



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

Cash Converters

February 2020



Introduction

1. Cash Converters is New Zealand's largest provider of small amount loans as well as the largest buyer and seller of second hand goods.
2. Cash Converters has been active in New Zealand for more than 25 years. We directly employ 380 people and operate 28 stores across the country. Each week we help thousands of everyday Kiwis get on with their lives with responsible financial solutions.
3. Cash Converters has contributed to consumer credit reform for 12 years. We promote responsible lending practices and have a long-standing reputation for ethical conduct and the provision of responsible services in New Zealand. Cash Converters is a vocal supporter of responsible lending principles and the Responsible Lending Code.

Responses to issues raised in the discussion paper

4. We have limited our responses to items where we have direct relevant experience and either a suggestion or concern regarding the proposed regulations.
5. We would be pleased to provide further information useful to the Ministry during the review. If there are any questions please contact Erin White (erin.white@cashconverters.co.nz, 09 281 7306) or Andrew Kamp (andrew.kamp@cashconverters.co.nz, 09 281 7301).

Assessment that a borrower is likely to repay without substantial hardship

Regulation 4AE – reasonable surplus

6. The underlying obligation of a lender under the Lender Responsibility Principles is to ensure the borrower can make payments under the agreement without suffering substantial hardship.
7. The concept of substantial hardship has meant that borrower income is sufficient to meet essential living expenses (such as accommodation, food, utilities, transport and required medical expenses), existing financial commitments and any proposed new financial commitments.
8. Proposed Regulation 4AE extends this to include both regular or frequent discretionary expenses as well as an additional surplus intended to allow for under-estimation of relevant expenses, and payment of "other" expenses.
9. All applicable expenses, including discretionary spending, are already captured within the wide definition of relevant expenses, and it is unnecessary to allow a for further "other" expenses in addition to the existing essential and discretionary expenses already assessed.

10. In respect to savings this could contribute to an absurd outcome where a person who has no regular savings is able to borrow to address an unexpected expense, but someone who engages in regular savings can be financially excluded and unable to borrow in otherwise similar circumstances.
11. Consumers must always retain the right to start and stop saving, and to allocate their own savings as they choose, without risk of regulatory discrimination and financial exclusion as a result of their savings choices. It is wrong to consider regulation that interferes with this right.

Regulation 4AG – initial estimate of borrower’s likely expenses

12. Cash Converters generally supports the proposed regulation 4AG.
13. Our experience is it is often more practical and almost always more accurate for the borrower to assess and then confirm or amend a statement of expenses prepared by the lender rather than preparing a statement of expenses themselves.
14. The current wording of regulation 4AG(1)(a) does not appear to support this approach as it requires the lender to obtain the statement of expenses from borrower and does not contemplate providing a categorised statement to the borrower for review.
15. We suggest clarifying the wording to ensure the latter approach remains acceptable.

Regulation 4AH – final estimate of likely expenses

16. The requirements in regulation 4AH to use the greater of the borrower’s expenses and a reasonable external expected cost of those expenses for somebody in similar circumstances to the borrower will result in over-estimation of expenses for as much as fifty percent of borrowers and unfairly penalise those who are consciously more frugal than the typical borrower.
17. Cash Converters believes it would be more appropriate in the majority of cases to adopt the borrower’s estimate of expenses and, where that expense was capable of comparison and fell below a reasonable expected level but for a valid reason, for the lender to be able to proceed after having ascertained and recorded the reason.

Regulation 4AI – presumption that loan is unaffordable

18. There are many and varied reasons for payment defaults which are not the fault of the borrower including errors scheduling errors by the lender, bank and transaction processing errors, bank account changes, and late or delayed wage deposits.
19. It is incorrect to assume that simply because there is a single default under an existing credit contract that the borrower is already suffering substantial hardship.
20. Substantial hardship is a high threshold, and does not encompass many of the circumstances that could lead to a single default on a credit agreement.

21. Accordingly, Cash Converters believes regulation 4AI as drafted is unreasonably restrictive.
22. A more appropriate measure may be to apply the presumption where the borrower has defaulted several times on the existing credit contract, where the most recent default is within the preceding 90 days, and where the defaults remain unresolved.
23. This approach would allow some room for minor repayment issues, many of which may not be of the borrower's making or do not indicate substantial hardship, while still delivering on the principle that high-cost credit should not be used to support failing repayments on other credit obligations.