



ASIC

Australian Securities & Investments Commission

Senate inquiry into the performance of the Australian Securities and Investments Commission

Submission by ASIC on reforms to the credit industry and 'low doc' loans

October 2013

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A Purpose and scope

- 1 The Senate Economics References Committee Inquiry into the performance of the Australian Securities and Investments Commission (ASIC) has terms of reference that cover a wide range of ASIC's functions, powers, activities and resources.
- 2 As stated in our initial submission, ASIC envisages that we will provide several submissions to the Senate Economics References Committee:
 - (a) We provided an initial submission to the Committee on 2 August 2013, which provided an overview of our actions in relation to Commonwealth Financial Planning Limited (CFPL) as well as some context about our work in the financial advice sector.
 - (b) This submission discusses the regulation of the Australian credit industry, the reforms that have taken place over time, and their impact, and, more specifically, the regulation of 'low doc' loans.
 - (c) We will also shortly provide a more substantial main submission that addresses all of the terms of reference.
 - (d) Finally, we may provide additional submissions responding to issues raised in other submissions to, or hearings before, the inquiry.
- 3 The Senate Economics References Committee has received a large number of submissions that relate to issues in the credit industry, and in particular low doc lending in the period before ASIC became the national regulator of consumer credit in July 2010. These issues were also raised in the 2012 Senate Inquiry into the Post-GFC Banking Sector. Given the number of these submissions, ASIC has decided to lodge this separate submission addressing the substance of the issues involved.
- 4 Accordingly, the purpose of this submission is to provide:
 - (a) an overview of the regulation of the credit industry before ASIC took over responsibility for consumer credit regulation on 1 July 2010, and ASIC's action during this period;
 - (b) information about the reforms contained in the *National Consumer Credit Protection Act 2009* (National Credit Act), including ASIC's work implementing the reforms;
 - (c) the impact of the national consumer credit reforms (credit reforms) and ASIC's ongoing work in this area; and
 - (d) a detailed discussion of ASIC's handling of concerns in relation to low doc loans entered into before the introduction of the National Credit Act.

- 5 ASIC notes that the 2012 Senate Inquiry into the Post-GFC Banking Sector considered allegations of fraud in the context of low doc loans. The report of that inquiry made no specific recommendations in relation to the allegations, but noted that the reforms in the National Credit Act seemed to be effective in placing a greater obligation on industry to verify the ability of borrowers to repay loans.

B ASIC's response to market problems in the credit industry

Key points

Before ASIC took over the regulation of consumer credit on 1 July 2010 under the National Credit Act, consumer credit was primarily regulated by the states and territories. During this time, ASIC had limited jurisdiction over the credit industry.

Despite the limitations of the legislative framework, ASIC took action on credit matters and monitored practices in the credit industry. We identified significant problems in industry practice and weaknesses in the regulatory framework. Our reports on those matters contributed significantly to reforms both of the law and of industry practice.

The current national regulatory regime for credit includes significantly enhanced protections for consumers.

Regulation of the credit industry before 2010

- 6 ASIC took over the regulation of consumer credit on 1 July 2010 under the National Credit Act. Before 1 July 2010, consumer credit was primarily regulated by the states and territories under the Uniform Consumer Credit Code (UCCC).
- 7 The UCCC was developed before non-bank mortgage lending, securitisation and the use of mortgage brokers became common features of the home finance market. As a result, it did not address many of the issues arising from these developments and, most particularly, it did not regulate the intermediary and advice role played by mortgage brokers.
- 8 Some states implemented additional legislative requirements, but there was a great deal of inconsistency—for example, Western Australian legislation contained licensing requirements for finance brokers and credit providers, and New South Wales legislation covered finance broker contracts.
- 9 These inconsistencies, and the difficulties in effecting consistent regulatory change, were important drivers for the Productivity Commission's recommendation in its 2008 report on the Review of Australia's Consumer Policy Framework that the Commonwealth take over the regulation of credit.

ASIC's role in relation to credit before national credit regulation

10 Before the implementation of national credit legislation in 2010, ASIC had, from March 2002, a federal regulatory role over credit under the *Australian Securities and Investments Commission Act 2001* (ASIC Act). This role was limited in scope, with jurisdiction limited to administering broad standards of conduct, including prohibitions on:

- (a) unconscionable conduct;
- (b) misleading or deceptive conduct; and
- (c) undue harassment and coercion.

Difficulties in relying on the prohibition on unconscionable conduct

The law in relation to unconscionable conduct continues to evolve. However, the courts have set a high bar for establishing unconscionability, particularly for commercial transactions.

Whether a specific transaction is unconscionable depends on the individual facts and circumstances of the case. A general power imbalance between the parties or a contract that favours one party more than the other is not sufficient to support a claim of unconscionable conduct.

The courts have found that, barring special circumstances, a mortgage broker is the agent of the borrower, and not the lender. This poses significant challenges for establishing unconscionable conduct where a broker is involved in the transaction, because:

- the broker's actions are attributed to the borrower. For instance, if the broker has manipulated the loan application, unbeknownst to the borrower and the lender, the action is taken to be that of the borrower, and not the lender; and
- the knowledge of a broker cannot necessarily be imputed to a lender. In these circumstances, as the lender typically deals with the broker and may not have any direct contact with the borrower, it is difficult to establish that the lender has sufficient knowledge of the borrower's circumstances for the lender's conduct to be unconscionable.

ASIC intervened in court proceedings in 2009 to argue that, in some circumstances, brokers should be considered agents of the lender. The courts did not accept ASIC's submissions.

Although a borrower may have a remedy against a finance broker for unconscionable conduct, the ability to obtain such a remedy, and value thereof, may be reduced in circumstances where the borrower is in financial hardship, due to an inability to repay the loan, and may be facing separate enforcement or legal action in relation to their home.

11 The prohibitions listed in paragraph 10 are dependent on the particular facts and circumstances of individual cases. Findings that they have been breached tend to be specific to the case at hand and rarely set a general rule or precedent. The conduct standards in the ASIC Act were therefore at best an imperfect tool for a regulator seeking to address systemic or widespread issues.

- 12 Nevertheless, while acknowledging the primary role of the states and territories in the regulation of consumer credit, ASIC made strategic use of the jurisdiction we did have. We sought to take court action where we could potentially achieve an impact beyond the individual case and provide a wider benefit for consumers or obtain improvements in industry conduct. We provided guidance to industry in areas where practice was poor. We developed resources, tools and information for consumers of credit. Where ASIC saw problems in the credit market, we did surveillance to understand their causes and impacts, and published reports bringing the issues to public and government attention.
- 13 Examples of ASIC's work on credit matters before national credit regulation include the following:
- (a) In 2004, ASIC accepted an enforceable undertaking from mortgage broker Structured Financial Solutions in relation to potentially misleading and deceptive advertising. Structured Financial Solutions had claimed to offer 'independent' and 'impartial' advice about mortgages, but only advised consumers about lenders on its panel, all of whom paid commissions: see Media Release (04-256MR) *ASIC crackdown against misleading mortgage broker advertising continues* (10 August 2004).
 - (b) In August 2005, ASIC and the Australian Competition and Consumer Commission (ACCC) published an updated debt collection guide for collectors and creditors. The guide reflects the agencies' views on how relevant consumer protection provisions (most particularly the three prohibitions listed at paragraph 10) apply to debt collection. The guide was developed in consultation with industry and consumer representatives to provide guidance on appropriate conduct to anyone involved in debt collection: see Report 55 *Collecting statute-barred debts* (REP 55) and Regulatory Guide 96 *Debt collection guideline: For collectors and creditors* (RG 96). Over time, the debt collection guide has helped improve standards and drive greater professionalisation of the industry.
 - (c) In October 2006, ASIC took civil and criminal action against Canberra-based mortgage broker Tonadale Pty Ltd and Kelvin Skeers. The charges related to knowing use of false accountants' letters with the intention of inducing a lender to approve low doc loans. Mr Skeers pleaded guilty and served five months weekend detention: see Advisory (09-99AD) *Canberra mortgage broker sentenced* (28 May 2009).
 - (d) In December 2006, following widespread consumer complaints, ASIC obtained orders against mortgage brokers Sample & Partners Pty Ltd in relation to misleading and deceptive conduct. The orders required Sample & Partners to implement processes for borrowers to make claims for loss or damage, and to engage an independent compliance

officer: see Media Release (06-430MR) *ASIC acts against mortgage broker* (11 December 2006).

- (e) In March 2009, ASIC intervened in the Tonto Home Loans Australia Pty Ltd matter to argue that, in the circumstances, the brokers should be considered agents of the lender and that the actions of the lender were unconscionable. We considered it in the public interest to seek a broader application of the unconscionable conduct provisions. The Supreme Court of New South Wales Court of Appeal ultimately held that the broker was not the agent of the lender and, as a result, that the lender's conduct was not unconscionable, but that the relevant contracts were unjust under state legislation: see Advisory (09-39AD) *ASIC intervenes in low doc loan proceedings* (6 March 2009).
 - (f) In December 2009, ASIC took action against Whyte Corporation Pty Ltd in relation to misleading and deceptive conduct pertaining to its loan calculator and representations to borrowers that its EquityExcel Plan allowed borrowers to pay off their mortgage sooner with no increase in their monthly payments or changes to their lifestyle. The Federal Court subsequently made declarations that Whyte Corporation and its director, Gavin Whyte, had engaged in misleading and deceptive conduct: see Advisory (09-113AD) *Federal Court declares Sydney mortgage broker engaged in misleading and deceptive conduct* (24 June 2009).
 - (g) In June 2010, ASIC commenced proceedings against Australian Lending Centre Pty Ltd and Sydney Lending Centre Pty Ltd for unconscionable conduct in relation to finance broking. The Federal Court found that Australian Lending Centre and Sydney Lending Centre engaged in unconscionable conduct. Central to that finding in relation to most of the loans involved was the false use of business purpose declarations to avoid regulation under state credit laws: see Media Release (12-19MR) *Federal Court finds loan brokers engaged in unconscionable conduct* (8 February 2012).
- 14 ASIC provided consumer guidance in the form of financial literacy material on managing credit and loans and debt. This information was available on the forerunner of the current MoneySmart website.
- 15 ASIC also worked with industry, consumer groups and the external dispute resolution schemes to improve practices and access to dispute resolution. This included work fostering:
- (a) the development of a code of practice applicable to brokers and non-bank lenders;
 - (b) enhancements to the codes of practice of both the banking industry and the mutual sector;

- (c) the ongoing development of the Financial Ombudsman Service (FOS);
and
- (d) the establishment and development of the Credit Ombudsman Service Limited (COSL), a dispute resolution scheme covering many brokers and non-bank lenders.

ASIC reports on problems in the credit industry

- 16 Before becoming the national consumer credit regulator, ASIC conducted a number of reviews looking at problems in the credit industry and publicly expressed concerns about the practices involved and the effectiveness of the regulatory system in place at the time to address them.
- 17 In 2003, ASIC released Report 19 *A report to ASIC on the finance and mortgage broker industry* (REP 19). This report provided a comprehensive analysis of the role of brokers, presented evidence that standards needed to improve in the mortgage broking sector and identified options for reform.
- 18 REP 19 found that consumers who used mortgage brokers could face problems that include:
- (a) poor advice, with resulting increased costs from inappropriate loans;
 - (b) conflicts of interest;
 - (c) inadequate disclosure of fees and commissions;
 - (d) no obligation on the broker to assess the borrower's capacity to repay the loan advised upon;
 - (e) uncertainty about the nature and price of the service; and
 - (f) in some cases, fraudulent activity such as manipulating loan applications.
- 19 The report concluded that 'the development of the broker industry has seen responsibility at the point of sale shift from the lender to brokers, who in practice are unaccountable'. It noted that lenders were increasingly reliant on brokers but that:
- (a) they lacked means of disciplining bad brokers;
 - (b) brokers were not accountable to consumers where they caused loss or damage; and
 - (c) as the law considered the broker to be the consumer's agent, the consumer generally had no recourse to the lender for the misconduct or poor advice of the broker.
- 20 As noted in paragraph 13, ASIC released REP 55 in 2005, which found that debt collectors making demands for payment of old debts needed to do more to avoid the risk of contravening the general conduct obligations in the ASIC

- Act (misleading and deceptive conduct, unconscionable conduct and undue harassment). Some agencies reviewed by ASIC did not have adequate procedures for checking whether a debt was statute-barred or did not adjust their collection methods where they knew the debt was statute-barred.
- 21 In 2009, ASIC addressed debt collection more generally in a joint report with the ACCC: Report 155 *Debt collection practices in Australia* (REP 155). REP 155 summarised major issues identified by the ACCC and ASIC during information-gathering activities undertaken in 2008 and complemented the existing debt collection guidelines the agencies issued in 2005.
- 22 In 2008, ASIC identified risks related to loans arranged by finance brokers on the fringe of the market in Report 119 *Protecting wealth in the family home: An examination of refinancing in response to mortgage stress* (REP 119). This included risks related to ‘low doc’ loans, where the lender had not documented, assessed and verified the ability of the borrower to repay the loan before approval.
- 23 REP 119 identified concerns about the practices of some brokers, including engaging in misleading conduct and providing false documentation to secure loans. It highlighted poor practices among some lenders, including approving loans to borrowers facing financial stress who were unlikely to be able to make repayments. It noted that, as a product, low doc loans increased the opportunity for intermediaries to engage in fraudulent conduct. It identified particular practices used by brokers engaged in misconduct, including the misuse of business purposes declarations and the use of false letters from accountants in an attempt to arrange loans. Both of these practices were targeted in ASIC’s strategic enforcement work: see paragraph 13(c) and 13(g).
- 24 REP 119 identified significant gaps in the regulation of the credit industry, including that lenders were not accountable for poor lending practices, the barrier the law of agency presented to borrower’s seeking redress and that there was no consistent regulation of intermediaries like mortgage brokers under the state and territory regimes. It also noted that ASIC’s jurisdiction over brokers and lenders at that time only covered broad standards of conduct.
- 25 ASIC, in conjunction with Consumer Affairs Victoria, released a report in 2009 examining how lenders and mortgage brokers respond to borrowers experiencing financial difficulties. Report 152 *Helping home borrowers in financial hardship* (REP 152) found that there was a need for improvement in relation to assisting borrowers in financial hardship.
- 26 In particular, information about financial hardship was usually only provided following payment default, making it difficult for borrowers to take positive

action at an early stage. Some lenders were doing little to identify borrowers who required assistance and, despite clear industry standards, mortgage brokers generally had a limited understanding of their role in responding to financial hardship.

- 27 ASIC also prepared reports on more product-specific issues in the credit market, including Report 109 *'All we have is this house'* report on consumer experiences with reverse mortgages (REP 109) and Report 125 *Review of mortgage entry and exit fees* (REP 125). Subsequently, both of these areas have been subject to targeted regulation.

Subsequent reform of the credit industry

- 28 In 2008, the final report of the Productivity Commission's Review of Australia's Consumer Policy Framework was released. This report recommended that the Commonwealth take over responsibility for the regulation of credit.
- 29 Shortly after the release of the Productivity Commission report, the Government released a green paper, *Financial services and credit reform—Improving, simplifying and standardising financial services and credit regulation*. This green paper proposed significant reform to the regulation of the credit industry.
- 30 The paper referenced ASIC's findings on problems in the regulation of the credit industry in various reports. It described various issues in the state-based and territory-based regulation of credit, including that:
- (a) the cooperative uniform legislative scheme underlying the UCCC made change difficult, so credit regulation was not keeping pace with industry developments;
 - (b) there were few positive obligations on lenders and other service providers, including no explicit requirement to provide credit only to people who could afford it; and
 - (c) because the UCCC did not apply to investment and small business loans, fringe lenders could avoid the UCCC's requirements by inducing consumers to complete a false declaration about the loan's purpose.
- 31 In 2008, the Council of Australian Governments agreed to implement the credit reforms, to be enacted in two stages.

Outline of the credit reforms

Initial credit reforms

- 32 The first phase of the credit reforms was implemented by the National Credit Act and established the national consumer credit framework administered by ASIC as the single national regulator.
- 33 Central elements of the credit reforms include:
- (a) the introduction of a licensing regime that imposes minimum standards of conduct for credit industry participants, including requirements for competence, mandatory membership of an ASIC-approved external dispute resolution scheme, compensation arrangements, and adequate compliance and risk management systems. The licensing regime provides mechanisms to cancel credit licences and ban persons from engaging in credit activities, thereby excluding unscrupulous operators; and
 - (b) responsible lending obligations, which mandate that credit licensees must make inquiries into a consumer's objectives and financial situation and verify their financial situation. Credit licensees must assess this information and not provide or suggest credit to a consumer if that credit will not meet the consumer's objectives or the consumer will not be able to meet their financial obligations without substantial hardship.
- 34 Lenders must also comply with the National Credit Code, which largely mirrors the now-superseded UCCC, together with some key enhancements, including:
- (a) extended coverage (now encompassing lending to invest in residential property);
 - (b) regulation of mortgage brokers and other credit intermediaries;
 - (c) the power for ASIC to take representative action in relation to unjust transactions or unconscionable fees;
 - (d) a prohibition against taking security over essential household goods;
 - (e) tighter restrictions around business purpose declarations being used to avoid the National Credit Code; and
 - (f) greater access to assistance for borrowers in financial difficulty.
- 35 Additionally, the credit reforms also included margin loans as a financial product subject to regulation under the *Corporations Act 2001* (Corporations Act).
- 36 The combination of the licensing framework and responsible lending obligations set out in the National Credit Act, and the obligations set out in the National Credit Code, provide a far more explicit regulatory framework

on what credit providers and intermediaries (including finance brokers) must do before providing credit, as compared to the general prohibition on unconscionable conduct in the ASIC Act. These credit reforms have significantly increased the level of regulatory protection for borrowers and led to substantial improvements in industry practice.

Further credit reforms

37 The second phase of the credit reforms has been implemented in three legislative tranches. It also incorporates some of the then Government's commitments set out in the Competitive and Sustainable Banking System Reforms announced in December 2010 and August 2011, particularly bringing forward credit card reforms and banning exit fees: see Table 1.

Table 1: Phase 2 credit reforms

Tranche	Subject matter	Timing
Tranche 1	Credit card reforms, including requirements on credit limit increase offers, over-limit fees and payment allocation (i.e. requirements to apply payments to transactions attracting highest interest rates first). Requirements for key fact sheets for home loans and credit cards.	Legislation passed in July 2011. Obligations commenced in July 2012 (credit cards) and January 2012 (key fact sheets).
Tranche 2	'Enhancements' Bill, including reforms to short-term lending (price caps and specific responsible lending measures), consumer leases, reverse mortgages and other National Credit Code enhancements (e.g. expanding a lender's consideration of hardship assistance for consumers).	Obligations generally commenced in either March 2013 or July 2013.
Tranche 3	Consultation has occurred on proposals for the regulation of investment lending, peer-to-peer lending, small business lending, short-term and indefinite-term leasing, and anti-avoidance mechanisms.	Draft legislation released for consultation in December 2012; submissions closed in March 2013. A final policy decision has not been made.

ASIC's role in implementing the credit reforms

The implementation of the credit reforms has been a significant body of work for ASIC. In 2009, ASIC established an internal project team to manage the transfer of responsibility from state and territory consumer agencies.

During the implementation process, ASIC engaged with the credit industry to improve understanding of the new legislation, clarify ASIC's interpretation of the law and provide practical guidance on compliance. This included:

- conducting a national roadshow of 55 presentations in capital and regional cities to help industry prepare for credit licensing (attended by more than 2,700 people);
- additional presentations and walk-in sessions in capital cities (attended by more than 850 people);

ASIC's role in implementing the credit reforms

- two national webcasts (watched by nearly 2,000 people);
- over 200 site visits to industry participants; and
- a comprehensive media campaign, weekly emails to registered persons and regular circulars to subscribers.

ASIC also issued over 20 regulatory guides and information sheets on the new credit obligations, including guidance on:

- when a credit licence may be required—Regulatory Guide 203 *Do I need a credit licence?* (RG 203);
- the general conduct obligations—Regulatory Guide 205 *Credit licensing: General conduct obligations* (RG 205);
- responsible lending—Regulatory Guide 209 *Credit licensing: Responsible lending conduct* (RG 209);
- advertising—Regulatory Guide 234 *Advertising financial products and advice services (including credit): Good practice guidance* (RG 234); and
- appointing and maintaining credit representatives—Information Sheet 126 *Credit representatives* (INFO 126).

In the 12 months following the commencement of the National Credit Act, ASIC issued 6,081 credit licences and we were notified of the authorisation of over 24,000 credit representatives.

Impact of the credit reforms

- 38 The credit reforms have gone a long way to addressing many of the issues that were prevalent throughout the credit industry before 2010.
- 39 The credit reforms have imposed minimum competency and honesty standards on credit providers, mortgage brokers and other industry participants. These standards apply consistently across all Australian jurisdictions and include a number of areas not adequately covered by previous state-based and territory-based regulation, such as mortgage brokers and loans to invest in real property.
- 40 The risk that borrowers may receive unaffordable or otherwise inappropriate loans has been mitigated by requiring credit licensees to:
- (a) make inquiries into the consumer's objectives and financial situation;
 - (b) verify the consumer's financial situation; and
 - (c) conduct assessments of suitability, with loans that are unsuitable being prohibited.
- 41 These obligations apply regardless of whether a loan is marketed as being low doc. Indeed, a truly low doc loan, where the lender does not verify the financial position of the borrower, would now be prohibited by the National Credit Act.

- 42 The credit reforms have also increased consumer access to flexible arrangements when they experience financial hardship or a temporary inability to repay their loan. Consumers also now benefit from increased access to dispute resolution options, including external dispute resolution schemes.
- 43 The credit reforms have also made avoidance of obligations by lenders or intermediaries more difficult by imposing stricter requirements and addressing some of the avoidance methods that were used previously.
- 44 The National Credit Act has addressed:
- (a) the problems in the conduct and regulation of mortgage brokers identified by ASIC in REP 19;
 - (b) the problems in low doc lending, instances of irresponsible lending, and avoidance of existing regulation through misuse of business purpose declarations, identified by ASIC in REP 119;
 - (c) the need for improvements in the handling of borrower hardship identified by ASIC in REP 152;
 - (d) the significant risks associated with reverse mortgages identified by ASIC in REP 109;
 - (e) the problem with some early exit fees, which were excessive relative to costs, identified by ASIC in REP 125; and
 - (f) some of the issues in the debt collection industry identified by ASIC in REP 55 and REP 155.

ASIC's credit enforcement activities

- 45 Since the commencement of the National Credit Act, ASIC has been very active in seeking to ensure industry compliance through guidance to industry, administration of the licensing framework, surveillance and enforcement action.
- 46 To this end, ASIC has pursued a number of enforcement outcomes in relation to credit. These include:
- (a) three criminal convictions, including two relating to providing false documents to banks to secure approvals for home loans (see Media Release (13-008MR) *Former mortgage broker convicted* (24 January 2013); Media Release (13-145MR) *Former mortgage broker pleads guilty to submitting false documents to lenders* (18 June 2013)) and one relating to unlicensed credit activity (Media Release (13-151MR) *Former director sentenced for credit offences* (25 June 2013));
 - (b) one civil matter relating to unlicensed credit activity under the National Credit Act, and other civil matters under the ASIC Act, including debtor harassment and unconscionable conduct;

- (c) 24 administrative matters, including the cancellation of credit licences, banning of individuals from engaging in credit activities and the issuing of infringement notices, for matters including failing to meet credit licensee obligations, such as membership of an external dispute resolution scheme; and
- (d) obtaining five enforceable undertakings, relating to matters including unlicensed credit activities and unfair contract terms.

47 ASIC has also commenced proceedings in a number of other matters, including against The Cash Store Pty Ltd and Assistive Finance Australia Pty Ltd for breaches of responsible lending provisions and unconscionable conduct in relation to customers on low incomes or in receipt of Centrelink benefits: see Media Release (13-257MR) *ASIC takes civil action against The Cash Store* (11 September 2013).

48 ASIC currently has a number of credit investigations in progress, many of which are likely to result in proceedings.

False loan applications under the National Credit Act

49 Under the National Credit Act, ASIC licenses entities to provide credit and credit services. As such, we have a clear role and powers to remove dishonest operators from the industry.

50 It can be difficult to satisfy the burden of proof for dishonesty or fraud offences. As a result, ASIC in most cases takes banning action in order to protect consumers by removing the person from the industry as quickly as possible. In appropriate cases ASIC also seeks to pursue criminal penalties. These matters can also be investigated by the police.

51 ASIC has been very active in investigating matters involving false documents or information supporting loan applications. Using reports by the Australian Transaction Reports and Analysis Centre (AUSTRAC), lenders, industry bodies and consumers, ASIC has identified significant falsification of loan documentation by mortgage and finance brokers. We are currently investigating 23 matters of this kind. Two of them involve large, ongoing, systematic conduct. The remainder appear to involve falsification of documents on a smaller number of transactions motivated by self-benefit.

52 Outcomes to date include:

- (a) one conviction in the District Court (NSW);
- (b) two further matters where the perpetrators have pleaded guilty and are awaiting sentencing;
- (c) the cancellation of two credit licences; and
- (d) the banning of five brokers.

53 ASIC expects more outcomes and has a number of matters pending with the Commonwealth Director of Public Prosecutions (CDPP) and a number being considered for banning.

Responsible lending obligations and changes in lending practices

54 The responsible lending obligations under the National Credit Act commenced in full on 1 January 2011. These obligations require both brokers and credit providers to make reasonable inquiries into and verify a borrower's financial position and prohibit suggesting or providing a loan that is unsuitable, including because the borrower would not be able to make the repayments without undue hardship.

55 Although the types of inquiry and verification may vary depending on the borrower's specific circumstances (e.g. self-employment), some of the practices that were common before ASIC's regulation of credit would not satisfy the responsible lending requirements.

56 Following the commencement of the National Credit Act, ASIC has been undertaking reviews of high-risk segments of the consumer credit industry to assess how they are complying with their responsible lending obligations.

57 ASIC identified loans promoted as 'low doc' as an immediate priority area for review at the commencement of the responsible lending obligations. Our initial report from this review, Report 262 *Review of credit assistance providers' responsible lending conduct, focusing on 'low doc' home loans* (REP 262), was published in November 2011. The report focuses on practices in the first six months from the commencement of the National Credit Act. ASIC found that, at that time, brokers were generally aware of the new responsible lending obligations, and were making changes to their practices and procedures to comply.

58 The report did, however, identify areas for further improvement in industry practice and made a number of findings. These included some instances of brokers:

- (a) not strictly adhering to their own responsible lending guidelines;
- (b) not carrying out sufficient inquiries about consumers' longer term requirements and objectives in conducting a responsible lending assessment; and
- (c) not carrying out sufficient inquiries to verify income and expenses.

59 These problems were indicative of a previously largely unregulated industry requiring guidance to comply with new obligations. Following our review, we raised the issues we identified and conducted ongoing work with the entities involved.

- 60 We subsequently commenced a further review, including on compliance with responsible lending obligations for home loans, in late 2011. The review looked at the monitoring and supervision practices of 18 licensees responsible for over 60% of finance broker representatives. We released a report with our findings in March 2013, Report 330 *Review of licensed credit assistance providers' monitoring and supervision of credit representatives* (REP 330).
- 61 The review again included a focus on 'low doc' loans. Low doc loans in the sense previously common in the market, where the lender does minimal verification of the borrower's financial position, are now prohibited under the responsible lending laws. ASIC has made that very clear to industry. Our observation of the market is that the term 'low doc' has remained as a marketing term but that practice has changed. In our review we found that, in the three months after the responsible lending obligations commenced, the volume of credit assistance for home loans promoted in marketing as 'low doc' was nearly half that in the three months before.
- 62 Our broader findings from this review suggest that lending practices have improved significantly since the introduction of the responsible lending requirements. There is a much greater focus on collecting, recording and considering more information about a potential borrower's financial position and their credit needs and objectives, and in doing so consistently.
- 63 However, REP 330 also identified some issues with the record keeping of the credit licensees we reviewed and the way in which they monitored their representatives. In particular, some licensees:
- (a) were relying exclusively on their credit representatives to keep records of the basis of the assessment of whether a credit contract or consumer lease would be unsuitable for the consumer;
 - (b) were unable to access sufficiently detailed information about the volume and nature of credit assistance provided by their representatives; and
 - (c) did not have appropriate practices in place to conduct compliance reviews.
- 64 The licensees we reviewed made a number of improvements to their monitoring and supervision processes as a result of the review.
- 65 ASIC intends to publish a third report from a subsequent review of credit providers' responsible lending conduct in coming months.
- 66 ASIC has also issued, and on a number of occasions updated, guidance on the responsible lending obligations in RG 209.

Changes in practices by short-term, small amount lenders

- 67 Following the introduction of the National Credit Act, ASIC conducted a review of short-term, small amount lending practices (including payday loans) during the second half of 2010. The findings of the review were published as Report 264 *Review of micro lenders' responsible lending conduct and disclosure obligations* (REP 264).
- 68 Our review found that the small amount lending industry has changed its practices following the commencement of the National Credit Act. Individual lenders became licensed, developed responsible lending policies and procedures, put in place internal dispute resolution procedures and joined external dispute resolution schemes.
- 69 To become licensed, short-term lenders and key individuals in these businesses had to meet a 'fit and proper person' requirement and develop compliance plans. Further, many individuals in the industry have gained qualifications, joined an industry association and signed up to receive ASIC policy alerts to ensure they remain up to date with their legal obligations.
- 70 A significant number of initial licence applications by short-term lenders were either withdrawn or refused. This indicates that some previous industry participants did not meet licensing requirements under the new regime.
- 71 However, REP 264 also found that there were still problems in some areas of the short-term lending industry, particularly relating to compliance with responsible lending obligations. Our review identified files where:
- (a) limited inquiries were made about the consumer's financial situation, requirements and objectives;
 - (b) the expenses in the application appeared to be understated when assessed against the basic living costs for most households;
 - (c) the expenses in the application plus the cost of the credit applied for exceeded the stated income;
 - (d) there had been a default on the first or second loan repayment for a previous loan;
 - (e) some of the money provided was to refinance another small loan;
 - (f) the bank statement showed the consumer's account was overdrawn by the end of each pay cycle; and
 - (g) the income appeared to be overstated and/or did not appear to match information obtained during the verification process.
- 72 ASIC has continued to focus on the short-term small amount lending industry and a follow-up review, focusing on compliance with recent enhancements to the laws applicable, is underway. To date, ASIC has carried out 20 bannings in relation to individuals involved in the provision of small

amount credit contracts. We also have proceedings underway alleging breaches of the responsible lending provisions and of the prohibition on unconscionable conduct by a payday lending business: see paragraph 47.

- 73 This submission has focused on a few key aspects of our credit surveillance work that ASIC considered would be of particular interest to the Senate Economics References Committee, such as ‘low doc’ lending and short-term small amount lending. ASIC would be happy to provide information on the wider range of credit surveillance and monitoring activities we have and are undertaking.

Regulation of parts of the credit industry still under consideration

- 74 Some types of credit are not regulated under the National Credit Act. For instance:
- (a) the National Credit Act protections apply to consumers borrowing to invest in residential property, but not to consumers borrowing to invest in financial products or non-residential property. Consumers are not necessarily more likely to be able to repay a loan where its purpose is to secure financial products or non-residential property rather than residential property; and
 - (b) small businesses, which are protected as retail clients under the financial services regime, are not protected as consumers under the National Credit Act.
- 75 Earlier in 2013, Treasury consulted on proposals for the regulation of investment lending, peer-to-peer lending, small business lending, short-term and indefinite-term leasing, and a number of anti-avoidance mechanisms. A final policy decision has not been made on these proposals.

Conflicts of interest in the credit industry

- 76 The recent Future of Financial Advice (FOFA) reforms have addressed structural conflicts of interest that may affect the quality of financial product advice by banning certain forms of conflicted remuneration. While comparable sources of conflict exist in the credit industry, the FOFA reforms were not extended to the credit regime.
- 77 Credit licensees must put in place adequate arrangements to ensure that their clients are not disadvantaged by conflicts of interest. However, there may be broader structural conflicts in the industry which affect the outcome for consumers without directly conflicting with a licensee’s legal obligations.
- 78 These conflicts may arise out of commission structures and other forms of conflicted remuneration.

79 ASIC is currently undertaking work to understand what sorts of conflicted remuneration exist in the credit industry. Our work has an initial focus on motor vehicle finance.

US prohibition on conflicted remuneration for loan originators

In response to significant consumer hardship suffered during the global financial crisis, the United States enacted new rules governing the remuneration that can be paid to employees who are loan originators (broadly equivalent to 'credit assistance providers' in Australia's National Credit Act).

Under these new rules, loan originators must not be paid remuneration that is based either directly or indirectly on any terms or conditions of a mortgage transaction they engage in on behalf of a consumer—for example, remuneration calculated according to the interest rate or loan-to-value ratio of the mortgages they originate. The prohibition applies to remuneration—including salaries, commissions, and annual or periodic bonuses.

These rules were implemented following concerns that loan originators were directing consumers into mortgages with terms that were less favourable to the consumer but more profitable for the loan originator, due to the conflicted remuneration structures in place.

The Consumer Finance Protection Bureau (CFPB) has recently initiated court action against Castle & Cooke Mortgage LLC, a firm accused of paying bonuses to its loan staff on the basis of interest rates charged to consumers, with the higher interest rates attracting higher bonuses.

C ASIC's handling of concerns raised by the BFCSA relating to 'low doc' loans

Key points

ASIC has received over 150 letters from members of the Banking and Finance Consumers Support Association (BFCSA) alleging widespread misconduct by lenders in relation to falsifying low doc loan application forms.

The information ASIC has received from BFCSA members does not evidence the widespread breaches of the law by lenders they contend has occurred.

ASIC has sought to help the BFCSA and its members understand what kinds of information may assist ASIC in further assessing their concerns.

- 80 A large number of submissions to this inquiry have raised concerns about ASIC's handling of reports of misconduct regarding loans entered into between 2004 and 2008. Those reports generally allege that the relevant loan applications contain falsified information. As a result, ASIC is providing information to the inquiry on:
- (a) the reports of misconduct we have received, particularly from the BFCSA;
 - (b) our handling of those reports; and
 - (c) the legal barriers to establishing that the applicable legal standards were breached by the lenders involved.
- 81 This repeats and expands upon material in our submission to the 2012 Senate Inquiry into the Post-GFC Banking Sector.

Background

- 82 In the period leading up to the global financial crisis, many loans were provided on the basis of expectations held by lenders and borrowers of the continuation of a strong economy and a strongly rising property market. The period during which these loans were provided was also characterised by strong competition among lenders for market share, and high levels of available funds to lend.
- 83 Subsequent events have shown that some loans made during this period were unaffordable for the borrowers involved, in the context of how the economy

and markets actually performed. The lending was, at least in that sense, excessive.

- 84 ASIC acknowledges that this has involved a great deal of suffering for some affected borrowers. Nevertheless, the level of bad debts and foreclosures in Australia during the global financial crisis remained very low by world standards.¹
- 85 Under the law that applied before the National Credit Act, borrowing for investment purposes was very lightly regulated, regulation of credit intermediaries was inconsistent, and there was no specific onus on lenders to ensure that borrowers could afford to repay loans. The state-based and territory-based regulation did not provide for a remedy for borrowers with unaffordable loans in most cases.
- 86 ASIC's administration of our limited jurisdiction over credit before the commencement of the National Credit Act—including enforcement action, industry reviews and publicly raising concerns with some industry practices—is outlined in Section B.

Concerns raised by the BFCSA

- 87 ASIC has received over 150 letters from members of the BFCSA alleging widespread misconduct by the finance industry in relation to falsifying low doc loan documents.
- 88 The letters from BFCSA members have generally taken a standard form with generalised allegations.
- 89 Almost all of the loans that BFCSA members have raised concerns about were entered into before the National Credit Act commenced, with most of the loans issued between 2004 and 2008. Where the borrower has provided details on the purpose of the loan, just over half were for investment or business purposes, and as such were not regulated under the state and territory credit laws.
- 90 One of the common allegations made is where a copy of the loan application form has been obtained from the lender and gaps or discrepancies have been identified—usually in relation to an inflated income and asset position, an understatement of liabilities and an overvaluation of property.

¹ In Australia the proportion of non-performing housing loans peaked at under 1% and is currently trending lower. By comparison, in the United States they peaked at over 8% and remain in excess of 7%. In the United Kingdom they have been over but are now just under 2%. In Spain they are over 5% and trending upwards. Canada's experience is similar to Australia's.

91 Many letters from BFCSA members state that the loans are unaffordable and based on the value of the underlying asset over which security has been taken. In a number of cases, it appears that the inability to repay the loan may be due to the non-performance of the property investments involved.

92 ASIC has written to BFCSA members requesting that they provide additional information and documents that may provide evidence of specific misconduct.

93 In particular, ASIC sought to help borrowers understand what kinds of information would assist ASIC in assessing their concerns. The kinds of information we listed included:

- (a) information about the purpose of the loan;
- (b) copies of all documents relating to the loan, such as any Statements of Advice, loan application forms or loan contracts;
- (c) the names and roles of any parties involved in arranging or providing the loan, such as mortgage brokers, financial planners or accountants;
- (d) details of any other loan applications made at the time; and
- (e) information about whether the loan has been subsequently refinanced.

94 To date, 20 BFCSA members have provided more specific information for assessment.

ASIC assessment and correspondence

95 In the smaller number of cases where borrowers have provided additional material, ASIC has examined that material in detail, looking for evidence of breaches of the law.

96 As previously noted, ASIC's regulatory role over credit contracts entered into before the National Credit Act commenced is limited to administering the broad conduct provisions of the ASIC Act and primarily the prohibition on unconscionable conduct. As detailed in Section B, it is difficult to establish that conduct is unconscionable, particularly where the transaction is commercial and a broker intermediary is involved.

Agency law: A barrier to establishing that conduct is unconscionable

Because the law considers the broker to be the agent of the borrower, if a broker inserted false information into a loan application, their conduct would not be relevant to any claim that the lender acted unconscionably in providing the loan based on that information. This would apply even where:

- a borrower was completely unaware of any false information provided about their financial position; or
- a borrower had only agreed to exaggerated information being inserted under great pressure and encouragement from the broker.

Agency law: A barrier to establishing that conduct is unconscionable

In such a situation, a borrower may have had a claim against the broker but that would not negate their liability under the loan. Given the light and inconsistent regulation of brokers before the National Credit Act, a claim against the broker may prove fruitless.

- 97 In the context of the laws at the time, the material provided by borrowers does not provide evidence of breaches of the law by the credit providers involved. It also does not establish that, in relation to the specific loans, the credit providers:
- (a) had any awareness of false information being inserted into application forms;
 - (b) encouraged credit intermediaries to insert false information into application forms; or
 - (c) inserted false information into application forms themselves.
- 98 ASIC does not consider that we had prospects of establishing unconscionable conduct in those cases.
- 99 ASIC previously intervened in the Tonto Home Loans Australia Pty Ltd matter (see Section B) and argued a position that would have widened the range of circumstances in which the misconduct or knowledge of a broker would be attributed to the lender. If successful, it would have facilitated borrowers affected by similar misconduct obtaining a remedy. However, on appeal, the court held to the position that the broker is the agent of the borrower, and thus that the broker's knowledge is generally not attributable to the lender.
- 100 ASIC has advised BFCSA members that:
- (a) ASIC took over as national consumer credit regulator on 1 July 2010 and that the National Credit Act does not apply to loans written or entered into before this date;
 - (b) there were no responsible lending obligations in force at the time the loans were made;
 - (c) business and residential investment loans were not subject to the credit regulatory regimes administered by the states and territories, and they are not regulated under the National Credit Act;
 - (d) the state and territory police services are the more appropriate authorities to investigate allegations of fraud; and
 - (e) where relevant, the statutory limitations period has lapsed.
- 101 In light of recent court decisions and subsequent instances where consumers have unsuccessfully challenged enforcement action by lenders, ASIC has provided further information to BCFSA members explaining the high bar

that courts have placed on applicants to prove unconscionable conduct: see Section B.

- 102 ASIC has also provided general information to the BCFSa about:
- (a) internal dispute resolution and external dispute resolution mechanisms;
 - (b) the services of free financial counsellors, where consumers may be experiencing financial difficulty and trouble with their debts; and
 - (c) seeking legal advice, including details on free legal services for consumers who cannot afford a private lawyer.

Allegations of loan fraud

103 Many of the reports from BCFSa members allege fraud by their lender. As noted above, where there were allegations of fraud occurring before the commencement of the National Credit Act, the state and territory police were the more appropriate authorities to investigate. The state and territory police have investigated some matters.

104 Consistent with ASIC's more recent experience under the National Credit Act, it appears that dishonest or fraudulent conduct has been more commonly found in relation to mortgage and finance brokers rather than lenders. An example of a state prosecution is noted below.

Case study 1: Fraud by mortgage broker

On 1 March 2013, after an investigation by WA state police, mortgage broker Catherine Anne Thompson of Mortgage Miracles Pty Limited pleaded guilty to seven counts of stealing and 18 counts of stealing by direction.

On 30 June 2013, Ms Thompson was sentenced to a cumulative jail term of five years and one month, with concurrent terms of imprisonment to be served in respect of 23 of the admitted offences. Much of the funds lost by victims had been arranged by remortgaging their properties to access the equity. Ms Thompson, as a mortgage broker, arranged the refinancing.

Appropriate venue for individual claims

105 While alleging fraud, BCFSa members are generally seeking redress from their lender. The appropriate venue for individual disputes over whether or not a loan should have been provided is either the courts or the lender's external dispute resolution scheme.

106 Borrowers who elect to pursue matters in court face the same barriers as ASIC in establishing that a lender's conduct was unconscionable. These difficulties are demonstrated by the WA Supreme Court's decision in *Perpetual Trustee Company v Burniston (No. 2)* [2012] WASC 383, the facts of which are set out in case study 2.

Case study 2: Difficulty for borrowers in establishing that a lender's conduct is unconscionable

Following the sale of their home in 2008, the borrowers invested \$235,000 of the proceeds with a mortgage broker who also arranged a loan for the borrowers to purchase a new residence.

The broker promised that investment returns would cover the loan repayments. The loan was made on the basis of a low doc loan application which included misrepresentations made by the broker, including that the loan was for business purposes, that the borrowers were self-employed and that they had substantial income.

Returns from the investment with the broker were not sufficient to meet loan repayments and following loan default, and in response to the lender seeking to take possession of their home, the borrowers sought a declaration from the court to declare the loan and mortgage void on a number of bases, including unconscionable conduct by the lender.

The court found that there was unconscionable conduct on the part of the broker due to the false representations in the loan application and the manner in which the broker had the borrowers execute the loan documents, including not advising the borrowers of the false representations made or warning them of the risk of loss.

However, the court found that the lender had not engaged in unconscionable conduct, either indirectly through the broker (because it could not be established that the finance broker was the agent of the lender), or directly in its own right because the lender owed no duty of care to the borrowers, and that the failure to check the accuracy of information, or take reasonable precautions, might have been careless but not unconscionable.

- 107 The broker in case study 2 was Catherine Thompson of Mortgage Miracles Pty Limited. As Ms Thompson was bankrupt, the court's finding of unconscionable conduct by the broker was of little use to the borrowers.
- 108 Borrowers who seek a remedy through their lender's external dispute resolution scheme require clear evidence. However, borrowers who attempt to resolve their dispute through the lender's external dispute resolution scheme benefit from:
- (a) the scheme being free to access;
 - (b) the scheme having a broad remit to make decisions based on the additional factors of what is fair and reasonable and good industry practice (as well as the law); and
 - (c) the decision of the scheme being binding on the lender but not on the borrower.
- 109 In some cases, these factors may result in a remedy being available through external dispute resolution which may not be available through the courts.

- 110 ASIC is aware of one matter involving a BFCSA member where the borrower made a complaint to an external dispute resolution scheme which found that liability for the consumer's loss should be apportioned equally between the borrower and the lender. Under this finding, the consumer would have received partial redress. However, the consumer rejected that finding and subsequently commenced court proceedings where summary judgment was made in the lender's favour.
- 111 Many of the BFCSA members who have raised concerns with ASIC have also lodged a dispute with external dispute resolution schemes—FOS or COSL. ASIC generally considers that the external dispute resolution schemes are the appropriate forum for these matters to be considered. We will provide additional information on the operation and role of external dispute resolution schemes in our main submission to the inquiry.

Correspondence with Ms Brailey

- 112 Before the 2012 Senate Inquiry into the Post-GFC Banking Sector, ASIC invited Denise Brailey on a number of occasions to provide specific evidence of misconduct in connection with low doc loans. This information has not been forthcoming.
- 113 The issues raised by the BFCSA were considered by the Senate Economics References Committee's Inquiry into the Post-GFC Banking Sector. The Committee's report² made no specific recommendations in relation to the allegations, noting that the responsible lending obligations seemed to be effective in placing a greater obligation on industry to verify the ability of borrowers to repay loans.
- 114 The Senate Economics References Committee also noted that ASIC should investigate when presented with an arguable case. Following up the Committee's request, ASIC wrote to Ms Brailey, requesting she provide documentation evidencing misconduct, which she had publicly stated that she had in her possession.
- 115 This request resulted in a meeting in February 2013 between senior ASIC staff and Ms Brailey where some documentation was provided. These documents generally consisted of marketing materials sent by lenders to a finance broker³ between 2004 and 2008, media articles regarding the global financial crisis and sub-prime loans, and emails from 2004 to 2008 between lenders and the finance broker. Many of these documents were redacted, did not relate to a particular transaction, or had handwritten notes from Ms Brailey, reducing any potential evidentiary value. ASIC has reviewed the documents

² Senate Economics References Committee, *The post-GFC banking sector*, November 2012.

³ ASIC understands the broker involved was Catherine Thompson of Mortgage Miracles Pty Limited.

in detail and considers that they do not provide evidence of any breach of the law by lenders.

116 ASIC wrote to Ms Brailey advising that the documents provided did not provide evidence of a breach of the law and reiterating that ASIC would be interested in documents evidencing specific instances of breaches of the laws that ASIC administers. ASIC has also offered to meet again with Ms Brailey.

117 Although Ms Brailey has not accepted ASIC's offer to meet again, and has not provided ASIC with any further documents, a number of documents were subsequently uploaded onto the BFCSA website. Many of the documents were those provided to ASIC in February 2013. Other loan application form documents were provided with limited context and were heavily redacted. Again, the information reviewed did not provide evidence of breaches of the laws that ASIC administers, or indicate that any of the credit providers were aware of, encouraged, or inserted misleading information in application forms.

Other specific issues raised by the BFCSA

118 A number of letters from BFCSA members have contained some misconceptions, particularly relating to:

- (a) access by finance brokers to a lender's calculator for assessing loan serviceability indicating misconduct;
- (b) the rights of consumers to obtain 'loan application forms' from lenders:
and
- (c) how the law treats asset lending.

Lenders' calculators

119 Credit providers allow finance brokers access to calculators so that they can ensure consumers meet the credit provider's lending criteria before a formal loan application is lodged. Similar calculators are often provided for prospective borrowers to access online, allowing them to get a sense of how much they could potentially borrow and therefore whether a particular loan or property purchase they are considering might be feasible.

120 If an individual, whether a finance broker or a borrower, falsifies information in order to make a loan fit a calculator, it is the individual who has engaged in misconduct, not the person who has made the calculator available.

Loan application forms

121 At times it appears BFCSA members' conception of what constitutes a loan application form may differ from the form itself, and include a suite of

documents internal to the lender, including calculations from the lender's serviceability calculator.

122 There is also a misapprehension about what parts of the lender's file the borrower is legally entitled to obtain. The National Credit Act contains specific requirements for the provision of unsuitability assessments, credit contracts, mortgages, guarantees and account statements. However, these obligations only apply to those loans regulated under the National Credit Act. Prior to the National Credit Act there was no separate obligation to provide borrowers with loan application forms or other documents upon which the loan was assessed.

123 Consumers may obtain loan documents in a number of ways:

- (a) Under the *Privacy Act 1988*, consumers have rights to access personal information held about them, subject to certain exceptions. For example, where providing access would reveal evaluative information generated within the organisation in connection with a commercially sensitive decision-making process, the organisation may give the individual an explanation of the commercially sensitive decision rather than direct access to the information.
- (b) Consumers may access copies of loan documents as part of legal proceedings.
- (c) Codes of practice may also allow consumers access to loan documents. For example, s19 of the Mutual Banking Code of Practice gives customers of subscribing credit unions and mutual building societies the right to access loan applications and contracts. However, the Code of Banking Practice does not identify loan applications as a document that the customer has a right to access.
- (d) When a consumer lodges a dispute with an external dispute resolution scheme, the scheme member may be required to provide documents relevant to the dispute. While some of these documents may be made available to the consumer, some documents, including those containing commercially sensitive information, may not be made available.

Asset lending

124 Lending on the strength of the income producing ability of, or in the last resort the ability to sell, an asset being financed with the loan rather than the borrower's other income is not illegal or unlawful.

125 While the fact that a loan was an 'asset lend' has been one factor in a number of cases where the courts have found the conduct to have been unconscionable, it has only been one factor among many. The cases involved a wider range of issues that, together with the nature of the loan, made the lender's conduct unconscionable.

126 Even under the now much tougher responsible lending obligations in the National Credit Act, with appropriate care a lender can lend funds to a borrower in circumstances where the borrower will likely have to sell their asset to repay the loan. This applies even where the asset involved is their home. If these loans were prohibited, many potentially beneficial transactions that people wanted to enter could not go ahead. The responsible lending laws require caution and that the borrower is entering the transaction with their eyes open. The law does not seek to prevent such loans.

Key terms

Term	Meaning in this document
13-008MR (for example)	An ASIC media release (in this example numbered 13-008MR)
ACCC	Australian Competition and Consumer Commission
ASIC	Australian Securities and Investments Commission
ASIC Act	<i>Australian Securities and Investments Commission Act 2001</i>
BFCSA	Banking and Finance Consumers Support Association
CFPB	Consumer Finance Protection Bureau (US)
CFPL	Commonwealth Financial Planning Limited
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purposes of that Act
COSL	Credit Ombudsman Service Limited
credit licence	An Australian credit licence under s35 of the National Credit Act that authorises a licensee to engage in particular credit activities
credit licensee	A person who holds a credit licence under s35 of the National Credit Act
credit reforms	The National Credit Act and National Credit Code
FOFA	Future of Financial Advice
FOS	Financial Ombudsman Service
INFO 153 (for example)	An ASIC information sheet (in this example numbered 153)
low doc loans	Loans where the lender does not collect documents to verify the financial position of the borrower
National Credit Act	<i>National Consumer Credit Protection Act 2009</i>
National Credit Code	Sch 1 of the National Credit Act
REP 240 (for example)	An ASIC report (in this example numbered 240)
RG 240 (for example)	An ASIC regulatory guide (in this example numbered 240)
UCCC	Uniform Consumer Credit Code
unconscionable conduct	Conduct that is prohibited by s12CA and 12CB of the ASIC Act