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'Responsible' lending laws to be axed

John Kehoe *Senior writer*

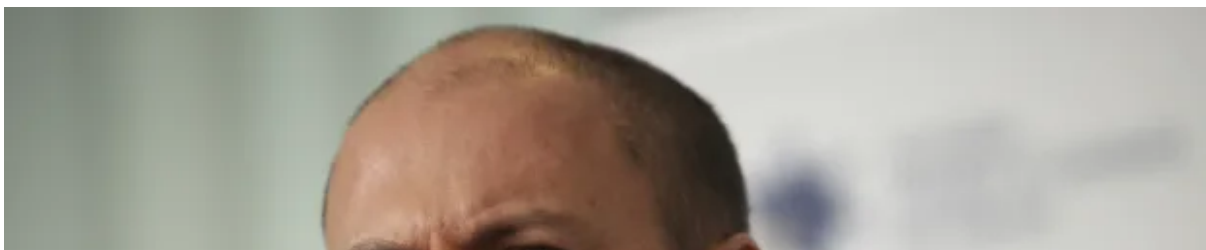


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Responsible lending laws that fuelled a bitter court fight between the corporate regulator and Westpac will be scrapped for banks, which will be subject to less onerous credit rules to encourage the flow of loans and boost the economic recovery from the COVID-19 recession.

In a shift from "lender beware" back towards traditional "borrower beware", Treasurer Josh Frydenberg will on Friday announce the government will in effect dump the responsible lending law that was imposed by the Rudd Labor government in 2009 following the American subprime loan crisis.





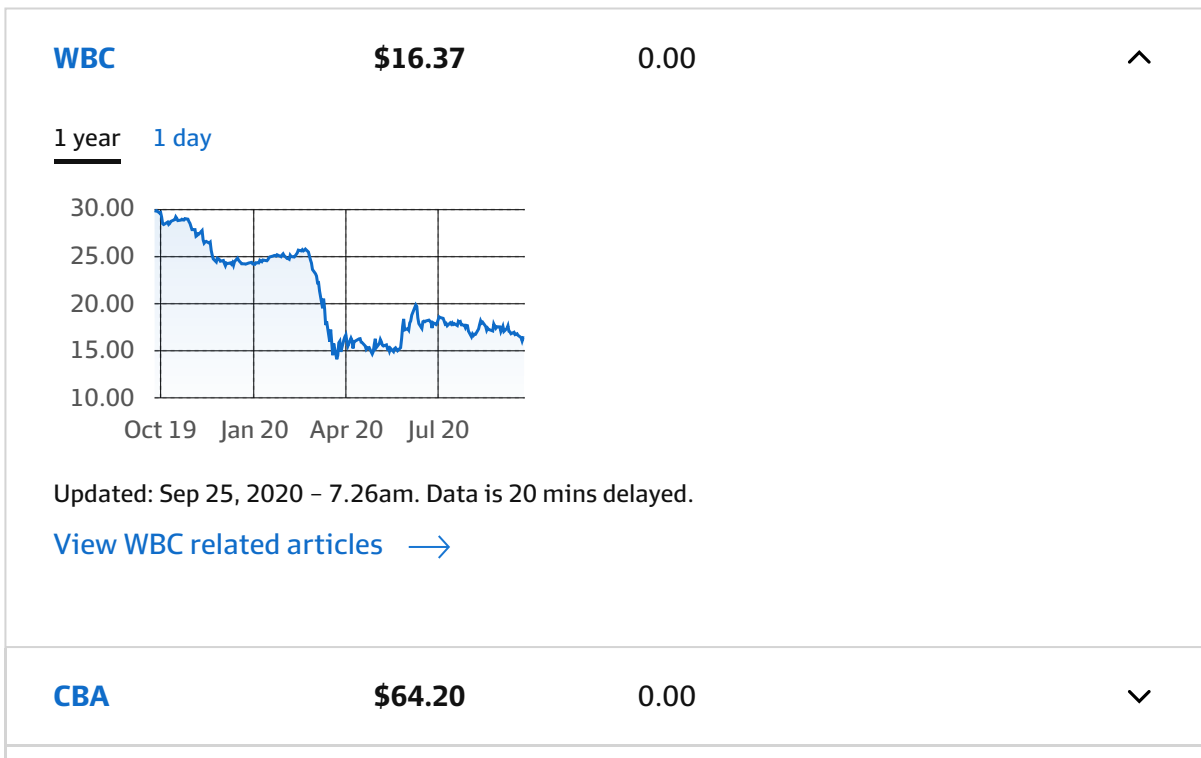
Treasurer Josh Frydenberg wants to boost the flow of credit. **Alex Ellinghausen**

The simplification will remove the Australian Securities and Investments Commission from enforcing the responsible lending rules for banks and other mainstream lenders, while bolstering ASIC's oversight of payday lenders for vulnerable borrowers.

In a red-tape reduction, banks and many non-bank lenders will be policed under less prescriptive prudential lending standards currently overseen by the Australian Prudential Regulation Authority, while eliminating the stricter ASIC lending rules.

The deregulation responds to concerns of banks and Reserve Bank of Australia governor Philip Lowe, that following the Hayne banking royal commission and ASIC's pursuit of Westpac in the "shiraz and wagyu" lending case, banks became too conservative and squeezed the flow of credit.

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Greater emphasis on self-responsibility means lenders will not be penalised if borrowers mislead on their loan applications, enabling banks to rely on income and expense information provided by borrowers and speeding up the credit approval process.

Mr Frydenberg said the most significant reforms to credit rules in a decade would increase the flow of credit to households and businesses, reduce red tape and strengthen protections for vulnerable consumers.

“As Australia continues to recover from the COVID-19 pandemic, it is more important than ever that there are no unnecessary barriers to the flow of credit to households and small businesses,” he said.

“By simplifying the loan application process for borrowers it will reduce barriers to switching between credit providers, encouraging consumers to seek out a better deal.”



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Higher-risk non-bank products, known as small amount credit contracts and consumer leases, will remain under ASIC's purview and the rules for these

products strengthened, such as caps on credit.

The surprise move disempowers ASIC only three weeks after its chairman James Shipton insisted the responsible lending law is "now settled" after the agency abandoned its prosecution of Westpac over thousands of home loans.

While the Hayne royal commission ultimately gave banks a reprieve in 2019 from a formal crackdown on responsible lending laws for consumers, it pressured banks to undertake more forensic investigation of loan applicants.

The scrutiny of banker conduct was exacerbated by the [Westpac and ASIC responsible lending case](#).

The legal battle tested Westpac's argument that the national credit act provides banks with discretion on using benchmarks when assessing whether loans are suitable for customers, and that customers can be expected to reduce historical levels of spending to meet repayment obligations.

After ASIC lost the Westpac case for a second time on appeal in Full Federal Court, the regulator [opted in July not to appeal to the High Court after receiving warnings from the heads of the RBA and Treasury that it would undermine bank lending during the COVID-19 recession](#).

Officially, small business borrowers are already exempt from the consumer-focused responsible lending law, but in practice many sole traders and self-employed people have been affected because they use their mortgages or personal homes as collateral to secure loans.



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Dr Lowe said last month the "pendulum has probably swung a bit too far to blaming the bank if a loan goes bad".

"So some of the banks have had this mindset, 'Well, we can't make loans that go bad'," Dr Lowe said at the time.

"We can't have a world in which, if a borrower can't repay the loan, it's always the bank's fault."

"On a portfolio basis, we want banks to make some loans that actually go bad, because if a bank never makes a loan that goes bad it means it's not extending enough credit."

Separately, the [Australian Financial Complaints Authority's enforcement of "appropriate" lending rules for small businesses](#) – temporarily removed during COVID-19 – had become another "back door" way to apply tougher rules to small business.

[ANZ and Commonwealth Bank of Australia chief executives warned this month](#) that responsible lending laws and the challenges of dealing with two regulators and an ombudsman charged with overseeing the provision of credit are adding to the costs of doing business.

APRA's prudential lending standards will become the main line of defence for authorised deposit-taking institutions, governing more than 90 per cent of credit extended to non-business borrowers.

External dispute resolution

Lenders will continue to be subject to standards for credit risk management and expectations of sound lending practices.

For recognised non-bank lenders, they will be bound by APRA's prudential lending standards, but these will be policed by ASIC.

Borrowers will continue to be able to raise concerns and seek external dispute resolution via the Australian Financial Complaints Authority.

At the other end of the credit market, payday lenders and consumer leases face a crackdown in response to a push from consumer advocates.

New rules will aim to protect welfare recipients by restricting payday loans (known as Small Amount Credit Contracts [SACC]) and consumer leases for people who receive 50 per cent or more of their net income from Centrelink.



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These people would be banned from devoting more than 20 per cent of their net income to SACC and consumer lease repayments, with no more than 10 per cent of this being allocated toward SACC repayments.

Consumer leases will face caps on costs and fees, equal to the sum of the base price of the goods hired under the lease, permitted delivery fees and installation fees multiplied by 4 per cent per month, up to a maximum of 48 months).

Lessors will be able to charge a one-off establishment fee of 20 per cent of the good's base price.

The government said since the National Consumer Credit Protection Act was introduced in 2009 a range of new consumer financial protections remained in place including product intervention powers for credit products, a design and distribution obligation for product issuers, a best interests duty for mortgage brokers, banning unsolicited offers of credit limit increases and the establishment of AFCA.

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