

## Article Information

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# Christmas comes early for lenders: ASIC releases updated RG 209

**Despite ASIC v Westpac awaiting appeal, ASIC have released their much anticipated update to RG 209.**

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ASIC released its much anticipated update of [RG 209 Credit licensing: Responsible lending conduct \(RG 209\)](#) on 9 December 2019. After extensive consultation, the updated guidance provides greater clarity on the ambit of responsible lending, criteria for inquiry obligations and addresses the technological developments in the financial sector.

The updated RG 209 represents ASIC's focus on clarifying obligations in regards to the consumer. There is a great focus on dispelling ambiguities in regards to the inquiry criteria and substantial hardship considerations and provides clarity on how to utilise benchmarks when assessing loan applications. In order to illustrate the updated provisions, ASIC refers to multiple, pertinent case law such as the recent *Australian Securities and Investments Commission v Westpac Banking Corporation (Liability Trial)* [2019] FCA 1244 to demonstrate how a consumer's outgoings<sup>[1]</sup> or a consumer's financial obligations can be assessed.

The updated RG 209 importantly clarifies in what circumstances the responsible lending guidelines will not apply, including:

1. loans to companies, including small businesses, other than strata corporations for any purpose;
2. credit licensees that are providing the credit service of 'acting as an intermediary' but not 'providing credit assistance' to the consumer; and
3. where a person engages in a credit activity that is exempt from the requirement to hold a licence.

The guide clarifies in which situations a licensee may be required to obtain more information to make more detailed inquiries such as for reverse mortgages<sup>[2]</sup> or less information for fewer inquiries where the consumer may have had a similar kind of credit product.<sup>[3]</sup>

A significant change to note was the guidance being updated to incorporate open banking and digital data capture services which will inevitably affect the accessibility, cost of obtaining, transaction information and impact the overall greater view and understanding of a consumer's circumstance.<sup>[4]</sup> Evidently, ASIC acknowledges the impact technological advancements will have on future legal developments.

Appendix 2 to RG 209 has been added to provide an example of the kind of information ASIC consider would be useful to include in a written assessment.

Overall, the updated RG 209 provides greater understanding of how to engage in responsible lending through extensive scenarios and case law to assist both the licensee and lenders ensure they are complying with their obligations. To see how the updated RG 209 compares with the December 2014 version please see this [comparison table](#).

The external dispute resolution body for credit, the Australian Financial Complaints Authority (AFCA) have previously indicated that they will release their own responsible lending guidance in 2020 after considering the updated RG 209. We expect this guidance to provide greater clarity as to how AFCA will interpret this guidance in its decision-making.

If you would like to discuss what these changes mean for your business' responsible lending practices, please get in touch with us.

<sup>[1]</sup> RG209.65 - RG209.67.

[\[2\]](#) RG209.85.

[\[3\]](#) RG209.86.

[\[4\]](#) RG209.122.