

# Submission on *Exposure draft of Credit Contracts and Consumer Finance Amendment Regulations (No 2) 2022 and updated Responsible Lending Code*

## Your name and organisation

Name	Privacy of natural persons
Organisation (if applicable)	Office of the Privacy Commissioner
Contact details	Privacy of natural persons

[Double click on check boxes, then select 'checked' if you wish to select any of the following.]

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## Responses to questions

1	<p>Do you agree with amending the definition of 'listed outgoing' along the lines proposed? Do you have any comments on the wording of these changes?</p>
	<p>The Office of the Privacy Commissioner (OPC) agrees with the new amended definition of 'listed outgoing' to include payments of debts under a buy now pay later contract. For credit providers to undertake assessments of an individual's creditworthiness it is prudent that information on debts incurred from BNPL contracts are included to ensure unsuitable credit is not provided to individuals.</p> <p>The collection of this information appears to be necessary for the purposes of assessing an individual's creditworthiness.</p>
2	<p>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?</p>
	<p>The proposed definition allows for the lender to determine what may amount to discretionary expenditure, providing the lender with the flexibility to determine what information meets the definition of relevant expenses for the different types of financial products.</p>
3	<p>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 these options?</p>
	<p>Of the two options, option 1 is the preferred option. Option 1 adopts a data minimisation approach meaning that lenders at the outset of assessing an individual's relevant expenses will not collect information on discretionary expenses. But they may collect further information if it is material to the lending decision.</p>
4	<p>Do you agree with the approach to excluding some credit cards as proposed in regulation 4AL(2A)? If not, what changes would you make?</p>
	<p>From a privacy standpoint, if the individual has no change on a revolving credit contract, where there is no interest charged, or the lender has no reason to believe that the borrower will not incur interest, this wouldn't impact the risk profile of the individual or negatively impact the creditworthiness of the individual. This approach ensures information only material to making an affordability assessment is collected by the lender, ensuring only information that is necessary for the determination of the assessment of the individual's creditworthiness is collected.</p>
5	<p>Is any additional guidance needed for the exception in 4AL(2A) for certain credit cards? If so, what should this guidance state?</p>
	<p>No comment.</p>
6	<p>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?</p>

BNPL products should be captured in the regulations and should be included in assessing an individual's creditworthiness.

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?

See response at point 6.

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?

No comment.

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?

No comment.

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?

No comment.

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.

## Other comments

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