

From: s 22
To: [Auster, Amy](#); s 22
Cc: [Codina, Martin](#)
Subject: USE THIS ONE RE: 200924 1.20 pm Budget Announcement - Supporting the flow of credit factsheet.docx
[~~SEC-PROTECTED~~]
Date: Thursday, 24 September 2020 3:13:49 PM
Attachments: [Treasurer - Joint Media Release - Simplifying Access to Credit for Consumers and Small Business.docx](#)

My apologies THIS is the correct version.

From: s 22
Sent: Thursday, 24 September 2020 3:12 PM
To: Auster, Amy ; s 22
Cc: Codina, Martin
Subject: RE: 200924 1.20 pm Budget Announcement - Supporting the flow of credit factsheet.docx [~~SEC-PROTECTED~~]

Hi Amy,

Media Release attached for fact checking please.

The Treasurer has approved this so where possible we don't need any change to the language.

Thanks,

s 22

From: Auster, Amy <Amy.Auster@TREASURY.GOV.AU>
Sent: Thursday, 24 September 2020 3:00 PM
To: s 22 <s22@TREASURY.GOV.AU>
Cc: Codina, Martin <Martin.Codina@TREASURY.GOV.AU>; s 22 <s22@TREASURY.GOV.AU>
Subject: RE: 200924 1.20 pm Budget Announcement - Supporting the flow of credit factsheet.docx [~~SEC-PROTECTED~~]

~~PROTECTED~~

Hi s 22

I have been through the document again, found a few typos and changed the date. Attached is a marked up version so you can see the changed and a clean version.

It would be great to fact check the press release, and also discuss stakeholder approach when you are ready.

Kind regards
Amy

~~PROTECTED~~

From: s 22 <s22@TREASURY.GOV.AU>

Sent: Thursday, 24 September 2020 2:29 PM

To: Auster, Amy <Amy.Auster@TREASURY.GOV.AU>

Cc: Codina, Martin <Martin.Codina@TREASURY.GOV.AU>; s 22
[REDACTED]@TREASURY.GOV.AU>

Subject: 200924 1.20 pm Budget Announcement - Supporting the flow of credit factsheet.docx
[~~SEC PROTECTED~~]

~~PROTECTED~~

Hi Amy

Some minor changes. We have decided not to go with the data in the document as it doesn't quite fit. The Treasurer will have it as back pocket.

s 22

~~PROTECTED~~



THE HON JOSH FRYDENBERG MP
Treasurer

THE HON MICHAEL SUKKAR MP
Minister for Housing and Assistant Treasurer

JOINT MEDIA RELEASE

25 September 2020

SIMPLIFYING ACCESS TO CREDIT FOR CONSUMERS AND SMALL BUSINESS

As part of the Morrison Government's economic recovery plan, we are reducing the cost and time it takes consumers and businesses to access credit.

Credit is the lifeblood of the Australian economy, with billions of dollars in new credit extended to households and businesses in Australia each month.

Now more than ever, it is critical that unnecessary barriers to accessing credit are removed so that consumers can continue to spend and businesses can invest and create jobs.

What started a decade ago as a principles based framework to regulate the provision of consumer credit has now evolved into a regime that is overly prescriptive, complex and unnecessarily onerous on consumers.

The Government will simplify the system by moving away from a "one-size-fits-all" approach while at the same time strengthening consumer protections for those that need it.

Key elements of the reforms include:

- Removing responsible lending obligations from the *National Consumer Credit Protection Act 2009*.
- Ensuring that authorised deposit-taking institutions (ADIs) will continue to comply with APRA's lending standards requiring sound credit assessment and approval criteria.
- Adopting key elements of APRA's ADI lending standards and applying them to non-ADIs.
- Retaining responsible lending obligations for higher risk products, being small amount credit contracts (SACCs) and consumer leases, and introducing heightened obligations for these products.
- Protecting consumers from the predatory practices of debt management firms by requiring them to hold an Australian Credit Licence when they are paid to represent consumers in disputes with financial institutions.
- Allowing lenders to rely on the information provided by borrowers, replacing the current practice of 'lender beware' with a 'borrower responsibility' principle.
- Removing the ambiguity regarding the application of consumer lending laws to small business lending.

These changes will make it easier for the majority of Australians and small businesses to access credit, reduce red tape, improve competition, and ensure that the strongest consumer protections are targeted at the most vulnerable Australians.

The Government will consult publicly with stakeholders before finalising any legislation required to implement the reforms.

Ends.

s 22

From: Auster, Amy
Sent: Tuesday, 29 September 2020 9:58 AM
To: s 22
Subject: SMH [SEC=UNOFFICIAL]
Attachments: SMH 29 Sept.pdf

UNOFFICIAL

Hi s 22

Quick update s22 meetings lined up with APRA, ASIC etc etc through this week to get cracking on RLOs. The team fielded a number of calls from stakeholder groups yesterday and all seems to be running fairly smoothly.

The attached piece was in SMH this morning in case you didn't see it with the commentary from Morgan Stanley.

Kind regards
Amy

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I am working remotely.

UNOFFICIAL

The email attachment is
exempt in full and has
been deleted

s 22

From: Auster, Amy
Sent: Thursday, 24 September 2020 4:28 PM
To: s 22 ; Codina, Martin
Cc: s 22
Subject: Additional speaking materials [SEC=OFFICIAL]
Attachments: 200918 Key RLO quotes.docx; Talking points and key statistics.docx; 200916 RLO Cameos.docx

OFFICIAL

Hi s 22, Martin

Attached please find some further documents that can be drawn upon for speaking notes and other background material.

I have not yet received anything s47E(d), s47G(1) but am chasing this and will forward if something comes through.

Thanks to the team for pulling this together.

Kind regards
Amy

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RLO Cameos

Anne is a retiree who recently lost her husband. They had a \$3,000 credit card account in both their names, but upon her husband's death the bank closed the account as he was the main cardholder. During the last two years, Anne was the only person using and paying for the card, but was informed by the bank that she could not obtain a credit card in her own name as it could put her in 'severe financial distress'.

Despite Anne having \$430,000 in her accounts, including her husband's Refundable Accommodation Deposit being repaid to his estate, the bank notified Anne that it does not look at a customer's assets, but rather the actual income they receive each month.

<https://media.streem.com.au/print/>

Michelle is a Sydney teacher who has been able to save up for purchasing a home by living with her parents. Instead of purchasing a property in Sydney, she was able to settle on a house and land package that would allow her to get a foot in the property market without being overburdened. Michelle has no other debt burdens, low expenses and a full-time job, meaning she would not be considered a 'high-risk' case. However, her mortgage broker and bank needed to make all the necessary inquiries and assessments to ensure they were complying with responsible lending laws. The balance of maximising access to credit for consumers who have the desire and ability to service it with minimising incidences of entering unsuitable contracts, meant that Michelle could only purchase land and build a house in another city, rather than having a larger loan and being able to fulfil her ultimate goal of purchasing a property in Sydney.

<https://www.abc.net.au/news/2020-01-07/asic-guides-banks-and-brokers-on-home-loans/11810994>

Jenny is a Solicitor who has recently applied for a home loan to purchase her first home. The bank has already undertaken its assessment of loan suitability and has pre-approved her loan. Jenny has put down a deposit for a house, with settlement due to occur in a month's time. However, after paying the deposit, Jenny is notified by her workplace that she was successful in the recent promotion round and will be starting as an Associate in a week's time. Jenny notifies the bank that she has been promoted and will be receiving a higher salary.

However, the bank notifies Jenny that this constitutes a change in circumstances, meaning they need to run the loan suitability process again to determine how much she can borrow. Understandably, this causes Jenny some concern as it adds a further delay to the final approval of funds for settlement of the property.

<https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22committees%2Fcommrep%2F2085edc8-94d9-4504-852e-5c971b17db09%2F0000%22>

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Not based on real events – narrative to highlight why the situation should be different

When Peter started his career in his early 20s while living at home, he required a car to drive to and from work and to see clients. At the time, Peter had not previously owned a car and did not have enough savings to purchase a car outright and so decided to apply for a personal loan of \$15,000 to help finance the purchase. The bank inquired extensively as to Peter's wealth, income and his weekly expenses in determining whether he would be able to service the loan. The car would have been Peter's first major asset, and he only had \$2,000 in savings, meaning he had not accrued a reasonable level of wealth. Given his income and relatively low expenses, the bank decided Peter could service this level of debt and granted him the loan.

In his 50s, Peter once again sought a personal loan to purchase a new car. Peter had accrued a higher level of wealth via owning a house in Sydney, had savings in the bank, and an income of \$1500,000 – Peter was subject to the same level of questioning and interrogation for this loan as for his first loan despite clearly being a less risky borrower.

John is 28 and holds a full-time permanent job in the professional services industry, lives at home, has saved up \$100,000 and has discretionary expenses including streaming services. He decides that he wants to get into the property market and applies for a \$600,000 home loan. The bank undertakes a suitability assessment to ensure they are able to appropriately provide this credit. This includes making reasonable inquiries and undertaking extensive verification of John's income and expenses to ensure she is able to service the debt. The bank concludes this would be a suitable loan for John and extends the \$600,000 mortgage.

John is also in need of short-term credit to allow him to spend month to month, including online purchases. John applies for a \$10,000 credit card from his existing bank. The bank undertakes the same suitability assessment to ensure they are able to appropriately provide this credit. Ultimately, the process of having his credit card application approved takes the same amount of time, despite the loan amount being much smaller and the application being with the same financial institution.

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Key RLO quotes

Standing Committee on Economics – Reserve Bank of Australia Annual Report 2019, Friday 14 August 2020

<https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22committees%2Fcomprep%2F868db039-2384-4ce9-a502-1354709677d2%2F0000%22>

- **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.

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Standing Committee on Economics - Australia's four major banks and other financial institutions: four major banks, Friday 4 September 2020

<https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22committees%2Fcomprep%2F2085edc8-94d9-4504-852e-5c971b17db09%2F0000%22>

ANZ

- **CHAIR:** I have a final question before I hand over to the deputy chair. I've submitted this to you in writing, but I'd be interested in your comments. You've no doubt reviewed the RBA governor's reflections at his most recent appearance before this committee.
- **Mr Elliott:** Yes.
- **CHAIR:** He made a particular point around responsible lending, and Mr Falinski will no doubt ask further questions about that today. In the context of responsible lending laws and whether they create barriers to lending, the RBA governor's reflection, **if I can paraphrase him, was that it was more about guidance notes that were issued rather than the structure of the law. Do you share that view?** Are there some issues around the guidance notes provided that make it more difficult for ANZ to loan?
- **Mr Elliott:** I do broadly share the views. I don't think there's a fundamental issue with the law as it stands. No one wants to be irresponsible. It's not in our interest either. Like everything, I think the devil is in the detail, and it always comes down to interpretations of phrases, terminology et cetera. That's where the guidance notes, particularly from ASIC and APRA, are very helpful to clarify how some of these are intended to be interpreted. The recent RG 209 from ASIC was a step forward and provided greater clarity. I want to assure the committee that ANZ does not sit here today bemoaning the responsible lending laws and in some way implying that they are restricting our ability to go about doing our job well and prudently in supporting customers. Of course, there are always going to be technical issues that we need to work through, and we work through those with the regulators appropriately, but I don't see it as a barrier to us supporting the economy, in terms of what this committee would be interested in, and making sure that we're out there and able to lend to the right segments of the economy.
- **Mr FALINSKI:** Shayne, I'm going to ask you about responsible lending obligations and responsible lending laws. I understand that any bank is obviously reluctant to be critical of a regulator, but I'm going to ask you to do that at this point in time, because I think that, for the parliament, it's important that we realise the adverse impacts that responsible lending obligations are having in the lending market. Other representatives of ANZ have told us that, when responsible lending first came in, it had a marginal impact on your processes within ANZ, but over time, as ASIC and AFCA and the court imposed more obligations and interpreted the law differently, as opposed to its principles, the time it took for you to assess loans blew out from five working days to over a month. Don't you think that that would have an impact on your capacity to lend money?
- **Mr Elliott:** It's a fair question. If I may, I think the way that I would describe this is that we all want to do responsible lending. It's in our interest, so nobody disagrees with the intent. **The issue here is in the interpretation. When the law first came to be—and it came out years ago, by the way—it's fair to say it was principles based.** It was a bit grey around the edges and, by the way, it wasn't clear where the lines were and if you crossed the line the penalties were not extreme. What has happened over time is that the penalty regime has increased. We've seen

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banks being hauled in front of the royal commission, quite rightly, and questioned about their actions. We've seen actions in the court. We've seen personal reputations damaged et cetera. Fine. **So you've now said: 'It's grey. It's not clear where the line is, but if you cross it the penalty is extremely high.'** The only rational response to that is to stay away from the line. **So you just stay away from the line; you build a buffer. So, yes, we have become more and more cautious. The more the line can turn from grey to black the better, and the closer we can get to the original intent.** We are all for greater transparency, greater clarity and greater guidance from our regulators. The only other thing I would say on this is that it's easy to talk about ASIC as the only responsible agency. There are also the sister effects. **APRA also has regulation. It's not called responsible lending, but it's about how we make important credit decisions. They're very, very similar. We have to navigate between both of those.** I'll give you an example. ASIC, quite helpfully, have said, 'By the way, if Jason has a loan with you and it's principal and interest and he wants to turn it into interest only, you don't have to go through a responsible lending review, because the total amount being borrowed hasn't shifted.' Okay; fine. That's good; that's really clear. However, APRA say that converting from principal and interest to interest only is what they call a credit-critical event, and it requires us to do essentially a soup-to-nuts review of that lending relationship. So we're also trying to navigate that, and then, without going into detail, AFCA have a slightly different approach again to their definition of responsible lending. So part of it is the navigation between the various agencies and their interpretations, which are all, on their own, not unreasonable, but we are stuck in the middle having to navigate those.

- **Mr FALINSKI:** Of course, this adds considerable cost to undertaking that transaction, and otherwise viable loans become unviable because of the cost of conducting them. That's a statement, but, theoretically and in principle and in actuality, that's what's occurring, isn't it? **Mr Elliott:** I would say yes. In theory that is true. We can argue about the materiality of it; I think that's fair. Again, I go back to the principle. I am not here in front of this committee today, saying, 'I would like permission to do irresponsible lending, please.' That is not what we're asking for. **What we're asking for is clarity, alignment and coherence of these.** By the way, I get no sense from our regulators that they disagree. But they are encumbered by the laws that they're asked to uphold.
- **Mr Elliott:** No, I'm not worried about that. I'm just saying that if this was just Shayne Elliott's bank, we have rules too, and we ask our loan officers to be prudent and thoughtful, and, hey, there are consequences for making bad decisions. My old boss at Citi used to say, 'It's okay to lose money as long as you do it properly.' As long as you followed a process—if you were a loan officer and you went through process; you asked the right questions, you were thoughtful, you used judgement—there's no harm in that. That's exactly what ASIC want as well. Where we let ourselves down, as I mentioned, is that sometimes these rules are grey, and all that people are asking for is clarity. Just explain it to me. People are smart and well-meaning at ANZ. They're just saying, 'Give me clarity.' So, in my analogy, I'm happy to go all the way up to the line, but I'd really like to know where the line is. I'd like to know it in some level of specificity, and that's exactly what we're working on with ASIC. The last regulatory guide really helped, actually, but there's still more to do.

Commonwealth Bank

- **CHAIR:** Earlier this morning we heard from Mr Elliott around responsible lending laws. He made the point that he didn't think laws were a problem. He agreed with the Reserve Bank governor around some of the criticisms of guidance notes, but believed that they were broadly being corrected. Is that your view or do you think that there are still significant problems around the

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law or guidance notes? Do you agree with the Governor of the Reserve Bank, do you agree with Mr Elliott or do you have a completely different view?

- **Mr Comyn:** I'm very aware of the governor's views in particular. As you would imagine, this has been a topic of conversation between institutions, the regulator and the Council of Financial Regulators. I think there are a number of ways to look at it overall. First of all, **regulators have been asked and have sought to clarify and provide additional guidance about what's required for institutions to undertake responsible lending. That has increased the workload on financial institutions in the assessment of loans.** We've invested tens of millions of dollars to make sure that we can turn around, in this case, our home-lending decision times within a couple of days. It has enabled us to grow above system. We lent more than \$100 billion last financial year to housing. **In my view there is an abundant supply of credit available for housing but it is harder for a customer in terms of the process to get a loan. The time that that takes varies across institutions.** I think it's less about the supply of credit and more about the process. The guidance from our perspective is clear. We understand the guidance. It's a separate discussion around—
- CHAIR: Mr Elliott said there was a lot of grey in it. You're saying it's more black and white?
- **Mr Comyn:** **We certainly feel confident about the interpretation of the guidance that's there. We've engaged, as have other institutions, fulsomely with ASIC. It has been clarified.** It is much more comprehensive and robust than it had been in the past. If you went through the responsible lending guidance across RG 209, APG 223 from APRA and various representations from, let's say, AFCA around how they'll think about responsible lending, there is very extensive documentation, but we have operationalised our processes and systems around that. **Banks are far less able to rely on what customers are telling you in loan applications than they were in the past. Essentially, a lot more work now goes into, particularly, expense verification and liability verification. That takes time. For institutions that haven't automated those processes, it takes them a significant amount of time, which is why some of the speeds of decision at some other institutions have blown out extensively, which is causing frustration across both customers and particularly property developers.**
- CHAIR: Isn't this fundamentally a problem? You're a larger bank. You've got more sophisticated systems. More burdensome regulation actually puts you at a competitive advantage.
- **Mr Comyn:** We've certainly invested in response to operationalising and trying to automate as many of those processes as possible. That certainly has been helpful in the current context.
- CHAIR: I know you'll be excited: you've got a whole bunch of questions on notice that apparently have been distributed to you in the past 24 hours on this, to try and expand on what the impact of responsible lending is on the provision of loans. There has been a drift, if I understand correctly, on mortgages picked up by the CBA in this time over the past few months in comparison—it already had a very strong loan book, but it has become even stronger, if I'm not mistaken. How much has it grown by?
- **Mr Comyn:** We grew at 1.3 times—about 4½ per cent annual balance growth. The market was growing slightly below four per cent. As I said, our gross loans during the last financial year were \$100 billion. Our mortgage book in total would be almost \$500 billion. It's clearly a substantial part of our business.
- CHAIR: In the past 12 months it has grown 4½ per cent? **Mr Comyn:** Yes. CHAIR: I have more questions, but I can't be greedy. I'll hand it over to the deputy chair

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- Mr FALINSKI: You have provided a lot of clarity in the last few minutes, so thank you for that. The other thing is responsible lending obligations. I do apologise for doing this, but I'm afraid we have to ask the question. From what you have said to us today, it would appear that responsible lending obligations have become, through no fault of your own, a capacity for current providers of credit in the market to ensure that they have an advantage over people trying to enter the market. You have both data and systems in place to be able to do those processes very quickly, whereas new entrants to the market wouldn't have any of those leads. Is that an unfair statement?
- Mr Comyn: I wouldn't characterise it in that way, simply because I don't think it's a distinction between existing or new entrants. I think it is simply a case of the process having changed over time around responsible lending, particularly as it relates to housing. For any company—and some of the bigger companies are having more difficulties than the smaller companies—if you haven't been able to actually operationalise those processes with large numbers of people or investments in technology to try to automate those processes, it's possible that the time that it's taking to turn around or approve a home loan has increased. I think that—
- Mr FALINSKI: It's more expensive as well if you can't operationalise it or automate it as you've suggested.
- Mr Comyn: Yes, that's right. As is the case for any process, when you provide more and more specificity, particularly in a couple of areas, financial institutions—and this is not a criticism of the regulators; this is specifically something that was examined in the royal commission. Questions were asked about why banks weren't doing more. The regulators provided guidance. All institutions are now interpreting it and have tried to operationalise that guidance. We've been able to operate successfully through that period, but there's no question that lending standards have evolved. **The question is: is it appropriate? Given that for many customers it's the most significant financial decision or loan that they will take on, I think you can make that case. But banks, in and of themselves, are less able to rely on the information that customers provide us. There is more required to verify the information than there was in the past.**
- Mr FALINSKI: Matt, this is an actual story that relates to a CBA customer. I'm not raising it within this environment to embarrass the CBA. Rather, I'm raising it because I'm concerned that the laws that the parliament have imposed and the way that the regulators are dealing with them is making it almost impossible for financial institutions. This is a woman who was buying a house in Port Macquarie. She got pre-approval for the house. She was a paralegal; she'd completed her law degree. The CBA had given her pre-approval for a loan to buy land and house. Then she completed her 12 months as a paralegal and became a junior solicitor. At that point, the CBA said, 'We have to withdraw the pre-approval that we gave you. We have to wait six months to make sure that you continue to have continuity of employment.' When she made the obvious statement, as people not involved in this process would, 'This is a bit silly. I haven't changed employers. I'm actually now earning more money; it's just my role that's changed,' she was legitimately told, 'Under responsible lending obligations'—under the regulatory guidance provided by the regulator—'we think that is the appropriate thing for us to do.' That's what your loan officer said to her. That is obviously having an impact on economic activity in the Australian economy.
- **Mr Cohen:** If I recall correctly, this was a complaint that actually did come across my desk. We looked into it, and it was through no fault of our frontline people, to be honest. They were doing what they thought was the right thing to do and they were being prudent. I can't recall

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exactly now how the actual matter ended up, but I know that we had our specialist team go back in and look at it and talk with the lending team, and I believe they came to a sensible resolution. The reason I mentioned that it was through no fault of the front line is simply because we did have certain guidelines in place. Those guidelines reflected what we understood was required under the guidance we had received from regulators. It's probably a good example of how we are, on a regular basis, finetuning the way we approach things in order to be able to reach the right outcomes

- Ms HAMMOND: A number of my questions have been covered, including by Dr Aly just then. I think you've covered the proposed solutions for people who can't pay. Do you think that responsible lending laws and practices are actually benefitting customers? Are they working to assist customers or not?
- Mr Comyn: The **essence of responsible lending is, of course, trying to minimise the chances of a customer taking out a loan that is unsuitable for them**, and there are many different ways to look at that. From our perspective, it's never in a financial institution's interest to make a loan that the customer is unable to repay. The **responsible lending obligations are designed to increase consumer protections by putting more onus on the lending institution to understand a customer's financial circumstances and to validate and verify all of their details**. I think the design is sound. It becomes more a question of the trade-offs associated with that. But I think there's no question that, if you spoke to any of the consumer or customer advocate agencies, they would be strong advocates of the responsible lending laws.
- Ms HAMMOND: How many people do you think are being locked out, though, because of the new responsible lending laws? Are there more people being locked out of potential loans than previously?
- Mr Comyn: It's very hard to estimate. **My overall view would be that there is an abundant supply of credit available in Australia, by international standards, in terms of borrowing capacities and what individuals and multiple parties can borrow against—housing**. I don't think it's the source of the problem and I don't think it's the source of frustration, either, more broadly. **Typically the frustration, to the extent that there is some, manifests around the time taken and perhaps the intrusiveness, from the customer's perspective, of the information that they're required to provide—the level of expense verification and interrogation**. I think that is much more of a factor. If you were to talk to—and I have—significant property developers who are building new houses, they would say that customers are less certain about getting access to finance, particularly on a staged basis, because institutions now far more commonly have multiple additional steps, subject to valuations and verifications. Of course, you have to overlay that with a COVID environment, where there's a lot of economic uncertainty. All institutions, including the Commonwealth Bank, would be taking a more conservative view about people's income; we'd be discounting unstable sources of income. So I think there's both a separation between responsible lending per se as well as alongside the economic uncertainty that we're all experiencing as part of the pandemic.
- Ms HAMMOND: **Do you think there's a potential that they could work to disadvantage first-time borrowers**, for example younger people entering into the housing market?
- Mr Comyn: **Potentially, yes. As lending standards have changed and evolved over time, we and a number of stakeholders have become very conscious of access to the market for first home buyers**. It's a very important segment for us. But there are requirements, and I think, broadly,

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those requirements, which have been in place for some time, particularly those around requiring a deposit and maximum loan-to-value ratios, have served the financial stability of Australia remarkably well. You look at parts of Europe and the US which got into great difficulties in the housing crisis post GFC. There were a number of cases where income wasn't validated or verified. People were being lent too much, the loan-to-value ratios, or the loan, were in excess of the value of the property which led to a lot of economic instability as well as great difficulties for the individual borrowers.

Westpac

- CHAIR: I look forward to getting those specifics. Just before I hand over to the deputy chair in a few minutes—the RBA governor appeared before this committee and said that responsible lending legislation is fine but the various guidance notes from the regulators are creating problems around issuing finance. Can you give us your thoughts about whether you think his reflections are correct. Is the legislation fine, or is there some alternative reform required to make it more straightforward to lend?
- Mr King: I think the biggest question mark on responsible lending was actually the court case that Westpac and ASIC had, and that's now been resolved, so I think that is a positive thing for certainty. In relation to other matters, we're working with regulators on what I would call aligning some of the requirements. **There are small inconsistencies in the details between APRA, ASIC and AFCA, but I think we can work through those with the regulators.**
- CHAIR: In his appearance at last week's hearing, Matt Comyn, the CEO of CBA, basically said they get a competitive advantage because of the complexity of the data that's required and because, due to the fact they have the capacity to invest so much in their systems, they can get answers for customers faster and better than other banks can. Firstly, do you agree with that? Secondly, do you agree that responsible lending can provide some banks, say CBA, with a competitive advantage?
- Mr King: I can't comment on individual banks, because I can't see their inner workings, but over time, as regulations settle, technology can be used to improve the process; I agree with that thematic. We have more opportunities to optimise the process and use the data, and so that's what we're focused on.
- CHAIR: But you're not concerned the regulations may be favouring your competitors?
- Mr King: **My view is if regulations can be clear and held consistent then the industry can deal with them. So it's clarity and consistency in regulation which would be helpful.**
- Mr FALINSKI: Responsible lending obligations: the chair's already asked you this question but are you aware of instances where you have been unable to offer credit to people that you otherwise would have under normal circumstances but you felt that you couldn't comply with the law as interpreted by the regulators?
- Mr King: Not specifically. The areas we are working on internally are those that aren't specifically covered or that need judgement. People are cautious at the moment because of the environment. So the exercise of judgement, which is a responsibility for the bank, is where we see customer complaints

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- Ms HAMMOND: Moving on to responsible lending laws—my questions are going to go all over the place; I apologise in advance. Do you find that the responsible lending laws are helping or hindering customers?
- Mr King: Responsible lending laws are there for the banks to check about requirements, objectives and the ability to service loans, so that's a good intent. There's always judgement in these things. That's the bit we're working on. But the biggest question mark in that area was the court case between Westpac and ASIC, and that's now been resolved, so we can move forward.
- Ms HAMMOND: That was the Wagyu beef case, wasn't it?
- Mr King: Some have reported it under that name. Ms HAMMOND: Has the laws caused loan approvals to take longer?
- Mr King: The more you check—it does add incrementally to the processes, so at the margin it would have.
- Ms HAMMOND: You haven't done any analysis to see how? Mr King: The biggest issue on processing times for us has been redirecting our people to help on the package deferrals, so redirecting resources, and then we had an issue with some of our offshore providers and COVID. We've made a decision to bring a thousand roles back, including for our mortgage processes. So that will help out over time.

NAB

- Chair: Finally—and I'm sure Mr Falinski will go to this in his line of questioning—the RBA governor appeared before this committee a couple of weeks ago and said that he didn't see that there was any issue with responsible lending laws in Australia, though he raised the subject of the guidance notes issued around the laws' application and said that's where the error and the problems were which were limiting the capacity for financing. Could you tell us what you think about his remarks.
- Mr McEwan: Yes. I think this came up when Mr Chronican was in front of the committee in November last year—
- CHAIR: Yes.
- Mr McEwan: and there were some issues that he raised at that point. Since then, we've had a number of clarifying points on that, and also the case at Westpac that's been ruled on. I don't think there's any issue between us and ASIC on responsible lending and our obligations and what we need to do about them. I've taken on board all of these rulings, and our view is that we have enough information to make the decisions that are needed to look after customers.
- CHAIR: So you don't believe there's any need to address issues around the guidance notes?
- Mr McEwan: We've had the guidance notes and we're reasonably comfortable with them.
- Mr Dooley: Yes, ASIC updated their guidance notes last year, and we found those very helpful, actually, in terms of the clarity that they provided. Part of our role is to continue to ensure that all of our people understand those and to provide them with both clarity and education. We think that ASIC have worked well with us, as the other regulators have, to ensure that the perception of credit is not being impacted in any negative way.

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Talking points and key statistics

What is the importance of credit to the Australian economy?

- An efficient and vibrant credit market forms the keystone of a dynamic economy and is crucial for Australia's economic recovery. Research by the Reserve Bank indicates that a typical negative shock to credit supply to firms can reduce GDP by $\frac{1}{3}$ per cent after one year.¹ Conversely, studies have clearly shown reducing the cost of credit can boost GDP growth.
- Households and firms rely on credit to support the consumption and investment demand that underpins economic growth and propels the economy forward. There is currently around \$3 trillion in credit outstanding in Australia.
- Credit also underpins the Australian dream of home ownership, with around \$13 billion on average in new credit extended each month helping around 30,000 Australian families purchase their own home. Credit also allows investors and businesses to invest and grow, including new credit of about \$5 billion per month flowing to housing investors.
- The onset of the COVID pandemic has seen credit growth stall. The annual rate of total credit growth fell by a full percentage point from 3.7 per cent in March 2020 to 2.8 per cent in June. The contraction in investor housing credit continues to gather pace, and annual business credit growth declined from 6.7 per cent in April to 4.7 per cent in July.
- Now, more than ever, it is important that there are no unnecessary barriers to the flow of credit to households and business, especially small and medium sized businesses, as the economy recovers.

Current state of the consumer credit framework

- Australia's national credit laws has been in place for 10 years. However, the Government has implemented a number of changes since then to strengthen the framework and protections for consumers.
- Some of the Government's actions in the last few years include: credit card reforms (2018); a best interest duty for mortgage brokers (from 1 Jan 2021), and design and distribution obligations (from 5 Oct 2021).
 - In addition, the establishment of the Australian Financial Complaints Authority (AFCA) has increased access for borrowers to external dispute resolution.
 - The Government has also more than doubled corporate and financial sector penalties under the Credit Act and provided the Australian Securities Investments Commission (ASIC) with a product intervention power, increasing deterrence for misconduct.
- The responsible lending obligations govern the vast majority of interactions that Australian consumers have with their lenders. Therefore, based on this Government's track record of taking action, we have decided it is time to ensure the framework is adapting to the current economic climate.

¹ Jacobs, D and V Rayner (2012), *The Role of Credit Supply in the Australian Economy*, RBA Research Discussion Paper No 2012-02.

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- The responsible lending obligations started as a principles-based framework, but have now become overly prescriptive, with ASIC's guidance at around 100 pages, and lenders overcautious in their application.
- At the same time, APRA as the prudential regulator also sets standards for banks on credit origination and other credit-related matters. The Authorised Deposit-taking Institutions, or ADIs, that are regulated by APRA account for more than 90 per cent of all credit extended in the Australian market. These have also been strengthened in recent years.
 - In effect, ADIs are now subject to two regulators applying similar obligations on the same activity.
- Taken as a whole, we've ended up with a one-size fits all system that has too many layers, has made lenders too risk averse, has taken away responsibility from borrowers, and has negatively affected business credit as cautious lenders apply the same approach to small businesses.
- This is why the Government has decided that now is the time to take action and implement reforms that will reduce the cost of credit, benefiting Australian consumers as we recover from this crisis.

Case studies

- The stories about consumers' experiences with accessing credit are the best argument for why we need change.
- A retiree who recently lost her husband and now has \$430,000 in her account and her husband's refundable accommodation deposit being repaid to his estate, was informed by her lender that she couldn't obtain a new credit card in her own name as it would put her in "severe financial distress." Her lender notified her that it could not consider her assets in her credit evaluation but only actual income received each month.
- Another example was a first home buyer who put down a deposit after receiving pre approval from the bank. Prior to settlement he received a promotion at work which involved a salary increase. He notified the lender before his loan was finalised and the bank told him that the promotion constituted a change in circumstance requiring his loan application to be reassessed and delayed because he didn't have a past history of income at that level to rely on.
- When borrowers are being asked for detailed expenses relating to their Spotify subscriptions or UberEats receipts, or customers with hundreds of thousands of dollars in equity in their homes are being asked to fill in a long form credit application for a \$1,000 increase in their credit card limit, it is clear that something in the assessment process has become imbalanced.

The consumer credit reforms

- The Government will replace the prescriptive 'one-size-fits-all' approach to responsible lending obligations by:
 - ensuring that authorised deposit-taking institutions (ADIs) continue to comply with APRA's prudential standards around credit origination, removing regulatory duplication faced by the 147 ADIs that underwrite more than 90 per cent of all credit extended to Australian borrowers;

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- adopting a lighter-touch framework based on APRA’s ADI lending standards for non-ADIs; and
- retaining responsible lending obligations for higher risk products, being small amount credit contracts (SACCs) and consumer leases, and introducing heightened obligations for these products.
- The Government’s actions will impact all new consumer credit issued, including refinancing. There is approximately \$34 billion in new consumer credit issued each month including home loans (owner occupier, investor and refinancing), credit cards and personal loans.
- This simplification of Australia’s credit framework will ensure consumers and small businesses can get timely access to credit, particularly as the economy recovers following the COVID crisis.

Specifically:

- Lenders will be able to rely on the information provided to them by customers.
- Customers will face less intrusive and detailed questions on their expenses.
- Refinancing mortgages will be simpler, increasing competition and reducing non-financial costs to customers looking to switch.
- Small businesses will have easier access to credit as lending which is in part for a small business purpose, irrespective the part, will not be subject to the new obligations.

How will the Government’s actions impact consumer credit?

- The changes will remove the ‘one-size-fits-all’ approach to lending, and ensure credit assessment is attuned to the needs of the borrower and the credit product.
 - For example, lenders at present are required to obtain and verify extensive information about borrowers’ expenses, irrespective of the type of loan product or the borrower.
- As a result, credit providers will be able to simplify their credit assessment process and extend credit in a more timely and efficient manner.
- The Government expects that lenders will pass on the benefits of the reduced regulatory burden to consumers over time, resulting in lower costs for consumers and reduce barriers to switching between credit providers, encouraging them to seek out better terms or a lower interest rate.
- The Government will publicly consult with stakeholders on these reforms, and aims to implement the necessary legislative changes as of 1 March 2021, subject to the passage of legislation.

What is being done about consumer protection?

- The Government’s reforms operate in the context of the existing suite of consumer protections in the Credit Act, including that lenders must act efficiently, honestly and fairly.
- Most importantly, consumers will continue to have access to fair and efficient dispute resolution through the Australian Financial Complaints Authority (AFCA).

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Small amount credit contracts and consumer leases

- The Government is also enhancing protections for consumers accessing the high-cost products of SACCs – sometimes referred to as payday loans - and consumer leases. These reforms include:
 - imposing a cap on the total payments that can be made under a consumer lease;
 - introducing new ‘protected earnings amounts’ for SACCs and consumer leases, limiting the proportion of income consumers can dedicate towards SACC and consumer lease repayments;
 - prohibiting SACC providers from making unsolicited SACC invitations to current and former customers and prohibiting door-to-door selling of leases to ensure that applications for SACCs and leases are made by consumers and not in response to the consumer being enticed to apply; and
 - introducing broad anti-avoidance provisions to prevent SACC and consumer lease providers from circumventing the law.
- These reforms will take effect 6 months following passage of legislation.

Debt management

- The Government is also taking action to protect consumers from the predatory practices of debt management firms.
- Consumers using these firms are often vulnerable or confused by unfamiliar processes, and the lack of a regulatory framework has meant that some consumers are landing up in worse financial positions.
- Currently around 10 per cent of consumers in hardship engage debt management firms, and this number may grow as more consumers seek these services due to hardship experienced during the coronavirus crisis.
- The Government will require debt management firms being paid to represent consumers in dispute resolution will be required to hold an Australian Credit Licence.
 - This means they will also be required to be members of AFCA, ensuring consumers get access to appropriate recourse should they experience detriment as a result of the service provided by the firm.
- This reform will commence from 1 April 2021.

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Summary of facts and figures

Credit Snapshot

- Currently \$3 trillion in credit outstanding in Australia
 - \$1 trillion in credit is outstanding to business
 - \$2 trillion in credit is outstanding to consumers
- There is approximately \$34 billion in new consumer credit issued each month of which:
 - \$13 billion on average is extended in new credit each month to help Australian families buy their own home
 - \$5 billion per month is extended to allow investors to invest in housing

Credit and Growth

- Recent RBA research estimates that a ½ percentage point reduction in mortgage rates can lift GDP by 0.6 per cent in three years through increased dwelling investment and household consumption.
- The onset of the COVID pandemic has seen credit growth stall. The annual rate of total credit growth fell by a full percentage point from 3.7 per cent in March 2020 to 2.8 per cent in June. The contraction in investor housing credit continues to gather pace, and annual business credit growth declined from 6.7 per cent in April to 4.7 per cent in July.
- Approval times more than doubled for investors in 2019, according to analysis of more than 30,000 mortgages from online broker Lendi. The same analysis also reported approval times for owner-occupiers increased by more than 50 per cent as the banks demanded more information from borrowers.
 - As part of the Government's SME Guarantee scheme, 18, 593 loans worth \$1.7 billion have been accepted by small business

Major Banks

- In July 2020, the four major banks accounted for roughly 78 per cent of total housing loans and around 69 per cent of business loans in the banking sector, the majors have lost roughly 1 per cent of their market share in housing and business lending since last year.
 - In housing loans this market share has transferred to other Australian banks and to a lesser extent foreign subsidiaries, while foreign branch branches alone account for the decrease in market share of business loans.
- The major banks have lost 1.5 per cent of market share in deposits year-on-year, largely to foreign bank branches. Deposits also flowed towards foreign bank branches from other Australian banks and foreign subsidiaries.
 - Overall deposits have decreased in July 2020 by \$6.2 billion or 5 per cent, down from a peak seen in March. Total deposits increased significantly over March (by \$164 billion) and April in both household and business sectors reflecting larger liquid holdings.

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APRA and lending

- APRA's standards cover 147 banks and over 90 per cent of all credit extended to Australian borrowers.

Debt management firms

- Approximately 10 per cent of consumers in hardship engage debt management firms
- The Government's reforms will require the approximately 65 debt management firms being paid to represent consumers in disputes with financial services firms to hold an Australian Credit Licence

s 22

From: Auster, Amy
Sent: Thursday, 24 September 2020 1:33 PM
To: s 22
Cc: s 22
Subject: RE: Increasing access to credit; key to economic recovery.docx [~~SEC-PROTECTED~~]
Attachments: Increasing access to credit; key to economic recovery (002) AA.docx

~~PROTECTED~~

Hi s 22

Attached please find the op ed with suggested edits including suggested change to data point.

Kind regards
Amy

~~PROTECTED~~

From: s 22
Sent: Thursday, 24 September 2020 12:59 PM
To: Auster, Amy
Subject: Increasing access to credit; key to economic recovery.docx [~~SEC-PROTECTED~~]

~~PROTECTED~~

Hi Amy

Attached is the OpEd. Do you mind just getting someone to fact check asap?

s 22

s 22
Senior Advisor - Financial Services
Office of the Treasurer
The Hon. Josh Frydenberg MP
Parliament House, Canberra

Mobile: s 22
Email: s 22 [@treasury.gov.au](mailto:s 22@treasury.gov.au)

~~PROTECTED~~

Increasing access to credit; key to economic recovery

The flow of credit is the lifeblood of the Australian economy.

s47C, s47E(d)

s47C, s47E(d)

As the nation strives to recover from COVID-19 the provision and access to credit will be critical to rebuilding every sector of our economy, from hospitality to tourism, construction to retail.

Liquidity in the banking system is not an issue.

Through the actions of the Morrison Government and the Reserve Bank of Australia more than \$200 billion has been made available to lenders.

The cost of borrowing has never been lower with the cash rate at an historic low of 25 basis points.

The challenge today is a different one.

The burden of regulation has been increasing and with it has come more obstacles for the consumer making it harder for them to access credit.

From what started a decade ago as a principles based framework to regulate the consumer credit has now evolved into an overly descriptive, complex, costly, one size fits all regime know as responsible lending obligations (RLOs).

s47C, s47E(d)

So called RLOs apply to lending by banks, credit unions and other financiers to ensure that "unsuitable" credit is not provided to consumers.

These principles based obligations have given rise to almost 100 pages of ASIC regulatory guidance.

Over time, lenders have become increasingly risk averse and overly conservative in their approach.

The consequence of which is borrowers, irrespective of their financial circumstances, have faced an ever more intrusive, difficult, and drawn out approval process.

It is now not uncommon for a person applying for a mortgage to be asked to explain individual discretionary spending and provide verification of a customer's Netflix and Spotify subscriptions, UberEats or MenuLog usage or other detailed information.

All in order for the lender to be confident that it cannot be held liable in the event the borrower cannot repay the loan.

Even the lenders are at risk should they rely on information provided by the borrower which subsequently proves to be incorrect or false.

It is no surprise that Australians have found it more difficult to obtain the credit they are seeking, with many giving up along the way.

In the words of RBA Governor Dr. Phil Lowe just last month “The way we’ve translated these principles into reality needs looking at again.”

There are numerous real life examples which illustrate this point.

A retiree who recently lost her husband and now has \$430,000 in her account and her husband’s refundable accommodation deposit being repaid to his estate, was informed by her lender that she couldn’t obtain a new credit card in her own name as it would put her in “severe financial distress.”

A lender notified her that it could not consider her assets in her credit evaluation but only actual income received each month.

Another example was a first home buyer who put down a deposit after receiving pre approval from the bank.

Prior to settlement he received a promotion at work which involved a salary increase.

He notified the lender before his loan was finalised and the bank told him that the promotion constituted a change in circumstance requiring his loan application to be reassessed and delayed because he didn’t have a past history of income at that level to rely on.

Even modest increases in credit limits for existing customers trigger the need for a reassessment of the customer’s financial circumstances.

For example, a customer who’s paid down \$200,000 of their \$500,000 mortgage but subsequently seeks a \$1,000 increase on their \$10,000 credit card limit needs to fill in a long form credit application to re-verify income, expenses and other liabilities to check if they haven’t changed since the original mortgage was approved.

In light of these and countless other examples the Government is moving to simplify and clarify the law which will reduce the cost and time faced by consumers and small businesses seeking to access credit.

s47C, s47E(d)

For lenders that are not currently regulated by APRA, the Government will seek to mirror APRA’s lending standards with ASIC continuing to monitor their compliance.

In the case of lending to small business, it will be exempted from these new requirements.

This new framework will remove the overlap and ambiguity for consumers and move away from the current one size fits all approach.

It will target the strongest consumer protections where they are most needed.

In doing so it enables the vast majority of Australians to benefit from improved access to credit.

Importantly, the many additional protections the Coalition has introduced will remain in place including the best interest duty for mortgage brokers, ASIC's product intervention power, design and distribution obligations on lenders and the continued free access to consumers to dispute resolution via the Australian Financial Complaints Authority (AFCA).

The removal of RLOs will substantially cut red tape and improve consumer outcomes.

It will restore balance to the system after 10 years of regulatory creep that has seen the pendulum swing too far away from borrower beware to lender beware.

As the economy emerges from the COVID induced recession we know credit will be essential to the speed and strength of recovery.

These reforms are in pursuit of that objective.

s 22

From: Auster, Amy
Sent: Thursday, 24 September 2020 1:24 PM
To: s 22 Codina, Martin
Cc: Quinn, Meghan; s 22
Subject: Credit framework budget announcement - final draft [~~SEC-PROTECTED~~]
Attachments: 200924 1.20 pm Budget Announcement - Supporting the flow of credit factsheet.docx

~~PROTECTED~~

Hi s 22 Martin

s47C, s47E(d)

Can I please request that the office media advisor sends us the media release for fact checking? Treasury media has advised this request will need to be fielded through the office.

Many thanks
Amy

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s 22

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Consumer credit reforms

The Government is simplifying Australia's credit framework to ensure consumers and small businesses can get timely access to credit, particularly as the economy recovers following the COVID crisis. Through a suite of changes to Australian credit laws, the Government will enable the more efficient flow of credit to consumers and small businesses while maintaining strong consumer protections.

Taking action to reduce barriers to credit

The importance of credit to households and businesses makes access to credit vital to Australia's economic success. Economic studies have consistently demonstrated a positive relationship between credit growth and economic growth, with the cost and availability of credit a strong determinant of credit growth.

There is currently around \$3 trillion in credit outstanding in Australia. Credit underpins the Australian dream of home ownership, with more than \$13 billion dollars on average in new credit extended each month to help Australian families purchase their own home. Credit also allows investors and businesses to invest, grow and create jobs, including around \$5 billion per month to housing investors.

The onset of the COVID pandemic has seen credit growth stall. Following a weak patch in the wake of the *Royal Commission into Misconduct in the Banking and Financial Services Industry* last year, total credit growth recovered to reach nearly 3 per cent in March 2020 from the previous year. By June, annual growth had declined to 2 per cent, with growth in investor housing falling away and business credit growth declining from 6.3 per cent per year in April 2020 to 3.8 per cent in July. The stock of consumer credit outside of the housing sector is shrinking relative to the economy, falling to just 7 per cent of GDP as at June 2020, a level not seen since before 1990. Now, more than ever, it is important that there are no unnecessary barriers to the flow of credit to households and business, especially small and medium sized businesses, as the economy recovers.

The *National Consumer Credit Protection Act 2009* (Credit Act) was put in place more than 10 years ago. The Credit Act introduced principles aimed at ensuring lenders do not provide unsuitable loans to consumers. Fast forward to 2020, and the principles which underpin responsible lending obligations (RLOs) have been implemented in a way that is no longer fit for purpose and which risks slowing our economic recovery.

The prescriptive approach in RLO guidance and internal lenders' systems aimed to comply with the guidance leaves borrowers and lenders facing a 'one-size-fits-all' approach. This means lenders are required to adopt a similar approach to credit assessment for most consumers and credit products, irrespective of their circumstances. Lenders face prescriptive obligations, with close to 100 pages of guidance advising how they should meet their obligations under RLOs. The guidance puts the onus on

lenders to verify information provided by borrowers, with borrowers bearing limited responsibility for providing incorrect or misleading information to lenders. In response, many lenders have put in place detailed and lengthy credit approval processes aimed solely at meeting these requirements, but without necessarily improving a lender's ability to understand if the loan is suitable for the customer.

As a result, obtaining credit has become more burdensome for borrowers, irrespective of the risks they face, and significantly increased the time needed to gain credit approvals. As the Governor of the Reserve Bank of Australia observed recently, what began as responsible lending principles has translated into a practice that has become imbalanced between a lender and its customer, leading to the undesirable consequence of unduly restricting lending.

Since the introduction of RLOs, the Government has introduced a number of significant changes in other areas of the law that have strengthened consumer protection in the credit system, including:

- provided the Australian Securities and Investments Commission (ASIC) with a product intervention power that allows ASIC to ban, or amend, a credit product where that product has resulted, or is likely to result, in significant consumer detriment;
- introduced a design and distribution obligation which will require product issuers to identify and distribute their products to appropriate consumers to reduce the risk of consumers acquiring or being mis-sold products that do not meet their needs.
- introduced a best interests duty for mortgage brokers which will ensure mortgage brokers act in the best interests of consumers when providing credit assistance;
- more than doubled the maximum corporate and financial sector civil and criminal penalties under the Credit Act;
- enhanced protections for credit card customers by banning unsolicited offers of credit limit increases, simplifying how interest is calculated and requiring online options be available for consumers to cancel cards or reduce their limits; and
- established the Australian Financial Complaints Authority (AFCA), increasing access for borrowers to external dispute resolution.

The Australian Prudential Regulation Authority (APRA) has also updated its standards for Authorised Deposit-taking Institutions (ADIs) to ensure lenders have appropriate settings for managing risk. APRA's standards, which govern over 90 per cent of all credit extended to Australian borrowers, sets out standards for credit risk management that ADIs are expected to meet. These standards include expectations of sound lending practices. At present, ADIs are subject to the RLOs while also needing to comply with APRA's requirements in respect of the same lending activity.

The 'one-size-fits-all' and prescriptive nature of RLOs is imposing burdensome and unnecessary processes on both lenders and borrowers, leading to delays in credit approvals and increasing borrowing costs. Existing mortgage holders face avoidable delays in refinancing existing loans even if they have a strong credit record and sophisticated borrowers are often subject to the same stringent obligations as a high-risk borrower applying for a payday loan. To the extent that small business

owners use their home as security for personal and business investment, delays in credit processing times also delay investment and business growth.

Example - 'One-size-fits-all' framework

Lisa is a retiree who recently lost her husband. They had a \$3,000 credit card account in both their names, but upon her husband's death the bank closed the account as he was the main cardholder. During the last two years, Lisa was the only person using and paying for the card, but was informed by the bank that she could not obtain a credit card in her own name as it could put her in 'severe financial distress'.

Despite Lisa having \$430,000 in her accounts, including her husband's Refundable Accommodation Deposit being repaid to his estate, the bank notified Lisa that it was not able to consider her assets in her credit evaluation, but only the actual income she received each month.

Following the proposed changes, the lender would instead be able to consider Lisa's financial circumstances, including that she has sufficient available assets to meet the total amount of outstanding credit and make their own assessment regarding whether to extend the product.

Government reforms – improving the flow of credit

The Government will simplify the law through changes to the Credit Act to reduce the time and cost of borrowing for consumers and businesses, reduce red tape for consumers seeking a credit product, improve competition by making it easier for consumers to switch lenders, and enhance access to credit for small businesses.

The Government will achieve this by:

- ensuring that ADIs continue to comply with APRA's lending standards;
- appropriately adopting key elements of APRA's ADI lending standards and applying them to non-ADIs; and
- for higher-risk products, being small amount credit contracts (SACCs) and consumer leases, RLOs will remain and the obligations on all lenders of these products strengthened.

APRA will continue to regulate ADIs in relation to existing standards and ASIC will continue to regulate non-ADIs in relation to the new standards that are introduced. Appropriately adopting APRA's expectations of sound ADI lending standards for non-ADIs will ensure there is consistency between the standards applied for ADIs and non-ADIs.

A key feature of the new obligations will be allowing lenders to rely on the information provided by borrowers, unless there are reasonable grounds to suspect it is unreliable. Borrowers will be made more accountable for providing accurate information to inform lending decisions, replacing the current practice of 'lender beware' with a 'borrower responsibility' principle. This change will help

address the excessive risk aversion which has progressively entered the system, restricting the flow of credit.

The changes will remove the 'one-size-fits-all' approach to lending, and ensure credit assessment is attuned to the needs of the borrower and the credit product. For example, lenders at present are required to obtain and verify extensive information about borrowers' expenses, irrespective of the type of loan product or the borrower. Following the changes, the obligations on the lender will be proportionate with the risk. As a result, credit providers will be able to simplify their credit assessment process and extend credit in a more timely and efficient manner. The Government expects that lenders will pass on the benefits of the reduced regulatory burden to consumers over time.

Example - Risk-averse lender

Marc put down a deposit to buy his first home after receiving pre-approval from the bank, following a suitability assessment. Prior to settlement, Marc received a promotion at work that changed his role and increased his salary (he had been with the company for a number of years). He notified his bank before the loan was finalised. The bank's response was that the promotion constituted a change in circumstance, and therefore the loan suitability process would need to be run again to determine how much he could borrow. However, this process was delayed because Marc no longer had a past history of income at the level to rely on. Understandably, this caused Marc concern as settlement on the house was imminent, and this was an unnecessary delay in the final approval of funds.

Following the proposed changes, the bank would instead be able to assess that the change in circumstance did not negatively affect borrowing capacity.

The changes to the Credit Act will streamline consumers' engagement with lenders. As lenders can rely on the information provided by borrowers, the need for extensive verification procedures, which can often account for half the loan application process, will diminish. This will significantly simplify the loan application process for borrowers as they will no longer need to hand over extensive amounts of information to lenders. Reducing the burden faced by borrowers when seeking loans will also reduce barriers to switching between credit providers, encouraging consumers to seek out better terms or a lower interest rate.

Where a proportion of an application for credit is for a business purpose, irrespective of the proportion, the new framework will not apply. Small business lending was never intended to be captured by the Credit Act, but the recent prescriptive interpretation of the obligations as well as the excessive risk aversion of lenders has meant that some small businesses have struggled to access credit, particularly where it is difficult to separate their business from their household, such as primary producers. Borrowers will have more confidence to approach lenders to access credit for business purposes knowing that the process to obtain approval is simpler and less intrusive. Importantly, small business lending will continue to be covered by the ASIC approved Banking Code of Practice, which will be strengthened following the implementation of the financial services Royal Commission, to include enforceable code provisions, regulated by ASIC. Small business lending also continues to be subject to AFCA's small business jurisdiction, where the lender is an AFCA member, providing free and timely access to redress.

Consumers more broadly will continue to have access to protections via existing frameworks for borrowers. Credit providers will still be obliged to be members of AFCA and comply with their existing licensing obligations to act efficiently, honestly and fairly. Further, the duty under the Banking Code of Practice for signatory banks to exercise the care and skill of a diligent and prudent banker will still apply.

To ensure there is no misalignment between the obligations of mortgage brokers and lenders, following the changes, mortgage brokers will no longer be subject to RLOs; however, consumers will continue to be protected when accessing services by mortgage brokers through the recently introduced best interest duty for mortgage brokers commencing 1 January 2021.

The reforms will be implemented through changes to the Credit Act and will commence, subject to the passing of legislation, from 1 January 2021.

Ensuring high cost forms of borrowing are protected – Small Amount Credit Contracts and Consumer Leases

The Government will also implement reforms to enhance financial inclusion and ensure Australian consumers accessing small amount credit contracts (SACCs) and consumer leases are better protected.

SACCs and consumer leases are high cost forms of borrowing, and are more typically accessed by some of Australia's most vulnerable consumers. While these products can be useful for consumers as an emergency source of funding, repeat borrowing can lead to repayments consuming a greater portion of income, becoming increasingly unaffordable.

The Government's reforms are designed to limit consumer harm while maintaining access to SACCs and consumer leases.

Imposing a cap on the total payments that can be made under a consumer lease

The permitted cap on costs will be equal to the sum of the base price of the goods hired under the lease, permitted delivery fees and permitted installation fees multiplied by 4 per cent per month (up to a maximum of 48 months). Lessors will additionally be able to charge a one-off establishment fee of 20 per cent of the good's base price.

Introducing new 'protected earnings amounts' for SACCs and consumer leases

SACC providers and consumer lessors will be prohibited from providing a SACC or lease that would result in:

- A person who receives 50 per cent or more of their net income from Centrelink from devoting more than 20 per cent of their net income to SACC and consumer lease repayments, with no more than 10 per cent of this being allocated toward SACC repayments.

- A person who receives less than 50 per cent of their net income from Centrelink from devoting more than 20 per cent of their net income to SACCs or consumer leases (these are separate caps).

These 'protected earnings amounts' will maintain access to credit while ensuring enhanced protection for the most vulnerable consumers.

The reforms will be implemented through changes to the Credit Act and will take effect 6 months following passage of legislation.

Protecting consumers from the predatory practices of debt management firms

The Government will support consumers engaged in financial disputes by introducing licensing obligations for debt management firms representing consumers in disputes with financial services firms.

Consumers turning to debt management firms for representation in disputes with credit providers are often vulnerable and confused by unfamiliar formalised processes. As it currently stands, the piecemeal regulatory regime for these firms means that, where difficulties arise between consumers and these paid representatives, affordable and accessible forms of redress are unavailable.

To address this, the Government's reforms will require debt management firms representing consumers in internal and external dispute resolution processes to hold an Australian credit licence and meet the ongoing obligations imposed on credit licensees. These obligations include a requirement to meet the 'fit and proper person' test, and to undertake their activities 'efficiently, honestly and fairly'.

Importantly, the Government's reforms will allow those consumers involved in a dispute with a debt management firm representative to have disputes determined efficiently and fairly by the Australian Financial Complaints Authority.

This reform will be implemented through a change to the Credit Regulations and will commence from 1 April 2021.

Next Steps

The Government's reforms will require changes to the Credit Act and associated subordinate legislation. The Government will consult publicly with stakeholders before finalising any legislation required to implement the reforms.

s 22

From: Auster, Amy
Sent: Sunday, 20 September 2020 5:43 PM
To: s 22
Cc: Codina, Martin; s 22
Subject: RE: RLO document [~~SEC-PROTECTED~~]

~~PROTECTED~~

Great will do.

Kind regards
Amy

~~PROTECTED~~

From: s 22
Sent: Sunday, 20 September 2020 5:40 PM
To: Auster, Amy
Cc: Codina, Martin ; s 22
Subject: RE: RLO document [~~SEC-PROTECTED~~]

~~PROTECTED~~

If we can get a draft to put in front of him first thing tomorrow morning that would be great. Happy for square brackets where any numbers need to be dropped in.

s 22

s 22
Senior Advisor - Financial Services
Office of the Treasurer
The Hon. Josh Frydenberg MP
Parliament House, Canberra

Mobile: s 22
Email: s 22 [@treasury.gov.au](mailto:s 22@treasury.gov.au)

~~PROTECTED~~

From: Auster, Amy <Amy.Auster@TREASURY.GOV.AU>
Sent: Sunday, 20 September 2020 5:10 PM
To: s 22 [@TREASURY.GOV.AU](mailto:s 22@TREASURY.GOV.AU)>
Cc: Codina, Martin <Martin.Codina@TREASURY.GOV.AU>; s 22 [@treasury.gov.au](mailto:s 22@treasury.gov.au)>
Subject: RE: RLO document [~~SEC-PROTECTED~~]

~~PROTECTED~~

Hi s 22

We could send through another version in the next few hours if the Treasurer would like to see how the narrative is shaping up tonight, or a more final draft tomorrow that would include some of the data that has been requested (needing to get this from MMPD but they are flat out on budget).

Let me know which you prefer?

Kind regards
Amy

~~PROTECTED~~

From: s 22 [REDACTED] <[\[REDACTED\]@TREASURY.GOV.AU](mailto:[REDACTED]@TREASURY.GOV.AU)>
Sent: Sunday, 20 September 2020 5:08 PM
To: Auster, Amy <Amy.Auster@TREASURY.GOV.AU>
Cc: Codina, Martin <Martin.Codina@TREASURY.GOV.AU>
Subject: RLO document [~~SEC - PROTECTED~~]

~~PROTECTED~~

Hi Amy

The Treasurer has asked when he will see the next version of the RLO document as he is keen to have another look at it. If you can let us know when you expect to have the next version through that would be great.

s 22 [REDACTED]

s 22 [REDACTED]
Senior Advisor - Financial Services
Office of the Treasurer
The Hon. Josh Frydenberg MP
Parliament House, Canberra

Mobile: s 22 [REDACTED]
Email: s 22 [REDACTED] <[\[REDACTED\]@treasury.gov.au](mailto:[REDACTED]@treasury.gov.au)>

~~PROTECTED~~

s 22

From: s 22
Sent: Friday, 18 September 2020 1:24 PM
To: Kelly, James; Barron, Christine; Auster, Amy
Cc: Quinn, Meghan; s 22
Subject: RE: Call with Tsr [SEC=UNOFFICIAL]

UNOFFICIAL

Of course

s 22

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Office of the Treasurer
The Hon. Josh Frydenberg MP
Parliament House, Canberra

Mobile: s 22
Email: s 22 [@treasury.gov.au](mailto:s 22@treasury.gov.au)

UNOFFICIAL

From: Kelly, James
Sent: Friday, 18 September 2020 11:43 AM
To: s 22 ; Barron, Christine ; Auster, Amy
Cc: Quinn, Meghan ; s 22
Subject: RE: Call with Tsr [SEC=UNOFFICIAL]

UNOFFICIAL

s 22 as discussed, Amy will be taking over the RLOs side so will need to have her on as well.

James

James Kelly
Division Head
Financial System Division
The Treasury, Langton Crescent, Parkes, ACT 2600
phone: +61 2 6263 3798 / mobile: +s 22
email: james.kelly@treasury.gov.au

UNOFFICIAL

From: s 22 [@TREASURY.GOV.AU](mailto:s 22@TREASURY.GOV.AU)>
Sent: Friday, 18 September 2020 11:21 AM
To: Kelly, James <James.Kelly@TREASURY.GOV.AU>; Barron, Christine <Christine.Barron@TREASURY.GOV.AU>
Subject: Call with Tsr [SEC=UNOFFICIAL]

Hi

The Treasurer is hoping to have a call with you both at 2pm to discuss the documents you are sending up on s 22 and RLOs. Does that work for you?

s 22

s 22

Senior Advisor - Financial Services
Office of the Treasurer
The Hon. Josh Frydenberg MP
Parliament House, Canberra

Mobile: s 22

Email: s 22 [@treasury.gov.au](mailto:s 22@treasury.gov.au)

s 22

From: Kelly, James
Sent: Sunday, 13 September 2020 11:57 AM
To: s 22 Luu, Nghi
Cc: Barron, Christine; s 22 Quinn, Meghan
Subject: RE: Talking points [~~SEC-PROTECTED~~]
Attachments: Responsible lending obligation reforms.docx

~~PROTECTED~~

s 22 attached is a one pager of talking points on RLOs in a more narrative style

s 34(3)

s 22

James Kelly
Division Head
Financial System Division
The Treasury, Langton Crescent, Parkes, ACT 2600
phone: +61 2 6263 3798 / mobile: +s 22
email: james.kelly@treasury.gov.au

~~PROTECTED~~

From: s 22
Sent: Sunday, 13 September 2020 11:13 AM
To: Luu, Nghi
Cc: Kelly, James ; Barron, Christine ; s 22
Subject: RE: Talking points [~~SEC-PROTECTED~~]

~~PROTECTED~~

s 34(3) . We needed detailed documents for the run through today that provides him the key points to build the story.

s 22

s 22
Senior Advisor - Financial Services
Office of the Treasurer
The Hon. Josh Frydenberg MP
Parliament House, Canberra

Mobile: s 22
Email: s 22 [@treasury.gov.au](mailto:s 22@treasury.gov.au)

~~PROTECTED~~

From: Luu, Nghi <Nghi.Luu@TREASURY.GOV.AU>
Sent: Friday, 11 September 2020 3:43 PM
To: s 22 [@TREASURY.GOV.AU](mailto:s 22@TREASURY.GOV.AU)>
Cc: Kelly, James <James.Kelly@TREASURY.GOV.AU>; Barron, Christine <Christine.Barron@TREASURY.GOV.AU>; s 22 [@treasury.gov.au](mailto:s 22@treasury.gov.au)>; s 22 [@TREASURY.GOV.AU](mailto:s 22@TREASURY.GOV.AU)>
Subject: FW: Talking points [~~SEC-PROTECTED~~]

Hi s 22

s 34(3)

Nghi

~~PROTECTED~~

From: s 22 <[REDACTED]@TREASURY.GOV.AU>

Sent: Friday, 11 September 2020 3:16 PM

To: Kelly, James <James.Kelly@TREASURY.GOV.AU>; Barron, Christine <Christine.Barron@TREASURY.GOV.AU>

Subject: Talking points [~~SEC-PROTECTED~~]

~~PROTECTED~~

Hi

Just making sure your teams are working up talking points for the Treasurer for Monday. He will want to go through these tomorrow. Christine, s 34(3) [REDACTED].

s 22 [REDACTED]

s 22 [REDACTED]

Senior Advisor - Financial Services
Office of the Treasurer
The Hon. Josh Frydenberg MP
Parliament House, Canberra

Mobile: s 22 [REDACTED]

Email: s 22 [REDACTED]@treasury.gov.au

~~PROTECTED~~

s 22

From: Luu, Nghi
Sent: Friday, 11 September 2020 7:10 PM
To: s 22
Cc: Quinn, Meghan; Kelly, James; Barron, Christine; s 22
Subject: s 34(3) [~~SEC-PROTECTED, CAVEAT-SH;CABINET~~]
Attachments: s 34(3)

~~PROTECTED//CABINET~~

s 22

s 34(3)

We've also attached the background brief on s34(1)(c)

Regards
Nghi

Nghi Luu
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~~PROTECTED//CABINET~~

From: Luu, Nghi
Sent: Friday, 11 September 2020 3:43 PM
To: s 22
Cc: Kelly, James ; Barron, Christine ; s 22
Subject: FW: Talking points [~~SEC-PROTECTED~~]

Hi s 22

s 34(3)

Also, as requested a few days ago we will also send you a backpocket brief on RLOs about what consumer protections will remain. Will be sent to you today as well.

Nghi

~~PROTECTED~~

From: s 22 @TREASURY.GOV.AU
Sent: Friday, 11 September 2020 3:16 PM
To: Kelly, James <James.Kelly@TREASURY.GOV.AU>; Barron, Christine <Christine.Barron@TREASURY.GOV.AU>
Subject: Talking points [~~SEC-PROTECTED~~]

~~PROTECTED~~

Hi

Just making sure your teams are working up talking points for the Treasurer for Monday. He will want to go through these tomorrow. Christine, s 34(3)

s 22

s 22

Senior Advisor - Financial Services
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The Hon. Josh Frydenberg MP
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Mobile: s 22

Email: s 22 [@treasury.gov.au](mailto:s 22@treasury.gov.au)

~~PROTECTED~~

The email attachment is
exempt in full and has
been deleted

s 22

From: Luu, Nghi
Sent: Wednesday, 26 August 2020 1:50 PM
To: Codina, Martin; s 22
Cc: Quinn, Meghan; Kelly, James; s 22
Rayner, Karla; Auster, Amy
Subject: RLOs options - A3 for our discussion [~~SEC-PROTECTED, CAVEAT-SH; CABINET~~]
Attachments: 200826_Options for decision A3.pdf; Table of APRA standards and principles_updated.docx

~~PROTECTED//CABINET~~

Martin, s 22

Following discussion with the Treasurer on RLOs, attached s34(1)(d), s47C, s47E(d)
s34(1)(d), s47C, s47E(d)

We've also included a table highlighting parts of APRA's prudential standards and guidance that relate to RLOs.

We intend to use these documents as a basis for discussion with you, hopefully later today.

We may make further changes to the A3 below it is given to the Treasurer.

Regards
Nghi

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~~PROTECTED//CABINET~~

The first email attachment is exempt in full and has been deleted

RLO key requirements	APRA Standards (law) APS 220	APRA Guidance APG 223 and APG 220
Understanding consumer's requirements and objectives	<p><u>Current state</u> N/A</p> <p><u>From 1 Jan 2022*</u> ADI must consider purpose and structure of exposure and sources of repayment.</p>	<p><u>Current state</u> Failure to meet RLOs including making reasonable inquiries about borrower's requirements and objectives can expose ADIs to significant risk.</p> <p><u>From 2022</u> – same as current state.</p>
Understanding consumer's financial situation	<p><u>Current state</u> N/A</p> <p><u>From 2022</u> ADIs must consider:</p> <ul style="list-style-type: none"> - making reasonable inquiries and taking reasonable steps to verify income or cash flows - current risk profile of borrower, including verification of commitments and total indebtedness - borrower expenses, including collection of reasonable estimate, where benchmarks must not be used as a substitute for making reasonable enquiries of expenses 	<p><u>Current state</u> A prudent ADI would be expected to make reasonable inquiries and take reasonable steps to verify available income.</p> <p>APRA expects ADIs to use the greater of a borrower's declared living expenses or an appropriately scaled version of the HEM or HPI indices.</p> <p><u>From 2022</u> In addition to above, borrower-declared expenses must be used when these are greater than calculated benchmarks.</p>
Is the loan suitable for the customer?	<p><u>Current state</u> N/A</p> <p><u>From 2022</u> ADI must assess credit risk primarily on the strength of a borrower's repayment capacity. The ADI must not place undue reliance on collateral provided by the borrower as a substitute.</p> <p>ADI must give due consideration to the integrity and reputation of the borrower as well as its legal capacity to assume liability.</p>	<p><u>Current state</u> APRA expects an ADI to undertake a new serviceability assessment whenever there are material changes to the current or originally approved loan conditions</p> <p>It is good practice to ensure borrowers retain a reasonable income buffer above expenses to account for unexpected income and expense changes.</p> <p><u>From 2022</u> In addition to above, in assessing a borrower's repayment capacity, the use of appropriate interest rate buffers are critical.</p>

*APRA's updated APS 220, credit risk management, and supporting guidance will come into effect 1 January 2022. This has been publicly consulted on and announced.

s 22

From: Luu, Nghi
Sent: Friday, 14 August 2020 5:03 PM
To: s 22 Codina, Martin
Cc: Quinn, Meghan; Kelly, James; s 22; Office of the Secretary; Rayner, Karla
Subject: s34(1)(d), s47C, s47E(d)
Attachments:

s 22, Martin,

Following discussions with your office on RLOs reform, please find attached s34(1)(d), s47C, s47E(d)
s34(1)(d), s47C, s47E(d)

We're happy to discuss further.

Regards
Nghi

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~~PROTECTED/CABINET~~

The email attachment is exempt in full and has been deleted

s 22

From: Luu, Nghi
Sent: Friday, 24 July 2020 1:10 PM
To: s 22
Cc: Codina, Martin; Quinn, Meghan; Kelly, James; s 22
Subject: APRA lending standards [SEC=OFFICIAL]
Attachments: APRA and lending standards.docx

OFFICIAL

s 22

As part of the work on RLOs, you requested information on APRA's lending standards.

Attached is a short summary on APRA's lending standards and guidance as its relates to mortgage and SME lending.

Regards
Nghi

Nghi Luu
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OFFICIAL

The email attachment
is exempt in full and
has been deleted

s 22

From: s 22
Sent: Saturday, 19 September 2020 1:02 PM
To: Barron, Christine; Kelly, James
Cc: Codina, Martin; Kennedy, Steven; Quinn, Meghan
Subject: s22 RLO documents [SEC=PROTECTED]

~~PROTECTED~~

Just a quick note to thank you for the quality of the documents you sent through on RLOs and s 22 yesterday. The Treasurer was very happy with them and it allowed him to provide some helpful input.

If you can pass that feedback onto the people on your team that helped pull them together too that would be greatly appreciated.

Well done.

s 22

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~~PROTECTED~~