

CPA Australia Ltd
ABN 64 008 392 452
Level 20, 28 Freshwater Place
Southbank VIC 3006 Australia
GPO Box 2820 Melbourne
VIC 3001 Australia
T 1300 737 373
Outside Aust +613 9606 9677
cpaaustralia.com.au

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Manager
Banking and Access to Finance Unit
Treasury
Langton Cres
Parkes ACT 2600

By email: creditreforms@treasury.gov.au

Dear Sir/ Madam

Consumer Credit Reforms

CPA Australia represents the diverse interests of more than 166,000 members working in over 100 countries and regions around the world. We make this submission on behalf of our members and in the broader public interest.

CPA Australia is cautiously supportive of the reforms aimed to reduce the time it takes for individuals and small business to access credit, while maintaining strong protections for consumers. We acknowledge that the reforms aim to achieve this for ADIs by removing the current requirement to comply with the Responsible Lending Obligations (RLOs), given ADIs must already comply with APRA's prudential standards which have similar requirements to those under the RLOs.

Removing regulatory complexity is an important reform agenda and is key to improving efficiency not only given the impact of COVID-19, but in rapidly evolving global markets. However, while it is imperative as part of Australia's economic recovery that viable small businesses can access finance in a timely and prudent manner, it is also important to consider the fragile nature of the current economy as a result of COVID-19 and ensure adequate consumer protections remain in place.

The extension of the best interests duty from only mortgage brokers to all credit representatives is one measure that will enhance consumer protections. The current principles-based approach will help support and positively influence the conduct of all credit representatives to ensure they prioritise the interests of their clients over those of their own, or other relevant associates.

However, the best interests duty only applies to consumer finance regulated under the National Consumer Credit Protection Act and is not proposed to apply where credit is for predominantly business purposes. CPA Australia believes there may be merit in extending the principles-based obligation to the provision of business finance, especially where personal property, such as the family home, is used as security. CPA Australia recommends that Treasury hold separate consultations to consider if this would be advantageous before a final decision is made.

As previously noted, ADIs must currently comply with both the RLOs and APRA's prudential framework, including APS 220 Credit Risk Management (APS 220). This Prudential Standard requires sound credit assessment and approval criteria, including the comprehensive assessment of a borrower's repayment capacity.

CPA Australia is concerned how the sole application of APS 220 may impact the documentation and other requirements a consumer or small business owner will need to be provide in order to secure finance.

For example, currently ADIs and non-ADIs have been requiring the accountant of a potential customer to sign a capacity to repay certificate or a certificate of independent financial advice as part of the lending assessment. These certificates typically require the accountant to:



- explain the terms of the lending product to the client, noting the accountant has no affiliation with the lender
- explain risks of undertaking the transaction on behalf of the lender
- assess the client's financial ability to make the repayments to the lender, and
- ensure that the client understands the advice provided by the accountant.

In other words, lenders are currently seeking to use these certificates as a means to outsource their responsibilities under the RLOs and APS 220 and to transfer, in part, the risk and liability to the accountant should the client default on the loan. These requests are unreasonable and add additional cost to the consumer or small business owner when seeking finance.

Importantly, if the finance is for consumer credit, then signing such a certificate could also be considered providing credit assistance and may be a breach of the National Consumer Credit Act if the accountant is not an authorised credit representative. It is also unlikely the activity is covered by the accountant's professional indemnity insurance.

Since the implementation of the National Consumer Credit Act, CPA Australia has had in place guidance advising members they should not sign these certificates. We have raised this issue several times over the past decade with the Australian Bankers Association calling for their members to cease requesting these certificates. However, the practice appears to be becoming even more prevalent since the impact of COVID-19.

Another common request from the lender is for the accountant to provide confirmation that an asset, such as a motor vehicle, will be used by their client predominantly for business purposes. By requesting this declaration from the accountant, the lender can avoid the application of the RLOs when assessing the client's eligibility for finance. Not only is this practice concerning, but it is also unreasonable for an accountant to verify what someone may do in the future. For this reason, we have also issued guidance advising members not to sign these declarations. A better approach would be to require the client to certify this themselves as part of the loan application.

We also understand that for a small business, the lender will require forecasts to help assess the capacity to repay the finance. However, in the current climate it is likely that such forecasts will have a very low level of reliability. Moreover, it should in fact be the applicant, not the accountant, who takes responsibility for sign off on these forecasts for the purposes of the loan assessment.

Other more recent examples of lender requests being made to the accountant include:

- confirmation whether the income being paid to the spouse is consistent and ongoing
- actual level of income expected for this financial year for the spouse from a trust
- whether the income is consistent and ongoing for future years, the basis upon which the assessment is made and the basis upon which the accountant can confirm the documents are authentic, and
- whether a client's income has been or will be affected by COVID-19.

It is impossible for the accountant to comply with many of these requests, as they can only provide information they can factually verify. However, the client is often advised by the lender that without such confirmation or a signed capacity to repay certificate from their accountant they will not be able to secure the finance. This is despite the current obligations on the lender.

CPA Australia strongly recommends that an explicit requirement be introduced as part of these reforms that mandates that the determination of capacity to repay must be made by the lender and that the lender cannot ask applicants to engage third parties to determine their capacity to repay as part of the loan application.

If you have any queries do not hesitate to contact Ms Keddie Waller, Head of Public Practice & SME at keddie.waller@cpaustralia.com.au or on 03 9606 9816.

Yours sincerely,



Dr Gary Pflugrath
Executive General Manager
Policy and Advocacy