By email: consumer@mbie.govt.nz

cashconverters

Consumer Policy
Building, Resources and Markets
Ministry of Business, Innovation & Employment

PO Box 1473
Wellington, NZ, 6104

Submissions re: Fit for purpose consumer credit legislation

Executive Summary

Cash Converters New Zealand (**CCNZ**) is pleased to submit a response to the Ministry of Business, Innovation, and Employment (**MBIE**) discussion paper on Fit for purpose consumer credit legislation. The primary focus of this submission is on the impact of high-cost credit provisions and the liability settings for directors and senior managers under the Credit Contracts and Consumer Finance Act (**CCCFA**).

High-Cost Credit Threshold

CCNZ does not support the proposed reduction of the high-cost credit threshold from 50%. Loans provided in the 30-50% range are already on the border of commercial viability.

In 2020 the introduction of the threshold cap caused thousands of customers to lose access to credit or pushed them into larger, longer-term loans where the total cost of borrowing is greater. CCNZ's view is that if the threshold is lowered further the same consequence would likely occur. The change would also represent an unacceptable transactional banking risk for lenders who are likely to exit the segment as a result.

High-Cost Credit Provisions

In CCNZ's experience, key points to consider regarding high-cost consumer credit (**HCCC**) are:

1. **Economic Viability:** The current regulatory environment has made it economically unviable to offer HCCC. Increased compliance costs, elevated credit risk, and the inability to recover the actual costs of establishing these loans have led to the elimination of this credit segment.

2. **Alternative Borrowing Options:** In the absence of HCCC, borrowers are turning to larger, longer-term loans, unregulated lending, government support, or are simply forgoing their needs. If available to the borrower, larger, longer-term loans often result in a higher total cost of credit and a longer repayment burden for the borrower.

3. **Negative Impacts on Borrowers:** CCNZ argues that the lack of HCCC options has had an overall negative impact on borrowers, particularly those seeking smaller, short-term loans to manage unexpected expenses. The company believes that well-managed HCCC products have a place in the market to meet genuine consumer needs.

4. **Recommendations:** To ensure a viable HCCC market, CCNZ recommends:
   i. Not lowering the high-cost credit threshold;
   ii. Implementing a cap on the total cost of credit to prevent debt spirals;

iii. Restricting repeat borrowing to prevent overuse; and
iv. Allowing lenders to fully recover the real costs of establishing loans.

Liability Settings

CCNZ raises concerns about the personal liability settings under the CCCFA:

1. **Over-Conservatism:** The imposition of uninsurable personal liability has led to overly conservative lending practices. This has significantly reduced access to credit for consumers.

2. **Recommendations:** CCNZ proposes the following changes to improve the situation:
    i. Removing restrictions on indemnities and insurance for pecuniary penalties to reduce over-conservatism.

CCNZ emphasises the need for a balanced approach that protects consumers from predatory practices while ensuring access to credit for those who genuinely need it. The company is committed to working with MBIE to develop practical solutions that address these concerns.

Sincerely,

Colin Mahoney

CEO - Cash Converters New Zealand

SUBMISSIONS

1.	**Options to amend the CCCFA to enable the FMA to carry out its role effectively**
	1.1. Do you have any evidence or experience of the due diligence duty and personal liability resulting in overly conservative approaches to complying with the CCCFA? What impact did this have on consumers? How common do you think this is?
	1.2. Do you have any observations about how the impact of the due diligence duty and personal liability works may or may not depend on the size of the lender?
	1.3. Are you aware of any other problems with these liability settings?

1.1 Do you have any evidence or experience of the due diligence duty and personal liability resulting in overly conservative approaches to complying with the CCCFA? What impact did this have on consumers? How common do you think this is?

b. CCNZ's experience with respect to the imposition of uninsurable personal liability is that it strongly incentivises lenders to adopt an inflexible, conservative approach.

c. Section 59B(2) states that a "*director or senior manager must exercise the care, diligence, and skill that a* ***reasonable*** *director or senior manager (as the case may be) would exercise in the same circumstances…*" [emphasis added].

d. The inclusion of the word 'reasonable' indicates that there is a level of judgment and discretion to be applied by the director or senior management (**Senior Manager**).

e. A difference in interpretation of what constitutes "reasonable" can result in potentially severe personal consequences for a Senior Manager.

f. CCNZ's interactions with other lenders indicate that they are uniformly of the same view.

g. This over-conservative approach to lending has materially reduced access to credit across the spectrum.[1]

h. Protect Commercial Interests [redacted] In our view, the major reason for the drop in approvals is attributable to the conservative approach adopted.

1.2 Do you have any observations about how the impact of the due diligence duty and personal liability works may or may not depend on the size of the lender?

a. While the size of the lender affects the way in which the duties and personal liabilities are addressed by a lender, it is CCNZ's view that a lender's size does not alter the ultimate effect of the Senior Manager.

[1] See, for example: https://www.stuff.co.nz/life-style/homed/real-estate/126947503/how-new-rules-mean-mortgage-borrowing-will-get-harder; https://www.stuff.co.nz/business/300493764/first-home-buyer-says-he-lived-like-a-hermit-to-get-approval-under-new-mortgage-lending-rules; https://www.oneroof.co.nz/news/cccfa-explainer-what-changes-were-made-and-why-theres-a-panic-40804

b. Senior Managers in small lenders are likely to be more involved in lending operations and can directly oversee and influence the discharge of the due diligence obligations.

c. Large lenders are more reliant on systems, procedures and internal quality assurance functions or audit reviews to identify potential issues.

d. In both instances, the duties to be discharged by Senior Managers, accompanied by onerous penalties make it difficult to recruit and retain quality senior managers and/or directors.

e. This leads to conservative lending decisions.

1.3 Are you aware of any other problems with these liability settings?

a. CCNZ understands that one of the drivers for the liability provisions was to provide the Commerce Commission with the ability to apply penalties to, and reduce irresponsible, predatory, and phoenix lenders.

b. CCNZ is of the view that uninsurable personal liability is unnecessary and that certification and licensing provisions are the more appropriate platform to achieve the Commerce Commission's desired outcomes.

Option A1 – Retain the due diligence duty but remove restrictions on indemnities and insurance

1.4 If lenders were able to indemnify their directors and senior managers from liability for pecuniary penalties (and costs), what difference (if any) would you expect that to make to how those individuals and the company as a whole approach the due diligence duty?

1.5 If insurance were available for pecuniary penalties liability, what difference (if any) would you expect that to make to how directors and senior managers and the company as a whole meet their due diligence duty? Do you have any information about how affordable that insurance might be for different types of lenders?

1.4 If lenders were able to indemnify their directors and senior managers from liability for pecuniary penalties (and costs), what difference (if any) would you expect that to make to how those individuals and the company as a whole approach the due diligence duty?

a. CCNZ is of the view that allowing lenders to indemnify their Senior Managers could be an effective option.

b. CCNZ believes this would alleviate some of the obstacles in attracting and retaining quality Senior Managers.

c. It would also allow those roles to exercise discretion more appropriately to balance the needs of borrowers against pecuniary risks in the event an approach considered reasonable is later challenged.

1.5 If insurance were available for pecuniary penalties liability, what difference (if any) would you expect that to make to how directors and senior managers and the company as a whole meet their due diligence duty? Do you have any information about how affordable that insurance might be for different types of lenders?

a. CCNZ is of the view that relying on insurance to mitigate or offset risks to Senior Managers in order to remove over-conservatism will not be effective.

b. CCNZ has formed this view due to the following:

i. the potential magnitude of claims, complex subject matter, and a thin insurance market in New Zealand is likely to result in insurance not being readily available to many lenders; and

ii. based on Cash Converters' experience in other markets, such as Australia, professional indemnity insurance for credit activities, particularly for small lenders and those operating in the "high-cost" segment, is generally impossible to place.

2. Options to amend disclosure requirements

C. Options for what and when information must be disclosed

2.1. As a consumer, do you receive the right kind and amount of information to make informed decisions? Why/why not?

2.2. Do you consider any of the disclosure obligations to be irrelevant, confusing or inappropriate? If so, please tell us what impact this has.

2.3. How could disclosure obligations be more targeted to the consumer's circumstances to ensure only relevant information is disclosed?

2.4. Is the information set out in Regulations 4F and 4G both sufficient and do sections 22 and 23 require the right information to be disclosed when a contract is varied?

2.5. Are there any other concerns or issues you would like to raise related to disclosure obligations?

2.1 The information set out below encompasses CCNZ's views on 2.1 to 2.5.

CCNZ:

a. believes its disclosure obligations are largely appropriate for its customers;

b. has invested heavily in making initial and ongoing disclosures which are as concise as possible; and

c. understands that consumers may consider disclosures for some credit products to be unwieldy or overly complicated, but this has not been an issue for CCNZ.

D. Options for how information must be disclosed

2.6. As a lender, do you identify any barriers in the Act to the use of electronic methods of disclosure? If so, can you explain what are these barriers and how they impact your processes?

2.7. As a lender, are there any practical difficulties with obtaining the borrower's consent for electronic forms of disclosure (section 32(4)(b))?

2.8. What would be the implications of removing the requirement to obtain borrower's consent for electronic communication and forms of disclosure (section 32(4)(b))?

2.6 CCNZ has not identified any barriers to the use of electronic methods of disclosure in the Act.

2.7 CCNZ is not aware of any practical difficulties with obtaining a borrower's consent for electronic forms of disclosure. The majority of borrowers are comfortable with, and prefer, electronic disclosure.

2.8 Removing the requirement to obtain a borrower's consent for electronic communication and forms of disclosure would simplify disclosure obligations for lenders as they would no longer need to maintain the infrastructure and processes necessary to support non-electronic disclosure, which would lead to costs savings for the borrower. CCNZ is of the view that there would be little to no detriment to borrowers.

E. Options for penalties for incomplete disclosures by lenders

CCNZ has no direct experience with these provisions.

3. Review of the high-cost credit provisions

3.1. What specific provisions (high-cost or other) have most impacted lenders' willingness or ability to offer high-cost consumer credit?

3.2. In the absence of high-cost loans, what other avenues are borrowers turning to?

3.3. Is the unavailability of high-cost consumer credit having positive or negative effects on would-be borrowers?

3.4. What evidence, if any, is there of debt spirals and/or continued repeat borrowing for vulnerable borrowers across credit contracts with interest rates of 30 per cent to 49.9 per cent?

3.1. What specific provisions (high-cost or other) have most impacted lenders' willingness or ability to offer high-cost consumer credit?

a. The primary challenge with offering HCCC relates to the economic viability of loans in that segment, as evidenced by the fact that the segment was eliminated by the previous regulatory changes.

b. The changes to the CCCFA resulted primarily in removing consumer choice.

c. Despite high headline rates, lenders face significant challenges in meeting the compliance costs associated with the provision of consumer credit.

d. The combination of:

i. Interest caps;

ii. repeat borrower restrictions in their current form;

iii. presumption of substantial hardship;

iv. increased compliance costs arising from additional checks required to ensure compliance with the HCCC specific provisions of the CCCFA;

v. higher credit risk associated with typical borrowers;

vi. inability to recover the real costs of establishing HCCC loans; and

vii. an inability to access transactional banking facilities,

mean offering products which are economically viable in the HCCC segment is extremely challenging. See paragraph 3.8 below for more information.

3.2. In the absence of high-cost loans, what other avenues are borrowers turning to?

It is CCNZ's understanding that, in the absence of HCCC, borrowers are turning to the following:

a. larger, longer-term loans, which ultimately have a higher cost to the customer – the loans have a more appealing headline interest rate, but ultimately represent a higher dollar cost of credit and longer repayment burden;

b. unregulated lending;[2]

c. increased reliance on Government support;[3] and/or

d. forgoing the need that drove the request for credit in the first place.

3.3. Is the unavailability of high-cost consumer credit having positive or negative effects on would-be borrowers?

a. CCNZ is of the view that, overall, the lack of availability of HCCC has had a negative impact on borrowers.

b. In the absence of viable HCCC options, borrowers turn to the alternatives set out in paragraph 3.2 above.

c. In our view, there is a genuine place for well managed HCCC.

d. CCNZ acknowledges that the HCCC segment exhibited some undesirable behaviours historically, in particular products which allow or encourage borrowers to enter a debt spiral.

e. CCNZ, as one of the largest lenders in this sector, has maintained policies, such as a cost of credit cap and repeat borrowing restrictions for many years to avoid debt spiral.

f. CCNZ's view is that, primarily, borrowers look for HCCC products which allow smaller amounts and shorter, more manageable loan terms.

g. The unavoidable fixed compliance costs, that form part of due diligence undertaken for HCCC products, including AML/KYC, responsible lending, and credit risk, mean products with a low principal value and shorter term sought by borrowers are inevitably "high cost" when viewed in percentage terms.

h. An appropriate solution should ensure that potentially damaging behaviours are controlled while still fostering an environment for HCCC products to be offered to consumers.

3.4. What evidence, if any, is there of debt spirals and/or continued repeat borrowing for vulnerable borrowers across credit contracts with interest rates of 30 per cent to 49.9 per cent?

a. While there may be isolated cases of borrowers using credit in an unexpected manner, CCNZ has experienced little evidence of repeat borrowing and debt spiral in the HCCC segment.

b. Protect Commercial Interests

c. Accordingly, these borrowers had an active loan for less than a third of the time over that period.

F. Options for changing the high-cost credit provisions

[2] See, for example, the UK Financial Conduct Authority letter to the lending industry: https://www.fca.org.uk/publication/correspondence/portfolio-letter-fca-strategy-for-consumer-lending.pdf, page 6.

[3] See https://www.nzherald.co.nz/nz/cost-of-living-msd-owed-billions-as-families-spiral-into-crippling-debt-to-government/4MAZ5NPOSJBTTHQIDYR5E46MSM/

Option F1: Expanding the definition of a high-cost consumer credit contract to contracts with an interest rate above 30 per cent

3.5. Are there any other issues associated with loans in the 30 percent and 50 per cent interest rate range that we should be aware of?

3.6 Are there examples where loans with interest rates between 30 per cent and 50 per cent would breach the 0.8 per cent rate of charge cap?

3.5. CCNZ is unaware of any other issues associated with loans in the 30 percent and 50 percent interest range that should be surfaced.

3.6. CCNZ is unaware of any examples where loans with interest rates between 30 per cent and 50 per cent would breach the 0.8 per cent rate of charge cap.

Option F2: Expanding the definition of a high-cost consumer credit contract to contracts with an interest rate above 45%

3.7. What evidence, if any, is there of debt spirals and/or continued repeat borrowing for vulnerable borrowers across credit contracts with interest rates of 45 per cent to 49.9 per cent? Are there any other issues associated with loans in this interest rate range that we should be aware of?

3.8. For lenders: If the government extended the high-cost provisions to loans with annual interest rate of 30 per cent or more, what would be the impact on your operations (if any)? Are there any changes to the high-cost provisions we should consider to enable those loans to remain profitable, and on what terms?

3.9. How is a revised definition of a high-cost consumer credit contract interest rate threshold likely to affect access to credit for borrowers?

3.10. Do you recommend considering another interest rate threshold? If yes, please explain why.

3.7. For evidence of debt spirals and/or continued repeat borrowing, please see paragraphs 3.2 to 3.4, above.

3.8. In CCNZ's view, if the government extended high-cost provisions to loans with an annual interest rate of 30% or more, it is likely to impact on both transactional banking risks and economic viability of loans in the sub-50% interest rate range.

Transactional Banking Risk

a. As with a number of industries, including FinTech, payment processing, and remittance industries, "high-cost" lenders are subject to bank de-risking.[4]

b. The "high-cost" moniker is particularly unhelpful in this regard.

c. As banking institutions are of the view that association with providers of consumer credit labelled by the government as "high-cost" carry a high reputational risk, most, if not all, sub-prime lenders are already in a position where it is impossible to obtain even basic transaction facilities.

d. Despite healthy borrower demand, this is a material barrier to providing services in this sector.

[4] https://chapmantripp.com/trends-insights/de-banking-an-international-survey/

Economic Viability

e. Currently, viability of loans provided in the 30% to 50% interest range is questionable for the range of borrowers CCNZ provide HCCC. The costs associated with establishing and managing a loan are primarily compliance driven.

f. Extending the application of the “high-cost” provisions would add additional compliance costs to the process, including further inquiries of the borrower to ensure the lender can comply with frequency restrictions.

g. It is not possible to fully recover those costs under the CCCFA provisions. Instead, a large portion of the true cost associated with establishing a loan must be met via interest.

h. While the principle is that a lender should cover their costs via fees, and interest should represent profit to the lender[5], this is not a true reflection of the reality of providing HCCC.

i. The following table shows an overview of the outcome of loans issued at various value and term combinations, at an annual interest rate of 49.95%:

Protect Commercial Interests

j. Each loan in the table represents a similar weekly repayment for the borrower. However, it is clear that the larger and longer loans have materially better margins and provide the lender with a better ability to cover costs and (hopefully) make a profit.

k. From the gross margin set out in the table above, the lender still needs to cover a number of other costs, including those CCNZ consider essential to the process

[5] See Consumer Credit Fee Guidelines, Commerce Commission, p11. https://comcom.govt.nz/__data/assets/pdf_file/0024/90078/Consumer-credit-fees-guidelines-September-2022.pdf

[6] Given the establishment fee represents only the fraction of the costs of assessing and establishing a loan deemed recoverable under the current fee guidelines, and assuming a 33% approval rate Protect Commercial Interests this would represent *at least* $200 in costs Protect Commercial Interests

of writing loans, but which are not recoverable under the current establishment fee guidelines. These include:

i. staff training and development

ii. internal audit and quality assurance to ensure compliance with the CCCFA, AML regulations;

iii. financial reporting and treasury operations;

iv. software development and maintenance;

v. any collections costs which cannot be recovered via default fees;

vi. all ongoing loan management and collection costs which are not able to be recovered via fees;

vii. management staff and associated on-costs;

viii. marketing and customer acquisition; and

ix. general overheads.

Recommended changes

l. In CCNZ's experience, many borrowers want smaller, more manageable loans to help deal with unexpected demands on cashflow, with 30% of consumers struggling to meet an unexpected expense of just $500[9].

m. Under the current framework, it is not viable to provide these loans because:

i. costs cannot be fully recovered via fees;

ii. interest must be used to cover remaining costs;

iii. interest rate caps, or soft caps (such as a "high-cost" credit threshold), mean costs cannot be met via interest.

n. Borrowers in this segment are primarily concerned with the actual total cost of the loan, not the headline interest rate.

o. CCNZ is of the view that alternate approaches could support viable small value, shorter term loans.

p. The key detriments previously experienced with a proportion of the short-term lending industry were debt spiral and unreasonable repetitious use of loans that are intended for occasional short-term use.

q. CCNZ suggest restructuring the controls that govern the HCCC industry to include:

i. A cap on the total cost of credit, where fees and interest cannot exceed the principal lent. This provides a measure of certainty and a safety net to ensure that that small loans do not spiral out of control.

ii. Implementation of restrictions on repeat borrowing to remove egregious overuse of short-term loans. CCNZ's recommendation is allowing a maximum of 6 loans over a rolling 12-month period. This would allow borrowers some flexibility to borrow more than once in the event of unexpected costs arising but would prevent overuse of a product designed for short term assistance. It also allows lenders the flexibility to offer the shorter term, smaller value products sought by borrowers.

[9] https://www.rnz.co.nz/news/business/519323/households-struggling-to-save-or-cope-with-unexpected-bills-report

This, in combination with a cap on the total cost of credit, would assist in preventing debt spiral.

iii. Provisions that allow lenders to more fully recover the real costs of establishing an HCCC loan, specifically to ensure a functioning, efficient, and inclusive credit market to assess loans, lenders should be able to recoup costs for assessing loans which ultimately do not progress.

iv. Re-designating “high-cost” credit as “short term” credit or “small value loans”, or follow the Australian convention below.

r. Australia has adopted an approach which recognises that short-term loans have different characteristics that do not suit the application of standard interest rate controls. For example, Australian regulations allow Small Amount Credit Contracts (**SACC**) and Medium Amount Credit Contracts (**MACC**) to charge the following fees:

i. 20% up-front establishment fee for a SACC, or a fixed fee of $400 for a MACC; and

ii. 4% of the original principal value of a SACC or MACC per month.

s. It is worth noting that none of the recommendations above will be effective if lenders who are willing to service the segment remain unable to access basic transactional banking services.

3.9. CCNZ is of the view that amending the definition of HCCC to 45%, or lower, is likely to cause lenders to cease offering products in this range in a similar manner to the response to the December 2021 high-cost credit changes.

a. In our view, few, if any, providers will continue to provide loan options in the 30% to 50% range if those loans are considered “high-cost”.

b. Further, CCNZ expects that if the HCCC definition was to be amended to 30%, it would likely still lead to lenders moving towards larger and longer loans to help mitigate the transactional banking risks and associated additional restrictions attached to HCCC as well as providing a better opportunity to recover costs.

c. Despite the outward appeal of lower headline rates, CCNZ is of the view that it is not necessarily in the interests of borrowers, who would experience a higher total cost of credit and a longer repayment commitment period than they would otherwise expect.

d. This introduces a risk of a mismatch between the only products lenders are capable of offering and what borrowers want.

e. The higher potential exposure to bad debt that larger loans have for lenders are likely to result in lenders being more cautious with borrowers that represent higher credit risks. This would also reduce access to credit for a number of those borrowers, pushing them outside the regulated credit sector.

f. As noted above, there would likely be an increased reliance on social support programs. A recent article[10] suggests recoverable assistance payments from the Ministry of Social Development have risen from $557.8m in 2018 to $1.2b now, with total debt owed rising from $1.5b in 2018 to $2.6b in 2024.

---

[10] https://www.nzherald.co.nz/nz/cost-of-living-msd-owed-billions-as-families-spiral-into-crippling-debt-to-government/4MAZ5NPOSJBTTHQIDYR5E46MSM/

3.10. Please see point 3.9 above.

Option F3: Status quo
3.11. Do you have any other feedback on any of the high-cost credit provisions? Have they been effective in reducing financial harm caused by the excessive cost of credit for some types of loans and repeat borrowing by vulnerable consumers?

3.11. The provisions, in combination with the penalties and liability settings, have been effective in removing those behaviours in so far as they have removed all participants from the "high-cost" lending space. CCNZ genuinely believes that there is benefit to consumers in retaining a viable short-term lending industry, as set out above.

Option F4: Other high-cost provisions
3.12. Is there evidence of certain industry lending practices that are causing harm which the high-cost credit provisions could address?
3.13. Are there any other industry lending practices that you believe are harmful to consumers?
3.14. Do you agree with the suggested impacts of each of the identified options? Why/why not?
3.15. Do you have any information or data that would support our assessment of the impacts of each of the options?
3.16. Do you think that the CCCFA could be strengthened to protect consumers who are sold lending products or add-ons that exceed the value of the product? If so, how?
3.17. Finally, are there any other areas and options for change that we should consider that have not been addressed in this discussion document?

3.12. With respect to evidence of other industry lending practices that are causing harm, which HCCC provisions could address, CCNZ notes that the BNPL segment of the market is significantly vulnerable to over-use and abuse.

3.13. As there is effectively no other short-term lending industry, CCNZ is unaware of any practices that are detrimental to consumers.

3.14. With regard to suggested impacts, CCNZ is of the view that:

a. The impact to consumers' loss of access to credit is poorly understood and dramatically understated.

b. As a result of the CCCFA's previous reforms, CCNZ was unable to assist thousands of customers who were previously able to borrow small amounts on an occasional basis, to assist with unexpected costs and expenses.

c. Further, consumers have reacted to the changes to the CCCFA with both anger at the level of intrusiveness involved in making "reasonable inquiries" to tears because CCNZ is unable to assist customers that have no other legal option to turn to.

3.15. CCNZ is of the view that it has data to support its assessment of the impacts of each option. However, it has had insufficient time to collate such data prior to the deadline required for these submissions. CCNZ would welcome a chance to discuss the impacts and assessments with the Ministry at a future date.

3.16. CCNZ has no further information with respect to this question.

3.17. CCNZ has no further information with respect to this question.