



National Australia Bank Submission

Feedback on ASIC buy now pay later
regulatory guidance

(Consultation Paper 382 in relation to
draft Regulatory Guide 000, Low cost
credit contracts)

March 2025

Introduction

National Australia Bank (NAB) welcomes the opportunity to provide feedback on the Australian Securities & Investments Commission (ASIC)'s low cost credit contracts regulatory guidance (Guidance).

NAB supports the regulation of low cost credit contracts (LCCC) and buy now pay later (BNPL) products, the introduction of modified Responsible Lending Obligations (RLOs) and designation of BNPL products as part of the Low Cost Credit Contract (LCCC) product class.

As with our previous submission to Treasury's consultation on BNPL/LCCC, NAB's position is informed by the perspective of a provider of various lending products including a BNPL proposition (NAB Now Pay Later).

Executive Summary

NAB's submission focuses on areas where the draft regulation could provide more clarity – specifically, regarding the modified RLOs and enquiries about the consumer's income and expenditure, as well as the feasibility of obtaining comprehensive information about other LCCC products. This includes seeking:

- Illustrative examples of reasonable income and expenditure verification for LCCC product origination in a digital setting.
- Confirmation that existing and current customer information can be used to provide an understanding of an applicant's overall financial situation when making a credit decision.
- Clarification that where applicants hold LCCCs that are not reported under Comprehensive Credit Reporting, that LCCC providers may rely on a combination of existing financial information and credit bureau checks in the unsuitability assessment.
- Clarification that no additional requirements in relation to account statements will be applied to LCCCs, where section 33(3)(g) is relied upon and the contract terms establish the frequency and method of calculation of repayments.

Responsible Lending Obligations

Enquiries about the consumer's income and expenses

NAB acknowledges that a principles-based approach has been taken for the modified RLOs, to give LCCC providers flexibility to apply them in a manner that is tailored to their product and target market.

We seek clarification and illustrative examples of what would be considered 'reasonable' inquiries and verification in context of paragraphs 000.34 and 000.35 of ASIC's draft Regulatory Guidance 000, which state that '[the factors outlined in Table 2 below paragraph 000.36] are generally intended to lower the scope and intensity of the inquiries and verification required under s130'. Given that the majority of BNPL credit assessments utilise digital origination, it would be beneficial to providers to have examples of what is contemplated by validating financial information ingested from a customer. We note illustrative examples in RG 209 provide greater clarity in reliance on regulatory guidance.

We also seek clarification in paragraph 000.28 of ASIC's draft Regulatory Guidance 000, where a credit provider holds financial data for a debtor which supports an understanding of the customer's overall financial position and profile. This combination of current financial information can provide a solid understanding of the consumer's unique financial capacity.

We consider addressing reliance on existing and current customer information for credit decisioning (in 000.28) is consistent with the principle-based scaling of information collection reflected in the modified responsible lending obligations for low-cost credit contracts. This would align with RG209.24 objectives that '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.'

We request guidance in 000.28 to align with RG209.112 which addresses financial information from an existing relationship with a debtor. Specifically for the scaled responsible lending obligations for low-cost credit contracts, that the unsuitability assessment may be conducted on relevant financial information held for the debtor, since this will also be supported with external credit bureau checks on liabilities and outgoings benchmarked.

The financial data available within a debtor's overall financial position variably includes evidence of frequency and regular income credits in reliable patterns. Alternatively, regular deposit credits can indicate derived salary at an estimated level. Predictive level of outgoings and expenses for the debtor can be determined from combined sources including transaction data patterns, level of financial commitments, discretionary spend and customer profiling with internal and/or external industry expense benchmarks.

Therefore, the debtor's financial capacity can be determined from the overall surplus balances or deficits and assess the likelihood of the credit contract contributing to financial harm.

Enquiries about the consumer's other debts including Low Cost Credit Contracts

NAB notes that under the new legislation, mandatory comprehensive credit reporting will not extend to all LCCC providers. This continues to present a challenge for providers seeking to accurately verify other LCCCs a customer may have, should the customer fail to disclose these, as LCCCs may not necessarily appear on a customer's credit report.

Instead, where financial data is held for the debtor, this may be relied on to indicate outgoings and payments for these other credit products or an absence of these commitments to inform the unsuitability assessment. We request the Regulatory Guidance also clarifies reliance on this combination of sources, existing financial data and available credit bureau information, to provide sufficient information to support the credit assessment and provide a reasonable picture of the customers LCCC commitment.

The introduction of comprehensive reporting would provide a single reliable source of information for providers, if obligations are applied to include this financial information in the credit assessment.

Credit related documentation

Statement of account

As drafted, the legislative amendments indicate that LCCC providers will be required to provide customers with a range of credit-related documentation, similar to 'traditional' credit card products.

RG000.73 & 000.74 provide guidance for financial table disclosure requirements in section 17(7) of NCC to disclose the frequency of repayments and the method of calculating the amount of the repayments. This will avail of section 33(3)(g) of the National Credit Code that 'A statement of account need not be given if ...the credit provider satisfies the requirements prescribed in the regulations for this paragraph.'

Therefore, we note that currently no amendment to Regulation 79 of NCCP Regulations has been made specifically for low cost credit contracts.

Conclusion

NAB considers that further clarity on the items above would be beneficial for all providers of LCCC's to ensure that these provide a safe and secure form of credit for consumers.

NAB has greatly appreciated efforts and consultation to date to ensure that LCCC products are regulated in a way that protects and makes sense for consumers and allows for continued innovation and development of this product class.