Regulatory Impact Statement: fit for purpose consumer credit law

Coversheet

Purpose of Document	
Decision sought:	Proposed reforms to consumer credit law
Advising agencies:	Ministry of Business, Innovation and Employment (MBIE)
Proposing Ministers:	Minister of Commerce and Consumer Affairs
Date finalised:	21 August 2024

Problem Definition

On 19 March 2024, Cabinet decided to transfer regulatory responsibility for the *Credit Contracts and Consumer Finance Act* (CCCFA) from the Commerce Commission to the Financial Markets Authority (FMA) [*EXP-24-MIN-0010* refers]. This change is to simplify the regulatory landscape for financial service providers. It refines New Zealand's 'twin peaks' approach to regulation so the FMA becomes the single regulator for financial markets conduct, including credit.

As part of reforms that are necessary to facilitate this transfer, the Government has also committed to addressing other known issues with the CCCFA that undermine its efficiency and effectiveness. The following is a summary of the four issues forming the basis of this regulatory impact statement. These issues are analysed fully from paragraph 40 of this paper.

A. Consumer credit and other financial services have different regulatory models, including entry and ongoing requirements and different tools the regulator can use to promote compliance with legal obligations. Transferring responsibility for consumer credit to the FMA without better alignment of these models would:

- create significant inefficiencies for the regulator by requiring the FMA to operate two different and inconsistent models within financial markets conduct regulation
- perpetuate those inefficiencies for lenders who provide products and services already regulated by the FMA, and require the regulator to treat the same firm differently for equivalent consumer financial services
- limit the FMA's ability to intervene and regulate lenders effectively (through licensing tools and other less formal interventions), which reduces consumer protection.

B. In 2022, an MBIE-led investigation found that the due diligence duty (set out in section 59B of the CCCFA) and personal liability for directors and senior managers were, at least in part, driving overly conservative lending practices. This has been reinforced by recent consultation on these settings. Overly conservative decision-making by lenders can result in inefficiencies (such as excessive compliance costs) and poor outcomes for consumers (such as substantially longer processing times). Furthermore, alignment of the CCCFA's regulatory model with that currently used by the FMA (as proposed) would remove the need for the duty and associated personal liability.

C. If a lender fails to disclose certain information, the affected borrower is not liable for the costs of borrowing in relation to the period before that disclosure is made (section 99(1A) of the CCCFA). The potential for this consequence to be substantially disproportionate to the breach was reduced in 2019 by making relief available to lenders on application to a court (under section 95A). However, lenders report that these consequences continue to produce overly conservative approaches to ensuring compliance with disclosure requirements. We believe these settings:

- are unduly burdensome for lenders given the potential sums involved across a class of affected loans
- can result in over-compensation or unnecessary litigation costs where the borrower was not harmed by the disclosure failure.

D. Provisions applying to high-cost credit contracts have led to the elimination of high-cost lending (at interest rates of 50% or more). Under section 45L of the CCCFA, the Minister is required to consider whether the interest rate that defines a high-cost consumer credit contract should be reduced to a rate between 30% and 50%. This provides an opportunity to place pressure on lending below 50% to reduce interest rates.

Executive Summary

The primary purpose[1] of the CCCFA is to protect the interests of consumers in connection with credit products. It does this by creating obligations on lenders, including to disclose certain information that may affect consumer decision-making, lend responsibly, and charge appropriate fees. Reforms to the CCCFA over time have:

- increased the overall burden of these obligations and liability for breaching them
- been developed independently of other financial markets legislation.

This has resulted in differences in how financial services are regulated and the complexity of that regulation for financial service providers.

The Government is committed to reforming the CCCFA and simplifying the regulation of financial services. Cabinet has agreed to transfer responsibility for credit contracts and consumer credit regulation from the Commerce Commission to the Financial Markets Authority (FMA). This would simplify the financial services landscape by making financial service providers (including lenders) accountable to two regulators (the Reserve Bank of New Zealand and the FMA) instead of three (when the Commerce Commission was also overseeing the credit market).

This regulatory impact statement examines four areas of reform to the CCCFA (noted in the 'problem definition' above).

We have consulted on possible reforms in each of these areas and analysed them against criteria reflecting the Government's objectives, as well as the purposes of the CCCFA. Our preferred options would form a package of reforms which involve a shift from managing the conduct of lenders through accountability of directors and senior managers and formal interventions to managing conduct through a licensing model that expects lenders to be capable of effectively

[1] The CCCFA's secondary goals include promoting confident and informed participation by consumers, as well as promoting/facilitating fair, efficient, and transparent credit markets.

delivering the service and less formal interventions by the regulator. The reforms forming this package (with some interdependencies between them) are as follows:

A. *Align the model the FMA would use to regulate credit contracts and consumer credit with other financial services.* Consumer credit lenders would transition to FMA monitoring under a market services licence, and the FMA would have core regulatory tools (such as the power to make stop orders). Transitioning to licensing would involve replacing the current certification regime with market services licensing by deeming all consumer credit lenders to hold a market services licence. This means only new entrants need to obtain a licence. This would give the FMA tools to regulate existing and future lenders effectively in the interests of consumers. It is expected to achieve efficiencies from alignment with other financial services regulation without necessarily increasing the regulatory burden on lenders.

B. *Remove the due diligence duty and personal liability for directors and senior managers.* This form of accountability and incentives for individuals would largely duplicate licence obligations associated with the regulatory model proposed above. That model would enable the FMA to take a more proportionate approach to incentivising compliance, thereby addressing the overly conservative lending practices we have observed as a result of personal liability.

C. *Limit the application of a provision (section 99(1A)) that creates potentially significant consequences for lenders when they fail to make initial or variation disclosures, by requiring harm to the borrower to be shown*. Our view is that these consequences should be retained because they play an important role in incentivising lenders to make proper disclosures and remedy any failure to do so. This option would address uncertainty about these consequences, including litigation costs in the case of harmless failures. Although this option would transfer the burden of proof to borrowers, the FMA can intervene to secure redress where it believes borrowers have been harmed by the disclosure failure. Licensing (as proposed above) would support the FMA to do this.

D. *No change to the high-cost credit provisions.* Our assessment is that these provisions have been effective at achieving their stated purpose. Based on the evidence available to us, we do not consider that the risks of harm are such as to require lowering the interest rate threshold that defines high-cost credit.

This package of reforms is expected to increase the effective regulation and efficient operation of markets for credit. It presents some risks to the interests of consumers. These can be mitigated in large part by providing the FMA with a range of regulatory tools and powers to intervene effectively.

The proposed changes to the regulatory model would coincide with the transfer of functions to FMA, transferring the Commission’s existing appropriation for its regulatory responsibilities under the CCCFA, and may require transitional arrangements for matters, such as ongoing litigation.

We propose to monitor these reforms and compare their actual impacts with those presented in this regulatory impact statement between three and five years after their commencement.

Limitations and Constraints on Analysis

Officials consulted with the FMA, RBNZ, the Treasury, and the Commerce Commission in developing options for consultation. A discussion document was prepared in a short timeframe and consulted on over a period of four weeks. We received 37 submissions from a range of stakeholders including industry organisations, financial markets participants, consumer

representatives and law firms. The options we consulted on polarised stakeholders, which limited information they provided about the impact of more moderate options.

There are some minor differences between the options we consulted on and those analysed in this regulatory impact statement. More time for our policy development prior to consultation and a longer consultation period could have enabled us to include higher quality options and analysis in the discussion document, as well as a higher quality of responses. However, we are satisfied that responses received, when combined with other information we have, is reasonably sufficient for analysis of the policies considered in this paper.

Quantitative information

For options that relate to section 99(1A), high-cost credit, and to an extent the due diligence duty and personal liability, we have access to quantitative data that helps us to understand national trends in the consumer credit lending market and the scale of activities likely to be affected by some options. The data does not definitively show the impact of past and future changes to consumer credit law because trends (e.g. the default rate for loans) are influenced by a range of external factors (e.g. economic factors).

For the high-cost credit analysis, as national lending data does not capture interest rates, we looked at financial mentor client datasets, in which loans could be differentiated by interest rate. These data only relate to loans that have caused consumers to seek assistance from those mentors, so is not representative of all loans. This limitation has contributed to our assessment that there is a lack of evidence of systemic harm from lending at certain interest rates (or attributable to those interest rates).

Qualitative information

For all options, we have largely relied on qualitative evidence from submissions and through discussions with lenders, consumer advocates, the Commerce Commission and the FMA. Because views were different and often conflicting between lenders and consumer advocates, we have used judgement (e.g. directors of lenders are best placed to comment on impacts from personal liability settings) and noted assumptions in the analysis.

In general, it is difficult to attribute specific impacts to specific settings in the CCCFA. The changes most relevant to this regulatory impact statement were part of wider reforms intended to have a similar impact. For example, the high-cost credit provisions came into force in May 2020 and, shortly after in December 2021, both the due diligence duty and personal liability settings and the new, prescriptive affordability requirements came into force.

Our reliance on qualitative information (and the impact of these constraints) is much lower in judging the impacts of the regulatory model that would be in place once the FMA takes over regulatory responsibility for consumer credit.

Key assumptions made in our analysis

We have assumed that unnecessary compliance costs to lenders (resulting from inefficiencies or excessive regulatory burden) are passed on to consumers. We expect lenders do this either by pricing additional costs into their offerings or directly through the fees they charge (which are required by the CCCFA to be calculated on the basis of direct cost-recovery). We have also assumed that competitive pressure between lenders results in them passing on savings to consumers. We note the Commerce Commission's market study has raised questions about competition for the provision of home loans, describing the intensity of that competition as

‘sporadic’[2]. This detracts slightly from our assumption that savings would tend to be passed on to consumers, but, in our view, does not negate it.

The comparative costs and benefits of options for three of the four issues (all except high-cost credit) would vary depending on how they are implemented by the FMA. We have made certain assumptions about this based on discussions with FMA staff. For example, we assume the FMA would administer a licensing model and use the proposed regulatory tools in a way that:

- does not meaningfully increase the current standard for entry into the market
- promotes compliance with obligations under the CCCFA comparably to the due diligence duty and personal liability settings.

Responsible Manager

Sally Whineray Groom
Acting Manager
Consumer Policy
Ministry of Business, Innovation and Employment

21 August 2024

Quality Assurance

Reviewing Agency:	MBIE
Panel Assessment & Comment:	MBIE’s Regulatory Impact Assessment Review Panel has evaluated the Regulatory Impact Statement "fit for purpose consumer credit law" and considers that it **meets** the quality assurance criteria. The panel is satisfied with the problem definition, options identified, analysis undertaken, and the consultation process.

Section 1: Diagnosing the policy problem

What is the context behind the policy problem?

Markets for consumer credit meet diverse needs

1. Using credit is a normal part of everyday life for many New Zealanders. Credit products include home loans, personal loans, credit cards, consumer leases, vehicle finance, pawnbroking agreements, mobile trader credit sales and buy now pay later. These are all contractual agreements by which consumers can defer payment of debt.

2. In April 2024, the Centrix Credit Indicator Report revealed that consumer credit demand has increased by 3.5% from the previous year. Around a quarter of consumers have entered into a credit contract in the past two years.[3]

[2] The Commission’s draft report can be found on this page: Commerce Commission - Market study into personal banking services (comcom.govt.nz). The final report will be published on 20 August 2024.

[3] New Zealand Consumer Survey 2024, commissioned by MBIE and the Commerce Commission to Ipsos.

3. Consumers generally choose consumer credit products depending on their preferences and needs.[4] Long-term loans are commonly used for housing or vehicles, while credit cards are frequently obtained without a specific purpose in mind. Overdrafts and short-term loans serve various purposes such as renovations, bills, vehicles, and debt servicing. Buy now pay later credit products are often used for purchasing clothing, electronics, and appliances.

4. Different types of entities provide consumer credit. There are currently 544 consumer credit lenders in New Zealand registered on the Financial Services Providers Register. There are an additional 496 lenders who are exempt from certification because they are vehicle dealers who have arrangements with a finance company whereby they only provide credit on an interim basis before transferring it to the finance company.

5. Although there are only 16 banks offering personal banking services in New Zealand, as of January 2024, 96% of housing and personal consumer lending was provided by registered banks.

6. In addition to registered banks, non-bank businesses also provide personal banking services. This includes:

   a. 15 licensed non-bank deposit takers, such as credit unions and building societies; and

   b. other finance companies, including peer-to-peer lenders.

Consumer credit is regulated by the Credit Contracts and Consumer Finance Act 2003 (CCCFA)

7. The CCCFA came into force in 2005, repealing and amalgamating the Credit Contracts Act 1981 and the Hire Purchase Act 1971. Its primary purpose is to protect the interests of consumers in relation to various forms of consumer credit. This reflects that:

   a. Markets for consumer credit are characterised by information asymmetries between lenders and borrowers. Even when consumers have a good level of financial literacy, they are rarely in the same position as the lender to evaluate how their interests might be impacted by the contract terms being offered, and to compare these with other available products.

   b. Consumers often exhibit cognitive biases that can affect their ability to make rational financial choices in their own long-term interests[5], or can be made vulnerable to poor decision-making by their circumstances (such as strong pressure to make a purchase) or shortcomings (such as poor literacy).[6]

8. The CCCFA's secondary purposes include promoting confident and informed participation by consumers as well as promoting and facilitating fair, efficient, and transparent credit markets.

9. The Commerce Commission is currently the agency responsible for enforcing the CCCFA.

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[4] MBIE Consumer credit Research Report 2024, conducted by Verian, accessible here: https://www.mbie.govt.nz/dmsdocument/28546-consumer-credit-research-report-march-2024.

[5] See for example: *Household Finance* in *The Journal of Finance* (2006), Campbell, J. Y. 61(4), 1553–1604 and *Judgment under uncertainty: Heuristics and biases* in *Science* (1974), Tversky, A., & Kahneman, D. 185(4157), 1124–1131.

[6] The New Zealand Retirement Commission has published a financial capability survey 2021 that found, among other things, that New Zealanders, among other countries that did this survey, score at the bottom or near the bottom for spending restraint, not borrowing for day-to-day expenses, and informed product choice. The report can be found here: TAAO-RC-NZ-FinCap-Survey-Report.pdf (retirement.govt.nz).

The CCCFA has been amended several times, resulting in unintended impacts for both consumers and lenders

10. Reforms to the CCCFA over the last decade have been motivated by concerns about its effectiveness in protecting the interests of consumers, particularly against irresponsible lending. Those reforms increasingly placed greater responsibility and regulatory burden on lenders to act in the best interests of borrowers.

11. These reforms are summarised in **Annex 1**. There were two main periods of reform:

    a. In 2015, changes were intended to address unscrupulous lending by creating lender responsibility principles, new disclosure requirements and increased liability for lenders who breach the CCCFA.

    b. Between 2019 and 2021, changes were made in response to concerns about problem debt and continued non-compliance (including in the high-cost credit market). They included prescriptive affordability assessment requirements, greater scrutiny and accountability for a lender's directors and senior managers, increased liability for breaches and additional rules targeted at high-cost loans.

12. Some of these reforms have been perceived to create a regulatory burden that is disproportionate to risks to consumers and, in many cases, may undermine their interests. We observed some of these effects in 2022 as part of our investigation CCCFA changes that took effect in December 2021, which identified the following unintended impacts:[7]

    a. more borrowers across all lending types who should pass the affordability test are subject to declines or reductions in credit amount;

    b. borrowers are subject to unnecessary or disproportionate inquiries that are perceived by them as intrusive.

The CCCFA also has evolved independently of other financial services legislation, complicating the wider regulatory landscape

13. Lenders subject to the CCCFA are also subject to other financial markets legislation. In summary:

    a. All lenders need to be registered under the Financial Service Providers (Registration and Dispute Resolution) Act 2008 and be part of a dispute resolution scheme.

    b. Some lenders, such as registered banks and non-bank deposit takers, are also subject to:

        i. Prudential regulation (including registration or licensing by the NZ Reserve Bank) to ensure stability of the financial system, and

        ii. Conduct regulation for other financial products or services (including licensing) by the FMA.

    c. Banks and non-bank deposit takers will also, from 31 March 2025, be subject to the *Financial Markets Conduct (Conduct of Financial Institutions) Amendment Act 2022* (CoFI Act). This requires them to have effective systems and policies for designing,

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[7] The 2022 investigation report is accessible here: [Early implementation and impacts of 1 December 2021 credit law changes (mbie.govt.nz).]

distributing and supporting the ongoing provision of products and services to customers, including consumer credit.

d. Lenders that are not already licensed by or registered with the New Zealand Reserve Bank or licensed by the Financial Markets Authority (e.g. finance companies, mobile traders) must meet the the CCCFA 'fit and proper person' certification requirement. This is administered by the Commerce Commission.

14. These various forms of legislation applying to financial service providers have evolved independently over time. They are administered by different regulators (the Commerce Commission, FMA and RBNZ) using different regulatory models. This has led to excessive layering of regulation and loss of coherence across the financial services regulatory environment.

The Government wants to streamline and simplify how financial services, including consumer credit, is regulated

15. The Government's commitment to reform the CCCFA is expressed in:

a. the *National* Party's 100-point plan for Rebuilding the Economy (which includes a commitment to 'cut financial red tape that is stifling investment, including significantly reducing the scope of the CCCFA which has restricted access to credit'), and

b. the National and ACT Coalition Agreement (which includes a commitment to 'Rewrite the CCCFA to protect vulnerable consumers without unnecessarily limiting access to credit').

16. Cabinet has already agreed to transfer all regulatory functions under the CCCFA from the Commerce Commission to the FMA [EXP-24-MIN-0010 refers]. This decision is intended to deliver a clearer 'twin peaks' model for the sector, whereby the FMA is responsible for all conduct regulation and the RBNZ for all prudential regulation.

The Government is pursuing reforms to financial services regulation through two phases.

17. Phase one has resulted in the following changes to regulations:

a. a full exemption from the CCCFA for voluntary targeted rates schemes administered by local authorities and removal of duplicative reporting requirements – effective 25 April 2024

b. removal of redundant exemptions relating to COVID-19 from regulations under the CCCFA – effective 7 June 2024

c. alignment of certain rules for different financial dispute resolution schemes – effective 18 July 2024

d. removal of prescriptive affordability requirements from regulations made under the CCCFA (and development of new guidance on affordability in the Responsible Lending Code) – effective 31 July 2024.

18. Phase two reforms include the proposals in this regulatory impact statement and:

a. a targeted review of the CoFI Act and other conduct requirements under the *Financial Markets Conduct Act 2013* (FMC Act) and *Financial Markets Authority Act 2011* (FMA Act)

b. improving consumer access to and the effectiveness of the financial dispute resolution system.

19. Following Cabinet approval, we undertook public consultation on phase two reforms over four weeks ending 19 June 2024 and recieved 37 submissions from a range of interested parties.

How is the status quo expected to develop?

20. We answer this question in the context of Cabinet's decision to transfer all credit finance and consumer credit regulatory functions to the FMA, and as it pertains to four areas of the CCCFA that we consulted on as part of the financial services reforms package in the discussion document *Fit for purpose consumer credit regulation*.

Issue A: Regulatory model

21. The regulatory model and regulatory tools under the CCCFA are in contrast to those the FMA uses to regulate other financial services. This means lenders are subject to different requirements depending the type of entity they are (see paragraph 13).

22. The Commission's approach to regulating consumer credit is influenced and limited by the regulatory tools the CCCFA provides. The current approach emphasises deterring non-compliance through investigations, formal interventions and strong penalties over prevention (which requires more administrative regulatory tools).

23. The CCCFA's certification requirement, which took effect in 2021, gives the regulator some scrutiny over lenders entering the market. Certification ensures, every five years, that a lender's directors and senior managers are 'fit and proper persons' to hold their respective positions. It was introduced to improve compliance, and reduce irresponsible lending and phoenixing (i.e. individuals escaping accountability by winding up the business and starting a new one). There is limited discretion to impose conditions on certification and change those conditions.

24. Certification provides the regulator with some oversight of individuals, but no direct oversight of conduct. The regulator is still confined to regulating conduct through formal interventions, used in response to potential non-compliance. This is in constrast to the FMA's licensing model, which provides direct oversight of conduct and the ability to intervene informally. A licence requirement carries the expectation that the lender is capable of effectively carrying out the service and meeting their legal obligations.

25. If the regulatory model does not change when functions under the CCCFA are transferred to the FMA, the FMA would not have the regulatory tools it normally uses and which are necessary to provide direct oversight of conduct in the market for consumer credit:

    a. Market services licensing gives the FMA broad powers to monitor and oversee licencees' conduct. Formal licensing powers include being able to set conditions[8] (e.g. about the service or regulatory returns), require action plans, give directions, issue censures, and suspend or cancel the licence.[9] The FMA can tailor regulatory requirements through licence terms and conditions.

    b. Licensing is complimented by the FMA's ability to make direction orders (directing compliance or stipulating steps to remedy non-compliance), stop orders (preventing offering, advertising, or entering transactions for financial products or services), exemptions and designations (i.e. a call-in power), which do not require a court order.

[8] Section 403, FMC Act 2013.

[9] Under sections 402 - 428, FMC Act 2013.

Issue B: Personal liability settings

26. Under the status quo, directors and senior managers have a duty under section 59B of the CCCFA to "exercise due diligence to ensure that the creditor complies with its duties and obligations under this Act." They are personally liable for certain damages and pecuniary penalties that can be awarded by a court if they do not meet this duty. Their liability for pecuniary penalties cannot be indemnified or insured against.

27. Like certification, these settings were intended to increase accountability for directors and senior managers, and reflect a deterrence approach to regulating lenders (rather than a more proactive relationship with the regulator, enabled by tools such as licensing). We have seen signs that these settings cause lenders to take overly conservative interpretations to requirements relating to affordability and a reluctance to exercise discretion as intended.[10]

28. If the status quo continues (and even if a licencing model was applied), we would expect the settings to continue resulting in lenders taking overly conservative approaches to meeting their legal obligations.

Issue C: Consequences for incomplete disclosures

29. Sections 17 and 22 of the CCCFA require lenders to disclose certain information to ensure that consumers are able to make informed decisions before and after entering into a loan agreement.

30. If lenders fail to make disclosure to a consumer as required by section 17 (initial disclosure) or section 22 (agreed variation disclosure), section 99(1A) provides that the borrower is not liable for the costs of borrowing during that period of non-compliance. In other words, the lender forfeits the right to any interest or fees it charged during this period. This applies when a lender fails to make disclosure at all or only partially meets disclosure requirements.

31. Section 99(1A) has operated since June 2015. A 2017 review found that forfeiture of all interest and fees would be disproportionate to the seriousness of the failure in many cases (i.e. would over-compensate borrowers).[11] The risk of disproportionate consequences has also resulted in over-compliance by lenders.

32. The solution developed to address this is found in sections 95A and 95B, which took effect in December 2019. Section 95A makes relief available by enabling a court to extinguish or reduce the effect of section 99(1A) if that is considered 'just and equitable' and applying factors in section 95B.

33. Despite calls at the time, these provisions were not applied retrospectively. They apply to disclosures failures from December 2019 onwards, but not to disclosure failures that occured prior. This means that, under the status quo, the consequences for the lender of a disclosure failure depend on when the failure happened:

    a. Between June 2015 and December 2019, relief under section 95A is not available (although the Commission negotiates settlements on a similar basis to section 95A). Where private litigation is brought, lenders may face consequences that are

[10] See MBIE's report: *Early implementation and impacts of 1 December 2021 credit law changes*, accessible here: https://www.mbie.govt.nz/dmsdocument/23262-early-implementation-and-impacts-of-1-december-2021-credit-law-changes.

[11] You can read about the 2017 review on this webpage: Review of Section 99(1A) of the Credit Contracts and Consumer Finance Act 2003 | Ministry of Business, Innovation & Employment (mbie.govt.nz)

disproportionate to the seriousness of the disclosure failure. There are 18 lenders with relevant disclosure failures over this period that the Commission has resolved in some manner (excluding high-cost lenders and mobile traders).

b. After 1 December 2019, relief via section 95A is available. However, no court has made an order under this provision. It is therefore not certain how a court might apply it in practice to reduce or extinguish the effect of a failure to disclose. We would expect this to continue in the absence of either regulatory change or judicial guidance on section 95A that confirms lenders will be protected from disproportionate consequences. Maintenance of the status quo may increase lenders' desire to test section 95A, but we are not confident this would occur.

Issue D: High-cost credit provisions

34. In 2020, the Credit Contracts Legislation Amendment Act 2019 introduced new requirements that apply to high-cost consumer credit contracts. These formed new subpart 6A. Their purpose was to reduce problem debt by addressing the excessive cost of credit for these loans and repeat borrowing by vulnerable consumers.

35. Under the status quo, the CCCFA defines a high-cost consumer credit contract as a contract with an annual interest rate of 50% or more (or where the rate is likely, when combined with default interest, to be 50% or more). Provisions that apply to these contracts are:

    a. The costs of borrowing must not exceed the loan advance (i.e. a borrower can never be required to repay more than twice what they borrowed).

    b. Lenders are prohibited from entering into a high-cost consumer credit contract with a consumer who:

        i. has an unpaid balance or has had an unpaid balance on any other high-cost consumer credit contract in the preceding 15 days

        ii. has entered into two or more high-cost credit consumer contracts in the past 90 days.

    c. The rate of charge (including interest and fees but excluding default fees) for high-cost consumer credit contracts is capped at a maximum of 0.8% per day.

    d. Compound interest is prohibited.

    e. There is a rebuttable presumption that default fees are unreasonable if exceeding $30 (or other prescribed amount, if any).

36. Section 45L requires the Minister of Commerce and Consumer Affairs, as soon as practicable after three years, to review the effectiveness of the high-cost credit provisions. It also requires the Minister to consider whether the interest rate that defines a high-cost consumer credit contract should be reduced to a rate between 30% and 50%.

37. This review found that the high-cost credit provisions have led to the elimination of high-cost credit. Twelve high-cost credit providers left the market. Although nine remain, they have restructured their products to fall below the 50% interest rate threshold.

38. The elimination of high-cost loans has meant an estimated 150,000 potential borrowers no longer have access to this source of credit.[12]

39. A former high-cost lender stated that the combined effects of the high-cost credit provisions have rendered this type of credit economically unviable. Under the status quo, high-cost credit products are likely to remain unavailable. Moreover, banks are now reluctant to offer their services to lenders categorised as "high-cost" because of the potential harm to their reputation.

[12] Ministry of Business, Innovation and Employment (28 August 2019). *Review of consumer credit regulation – further policy recommendations.* ***https://www.mbie.govt.nz/assets/review-of-consumer-credit-regulation-further-policy-proposals.pdf***

What are the policy problems or opportunities?

Issue A: Regulatory model

40. Transferring regulatory responsibility to the FMA without better alignment of the regulatory model and tools available under the CCCFA would make it more difficult for the FMA to effectively regulate consumer credit. We would expect:

    a. significant inefficiencies for the FMA by requiring it to operate two fundamentally different models within financial markets conduct regulation

    b. inconsistencies by requiring the FMA to treat the same firm differently for equivalent consumer financial services

    c. similar inefficiencies for lenders who provide products and services already regulated by the FMA and have to navigate fundamentally different regulatory models

    d. inadequate regulatory tools for the FMA to intervene and regulate lenders effectively, which reduces consumer protection.

Issue B: Liability settings

41. The due diligence duty and personal liability for directors and senior managers have a tendency to produce more conservative lending practices than intended. We have observed this directly in our interactions with some lenders and from the approach many of them took to implementing affordability requirements that have now been revoked from regulations.[13] This can be characterised as a tendency to adopt overly cautious (and sometimes surprising) interpretations of their legal obligations, a reluctance to exercise discretion that is available, and excessive risk-aversion.

42. For example, in relation to these affordability requirements:

    a. some lenders were interpreting the definition of 'listed outgoings' as including discretionary expenditure

    b. lenders were making very little use of exceptions that were intended to reduce the burden of these requirements in lower risk cases.

43. It is difficult to disentangle the role these settings play in producing this outcome from other possible causes. They came into force as part of the 2019-2021 suite of reforms that increased the regulatory burden on lenders and, in particular, the perscriptive affordability assessment requirements. However, from what lenders have shared with us, we consider the personal liability settings are a plausible explanation for overly conservative lending behaviour.

44. Overly conservative lending practices is a regulatory failure, in that it can reduce consumers' access to appropriate credit and increases costs which can be passed onto consumers. A lack of confidence that consequences are proportionate is also likely to inhibit innovation that serves the interests of consumers.

45. These personal liability settings reflect the CCCFA's current approach of promoting compliance through the threat of significant consequences, rather than a relationship with the regulator whereby compliance is more actively managed (enabled by appropriate regulatory tools).

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[13] MBIE. (2022). Early implementation and impacts of 1 December 2021 credit law changes – Investigation report. Page 59. Supported by stakeholder submissions from 2024 FSR consultation.

Alignment with the licensing model used by the FMA would likely remove the need for these settings.

Issue C: Consequences for incomplete disclosures

46. The relief provided in 2019 (sections 95A and 95B) does not appear to have fully addressed the problem of over-compliance that is caused by the prospect of full forfeiture of interest and fees under section 99(1A).

47. Although relief under section 95A has in theory lessened, if not removed, the risk of disproportionate consequences for any disclosure failures after December 2019, the extent of relief it provides is uncertain. This has failed to fully restore lenders' confidence they can avoid disproportionate consequences. Given the potential scale of liability across a class of affected loans, we can see how this lack of confidence would continue to result in excessive compliance costs.

48. Moreover, where the disclosure failure was of no consequence to the borrower:

    a. there is potential for borrowers to be compensated despite not being affected at all

    b. lenders may incur unnecessary litigation costs in seeking to avoid this outcome.

49. We also continue to hear concerns about the risk of disproportionate consequences being applied to failures to disclose information that happened between 2015 and 2019. Notably, there is a class action against two of the largest banks that is being pursued through the courts, despite a settlement with the Commission that resulted in less than the full costs of borrowing being refunded to affected borrowers.

Commercial Information

50. Commercial Information

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52. The Commission has negotiated outcomes with 18 lenders for relevant disclosure failures over the period before December 2019, issued compliance advice letters to another four and has

unresolved investigations into the actions of another four lenders. It is unclear to what extent lenders may have other undisclosed liability from this period.

53. The opportunity to bring any civil or criminal proceedings is time-limited by the CCCFA (to three years after the failure was discovered or ought reasonably to have been discovered).

Issue D: review of the high-cost credit provisions

54. The CCCFA requires the Minister to review the operation and effectiveness of the high-cost credit provisions. This review should also consider whether the interest rate defining a high-cost consumer credit contract should be lowered to a rate between 30% and 50%.

55. Our analysis suggests that the high-cost credit provisions have effectively addressed the intended issues, and we have no evidence that the same kind of issues are caused by loans with a lower interest rate.

56. However, we have identified 13 lenders offering loans with interest rates of between 47.5% and 49.95%. The high-cost credit provisions provide an opportunity to place downward pressure on those interest rates. While this may benefit borrowers in this part of the market, a factor to consider is the availability of short-term loans and credit for those borrowers who cannot access more traditional forms of credit, for example, due to poor credit scores.

What objectives are sought in relation to the policy problems?

57. The Government’s reform objectives for the financial services regulatory landscape are as follows:

    a. simplify and streamline regulation of financial services (including reducing duplication)

    b. remove undue compliance costs for financial market participants

    c. improve outcomes for consumers.

58. Within this, more specific policy objectives have been developed for this review of consumer credit. These sub-objectives are:

    a. removing disproportionate compliance costs for consumers and lenders

    b. supporting consumers to access credit that meets their needs

    c. ensuring regulatory obligations and the institutional arrangements supporting them are clear and simple.

59. These objectives reflect the often competing interests of consumers in having access to credit from lenders who can innovate and operate efficiently, and being protected from harm created by irresponsible lending.

Section 2: Deciding upon options to address the policy problems

60. Our analysis has been informed by feedback from a range of stakeholders, including 37 submissions from different types of lenders (e.g banks and finance companies), law firms, organisations representing consumers, financial mentors and individuals. We have also continued to work closely with staff at the Commerce Commission and FMA to consider the implications of options.

Summary

61. The following table provides a summary of the options considered for each of the four problems/opportunities and our analysis of those options. Our preferred options form a package of reforms that have some interdependencies. In particular, our preference for option A2 (market services licensing) justifies some of our other preferences.

Area	Options	Expected Impact
A) Approach to regulating consumer credit following transfer of functions to FMA	A1: Retain 'Fit and proper' certification (the counterfactual) and add some FMA tools	**Advantages:** Greater certainty for lenders and some potential improvements in effective regulation from addition tools. **Disadvantages:** Misalignment of regulatory tools/approach creates inefficiencies for both the FMA and some regulated parties.
	A2: Transition to a market services licence and apply all FMA licensing and core tools– **preferred**	**Advantages:** Provides FMA with the regulatory tools to provide a proactive, responsive, proportionate, and effective oversight of lenders. More consistency and transparency for market participants. **Disadvantages:** Potential for higher standard for entry and competition impacts from approach to transitioning market. However, we understand from the FMA this is unlikely in practice.
B) Personal liability settings	B1 (the status quo): Retain due diligence duty for directors and senior managers, personal liability and restrictions on indemnities and insurance	**Advantages:** Incentivises care in ensuring compliance with the CCCFA, transparency and personal accountability for breaches. **Disadvantages:** Incentives appear to be excessive, in that these settings produce overly conservative lending practices and unnecessary compliance costs. These incentives are likely to be made redundant by licensing model if adopted (under Option A2).
	B2: Retain due diligence duty but remove restrictions on indemnities and insurance	**Advantages:** Same level of liability, but able to be redistributed, meaning incentives largely retained to protect consumers. **Disadvantages:** Unlikely to meaningfully shift conservative lending practices (including because it depends on availability and cost of insurance).
	B3(a): Remove due diligence duty and attendant personal liability	**Advantages:** Addresses overly conservative practices for licenced lenders who account for a significant proportion of lending and claim to be the worst affected.

	for deposit takers licensed under CoFI	**Disadvantages:** Creates different standards of conduct and liability for different types of lenders, with potential for competitive disadvantage.
	B3(b): Remove due diligence duty and attendant personal liability for all lenders on the basis of licensing (see option A2) - **preferred**	**Advantages:** Addresses overly conservative decision-making and supplants liability settings with more proportionate scrutiny and accountability from licensing, assuming this is the approach taken by the FMA. **Disadvantages:** Potential for lenders to take more liberal lending approaches, which may harm consumers. This can be mitigated by the FMA's approach to monitoring.
C) Consequences for incomplete disclosures by lenders	C1: The status quo: retain the 2019 solution without change to addressing risk of disproportionate consequences under section 99(1A)	**Advantages:** Borrowers adequately compensated with no/minimal litigation costs. Strong incentives on lenders to make disclosures and remedy failures. **Disadvantages:** Uncertain liability continues to produce inefficiencies/costs, particularly where no harm caused.
	C2: Cap percentages able to be forfeited based on type of failure	**Advantages:** Slightly improves lender confidence consequences will be reasonable (with associated efficiencies). **Disadvantages:** Does not address costs associated with harmless failures. Low risk of inadequate compensation for affected borrowers (depending on how caps are set).
	C3(a): Remove liability for harmless failures – burden on lenders	**Advantages:** Slightly improves lender confidence consequences will be reasonable (with associated efficiencies). **Disadvantages:** Potential for small increase in litigation costs for lenders. May reduce incentives on lenders where able to argue the failure was harmless.
	C3(b): Remove liability for harmless failures – burden on borrowers – **preferred** (but relies on option A2)	**Advantages:** Further improves lender confidence consequences will be reasonable (with associated efficiencies). **Disadvantages:** Power imbalance and litigation costs mean compensation less likely for borrowers and this reduces incentives on lenders to make disclosure and remedy failures. Expected to be mitigated by FMA intervention, particularly given option A2.
	C4: Repeal provisions and adjust statutory damages	**Advantages:** Significantly reduces likely costs for lenders for each disclosure failure and associated inefficiencies. **Disadvantages:** Significantly reduces likely compensation for affected borrowers, even if statutory damages increased, with reduced incentives on lenders to make proper disclosure and remedy failures.

D) Review of high-cost credit provisions	D1: The status quo – maintain the interest rate threshold that defines a high-cost consumer credit contract at 50% - **preferred**	**Advantages:** Effectively targets contracts that have caused systemic harm (by regulating them out of existence). **Disadvantages:** However, some questions about whether consumers who used to rely on these loans are better or worse off and whether it has limited access to short term loans.
	D2: Reduce the interest rate threshold that defines a high-cost consumer credit contract to 30%	**Advantages:** Possibility of cheaper, more responsible credit in the case of loans closer to 30% (which could be achieved by lenders to avoid additional regulation without significant restructure of their loans). **Disadvantages:** Disruption to the market (20 lenders and 143,000 borrowers). Expected to reduce access to credit.
	D3: Reduce the interest rate threshold that defines a high-cost consumer credit contract to 40%	**Advantages:** Unclear. Lenders affected unlikely to reduce interest rates without significant changes to minimum loan amounts and/or durations. Possibility of more responsible credit of loans in this interest rate range if lenders decide to comply with the high-cost credit provisions. **Disadvantages:** Same as for option D2 but on a reduced scale (13 lenders and 93,000 borrowers).

What criteria will be used to compare options to the status quo?

62. To assess all the options in this RIS against the status quo, we have used three criteria that reflect the policy objectives:

    a. effectively protects the interests of consumers

    b. minimises regulatory burden/compliance costs

    c. promotes fair and transparent markets for credit.

63. We are weighting each criterion equally. They are intended to isolate key trade-offs, such as between protecting consumers for irresponsible lending and removing barriers to efficient loan processing. An explanation of how we are applying each criterion follows.

64. These criteria do not in all cases account for all costs and benefits of the options we analyse in this statement. Where any other factors are relevant in assessing options, we have indicated these separately.

Effectively protects the interests of consumers

65. This reflects the primary purpose of the CCCFA. The main interests that are included in this criterion are the interests of consumers in being able to make informed decisions and being protected from the harm that can be caused by irresponsible lending. However, these interests vary for different consumer groups (e.g. are greater for consumers with poor financial literacy or other vulnerabilities). Other interests may also be relevant here, such as access to affordable credit.

66. To avoid overlap with other criteria, we are excluding from this criterion:

a. the interests of consumers in lenders operating efficiently and with minimal compliance costs, which are likely to be passed on to them (covered by criterion 2)

b. the benefits of competitive neutrality in how lenders are regulated (covered by the concept of 'fair markets' under criterion 3).

Minimises regulatory burden and costs

67. This criterion reflects the primary motivation for the Government considering these reforms and the reference in the CCCFA's other purposes to promoting and facilitating 'efficient' markets for credit.

68. The concepts of regulatory burden and costs both fall within that of efficiency, but are not necessarily identical. For example:

    a. regulatory burden can directly preclude lenders from innovating in a particular way (such as in how they structure the interest and fees chargeable to consumers)

    b. compliance costs can reduce efficiency by diverting resources to compliance that might otherwise be used to improve services or credit products (in ways permitted by the CCCFA).

69. Compliance costs affect consumers more directly than regulatory burden because they are likely to be passed onto consumers via interest charges or fees. Both are considered equally relevant under this criterion.

70. One of the Government's objectives is to streamline provision of financial services, including by avoiding duplication. Under this criterion we also consider any additional regulatory burden or compliance costs that arise from:

    a. differences in how credit is regulated by the FMA compared with other financial services

    b. duplication of requirements for lenders who operate in more than one market regulated by the FMA.

71. Costs include inefficiencies or costs incurred by the regulator (such as those that arise from the regulator needing to operate different regulatory approaches for different markets) .

Promotes fair and transparent markets for credit

72. The concepts of 'fair' and 'transparent' markets for credit are also recognised in the purposes of the CCCFA.

73. Fairness is a subjective term, but there are three main senses in which we apply it:

    a. the CCCFA providing a fair or level playing field for lenders (i.e. competitive neutrality)

    b. just/proportionate outcomes where breaches of the CCCFA occur

    c. natural/procedural justice.

74. Transparency is assessed as transparency for consumers and enforcement under this criterion. It is a matter of how easy it is for consumers to understand credit products, how transparent about their processes and decisions lenders are with consumers, the regulator and dispute resolution schemes, and how openly parties are able to or expected to communicate, other than through specific disclosure requirements.

75. By considering fairness and transparency together within this criterion, we are effectively half-weighting them. It is possible they would counteract each other, making an option neutral against this criterion.

What scope will options be considered within?

76. The scope, issues and options reflect the Government's objectives for the reform. The pace at which the Minister wishes to pursue these reforms has meant we have prioritised the issues that are seen as the most pressing. We have been working towards the Minister's aim of having legislation for all financial services reforms introduced by the end of this year. This has precluded us from:

    a. exploring ways to more fully resolve differences between consumer credit law and other financial services regulation, such as by integrating the CCCFA into the FMC Act

    b. more fully reviewing certain settings, such as disclosure requirements

77. This means other reforms may be desirable in the near future.

78. The statutory review of high-cost credit specifically requires the Minister to consider expanding the definition of high-cost credit to an interest rate between 30% and 50%.

Issue A: Regulatory model

What options are being considered?

Option A1 (the counterfactual) – Retain ‘fit and proper’ certification and add some FMA tools

Description

79. Under this option, the transfer of regulatory responsibility from the Commission to the FMA would be achieved by adding some FMA core regulatory tools (i.e. direction and stop order powers) but retaining the current certification model.

80. Lenders would continue to apply to the regulator (FMA) for certification that their directors and senior managers are fit and proper persons to hold their positions, every five years, unless exempt (e.g. because they are already licensed by the FMA or RBNZ). Certification by the Commerce Commission costs $1,055 (excluding GST) for each director and senior manager every five years – though this fee would instead be based on cost-recovery for the FMA.

Advantages/benefits

81. Adding the FMA core regulatory tools would allow for the FMA to be a reasonably responsive regulator with a wider range of tools than under the status quo. This improves the FMA’s ability to protect the interests of consumers, although less than option A2. Furthermore, this option would cause relatively little disruption to the industry.

Disadvantages/costs

82. This option limits the FMA’s toolkit and ability to monitor and regulate conduct effectively and efficiently in the interests of consumers. Retaining a certification model is inconsistent with the approach to regulating other consumer financial services. This would lead to inefficiencies for lenders (e.g. banks) who also operate in those other markets, and for the FMA in having to navigate two different systems and procedures. The lenders affected by this difference in approach account for a significant proportion of lending.

83. Lenders who are not exempt would need to renew their certification every five years. As well as the cost and time to prepare for recertification, application fees are currently $1,055 (excluding GST) for each director and senior manager.

84. Regulating consumer credit differently to other market services continues fragmentation and duplication, and risks that markets are less fair and transparent.

Stakeholder views

85. Lenders and an industry bodies suggest the certification model provides lower entry criteria than a market services licence. They suggest this benefits smaller lenders and helps to increase diversity and innovation within the industry. They view competition and innovation within the consumer credit market as advantageous for consumers. A consumer advocate points to the Commerce Commission’s market study into personal banking draft report to indicate New Zealanders are not well-served with regards to competition in this area.

86. A law firm views the existing model as sufficient for current purposes, and believes retaining the ‘fit and proper’ certification will cause the least disruption to the industry.

Option A2 – Transition to a market services licence and apply all FMA licensing and core tools (preferred)

Description

87. Under this option, transfer of regulatory responsibility to the FMA would be achieved by requiring all consumer lenders to have a market services licence for consumer credit. It also provides the FMA with all its regulatory toolkit for licensing and direction and stop orders.

88. Licensing establishes a monitoring relationship between the FMA and regulated entities. The FMA must be satisfied that the entity is capable of effectively performing the service and there is no reason to believe the entity is likely to breach its obligations. The FMA is able to impose and vary licence conditions, as well as suspend or cancel the licence where the lender's conduct justifies this. Once licensed, a lender does not need to have it renewed.

89. Under this option, lenders would be 'deemed' to hold a market services licence from the FMA if they:

    a. are already certified by the Commission (there are currently 457)

    b. are currently exempt from certification on the basis they are licensed by the FMA or licensed by or registered with RBNZ (there are currently 32).

90. The lenders who are currently exempt from certification for other reasons (e.g. certain securitisation arrangements or interim credit provided by non-financial service businesses[14]) would be exempt from this licensing requirement. This includes 496 non-financial service businesses who are currently exempt from certification under regulation 28.

91. Only new entrants to the consumer credit market would be required to obtain a licence. There is a one-off cost to obtain a licence, which we expect would be in the order of $700 - $1,000 (excluding GST) based on the current cost of a licence for providing a financial advice service (for which there are three categorises, with different costs).

92. The approach to 'deem' most of the existing consumer lenders to hold a licence differs to the transitional approach we consulted on. We consulted on automatically providing existing lenders with transitional licence which they would need to upgrade to a full licence at the end of the transitional period.

93. Based in part on advice from the FMA, we have since concluded that a 'deemed' licence approach would work better under this option than a transitional licence approach. The lenders receiving deemed licences would be a known population, because they are registered on the Financial Services Providers Register or exempt because they are regulated by the FMA or RBNZ already.

Advantages/benefits

94. Where the FMA has its core regulatory tools and licensing powers, this would enable the FMA to deliver cost-effective and proportionate regulation and respond to harm without subjecting firms or the wider sector to unnecessary regulatory burden or costs.

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[14] See e.g. regulations 27 – 28, Credit Contracts and Consumer Finance Regulations 2004.

95. The availability of tools like action plans likely improves the FMA's ability to act quickly and protect the interests of consumers. It also delivers efficiencies from consistency and alignment of consumer credit with other financial services.

96. A deemed licence removes the uncertainty and regulatory burden of needing to prepare for a licensing application process and would have no licensing costs or process for lenders (certified or exempt at date of commencement of relevant provisions). It would in fact reduce costs for existing lenders, who would otherwise be required to renew their certification every five years.

97. A deemed licence would also enable the FMA to effectively supervise these lenders on an ongoing basis.

98. The FMA has advised that deemed licensing will not create an additional regulatory burden on existing lenders.

Disadvantages/costs

99. The extent of regulatory and compliance burden under this option depends on how the licensing regime is designed and implemented by the FMA.

100. The approach of 'deemed' licensing treats existing lenders and new entrants differently. In the discussion document, we noted that this option risks negatively impacting competition by advantaging incumbents and inhibiting entry into the market and associated diversity and innovation.

101. Having discussed this further with the FMA and the Commission, we have downgraded our assessment of these impacts. Even though the conditions required to be met by existing and new entrant lenders will be different, we anticipate little to no change in terms of compliance costs and entry rate in practice. However, it is theoretically possible for the FMA's licensing approach to impose a higher standard. A higher standard for entry would also have potential to lessen competition and innovation by new lenders.

102. There is a potential increase to regulatory burden or compliance costs associated with *ongoing* monitoring by the FMA under a licensing model. One example is that the FMA may at some stage require lenders to provide with more information than required under the status quo to support its monitoring of lenders.

Stakeholder views

103. Stakeholders have stated that there will be better enforcement with this model. A law firm stated that adopting a licensing model would create consistency accross entities licensed by the FMA, and aligns with the single licence proposal in CoFI.

104. However, it is a common view amongst various stakeholders that there will be higher costs for those that are not already licensed through understanding the new obligations and implementation of new processes. This can mean that some lenders will leave the market, and compliance costs may increase which may be passed onto consumers.

105. Some lenders further pointed to the 2024 Commerce Commission personal banking services draft report to show the importance of competition and innovation.

106. A financial mentor saw a higher entry criteria as a benefit as it means lenders overall would be more aware of their obligations, which protects the interests of consumers.

How do the options compare to the status quo/counterfactual?

	Option One (A1) – Retain 'fit and proper' certification (counterfactual) and apply some FMA tools	Option Two (A2) – Transition to a market services licence and apply licensing and all core FMA tools
Effectively protects interests of consumers	**+** Provides the FMA with some additional tools.	**++** The FMA will have additional tools that enable it to more closely and proactive oversee lenders, which is more conducive to protecting the interests of consumers.
Minimises regulatory burden/costs	**-/0** Re-certification is required every 5 years. Continues misalignment with regulation of other market services.	**+** The deemed licensing approach would be cheaper for lenders already certified or exempt in terms of up-front costs. Ongoing costs/burden from FMA monitoring depend on its approach. One licensing regime is likely to be less costly for the FMA to administer and less costly for lenders that operate in other markets.
Fair and transparent markets for credit	**0** Lenders continue to know what to expect to demonstrate compliance. However, FMA having to develop a different regulatory approach for other markets creates uncertainty for lenders.	**+** Potential unfairness for lenders wanting to enter the market (unlevel playing field), but considered unlikely in practice. Better FMA powers and opportunities to supervise conduct in the credit market expected to improve transparency.
Overall assessment	**0/+**	**++++**

Key for qualitative judgements:	
++	much better than doing nothing/the status quo/counterfactual
+	better than doing nothing/the status quo/counterfactual
0	about the same as doing nothing/the status quo/counterfactual
-	worse than doing nothing/the status quo/counterfactual
- -	much worse than doing nothing/the status quo/counterfactual

What option is likely to best address the problem and deliver the highest net benefits?

107. We assess option A2 as most likely to address the problem and produce net benefits against the critieria. It would enable the FMA to more effectively regulate consumer credit in the interests of consumers. This option may support lenders to operate more efficiently, depending on the FMA's approach to assessing new licences and overseeing lenders.

Issue B: Personal liability settings

What options are being considered?

Option B1 (the status quo) – Retain due diligence duty, personal liability for directors and senior managers and restrictions on indemnities and insurance

Description

108. This option retains the current settings for due diligence and personal liability for directors and senior managers. The due diligence duty was introduced in December 2021, alongside other changes, to help drive compliance with and accountability under the CCCFA.

109. Under a different provision in the CCCFA, directors and senior managers are also held liable where they were knowingly or deliberately involved in contravention.

110. Under the certification model, the FMA would be limited to using formal interventions and have limited direct regulatory oversight of consumer credit.

Advantages/benefits

111. This option provides strong incentives on directors and senior managers to ensure the lender is complying with its obligations under the CCCFA.

112. It is unclear the extent to which compliance and protection for consumers have improved in the short time since the duty and liability has existed. We understand breaches of the due diligence duty are typically only discovered when the Commission investigates other potential breaches of the CCCFA, rather than proactively.

Disadvantages/costs

113. We would expect these settings to continue producing overly conservative lending practices, which can be inefficient and costly.

114. Retaining the settings for personal liability, insurance and indemnity continue a different and harsher regulatory setting for consumer credit compared to other consumer financial services.

115. If licensing is progressed, retaining the due diligence duty would duplicate the equivalent obligations under the FMC Act licensing provisions.

Stakeholder views

116. Some lenders reiterated that 2021 reforms to consumer credit law resulted in more conservative lending decisions than intended, and reported their experiences of these reforms. This included that personal liability for breaching the due diligence duty and interpretational difficulties have led to them taking a more conservative lending approach.

117. One lender stated that their approval rates fell from an average of 33% in the 12 months prior to the reforms to 11% immediately after the 2021 CCCFA reforms. A finance company considers that the CCCFA is not fit for purpose as it is making people too cautious, prevents innovation and startups. A law firm has submitted that, in their experience, the due diligence duty and personal liability has led to overly conservative lending approaches.

118. However, some stakeholders, including a consumer advocate, viewed the CCCFA as operating as intended, and that the status quo should be kept to incentivise lenders to comply with their obligations to protect consumers. A consumer advocate thought that lenders with more revenue would be able to take risks smaller lenders could not, and shield directors and senior managers from penalties.

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Option B2 – Retain due diligence duty but remove restrictions on indemnities and insurance

Description

119. This option would preserve the current due diligence duty and personal liability for directors and senior managers, but remove the restriction on indemnities and insurance.

120. Directors and senior managers may also be held liable where they were knowingly or deliberately involved in contravention.

Advantages/benefits

121. This option continues to provide incentives for directors and senior managers to take their lending responsibilities seriously but allows the consequences to be transferred (if an indemnity or insurance or both can be obtained) from the individuals to the business (in the case of indemnity) and/or an insurer (for insurance).

Disadvantages/costs

122. There may be additional costs to lenders in securing indemnity or insurance. We expect little change to lenders' compliance costs, as the risk would merely be transferred from the individuals rather than removed.

123. Retaining the settings for personal liability continue a different and more expensive regulatory setting for consumer credit compared to other financial services.

124. We do not anticipate any change in how this option promotes fair and transparent markets, nor do we consider that this option will improve lender behaviour.

Stakeholder views

125. Two lenders stated that, although the availability of insurance and indemnities would make lenders "more comfortable", it would not make a change in their conservative lending, citing reputational reasons. A financial mentor and a law firm shared similar views. A law firm stated that indemnification may not make material changes where compliance is embedded in lender processes, but it may help senior managers and directors feel more confident in taking more balanced risk-based decisions on challenging compliance decisions.

126. A lender indicated that retaining personal liability would continue to strongly incentivise lenders to adopt an inflexible, conservative approach to lending. Other stakeholders expressed similar views. Some lenders suggested that there may be difficulty for lenders in finding adequate insurance within the NZ market, or it will be at great expense if available.

127. Some lenders have indicated that removing a restriction on insurance and indemnities may benefit smaller lenders in attracting directors and senior managers.

Option B3 – Remove due diligence duty and attendant liability for licenced lenders (preferred)

128. This option would remove the due diligence duty for directors and senior managers of licensed lenders, that is, either:

    a. Option B3(a) for consumer credit lenders who have a market services licence for acting as a financial institution (CoFI licence), or

    b. Option B3(b) for licensed consumer credit lenders (preferred if chosen with option A2).

129. If a licensing model was adopted (Option A2), this would reduce, if not remove, the need to retain the due diligence duty and personal liability for licensed lenders' directors and senior

managers. The need to meet licensing obligations on an ongoing basis would become the conduct incentive in place of due diligence.

130. The role of the due diligence duty and associated personal liability plays in incentivising directors and senior managers to develop good systems for complying with CCCFA is similar to that played by the FMA's oversight of market services licence holders. The CCCFA approach incentivises conduct via a statutory duty, while market services regulation under the FMC Act combines general duties with direct monitoring and intervention to shape conduct. Licence holders are required to be capable of effectively carrying out the service.

131. In any case, directors and senior managers can still be held liable where they were knowingly or deliberately involved in contravention.[15]

Advantages/benefits

132. To a limited extent, this option would realign credit law with financial markets and general corporate law.

B3(a) - financial institutions only

133. Although due diligence duty and personal liability would be removed for CoFI lenders under this option, these lenders would still be subject to greater scrutiny over the products and services they provide.

134. Lenders that hold a CoFI licence are already subject to obligations under the FMC Act. This option removes duplicated duties and may make lenders licensed under the CoFI Act less inclined to take conservative lending approaches. However, this may not make a significant difference for those lenders where compliance is built into their processes.

B3(b) - licensed consumer credit lenders (if Option A2 is adopted).

135. The removal of the due diligence duty and personal liability will likely result in fewer conservative lending practices from consumer credit lenders. It may also help to attract or retain senior managers and directors to firms.[16]

136. The FMA states that there will be no further regulatory burden if the licensing model was proceeded with.

Disadvantages/costs

B3(a) - financial institutions only

137. This option will likely mean non-licensed consumer lenders whose directors and senior managers are subject to the due diligence duty and personal liability will continue to take a conservative lending approach.[17]

138. It may provide licensed under CoFI a competitive advantage over other lenders if the due diligence duty will no longer be tied to personal liability, meaning they may be less inclined to take a conservative approach to lending and have more resources to invest in innovation.

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[15] Sections 93(d) and s107A(1)(c) – (f) of the CCCFA.

[16] Supported by multiple non-bank deposit takers, law firm and a lender.

[17] Sections 93(d) and s107A(1)(c) – (f) of the CCCFA.

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Lenders and the FMA would have to navigate the two-tiered approach, which involves different obligations and regulatory models.

B3(b) - licensed consumer credit lenders

139. Whether this would continue to protect the interests of consumers and whether compliance costs increase will depend on the enforcement approach that the FMA takes.

Stakeholder views

140. Some stakeholders, including lenders, indicated that the due diligence duty has led to overly conservative approaches to their lending, slowed down credit processes, increased costs, and reduced their ability to provide access to credit by increasing the compliance burden. One lender indicated that their home loan approval rates dropped by a third post-2021 CCCFA reforms from 33% to 11% due to its conservative approach.

141. Some lenders indicated that larger lenders have an advantage over smaller lenders to comply with their due diligence obligations due to resourcing. They indicated this puts a higher onus on directors and senior managers of these smaller lenders which creates additional barriers to competition.

142. Various stakeholders suggest that because CoFI and CCCFA regimes are different, the obligations and penalties should be different.

143. Several stakeholders including lenders and a consumer advocate question whether ongoing oversight through licensing would be able to encourage responsible lending compared the due diligence duty itself. Many of the same stakeholders state that the due diligence duty provides a deterrence for bad behaviour and irresponsible lending by lenders.

144. A lender thought that if due diligence was removed only for those licensed under the CoFI Act it would create an unfair advantage those lenders. A law firm stated that the difference between CoFI licensing and the certification is not large enough to justify different treatment for licensed lenders.

145. The Commerce Commission is of the view that obligations under CoFI licensed lenders are not a precise substitute for the CCCFA due diligence duty.

146. A law firm, although they support the removal of the due diligence duty, states that success may depend on the extent of ongoing supervision and licensing processes.

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How do the options compare to the status quo/counterfactual?

	Option One (B1) – *Status Quo / Counterfactual*	**Option Three (B2) –** Retain the due diligence duty but remove restriction on indemnities and insurance	**Option Two (B3)** – Remove due diligence duty for licenced lenders
Effectively protects interests of consumers	**0** Provides strong incentives to ensure compliance with CCCFA obligations	**0** Retains personal liability for directors and senior managers, providing some relief to lenders.	**-/0** **B3(a)** Although due diligence duty is removed for CoFI lenders, these lenders will still be subject to scrutiny over the products and services they provide. Directors and senior managers will still be liable where they were knowingly or deliberately involved in contravention. **0** **B3(b)** May be effective when paired with the licensing model under option A2. However, this will depend on the supervisory approach the FMA takes. Directors and senior managers will still be liable where they were knowingly or deliberately involved in contravention.
Minimises regulatory burden/ costs	**0** High compliance costs and regulatory burden, resulting in overly conservative lending practices	**0/+** Lenders' compliance costs and regulatory burden will be redistributed without reducing the lender's overall liability. Potential for this to reduce the burden in practice, with liability at arm's length from directors/senior managers and availability of insurance	**+** **B3(a)** Likely to reduce compliance costs for licensed CoFI lenders who account for a significant proportion of lending. No change expected for other lenders. **++** **B3(b)** The FMA suggests they are likely to expect roughly the same efforts from lenders as the due diligence duty. Some efficiencies possible for CoFI lenders from consistency of approach.

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Fair and transparent markets for credit	**0** Fairness and transparency promoted by due diligence duty and personal accountability of directors and senior managers	**0** No material change expected	**-** **B3(a)** The two-tiered approach would reduce fairness and transparency for non-licensed consumer credit lenders. Assuming those lenders continue to take conservative lending approach, this may lead to CoFI lenders having a competitive. **0** **B3(b)** This would maintain fairness as all senior managers and directors of lenders will no longer be personally liable for due diligence duty unless they are knowingly or deliberately involved in a contravention of the CCCFA.
Overall assessment	**0**	**0/+**	**Option B3(a): -/0** **Option B3(b): ++**

Key for qualitative judgements:

++	much better than doing nothing/the status quo/counterfactual
+	better than doing nothing/the status quo/counterfactual
0	about the same as doing nothing/the status quo/counterfactual
-	worse than doing nothing/the status quo/counterfactual
- -	much worse than doing nothing/the status quo/counterfactual

What option is likely to best address the problem and deliver the highest net benefits?

Although option B3(b) relies on option A2 (which we prefer independently), assessing option B3(b) on its own merits, we believe it is most likely to address the problem and produce net benefits against the critieria. This reflects our understanding the FMA would use its regulatory tools in a manner has all the benefits of the status quo, while avoiding the problems identified.

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Issue C: Consequences for incomplete disclosures by lenders

What options are being considered?

Option C1 (the status quo) – Forfeiture of costs of borrowing with relief available under section 95A (from December 2019)

Description

147. This option would maintain the current consequences under section 99(1A) and the current method of avoiding disproportionate consequences via relief under section 95A from December 2019 onwards. Section 99(1A) gives affected borrowers an entitlement to not pay or to recover the costs of borrowing for the period before the failure is corrected. Lenders can ask the court to have this entitlement removed or reduced as appropriate in the circumstances under section 95A.

Advantages/benefits

148. Lenders are effectively incentivised by the nature of this liability to ensure they are providing borrowers with the information required, and to immediately address any failure to do so. This is consistent with the Commerce Commission's observation that, when section 99(1A) took effect in 2015, it significantly improved the quality of information disclosed to consumers. This helps to protect the interests of consumers by giving them an effective remedy in the event they are harmed by a disclosure failure, and one that is easier in practice to access than other remedies, such as statutory damages.

Disadvantages/costs

149. The Commerce Commission states that it takes a proportionate approach in responding to any disclosure failures subject to this provision, even where those failures precede section 95A. It tends to apply a materiality test as well as sections 95A and 95B to reduce the compensation it expects from lenders when section 99(1A) is triggered. For instance, the Commission does not tend to invoke section 99(1A) if a lender fails to disclose information that is unlikely to be material to the borrower.

150. Nonethless, uncertainty on how the relief will be applied, means that the problem of overly conservative approaches to ensuring compliance with disclosure requirements, and unnecessary litigation costs, has not been fully addressed by the relief available under section 95A. Inefficiencies and disproportionate costs would therefore continue to impact lenders and borrowers.

Stakeholder views

151. Lenders express strong concerns with section 99(1A), and argue that it poses threats to their solvency, stability or existence. This appears to relate largely to the fact relief under section 95A was not applied retrospectively. However, the industry also believes section 95A has not adequately addressed the problem. They do not believe it is reasonable to expect them to apply to a court for this relief (which no lender has yet done because these matters tend to get settled out of court) and suggest the potential consequences for disclosure breaches remain excessive.

152. On the other hand, consumer advocates and financial mentors believe that the status quo should be retained as it provides incentives for lenders that are necessary to ensure their compliance with the disclosure requirements.

Option C2 – Cap the percentages that can be forfeited to each borrower, depending on the type of disclosure failure

Description

153. This option involves setting limits to ensure the lender never forfeits more than a certain percentage of the costs of borrowing to a particular borrower, depending on the type of disclosure failure. There would still be discretion for a court to determine the amount of relief that is appropriate under sections 95A and 95B, but only within these limits.

154. Though noting that harm to the borrower is generally fact-dependent, maximum percentages could be set is to distinguish the relative seriousness of:

    a. failure to make disclosure at all (e.g. ensuring a lender is never required to forfeit more than 75 percent of the costs of borrowing)

    b. failure to disclose all the particulars required by the CCCFA (e.g. ensuring a lender is never required to forfeit more than 40% of the costs of borrowing)

    c. complete disclosure that is made just after the statutory deadline (e.g. ensuring a lender is never required to forfeit more than 20% of the costs of borrowing).

Advantages/benefits

155. Depending on how the caps are set, this option could improve lender confidence that forfeiture will not be disproportionate. It also makes it much easier for lenders to assess the potential extent of their liability for a given failure, while preserving their ability to seek relief.

156. This may create some efficiencies in how lenders meet disclosure requirements, with a reduction in compliance costs passed onto consumers.

Disadvantages/costs

157. If caps are set too low, this option could involve a risk of under-compensating borrowers for the harm caused by disclosure failures. This could also reduce incentives for lenders to take appropriate care to disclose the information required and quickly address any failure to do so. We consider this risk to be low.

158. This option would not address inefficiencies and costs associated with lenders responding to harmless disclosure failures.

Stakeholder views

159. The original option we consulted on involved a cap on total liability for a given disclosure failure affecting multiple borrowers. Lenders argued the original option would be difficult to design and implement. This option has been modified to address these concerns.

160. Consumer advocates generally did not support the original option either.

Option C3 – Exclude disclosure failures that cause no harm to borrowers

161. This option would confirm that no forfeiture of interest and fees is required for a disclosure failure that has not harmed the borrower. We have identified two ways this could work (as sub-options) in terms of which party has the burden of proving harm (or its absence):

    a. Option C3(a): section 99(1A) would not apply if the lender can satisfy a court there was no harm. The idea is that lenders would have more confidence they can avoid forfeiture in these circumstances (e.g. be insulated from unreasonable demands for forfeiture).

Where the lender accepts there was harm, or fails to persuade a court there was no harm, a court could still award relief under section 95A.

b. Option C3(b): section 99(1A) would only apply if affected borrowers, or the FMA on their behalf, satisfy a court that the lender's failure did cause harm. The court could then make a declaration that section 99(1A) applies and award any relief to the lender it considers appropriate under section 95A. The idea is that this would further reassure lenders they are not liable where the failure was not prejudicial because the burden of proving otherwise would be on borrowers or the FMA. Where the FMA has concerns about the impact on borrowers, it would have tools it could use to address the potential misconduct. The FMA may also negotiate/secure compensation for borrowers (particularly if Option A2 is pursued).

Advantages/benefits

162. Retaining the potential for lenders to forfeit some or all of the costs of borrowing under section 99(1A) continues effective incentives (that are not provided by other forms of liability) for lenders to comply, and promptly remedy defective disclosure. This benefits borrowers.

163. We would expect both sub-options to address the problem associated with harmless failures. They would improve the confidence of lenders that they can avoid any forfeiture of interest and fees in these cases, and we would expect this to improve negotiated outcomes for lenders (outside of court). Although we understand the Commission already applies a 'materiality' threshold, lenders would also be protected from action by private parties in these cases. This is likely to produce some modest efficiencies as a result of lenders making more proportionate efforts to disclose the particulars required by the CCCFA, and through avoided litigation costs where harmless failures do occur.

Benefits specific to sub-option C3(b): section 99(1A) only applies if affected borrowers or the FMA satisfy a court that the lender's failure did harm borrowers)

164. The FMA favours this sub-option on the basis that it could intervene on behalf of borrowers, particularly if the licensing powers under option A2 are available.

165. Sub-option C3(b) would have further advantages in terms of efficiencies and avoided costs for lenders, as it transfers the burden of proof (of the harm suffered) from the lender to affected borrowers or the FMA on their behalf. It also transfers some of the associated litigation costs where harm is disputed.

Disadvantages/costs

166. Both sub-options have the potential to reduce transparency by lenders and compensation for borrowers affected by a failure wherever there is an argument that they were not harmed.

167. The Commission's experience is that lenders commonly take the view that incomplete disclosures have caused no harm to borrowers, even where more than one item of what the CCCFA treats as 'key information' was missing from initial disclosure.

Disadvantages specific to sub-option C3(b): section 99(1A) would only apply if affected borrowers or the FMA satisfy a court that the lender's failure did harm borrowers

168. The risk of harm to the interests of consumers is greater under sub-option (b) because it is only where affected borrowers or the FMA can prove to a court there was harm that lenders have any liability under section 99(1A).

169. Affected borrowers are generally not well placed and resourced to discharge this burden. This may mean that lenders are less incentivised to ensure they comply with the disclosure requirements and work with affected borrowers or the FMA to remedy failures.

170. The worst case scenario under this sub-option is that the incentives provided by section 99(1A) are completely removed and the effect is comparable to option C4 (below). This could be the outcome if the prospect of a court declaring borrowers were harmed by a failure is too low for section 99(1A) to faciliate compensation in practice (e.g. because it is easier to obtain statutory damages, which do not require proof of harm),

171. Our view is that Option A2 would be necessary to ensure the benefits of this sub-option outweigh the potential harm to the interests of consumers. The oversight approach enabled by Option A2 would give the FMA effective mechanisms to detect failures and work with lenders to secure an appropriate remedy for affected borrowers without recourse to court.

Both sub-options

172. There are likely to be litigation costs associated with an increase in disputes over whether the lender is liable to forfeit any of the costs of borrowing. The two sub-options distribute these costs differently:

    a. Sub-option (a) assigns those costs to lenders, which may not differ from the costs they already incur in dealing with relatively harmless disclosure failures under section 95A

    b. Sub-option (b) assigns these costs to affected borrowers, or the FMA. This may present a significant barrier to affected borrowers obtaining compensation or otherwise create additional costs for the FMA in needing to intervene for borrowers. With effective regulatory tools (i.e. those available under Option A2), the FMA may be able to find more cost-effective ways to address the potential misconduct and to negotiate to secure compensation for borrowers.

Stakeholder views

173. Lenders argued a threshold along the lines of 'harm' or 'materiality' of the failure would contribute to uncertainty about their liability.

174. Some other stakeholders also had concerns about added complexity, depending on how the test is formulated, particularly if borrowers have the burden of proof.

175. It is difficult to know to what extent opposition to this option is the result of strong preferences for either repeal or the status quo.

176. Lenders and consumer advocates differed predictably on whether lenders or borrowers should have the burden of showing the failure was material/harmful. Consumer advocates point to a power imbalance and higher barriers to justice in support of their view.

Option C4 – Repeal sections 99(1A), 95A and 95B and adjust statutory damages

Description

177. This option is to repeal section 99(1A), so that lenders are never required to forfeit the costs of borrowing in the event of a disclosure failure. Lenders would still be unable to enforce the contract until they correct the failure, but would be entitled at that point to recover any unpaid interest and fees.

178. Under this option, we would consider whether the amount of statutory damages prescribed by section 89 remains sufficient to continue:

a. incentivising lenders to take appropriate care in making proper disclosures

b. ensuring adequate compensation for borrowers.

179. This recognises important differences between the consequences of section 99(1A) and statutory damages, which may explain the Commission's obversation of signficantly improved disclosures since 2015:

a. Whereas section 99(1A) creates an entitlement on part of all affected borrowers (which must be implemented by the lender), statutory damages must be sought by individual borrowers (for example, through dispute resolution schemes) or the Commerce Commission on their behalf.[18] In practice, this likely means that borrowers who are aware of the failure are less likely to be compensated than where section 99(1A) applies.

b. The maximum amount of statutory damages is specified by the CCCFA, and not based on a calculation of the costs of borrowing that have accumulated since the breach.

Advantages/benefits

180. This option would most effectively address the problem by significantly reducing the possible consequences of failure to disclose information properly to borrowers. This is likely to create efficiencies and reduce compliance costs.

Disadvantages/costs

181. We would expect this option, more than any other, to reduce incentives on lenders to take appropriate care in making proper disclosures and to identify and to rectify any failures to do so. Other remedies available to borrowers, even with statutory damages increased, provide less meaningful incentives and makes enforcement more costly for affected borrowers.

182. It would also increase costs associated with pursuing other remedies, particularly statutory damages. These costs are likely to be incurred by the FMA, rather than dispute resolution processes, given disclosure failures generally affect multiple borrowers.

Stakeholder views

183. Several lenders consider this option would most effectively address the disproportionate impacts of section 99(1A). They consider that the CCCFA already allows consumers to be compensated for any loss they suffer. They also consider that other potential penalties under the CCCFA would provide adequate incentives to ensure proper disclosures.

184. Confidentiality

[18] There are a few examples of statutory damages also being sought by the Commission, but this tends to be reserved for more egregious breaches affecting a class of borrowers.

185. Consumer advocates strongly oppose this option and reiterate the value of section 99(1A) in protecting consumers.

Application of relief under section 95A retrospectively to limit pre-2019 liability

186. In 2019, we considered retrospectively applying the ability for lenders to seek relief (under what it is now section 95A) from the problems with section 99(1A). It was dismissed on the basis that legislation with retrospective effect can generally only be justified where it is intended to be entirely for the benefit of those affected, with no adverse impacts for others.

187. We have not consulted on or analysed in this RIS any options with retrospective effect. However, we note the ongoing concerns expressed by lenders.

188. One way of retrospectively changing the effect of section 99(1A) that remains is to back-date the relief from disproportionate liability provided by section 95A to June 2015 (when section 99(1A) took effect). This would limit any liability arising from failures during that period which have not already been settled. This would give lenders the opportunity to ask the court to extinguish or reduce the amount of compensation under section 95A. If it does result in judicial application of section 95A, this option may reduce uncertainty about how section 95A operates and its effectiveness.

189. Retrospective intervention in this case would raise some natural justice questions (e.g. by altering the rights of borrowers that were provided by the law at the time they entered into their loan agreements) and constitutional questions (e.g. by changing the law that is actively being applied by the judiciary or, potentially, overturning a judicial decision), and a key consideration would be whether it would be in the public interest to do so.

How do the options compare to the status quo/counterfactual?

	Option C1: Status quo	Option C2: Capped percentages	Option C3(a): Consequences do not apply if the lender can establish no harm	Option C3(b): Consequences only apply if borrower can establish harm	Option C4: Repeal sections and adjust statutory damages
Effectively protects interests of consumers	0 Borrowers are well compensated for breaches with minimal costs/procedure. Strong incentives to ensure complete disclosure and remedy errors.	0/- Risk of negative impact on interests of consumers, would depend on how caps are set.	0/- Lenders may be slightly less incentivised to remedy failures where harm is debateable.	- Lenders less incentivised to ensure complete disclosure and remedy failures (particularly where harm is debateable). Harder for consumers to seek compensation. Mitigated by effective FMA intervention (dependent on option A2).	- - Would reduce incentives on lenders to comply or notify.
Minimises regulatory burden/costs	0 Relief available under s95A is designed to make liability proportionate, but uncertain liability continues to produce some inefficiencies/costs.	+ Slightly improves lender confidence forfeiture won't be disproportionate, but little impact on costs relating to harmless cases.	0/+ Marginally improves lender confidence no forfeiture required in harmless cases (at least where private action is threatened). May reduce inefficiencies/costs, but likely offset by small increase in private litigation costs.	+/++ Further improves lender confidence no forfeiture required in harmless cases, which may reduce inefficiencies/costs. Some additional costs incurred by FMA where it accepts burden of proving harm.	++ Reduces likely costs for lenders for each failure. May increase costs to FMA in pursuing other remedies to harm.
Fair and transparent markets for credit	0 Liability promotes transparency where failures occur, and s95A designed for fairness	0 Transparency and fairness neutral.	+ Fairness increased/more apparent in harmless cases	+ Fairness increased/more apparent, assuming credible threat of FMA intervention to	- Fairness and transparency materially reduced.

				prevent lenders failing to recognise genuine harm.	
Overall assessment	**0**	0/+	+	+/++	-

Key for qualitative judgements:

++	much better than doing nothing/the status quo/counterfactual
+	better than doing nothing/the status quo/counterfactual
0	about the same as doing nothing/the status quo/counterfactual
-	worse than doing nothing/the status quo/counterfactual
- -	much worse than doing nothing/the status quo/counterfactual

What option is likely to best address the problem and deliver the highest net benefits?

190. We assess option C3(b) as most likely to address the problem and produce net benefits against the critieria. This conclusion relies on the assumption that liability under section 99(1A) and the regulatory tools proposed under option A2 would together enable the FMA to intervene effectively to secure compensation for borrowers who have been harmed by a disclosure failure. Option C3(a) is a close second. It is the only other option that we would expect to improve on the status quo.

Issue D: High-cost credit provisions

What options are being considered?

Option D1: the status quo

191. The high-cost credit provisions would continue to apply only to consumer credit contracts with annual interest rates of 50% or more. No lenders offer these credit contracts, and this is not expected to change.

Advantages/benefits

192. The high-cost provisions have been effective in addressing the financial harm they were intended to address. There are no longer debt spirals resulting from these loans, and repeat high-cost borrowing since this form of credit has been eliminated.

193. This is gradually being reflected in FinCap (a financial mentoring network) client data, as the legacy of high-cost credit contracts is reducing. In 2021, high-cost loans represented 1.8% of unique debts with financial mentors by loan types. In 2023, this percentage was 1.5%.

Disadvantages/costs

194. The high-cost credit provisions have led 12 high-cost lenders to exit the market and nine to restructure their products (to avoid this additional regulation). We estimate this has impacted around 150,000 would-be high-cost borrowers.

195. A former high-cost credit lender reported that due to the absence of high-cost consumer credit, borrowers are turning to larger, longer-term loans, resulting in a higher overall cost of credit than expected. Before the high-cost credit regulations were implemented, the lender mentioned that the average short-term, low-value loan was $466, with an average repayment amount of $720.

196. Currently, the average loan amount provided is $1,903 (while borrowers request an average of $2,237), and the average repayment amount is $3,139. The average repayment amounts are 1.5 and 1.6 times higher than the average borrowed amount, respectively, indicating a small difference.

197. Despite concerns about the unavailability of small amounts and short-term loans, we have identified around 20 lenders (excluding BNPL providers) offering loans for amounts below $1,000 (at more reasonable interest rates than former high-cost lenders). A small number of lenders offer loans from as low as $200, while many start from $500. We note that these typically have high establishment fees relative to the value of the loan (in some cases, up to $250 or $350) – which are generally built into repayment amounts.

Stakeholder views

198. Consumer advocates and financial mentors consider that the elimination of high-cost credit has generally led to borrowers being better off. According to them, borrowers are now accessing lower-interest or interest-free loans, government support, are seeking help from financial mentors to negotiate more affordable payment plans, or adjusting their spending habits.

199. Additionally, Christians Against Poverty (CAP) pointed out that the average total debt balance for new clients has remained at similar levels over several years, indicating that former high-cost borrowers have been able to access alternative forms of credit without incurring more costs.

200. Financial mentors and consumers advocates believe that the current definition does not go far enough in protecting consumers from the likelihood of debt spirals and financial harm arising from lower interest rate loans.

201. This contrasts to the views of lenders and industry organisations. They have suggested that the unavailability of high-cost credit has negatively impacted would-be borrowers who need to access this type of credit. They argue that borrowers who turn to larger, longer-term loans may be left worse off over the long term. While an industry body expressed concerns about unregulated lending, including criminal gangs, they admitted to having no evidence to support this claim.

202. Furthermore, a lender mentioned that if borrowers are no longer experiencing financial hardship due to high-cost loans, they are now facing similar issues caused by the alternative types of credit they are now turning to (such as BNPL).

203. Lenders and industry organisations argue that maintaining the current definition would retain the positive impacts of the high-cost provisions in addressing the financial harm they were intended to address without risking any unintended consequences that could come from changing the definition.

204. An industry body is also concerned that, under the status quo, would-be borrowers are struggling to access small amounts of credit on a short-term basis.

Option D2 – Expand the definition of a high-cost credit contract to contracts with an annual interest rate of 30% or more

205. This option is to lower the annual interest rate defining high-cost credit to 30% or more. This threshold would appear to capture credit offered by 20 current lenders in the market, affecting an estimated 140,000 borrowers.[19]

Advantages/benefits

206. We would expect this option to make profitable lending in this interest rate range very difficult due to the heavy compliance burden of the high-cost provisions. This may have benefits in cases where that lending is contrary to the interests of consumers (e.g. because it is unaffordable or default interest is excessive), either by making credit of that kind unavailable or because the lender offers it on more favourable or responsible terms (below the 30% interest rate). We have considered whether there is financial harm caused by lending at these interest rates. The purpose of the provisions is to protect consumers from:

    a. the harm caused by accumulating excessive debts from default on high-interest loans or from rolling over or extending payment terms of high-interest loans; and

    b. the harm caused by excessive[20] interest and fees from repeat borrowing under high-interest loans.

207. We have not been able to find evidence of this kind of harm that is specific to loans with an interest rate of 30% or more. The data we have analysed is set out in **Annex 2**. In summary,

[19] This assumes a lender offering loans in the 30 – 49.99% interest rate range has the same number of customers as a former high-cost credit lender.

[20] It is however debatable on where to draw the line between what is a “reasonable” and an “excessive” cost of credit. For example, it is widely accepted that the cost of credit for mortgages will nearly or more than double the principal amount over the course of the loan. But it can be argued that the borrower is left with an asset at the end of the loan, which has the potential to increase in value over time. This may not be the case for other personal loans.

loans with interest rates of 30% or more account for a small proportion of debts that are referred to financial mentors (11% or 1,432 files closed by FinCap's financial mentors from January to July 2024) and a small proportion of enforcement actions taken by the Commission (34 enforcement actions which represent 9.6% of all consumer credit related enforcement actions taken by the Commerce Commission since June 2019).

208. It is possible this option could have some benefit to consumers who are currently accepting credit at interest rates around 30%. This is because those lenders could lower their interest rates to avoid being caught by the high-cost credit provisions without having to fundamentally restructure their terms (in order to remain profitable).

Disadvantages/costs

209. Given these considerations, lenders are likely to either restructure their loan products or, if restructuring is too costly and/or uncertain, exit the market. If they opt to restructure their loan products, these lenders may lose customers. They would also incur costs from restructuring their offer, deviating resources from innovation.

210. If the 20 lenders affected by this option instead choose to comply with the provisions, they would face additional compliance costs and legal risk. The Commerce Commission has found that some lenders had difficulty identifying whether existing or recent lending qualified as high-cost, which risks breach of the high-cost provisions.

211. This option is therefore likely to reduce the number of lenders operating in this part of the market (therefore negatively impacting competition), discouraging innovation and limiting consumer choice.

212. As a result, borrowers may need to seek alternative credit products. This could be challenging for those with poor credit histories and/or scores, those who are unable to afford longer-term loans, or those who cannot find loans in the market that match their needs. Small loans can be costly to administer relative to their value, and lower interest rates mean lower profits for lenders.

213. The 20 lenders affected by this option, however they respond, would be at a competitive disadvantage compared to non high-cost lenders.

Stakeholder views

214. The feedback we received on this option is divided. Lenders and industry bodies are against broadening the definition of high-cost credit, while consumer advocates and financial mentors suggest lowering the interest rate threshold to 30% or even 20%.

215. Lenders argue that there is limited evidence of financial harm caused by loans with interest rates ranging from 30% to 49.99%. They suggest that before considering a lower interest rate threshold, appropriate enforcement should be taken to address potential irresponsible lending practices by these lenders. They are also concerned about:

    a. Transactional banking risk: Banks view the association with providers of consumer credit labelled as high-cost as carrying a high-reputation risk, making it difficult for high-cost lenders to obtain basic transaction facilities.

    b. Additional compliance costs: which makes small-amount and short-term loans nonviable because some operational costs cannot be fully recovered via fees.

c. Reduced access to credit: Lenders stated that few, if any, providers will continue to provide loan options in the 30% and 49.99% range if these loans are considered high-cost, thereby excluding some borrowers.

216. A dispute resolution scheme stated that lowering the threshold to 30% would be unlikely to prevent unaffordable lending. The interest rate of complaints it receives are usually below this threshold.

217. However, consumer advocates, financial mentors and budgeting services suggest lowering the threshold to 30% or even 20% would better protect consumers. They consider this would decrease the likelihood of debt spirals, repeated borrowing, and financial harm.

218. CAP shared that a significant number of their clients' loan fall within the 30% to 49.99% interest rate range, predominantly involving higher-tier vehicle finance and personal loans. It considers that loans in this interest rate range, secured against valuable personal assets, lead to long-term financial hardship for families, trapping them in cycles of debt. According to CAP, these types of loans are targeted at and sold to Māori and Pasifika communities, who are disproportionately represented among CAP clients in irresponsible lending cases.

Option D3 – Expand the definition of a high-cost credit contract to include credit with an annual interest rate of 40% or more

219. This option would lower the interest rate threshold defining a high-cost consumer credit contract to 40%.

220. We identified 13 lenders that offer loans with a maximum interest rate between 40% and 49.99%, with would have an estimated total of 93,000 customers.[21] All of these lenders appear to offer interest rates of between 47.5 and 49.95%.

Advantages/benefits

221. There is some potential for consumers to benefit if affected lenders seek to avoid the high-cost credit provisions by reducing their interest rates. However, this prospect seems more remote for the lenders affected by this option than for those in the 30 to 40% bracket affected by option D2 (see paragraph 209). Loans in this interest rate range have different terms, amounts, and credit risk tolerance to remain economically viable at 39% interest.

Disadvantages/costs

222. The costs we identify for this option are similar to those for option D2 but on a smaller scale.

223. Should affected lenders restructure their products to avoid the high-cost provisions, we would expect demand for credit at this end of the market to go unmet. This may be because loans that are still available have fundamentally different terms (e.g. high minimum amounts, or durations) and/or reduced tolerence for credit risk to remain economically viable at 39% interest. Alternatively, these lenders could exit the market.

224. There is limited evidence that the risks of harm require lowering the interest rate threshold that defines high-cost credit.

[21] This number comes with caveats as we assume that a lender offering loans in the 30% to 49.99% interest rate range has the same number of clients as a former high-cost lender.

Stakeholder views

225. We consulted on an option of lowering the interest rate that defines high-cost credit to 45%, which is the closest to option D3. This option did not attract as much feedback from submitters, who tended to focus on the status quo and option D2.

226. Regarding a 45% threshold, lenders and industry bodies raised similar concerns as for option D2. One lender, offering loans starting from $500 with an annual interest rate of 47.8%, stated that a reduction in the high-cost interest rate threshold would make it challenging to maintain the viability of their products, as the costs incurred by lenders are primarily fixed and cannot be further reduced.

227. A former high-cost credit lender mentioned that if the threshold was lowered, its current personal products would likely become unviable, leading to the immediate withdrawal of the product from the market and the termination of around 40 staff members.

228. Feedback from consumer advocates was mixed. One said that a 45% interest rate threshold would address common concerns that some financial advisers have about lenders offering the highest interest rate loans on the market. However, some financial mentors noted that their clients typically do not have significant debts resulting from loans above 45% annual interest rate. Therefore, they thought that this option would be less effective in preventing debt spirals and problem debt compared to option two.

How do the options compare to the status quo/counterfactual?

	Option D1: Status quo - retain 50% threshold	Option D2: Reduce threshold to 30%	Option D3: Reduce threshold to 40%
Effectively protects interests of consumers	**0** The provisions effectively address problem debt caused by this type of credit.	- - An estimated 143,000 borrowers affected by this option. In most cases we would expect reduced access to credit. However, possible benefit to consumers of cheaper credit in the case of loans closer to 30%.	- An estimated 93,000 borrowers affected by reduced access to credit. However, possible benefit to consumers of cheaper credit in the case of loans closer to 40%.
Minimises regulatory burden/costs	**0** Compliance costs are prohibitive, but (for that reason) not incurred by any lender currently.	- 20 affected lenders either incur significant compliance costs or must lower their interest rates to avoid the additional regulation. This is expected to be commercially prohibitive in many cases. Some additional costs possible for the FMA in monitoring compliance with the high-cost credit provisions.	**0/-** Same impacts as option D2, but thought to affect 13 lenders currently in the market.
Fair and transparent markets for credit	**0** Fairness achieved by only targeting loans based on evidence of systemic harm directly related to cost to borrowers. Created competitive disadvantage for lenders who operated above the threshold. Transparency achieved by borrowers knowing they cannot be charged more than 49.99% interest without additional protections that also promote transparency.	- Would reduce fairness by extending competitive disadvantage to a part of the market where there is no evidence of systemic harm. To the extent lenders comply with the high-cost credit provisions transparency over their products may increase.	**0/-** Same impacts as option D2, but with lower likelihood of transparency benefits from lenders remaining in the market.
Overall assessment	**0**	- - - - -	- -

Key for qualitative judgements:	
++	much better than doing nothing/the status quo/counterfactual
+	better than doing nothing/the status quo/counterfactual
0	about the same as doing nothing/the status quo/counterfactual
-	worse than doing nothing/the status quo/counterfactual
- -	much worse than doing nothing/the status quo/counterfactual

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

229. We assess the status quo as the option that delivers the highest net benefits against the criteria.

Section 3: Delivering an option

How will the new arrangements be implemented?

230. Each of the preferred options would require changes to the CCCFA (and other legislation). They would predominantly be implemented by the FMA, who will have responsibility for the operation and enforcement of consumer credit.

231. The success of the preferred options largely depends on effective implementation by the FMA in terms of the systems, procedures and policies it develops to license, guide, monitor and intervene in markets for consumer credit. The commercement of the relevant legislative changes would be delayed to ensure the FMA is in a position to implement them.

232. Changes to the regulatory model and personal liability settings would coincide with the transfer of functions to the FMA and the transfer of the Commission's credit-related appropriation. Changes proposed to align aspects of the CCCFA with the financial markets conduct regulatory model (such as licensing, direction and stop orders) will require updates and adaptation of existing systems, processes, and procedures and regulatory approach to include credit. The FMA has recently been given responsibility for new regulatory areas such as conduct of financial institutions regime, insurance contract law, climate-related disclosures, and has experience adapting to change.

233. The transfer will also include standard transitional provisions relating to ongoing matters, such as decisions on certification and allowing the new regulator to take over certain proceedings.

234. It is important that the transition and changes are well communicated to key stakeholders. The FMA, as it has done for financial advice providers and conduct of financial institution (CoFI) changes, will proactively engage with stakeholders ahead of the changes coming into force. This includes supporting lenders who are not currently regulated by the FMA to make the transition to licensing (through a deemed licence), to provide certainty to all lenders about FMA's regulatory approach, and to support other stakeholders to migrate existing relationships and channels of communication to the FMA.

235. The monitoring and oversight relationship created by licensing (including deemed licensing) would support the FMA to establish working relationships with lenders and greater familiarity with their practices. This would help the FMA to work out how to best prioritise its resources.

236. If the Government decides to extend the high-cost credit provisions to lending at lower interest rates, we would provide advice on what notice period is reasonable to enable affected lenders to either comply with those provisions or restructure their loans to ensure they are not affected.

How will the new arrangements be monitored, evaluated, and reviewed?

Monitoring

237. The system-level impacts of the proposals will be monitored primarily by the FMA as part of its role in monitoring and responding to market conduct issues and in enforcing the credit obligations following the transfer of regulatory responsibility for CCCFA to FMA.

238. We will monitor the actions of the FMA as the new regulator for credit, including its licencing programme to assess whether the expected impacts on the lending market do in fact occur.

239. MBIE is the monitor for the FMA and we use financial and non-financial performance metrics as part of the annual Crown Entity monitoring programme. Our monitoring work will also include stakeholder engagement, complaints data and environmental scanning.

240. As the enforcement agency for the CCCFA, the FMA will have access to annual return information from lenders collected under the existing regime. This provides some limited statistical information in relation to the lender's business. Lenders must also keep records of about the Responsible Lending inquiries they make, and the results of those inquiries. The FMA can use this information, as well as other information and data they have access to and information from other government and community agencies, to identify current issues and emerging risks that have the potential to affect consumers or markets. This will enable the FMA to present a picture of the consumer credit environment, including the number of complaints, enforcement responses and prosecutions for breaches.

241. We would also rely on FMA reviews, investigations, cases etc. on an ongoing basis. This information, as well as data on the costs of implementing and enforcing the changes from the FMA, would be exchanged with MBIE.

242. We have ongoing engagement with lender, industry group, consumer and government stakeholders through regular catch-ups, and formal engagement through forums such as MBIE's Consumer Protection Partnership Forum (comprised of consumer advocates and government agencies) and the Responsible Lending Code Advisory Group (comprised of lenders, dispute resolution schemes, and consumer advocates). These forums provide the opportunity for us to monitor the impacts on lenders and consumers and identify any issues with the new arrangements.

Evaluation and Review

243. We intend to review the changes 3-5 years following commencement (subject to resource constraints). This will give enough time for the changes to bed in, whilst also enabling us to quickly understand what has worked, and any unintended consequenses.

244. This review will also be an opportunity to undertake a more fulsome review of consumer credit law to understand if there are further opportunities to align consumer credit regulation with financial markets conduct regulation.

245. Earlier this year, we conducted a baseline consumer survey already to help us understand the current state of the market.[22] Having a stocktake of the consumer credit markets before the changes come into force will enable effective monitoring and evaluation of the law changes when they are reviewed. We will conduct another survey when we come to evaluate the proposals so we can see what has changed over this period.

246. The monitoring identified above is likely to capture any unexpected results or impacts which may arise as a result of the changes. Any issues or concerns that stakeholders have in relation to implementation of the changes can be directed to the relevant enforcement body, the FMA.

247. The FMA has a statutory function to keep under review the law and practices relating to financial markets, financial markets participants. The FMA conducts regular market surveys and thematic reviews on various issues as and when it considers relevant. These mechanisms may be used in respect of the CCCFA if appropriate.

[22] The report on these survey results is available on the following webpage: Consumer credit research | Ministry of Business, Innovation & Employment (mbie.govt.nz)

Annex 1: Short history of reforms to the CCCFA

When the CCCFA first came into force in 2005 (repealing and amalgamating the Credit Contracts Act 1981 and the Hire Purchase Act 1971), it mostly sought to protect consumers by:

- addressing information asymmetries through disclosure requirements (to promote informed borrowing decisions by consumers)
- providing consistent rules about how interest and fees are calculated and charged (to ensure they are not unreasonable)
- enabling borrowers to seek relief in contract terms in the event of unforeseen hardship
- allowing consumers to seek relief from the Court to prevent oppressive conduct
- making other forms of redress available, including reparation from the Disputes Tribunal
- giving the Commerce Commission responsibility for promoting compliance with the Act.

The first major reforms to the CCCFA were made in 2015, following a review process that began in 2009 and was primarily concerned with unscrupulous 'fringe' lenders (an estimated 35% of whom were unregistered). The main changes were:

- introduction of responsible lending principles (and development of a responsible lending Code), including an obligation to be satisfied by reasonable inquiries that the loan is likely to be both suitable and affordable for the borrower (section 9C(3)(a) of the CCCFA)
- increased disclosure requirements
- new procedural requirements when the borrower makes an application on the grounds of unforeseen hardship
- making lenders liable for the costs of borrowing for any period during which they are unregistered (s99B) or have failed to make the initial disclosures required by section 17 or disclosure of agreed changes required by section 22 (s99(1A))
- incorporation of repossession laws into the CCCFA, with some improvements (based on recommendations from a Law Commission report).

The *Credit Contracts Legislation Amendment Act 2019* and amendment regulations made a series of reforms intended to address risk of harm to vulnerable consumers. This was in response to observations of continued irresponsible lending, unacceptable rates of non-compliance, uncertainty about how to fulfil certain obligations, and poor visibility of lending practices. With the exception of rules for high-cost credit, these reforms were applied to all lending in the interests of consistent standards and competitive neutrality.

The main changes and when they commenced were as follows:

- December 2019 – penalties created for breaching lender responsibility principles, statutory damages increased, new regulation-making powers, ability for court to reduce consequences of failure to make correct disclosures.
- May 2020 – additional restrictions (including a cost of credit cap) for high-cost credit.
- June 2020 – CCCFA obligations applied to mobile trader credit sales.
- June 2021 – introduction of 'fit and proper person' test for directors and senior managers.
- December 2021 – due diligence duty for directors and senior managers, requirement to maintain records showing how certain fees are calculated, requirement to maintain (and share on request) records of inquiries made into affordability, regulations prescribing minimum standards for assessing suitability and affordability of loans as well as advertising standards.

Annex 2: Data relevant to impact of high-cost credit options

Evidence of debt spirals and problem debts across credit contracts with an interest rate or a total interest charge[23] of 30% to 49.99%

248. The data in this section has some limitations, as it only represents:

a. Files closed by FinCap's financial mentors (the data is limited to the information that financial mentors have input into the Client Voices database) between 1 January 2024 and 30 June 2024

b. Files CAP has assessed from 1 January 2024 to early July 2024 (excluding the ones that have been passed on to a debt collector – if included CAP stated that approximately 35-45% of its clients would have had a loan above a 30% interest). We do not have insights on what has caused these clients to default. Some causes could not have been addressed by the high-cost credit provisions (e.g. a change in the borrower's financial situation, if the loan was unaffordable when granted).

249. Between 1 January and 30 June 2024, FinCap's financial mentors closed 13,020 clients' files. Among these, 11% (1,432 files) had loans with an annual interest between 30% and 49.99%.

250. The table[24] below compares data for FinCap's closed cases.

Table 1: FinCap files closed from January to June 2024

	Files with a debt to a consumer lender offering loans:		
	below a 30% interest rate	**with an interest between 30% -49.99%**	**with an interest between 45% -49.99%**
Percentage of all clients with a debt to a consumer lender	89%	11%	7%
Median debt	$1,599.63	$2,500	$1,824.18
Multiple debts to a lender in the same interest bracket	N/A	15%	9%
Proportion of files with $0-$749 per week income	52.6%	38.3%	42%
Proportion of files with $750-$999 per week income	23.7%	24.2%	25.8%
Proportion of files with $1000+ per week income	23.7%	37.4%	32.2%

251. CAP assessed a total of 185[25] clients between January 2024 to early July 2024. Out of these clients:

a. 61 clients had loans with an interest above 30%

b. 47 clients had loans with an interest rate between 30% and 40%

[23] When considering interest rates and default interests.

[24] Note the double counting as clients capture under the fourth column are also captured by the third column.

[25] This sample does not include clients who owe a debt to a lender offering loans above the 30% threshold and have had that debt passed on to a debt collector. If these clients were included in the sample, CAP stated that 35-45% of the clients who contacted them would have a loan with an interest rate above 30%.

c. 17 had multiple loans with an interest above 30%.

252. A budgeting service did not observe any instances of debt spirals within this interest rate range. Instead, it found them to be more common with interest rates around 20%, as well as zero (in the case of buy now, pay later schemes). Similarly, a dispute resolution scheme found that the majority of complaints related to irresponsible and unaffordable loans were typically associated with interest rates below 30%. These experiences may suggest that the level and occurrence of harm is not necessarily correlated to the interest rate of the loan, but rather to its unaffordability and/or unsuitability.

253. Based on this data, it appears that a larger proportion of these organisations' clients end up in debt when they have a loan with an interest rate below 30%. This could be due to the fact that there are more loans available in this market segment, making borrowers more likely to have this type of loan and thus increasing the likelihood of having a larger proportion of people with debt within this interest rate range.

Enforcement activities for credit contracts in this interest rate range

254. Since June 2019, the Commerce Commission took 34 enforcement actions againts lenders offering loans with an interest rate above 30%, which represent 9.6% of all consumer credit related enforcement actions taken by the Commerce Commission since June 2019.

Evidence of debt spirals and problem debts across credit contracts with an interest rate or a total interest charge of 40 to 49.99%

255. The evidence presented in this section should be interpreted with caution, for the same reasons explained in paragraph 248.

256. Between 1 January and 30 June 2024, FinCap's financial mentors closed 7% (911 files) clients' files with debt to a lender offering loans in interest range of 45% to 49.99% (we do not have the data for loans in the 40% to 49.99% interest range). Closed files with debts from loans within this interest rate range represented 7% of the total closed files, with 9% of them having multiple debts in the same interest rate bracket.

257. CAP assessed a total of 185 clients between January 2024 to early July 2024. Among these clients:

a. 21 clients had loans with an interest between 40% and 49.99%

b. 7 had multiple loans with an interest above 40%.

Enforcement activities for credit contracts in this interest rate range

258. Since June 2019, the Commerce Commission took 22 enforcement actions against lenders offering loans with an interest rate between 40% and 49.99%, which represent 6.2% of all consumer credit related enforcement actions taken by the Commerce Commission since June 2019.