

11 October 2022

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

*Bay Financial Mentors – Tau Awhi Noa (previously Tauranga Budget Advisory Service) 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

Bay Financial Mentors – Tau Awhi Noa has supported the financial well-being of clients from Katikati to Otamarakau for more than 50 years. We offer one-on-one mentoring, education programmes, support for clients who are homeless or at risk of becoming homeless and Total Money Management.

This year, we will deliver approximately 4500 sessions to clients, making us one of the largest providers in New Zealand.

We also assist clients with KiwiSaver withdrawals, Debt Reduction Orders, No Asset Procedures and Bankruptcy.

General comments related to this consultation

Whilst I understand there have been some challenges created because of the strengthening of the CCCFA, there has also been enormous gain. In particular, the reduction of pay-day lenders operating in this country. Some of these lenders were charging as much as 2% per day in interest and the impact on clients was crippling.

The concern is that, just as we address one avenue of potential exploitation, another develops. We now see clients struggling with multiple buy-now-pay later schemes, organisations selling “refurbished” items such as phones for exorbitant prices (but not charging interest) or pawn brokers who hold a family’s precious heirlooms such as Tapa Cloths and charge, 25%, 60% or even 90% interest per month.

This is a legislation that needs to be agile and the enforcement robust, because as quickly as we address one parasitic lender, another will emerge.

Response to the consultation paper questions

Question 1: Do you agree with amending the definition of ‘listed outgoing’ along the lines proposed? Do you have any comments on the wording of these changes?

There is always the potential for a client’s income to be under-estimated and while we do not want to see clients unable to borrow for a home, we know better than most that spending on items such as

smoking is not discretionary, clients will not give away pets that they consider family to save money and tithing is a cultural expectation that clients cannot easily avoid.

When in doubt, it is important to speak with the borrower and understand their individual situation.

We do clients no favours, when they obtain credit, they are not able to sustain. It quickly escalates, interests, fees and penalties grow, and debt ends in the hands of debt-collectors.

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?

Clients will often underestimate spending and there needs to be an obligation on the lender to look at the previous months to ensure they are accurately assessing the relevant expenses. This is particularly important for clients living with addiction. Often these expenses are hidden as large cash withdrawals. If these are happening regularly, it is likely this is something they are not easily going to be able to stop.

Other issues need to be considered too. These may include obligation to children not living in their care, multiple or seasonal jobs or large expenses paid annually eg rates.

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?

Option 1 – This option challenges lenders to take a broader approach and consider those items mentioned above that for many clients are not discretionary, while recognising that there are some items that would be discretionary if needed. I believe this will continue to provide protection whilst allowing safe borrowing moving forward.

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?

This seems entirely sensible as many people use their credit cards to pay for a wide range of expenses and clear the balance each month.

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

I agree it is important not to double-count expenses. My only concern would be the timing as credit cards can be used to effectively defer payments. If this is not cleared quickly clients can find themselves owing two payments at the same time – one to the credit card and one to the provider of the service. Lenders need to look at several months to identify this practice.

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?

I would be delighted to see this lending clearly recognised under the CCCFA Act. As mentioned in my general comments at the beginning, the legislation that needs to be agile to respond to new players in the market.

I am keen to see the wording in the final draft before making a decision regarding revolving credit.

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?

I would like to see BNPL fall under the CCCFA. In particular, I would like to see;

- *Better affordability assessments*
- *Questions regarding other BNPL accounts and their limits*
- *A restriction on BNPL providers continuously lifting the credit limits, even when clients are in hardship*

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?

The most important issue to establish is that the client is ultimately better off. To make this determination, it is not just a case of lower repayments but also the overall cost of borrowing. In addition, if the borrowing moves the debt from un-secured to secured debt, this will impact the client's ability to pursue an insolvency procedure.

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?

Option 2

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?

Nothing to add here

Question 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?

Conclusion

Thank you for considering our submission. This legislation needs to be both robust and agile to protect our most vulnerable.

Please contact Shirley McCombe to discuss any aspect of this submission further.

Ngā mihi,

Shirley McCombe
General Manager