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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

Family Finances Service Trust – Upper Hutt 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

Family Finances provides a free, confidential, non-judgemental, professional budget advisory and financial mentorship service to families and individuals in Upper Hutt City and environs. We have been operating as a standalone service since 2016. One of the biggest issues for our clients is easy access to borrowing. When money is tight due to high rents, low wages, and time out of work to raise children, it is tempting to borrow to cover the gaps. The ease of being able to make bad short-term financial decisions causes our clients harm and makes them unable to fully participate in society. As there is a squeeze on living costs, now is the time to ensure our clients are not able to get themselves into worse financial situations.

General comments related to this consultation

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.

I make the above recommendations because we have seen less harmful debt since the legislation changed. When I wrote my submission for the Consumer Contracts Legislation Amendment Bill in 2019, there were multiple players in the high-interest (over 50% pa) lending space. The change in legislation has resulted in all the high-interest lenders reducing their interest rates or leaving the NZ lending space. At the time of my original submission, I made the argument that I don't have a single example of someone being in a better position because of high-interest lending. I still stand by that, and by high-interest, I am talking about anything above 20% pa.

The main change for us in this legislation has been the onus being on the lender to prove affordability. While this change is mostly too new for our clients (people often don't come to us until they have been struggling with their debts for years), the fact that it is now the lender's

responsibility to show that the loan is affordable, is a huge help. When people are struggling to cover their bills, debt is never the answer, and can never be shown to be affordable.

Response to the consultation paper questions

Question 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?

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,' which will cause harm through the creation, or compounding, of financial hardship.

I make the above recommendations because when people are desperate, they are not in the best position to think rationally about their finances. When we work with clients, we try to get an understanding of their financial situation, but very few clients remember all their financial commitments. For example, anybody who has a car needs to have a budget for vehicle maintenance, anyone who has children needs a multitude of extra costs and for many expenses -the only way to show it is not an essential expense is to see if a person can do without it. When we arrange ethical, interest-free loans for clients, we need to produce three months of bank statements – in an attempt to identify essential costs for that client.

I am also concerned by the use of the word 'remittances' and would challenge MBIE to use language that is more commonly used by borrowers.

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?

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.

I make the above recommendations because when people are under financial stress, they over-estimate how much change they can make in their financial situation. Expenses that a lender may deem to be optional are often not so for a client. Parents are rarely willing to reduce TV and internet costs, gym and sports costs are often crucial to maintaining someone's mental health and reducing school costs brings shame. As mentioned above, the best way to show that something is not an essential cost is to do without it.

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?

Recommendation: Strengthened drafting along the lines of 'option 1' in the Consultation Paper 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 because each client's situation is unique, and only they can say if an item is discretionary. An example of this is where there is tithing or contribution to family costs. While these may be able to be reduced for one client, another may have no ability to stop these expenses. Other costs are not instant to reduce, e.g. those around addictions, anything requiring behaviour change or shared costs. The onus must be on the creditor to investigate these costs or assume by default they are not discretionary.

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?

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.

I make the above recommendations because there is no need for an affordability assessment before a client utilises this credit facility – it has already been done! So, while people who manage their money successfully may utilise credit cards as a way of maximising their use of money and to get credit card rewards, there is still a very real risk with a pre-approved credit facility, of someone using that facility and being unable to pay it back.

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

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 because the work needs to be done by the creditor to prove that the client can afford the loan. It seems there is no one-size-fits-all approach and trying to make one encourages short-cuts. There is no doubt that credit card debt is a real problem in New Zealand, and the majority of the costs of credit cards are paid by customers who cannot afford this sort of lending.

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?

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 because of my concern with the huge increase in BNPL, and what this says about our clients' abilities to manage their debt. Like credit cards, BNPL is paid for by those in the hardest situations. Across the last 6 months we have seen people come to us who are paying for food using BNPL. If the CCCFA requirements were applied to BNPL, and other pay-as-you-go contracts such as phone contracts, we would be able to ensure clients could only access safe lending that they could afford. Anyone who is using BNPL for food needs better help from our legislation than they currently get through these exclusions.

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.

I make this recommendation because anyone who is forced to use BNPL is not able to afford to borrow more money. Most of our clients have multiple accounts, and (as far as I am aware) each BNPL provider is unaware of the other.

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?

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 all have a responsibility to our people to assist them to manage financially. Use of BNPL should be a warning of financial hardship, not the cheerfully advertised product that it currently is.

Debt and spending are like drugs. Most of us are unaffected, but when every shop in every mall tells us it doesn't matter if we don't have the money, those of us who are addicts will not be able to resist. Every product that exists to allow people to hide from their financial hardship only makes the problem bigger.

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?

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 because debt consolidation is a mis-sued, and badly advertised concept, that implies to people that it is better for them when that is not always the case. One of the fundamental ideas for getting out of debt involves focusing on one debt at a time, which gives a huge psychological advantage. With the advances in internet banking, it is not difficult to manage multiple debt repayments (if the debts are affordable) and I would like to see consolidation only used if there is evidence that it will be better for the borrower.

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?

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.

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?

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 because people who have come into trouble financially are not usually looking rationally at long-term solutions. We have had clients who have wanted to consolidate debt to MSD, even though that portion of their debt is interest-free. The allure of one easy payment has won over working out how much the debt is going to cost them, and the practicality of solving today's problem has won over planning for a life free from the burden of debt.

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?

I draw your attention again to the extensive process taken by the ethical lenders, and suggest that the investment of time when giving someone a loan would save a huge amount of time and heartache from people having to access our services. I would love Financial Mentoring / Budget Advice Services to be able to return to helping people structure their money to give them back the dignity of living a good life that they can afford.

Conclusion

Thank you for considering our submission.

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

Ngā mihi,

Heather Lange
Manager & Budget Advisor/Financial Mentor
Family Finances Service Trust – Upper Hutt