



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

The ABA agrees with Governor Lowe's comments that when loans go wrong, it is not always a failure of proper due diligence or the fault of the bank. Banks must be able to take risks to prudently support the aspirations of individual customers and for the benefit of the economy.

The ABA supports RBA Governor Lowe's view that appropriately targeted lending regulation should not seek to remove all risks for borrowers. Strong consumer protections should be balanced with personal responsibility principles while facilitating access to timely and appropriate credit across the economy.

In the experience of ABA member banks, the vast majority of loan defaults are the result of significant changes in borrower circumstances such as serious illness, job loss, death or family breakdown, which are not foreseeable by either the bank or the borrower at the point of loan origination.

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

The Government has recently announced its intention to introduce significant Consumer Credit Reforms. These reforms propose the removal of ADIs from the responsible lending obligations of the *National Consumer Credit Protection Act 2009*, leaving APRA as the primary regulator of ADI credit assessment processes and frameworks. The ABA supports the Government's approach to simplify the regulatory landscape in this regard. The ABA also supports the proposed improved protections for consumers using debt management firms, small amount credit providers and consumer leases. These changes are particularly critical in the context of the current economic climate.

The ABA will work with the Government to ensure that the proposed reforms achieve the right balance between the appropriate flow of credit and protections for customers.

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

Banks understand the key role they play in ensuring the flow of credit into the economy, particularly as Australia emerges from the COVID-19 crisis. During COVID-19, banks have lent roughly \$1.5b a week to small businesses and remain committed to supporting individual and small business customers.

The Government is now consulting on proposed Consumer Credit Reforms. The ABA shares the Government's commitment to ensure the efficient flow of credit into the economy. The ABA considers the new framework should enable prudent risk taking by authorised deposit institutions while maintaining consumer protections and ensuring level playing field in consumer protections and lending standards for ADIs and non ADIs.

**(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?**

The proposed consumer credit reforms will set a new framework for ADIs. In effect, once implemented, these reforms will mean that ASIC's guidance as far as it relates to lending decisions, will not apply to ADIs.

We refer to our earlier comments above in relation to the Government's proposed changes.

**(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 banks to provide credit?**



We refer to our earlier comments above in relation to the Governments proposed changes.

**(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?**

APRA's guidance documents sit alongside their Prudential Standards and are an important regulatory tool to ensure sound credit risk management practices which is to the benefit of Australian consumers and businesses, ADIs and the financial system as a whole.

APRA's guidance outlines prudent practices in the management of risks arising from lending. In particular, APG 223 covers best practice for lending secured by mortgages over residential properties, including owner-occupied and investment properties.

Prudential Standard APS 220 Credit Risk Management covers a wider set of credit products and sets out APRA's requirements for an authorised deposit-taking institution to implement a credit risk management framework that is appropriate to its size, business mix and complexity.

The revised APS 220 which comes into effect on 1 January 2021, broadens its coverage to include credit standards and the ongoing monitoring and management of an ADI's credit portfolio in more detail. It also incorporates enhanced Board oversight of credit risk and the need for ADIs to maintain prudent credit risk practices over the entire credit life-cycle.

The ABA expects that the Government will work with APRA as part of the design of the proposed reforms to ensure that their standards are consistent with any Government changes. The ABA's view is the framework should enable prudent risk taking by ADIs. Since the GFC there has been significant evolution in credit risk practices, including more sophisticated analytical techniques and information systems. APRA's standards reflect contemporary credit risk management practices. The ABA will work with the Government to ensure that the new legislative framework will enable prudent risk taking and appropriate consumer protections.

**(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 banks to provide credit?**

As above.

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

Under proposed Government reforms, credit providers, including banks, will be required to remain members of AFCA. The ABA notes the upcoming Treasury review of the operation of AFCA, and anticipates that AFCA's approach to lending disputes, as well as the consistency of its determinations be a focus of the Treasury review.



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.