



ASIC

Australian Securities & Investments Commission

REGULATORY GUIDE 209

Credit licensing: Responsible lending conduct

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About this guide

This is a guide for credit licensees, credit applicants and unlicensed carried over instrument lenders (unlicensed COI lenders).

It sets out ASIC's expectations for meeting the responsible lending obligations in Ch 3 of the *National Consumer Credit Protection Act 2009* (National Credit Act).

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 November 2014 and is based on legislation and regulations as at the date of issue.

Previous versions:

- Superseded Regulatory Guide 209, issued 26 February 2010, reissued 25 June 2010, 31 March 2011, February 2013 and September 2013

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 the responsible lending conduct obligations in Ch 3 of the *National Consumer Credit Protection Act 2009* (National Credit Act). The key concept is that credit licensees must not enter into a credit contract or consumer lease with a consumer, suggest a credit contract or consumer lease to a consumer or assist a consumer to apply for a credit contract or consumer lease if the credit contract or consumer lease is unsuitable for the consumer.

As a credit licensee, you must decide how you will meet the responsible lending obligations. This guidance sets out our expectations for compliance.

Meeting your responsible lending obligations will require taking three steps:

- make reasonable inquiries about the consumer's financial situation, and their requirements and objectives;
- take reasonable steps to verify the consumer's financial situation; and
- make a preliminary assessment (if you are providing credit assistance) or final assessment (if you are the credit provider or lessor) about whether the credit contract or consumer lease is 'not unsuitable' for the consumer (based on the inquiries and information obtained in the first two steps).

In addition, if the consumer requests it, you must be able to provide them with a written copy of the preliminary assessment or final assessment (as relevant).

This section of the guide sets out the context of the responsible lending obligations and provides an overview of our guidance.

The responsible lending obligations

RG 209.1 The National Credit Act contains responsible lending obligations for credit licensees. These conduct obligations apply to 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).

Note 1: The *Corporations Act 2001* has been amended to include a responsible lending obligation in relation to margin loans under the *Corporations Legislation Amendment (Financial Services Modernisation) Act 2009*. This guide does not deal with the responsible lending provisions in relation to margin lending.

Note 2: The responsible lending conduct obligations for credit assistance providers and some credit providers and lessors have applied since 1 July 2010. For the remaining credit providers and lessors (i.e. authorised deposit-taking institutions (ADIs) and registered finance corporations), the obligations have applied since 1 January 2011.

Note 3: The responsible lending obligations apply to all credit contracts and consumer leases. However, from 1 March 2013, some additional obligations and provisions apply in relation to small amount credit contracts. From 1 June 2013, additional obligations and provisions apply in relation to reverse mortgages. Further information on these additional obligations and provisions is included in Sections B and C.

RG 209.2 The primary obligation is to conduct an assessment that the credit contract or consumer lease is ‘not unsuitable’ for the consumer: see Section C. This assessment is referred to as a ‘preliminary assessment’ (if you are providing credit assistance) or a ‘final assessment’ (if you are the credit provider or lessor).

Note: See s115, 116, 117, 128, 129, 130, 138, 139, 140, 151, 152 and 153 of the National Credit Act.

RG 209.3 A credit contract or consumer lease will be, and must be assessed as, unsuitable where, at the time of the assessment, it is likely that:

- (a) the contract does not meet the consumer’s requirements and objectives;
- (b) the consumer will be unable to meet their payment obligations, either at all or only with substantial hardship; or
- (c) other circumstances prescribed in the regulations apply to the contract.

Note 1: In some circumstances, there are presumptions that the consumer will only be able to meet their payment obligations with substantial hardship. These circumstances are discussed further at RG 209.108 and RG 209.111–RG 209.115.

Note 2: The additional prescribed circumstances in which certain contracts will be unsuitable are discussed further at RG 209.125–RG 209.131.

RG 209.4 In undertaking the assessment, you must:

- (a) make reasonable inquiries about both the consumer’s requirements and objectives and their financial situation; and
- (b) take reasonable steps to verify the consumer’s financial situation (see Section B).

RG 209.5 The responsible lending obligations apply when:

- (a) if you are a credit assistance provider—you:
 - (i) suggest that the consumer apply, or assist the consumer to apply, for a particular credit contract or consumer lease;
 - (ii) suggest that the consumer apply, or assist the consumer to apply, for an increase to the credit limit on an existing credit contract; or
 - (iii) suggest that the consumer remains in an existing credit contract or consumer lease; or
- (b) if you are a credit provider or lessor—you:
 - (i) enter into a credit contract or consumer lease with the consumer;
 - (ii) increase the credit limit on an existing credit contract; or

- (iii) make an unconditional representation to a consumer that you consider that they are eligible to enter into a credit contract or consumer lease with you, or that the credit limit of an existing credit contract with you will be able to be increased.

Note 1: For further guidance on ‘assisting’ and ‘suggesting’, see Regulatory Guide 203 *Do I need a credit licence?* (RG 203).

Note 2: The obligation to assess unsuitability before making an unconditional representation about a consumer’s eligibility to enter into a credit contract or consumer lease, or to increase a credit limit on a credit contract, applies from 1 March 2013.

RG 209.6 This means that the responsible lending obligations do not just apply to new credit contracts and consumer leases—the obligations also apply when you are considering whether to increase a credit limit under an existing credit contract (if you are a credit provider) or when you are providing credit assistance in relation to an existing credit contract or consumer lease by suggesting that the consumer remains in the contract, suggesting that the consumer applies for an increased credit limit, or assisting the consumer to apply for an increased credit limit. If credit assistance is provided, the responsible lending obligations must be complied with even if the consumer does not subsequently enter into the credit contract or consumer lease.

Note: See s115(1)(b), 115(2), 128(b), 138(1)(b) and 138(2).

RG 209.7 In addition, if the consumer requests it, you must be able to provide them with a written copy of the preliminary assessment or final assessment (as relevant).

Note 1: See s120, 132, 143 and 155.

Note 2: 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 contract or consumer lease 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.

The responsible lending obligations of credit assistance providers, credit providers and lessors

RG 209.8 Our guidance generally applies equally to credit providers, lessors and credit assistance providers—however, there are times when the obligations of these groups will differ. Within the broad classes of credit providers, lessors and credit assistance providers, different business models, product types and differences in the services provided may mean that different or additional steps are required to ensure compliance with the responsible lending obligations: see RG 209.23–RG 209.27 for further guidance.

- RG 209.9 We expect that the compliance processes a credit licensee puts in place will depend on the business model, product type and credit activities that the licensee undertakes or offers: see RG 209.38–RG 209.45.
- RG 209.10 Table 1 summarises the general Ch 3 obligations for credit assistance providers, and Table 2 summarises the general Ch 3 obligations for credit providers and lessors. These tables also indicate where our guidance on these obligations is located in this regulatory guide.

Table 1: Summary of key responsible lending obligations for credit assistance providers

What you must do	Brief overview of obligation	Location of guidance
<p>1 Conduct reasonable inquiries about the consumer and verify the information obtained</p>	<p>You must, before making a preliminary assessment of whether a proposed credit contract or consumer lease is 'not unsuitable' for a consumer:</p> <ul style="list-style-type: none"> • make reasonable inquiries about the consumer's financial situation; • make reasonable inquiries about the consumer's requirements and objectives; • take reasonable steps to verify the consumer's financial situation; and • take any steps prescribed by the regulations to verify any matter prescribed by the regulations: s117 and 140. <p>Note 1: For small amount credit contracts, you must obtain statements for accounts into which the consumer's income is paid to verify their financial situation: s117(1A). This additional requirement applies from 1 March 2013.</p> <p>Note 2: For reverse mortgages, you must make reasonable inquiries about the consumer's requirements and objectives in meeting possible future needs: reg 28HA of the National Consumer Credit Protection Regulations 2010 (National Credit Regulations). This additional requirement applies from 1 June 2013.</p>	Section B
<p>2 Based on these inquiries, make a preliminary assessment about whether the proposed credit contract or consumer lease is 'not unsuitable' for the consumer</p>	<p>The proposed credit contract or consumer lease will be unsuitable if, at the time of the preliminary assessment, it is likely that:</p> <ul style="list-style-type: none"> • the consumer will be unable to comply with their financial obligations under the proposed contract, or could only comply with substantial hardship; • the proposed contract will not meet the consumer's requirements or objectives; or • circumstances prescribed in the regulations apply to the proposed credit contract or consumer lease: s118(2), 119(2), 141(2) and 142(2). <p>Note 1: There are statutory presumptions that, in specified circumstances, the consumer will only be able to meet their payment obligations with substantial hardship. These presumptions apply:</p> <ul style="list-style-type: none"> – for all credit contracts and consumer leases—where the consumer could only comply with their financial obligations by selling their principal place of residence; or – for small amount credit contracts—where 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. This presumption applies from 1 March 2013. 	Section C

What you must do	Brief overview of obligation	Location of guidance
	<p>Note 2: Additional circumstances in which certain credit contracts will be unsuitable are prescribed:</p> <ul style="list-style-type: none"> – for small amount credit contracts—in reg 28XXF of the National Credit Regulations. This regulation applies from 1 July 2013; and – for reverse mortgages—in reg 28LC of the National Credit Regulations. This regulation provides that, in the specified circumstances, a credit contract will be presumed to be unsuitable, unless proved to the contrary. This presumption applies from 1 June 2013. 	
<p>3 If requested by the consumer, give the consumer a written copy of the preliminary assessment</p>	<p>If the consumer requests a copy of the preliminary assessment, you must give the consumer a written copy of the assessment within the prescribed timeframes and free of charge: s120 and 143.</p>	<p>Section D</p>

Table 2: Summary of key responsible lending obligations for credit providers and lessors

What you must do	Brief overview of obligation	Location of guidance
<p>1 Conduct reasonable inquiries about the consumer and verify the information obtained</p>	<p>You must, before making a final assessment of whether a credit contract or consumer lease is 'not unsuitable' for a consumer:</p> <ul style="list-style-type: none"> • make reasonable inquiries about the consumer's financial situation; • make reasonable inquiries about the consumer's requirements and objectives; • take reasonable steps to verify the consumer's financial situation; and • take any steps prescribed by the regulations to verify any matter prescribed by the regulations: s130 and 153. <p>Note 1: For small amount credit contracts, you must obtain statements for accounts into which the consumer's income is paid to verify their financial situation: s130(1A). This additional requirement applies from 1 March 2013.</p> <p>Note 2: For reverse mortgages, you must make reasonable inquiries about the consumer's requirements and objectives in meeting possible future needs: reg 28HA of the National Credit Regulations. This additional requirement applies from 1 June 2013.</p>	<p>Section B</p>
<p>2 Based on these inquiries, make a final assessment about whether the credit contract or consumer lease is 'not unsuitable' for the consumer</p>	<p>The credit contract or consumer lease will be unsuitable if, at the time of the final assessment, it is likely that:</p> <ul style="list-style-type: none"> • 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 to the credit contract or consumer lease: s131(1) and 154(2). <p>Note 1: There are statutory presumptions that, in specified circumstances, the consumer will only be able to meet repayments with substantial hardship. These presumptions apply:</p> <ul style="list-style-type: none"> – for all credit contracts and consumer leases—where the consumer could only comply with their financial obligations by selling their principal place of residence; or – for small amount credit contracts—where 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. This presumption applies from 1 March 2013. 	<p>Section C</p>

What you must do	Brief overview of obligation	Location of guidance
3 If requested by the consumer, give the consumer a written copy of the final assessment	<p>Note 2: Additional circumstances in which certain credit contracts will be unsuitable are prescribed:</p> <ul style="list-style-type: none"> – for small amount credit contracts—in reg 28XXF of the National Credit Regulations. This regulation applies from 1 July 2013; and – for credit contracts that are part of a reverse mortgage—in reg 28LC of the National Credit Regulations. This regulation provides that, in the specified circumstances, a credit contract will be presumed to be unsuitable, unless proved to the contrary. This presumption applies from 1 June 2013. <p>If the consumer requests a copy of the final assessment, you must give the consumer a written copy of the assessment within the prescribed timeframes and free of charge: s132 and 155.</p>	Section D

Documents you must provide to consumers

- RG 209.11 In addition to the responsible lending obligations discussed above, Ch 3 also requires you to provide certain documents to consumers at particular stages of the credit process. The appendix summarises these documentation requirements. Section D outlines our guidance on the obligation to provide a consumer with a copy of the assessment that a credit contract or consumer lease is ‘not unsuitable’.

Objective of the responsible lending obligations

- RG 209.12 The objective of the responsible lending obligations is to ensure that credit licensees do not suggest, assist with or provide a credit contract or consumer lease to a consumer that is unsuitable for the consumer. According to the Explanatory Memorandum to the National Consumer Credit Protection Bill 2009 (Explanatory Memorandum), the responsible lending provisions are intended to:
- (a) introduce standards of conduct to encourage prudent lending and leasing, and impose sanctions in relation to irresponsible lending and leasing (see para 3.16); and
 - (b) curtail undesirable market practices, particularly where intermediaries are involved in lending (see para 3.11).
- RG 209.13 Additional responsible lending requirements for small amount credit contracts have been imposed because of the particular risks to consumers that can result from using these kinds of credit contracts. In particular, there are risks 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: For more information, see para 4.7 of the Explanatory Memorandum to the Consumer Credit and Corporations Legislation Amendment (Enhancements) Bill 2011.

Our general approach to administering the responsible lending obligations

RG 209.14 This guide sets out our expectations for compliance with the responsible lending obligations, including the kind of conduct we will expect from you. We will administer the responsible lending obligations to reduce the risk of consumers being offered credit contracts or consumer leases that they cannot afford to repay or that are otherwise unsuitable for them, and to promote the objectives set out in RG 209.12.

RG 209.15 We will also take into account other obligations that apply to credit licensees, including the general conduct obligations you are required to meet under s47 of the National Credit Act, the consumer protection provisions in the *Australian Securities and Investments Commission Act 2001* (Pt 2, Div 2) 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).

B Making reasonable inquiries and verifications

Key points

To determine whether a credit contract or consumer lease is 'not unsuitable', you must make 'reasonable inquiries' about the particular consumer's financial situation and the consumer's requirements and objectives in relation to the credit contract or consumer lease. You are also required to take 'reasonable steps to verify' the consumer's financial situation.

The obligation to make reasonable inquiries, and to take reasonable steps to verify information, is scalable—that is, what you need to do to meet these obligations will vary depending on the circumstances.

For small amount credit contracts and reverse mortgages, there are additional requirements that need to be taken into account when determining what inquiries and verifications will be reasonable. These include:

- for small amount credit contracts—a minimum requirement, which may not be 'scaled down', to obtain account statements to verify the consumer's financial situation; and
- for reverse mortgages—the requirement to make inquiries about the consumer's possible future needs, including the possible need for aged care accommodation and whether the consumer intends to leave equity in their home to their estate.

This section sets out guidance on our expectations about making reasonable inquiries, and what constitutes taking reasonable steps to verify information provided by the consumer.

- RG 209.16 Your key responsible lending obligation is to ensure that you do not enter into a credit contract or consumer lease with a consumer, suggest a credit contract or consumer lease to a consumer, or assist a consumer to apply for a credit contract or consumer lease if the credit contract or consumer lease is unsuitable for the consumer.
- RG 209.17 From 1 March 2013, credit licensees who are credit providers and lessors are also required to assess whether a credit contract or consumer lease is unsuitable for a consumer before making an unconditional representation to the consumer that the licensee considers that the consumer is eligible to enter into a credit contract or consumer lease with the licensee, or that the credit limit of an existing credit contract will be able to be increased.
- RG 209.18 To determine whether a credit contract or consumer lease is unsuitable, the legislation states that you must make reasonable inquiries about the consumer. The legislation requires credit assistance providers, credit providers and lessors to:

- (a) make reasonable inquiries about the consumer's requirements and objectives in relation to the credit contract or consumer lease;
- (b) make reasonable inquiries about the consumer's financial situation (i.e. to determine whether the consumer has the capacity to meet their payment obligations under the credit contract or consumer lease being considered); and
- (c) take reasonable steps to verify the consumer's financial situation.

Note: See s117, 130, 140 and 153.

Scalability of the reasonable inquiries and verification obligations

The level of inquiries you need to make depends on the circumstances

RG 209.19 The legislation requires that you make inquiries about the particular consumer, and verify information obtained about their financial situation, to a reasonable standard. In general, we consider that the obligation to make reasonable inquiries and take reasonable steps to verify information is scalable—that is, what you need to do to meet these obligations in relation to a particular consumer will vary depending on the 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 Explanatory Memorandum, paras 3.71 and 3.140.

RG 209.20 For some kinds of credit contracts there are additional statutory provisions that require that particular inquiries and verifications be made:

- (a) For small amount credit contracts, there are additional statutory provisions that limit the circumstances in which these kinds of contracts can be entered into, and that specify particular steps that must be taken to verify the consumer's financial situation. We expect that you will need to make all inquiries and verifications that are necessary for you to be satisfied that the provisions will not be breached if the consumer enters into the contract. We consider these to be minimum inquiry and verification requirements.

Note: The additional provisions in relation to small amount credit contracts apply from 1 March 2013.

- (b) For reverse mortgages, there are additional statutory provisions that specify particular inquiries that must be made about the consumer's requirements and objectives.

Note: The additional provisions in relation to reverse mortgage arrangements apply from 1 June 2013.

RG 209.21 These additional minimum requirements do not limit the steps that would otherwise be considered 'reasonable steps' to inquire about and verify the

consumer's financial situation, requirements and objectives. Even if you are satisfied that the additional minimum requirements will not prevent the consumer from entering into the credit contract, you will still need to make any further inquiries and verifications that are reasonable according to the circumstances of the particular consumer. For more information about the additional inquiry and verification requirements for small amount credit contracts, see RG 209.57–RG 209.70. For more information about the additional inquiry requirements for reverse mortgages, see RG 209.71–RG 209.76.

RG 209.22 We have set out some relevant factors in relation to the concept of scalability in Table 3.

Table 3: Factors relevant to the scalability of the reasonable inquiries and verification obligations

Relevant factor	Effect on the obligations
Potential impact on the consumer of entering into an unsuitable credit contract or consumer lease	<p>More extensive consumer inquiries are likely to be necessary where the potential negative impact on the consumer is likely to be relatively serious if the credit contract or consumer lease is unsuitable—for example, if the size of a loan is large <i>relative</i> to the consumer's capacity to repay the loan. This is because even a small loan can cause financial difficulties for a consumer on a low income; therefore, in this situation, we expect that you will need to make more inquiries in order to meet your responsible lending obligations.</p> <p>Note: See also Explanatory Memorandum, para 3.71.</p>
Complexity of the credit contract or consumer lease	<p>Less extensive inquiries are likely to be necessary where the credit contract or consumer lease has relatively simple terms that most consumers can easily understand. More extensive inquiries are likely to be necessary where the credit contract or consumer lease has complex terms.</p>
Capacity of the consumer to understand the credit contract or consumer lease	<p>More inquiries about the consumer's requirements and objectives are likely to be necessary where it is evident to you that:</p> <ul style="list-style-type: none"> the consumer has limited capacity to understand the credit contract or consumer lease, and their payment obligations under that contract—for example, where the consumer has limited English-speaking skills; the consumer has conflicting objectives; the consumer is confused about their objectives (or has difficulty articulating them); or there is an apparent mismatch between the consumer's objectives and the product being considered by the consumer. <p>Note: We do not expect you to routinely evaluate the capacity of consumers to understand the credit product. Rather, we expect that this factor will be taken into account if it is clearly an issue.</p>
Whether the consumer is an existing customer or a new customer	<p>If you are a credit provider or lessor, you may be able to make less extensive inquiries about the consumer, and take less extensive steps to verify information, where the consumer is an existing customer and you already hold information about the consumer. More extensive inquiries and verification would be required for a new customer.</p>

Note: This is not intended to be an exhaustive list of potentially relevant factors that you can consider when deciding whether inquiries should or could be 'scaled up' or 'scaled down' in order to meet the 'reasonable inquiries' threshold.

Example 1: 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 utilising 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 Table 5 in the appendix, and Information Sheet 185 *Using ASIC's reverse mortgage calculator* (INFO 185).

What amounts to a reasonable level of inquiries depends on the nature of the services and products you offer to consumers

RG 209.23 The responsible lending obligations for credit providers, lessors and credit assistance providers 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 credit assistance providers are in Pt 3-1 of Ch 3 (for credit contracts) and Pt 3-3 of Ch 3 (for consumer leases); the provisions for credit providers are in Pt 3-2 of Ch 3; and the provisions for lessors are in Pt 3-4 of Ch 3.

- RG 209.24 The services that credit providers, lessors and credit assistance providers offer to consumers are different. We expect you to apply this guidance in the context of the services and products you provide.
- RG 209.25 This means that what amounts to a ‘reasonable level of inquiries’ and taking ‘reasonable steps to verify’ can differ, depending on the type of services and products you provide to consumers.

Example 2: Scalability in relation to the services you provide

If a credit licensee offers a debt consolidation service to consumers, which includes a review of current debts and how these could best be structured, we would expect them to undertake a greater level of inquiries and verifications to gain a more comprehensive understanding of a consumer’s financial situation. We would expect the licensee to make more detailed inquiries into the terms of the consumer’s existing contracts and the consumer’s objectives in consolidating their current debts, and consider whether entering into the new credit contract and terminating the existing contracts would meet the consumer’s objectives.

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

- RG 209.26 In administering the law on the reasonable inquiries and verification obligations, we will take into account all the circumstances when determining whether you have satisfied your obligations. This would include the nature of the services you offer—that is, whether you are a credit provider, a lessor or a credit assistance provider.
- RG 209.27 It would be reasonable to expect a credit provider, for example, to obtain a credit report, but this may not be reasonable for credit assistance providers.

What inquiries should you make?

- RG 209.28 We expect you to decide what inquiries it is reasonable for you to make in order to meet your responsible lending obligations in relation to a particular consumer. However, when considering whether you have conducted reasonable inquiries, we will look at whether you have made inquiries about the kinds of issues listed in RG 209.30–RG 209.34.
- RG 209.29 As discussed earlier in this section, we consider that the obligation to make reasonable inquiries is scalable. The lists of factors that follow are not designed to be ‘checklists’ that we expect you to follow in each instance.

Reasonable inquiries about a consumer’s financial situation

- RG 209.30 The obligation to make reasonable inquiries about the consumer’s financial situation requires you to find out about the particular consumer’s current

situation. This involves obtaining information about the consumer's actual income, expenses and other circumstances that are likely to affect their ability to meet the financial obligations of the proposed credit contract or consumer lease.

RG 209.31 The obligation to make reasonable inquiries about the consumer's financial situation has been the subject of judicial consideration in *ASIC v The Cash Store (in liquidation)* [2014] FCA 926 (*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.

Note: *ASIC v TCS* is the first judicial decision on the application of the responsible lending provisions. While this case dealt specifically with the provision of small amount credit contracts to consumers, we consider that many of the findings in this decision provide general support for the views outlined in this guide, and are more broadly relevant.

RG 209.32 Reasonable inquiries about a consumer's financial situation will generally include:

- (a) the consumer's current amount and source of income or benefits (this would include the nature and length of their employment—for example, full-time, part-time, casual or self-employed—and whether all or part of the consumer's income is sourced from payments under the *Social Security Act 1991*);
- (b) the extent of the consumer's fixed expenses (such as rent, repayment of existing debts, child support and recurring expenses such as insurance); and
- (c) the consumer's variable living expenses (such as food and utilities) and drivers of variable expenses, such as dependants and any particular or unusual circumstances.

RG 209.33 Depending on the circumstances of the particular consumer, and the kind of credit contract or consumer lease they may acquire, reasonable inquiries could also include:

- (a) the consumer's other expenditure that may be discretionary (such as entertainment, take-away food, alcohol, tobacco and gambling);
- (b) the extent to which any existing debts are to be repaid from the credit advanced;

- (c) the consumer's credit history (including the number of small amount credit contracts the consumer has been a debtor under within the previous 90-day period, and whether the consumer has defaulted on payments under those contracts);
- (d) the consumer's circumstances, including their age (particularly where they may be a minor) and the number of dependants;
- (e) the consumer's assets, including their nature (such as whether they produce income) and value (see also RG 209.107–RG 209.108);
- (f) any significant changes to the consumer's financial circumstances that are reasonably foreseeable (such as a change in repayments for an existing home loan due to the ending of a 'honeymoon' interest rate period or other foreseeable interest rate changes, or changes to the consumer's employment arrangements such as seasonal employment or impending retirement and plans to fund retirement—for example, from superannuation or income-producing assets);
- (g) geographical factors, such as remoteness, which may require consideration of specific issues (such as potentially higher living costs compared to urban areas); and
- (h) indirect income sources (such as income from a spouse) where that income is reasonably available to the consumer, taking into account the history of the relationship and the expressed willingness of the earning person to meet repayment obligations.

Note 1: If you are considering the relevance of indirect income to a consumer's financial situation, you will need to obtain information about the earning person's financial situation and verify that information (including their ability and willingness to meet the repayment obligations of the consumer). You should ensure that the consumer and the earning person understand that the assessment of the consumer's capacity to repay depends on the availability of that income. The assessment should note that the borrower's capacity to repay depends on the availability of the indirect income: see also Section D.

Note 2: This list is for your guidance and is not intended to be an exhaustive list of potentially relevant inquiries.

Note 3: The Explanatory Memorandum states that 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 Explanatory Memorandum, paras 3.69 and 3.139. See also paras 3.70, 3.72, 3.140 and 3.141.

Reasonable inquiries about a consumer's requirements and objectives

RG 209.34 The obligation to make reasonable inquiries about a consumer's requirements and objectives requires you to find out sufficient details about why the particular consumer requires credit or a consumer lease, to enable

you to understand whether the credit contract or consumer lease they are being offered will meet that purpose.

Note: The Explanatory Memorandum states that the minimum requirement for satisfying reasonable inquiries about a consumer's requirements and objectives is to 'understand the purpose for which the credit is sought and determine if the type, length, rate, terms, special conditions, charges and other aspects of the proposed contract meet this purpose': see Explanatory Memorandum, paras 3.68 and 3.138.

RG 209.35 The obligation to make reasonable inquiries about the consumer's requirements and objectives has also been the subject of judicial consideration in *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 (such as 'personal' or 'living expenses') would not be sufficient.

RG 209.36 Depending on the circumstances, reasonable inquiries about a consumer's requirements and objectives could include inquiries about:

- (a) the amount of credit needed or the maximum amount of credit sought (e.g. the desired limit for a credit card);
- (b) the timeframe for which the credit or consumer lease is required;
- (c) the purpose for which the credit or consumer lease is sought and the benefit to the consumer;
- (d) whether the consumer seeks particular product 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 or consumer lease, to be included in the amount financed, and whether the consumer is aware of the additional costs of these expenses being financed.

Note: This list is for your guidance and is not intended to be an exhaustive list of potentially relevant inquiries.

RG 209.37 In relation to credit cards, the Explanatory Memorandum states that 'a credit card has no particular purpose and therefore there would be a limited requirement to understand the consumer's requirements and objectives in this case': see Explanatory Memorandum, Example 3.5 for further details. However, we expect that you would still make inquiries about the maximum limit the consumer requires on the card, as this is a key feature of the product that relates to the consumer's requirements and objectives.

Processes to ensure that reasonable inquiries are made

- RG 209.38 We expect that you will be able to demonstrate that you have adequate processes in place to ensure that you make reasonable inquiries about the consumer. If you do not have appropriate processes in place, it will be difficult for you to show that you are meeting your responsible lending obligations.
- RG 209.39 The process of making inquiries and verifying the information obtained will in many cases raise additional issues (e.g. if the information received is inconsistent with other information you have about the consumer). Your processes should be flexible and allow for additional inquiries to be made as needed.

Processes that are appropriate to your business model and the type of credit activities you are undertaking

- RG 209.40 We expect that the supervision and compliance processes you put in place will depend on your business model and the credit activities that you undertake. For example, if you have employees who are situated in a number of different locations, you will need to have specific measures in place to ensure that employees are adequately supervised. Adequate supervision could include a combination of having compliance staff in regional offices (or visiting regional offices), conducting regular auditing or ‘spot checks’ on staff in all locations, or using a centralised system for assessing credit applications.

Note: We have provided separate guidance in relation to meeting your general conduct obligations as a credit licensee: see RG 205.

- RG 209.41 Many credit providers and lessors also use credit application and behavioural scoring systems to decide whether or not to provide credit or a consumer lease to a customer. While these systems may assist you in meeting your responsible lending obligations, it is also important that the requirements of the legislation are met. For example, a consumer’s ability to comply with the financial obligations of a credit contract must be assessed (i.e. the capacity to meet payment obligations under the contract).
- RG 209.42 A system that only measures the credit risk of the consumer, but does not assess the consumer’s capacity to meet their payment obligations, will not meet the responsible lending requirements (although such a system may provide a good prediction about the overall risk of default in the loan portfolio).

Note: The Explanatory Memorandum states that the fact that an application for credit has satisfied a credit provider’s own policies for affordability does not necessarily mean that the application meets the standard required by the legislation. However, it is expected that the types of inquiries made and assessments conducted for the purposes of the credit provider’s internal standards and guidelines on affordability would, in most cases, be very similar to those that are required in order to assess the likelihood that a consumer can meet the financial obligations under the proposed contract: see Explanatory Memorandum, para 3.153.

Processes in relation to face-to-face and internet applications

- RG 209.43 Our guidance is technology neutral but, depending on the channel you use, you may need to adjust your processes to ensure compliance. We consider that you can meet your responsible lending obligations using an online or face-to-face approach.
- RG 209.44 The way we regulate the responsible lending provisions is the same, regardless of the way that you engage in your credit activities.
- RG 209.45 It is up to you to determine how you want to accept and process applications for credit products. Factors to consider include:
- (a) whether you are operating a high-volume business, which might lend itself to applications being taken by email or via the internet;
 - (b) whether you are engaging in a credit activity in relation to a small amount credit contract; and
 - (c) the complexity of the credit product that is being offered.

Verification of information provided by a consumer

How the verification obligation differs between credit providers, lessors and credit assistance providers

- RG 209.46 You are obliged to take reasonable steps to verify a consumer's financial situation. Generally, this will require some positive steps to verify the information provided by the consumer: see Table 4. As discussed earlier, what constitutes taking 'reasonable steps to verify' information is generally scalable, and what amounts to reasonable verification will depend on the information and resources that you have access to and the facts and circumstances of each case.
- RG 209.47 In contrast to a final assessment made by a credit provider or lessor for the purpose of entering into a credit contract or consumer lease with a consumer, the assessment made by a credit assistance provider is considered to be a 'preliminary' assessment, based on the information available to a credit assistance provider. This does not diminish a credit assistance provider's responsibilities with regard to verification—however, it recognises that a credit assistance provider may not have access to some information that is available to a credit provider or lessor. Credit providers and lessors generally have access to a wider range of information than credit assistance providers (e.g. through credit reports, or account information for existing customers).

Note: See Explanatory Memorandum, para 3.67.

- RG 209.48 We recognise that, in certain circumstances, some credit providers will be able to verify a consumer's financial situation without receiving additional

information from the consumer. For example, a bank could look at a consumer's regular deposited salary, the timing of credit card payments, and the payment of other expenses. However, credit providers should take care relying on such information, which may not reflect the consumer's entire financial position—for example, if the consumer holds credit cards with other financial institutions.

RG 209.49 After inquiries have been made and information about the consumer's financial situation has been gathered, a credit licensee may use benchmarks or automated systems and tools for testing the reliability of the information obtained as part of the process for taking reasonable steps to verify the consumer's financial situation. For example, these kinds of systems and tools can be useful for confirming whether it is reasonable to rely on the information provided by a consumer for the purposes of the unsuitability assessment, or whether further inquiries may be warranted. However, automated systems and tools are not a substitute for making inquiries about the consumer's current financial situation.

RG 209.50 If you use these kinds of systems and tools, you need to ensure that they are adequate and appropriate and that their use is regularly monitored and reviewed to ensure their continued effectiveness.

Table 4: Examples of the types of information you could use to verify a consumer's financial situation

Consumer	Types of information	Who should gather the information
For PAYG employees	Recent payroll receipts/payslips Confirmation of employment with the employer (subject to the requirements of the <i>Privacy Act 1988</i>)	Credit assistance providers, credit providers and lessors (see RG 209.53–RG 209.56 for guidance about sharing this information)
For self-employed consumers	Financial statements Business bank account statements Recent income tax returns A statement from the person's accountant setting out details of the consumer's financial position Business Activity Statements	Credit assistance providers, credit providers and lessors (see RG 209.53–RG 209.56 for guidance about sharing this information)

For all consumers	Credit report	Credit providers and lessors
	Information/reports from other credit providers (subject to the requirements of the <i>Privacy Act 1988</i>)	
	Bank account or credit card records held by the credit provider (e.g. expenses can be verified by examining account statements over a period of time), and other information held about an existing customer	For small amount credit contracts—credit assistance providers and credit providers

Note 1: This is not intended to be an exhaustive list of types of evidence that you could use to verify information provided by a consumer. As we have stated above, what amounts to taking 'reasonable steps to verify' information is scalable and depends on the circumstances.

Note 2: Other tools may become available to you in the future, which may further assist you in complying with the responsible lending obligations (e.g. comprehensive credit reports or a database of small amount credit contracts). As new verification tools become available to licensees, what constitutes 'reasonable steps to verify' information may change.

Note 3: The Explanatory Memorandum states that credit providers 'must make such efforts to verify the information provided by the client as would normally be undertaken by a reasonable and prudent lender' in the relevant circumstances: see Explanatory Memorandum, para 3.146.

What constitutes 'reasonable steps to verify' where a consumer provides inconsistent information?

RG 209.51 Taking reasonable steps to verify information may lead to making additional inquiries about the consumer. For example, it is likely that further inquiries and verification of information provided will be needed where:

- (a) the information that a consumer provides is inconsistent with other information that you hold about the consumer (e.g. a credit report or account information for existing customers that shows regular income or expenses that are significantly different to the stated income or expenses); and/or
- (b) the information that a consumer provides is outside the standard range for the consumer (e.g. the income stated is far greater than would be expected for the type of work the consumer undertakes, or their expenses are far lower than would be expected, as indicated by relevant benchmarks).

Example 3: Inconsistent information about income

A consumer describes themselves in an application for credit as a full-time student with a \$6,000 per month income. As this income is significantly outside the standard range expected for a student, the credit provider needs to make some additional inquiries, and take additional steps to verify, the stated income.

Example 4: Inconsistent information about expenses

While considering an application for a personal loan, the credit provider finds a reference in one of the consumer's bank statements to a payment of

another loan, which has not been referred to by the consumer. As this information provided by the consumer is inconsistent with other information available to the credit provider, the credit provider needs to make some additional inquiries and verifications about that loan (such as whether the consumer is still making repayments on that loan).

RG 209.52 You may also need to verify that the information you are relying on is up-to-date. This is particularly true when relying on information in a preliminary assessment: see RG 209.53–RG 209.56.

Can credit providers and lessors take into account information provided by a credit assistance provider or other third parties?

RG 209.53 The purpose of a preliminary assessment is to ensure that, as a credit assistance provider:

- (a) you do not suggest a credit contract or consumer lease to a consumer that you do not reasonably believe meets the consumer's requirements and objectives; and
- (b) you reasonably believe that the consumer has the capacity to meet their payment obligations under the contract without substantial hardship.

Note: See Explanatory Memorandum, para 3.66.

RG 209.54 In some instances, credit providers and lessors are provided with information about the consumer by a credit assistance provider, which may be based on information from a preliminary assessment.

RG 209.55 Credit providers and lessors are, however, still bound by the reasonable inquiries and verification obligations, as well as the general obligations such as to act efficiently, honestly and fairly: see s47(1)(a), 130 and 153. We expect that reasonable and prudent credit providers and lessors will 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 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: In *ASIC v TCS*, the credit provider was found to have breached its responsible lending obligations where it relied on a credit assistance provider to complete inquiries, verifications and assessments on its behalf and the credit assistance provider failed to do so. Davies J also referred to the lack of any recorded supervision by the credit provider as an important factor in determining what had taken place.

RG 209.56 However, credit providers and lessors should not rely on information if, despite having appropriate processes in place, they have any reason to doubt the reliability of the information.

Inquiries and verifications that must be made for small amount credit contracts

RG 209.57 For small amount credit contracts, there are additional statutory provisions that apply. These provisions limit the circumstances in which small amount credit contracts can be entered into, charges that can be made and specify particular steps that must be taken to verify the consumer's financial situation. To be satisfied that the provisions would not be contravened if the consumer enters into a small amount credit contract, you will need to:

- (a) make inquiries about whether 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 (because of the presumption of substantial hardship in these circumstances: s118(3A), 123(3A), 131(3A) and 133(3A));
- (b) make inquiries about the source and amount of the consumer's gross income (because of the prohibition on entering into small amount credit contracts where a consumer receives at least half of their gross income under the *Social Security Act 1991* and repayments would exceed a specified proportion of their gross income: s133CC and reg 28S);
- (c) verify the consumer's financial situation by obtaining and considering recent bank account statements: see s117(1A) and s130(1A); and
- (d) make inquiries about whether the credit obtained will be used to repay another small amount credit contract (because of the 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) in Sch 1 to the National Credit Act (National Credit Code)).

RG 209.58 Each of these provisions are additional requirements, and 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 (as discussed in RG 209.23–RG 209.52).

Other small amount credit contracts

RG 209.59 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 RG 209.111–RG 209.115.

- RG 209.60 To determine whether this presumption applies, we would expect credit providers and credit assistance providers to 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 209.61 If you determine that the presumption does not apply, you still need to make reasonable inquiries and verifications to enable you 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 (as discussed in RG 209.23–RG 209.52).

Source of income

- RG 209.62 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 1991*; and
 - (b) the repayments in a payment cycle would exceed 20% of the consumer's gross income: see s133CC and reg 28S.
- RG 209.63 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 209.64 In light of this requirement, we would expect credit providers and credit assistance providers to make reasonable inquiries and verifications about:
- (a) the source of the consumer's income; and
 - (b) if the consumer's income includes payments under the *Social Security Act 1991*, the proportion of the consumer's gross income constituted by those payments.
- RG 209.65 If the repayments are less than 20% of the consumer's gross income, you still need to make reasonable inquiries and verifications to enable you 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 (as discussed in RG 209.23–RG 209.52).

Account statements

- RG 209.66 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 209.67 This requirement is in addition to the usual verification obligations discussed at RG 209.46–RG 209.52. It 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 particular consumer.
- RG 209.68 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 209.69 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. In these circumstances, you may need to make further inquiries about the consumer's regular expenses, as the statement is unlikely to provide useful verification of the consumer's expenses.
- RG 209.70 In general, 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.

Inquiries that must be made for reverse mortgages

- RG 209.71 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. To be satisfied that the provisions will not be contravened if the consumer enters into a reverse mortgage, you will need to:
- (a) make reasonable inquiries about the consumer's requirements and objectives in meeting possible future needs (see reg 28HA of the National Credit Regulations); and
 - (b) make reasonable inquiries and verifications about the information that must be taken into account when making the required equity projections, or that will affect whether a presumption of unsuitability will apply (see s133DB and reg 28LC of the National Credit Regulations).
- RG 209.72 Each of these provisions are additional requirements and do not limit the inquiries you need to make, or the steps you need to take to verify the information obtained, under your usual obligations (as discussed in RG 209.23–RG 209.52).

Future needs

- RG 209.73 Your inquiries about the consumer's requirements and objectives in relation to a reverse mortgage must include inquiries about their requirements and objectives in meeting possible future needs. The possible 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 209.74 In the circumstances of a particular consumer, it may be reasonable to also make inquiries about other possible future needs.
- RG 209.75 This additional requirement does not limit the types of inquiries that it may be reasonable for you to make about a particular consumer's broader requirements and objectives in relation to the credit contract.
- RG 209.76 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 estates': 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 209.77 Credit providers and credit assistance providers 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. 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 209.78 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 209.127–RG 209.131.

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 209.79 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 209.80 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 209.81 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. You may need to make further inquiries about the consumer's financial situation, and their requirements and objectives, as a result of these discussions.
- RG 209.82 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. 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 Making a preliminary or final assessment that a credit contract is ‘not unsuitable’ for a consumer

Key points

If you are a credit assistance provider, you must, before providing credit assistance to a consumer, make a ‘preliminary’ assessment that the credit contract or consumer lease about which you are providing credit assistance is ‘not unsuitable’ for the consumer.

If you are a credit provider or lessor, you must, before entering into a credit contract or consumer lease, increasing the credit limit on a credit contract, or making an unconditional representation about the consumer’s eligibility to enter into a contract with you or increase the credit limit on a credit contract with you, make a ‘final’ assessment that the credit contract or consumer lease is ‘not unsuitable’ for the consumer.

Making a preliminary or final assessment will require you to take active steps to form a reasonable view about whether the contract is ‘not unsuitable’ for the consumer. We expect that you will base this assessment on the reasonable inquiries you have made about the consumer: see Section B.

There are three main issues for you to consider in determining whether a credit contract or consumer lease is ‘not unsuitable’:

- will the consumer be able to meet their financial obligations under the contract without substantial hardship;
- does the contract meet the consumer’s requirements and objectives; and
- do any circumstances apply to the contract that have been prescribed in the regulations as circumstances in which the contract is, or is presumed to be, unsuitable?

You need to ensure that you keep a record of materials that will enable you to provide the consumer with a written copy of the assessment, if requested.

Provisions in the National Credit Act relevant to making a preliminary or final assessment that a credit contract or consumer lease is ‘not unsuitable’

RG 209.83 The responsible lending obligations require you to make a final assessment (if you are a credit provider or lessor) or a preliminary assessment (if you are a credit assistance provider) about whether the credit contract or consumer lease is ‘not unsuitable’ for the consumer before you:

- (a) if you are a credit assistance provider:
 - (i) suggest that the consumer apply, or assist the consumer to apply, for a particular credit contract or consumer lease;

- (ii) suggest that the consumer apply, or assist the consumer to apply, for an increase to the credit limit on an existing credit contract; or
 - (iii) suggest that the consumer remains in an existing credit contract or consumer lease; or
- (b) if you are a credit provider or lessor:
- (i) enter into a credit contract or consumer lease with the consumer;
 - (ii) increase the credit limit on an existing credit contract; or
 - (iii) make an unconditional representation to a consumer that you consider they are eligible to enter into a credit contract or consumer lease with you, or that the credit limit of an existing credit contract with you will be able to be increased.

Note 1: See s115, 128, 138 and 151.

Note 2: The assessment obligations in relation to making unconditional representations about a consumer's eligibility to enter into credit contracts or consumer leases, or to increase credit limits, apply from 1 March 2013.

RG 209.84 As discussed in Section B, the responsible lending obligations require that, before making the preliminary assessment or final assessment, you:

- (a) make reasonable inquiries about the consumer's requirements and objectives in relation to the credit contract or consumer lease;
- (b) make reasonable inquiries about the consumer's financial situation (i.e. to determine whether they can meet their payment obligations under the contract); and
- (c) take reasonable steps to verify the consumer's financial situation.

Note: See s117, 130, 140 and 153.

RG 209.85 In addition, you must assess a credit contract or consumer lease as unsuitable where it is likely that:

- (a) the consumer will be unable to comply with their financial obligations under the contract (i.e. they do not have the capacity to meet their payment obligations under the contract), or could only comply with substantial hardship;
- (b) the contract will not meet the consumer's requirements or objectives; or
- (c) if the regulations prescribe circumstances in which a contract is unsuitable, or unsuitable unless the contrary is proved—those circumstances will apply to the contract.

Note: See s118, 119, 131, 141, 142 and 154.

RG 209.86 The responsible lending obligations also provide that you must not:

- (a) provide credit assistance to a consumer by:
 - (i) suggesting that they apply for, or assisting them to apply for, a credit contract that will be unsuitable;

- (ii) suggesting that they apply for, or assisting them to apply for, an increase to the credit limit on an existing credit contract that will be unsuitable if the increase is made; or
- (iii) suggesting that they remain in an unsuitable credit contract (see s123 and 124);
- (b) provide credit assistance to a consumer by:
 - (i) suggesting that they apply for, or assisting them to apply for, a consumer lease that will be unsuitable; or
 - (ii) suggesting that they remain in an unsuitable consumer lease (see s146 and 147);
- (c) enter into a credit contract or increase the limit on a credit contract that will be unsuitable for the consumer (see s133); or
- (d) enter into a consumer lease that will be unsuitable for the consumer (see s156).

RG 209.87 Further, if requested, you must provide the consumer with a copy of the preliminary or final assessment that the credit contract or consumer lease is 'not unsuitable' for the consumer: see s120, 132, 143 and 155. In practice, this means that you must record the assessment in a form that allows you to provide a written copy promptly to the consumer: see Section D.

RG 209.88 All credit licences are subject to a condition that requires the licensee to:

- (a) keep a record of all material that forms the basis of the assessment in a form that will enable the licensee to give the consumer a written copy of the assessment if a request is made; or
- (b) if the licensee is an assignee of rights under a credit contract or consumer lease, 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.

RG 209.89 Together, these provisions of the National Credit Act mean that you must take active steps in order to form the view that a credit contract or consumer lease is 'not unsuitable' before:

- (a) if you are a credit assistance provider—you provide any credit assistance in relation to a credit contract or consumer lease;
- (b) if you are a credit provider or lessor—you:
 - (i) enter into a credit contract or consumer lease with a consumer, or increase the credit limit on an existing credit contract; or
 - (ii) make unconditional representations to a consumer about their eligibility to enter into a credit contract or consumer lease with

you, or to increase the credit limit on an existing credit contract with you.

Note: The assessment obligations in relation to making unconditional representations about a consumer's eligibility to enter into credit contracts or consumer leases, or to increase credit limits, apply from 1 March 2013.

RG 209.90 We expect that you will base your assessment on the reasonable inquiries you have made about the consumer (plus any other relevant information you have).

Note 1: To meet the requirements under the National Credit Act, the final assessment or preliminary assessment must specify the period the assessment covers: s116, 129, 139 and 152.

Note 2: For credit assistance providers, the preliminary assessment must be made within 90 days before the credit assistance is provided: s115 and 138. For credit providers and lessors, the final assessment must be made within 90 days before the credit contract or consumer lease is entered into, or within 120 days before the credit contract is entered into if the credit to be provided will be used for the purchase of residential property and secured by a mortgage over the property: s128 and 151 and reg 28J.

Note 3: In addition to the responsible lending requirements in Ch 3 of the National Credit Act, a credit contract that is unsuitable, particularly if the borrower has insufficient capacity to meet the repayment obligations, may also be unjust under s76 of the National Credit Code. We have standing to make an application under s76 in relation to one or more credit contracts, or a class of credit contracts. If a court considers that a contract is unjust, the transaction that gave rise to the contract can be reopened to provide relief to affected consumers.

Processes to ensure that a preliminary or final assessment is made

RG 209.91 As set out above, the National Credit Act requires credit licensees to assess (via either a preliminary or final assessment) whether a credit contract or consumer lease is 'not unsuitable' for a consumer. In order to meet this obligation, we expect that you will be able to demonstrate that you have adequate processes in place to assess whether a consumer has the capacity to meet their payment obligations without substantial hardship, and whether the credit contract or consumer lease meets the consumer's requirements and objectives. If you do not have the appropriate processes in place, it will be difficult for you to show that you are meeting your responsible lending obligations.

Note: In *ASIC v TCS*, in the absence of appropriate records in the customer file, or clear processes for ensuring completion of assessments, Davies J found that the licensees had failed to comply with their obligations to make an assessment.

RG 209.92 Depending on a consumer's objectives, an assessment of whether a credit contract or consumer lease is 'not unsuitable' may require consideration of the contract against the background of credit contracts or consumer leases that are commonly available in the market.

Assessing whether a consumer can meet the financial obligations of a credit contract or consumer lease

RG 209.93 Having completed reasonable inquiries (as set out in Section B), you must assess whether the credit contract or consumer lease is ‘not unsuitable’, which includes assessing whether the consumer can meet their financial obligations under the contract without substantial hardship (i.e. the consumer has the capacity to meet their payment obligations under the contract). This assessment will be based on the information you obtained (and verified) when you made reasonable inquiries about the consumer’s financial situation.

Note: In *ASIC v TCS*, Davies J found that where the licensee had failed to make reasonable inquiries about the consumer’s financial situation, the subsequent assessment was inadequate and did not comply with the obligation.

RG 209.94 A credit contract (or an increase to a credit limit) or a consumer lease is unsuitable if, at the time of the assessment, it is likely that the consumer:

- (a) will be unable to comply with their financial obligations under the contract (e.g. to make repayments); or
- (b) will only be able to comply with their financial obligations with substantial hardship.

Note 1: See s118(2)(a), 119(2)(a), 131(2)(a), 141(2)(a), 142(2)(a) and 154(2)(a).

Note 2: The assessment of unsuitability on the grounds that the consumer will be unable to comply with their financial obligations under the credit contract may only take into account information that the credit licensee has reason to believe is true, or would have had reason to believe was true (if the licensee had made reasonable inquiries and verifications): see s118(4), 119(4), 131(4), 141(4), 142(4) and 154(4).

What should you take into account in assessing a consumer’s capacity to meet their payment obligations?

RG 209.95 We expect that you will base the assessment of a consumer’s capacity to meet their payment obligations on the reasonable inquiries you have made about the consumer’s financial situation, and the reasonable steps you have taken to verify the consumer’s financial situation (as set out in Section B). You should also consider the likely maximum amount to be payable under the credit contract or consumer lease (including fees) when determining whether a consumer has the capacity to meet these payment obligations.

Note: The Explanatory Memorandum states that ‘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 Explanatory Memorandum, paras 3.69 and 3.139. We would expect you to take into account these types of issues when assessing whether a consumer will be able to meet their payment obligations under a credit contract or consumer lease. For example, in relation to exit fees, a credit provider should ask the consumer to obtain a payout statement from the original lender.

- RG 209.96 If two or more consumers jointly apply for a credit contract or consumer lease, you may assess each consumer's capacity to meet the payment obligations individually, or consider the reasonable inquiries made about their *combined* financial situation and the reasonable steps taken to verify that financial situation.

Example 5: Capacity to repay, taking into account all costs

A consumer goes to the website of a credit assistance provider to make an application to refinance a loan. When the credit assistance provider assesses the consumer's application, they will need to take into account all of the costs of changing credit contracts to determine the consumer's ability to meet the obligations of the new credit contract over the term of the contract, as at the time the assessment is made. This would include any fees for using the credit assistance provider's services.

Example 6: Capacity to repay in relation to credit cards

For credit cards, there may be some risks associated with assessing a consumer as having the capacity to repay the contract based solely on being able to meet the minimum monthly repayments. If, by paying only the minimum monthly repayments, the consumer is likely to take a long period of time to repay the maximum limit on the card, the credit licensee should consider whether this would meet the consumer's requirements and objectives (i.e. taking a number of years to repay a relatively small debt, and paying high amounts of interest on this debt).

Substantial hardship

- RG 209.97 'Substantial hardship' is not defined in the National Credit Act. We do not propose to give any definitive formulation of what substantial hardship means. The law about the meaning of 'substantial hardship' will develop and become clearer as cases come before the courts and judgments are handed down.

Note: Case law and other legislation provide some guidance on the interpretation of 'hardship' in different contexts. For example, in the superannuation context, one of the tests for whether a person is in 'severe financial hardship' is that 'the person is unable to meet reasonable and immediate family living expenses': Superannuation Industry (Supervision) Regulations 1994, reg 6.01(5)(a)(ii).

- RG 209.98 We consider that determining whether meeting payment obligations under a credit contract or consumer lease will cause substantial hardship to a consumer will require consideration of a number of factors.
- RG 209.99 In determining whether a credit contract or consumer lease is likely to result in substantial hardship for the consumer, we expect you will take into account information obtained about the consumer's financial situation as part of the 'reasonable inquiries' process set out in Section B. Therefore, in

administering the law, we will take the following factors into account when considering whether a transaction is likely to result in substantial hardship:

- (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 an increase in interest rates on their repayment obligations (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;
- (b) 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 1991*);
- (c) how consistent and reliable the consumer’s income is (and the size of the payment obligations relative to their income level);
- (d) whether the consumer’s expenses are likely to be significantly higher than average (e.g. because they live in a remote area);
- (e) the consumer’s other debt repayment obligations and similar commitments (e.g. child support); and
- (f) whether the consumer is likely to have to sell their assets, such as a car, to meet their payment obligations.

Note 1: This is not intended to be an exhaustive list of potentially relevant factors. In determining whether a situation involves substantial hardship, the presence (or absence) of any one or more of the listed factors is not conclusive.

Note 2: In relation to RG 209.99(f), see also the guidance at RG 209.107–RG 209.108.

RG 209.100 In addition, you may wish to take into account any other conversations that you have had with the consumer about how the credit contract or consumer lease will affect their living standards. For example, a consumer may be willing to make reasonable changes to their lifestyle to enable them to afford a loan without substantial hardship (such as cutting back on non-essential expenses).

RG 209.101 The National Credit Act also specifies two circumstances in which it is presumed that a consumer would only be able to comply with the financial obligations with substantial hardship, unless the contrary is proved:

- (a) where the consumer could only comply with their financial obligations by selling their principal place of residence (see s118(3), 123(3), 124(3), 131(3), 133(3), 142(3), 146(3), 147(3), 154(3) and 156(3)); and
- (b) where the contract is a small amount credit contract and either:
 - (i) 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

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

Note: For further information on these statutory presumptions, see RG 209.108 and RG 209.111–RG 209.115.

Processes for determining substantial hardship

- RG 209.102 We expect you to develop appropriate systems and processes to identify whether a proposed credit contract or consumer lease is likely to cause substantial hardship to a consumer. Different licensees are likely to take different approaches, depending on the nature of their business and their range of customers.
- RG 209.103 The systems and process will need to ensure that you are able to determine whether a statutory presumption of substantial hardship applies. For example, licensees that engage in credit activities in relation to small amount credit contracts will need appropriate systems and processes to determine whether a consumer is, or has been, a debtor under other small amount credit contracts.
- RG 209.104 Benchmarks can be useful tools in the process of determining whether a particular consumer is likely to experience substantial hardship as a result of meeting their financial obligations under a credit contract or consumer lease. Incorporating benchmarks into the assessment process, may provide a credit licensee with an indication of whether a consumer may be exposed to substantial hardship. For example, such benchmarks could indicate whether a consumer's available income is:
- (a) below a level where they do not have funds to meet their realistic living costs and those of their dependants;
 - (b) below an amount based on a particular objective indicator (e.g. the Henderson Poverty Index plus a certain margin); or
 - (c) below the maximum applicable level of government benefits for a person in the financial and family situation of the consumer.
- RG 209.105 Use of benchmarks is not a replacement for making inquiries about a particular consumer's current income and expenses, nor a replacement for an assessment based on that consumer's verified income and expenses.

Example 7: Use of benchmarks

While assessing a consumer's ability to make repayments on a proposed loan, the credit provider refers only to a benchmark living expense figure even though the consumer's stated living expenses (which the lender has ascertained through inquiries) are higher. A difference between the benchmark figure and the consumer's stated expenses should prompt

further inquiries with the consumer about whether the consumer is prepared and reasonably able to reduce their expenses in future, to be able to afford the loan. Without the consumer's agreement to reduce their living expenses, the credit provider will not have complied with its responsible lending obligations.

RG 209.106 We would expect credit providers and lessors to have detailed policies and processes to assess whether a consumer will be able to meet their payment obligations under a credit contract or consumer lease. These include processes for calculating what funds a person needs to pay for basic living expenses in order to determine how much they can borrow or commit to making lease payments (i.e. at what level a consumer can make repayments).

Meeting payment obligations from income, not assets

RG 209.107 Generally, consumers should be able to meet their payment obligations under a credit contract or consumer lease 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).

Note: We expect lenders to take particular care when assessing the capacity to repay for products like reverse mortgages and bridging loans. Reverse mortgages differ from other credit contracts in a number of ways, including that:

- interest is capitalised because there is no obligation for the borrower to make regular repayments, so the amount owing increases over time; and
- the consumer may have difficulty in accurately determining the value of the equity in their home over time.

Before making an assessment of whether a reverse mortgage is unsuitable, a credit assistance provider or credit provider must give the consumer 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 a contract for a reverse mortgage: s133DB. Each of these projections must be made in accordance with any instructions for making the projections included on a website approved by ASIC, and the consumer must be given printed copies of all projections.

RG 209.108 Under the National Credit Act, it is presumed that, if a consumer will only be able to comply with their financial obligations under the credit contract or consumer lease 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 is that where a consumer establishes that they could only meet the payment obligations by selling their home, then the onus is on the credit provider, lessor or credit assistance provider to establish that the credit contract is 'not unsuitable'. The law allows you to exercise judgement in the application of this requirement.

RG 209.109 Information obtained from reasonable inquiries into the consumer's financial situation (see RG 209.30) will assist you to establish whether the consumer

has the appropriate capacity to meet payment obligations, despite foreseeable changes to income.

Examples about meeting payment obligations from sources other than current income

RG 209.110 Following are some examples to illustrate our guidance on meeting the payment obligations from sources other than current income.

Example 8: Repayment from superannuation

A male consumer aged 65 applies for a fixed-term loan to purchase a boat. Although 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. The preliminary inquiries undertaken by the finance broker he has approached reveal, however, that his superannuation will be more than sufficient to meet his ongoing financial needs as well as repayments under the loan.

Example 9: Future plans to sell the principal residence and downsize

A female consumer applying for a 25-year principal and interest home loan to purchase a new home 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 the consumer could only meet her financial obligations post retirement by selling the home, it appears at first view that the presumption in s118(3) applies and, as a result, the loan would be unsuitable.

The lender's inquiries about her requirements and objectives, however, 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, however, and also considers the home she is currently purchasing has greater potential to appreciate in value in the years before she has to sell it. Given her 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'.

Small amount credit contracts—presumption of substantial hardship

RG 209.111 Under the National Credit Act, 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 209.112 The effect of this presumption is that, where these circumstances exist, the onus is on the credit licensee to establish that a consumer could comply with their financial obligations under the contract without substantial hardship. If the credit licensee is unable to prove this:

- (a) the contract will be, and must be assessed as, unsuitable (s118 and 131); and
- (b) the credit licensee is prohibited from providing credit assistance in relation to the small amount credit contract, or entering into the small amount credit contract with the consumer (s123 and 133).

RG 209.113 For the purpose of this presumption, we consider that a default in payment will have occurred if the debtor has not made a payment that is due at the time the assessment is made.

RG 209.114 In light of this presumption, we expect that the inquiries and verifications that would be reasonable for a credit provider or credit assistance provider will include:

- (a) asking the consumer whether the consumer is, or was during the previous 90-day period, a debtor under any other small amount credit contracts;
- (b) asking the consumer whether they are in default in payment of an amount under any small amount credit contract; and
- (c) obtaining copies of any other small amount credit contracts under which the consumer was a debtor in the 90-day period before the assessment.

RG 209.115 We also expect that transaction histories in the account statements that credit licensees are required to obtain (as discussed at RG 209.66–RG 209.70) 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 209.116 Credit licensees may also obtain a credit history report for the purposes of meeting their responsible lending obligations, and a review of this may help the licensee to make further inquiries with the consumer.
- RG 209.117 Regardless of whether you determine that the presumption does not apply or can be rebutted, you still need to determine (on the basis of reasonable inquiries and verifications) 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.

Examples about capacity to repay and substantial hardship

- RG 209.118 Following are some other examples to illustrate our guidance on the capacity to repay and substantial hardship.

Example 10: Regular family expenses

In assessing whether a credit contract will cause a consumer to experience substantial hardship, a credit licensee might set one or more levels of realistic family living expenses required to meet the consumer's (and their dependants') living costs. The consumer would need to be able to meet these living costs from their income, after deducting the ongoing repayments under the credit contract (and all other repayments and regular financial commitments of the consumer). Below this level, the licensee would, as a policy, not consider the consumer to have the capacity to repay the loan without substantial hardship, regardless of their circumstances.

Example 11: Temporary period without income

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.

However, 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 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 credit 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.

Example 12: Refinancing

Where a consumer cannot currently comply with their existing financial obligations under a credit contract (or only with substantial hardship), a

credit licensee can refinance the consumer's debts if, after refinancing, they will be able to comply with the resulting credit contract without substantial hardship. While the level of hardship may still be significant, the important factors are both that it is reduced and that, despite the unusually high level of hardship, genuine capacity to meet new repayment obligations can be demonstrated.

Example 13: Casual employees

A consumer receives their first fortnightly pay cheque as a casual employee, and applies for a credit card. The consumer is told by the bank officer to multiply their salary by 26 to calculate their annual income. This is not an appropriate method to determine income because the consumer's employment is on a casual basis and their salary may fluctuate considerably from fortnight to fortnight. The resulting calculation based on the bank officer's instructions will not accurately reflect the consumer's annual income and capacity to repay the loan.

Example 14: Balloon repayments

Some products involve a large 'balloon' payment at the end of the loan term. While a consumer may be able to manage the regular repayments under the loan, whether the product is suitable for them also depends on whether they will be able to make the final, much larger, payment. We would expect the credit licensee to satisfy themselves that the consumer understands, and has the capacity to cover, the final repayment before offering this type of product to the consumer.

Example 15: Multiple small amount credit contracts

A consumer applies for a small loan and is asked by the credit provider 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 credit provider is otherwise able to prove that there would not be substantial hardship.

Following further inquiries about the purpose of each of the previous loans, the credit provider finds that the loans were used to buy goods that the consumer still owns, and that the loans were both repaid with no defaults. The credit provider's other inquiries about the consumer's financial position do not raise any concerns about the consumer's capacity to repay the loan being applied for. In these circumstances, the credit provider may be able to prove that the consumer would be able to meet their repayment obligations without substantial hardship, despite the initial presumption.

However, if the credit provider's inquiries had indicated that the previous small loans had been used to meet other financial commitments or expenses, such as rent or repayments on another loan, it is less likely that the credit provider would be able to disprove the initial presumption.

Assessing whether a credit contract or consumer lease will meet a consumer's requirements and objectives

Overview of obligation

- RG 209.119 A credit contract or consumer lease is unsuitable if it 'will not meet the consumer's requirements and objectives': see s118(2)(b), 119(2)(b), 131(2)(b), 141(2)(b), 142(2)(b) and 154(2)(b). This requires a credit assistance provider, credit provider or lessor to assess whether a credit contract or consumer lease will meet the consumer's requirements and objectives (as disclosed by the consumer).
- RG 209.120 Determining the consumer's requirements and objectives in relation to the credit contract or consumer lease is, therefore, part of your overall obligation to avoid placing a consumer in a contract that is unsuitable for them. Having completed reasonable inquiries (as set out in Section B), you must then assess whether the credit contract or consumer lease is 'not unsuitable', which includes assessing whether it meets the consumer's requirements and objectives (as well as whether the consumer has the capacity to make repayments, as discussed earlier in this section).

Note: The assessment of unsuitability on the grounds that the credit contract or consumer lease will not meet the consumer's requirements and objectives may only take into account information the credit licensee has reason to believe is true, or would have had reason to believe was true (if the licensee had made reasonable inquiries and verifications): see s118(4), 119(4), 131(4), 141(4), 142(4) and 154(4). If you are unsure of the consumer's objectives and needs, this should be resolved through the reasonable inquiries process.

Note 2: In *ASIC v TCS*, Davies J found that where the licensee had failed to make reasonable inquiries about the consumer's requirements and objectives, the subsequent assessment was inadequate and did not comply with the obligation.

Factors relevant to assessing whether a credit contract or consumer lease meets a consumer's requirements and objectives

- RG 209.121 Making an assessment that a credit contract or consumer lease meets a consumer's requirements and objectives involves matching the consumer's stated requirements and objectives (which you will understand from the reasonable inquiries process set out in Section B) with a credit contract or consumer lease that is 'not unsuitable'.
- RG 209.122 We consider that whether a credit contract or consumer lease meets a consumer's requirements and objectives will vary depending on the circumstances, but some examples of factors that you could take into account in making this assessment include:

- (a) the nature of the credit requested by the consumer, and the consumer's stated objectives in obtaining the credit (based on inquiries made about the consumer, as set out in Section B);
- (b) if the consumer has more than one requirement or objective, the relative importance of each to the consumer (e.g. whether the cost of the credit or flexibility to make later changes is more important to the consumer);
- (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 contract or consumer lease;
- (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) the complexity of the credit contract or consumer lease, and whether a more basic product could meet the consumer's needs;
- (h) 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;
- (i) whether the consumer will need to finance a large final payment under the contract; and
- (j) in relation to switching, the extent to which switching to the new credit contract will benefit the consumer.

Note 1: This is not intended to be an exhaustive list of potentially relevant factors in relation to assessing whether a credit contract or consumer lease meets a consumer's requirements and objectives. In determining whether a contract meets a consumer's requirements and objectives, the presence (or absence) of any one or more of the listed factors is not conclusive.

Note 2: The Explanatory Memorandum states that the minimum required of credit licensees in order to meet the obligation to make reasonable inquiries about a consumer's requirements and objectives will be to understand the purpose for which the credit or consumer lease is sought. The next step that the licensee should take is to determine whether the type, length, rate, terms, special conditions, charges and other aspects of the proposed credit contract or consumer lease meet this purpose or, if not, to suggest credit contracts or consumer leases that do match the consumer's purpose: see Explanatory Memorandum, paras 3.68 and 3.138.

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

- RG 209.123 If none of the credit contracts or consumer leases that you provide (or provide services about) meets the requirements and objectives for a given consumer (i.e. they are all unsuitable), then you must not enter into a credit contract or consumer lease with the consumer, make unconditional

representations about the consumer's eligibility to enter into a credit contract or consumer lease with you, suggest a credit contract or consumer lease to the consumer or assist the consumer to apply for a credit contract or consumer lease.

Examples about meeting a consumer's requirements and objectives

RG 209.124 Following are some examples to illustrate our guidance on meeting a consumer's requirements and objectives.

Example 16: Key features for the customer

If a prospective borrower indicates that the ability to easily refinance their home loan is a key requirement, a credit contract that would be costly to refinance—because it has high break costs or substantial upfront costs that must be paid in order to refinance (e.g. where lenders' mortgage insurance is required on a loan with a high loan-to-value ratio)—would be more likely not to meet the consumer's requirements and objectives. In such circumstances, the credit licensee should make inquiries of the consumer to clarify the relative priority of the consumer's competing requirements and document the outcome of these inquiries.

Example 17: Short-term finance

A consumer contacts a mortgage broker by phone because they are having short-term difficulties in meeting bills, pending the maturing of a term deposit. It is not appropriate for the mortgage broker to suggest a loan secured by the equity in the consumer's house. The costs involved in establishing this type of loan would not be warranted if the consumer's financial difficulty is clearly short term. A preferable approach might be for the mortgage broker to suggest that the consumer investigate the penalties associated with early access to the term deposit.

Example 18: Consumer lease

A consumer contacts a licensee to finance the purchase of household whitegoods. The licensee suggests that the consumer obtains a consumer lease. The consumer lease may be unsuitable for the consumer because, at the end of the lease period, the consumer will not own the whitegoods. To determine whether a consumer lease would be unsuitable, the licensee would need to make inquiries of the consumer about whether the consumer wants to own the whitegoods at the end of the contract.

Example 19: Entering an interest only loan

A young first home buyer applies for an interest-only loan for the purchase of a residential property through a mortgage broker. To understand whether entry into the interest-only loan meets the consumer's requirements and objectives, the broker makes inquiries about the consumer's reasons for

seeking this loan rather than a principal and interest loan, and how long the interest-only period would need to be maintained.

As a result of these inquiries, the broker obtains information that the consumer wants to maximise their buying power and expects that their income will increase over the interest-only period due to their partner returning to work following maternity leave. The consumer's partner confirms that she is scheduled to return to work in three 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.

Prescribed circumstances in which certain types of contract will be unsuitable

RG 209.125 You need to consider whether any circumstances apply to the credit contract or consumer lease that have been prescribed in the National Credit Regulations as circumstances in which the contract will be unsuitable: see s118(2)(c), 119(2)(c), 131(2)(c), 141(2)(c), 142(2)(c) and 154(2)(c).

Note: No regulations have been made that prescribe circumstances in which a consumer lease will be unsuitable.

Small amount credit contracts and medium amount credit contracts

RG 209.126 A credit contract will be 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 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: This regulation applies from 1 July 2013. For more information, see the Explanatory Statement to the National Consumer Credit Protection Amendment Regulation 2012 (No. 4).

Reverse mortgages—Presumption of unsuitability

RG 209.127 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.

Note: This regulation applies from 1 June 2013. For more information, see the Explanatory Statement to the National Consumer Credit Protection Amendment Regulation 2013 (No. 2).

- RG 209.128 Depending on a consumer's particular 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.
- RG 209.129 The use of a presumption of unsuitability, which can be disproved, is intended to 'allow reverse mortgage lenders some flexibility to negotiate 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 209.130 We expect that you would need to undertake a higher level of inquiries about the consumer's financial situation, and their requirements and objectives in relation to the credit contract (including their requirements and objectives in meeting possible future needs) in order to prove that the credit contract is not unsuitable in these circumstances.
- RG 209.131 If you decide that a higher loan-to-value ratio will not be unsuitable in the circumstances of a particular consumer, we also expect you to:
- (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).

Switching and refinancing

Additional considerations for switching or refinancing activities

- RG 209.132 We expect that you will undertake additional analysis when engaging in switching and refinancing activities (i.e. the level of inquiries you make may need to be 'scaled up': see guidance at RG 209.19–RG 209.27). This would include consideration of whether entering the new credit contract:
- (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 credit contract better meets the consumer's requirements and objectives (e.g. because of

convenience, greater flexibility or particular tailored features such as a redraw facility on a mortgage).

- RG 209.133 The determination of whether there are overall cost savings to the consumer should take into account all the circumstances, including the cost of the replacement (i.e. making the switch or refinancing) and all associated fees and other charges. There are usually transaction costs associated with refinancing, including any fees for using a credit assistance provider's services.

Note 1: See Explanatory Memorandum, paras 3.73 and 3.148–3.149.

Note 2: When you are arranging the refinancing or switching, you may not have access to the details of the credit contract if the old contract is with another licensee. However, we expect that you should find out the costs of the current contract from the consumer as part of the reasonable inquiries made about the consumer.

- RG 209.134 We expect that, if your business includes refinancing activities, you will need to have specific processes in place to ensure that your employees are adequately supervised and trained to undertake these activities. For example, when considering whether to offer credit as part of a refinancing transaction, we expect that you, as the provider, would make reasonable inquiries about the consumer's existing credit arrangements before forming a view about whether the new credit is 'not unsuitable'.

Refinancing where a consumer is in arrears

- RG 209.135 The level of inquiries that is reasonable is likely to be greater where the consumer is refinancing, particularly where they are having difficulties meeting the repayments, or are even in arrears, on their existing credit contract. In this situation, 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.
- RG 209.136 In circumstances where the consumer is in arrears on a small amount credit contract and is seeking to borrow more money or refinance, the presumption of substantial hardship may be triggered.
- RG 209.137 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 available under the National Credit Code: see s124(7).

Note: See also Explanatory Memorandum, paras 3.73 and 3.148–149.

D Guidance about providing a written assessment that a credit contract or consumer lease is ‘not unsuitable’

Key points

You must, if requested, provide the consumer with a copy of the assessment that a credit contract or consumer lease is ‘not unsuitable’.

In this section, we provide guidance about our expectations in relation to the form of this document.

When must you provide a consumer with a written assessment?

RG 209.138 Under the National Credit Act, you must, if requested, provide free of charge to the consumer a copy of the assessment that the credit contract or consumer lease is ‘not unsuitable’ for the consumer: see s120, 132, 143 and 155. In practice, this means that you must keep a record of the assessment in a form that allows you to provide the assessment to a consumer promptly 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 contract or consumer lease 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 209.139 The National Credit Act also sets out timeframes in which the written assessment must be provided: see s120, 132, 143 and 155.

RG 209.140 If the rights of a credit provider or lessor are legally assigned to another person (who then becomes the new credit provider or lessor), the obligation to give a copy of the assessment must be complied with by the new credit provider or lessor. In these circumstances, the timeframes for giving assessments have been extended because the assignee may need to obtain information from the previous credit provider or lessor: see reg 28M. Assignees should ensure that the credit provider or lessor 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.

What information should be included in a written assessment?

- RG 209.141 We expect that this written assessment will be concise and easy for consumers to understand, and include reference to the relevant factual information provided by the consumer that you used to assess the credit contract as ‘not unsuitable’.
- RG 209.142 You should ensure that the written assessment you provide to consumers will:
- (a) assist consumers in understanding that the credit contract has been assessed as ‘not unsuitable’ for them; and
 - (b) assist you in demonstrating compliance with the responsible lending obligations.
- RG 209.143 You should also ensure that the consumer has the opportunity to check the factual basis on which you have made the assessment (as stated by you in the written assessment) so that, if it is inaccurate, the consumer can raise the matter with you. This means that the assessment should include a record of the financial information obtained, and the requirements and objectives communicated by the consumer.
- RG 209.144 For example, the written assessment could set out information provided by the consumer about their income and expenses (i.e. which demonstrates that the consumer has the capacity to meet their payment obligations), as well as the stated purpose for the credit or consumer lease.
- RG 209.145 Where the borrower’s capacity to make payments depends on the availability of income provided by another person, the assessment should reflect this.
- RG 209.146 We do not expect you to disclose the commercially sensitive lending criteria on which your credit decisions are based. Only the information that specifically relates to the statutory concepts of ‘requirements and objectives’, ‘capacity to repay’ and ‘reasonable inquiries’ should appear in the written assessment.

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

- RG 209.147 You are not required to give the consumer a copy of the assessment if:
- (a) you are a credit provider and the transaction does not go ahead; or
 - (b) you are a credit assistance provider and you do not provide credit assistance to the consumer. However, decisions made by the consumer, credit provider or lessor 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 1: 'Credit assistance' is defined in s8 of the National Credit Act, and includes suggesting that a consumer apply for a particular credit contract with a particular credit provider, and assisting the consumer to do so.

Note 2: The *Credit reporting code of conduct* (issued by the Privacy Commissioner under s18A of the *Privacy Act 1988*, September 1991 and including all amendments as at March 1996) provides at Note 40 that: 'A credit provider who has refused an individual's application for credit based on a credit report issued by a credit reporting agency must provide the individual with written notice of refusal, informing the individual: (a) that refusal was based wholly or partly on the credit report; (b) of his or her rights to obtain access to his or her credit information file held by the credit reporting agency; and (c) of the name and address of the credit reporting agency.' This is also a requirement under s18M of the *Privacy Act 1988*.

Appendix: Ch 3 obligations relating to documents

Table 5: Summary of the Ch 3 obligations relating to documents

Document	Who the obligation applies to	Brief overview of obligations
Credit guide	Credit providers, lessors, credit assistance providers and credit representatives must give a credit guide to the consumer Note: Some obligations also apply to unlicensed carried over instrument lenders (unlicensed COI lenders) in relation to carried over instruments. For more information on the statutory regime for unlicensed COI lenders, see Information Sheet 110 <i>Lenders with carried over instruments</i> (INFO 110) and reg 38, National Consumer Credit Protection (Transitional and Consequential Provisions) Regulations 2010.	Credit assistance providers must give a credit guide to the consumer as soon as practicable after it becomes apparent to the credit assistance provider that they are likely to provide credit assistance to the consumer: s113(1), 136. Credit providers and lessors must give a credit guide to the consumer as soon as practicable after it becomes apparent to the credit provider or lessor that the consumer is likely to enter into a credit contract or consumer lease with them: s126(1), 149. Credit representatives must give a credit guide to the consumer at the same time that they give the consumer the credit guide of the licensee they represent: s158.
Quote for providing credit assistance	Credit assistance providers	Credit assistance providers must not provide credit assistance to a consumer unless they have given the consumer a quote and the consumer has signed and dated the quote (or otherwise indicated their acceptance of the quote): s114(1), 137.
Credit or lease proposal disclosure document	Credit assistance providers	Credit assistance providers must, at the same time as providing credit assistance to the consumer, provide the consumer with a credit or lease proposal disclosure document: s121, 144.
Written preliminary assessment or final assessment that a credit contract or consumer lease is 'not unsuitable'	Credit providers and credit assistance providers	If requested by the consumer: <ul style="list-style-type: none"> • credit assistance providers must give the consumer a copy of the preliminary assessment free of charge; and • credit providers and lessors must give the consumer a copy of the final assessment free of charge. For further information, see Section D.
Key facts sheet for standard home loans	Credit providers	If a credit provider has a website on which consumers can inquire about, or apply for, a standard home loan, the consumer must be able to generate a key facts sheet using the website. If a consumer otherwise requests a key facts sheet for a standard home loan, the credit provider must give the consumer a key facts sheet: s133AC, 133AD.
Key facts sheet for a credit card contract	Credit providers	The application form for a credit card contract must include a key facts sheet: s133BC.

Document	Who the obligation applies to	Brief overview of obligations
For reverse mortgages—equity projections and reverse mortgage information statement	Credit providers and credit assistance providers	<p>Before giving a preliminary assessment or a ‘final’ assessment in connection with a reverse mortgage, a credit provider or credit assistance provider must:</p> <ul style="list-style-type: none"> • show to the consumer in person—or give the consumer by mail, email or another form of written or electronic communication agreed to by the consumer—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 a reverse mortgage; • give the consumer a printed copy of the projections; and • give the consumer a reverse mortgage information statement: s133DB. <p>The projections must be made using the reverse mortgage calculator on ASIC’s MoneySmart website (www.moneysmart.gov.au), and in accordance with ASIC’s instructions for making projections that are included in the calculator.</p> <p>If the credit provider or credit assistance provider has a website that provides information about reverse mortgages, they must make a reverse mortgage information statement available through the website: s133DC.</p> <p>If a consumer otherwise asks for a reverse mortgage information statement, the credit provider or credit assistance provider must give them this document: s133DD.</p> <p>For more information, see Information Sheet 185 <i>Using ASIC’s reverse mortgage calculator</i> (INFO 185).</p>

Note: Information Sheet 134 *Complying with your obligations if both a credit licensee and an AFS licensee* (INFO 134) and Information Sheet 146 *Responsible lending disclosure obligations: Overview for credit licensees and representatives* (INFO 146) also provide details on those instances where licensees may be exempt from disclosure requirements or where licensees can combine one or more documents.

Key terms

Term	Meaning in this document
ADI	Authorised deposit-taking institution—Has the meaning given in s5 of the National Credit Act
ASIC	Australian Securities and Investments Commission
<i>ASIC v TCS</i>	<i>ASIC v The Cash Store (in liquidation)</i> [2014] FCA 926
carried over instrument	Has the meaning given in s4 of the Transitional Act
Ch 3 (for example)	A chapter of the National Credit Act (in this example numbered 3), unless otherwise specified
COI lender	A person who was a credit provider or lessor in relation to a carried over instrument immediately before 1 July 2010 and who remains the credit provider or lessor on or after 1 July 2010
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
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

Term	Meaning in this document
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
Explanatory Memorandum	Explanatory Memorandum to the National Consumer Credit Protection Bill 2009, unless otherwise specified
general conduct obligations	The obligations under s47(1) of the National Credit Act
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	<i>National Consumer Credit Protection Act 2009</i>
National Credit Code	National Credit Code at Sch 1 to the National Credit Act
National Credit Regulations	National Consumer Credit Protection Regulations 2010
reg 28J (for example)	A regulation of the National Credit Regulations (in this example numbered 28J), unless otherwise specified
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
small amount credit contract	Has the meaning given in s5 of the National Credit Act
standard home loan	Has the meaning given in s5 of the National Credit Act
Transitional Act	<i>National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009</i>
unlicensed COI lender	Has the meaning given in s5 of the National Credit Act, as modified by item 2.4 of Sch 2 to the National Credit Regulations

Related information

Headnotes

carried over instrument, COI lender, 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, unlicensed COI lender

Regulatory guides

RG 51 *Applications for relief*

RG 108 *No-action letters*

RG 139 *Approval and oversight of external dispute resolution schemes*

RG 165 *Licensing: Internal and external dispute resolution*

RG 203 *Do I need a credit licence?*

RG 204 *Applying for and varying a credit licence*

RG 205 *Credit licensing: General conduct obligations*

RG 206 *Credit licensing: Competence and training*

RG 207 *Credit licensing: Financial requirements*

RG 208 *How ASIC charges fees for credit relief applications*

RG 210 *Compensation and insurance arrangements for credit licensees*

Information sheets

INFO 97 *Guidance for small credit businesses*

INFO 110 *Lenders with carried over instruments*

INFO 134 *Complying with your obligations if both a credit licensee and an AFS licensee*

INFO 146 *Responsible lending disclosure obligations: Overview for credit licensees and representatives*

INFO 185 *Using ASIC's reverse mortgage calculator*

Legislation

Australian Securities and Investments Commission Act 2001, Pt 2, Div 2

Consumer Credit Legislation Amendment (Enhancements) Act 2012;
Consumer Credit Protection Amendment Regulation 2012 (No. 4);
Consumer Credit Protection Amendment Regulation 2013 (No. 2)

Corporations Act 2001

*Corporations Legislation Amendment (Financial Services Modernisation)
Act 2009*

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; National Consumer Credit Protection
(Transitional and Consequential Provisions) Regulations 2010, reg 38

Privacy Act 1988, s18A, 18M

Social Security Act 1991

Superannuation Industry (Supervision) Regulations 1994, reg 6.01(5)(a)(ii)

Cases

ASIC v The Cash Store (in liquidation) [2014] FCA 926