

# Submission on the exposure draft of the Credit Contracts and Consumer Finance Amendment Regulations 2020

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2 July 2020

## SUMMARY

Thank you for the opportunity to provide comment on the draft regulations. CAP is generally supportive of the overall direction and intent of these regulations. We commend Minister Faafoi for continuing the application of affordability assessment regulations to all consumer credit contracts.

It is good to see income for affordability assessments net of Kiwisaver contributions – we advocate for any reasonable surplus definition to also include an allowance for those that do not currently contribute to Kiwisaver to be allowed for, so as not to disadvantage low income earners and beneficiaries that are typically under-represented in those saving for their retirement, should they want to start saving for their retirement also.

CAP advocates for the requirement that lenders collect a benefit breakdown for income and expense assessment of beneficiaries. A benefit breakdown provides valuable information that informs both income and actual expenses that are just not visible on a bank statement. This will help lenders to appropriately consider the actual circumstances of beneficiaries who are at most risk of harm from an inadequate assessment.

We are pleased to see specific guidance in regulation 4AL regarding calculation of loan repayments, particularly in relation to revolving credit facilities. Too many affordability assessments to date have not made allowance for the repayment of these debts, keeping families trapped and unable to utilise them as the safer forms of credit that they are intended to be.

We are also pleased to see the requirement for lenders to incorporate robust statistical methodology in benchmarking; currently many lenders use their own in-house estimates which significantly underestimate household expenses leading to unaffordable loan repayments trapping families in financial hardship.

We welcome any questions you may have and are available for further feedback as you may require.

*Heaha temea nui o te ao  
He tangata, he tangata, he tangata*

## SUITABILITY

CAP is generally supportive of the proposed new regulations 4AA and 4AB to prescribe the steps to be taken to satisfy the requirements of suitability assessment.

We do have serious concerns that vulnerable borrowers can be exploited at the point of loan signing to accepting a raft of additional charges, insurances and add-ons without realising what the total cost of the additional charges will be over the life of finance.

Consistent with our submission in February 2020, we recommend that the additional costs disclosed for any added fees or charges being financed are for the **total expected cost** over the course of the financing. This will assist the borrower to have the information necessary to adequately determine whether additional goods and services meet their requirements and objectives.

## AFFORDABILITY

CAP is generally supportive of the proposed new regulations 4AC to 4AO to prescribe steps lenders should take to satisfy the requirements of affordability assessment. We are supportive of these regulations being applicable to all consumer credit contracts.

From our perspective, the serious inadequacy of fair and reasonable affordability assessment across different loan products and different lenders has been one of the principle contributors consumer harm and long-term financial hardship.

## KIWISAVER CONTRIBUTION / REASONABLE SURPLUS

We are pleased to see that income has been defined as net income after Kiwisaver/superannuation deductions. (4AE Income). We are also pleased to see the expectation that there will be a reasonable surplus to pay or save for other expenses. (4AF and 4AG).

**CAP recommends that a reasonable surplus definition is expanded to include a minimum Kiwisaver contribution** for those that do not have one already accounted for from their net income. This would preserve the option for those that are not contributing to Kiwisaver at the time of loan assessment to start saving towards their retirement as well. Low-income earners and beneficiaries are the most likely to not be contributing to Kiwisaver and are, equally, those that need the most protection to be able to contribute. As it is currently written, the draft regulations protect the Kiwisaver contributions for those that are already saving but leaves open the possibility that those who are not currently contributing will be unable to do so.

## 4AE - LISTED OUTGOINGS

CAP recommends that the definition for listed outgoing (b) “payments on any debts” is clarified to include the payment towards debt arrears, to allow borrowers the capacity to catch up on any payment schedules that they may not be up to date with.

4AE(d) should include “pet costs”. This would be a catch-all term to include the costs of food, registration (e.g. dog), and veterinary care. The costs of raising a pet are often overlooked but are indeed costs that most pet owners would be unwilling to cease and will continue to incur.

## 4AG - BORROWER’S INCOME SIGNIFICANTLY RELIED ON

CAP recommends clarifying that general rule 4AG is applicable to all borrowers to the loan if any borrower’s income is relied on to make payments. There may be two or more co-borrowers to a loan where one’s income is ‘significantly relied on’ but the other is not. As jointly and severally liable, though, it would be necessary to complete a full income and expense assessment for both borrowers. Additionally, the more co-borrowers to a loan, the more a lender may argue that each borrower is significantly less ‘relied on’, although they are all equally liable.

## 4AG - OPTION 1 PREFERRED

We are presented with two options at 4AG(3). CAP prefers the wording of **Option 1**. Option 1 appears to apply a more objective standard for assessment, comparing the assessment to what is reasonable within the market of other lenders. This section (3) should necessarily set a high standard and requires lenders to consider their actions within the context of an industry standard.

4AG (2)(a)(i) – there appears to be an error referring to regulation 4AF rather than the correct 4AJ.

## 4AH - KIWISAVER FINANCIAL HARDSHIP WITHDRAWAL EXCLUSION

We are pleased to see that a withdrawal due to financial hardship from Kiwisaver is excluded from money being available to meet the payments under an agreement.

#### 4AJ – INITIAL ESTIMATE OF INCOME FOR BENEFICIARIES

It should be mandatory for lenders to confirm a beneficiary's income by sighting a benefit breakdown. These are easily obtainable and provide an accurate description of the different components of income. Many parts of a benefit are only paid for a temporary period of time: Temporary Additional Support, Winter Energy Payment, Best Start, Family Tax Credits, etc. CAP has seen many examples of affordability assessment relying solely on a bank statement to verify net income where reviewing a benefit breakdown would have quickly highlighted the temporary duration of parts of the income. Beneficiaries deserve the best protection we can provide from poor affordability assessment that may overestimate their income.

#### 4AK – INITIAL ESTIMATE OF BORROWER'S EXPENSES FOR BENEFICIARIES

In conjunction with the above point, it is very common for beneficiaries to have deductions for relevant expenses taken directly from their benefit. Another reason that it should be mandatory for lenders to obtain a benefit breakdown when a borrower will rely on income from a benefit is so that these real expenses can be sighted; they will not appear in the client's bank statement so it is important to view the benefit breakdown to assess relevant expenses.

As noted in our February 2020 submission, CAP also notes that if a lender notices a special benefit income such as Disability or Child Disability, Temporary Additional Support, Winter Energy Payments, that these funds are explicitly being provided to meet the *additional* costs of some extra-ordinary essential expenses. As such, these incomes should not be relied on or, at the very least, these incomes should be netted off against equally increased allowances in a borrower's expenses.

#### 4AL – CALCULATIONS FOR PAYMENT OF A DEBT

CAP is very pleased to see the inclusion of this guidance, particularly the expectation of 4AL(2)(d) in relation to revolving credit contracts. CAP all too frequently sees examples of affordability assessments by lenders that provide no allowance for a borrower to repay their credit card or overdraft balances, expecting them to stay in debt on these products to service the new loan. These allowances will play an essential role in providing the capacity to borrowers to repay existing loans.

#### 4AN – BENCHMARKABLE EXPENSES

CAP is supportive of this regulation, in particular the requirement of 4AN(2)(a) to use robust statistical methodology; many lenders use their own in-house estimates that are neither realistic nor fair to the borrower. Their figures significantly underestimate household expenses which, in turn, lead to unaffordable loan repayments trapping families in financial hardship.

#### 4AO – PRESUMPTION OF SUBSTANTIAL HARDSHIP

CAP is supportive of the intention of this presumption. We assume that the intention is that any existing consumer credit contract in default cannot be remedied by the use of a high-cost consumer credit contract; it appears as it is currently written, though, that a lender could rebut the presumption of substantial hardship by using the proceeds of a high-cost consumer credit contract to immediately remedy the default, paying one debt off with another.

## ADVERTISING

CAP is supportive of the proposed changes to advertising regulations as detailed in the table of Key Changes Proposed in MBIE's email to CAP (and others) on 13 March 2020.

## DISCLOSURE

### REGULATIONS 4F – DISCLOSURE OF AGREED CHANGES

CAP is supportive of disclosure of the changes particularly, 4F(3) requires, in a format that enables the comparison of proposed changes against no changes. For clarity, this disclosure should be provided to any borrowers in advance of any variation to allow the borrower to determine how the proposed variation will change their obligations.

### REGULATION 5A – DISPUTES RESOLUTION SCHEMES AND FINANCIAL MENTORING SERVICES

CAP is supportive of requiring disclosure to dispute resolution schemes only in cases where the complaint is not resolved to the customers' satisfaction within 2 working days.

CAP is supportive of requiring disclosure about Financial Mentoring only once the customers has been in default (or in excess of their credit limit) for 10 working days.

### REGULATION 24 – DEBT COLLECTORS TO PROVIDE DISPUTES RESOLUTION AND FINANCIAL MENTORING INFORMATION

CAP is supportive of debt collectors also being required to provide the same information about dispute resolution schemes and financial mentoring services that creditors are required to provide.

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