

19 October 2022

Submitted via: consumer@mbie.govt.nz

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

RE: Credit Contracts and Consumer Finance Amendment Regulations (No 2) 2022 and updated Responsible Lending Code Consultation Paper

David Verry, Volunteer Financial Mentor with North Harbour Budgeting Services, welcomes the opportunity to comment on the Ministry of Business, Innovation & Employment (**MBIE**) Credit Contracts and Consumer Finance amendment Regulations (No 2) 2022 and updated Responsible Lending Code Consultation paper (**Consultation Paper**).

Introducing myself

As stated above I am a volunteer Financial Mentor with North Harbour Budgeting Services. I have been mentoring for circa 11 years and have been retired for 7 years (I was in banking for 30 years).

I work with a range of clients. Most of my clients are employed - I can work evenings and weekends which is convenient for this group. I also work with inmates at Paremoremo Prison and still mentor some that have been released. I am currently working with 36 clients at various stages of their financial journey. Most are in financial difficulties or under duress from lenders.

I am also involved in Community Education programmes (including the prison) to promote financial literacy – trying to be the fence at the top of the cliff rather than the ambulance at the bottom..

General comments related to this consultation

Recommendation: Decision makers in current and future Governments maintain and continue to strengthen our current Credit Contract and Consumer Finance Act safe lending laws so that:

- Financial mentors and other community workers have the tools to reverse harm caused by unfair lending that was always going to be unaffordable.
- All lenders are better deterred from unfair and unaffordable lending that would lead to harm in our community.

I make the above recommendations because:

- Since the changes I believe we are starting to see a decline in the levels of “unaffordable” and “unsuitable” lending due to lenders having to take more care and responsibility when undertaking their assessments (this includes providing evidence of the assessments);
- We are having some, but not universal, success when challenging lending which we believe to be unaffordable or unsuitable;
- We are hopeful that the law changes will lead to prosecutions by the Commerce Commission of a number of lenders whom we regard as “predators” (consistently undertaking

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unaffordable/unsuitable lending) or those who pay lip service to the legislation and who will largely ignore the Responsible Lending Code (due to it being guidance only);

- We do not necessarily want the lenders to leave the industry (they are often the lenders of last resort), as long as they follow the legislation and regulations (the Responsible Lending Code) – they are dealing with vulnerable borrowers and have a greater duty of care to deliver.
- We use the legislation extensively when challenging lenders whom we believe have not met the requirements laid down in the legislation.

Response to the consultation paper questions

Question 1: Do you agree with amending the definition of ‘listed outgoings’ along the lines proposed? Do you have any comments on the wording of these changes?

Recommendation: MBIE when drafting to implement changes removing checks around truly discretionary expenses, specifically require lenders to consider what is, and is not, discretionary in each individual circumstance.

The proposed drafting of the change of regulation 4AE creates a risk that lenders will misclassify expenses and their affordability assessments will underestimate ‘listed outgoings,’ which will cause harm through the creation, or compounding, of financial hardship.

I make the above recommendations because:

- Lenders often do not drill down far enough on information they have, and to then ask appropriate questions of borrowers, to be able to classify expenses as discretionary or not. Instances of tithing and supporting relatives locally & overseas (particularly for Polynesian clients) can often be classified as discretionary by lenders whereas they are cultural necessities;
- Clients who have addiction problems (gambling in particular) will make cash withdrawals that are often regarded as discretionary whereas they are a “necessity” for the addict;
- Many clients work extreme work hours (often unsustainable) to be able to meet loan repayments and their non-discretionary expenses;
- There is often a failure by lenders to account sufficiently for “annual expenses” – clothing/shoes, medical/pharmacy, insurances paid annually, car expenses (maintenance, WOFs, registration);
- Typically the budgets I calculate show far less of a surplus/a larger deficit than that affordability assessments of lenders.

Question 2: Do you agree with amending the definition of ‘relevant expenses’ along the lines proposed? Do you have any comments on the wording of these changes?

Recommendation: MBIE, when drafting to implement the removal of truly discretionary expenses from ‘relevant expenses’ should ensure that the onus is on lenders to meet a high threshold of establishing reasonable expectations around what is, and is not, discretionary in each individual circumstance.

The proposed drafting of the change of regulation 4AE creates a risk that lenders will misclassify expenses and their affordability assessments will underestimate 'relevant expenses,' which will cause harm through the creation, or compounding, of financial hardship.

I make the above recommendations based on the same reasons provided in Question 1 and reiterate the onus of the lender to substantiate what is discretionary with appropriate questioning and investigation.

Question 3: Which of the two options for guidance in the Draft Code relating to treatment of discretionary expenses is most appropriate and why? Do you have any comments on the wording of either of the options?

Recommendation: Strengthened drafting along the lines of 'option 1' in the Consultation Paper should be implemented by MBIE to realise the instructions for change. This style of drafting acknowledges that the circumstances of borrowers are unique and this needs to be considered by all lenders when deciding what is truly a discretionary expense. The time within which a borrowers may be able to cease or reduce a particular expense may also vary.

Question 4: Do you agree with the approach to excluding some credit cards as proposed in 4AL(2A)? If not, what changes would you make?

Recommendation: MBIE's drafting of regulations in response to instructions to stop the double counting of everyday expenses paid by credit card without incurring charges should be precise and not leave room for harmful lending models to emerge unchecked

In my experience, the only time that it is acceptable to exclude credit card obligations is when these are paid off in full each month (and no interest paid) and the expenditure has been included elsewhere in an affordability assessment.

Question 5: Is any additional guidance needed for the exception in 4AL(2A) for certain credit cards? If so, what should this guidance state?

Recommendation: MBIE expand the proposed drafting in the Responsible Lending Code guidance related to the instructed change to avoid double counting of everyday expenses paid by credit card without incurring charges. This expanded drafting should ensure lenders are guided to ask about, and consider, each potential borrower's unique circumstances and whether charges will likely occur on the revolving credit card arrangements following additional lending.

Question 6. Do you agree with explicitly excluding BNPL in its entirety from 4AL(2)? If not, are there alternative ways, that would be workable for lenders, to impute future BNPL expenses based on a borrower's existing BNPL facilities?

Recommendation: The Minister for Commerce and Consumer Affairs and Cabinet extend CCCFA requirements to Buy-Now-Pay-Later (BNPL) lending to prevent the harm caused to the community by this lending. This would have the added benefit of avoiding unnecessary complexity or significant gaps in the proposed redrafting of CCCFA related regulation.

I make this recommendation because:

- I have clients who have multiple BNPL accounts and have been provided with limits by bnpl providers well in excess of the immediate purchase they are making with the result that

their BNPL obligations put their budgets into deficit and they are unable to make payments for regular expenses;

- The lack of BNPL providers undertaking affordability and suitability assessments is causing significant harm to their (and ultimately my) clients;
- There is too much temptation with BNPL for clients (as the application process is so “easy”) to make purchases which are un-necessary and which, when added to existing obligations, will put them into financial hardship;
- Hardship processes/procedures are haphazard at best;
- If a payment needs to be missed, due to a lack of cash after existing obligations are met, typically a BNPL debt will be the first (although some clients will forgo essentials to maintain such debt obligations).

Recommendation: MBIE does not exclude BNPL lending from the revolving credit section of CCCFA related regulation but instead implements specific drafting to manage the risk related to this type of lending and implementing instructed policy changes.

I make this recommendation based on the examples provided in Question 7.

Question 7. In light of excluding BNPL from 4AL(2), is any further guidance in the Code necessary to address the treatment of BNPL expenses? If so, what should this guidance state?

Recommendation: MBIE drafts extended guidance in the Responsible Lending Code instructing lenders to obtain sufficient information to understand the nature of revolving BNPL lending available to a potential borrower. The guidance should also instruct lenders to establish whether additional BNPL lending has recently been extended to the borrower or whether they have recently incurred any fees related to such borrowing.

I make this recommendation based on the examples provided in Question 7.

BNPL should be considered as a debt repayment and all affordability assessments should recognise them as such (including those not currently being done by BNPL providers themselves).

Question 8. Do you agree with the way that the Draft Regulations relating to the expanded exception for variations and replacements of existing credit contracts is phrased? If not, what changes would you make?

Recommendation: The drafting of regulations to allow a lender to replace a borrower’s existing debt from other lenders set a clear onus on that lender to meet a high threshold of checking this lending will be better than alternatives. It is important borrowers are not prevented from accessing existing hardship assistance entitlements, insolvency options and available support from community workers. Any lending permitted by this change must ease rather than create or compound existing, or emerging hardship faced by the borrower.

I make this recommendation based on:

- Any form of debt consolidation must be affordable, not just reduce a deficit. Whilst it may be difficult for clients to accept, sometimes an insolvency may be a better long term outcome than a debt consolidation that will just prolong financial hardship and psychological/emotional pain.
- Many clients will seek debt consolidations but, in my experience, most are declined as the debt consolidation does not put the budgets back in to surplus/balancing.

- Where clients are offered a debt consolidation they will generally “leap at it” regardless of the long term consequences – in the short term they can get several lenders off their backs and, in the long term, only have to deal with one.

Question 9. Which of the two drafting options for expanding the exception for variations and replacements of existing credit contracts would be most workable and why?

Recommendation: Strengthened drafting along the lines of ‘option 2’ in the Consultation Document be implemented by MBIE. The strengthening should realise instructed changes to allow debt replacement that is truly in the best interests of the borrower. This approach to drafting is preferable because it doesn’t allow any further charges to a potential borrower without clear justification and accountability from lenders.

I make this recommendation based on the answers given to Question 8.

Question 10. Do you agree with the suggested guidance in the Draft Code relating to the expanded exception? If not, what changes should be made to the Draft Code guidance?

Recommendation: Proposed guidance in the Responsible Lending Code relating to proposed drafting for debt replacement be expanded to set a high standard for establishing that replacing existing consumer lending is truly in the best interests of the borrower. Where the purpose of replacing existing lending is to reduce or avoid financial difficulties then the Responsible Lending Code should note that the borrower is a ‘vulnerable borrower’ as discussed on page 98 of the Responsible Lending Code version revised June 2022.

Question 11. Would any of these changes require changes to lender systems before they could come into force? If so, what are the likely timeframes for making these changes?

As financial mentor, and not a lender, I cannot comment on this.

Conclusion

Thank you for considering my submission.

Some general comments:

- Loosening of legislation to prevent unaffordable or unsuitable lending needs to be taken with great care;
- All lenders, including banks, should continue to be bound by the same rules no matter how strong their internal processes are or how sophisticated their clients are;
- It is imperative that BNPL providers are brought into the CCCFA as we are seeing considerable harm being caused by them (as we used to see with mobile traders and payday lenders)

Please contact me on Privacy of natural persons to discuss any aspect of this submission further.

Ngā mihi,

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