



Promoting Responsible Consumer Lending

20th May 2019

Attention: Fleur Grey
Australian Securities and Investments Commission
Level 5, 100 Market Street, Sydney, 2001
By email: fleur.grey@asic.gov.au

Re: NCPA response to CP309

The National Credit Providers Association (NCPA) welcomes the opportunity to comment on ASIC’s consultation paper CP309. In particular, we support the general proposition that ASIC “provide additional guidance in RG 209 to identify more clearly the inquiries and steps that (ASIC) think(s) are important for licensees in complying with their responsible lending obligations.” Our members want to conduct their business in a compliant manner consistent with the conditions of their Australian Credit Licences (“ACLs”) and the National Consumer Credit Protection Act 2009 (“NCCP”). They are particularly committed to responsible lending. They have consistently expressed to the NCPA their desire for greater clarity and certainty in the expectations that ASIC has of what the responsible lending obligations mean in practical terms in particular situations. This document will now respond to the specific proposals and questions in the Consultation Paper.

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

Our members would find such identification more useful as it would:

- (a) better enable them to comply with their ACL and NCCP obligations;
- (b) provide more certainty for their business operations;
- (c) assist in staff training;

(d) allow for a consistent approach to enforcement of responsible lending obligations across the credit industry.

NCPA agrees with the approach taken by ASIC in CP309 at B11-12 that such identification and clarification should not impose minimum requirements by way of regulation as these would impose higher compliance costs without being the most efficient means of consumer protection. Updating RG209, as stated in B14, is the most appropriate approach. Guidance is good. Prescription is not.

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

Since RG209 was first issued, technology has advanced to enable the quick, efficient and relatively economic access (with appropriate consumer consent) by licensees to the bank statements of consumers. In the case of SACC loans, 90 days of bank statements are, of course, mandated as a minimum requirement.

Many of our members obtain and assess 90 days of bank statements for all classes of loans as they consider this the best way to satisfy their responsible lending obligations. NCPA suggests that this industry standard could be reflected in the guidance for all licensees.

B1Q3 Are there any kinds of credit products, consumers or circumstances for which you consider it may be reasonable to undertake fewer inquiries and verification steps? Please identify the kinds of products, consumers and circumstances and particular features you think are relevant.

NCPA members do not support amending RG209 to recommend fewer inquiries or verification steps for the products, SACCs, MACCS and mostly unsecured Other Personal Loans they provide.

B1Q4 In your view, what aspects of the consumer's financial situation would a licensee need to inquire about in all circumstances? If you think some aspects of the consumer's financial situation do not need to be inquired about, please explain why.

The level of inquiry should be scalable and suitable to the relevant loan products as currently stated in RG209.19. Inquiries should be made of a consumers' income, expenses and existing credit commitments in order for a licensee to satisfy their responsible lending obligations in making a credit assessment. Other than those contingencies which are reasonably foreseeable at the time of making the assessment (for instance if employment is already described as casual) further inquiry does not appear to NCPA to be necessary for the types of loan

products provided by its members than those already canvassed in RG209.

For instance, more detailed inquiry of a person about their long term employment plans (e.g. leading to retirement) may be necessary for a loan of 10 years or longer but not a SACC or a MACC.

B1Q5 In your view, what aspects of the consumer's financial situation would a licensee need to verify in all circumstances? If you think some aspects of the consumer's financial situation do not need to be verified, please explain why.

Most NCPA members do not require third party verification of a consumer's own statement of their family situation. If their bank statements contain entries which are inconsistent with the consumer's statement, then that should prompt further inquiry. However, in the first instance, a SACC and MACC lender need not verify by way of birth certificates, or medicare records, the family status of a consumer applicant. We suggest this should not change in RG209.

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

This response should be read with our response to B1Q1 above where we support the reasoning in CP309 11-12 opposing more mandated minimum requirements. For most of our members, however, identifying by way of guidance particular inquiries and verification steps would assist in the ways described above.

However, not all the items identified in Appendix 1, for instance, are appropriate in a scalable way for all products. Appendix 1 Table 1, for instance, lists several methods for verifying a consumer's income including for PAYG workers:

- recent payroll receipts/payslips;
- confirmation of employment with the employer (subject to requirements of the Privacy Act 1988 (Privacy Act));
- recent income tax returns; and
- bank statements recording incoming payments

Of these, only bank statements are practical in a scalable sense for SACC loans particularly in the on-line environment. Payslips, confirmations with employers and tax returns would add little to a credit assessment on income that could not be gleaned from analysis of 90 days of bank statements. Collecting them, however, would add to costs for both credit provider and consumer.

Appendix 1 Table 2 suggests that Credit Reports be required for all applicants. Credit Reports cost money. A SACC lender is already required to obtain 90 days of bank statements. Analysis of those will identify the regular debt payments being made by the applicant consumer for the relevant period and:

- whether they are late; and
- if default fees have been imposed by other credit providers.

The average SACC loan term is only 4-6 months in any case.

A Credit Report is unlikely to improve this analysis and is simply another cost without benefit to the assessment process.

Credit Reports may be appropriate for larger long term loans, e.g MACCs and Other Personal loans but NCPA suggests leaving their use in the case of SACCs to the individual licensee.

B1Q7

What would be the effect on business costs of ASIC identifying particular inquiries and verification steps? Please provide details of the effect on compliance costs for the licensee, and any factors that are likely to affect the level of cost or cost savings.

Greater clarity and certainty in difficult areas, as discussed above, would probably reduce compliance costs. However, as discussed above, some of the items in Appendix 1 would add considerably to the cost of credit assessments without improving their quality.

For instance, depending on volume, credit reports can cost \$5-\$15 each from each of the major credit reporting bodies. The cost of obtaining confirmation from employers, for an applicant's income, is likely to be in the order of \$10 depending on whether it can be done by telephone or email.

Adding these to the cost of assessing a SACC loan of \$400 - \$500 is not justified when the relevant information for the credit assessment can be verified and analysed from 90 days of bank statements.

B1Q8

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

Subject to the appreciation of scalability discussed above and understanding that not all methods of verification are relevant to all loan products, NCPA believes that greater clarity and guidance in RG209 will enhance competition between licensees and different classes of licensees.

This is understandable as the SACC loans provided by our members are already the most regulated consumer credit loan product and are subject to a number of mandated minimum requirements for inquiry and verification.

Taking some of those requirements (e.g. 90 days of bank statements) and putting them in RG209 for a greater range of products will only make the market fairer and more compliant with the responsible lending obligations in the NCCP.

Proposal C1

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

- (a) clarify our guidance on kinds of information that could be used for verification of the consumer's financial situation, and provide a list of forms of verification that we consider are readily available in common circumstances; and
- (b) clearly state that views on what are 'reasonable steps' will change over time, as different forms or sources of verifying information become available. For example, developments in open banking and data aggregation services will assist licensees to efficiently confirm the financial situation of a consumer (including allowing simultaneous inquiry about and verification of some information).

In general, as discussed above, NCPA members would welcome greater clarity in RG209 as to ASIC's expectation on forms of verification but this is subject to the scalable suitability of those expectations to different types of lending.

C1Q1 Please provide details of any particular types of information that you consider should be reflected in the guidance as being appropriate and readily available forms of verification?

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

As discussed above, not all the examples in Appendix 1 are appropriate for all products, particularly SACCs where 90 days of bank statements are already mandated for all credit assessments.

Apart from cost, not all of the sources of verification identified in Appendix 1 Table 1 for income are so "readily available" as others.

Modern technology and data aggregation services makes access to bank records and analysis of those records much easier than expecting the consumer to locate, scan and send payslips. "Payslips" is itself becoming an outdated term as almost all wage earners will now be paid electronically and such payment confirmed by electronic means. Analysing the bank statements will achieve exactly the same outcome in a much more efficient way as the same source can be used to verify other aspects of a consumer's financial situation such as their expenses.

C1Q3 Are there particular issues with using data aggregation services that you consider should be raised in our guidance? Please provide details of those issues, and information that you consider should be included in our guidance. For example, would it be useful to include specific guidance on matters the licensee could, or should, raise with the consumer before obtaining the consumer's consent to use this kind of service?

Licensees are already required to obtain the consumer's consent to access their bank statements whether that is:

- (a) directly; or
- (b) through a data aggregation service.

The data aggregation and analysis services used by most NCPA members currently only source data from bank statements. If multiple sources of information become available to such a service so that almost all the consumer's financial situation can be analysed from a single source this would enhance the credit assessment process.

NCPA members would welcome guidance from ASIC, whether in RG209 or elsewhere, on whether increased disclosure and consent from consumers would be then required. Perhaps this is more a matter for the Office of the Australian Information Commissioner under the Privacy Act?

Proposal C2

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

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

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

In general NCPA supports RG209 more clearly stating that licensees should not merely obtain information but have regard to it in their credit assessments. This is qualified, however, by the discussion above that not all the sources of information in Appendix 1 are appropriate or necessary for credit assessment of all credit products.

- C2Q1 Do you consider that the proposed clarification of guidance on reasonable verification steps would be useful? Are there any other aspects of our guidance on verification that you consider would be useful?
- C2Q2 Would an ‘if not, why not’ approach encourage improvements to current verification practices? Why or why not?
- C2Q3 What are the benefits, risks and costs for consumers in this approach (including any effect on access to and cost of credit for consumers)?
- C2Q4 What additional business costs would be involved in this approach?

The “if not why not” approach would be appropriate if it need only be stated once, perhaps in a Responsible Lending Policy document included in the Compliance Plan of the licensee, for a particular credit product or, perhaps, class of consumer applicant. Further, if a particular source of information was accessed and not used, that is a situation which justifies the “if not why not” approach. NCPA does not approve of appropriate information being accessed and not used by a credit provider in its assessment.

However, if the “if not why not” question has to be answered for each and every credit assessment when, it is clear, a particular source of information is not being accessed by the licensee for certain credit product, e.g. SACCS, then this will add considerably to the cost of the credit. As SACCS are subject to mandatory pricing, this will add to the costs for licensees without any means of its recovery.

Again, NCPA members welcome greater clarity but not the imposition of an increased expectation in RG209 about the verification steps they are required to undertake when such will not add to the quality of their credit assessments.

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

If licensees not offering products like SACCS which are already subject to mandatory verification requirements, were better guided by RG209

to obtain and use relevant sources of information, like bank statements, this would enhance fair competition between different classes of licensees.

Proposal C3

We propose to clarify our guidance in RG 209 on the use of benchmarks as follows:

(a) A benchmark figure does not provide any positive confirmation of what a particular consumer's income and expenses actually are. However, we consider that benchmarks can be a useful tool to help determine whether information provided by the consumer is plausible (i.e. whether it is more or less likely to be true and able to be relied upon).

(b) If a benchmark figure is used to test expense information, licensees should generally take the following kinds of steps:

(i) ensure that the benchmark figure that is being used is a realistic figure, that is adjusted for variables such as different income ranges, dependants and geographic location, and that is not merely reflective of 'low budget' spending;

(ii) if the benchmark figure being referred to is more reflective of 'low budget' spending (such as the Household Expenditure Measure), apply a reasonable buffer amount that reflects the likelihood that many consumers would have a higher level of expenses; and

(iii) periodically review the expense figures being relied upon across the licensee's portfolio—if there is a high proportion of consumers recorded as having expenses that are at or near the benchmark figure, rather than demonstrating the kind of spread in expenses that is predicted by the methodology underlying the benchmark calculation, this may be an indication that the licensee's inquiries are not being effective to elicit accurate information about the consumer's expenses.

NCPA welcomes this proposal. In keeping with the discussion in CP309 B11-12, we note that the updated RG209 proposal is not mandating the use of benchmarks in all credit assessments for all products.

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

NCPA considers this proposal useful in particular C3(b)(iii) which could be a useful regular, probably annual, compliance check to see if:

- (a) the relevant benchmark a licensee is using is working as it should; and
- (b) if the licensee is collecting accurate information about consumer expenses and how this can be improved.

This proposal would involve significant cost to members in the setting up of up, maintaining and calibration of the appropriate software but the information gathered on an ongoing basis could be useful.

C3Q2 Please provide information on what buffer amounts you currently apply, or would otherwise consider to be reasonable.

On purely anecdotal basis, NCPA can report that its members have a variety of approaches to “buffers” and “margins.” Some have fixed buffers of between \$50 - \$100 per week and others percentages of about 10 – 15%.

RG209.104 currently uses the word “margin” which implies a percentage as opposed to “buffer” which would indicate a fixed amount. We ask that RG209 be amended to provide clarity around this issue though it would be the preferred position of the NCPA that ASIC does not stipulate which approach is more compliant but simply identify and acknowledge the distinction.

C3Q3 What are the benefits, risks and costs for consumers in this approach (including any effect on access to and cost of credit for consumers)?

NCPA notes that the approach in the proposal does impose some increased compliance costs but does not see them as unsustainable. The correct use of benchmarks should (even without the proposed guidance) have a salutary effect on responsible lending and, therefore, may lead to consumers being denied credit.

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

See above.

Proposal C4

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

NCPA supports this proposal in the light of the problems identified in REP 493 but its members do not, largely:

- a. take referrals from brokers;
- b. offer interest-only home loans.

Proposal D1

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

NCPA supports this proposal but notes that its members, by and large, do not provide small business finance.

Proposal D2

We propose to include new guidance in RG 209 on:

- (a) the role of the responsible lending obligations, and in particular the obligation to take reasonable steps to verify information provided about the consumer's financial situation, in mitigating risks involved in loan fraud; and
- (b) risk factors that might indicate that additional verification steps should be taken.

NCPA supports this proposal but notes that it is mostly directed to fraud and misconduct by third party assisters and that, by and large, its members do not take loan applications through brokers or other assisters.

NCPA members through their compliance with the requirements in the NCCP to obtain 90 days of bank statement and their AML/CTF compliance programs take appropriate steps, in the scalable context of the products they offer, to address potential consumer fraud.

Proposal D3

We propose to include guidance in RG 209 to clarify how repayment history information may be used, including that:

- (a) the occurrence of repayment difficulties on one product will not necessarily mean that a new credit product will in all cases be unsuitable for that consumer; and

(b) this information should instead trigger the licensee to make more inquiries to enable them to understand those repayment difficulties, and the likelihood that the circumstances of the consumer leading to those difficulties will mean that the consumer would also be unable to meet financial obligations under the new product being considered.

NCPA welcomes this proposal for the reasons discussed below.

D3Q1 Would guidance about use of negative repayment history information and hardship indicators reduce the risk that credit providers consider it necessary to refuse applications for further credit products that may in fact be affordable for the consumer? Why or why not?

While most NCPA members are already aware of this issue and make those further inquiries where appropriate, NCPA welcomes further guidance as it will give confidence to licensees that, after appropriate further inquiries, the occurrence of repayment difficulties identified either in bank statements or in a credit report is not considered by ASIC to be an “absolute barrier” to further credit assessment.

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

The benefit to consumers is that some who may otherwise be able to afford a proposed loan but who are refused credit due to past repayment difficulties, will now have a greater chance at passing a credit provider’s credit assessment process.

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

Responding to such “triggers” and making further inquiries is more time consuming and will elongate the credit assessment process making it more expensive. This is off-set by the prospect of doing business with a consumer who may otherwise be unfairly rejected.

Overall, the greater confidence which this proposed guidance would provide to credit providers outweighs the potential increased costs.

Proposal D4

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

NCPA largely welcomes this proposal but notes that REP493 was largely concerned with problems with mortgage broking and interest-

only home loans which are not products offered by our members. NCPA considers scalability is important based on the product type must be available.

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

NCPA considers such guidance to be potentially useful for its members as long as it is not seen as so prescriptive as to interfere with the industry innovation and diversity which are necessary for a competitive market. It would assist in staff training.

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

Referring to CP309 paragraph 85, NCPA considers (a) "the use of tools" and (b) "Record keeping" of communications with consumers to be generally appropriate for all licensees. Anecdotally, NCPA believes that most of its members already maintain systems which use such tools and record file notes of communications with consumers and along with notes added to the record by the relevant credit assessing staff.

NCPA, however, does not consider that (c), the "concise narrative summary", is necessary for all loan products, particularly SACCs. If an accurate record has been kept of the consumer's application, verification documents and correspondence and communications with the credit provider, the additional requirement of drafting and recording such a summary would add little to the process or its record for internal compliance purposes or external review.

D4Q3 What are the benefits, risks and costs for consumers in this approach (including any effect on access to and cost of credit for consumers)?

Better records means better assessments and better responses to any review whether voluntary or mandated by ASIC.

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

As most NCPA members are already utilising tools and record keeping of communications as part of their business operations, we do not see any additional costs resulting from the proposed guidance. We do not consider concise narrative summaries as necessary for SACC assessments and note that drafting and recording these would add some \$10 - \$20 to the cost of an assessment without enhancing its quality or accountability.

Proposal D5

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

NCPA welcomes this proposal on guidance and not being prescriptive.

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

Yes. This is notionally the guidance which NCPA is seeking from ASIC.

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

Most NCPA members already have credit assessment documents as detailed as this one. We note that the “Objective” section does not include an option for medical and/or dental expenses which are commonly identified by consumers as their purpose for a SACC loan.

Of course, not every section of the example is suitable for every type of credit product and that is, we gather, ASIC’s intention. It is, however, a useful guide supported by the NCPA.

D5Q3 What are the benefits, risks and costs for consumers in this approach (including any effect on access to and cost of credit for consumers)?

The benefit is to improve the standard of credit assessments and this should not negatively impact on access to suitable credit for consumers.

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

There may be some “tooling up” costs for licensees as they review their existing credit assessment templates in the light of the new proposed guidance but after that there should be no ongoing increased cost.