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Nathan Bourne
Senior Executive Leader, Credit, Banking and General Insurance
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Australian Securities and Investments Commission

By email only: tuan.nguyen@asic.gov.au

Dear Nathan

Thank you for the opportunity to review the proposed updates to RG209 with respect to the treatment of HECS debt in responsible lending.

Consumer Action Law Centre's perspective is that the changes appear commonsense, particularly because they describe a closer assessment of a person's income and expenditure in providing consumer credit. On this basis, we do not oppose the amendment, but further clarification could be added to the guidance.

Lending Practices

We anticipate that this clarification will lead to lenders giving closer attention to a borrower's financial position if they have a HECS or HELP debt. This could help some prospective borrowers – many of whom might be first home buyers – to secure a mortgage or refinance. For the vast majority of potential borrowers with insufficient income to meet the Compulsory Repayment Income Thresholds (CRIT), they would likely also not meet a suitability assessment under responsible lending obligations in the National Credit Code. In practice, we expect this will likely occur when someone is the 'second income' on a mortgage application.

However, liability to pay a HECS or HELP debt is dynamic due to a person's circumstances potentially changing at any time and therefore exceeding the CRIT. Changing employers can also mean that HECs and HELP payments are not withheld appropriately. Self-employed traders may not accurately anticipate their liability, and we understand that they are unable to make compulsory payments in advance of filing their tax return each year.¹

¹ We understand that payments made to HECS or HELP debts throughout the year are treated as voluntary payments and self-employed traders remain liable to pay the full compulsory amount.

Similarly, for employees whose gross income is higher because they qualify for salary sacrificing, they may be liable to pay a Fringe Benefits Tax and their assessable income will be higher for HECS purposes.² This can result in an unexpected HECS or HELP liability when lodging a tax return.

All of these circumstances may result in someone experiencing financial difficulty. ASIC may consider directing lenders to explicitly consider a borrower's future potential HECS and HELP liability in their specific circumstances.

Lastly, any people with long lasting HECS or HELP debts are likely on the lower end of the income spectrum or could be experiencing entrenched financial difficulty. A HECS or HELP debt may be a useful indicator of financial difficulty for lenders, despite the different treatment of this loan type proposed.

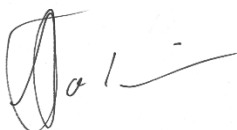
Interaction with Consumer Credit Protections

More generally, we note that mortgage stress has remained the top presenting issue on the National Debt Helpline in Victoria (that Consumer Action operates) for two years.³ There is considerable hardship among homeowners in Australia and therefore consumer protections in lending remain highly important.

While not the intention of the proposed updates, we strongly caution against any changes to RG209 that may limit Responsible Lending Obligations in any way under the Consumer Credit Protection Act. In the recent Senate Economics Committee Inquiry into Finance for First Home Buyers, consumer advocates raised serious concerns about the risks of even the smallest winding back of Responsible Lending Obligations or APRA buffers for ADI lending. We refer to the submission of Consumer Policy Research Centre and Mortgage Stress Victoria⁴ on the critical role that these protections have played in protecting consumers experiencing vulnerability and protecting against large-scale mortgage defaults and foreclosures during recent interest rate rises.

Thank you again for the opportunity to give feedback on the proposed changes to RG209. If you have any questions about our feedback, please contact Stephanie Tonkin at stephanie@consumeraction.org.au.

Yours faithfully,



Stephanie Tonkin
CEO
Consumer Action Law Centre

² <https://www.ato.gov.au/businesses-and-organisations/not-for-profit-organisations/your-organisation/your-obligations-to-volunteers-employees-and-contractors/salary-sacrifice-arrangements-and-not-for-profits>

³ See Consumer Action's 2024 report 'At the Frontline of the Cost of Living Crisis': https://consumeraction.org.au/wp-content/uploads/2024/03/CALC032_Cost-of-Living-Snapshot_FA_WEB_Scroll.pdf

⁴ Available for download at: https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Homeownership/Submissions