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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Organisation (if applicable)	Financial Advice New Zealand
Contact details	

[Double click on check boxes, then select 'checked' if you wish to select any of the following.]

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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?
	Financial Advice NZ believes that the amended definition of "listed outgoings" as proposed in the draft Regulations is an improvement on the current definition in Regulation 4AE(d).
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?
	Financial Advice NZ believes that the amended definition of "relevant expenses" as proposed in the draft Regulations is an improvement on the current definition in Regulation 4AE.
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?
	Financial Advice NZ prefers the second of the two options provided in the draft RLC as it is not as prescriptive as Option 1. This option provides the greatest discretion. We have concerns that the wording 'lenders may presume that expenses' other than discretionary expenses could be used against them. This wording combined with the legislation regarding personal liability for directors and senior managers for any breaches of their compliance obligations may mean that lenders continue to take a risk-based approach therefore will not achieve the desired outcomes of a reduction in intensive questioning of the customer. We recommend you re consider the wording of this change.
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?
	Financial Advice NZ supports the intention of the proposed approach in draft Regulation 4AL(2A) for borrowers who use these facilities for day-to-day transactions and pay them off quickly without incurring interest. This change is logical and could avoid double counting expenditure.
5	Is any additional guidance needed for the exception in 4AL(2A) for certain credit cards? If so, what should this guidance state?
	No
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?

	We believe BNPL expenses should be excluded and treated as a debt under the definition of listed outgoings until there is greater definition of BNPL. Consideration needs to be provided as to if there is a $0 balance or there is no intention for the facility to be used again then they can be excluded. If this did not occur, then a borrower's perceived repayment ability maybe impaired.
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?
	No
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?
	Yes
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?
	Option 1 is the best of the two proposed options. The total monthly repayment is inclusive of the total daily interest that would be charged under the new credit contract is the most simple option. We would like to see Option 2(b)(i)(B) added into Option 1 – will increase only to the extent reasonably necessary to allow for the postponement or reduction of existing payments to reduce financial difficulties that the borrower is experiencing or reasonably expects to experience. This empowers the borrower to make the best choices available to them for their future.
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?
	No comment as we support Option 1.
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?
	N/A

Other comments

	We would like to thank MoBIE for consulting on these changes. We believe these changes will not be significant enough to change the dial back to the level of December 2022 for those who meet the affordability criteria.

Until changes are made to the legislation with regards to Directors and Senior Managers liability, we believe that the risk approach taken by lenders will continue. We would like to see the evidence that supports such a strong legislative approach which has such unintended consequences on the average Kiwi's ability to obtain credit.