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29 January 2021

By email: ADIpolicy@apra.gov.au

General Manager, Policy Development
Policy and Advice Division
Australian Prudential Regulatory Authority
GPO Box 9836
SYDNEY NSW 2001

Dear General Manager

Submission: Consultation on revision to the new Prudential Standard APS 220 Credit Risk Management

We refer to the proposed amendment to Prudential Standard APS 220 Credit Risk Management (**APS 220**), announced by letter from John Lonsdale, Deputy Chair of Australian Prudential Regulatory Authority (**APRA**), to all authorised deposit-taking institutions (**ADIs**) dated 9 December 2020 (**Consultation Letter**).

This letter provides feedback to this consultation from Consumer Action Law Centre, Financial Rights Legal Centre, Victorian Aboriginal Legal Service, CHOICE, Financial Counselling Australia, Consumer Credit Law Service (WA) Inc, Uniting Communities Consumer Credit Law Centre SA, Care and Consumer Law Centre ACT, Indigenous Consumer Assistance Network. We are a group of community and consumer organisations, with specialist knowledge in consumer credit in Australia. Our practical expertise in consumer credit law is largely based upon the lived experiences of clients we assist with free financial counselling and legal advice services.

The proposed amendment to APS 220 is in response to the Government's plans to remove responsible lending obligations for all consumer loans (except loans under \$2,000 and consumer leases), and is subject to the passage of the *National Consumer Credit Protection Amendment (Supporting Economic Recovery) Bill 2020 (the Bill)*. The amendment to APS 220 (**the Amendment**) would add a single sentence to paragraph 41: "*For exposures to individuals, an ADI must assess the individual's capacity to repay credit without substantial hardship.*"

In the Consultation Letter, APRA confirms its view that this Amendment is 'consistent with APRA's existing requirements', and will not impose additional burden on ADIs. APRA has also confirmed that 'the proposed changes to the new APS 220 will not change APRA's approach to supervising ADI lending practices, or enforcing this prudential standard.' As such, it is clear to us that the Amendment will do nothing to improve consumer outcomes.

Consumer groups strongly oppose the Bill. The Amendment is no replacement for the current responsible lending protections. Despite the Amendment, the following gaping holes would remain in our lending consumer protection regime if the Bill is passed:

- complete removal of current civil and criminal penalties for irresponsible lending by ADIs;
- reduced legal rights for borrowers against ADIs and brokers;
- no consideration of a borrower's requirements and objectives;
- removal of specific protections relating to credit card assessments;
- reduced requirements for banks to properly verify loan applications, including permitting estimates of expenses; and
- dismantling the ASIC and APRA 'twin peaks' regulatory model for bank lending.

As the prudential regulator, APRA's remit is to focus on the financial stability of the institutions it regulates. APRA does not monitor or enforce the suitability of individual consumer loans. This is fundamental to the current twin peaks regulatory model, which sees ASIC regulate individual instances of misconduct, and APRA regulating prudential matters. APRA has made it crystal clear in the Consultation Letter that the change to APS 220 will not affect APRA's approach in this regard, which leaves individual borrowers at risk of falling through the cracks:

APRA's objective in implementing the new APS 220 is to set prudential requirements of ADIs for sound lending practices, which support the financial soundness of ADIs and the stability of the Australian financial system.

The Bill contradicts the very first recommendation of the Financial Services Royal Commission: to retain the current 'not unsuitable' test in our responsible lending laws. The Bill seeks to remove the suitability test altogether. The Bill also contradicts recommendation 6.1 of the Royal Commission, which recommended retaining the twin peaks regulatory model between ASIC and APRA. The Government accepted both of these recommendations, yet is now attempting to walk away from its promises.

The Bill, if passed, will cause harm to individuals and families across Australia. It will hinder our economic recovery from the COVID-19 crisis, potentially leading us to a household debt disaster. Consumer groups cannot support the Government's proposals, or the proposed Amendment, as it is wholly inadequate as a substitute for responsible lending laws.

Please contact **Gerard Brody** at **Consumer Action Law Centre** on 03 9670 5088 or at gerard@consumeraction.org.au if you have any questions about this submission.

Yours Sincerely,



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