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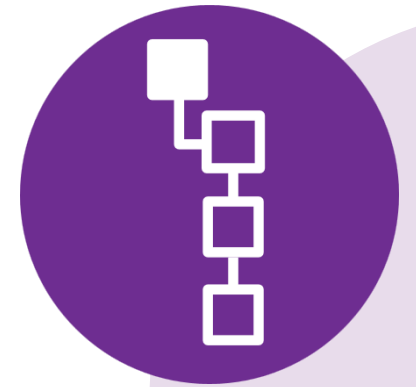
Changes to the Credit Contracts and Consumer Finance Act

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30 June 2021

Outline

- How did we get here?
- General overview of key changes
- Pinch points for lenders
- The responsible lending principles and key lender responsibilities:
 - affordability and suitability
 - informed decision making
 - repayment difficulties and other problems
- Takeaways
- Questions



Background: CCCFA reforms

- Last significant amendments 2015
- Credit Contracts Legislation Amendment Act 2019 amends the Credit Contracts Finance Act 2003 (**CCCFA**)
- Updated CCCFA Regulations and Responsible Lending Code
- Staggered implementation: final changes effective **1 October 2021**



“This bill represents the Government’s commitment to protecting vulnerable consumers and stopping families being trapped in debt spirals”

- Hon Kris Faafoi

Key CCCFA changes

- Increased enforcement and tougher penalties
- High-cost loans
- Caps on fees and interest
- Call-in power

From 1 October 2021:

- Prescriptive requirements for affordability and suitability assessments
- Responsible advertising standards
- More transparency and access to redress before debt collection starts
- Additional registration and compliance requirements



Pinch points: a lender's perspective

- Directors and senior managers:
 - certification: fit and proper person (some entities are exempt, e.g.. registered banks)
 - due diligence duty
- Record keeping/annual reporting
- Personal liability, pecuniary penalties
- Discharge of lender responsibilities



Responsible Lending Principles

GENERAL RESPONSIBILITY

Lender must exercise the **care, diligence, and skill** of a responsible lender:

- in any **advertisement** for providing credit or finance under an agreement
- **before entering into an agreement** to provide credit or finance and before taking a relevant guarantee
- in all **subsequent dealings** with a debtor in relation to an agreement or a guarantor in relation to a relevant guarantee

Responsible Lending Principles

GENERAL RESPONSIBILITY

A lender must comply with specific listed lender responsibilities set out in the CCCFA:

- make **reasonable enquiries**: suitability and affordability
- assist borrowers and guarantors to make an **informed decision**
- hardship: must act **reasonably and ethically**
- ensure loans are **not oppressive**
- meet **all other legal obligations** e.g.. Fair Trading Act, Consumer Guarantees Act, FSP Act.

Key lender responsibilities – suitability and affordability

Creditor must make **reasonable inquiries**, before entering into a consumer credit contract, so as to be satisfied that:

- the credit or finance **will meet the debtor's requirements and objectives**
- the debtor can make the payments **without suffering substantial hardship**

From 1 October 2021:

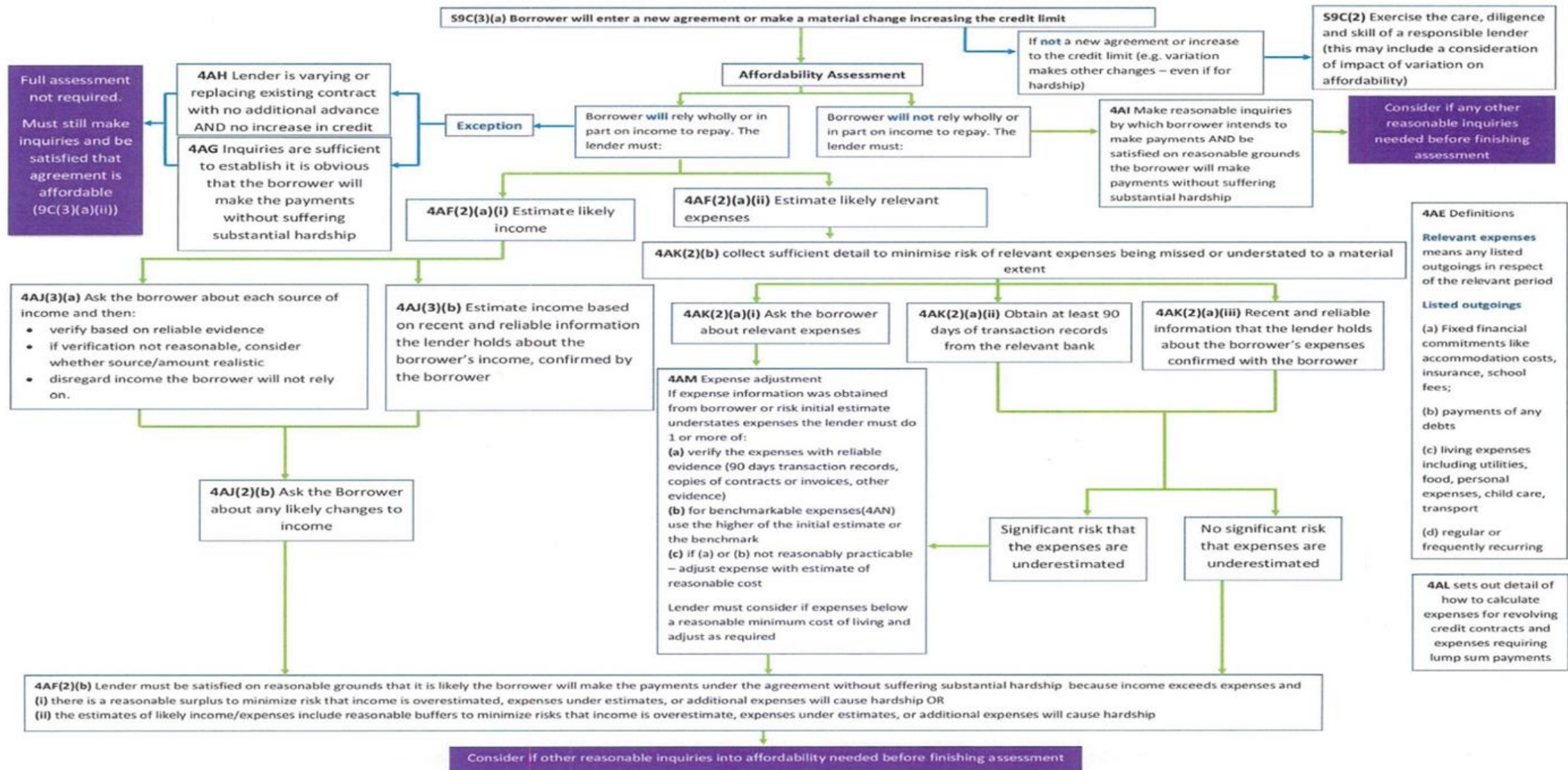
- creditor must also **keep records** about the inquiries made
- the records must demonstrate **how** the creditor satisfied itself as to the suitability and affordability assessment

5.7 of the Code: Verification - affordability

A lender should require financial advisers and intermediaries **to implement and maintain appropriate policies and procedures** to collect information from the borrower and perform any necessary verification, and to **train their staff on the Code and the lender responsibility principles**.

The lender, not financial advisers or other intermediaries, remains responsible for ensuring the lender complies with its responsible lending obligations.

Affordability assessment process chart



Key lender responsibilities

– assisting a debtor make an informed decision

The creditor must **assist** the debtor to reach an **informed decision** before entering into the agreement and that is **reasonably aware of its full implications**

Responsible lending obligations – repayment difficulties and other problems

Lenders must:

- Treat the borrower and their property reasonably and in an ethical manner, including:
 - if breaches occur
 - if problems arise, including unforeseen hardship
- Ensure all agreements are not oppressive and it does not act in an oppressive manner

From 1 October 2021:

- Mandatory disclosure:
[financial mentoring services](#)

Key takeaways

- Certification, new due diligence duty
- Increased penalties
- Compliance programmes
- Operational challenges
- Prescriptive requirements in the Regulations
- Discharge of lender responsibilities

1 October 2021 watch this space!



Thank you.



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