



Factsheet No. 22

Consumer Credit and Responsible Lending

*This factsheet addresses consumer credit and responsible lending laws in NSW, Australia, and covers Requirements under Chapter 3 of the National Consumer Credit Protection Act 2009 (Cth) (**National Credit Act**); assessments of 'unsuitability' and maladministration; and other resources for dealing with consumer credit issues.*

- What is responsible lending?
- Who do the responsible lending requirements apply to?
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What is responsible lending?

Lenders must comply with the responsible lending obligations set out in the National Credit Act. The National Credit Act imposes certain obligations on lenders to engage in "responsible lending" when providing consumer credit contracts and loans or increasing the credit limits of loans. The responsible lending obligations are designed to ensure that lenders do not suggest or encourage consumers to enter into credit arrangements that would be unsuitable for them given their financial situation, requirements or objectives.

Responsible lending obligations require that lenders make an assessment of a consumer's "unsuitability" for entry into a credit arrangement before providing credit or a loan to them.

A credit provider must not provide credit assistance to a consumer if the credit contract would be "unsuitable" for that consumer.

Who do the responsible lending requirements apply to?

There are three types of lenders regulated by the responsible lending rules:

- Credit assistance providers, such as mortgage and finance brokers, who provide information and assistance to consumers about loans provided by credit providers;
- Credit providers, who actually provide loans to consumers, including banks, credit unions, small amount lenders and finance companies; and
- Lessors of consumer leases.

What is required of lenders?

To comply with their responsible lending obligations, lenders must, before giving a consumer a loan or approving a consumer for a loan:

- have an Australian credit licence;
- provide the consumer with a quote setting out the maximum amount of money they will be required to pay back to the credit provider;
- make reasonable enquiries and take reasonable steps to verify the financial situation of the consumer and their requirements and objectives;
- provide the consumer with a copy of the financial assessment, if requested; and
- provide the consumer with certain documents that disclose information about the provision of credit and dispute resolution procedures. This usually involves the provision of a credit guide.

These obligations apply to all lenders.

Assessment of Unsuitability

A key element of the responsible lending laws is that lenders are prohibited from providing credit to consumers if it would not be suitable for those consumers.

Lenders must reach a conclusion that a credit contract is "not unsuitable" for a consumer before they can enter into a credit contract with them or before the lender increases the credit limit on an existing contract.

The assessment of suitability for credit assistance depends on the following factors:

- whether the consumer will be unable to comply with the requirements of the credit contract;
- whether the consumer would suffer substantial hardship in complying with the credit contract; and
- whether the credit contract meets the consumer's requirements or objectives.

The National Credit Act provides that a consumer would be "unsuitable" for a credit contract if complying with the credit contract would require the consumer to sell their home.

Generally, the credit assistance provider will do the "preliminary assessment" of the suitability of the credit product for the consumer, and the credit provider will do the "final assessment".

Credit Guide

Before entering into a credit contract with a consumer, lenders must provide consumers with particular disclosure documents, including a written credit guide. Credit guides must contain the following minimum information:

- the lender's name and contact details;
- the lender's Australian credit licence number; and
- information about the procedure for resolving disputes with consumers.

There are additional requirements for credit guides depending on what kind of entity the lender is. For example, credit assistance providers must include commissions, fees and charges that they charge, the

six credit providers they deal with most often, and whether commissions to any third party referrers will be paid, in their credit guide.

Other standard documentation

There are additional documents that lenders have to provide consumers, depending on the product and the entity.

Credit assistance providers must provide:

- A quote to the consumer which the customer signs and dates; and
- A credit or lease proposal disclosure document.

Credit providers must provide:

- A key facts sheet for home loans; or
- A key facts sheet for credit card contracts.

Before making a preliminary or final assessment of the suitability of a reverse mortgage for a consumer, both credit providers and credit assistance providers must provide consumers with equity projections and a reverse mortgage information statement.

Assessment of Maladministration

Occasionally, breaches of responsible lending obligations by lenders can amount to "maladministration in lending". The Financial Ombudsman Service (**FOS**) has jurisdiction to assess whether there has been maladministration by the lender.

In assessing whether there was maladministration, the FOS will often look at the consumer's capacity to repay the debt. It will assess the consumer's income and financial situation at the time the loan was advanced, how the consumer applied for the loan, whether the lender verified all the relevant information, and what the lender's loan guidelines were and whether they were followed.

The FOS can order that the lender compensate the consumer where it finds that the consumer suffered loss as a result of the lender's maladministration. The aim of compensation is to put the consumer back in the position they would have been in had the loan never been granted.

The FOS can only assess maladministration

allegations where the value of the claim is less than \$500,000 and the FOS can award compensation to a cap of \$280,000.

Financial Hardship and Negotiating Hardship Variations

If you have a debt from a lender who has complied with their responsible lending obligations but are unable to pay the debt due to financial hardship, please refer to the Financial Hardship Factsheet.

Lodging a complaint

If you would like to make a complaint because you think a lender has not complied with its responsible lending obligations or has conducted maladministration, you can lodge a dispute with the FOS on its [website](#). It is advisable to consult the [information](#) about FOS' dispute resolution process before lodging a dispute.

You can also call the FOS on 1800 367 287 from 9am-5pm Monday-Friday.

Other Resources

- Financial Ombudsman Service, *[Responsible Lending Obligations and Maladministration in Lending](#)*
- Australian Securities and Investments Commission, *[RG 209: Credit licensing: responsible lending conduct](#)*
- Australian Securities and Investments Commission, *[Responsible lending disclosure obligations – Overview for credit licensees and representatives](#)*

Produced by Redfern Legal Centre in September 2016.

This factsheet is a guide to the law in New South Wales, Australia. It is not a substitute for legal advice. If you have a legal problem seek legal advice from your local community legal centre.

