# Submission on *Exposure draft of updated Credit Contracts and Consumer Finance Regulations 2004 and Responsible Lending Code*

## Your name and organisation

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| **Name** | Kathryn Burton |
| **Organisation (if applicable)** | I am an independent community advocate who trains and supports professionals across a range of social service sectors including Financial Mentoring, Social, transitional and emergency Housing, Whanau Ora, Family Start, SWIS and Whanau Support. |
| **Contact details** | Privacy of natural persons |

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## Responses to questions

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| 1 | Do you agree with the way that the draft Regulations are phrased? If not, what changes would you make? |
| | Every whānau faces different challenges and situations. The regulations and guidance need to make it clear that Lenders should have conversations with borrowers to gain clarity on savings and investments, even though they've been removed as examples. The phrasing needs to make it clear that each borrower is an individual with unique circumstances and therefore an individualised assessment of their situation is needed. |
| 2 | Do you agree with the way that the guidance relating to expenses is communicated in the Draft Code? If not, how do you suggest it is improved? |
| | The guidance needs to make it clear that all expenses relevant to that particular borrower need to be included in the affordability assessment and that the amounts must be based on factual reality wherever possible. When lenders are allowed to make estimates or determine for themselves what level of expenditure is acceptable in a given circumstance we see these expenses being cut to unrealistic levels. Where bank transaction records are available to confirm the information which is supplied by an applicant borrower these should be checked to ensure the veracity of the information provided. Where there are marked discrepancies between what is reported by a potential borrower and the information in their transaction records, lenders need to be clear that they should include the actual spending in the affordability assessment.<br>The proposed drafting of '5.6' introduces guidance for discussions about future discretionary spending. We suggest more work here to ensure that lenders have systems in place to stop salespeople 'coaching' answers ahead of an affordability conversation.<br>The guidance in '5.27' needs to be clear that a credit check should not substitute for an affordability assessment but may be part of it. |
| 3 | Are there other practices for estimating expenses that the Code should endorse? |
| | The code needs to make it clear that lenders cannot "shop around" for the benchmark or estimate that most suits their purposes and should instead be using up to date and relevant benchmarks which are most applicable to the individual borrower. For example, many lenders are currently using the costs the Inland Revenue Department use to determine liable parents living allowances for child support purposes. These cost estimates are out of date and result in expenses being underestimated. If lenders were forced to use reliable and up to date benchmarks such as the Otago food cost survey and the Tenancy Services market rent surveys we will see less harm to whanau from irresponsible and unaffordable lending. |
| 4 | Is the new wording in the Draft Code on how lenders may apply a reasonable surplus to comply with regulation 4AF(2)(b)(i) relating to changes to expenses clear? If not, how do you suggest it is improved? |
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| 5 | Do you have any other proposals for additional guidance on surpluses? |

Guidance around surpluses should include the need to allow enough for essential household asset replacement. This includes items such as fridges, washing machines, other necessary appliances and motor vehicles. If there is not sufficient surplus to replace these assets as the need arises (ideally by way of regular savings) the borrower will face certain hardship if the item breaks down or becomes unusable for any reason. This needs to be of particular note when the listed expenses do not contain insurance for accident, fire or theft of the item.

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| 6 | Is the updated guidance and examples on 'obvious' affordability helpful? If not, how could they be improved? |
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| 7 | Do you have any other proposals for additional guidance and examples for 'obvious' affordability? |
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| 8 | Would any of these initial changes require changes to lender systems before they could come into force? If so, what are the likely timeframes for making these changes? |
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## Other comments

The dilution of provisions to ensure borrowing is not harmful for whanau is concerning to me and many of the advocates I support. In our daily work we see examples of the harm caused by unaffordable home loan lending by banks. This harm does not make the headlines but is none the less very real.

For example: It has become usual practice for first home buyers to access their kiwisaver funds to pay the deposit on their home. When these borrowers are given loans beyond their ability to comfortably repay and they contact their bank to discuss options, the banks are often requiring or strongly encouraging them to withdraw any remaining balance in their kiwisaver account to be able to continue the payments. When they have exhausted these funds they are forced to sell at a price which may be less than they originally paid for the property. The lender gets the full amount of their loan back and therefore does not register or report this as a "problem loan", but the borrower has used their retirement funds with nothing to show for it. The financial implications of this practice are not seen immediately but will have a major impact when those borrowers reach retirement age. This is a massive transfer of wealth from ordinary New Zealanders to the Australian shareholders of banks operating in Aotearoa New Zealand.

We are also seeing a weaponisation of affordable lending rules where the banks are manipulating them to use against borrowers.

For example: Borrower A was given a loan of $470,000 from the BNZ in July 2020. This loan was granted under the same affordability criteria as exists now (bearing in mind that robust affordability assessments have been enshrined in the CCCFA since 2015) and was deemed to be affordable. A very quickly found the repayments challenging to make and when living costs rose they became totally unaffordable. A approached the BNZ to investigate the possibility of downsizing the home purchased to enable a more affordable mortgage repayment and was told that they would not be able to borrow more than $250,000. They were told instead to withdraw kiwisaver funds to help them make mortgage payments.

We are also seeing examples where a bank has refused to assist a borrower to reduce their payments by claiming the lower repayments would be less affordable than the higher repayments they deemed affordable prior to December 2021.

The need for, and advantages of, a robust and comprehensive affordability assessment for home loan lending in particular cannot be underestimated as this is usually the most significant purchase the average New Zealander makes. The ramifications of unaffordable home loans are devastating and long lasting. Any change to the CCCFA and its associated regulations and guidance will seriously impact the future wealth of our population and need to be approached with caution.