asset;

(d) the interest rate, fees and charges applying to the credit product;

(e) the consumer's understanding of the proposed contract;

(f) for a consumer lease, whether the consumer is aware that they will not own the goods at the end of the contract;

(g) if other expenses, such as premiums for insurance relating to the credit contract or consumer lease, are to be financed, whether the consumer is aware of this and accepts the additional costs of these expenses being financed;

(h) whether the consumer will need to finance a large final payment under the contract; and

(i) in relation to switching, the extent to which switching to the new credit contract will benefit the consumer.

Note: This is not intended to be an exhaustive list of potentially relevant factors in relation to assessing whether a credit product meets a consumer's requirements and objectives. In determining whether a credit product meets a consumer's requirements and objectives, the presence (or absence) of any one or more of the listed factors is not conclusive.

RG 209.221 The following examples show how you may need to consider whether significant features of a product meet a consumer's requirements and objectives.

Example 35: Assessment of impact of balloon payment

The lender arranges a car loan for a consumer with a substantial balloon payment at the end of the contract. The lender's record of the consumer's requirements and objectives does not provide any explanation as to why a loan with a balloon payment has been provided, rather than a loan without a balloon payment.

The loan would be inconsistent with the consumer's requirements and objectives if, at the time of the assessment, they wanted a loan where they would own the car outright at the end of the term, and the size of the balloon payment was such that it was reasonable to expect they would be unable to pay this as a lump sum at the end of the term.

It may meet their requirements and objectives if the consumer wants to have lower repayment amounts for most of the loan term and expects to be able to sell the car for an amount that is sufficient to repay the final larger balloon payment.

Without a record of the consumer's requirements and objectives, it will be difficult for the lender to show that it has understood what the consumer wants and assessed that the repayment structure of the loan meets those requirements and objectives.

Example 36: Assessment of value provided by offset account

A broker is providing credit assistance to a consumer in relation to two similar home loans:

- a home loan with no offset account; and
- a home loan with an offset account but a higher interest rate.

The consumer's objectives are to:

- pay off their home loan as quickly as possible; and
- obtain an offset account provided it delivers value consistent with this objective.

In assessing the suitability of these two home loans the broker will need to assess whether the likely savings from using the offset account are less or

more than the additional costs from the higher interest rate. For example, if the home loan is to be provided on the assumption that the consumer will reduce some of their spending, then this would need to be taken into account when assessing the forecast savings from the offset account.

Example 37: Resolving competing requirements and objectives

A prospective borrower is seeking a home loan and indicates that they would like it to be arranged as fast as possible. The broker identifies that the borrower has two competing objectives, to obtain the loan quickly and to obtain a cheap home loan. The broker needs to make inquiries of the consumer to clarify the relative priority of the consumer's competing requirements and document the outcome of these inquiries.

The broker could explain to the consumer that arranging a loan quickly will result in the loan having a higher interest rate, and that it can be expected to cost approximately an additional $5,000 per year in higher repayments. On this basis the consumer determines that price is more important than speed of approval.

Example 38: Arranging an interest only loan

A young first home buyer asks a mortgage broker whether they should apply for an interest-only loan for the purchase of a property that they will live in. To understand whether entry into an interest-only loan meets the consumer's requirements and objectives, the lender makes inquiries about the consumer's reasons for seeking this loan rather than a principal and interest loan, and how long they may need the loan to be interest-only.

As a result of these inquiries, the lender obtains information that the consumer wants to maximise their current lending capacity, given that they expect their income will increase in the foreseeable future due to their partner returning to work following maternity leave. The consumer's partner confirms that she is expected to return to work in 18 months and will be contributing to the repayments on their joint property purchase at that time. Her employment and scheduled return to work are verified by her employer.

The broker confirms that the consumer will be able to borrow more under an interest-only loan than under a principal and interest loan. On this basis, it is likely that a home loan with a two-year interest only period would be 'not unsuitable'. However, a home loan with a five-year interest only period will exceed the period for which lower repayments are needed and have a higher overall cost to the consumer and so may be unsuitable (depending on the consumer's other requirements and objectives).

Will the need for spending reductions prevent the credit product meeting the consumer's objectives?

RG 209.222 As discussed in RG 209.196–RG 209.203 we recognise consumers will often expect and be willing to make some changes to their outgoings to afford a credit product (or the assets they wish to obtain using credit), and that many reductions can be made without the consumer experiencing 'substantial hardship'.

RG 209.223 However, we also recognise that some outgoings may be more important to the consumer than others—we do not think you should assume all kinds of outgoings can be reduced or eliminated without discussing this with the consumer. If the consumer can only meet repayments on a credit product by reducing or eliminating current expenditure that is important to them, the credit product is less likely to meet the consumer's objectives.

What if none of the credit products you offer meets the consumer's requirements and objectives?

RG 209.224 If none of the credit products that you provide (or provide services about) meets the requirements and objectives of the consumer you are dealing with (i.e. they are all unsuitable), then you must not enter into a credit product with the consumer, make unconditional representations about the consumer's eligibility to enter into a credit product with you, suggest a credit product to the consumer or assist the consumer to apply for a credit product.

Circumstances in which products must be assessed as unsuitable

Sale of principal place of residence: Presumption of substantial hardship

RG 209.225 It is presumed that if a consumer will only be able to comply with their financial obligations under the credit product by selling their principal place of residence, then the consumer could only comply with those obligations with substantial hardship, unless the contrary is proved: see s118(3), 131(3), 142(3) and 156(3). The effect of this presumption is that where it appears a consumer could only meet the payment obligations by selling their home, then the onus is on the licensee to demonstrate that this does not involve substantial hardship for the consumer. The law allows you to exercise judgement in the application of this requirement.

RG 209.226 The presumption does not limit the types of circumstances that may involve substantial hardship (i.e. circumstances other than the consumer being forced to sell their primary residence can involve substantial hardship).

Small amount credit contracts: Not consistent with the consumer's requirements and objectives

RG 209.227 A credit contract is unsuitable if the consumer's requirements and objectives are to receive a certain amount of credit, which could be provided through one credit contract, but the credit provider offers an arrangement to provide that amount through two or more small amount credit contracts or medium amount credit contracts that would be more expensive for the consumer: see reg 28XXF of the National Credit Regulations.

Note: For more information, see the Explanatory Statement to the National Consumer Credit Protection Amendment Regulation 2012 (No. 4).

Small amount credit contracts: Presumption of substantial hardship

RG 209.228 It is presumed that a consumer could only comply with their financial obligations under a small amount credit contract with substantial hardship, unless the contrary is proved, if either:

(a) at the time of the assessment, the consumer is a debtor under another small amount credit contract and is in default in payment of an amount under that contract; or

(b) in the 90-day period before the assessment, the consumer has been a debtor under two or more other small amount credit contracts: s118(3A), 123(3A), 131(3A) and 133(3A).

Note: You need to take into account any small amount credit contracts under which the consumer was a debtor during the 90-day period, even if the contract had been entered into before that period began or had been repaid during that period.

RG 209.229 We consider that a default in payment will have occurred if the debtor has failed to make a payment that is due at the time the assessment is made, and has not rectified that failure.

RG 209.230 The effect of this presumption is that, where these circumstances exist, the onus is on the licensee to establish that the consumer could comply with their financial obligations under the contract without substantial hardship. If you are unable to prove this the contract will be, and must be assessed as, unsuitable and you must not enter it or assist the consumer to apply for it.

RG 209.231 To enable you to determine whether the presumption applies, it would be reasonable to:

(a) ask the consumer whether they are, or were during the previous 90-day period, a debtor under any other small amount credit contracts;

(b) ask the consumer whether they are in default in payment of an amount under any small amount credit contract; and

(c) obtain copies of any other small amount credit contracts under which the consumer was a debtor in the 90-day period before the assessment.

RG 209.232 As discussed in RG 209.158–RG 209.161, you are required to obtain and have regard to account statements. The transaction histories in these statements will also help to:

(a) identify payments by the consumer that may relate to other small amount credit contracts, and form the basis for inquiries to the consumer; and

(b) verify whether regular payments are being made on other small amount credit contracts.

RG 209.233 If you obtain a credit history report for the consumer, a review of this may also help you to identify other small amount credit contracts that are, or have been, held by the consumer and make further inquiries about those contracts.

RG 209.234 Regardless of whether you determine that the presumption does not apply or can be rebutted, you still need to determine whether the consumer would have the capacity to meet their payment obligations, or could only do so with substantial hardship, in accordance with your usual obligations.

Example 39: Multiple small amount credit contracts

A consumer applies for a small loan and is asked by the lender whether they are, or have recently been, a debtor under any other small amount credit contracts. The consumer advises that, in the last month, they have had two other small amount credit contracts.

In this case, there will be a presumption that the consumer would only be able to comply with obligations to repay the new loan that is being applied for with substantial hardship. Accordingly, this loan must be assessed as unsuitable, unless the lender is otherwise able to prove that there would not be substantial hardship.

Further inquiries about the purpose of the previous loans indicate that the previous small loans had been used to meet other financial commitments or expenses, such as rent or repayments on another loan, indicating potential financial difficulty. In these circumstances, it is unlikely the lender would be able to disprove the initial presumption.

However, if the further inquiries showed that the previous loans were used to pay for a couple of unexpected expenses, and that the loans were both repaid with no defaults (confirmed by the consumer's credit history report and account statements), the lender may be able to prove that the consumer would be able to meet their repayment obligations without substantial hardship, despite the initial presumption.

Reverse mortgages: Presumption of unsuitability

RG 209.235 A reverse mortgage will be presumed to be unsuitable, unless proved to the contrary, where:

(a) the youngest borrower under the reverse mortgage is 55 or younger, and the loan-to-value ratio of the mortgage is higher than 15%; or

(b) the youngest borrower under the reverse mortgage is older than 55, and the loan-to-value ratio of the mortgage is higher than the sum of 15% and 1% for each year that the borrower is older than 55: see reg 28LC of the National Credit Regulations.

RG 209.236 Depending on a consumer's circumstances, you may be able to prove that a reverse mortgage with a loan-to-value ratio higher than the prescribed amount is not unsuitable. This 'allows reverse mortgage lenders some flexibility to negotiate the loan to value ratio with a borrower and provide a loan to value ratio higher than those prescribed if they have sufficient reason (and evidence) that the higher ratio meets the borrower's requirements and objectives': see the Explanatory Statement to the National Consumer Credit Protection Amendment Regulation 2013 (No. 2).

RG 209.237 We expect that you would need to undertake a higher level of inquiries about the consumer's financial situation, and their requirements and objectives (including their requirements and objectives in meeting possible future needs), to prove that the reverse mortgage is not unsuitable in these circumstances.

RG 209.238 If you decide that a higher loan-to-value ratio will not be unsuitable in the circumstances of the consumer, you should:

(a) fully inform the consumer of the implications of the higher loan-to-value ratio on the consumer's indebtedness over time;

(b) confirm that the consumer understands the implications of the higher loan-to-value ratio on the consumer's indebtedness over time; and

(c) confirm with the consumer that a reverse mortgage on these terms will meet the consumer's requirements and objectives in relation to their possible future needs (including their capacity to leave equity in the reverse mortgaged property to their estate).

Credit card contracts: Capacity to repay

RG 209.239 If a consumer cannot comply with an obligation to repay an amount equivalent to the credit limit of the credit card contract within a period determined by ASIC, the consumer will be taken to only be able to comply with their financial obligations with substantial hardship. This is not a rebuttable presumption.

> Note: See s118(3AA), 123(3AA), 131(3AA) and 133(3AA). This provision applies from 1 January 2019. ASIC has prescribed a three-year period by a legislative instrument: see ASIC Credit (Unsuitability—Credit Cards) Instrument 2018/753.

RG 209.240 The purpose of this additional presumption is to reduce the likelihood of consumers being granted excessive credit limits.

> Note: See the Explanatory Memorandum to the Treasury Laws Amendment (Banking Measures No. 1) Bill 2017 at para 4.3.

Switching and refinancing

Additional considerations for switching or refinancing activities

RG 209.241 When assessing a credit product in a switching or refinancing situation, additional matters should be considered, including whether entering the new product:

(a) would result in overall cost savings to the consumer that are likely to override any loss of benefits; or

(b) may result in minimal cost savings, but the new product better meets the consumer's requirements and objectives (e.g. because of convenience, greater flexibility or additional features such as a redraw facility on a mortgage).

RG 209.242 The determination of whether there are overall cost savings to the consumer should take into account all the circumstances, including the cost of the transaction (i.e. making the switch or refinancing) and all associated fees and other charges, such as costs associated with refinancing, including any fees for using a broker's services.

Note: See the Explanatory Memorandum at paras 3.74 and 3.149.

RG 209.243 When you are arranging the refinancing or switching, you need to find out details of the existing credit contract if you do not already have this (e.g. if the current contract is with another licensee). As part of the reasonable inquiries, you should:

(a) obtain details of the current contract, including details of the interest rate and fees; and

(b) find out the consumer's repayment history (e.g. whether they are up to date or ahead on their repayments or have a mixed payment history).

RG 209.244 If the consumer is currently having difficulties meeting the repayments under the existing credit product, or is in arrears, it will be possible to determine that the consumer cannot meet the repayments of the amount being charged under that contract, and a contract will be unsuitable where the repayments are at the same or a similar level.

Note 1: See the Explanatory Memorandum at paras 3.73 and 3.148.

Note 2: Where the current contract is unsuitable, but after making reasonable inquiries you reasonably believe that there is no other credit contract that is 'not unsuitable', you may be able to suggest that the consumer remains in the current contract (even though it is unsuitable), provided that you also inform the consumer about the hardship variation procedures that are available: see s124(7).

'Like for like' refinancing and 'mortgage prisoners'

RG 209.245 The term 'mortgage prisoners' is used to describe a class of consumers who are locked into loans with an interest rate that is higher than current available rates. They may be in this position because there have been changes to the assessment of lending criteria by that lender (or other lenders to whom the consumer could switch).

RG 209.246 In the event of a refinance under a lower rate loan, the consumer's repayments will likely reduce even if the period during which they are making payments is the same (assuming they are not borrowing additional funds). In these circumstances, it is reasonable for lenders to specifically consider the consumer's payment history under their existing loan. Other

matters may be given less weight, unless they identify particular risks with the consumer's financial situation.

RG 209.247 It is therefore likely a refinance will be suitable where the consumer has regularly made payments on the home loan when they fall due, the amount of the repayments will reduce following a refinance to a lower interest rate, and there have been no adverse changes to the consumer's circumstances.

RG 209.248 On the other hand, we recognise that continued repayments on an existing loan could disguise circumstances of financial stress. Consumers will generally prioritise repayments for a principal asset such as a home over other outgoings and may take on additional credit to meet repayments (e.g. by using a credit card).

RG 209.249 For this reason, it is important that you ensure the repayment history information you consider is for a sufficiently long period (e.g. 12 months) and that you have regard to any other indicators of either:

(a) financial stress (e.g. increasing credit usage or delinquencies on utility payments); or

(b) financial stability (e.g. the consumer regularly pays the monthly balance of their credit card in full, even though it is a substantial lump sum).

RG 209.250 If repayments on the new credit product are lower than the consumer's current repayments because the term of the new product will be longer, the consumer will be paying more in interest or other charges over the longer term. In this case, the consumer should be expressly advised of the effect of the longer term and you should determine whether the new product will continue to meet the consumer's requirements and objectives.

Reviewing the outcome of your assessments and credit decisions

RG 209.251 You should periodically review your portfolio to consider whether the assessments you make are effectively identifying individual circumstances in which credit products are unsuitable or 'not unsuitable' for the consumers you are dealing with.

RG 209.252 A higher incidence of complaints received through your dispute resolution processes, and early default or arrears, hardship or switching events, may indicate that the assessments you are making are not achieving their objective, and that you should adjust the way you make assessments or the inquiry and verification steps you use to inform those assessments.

RG 209.253 Some licensees use automated decision systems, in which the information provided by the consumer or otherwise obtained by the licensee is compiled and assessed by the system under predetermined rules.

RG 209.254 If you use these kinds of systems, we consider you should ensure that:

(a) the system, rules and algorithms used to compile and assess the consumer's information are tested prior to implementation, and at reasonable regular intervals, to ensure the decisions made using the system are appropriate;

(b) the system is capable of identifying situations that require further inquiries or verification steps, and either completing those additional steps or referring the application for manual consideration; and

(c) the system is capable of maintaining or producing a meaningful record of the assessment.

D Giving a written copy of the assessment and recording the steps you have taken

Key points

The purpose of the requirement to give the consumer a written copy of the assessment is to provide them with information that enables them to understand the basis on which you have assessed a credit product or credit limit increase as 'not unsuitable'

Depending on whether the consumer asks for the assessment before or after the credit product has been entered into or the credit limit increased, it also allows them to correct errors in the information you are relying on, make an informed borrowing decision, or engage in dispute resolution.

This section of the guide outlines our views on:

- the level of information you should include in the written copy of the assessment to meet this purpose (see Appendix 2 for an example); and
- recording practices that can help you to demonstrate compliance with your obligations.

Giving a written copy of the assessment

RG 209.255 If you are asked by the consumer for a written copy of the assessment that a credit product is 'not unsuitable', you must give them a copy of the assessment free of charge. This means that you need to keep a record of the assessment in a form that allows you to provide the assessment to the consumer promptly (within the prescribed time limits) and in writing.

Note: A licence condition supports this obligation, by requiring the credit licensee to:

- keep a record of all material that forms the basis of an assessment of whether a credit product will be 'not unsuitable' for a consumer in a form that will enable the licensee to give the consumer a written copy of the assessment if a request is made under s120, 132, 143 or 155; or
- if the licensee is an assignee, have in place arrangements with the credit provider or lessor who assigned their rights to the licensee that will ensure the licensee can access or prepare a written copy of the assessment, and give it to the consumer if a request is made under s132 or 155.

RG 209.256 If the rights of a lender are legally assigned to another person (who then becomes the new lender), the new lender must comply with the obligation to give a copy of the assessment to the consumer. In these circumstances, the timeframes for giving assessments have been extended because the assignee may need to obtain information from the previous lender: see reg 28M. Assignees should ensure that the lender that is assigning its rights provides the assignee (or has in place arrangements to provide the assignee) with the relevant records and other material to enable the assignee to comply with the obligation to provide a copy of the assessment to the consumer, on request.

RG 209.257 ASIC may also ask for a copy of the written assessment when conducting our monitoring and surveillance activities.

Note: ASIC may require you to produce a copy of the written assessment through its powers to require the production of documents (see Div 2 of Part 6-3 of the National Credit Act), or by requesting reasonable assistance from you (see s51 of the National Credit Act).

RG 209.258 While there is no obligation, it is good practice to prepare a written copy of your assessment at the time the assessment is made and provide it to consumers (whether they request it or not). This has benefits for both:

(a) the consumer (e.g. to help them understand the basis on which you have assessed the credit product as being 'not unsuitable' and make more informed borrowing decisions); and

(b) you (e.g. to help you demonstrate your compliance with the inquiry, verification and assessment obligations, and as a clear record of statements made by the consumer on which you have relied).

What is the purpose of a written assessment?

RG 209.259 The purpose of the written assessment is to provide the consumer with information that will enable them to:

(a) understand what information you have had regard to in determining that the credit product is 'not unsuitable' for them;

(b) if the credit product has not yet been entered—advise you of any incorrect details, and decide whether to enter the contract; and

(c) if the credit contract or consumer lease has already been entered—engage in dispute resolution processes with a clear statement of the grounds for your assessment.

Note: See the Explanatory Memorandum at paras 3.91 and 3.160.

What information should be included in a written assessment?

RG 209.260 The written assessment should be easy for consumers to understand. It should contain information that will ensure that the written assessment can be used by the consumer (and in the case of disputes—AFCA or the court) for the purpose described in RG 209.259.

RG 209.261 We consider that the following kinds of information should be included to enable the reader to understand the basis on which the credit product has been assessed as being 'not unsuitable' for the consumer:

(a) a statement of your understanding of the consumer's requirements and objectives in relation to the credit product;

(b) a description of the information about the consumer's financial position that you have relied upon (including relevant amounts), and how that information has been verified;

(c) if the consumer's capacity to make repayments depends upon financial support from another person—a description of the information about that other person's financial position that you have relied upon, and how that information has been verified;

(d) if the consumer's capacity to make repayments depends on them taking particular action to reduce their current expenses or potential liabilities (e.g. by cancelling an existing credit card that is being paid out)—a clear statement of the action the consumer has stated they will take.

RG 209.262 We do not expect you to disclose the commercially sensitive lending criteria on which your credit decisions are based.

RG 209.263 Appendix 2 gives an example of what would provide an appropriate level of information to meet the purpose described in RG 209.259. This example is only an illustration of the kinds of information we consider should be included.

Circumstances where you are not required to provide a written assessment to a consumer

RG 209.264 You are not required to give the consumer a copy of the assessment if:

(a) you are a lender and the transaction does not go ahead; or

(b) you are a broker and you do not provide credit assistance to the consumer. However, decisions made by the consumer or lender after you have given credit assistance (e.g. not to apply for or enter into the credit contract or consumer lease) will not affect your obligations (i.e. you are still required to provide a written copy of your preliminary assessment if requested).

Note: The Privacy (Credit Reporting) Code 2014 (registered under s26M of the Privacy Act and cited as 'CR code v2') provides at para 16.3 that a credit provider who obtains credit reporting information about an individual from a credit reporting bureau and, within 90 days of obtaining that information, refuses a consumer credit application, must provide a written notice of refusal, informing the individual of those matters set out in para 16.3, including their right to access credit reporting information held about them, that the refusal may have been based in whole or part on the credit reporting information, and the process for correcting the information. This is also a requirement under s21P of the Privacy Act.

Keeping records to demonstrate compliance with your obligations

RG 209.265 A failure to keep a record of inquiries made and verification steps taken, and the information you have relied on in your assessment, may make it difficult for you to adequately demonstrate that you have complied with your obligations.

RG 209.266 We consider the following practices help demonstrate compliance.

Note: For more information, see REP 493.

Using application forms, 'fact find' and 'needs analysis' documents

RG 209.267 These kinds of tools can be useful to provide a structure for recording your inquiry and verification steps, especially where you conduct business through a number of credit representatives.

RG 209.268 Where such tools are used, it is good practice to ensure that all questions are answered, including by indicating a 'nil response' or 'not applicable'. If sections are left incomplete, it may be difficult to demonstrate that you and your representatives have a consistent practice of addressing all questions included in a standard document.

Keeping records together

RG 209.269 The inquiry and verification process will often not be a linear process. After the initial collection of information from the consumer during the application process, there may be communications to clarify aspects of the consumer's requirements and objectives (or the consumer may change their mind about some or all of their requirements and objectives), clarify inconsistencies in the information that has been provided, and to determine the consumer's willingness and ability to use assets or reduce their current expenditure level to afford repayments on a particular product.

RG 209.270 If these communications are not properly recorded on the consumer's file, you may not be able to demonstrate that you have complied with your obligations. Keeping file notes or other records in one place may help you to explain what steps you have taken, and why those steps are reasonable in the circumstances of the consumer.

Preparing a narrative summary

RG 209.271 An understanding of the requirements and objectives of a consumer in relation to a particular credit product might be formed by reference to a number of questions throughout an application form or fact find document, dealing with different matters, such as the consumer's purpose, timeframe,

features of the product and expected position on completion of the term of the contract. The consumer's description of their requirements and objectives may also change between initial inquiries and the completion of your assessment. For example, they may change their mind about particular features they want or do not want, or decide to favour one feature (e.g. a low interest rate) above others.

RG 209.272 A concise narrative summary included on the consumer's file can help you to 'connect the dots' between the consumer's responses to different questions and demonstrate that you understood what the consumer's requirements and objectives were and how the credit product that was applied for or entered met those requirements and objectives.

Keeping a written assessment

RG 209.273 If requested by a consumer, you are required to give the consumer a written copy of the assessment that the credit product is 'not unsuitable' for them. If you do not record your assessment in writing, and instead maintain separate records of all the matters you had regard to in making that assessment, it may be more difficult for you to compile the written assessment at a later date.

> Note: The consumer could request a written copy of the assessment up to seven years after the date on which the credit assistance is provided, or the credit product is entered into.

Appendix 1: Overview of requirements and commencement dates

Note: If the credit provider or lessor is an exempt special purpose funding entity, the obligations are modified to apply to that entity (even though it is not a licensee). A licensee that acts on behalf of the exempt entity under a servicing agreement is not required to comply with obligations that would ordinarily apply to it as a credit assistance provider: see Sch 3 to the National Credit Regulations.

Table 6: Summary of key responsible lending obligations

What you must do	Brief overview of obligation
1 Make reasonable inquiries about the consumer	For all consumers, you must: • make reasonable inquiries about the consumer's financial situation; and • make reasonable inquiries about the consumer's requirements and objectives. Note 1: See s117 and 140 (credit assistance providers), s130 (credit providers), s153 (lessors). Note 2: The standard obligations commenced on: • 1 July 2010; or • 1 January 2011 for ADIs and registered finance corporations. Credit providers must make reasonable inquiries about the maximum credit limit that a consumer requires. Note: This inquiry has been required since 1 July 2012: see reg 28JA Additional requirement for reverse mortgages—you must make reasonable inquiries about the consumer's requirements and objectives in meeting possible future needs. Note: This inquiry has been required since 1 June 2013: see reg 28HA.
2 Take reasonable steps to verify the information obtained	For all consumers you must take reasonable steps to verify the consumer's financial situation. Note: See s117 and 140 (credit assistance providers), s130 (credit providers), s153 (lessors). Additional requirement for small amount credit contracts—you must obtain statements for accounts into which the consumer's income is paid to verify their financial situation. Note: This step has been required since 1 March 2013: see s117(1A) (credit assistance providers), 130(1A) (credit providers).
3 Assess whether the credit product or credit limit increase is 'not unsuitable' for the consumer	The credit product or credit limit increase will be (and must be assessed as) unsuitable if, at the time of the assessment, it is likely that: • the consumer will be unable to comply with their financial obligations under the contract, or could only comply with substantial hardship; • the contract will not meet the consumer's requirements or objectives; or • circumstances prescribed in the regulations apply. Note: See s116, 118, 119, 139, 141 and 142 (credit assistance providers), 129 and 131 (credit providers), 152 and 154 (lessors). For the purpose of this prescribed test of unsuitability, only information that satisfies both of the following paragraphs is to be taken into account: • the information is about the consumer's financial situation, requirements or objectives, or any other matter prescribed by the regulations; • at the time of the assessment: – the licensee had reason to believe that the information was true; or – the licensee would have had reason to believe that the information was true if the licensee had made the required reasonable inquiries or verifications. Note: See s118(4), 119(4), 141(4), 142(4) (credit assistance providers), 131(4) (credit providers), 154(4) (lessors).

What you must do	Brief overview of obligation
4 As part of the assessment, apply the statutory presumptions	You must assess the credit product or credit limit increase as unsuitable if a circumstance exists that triggers a statutory presumption, unless you can prove that, for the particular consumer, that circumstance does not mean the consumer can only meet their financial obligations with substantial hardship. The presumption that applies for all credit products is that if the consumer's principal place of residence would need to be sold to meet the financial obligations, the consumer would face substantial hardship. Note: See s118, 119, 139, 141 and 142 (credit assistance providers), 129 and 131 (credit providers), 152 and 154 (lessors). For small amount credit contracts, the contract will be presumed to be unsuitable if: • at the time of the assessment, the consumer is a debtor under another small amount credit contract and is in default in payment of an amount under that contract; or • in the 90-day period before the assessment, the consumer has been a debtor under two or more small amount credit contracts; or • a required amount of credit is to be provided under multiple small amount credit contracts or medium amount credit contracts, and the cost to the consumer is higher than the maximum charge payable under a single credit contract. Note: These presumptions have applied since 1 July 2013: see s118(3A) (credit assistance providers, 131(3A) (credit providers), and reg 28XXF. For reverse mortgages, the contract will be presumed to be unsuitable where: • the youngest borrower under the reverse mortgage is 55 years or younger, and the loan-to-value ratio of the mortgage is higher than 15%; or • the youngest borrower under the reverse mortgage is older than 55 years, and the loan-to-value ratio of the mortgage is higher than the sum of 15% and 1% for each year that the borrower is older than 55 years. Note: This presumption has applied since 1 June 2013: see reg 28LC. For credit card contracts, the contract will be treated as unsuitable if the consumer could not comply with a requirement to repay an amount equal to the credit limit of the contract within a period of three years. Note: This presumption has applied since 1 January 2019: see s118(3AA) (credit assistance providers), 131(3AA) credit providers). ASIC has prescribed the three-year period by a legislative instrument: see ASIC Credit (Unsuitability—Credit Cards) Instrument 2018/753.
5 Do not engage in regulated conduct if the credit product or credit limit increase is unsuitable	If the credit product, or an increase to the credit limit of an existing credit product, is unsuitable for the consumer, you must not: • suggest the product or increase to the consumer (or that the consumer remain in the product); • assist the consumer to apply for the product or increase; • make an unconditional representation that the consumer is eligible for the product or increase; or • enter into the product with the consumer, or increase the credit limit on an existing contract. Note 1: See s123, 124, 146 and 147 (credit assistance providers), 133 (credit providers), 156 (lessors). Note 2: The prohibition on making unconditional representations about eligibility applied from 1 March 2013.
6 If requested by the consumer, give the consumer a written copy of the assessment	If the consumer requests a copy of the assessment, you must give the consumer a written copy within the prescribed timeframes and free of charge. Note: See s120 and 143 (credit assistance providers), 132 (credit providers), 155 (lessors). For licensees who are assigned rights of a credit provider or lessor, the prescribed timeframe is extended: see reg 28M.

Appendix 2: Example written assessment

Note: This example has been provided to illustrate the kind of information we consider it would be useful to include in a written assessment for the document to be fit for its intended purpose. The example is not intended to be applied as a 'template' or to suggest the appropriate format. We recognise that the way the written assessment is presented is a matter for the licensee and will be affected by the way in which the licensee obtains and records information about its assessment and the information gathering steps undertaken to enable that assessment.

Consumer's details

Dependants

Number of dependants; type of dependants (e.g. minors, adult children, spouse, elder relatives); age of dependants

Residence

Home owner (with/without mortgage) or tenant

Requirements and objectives

Objective: Purpose of obtaining credit

Concise summary of the consumer's description of the purpose for obtaining, increasing or refinancing credit.

As an illustration, examples include:

(a) purchase an asset (e.g. residential property, car, whitegoods) of a specified value (or value range) or quality;

(b) purchase an asset of a specified value or quality *and* cover other costs associated with the purchase or the asset (e.g. valuations, transaction costs, necessary insurance or other products offered together with the asset);

(c) have access to a line of credit that includes loyalty benefits;

(d) have access to a line of credit for a specific purpose such as a holiday or international travel; to refinance or consolidated existing specified loans;

(e) lease goods and have flexibility to upgrade models at a future date;

(f) refinance a loan to a loan that is more affordable (with reference to whether transaction fees need to be financed, whether additional credit is sought and whether the term of the loan is to be extended from the current end date).

Requirements: Amount and term of credit requested

The amount or maximum amount of credit requested by the consumer, and the consumer's requested timeframe for completing repayments, including any flexibility the consumer requires around repayments (e.g. ability to repay early without additional fees or charges).

Requirements: Particular features requested or not wanted

Contract features the consumer has requested, and a description of whether any features are considered a priority or essential for the consumer.

Contract features the consumer has indicated are not wanted (particularly if additional charges will be incurred as a result).

Financial position

Current income

Amount of [weekly/fortnightly/monthly] net income.

Form of income (e.g. salary, investment returns, superannuation, social security payments).

Source of information used to verify this amount.

Current outgoings

Total amount of [weekly/fortnightly/monthly] outgoings.

Source(s) of information used to verify this amount.

Include breakdown of total amount to specify the following items.

Outgoings that must be maintained post-loan

Types of outgoings (e.g. debt commitments, rental, insurance, rates, child support) and the amount.

Outgoings that are likely to be maintained post-loan

Types of outgoings the consumer is not able or willing to reduce to afford the credit product, and the amount.

Outgoings that can be reduced if needed to meet repayments

Types of expenses the consumer indicates they can reduce to afford the credit product. Specify the current amount of those expenses, and the amount the consumer considers they could reduce those expenses to if required. Outline the basis on which you accept those reductions to be realistic.

Foreseeable changes to financial position

Any reasonably foreseeable changes to income/outgoings (e.g. the consumer has indicated that they are planning unpaid leave, the composition of their household is changing, or the consumer is approaching retirement).

If the purpose of credit is to purchase an asset that involves additional expenses (e.g. additional costs for operating a car and maintaining insurance) especially if required as a term of the contract—outline the nature of expenses taken into account and an estimated amount for those anticipated expenses.

Financial support from a third party

If the consumer relies upon financial support from another person, outline details including: amount of financial support required; who the person is; whether the person has acknowledged that they will be making funds available to the consumer; and the amount that will be available.

Source of information used to verify the person's financial position and capacity to provide the amount identified.

Assumptions dependent on consumer behaviour

If the consumer's capacity to make repayments depends on them taking particular action to reduce their current expenses or potential liabilities (e.g. by cancelling an existing credit card that is being paid out)—a clear statement of the action the consumer has stated they will take.

Credit product meets the consumer's requirements and objectives

A statement of whether the terms of the credit product meet each of the specified objectives and requirements.

If some requirements specified by the consumer are not met—outline whether this has been discussed with, and acknowledged by, the consumer.

Consumer's capacity to meet repayments

A statement of whether the consumer has the capacity to meet the financial obligations of the credit product.

Key terms

Term	Meaning in this document
ADI	Authorised deposit-taking institution, which has the meaning given in s5 of the National Credit Act
APRA	Australian Prudential Regulation Authority
ASIC	Australian Securities and Investments Commission
ASIC v Channic	*Australian Securities and Investments Commission v Channic Pty Ltd (No 4) [2016] FCA 1174*
ASIC v TCS	*ASIC v The Cash Store (in liquidation)* [2014] FCA 926
ASIC v Westpac	*Australian Securities and Investments Commission v Westpac Banking Corporation (Liability Trial)* [2019] FCA 1244
Ch 3 (for example)	A chapter of the National Credit Act (in this example numbered 3), unless otherwise specified
consumer	A natural person or strata corporation Note: See s5 of the National Credit Act
consumer lease	A consumer lease to which the National Credit Code applies Note: See s169–171 of the National Credit Code
Corporations Act	*Corporations Act 2001*, including regulations made for the purposes of that Act
credit	Credit to which the National Credit Code applies Note: See s3 and 5–6 of the National Credit Code
credit activity (or credit activities)	Has the meaning given in s6 of the National Credit Act
credit assistance	Has the meaning given in s8 of the National Credit Act
credit assistance provider	A person who provides credit assistance to a consumer in relation to a credit contract or a consumer lease and who is not the credit provider (for a credit contract) or the lessor (for a consumer lease)
credit contract	Has the meaning given in s4 of the National Credit Code
credit legislation	Has the meaning given in s5 of the National Credit Act
credit licence	An Australian credit licence under s35 of the National Credit Act that authorises a licensee to engage in particular credit activities
credit licensee	A person who holds an Australian credit licence under s35 of the National Credit Act
credit provider	Has the meaning given in s5 of the National Credit Act
credit representative	A person authorised to engage in specified credit activities on behalf of a credit licensee or registered person under s64(2) or s65(2) of the National Credit Act
credit service	Has the meaning given in s7 of the National Credit Act

Term	Meaning in this document
exempt special purpose funding entity	Has the meaning given in reg 3 of the National Credit Regulations
Explanatory Memorandum	Explanatory Memorandum to the National Consumer Credit Protection Bill 2009, unless otherwise specified
FCA	Financial Conduct Authority (UK)
Financial Services Royal Commission	Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry
general conduct obligations	The obligations under s47(1) of the National Credit Act
INFO 146 (for example)	An ASIC information sheet (in this example numbered 146)
lessor	Has the meaning given in s5 of the National Credit Act
loan-to-value ratio	The ratio calculated by dividing the amount of credit owed under a credit contract by the value of the mortgaged property, multiplied by 100
medium amount credit contract	Has the meaning given in s204 of the National Credit Code
National Credit Act	*National Consumer Credit Protection Act 2009*
National Credit Code	National Credit Code at Sch 1 to the National Credit Act
National Credit Regulations	National Consumer Credit Protection Regulations 2010
Privacy Act	*Privacy Act 1988*
reg 28J (for example)	A regulation of the National Credit Regulations (in this example numbered 28J), unless otherwise specified
REP 580 (for example)	An ASIC report (in this example numbered 580)
reverse mortgage	Has the meaning given in s5 of the National Credit Act, and includes a credit contract that is part of a reverse mortgage
reverse mortgage information statement	Has the meaning given in s5 of the National Credit Act
reverse mortgaged property	Has the meaning given in s204 of the National Credit Code
RG 205 (for example)	An ASIC regulatory guide (in this example numbered 205)
s47 (for example)	A section of the National Credit Act (in this example numbered 47), unless otherwise specified
servicing agreement	Has the meaning given in s5 of the National Credit Act
small amount credit contract	Has the meaning given in s5 of the National Credit Act
Social Security Act	*Social Security Act 1991*
standard home loan	Has the meaning given in s5 of the National Credit Act

Related information

Headnotes

Consumer lease, credit assistance provider, credit card contract, credit contract, credit licence, credit licensee, credit provider, lessor, responsible lending, reverse mortgage, small amount credit contract, standard home loan

Regulatory guides

RG 203 *Do I need a credit licence?*

RG 205 *Credit licensing: General conduct obligations*

Information sheets

INFO 100 *Margin lending: Getting or varying an AFS licence*

INFO 146 *Responsible lending disclosure obligations: Overview for credit licensees and representatives*

INFO 185 *Using ASIC's reverse mortgage calculator*

Reports

REP 493 *Review of interest-only home loans: Mortgage brokers' inquiries into consumers' requirements and objectives*

REP 580 *Credit card lending in Australia*

REP 590 *Response to submissions on CP 303 Credit cards: Responsible lending assessments*

Legislative instruments

ASIC Credit (Unsuitability—Credit Cards) Instrument 2018/753

Legislation

ASIC Act, Pt 2, Div 2

Consumer Credit Protection Amendment Regulation 2012 (No. 4); Consumer Credit Protection Amendment Regulation 2013 (No. 2)

Corporations Act, Div 4A of Pt 7.8

National Credit Act, Ch 3, s8, 47, 115–133, 133AC–133AD, 133BC, 133CC, 133DB–133DD, 136–147, 149, 151–156, 158; National Credit Code, s31A(1A), 76, 204; National Credit Regulations, regs 28HA, 28J, 28LC, 28M, 28S, 28XXF

Privacy Act, s21P, 26M; Privacy (Credit Reporting) Code 2014

Social Security Act

Treasury Laws Amendment (Banking Measures No. 1) Bill 2017, Explanatory Memorandum

Cases

ASIC v The Cash Store (in liquidation) [2014] FCA 926

Australian Securities and Investments Commission v Australia and New Zealand Banking Group Limited [2018] FCA 155

Australian Securities and Investments Commission v Channic Pty Ltd (No 4) [2016] FCA 1174

Australian Securities and Investments Commission v Westpac Banking Corporation (Liability Trial) [2019] FCA 1244

Silberman v Citigroup Pty Ltd [2011] VSC 514

Silberman v Citigroup Pty Ltd [2011] VSC 426

Zhang v Mercedes-Benz Financial Services Australia Pty Ltd [2008] VCAT 1939

Other references

APRA, APG 223 *Residential mortgage lending*

APRA, APS 220 *Credit quality*

APRA, CPG 220 *Risk management*

APRA, CPS 220 *Risk management*

> Note: Some of these standards are being reviewed. For release of updated versions, see Prudential and reporting standards for authorised deposit-taking institutions.

FCA, PS19/27 *Changes to mortgage responsible lending rules and guidance: Feedback on CP19/14 and final rules*

Financial Services Royal Commission, Interim report, September 2018

Treasury, *Credit cards: Improving consumer outcomes and enhancing competition*, August 2017