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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

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

Henderson Budget Service 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**

Henderson Budget Service has been operating for the last 30 years in the West Auckland Community. We provide financial mentoring services to members of the west Auckland community. The service was started after a need was identified to help whanau who are subject to high levels of consumer debt and a general lack of financial literacy.

We provide budgeting advice to individuals and whanau along with financial literacy education to the community via alternative education providers, employers and other social service providers. Our aim is to view the client wholistically and provide a link to other social service providers in the community where appropriate as well as helping clients develop and understand an achievable budget.

We are funded by an MSD contract to provide 690 client sessions per annum. Last year we provided over 1,100 sessions along with running education programs for several large employers and alternative education providers.

We were presented with over \$12million of consumer debt much of which is to finance companies who charge interest rates in excess of 25%pa. In the last 12 months we have seen a significant increase in working whanau presenting with unaffordable personal debt which has seen a need for our staff to provide advocacy support to assist them navigate the financial harm being caused in our community.

The West Auckland community we serve is predominantly lower socio economic and working-class families with poor financial literacy who struggle to make ends meet. We see a wide age range, including young people starting out and struggling to address what has been a proliferation of easy to establish consumer debt through to pensioners who have been unable to get off the debt treadmill and have little to no assets to show for a lifetime of working. In many cases these pensioners are left with little to no choice but to consider insolvency in their old age.

Our local community has seen the access to consumer credit increase over the last 3 years. We have seen a significant uplift in clients approaching us for assistance to help them access Kiwi Saver funds under financial hardship provisions. This has had a several impacts on the service mainly around the complexity and length of time it takes to work with whanau to resolve their issues.

Historically our service would not see irresponsible lending cases until loans had become so unaffordable that the client was in dire financial harm and left with little option but insolvency. The

increasing number of hardship claims is highlighting lender behaviour at an earlier stage meaning that our service can engage at a time when there are other options other than insolvency.

The ease of access to consumer credit has been amplified by the proliferation of Buy Now Pay Later (BNPL) facilities. Whilst these facilities started out serving retailers selling discretionary items the facilities are now commonly used for essentials including groceries, nappies and takeaways. The ease of which these facilities are accessed has had a wide effect on the community and is non discriminant as to those it effects.

### **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 or should have received better care diligence and skill of the lender at the tie of establishment of the loan.
- 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 been able to hold lenders to account for poor assessment and other lending decisions. The ability to use the act as a tool to gain access to information and agreement on an outcome is much improved over previous versions.

One of our cases saw the financier take immediate action to address the issues raised, resulting in the client receiving a full refund of all payments and the vehicle returned to the dealer. This saw the client reduce their debt from \$98k to \$28k and their weekly outgoings drop by 305/week. Prior to the CCCFA the ability to clearly challenge the affordability of the loan would have been much more difficult.

The dispute resolution services have a better ability to hold lenders accountable for their actions. The new proposal allows for further redress to lenders and returning the client to the position prior to the lending occurring rather than suffering any financial harm.

Our service has been able to identify over \$180,000 in unaffordable loans for just 6 clients resulting in loans being cancelled and clients having over \$180/week on average returned to their budget.

### **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 we see lenders remove church tithing, not considered BNPL commitments and not considered debt collection payments as financial commitments as they deem these all as discretionary.

In many unaffordable lending cases we see lenders use historic statistical amounts for food and vehicle expenses. These statistical amounts are now dated (the Otago food survey is dated 2019

and the IRD Household Expense Statistics are from 2020) and not currently relevant to the true cost of running a household.

It is also common for lenders to use income from sources such as “winter energy payments” and “child disability allowances” as income for debt servicing – these income sources are either temporary and or to cover specific expenses

**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 in many cases, particularly in the Pacifica community, we see tithing completely overlooked and discounted as discretionary. For these clients the stigma and shame they place on themselves for not being able to meet this commitment creates other issues such as mental health and stress related conditions.

Also common is the treatment of gambling and alcohol expenditure as discretionary. For many clients they are unable to adjust their spending in these areas and the provision of debt, particularly personal loans compound the harm caused to the client.

From our experience lenders do not take the time to understand their client and their personal spending habits. This shows evidence of the lack of care diligence and skill of a lender who prefers to use automated approval algorithms for fast turnaround times rather than gaining a true understanding of the client individual situation.

By making lenders more accountable for “relevant expenses” we will see lenders have to take a step back and considering the individual situation. Ultimately this may lead to more declines, but it will also lead to less economic harm on whanau

**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 too many lenders do not take the time to investigate the client’s individual circumstances as they are rushing to meet turnaround times. This leads to errors particularly when dealing with borrowers who have a history of default and or poor money management. These clients should be treated as vulnerable and extra time taken to undertake the assessment of the loan suitability for that borrower. Whilst it may take longer to have the loan approved the benefits of understanding the situation will mean better outcomes for the borrowers. It also demonstrates the lenders commitment to utilising care diligence and skill of a responsible lender rather than using algorithms to approve loans.

**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 at any time the client can access funds from the card via a large one-off expense, such as travel overseas for a family emergency or an unforeseen medical expense. They may also have access to funds via cash advance. In this circumstance they take on additional debt under preapproval and the repayment of this debt would then affect the affordability of the loan being applied for.

**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 as discussed client circumstances can change, and credit card utilisation can be amended to allow for cash advances and or one-off large purchases that then attract interest.

This should not preclude the lender from being able to treat the borrower as an experienced borrower and make a judgement call on how to treat the credit card limit. It should be a time that the lender asks more questions to establish and then document how they will treat the credit card limit.

**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 we see many clients that lose control of their BNPL facilities. An example is a client who presented with 15 transactions across 3 BNPL platforms. The largest transaction was \$37 however in the ensuing 2 weeks they had a financial obligation of \$258 per week, leaving just \$42 per week to feed a family of 1 adult and 2 children.

BNPL is a financial obligation and we see increasing numbers of clients that are having their credit ratings negatively affected by the registration of defaults on these BNPL obligations.

This leads to increase borrowings costs for clients who are penalised for the reduced credit rating

**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 We regularly see clients with multiple BNPL facilities which cause financial harm. We are now also seeing the BNPL services promote their facilities to clients who have an account. This promotion overtly encourages spending by offering discounts and special member prices. The BNPL service has not undertaken any affordability assessment and are therefore unaware of their client's position. By promoting member specials they are actively encouraging potentially vulnerable clients to take on additional debt

**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 as mentioned above the lack of knowledge by BNPL services of the client's individual situation leads them to allow facilities and limits well beyond the client's affordability. We see clients with multiple facilities that can take a considerable proportion of their weekly income to repay. If lenders do not have sufficient knowledge of the client's utilisation and history with these facilities, they may compound financial harm by lending additional funds to the client

**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 higher 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 the existing behaviour of lenders to electronically assess and validate affordability is left open to manipulation of input data. We regularly see data input that is inaccurate and leads to loans being approved when they are clearly unsuitable and unaffordable. Debt consolidation facilities have a place in the lending spectrum but must be assessed to a higher level to ensure the client is better off than the status quo.

**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.

I make this recommendation because as above the speed at which the borrowers can access debt consolidation loans does not necessarily show that the lender has taken the care diligence and skill required to ensure that the borrower is benefiting from the loan. Often the debt is increased as the new lender to sell add on insurance products to protect the loan in the event of illness and or other events that may contribute to hardship.

**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 it is too easy now for lenders to use automated processes to assess affordability. There is a skill involved in assessing loans to vulnerable borrowers and as such the suitability of a debt consolidation facility should be treated as paramount when undertaking these transactions.

Consumer lenders in New Zealand have tended to show themselves to be greedy when undertaking refinances and have a habit of adding on irrelevant insurance products that are not in the best interests of the client (they bolster the profits of the lender).

The state of mind of the borrower (stress levels) when under pressure to repay obligations to BNMPPL or other financiers to avoid recovery action can lead to poor decisions. This pressure currently allows lenders to take advantage of the consumer by adding unnecessary costs and implying that the loan may not be approved without these costs. Additional care and diligence by the lender are required to ensure the client understands exactly what they are signing.

**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?**

No Comment

### **Conclusion**

Thank you for considering our submission. Please contact Jeremy Cooper on Privacy of natural persons to discuss any aspect of this submission further.

Ngā mihi,

Jeremy Cooper  
Financial Mentor  
Henderson Budget Service