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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

Compassion Trust 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

Compassion Trust is a charitable trust established in 2003 serving families and individuals primarily in the east of Christchurch, Philipstown & Linwood who are experiencing financial difficulties. We are run by a team supported by staff, volunteers, and sponsors. Compassion Trust are not just financial mentors (budget advisors), we are a group of professional staff and volunteers who are passionate about rebuilding people's lives. In our journey with clients, we address poverty holistically, to also empower future generations.

The services we provide are budgeting, financial mentoring, debt management, advocacy, working with creditors, educational money courses and community gatherings.

Over this last year we supported 373 individuals and families and 67% of these clients had multiple sessions. Our goal is to work long term with client to work towards them becoming debt free and to enable them to move forward with financial freedom.

Alongside our budget service we run community gatherings which is run by volunteers to assist the local community in practical ways. We have a fortnightly community lunch which hosts arounds 70 people, a weekly coffee and chat every Wednesday which has around 15-20 attending for social connect and our Hands of Compassion team helping those in our community in practical ways such as yard work, odd jobs, plumbing, painting etc. All these initiatives are about reaching and servicing our local community in a holistic way.

The challenges we are seeing in our community are high levels of debt, the effort to get creditors to engage and supply information and creditors unaware of their new responsibilities with the responsible leading code which includes disclosure and hardship.

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:

Important note – any light grey text inadvertently left in at time of submission may not be intended as part of the submission and it is requested that MBIE clarify this with the person submitting before considering feedback or publishing submissions.

- 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.

We make the above recommendations because since the changes came into force on 1st December 2021 and 1st February 2022 (and the previous changes particularly with regard to high-cost lending):

- We have seen debts wiped when extreme hardship is experienced. Formerly the creditor would have pushed for 'minimum payments' regardless of whether they are affordable or not.
- We can quote the changes to the Act to get better outcomes for our clients
- The number of our clients having High-Cost Lending Loans has dropped to being almost non-existent among our clients
- See below Case study: Trudy which shows the debt spiral that an unaffordable loan can cause: This case study also highlights that creditors are unaware of the hardship provisions of the act and our role as Financial Mentors in getting justice for our clients who assume that the creditors know best.

Case Study: Trudy

How an unaffordable finance contract affected my client Trudy

At the beginning of December 2021 Trudy had debts with two credit cards, a bank and two finance companies (A & B). At this stage none of these accounts were in arrears.

Trudy applied to a Finance Company C for a loan in December 2021. This loan was incorrectly approved, because it didn't take into consideration the payments on her credit cards and the new loan payments that she had applied for. (The new loan payments of $99 per fortnight used up all of the surplus that she had each week, and the credit card debt payments weren't listed). In January 2022, Trudy started to go into arrears with her other lenders as well as with the new loan from Finance Company C.

In February, Trudy realised that she was unable to pay her car payments with finance company (A). She kept ringing Finance Co A for a hardship application because she wasn't getting as much work as previously and was told not to worry. She eventually made an online application for hardship with the Finance Company who she had the car loan with. (She had to request the hardship application many times) When Finance Co A got back to Trudy didn't accept her hardship and deemed the contract unaffordable. They then threatened Repossession. When Trudy said to Finance Co A that she needed the car for work they put the contract in the hands of a collection agency who allowed lower loan repayments.

What Trudy didn't realise was that she had filled the online 'Statement of Affairs' (SOA) incorrectly listing some of her debts as 4 weekly instead of monthly and her income as fortnightly. She also had forgotten that her rent had gone up since her application for this loan. (From $190 to 225 per week) Had this Finance Co A shown a more active assessment of her hardship comparing her costs with their initial affordability assessment, they would have become aware of this change in her situation and Trudy's incorrect filling in of the SOA.

The debt spiral continued with her credit cards and bank loan and other debts. When we became aware of the situation as a Financial Mentoring Service, we quickly moved to notify all the creditors

that Trudy was in hardship and payments were suspended because of this new hardship as Trudy suffered a time of prolonged medical issues including Covid-19.

We also requested contracts and loan affordability assessments from all the creditors. We then found that Finance Co C had incorrectly assessed Trudy's ability to afford the loan. This company have accepted that the loan was unaffordable because of not including the credit card payments and have wiped all fees and interest associated with this loan. We have asked that they wipe the principal loan amount as well, as this caused Trudy further hardship due to the fact that she couldn't afford it. We are currently awaiting their reply to this request.

Please note the following:

- This case is still in progress
- Finance Company A didn't attempt to work with Trudy to address the hardship that she felt. If they had of addressed the hardship and fully engaged with Trudy at the time, they wouldn't have issued a Repossession notice which was a stressful event for Trudy.
- The actions of Finance Co C in not calculating affordability properly led to a debt spiral affecting all of Trudy's creditors
- Once it was pointed out to Finance Co C that they hadn't included the credit card payments in the affordability assessment they admitted that this loan was unaffordable and offered to wipe the fees and interest. Trudy would have accepted this if we had not pointed out that it affected all her other loans and therefore, we believe all the principal loan money should be refunded. We have yet to find out if Finance Co C will agree to this.
- As Financial Mentors we have to use the law to get resolution for our clients because our clients are not aware of these rights.

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

- Often debtors will have addictions (Tobacco, Alcohol, Drugs) which lenders could deem discretionary but are in fact essential and should be included in the Affordability assessment.
- 'Takeaways' for some are essential when they work multiple jobs; are caring for relatives; and have health conditions that cause tiredness. But often this could be labelled 'discretionary'.

I suggest that Creditors need to look at the bank statements to ascertain whether these expenses are regular or discretionary based on <u>frequency</u>:

i.e. cash withdrawals could be for addictions if they are commonly made once or more each week.

The key word to be drafted in the legislation is <u>frequency</u> of these recurring outgoings.

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.

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.

I make the above recommendations because every borrower has specific circumstances relating to them and lenders should be real about whether an expense is discretionary. Specific wording should be added to strengthen Option 1 to include Addictions should be added to certain expenditures (tithing and remittances) that cannot be ceased or take time to stop.

Borrowers will often not cease their addictions when faced with financial hardship. Also, these addictions can be exacerbated (increased) by financial hardship making it even more unreasonable to expect this to be stopped.

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.

I make the above recommendations because as can be seen some people pay their credit cards off monthly, but the majority incur interest regularly. In the Case of Trudy above, the omitting of the monthly payments to these cards led to a debt spiral.

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 seen borrowers with multiple BNPL accounts and are in hardship because of these accounts. Borrowers with these accounts don’t see them as debts and they quickly can send them into a debt spiral. The ability to borrow from multiple BNPL schemes enabled borrowers to become overburdened with the debts very quickly. Borrowers have multiple accounts with differing amounts being paid each week or fortnight, making it hard to predict what was due each week. Because it is so easy to get these accounts with no checks with regard to affordability, we see that they are causing harm in our community.

Case Study: Aleesha

Aleesha had 4 young children and reported that she was having trouble feeding them. A normal budget showed a surplus until she noted all the 4 BNPL companies that she was paying which totalled $135 per week eroding her food budget.

In summary the issues identified with the BNPL and Aleesha were as follows:

- Aggressive telemarketing reported by Aleesha which she has asked to stop calling her but they continued to do so
- Unsolicited goods sent out in plain packaging with no details, so Aleesha had to call companies to find out where this was from
- When Aleesha wanted to cancel the contract she was asked: 'Have you opened the package?' and when she said yes, she was told that she had to pay for it or they would 'send her to Baycorp' (She feared ‘Baycorp’ more than her children being without food)
- No timely supplying of information when I requested it
- Confusion over Company names with meaning it took a long time to document what was happening for the Client. This I believe to be a smokescreen as a company search reveals the same registered office address and one shared director
- Set-up of Direct Debits and contracts are being done over the phone with the client and direct debits are being taken from the bank account and contract sent out following the phone call. The recordings are hard to hear especially where overseas accents predominate
- Most people don't believe they can cancel any direct debits and are reluctant to do so this leaves them vulnerable to the sales company. (They are not signing/sighting a direct debit form.) The opportunity for the Direct Debits to continue past the finish date when they continue over years leaves clients vulnerable to abuse by Sales Companies
- If they want to cancel the contract and the Sales company won’t do so people don’t know their rights.
- If faulty goods are received the sales company doesn’t necessarily accept responsibility. It is up to customers to return goods and the companies ask the client to pay courier costs.

- When requesting information from BNPL as Financial Mentors there didn't seem to be a prescribed process that the BNPL had to engage with us, leaving a poor result when hardship was being addressed for our clients.

Increased credit limits based on past spending mean there is an ability for debts to become out of hand (A borrower may have only had 1 BNPL account when they afforded a large ticket item which they paid but in subsequent times they may have multiple BNPL meaning that their ability to pay has eroded future spending in total)

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 because of my Case Study: Aleesha above.

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 because of my case study: Aleesha (above).

Lenders need to ascertain how many BNPL accounts there are and the nature of the spending specific to the borrower including if they have fees charged for missing payments to BNPL accounts which could indicate an inability to control their BNPL spending.

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 because debt consolidation can make the borrower worse off particularly if the borrower secures the debt consolidation to an item like a car. This means that the borrower closes the door to insolvency options for unsecured debt and locks in the debt to the secured item. If the change to a debt is from unsecured to secured even if the payments are lower the borrower is worse off. The lender needs to ascertain that the reason for a debt consolidation doesn't fall under other provisions such as hardship assistance entitlements with the original lenders or is better resolved in another way.

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.

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 Mentors with limited resources we strain to adapt and cope when regulatory changes are made so we consider that lenders could do likewise to adapt their systems as soon as possible so that changes can come into force.

Conclusion

Thank you for considering our submission.

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

Ngā mihi,

Maria Penny