

18 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

Debtfix, the Debt Relief Foundation 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 our organisation and community.

Debtfix was established in October 2018 to provide **FREE** debt advice, support and solutions to New Zealanders with complex debt issues. Debtfix is unique. It is the only service that offers a full suite of debt and insolvency solutions to individuals in debt, delivered after a complete and holistic assessment of an individual's financial position, household needs and debt obligations. Once our advice process is complete, a client is then fully empowered to determine which debt solution option (if any) they wish to adopt.

Debtfix has a proven track record of looking after the interests of their clients as well as respecting the rights of lenders, and we believe that the returns that Debtfix recover on behalf of a lender (where a client has debts with multiple lenders), far exceed those of normal debt collection processes.

In September 2020, under a memorandum of understanding, Debtfix was recognised by FinCap as the primary debt specialist in NZ, with its role entrenched as the virtual debt adviser to support and assist the nationwide financial capability and budgeting sector organisations, and their financial mentors. In November 2020, Debtfix was also awarded a two-year contract with the Ministry of Social development created in response to Covid-19, and in recognition of the services offered to clients and the financial capability sector. This contract was renewed in June 2022 for a further year.

In June 2021, the Debt Relief Foundation ("DRF") was granted charitable status with seven Trustees appointed to the Board, along with the co-founders of Debtfix. With an effective date of 1 August 2022, the DRF Board purchased the business and assets of Debtfix. The Debtfix brand will continue to be utilised as the predominant trading style for DRF going forward.

Debtfix (DRF) is committed to supporting people in vulnerable circumstances to repay problem debt in a safe way, and to support them on a journey of change to improve their financial and personal wellbeing. This has never been more important than now as we face uncertain economic times resulting from the negative impacts of COVID-19 and the rising cost of living. To further develop the role and reach of Debtfix financial support from lenders, philanthropic organisations and government is required.

The community we serve is the whole of NZ. The challenges we are seeing currently are:

- Vulnerable borrowers with a lack of financial acumen, signing up for unaffordable loan contracts.
- The impact of Covid on job stability and the flow on effect with relationship breakdowns, gambling and other addictions.
- Clients signing up for multiple buy now pay later schemes that they can't afford to pay back.
- Huge pressure on clients' mental health – many who have had to leave their employment. We play the role of Counsellor and listening ear as clients carry a lot of shame around their debt situation.

General comments relating to this consultation

Recommendation: Decision makers in current and future Governments maintain and continue to strengthen our current CCCFA 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 discouraged from unfair and unaffordable lending that would lead to harm in our community.

We make this recommendation because we have supported numerous clients who did not have the skills, strength or capability to challenge the lenders themselves and we have proven many cases of unfair lending and have obtained sizeable refunds for our clients. The Lenders are respecting the code and it is proven to be an excellent safeguard.

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: We are recommending that MBIE include in its draft for changes, that Lenders have an honest conversation with clients about what are truly discretionary expenses.

We make this recommendation because we have found, in the numerous affordability assessments that we have checked, discretionary expenses are most often underestimated. We have also found that some existing debt repayments have been missed out, when clients weren't making regular repayments (and therefore were not seen as regular outgoings on bank statements.)

We have assisted a lot of clients who are problem gamblers, and this spending is not often factored into the affordability assessments.

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.

We make this recommendation because we have seen examples of lenders not assessing expenses based on the individual's circumstances but rather applied "benchmark" figures. An example would be where a client has specific dietary requirements so their spend on food would be higher. Addiction spending i.e., cigarettes, alcohol and gambling are also examples.

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 borrower may be able to cease or reduce a particular expense may also vary.

We make this recommendation because in our experience, clients are unlikely to reduce discretionary spending, when facing financial hardship. Drinking and smoking are often coping mechanisms for clients and their families often go without food because of this.

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.

We make this recommendation as we feel this is a much fairer way to consider everyday expenses paid for using a Credit card.

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.

We make this recommendation as we feel there needs to be greater care taken by lenders, to ask appropriate questions that justify the suitability of the loan.

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.

We make this recommendation because we have seen significant harm caused by clients entering into multiple BNPL schemes. A client recently described them as an addiction.

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.

We make this recommendation because it is critical we have the full picture of our clients appetite for BNPL. We are focussed on educating our clients with the view of changing negative spending behaviours, that will lead to financial freedom for them in the future.

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 sets 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.

We make this recommendation because we have seen debt consolidation loans extended to clients whereby the debt being cleared and consolidated were not closed. This has resulted in a worsening situation for the clients and in some cases has doubled their debt.

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.

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?

Can't comment.

Conclusion

Thank you for considering our submission. Please contact Christine Liggins at Debtfix –
Privacy of natural persons **to discuss any aspect of this submission further.**

Nga mihi.

Christine Liggins.