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Submission to MBIE on the Exposure draft of the Credit Contracts and Consumer Finance Amendment Regulations 2020

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5 February 2020

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Introduction

FinCap welcomes the opportunity to comment on the Exposure Draft of the Credit Contracts and Consumer Finance Amendment Regulations 2020 (the draft Regulations). The key message that FinCap would like to convey is in relation to the higher level of prescription that will be imposed on lenders through the proposed requirements around affordability assessments.

FinCap supports the proposed level of prescription and strongly recommends that the prescription apply to all providers of consumer credit, including banks and finance companies as well as high cost lenders. We anticipate that some lenders may express concern that they risk being held to a standard which is unduly onerous or unreasonable.

However, our experience with clients is that consumer debt of all types, when provided irresponsibly, causes significant harm to the health and wellbeing of people, whānau and communities - just like smoking, alcohol and gambling does - and therefore the processes that all lenders must go through, to provide consumer credit, need to be rigorous.

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

Support for the regulations on suitability

We support regulation 4AA which requires the lender to ask the borrower about the amount, purpose and term of the credit, and assess whether the agreement is compatible with these requirements.

Regulation 4AA is important to ensure that the lender has made inquiries to ensure the loan meets the borrower's needs. This is likely to decrease the number of loans made to borrowers that are unsuitable and did not need to be entered into in the first place.

Suitability of loans was identified as an issue during the Australian Royal Commission of Inquiry into Misconduct in the Banking, Superannuation and Financial Services Industry ("the Royal Commission"). The Royal Commission found that one or more of the four largest banks in Australia did not look at the borrower's requirements and objectives. If the borrower was expected to not default, then no further inquiries into the borrower's requirements and objectives were made.[1]

We support regulation 4AB which provides additional requirements for suitability to apply to repayment waivers, extended warranties and relevant insurance contracts. The inclusion of

[1] Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, Interim Report, Vol 1, Commonwealth of Australia 2018 [2.2.1], 23-24.

additional products to consumer loans (like insurances in relation to a car purchase) is common, and often these products are expensive and often do not offer any or only minimal value to the borrower.

Regulation 4AB is important in order that the lender has extra obligations to inquire whether the specific credit the borrower is seeking meets the borrower's needs, and the borrower is more likely to be aware of the consequences of these types of arrangements following additional inquiries.

We support the regulations on suitability clarifying the position of s 9C(3)(a) of the CCCFA, which requires the lender to "make reasonable inquiries, before entering into the agreement, so as to be satisfied that it is likely that [the loan] will meet the borrower's requirements and objectives; and the borrower will make the payments under the agreement without suffering substantial hardship".

We would suggest as an addition to the draft Regulations that the Regulations state that the lender must be satisfied on reasonable grounds, based on the information collected, that the credit or finance to be provided under the agreement - or the waiver, warranty or insurance, as appropriate - will meet the borrower's requirements and objectives. This reflects the language of s 9C(3)(a). It is also consistent with draft reg 4AE(b) (which states that the lender must be satisfied on reasonable grounds that it is not likely that the borrower will suffer substantial hardship, because there is a reasonable surplus, etc). This would also help clarify the meaning of s 9C(3)(a) which is worded in a way that is potentially open to different interpretations by lenders.[2]

Credit card debt is a major issue often seen by financial capability and budgeting services in their dealings with clients. It is essential that the requirements around assessing suitability are made more prescriptive to assist in the minimising of irresponsible credit card lending.

Affordability: Assessment that a borrower is likely to repay without substantial hardship

Support for the regulations on affordability

In our original submission to the MBIE Discussion Paper in June 2018 and in our submission on the Credit Contracts Legislation Amendment Bill (CCLAB), we strongly encouraged that the law include clearly defined requirements for affordability assessments (see page 11 of the FinCap submission). We are pleased to see that this has been included in the Credit Contracts and Consumer Finance Amendment Regulations 2020.

[2] For example, the ANZ Bank in its submission to the 2019 Reforms sought recognition that a lender presently has, and should continue to be allowed, the flexibility to lend even if the lending is unaffordable. The submission stated that: "The Act is silent on what happens if a creditor identifies that lending is likely to be unaffordable or unsuitable. Unlike Australia, the Act does not expressly restrict lending in those circumstances."

We support regulation 4AE. Regulation 4AE requires the lender to determine that the borrower will have a reasonable surplus after their likely expenses have been subtracted from their likely income, or - in the alternative - the lender must be satisfied that the borrower is unlikely to suffer hardship because of other sources of money that allows them to make repayments and meet their other expenses, or the lender is satisfied that exceptional circumstances allow the borrower to use another source of money to make repayments

Requiring a reasonable surplus is important in order to prevent borrowers from falling into hardship because it allows for unexpected expenses and savings, after making repayments on the loan and the borrower's usual expenses. These regulations support the understanding that lenders have a greater obligation than merely to make reasonable inquiries; indeed, their inquiries must lead the lender to be satisfied that the borrower will not suffer hardship as a result of making loan repayments, or - in other words - the lenders must come to a conclusion, after inquiring about the borrowers' circumstances, as to whether the loan is affordable for the borrower. Having a reasonable surplus prevents people getting into debt spirals and helps borrowers get out of a cycle of borrowing.

Lenders should specifically be required to assess if the loan is affordable over the life of the loan. For example, the lender should ask about the borrower's contingency plan if a life event changes their income or circumstances. The length of the loan needs to be considered in inquiring about affordability.

It is imperative that prescription around affordability assessments should apply to all consumer credit contracts, not just high-cost loans. We acknowledge that there is significant evidence of irresponsible lending in the high-cost lending market. But there is also significant evidence of irresponsible lending in the consumer lending market below the threshold for high cost loans. We elaborate on this statement later in this submission.

The most important protection for borrowers in the market below high cost is a good affordability assessment. Because of the amounts borrowed in medium and long-term are larger than short-term high-cost loans it is even more crucial that lending is responsible. We are concerned that if lenders such as banks and finance companies are allowed an exemption from the prescription contained in these regulations, that that will give them leeway to engage in irresponsible lending practices.

We have a particular concern that banks and other lenders may be relying on benchmarks instead of obtaining information from the borrower about expenses or instead of engaging in verification of information obtained. We note that the Bank Culture and Conduct Review stated that:[3]

> *"There was also evidence that banks are relying on benchmarks when assessing customers' expenditures: "Some banks in our review indicated that their credit assessments incorporate whichever is higher of estimated customer expenses or a minimum expenditure benchmark. However, we did not get a good sense of how many loans are approved using these minimum expenditure benchmarks, and how realistic these minimum benchmarks are."*

We note that the Responsible Lending Code currently seems to allow the use of benchmarks in this way (at [5.11]). The Royal Commission expressed concern with the use of benchmarks when used as

[3] Financial Markets Authority/Reserve Bank of New Zealand, *Bank Conduct and Culture – Findings from an FMA and RBNZ review of conduct and culture in New Zealand retail banks,* November 2018, at 14.

a substitute for obtaining information about the borrower or when used for verification purposes, mainly because the benchmark commonly used in Australia only allows for minimal levels of expenditure. Benchmarks do not allow lenders to gauge affordability of the loan as benchmarks are very likely to be conservative estimates of weekly expenses for various types of families. This is shown by the finding of the Royal Commission that 3 out of 4 Australian households spend more on discretionary basics than the Household Expenditure Measure benchmark (HEM).[4]

We would be very concerned if banks or any lenders were exempted from having to comply with the proposed prescription around affordability assessments if that meant they could then use benchmarks in this way.

We support regulation 4AF, 4AG, 4AH as the process to obtain and verify information for an affordability assessment. The process used aligns with the way that a Financial Mentor would assess a person's budget. Often during this process Financial Mentors identify loans made that, based on the borrower's income and expenses, were unaffordable when the loan was made. We believe that the regulations outline a good process that will ensure that responsible lending obligations are met.

We support regulation 4AF. This is a crucial step in determining the affordability of a loan. Requiring evidence to show a borrower's income means the lender can verify how much income a borrower receives and assists with determining whether the borrower can afford loan repayments. We suggested in our submission to the Credit Contracts Legislation Amendment Bill that the borrower's future income should be analysed by the lender to determine whether a loan is affordable. It is pleasing to see that this has been included in the draft Regulations by requiring the lender to "have regard to the borrower's statement of their current income (regulation 4AF(1)(a)), supported by reliable documentary evidence (regulation 4AF(1)(b)), and any information provided by the borrower about likely changes to income (regulation 4AF(1)(c))".

We support regulation 4AG. In regulation 4AG, lenders must undertake an initial estimate of a borrower's likely relevant expenses by obtaining from borrowers a categorised statement of their relevant post-contract expenses (reg 4AG(1)(a)) including fixed financial commitments, living expenses, and regular or frequently recurring discretionary expenses. A comprehensive budget worksheet enables the credit officer to ensure that expense estimates are appropriately realistic and will be helpful to use in complying with the flexible requirement to compare expenses. These must be included in any affordability assessment. We endorse this approach because considering income and expenses over the life of the loan is essential in determining whether the loan is affordable.

We support the regulation 4AH that says lenders must estimate a borrower's likely relevant expenses and adjust the initial estimate of the borrower's likely living expenses, by reference to reasonable costs for a person in the same position as the borrower for comparable expenses. This requires the lender to check the initial estimate of living expenses and discretionary expenses. We support this regulation because the lender is obliged to compare expenses and check that they are realistic.

We also support the regulation requiring that expenses that cannot be easily compared must still be sense-checked to ensure that they are reasonable and realistic. In the final estimate of likely expenses under reg 4AH subclause (1)(a), the age of dependents is relevant to determine expenses.

[4] Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, Interim Report, Vol 1, Commonwealth of Australia 2018, at [2.2.3], 27-28.

It is important that this step is seen as different to using benchmarks to determine income or expenses or as a substitute for verification.

We support the new regulation 4AI. We submitted on this in our response to the MBIE June 2018 Discussion Paper, stating that if a borrower already has a high-cost loan or other finance company debt they should not be given another loan until the first has been paid off. This was extended in our submission on the Credit Contracts Legislation Amendment Bill, by suggesting a rebuttable presumption that a high cost loan is unaffordable if the borrower is in default under another high-cost loan or has held two or more other high-cost loans in the past 90 days.

This suggestion is similar to the proposed presumption in the draft Regulations that a high-cost loan is unaffordable where the applicant has been in default under one or more loans (not just high-cost loans) in the preceding 90 days and this default has not been corrected in reg 4AI. We support the extension of our proposal to include default under any type of consumer credit contract.

We acknowledge that there are issues around how the lender will obtain this information. If the lender has followed the processes required by regs 4AF and 4AG correctly there is a reasonably good chance that any default will become apparent. This presents another reason why there should be no exemptions for particular types of lenders – if the exemption allows flexibility, that increases the chances of not picking up on loans in default.

Importance of regulations on affordability

The level of hardship revealed across all lending tiers and all incomes suggests that existing good practice is limited. Lenders of all types of consumer credit were given the opportunity to self-regulate under the 2015 CCCFA amendments that introduced the Responsible Lending Principles and the Responsible Lending Code. The deepening debt crisis seen by Financial Mentors shows that affordability assessments are not being done adequately, precipitating the need for more prescriptive requirements for lenders across all lending tiers, not just high-cost loans.

The costs to lenders of complying with these proposed regulations is outweighed by the financial, economic and health benefits to borrowers, their families and communities.

On the issue of guarantors, the same level of prescription should apply when assessing affordability. This is because guarantors are often in as precarious financial situations as the borrower themselves. Lenders needs to be assured that guarantors have the financial capacity to meet the guarantee obligations.

Example on why more prescriptive rules on affordability are required

Bank loan example:

> *"In 2012 my husband told the bank that he wanted money to help bring my sister over from Kenya. He was told to get a letter from my sister. My sister sent the letter with a quote for travel costs of just over $1900. He had other financial debts from a car company and a credit card*

and overdraft facility with the Bank even though he was studying full time with only small irregular income.

We didn't have a joint account. They told him he didn't qualify for the money on his own so asked him to bring in his wife as she was earning.

He took my payslips without me knowing and told the bank we were in agreement. The Bank went ahead and approved the loan based on my income and they advised they had opened a joint account (without us asking for it) to deposit the repayments into to pay the loan. After this was arranged the bank asked for me to go in.

I went into the bank and he assured me he was going to earn extra money to help pay it back. An amount of $17,000 was approved to help my sister and at the same time they consolidated his car loan and his credit card and his overdraft and a small loan of mine with a balance of $2000 making the total joint loan $33,500! No evidence was taken for the rest of the money allocated for my Sister apart from the $2000 travel costs. The bank approved the loan knowing that we had five children, they did not do a budget, ask about expenses or ask me any questions. It was settled and approved on the basis of my income by the time I went into the bank personally.

My sister came out to NZ and she opened a bank account with the bank. A month later tragic personal circumstances unfolded and I found I was servicing the large loan of no material benefit to me, by myself. I reported the incidence to the police. For me it ruined my life and the life of my children, I suffered mental illness, I broke down and had a period of time where I was unable to work.

By 2015 the loan fell into arrears. In Jan 2016 the bank restructured the loan with a new balance of $22,078.80 while I was a beneficiary and set the repayments at a ridiculous $400 per fortnight. They never asked for details, they just made assumptions. After struggling to make repayments I told the bank that this wasn't my debt and I wasn't going to pay any more and they would have to contact the other person on the loan. He made repayments for some time during 2017 and when they couldn't raise him began to harass me again.

In Oct 17 the bank forwarded the loan to EC credit control due to missed payments, the balance now $13,000. With another $3,152 added by EC Credit control. My budget adviser made an arrangement with EC Credit Control to pay $20 per week but the bank, even though they passed the debt onto a third party, is still harassing me."

Finance company loan example 1

“Someone in receipt of benefit was given a loan through a finance company for $2,500, with a loan processing fee of $320. This loan was settled and refinanced three months later with an infamously named ‘top-up’ loan of $500. A settlement fee of $75 was charged as well as a new loan processing fee of $170. Three months after that another ‘top-up’ of $300 was approved causing another $75 settlement fee and a loan processing fee of $110. Three months later another ‘top-up’ of $600 was approved with a loan processing fee of $125. This generated charges not including interest totalling $630 for $1400, not taking into account the account maintenance fee and interest being charged at 35.5%!

When the finance company was questioned by the Financial Mentor about what amounts to a gouging practice, the company replied by email “The credit fees and interest rates have been charged and fully disclosed as per the current cost of borrowings at the time of execution of each loan. Our Credit fees are calculated in accordance with the Commerce Commission’s Credit Fee guidelines and reviewed regularly to ensure continued compliance. In regard to (this persons) lending requests, we are a responsible lender and do a full application and assessment on every request at that time and the appropriate decision given. (The person) has been a customer of ours for many years and we will continue to lend to (the person) should requests be made for finance at any time.”

Finance company loan example 2

“A person was supporting a family of six on a salary of $1,400 per week and paying over $500 in private rent. He approached a new peer to peer online lender for an extra $1,800 on top of an existing loan from them to supplement the shortfall from car insurance to purchase a car after an accident. He was approved $9,000 after online lender made assumptions without checking with borrower, bringing the total of debt to $15,000. The total on the person’s debt schedule was $63,000 and included two bank credit cards, a bank overdraft, three store cards, two finance company loans and school fees debt. After persistent investigation by the Financial Mentor that lead to laying a complaint with the disputes resolution scheme the person was contacted by the Operations Manager of the company asking them if they would like their loan to go away! The loan of $15000 was written off with a polite request to the person to withdraw their complaint from the dispute resolution process as it had been resolved internally!”

High-cost loan example

“A beneficiary asked for $300 from [lender] over the counter. A $1,000 personal loan was approved. She borrowed $400 again a month later

without making any payments on the first loan - interest rate on both loans 485% p.a. During the verbal affordability check, $50 was accepted for food costs when a family tax credit weekly payment of $283 was included income, indicating there were at least four children in the family. When the Financial Mentor challenged their affordability assessment the lender's manager asked what outcome was wanted. A write-off of both loans was raised as the best outcome for the beneficiary. The write-off was actioned that day. The family debt schedule showed the two high interest loans, two debt collection demands, a Work and Income debt and advances plus overdue utilities - a total of $20,000."

Improvements to the regulations on affordability

An issue that we think has not been covered by the draft Regulations and is essential to assessing affordability is that certain types of payments to borrowers should be excluded from income and therefore not be included in the affordability assessment. These streams of payment include board payments received, Family Tax Credits, Child Support and Disability Allowances, all of which are not treated as income by the IRD. This proposal is to ensure that lenders are not assessing loans as being affordable by requiring the borrower to make repayments using the money they receive from these sources. The money that is granted under these payments and benefits is for a specific purpose, not for a lender to take advantage of by taking these benefits in loan repayments. This can be achieved by defining what is "income" for the purposes of affordability assessments.

Another issue not covered by the draft Regulations is that direct debit authorities should be prohibited in relation to loans to beneficiaries. At present, many lenders require a direct debit to be set up by the borrower (in other words, an instruction to the bank to pay the lender at regular intervals). The use of direct debit payment authorities in the case of borrowers who are beneficiaries should be prohibited. These borrowers have very little income to cover daily expenses and the lenders use their powerful bargaining position to insist on taking repayments out of the bank account as soon as the benefit is paid in. When direct debits fail there are also additional charges. While banks have reduced their charges when direct debit's fail, there are still significant charges from finance companies, causing more hardship for the borrower.

Advertising

Support for the regulations on advertising

We support new regulations 4AK, 4AL, 4AM and 4AN. We support that the advertising standards introduced by the draft Regulations apply to all consumer credit contracts, as poor advertising practices is not an issue merely confined to high-cost loans.

In our submission to the MBIE Discussion Paper in June 2018, we suggested that there should be more prescriptive rules around advertising, for example by including the total amount the borrower may end up repaying (see page 14 of that submission). We elaborated on suggestions for these rules

in our submission on the Credit Contracts Legislation Amendment Bill, which includes requiring all high-cost lenders to state the annual rate of interest for the loan (see page 48 of that submission). These requirements include requiring any advertisement that is distributed to the public or a section of the public referring to an interest rate or interest charge to state the total amount of payments (if ascertainable) or the annual interest rate in reg 4AK, providing information about the annual interest rates of the class of credit contracts covered by the advertisement, as well as any mandatory credit fees in reg 4AL and disclosing any mandatory fees if an advertisement states there is no interest under reg 4AM (see pages 22 and 23 of that submission).

However, we note that the draft Regulations do not mention requirements for high-cost lenders to advertise their daily interest rate. This is important because the interest rate cap of 0.8% applies to high-cost loans on a daily basis. A requirement for high-cost lenders to advertise their daily interest rate in addition to the annual interest rate is important to allow the potential borrower to make a fair comparison between loans and allow the Commerce Commission, Financial Mentors and consumers to easily determine whether or not a high-cost loan is within the cap.

We support prohibiting the practice of advertising the phrase "15-minute approval" because, as stated in the draft Regulations, this implies that the lender will not inquire fully into the borrowers' circumstances, and assessments undertaken in such a short period will not be compliant with the lender responsibilities and the Regulations. However, we have concerns, that approval times above 15 minutes may be still be too short (such as 30 minutes) to do an adequate suitability and affordability assessment.

Example of poor advertising in a newspaper

Improvements to the regulations on advertising

A substantial weakness of the draft Regulations is that they do not propose any changes requiring lenders to consistently present their information to allow borrowers to make effective comparisons between different lenders and different products. An example is that data about fees and charges is often very hard to locate. We ask that the Regulations impose a requirement that all creditors present information to potential borrowers in a standard format. This format could be approved by the Commerce Commission. Any such provisions in the Regulations should make express provision for minimum font size and line spacing to deal with the occasional practice of some lenders (particularly mobile traders) of using so-called "mouse-print" with tiny fonts and compacted lines of print.

A further matter that should be addressed in the draft Regulations is the use of interest calculators. Many, but not all, lender websites provide interest calculators so that a would-be borrower can establish the total obligations they are entering into. This is undoubtedly a very useful and user-friendly way of providing the information. All lenders of consumer credit advertising their products electronically (e.g. on the Internet, by social media etc) should be required to provide an interest rate calculator in a stipulated format. That stipulated format should also include provision for automatic display of the fees and charges associated with the loan and their effect on the total indebtedness that will accrue.

Support for the regulations on variation disclosure

We support regulation 4F that information as part of the initial disclosure must be re-disclosed if it changes as a result of the agreed change. We also support that re-disclosure of the rate of charge for high-cost consumer credit contracts, if this changes as a result of an agreed change, must be made to the borrower, as well as the guarantor.

Support for the regulations on debt collection disclosure

We support the requirements around debt collection disclosure in the draft Regulations because this will allow borrowers to understand the debt owed and its composition. We support the requirement for lenders to disclose (1) the total amount of debt to be collected; (2) how the debt is comprised, including the unpaid loan balance prior to any debt collection fees being added; and (3) any debt collection fees subsequently added. This is a clear description of what lenders are required to disclose and assist the borrower to understand the debt owed. With this information debtors will be more easily able to identify unreasonable fees and are more likely to access options for support and advocacy such as Financial Mentoring.

Often when people are presented with a debt from a debt collection agency it is difficult for them to determine how much of the debt was the principal, interest and fees or debt collection charges. When people receive notices from debt collectors they are often under considerable stress, and trying to find out this information causes more stress and anxiety. Therefore, this information must be set out in the disclosure given at the beginning of the debt collection process.

Example on why more prescriptive rules on debt collection disclosure are required

> *"A bank lent $20,000 unsecured to a 19 year old client. When the advocate heard how the lending came about it didn't sound quite right, so she contacted the bank asking for the associated paperwork. They replied saying that the debt was in the process of*

being passed to a debt collector for collection and subsequently was off their books, also, I needed to contact the debt collector to arrange repayment. The implication was that they didn't need to supply me with any of the paperwork because the file had been closed. The debt collector then confirmed that they hadn't bought the debt, but were just collecting it on behalf of the bank, I went back to the bank which finally provided me with the credit contract & account statement as required (but no affordability assessment info)."

Definition of "debt collector"

The Regulations should include a definition declaring debt collectors that act as agents of the creditors to themselves be "creditors under a consumer credit contract". Debt collectors who are assigned debt are already subject to the CCCFA because they are included in the definition of "creditor" in s 5 of the CCCFA. If all debt collectors including those who act as agents of the lender are subject to the CCCFA, the lender responsibility principles would apply to all debt collectors requiring them to treat borrowers reasonably and in an ethical manner. This also has the effect of debt collectors being able to only charge "reasonable fees" and also being subject to the interest rate cap. All debt collectors would also be required to be a member of a dispute resolution scheme.

Improvements to the regulations on debt collection practice

A regulation that was suggested in our submission on the Credit Contracts Legislation Amendment Bill is requiring disclosure by letter or email of the debtor's rights and obligations at the start of the debt collection process (in addition to fees and charges to be imposed by the debt collector). Further, the disclosure document should be limited to one page and only include key information to make the notice easy for the borrower to understand.

The draft Regulations do not include any rules around how often a debt collector can contact a debtor. It is not uncommon for a debt collector to harass the debtor (sometimes until the debtor applies for bankruptcy) by calling many times per day, sometimes using automated dialler technology (robocalls). In one case that we know of, a debtor received 33 calls in one day. Evening visits are also sometimes made (between 6pm and 10pm). Contact is generally by cell phone or landline, email and in person. However, social media, work phone and other forms of contact are also used. When debt collectors talk to a debtor's family or workplace, they are breaching the debtor's privacy and causing further stress to the debtor. The nature and frequency of the contact made with the borrower can be a source of great stress for debtors. Therefore, the frequently and types of permitted communication between debt collectors and debtors (with the aim of reducing harassment) should be a matter covered in the Regulations.

Example on why more prescriptive rules on debt collection practice are required

"We have recently had a case in point, where a client had already told the trading company that she could not afford the agreed repayments and was going to be seeing a Financial Mentor. The Financial Mentor also contacted the company and asked them for a

week to come back with a proposal. They agreed, but a debt collector from the company still turned up at the client's home after 7pm, unannounced, and harassed the client, refusing to leave until she had signed an agreement to pay (more than she could afford). The Financial Mentor phoned the company the next day to cancel this agreement and get some clarification and was stonewalled. The person she spoke to didn't know which Financial Services Disputes Organisation they were registered with (actually didn't know what the Financial Mentor was talking about), and finally suggested that the Financial Mentor was at fault and their collectors would never act in that way."

Other regulations inserted by the Bill

New requirement to provide contact details for *MoneyTalks* in payment reminders and the new requirement to provide information about dispute resolution schemes and financial mentor services

We support the intention behind the new regulations 5A(2), 5A(3) and 5A(4) including the requirement to provide contact details for MoneyTalks in payment reminders and the requirement to provide information about dispute resolution schemes and financial mentor services.

These new regulations are in line with our submissions to the MBIE Discussion Paper in June 2018 and the CCLAB. We submitted that all lenders should be required to advertise MoneyTalks to encourage borrowers to discuss their money issues with qualified Financial Mentors. The contact details should be prominently positioned on websites and all electronic and other correspondence and profiled in public-facing offices.

Additionally, we submitted in our submission on the CCLAB (at page 71) that an obligation should be placed on high-cost lenders to cooperate with Financial Mentors and budgeting services in defined ways. This could be in the form of a positive duty on lenders to negotiate with borrowers' advocates and interact with advocates in good faith and being proactive about referrals to a national helpline for financial hardship and debt, such as MoneyTalks, when borrowers are in default on loans, and potential borrowers are refused loans.

However, the wording of the regulations in 5A(7) is too specific given that MoneyTalks is currently a pilot service. The Ministry may not continue with the name MoneyTalks and it is not trademarked. Over time, as new digital innovations come on-line, it may be that there are other services that can direct people to Financial Mentoring services in the local community. To update the regulations when this occurs would be time-consuming and process-heavy.

We suggest that the references to MoneyTalks are deleted but that the references to Financial Mentors remain. We believe that the intention of Parliament when writing this regulation was to direct people to support from Financial Mentors. The high-quality submissions made by Financial

Mentors across New Zealand illustrated the benefits that people in debt receive from working with Financial Mentors. Financial Mentoring services are a more specific service than the broader "Building Financial Capability" services funded by the Ministry of Social Development. Financial Mentors are the people in the "Building Financial Capability" system trained to deal with hardship arising from credit issues. They can, if appropriate refer onto other parts of the financial capability sector.

FinCap agrees with the Ministry of Social Development's view that *MoneyTalks*, and the requirement for the phone number and web address to be given as well, should be specifically included in the Responsible Lending Code (the Code). We agree that that would be the best way to ensure the sector uses a service that fits the intent of the regulations, and recipients of the information (borrowers) have an actual place to go without them needing to find-out what are, and where are, Financial Mentoring services that will suit their circumstances. As referred to above, as the entry point into receiving services changes, we can amend the Code with relative ease compared to regulations.

In addition, we also consider that the Code should be more directive and state the specific wording that should be used when giving the MoneyTalks information to borrowers. There is an opportunity here to have "marketing type material" as part of the information to relay the benefits of the service (for example share a real story about the way financial mentoring assisted in a recovery from financial hardship).

FinCap would welcome the opportunity to work with you to develop the contents for the Code in this respect.

Formulae in relation to the rate cap

The formula used seems to be the same as that provided in the targeted consultation paper (27 September), but the result of the example they provide is different.

The difference appears to be in the denominator ($9,271.19 versus $9,131.19). We are wondering why it is different and are unsure if it addresses the issue we raised with MBIE i.e. using repayments to first pay interest and then deduct the balance off the principal gives the same answer as compounded interest (but technically without the compounding).

It may be in the definition/interpretation of U_t in the formula – "U_t is the unpaid daily balance on that day excluding the amount of the costs of borrowing within the meaning of section 45A of the Act that have accrued under the contract".

If would be good if we could get a detailed example from MBIE to work out what has impacted on the result and if this addresses effectively the problem we highlighted.

Credit Contracts Legislation Amendment Act Commencement Order 2020

We are satisfied with the dates the main provisions of the Bill will come into force.

Contents of the annual return

We support the requirement for lenders to report statistical information to the Commerce Commission on a yearly basis. (We submitted on this issue on page 74 of our submission on Credit Contracts Legislation Amendment Bill).

We believe that the Commerce Commission should make this information publicly available, even if it is in an aggregate form so that researchers, advocates and media understand how the consumer credit sector is operating in New Zealand.

We attach a table to illustrate which types of information we believe are the most helpful (categorised as 1st, 2nd or 3rd priority) to collect in the annual return, with comments as to why we think they are helpful.

Type of information collected	**Priority (1st, 2nd, 3rd)**	
INFORMATION ABOUT THE LOAN BOOK		
128. Total dollar amount of consumer credit provided.	First	
129. Total dollar amount of consumer credit outstanding as at the end of the period.	First	
130. Proportion of revenue coming from interest, fees, default interest and default fees.	First	
131. The number of consumer credit contracts entered into for which a security interest is or may be taken under the contract.	Third	
132. The number of high-cost consumer credit contracts and related consumer credit contracts entered into.	First	
133. The number of consumer credit contracts provided at an annual interest rate of: a. 10% or less b. 11% to 25% c. 25% to 29% d. 30% to 40% e. 41% to 50% 33 f. 51% or greater.	First	
134. For each of the categories listed above, the number of consumer credit contracts where the terms of the loan were extended or the loan was rolled over or refinanced.	First	

135. Information about interest rates and fees as required to be disclosed under the Credit Contracts and Consumer Finance Regulations 2004, sections 4B to 4D and if interest rates and fees have changed during the reporting period, details about changes.	Second	Balanced with difficulty of collecting this information and usefulness of this information, this information may not be first priority.
136. The average term of a loan.	First	Very important because high-cost loans are supposed to be short term, would be useful to know if the majority of loans are actually short term. (including separate information about the average term for those that have been refinanced, rolled-over, or extended)
INFORMATION TO BE PROVIDED ABOUT HIGH-COST LENDING		
137. The number of consumer credit contracts provided, with data both as an average (mean) across all consumer credit contracts, and as averages (means) for all consumer credit contracts in each of the following categories: a. 0.0 – 0.29 per cent rate of charge per day b. 0.3 – 0.49 per cent rate of charge per day c. 0.5 – 0.8 per cent rate of charge per day.	First	
138. The number of consumer credit contracts and related consumer credit contracts where total payments made reached 90 per cent or more of the first advance.	First	
139. A breakdown of the stated purpose for which a borrower requested a consumer credit contract (broken down by the lender's internal categories).	Second	
INFORMATION TO BE PROVIDED IN RELATION TO CAR FINANCE		
140. The number of loans which included insurance (including repayment waiver products), broken down by the type of insurance provided.	First	Must include information on the average cost for each type of insurance, and the number that opted to pay outside of finance (re: draft regulation 4AA(2)(f)
141. The number of loans with insurance where a claim was lodged.	Third	
142. The number of loans with a repayment waiver where a claim was lodged.	Third	
143. The number of loans with insurance where a claim was approved and paid out.	Third	
144. The number of loans with a repayment waiver where a claim was approved and paid out.	Third	

INFORMATION ABOUT LOANS		
145. The number of unique borrowers (i.e where each borrower is only counted once regardless of how many times they borrowed).	Second	
146. The number of unique borrowers for high-cost consumer credit contracts.	First	
147. The information at paragraphs 148, 149 and 150 should be provided as a total across all consumer credit provided and as totals for all consumer credit provided in each of the following brackets of total income before tax and any other compulsory deductions (i.e including all sources of income), in New Zealand dollars a. $0–$30,000 b. $30,001–$50,000 c. $50,001–$70,000 d. $70,001–$100,000 e. $100,001–$120,000 f. $120,001–$150,000 g. >$150,000.	First	
148. The number of consumer credit contracts entered into, broken down into the number that were new customers and the number that were returning customers.	First	
149. The number of applications for consumer credit that were declined, broken down into the number that were new customers and the number that were returning customers.	First	
150. The number of applications for consumer credit that were withdrawn.	Third	
151. The number of loans which were defaulted on or fell into arrears within one month of taking out the loan.	First	
152. The number of loans which were repaid in full by taking out a new loan with the creditor.	First	
153. The number of loans which included an assignment of wages.	First	
154. The number of loans with attachment orders, as a result of default.	First	
155. The number of consumer credit contracts for which debt collection action was undertaken (for example, by being transferred to an internal debt collection team, by contracting a debt collector to collect the debt, or by on-selling the debt to a debt collector).	First	

156. The number of hardship applications received in the period.	First	
157. The number of hardship applications approved in the period.	First	
158. Number of loans for which there was a guarantor.	Second	
159. Number of loans where the guarantor was asked to repay the debt.	Second	
INFORMATION ABOUT COMPLAINTS		
160. The number of complaints made to the creditor in the period.	First	
161. The number of complaints that were resolved internally in the period.	First	