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13 January 2021

Submitted via email: [consumer@mbie.govt.nz](mailto:consumer@mbie.govt.nz)

Competition and Consumer Policy Team  
Building, Resources and Markets  
Ministry of Business, Innovation and Employment  
Wellington

Dear Competition and Consumer Policy Team

**RE: Updated draft Responsible Lending Code 2020**

FinCap welcomes the opportunity to comment on the Updated draft Responsible Lending Code 2020 (the revised code). Financial Mentors across Aotearoa New Zealand regularly see the harm caused by irresponsible lending of unaffordable loans or lenders not offering appropriate and realistic assistance where borrowers have difficulty making repayments. The people working with Financial Mentors can end up unable to access the essentials because of the consequences of these practices. FinCap thanks the Consumer and Consumer Policy Team for their extensive work preparing this revised code and for including us on the Code Advisory Group that was formed to provide advice on the drafting of this code. We generally support the bulk of the content that has resulted and strongly support the Government's decision to stick to the October implementation timeframe.

However, in a wider context we are conscious some forms of lending may not be covered by this code when consistency in protections is essential to fair outcomes for all borrowers who may struggle to repay. We encourage the Ministry of Business, Innovation and Employment (MBIE) and the Government to identify and ensure all lending is covered that can or is causing harm for borrowers including the 'Buy Now Pay Later' lending that Financial Mentors have mentioned is more regularly causing issues for the people they work with. Telecommunications companies also selling contracts that include the provision of mobile phones that are for significant sums over a long repayment period may also be 'slipping through the cracks' of appropriate and consistent regulated consumer protections.

We are also concerned lenders and other businesses are not appropriately identifying and ensuring they are not enabling economic abuse. There are opportunities throughout the code to flag potential action from lenders that could be reducing harm from this type of family violence.

We also discuss a number of aspects of the drafting that may be adjusted to improve the practical implementation of the relevant regulations or that we strongly support in the submission below.

**About FinCap**

**FinCap** (the National Building Financial Capability Charitable Trust) is a registered charity and the umbrella organisation supporting the work of Aotearoa New Zealand's 200 local free financial capability and budgeting agencies, which annually support more than 70,000 people in financial hardship. Our input to that involves training Financial Mentors, hosting and analysing data from client



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interaction, supporting networking, and communicating and advocating around issues affecting those agencies.

## Comments on the revised code drafting

### Chapter 1 Introduction

Financial Mentors have commented that staff across many businesses do not receive training sufficient to clearly focus on avoiding actions that would cause harm to people at risk of or experiencing financial hardship. Life can get messy and financial issues increasingly complicated, and Financial Mentors will often unpack this to understand what is causing a person financial hardship. In undertaking this action Financial Mentors will realise a lender having taken the same action earlier could have avoided hardship arising. In a paragraph at the end of the 'Different products and circumstances section on page six in the revised code there is an explanation of how to interpret what is 'reasonable' when this is discussed in the revised code. This helpfully does not give a clear definition of what is reasonable in all circumstances as doing so would ignore the many unique experiences potential borrowers will have across a range of products.

However, to encourage conduct in line with the lender responsibility principles this paragraph could offer further explanation instructing lenders to consider a borrower's perspective across varying circumstances. For example, drafting could be added along the lines of: 'where a statement about reasonable actions could be interpreted in different ways it should be read from the perspective of a borrower who has experienced hardship due to decisions made by a lender.' Many people in lenders staff may have competing priorities, such as sales targets that impact their judgement either in individual decisions about whether lending is responsible or in setting up automated systems. The above drafting would be helpful guidance to refocus lenders on avoiding actions that are likely to lead to harm for borrowers where circumstances or scenarios are complex or obscure.

### Chapter 2 Obligations that apply before and throughout the agreement

Chapter 7 of the revised code retains some drafting around limited actions lenders should take when a borrower is likely being coerced into borrowing for another person's benefit. More could be added to the code to encourage lenders to avoid the harm that can arise from economic abuse that includes people being at risk from borrowing. A report by Good Shepherd in 2018 flagged that economic abuse should be considered in policy and regulation relating to credit law.<sup>1</sup> This report adopts the UN Women definition of economic abuse which is "causing or attempting to cause an individual to become financially dependent on another person, by obstructing their access to or control over resources and/or independent economic activity."<sup>2</sup>

The section of this chapter in the revised code on contacting borrowers or guarantors addresses an intervention point where businesses could identify economic abuse and associated family violence and take actions that avoid enabling perpetrators. MBIE should consider work done overseas like the

<sup>1</sup> Milne, S. Maury, S. Gulliver, P. & Eccleton, N. (2018) *Economic Abuse in New Zealand: Towards an understanding and response*. Published by Good Shepherd Australia New Zealand.

<sup>2</sup> Ibid, p.i



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Australian Bankers' Association Industry Guideline: Financial abuse and family and domestic violence policies<sup>3</sup> or resources developed by the Economic Abuse Reference Group<sup>4</sup> and then flag relevant actions lenders should take to mitigate harm in Aotearoa here and throughout the code.

The drafting in clause 2.9 of the revised code around contact timeframes includes the qualifier 'where possible.' Harm can be caused by contacting borrowers experiencing hardship at inappropriate times and this contact outside appropriate times can be considered harassment in some circumstances. Substantial hardship can arise where the harassment from one lender means repayment of that debt is prioritised above other essential needs. The drafting should be expanded to include an expectation that lenders should have evidence of why someone was contacted outside of reasonable hours as this should both discourage unnecessary inappropriate contact or be considered where a dispute arises.

We strongly support the section on *Working with borrower representatives* including its specific mention of Financial Mentors in this chapter of the revised code. Financial Mentors are experts in working with people and whānau to avoid hardship or find pathways out of hardship. Lenders should be encouraged to work in good faith with expert Financial Mentors to a sustainable way forward where financial issues arise. Such actions will bring benefits to both borrowers and lenders where ongoing difficulty with repayment is resolved.

### Chapter 3 Advertising

In the preamble of this chapter within the revised code, the third point under advertising minimum standards is '*if a lender advertises no interest credit contracts, the advertisement must include any mandatory credit fees.*' This protection will help avoid people being misled by lenders who operate under the CCCFA. FinCap is concerned that 'Buy Now Pay Later' lenders will not be held to this same standard and these lenders could cause significant harm. MBIE should recommend the Government take action to ensure all lending that could cause significant hardship is covered by this code and the relevant act and regulations if it does not have the scope to make this the case already.

The drafting of 3.1.a. in the revised code includes the consideration of the intended audience by the lender when advertising. MBIE should consider whether lender actions to better achieve the lender responsibility principles could be encouraged by expanding commentary around intended audiences for advertising lending. From October, lenders in Australia will be required to design financial products that are likely to be consistent with the needs for a cohort of potential borrowers and then take reasonable steps to see that those products reach that cohort as well as monitor consumer outcomes and review the products if need be.<sup>5</sup> Expanding this section could encourage consumer centric processes by lenders along these lines that can increase the likelihood of appropriate outcomes for borrowers.

<sup>3</sup>See: [https://www.ausbanking.org.au/wp-content/uploads/2019/05/ABA\\_Industry\\_Guideline\\_-\\_Financial\\_Abuse\\_and\\_Family\\_and\\_Domestic\\_Violence-Nov-2016.pdf](https://www.ausbanking.org.au/wp-content/uploads/2019/05/ABA_Industry_Guideline_-_Financial_Abuse_and_Family_and_Domestic_Violence-Nov-2016.pdf)

<sup>4</sup> "The Economic Abuse Reference Group is an informal group of community organisations which influences government and industry responses to the financial impact of domestic and family violence" see: <https://earg.org.au/good-practice-short-guides/>

<sup>5</sup> Discussed in the Australian Securities & Investments Commission (ASIC) Regulatory Guide 274. See: <https://download.asic.gov.au/media/5899239/rg274-published-11-december-2020-20201218.pdf>



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#### **Chapter 4 Inquiries into and assessment of borrowers' requirements and objectives**

We strongly support the drafting in clause 4.6 of the revised code which encourages lenders to see lending as an iterative process. Quick decisions by lenders can risk mistakes that could lead to substantial hardship and are not ideal. Where borrowers feel under high pressure for quickly applying and accepting debt they may have less choices to understand what alternatives may better suit their needs. Lenders focusing too much on increasing the pace at which a loan is offered could end up cutting corners through significant protections. The consequences of irresponsible loans can lead to substantial hardship that could last generations.

We are concerned the drafting of 4.9.a. in this chapter implies an overdraft is a simple credit product that is widely understood and this drafting ignores the consequences of the varying interest rates and fees that can be applied in these arrangements. This should not be provided as an example of a reason why less extensive inquiries should be made as these products may cause substantial hardship and we believe it is a jump to say the varying features of overdrafts are widely understood by the public. Lending options vary and therefore can become complex to compare, we recommend this clause in the code is removed and instead lenders are simply instructed to comply with the regulations.

The drafting in 4.9.b. also says less extensive inquiries are needed where the borrower is a well-informed user of credit. This and other drafting like this throughout the code that address different aspects of lending appear open to inconsistent interpretation and the drafting could be expanded to encourage lenders to evidence on what basis they made this judgement.

As part of our involvement within the code advisory group FinCap was aware earlier drafting included guidance on 4AA(2)(d) in the regulations which requires lenders to make inquiries to ensure borrowers are aware of and accept the cost of products and services bundled which may not meet their stated purposes. Guidance that points to this aspect of the regulation is helpful for guiding lender's compliance. Compliance could mean that people who find themselves experiencing hardship have not had this compounded by paying for products and services that are bundled with lending but provide them no benefit. This should not end up being the difference on a budget for a whānau that means they are at risk of not paying for essentials. MBIE should add guidance pointing to this regulation back into the chapter.

#### **Chapter 5 Inquiries into and assessment of substantial hardship (borrowers)**

FinCap is concerned the drafting of clause 5.2 in this chapter of the revised code could be read as allowing lenders to ignore the regulations. While we believe this drafting has the purpose of explaining that lenders may make additional inquiries to check lending is not irresponsible as well as those required in the regulations this should be made clearer or removed where the explanation in clause 5.1 could be seen as sufficient.

People working with Financial Mentors to avoid or overcome hardship often have a matter of dollars or cents difference between their budget balancing or not each week. Significant harm can still arise where payments that appear small or low risk when not viewed holistically can still cause significant harm to borrowers. Clause 5.8 of the guidance gives an example of different adjustments across credit products where a 'lower risk personal loan' compared to a 'high risk home loan.' While we recognise there will be differences, we are aware of Financial Mentors seeing people with multiple personal



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loans from lenders which cause a deficit. Clause 5.9 in the drafting clearly states the differences must be reasonable but this example may inadvertently encourage harmful conduct that is not addressed until a complaint arises and it should be removed.

We welcome the drafting in clause 5.12 of the revised code which flags valid reasons why aspects of a borrower's budget may be at risk of variation. Financial Mentors will often not put unreliable income on a budget they draw up but will include possible expenses that may arise in order to lower the risk of hardship. Lenders should be encouraged to consider adjusting volatile or irregular income and expenses in this way through expanded drafting. Following this established practice that avoids substantial hardship arising from somewhat foreseen loss of income or increases in expenses would be best practice.

We are concerned a borrower may be put at significant risk of unexpected ongoing costs where a lender follows the process discussed in the drafting of clause 5.13 of the revised code. Life events are one of the main reasons people end up in financial hardship, a lender assuming the borrower will take longer to repay the loan than the borrower expects and approving on this basis is a recipe for the equivalent of 'bill shock' and unexpected hardship for the borrower. Subclause 5.13.c. appears to imply that lenders could disclose they are assessing affordability on the basis of a longer period for repayment. This is not a robust protection, people are at risk of information overload when applying to borrow and may miss this risk completely. MBIE should remove this guidance to avoid risks to borrowers taking on more commitment than they expect.

The drafting in clause 5.16 of the revised code is a helpful reminder for lenders to consider how household costs may or may not be divided amongst occupants. As discussed in our comments on Chapter 2, this may also be a good intervention point for reminding lenders to look out for and respond appropriately to economic abuse. From the billing seen at FinCap recently, the example of \$50 a week for power in this drafting could be a bit of an unrealistically high-cost example compared to the likely cost for someone splitting costs with flatmates.

We strongly support the inclusion of clause 5.18 in the revised code. 5.18.b. is a great example of life events that lead to a person being at risk of substantial hardship. The clause could be expanded further to include that a person in that situation could be left with problems paying for others essential services costs like electricity and communications. FinCap has recently seen an example of this being the presenting problem for a young person seeking assistance from a Financial Mentor.

The drafting in clause 5.23 of the revised code states some information about decision making for lending which does not have to be disclosed to borrowers. Some of this information seems it would be essential to determining whether there has been misconduct around the regulation where lending has caused substantial hardship. Such information should be disclosed in instances where a dispute has arisen so that a dispute resolution service, regulator, or a legal representative for the borrower should be able to see whether a lender's process indicates misconduct. Drafting should be expanded to flag an expectation along these lines.



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### **Chapter 6 Inquiries into and assessment of substantial hardship (guarantors)**

The drafting in clause 6.13 of the revised code describes where lenders should make more extensive inquiries because there is a risk that a guarantor may not be able to repay a guarantee. As discussed in our comments on Chapter 2, this may also be a good intervention point for reminding lenders to look out for and respond appropriately to economic abuse.

The drafting in clause 6.17 of the revised code appears to limit the accountability of lenders when relying on information provided by a broker or financial adviser but this should go further and require lender verification. People in broker or adviser roles may have a financial incentive to get loans approved and therefore not act in the interests of checking a guarantee can be repaid by a guarantor. Sufficient protections need to be put in place to ensure information has not been inappropriately adjusted by these third parties. This should be redrafted so that lenders should verify information instead of third parties to avoid significant risks of substantial hardship arising for a guarantor.

### **Chapter 7 Assisting borrowers to make an informed decision**

As discussed earlier in this submission, what may appear to be small differences in charges can tip a whānau budget into deficit and cause hardship. Unneeded bundled products provided by a lender could cause these problems. Information about bundled products should be added to the list that lenders should inform borrowers of under clause 7.2. of the revised code.

The drafting in clause 7.3 of the revised code limits the information provided again from the list in clause 7.2 where a borrower is refinancing to only what has changed. However, 7.4 requires lenders to respond to borrower's requests for further information. It may be the case that a borrower has not remembered some of the information from their initial interaction with the lender and that some of that information may provide crucial context. The drafting in 7.3 should also clearly direct lenders to offer to run through any information previously provided when a borrower is refinancing so to offer a borrower the opportunity to clarify any relevant aspect of the agreement.

The drafting in clauses 7.5-7.8 of the revised code instructs lenders to recommend that borrowers seek legal advice in several scenarios where a borrower may be the victim of economic abuse. While this may help some potential victims, access to legal advice can be difficult due to the cost or the practicality of a person being able to act independently of a perpetrator of family violence or elder abuse. It is good that this code includes some instructions aimed at intervening. However, it should go further and recommend that lenders implement family violence policies and pursue other means of identifying economic abuse.

As previously discussed in our comments on the drafting of clause 4.9 in the revised code, the drafting in sub clause 7.11.a. asserts that an overdraft is a simple credit product that is widely understood but this assertion should not be made. This should instead be removed.

The drafted example underneath clause 7.16 in the revised code relies on disclosure in an online environment as a consumer protection. This is likely to be ineffective given that lender's contracts could be complicated and generally contain large amounts of text that includes jargon which can be overwhelming for most borrowers. Information disclosure alone should not be relied upon as



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sufficient protection and MBIE should look for insights from behavioural economics experts to determine what examples or requirements would be more likely to lead to better borrower understanding and associated outcomes.

As discussed above in our comments around the drafting of clause 3.1 in the revised code, how products and services are designed for intended audiences or target markets can play a big part in achieving good outcomes for borrowers. The drafting in 7.24 should go further and instruct lenders to create records as to how they establish who is their target market and whether their product is appropriate or appropriately advertised or communicated. As discussed in earlier comments, the work on RG274 by ASIC<sup>6</sup> for Design and Distribution Obligations for lenders in Australia may offer insights as to how lenders are best instructed to lend in the interests of consumers.

### **Chapter 9 Credit-related insurance and repayment waivers**

Bundling of products like insurance which can easily be misunderstood by borrowers can lead to whānau budgets tipping into deficit and substantial hardship when cover is already provided elsewhere or offers no benefit. The drafting in clause 9.4 of the revised code gives borrowers the opportunity to check if they are covered already. To aide borrower's chances of recognising what cover they may already have, the drafting in this clause could be expanded to include suggested prompts that lenders' staff could use to simply describe common products or services a borrower may already have.

As a whole the drafting in clause 9.15 of the revised code asserts that lenders may be able to reasonably expect someone has a pre-existing understanding about insurance products or that simple insurance exists that require lenders to offer a lower level of assistance. When meeting with the Insurance Council of New Zealand (ICNZ), FinCap has heard insurers are also concerned that many people may misunderstand insurance cover. This was given as one of the reasons why ICNZ supports Financial Capability Programmes.<sup>7</sup> The assertions in clause 9.15 may therefore give too much scope for lenders to make jumps in their assumptions about what a borrower understands and should be removed.

### **Chapter 11 Subsequent dealings**

Like the drafting of clause 7.2-7.4 of the revised code, the drafting of 11.2 also includes an instruction to make some information available to a borrower on request. As discussed in our comments on clauses 7.2-7.4, the drafting in 11.2 could also include instructions that lenders prompt whether borrowers would like this information to give borrowers an opportunity to raise issues. The Electricity Authority's recent draft Consumer Care Guidelines includes a recommendation that energy retailers at least annually interact with their customers and provide some information including what is available for whānau who may have trouble paying.<sup>8</sup> We strongly support initiatives like this given that Financial Mentors have mentioned that the people they work with can at times fear contacting businesses and disclosing issues with money because they perceive that this may risk a business responding with punishment. A regular check in that asks if borrowers would like information can

<sup>6</sup> Australian Securities & Investments Commission (ASIC) Regulatory Guide 274. See: <https://download.asic.gov.au/media/5899239/rg274-published-11-december-2020-20201218.pdf>

<sup>7</sup> See: <https://www.icnz.org.nz/industry-leadership/financial-capability/>

<sup>8</sup> See part 5 of this document: <https://www.ea.govt.nz/assets/dms-assets/27/Consumer-care-guidelines.pdf>



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provide an opportunity for a borrower to raise issues and receive early assistance to avoid substantial hardship arising or compounding. Clause 11.2 should be expanded to include a similar expectation of regular contact as in the Electricity Authority draft Consumer Care Guidelines.

Many people may be whakamā about approaching a lender when experiencing issues paying. This may be related to a fear that a business will punish those unable to pay, stigma around people experiencing financial issues or people may also not have the time to proactively approach lenders when dealing with an overwhelming amount of debt and/or social issues. We strongly support the drafting in subclause 11.4.c. of the revised code which instructs lender to contact borrowers and inform them of their rights and obligations where the borrower has or is soon likely to have repayment difficulties. This proactive contact can avoid hardship compounding or arising and escalating into debt spirals unnecessarily. Earlier referrals to Financial Mentors can also be made which often mean there are more options for addressing issues.

### **Chapter 12 Default and other problems**

We encourage MBIE to consider some drafting at the front of this section which gives a purpose to all actions taken by a lender relative to a borrower's hardship. An example of such drafting could be: "All actions taken by lender in relation to chapter 12 should be undertaken with the purpose of engaging with a customer who is at risk of or actually having difficulty with payment in order to find a sustainable way forward' and 'where the drafting in chapter 12 could be read with different meanings, a lender should interpret the statement from the perspective of a borrower who is at risk of or actually having difficulty with payment.' Drafting along these lines would encourage lenders to contemplate issues that borrowers may be facing and implement the regulations in a consumer centric way.

The drafting on clause 12.1 of the revised code should also instruct lenders to make their policy and procedures for assisting borrowers with current or potential repayment difficulties readily available to the public. Doing so would provide a means of businesses being accountable to public scrutiny and consistent with all borrowers who experience similar issues. It would also allow Financial Mentors an efficient way of assessing what options are available to the people they are working with that would help with avoiding or overcoming substantial hardship.

FinCap strongly supports the drafting in clause 12.4 of the revised code which instructs lenders to provide ways that borrowers can contact them free of charge. Financial Mentors have reported some of the people they work with who are experiencing hardship may face barriers to assistance otherwise. A common example that has been reported is people may often have no credit on a prepay phone to respond to a creditor immediately. Options for free means of contact will reduce barriers to overcoming hardship.

There should also be more guidance as to what could be considered a reasonable attempt to contact a customer about repayment difficulties. For instance, multiple preferred methods of contact should be used where known, varied and spaced contact times should be attempted. This will avoid barriers in communication that could lead to better outcomes.

We are also aware some commentary from lenders has also raised a concern that their customers are offended by offers of assistance. This should not deter expectations that borrowers are informed of



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their options. These issues should instead be seen to be with the nuance of the way businesses communicate when making this contact. Drafting on guidance for better practice scripts or lender staff training may be useful for realising more approachable, strengths-based assistance for working with borrowers who could be having repayment difficulties.

Early intervention to offer assistance is the best way to avoid debt issues spiralling out of control. The drafting in clause 12.5 of the revised code should be adjusted to apply to all lenders not just those who are high-cost lenders. It is appropriate to have more protections around high-cost lending which is more likely to cause substantial hardship but all loans can lead to avoidable hardship issues. It is best practice to make households aware of assistance as soon as possible and normalise seeking assistance. While some households may have simply made a mistake, an appropriately communicated offer from a lender doesn't need to assert that a borrower is in hardship but instead mention that the option of assistance is available if repayment difficulties are the cause of the missed payment.

The example script provided on page 71 of the revised code is a helpful prompt for lenders on referring to a Financial Mentor. Some lenders may have direct links to local service but otherwise the MoneyTalks service which is operated by FinCap allows for lenders to confidently refer borrowers to a Financial Mentor who is up to date with which of the more than 200 services in Aotearoa New Zealand is best able to provide ongoing Financial Mentoring if that is what the borrower needs.

Again, for the sake of reducing barriers and providing as early assistance as possible we strongly support the drafting in clauses 12.21 and 12.22. The suggestion that lenders should offer to assist borrowers to complete an application should remain. It would be most efficient for a lender to assist someone who may have difficulty to apply 'then and there' when this becomes apparent. Anything else may mean a barrier to a fair outcome or unnecessary use of borrowers and support services resources. Every step in a process is a chance for it to fail to achieve its outcome, especially where borrowers may be up against multiple financial, social and health issues.

We also strongly support the drafting in clause 12.25.d. of the revised code. This instructs lenders to take into consideration the suggestions of a Financial Mentor working with the borrower when considering what relief may be appropriate. Financial Mentors are experts in assessing what will be sustainable for a borrower when holistically considering all factors. These suggestions could mean the difference or not between a bank changing repayments to what is still an unrealistically high rate which only compounds hardship for the borrower and leads to a failed repayment plan.

The call to regularly contact borrowers where it is unclear how their financial situation may continue to change can avoid disengagement where things do not go to plan. This drafting in clause 12.32 of the revised code is a good safeguard for situations where optimism bias is a risk for borrowers making arrangements. Where repayment arrangements don't go to plan borrowers may worry about the risk of reaching out to change the assistance they are already receiving. The regularity of contact should be determined by what is most likely timely for the borrower. It is also important that lenders understand that more than 'one shot' at assistance will be necessary to get things right in many situations where multiple factors can regularly change a person's financial situation.



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We also welcome the inclusion of drafting in clauses 12.39 and 12.40 of the revised code. Referral protocols to Financial Mentors can reduce barriers to people with repayment difficulty accessing our services to avoid or find a pathway out of hardship. We are already working with some businesses to implement these referral pathways and welcome more work with others.

Sub clause 12.41.e. in the proposed drafting instructs a lender only to request that a borrower makes repayments through income from Work and Income if the lender is sure this will not cause hardship. There is research available that shows that current benefit levels will often leave whānau in poverty.<sup>9</sup> It is therefore inappropriately risky that where lenders suggest redirections they will often be suggesting people live in poverty, especially given that lenders are unlikely to have a full picture of all aspects of a borrower's financial situation or how this could change. The drafting should therefore instruct lenders to never suggest these redirections that could cause significant hardship where the borrower ends up unable to pay for essential services. Instead it could say that lenders can accept these redirections where they are initiated by the borrower or their representative.

We strongly support the section on *Persistent Debt* that includes clauses 12.44 and 12.45 in the revised code. Borrowers who have persistent unreducing debt can be at high risk of experiencing or already experiencing significant hardship. The suggestions in 12.45 that recommend lenders contact borrowers and offer assistance to find more suitable arrangements should be adjusted to be clear expectations. They should also explicitly instruct lenders to make contact with the borrower and offer the potential assistance and the drafting in the code should provide a clear trigger for their proactive contact. Such contact will reduce the number of whānau in Aotearoa New Zealand who end up in avoidable substantial hardship.

## Responses to specific consultation questions

### **Question 1: What is the current practice of lenders, in relation to informing guarantors about variations, and how are privacy considerations managed?**

FinCap is not immediately familiar with current practices in this space. In principle we support guarantors being informed where risk arises. Ideally a family violence policy that considers economic abuse should also be in place to guide banking staff as discussed earlier in this submission.

### **Question 2: In your view, how should the Code address the issue of informing the guarantor in these circumstances (if at all)?**

As above.

<sup>9</sup> For example see the Child Poverty Action Group commentary here: <https://www.scoop.co.nz/stories/AK2005/S00431/new-research-current-benefits-leave-families-in-poverty.htm>



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**Question 3: In your view, does the proposed addition appropriately balance the considerations in these situations? If not, please explain your reasoning.**

Redirections from benefits should only be arranged at the suggestion of the borrower of their representative. See our above comments in relation to the drafting of clause 12.41.e.

**Question 4: In your view, when should the new Chapter 12 (as updated in light of submissions) come into force, to ensure lenders and borrowers have clear guidance around the management of repayment difficulties, and to allow lenders sufficient time for implementation?**

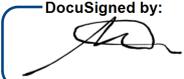
Chapter 12 in the revised code provides many protections that will reduce unnecessary consumer harm. There is avoidable harm to consumers every day that protections are not in place and all aspects of the code should be required by October 2021 and implemented as soon as possible by lenders. Financial hardship can cause harm that lasts for generations and it is inappropriate to delay protections that have taken years of development any further.

**Question 5: In your view, are there any elements of Chapter 12 which should come in more urgently than others?**

Financial Mentors around Aotearoa New Zealand are able to provide assistance to whānau experiencing payment difficulty now and referrals and work with Financial Mentors should be implemented by lenders ahead of October. Otherwise, we view all aspects of Chapter 12 as urgent as they all will reduce harm for whānau as a complete package.

Please contact Jake Lilley, Consumer Issues Adviser, on 04 333 0393 or at [jake@fincap.org.nz](mailto:jake@fincap.org.nz) if you would like to discuss any aspect of this submission.

Ngā mihi,

DocuSigned by:  
  
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**Moana Andrew**  
**Acting Chief Executive**  
**FinCap**