



ASIC
Australian Securities &
Investments Commission

**Australian Securities
and Investments Commission**

Office address (inc courier deliveries):
Level 7, 120 Collins Street,
Melbourne VIC 3000

Mail address for Melbourne office:
GPO Box 9827,
Brisbane QLD 4001

Tel: +61 1300 935 075
Fax: +61 1300 729 000

www.asic.gov.au

16 February 2021

Committee Secretary
Senate Economics Legislation Committee
PO Box 6100
Parliament House
Canberra ACT 2600

By email: Economics.Sen@aph.gov.au

Dear Secretary,

National Consumer Credit Protection Amendment (Supporting Economic Recovery) Bill 2020

This submission seeks to assist the Senate Economic Legislation Committee Inquiry into the *National Consumer Credit Protection Amendment (Supporting Economic Recovery) Bill 2020* (the Bill) by providing information about the responsible lending obligations that ASIC administers, ASIC's historical approach to administering and enforcing the responsible lending requirements, and key changes to licensees' obligations and ASIC's role if the Bill is passed.

During the development of the Bill and related subordinate instruments, ASIC has engaged with Treasury and the Australian Prudential Regulation Authority (APRA) to seek to ensure that the provisions proposed are capable of enforcement by ASIC in a manner consistent with the Government's stated policy objectives. It is not ASIC's role to make submissions relating to those policy objectives.

The Minister will prescribe standards that contain requirements for licensees to establish systems, policies and processes (SPPs) that are fit for the purpose of determining whether the consumer has capacity to meet repayments without substantial hardship. While an exposure draft of the proposed standards has been released, we understand that they have not yet been finalised. The content and enforceability of the new obligations will depend on the requirements in these standards. Accordingly, ASIC is not currently in a position to definitively comment on whether the provisions proposed are

capable of enforcement by ASIC in a manner consistent with the Government's stated policy objectives.

We note that the Bill includes reforms relating to enhancements to the requirements for small amount credit contracts (SACCs), consumer leases and reverse mortgages. Our submission does not cover the details of these reforms, as we expect that ASIC's comments would have been considered through previous Parliamentary processes. Further, we note the Government's announcement of the proposed credit reforms also includes subordinate legislation intended to regulate the conduct of debt management firms, which is subject to a separate consultation process.

Although these aspects of the reform package are not specifically addressed in this submission, ASIC notes that it welcomes stronger protections for more vulnerable consumers and the extension of licensing requirements to debt management firms.

The responsible lending obligations

The responsible lending obligations, contained in Chapter 3 of the *National Consumer Credit Protection Act 2009* (the Act), were made to:

- introduce standards of conduct to encourage prudent lending and leasing to continue, and impose sanctions in relation to irresponsible lending and leasing; and
- curtail undesirable market practices, particularly where intermediaries are involved in lending.¹

These reforms were made following recommendations by the Productivity Commission in May 2008. The final Productivity Commission report on the *Review of Australia's Consumer Policy Framework* had noted an increased use of credit in Australia over the preceding 20 years. It was noted that increased use of credit had led to higher levels of household indebtedness which impacts on household financial capacity and ability to respond to changing circumstances such as interest rate increases, a slowdown in economic conditions or rising unemployment. The Productivity Commission also noted that poor lending practices had contributed to a growing number of borrowers experiencing financial stress, and recommended consideration, in the context of a national credit regime, of what initiatives are required to promote responsible lending.²

¹ See the Explanatory Memorandum to the Act at paras 3.11 and 3.16.

² See the Explanatory Memorandum to the Act at paras 3.8-3.13.

The primary outcome intended by the introduction of these obligations was to minimise the risk that consumers:

- enter into, or are encouraged to enter into or remain in, an unsuitable credit product; or
- increase the credit limit of an existing credit product to a limit that is unsuitable.

When the obligations apply

To achieve this outcome, the responsible lending obligations apply:

- to all credit licensees, including credit providers (such as banks, credit unions, small amount lenders and finance companies), lessors under consumer leases and credit assistance providers (mortgage and finance brokers); and
- at different stages of the consumer's process of applying for credit products (depending on whether the consumer seeks help from a credit assistance provider or deals directly with the credit provider or lessor).

The obligations apply only in relation to credit products that are regulated under the consumer credit regime – that is, products provided to individuals or strata corporations for wholly or predominantly personal, domestic and household purposes or for the purchase or improvement of residential investment property. This includes credit products such as home loans, reverse mortgages, residential investment loans, personal loans, credit card contracts, medium and small amount credit contracts and consumer leases.

The requirements in the Act, including the responsible lending obligations, do not apply to loans where the predominant purpose is a business purpose or an investment purpose (other than investment in residential property)³. The Act also does not apply to loans to companies (other than strata corporations) for any purpose.

This means the responsible lending obligations do not apply to loans made to persons, including individuals, who operate small businesses that are wholly or predominantly for the purpose of the small business. A temporary exemption from the responsible lending obligations has also been made where credit provided to a small business operator will be used at least partly for the purpose of the small business.⁴

³ See s5 of the National Credit Code.

⁴ See the *National Consumer Credit Protection Amendment (Coronavirus Economic Response Package) Regulations 2020*. This exemption does not affect other obligations in the Act and National Credit Code, which continue to apply where the loan has a predominantly consumer purpose.

Although the responsible lending obligations do not apply to small business loans, we are aware that some lenders have applied similar credit assessment processes to those they use for consumer loans. This is not something required by the law or suggested by ASIC in its regulatory guidance.

Banks and other authorised deposit taking institutions (ADIs) are also subject to requirements in relation to credit assessments under prudential standards made by APRA. The revised⁵ APS 220 *Credit Risk Management* will apply to all lending activity by ADIs, including lending to both small and large businesses, and includes additional criteria that must be considered for credit exposures other than to individuals.

Reasonable inquiries, verification and unsuitability

Broadly, the responsible lending obligations require credit providers, lessors and credit assistance providers to, before engaging in relevant credit activities:

- make “reasonable inquiries” about the consumer’s requirements and objectives in relation to the credit product and the consumer’s financial situation;
- take “reasonable steps” to verify the consumer’s financial situation; and
- assess whether the credit product will be unsuitable for the consumer if it is entered into, or the credit limit is increased, during the period covered by the assessment.

If the credit product or credit limit increase is assessed to be unsuitable for the consumer, the licensee must not engage in the relevant credit activities.

Licensees are also required to give the consumer a written copy of the assessment on request.

The Act does not set out specific matters that must or must not be inquired into or verified. It is open to credit providers and credit assistance providers to determine what inquiries and steps are reasonable in the circumstances. In this way, the requirements are principles-based and scalable.

⁵ The current APS 220 does not include specific criteria for credit assessments. APRA has revised APS 220, which was intended to commence on 1 January 2022. We understand that the commencement of the revised APS 220 may be brought forward to better align with the commencement of the reforms under the Bill.

The Act provides that the credit product must be assessed as unsuitable if, at the time of the assessment, it is likely that:

- the consumer will be unable to comply with the consumer's financial obligations under the credit product, or could only do so with substantial hardship;
- the credit product will not meet the consumer's requirements and objectives.

The Act and regulations provide for a rebuttable presumption that a credit product will be unsuitable in some circumstances. These are:

- for all credit products – where the consumer's financial obligations could only be met by selling the consumer's principal place of residence;
- for SACCs – where the consumer is in default under an existing SACC, or has held two or more SACCs within the preceding 90 days. There is also a non-rebuttable presumption where multiple SACCs or medium amount credit contracts (MACCs) are used in place of a single loan at higher overall cost;
- for reverse mortgages – in circumstances affected by the age of the youngest borrower and the loan-to-value ratio of the mortgage.

For credit card contracts, the contract will be taken to be unsuitable if the consumer could not comply with the requirement to repay an amount equal to the credit limit of the contract within a period prescribed by ASIC. ASIC has prescribed a period of three years.⁶

ASIC's guidance and regulatory approach

ASIC considers that the responsible lending obligations provide licensees with flexibility in how they meet the requirements including by allowing licensees to adapt compliance to their individual business processes and systems. What steps are reasonable for a licensee to take will also depend on the features of the proposed credit product (e.g. the amount of credit that is proposed or complexity of the terms of the product) and the circumstances of the consumer. ASIC does not consider the obligations require a 'one-size-fits-all' approach or process to obtaining information about the consumer or assessing whether the credit product is unsuitable for the consumer.

Some licensees may choose to apply a 'one-size-fits-all' approach, usually to create efficiencies in their assessment processes; however, this is not required by the law or suggested by ASIC in its regulatory guidance.

⁶ See Media Release 18-257 'ASIC prescribes three-year period for credit card responsible lending assessments'.

We are aware that some lenders may, for their own commercial purposes and subject to their credit risk appetite, seek to standardise their processes to create both efficiencies in the process and consistent outcomes. In some cases this may mean a lender will seek more information than would be required, having regard to the circumstances of a particular consumer and application. This is entirely a matter for licensees and a separate issue from their legal requirements under the responsible lending obligations. ASIC may nevertheless be concerned if a standardised or 'one-size-fits-all' process implemented by a licensee fails to identify individual circumstances that materially affect whether a credit product is unsuitable for a particular consumer.

This position is reflected in Regulatory Guide 209 *Credit licensing: Responsible lending conduct* (RG 209). ASIC's guidance is designed to give practical guidance to licensees on ASIC's understanding of what the laws require, and our views on conduct which is more likely to help licensees to:

- avoid outcomes prohibited by the laws (entry into, and provision of credit assistance in relation to, unsuitable credit products);
- determine what steps can be taken to minimise risks of those outcomes occurring; and
- demonstrate compliance.

The guidance does not have the effect of law and licensees should ascertain for themselves what is required of them to meet their legal obligations. As requested by stakeholders, the guidance contains a range of illustrative examples of how we interpret the law. The guidance was reviewed in 2019 through a thorough consultation process.

ASIC's guidance broadly describes a view that:

- a licensee needs sufficient information to enable it to understand the consumer's requirements, objectives and financial situation and make an assessment of whether the credit product is unsuitable for the consumer under the legal tests of unsuitability; and
- what may need to be done to gather sufficient information for this purpose will depend on the circumstances of the particular consumer. In some circumstances, more information may be needed, and in others less information may be needed.

ASIC's guidance seeks to help licensees identify kinds of circumstances that may affect the amount of information they obtain about the consumer.⁷ While earlier versions of the guidance had indicated that the obligations are 'scalable' and referred to circumstances that affect the scale of inquiries and verification steps at a high level, feedback from stakeholders during our review in 2019 suggested that more practical guidance would be helpful.

In addition to describing particular circumstances that may indicate a consumer is at a higher risk of entering an unsuitable contract (such as where the new financial obligations will be a proportionately significant part of the consumer's available income or the consumer has demonstrated difficulty in understanding the credit product), the current version of RG 209 includes a more expansive discussion of circumstances in which the licensee may consider that less information is needed to be able to make the required assessment, including:

- existing customers of the licensee;
- consumers with a demonstrated savings history;
- high net worth consumers; and
- some refinancing situations.

ASIC's guidance also recognises interaction with tools used by lenders to manage their own credit risk (such as debt-to-income ratios and credit scores), and that negative repayment history information does not mean that a new credit product will necessarily be unsuitable for the consumer.

Neither the responsible lending obligations nor ASIC's guidance place restrictions on the kind of information that may be considered about a person's financial situation. For example, it is expressly recognised that non-salary income sources (such as assets⁸, investment returns and third-party payments like spousal or child maintenance payments) may be relevant sources of funds for repayment.

⁷ See RG 209.79-114.

⁸ The Explanatory Memorandum to the National Consumer Credit Protection Bill referred to expectations that income rather than assets be used for repayments. However, there is no express requirement to this effect and ASIC's guidance highlights that use of assets may often be intended by the consumer and may be a relevant source of funds for repayments.

In relation to the consumer's outgoings, ASIC's guidance notes that there are different kinds of expenses – some of which are more likely than others to be important to the consumer or difficult to reduce (e.g. medical expenses, insurance and children's schooling costs). The guidance recognises that consumers will, and may be expected to, reduce their spending in order to afford credit. Our guidance suggests licensees consider whether reductions that are expected are realistic and achievable for the particular consumer, and notes that some reductions (e.g. spending on recreational items) could be determined to be realistic and achievable without discussion with the consumer.⁹

RG 209 also provides guidance on what may be meant by the concept of 'substantial hardship' in the context of the prescribed test of unsuitability (i.e. as a different test to the consumer being *unable* to meet financial obligations)¹⁰. The guidance reflects judicial commentary and recognises that not all spending reductions would be likely to amount to substantial hardship.

ASIC's approach to enforcement

Through our enforcement work, we seek to deter poor behaviour and misconduct, punish wrongdoers and protect consumers. In particular, we focus on cases of high deterrence value and those involving egregious harm or misconduct. ASIC is committed to stepping in and taking strong enforcement action when we see misconduct that is likely to cause, or has caused, significant harm to consumers.

We remain committed to our 'Why not litigate?' discipline to seek court-based outcomes against wrongdoers. However, this approach does not suggest that we will take every matter to court as the default option. We will actively ask ourselves why we would not progress a given matter through to court-based enforcement action.

In practice, ASIC will consider a range of public interest factors when considering whether to pursue enforcement action in relation to suspected contraventions of responsible lending laws. These include:

- the deterrent impact of any enforcement action;
- the seriousness of the alleged misconduct (e.g. the scale of the conduct and whether it was dishonest or deliberate);
- the extent of consumer harm or loss or potential harm or loss (e.g. impact on vulnerable consumers, the number of consumers impacted, the quantum of losses suffered at an individual consumer and/or consumer cohort level);

⁹ See RG 209.194-201.

¹⁰ See RG 209.187-193.

- whether the matter falls within our enforcement priorities;
- the impact of the alleged misconduct on market integrity or the confidence of investors and financial consumers;
- the steps taken by the alleged contravener to cease the conduct and remediate any harm, and the timeliness of those steps;
- the penalties or other remedies achievable by enforcement action; and
- whether the available action will be a good use of our resources.

A list of relevant outcomes is set out in **Appendix A**.

Action in ASIC v Westpac

Since the commencement of the responsible lending obligations in 2010 (for non-ADIs) and 2011 (for ADIs) ASIC had undertaken various pieces of work to both understand how industry was seeking to comply and to improve standards where we saw examples of conduct falling below industry practice and/or our understanding of the obligations.

The Westpac litigation related to the assessment process a lender undertakes to determine whether a loan is unsuitable for the consumer and whether the lender is required, in some way, to consider information about expenditure provided by the consumer.

ASIC considered it was important to take action in relation to Westpac's assessment process to provide greater clarity and certainty as to what was required under the responsible lending obligations.

The decision of the Full Federal Court noted that the proper construction of the relevant provisions is not straightforward. The Court observed that to the extent it could properly be said that there is an interpretative choice as to the proper statutory guidance, civil penalty provisions should be interpreted on the basis that it is to be expected that an obligation imposed would have been identified clearly and unambiguously.

Ultimately the court decided that it is up to a fully informed lender to decide what process it adopts as long as the assessment is directed at the question of suitability.

It was not ASIC's position that all expenses needed to be gathered and inputted into the assessment. ASIC's argument was that relevant expenses collected needed to be at least considered within the process. The Court rejected this argument.

ASIC has not yet updated RG 209 to reflect the Full Federal Court decision, as the content of this guide will be more significantly affected by the current proposed reforms. The current version of RG 209 already reflects the trial decision of Perram J.

What will be changed under the Bill

The Regulatory Impact Statement prepared by Treasury outlines a range of advantages and disadvantages involved in the proposed change in regulatory approach to credit assessment. Advantages include more flexibility in adhering to principles of prudent lending, and greater ability to scale the credit assessment process, that result in cost and efficiency benefits. Potential disadvantages relate to risks of consumer harm resulting from increased onus on borrowers, who may underestimate or misunderstand their repayment capacity, and lenders approaching lending at the portfolio level rather than the loan level, which may lead to lenders taking on more risks in lending.

If the Bill is passed, ADIs will not be subject to responsible lending obligations, other than in relation to small or low limit loans that are equivalent to a SACC. Accordingly, ASIC will no longer have a direct role in supervising decisions by ADIs to enter loans with consumers. ADIs will be subject to prudential standards that relate to credit assessment (the revised APS 220) and regulated by APRA.

Non-ADI lenders will no longer be subject to responsible lending obligations, other than in relation to SACCs and consumer leases, and instead will be required to comply with new obligations based on the standards contained in new revised APS 220. ASIC will be responsible for regulating conduct of non-ADI lenders under these new requirements.

Credit assistance providers will no longer be subject to responsible lending obligations, other than in relation to low limit credit contracts (SACCs and equivalent small loans from ADIs) and consumer leases. Credit assistance providers will be subject to a best interests duty (BID) (other than where they mostly act on behalf of credit providers). ASIC will be responsible for regulating the conduct of credit assistance providers under these new requirements.

Obligations that continue to apply to ADIs

ADIs will continue to be subject to:

- the general conduct obligations that apply to credit licensees under the Act (in particular s47 which includes the obligation to do all things necessary to ensure that the ADI's credit activities are engaged in efficiently, honestly and fairly);
- obligations as credit providers under the National Credit Code (including requirements in relation to precontractual disclosure and contractual terms, enforcing contracts and treatment of consumers who notify the lender of hardship);
- the consumer protection provisions that apply to financial products and financial services under Division 2 of Part 2 of the *Australian Securities and Investments Commission Act 2001* (ASIC Act) (including misleading and deceptive conduct); and
- contractual commitments to consumers under codes of conduct, including enforceable codes¹¹.

ASIC will not have the ability to take action against an ADI in respect of irresponsible lending conduct unless it also contravenes, a requirement noted above.

At this stage of the development of the new regime, it is not clear what direct remedies will be available to consumers who have complaints about assessments and credit decisions by ADIs. The explanatory memorandum to the Bill indicates the Australian Financial Complaints Authority (AFCA) will have jurisdiction to hear consumer complaints¹². APRA has indicated in its submission to the Committee that it has developed a relationship with AFCA and that it will refer individual complaints to AFCA.

AFCA makes decisions that it considers are fair in all the circumstances, having regard to legal principles, applicable industry codes or guidance, good industry practice and previous relevant AFCA determinations. It is not clear what legal principles AFCA will be able to have regard to where the only credit assessment requirements are under prudential standards for managing credit risk (unless the individual matter indicates the ADI has not met its general obligation to act 'efficiently, honestly and fairly' or that the entry into the loan is an unjust transaction for the purpose of s76 of the National Credit Code).

¹¹ There are currently no enforceable code provisions.

¹² Under its Rules, AFCA must exclude a complaint about a financial firm's assessment of the credit risk posed by a borrower unless the complaint is about maladministration in lending, loan management or security matters or the variation of a credit contract as a result of the complainant being in financial hardship.

Obligations for non-ADI lenders

The new obligations under the Bill will apply in relation to 'non-ADI credit conduct'. This covers the following conduct in relation to a credit contract that is not a SACC and is not provided by an ADI:

- entering into a credit contract;
- increasing the limit of a credit contract;
- making unconditional representations about eligibility for a credit contract or credit limit increase; and
- for credit cards – providing a credit card that will cause a contract to be entered into if the consumer uses or activates the card.

Under the new s133EB(1), a licensee must not engage in non-ADI credit conduct if it has not established or does not maintain SPPs for credit assessment that comply with the standards prescribed by the Minister, or does not have a written plan that documents those SPPs. This is a civil penalty provision (5,000 penalty units).¹³

Under the new s133EB(2), the licensee must retain a copy of the written plan for a period of seven years from the end of the period to which it relates. This is a civil penalty provision (5,000 penalty units).

Under the new s133EC(1), a licensee must not engage in non-ADI credit conduct if the licensee's SPPs established for the purpose of complying with the standards require the licensee to engage in conduct ('required conduct') before it engages in the non-ADI credit conduct and the licensee has not engaged in the required conduct. This is not a civil penalty provision. It is also not considered to be an obligation under the credit legislation for the purposes of s37(1)(b) (when a licence may be granted), s47(1)(d) (general conduct obligations for licensees), s55(1)(a) (when a licence can be suspended or cancelled), and s80(1)(d) and (e) (when ASIC may make a banning order) of the Act. This means that ASIC does not have powers in relation to individual instances of breaches of this obligation.

¹³Note that this is the penalty specified for the civil penalty provision. The maximum penalty applicable is calculated using the formula in s167B of the *National Consumer Credit Protection Act 2009* (Cth).

However, individual consumers will be able to seek access to remedies for breaches of s133EC(1) through AFCA. Nevertheless, we understand consumer representative groups remain concerned about impact on consumer access to remedies because:

- action through the Courts for statutory remedies under s178 and s179 is only available where there is a contravention of a civil penalty provision; and
- consumers are unlikely to have access to the licensee's SPPs, and accordingly it would be difficult for them to know whether the licensee has failed to meet the required conduct specified in their SPPs. We note that AFCA may obtain and consider the licensee's SPPs if it considers a complaint raises a possible contravention of the new requirements.

At this stage of the development of the new regime, it is too early to assess the significance of these concerns. As noted above, AFCA makes decisions that it considers are fair in all the circumstances, having regard to legal principles, applicable industry codes or guidance, good industry practice and previous relevant AFCA determinations. It is not clear to what extent APRA's prudential standards and guidance will be considered in making decisions on complaints about credit assessments made by non-ADI lenders.

Under new s133EC(2), a licensee must not repeatedly contravene subsection 133EC(1). This is a civil penalty provision (5,000 penalty units).

As we have noted above, the Minister will prescribe standards that contain requirements for licensees to establish SPPs that are fit for the purpose of determining whether the consumer has capacity to meet repayments without substantial hardship. The enforceability of the new obligations will depend on the content of these standards.

The exposure draft of the standards provides for a credit assessment to be made that considers the consumer's capacity to meet financial obligations under the credit contract without substantial hardship. Unlike the current responsible lending obligations, the standards will not require consideration of the consumer's requirements and objectives.

Consistent with the Bill's explanatory memorandum, ASIC does not intend to provide regulatory guidance in respect of the proposed laws.

ASIC's priorities

ASIC's Corporate Plan for 2020-24 identifies a number of credit-related key actions, including:

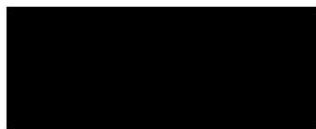
- communicating with payday lenders, lessors and industry bodies to set expectations about maintaining fair practices;
- assessing changes to lending practices in light of the COVID-19 pandemic;
- using data from industry and commercial sources to identify trends in lending patterns;
- conducting active targeted surveillance on entities when there is a heightened risk, or evidence, of poor conduct;
- increasing the use of rapid and disruptive enforcement action (e.g. injunction and product intervention orders) to prevent predatory lending and punish breaches of the law; and
- considering appropriate regulatory action to ensure that credit providers deal with hardship requests in accordance with general credit licensee obligations and hardship request procedures under the Act.

ASIC will assess the extent to which these priorities remain appropriate if the Bill is passed.

Conclusion

We hope this information assists the Committee in its consideration of the Bill.

Yours sincerely,



Sean Hughes

Commissioner

Australian Securities and Investments Commission

Appendix A – Relevant enforcement outcomes

- **The Cash Store:** On 19 February 2015 the Federal Court awarded penalties against payday lender The Cash Store Pty Ltd (in liq) and loan funder Assistive Finance Australia Pty Ltd for failure to comply with consumer lending laws (see [15-032MR](#)).
- **Bank of Queensland:** On 25 May 2015 ASIC announced the Bank of Queensland had improved its lending practices following ASIC's concerns about the way it assessed applications for home loans (see [15-125MR](#)).
- **Australia and New Zealand Banking Group:** On 7 March 2016 ASIC announced that the ANZ had paid five infringement notices totalling \$212,500 for not making reasonable inquiries about the overdraft credit limit a customer requires (see [16-063MR](#)).
- **Commonwealth Bank of Australia:** On 14 September 2016 ASIC announced that the CBA had paid four infringement notices totalling \$180,000 for failing to take into consideration the declared housing and living expenses of some consumers when providing personal overdraft facilities (see [16-308MR](#)).
- **BMW Finance:** On 6 December 2016 ASIC accepted an enforceable undertaking from BMW Finance which involved the payment of approximately \$77million (see [16-417MR](#)).
- **Channic Pty Ltd:** On 7 April 2017 the Federal Court fined Cairns-based lender, Channic Pty Ltd, broker Cash Brokers Pty Ltd and the sole director of both companies for breaching consumer credit laws (see [17-108MR](#)).
- **Motor Finance Wizard:** On 24 May 2017 ASIC accepted an enforceable undertaking from Motor Finance Wizard which includes over \$11million in refunds (see [17-150MR](#)).
- **Westpac Banking Corporation:** On 7 February 2018 ASIC provided an update on the 2016 announcement that followed ASIC concerns that Westpac had failed to make reasonable inquiries about some credit card customers' income and employment status. Westpac had provided around \$11.3 million in remediation to around 3,400 customers in addition to the agreed \$1 million contribution to support financial counselling and literacy ([18-031MR](#)).

- **ANZ / Esanda:** On 23 February 2018 the Federal Court ordered ANZ to pay \$5 million in penalties for breaches of the responsible lending provisions for car loans approved by Esanda. ANZ had also agreed to remediate approximately 320 customers a total of around \$5 million (see [18-057MR](#)).
- **Thorn Australia:** On 16 May 2018 the Federal Court ordered Thorn pay a \$2 million penalty for contravening responsible lending obligations. Thorn also agreed to pay \$6.1 million in refunds to customers and write-offs of default fees, and an additional \$13.8 million in customer refunds of excess lease payments (see [18-139MR](#)).
- **Westpac Banking Corporation:** On 26 June 2020 the Full Federal Court dismissed ASIC's appeal that Westpac had breached its responsible lending obligations with respect to how it undertook its responsible lending assessment for some of its home loans ([20-149MR](#)).
- **Volkswagen Financial Services:** On 12 October 2020, ASIC announced that it had accepted an enforceable undertaking from Volkswagen Financial Services which included an estimated \$4.7 million in redress to approximately 1,800 customers (see [20-239MR](#)).
- **Commonwealth Bank of Australia:** On 30 October 2020, the Federal Court ordered the Commonwealth Bank of Australia to pay a \$150,000 penalty after the Court found the bank breached the responsible lending provisions by failing to take into account a notification by a customer that he was a problem gambler and failing to take reasonable steps to verify his financial situation before offering and approving a credit card limit increase (see [20-263MR](#)).