



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

To: Ministry for Business and Innovation
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INTRODUCTION

Te Pūtahitanga o Te Waipounamu welcomes the opportunity to comment on the *Exposure draft of Credit Contracts and Consumer Finance Amendment Regulations (No 2) 2022 and updated Responsible Lending Code*.

Whānau Ora is based on the belief that a healthy whānau is not reliant on indicators of deprivation but is instead driven by a belief in their own inherent wealth. Whānau wellbeing is intimately tied to the concepts of caring – the application of manaakitanga, wairuatanga, and ukaipotanga.

Whānau Ora recognises the collective strength and capability of whānau to achieve better outcomes in areas such as health, education, housing, environment, employment, and income levels. Our relationships encourage inter-dependence; we know that our strength comes through all of us taking up our roles and responsibilities to one another.

Whānau Ora Navigators support whānau to be self-determining and navigate whānau to champion their aspirations. Our Whānau Ora Navigators work with whānau to:

- Support them through crisis and link them to the appropriate services.
- Collaborate, broker services and advocate ensuring their needs are addressed in a holistic way.
- Help develop a step-by step plan to achieve their goals and aspirations.
- Identify and strengthen support networks.
- Reduce any risk of harm to whānau.
- Uplift mana and create opportunities for cultural connectedness.

The Whānau Ora approach is unique because it:

- recognises a collective entity,
- endorses a group capacity for self-determination,
- has an inter-generational dynamic,
- is built on a Māori cultural foundation,
- asserts a positive role for whānau within society and,
- can be applied across a wide range of social and economic sectors.

Te Pūtahitanga o Te Waipounamu is the Whānau Ora Commissioning Agency for the South Island. We work to respond to whānau innovation, to foster and grow inspirational ideas that are whānau-centred, intergenerational, locally driven, and provide direct impact for whānau to enable independent transformational change.

We represent a legal partnership of Ngā Iwi o Te Waipounamu, the eight iwi of the South Island: Ngāti Rarua; Ngāti Tama; Ngāti Kuia; Ngāti Koata, Rangitane o Wairau, Ngāti Apa ki te Rā To; Ngāti Toa Rangatira, Te Atiawa. This unique initiative reflects the aspirations of ngā iwi as they relate to whānau.

As our name suggests, we reflect the convergence of the rivers of Te Waipounamu, bringing sustenance to the people and reflecting the partnership's founding principle of whanaungatanga.

Whānau Ora recognises the strengths and abilities that exist within whānau and aims to support and develop opportunities that fulfil potential. Whānau Ora is defined by whānau, and whānau self-determination is central to the approach. By its very nature, Whānau Ora is collective in its scope and intergenerational in its impact.

Te Pūtahitanga o Te Waipounamu is dedicated to improving the health and wellbeing of whānau and focuses on the aspirations and development of whānau. This includes the financial wellbeing of all whānau, which we believe must be protected and respected unconditionally.

The following is the view of the Te Pūtahitanga o Te Waipounamu on the ***Exposure draft of Credit Contracts and Consumer Finance Amendment Regulations (No 2) 2022 and updated Responsible Lending Code.***

GENERAL COMMENTS

Whānau Ora Recommendations:

Te Pūtahitanga o Te Waipounamu welcomes the opportunity to submit feedback on the ***Exposure draft of Credit Contracts and Consumer Finance Amendment Regulations (No 2) 2022 and updated Responsible Lending Code.***

Te Pūtahitanga o Te Waipounamu wishes to comment on the exposure draft of the Credit Contracts and Consumer Finance Amendment Regulations (No 2) 2022 (**the Draft Regulations**), which implement these decisions, along with changes to Chapter 5 and 7 in the draft Responsible Lending Code (**Draft Code**). We would like to specifically feedback on the design and workability of the Draft Regulations and Draft Code, as policy decisions have already been made.

We note the investigation initiated in January 2022, by the Minister of Commerce and Consumer Affairs into the impacts of recent legislative and regulatory changes under the CCCFA that came into effect on 1 December 2021. The investigation report was published on 2 August. We also note the number of changes and clarifications to the Credit Contracts and

Consumer Finance Regulations 2004 in January 2022 when (**the Regulations**) and Responsible Lending Code (**the Code**) came into force. These covered matters such as:

- a) clarifying requirements for estimates of borrowers' expenses, particularly in relation to use of bank statements
- b) removing 'savings' and 'investments' as examples of outgoings that lenders need to inquire into
- c) clarifying that a 'reasonable surplus' is not required if the lender has applied adequate buffers and adjustments to income and expenses
- d) new guidance and examples for when it is 'obvious' that a loan is affordable.

We also acknowledge that following consideration of the investigation report, Cabinet agreed to further changes to the Regulations, to address the unintended impacts of the December 2021 changes under the **Credit Contracts and Consumer Finance Act (CCCFA)**. These comprise changes to the treatment of discretionary expenses, the estimation of expenses associated with revolving credit contracts, and the exception for variations and replacements of existing credit contracts.

We also note that the CCFA changes were part of the wider reform to the Credits Contracts and Consumer Finance Act 2003 (CCFA) and included amendments to requirements for affordability and suitability assessments and the associated liability regime. The CCFA changes were also intended to address concerns about continued irresponsible lending that was harming some lenders. To this end, Te Pūtahitanga o Te Waipounamu submitted on these proposed changes. Specifically, the CCCFA changes were intended to result in all consumer lenders implementing credit assessment processes that conformed to the lender responsibility principles around affordability and suitability, including performing 'minimum steps' prescribed in regulations.

However, as noted in the Draft, the CCCFA changes are having some unintended impacts:

- a. More borrowers across all lending types who should pass the affordability test are subject to declines or reductions in credit amount.

- b. Borrowers are subject to unnecessary or disproportionate inquiries that are perceived by them as intrusive.

After reviewing the ***Draft Regulations***, Te Pūtahitanga o Te Waipounamu asserts that the Lender should be entitled to make reasonable inquiries into the borrower's current income and other debts and if as a result can confirm with the borrower that there have not been any adverse changes to their circumstances since they last borrowed, then this should be able to satisfy the lender that the borrower's income does not exceed their likely expenses. This should also be proof that there is sufficient evidence that is obvious that the lending is affordable.

However, Te Pūtahitanga o Te Waipounamu does not agree that lenders should reorganise their credit assessment processes to allow for the automated collection of more extensive information about customers' finances, with a range of potential applications (including CCCFA compliance). There is also no need to inquire into their current living expenses from recent bank transactions. Although we do acknowledge that when clarifying that when lenders estimate expenses from recent bank transaction records, lenders can ask the borrower about how once the contract is entered into.

New section 9CA of the CCCFA requires lenders to keep records about the affordability and suitability inquiries made by the lender and the results of those inquiries. These records must demonstrate how the lender has satisfied itself as to the affordability and suitability of the credit contract. The Code provides further guidance on the records that should be kept. This list of information largely mirrors the inquiries required by the Regulations, and essentially requires lenders to retain copies of information provided to them by the borrower, a breakdown of the lender's initial estimates of likely income and expenses, information about how those have been adjusted through verification or the use of benchmarks, and the specific reasons why the loan was affordable (e.g., likely income exceeded likely expenses with a reasonable surplus).

CHANGES RELATING TO THE TREATMENT OF REVOLVING CREDIT CONTRACTS

SPECIFIC COMMENTS

In response to the specific questions raised, these are noted below:

- 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?**

Yes, we agree that the definition of 'listed outgoings' to remove the examples "gym memberships" and "entertainment costs." We do posit that 'koha' and activities associated with the notion of 'Manaakitanga' are not an entertainment cost and would suggest that the *Code* contain guidance on what is considered entertainment costs. While we support the removal of the reference to "expenses the borrower is unwilling to cease", we do not accept the removal of 'unable' to cease after the agreement is entered into or materially changed." The reason for not accepting the 'unable' to cease is simply because they may be locked into a commitment after the agreement is entered into and materially changed which could impact on their ability to meet that commitment, and that would be unfair as it places the lender in compromising position.

Also, we do accept that where the gym membership is connected to the wellbeing of the borrower particularly those who require the use of the gym for therapeutic purposes such as support provided to tangata whaikaha (disabled peoples), then there should be wording to align with this. Again, this guidance could be captured in the *Code*.

- 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?**

Social or moral obligations such as tithing, or remittances should be included as 'relevant expenses.' It should also be remembered that while the *Code* sets out a range of assumptions that lenders have regard to, the *Code* merely acts as a guideline for lenders and does not ensure whānau/borrowers are sufficiently supported throughout their lending journey, and especially during times of financial hardship.

Additionally, while we understand that the **Code** is non-binding, and instead functions as a guide to the Act, it only includes guidelines for lenders when dealing with borrowers who are experiencing unforeseen hardship. This allows lenders to exercise freedom over their default policies and procedures with little or no protection for whānau. Te Pūtahitanga o Te Waipounamu emphasises the importance of implementing sufficient legal protection for borrowers as the *Code* fails to deliver a Whānau Ora approach to responsible lending, thus failing to ensure a similar approach is implemented by lenders to whānau.

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?

We think that Option 1 is the best option, as it aims to mitigate the risk that lenders take an unduly narrow approach to capturing non-discretionary expenses, causing the individual circumstances of borrowers to be overlooked, and relevant expenses to be missed. However, it is likely to require lenders to conduct more inquiries than Option 2 in circumstances where there is doubt about the affordability of a loan under the initial capture of expenses, but we believe this is appropriate, but any further inquiries should not be intrusive as noted above.

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

Te Pūtahitanga o Te Waipounamu supports this change which aims to account for borrowers who use these facilities for day-to-day transactions and pay them off quickly without incurring interest, rather than making large purchases to be paid back over months or years. We note that this reduces the extent of 'double counting' of both the assumed debt payment on the revolving credit contract and the regular expense being paid under the revolving credit contract and are supportive of this approach.

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

The BNPL cards could disadvantage borrowers as they could get caught in a spiral of buy now pay later for many cards.

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?

Yes, the BNPL expenses should be excluded as they could be longer than the interest-free period of cards which is less than sixty days which is intended to limit the exception to credit cards commonly used for day-to-day payments and paid off regularly, rather than cards that are designed with long interest-free periods (and sometimes payment holidays) that encourage the accumulation of larger unpaid balances that are paid off over a longer period. In many cases, a borrower may not have incurred interest on the latter type of card but will need to make payments over several months or more to pay off any balance before the interest-free period expires. These payments will need to be made on top of the borrowers' other day-to-day expenses.

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?

As Māori are more likely to experience poverty, earn less per year, observe lower rates of financial literacy, and view finance and spending through a uniquely Māori lens, the *Code* fails to fully address and support the cultural needs and demands of many whānau as they experience unforeseen hardship and societal challenges (Houkamau et al., 2019).

Research conducted by The National Māori Authority (2019) regarding Māori interests and concerns found that 26% of Māori participants were concerned most by increasing debt and financial instability, and 21% were most concerned with housing affordability. These figures support the notion that financial hardship and the risk of accumulating more debt already exists as an ongoing concern for many whānau, highlighting the need for greater financial support and protection for Māori.

Whānau Ora recognises that to empower borrowers out of poverty and financial hardship, borrowers must first be supported through an approach that uplifts and empathises with whānau, as opposed to the use of punitive and unethical practices. This report includes

considerations and recommendations through a Whānau Ora lens in response with a focus on the BNPL perspective.

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?

We think that concise and lay language that is easy for all whānau, at all different levels of financial literacy, to understand is the best option. Option 1 is easy and clear to read and uses common language that allows the reader to quickly understand this Draft Regulation.

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 – this option is clear, uses common language, and is easier for all whānau to comprehend.

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?

We agree with the suggested guidance in the Draft Code, particularly the section that discusses situations of hardship or financial difficulties experienced by whānau, outlining that clients should be well informed and supported by lenders when making their next financial/debt management decision.

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 raise some concerns over the non-binding nature of these Draft Regulations in that many lenders and financial institutions will continue their business as usual, and whānau, particularly those with little financial literacy or options for managing debt/hardship, will be most impacted. We believe that these changes require both a system change and a cultural change, in that the lender-client relationships and dynamics need to shift from business-focused, to supportive in nature, which may take some time.

Similar legislative change was proposed in 2021 to the Responsible Lenders Code, however, much of these changes were recommended and not enforced. This was evident in the BNZ StepUP Loans/Good Shepherd Community Loans in which ethical recommendations were offered, however, these recommendations did not translate into practice.

Te Pūtahitanga o Te Waipounamu is happy to speak to any aspect of this Submission.

Heoi ano

A handwritten signature in black ink, appearing to read 'Ivy Harper'.

Ivy Harper
Pouārahi / Chief Executive
Te Pūtahitanga o Te Waipounamu

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