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

Submitted to: consumer@mbie.govt.nz

Submission on the Credit Contracts and Consumer Finance Amendment Regulations (No 2) 2022 and updated Responsible Lending Code Consultation Paper

CAP thanks MBIE for the opportunity to make a submission on the three proposed changes to the regulations. The regulatory changes to date have continued to provide important consumer protection, particularly to borrowers who are vulnerable and most at risk of financial hardship.

In this submission CAP wishes to draw MBIE's attention to the incredibly vital role of fair and reasonable affordability assessment. In contrast, CAP repeatedly sees the financial hardship that families bear when a borrower's expenses are not adequately considered. Lenders often have mis-classified essential expenses as discretionary, and this can quickly lead to the approval of unaffordable loans. CAP submits that the onus should be on lenders to verify in cases where it is not clear.

CAP also has concerns about the proposed changes to exclusions for debt consolidation. CAP often seen cases of financial hardship, which has been prolonged through unaffordable debt consolidation. This often does not address the underlying causes and often only delays the point at which people seek help. CAP strongly encourages MBIE to better safeguard people from further financial hardship by expanding the definition of **"vulnerable borrower"** in the Glossary of the Responsible Lending Code to include borrowers that are refinancing to resolve overdue or defaulting debts.

CAP welcomes the opportunity for further dialogue and remains willing to discuss any aspects of this submission.

Ngā manaakitanga,

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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?

CAP is comfortable with the deletion of "gym memberships" and "entertainment costs" given that the draft code includes the guidance that underlying contractual requirements, such as significant break fees, would be fixed financial commitments.

The rationale to delete "expenses the borrower is unwilling or unable to cease after the agreement is entered into or materially changed" is clear.

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?

CAP is concerned that the proposed additional sub-paragraph presumes an established understanding of what "discretionary expenditure" actually means, yet CAP cannot identify this term defined in the draft act or draft code. Without a clear definition of the term, CAP is concerned that proposed changes to 4AE will lead to lenders misclassifying and then excluding relevant expenses.

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?

CAP prefers **Option 1**. The guidance provided within Option 1 is crucial; CAP constantly reviews poor lending decisions. CAP has a full-time team member who raises disputes with lenders and complaints with disputes resolution schemes. Very often the lender has made various presumptions about a borrower's expenses, very much exercising the 'blanket approach' that paragraph 16 of the Consultation Paper refers to.

Option 1 seems to lead more naturally to conversations between lenders and borrowers to clarify areas of ambiguity, avoiding the blanket approach that has caused so much consumer harm to date.

Option 1 still lacks a definition of the term "discretionary expenditure". This could be rectified by including some of the helpful material of Option 2:

"In considering whether expenditure is discretionary, lenders may presume that the following are not discretionary:

- a) Fixed financial commitments – including any expenses with underlying contractual requirements or significant break fees associated with ceasing them (e.g., some pay television subscriptions, gym memberships and bundled mobile phone plans);*
- b) Payments of debts;*
- c) Essential living expenses; and*
- d) Regular or frequently recurring outgoings associated with tithing, remittances to a family member overseas, and pets."*

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

CAP understands the intention of wanting to avoid the 'double-counting' as described in paragraph 22 of the Consultation Paper, but the drafting should be strengthened to consider the proportionally higher risk of a high credit limit being excluded than a lower credit limit. Within the current drafting it is feasible that a lender treats two assessments equally for two different borrowers with identical incomes and expenditures, yet one has an existing credit card limit of \$1,000 and the other of \$50,000. The current drafting should include a mechanism that acknowledges the risk that a borrower that did draw down the entirety of a much higher credit limit may be in financial hardship by virtue of being unable to pay for their maxed credit card limit.

Paragraph 22 of the Consultation Paper indicates that the intention is to avoid double-counting for those that haven't incurred interest, presumably because the borrower pays off their credit card promptly, demonstrating habitual financial discipline. 4AL(2) should be strengthened by including the obvious additional condition that the lender has no evidence of defaults or payment difficulties with other loan products.

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

CAP recommends that the Responsible Lending Code is updated to include guidance on double-counting assessment that captures the point raised above in Question 4 about defaults or payment difficulties within other loans or bank statements.

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?

It is challenging to provide a definitive answer to this question while it remains unclear about how the Minister for Commerce and Consumer Affairs intends to treat BNPL products. CAP sees BNPL problem lending increasingly frequently. CAP's [December 2021 submission](#) on BNPL clearly demonstrated cause for concern. CAP recommends that BNPL products are brought under the CCCFA, and that BNPL products are treated within 4AL as a revolving credit facility.

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?

Code guidance should instruct lenders to make sufficient inquiries with borrowers to understand the full extent of their credit limit(s) for BNPL products.

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?

CAP has significant concerns about the proposed changes to exclusions for debt consolidation. CAP often seen cases of financial hardship, which has been prolonged through unaffordable debt consolidation. Evidence shows that people in financial distress are less capable of making good long-term decisions. This often means that borrowers seek debt consolidation which does not address the underlying causes and often only delays the point at which people seek help.

CAP strongly encourages MBIE to better safeguard people from further financial hardship by expanding the definition of **"vulnerable borrower"** in the Glossary of the Responsible Lending Code to include borrowers that are refinancing to resolve overdue or defaulting debts. This will place a higher degree of responsibility on lenders to ensure that sufficient inquiries are made when assessing a borrower's requirements and objectives (4.8), when assisting borrowers to make an informed decision (7.11), when communicating key features of associated insurances (9.15). This will appropriately support the intention of the Consultation Paper to balance the desire to broaden the range of lenders with whom a borrower can refinance, with the need to protect vulnerable people in financial hardship from getting into further trouble.

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?

CAP recommends the adoption of Option 2 which seems to be the choice that will prevent debt spirals and persistent indebtedness. As financial mentors, CAP's experience of debt consolidation has often only masked over hardship temporarily, without addressing the root issues of hardship. It is imperative that borrowers that are looking to refinance to alleviate financial hardship are protected from further indebtedness.

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?

The main issue to be addressed within the Code should be the high expectation on lenders to demonstrate that refinancing is truly in the best interest of the borrower. There is real risk of

unaffordable loans, and unscrupulous lending practices by expanding the exception for variations and replacements of existing credit contracts, that the safeguard of suitability is of immense importance. As noted above, borrowers refinancing to alleviate financial hardship or default should be considered “vulnerable borrowers” as defined in the Code because the risks of further indebtedness and harm is so high.