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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**

Te Aroha Family 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**

Our Service has been in operation for over 30 years providing budgeting advice to a variety of Te Aroha residents. We provide a non-judgemental, confidential service to those who require assistance with financial matters. The community is made up of employed, self-employed, retired and benefit households. We see it as a prime function of our Service to provide help, educate and provide assistance with regard to financial situations which can cause hardship and distress to families. This is a challenge which we meet head on to enable our community to advance their financial capability. Ultimately, we want to empower our clients and their whanau and arm them with knowledge to be able to make good decisions around money.

**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...

As Financial Mentors, and in our opinion, the laws now controlling mobile trucks, along with pay day lenders has been very positive and we are seeing a sharp decline in debt to these companies.

Our main concern is the problem with BNPL (buy now, pay later) dealers (AfterPay, Genoa Pay, ZipPay, Humm, Laybuy etc – the problems with these companies is widespread and is becoming worse than credit card accounts. These lenders do not seem to check what other commitments customers have, or to assess their repayment ability. Legislation must be enacted as soon as possible to control these lenders. It is just too easy for clients to become entrapped is what we see as an insidious trading method.

## **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 had clients who have been given loans or credit when they have had large amount of money (cash) coming out of their accounts on a regular basis. Sometime this is due to gambling but lenders are not picking up on this and giving the loan regardless, thus making the cycle and the clients capability to repay almost out of reach (often at the expense of food for the family or paying the power bill).

### **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...

Past clients have struggled to make their repayments for loans due to the lender not allowing for expenses. Grouping things such as "car costs" into one amount, rather than finding out exact costs (Registration, RUC, tyres etc). Fuel is a variable amount which is not assessed properly. Invoices or outstanding debts with private companies are also not taken into account. Often, bank statements are looked at but regular payments are not picked up (often to family or friends). They also often do not allow any money for things such as medical expenses (Doctor, optometrist etc).

### **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 recommendation because...

We know that quite often when people are going through crisis or hardship that they have no luxuries in life, and things like pets or addiction are not things that are able to be given up lightly or easily. Sometimes, a pet is the only company for someone on their own and struggling. They become like a family member to them and to ask them to relinquish them would be unkind. Addiction is costly, but so is rehabilitation.

**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.

**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.

**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 the consequences that BNPL credit can have on clients. An example of BNPL harm is a client who had 13 purchases with 3 companies totalling \$253.32 each week. The client also had a debt with a retailer, a vehicle loan, a pay day loan and a loan with another lender. These debts totalled over \$18,000 with a repayment total of \$333 a week. His weekly expenses (board, food, fuel, phone, insurance, car costs etc) totalled \$395 a week. Together, his total outgoings were \$1005 a week. His income was \$773 a week. A deficit each week of over \$230 a week meant that he was unable to meet payments to the BNPL company which attracted late fees and left him, eventually with a debt of nearly \$1200. BNPL companies need to be making the same credit checks and affordability checks that every other lender makes.

**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...

- 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...

- As above, and;
- 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...

- We have witnessed debt consolidation putting a client in a worse situation
- We are also aware of when 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...

- We have witness debt consolidation prolonging and intensifying hardship
- As above, we have a concern that going into debt consolidation is often rushed and clients ended up paying much more

**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...

- We have had situations where a client did not understand the cost of a debt consolidation loan
- In the instances where debt consolidation was rushed, lenders should have referred the client to a financial mentor or different alternative instead of lending
- We have had clients who have had family emergencies which saw the client being under significant pressure and stress at the time they took out a debt consolidation loan. Ultimately, this meant that they did not understand fully the implications of the loan and ended up in a situation where they were unable to service this loan or to access any further financial help.

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?

The strain on Financial Mentors to keep up with changes to regulatory changes is significant.

## **Conclusion**

Thank you for considering our submission.

Please contact Sarah Matafeo-Ross, Manager to discuss any aspect of this submission further.

Ngā mihi,

Sarah Matafeo-Ross

Manager and Financial Mentor