



11 March 2025

Regulatory Reform and Implementation
Regulation and Supervision
Australian Securities & Investments Commission

By email: rri.consultation@asic.gov.au

Buy Now Pay Later Regulatory Guidance

The Australian Banking Association (**ABA**) welcomes the opportunity to provide feedback on the draft Regulatory Guide 000, *Low cost credit contracts (Draft RG 000)*. We support the overall intent of the guidance and note that it provides some useful clarity on the operation of the legislation and the regulations.

Given the tight timeframe for implementation, the ABA is grateful for the proactive approach of ASIC in consulting upon a draft version of the regulatory guidance before the draft *National Consumer Credit Protection Amendment (Low Cost Credit) Regulations 2025 (draft regulations)* were finalised. We request that ASIC conduct further targeted consultation on any changes to the guidance that may result from material variations to the registered version of the regulations.

Our submission to the draft regulations points to some of the challenges associated with the fee cap and with the mandatory inquiry framework. Irrespective of whether these challenges are addressed through the final regulations, we consider that they are relevant to the drafting of the regulatory guidance. As such, we have provided some comments below aimed at assisting clarity for licensees and ensuring the intent of the law and regulations are understood and appropriately implemented.

1. The scope of the LCCC framework

Under the legislation, a licensee may elect to apply the modified responsible lending obligations to all, or a class of, low cost credit contracts (**LCCCs**). However, other obligations such as the additional disclosure obligations and the requirement to send a first default in payment notice, do not appear to be limited to contracts where the modified responsible lending obligations have been applied in assessing a customer's application.

If interpreted this way, the legislation could impose new and differing obligations in relation to contracts that are already subject to the full responsible lending obligation (**RLO**) regime under the National Consumer Credit Protection Act (**NCCP Act**). The result would be that certain lower risk credit products such as low limit, low interest credit cards would be subject to a higher level of regulation than their higher fee counterparts. This is a perverse outcome that may result in such products becoming less viable for licensees to offer.

Recommendation 1

It is important for ASIC's regulatory guidance to clarify that the additional obligations that apply to LCCCs **do not** apply where a provider has not made an election to rely on the modified responsible lending obligations.

2. Fee cap framework

The draft regulations prescribe annual fee caps for a credit contract to be a LCCC.¹ This is referenced in RG 000.16 of the draft regulatory guidance.

¹ See subregulation 69G.

The ABA has a general enquiry relating to the fee cap framework. If a product falls under the definition of an LCCC but the provider chooses to undertake a full credit assessment, we seek to confirm that the fees and charges attributable to that product will not contribute to the fee cap in a way that could prevent the customer from being assessed under the regime for another LCCC product.

RG 000.6 provides that where a credit contract falls within the definition of an LCCC, however it is characterised, it is regulated “only” as an LCCC. This appears inconsistent with later guidance in RG 000.62 that if an election is not made in relation to all or a class of LCCCs, compliance with the standard RLO obligations is required.

Recommendation 2

The guidance should clarify that, where a credit licensee has not elected for the modified RLO regime to apply to a class of credit contracts, the standard responsible lending requirements will apply even if that class of products falls under the definition of an LCCC.

Further, the guide should also clarify that, where a credit licensee does not elect to be part of the of the modified RLO regime for all or part of their product suite, the relevant credit contracts are not subject to any of the benefits or restrictions of the regime, and will not contribute to the fee cap for a customer if they have another product that the licensee has elected to be under the regime.

3. Definition of fees and charges

We note that some LCCC products may offer additional services not related to credit provision (e.g. they may be able to be used overseas or by an additional cardholder where the LCCC product is linked to a card). These additional services only attract a fee for the customers that opt-in to use them.

The ABA is of the view that it would be undesirable for these additional fees to be considered under the fee cap regime because they are unrelated to the provision of credit. Rather, they relate to additional ‘opt-in’ services that customers may find convenient and beneficial to have access to. We note that excluding non-credit fees and charges would bring the operation of draft sub reg 69G in line with existing reg 51 of the *National Credit Regulations*.

Recommendation 3

RG 000.17 outlines what is excluded from the definition of fees and charges in sub reg 69G of the draft regulations. Subject to ASIC adopting recommendation 1 (above), the ABA recommends this list should be expanded to specify that any fees and charges not related to the provision of credit are excluded.

4. Mandatory inquiries

RG 000.25-33 set out more information about the mandatory inquiries that a credit licensee must make about a consumer’s income, expenditure and other credit products, as well as credit history.

We note that existing ASIC Regulatory Guidance 209, *Credit licensing: Responsible lending conduct* (RG 209) outlines circumstances where it may be reasonable for a credit licensee to rely on existing information that they hold about the customer.² This clarification is absent from the draft regulatory guidance, and we ask that it please be included.

Recommendation 4

‘Reasonable steps’ under RG.00027(b) should be clarified to include a credit licensee checking internal transaction data to verify if evidence of any other low cost credit contracts, small amount credit contracts and/or consumer leases could be found.

² See RG 209.112



5. Electing to comply with modified RLOs

The ABA requests further clarification on how an entity can elect to comply with the modified RLOs. In particular, we seek ASIC's guidance as to the requirements on how this election is made or recorded and whether any disclosure is required to be made.

Recommendation 5

As a matter of simplicity, the list of elections or revocations could be listed on bank websites in addition to being reflected in elected product contracts for low cost credit.

6. Start date and transition

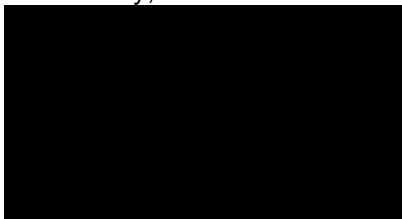
Recommendation 6

The guidance provides a start date of 10 June 2025 but should be corrected to 11 June 2025 on the basis that the legislation provides that "if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period." Given Royal Assent occurred on 10 December 2025, the latter is the relevant date.

In our submission to the regulations, the ABA requested consideration of the start date be moved back by a further 6 months to ensure that licensees have sufficient regulatory clarity in the regulations and the guidance ahead of implementation of changes. We note that the current start date provides very little time for licensees to undertake updates to systems, policies and procedures and customer terms and conditions.

Thank you for the opportunity to provide our feedback. Should you require any further information or clarification, please contact [REDACTED], Policy Director [REDACTED]

Yours sincerely,



[REDACTED], Policy Director
Australian Banking Association