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)	
Contact details	Privacy of natural persons

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Responses to questions

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?

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?

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 these options?

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

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

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?

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?

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?

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?

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?

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	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?

Other comments

Credit Contracts & Consumer Finance Act (CCCFA) & the associated Responsible Lending Code

The intent of the Credit contract & Consumer Finance Act (CCCFA) is excellent. The associated Responsible Lending Code (RLC) supports the intent of the Act.

However, there is a very big **BUT** to this observation.

In drafting the CCCFA, insufficient prescriptive attention has been placed on the consequences of a Lender breaching many parts of the act. To such an extent, that Unaffordable and Oppressive lending is a very common occurrence seen by financial mentors, particularly for low income Borrowers who inevitably arrive at our office seeking help as they cannot afford to maintain loan repayments.

As the Act currently stands, if a loan is found to be classed as Unaffordable, the current outcome for these Borrowers is **inevitably a financial (often significant) loss.**

It should also be recognised that the related culture and tools available to the Disputes Resolution Services and the Commerce Commission who are responsible for enforcing compliance with the Act, need to change. These entities fail significantly in providing a just outcome for Borrowers who are victims of Unaffordable & Oppressive lending.

This circumstance is particularly prevalent in Motor Vehicle Finance Contracts.
As is well understood, a car is currently an essential item for most people to be able to connect with society and family and equally importantly, to secure & maintain a job. This is eloquently explained in the CAP report https://www.capnz.org/research-and-policy/vehicle-finance/

Some lenders throughout the country act responsibly and abide by the Act. Many, however, do not.

The following case is typical of the effect experienced by Borrowers when an irresponsible Lender breaches the CCCFA Section 9 -

In 2020, a beneficiary Borrower approached a car sales yard, referred by a friend, as they had heard that that company has a reputation of arranging car loans to those

with very poor credit scores. They anticipated spending in the order of $3,000 to $5,000. They knew that they had a poor credit rating.
The car yard salesperson talked the buyer out of the low-cost vehicle (unreliable, expensive to maintain, poor fuel consumption etc.) and assured the buyer that they could easily afford one of two other options and that financing it will not be an issue and no deposit will be needed. However, at this stage, that assumption by the car salesperson is just that, an assumption as no detailed check of Bank Statements etc. to confirm income and existing debt commitments had been undertaken.

A car was selected which had "at best", a retail value of $7,000 (entering the Rego number and Odometer reading into TradeMe *Value My Car* estimator). The vehicle was "sold" to the buyer for $11,500. The buyer understood that that seemed a lot to spend but the car-Sales person assured them that that will not be an issue and finance will be arranged. The initial required paperwork was completed, and the buyer was asked to return the following day to conclude the purchase.

Now the cost of the loan amount had escalated to $14,250 once all the fees and valueless "Add-ons" have been "sold" to the buyer. The interest rate set for this buyer is 29.95% and this applies to the inflated purchase price and all fees and Add-Ons.

The loan is approved. It is important to note that at no time did the Buyer knowingly have any interaction with the Finance company. The entire deal was arranged at the car sales yard. The Loan Repayments were $134/wk. Comprehensive vehicle insurance (required as a condition of the loan) was also arranged by the Lender/Car sales yard and was an additional cost of $16.81/wk. Total outgoings of $150.81/wk.

The formal income of the Buyer was as a Solo Parent beneficiary. Total net weekly benefit income was $764.98 (includes Working for Families tax credit). At the time, the buyer owed $12,000 (approx) to MSD for benefit Advances over a number of previous years and the Advance Offset repayments reduced the net weekly benefit income payable to the $764.98 figure.

The basic weekly living budget for a Solo parent with two young children, as determined by the IRD Household Expenditure Guide (HEG) is $523.80. Add Rent to this ($460 in this case) and the weekly expenses for this Borrower are $983.80.

Clearly, <u>this loan was demonstrably unaffordable from the outset</u>. The Lender used creative reasoning to justify their decision to lend, along with failing to make reasonable and necessary inquiries into the apparent income of the buyer based on deposits being made into their account during the 90 day period Bank Statement transactions used to assess the Buyers income/expenses profile.

The loan fell into Hardship 11 months from the date it was approved. The Buyer applied for Hardship relief and the hardship repayment rate was set by the Lender at $65/wk for a limited time period. The Borrower was unable to sustain this repayment. This amount did not change the required insurance premium of $16.81/wk. We also note that the repayment rate of $65/wk did not cover the cost of interest and fees for the loan balance at that time. In other words, the loan balance was increasing during the hardship period.

The matter came to the attention of a Financial Mentor. The Lender was challenged over the affordability issue and denied any fault. The matter was referred to the Disputes Resolution Service who in this instance inexplicably sided with the Lender.

The options for the Borrower then were –

1. ***Return the car for sale by the lender***. It will be sold for its' wholesale value (estimated to be $3,500) which will be offset against the outstanding balance owing. The Borrower will now have no vehicle, has already paid a significant sum to the Lender and now has a significant "over-hang" debt to repay at 29.95%.
2. ***Apply for Hardship consideration by the Lender***. However, this option is disingenuous as the Borrower had already defaulted from being unable to pay the originally suggested Hardship rate as detailed above.

And here is the immediate issue –

- The Lender has clearly breached the CCCFA - Section 9c (the loan was illegal).
- The lender will suffer no penalty for this breach (in fact they continue to profit from the transaction) and the Borrower **will be left with no car**. In this instance, they will have already paid a significant sum ($9,214) in repayments and have to continue paying the Lender for the "over-hang" debt of the loan ($8,154 plus interest and fees).

The intent of CCCFA is clear and yet this law has provided absolutely NO protection for this vulnerable Borrower.

The enforcement details within the Act require significant review to ensure that cases, as detailed above, are stopped from happening. If this does not occur, then the Act is meaningless.

Borrowers who fit the above income criteria are not in a position to consider legal redress to test the Act. The cost is simply prohibitive and Legal Aid only exists in name as it is all but impossible to secure.

To attempt to get some form of justice for this Borrower, we have had to place the matter before a Disputes Tribunal, seeking a ruling to confirm that this loan was

Unaffordable from the outset and hence breached the CCCFA as described above (it was an illegal loan).

However, we accept that the outcome from the Tribunal may not necessarily provide justice for the Borrower.