

Submission by Brent Hollows due 05 February 2020

Exposure draft of the Credit Contracts and Consumer Finance Amendment Regulations 2020

2 Assessment of whether credit or finance will meet the borrower's requirements and objectives

KEY AREAS WE WOULD LIKE YOUR FEEDBACK ON:

- The proposed process for assessing the borrower's requirements and objectives.

Agree, this is simple and straightforward.

- How these regulations could be refined to minimise cost for lenders.

The regulations are very streamlined already. The costs for lenders complying with the new requirements is not an issue. Meeting these requirements is quite simple. Just ask, collect, assess and document the answers to the questions in the loan application form.

- Other features of an agreement that lenders should ask borrowers about.

It is really easy when a borrower tells you exactly how much they want to borrow however in practice generally most borrowers' first question is to ask how much they can borrow. Most of the time the borrower is semi flexible with the amount they want/need to borrow. Probably they are shopping around to see which creditor will lend them the most. I respond by saying how much do you want to borrow and for how long and how much can you afford to pay per week. 9 times out of 10 they come back with a weekly amount they can pay; very rarely do they say the amount they want to borrow or the term at this stage. I let them know how much they could afford to borrow based on the weekly payment amount they said they can pay. Then I tell them the total payback and the term. People generally are not interested in the term or interest rate just the amount they can get and the weekly payment amount. Nothing else. Very rarely does a borrower have any idea what term they want the loan over. I then ask them is that the amount they want/need to borrow. At this stage they disclose the amount they want to borrow. If the amount they disclose they want to borrow is more than the weekly amount they generally say they can afford a higher weekly amount or we talk about extending the term. At this stage I say I will need to verify through your bank statements that you can afford the higher payment amount.

Most borrowers want repayment waivers as they do not want to pay the extra interest if they are unable to pay due to illness etc. Furthermore, they do not want the stress of not being able to make timely payments. Also they want the security to go to their family upon death rather than it having to be sold to pay the debt. CCI gets bad press and it is said it is a waste of money. However, it is a valid useful product. It also teaches borrowers to be responsible and allow for their liabilities. Look at what happened in Christchurch whereby most commercial buildings did not have earthquake cover because people didn't ever think an earthquake would occur. This was clearly irresponsible and greed based upon premium savings. This same logic applies to CCI which is in fact a valid product. CCI premiums are low on my loans at about \$80 and rebated for early repayment. I totally agree that a borrower must be capable of making a claim. CCI is 100% the borrowers' choice. If borrowers are actively discouraged from getting CCI from an outside source and are thus being encouraged to act irresponsibly then who should be liable upon claim time?

3 Assessment that a borrower is likely to repay without substantial hardship

KEY AREAS WE WOULD LIKE YOUR FEEDBACK ON:

- The proposed regulation requiring there to be a reasonable surplus after estimating likely income and expenses.

What is a reasonable surplus? How long is a piece of string? A reasonable surplus is like that; it is different for every individual.

- Whether there are any other exceptions that are not adequately captured by the provision for exceptional circumstances to the general rule.

Bank Statement actuals should trump benchmarks.

- Whether the proposed requirement to compare the initial estimate of expenses against a reasonable level strikes an appropriate balance between prescription and flexibility.

There does not need to be an estimate of expenses. Bank Statement actuals are precise, relevant and real in the specific situation whereas estimates and benchmarks are not. Flexibility is needed as prescription will shut out borrowers who can afford the loan based on actuals but not on benchmarks. Moreover, eliminating estimates will streamline the process.

- How much, if any, of the proposed process above should apply to an assessment of affordability for guarantors.

100%. Guarantors should be assessed the same way the prime borrower is because when things go wrong they become the prime borrower. Furthermore, it will make lenders accountable and may stop them taking a guarantee. Generally, I am totally opposed to the use of Guarantors.

- How these regulations could be refined to better reflect existing good practice and minimise cost for lenders.

Reasonable surplus is different depending on the size of the loan and a person's circumstances and it is not necessarily linked to a percentage of income. I look at 100's of bank statements every year and they almost always show that people that need to borrow use their whole weekly wage every week indicating they do not have a surplus. However, in practice once they finish repaying a current loan showing on the bank statement the future bank statement would not show a surplus either or that they could have even paid this loan but they did. In practice most people fully spend what they earn. However, people have an ability to be flexible and prune their discretionary income. Discretionary income is so different person to person so how can you analyse this? So called non-discretionary expenses vary widely between people and therefore they are also partly discretionary. For example; some people on high incomes will purchase premium products whilst others on lower incomes will not. Example Manuka honey \$30 versus budget honey \$8. How precise do lenders need to be? Should we have to request supermarket receipts? Should lenders have to go to such lengths as obtaining a photo showing the person has a garden and that is why their food cost is low and well below a benchmark figure? Benchmark figures are only an average, a range; low and high figures would be more useful. In the past I have had arguments with several clients saying you cannot feed your family on such a small amount. The kids looked healthy and well-groomed and I was shown a fully stocked larder with budget brands. I have also had this argument with regards to power bills

and been proven wrong again by my clients. In short benchmarks do not always work and the use of benchmarks will exclude some borrowers from their human right to be able to borrow.

My process is to obtain 6 months of bank statements and complete a budget from that as much as I can then I talk with the client to fill in any gaps or ask them what they think their weekly dollar amount is per expense item. I do not agree with comparing these expense figures against a reasonable level benchmark because people's circumstances and budgets vary greatly and the benchmarks will exclude some borrowers from getting the same loans again in the future. Loans that they already have and are already affordably paying. Accurate actual figures are more important and they are the real deal.

I see a high proportion of borrowers that pay their rent, power and loans from their bank account electronically and withdraw the remaining balance in cash. That way they are living within their means. Now that we can no longer rely on the client telling us how much they spend on food; do they need to produce supermarket receipts for lenders? I have illustrated that benchmarks do not always provide an accurate result. Also how do you know that EFTPOS transactions at the petrol station and at the supermarket that are shown on the bank statements do not include a cash out amount? Do borrowers using Globug have to keep their receipts for the loan application process?

Also income from boarders is usually in cash. Do you need to get a signed letter from the boarder? How do you do this without impinging on the borrowers' privacy?

How do you know about discretionary expenditure if the borrower does not tell you? Does this mean we are then relying on what the borrower tells us which was the old rule? How does a borrower prove they don't smoke or don't drink heavily? I am not trying to be awkward it is just that I do not know how to figure this out.

Also beneficiaries are allowed to earn \$80 - \$100 per week without it affecting their entitlement. This is usually in cash for things like; cleaning ironing etc. Does this have to be verified as well? Doing so would impinge on their right to privacy and probably lose them that income.

Is it necessary to get a signed undertaking from borrowers that they will curb discretionary spending on items like cigarettes and sending money home if this is required to obtain a reasonable budget surplus? Will borrowers lie about this to get the loan? How do you monitor this? Isn't the flavour of the new legislation that we can no longer believe borrowers so how do lenders reconcile this?

Another big problem I encounter is you complete a budget and it has a good surplus then some slick retail salesperson or car salesperson signs the borrower up for another loan which causes problems on the existing loan. The borrower then misses payments on my loan and asks for reduced payments from me so they do not get their car or retail goods items repossessed. How do the new rules avoid this happening? After Pay falls in to this category as well upsetting a person's budget surplus.

Why even get the initial estimate of expenses from the borrower? Streamline the process by going straight to bank statements. We are no longer allowed to believe the borrower so why continue believing them and believing their estimates?

What type of further inquiries need to be made for significant cash withdrawals as per regulation 4AG (1) (c) and do the enquiries need to be supported by receipts? Clients that withdraw cash generally do not keep receipts. Do we need to tell them that as part of the lending application process they will need to keep these receipts?

Where can I find “reasonable costs for a person in the same position as my particular subset of borrower”? The requirement is to adjust initial expenses to this however I use bank record actuals so why be forced to use benchmarks which are an average? The range within that average would be a more useful tool to use. Can a finance company use as a bench mark what their specific clients bank verified budgets demonstrate as being that particular expenses? This would be more accurate. Nobody has ever contacted even one of my clients to ask them about their expenses. I know because I have asked every single one of them.

Where does the assumption to justify benchmarks come from that suggests it is required because borrowers presenting a bank verified budget may already be living in substantial hardship?

4 Advertising

KEY AREAS WE WOULD LIKE YOUR FEEDBACK ON:

- How these regulations could be refined to reflect existing good practice and minimise undue cost for lenders.

No comment other than; TV advertising should prominently include amount borrowed, total payback, interest rate, term, credit fees etc.

5 Variation disclosure

KEY AREAS WE WOULD LIKE YOUR FEEDBACK ON:

- How these regulations could be refined to best inform borrowers about the effect of changes to credit contracts, and minimise undue cost for lenders.

Providing the initial disclosure items again does not give the borrower a view of what the cost of missing a payment or reducing the weekly payment amount is. It is not useful to the borrower.

Does paragraph l.) in Schedule 1 of the CCCFA Act mean that the total interest payable is from the variation date to the maturity date or from loan inception to loan maturity?

I suggest that the regulations produce a model disclosure document for variation disclosure much the same way as previous regulations produced model documents; e.g. the standard post possession notice. Everybody then knew exactly how to comply.

I would suggest that the variation document should detail the effect of the variation viz; the total cost of the variation, the new maturity date, the new payment amount, any missed payments, the additional interest, and fees.

A schedule of payments remaining is useful but does not assist the borrower in grasping the cost of the variation and the physical typed size of the schedule will be out of proportion with the meaningful information. Total payments to go would be more meaningful and concise.

Comparing initial disclosure with the variation could be confusing and unduly distorted if there has already been a variation or if there has been a dishonoured payment.

Occasionally clients ring up on the same day a payment is due requesting to miss a payment that evening usually because of late notice they have received about their wages being delayed or not qualifying for sick pay etc. etc. It is extremely difficult to complete the variation disclosure to the client in that compressed

intraday period. Technically it is still a variation even though they will make a manual payment the next day when their wages arrive. There is no flexibility for lenders in this situation of having to provide disclosure before the variation takes place.

6 Provisions about securitisation and covered bond arrangements

KEY AREAS WE WOULD LIKE YOUR FEEDBACK ON:

- Whether the proposed regulations appropriately prescribe how due diligence duties apply in the context of securitisation and covered bond arrangements.

No comment.

7 Debt collection disclosure

KEY AREAS WE WOULD LIKE YOUR FEEDBACK ON:

- The structure of disclosure of charges, and if this reflects industry practice for how charges are passed on.
- Whether the regulations capture all the information that should be disclosed to debtors (for example, in relation to costs associated with court proceedings).
- Whether all the disclosure requirements are appropriate for credit contracts that are not also consumer credit contracts (for example, disclosure of redress options like MoneyTalks).
- How the disclosure obligations could be refined to better improve transparency or to better enable debtors to seek assistance (where needed).
- If the provision of model disclosure statements would assist in compliance with these regulations and their empowering provision (new section 132A).

Totally support a model disclosure agreement.

8 Other regulations inserted by the Bill

KEY AREAS WE WOULD LIKE YOUR FEEDBACK ON:

- How the drafting of the regulations inserted by the Bill could be refined to be more effective and minimise cost for lenders.

Enable Lenders to be able to make further submissions on the draft regulations once they are written. Include a cross section of Lenders in the drafting process to provide a sense and practicality check.

- Is there another way to describe the *MoneyTalks* service, to better encourage people to seek assistance?

Some borrowers ask that I send them a reminder text so that they do not overlook their weekly payment. This text is 17 words long “please remember to leave enough money in your bank account tonight to allow

for your loan payment”. This text is sent before the payment is due. Would new Regulation 5A (3) as per paragraph 113 on page 29 apply in these circumstances?

Moreover, when a borrower misses a scheduled payment I send a 15 word text “Your loan payment dishonoured. Please no more dishonours. Contact me if there is a problem” and if there is no response to the text I follow this up with a phone call. This really is quite a low level interaction with the borrower. In these circumstances is all the information in paragraph 113 page 29 required in a text, in a phone call or is it just required for a formal reminder letter which would be the next stage if a further consecutive payment was missed?

To comply with paragraph 113 requires 32 words without detailing the physical and postal address of Money Talks; including it requires 48 words. The effect of this is missing the prime message which is only half to one third of the size. It is easy to provide this information in a text. How do you prove you have provided this information in a follow up phone call and do you have to provide it again as well as in the original text?

Is a simple text and a simple phone call about a single missed payment a communication or does it have to be a letter?

Creditors I have talked to including myself are nervous about referring borrowers to budget advice services because a part of that process is trying to apportion blame to the lender and trying to trip the lender up on a responsible lending principles technicality rather than trying to help the borrower moving forward. As a Lender you feel like you are the enemy. If all budget advisors were neutral and didn’t have a distaste towards creditors then this process would work much better for both the borrower and the creditor. When a borrower gets into financial hardship it is in everyone’s interest to work together to help them get back on their feet again.

9 Credit Contracts Legislation Amendment Act Commencement Order 2020

KEY AREAS WE WOULD LIKE YOUR FEEDBACK ON:

- Any errors in the allocation of provisions to dates specified in the commencement order.

No comment.

10 Content of the annual return

KEY AREAS WE WOULD LIKE YOUR FEEDBACK ON:

- Whether this information is already held by lenders, or can be reasonably determined based on information already available to lenders.

Most of this information is not readily accessible by Lenders. Finance Software has reports based on 31 March years so this would be a better year end than a December year end.

The majority of the information requested would have to be manually extracted.

- Whether the statistical information covers key areas of interest for monitoring and enforcement.

Yes, and more it is a very extensive list that would take quite some time to prepare.

- What types of information – listed above – do you believe are the least useful for monitoring purposes?

Paragraphs 131, 136, 140-144, 150

- The proposed reporting periods and timing of returns
- Whether there are types of information – listed above – which would only be usefully provided by some types of lenders.

Paragraphs 151, 152, 153 and 154 do not really have any meaning unless they are directed at high-cost lending.

- Whether assignment of loans would impact on the ability to provide this information.

No comment.

My specific comments for the following paragraphs are:

128 –easily provided and useful

129 –easily provided and useful

130 –easily provided but not useful

131 –easily provided but not useful. Why not unsecured loans?

132 –n/a to me. Useful.

133 –easily provided and useful

134 –not so easy a manual process but useful

135 –easily provided and useful

136 –not so easy a manual process and not useful

137 –n/a to me

138 –n/a to me

139 –n/a to me

140 –n/a to me

141 –n/a to me

142 –n/a to me

143 –n/a to me

144 –n/a to me

145 –not so easy a manual process and not useful

146 –n/a to me

147 –the first bracket is too broad and could be split into lower thresholds. I would suggest \$0 to \$1,000, \$1,001 to \$2,000, \$2,001 to \$5,000, \$5,001 to \$10,000 and \$10,001 to \$30,000

148 –not so easy a manual process and not useful

149 –easily provided and useful

150 –easily provided but not useful

151 –not so easy a manual process but useful. A lot of loans require a monthly payment so they would not be captured by this. I would word this as loans where borrowers default on their first payment.

152 –not so easy a manual process and not useful

153 –easily provided and useful

154 –easily provided and useful

155 –easily provided and useful

156 –easily provided and useful

157 –easily provided and useful

158 –easily provided and useful

159 –easily provided and useful

160 –easily provided and useful

161 –easily provided but not useful

162 –this would be very difficult to provide for a December year end. However it could be easily provided for a March year end because Industry Standard Finance Software has reports based on 31 March year ends. The filing date obviously being moved by 3 months to 31 October.

I do not think the information for paragraphs 140-144 are relevant or useful and I wonder if they are being included to justify eliminating insurance products.

Lenders should be provided with the collated results of the annual returns on a segment by segment basis.