

# Financial Mentoring Service

Budget Advisory Service (Whakatane) Inc

The Villa 37/39 Goulstone Road  
Whakatane 3120

Phone (07) 307-1390. Mobile 027 774 6288  
Charitable Entity CC21835

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Submitted via: [consumer@mbie.govt.nz](mailto:consumer@mbie.govt.nz)

Competition and Consumer Policy  
Building, Resources and Markets  
Ministry of Business, Innovation & Employment  
Wellington

To whom it may concern

## **RE: Credit Contracts and Consumer Finance Amendment Regulations (No 2) 2022 and updated Responsible Lending Code Consultation Paper**

Financial Mentoring Service (Budget Advisory Service Whakatane Inc) 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:**

Financial Mentoring Service is contracted by the Ministry of Social Development to deliver Building Financial Capability Service (BFC) to the Whakatane district (Whakatane township, Ohope, Edgecumbe, Matata, Paroa, Poroporo, Taneatua, Ruatoki and Waimana.) Our service was established in 1966. Whakatane district is an urban/rural mixture, the disadvantaged members of the community are often low wage earners, seasonal workers, beneficiaries, youth, teenage mums, solo parents, and an increasing number of elderly people. The majority of the Whakatane district is **high deprivation decile 10 (2018 census)**. Currently 77% of our clients are Māori and whakapapa to mix of Iwi with the majority being from Nga Tuhoe and Ngati Awa Iwi.

There are many challenges that our community is currently facing, financial hardship is at the top. The majority of our clients are presenting with more complicated financial and social needs. There is a lack of housing, lack of affordable housing, they often present with multiple debts that they are struggling to pay, which causes harm and financial hardship. Many cannot afford to pay for the real basics (food and rent). We are seeing more clients presenting with credit card debts/loans that they should not have been granted if an accurate and true affordability assessment was done by the lending institution.

**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:

- 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.

### **Response to the consultation paper questions**

**Question 1: I do not agree to amending the definition of ‘listed outgoings’ along the lines proposed.**

**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.’

I make the above recommendations because of the feedback received from our service’s financial mentors’ who are concerned with the increased client financial hardship due to:

- Lenders underestimating affordability assessments and making it look as though a borrower has more surplus
- Situations where an expense that most would expect to be discretionary is not in reality for a client. Reasons for this:
  - Instances where timing is important when categorising discretionary items that could be linked to addictions
  - Practicalities of life, particularly for those that are working multiple jobs with non-standard and fluctuating hours and patterns of work, those caring for friends or family members, and those whose finances are impacted by health conditions.

**Question 2: Amending of the definition of ‘relevant expenses’ along the lines proposed, may create further unexpected hardship to the borrower.**

**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: Regarding the two options for guidance in the Draft Code relating to treatment of discretionary expenses:**

**Recommendation:** Strengthen drafting along the lines of 'option 1' in the Consultation Paper and 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 based on financial mentors' feedback that borrowers are unlikely to give up pets, might have significant break fees associated with an expense and that there may be wider special circumstances to think about as a lender. Also, there is no mention of spending related to addiction or the time it takes practically to cease an addiction related expense, as this requires the individual/borrower to successfully engage in an addiction quit programmes and counselling, and to actually quit.

**Question 4: I do not agree with the approach to excluding some credit cards as proposed in 4AL(2A).**

**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.

**Question 5: Additional guidance needed for the exception in 4AL(2A) for certain credit cards.**

**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.

I make this recommendation based on feedback from financial mentors, they claim that clients do not understand, and do not comprehend, the likely consequences of not meeting other costs or debt repayments and take out the maximum amount of a credit card. Some clients will max out their card to pay for the payment due which compounds their debt problem, and is unaffordable.

**Question 6. Buy-Now-Pay-Later (BNPL) and 4AL(2).**

**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 based on financial mentors' feedback, who claim that unaffordable BNPL lending is causing hardship, there is poor hardship response, increased credit and credit limits from BNPL is being offered which is leading to more hardship and disaster for the vulnerable.

**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.

**Question 7. In light of excluding BNPL from 4AL(2), further guidance in the Code is necessary to address the treatment of BNPL expenses.**

**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 we have observed:

- Clients increasing their BNPL borrowing
- Clients signing up with multiple BNPL lenders
- Clients paying fees when they miss BNPL repayments
- BNPL borrowing regularly fluctuating
- Credit limits from BNPL being offered on an ongoing basis even though someone is otherwise in hardship
- Increased credit limits from BNPL being offered and leading to disaster

**Question 8. The way that the Draft Regulations relating to the expanded exception for variations and replacements of existing credit contracts is phrased.**

**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 based on feedback from financial mentors as they are concerned about the amount of strain that will be placed on them when there are regulatory changes, as they and the service have limited resources.

**Question 9. Regarding the two drafting options for expanding the exception for variations and replacements of existing credit contracts preference:**

**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.

I make this recommendation based on feedback from financial mentors, who advise that debt consolidation prolongs and intensifies their client's hardship, they can end up paying more.

#### **Question 10. Proposed Draft Code guidance relating to the expanded exception**

**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.

I make this recommendation based on feedback from financial mentors as clients do not understand the cost of a debt consolidation loan. They are already under intense stress due to their debts and this process increases their stress and places them under significant longterm pressure, the process takes a long time.

**Question 11.** As mentioned above we are concerned about the amount of strain that will be placed on our service, our financial mentors when regulatory changes are made, as we have limited resources.

#### **Conclusion**

Thank you for considering our submission.

Please contact Tui Edwards on Privacy of natural persons to discuss any aspect of this submission further.

Ngā mihi,



Tui Edwards

Service Manager