

Proposed Amendments to the Consumer Protection Code: A Critical Look at Vulnerable Circumstances and Trusted Contacts



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The recent amendments proposed to the Consumer Protection Code have sparked significant discussion, particularly concerning how they address consumers in vulnerable circumstances. These amendments aim to enhance consumer protection by recognising the unique needs of customers in vulnerable circumstances. However, questions have been raised about the effectiveness and implications of these proposed changes, particularly considering existing legislation such as the Assisted Decision-Making (Capacity) Act 2015 (ADMA).

Recording Vulnerable Consumers: A Double-Edged Sword?

One of the key proposals in the Draft Regulations is outlined in Section 37, which mandates the recording of consumers identified as being in vulnerable circumstances provided consent is obtained. This requirement is intended to ensure that vulnerable consumers receive appropriate support and consideration from financial institutions.

This approach raises a critical concern: labelling consumers. The draft guidance accompanying the regulations explicitly states, "The approach to consumers in vulnerable circumstances should not be to label some consumers as vulnerable." This apparent contradiction highlights a fundamental flaw in the proposed amendments.

The ADMA introduced a functional approach to assessing capacity in 2023, mandating that capacity be evaluated at a specific moment in time, relative to the decision at hand, and considering any available supports. This approach leads to outcomes that are specific to the moment, avoiding the pitfalls of static labels.

Moreover, there is ambiguity surrounding how the information about consumers in vulnerable circumstances is intended to be used. Without clear guidelines, there is a risk that such information could undermine the implementation of the functional approach to capacity. Rather than mandating the recording of this information, it could be more appropriate to offer an option to record such details as needed, allowing for a case-by-case approach.

Clarifying the Role of the Trusted Contact Person

Another area of focus in the consultation is the role of the trusted contact person. While the concept of a trusted contact person is well-defined, the Compliance Institute has concerns about how this role differs from that of a Decision-Making Assistant as established under the ADMA.

The ADMA allows for the appointment of a Decision-Making Assistant to support individuals in making decisions, ensuring their capacity is respected and supported. The draft guidance specifies the types of matters in which a trusted contact person may be involved, which is a positive step towards clarity. However, there is a potential for overlap and confusion between the roles of a Trusted Contact Person and a Decision-Making Assistant.

To streamline the process and avoid confusion, the Compliance Institute in its response to the consultation suggested that financial services providers be permitted to contact a Decision Making Assistant in situations where they would typically reach out to a Trusted Contact Person. This approach would extend the same protections to



consumers without introducing an additional role, thereby simplifying the system and reducing the potential for confusion.

Conclusion

The proposed amendments to the Consumer Protection Code represent a significant step forward in recognizing and addressing the needs of consumers in vulnerable circumstances. However, the concerns raised in the Compliance Institute’s consultation response highlight the importance of ensuring that these changes do not inadvertently undermine the very protections they seek to enhance.

By reconsidering the requirement to record vulnerable circumstances and clarifying the roles of Trusted Contact Persons, the Central Bank can create a more flexible, effective, and consumer-friendly framework. This approach would better align with the principles of the ADMA, promoting a functional and dynamic approach to capacity while safeguarding the autonomy of individuals.

