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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

North Harbour Budgeting Services 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

North Harbour Budgeting Services Inc (NH Budgeting) works from Devonport to the Hibiscus Coast of Auckland and via zoom with many clients throughout New Zealand and Overseas.

We have been operating for 19 years as NH Budgeting but previously had operated as five budgeting services from North Shore and Hibiscus Coast Citizens Advice Bureaux.

NH Budgeting saw 405 new families in our 2021-2022 year of which 40% identified as NZ European, 20% identified as Maori, and 18% identified as Pacifica with the final 22% made up of other ethnicity. 38% of our clients were in the 26 to 35 age range, 23% were in the 46 to 65 age range, 19% were in the 36 to 45 age range, 14% were under 25 and the final 6% is 65 years plus.

The North Shore of Auckland is seen as a well to do community with very little need for financial assistance. This is not correct, with our cheapest doctor charging $18.00 per visit and the average being aprox $70.00 per visit alone it shows immediate costs for needs are high. We do see many homeless people and a reasonable amount of emergency housing. However the biggest area of growth for us is In the low to middle income working poor. These people have very little options for extra assistance. They generally are working with children in childcare which puts both economic and mental stress on clients

The challenge our community has is to provide resources to cope with the growing needs in our community, e.g. Food Banks, reasonable cost doctors, reasonable cost transport.…

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 see many clients that have been granted lending that were unaffordable from day one. Comments like

"I thought I could afford it because they gave me the money."

"I didn't think I would get the loan but when it was given I didn't want to say no and I thought I would be able to handle it."

We have many clients in the past year that we have been able to use this law for, either by negotiation with creditors or via Financial Disputes Resolution groups.

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 have seen and continue to see examples of regular spending classified as discretionary. Pets are one area were this is already mis calculated. Pets may play a very important part in the mental health of the client. Pet food and vet fees should not be classified as discretionary. They are an ongoing regular expense. If a client has had an injury or doctors have recommended ongoing gym work, then a reasonable ongoing cost for gym should not be seen as discretionary.

Addictions are an important part of this. If you have an addiction, then the product that they are addicted to must not be seen as discretionary. They need assistance to address addictions however this is not for lending officers to decide.

We also do not believe that all lenders will take a responsible attitude to this area as we have not seen this in the past. They are happy to forgo regular expenditure and place it under discretionary to help the affordability of the lending.

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 as stated in Question 1 and repeated below.

We have seen and continue to see examples of regular spending classified as discretionary. Pets are one area where this is already mis calculated. Pets may play a very important part in the mental health of the client. Pet food and vet fees should not be classified as discretionary. They are an ongoing regular expense. If a client has had an injury or doctors have recommended ongoing gym work, then a reasonable ongoing cost for gym should not be seen as discretionary.

Addictions are an important part of this. If you have an addiction, then the product that they are addicted to must not be seen as discretionary. They need assistance to address addictions however this is not for lending officers to decide.

We also do not believe that all lenders will take a responsible attitude to this area as we have not seen this in the past. They are happy to forgo regular expenditure and place it under discretionary to help the affordability of the lending.

We believe that health conditions can have a huge impact on whether an expense is discretionary or not. Costs of medications, food products, pets, councelling, addiction costs etc might often be seen in discretionary spending to help show surplus.

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 based on experiences with many different clients and the struggles they have had to cease smoking, get assistance to detox from alcohol addiction, struggle with gambling addictions and deal with mental health issues.

One of our advisors used to sit on the curb with a client who struggled to give up alcohol. Anybody that has ever witnessed this struggle with drink will understand the reason why the borrowers' unique circumstances need to be taken into consideration every time.

Pets can be the only friend, security, or safety blanket that somebody has. For the clients mental health costs associated with these pets needs to be non-discretionary. For these reasons tenancy agreements have been altered to reflect the need sometimes for pets and this needs to be carried into the non-discretionary spending area for lenders. Again, understanding unique circumstances being taken into consideration every time.

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 we see clients who have lost highly paid jobs unexpectedly due to redundancy or illness/accident and have a number of high-cost credit cards that have always been paid off in full to earn air points or bonuses for the client. However, with loss of income comes loss of ability to pay in full, They may have plenty of air points or bonus points but they find themselves unable to meet part payments and with large interest charges due to the way credit card interest is calculated meaning they very quickly find themselves in very dire straits with finances. In many cases we do see between five and 10 credit cards.

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 often clients have not understood the likely consequences like an inability to meet other costs or debt repayments that taking out the full amount of a credit card will have or have not considered what would happen in this event.

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 are seeing large numbers of clients with unaffordable BNPL debt that is affecting their ability to feed and supply necessities to families and whanau.

Clients can obtain many different BNPL debts and as long as they pay then the advancement of larger credit limits is unchecked and unregulated leading to disaster.

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 of

- Clients increasing their BNPL borrowing amounts

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

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 of

- 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. 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 of

- Debt consolidation putting a client in a worse situation
- Where going into debt consolidation was rushed and closed the door on alternative options for resolving a financial issue

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 of

- Debt consolidation prolonging and intensifying hardship
- Where going into debt consolidation was rushed and clients ended up paying much more
- Situations where a clients debt went from unsecured to secured meaning they were unable to access a NAP to remedy financial 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 of

- Clients did not understand the cost of a debt consolidation loan
- Where going into debt consolidation was rushed and lenders should have referred to a financial mentor or different alternative instead of lending
- Situations where a client didn't understand that debt would go from unsecured to secured meaning they were unable to access a NAP to remedy financial hardship
- Situations where a client was under significant pressure or stress at the time they took out a debt consolidation loan

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 Claudette Wilson Privacy of natural persons to discuss any aspect of this submission further

Ngā mihi,

Claudette Wilson

General Manager
North Harbour Budgeting Services Inc.