

Credit Ombudsman Service

Position Statement Issue 5

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This Position Statement is intended to provide guidance as to how we will deal with a complaint that a consumer was provided with an unsuitable credit product. Nothing in this Position Statement is intended to be mandatory or taken as an exhaustive description of the steps required to comply with responsible lending obligations in every case.

This Position Statement takes into account and applies Regulatory Guide 209 issued by the Australian Securities and Investments Commission ('ASIC').

Responsible Lending



POSITION STATEMENT No. 5

- 1. Summary 3
- 2. Background 7
- 3. Suitability obligations 8
- 4. Reasonable inquiries about a consumer’s requirements and objectives10
- 5. Reasonable inquiries about a consumer’s financial situation13
- 6. Verifying a consumer’s financial position.....15
- 7. Assessment of unsuitability18
- 8. Substantial hardship20
- 9. Indirect and uncertain sources of income21
- 10. No ‘safe harbours’22
- 11. Refinancing23
- 12. Positive product recommendations24
- 13. Reverse mortgages24
- 14. Variations for hardship25
- 15. Remedies26

1. Summary

- 1.1 The National Consumer Credit Protection Act 2009 (Cth) ("the NCCP Act") imposes responsible lending obligations on persons who engage in a credit activity. Whether or not a person engages in a credit activity will depend both on the activity itself and whether it relates to a credit contract, a consumer lease, a mortgage or a guarantee that is regulated by the NCCP Act.¹
- 1.2 The objective of the responsible lending obligations can be stated very simply: it is to ensure that credit licensees do not assist with or provide a credit contract or consumer lease that is unsuitable for the consumer. We do not consider that it is possible to set out procedures that apply to every case.
- 1.3 The responsible lending obligations apply to both:
 - (a) credit providers (such as banks, credit unions, finance companies and non-bank lenders); and
 - (b) credit assistance providers (e.g. mortgage and finance brokers).
- 1.4 The responsible lending conduct obligations for brokers and some lenders applied from 1 July 2010. For the remaining lenders (i.e. authorised deposit-taking institutions (ADIs)² and registered finance corporations), the obligations applied from 1 January 2011.
- 1.5 Meeting responsible lending obligations will require a credit provider or credit assistance provider to take three steps:
 - (a) make reasonable inquiries about the consumer's requirements and objectives and their financial situation;
 - (b) take reasonable steps to verify the consumer's financial situation; and
 - (c) make an assessment about whether the credit contract is 'not unsuitable' for the consumer (based on the inquiries and information obtained in the first two steps and any other relevant information that they may have about the consumer).

¹ In broad terms (but with some exceptions), the NCCP Act will apply to the provision of credit where:

- (a) the debtor is a natural person or a strata corporation; and
- (b) the credit is provided wholly or predominantly for:
 - (i) personal, domestic or household purposes; or
 - (ii) to purchase, renovate, improve or refinance a residential investment property; and
- (c) a charge is made for the credit.

² Such as banks, building societies and credit unions.

- 1.6 A credit contract or consumer lease will be regarded as 'unsuitable' for a consumer if:
- (a) it does not meet the consumer's requirements and objectives; or
 - (b) the consumer is unlikely to be able to meet their financial obligations under the credit contract or consumer lease or can only do so with substantial hardship.
- 1.7 Under the NCCP Act:
- (a) A credit assistance provider must not suggest or assist a consumer to:
 - (i) apply for or remain³ in an unsuitable credit contract or lease;
 - (ii) apply for an increase in the credit limit on an unsuitable credit contract.
 - (b) A credit provider must not enter into a credit contract or consumer lease, or increase the limit on a credit contract, that will be unsuitable for the consumer.
 - (c) At the consumer's request, a credit assistance provider or credit provider (or its assignee) must provide a copy of their assessment that the credit contract is 'not unsuitable'.⁴
- 1.8 Consumers may complain to COSL that a credit assistance provider assisted them into an unsuitable credit contract or that a credit provider entered into an unsuitable credit contract with them. We will consider each complaint about responsible lending on its individual merits.
- 1.9 The minimum requirement for satisfying reasonable inquiries about a consumer's requirements and objectives is to 'understand the purpose for which the credit is sought and determine if the type, length, rate, terms, special conditions, charges and other aspects of the proposed contract meet this purpose'.⁵
- 1.10 ASIC considers the obligation to make reasonable inquiries and take reasonable steps to verify information to be "scalable";⁶ that is, the level of appropriate inquiries and verification depends on the particular circumstances.⁷
- 1.11 What are 'reasonable inquiries' or 'reasonable verification' will also depend on the type of credit business the credit licensee provides in relation to the consumer.⁸ For

³ NCCP Act section 124(7) provides a defence that allows the credit assistance provider to suggest the consumer remain in the existing credit contract without contravention of the responsible lending obligations.

⁴ NCCP Act sections 120, 132, 143 and 155.

⁵ Explanatory Memorandum to the NCCP Bill 2009, paragraphs 3.68 and 3.139.

⁶ ASIC Regulatory Guide 209 Responsible Lending ("ASIC RG209"), at RG209.17.

⁷ The Explanatory Memorandum states that the significance and extent of inquiries will depend on the particular circumstances: see Explanatory Memorandum, paragraphs 3.71 and 3.140.

⁸ ASIC RG209.21. For example, in terms of a debt consolidation service, a licensee would be expected to undertake a greater level of inquiries about current debts in order to gain a full picture of the consumer's financial situation.

example, it may not be reasonable to expect a credit assistance provider to obtain a copy of the consumer's credit report or data arising from a banking relationship or for the credit assistance provider to make an assessment that takes into account the commercial risk of being the lender.⁹

- 1.12 Generally, for a more basic credit contract, such as a small personal loan (i.e. one that is small relative to the consumer's capacity to repay), the credit provider would need to make less detailed inquiries than for a mortgage.
- 1.13 However, even a small loan can cause financial difficulties for a consumer on a low income, and in such circumstances, the credit provider or credit assistance provider may need to make more inquiries in these circumstances in order to meet its responsible lending obligations.
- 1.14 More extensive inquiries will be necessary:
- if the credit contract is complex or not easily understood (e.g. reverse mortgages¹⁰);
 - the consumer has limited capacity to understand the credit contract or has conflicting objectives;
 - where the potential negative impact of an unsuitable credit contract on the consumer is likely to be relatively serious; or
 - where the consumer is refinancing, particularly if the consumer is having difficulties meeting repayments, or is in arrears, under their existing credit contract.
- 1.15 Although an application for credit may satisfy a credit provider's own lending policies, this does not necessarily mean that the credit provider has satisfied its responsible lending obligations.
- 1.16 The credit provider or credit assistance provider should consider each consumer's application separately and independently. It follows that a credit provider or credit assistance provider may not be able to maintain that they complied with their responsible lending obligations by merely following a checklist or complying with internal lending guidelines (see paragraphs 5.7, 7.7 and 10.1 of this Position Statement).
- 1.17 It is no longer possible to have a 'self certified' loan where the consumer does not provide the credit provider with any financial information. So for example, a credit provider will not meet its responsible lending obligations if it does no more than obtain a declaration from the consumer that the consumer believes they can afford

⁹ Explanatory Memorandum to the NCCP Act, paragraph 3.78.

¹⁰ As reverse mortgage consumers are often seniors using their primary residence to obtain finance, the consequences of entering into an unsuitable reverse mortgage contract can be potentially severe – including, but not limited to, affecting their eligibility for Centrelink payments. Because of this, ASIC considers that more extensive inquiries and verification are warranted, as well as a high standard of investigation and verification as to the consumer's understanding of the contract and its possible consequences – RG209.18.

the loan repayments or that the loan is suitable (see paragraphs 6.8 to 6.11 of this Position Statement).

- 1.18 A credit assistance provider will need to take into account all of the costs of refinancing a loan to determine the consumer's ability to meet their obligations under a refinancing loan over the term of the credit contract.
- 1.19 If none of the credit contracts available through the credit provider or the credit assistance provider meet the requirements and objectives of the consumer, then the credit provider must not enter into a credit contract with the consumer and the credit assistance provider must not suggest a credit contract to the consumer or assist the consumer to apply for any of the credit contracts.
- 1.20 If a credit provider chooses to rely on information provided, or verification undertaken, by a credit assistance provider or other third party, it does so at its own risk because the credit provider is subject to an independent and separate statutory responsible lending obligation (see paragraph 6.15 of this Position Statement).
- 1.21 Credit providers and credit assistance providers should exercise caution when including indirect and uncertain sources of income (such as from other persons, investments or superannuation), as part of the income used to make payments under credit contracts (see paragraph 9 of this Position Statement).
- 1.22 Credit providers and credit assistance providers have no basis to argue that they would be in breach of their responsible lending obligations if they assisted in or agreed to an application by a consumer for variation to their credit contracts on grounds of financial hardship (see paragraph 14 of this Position Statement).
- 1.23 In terms of reverse mortgages, a credit provider and credit assistance provider must ensure that consumers, who by the nature of the product may be elderly and potentially suffering from age-related impairments, understand what they are doing and appreciate the potential implications of proceeding with a reverse mortgage (see paragraph 13 of this Position Statement).
- 1.24 COSL has a number of remedies available should it find that a member of COSL has contravened the responsible lending obligations in the NCCP Act (see paragraph 15 of this Position Statement).

2. Background

- 2.1 According to the Explanatory Memorandum to the NCCP Act, the responsible lending provisions are intended to:
- (a) introduce standards of conduct to encourage prudent lending and leasing;¹¹ and
 - (b) curtail undesirable market practices, particularly where intermediaries are involved in lending.¹²
- 2.2 Chapter 3 of the NCCP Act:
- (a) extends the existing consumer credit disclosure regime by introducing a number of additional pre-contractual disclosures relating to services provided to consumers before they enter into a credit contract, and
 - (b) imposes new obligations on lenders and intermediaries (such as finance brokers) aimed at ensuring that consumers:
 - (i) are provided with appropriate credit products; and
 - (ii) do not become financially overcommitted, having regard to each consumer's individual circumstances, requirements and financial objectives (referred to below as 'suitability obligations').
- 2.3 This Position Statement focuses only on suitability obligations because the requirements are completely new and unlike anything else that has been required by Australian law.
- 2.4 The new responsible lending obligations are intended to achieve what their name implies; that is, to make lenders and intermediaries legally responsible for ensuring that consumers do not acquire unsuitable credit products.
- 2.5 For many types of products, the consumer will be capable of determining for themselves whether or not the credit product they propose to acquire will meet their needs. However, given the range and complexity of credit products available, there is a growing acceptance that consumers will not always be able to adequately protect their own interests when making decisions about the products. The consequences for a consumer who acquires an unsuitable financial product can be serious.
- 2.6 The NCCP Act therefore requires those who should have a better understanding of the products to be responsible for guiding consumers into products that are not unsuitable, having regard to their needs and circumstances.

¹¹ Explanatory Memorandum paragraph 3.16.

¹² Explanatory Memorandum paragraph 3.11.

3. Suitability obligations

Credit assistance provider

3.1 The responsible lending suitability obligations for a credit assistance provider may be summarised as follows:

- (a) Before a credit assistance provider provides *credit assistance* to a consumer for a particular credit product, the credit assistance provider must make a preliminary assessment to ensure that the product is not unsuitable for the consumer.¹³

Credit assistance means suggesting or assisting a consumer to:

- apply for a particular loan or lease with a particular credit provider or lessor
- apply for additional credit under an existing loan
- remain in a particular loan or lease with a particular credit provider or lessor

- (b) The credit assistance provider is not required to make a preliminary assessment if credit assistance is not provided.¹⁴

(c) The steps involved in making a preliminary assessment must include:

- (i) inquiries – the credit assistance provider is required to make reasonable inquiries to determine the consumer’s requirements and objectives in seeking credit¹⁵ and the consumer’s current financial position;¹⁶
- (ii) verification – the credit assistance provider is required to take reasonable steps to verify the information provided about the consumer’s financial position;¹⁷
- (iii) assessing whether the product meets the consumer’s needs - the credit assistance provider must satisfy themselves that the proposed credit contract meets the consumer’s specific requirements and objectives (if any);¹⁸ and
- (iv) consumer’s capacity to repay - the credit assistance provider must assess whether or not the consumer is likely to have the capacity to repay the credit contract without substantial hardship.¹⁹

¹³ NCCP Act section 116(1)(b) and (2)(b).

¹⁴ Note to NCCP Act, section 116.

¹⁵ NCCP Act section 117(1)(a).

¹⁶ NCCP Act section 117(1)(b).

¹⁷ NCCP Act section 117(1)(c).

¹⁸ NCCP section 118(2)(b).

¹⁹ See NCCP Act section 118(2)(a) (entering into credit contract), section 119(2)(a) (remaining in a credit contract), section 141(2)(a) (entering a lease) and section 142(2)(a) (remaining in a lease).

- (d) Failure to take any of these steps in the manner required by Chapter 3 of the NCCP Act will effectively mean that the credit assistance provider has not made a preliminary assessment in accordance with their responsible lending obligations.²⁰
- (e) Where credit assistance is provided, the consumer may request a copy of the preliminary assessment at any time within 7 years of the date of the credit assistance quote, and a copy must be provided free of charge.²¹
- (f) Failure to provide a copy of preliminary assessment when requested by the consumer attracts both civil and criminal penalties. Attempting to charge the consumer for providing a copy of the preliminary assessment attracts a civil penalty.
- (g) There is a prohibition on providing credit assistance to a consumer in respect of a credit contract that is unsuitable for that consumer. If breached, civil and criminal penalties can apply.
- (h) If credit assistance is provided to a consumer who enters into a credit contract, but the credit assistance provider fails to make the preliminary assessment, the credit assistance provider is liable for a civil penalty even if the credit product was not unsuitable for the consumer.

Credit provider

3.2 The responsible lending suitability requirements for a credit provider may be summarised as follows:

- (a) Before a credit provider²² enters into a credit contract with a consumer or provides additional credit under an existing credit contract, the credit provider must make a final assessment to ensure that the proposed credit contract, or the additional credit that it proposes to provide (as the case may be), is not unsuitable for the consumer.²³
- (b) The credit provider is not required to make the assessment if the credit provider does not enter into the credit contract or does not increase the credit limit.²⁴
- (c) In making the final assessment, the credit provider must include:²⁵
 - (i) inquiries – the credit provider is required to make reasonable inquiries to determine the consumer’s requirements and objectives in seeking credit and the consumer’s current financial position;

²⁰ NCCP section 116(1) and (2).

²¹ NCCP Act section 120(1). During the first 2 years, the copy of the preliminary assessment must be given to the consumer within 7 business days of being requested, and within 21 business days during the subsequent 5 years.

²² This includes an assignee of the original credit provider or lessor – NCCP Act section 10.

²³ NCCP Act section 129.

²⁴ Note to NCCP Act section 129.

²⁵ NCCP Act section 130(1)(a) and (c).

- (ii) verification – the credit provider is required to take reasonable steps to verify the information provided about the consumer’s financial position;
 - (iii) assessing whether the product meets the consumer’s needs - the credit provider must satisfy themselves that the proposed credit product meets the consumer’s specific requirements and objectives (if any); and
 - (iv) consumer’s capacity to repay - the credit provider must assess whether or not the consumer is likely to have the capacity to repay the loan without substantial hardship.
- (d) It is presumed that, if the consumer could only meet their financial obligations under the loan by selling their principal place of residence, the consumer could only comply with those obligations with substantial hardship, unless the contrary is proved²⁶(see paragraph 8.4 to 8.6 of this Position Statement).
- (e) The consumer may request a copy of the final assessment at any time within 7 years of the date the credit provider and the consumer entered into the credit contract, and the copy must be provided free of charge.²⁷
- (f) Failure to provide a copy of the credit provider’s final assessment when requested by the consumer attracts both civil and criminal penalties. Attempting to charge the consumer for providing a copy of the final assessment attracts a civil penalty.
- (g) There is a prohibition on a credit provider entering into a credit contract, or agreeing to increase the credit limit under an existing credit contract, if the proposed credit contract, or the additional credit that it proposes to provide (as the case may be), is unsuitable for that consumer²⁸ – civil and criminal penalties apply if breached.
- (h) If a credit provider provides credit to a consumer without having made the final assessment, the credit provider is liable to a civil penalty even if the credit contract was not unsuitable for the consumer.

4. Reasonable inquiries about a consumer’s requirements and objectives

- 4.1 This obligation appears to be based on an implied assumption that every prospective consumer will have specific objectives and requirements. We consider that, in some cases, this will be clear.
- 4.2 For example, credit may be required for a specific purpose like buying a car, purchasing an investment property, financing a period of study or for bridging finance.

²⁶ NCCP Act sections 131(3) and 133(3).

²⁷ NCCP Act section 132. During the first 2 years the copy of the assessment must be given to the consumer within 7 business days of being requested, and within 21 business days during the subsequent 5 years.

²⁸ NCCP Act section 133(1).

- 4.3 Conversely, there may be circumstances unique to a consumer which would suggest that some credit contracts will not be suitable for them. For example, a home loan with a five year fixed interest rate will not be suitable for a borrower who intends to sell the property and relocate in 3 years time.
- 4.4 At the other end of the spectrum, there are those consumers who do not have specific requirements for a particular credit product and whose requirements speak for themselves: for example, a consumer may want a credit card, not for any specific purpose other than to provide them with access to a payment system, so that they can carry out online transactions, make bookings for travel and accommodation, etc. There would be a limited requirement to understand the consumer's requirements and objectives in this case,²⁹ but the licensee would still need to make inquiries about key features of the product relevant to the consumer's requirements and objectives, such as the maximum limit the consumer requires on the card and whether the consumer requires an interest-free period and is prepared to pay an annual fee.³⁰
- 4.5 In between will be a range of prospective borrowers who have more or less clearly considered objectives for seeking credit.
- 4.6 Credit assistance providers and credit providers need to be able to deal with consumers at any point of the spectrum, taking an approach to compliance that is appropriate to the particular consumer.
- 4.7 ASIC suggests that, depending on the circumstances, reasonable inquiries about a consumer's requirements and objectives could include inquiries about:³¹
- (a) how much credit is needed or the maximum amount of credit sought;
 - (b) how long the credit is required for;
 - (c) why the credit is needed and how it will benefit the consumer; and
 - (d) whether the consumer is looking for particular product features or flexibility, and understands the costs of these features and any additional risks.
- 4.8 More extensive inquiries will be necessary where:
- the credit product is complex or not easily understood (e.g. reverse mortgage);³²
 - the consumer has limited capacity to understand the credit contract or has conflicting objectives;³³
 - the potential negative impact of an unsuitable credit contract on the consumer is likely to be relatively serious;³⁴ or

²⁹ See Explanatory Memorandum Example 3.5 for further details.

³⁰ ASIC RG209.29.

³¹ ASIC RG209.28.

³² See footnote 10 of this Position Statement.

³³ ASIC RG209.18 Table 3.

³⁴ ASIC RG209.18 Table 3.



- the consumer is refinancing, particularly if the consumer is having difficulties meeting the repayments or is in arrears.³⁵

4.9 We consider the following principles, adapted as circumstances require, are consistent with the intention of the NCCP Act and are likely to lead to practical outcomes of the kind which the legislation intends to achieve:

- (a) All consumers, even those who do not require credit for any specific personal reason (as discussed in paragraph 4.4 of this Position Statement), should be regarded as having certain 'base level' requirements in relation to credit products, being:
- (i) The product is understandable – that is, with the application of reasonable diligence and commitment of time, consumers will be capable of understanding and effectively managing the product, taking into account any known disability or special disadvantage that affects them;
 - (ii) The product is not risky – products that do not involve conditions or features which expose the consumer to a risk of loss that is not apparent to them or which they would not reasonably expect; and
 - (iii) The product does not exceed their needs to their detriment (or "unreasonably") – that is, products should not include features or functionalities that the consumer has not requested and cannot reasonably be expected to need in the light of their requirements and objectives, where these surplus features or functionalities involve extra cost or risk to the consumer.

Not every credit contract must be individually customised for each consumer, but where a range of alternative products is available (eg different types of home loans or credit cards), a consumer should not be provided with a more complex product (such as a more flexible home loan with redraw facilities or options for sub-accounts, or a more expensive credit card with a loyalty program) if there is a 'basic' product available that would meet their needs and they have not requested any of the additional features.

Given the level of protection that consumers now expect, we do not consider it is necessary for a consumer to have to expressly state or request any of these characteristics in order for them to be regarded as base level suitability requirements for all consumers.

- (b) In those cases where the consumer does not require credit for a particular purpose, such as those mentioned in paragraph 4.4, it will still usually be necessary to consider the range of alternatives available, and again not to propose products that are more expensive or complex than necessary.

³⁵ ASIC RG209.82.

For example, a high interest rate credit card is unlikely to be the most appropriate way to finance the purchase of a car. Personal loans (fixed term, fixed rate) are more commonly used. It may be not unsuitable to increase the amount of a secured loan (e.g. home loan) to finance a car purchase, even though this could effectively mean that the finance is not repaid until long after the car has been disposed of, if the interest rate is significantly lower than other alternatives and the net benefits to the consumer are sufficient to justify that finance.

- 4.10 The information required for the purposes of determining a consumer's requirements and objectives can usually only be provided by the consumer themselves. The most straightforward situation is where the credit provider and the consumer are dealing directly with each other and the necessary information can be requested and confirmed between them.
- 4.11 However, given the increasing range of credit providers and intermediaries involved in the provision of credit, as well as the diversity of their business models and distribution channels, it may be appropriate to use other methods to determine a consumer's requirements and objectives. Licensees will need to develop procedures that are effective and sustainable, and also appropriate to their own businesses.
- 4.12 While the NCCP Act does not contain a requirement to verify the consumer's requirements and objectives, this does not mean that a credit provider or credit assistance provider can accept all information provided by a consumer at face value. Credit providers and credit assistance providers need to consider and critically evaluate information they are given to identify and resolve gaps and inconsistencies. Gaps or inconsistencies in information are not necessarily deliberate and can often be explained.
- 4.13 Where something does not make sense or appears to be inconsistent with other information provided by the consumer, or known to the credit provider or the credit assistance provider, we consider that it will be necessary to apply common sense, ask questions and make judgments that can be justified as being reasonable and prudent in the circumstances.³⁶

5. Reasonable inquiries about a consumer's financial situation

- 5.1 The obligation to make reasonable inquiries about the consumer's financial situation lies at the heart of responsible lending conduct, because without understanding the consumer's financial situation it will not be possible to determine the consumer's capacity to repay a credit contract without substantial hardship.

³⁶ ASIC RG209.42.

- 5.2 In relation to inquiries about a consumer's financial situation, the Explanatory Memorandum states that the significance and extent of inquiries will depend on the circumstances.³⁷
- 5.3 Reasonable inquiries to make an assessment of the consumer's capacity to repay the credit contract may include recent payslips, employment confirmation, recent bank statements confirming details of pay dates and amounts, number of dependents and vehicles to run, time employed, period at home address, Centrelink benefit statements, evidence of fixed expenses (such as rent, insurance or other contracted expenses) and variable expenses, copy of the consumer's credit report and other factors that influence the consumer's capacity to repay.³⁸
- 5.4 There should also be an indication of how the information recorded was used by the licensee. We would want to see file notes demonstrating that further inquiries were made to understand and resolve any discrepancies and calculations as to how the consumer would be able to meet repayments on the proposed consumer credit contract.
- 5.5 We are of the view that the information required to form a view on a consumer's ability to repay a credit contract will be more than just a snapshot of their current financial position. It should include information that allows the person making the assessment to form a view on whether the consumer's financial position could change during the term of the loan (and if so, how).
- 5.6 We do not propose to provide a checklist of the inquiries that should be made.
- 5.7 The obligation should be approached on the basis that it is necessary to make as many inquiries as are necessary to adequately understand the consumer's financial position. It is valid to start with a checklist,³⁹ but it is likely that other inquiries will also need to be made and these will vary from consumer to consumer; responses to initial inquiries may prompt further inquiries and so on until the person making the inquiries is satisfied that they have a full understanding of the consumer's financial position.
- 5.8 Although an application for credit may satisfy a credit provider's own policies for affordability, it does not necessarily mean that it meets the responsible lending standard in the legislation.⁴⁰
- 5.9 The fact that the NCCP Act requires only 'reasonable inquiries' to be made should be regarded as a concession. It does not require 'all possible' inquiries to be made. By requiring only 'reasonable inquiries' to be made, the NCCP Act allows credit providers and credit assistance providers to undertake measured inquiries, provided the

³⁷ Explanatory Memorandum, paragraphs 3.71 and 3.140.

³⁸ Explanatory Memorandum paragraphs 3.140 and 3.139 Example 3.6.

³⁹ ASIC suggests that the features identified in checklists should relate to the consumer's specific circumstances, the relative priority of the features of the loan to the consumer, and the costs and benefits of those features - ASIC Report 262: 'Review of credit assistance providers' responsible lending conduct, focusing on 'low doc' home loans'.

⁴⁰ Explanatory Memorandum paragraph 3.155.



inquiries that are made are reasonable by reference to the consumer's circumstances. For example:

- (a) the credit provider may already hold the same, or better, information about the consumer than would be generated by making an enquiry (this would not be unusual where the consumer is an existing customer of the credit provider); or
 - (b) practical experience has shown that inquiries of the kind in question produce:
 - (i) the same information, of equal reliability, as information already obtained by making other inquiries;
 - (ii) information that is not required, or not permitted, to be taken into account in performing the unsuitability assessment;
 - (iii) information that is unreliable and which is legitimately disregarded in performing the unsuitability assessment or in making credit decisions;
 - (iv) information that does not change the outcome of the unsuitability assessment or credit decisions; or
 - (v) information that is obtained at a cost, effort or inconvenience which is out of proportion to the likely value of the information to a credit assessment.
- 5.10 ASIC considers that the obligation to make reasonable inquiries is scalable - that is, the extent of the enquiry depends on the particular circumstances.
- 5.11 Generally, for a more basic credit contract, such as a small personal loan (i.e. one that is small relative to the person's capacity to repay), ASIC expects that the credit provider would need to make less detailed inquiries than for a mortgage.
- 5.12 Conversely, even a small loan can cause financial difficulties for a consumer on a low income, and in those cases the credit provider may need to make more inquiries in order to meet their responsible lending obligations.

6. Verifying a consumer's financial position

- 6.1 ASIC accepts that what constitutes taking 'reasonable steps to verify' information is scalable, and what amounts to reasonable verification will depend on the information and resources that a credit assistance provider or credit provider have access to and the facts and circumstances of each case.⁴¹
- 6.2 Usually this will be straightforward. For example, PAYG summaries are a typical and sound form of income verification because of inherent checks and balances, and an employer, employee and the ATO have complementary reasons for ensuring they are accurate.

⁴¹ASIC RG209.38.

- 6.3 Generally, the credit assistance provider and credit provider will need to ask whether the verification that has been done (tax returns, accounting records, bank statements etc) leaves any reasonable doubt that the information being relied on could be incorrect. If so, they would need to consider whether there are other steps that could be taken to verify it or (in extreme cases) the extent to which it can be relied upon.
- 6.4 [Note: What is being verified is the *information provided by the consumer*, not any opinion that may have been formed about the consumer's ability to repay. The assessment of the consumer's ability to repay is done by the credit provider and the credit assistance provider, relying on the verified information. The assessment itself does not have to be verified.]
- 6.5 An accountant's certificate about the consumer's ability to repay is not a substitute for verification, unless it is supported by evidence of that ability to repay (such as a statement of income over a representative period).
- 6.6 Licensees may use statements from the consumer's accountant as one type of information to verify a consumer's income.⁴² However, when seeking to rely on such statements for income verification purposes, a licensee should ensure that the accountant's statement confirms the consumer's actual level of regular income and specifies the basis on which the statement is made. The statement should also include comments on the consumer's previous earnings and the underlying information supporting the statement, and identify the relevant period for which the accountant has been engaged by the consumer.⁴³
- 6.7 Although RG209 suggests that the inquiries and verifications a credit licensee must make to satisfy their responsible lending obligations are 'scalable' depending on the circumstances of the consumer, this does not mean that inquiries and verifications may be scaled down because of the label applied to a product, such as low doc.⁴⁴
- 6.8 A credit licensee should not put a consumer into a home loan promoted as low doc only because the consumer is self-employed and holds an ABN. Although ABN registration may substantiate a consumer's claim of self-employment, it is not a means of verifying a consumer's actual income⁴⁵ or an excuse not to make inquiries about or verify the consumer's actual income.
- 6.9 It is no longer possible to have a 'self certified' loan (where the consumer merely certifies they can afford the loan, without providing any financial information), because the credit provider cannot possibly argue that it has made reasonable inquiries about the consumer's financial position.

⁴² Paragraph 97, ASIC Report 262: Review of credit assistance providers' responsible lending conduct, focusing on 'low doc' home loans.

⁴³ Paragraph 98, ASIC Report 262: Review of credit assistance providers' responsible lending conduct, focusing on 'low doc' home loans.

⁴⁴ Paragraph 19 of ASIC Report 262: 'Review of credit assistance providers' responsible lending conduct, focusing on 'low doc' home loans'.

⁴⁵ Paragraph 92 of ASIC Report 262: 'Review of credit assistance providers' responsible lending conduct, focusing on 'low doc' home loans'.

- 6.10 So for example, a credit provider will not meet its responsible lending obligations if it does no more than obtain a declaration from the consumer that the consumer believes they can afford the loan repayments or that that the loan is suitable. Such declarations do not negate the need for a credit provider to take positive steps to meet its responsible lending obligations and ensure the consumer is not entering into credit contracts that are unsuitable.⁴⁶
- 6.11 We consider that the requirement for verification spells the end for "No-Doc/self-certified" lending which relies on such certification.
- 6.12 Nor is it possible for a credit provider to rely on financial information about the consumer without taking any steps to verify it. We expect an applicant for a loan will be able to and should be required to produce evidence such as bank statements, tax returns or accounting records.
- 6.13 Quite often, licensees use automatically generated figures to ascertain a consumer's living expenses. These figures may be obtained by using calculators that take into account the number of people supported by the consumer's income. Although these figures may be useful, licensees should make reasonable inquiries about a consumer's actual living expenses. A licensee may use the figures obtained by the calculator to verify a consumer's self-reported living expenses, but it should ensure that it makes reasonable inquiries about the consumer's actual living expenses prior to relying on such information.⁴⁷
- 6.14 A consumer that could not produce tax returns, bank statements or accounting records would be highly suspicious and a credit provider or credit assistance provider would be taking a risk in claiming that there was no reasonable verification available to them.
- 6.15 ASIC's RG 209 suggests (subject to application of "scalability", mentioned at 5.10 – 5.12 above) that the following documentation should be sought:

For PAYG employees

- Recent payroll receipts/payslips
- Confirmation of employment from an employer

For self-employed

- Recent income tax returns
- A statement from an accountant
- Business Activity Statements

⁴⁶ Paragraph 85, ASIC Report 264: Review of micro lenders' responsible lending conduct and disclosure obligations.

⁴⁷ Paragraph 105, ASIC Report 262: Review of credit assistance providers' responsible lending conduct, focusing on 'low doc' home loans.

For all consumers

- Credit report
- Information/reports from other lenders
- Bank account or credit card records held by credit provider.

- 6.16 If a credit provider chooses to rely on information provided or verification undertaken by a credit assistance provider or other third party, it does so at its own risk because the credit provider is subject to an independent and separate statutory obligation to make inquiries about the consumer's requirements and objectives and their financial situation, as well as make an assessment about whether the credit contract is 'not unsuitable' for the consumer.⁴⁸
- 6.17 It is important that licensees record the steps taken by them in conducting the required inquiries and verifications. These notes should also record the licensees' findings. These contemporaneous notes will be vital in demonstrating that the licensee had met their responsible lending obligations. COSL may request the licensee to provide these documents for review in investigating a complaint regarding responsible lending.

7. Assessment of unsuitability

- 7.1 Depending on a consumer's objectives, an assessment of whether a credit contract is 'not unsuitable' may require consideration of the contract against the background of credit contracts that are commonly available in the market.⁴⁹
- 7.2 ASIC suggests that the following (non-exhaustive) factors could be taken into account when making an assessment about whether a credit contract meets a consumer's stated objectives and requirements:⁵⁰
- (a) the nature of the credit requested;
 - (b) if the loan is to purchase a specific item, the term of the loan relative to the likely useful life of the asset;
 - (c) the interest rate and fees applying to the credit contract;
 - (d) the complexity of the credit contract, and whether a more basic product could meet the consumer's needs;
 - (e) whether the consumer will need to finance a large final payment under the contract;⁵¹ and
 - (f) in relation to refinancing, the extent to which refinancing to the new credit contract will benefit the consumer.

⁴⁸ See also ASIC RG209.47.

⁴⁹ ASIC RG209.56.

⁵⁰ ASIC RG209.76.

⁵¹ For example, see ASIC RG209 'Example 12: Balloon repayments'.

- 7.3 If none of the credit contracts available through the credit provider or the credit assistance provider meet the requirements and objectives of the consumer, then the credit provider must not enter into a credit contract with the consumer or the credit assistance provider must not suggest a credit contract to the consumer or assist the consumer to apply for any of the credit contracts.
- 7.4 In reviewing the complaint of unsuitability on the grounds that the consumer was unable to comply with the financial obligations under the credit contract, we will take into account the information reasonably believed, or which ought reasonably to be believed, by the licensee at the time of the credit contract, and also any additional information the licensee would have reasonably believed had they made reasonable inquiries or verification.⁵² In doing so, COSL will be mindful of the risks of hindsight, in that it will not always be true that a credit provider or credit assistance provider should reasonably anticipate a particular outcome, even if it is aware of (or should have been aware of) some of the inconsistencies that were contributing cause to the outcome.
- 7.5 ASIC accepts that where two or more consumers jointly apply for a credit contract, a credit assistance provider and credit provider may assess each consumers' capacity to repay individually, or consider the reasonable inquiries made about their combined financial situation, but in either case the credit assistance provider and credit provider will need to make reasonable inquiries and take reasonable steps to verify relevant information.⁵³
- 7.6 We expect finance brokers to have their own understanding of the principles of loan serviceability and that they should apply that understanding in performing unsuitability assessments and in deciding which credit provider(s) to approach with a consumer's loan application.
- 7.7 If a finance broker considers that a particular credit provider's serviceability requirements do not satisfy the responsible lending obligations prescribed by the NCCP Act (e.g. a broker considers that the consumer will not be able to repay the loan without substantial hardship yet the credit provider will approve the loan under its lending guidelines), the broker should rely on their own assessment because it will not be a defence to say that they relied on the credit provider's serviceability requirements.
- 7.8 A licensee should keep a record of all material that forms the basis of an assessment of whether a credit contract will be unsuitable for a consumer. The material should be in a form that will enable the licensee to give the consumer a written copy of the assessment if requested.⁵⁴

⁵² Sections 118(4), 119(4), 131(4), 141(4), 142(4) and 154(4).

⁵³ ASIC RG 209.60.

⁵⁴ Paragraph 41, ASIC Report 264: Review of micro lenders' responsible lending conduct and disclosure obligations.

8. Substantial hardship

- 8.1 'Substantial hardship' is not defined in the NCCP Act. Some guidance may be found in the superannuation context: one of the tests for whether a person is in 'severe financial hardship' is that 'the person is unable to meet reasonable and immediate family living expenses'.⁵⁵
- 8.2 ASIC suggests that the following (non-exhaustive) factors should be taken into account when determining whether a credit contract is likely to result in substantial hardship for the consumer:⁵⁶
- (a) the money the consumer is likely to have remaining after their living expenses have been deducted from their after-tax income;
 - (b) whether the consumer has indicated that they may be willing to make reasonable changes to their lifestyle to enable them to afford the loan without substantial hardship (such as cutting back on non-essential expenses);
 - (c) how consistent and reliable the consumer's income is (and the size of the loan relative to their income level);
 - (d) whether the consumer's expenses are likely to be significantly higher than average (e.g. because they live in a remote area);
 - (e) the consumer's other debt repayment obligations and similar commitments (e.g. child support);
 - (f) how much of a buffer there is between the consumer's disposable income and the repayments (e.g. how vulnerable they are to an increase in interest rates); and
 - (g) whether the consumer is likely to have to sell their assets, such as a car, to repay the loan.

In assessing the above, licensees should take into account the consumer's financial information obtained as part of the reasonable inquiries.

- 8.3 It is presumed that, if a consumer will only be able to comply with their financial obligations under the credit contract by selling their principal place of residence, then the consumer could only comply with those obligations with substantial hardship, unless the contrary is established.⁵⁷
- 8.4 We consider that the NCCP Act's presumption of substantial hardship merely reverses the onus of proof in certain circumstances and can be rebutted using information obtained by making reasonable inquiries about the consumer's objectives and financial circumstances.

⁵⁵ Superannuation Industry (Supervision) Regulations 1994, reg 6.01(5)(a)(ii).

⁵⁶ ASIC RG209.63/64.

⁵⁷ National Credit Code, sections 118(3), 131(3), 142(3) and 156(3).

- 8.5 For example, we would consider that a credit contract was 'not unsuitable' if the credit provider or credit assistance provider was able to show that their inquiries of a consumer who was within a few years of retirement age (and who had applied for a long term loan to purchase a new home) revealed that the consumer intended to sell the home and downsize when he or she reached retirement age and could no longer comfortably afford to meet the repayments, but that, in the meantime, the consumer considered that the home he or she was purchasing had greater potential to appreciate in value.
- 8.6 The responsible lending requirements therefore effectively recognise that a credit contract may not be unsuitable merely because the consumer may have to sell their home in order to repay a debt.⁵⁸ However, there must not be any evidence of predatory or other 'irresponsible' lending generally. Inquiries as to the consumer's intentions and verification of the consumer's circumstances will be crucial in such situations and may involve written confirmation that the consumer understands they may have to sell their home and that this is consistent with their requirements and objectives in relation to the credit contract.
- 8.7 In practice, the 'substantial hardship' test requires credit assistance providers and credit providers to know or be able to satisfy themselves of the following:
- (a) Do they understand the consumer's financial position well enough to form a view about the consumer's ability to effectively service and manage the proposed debt without leading to financial or other stress? This may require the credit assistance provider and credit provider to consider the consumer's lifestyle and track record of managing their own finances. The high income of the consumer may not be enough by itself.
 - (b) What is/are the source/s of the funds which the consumer proposes to use to make the payments due to the credit provider under the credit contract; that is, the regular instalment payments that will be made during the term of the credit contract and, where applicable, any additional funds that will be required to repay the outstanding balance in full at the time it falls due for repayment (or any earlier time if there are reasonable grounds for the credit provider to expect early repayment).

9. Indirect and uncertain sources of income

- 9.1 Relying on indirect and uncertain sources of income to support payments by the consumer under a credit contract need not be unsuitable lending. However, ASIC is of the view that such reliance requires increased inquiry and verification than that which is required for more certain income within the direct control of the consumer.⁵⁹
- 9.2 If one of the sources of indirect income is another person, such as a spouse, then credit providers need to obtain information about that person's financial situation and verify that information. Credit providers should obtain written confirmation that the

⁵⁸ This will certainly be the case of bridging loans and reverse mortgages.

⁵⁹ ASIC RG209.27.

other person understands that the assessment of the consumer's capacity to repay depends on the availability of their income and that the other person is willing to make those contributions for the full term of the credit contract. The assessment should note that the borrower's capacity to repay depends on the availability of the indirect income (eg spousal income).

- 9.3 Relying on superannuation payments, whether by way of pension or lump sum, is not necessarily unsuitable lending as long as the credit provider obtains written confirmation that:
- (a) the consumer understands that they will need to use their superannuation payments to meet their repayment obligations under the credit contract;
 - (b) the superannuation payments are due within the term of the credit contract; and
 - (c) the consumer's requirements and objectives are being met, including those which rely on the balance of their superannuation payment after the repayments due under the credit contract.
- 9.4 Relying on income from investments, including investment properties, is not necessarily unsuitable lending although it may be reasonable for the credit provider to apply a discount to the predicted income given the uncertainty of investment returns, including rental property occupation rates. Credit providers should include keep a record of the basis on which investment income has been included and discounted.

10. No 'safe harbours'

- 10.1 If a consumer enters into an unsuitable credit contract, there will be a breach of the responsible lending obligations and a credit provider or credit assistance provider will not be able to successfully defend their actions in contributing to this outcome by saying that they followed a checklist or complied with internal lending guidelines.
- 10.2 We do not recognise safe harbours – i.e. procedures which, if followed by a credit provider or credit assistance provider, will provide them with a defence to at least some liabilities under the legislation. The emphasis under the NCCP Act is on the credit provider or credit assistance provider actually knowing and understanding the consumer's position. Given that every consumer's situation is different, we consider that it is not possible to set out procedures that, if followed, will achieve legislative compliance in every case. The credit provider or credit assistance provider must apply their minds separately and independently to each consumer and each loan application or risk breaching the responsible lending requirements.

11. Refinancing

- 11.1 ASIC expects additional inquiries and assessment to be made where the consumer wishes to refinance, including:⁶⁰
- (a) the nature of the existing credit arrangements;
 - (b) whether, if the refinance would only result in minimal cost savings, the new credit contract would nonetheless better meet the consumer's requirements and objectives (e.g. because of convenience, greater flexibility or particular tailored features such as a redraw facility on a mortgage); and
 - (c) whether there are overall cost savings to the consumer having regard to, for example, the cost of the refinancing, the credit assistance provider's services and any exit fees, and whether the cost savings are likely to override any loss of benefits.
- 11.2 A credit assistance provider will need to take into account all of the costs of refinancing a credit contract to determine the consumer's ability to meet their payment obligations under the new credit contract over the proposed term. This would include any fees for using the credit assistance provider's services and exit fees (if any) payable under the existing loan.⁶¹ Similarly, in relation to exit fees, a credit provider should ask the consumer to obtain a payout statement from their original credit provider when assessing the consumer's ability to meet their obligations under the new credit contract.⁶²
- 11.3 We expect the credit assistance provider and credit provider to undertake a greater level of inquiry where a consumer wishes to refinance in circumstances where they are having difficulties meeting the repayments, or are in arrears, on their existing credit contract. In these situations, a credit contract is likely to be unsuitable if the repayments under the new credit contract are at the same or a similar level to the existing contract.⁶³
- 11.4 Where the existing credit contract is no longer 'not unsuitable' and no alternative contract is considered to be not unsuitable, a credit assistance provider may suggest that the consumer remain in the contract without contravening the responsible lending obligations.⁶⁴

⁶⁰ ASIC RG209.82.

⁶¹ ASIC RG209 Example 4.

⁶² Explanatory Memorandum paragraphs 3.69 and 3.139 and Note to ASIC RG 209.59.

⁶³ Explanatory Memorandum paragraph 3.73.

⁶⁴ NCCP Act section 124(7) provides a defence that allows the credit assistance provider to suggest the consumer remain in the existing credit contract without contravention of the responsible lending obligations. The defence is available if, after making reasonable inquiries, there was no other credit contract that was not unsuitable and the consumer was informed of the hardship procedure under sections 72 and 94 of the National Credit Code.

12. Positive product recommendations

- 12.1 Some licensees may want to do more than simply perform the product suitability obligations that are required by the NCCP Act, and may want to make positive product recommendations to consumers. Those who do this need to keep in mind:
- (a) their duty to the consumer when making recommendations – particularly the general duty of care applicable to giving advice of this kind, and the requirement that there be a reasonable basis for any recommendation which they may make;
 - (b) their duties regarding conflict of interests; and
 - (c) that it is advisable to keep the NCCP unsuitability assessment separate or at least clearly distinguished from any advice or recommendation – to avoid creating confusion for the consumer and for compliance reasons. Assessments are subject to specific regulation under the NCCP Act and a copy must be given to the consumer on request at any time within 7 years of the date of the credit contract or the credit assistance provider's quote (as the case may be). It is important to ensure that the content of the assessment complies with the NCCP Act and that the document which constitutes the assessment can be identified and produced when required.

13. Reverse mortgages

- 13.1 Reverse mortgages are capable of complying with responsible lending requirements even though a fundamental aspect of the product is that it will almost certainly be repaid using the proceeds of sale of the consumer's principal place of residence.
- 13.2 The unsuitability assessment of a proposed reverse mortgage must be done with the same degree of rigour as for any other credit product and, if anything, may even be more complex than for some traditional (and therefore more familiar) products.
- 13.3 A credit provider and credit assistance provider must ensure that consumers, who by the nature of the product will inevitably be elderly and potentially suffering from age-related impairment of their faculties, understand what they are doing and appreciate the potential implications of proceeding with a reverse mortgage.
- 13.4 The fact that a reverse mortgage may meet the financial requirements and objectives of the consumer may not be sufficient for the purposes of the unsuitability assessment if there are potential negative non-financial implications for the consumer(s) that outweigh any possible financial attractions of the product.
- 13.5 Negative implications may include the consumer incurring negative equity, or being required to move out of the secured property before their death. Non-financial implications may also include family disputes that may arise due to equity depletion due to the reverse mortgage.

14. Variations for hardship

- 14.1 The National Credit Code provides for variations of consumer credit contracts. These can be:
- (a) variations by agreement under section 71 which can be initiated either by the credit provider or the consumer; or
 - (b) variations on the grounds of hardship under section 72 provided the maximum amount of credit is less than \$500,000⁶⁵ (application for such variation is by the consumer and, if refused by the credit provider, the consumer can apply to the court or COSL to either order or determine the variation under section 74).
- 14.2 The case law surrounding the predecessor to section 74⁶⁶ dealt exclusively with reductions in repayments or moratoriums on repayment when consumers suffered illness, unemployment or other reasonable cause⁶⁷ which prevented them complying with their repayment obligations without hardship. Section 72(2) specifies the various types of variation which can be ordered.⁶⁸ These are limited to adjustments in repayments which do not change the annual percentage rate.
- 14.3 As these are all variations of existing contracts, they are not new contracts. Section 72 variations, on the grounds of hardship, are also not increases in the credit limit of an existing continuing credit contract. Therefore none of these variations attract the prohibition on entering unsuitable contracts under section 133 of the NCCP Act. This prohibition only applies to "entering into a credit contract" or "increasing the limit under a credit contract".⁶⁹
- 14.4 We therefore consider that credit providers cannot reject applications under section 72 on grounds that they would be breaching their section 133 obligations of responsible lending because these obligations do not apply to such applications as a matter of law.
- 14.5 As a matter of practicality, section 72 applications are always going to involve a reduction or suspension of some repayments required of the consumer by the contract. It is highly unlikely, therefore, in our view, that such applications would convert a compliant contract which had not been "unsuitable" under the NCCP Act into one which was unsuitable and, therefore, non-compliant.

⁶⁵ This limitation will be removed under the Consumer Credit and Corporations Legislation Amendment (Enhancements) Bill 2011, if enacted as presently drafted..

⁶⁶ Sections 66-68 of the Uniform Consumer Credit Code.

⁶⁷ These statutory conditions will be removed under the Consumer Credit and Corporations Legislation Amendment (Enhancements) Bill 2011, if enacted as presently drafted..

⁶⁸ The limitations as to the types of variations that can be ordered will be removed under the Consumer Credit and Corporations Legislation Amendment (Enhancements) Bill 2011, if enacted as presently drafted..

⁶⁹ See also ASIC's Information Sheet 105: "The responsible lending provisions will not apply to hardship variations unless additional credit is provided (which would be unlikely in the vast majority of cases) or existing obligations are refinanced (creating a new contract instead of varying the existing contract)."

- 14.6 Likewise, a resolution of an application for variation for hardship whether facilitated or determined by COSL which includes a capitalisation of arrears will not attract the operation of section 133 because it is not entering into a new contract or raising the credit limit of a continuing credit contract. It is a variation of an existing contract.
- 14.7 We will consider each application for variation under sections 72-74 on its merits and in accordance with the approach outlined in COSL Position Statement 2 – Financial Hardship.

15. Remedies

- 15.1 A contravention of the responsible lending obligations may lead to an order by a court that a credit provider or credit assistance provider compensate the consumer for any loss or damage.⁷⁰ Such orders may be made whether or not a declaration of contravention has been made under section 166 of the NCCP Act.⁷¹
- 15.2 COSL is not a court nor is it responsible, like ASIC, for the conduct of ACL holders. It is an independent dispute resolution scheme approved by ASIC to perform that function under RG139. COSL Rule 1.2 states that: "The main objectives of COSL are to...provide Consumers free of charge with an accessible alternative to legal proceedings for the resolution of their complaints against its members..." COSL is established, therefore, as "an alternative to legal proceedings". Consumers could be awarded compensation under section 178 of the NCCP Act for loss arising out of a contravention of the responsible lending obligations. COSL, therefore, may also determine such compensation.
- 15.3 The COSL Rules form part of the contract between COSL and its Members. Rule 9 provides that COSL may award compensation for loss, both direct and indirect, or may determine that a COSL Member refrain from doing some act in relation to a credit contract including enforcing a right. Under Rule 9.6, COSL may also determine:
- (a) the payment of a sum of money;
 - (b) the variation of a debt;
 - (c) the release of security for debt;
 - (d) the repayment, waiver or variation of a fee or other amount paid to or owing to the COSL member or its representative or agent, including the variation in the applicable interest rate on a loan;
 - (e) the discontinuation of enforcement action against the consumer;
 - (f) in relation to a default judgment, staying the execution of the default judgment⁷² or not enforcing the default judgment;
 - (g) the release of the consumer from a contract; and

⁷⁰ NCCP Act section 178(1).

⁷¹ NCCP Act section 178(1).

⁷² See COSL Position Statement 3.

- (h) the variation of the terms of a credit contract in cases of financial hardship.
- 15.4 If, therefore, COSL finds that there has been a contravention of the responsible lending obligations, it may require the following actions, among others, to be taken:
- (a) waiver or refund of fees and charges by the credit provider in return for the repayment of the principal sum lent under the credit contract;
 - (b) refund of any fees paid to a credit assistance provider who assisted the consumer into the unsuitable credit contract;
 - (c) variation of the repayments required under the credit contract so as to make them possible for the consumer without hardship; or
 - (d) release of the consumer entirely from the credit contract including any mortgage or security (subject to unjust enrichment).
- 15.5 These are not mutually exclusive remedies and COSL may combine them so as to produce an outcome having regard to “fairness in all the circumstances.” For example, upon a finding of irresponsible lending, COSL may determine that the consumer repay the principal amount owing under the credit contract by regular payments over time, in such amounts which would not cause hardship and that the credit provider waive any fees and charges in part or, if fairness requires, in whole. If a credit assistance provider had assisted the consumer into the unsuitable contract and the amount financed included any fee paid to the credit assistance provider, then the amount to be repaid, could be reduced by the amount of that fee in part or in whole.