

HOUSE OF REPRESENTATIVES STANDING COMMITTEE ON ECONOMICS

REVIEW OF THE FOUR MAJOR BANKS

ANZ

ANZ47QW:

In the context of an exchange that occurred during the House of Representatives' Standing Committee on Economics' hearing with the Reserve Bank Governor and the Member for Mackellar on 14 August 2020:

Mr FALINSKI: And I congratulate you for drawing attention to something that people have deliberately ignored for too long, but while we're on the point of bad regulations and unintended consequences, we, the federal parliament, introduced not long ago responsible lending obligations, which essentially have the principle that the lender is responsible for decisions that the borrower makes. Is it your evidence to this committee and to the parliament that that law is not having any impact on credit creation and lending to small business and to those enterprises that are taking a risk in starting new enterprises?

Mr Lowe: That's not my evidence. I think it is having an effect. Just to go back to the legislation the parliament passed, which at a very high level is eminently reasonable, it says that, when extending credit, the loan can't be unsuitable—who could argue with that?—and in making the loan you've got to take reasonable steps that the borrower can repay. Well, who could disagree with those two broad principles? I find it very hard to disagree with them. What has happened is that those principles have turned into hundreds of pages of guidance. Once the compliance people, the lawyers, the regulators and the media get involved, these high-level principles put in law get turned into a lot of guidance, because people don't want to offend these kinds of regulatory requirements.

Mr FALINSKI: Can I humbly put it to you that you're being very generous. Wasn't it the interpretation of the courts, until the recent ASIC v Westpac case, that what this actually did was put the obligations back on lenders to understand absolutely and completely the capacity of borrowers to service a loan? That's why it turned into hundreds of pages and, when this was tested before the courts, especially the lower courts, that's what they found. I guess that's why we say the principle makes sense but the unintended consequence was that it restricted lending in the Australian capital markets.

Mr Lowe: I agree with you. I think the principles in the legislation are sound, but I think the way we've translated those principles into reality needs looking at again. If we can't do that properly, maybe we need to look at the legislation. We can't have a world in which, if a borrower can't repay the loan, it's always the bank's fault. On a portfolio basis, we want banks to make some loans that actually go bad, because if a bank never makes a loan that goes bad it means it's not extending enough credit. The pendulum has probably swung a bit too far to blaming the bank if a loan goes bad, because the bank didn't understand the customer; if it had done proper due diligence—this is the mindset

of some—the bank would never have made the loan. So some of the banks have had this mindset, 'Well, we can't make loans that go bad.' I would have to say, though, that in the past three or four months I've heard fewer concerns from the banks about the responsible lending laws. ASIC introduced new guidance. Institutions are gradually coming to grips with those.

Mr FALINSKI: That might be because, under the extraordinary powers we granted the Treasurer, he has given them relief from RLOs.

- (a) Can you advise whether the Governor of the Reserve Bank of Australia's views reflect that of your institution?
- (b) Do you agree with the principles established in legislation on responsible lending obligations? If not, which principles and why?
- (c) Are there any principles in the legislation that you believe could be amended or replaced that would better enable the bank to provide credit?
- (d) Do you agree with ASIC's guidance notes for the implementation of responsible lending obligations? If not, which sections do you disagree with, and why?
- (e) Are there any sections in ASIC's guidance notes for the implementation of responsible lending obligations that could be amended or replaced that would better enable the bank to provide credit?
- (f) Do you agree with APRA's guidance notes for the implementation of responsible lending obligations? If not, which sections do you disagree with, and why?
- (g) Are there any sections in APRA's guidance notes for the implementation of responsible lending obligations that could be amended or replaced that would better enable the bank to provide credit?
- (h) Have there been any unintended consequences resulting from the rulings of courts or tribunals that have applied strict interpretations of responsible lending obligations?
- (i) Have there been any decisions of courts or tribunals, such as AFCA, that you have chosen to appeal? If so, please provide details.
- (j) Have you removed any products as a result of responsible lending obligations?
- (k) Since 2008, what debt products have you removed from your product list as a result of responsible lending obligations?

Answer:

Please note that we have repeated the questions in this set of answers to improve readability.

(a) Can you advise whether the Governor of the Reserve Bank of Australia's views reflect that of your institution?

We agree with the Governor's view on the high level intent of the responsible lending laws. It is not in the interests of our customers or shareholders to lend money when it is unlikely that the loan will be repaid at all or only with substantial hardship.

To the extent that the Governor discussed how the laws are translated into reality, we note that the penalties that apply to any contravention of the obligations are significant. Our objective is to comply with the law. Where there is compliance uncertainty, we would approach the issue cautiously given the penalties that apply.

We would agree with the Governor's concern if the responsible lending obligations were used to dissuade any lending that involves some risk of loans going 'bad' irrespective of whether the obligations are adhered to. We will have loans that sadly go into default irrespective of compliance with the responsible lending laws. This largely happens because of changes in the circumstances of customers.

In respect of the Governor's comments concerning ASIC's new Regulatory Guide 209 (RG 209), our views on the guide are set out in response to ANZQW47(d) and (e).

(b) Do you agree with the principles established in legislation on responsible lending obligations? If not, which principles and why?

As noted in response to ANZ47QW(a), we agree with the core principle that lenders make loans that can be repaid (noting our comments above concerning the risk of loans going 'bad'). We also support the principle that the steps that lenders need to take generally are those which are 'reasonable' in the circumstances. This idea of 'reasonableness' should allow lenders to calibrate their processes to match their customers' circumstances.

We note that, in judging whether a lender complies with the legislation, regard must be had not only to the information the lender collected at the time of the assessment, but also the information the lender ought to have been aware of based on reasonable inquiries and verification (see RG 209.210 explaining section 131(4)(b)(ii) of the *National Consumer Credit Protection Act 2009* (Cth) (NCCP Act)). This means that lenders are deemed to know information that would have been obtained through reasonable inquiries and verification. While we understand the intent of this principle, it can be challenging to meet it when operating standardised loan assessment processes; it requires lenders to be alert to any circumstances of a borrower that may indicate that further inquiry is required.

(c) Are there any principles in the legislation that you believe could be amended or replaced that would better enable the bank to provide credit?

We note that the Government has announced proposed changes to the responsible lending laws. We look forward to working with the Government on the simplification and clarification of the laws that relate to lending in a way that supports the economy and protects consumers appropriately.

(d) Do you agree with ASIC's guidance notes for the implementation of responsible lending obligations? If not, which sections do you disagree with, and why?

Our response to this question is consolidated with our response to the next.

(e) Are there any sections in ASIC's guidance notes for the implementation of responsible lending obligations that could be amended or replaced that would better enable the bank to provide credit?

In its revised form, RG 209 helpfully:

- Adopts a principles-based approach, which is consistent with the NCCP Act;
- Provides lenders with examples that clarify key topics (e.g. the steps that need to be taken in refinancing); and
- Introduces a new concept of the customer's 'overall financial situation' and explains how a lender can use an understanding of it to comply with the responsible lending obligations.

If RG 209 were to be revised, a potential area of improvement would be for it to set out ASIC's understanding of the 'baseline' steps that lenders should take to comply with obligations. This is because RG 209 currently contains references to situations where *more or fewer* steps may be required but no clear baseline against which to calibrate these steps. Such a baseline could assist lenders understand what additional (or fewer) steps should be followed in particular situations.

(f) Do you agree with APRA's guidance notes for the implementation of responsible lending obligations? If not, which sections do you disagree with, and why?

Our response to this question is consolidated with our response to the next.

(g) Are there any sections in APRA's guidance notes for the implementation of responsible lending obligations that could be amended or replaced that would better enable the bank to provide credit?

We note that under the Government's proposed changes to the responsible lending laws the APRA standards (principally APG220: Credit Risk Management) and associated guidance would operate as the main requirements for ADIs in respect of lending. We would look forward to working with APRA on any calibration of these

standards and guidance that is necessary to allow them to perform this function effectively.

(h) Have there been any unintended consequences resulting from the rulings of courts or tribunals that have applied strict interpretations of responsible lending obligations?

We are not aware of any court or tribunal rulings that have applied unexpectedly or unreasonably strict interpretations of the responsible lending obligations.

(i) Have there been any decisions of courts or tribunals, such as AFCA, that you have chosen to appeal? If so, please provide details.

To the extent this question relates to decisions concerning our responsible lending obligations, no.

(j) Have you removed any products as a result of responsible lending obligations?

Yes. See our response to ANZ47QW(k).

(k) Since 2008, what debt products have you removed from your product list as a result of responsible lending obligations?

In 2012, we ceased offering a product called the 'Portfolio Facility' in part due to the responsible lending obligations.

This product provided a limited line of credit potentially structured across multiple loans. Customers could shift the credit across the loans at their discretion. The obligations made the product less feasible as each new loan or increase in the size of each individual loan would require a new responsible lending assessment.

While we no longer offer the product, a very small number of customers continue to hold it.