



AFIA Risk Summit - Responsible Lending

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➤ ‘Winding back’ responsible lending

Category	Type / description	RLOs - ADIs	RLOs - Non-ADIs
Credit assistance (where credit has >50% consumer purpose)	All (excluding SACC and consumer lease)	Best interest duty (NCCPA)	Best interest duty (NCCPA)
	SACC and consumer lease	RLOs (NCCPA)	RLOs (NCCPA)
Lending (consumer only)	All (excluding SACC and consumer lease)	APS 220 and APG 223	Non-ADI Credit Standards
	SACC and consumer lease	RLOs (NCCPA)	RLOs (NCCPA)
Lending (mixed purpose)	All (excluding SACC and consumer lease)	APS 220 and APG 223	Nil*
	SACC and consumer lease	RLOs (NCCPA)	RLOs (NCCPA)

* Subject to the credit being genuinely for the purposes of a small business operated by the consumer, and these purposes are not merely minor or incidental to the overall purpose of the credit contract

➤ Best interests duty (BID) and credit assistance providers

KEY TAKEAWAYS

1. The BID will not apply if you are relying on an ACL exemption (i.e. POS exemption)
2. The BID will not apply where credit assistance is being provided in relation to a credit contract that is >50% for a business purpose (i.e. where the contract has a predominant business purpose)
3. The BID will apply to ADI and non-ADI licensees who meet the criteria (i.e. this is a stand alone obligation, separate to the carve up of RLO obligations for licensees)
4. Applies to all credit and consumer leases subject to assistance – if bundled product, BID applies to each mortgage, credit card, personal loan under the bundled product



THE BID EXTENDS TO CREDIT ASSISTANCE PROVIDERS (CAP)

To be caught, the CAP must:

- [if a credit rep] be acting within the scope of their authority from the licensee;
- carry on a business of providing credit assistance in relation to credit contracts or consumer leases;
- not perform obligations, or exercise the rights, of a credit provider or lessor in relation to the majority of credit contracts or consumer leases [if credit rep: neither should licensee]; and
- provide credit assistance in relation to credit contracts or consumer leases offered by more than one credit provider or lessor.



CORE BEST INTEREST OBLIGATION

A licensee or credit representative must act in the best interests of the consumer in relation to the credit assistance.

CORE CONFLICTS OBLIGATION

The licensee or credit representative must give priority to the consumer's interest when providing credit assistance where there is a conflict between interests of the licensee, credit representative (or defined associated parties) and the consumer.

LICENSEE REASONABLE STEPS OBLIGATION

A licensee must take reasonable steps to ensure a credit representative acts in the best interest of the consumer, and prioritises the consumer's interests in the event of conflict

➤ Responsible lending – mixed purpose loans

ADIs

- Mixed purpose lending / business lending remains subject to prudential standards – obligations the same as those for consumer lending
- Banking Code of Practice

Non-ADIs

- Mixed purpose lending / business lending **is not** subject to the Non-ADI Credit Standards. Apply internal credit risk criteria
- Industry codes

KEY TAKEAWAYS

1. Non-ADI lenders may attract more small business borrowers due to less prescriptive lending obligations
2. DDO may assist to 'level the playing field' to a degree, unless loan has more than > 50% business purpose (then the business purpose exemption applies)

➤ Key takeaways

Licensing

- An ACL is still required to provide credit activity, unless exemption applies
- Credit activity includes being a credit provider under a credit contract, providing credit assistance or acting as an intermediary

Needs and objectives

- No obligation for ADIs and non-ADIs to make reasonable inquiries as to the consumer's needs and objectives. Focus is on risk-based lending, rather than individual conduct obligations
- ADIs and non-ADIs must have documented processes and criteria to assess a borrower by applying scalable approach
- BID may 'step in' but only for credit that is > 50% consumer purpose (but does not apply to the lender!)

Borrower beware

- Non-ADIs may rely on information provided by the borrower, unless reasonable grounds to believe it is unreliable
- ADIs must undertake comprehensive assessment

Business lending

- BID will apply to credit assistance providers (licensees and credit reps) where credit has >50% consumer purpose, < 50% business purpose
- Business lending by ADIs is subject to prudential requirements
- Business lending by non-ADIs is not subject to the Determination, provided credit has a genuine small business purpose that is not merely minor or incidental

➤ Where to now?



THE NCCP AMENDMENT BILL WAS INTRODUCED ON 9 DECEMBER 2020

- Included revisions for reverse mortgages, SACC and consumer lease obligations.
- Core RLO changes commence the later of 1 March 2020 or the day after Royal Assent – BID changes 6 months after that.



SENATE COMMITTEE INQUIRY INTO THE AMENDMENT BILL

- The Amendment Bill has been referred to the Economics Legislation Committee.
- Two public hearings scheduled in Canberra on 19 February 2021 and 26 February 2021.
- 84 submissions received to date – majority from consumer and legal aid groups.



SCRUTINY COMMITTEE HAS REQUESTED FURTHER ADVICE FROM TREASURER

- Committee is concerned with use of delegated legislation (i.e. Non ADI Credit Standards) for significant matters of the reform.
- Treasurer to provide detailed advice to Committee on why this approach is necessary and appropriate.

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