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

Your name and organisation

Name	BRENT HOLLOWS
Organisation (if applicable)	
Contact details	

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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?
	I agree wholeheartedly with continuing to include BNPL at 4A(b). The use of the word "material" in the amended Regulations still remains and this is a vague term. There is now more discretion for lenders but that will be open to different compliance interpretations resulting in increased uncertainty for lender from a compliance point of view. Who decides upon the lenders judgment call?
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?
	Yes, agree. No comment on the wording changes.
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?
	Option 2 is more appropriate because it is more streamlined. It is a more practical option allowing lenders to not have to collect extensive unnecessary information in every case when it is not required for all borrowers. It is a more sensible and tapered approach tailored to the actual situation. Moreover, Option 2 more explicitly excludes discretionary expenses than Option 1 allowing lenders to feel more comfortable that they know with a higher degree of consistency & certainty that they are complying. The Option 2 level of enquiry is therefore a satisfactory and workable legal minimum and there is nothing to stop the lender performing more extensive enquiries when they are thought to be warranted. There is more discretion with both Option 1 & Option 2 However, neither are designated as a safe harbour approach which creates an extra risk for lenders because the additional discretion provided to lenders with discretionary expenses would be open to a wider interpretation by Regulators. Making it difficult for both.

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?
	No, I do not agree, even if interest is not charged on the Credit Card; the items on the Credit Card Statement need to be analysed as some of these items may be non-discretionary expenses and these relevant expenses should therefore be included in the affordability assessment. The same should apply for BNPL facilities. I look at the last 6 months of BNPL usage from Bank Statements and include: a) the higher of that average or b) the actual future outstanding repayment commitments and where this future amount is less than the average amount then I get an assurance from the borrower that future BNPL usage is discretionary and it will not exceed an amount necessary to maintain an adequate budget surplus. I therefore agree with 4AL(2B) that BNPL should be included in the list of relevant expenses. Over the last 2 years I have seen a trend of borrowers increased dollar usage of BNPL facilities resulting in a trend of reduced weekly budget surpluses. I even see BNPL being used for food purchases. It is unfair that BNPL is not captured by the CCCFA.
5	Is any additional guidance needed for the exception in 4AL(2A) for certain credit cards? If so, what should this guidance state?
	Yes, guidance should state that the last 90 days of Credit Card Statements should be obtained and held on file by the lender and any relevant expenses recorded on these Credit Card Statements should be included as relevant expenses in the affordability assessment process.
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?

Disagree completely.

BNPL is a relatively unregulated product operating in a regulated market and because of this technicality it should be included for: a) borrower protection and b) to provide a level playing field with other lenders.

Payments actually due on BNPL should be treated as debt payments for the purpose of listed outgoings and relevant expenses.

The draft Code paragraph 5.34 is very welcome guidance and very necessary guidance.

However, there is no need to crystal ball gaze and factor in that BNPL facilities may be fully drawn by the borrower. Lenders shouldn't have to factor in something that may not even happen.

Another example could be that in the future that a borrower may increase the BNPL limit or get another BNPL facility. You cannot and should not be expected to factor in something like that either that has not happened.

The Credit Card example doesn't propose to do this even though the borrower does have the same potential to fully utilise the Limit or get another Credit Card from another Bank. There should be a consistent approach with BNPL.

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?

BNPL expenses should NOT be excluded from 4AL(2).

BNPL facilities are rampant amongst more vulnerable borrowers and they are much easier to get than a traditional loan. Borrower protection is required, so is a level playing field.

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?

I disagree.

I would delete the exceptions.

There should not be any exceptions.

The exceptions are rife for gaming.

Lender B could increase the debt and keep payments the same or lower by extending the loan term.

A full affordability assessment should be done.

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?

Neither, I disagree with both.

A full affordability assessment should be done.

Refinancing generally signifies that a borrower is experiencing financial stress, a pre cursor to financial hardship. The full process should therefore apply.

It would not be prudent for the new lender to rely on the existing lenders HISTORICAL affordability assessment. It could have been faulty and moreover outdated.

The borrower could actually be in financial hardship with Lender A so why should Lender B be allowed to forego the full assessment?

I have had clients struggling with payments and then found that they havd refinanced elsewhere with the same weekly payment amount and the new lender had not even checked if payments on the existing loan were being made.

Therefore what is being proposed would make this practice easy picking for unscrupulous lenders.

It is also unfair that another lender could pinch business from another lender on the premise of payments being the same without having to go through the full affordability assessment process.

The new lender would have lower on boarding costs which sets an uneven playing field.

I strongly believe for these reasons that a new fresh full affordability assessment needs to be completed by the new Lender.

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?

I do not agree.

The proposed expanded exception should be deleted.

There is a distinct possibility that Lender B could game the situation by increasing the amount borrowed and increasing the loan term to obtain equal or lower payments.

It is also unfair that Lender B is able to do this and yet Lender A is not allowed to do this. Of course there is a very good reason because Lender A could manipulate the requirements of 4AF by doing this so why should it be allowed for Lender B? It clearly should not be allowed full stop.

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?

The minor changes required to my systems could easily be made by 31 March 2023.

Other comments

No other comments.