

Article Information

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Service: Asset Finance, Banking & Finance, Corporate & Commercial Finance, Project Finance, Property & Development Finance

Sector: Financial Services

Buyers beware - will lending no longer be responsible?

In light of increased scrutiny of banker conduct and conservative lending practices, the Government proposes to overhaul responsible lending laws and place a greater emphasis on consumer responsibility.

Responsible lending laws are to be overhauled. The Treasurer made this shock announcement on 25 September 2020.

Treasurer Josh Frydenberg is making major changes to the responsible lending laws implemented in 2009 by the Rudd Labor Government^[1]. The proposed changes seek to remove responsible lending rules for banks and mainstream lenders, shifting the emphasis from “lender beware” to “borrower beware.” This red-tape reduction will see the removal of ASIC from enforcing the responsible lending rules for said institutions. Instead, ADI’s will need to comply with APRA lending standard (and APRA will supervise this). Key elements of those lending standards will apply to non-ADI’s. Small amount credit contracts and consumer leases however will be exempt from the changes and will continue to be monitored by ASIC.

The joint media release dated 25 September 2020, by the Treasurer and the Minister for Housing and Assistant Treasurer states that:

“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.”

It continues to observe that responsible lending was originally on introduction a decade ago a “principles based framework”. However it has now evolved into a regime that is “overly prescriptive, complex and unnecessarily onerous on consumers.”

The announcement follows an increase in conservative lending practices sparked by the scrutiny of banker conduct in the Hayne Banking Royal Commission. The excess of regulation and oversight was further brought to light in the recent Westpac and ASIC responsible lending case^[2]. Having lost for a second time on appeal in the Full Federal Court, ASIC chose not to appeal the decision to the High Court, stating that the case was crucial to clarifying, perhaps soon to be made redundant, ‘responsible lending obligations’.

Though the changes would impose increased consumer responsibility, they are said to be of greater benefit to borrowers. The Treasurer states in the media release that a simpler loan application process will strengthen consumer protection by reducing barriers to switching between credit providers and encourage borrowers to seek out a better deal. The overhaul is intended to stimulate the flow of credit, making it easier for Australians and small businesses to access loans, and bolster economic recovery following the financial impact of COVID-19.

The Consumer Action Law Centre has criticised the Government’s announcement, stating that it risks individuals and families becoming over indebted^[3]. The new laws are anticipated to come into effect in March 2021 should they pass Parliament.

The media release lists the following as key elements of the reforms:

- “removing responsible lending obligations from the National Consumer Credit Protection Act 2009 (Cth), with the

exception of small amount credit contracts (SACCs) and consumer leases where heightened obligations will be introduced;

- *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;*
- *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; and*
- *removing the ambiguity regarding the application of consumer lending laws to small business lending."*

March 2021 is likely to herald a new era for consumer credit.

[1] The Treasury, '[Simplifying access to credit for consumers and small business](#)' (Media Release, 25 September 2020)

[2] *Australian Securities and Investments Commission v Westpac Banking Corporation* [2020] FCAFC 111.

[3] Ali Moore, '[Simpler lending laws risk Australians drowning in debt](#)', *The ABC* (online), 25 September 2020