



**Submission Document: Exposure draft of  
the Credit Contracts and Consumer  
Finance Amendment Regulations 2020**

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### Background

1. In April 2019, the Minister of Commerce and Consumer Affairs introduced the Credit Contracts Legislation Amendment Bill. The Finance and Expenditure Committee reported back to the House on the Bill on 11 November 2019. MBIE is seeking feedback on the draft regulations by 5<sup>th</sup> February to refine and highlight areas of the draft legislation that may need further investigation.
2. Argos Financial Systems Ltd (Argos), is a leading provider of loan software to companies within the Financial sector which, amongst other things, provide consumer loans and are regulated under the CCCFA. Argos is collectively representing a proportion of these companies that are directly affected by these changes and would rather voice their opinions through a single, communal channel, than individually. These companies collectively fill the void at different levels, between banks and pay-day lenders.
3. It is important to stress that all companies under the collective support and share the sentiment of the bill and concur with Minister Faafoi when he states

*“Also getting the credit settings are right, so that people can borrow appropriately when they need to but are not dragged into a long-term debt spiral is another way we will ensure all New Zealanders benefit from a strong and inclusive economy<sup>1</sup>.”*

However, there is considerable concern that the outcomes from such legislative change will not result in its stated goal;

*“Clearly the 2015 amendments to the Act did not go far enough and it is time now to finish the job and protect the most vulnerable consumers.”*

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<sup>1</sup> <https://www.beehive.govt.nz/release/credit-review-and-measures-stop-predatory-lending-released-discussion>

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4. **Darwinism in action:** Already, it has been indicated to us by larger lenders that offer a diverse portfolio of products that they are looking to reduce their exposure or move out of the Consumer lending space completely. The reason is a combination of low profitability due, principally, to higher compliance costs and the associated risk. Conversely, some of our third-tier clients are looking to take advantage of this retraction to attract these perceived “quality” customers as, to them traditionally, they represent less risk (and less work). Nevertheless, this means a reduction of capital available to traditional third-tier lenders and a reduction of appetite to lend it unless the “lenders of last resort” also move up the market. The net effect, unless the void is filled by new entrants, will be a squeezing out of the most vulnerable and those that may need short-term loans the most from the market.
  5. **Onerous and costly reporting:** The Amendment also calls for a significant amount of content to be included within an Annual report. We do not currently know of any client that is able to readily produce and collate these datapoints, especially if they were required to be produced historically. Neither do we see much of the data helping from a compliance point of view but rather being gathered as an “interesting, nice to have” exercise. Speaking from a software point of view, significant development would be required to collate these datapoints and produce an electronic report that could be utilised by a regulator (universal format still unspecified). If it could not be undertaken automatically, it represents a huge manual burden to a lender with no conceivable benefit.

### Summary

6. Since the CCCFA Act in 2003, the industry has engaged in responsible lending and without doubt improved the “onboarding” of borrowers. As a result, the consumer has accepted that they are going to have to open-up with financial information that can be verified. This new “openness” has allowed the lender to combine due diligence with local knowledge (to “know their client”) and find a way to lend money. The fact that these loans were repaid without fuss would indicate that the borrower found the transaction “reasonable”. The current amendment (as discussed later) may have prevented many of these transactions from happening.
7. We are highly sceptical of the use of expense benchmarks (as discussed below) within this market. They are useful for generating automated results but if the result is not clear-cut, there will then need to be face-to-face discussions to understand if the borrower will face hardship should their situation change during the term of the loan. This currently happens successfully for the majority of those lenders that are not in the “high-cost” market under the current environment, so we openly question the need for change
8. We are highly concerned at the total transfer of responsibility on to the lender and the absolution of responsibility by the borrower. In the case of insurance, it is expected that a lender upselling insurance would sell a policy fit for purpose. If it is not fit for purpose, that is a matter for the commerce commission. It is NOT the duty of the lender to analyse the borrower’s insurance policies (for example) to see if they are fit for purpose. Additionally, ignorance on behalf of the borrower is not an excuse. MoneyTalk is an excellent idea for those borrowers who have gotten into trouble. We suggest that it should be used as an educational

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tool BEFORE borrowers approach a lender and perhaps a “certificate of understanding” need be requested by the lender

9. The new proposals bookend the loan with enormous amounts of due diligence at one end and complicated reporting requirements at the other end. For a lender in the consumer market to make a worthwhile return (vs the risk), this process needs to be as automated as possible. This in turn will result in new software development costs that the lender will need to recover. Some of the data providers required to undertake the due diligence charge a “per-application” fee and this needs to be recovered for those applications that failed as well as succeeded. Though platforms, like Argos, should be able to provide its clients with the tools to facilitate the responsible lending criteria and extract all the datapoints in a format that can be audited by April 2021, extracting this data historically will not be an option. We doubt that many lenders are keeping records of the datapoints being asked for nor have any incentive to keep said records. Looking retro-actively, you cannot look for something that does not exist.

### Conclusion

10. There is a strong feeling that this new regulation is a knee-jerk reaction to publicised problems at either end of the lending spectrum, be they crippling interest rates or the mis-selling of additional products. The Amendment appears to absolve the borrower of almost all his or her responsibilities by transferring them on to the lender. The resultant legislation is going to be felt across the whole lending spectrum with the potential result that there will be less money to lend to marginal clients and the fees and/or interest rates associated with all lending may rise.

### Rules

- (a) **4AB 2(a)(i) & (ii):** *The lender must determine the following aspects of the borrower’s requirements and objective: (a) whether the waiver, or insurance is useful for the borrower, which may include inquiries into -*
  - i. *Whether the borrower has existing cover that may protect against some or all of the risks for which the borrower is seeking cover*
  - ii. *Whether the borrower’s circumstances (for example, employment status) may make them ineligible to claim some or all of the benefits under the proposed waiver, warranty, or insurance; and*

Lenders are not insurance experts nor should they be expected to be. We agree that if a lender be selling an insurance add-on, that insurance should be fit for purpose and properly explained, but the borrower should not be able to outsource his or her personal responsibility for insurance on to the lender. **remove**

- (b) **4AH Lenders must adjust initial estimate of borrower’s likely relevant expenses:**
  1. *The lender must –*
    - (a) *Compare their initial estimate of the borrower’s likely living expenses, individually or as a group of expenses, against a reasonable cost of those expenses; and*

- 
- (b) *Take the borrower's likely living expenses to be the greater of the lender's initial estimate of living expenses and a reasonable cost of those expenses, unless there are reasonable grounds to do otherwise. remove*

These benchmarks are useful for

- i. providing indicators for pre-approval
- ii. Allowing the automation of loans where the disposable income margin is significantly higher than a "reasonable" amount.
- iii. helping borrowers understand how their living expenses will be viewed and valued
- iv. providing a reason for the lender to decline credit.

However, we do not believe they should be a yardstick on which to base or refuse a loan for the following reasons:

- i. It is unlikely that the borrower's disclosed expenses are below the Household Expenditure Statistics benchmark (provided by the government at <http://nzdotstat.stats.govt.nz/wbos/Index.aspx?DataSetCode=TABLECOD E7553#>) simply because that index runs at least 2 years behind today's pricing.
- ii. There is no incentive to go below the benchmark as the "highest" common denominator **has** to be taken into consideration by the lender.
- iii. It then boils down to a face-to-face discussion surrounding the borrower's ability to repay the loan – something that already happens very successfully within the market today.

(c) **8 new regulation 24 and cross-heading inserted**

*h) that the person can ask for free and confidential budgeting and financial capability advice from MoneyTalks, the contact details for MoneyTalks, and a link to the MoneyTalk's internet site.*

We applaud the Government's pro-active stance in helping people already in trouble to get professional investment advice. Perhaps if there was a requirement for every person who wished to undertake "*high-cost consumer credit*" to produce a certificate proving that they have undertaken an online education programme within MoneyTalk's internet site, there would be fewer issues to deal with due to a greater ***understanding by the borrower of their potential commitments and the real and serious consequences*** they may face if unable to meet their obligations.

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## Content of the Annual Return

We can only answer this question from an Argos point of view but would like to stress that we are one of the leading providers of software in this industry. If you do not use Argos or our main competitor, it is likely that you are using a platform that has been developed in-house, in excel or an overseas product that is not specific to the NZ market. Therefore, we believe that our answers represent a more complete picture than is perhaps average, in terms of datapoints currently recorded and the ability to manipulate them into answers.

There are four major issues:

1. **Cost:** To collect all stated datapoints, add the logic to collate and calculate all derived datapoints, test and provide a usable report format is not insignificant to companies such as Argos, let alone those using “home-grown” solutions.
2. **Existence:** Many of the datapoints will not be currently collected. Even if the ability to collect said data started in April 2021, the information cannot be collected retro-actively if it does not exist.
3. **Relevance:** The breadth and type of information being asked for, whilst statistically interesting, has limited use unless collated universally – again how that is envisaged for companies not using a software programme is difficult to understand. Neither does the data appear to serve much of a purpose from an enforcement viewpoint. We question the relevance of this data request (and associated cost) within the context of the amendment and how it will be utilised to resolve the perceived problems within the industry.
4. **Incentive:** The lack of incentive to provide these datapoints begs a question as to the future accuracy of their recording. If not automated, prompted or mandated, these datapoints may not even be filled in.

### **We suggest an implementation and start date of April 2021**

The following table gives a simplified response to the current and future **feasibility** of acquiring the datapoints requested and highlights some associated issues. The Data Point column refers to the item number in the Amendment document ordered under title “10 – Content of the annual return”.

It does not take into the account of the cost of undertaking the changes to software, platform, training etc required.

Data points	Available in Argos platform today	Available in a format suitable for collation	Available in Argos reports by 2021	Able to be collated from Jan '20
128	Y	N	Y	Y
129	Y	N	Y	Y
130	Y	N	Y	Y
131	Y	N	Y	Y
132	n/a			
133	N	N	Y	maybe
134	Difficult – see below			
135	N	N	Maybe	No
136	N	N	Y	Y
137	n/a			
138	n/a			
139	n/a	n/a	n/a	n/a
140	Y	N	Y	Y
141*	Y	N	Maybe	Y
142*	Y	N	Maybe	Y
143	Y	N	Y	Y
144	Y	N	Y	Y
145	Y	N	Y	Y
146	n/a			
147				
148	Y	N	Y	N
149	Y	N	Y	Y
150	Y	N	Y	Y
151	Y	N	Y	Y
152*	Y	N	Y	Y
153	Y	N	Y	maybe
154	Y	N	Y	Y
155	Y	N	Y	Y

156	Y	N	Y	Y
157	Y	N	Y	Y
158	Y	N	Y	Y
159	Y	N	Y	Y
160	Y	N	Y	Y
161	Y	N	Y	Y

134 – the question presents itself “how to recognise that when a loan has been extended, rolled over or refinanced.” Usually a loan is closed and a new loan opened possibly with a different lender

141 & 142 – this would have to be legally mandated and a flag placed against the account and a reason for closure

n/a - Point 137 infers that every lender is in fact a “high-cost” lender as their annual interest rate is above zero per cent. We believe high-cost lenders should be defined as a group that lends above a certain daily interest (for example 0.1 per cent rate of charge per day) and everyone else under that rate is categorised differently. We will therefore respond n/a on datapoints that we do not feel our clients would report on