

**Australia and New Zealand Banking Group Limited (ANZ) comments on
ASIC Consultation Paper 309 Update to RG 209: Credit licensing:
Responsible lending conduct**

General comments and approach

1. ANZ welcomes the opportunity to comment on CP 309 *Update to RG 209: Credit licensing: Responsible lending conduct*.
2. ANZ supports ASIC's review of RG 209. Going forward, ANZ would support more regular reviews as well as ongoing dialogue between ASIC and industry on ASIC's policy position on responsible lending. This continual engagement will be increasingly important given the rapid and ongoing development in technologies and information sharing regimes (including the Consumer Data Right (open banking) and comprehensive credit reporting).
3. ANZ supports the current approach taken in RG 209 of providing principles-based guidance to assist credit licensees (**licensees**) in complying with their responsible lending obligations. This approach allows licensees to tailor their responsible lending processes in a way that is appropriate to their business model and credit activities and the circumstances of each individual consumer.
4. For example, the regime needs to stay flexible enough for licensees to tailor their verification processes to applicants who may have alternative sources of income that cannot be verified through 'standard' documentation like payslips and salary credits (for example, high net worth individuals or individuals who receive income from a small business) or where the licensee already holds sufficient financial information about the applicant for the purposes of verification of their financial situation. This flexibility means licensees can design processes that do not impose unnecessary burdens on consumers and which meet consumer expectations in relation to efficient and effective access to consumer credit.
5. An overly prescriptive approach imposed on regulated licensees alone could also have the unintended consequence of encouraging consumers towards unregulated lenders, such as 'buy now, pay later' lenders, who are able to offer more streamlined and less onerous application processes. This could distort competition in the credit market and create potentially negative outcomes for consumers looking to access 'quick and easy credit', which nonetheless may be unsuitable for them.
6. While the flexibility afforded by a principles-based approach is important, there are some aspects of the responsible lending obligations which in ANZ's view would benefit from more specific guidance. ANZ acknowledges that bank statements can be readily available. However the interpretation of

information in bank statements for the purposes of verification is not always straightforward, as we discuss further below. Therefore, clearer guidance on the circumstances in which licensees are expected to collect bank statements for the purposes of verification, and how they are expected to use those statements, could help bring greater industry consistency to this area.

7. In providing our response to CP 309 ANZ takes the approach of providing comments on a thematic basis rather than responding to each question posed by ASIC. The key themes on which ANZ wishes to comment are:
 - verification of a consumer's financial situation;
 - positive confirmation of living expenses;
 - sources of verifying information; and
 - the use of benchmarks and other potential mechanisms, such as a Debt Servicing Ratio.

ANZ also provides brief comments relating to fraud risks and impact on responsible lending obligations, use of repayment history information and content of a written assessment.

Verification of a consumer's financial situation

8. ANZ agrees with the statements in paragraph 18 of CP 309 that RG 209 could provide greater certainty about the kinds of information licensees should consider using to verify different aspects of the consumer's financial situation. However, to take this point further, we believe that where regulatory guidance specifies information that licensees should consider using, that it also sets out what aspect of the customer's financial situation the information could be used to verify and how it could be used.
9. For example, CP 309 makes certain comments about bank statements and their use as part of a licensee taking reasonable steps to verify a consumer's financial situation. Such comments include that:
 - a. bank statements are readily available, even if they are not already accessible to the licensee (paragraph 26(a));
 - b. ASIC generally expects licensees to use readily available information to verify a customer's financial situation (paragraph 29); and
 - c. ASIC is aware of instances of licensees having collected bank statements for income verification but ignoring the statement insofar as it includes information about the consumer's material expenses (paragraph 26(b)).
10. From these comments, we understand ASIC has an expectation that at least in some circumstances, licensees should be collecting and using bank

statements for the purposes of verification of an applicant's financial situation. However, ANZ believes any guidance on the collection and use of bank statements would be more useful if it also expanded on how ASIC sees bank statements being used.

11. To illustrate the importance of this clarification, below are two ways in which bank statements could form a part of a licensee's reasonable steps to verify:
 - a. where bank statements are collected for the primary purpose of verifying a consumer's income, they are also examined to identify any material discrepancies between a consumer's stated expenses and the transactions contained in those bank statements (**Approach A**). This may involve using the bank statement to identify significant repeated transactions evidencing an ongoing expense that has not been stated on the customer's statement of position, or which may have been understated; or
 - b. collecting bank statements for the purposes of seeking to account for each aspect of the consumer's financial position, including by matching declared income and expenses against corresponding transactions appearing in the statements (**Approach B**).
12. Depending on whether Approach A or Approach B is taken, the type and number of bank statements collected and what type of analysis performed on the statements will differ as follows:
 - a. if Approach A is taken, the licensee will need to collect what is required in order to perform income verification, which would be limited to statements for the accounts into which the consumer is paid their income. In this scenario, a complete picture of the consumer's expenses is unlikely to be available through review of those statements. Accordingly, the analysis would be limited to looking for anything in the bank statement that is clearly inconsistent with the consumer's stated financial position, in particular missing expenses or liabilities;
 - b. if Approach B is taken, the licensee will need to collect all statements for accounts (deposit, saving and credit card accounts) into which the consumer is paid their income, and out of which the consumer pays their everyday living expenses and other credit liabilities. This is potentially a significant amount of material covering multiple accounts. The analysis would then require matching of stated expenses against observed expenses on the statements.

13. We believe it would be helpful for RG 209 to set out ASIC's broad expectations under a process of manual collection of bank statements and manual analysis of statements. Until reliable automated mechanisms to facilitate the request and collection of transactional information are more readily available to licensees, in ANZ's view the expectation on the use of bank statements in a manual process should accord more with Approach A than Approach B.
14. In our view, Approach A is more aligned with the intent of the legislation that a lender takes *reasonable* steps to verify the consumer's financial situation. Approach B would be onerous, for licensees and consumers alike, and would likely result in considerable delays to the loan assessment process. The difficulties and limitations of detailed expense verification (set out below) are exacerbated where a lender is relying on the manual collection and review of relevant documentation.
15. ANZ agrees with the commentary at paragraphs 20-23 that over time, developments in relation to open banking may increase the ease of obtaining information about a customer's financial position and that these developments will change what can be viewed as reasonable steps to verify. However, we note that implementation of open banking is contingent on Parliament passing an enabling law. Even after its introduction, open banking will be implemented on a phased basis from 1 July 2019 to 1 July 2021.¹ ASIC may like to consider when data would be available under that regime and from which entities consumers would be able to request data. If a consumer has a transaction account relationship with an entity that is not obliged to disclose data, then the open banking regime would not aid in increasing the availability of transaction account data for a licensee assessing an application of credit from the consumer. ANZ also suggests that ASIC undertake consultation with other interested bodies such as the Australian Competition and Consumer Commission before RG 209 guidance regarding open banking is finalised.
16. For this reason, we believe any guidance on verification should continue to contemplate the complexities involved in the manual collection and ingestion of bank statements and other verification material and should be mindful that it may take some time for any open banking regime to significantly improve the accessibility of verifying information for licensees.
17. We are concerned that ASIC envisages data aggregation services could play a similar role in the meantime. In ANZ's experience to date, data

¹ See pages 95-97 of the draft *Consumer Data Rules* as released by the Australian Competition and Consumer Commission available at: <https://www.accc.gov.au/system/files/Exposure%20draft%20CDR%20rules%2029%20March%202019.pdf>

aggregation services commonly rely on the effective disclosure by consumers of confidential identifiers. Such disclosure by the consumer potentially breaches clause 12 of the ePayments Code and the terms and conditions of their credit facility, exposing consumers to potential liability for any loss resulting from unauthorised transactions. We suggest that RG 209 guidance should not endorse forms of data sharing that cannot be facilitated in a secure manner and in a way that is consistent with existing regulatory safeguards.

18. ANZ would be happy to have further discussions with ASIC about the complexities facing licensees, including the potentially significant cost implications for both licensees and consumers, in the collecting of transactional information and automation of the analysis of such information. We would also be happy to discuss the concerns we have with screen scraping technology.

Positive confirmation of living expenses

19. CP 309 refers to the concept of 'positive confirmation' of expenses a number of times, for example at paragraph 57. This term could be given a number of different interpretations and we would encourage ASIC to clarify its meaning if it is to be used as part of regulatory guidance. For instance, positive confirmation could mean:
 - a. confirmation that an expense of the type declared by the consumer has occurred;
 - b. confirmation that there have been no expenses incurred beyond what the consumer has declared;
 - c. confirmation that the total incurred for a type of expense declared by the consumer is reflected in bank statements; or
 - d. confirmation that the total of all declared expenses is reflected in the bank statements.
20. On another view, 'positive confirmation' could be interpreted as taking each individual customer-declared expense item and checking it off against the corresponding transaction(s) appearing on the relevant bank statements. This would be an extremely difficult and imprecise process, for the following reasons:
 - a. an applicant may have multiple expenses sources, including more than one transaction account and/or credit card account;
 - b. transaction descriptions appearing on bank statements do not always display sufficient information about the transaction to put it into a specific category of expense;

- c. a customer's account statements may not reveal all expenses they incur, in particular expenses paid for by cash and expenses incurred by the customer but paid for by a spouse or family member;
 - d. there would be uncertainty in how to apportion expenses for a sole applicant producing bank statements for a joint account; and
 - e. ahead of implementation of the Consumer Data Right (open banking) there is no guarantee that licensees have all 'source information' in the form of bank account statements in their possession to permit positive confirmation of expenses. Even after the introduction of an open banking regime, individual customers may not provide the required consent for all relevant information to be shared and due to the planned phased introduction of the regime, only limited transactional data would be available through the system in any event.
21. Based on our analysis, consideration of one average credit card statement for transactions representing actual living expenses could involve the review of between 100-300 separate transactions for that month. To facilitate a sufficiently detailed analysis of the customer's living expenses through transactions, licensees would need to multiply this review across at least 3 months of these statements and also consider what other accounts, including transaction accounts, need to be reviewed to capture a full picture of the customer's expenditure. It is likely that such a review may be resource intensive without a commensurate improvement in the quality of credit decisions. This is especially where the confirmation is being conducted in relation to smaller discretionary expense items that may not be material to the customer's ability to repay the loan, and which could be reduced by the consumer in the future.
22. As an indicator of the resource requirement, we estimate that if such a review was conducted manually by a bank officer across 3 months statements for two accounts, it would take approximately 2 hours (in addition to the other steps involved in the assessment process) and would unlikely result in complete confirmation of all stated expenses for the reasons stated in paragraph 20. This would mean further discussions with the consumer to validate observed expenses would be required. Such inquiries may be considered invasive by some consumers and would add further time to the assessment.
23. The effect of such delays may be compounded for consumers who are applying for credit through credit assistance providers like a broker. These consumers may already face inconsistent and duplicative demands for documentation and information for the purposes of verification – one set of

demands from the credit assistance provider for the purposes of complying with their licence obligations, and another from the lender.

24. Any guidance on expense verification should also recognise the limited value of verifying past expenses to assess future capacity to make repayments without substantial hardship, unless those expenses do not tend to change over time and are not discretionary. Any guidance on expense verification should recognise that the requirement to take 'reasonable steps' to verify applies to a consumer's overall financial situation, and does not mean that verification of each aspect should be at the same level. Confirming previous discretionary living expenses, which can be more easily managed by the consumer in the future, is of limited value to an assessment, compared to the verification of other forms of expenses which have a more material impact on the consumer's ability to repay and are unlikely to change.
25. ANZ's experience is that confirmation of a consumer's income and level of indebtedness is more critical to that consumer's ability to service their loan without substantial hardship than detailed verification of expenses, and that these aspects warrant greater focus.
26. In summary, ANZ's position is that:
 - a) there are inherent difficulties in positively confirming past living expenses;
 - b) these difficulties are compounded when applied as part of a manual process;
 - c) positive confirmation of small discretionary expenses that have occurred in the past is not necessarily relevant to the assessment of whether the customer will be able to afford the loan into the future;
 - d) ANZ agrees that in some circumstances credit providers will need to have regard to past account activity as part of verification of living expenses. However conducting a detailed 'audit' of each expense category is a lengthy and complex process, may ultimately not be useful to the assessment and therefore could be considered as beyond a reasonable step, and;
 - e) until there is widespread availability of source transaction data through mechanisms such as open banking and reliable means for credit providers to automatically ingest and interpret this data, expense verification should focus on validating that the consumer's past expenses are broadly consistent with their proposed future expenditure and that there are no clear discrepancies requiring further inquiry by the licensee.

Sources of verifying information – ‘if not, why not’

27. ANZ has considered the sources for verifying information set out in Appendix 1 and generally supports ASIC’s comments regarding the extent to which the listed categories of information are or may be readily available from the consumer, and we support ASIC’s recognition that verifying material for some variable living expenses (such as entertainment or recreation) may not necessarily be readily available. We note however the concerns we have expressed above regarding the use of data aggregation services (mentioned in Table 5).
28. We understand ASIC’s position to be that the extent to which verifying information should reasonably be obtained will depend on the circumstances. ANZ supports this approach. For example, in the case of income verification (Table 1), ANZ anticipates that in cases where recent payroll receipts/payslips have been obtained from a customer, it is unlikely that seeking to obtain income tax returns would add any value to the assessment process. Similarly, where a licensee has access to relevant transactional data through either its own systems, or through open banking, it may not be necessary to also obtain payslips from the customer to verify their income.
29. However we believe the ‘if not, why not’ approach proposed in C2(b) conflicts with this position that what is reasonable to collect and review will depend on the circumstances. We also believe the ‘if not, why not’ proposal, to the extent that it requires a licensee to explain why it has not referred to all ‘readily available’ information (which may change over time), is inconsistent with the responsible lending regulatory regime, which requires licensees to take reasonable steps to verify a consumer’s financial information. A licensee should not have to explain why it did not obtain or refer to information or documentation that in its reasonable view, did not constitute a reasonable step to verify. The proposal also does not seem to match with a principles-based regime.
30. A licensee should be in position to explain which information it has used in meeting statutory and regulatory requirements and list of information in Appendix 1 is a valuable reference in this regard. However, in our view, a requirement to explain why each potential source of information is not used is unnecessary.

Use of benchmarks

31. ANZ supports ASIC’s comments at paragraph 52 that benchmarks can be a useful tool to help determine the plausibility of information provided by consumers. However ANZ seeks clarification of ASIC’s position how they should be used as part of an unsuitability assessment.

32. In ANZ's view, it is not clear from Proposal C3 whether it is ever appropriate to use a benchmark in place of 'positive confirmation' of living expenses. CP309 seems to suggest that it may be 'sufficient' to compare the consumer's estimated general living expenses to a benchmark figure where: the benchmark is realistic and is not reflective of low budget spending; if the benchmark is reflective of low budget spending, that an appropriate buffer be added to the benchmark; and the benchmark is periodically reviewed. CP 309 also notes that a credit provider may have more reason to rely on stated expenses where they are well above a reasonable benchmark figure, but that positive confirmation may be required where declared expenses are below a benchmark figure.
33. For ANZ, this raises some confusion as to ASIC's position on benchmarks and income verification. A position that benchmarks may be sufficient in some circumstances, without any form of positive expense verification, does not appear consistent with other statements, in particular that licensees will generally be expected to refer to readily available information and documentation for the purposes of verification. ANZ requests ASIC to clarify this position.
34. CP 309 suggests that the application of a benchmark to a customer's stated living expenses could be used by a licensee to determine whether some form of positive confirmation of the customer's stated expenses is required.
35. As stated above, ANZ would like clarification that this is ASIC's position. However assuming our interpretation is correct, we would propose a potential alternative method by which credit providers could ascertain whether further inquiries and/or verification are required.
36. A Debt Servicing Ratio (DSR) is the proportion of pre-tax income that is used to service all lending repayment obligations (both interest and principal repayments). The lower a consumer's DSR, the more likely the consumer is to have capacity to service debt. In ANZ's view, the DSR could be used in two ways:
- a. To impose an industry-wide limit on the maximum proportion of a consumer's income that can be used for debt servicing; and
 - b. To determine whether, based on: (1) the consumer's DSR; and (2) the customer's available monthly income (based on declared expenses), the credit provider needs to take some steps towards positively confirming the customer's declared expenses. For instance a credit provider could take these extra steps if the DSR was high and the customer's available monthly income is low.
37. If a DSR was to be used to determine which applications need to be the subject of more detailed expense verification, it should be calculated by

reference to verified income amounts and information about the customer's outstanding liabilities that has been drawn from comprehensive credit information provided by a credit reporting body. This would be a more reliable 'filter' to apply than the customer's available monthly income alone, which could be calculated purely from declared, unverified information. A form of DSR is currently utilized in other credit markets, including Canada, Hong Kong and Singapore.

38. We would strongly recommend further consultation between ASIC, industry and other interested bodies such as APRA, before any recommendations in relation to DSR uses are finalised. ANZ looks forward to contributing to these discussions.

Fraud risks and impact on responsible lending obligations

39. ANZ supports the comments at paragraphs 73 and 74. ANZ suggests that it would also be appropriate for ASIC to provide guidance to emphasise that credit assistance providers should have processes in place to ensure the reliability of information collected by their officers (who conduct credit assistance as representatives), including training and file reviews.

Use of repayment history information

40. ANZ is concerned that the proposed guidance as presented at D3 to 'discourage licensees from treating hardship indicators...as a trigger for automatic refusal but indicate that such information should trigger additional inquiries' could be misinterpreted as requiring a lender to make further inquiries of the consumer every time negative repayment history information is found, even where the lender does not intend to provide credit.
41. We agree that a hardship flag, or other form of hardship indicator, should not in all cases be an automatic trigger for declining a loan. Nevertheless, it may be considered as an indicator of a relatively higher risk of further hardship if additional credit is extended. Whether or not further inquiries ought to be made with the customer about their financial situation will depend on the lender's view of all information available to it when assessing the application. It may be, when considered as a whole, the lender decides to decline the application without further inquiries of the consumer about the negative repayment history information. It is important that lenders are able to form a judgement, consistent with their legislative obligations, based on the information it has available.
42. ANZ suggests that the more appropriate guidance would be to the effect that providing credit to consumers who have negative repayment history information, or other indicator of financial hardship on their credit report, does not necessarily equate to the provision of unsuitable credit, as long as

additional inquiries have been made and the licensee records the basis on which it believes the circumstances can be managed by the consumer in the future.

Content of a written assessment

43. ANZ makes the following comments regarding Proposal D5:

- a. the proposed guidance indicates a significant increase in the level of detail expected to be contained in a written assessments compared to current guidance in RG 209;
- b. RG 209 emphasises that a written assessment should be concise and easy for the consumer to understand – we believe the expectations expressed in in D5 could result in lengthy unsuitability assessments and be less consumer-friendly;
- c. the guidance would also likely require each unsuitability assessment to be manually prepared as it is required to contain very specific information, such as 89(a)(iii) and (v), which will likely be contained in manual notes made by the relevant lender/assessor;
- d. the proposed requirement outlined at paragraph 89(a)(iii) could include a summary of all income, expenses, liabilities that a customer has either not stated or understated and that the licensee has corrected as part of verification. It would be extremely difficult for a licensee to provide this type of variable information in a written assessment that is generated as part of an automated process designed to deal with a high volume of consumer requests. It should be sufficient for a licensee to provide the information that has formed the basis for its assessment. The consumer can then, having reviewed this information, ask for further detail about why the licensee did not accept customer-declared financial information.

44. ANZ would encourage ASIC to reconsider the level of detail in proposal D5 in light of the above. If the proposals in D5 are adopted, this would represent a significant shift in guidance on this requirement and ASIC should provide some time for licensee to adjust their processes and systems for the production of unsuitability assessments on request.

Further information

45. ANZ would welcome the opportunity to respond to any questions that ASIC may have. If ASIC would like to discuss our comments please contact Jacob Somers via the contact details provided separately.

20 May 2019