

HOUSE OF REPRESENTATIVES STANDING COMMITTEE ON ECONOMICS

REVIEW OF THE FOUR MAJOR BANKS

Westpac

WBC52QW:

- (a) Can you advise whether the Governor of the Reserve Bank of Australia's views reflect that of your institution?
- (b) Do you agree with the principles established in legislation on responsible lending obligations? If not, which principles and why?
- (c) Are there any principles in the legislation that you believe could be amended or replaced that would better enable the bank to provide credit?
- (d) Do you agree with ASIC's guidance notes for the implementation of responsible lending obligations? If not, which sections do you disagree with, and why?
- (e) Are there any sections in ASIC's guidance notes for the implementation of responsible lending obligations that could be amended or replaced that would better enable the bank to provide credit?
- (f) Do you agree with APRA's guidance notes for the implementation of responsible lending obligations? If not, which sections do you disagree with, and why?
- (g) Are there any sections in APRA's guidance notes for the implementation of responsible lending obligations that could be amended or replaced that would better enable the bank to provide credit?
- (h) Have there been any unintended consequences resulting from the rulings of courts or tribunals that have applied strict interpretations of responsible lending obligations?
- (i) Have there been any decisions of courts or tribunals, such as AFCA, that you have chosen to appeal? If so, please provide details.
- (j) Have you removed any products as a result of responsible lending obligations?
- (k) Since 2008, what debt products have you removed from your product list as a result of responsible lending obligations?

Answer:

- (a) We agree that guidance should be principles based.
- (b) We note the Government's intention to make amendments to the Responsible Lending legislation. We agree that it is appropriate to review legislation in light of changing circumstances.
- (c) We note the Government's intention to make amendments to the Responsible Lending legislation. We agree that it is appropriate to review legislation in light of changing circumstances.

There are enhancements that could be made over time to the legislative framework. For example, we consider that if customers could authorise lenders to access their ATO data it would streamline the process for customers.

In addition, consideration should be given to allowing the use of Debt to Income ratios and credit scores (similar to the approach in the US) or other risk indicators to identify those lower risk customer cohorts to go through more scaled inquiries and verification compared to those higher risk cohorts requiring a more extensive process.

- (d) We note the Government's intention to make amendments to the Responsible Lending legislation. We agree that it is appropriate to review legislation in light of changing circumstances.
- (e) We note the Government's intention to make amendments to the Responsible Lending legislation. We agree that it is appropriate to review legislation in light of changing circumstances.
- (f) We note the Government's intention to make amendments to the Responsible Lending legislation. We agree that it is appropriate to review legislation in light of changing circumstances.
- (g) We note the Government's intention to make amendments to the Responsible Lending legislation. We agree that it is appropriate to review legislation in light of changing circumstances.
- (h) There have been very few contested court rulings applying the responsible lending laws and consequently, prior to clarification provided by the Federal Court's recent decision in ASIC v Westpac, there was significant uncertainty regarding the operation of the laws. Given the serious consequences of non-compliance with these obligations, lenders had a strong incentive to take a cautious approach especially where such approaches aligned with regulatory guidance.

As a consequence of this uncertainty, many lenders may have felt compelled to adopt more cautious and prescriptive processes, for example in relation to consumers' declared living expense information, to minimise the risk that their systems might ultimately be found to be non-compliant.

- (i) With the exception of the case noted in (h), we have reviewed our records back to January 2018 and we are not aware of having been involved in any appeal to any Court or Tribunal about our responsible lending obligations.

With regard to AFCA, we are bound by all final determinations if they are accepted by the customer (that is, they cannot generally be appealed).

In 2019 AFCA issued draft documents outlining its approach to responsible lending, and what it would consider to be good industry practice, but these are yet to be issued in final form or published widely.

We have only identified two examples where we have disputed AFCA's assessment of whether we have met our responsible lending obligations. Both of these cases occurred prior to the decision of the Full Federal Court in *ASIC v Westpac*. In both cases, AFCA did not accept our historical use of the "Full Term Method" for assessing loans with an interest only period. Nor did it accept our approach to assessing credit risk for investment properties.

In addition, there is one matter where AFCA changed its approach between Recommendation and Determination because of the *ASIC v Westpac* decision. In that case, AFCA stated: *"Following the Court's additional discussion of amortisation of 'interest only' loan repayment obligations, AFCA has revised its approach to calculating the serviceability of loans with an 'interest only' period... We have reconstructed the serviceability of the complainant's loans using the Full Term Method."*

Copies of the relevant AFCA Determinations can be provided upon request.

- (j) Whilst responsible lending has not been the sole determinant in removing a product from sale, it has been influential when making changes to how we distribute and refine and design our assessment process for new and existing products.
- (k) We do not recognise the term 'debt products', see answer (j).