

6 May 2024

Ministry of Business, Innovation and Employment
Wellington
By email: consumer@mbie.govt.nz

SUBMISSION on Credit Contracts and Consumer Finance Act Amendment Regulations (No 2) 2024

Thank you for the opportunity to make a written submission on the reform of the Credit Contracts and Consumer Finance Act (CCCFA) Amendment Regulations (No 2) (Regulations). Given the very short timeframe for this targeted consultation, we are only able to make the following high-level comments:

1. We do not support the Regulations. In 2020, we supported the introduction of more prescriptive affordability regulations. Our submission noted “prescription around affordability assessments must apply to all consumer credit contracts given the evidence of irresponsible lending practices in respect of both high and lower cost loans.” We continue to hold this view.
2. We are concerned removing the prescriptive affordability regulations will mean consumers are no longer adequately protected from irresponsible lending. Minister Bayly stated, “We are revoking 11 pages of overly prescriptive affordability regulations, introduced by the last Government, to enable Kiwis to access finance with confidence”. However, we consider revoking the prescriptive affordability regulations will result in Kiwis being less able to confidently access finance. Instead of following prescriptive requirements, lenders will have greater discretion to judge what enquiries are appropriate and will only be provided with non-binding guidance in the Responsible Lending Code. In our view, using the Responsible Lending Code to set out guidance to lenders is not adequate and is likely to lead to more consumers being sold

unaffordable debt. We agree with officials' views that vulnerable consumers and those seeking credit from less scrupulous lenders are likely to be disproportionately affected.¹ We share the concerns of others in the sector that removing the affordability regulations is like taking down the guardrail at the top of the cliff.² Also, any new guidance is likely to take time to draft meaning borrowers may be further exposed to risk. So, if the Regulations do come into force, they should not do so until the amended Code is in place.

3. We are also concerned the Regulations appear to remove some protections for high-cost credit contracts. For example, although regulation 4AO is retained, other high-cost credit provisions are deleted, such as regulation 4AK. This requires high-cost credit providers to check 90 days of bank statements rather than relying on unverified information.
4. Removing the prescriptive affordability regulations has been touted as the option with the "greatest potential to reduce costs from unnecessary inquiries and improve access to affordable credit." As stated previously, in our view, there is no strong evidence there is a current issue with access to affordable credit.
5. Given the risk the proposed changes pose to vulnerable consumers we have made multiple requests for the evidence or policy analysis undertaken to establish the case for changing the current regulations. Officials have been unable to provide any current evidence. In fact, they have stated "We have a low to medium level of confidence in the quality of evidence."³ As a result, we think the primary driver for the Regulations is to reduce costs for lenders. This

¹ Retrieved on 30 April 2024 from <https://www.mbie.govt.nz/dmsdocument/28287-regulatory-impact-statement-reducing-the-burden-of-affordability-requirements-in-consumer-credit-legislation-proactiverelease-pdf#:~:text=Regulations%20specifying%20minimum%20steps%20for,to%20be%20harming%20some%20borrowers.>

² Retrieved on 30 April 2024 from https://newsroom.co.nz/2024/04/26/debt-services-face-funding-cut-as-lending-laws-set-to-loosen/?utm_source=Newsroom&utm_campaign=afacf26664-Daily_Briefing+29.04.2024&utm_medium=email&utm_term=0_71de5c4b35-afacf26664-97858151&mc_cid=afacf26664

³ Retrieved on 30 April 2024 from <https://www.mbie.govt.nz/dmsdocument/28287-regulatory-impact-statement-reducing-the-burden-of-affordability-requirements-in-consumer-credit-legislation-proactiverelease-pdf#:~:text=Regulations%20specifying%20minimum%20steps%20for,to%20be%20harming%20some%20borrowers.>

seems to go against the primary purpose of the CCCFA which is to protect the interests of consumers accessing finance.

6. Rather than making ad hoc changes to the regime and implementing a two-phase approach, we support a comprehensive review of the CCCFA, regulations and other financial service legislation. This should include bringing Buy Now Pay Later under the CCCFA. In our view, the risks of rushing ad hoc changes through in stages is likely to outweigh any benefits to consumers and is likely to put vulnerable consumers in harm's way.

Thank you for the opportunity to provide comment.

Kind regards,

Aneleise Gawn

ENDS