

## HOUSE OF REPRESENTATIVES STANDING COMMITTEE ON ECONOMICS

### REVIEW OF THE FOUR MAJOR BANKS AND OTHER FINANCIAL INSTITUTIONS

#### Commonwealth Bank of Australia

**CBA46QW:** 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:**

(a)-(h) We believe customers should have practical means to access credit and that the process for applying for credit should include sufficient checks and balances for the customer to understand the impact of the loan on their financial position, and to make an informed decision as to whether that loan would be in their interests. Lenders should play a role in supporting the customer through this decision-making process in a responsible way, in line with community expectations. At the same time, the process for applying for credit should not include elements that are unnecessarily or disproportionately intrusive or burdensome.

As per evidence given to the Committee on 4 September 2020, we believe current responsible lending arrangements and related regulator guidance are clear. However, we do acknowledge that under current arrangements, the average time required to process applications across the industry has risen, and that the process may add to the burden on customers who are seeking to substantiate and complete their applications.

We note that the Government has recently announced its intention to revise arrangements governing responsible lending obligations. We will participate in consultation on the Government's proposed reforms, with a view to Government adopting arrangements that provide practical and timely access to credit while also providing adequate support and protections for customers.

(i) The Commonwealth Bank has not appealed any decision of the courts or tribunals in relation to responsible lending obligations in the last three years.

(j) – (k) As per the evidence given to the Committee on 4 September, we have operationalised the regulatory guidance provided on responsible lending. We continually refine our product offering in light

of community expectations, but have not removed any products uniquely as a result of changes in responsible lending obligations.