

Submission on *Exposure draft of Credit Contracts and Consumer Finance Amendment Regulations (No 2) 2022 and updated Responsible Lending Code*

Your name and organisation

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

Dunedin Budget Advisory Service (DBAS) welcomes the opportunity to comment on the CCCFA and responsible lending code(**Consultation Paper**).

Introducing our organisation and community

We are based in Ōtepoti, Dunedin and have served our community for 50 years. We deliver building financial capability services in our area, supporting our whanau and individuals who are in, or at risk of being in, financial hardship. We have been pleased with the reforms to the CCCFA and would like to see these protections for our community strengthened and continued.

Throughout our mahi DBAS has seen many positive impacts of the CCCFA reforms. The major decline of high cost lenders and the inclusion of mobile lenders into the CCCFA has been significant in our experience. However we are still seeing clients with many credit contracts from 2nd tier lenders in particular (and BNPLs) whose lending practices are well under the standard we expect from this industry.

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.

DBAS makes the above recommendations because:

Most people need and use credit in the way it was designed and we fully acknowledge and embrace the use of safe and suitable credit.

The reduction of harm to our whanau has been noticeable, to the due the strengthening of this law. This is especially important during high inflation, rising interest rates, increased cost of living and a declining housing market. Real examples of this are a few whanau who have been declined a mortgage late last year who now would not be about to afford even the minimum payments of that mortgage, let alone property maintenance. This is good news. This is also good news as most major banks were adhering to the CCCFA reforms before the set date of December 2021.

DBAS has worked with many whanau who have been referred to our organisation from their credit provider, due to the regulations, and we are most pleased with this, as this is what the client needs – an independent view with the clients' well-being foremost in mind.

We have also seen a big increase to our service for clients asking about ethical, interest free, micro finance debt solution loans we have access to. This has been due to whanau being declined credit, normally due to affordability and suitability. We are then able to work with that client and present them with all options available to them, including affordable credit, debt repayment, hardship, insolvency, kiwisaver withdrawal. Quite often in this circumstance, the client discovers other options and actually doesn't need to incur further credit.

With the recent changes we have been pleased to experience quicker responses from lenders we are requiring clients information from. In the small instances where this has not been forthcoming, the credit lenders' financial dispute resolution provider has been able to educate the lender in this change. This has had a major positive impact on our whanau's mental wellbeing – not having to wait too long to get the information required to move forward.

DBAS often officially complained about one particular predatory lender in our community regarding affordability. We are very pleasantly surprised to see we have not had to complain about this lender since the changes.

As part of our mahi, DBAS constantly reviews credit contracts. We check for affordability, suitability, oppression, fees as a matter of course although other issues arise. We regularly escalate these issues to a financial dispute resolution provider and the Commerce Commission.

Responses to questions

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?

DBAS does not agree.

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.

Everyone is different! All whanau have different priorities. How can lenders make a sweeping judgement based on a generic template?

We feel very strongly about this as ALL clients we see have different needs.

If lenders are allowed to only assume and not do thorough checks, we are certain we will see many whanau being harmed due to the lenders' software not being able to ascertain whether the borrowers' spending is discretionary or not. Dietary requirements are a good example of this as benchmarks lenders have the ability to use do not account for this or many other individual circumstances.

We ask the question: how the lender would be able to accurately discover if a person applying for credit has gambling, addiction issues, a contractual gym membership which cannot be cancelled, koha, tithing, giving and other cultural obligations for example. Many whanau we support have ongoing familial financial commitments which could look like discretionary spending but are not. In our experience we know many clients' who have tried to cut out their entertainment costs, only to have their entire weekly budget collapse as they feel they are 'no longer living their life'.

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?

See Q1

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 these options?

Again, we refer you to answer 1. We would also ask the question as to why it is only a code? We find in many of our escalations to financial dispute resolution providers, that the lender is interpreting the code in a way which seems to benefit the lender and not the client/borrower/consumer/customer. We also see the use of the code seems to be guidance mainly for the dispute resolution schemes to use.

4

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

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.

However, why should the law be structured around one type of credit product? We feel it is extremely risky not to count revolving credit. Unexposed people get air points and other rewards while many vulnerable members of our community go insolvent due to this. The impact on mental health really takes a toll here, which leads to more financial distress and debt cycles.

It costs more to be poor.

DBAS often sees clients who have large credit card limits and can't afford to pay for their tamariki school camps, school shoes, stationery, uniforms, sports, and bus fares.

In our experience we regularly see clients trying to reduce their credit card and overdraft limit but this is very difficult. The lenders do not make it easy and we think this is for the specific reason of making more profit. We believe this is the current culture of lenders in Aotearoa.

5

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

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.

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.

We are distressed to see that BNPL seems to be the 'norm' instead of the exception.

BNPL has replaced pay lenders and mobile traders in the way they offer credit without questions.

This flies in the face of affordable lending, the good work that the Commission for Financial Capability is trying to do around savings and retirement.

As BNPLs do not report on positive credit reports, even if whanau do pay regularly and on time, this is not recorded on their credit file. However, some BNPLs report on negative credit records. This means some BNPLs send their unpaid debts to a debt collector. In this instance the client has no recourse under the CCCFA.

Multiple BNPLs are destroying peoples' ability to manage their day-to-day finances. The constant debt cycle leading to debt spiral is terrifying. Clients do not think of BNPLs as debt which is a huge cause of concern regarding financial capability in Aotearoa.

We are no longer a nation of 'saving for a rainy day' but one of instant gratification with little understanding of the debt trap BNPLs cause, due to not being currently included in the CCCFA.

We are looking forward to BNPLs being included in the CCCFA as this will give the protections needed for whanau.

We see many instances where our whanau cannot afford to pay their power bill and are then disconnected due to their BNPL repayments. Some of these clients are using community food banks for support. Many whanau do not even know the amounts they owe, when the repayments are due or how much are supposed to be debited from their bank account.

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.

This is one of many examples we see each day during our mahi with clients.

This distressed person, came to our service due to them not being able to afford to pay their power bill or buy food for their young child. Client has 2 BNPL accounts. After educating client on how to find out how much they owe for the BNPLs, client discovered they pay \$410 per fortnight. Client applied for a Good loan through Good Shepherd (ethical, no interest loan provider) This was declined due to the fortnightly repayment amount to the BNPLs. This is one example of many of the clients we see who have no other options available to them due to the BNPL payments. They are trapped. We are more than willing to answer any questions about the poverty we see due to BNPLs with MBIE.

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?

DBAS disagrees. Our knowledge around the area of debt consolidation shows us that the only fair and workable option for whanau even after exploring all other options, is an ethical interest free debt solution from a micro finance provider. Government funding needs to be addressed in this area and when this happens, this would be the only debt consolidation loan we would be comfortable with.

DBAS has only ever seen secured debt consolidation loans. This security puts the borrower in a vulnerable situation where their property is at risk and takes away the option of insolvency in the future.

This type of security often doesn't reflect the monetary value of the loan versus the secured items, but in many instances the sentimental attachment. Family heirlooms for example.

We also see many debt consolidation loans secured against other family members' property. This has an enormous negative impact on the family dynamics and mental well-being for all. We call this STD – sexually transmitted debt.

DBAS has multiple experiences with a particular local lender who uses these practices frequently. We are more than happy to discuss this lender and their lack of ethics further with MBIE.

The debt consolidation loans we see cause further hardship to the whanau due to the previous debt facility not being closed. For example, a client (or many in our experience) consolidates their non-bank credit card with another provider. However, as the non-bank provider has not closed the account, the client is still able to use the card. This means the whanau is actually in more debt than they began with, but now has a secured loan (the debt consolidation loan) as well.

Many debt consolidation loans offer or accept the request for extra credit. Once again, DBAS is happy to discuss our local lender concerns regarding this issue as well.

In our opinion, a debt consolidation loan is not a loan, but a product used to achieve for the betterment of the client. However, in our view this is not the way it is seen by lenders, but just another way of keeping the whanau in debt, for a longer timeframe, with security interests and no other options.

Interest free debt – debt to family, Government depts, some debt collector debt, education, health, utilities, should not turn into interest bearing, secured loans.

How can a debt consolidation loan be suitable for whanau when the lender isn't required to do affordability and suitability checks? How does the client become aware of other options if a debt consolidation loan is the only one presented to them? We are concerned, should this become law, that many whanau will not feel the need to reach out and explore other avenues of support, be that financial or community.

We reiterate, DBAS has never seen a debt consolidation loan from any organisation other than a micro finance, ethical lender, which has served the client well and seen them better off.

Refer to Q8

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?

Refer to Q8

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?

We think the question which needs to be asked here is “how much of Financial Mentors valuable time is currently taken up with irresponsible lending?” The time it takes to escalate a complaint and the amount of time waiting for a resolution is just not good enough. Credit providers have the capability of employing and accessing lawyers. These lawyers are used to push back on complaints raised by Financial Mentors regarding the lenders. Financial Mentors do not have access to lawyers. There is a definitive power imbalance here and one we regularly encounter in our mahi.

Other comments

DBAS is encouraged by the recent changes to the CCCFA and is looking forward to further strengthening of this law.

We do not understand why though, some forms of credit are not included.

The number of whanau we work with who have mobile phone contracts which are not included in the CCCFA is staggering. These and the likes of BNPLs, Television shopping and other lay by types of credit products are currently unregulated, under the radar and are causing major harm in our community. These products are typically more expensive than retailers included in the CCCFA.

As our profession seems to be the only sector concerned with the financial distress caused by irresponsible lending, we often escalate various issues to a financial disputes resolution scheme (DRS).

As Aotearoa currently has four DRSs, we find the entire process difficult to navigate. We have been asked on many occasions from whanau why there are 4, and we are asking the same question of you. Having multiple DRSs is confusing for everyone. We have found little consistency with outcomes given, time frames and knowledge of what an DRS provides, between the 4 providers. Lenders also being able to change DRS's is not ideal either as a few lenders 'DRS hop' depending on the outcome of a complaint against that lender. Australia and the UK each have one only financial disputes resolution scheme. We are disappointed to know that all of Aotearoa's' DRSs' have a policy not to publish the outcomes regarding lenders. This does not encourage compliant behaviour.

DBAS was excited to learn the Commerce Commission would be granted more resources as this is something which has been clearly lacking over the years. However, to date we have not seen evidence of this. Nothing seems to have changed regarding the investigations undertaken, the interaction between the Commerce Commission and the stakeholders, and

the time frames taken for investigations to conclude. We understand a major part of the Commerce Commissions' role is education, but we feel that unless the Commerce Commission starts to enforce their compliance role, many creditors with substandard and/or borderline lending behaviour will continue to do so and our complaints will still fall on deaf ears.

Thank you for considering our submission. Please contact Andrew Henderson (Manager) to discuss any aspect of this submission further.

Ngā mihi,

Andrew Henderson and Charlotte Whitaker on behalf of Dunedin Budget Advisory Service (DBAS).