



PO Box 12041, Penrose, Auckland 1064

P 09 270 0334 E info@capnz.org

capnz.org

Credit Contracts and Consumer Finance Amendment Regulations (No 2) 2020 – Exposure Draft Submission

From:

Christians Against Poverty

PO BOX 12041

Penrose

Auckland 1064

To:

Competition and Consumer Policy Team

Building, Resources and Markets

Ministry of Business, Innovation & Employment

PO BOX 1473

Wellington 6140

Sent by email to consumer@mbie.govt.nz

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FEEDBACK ON THE POLICY COMMENTARY

CAP is generally supportive of the overall direction and intent of the changes within this third draft and do not have any specific comments to make about the wording within the draft regulations. The comments below are in relation to the Policy Commentary provided with the third draft.

4. SUITABILITY ASSESSMENT AND USE OF 'DETERMINE'

CAP is supportive of the current wording in this draft, however we don't object to the potential alternative proposed – "The lender must make reasonable inquiries in order to determine...".

5. EXCEPTION TO THE GENERAL RULE IF IT IS OBVIOUS THE BORROWER WILL NOT SUFFER SUBSTANTIAL HARDSHIP

CAP appreciates this explanation and is supportive of the expectation that this is a 'high test'. The example given provides assurance of the intended exceptions. We look forward to further clarification with examples in the Responsible Lending Code to help clarify this high test. We would suggest that the required knowledge of a customer's high-net worth position where this exception could be applicable would be strictly limited to an existing lender-client relationship where an intimate knowledge of a person's financial circumstances is apparent from information already held on file.

6. RELATIONSHIP BETWEEN THE INITIAL ESTIMATE OF EXPENSES AND THE FINAL ESTIMATE OF EXPENSES.

CAP acknowledges that a borrower's current expenses may overestimate their likely future expenses as a potential borrower could be prepared to 'tighten the belt' in order to take on a new loan, such as a mortgage.

However, in our experience, the most persistent cause of poor affordability assessment which leads to borrowers making payments while in substantial hardship is the over-reliance on bank statement transactions as the source of relevant expenses. One very common example would be the analysis of bank statements from people on very low incomes whose spending on some of the listed outgoing is non-existent. For example, there may be categories of relevant expenses that just do not appear on the bank statements at all (no money spent on clothing, no money spent on doctor visits or prescriptions).

The commentary refers draft regulation 4AM as the "verifications or adjustments, which describe what is done to ensure that the initial estimate is *realistic and accurate*" (emphasis added). CAP would suggest that the intention of 4AM is more strongly to ensure the initial estimate is also "**reasonable**". We are therefore pleased to see the inclusion of "a reasonable minimum cost of living" in 4AM(3).

4AM is **the primary function** within the draft regulations to ensure that affordability assessments are conducted with the intention of 9C(3)(a)(ii) in mind. It is vital that the importance of 4AM in preventing substantial hardship is clarified and we hope to see clear guidance of how lenders can quantify a 'reasonable minimum cost' that fairly protects borrowers within the Responsible Lending Code.

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

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