

HAS THE LICENSEE MADE A CONSUMER CREDIT CONTRACT ASSESSMENT?

s 116 NCCP: A preliminary assessment of the unsuitability of the credit contract must be made.

For:

- New consumer credit contract: s 116(1)
- Increasing credit limit: s 116(1)
- Credit assistance for consumer leases: s 139
- Consumer leases: s 152
- Advice on remaining in credit contract: s 116(2).

S 117: for purposes of s 115 a preliminary credit assessment requires a licensee to:

- Make reasonable inquiries about the consumer's requirements and objectives in relation to the credit contract; and
- About the consumer's financial situation; and
- Take reasonable steps to verify the consumer's financial situation; and
- Make any inquiries prescribed by the regulations; and
- Take any steps to verify the matter prescribed by the regulations.

For:

- New, increasing, remaining credit contract: s 117
- Credit assistance for consumer leases: s 140
- Consumer leases: s 153

"REASONABLE ENQUIRIES":

CONSUMER'S REQUIREMENTS AND OBJECTIVES

- ASIC REGULATORY GUIDE 209.28
 - Amount of credit needed/max amount of credit sought
 - Time frame for which the credit is required
 - Purpose for which the credit is sought and the benefit to the consumer
 - Whether the consumer seeks particular product features or flexibility and understands costs associated, and additional risks

CONSUMER'S FINANCIAL SITUATION

- ASIC REGULATORY GUIDE 209.27
 - Consumer's income or benefits
 - Extent of the consumer's fixed expenses
 - Consumer's variable expenses
 - Extent to which existing debts are to be repaid from the credit advanced
 - Consumer's credit history
 - Consumer's circumstances, including age and number of dependents

- Any significant changes to the consumer's financial circumstances that are reasonably foreseeable.

VERIFICATION OF CONSUMER INFORMATION

ASIC Regulatory Guide 209.42 requires verification of:

- The information provided is inconsistent with other information licensee holds about the consumer
- The information provided is outside the standard range for the consumer e.g overstated income

WHEN IS THE CONSUMER CREDIT CONTRACT UNSUITABLE?

Licensees must also consider circumstances in which the contract would be unsuitable:

ASIC Regulatory Guide 209.58

The contract will be unsuitable if the consumer:

- Would be unable to comply with their financial obligations under the contract; or
 - Only be able to comply with the contract with substantial hardship
- New, increases and remaining credit: s 118(2)
 - Credit assistance for consumer leases: 141(2)
 - Consumer leases: s 154(2)

'Substantial hardship' (ASIC Reg Guide 209.63) includes:

- Money left after living expenses
- How consistent/reliable their income is
- If their expenses are likely to be significantly higher than average
- Consumer's other debt repayment obligations and similar commitments e.g child support
- How much buffer there is between their disposable income and the repayments
- Whether the consumer is likely to have to sell their assets to repay the loan.

TIME PERIOD OF THE SUITABILITY ASSESSMENT

- Time period must be set out in the credit assessment – the assessment of unsuitability is not for the duration of the contract – ss 115, 138, 128, 151
 - New consumer credit contract: s 115(1)
 - Increasing credit limit: s 115(2)
 - Credit assistance for consumer leases: s 138
 - Consumer leases: s 151
- Assessment of suitability of the contract relates to circumstances, aspirations and capacity of the person in that time period
- Max time period is 90 days leading to the date of the activity that triggers the obligation
 - Longer or shorter time periods permitted for different types of credit