# Submission on discussion document: *Fit for purpose consumer credit legislation*

## Your name and organisation

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| **Name** | |
| **Organisation (if applicable)** | Dentons Kensington Swan |
| **Contact details** | +64 99 09 6345 |

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## Responses to discussion document questions

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| | **1. Options to amend the CCCFA to enable the FMA to carry out its role effectively**<br>**A. Options for liability settings** |
| **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?* |
| | We do not have direct evidence or experience of this, but anecdotally and from our exposure to the market we believe this has had negative impact on consumers causing reduced access to credit, increased application requirements and higher costs.<br>The approach may have the unintended consequence of resulting in increased compliance burdens for responsible lenders who want to ensure they are CCCFA compliant. Conversely lenders who may have a more casual approach towards compliance and operate at the more vulnerable borrower end of the market are less likely to change any of their practices.<br>The prohibition on insurance stands out as the exception compared to other financial services regimes (eg. Directors and senior managers of financial advice providers) and lacks justification. In particular, it is inappropriate for directors and senior managers of registered banks given they are already subject to multiple layers of compliance. The matter of who is a director and senior manager is also an added compliance cost given the material implications of the prohibition. |
| **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?* |
| | Larger financial institutions typically possess comprehensive compliance departments and legal teams that can efficiently manage these regulatory obligations. Consequently, they are generally able to absorb the associated costs and maintain a more balanced approach to lending. While larger lenders might still exhibit some level of caution, their robust compliance frameworks enable them to navigate the regulatory landscape without overly restricting their existing lending practices.<br>In contrast, small to medium-sized lenders often face more significant challenges. Limited resources and expertise can make it difficult for them to comply with complex regulatory requirements. They may regard these requirements as disproportionate given the size of the business and therefore take a 'looser' approach to compliance. |
| **3** | *Are you aware of any other problems with these liability settings?* |
| | There may be an adverse impact on competition as it promotes market consolidation, where only larger, well-resourced institutions can afford to comply with the regulations. This may limit consumer choice and driving up prices. These issues underscore the importance of balancing regulatory objectives with practical considerations to avoid unintended consequences that can adversely affect both lenders and consumers. |
| *Option A1: Retain the due diligence duty but remove restrictions on indemnities and insurance (preferred)* | |

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| 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?* |
| | We would welcome this but would not expect a material change or impact as a result for those directors and senior managers that already operate in companies where compliance is already embedded into their existing policies, practices and procedures. For more challenging or 'hard' compliance decisions directors and senior managers, knowing they are financially protected against penalties, might feel more confident in making balanced, risk-based decisions rather than defaulting to the most cautious approach. |
| 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?* |
| | We regard making insurance available as having no greater or less impact than the ability of directors and senior managers to be indemnified. The relevant director or senior manager should not make a practical distinction between the availability of indemnities or insurance as to how they approach and regard their due diligence duty. We would not regard the availability of insurance as correlating with more risky decisions or practices by directors and senior managers as the negative impact of pecuniary penalties is already self-evident. The key aspect is ensuring the lender has adequate policies, procedures and controls in place for CCCFA compliance. |
| *Option A2: Remove due diligence duty for licenced lenders* | |
| 6 | *Do you agree that the due diligence duty is less likely to be needed for lenders who are sophisticated enough to be licensed under the CoFI Act? Why/Why not?* |
| | Yes, these lenders are subject to higher regulatory standards and ongoing supervision by the FMA, which should ensure that they are capable of effectively and lawfully providing consumer credit. The CoFI Act requirements for licensing, including the fit and proper person test, should already provide sufficient oversight to ensure that these lenders are complying with the CCCFA. We see this requirement as duplicative and of no material upside to consumers. |
| 7 | *How well do you think licensing and ongoing supervision by the FMA could replace the need for due diligence and personal liability? Does this depend on the kind of lender? If so, how?* |
| | We support the disapplication of the due diligence duty for lenders licensed under CoFI. This makes sense in terms of costs and efficiencies given CCCFA compliance and enforcement is also moving to the FMA. However, we do not support introducing licensing for CCCFA lenders as believe there is no obvious or systemic need for it at this time. |
| 8 | *What impacts might options A1 and A2 have on lenders and consumers compared to the status quo? For lenders, how would you expect lender decision-making and compliance cultures to change under these options?* |
| | Options A1 and A2 should not be mutually exclusive and both should be considered so A2 applies to licensed CoFI lenders. |

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| | Option A1 would be consistent with the approach taken under other comparable legislation. We would not expect there to be a seachange in approach or culture in relation to CCCFA policies, practices and procedures as a result. This is because the CCCFA has relatively strict requirements, many of which are prescribed or otherwise have clear parameters set out under the Responsible Lending Code.<br><br>As mentioned above, licensed lenders are already subject to a higher level of regulatory compliance and scrutiny. We see the due diligence duty as duplicative and of minimal material benefit given there are minimum standards that must be complied with in order for licenses to be maintained.<br><br>We would not expect there to be any material change in decision- making or culture if option A2 was introduced (either to apply to all lenders or just licensed lenders). |
| | **B. Options for regulatory model** |
| **9** | *Do you agree that these are a fair reflection of the minimum legislative changes that are required to transition credit to the FMA? If not, please explain* |
| | Broadly agree with streamlining the current regulatory model so that supervision of the CCCFA fully sits within the FMA. As mentioned, we do not see the obvious need that in order to achieve this licensing of consumer credit providers must first occur. Although the 'fit and proper' certification regime is not perfect, there has been far too much CCCFA reform in recent years. It has been politicised and resulted in sub-optimal changes which have had a negative impact on both lenders and borrowers. Adding licensing on top of this as a priority in the short term will only further hamper the compliance burden for lenders and the frustration experienced by borrowers in accessing credit. |
| *Option B1: Transition to a market services licence and apply all FMA core and licencing powers to consumer credit (preferred)* | |
| **10** | *What implications would you expect from adopting a licencing approach and the associated regulatory tools for credit?* |
| | • We do not consider a licencing approach should be priority or pursued as part of the current CCCFA reforms as introduction of a licencing regime will further hinder access to credit for consumers in the short to medium term. As with any new regime, there will be significant operational costs for lenders, particularly smaller entities that may need to invest significantly in upgrading their systems and processes.<br><br>• We also do not believe a licensing approach to be a priority for consumers. Focus should instead be on a constructive educative approach, such as producing more guidance for lenders as to the policies, processes and procedures the regulator expects should be in place for providers of consumer credit. |
| **11** | *What modifications to the FMA's existing regulatory tools, such as stop orders, should we consider if extending them to the CCCFA under this option?* |
| | As per 10 above, we do not support this option. Regardless of this, the regulatory tools already allow for proportional enforcement actions based on the nature and extent of the breach. For example, minor breaches might be met with warnings or fines, while more serious violations could trigger court action. In all cases a graduated approach should be taken to ensure that enforcement is fair and not overly punitive, whilst also being conscious |

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| | of the potential impact on existing borrower customers. Broadly, we believe the current regulatory toolkit is sufficient. |
| **12** | *What do you think about the transitional licence approach, including what time periods are appropriate?* |
| | As stated above, we are not supportive of introducing licensing. However, if this was to be introduced then a minimum 24 period should apply to give existing lenders the opportunity to conduct a self-assessment against the new requirements, identify gaps in their current systems and processes and implement necessary changes to comply with the new licensing requirements. |
| *Option B2: Retain 'Fit and proper' certification (status quo) and add FMA core tools for enforcing the regulatory perimeter* | |
| **13** | *Do you agree with our analysis about the relative benefits and risks of the certification model? Why/ why not?* |
| | Generally, yes. On a cost benefit analysis we believe the current model is sufficient for current purposes. By adding FMA core tools for enforcement of the regulatory perimeter this should be the strongly preferred option as it will cause the least disruption to the industry. We do not believe there is appetite from lenders or borrowers to introduce licensing given the legislative changes that have been introduced over the past 5 or so years. |
| **14** | *Are there additional tools that you consider the FMA should have to regulate credit, for examples tools like action plans or censures that are usually only available under a licensing model?* |
| | No - the CCCFA and its regulations, plus the Responsible Lending Code are all in situ and should be utilised without the need to introduce new licensing requirements or additional tools. |
| | **2. Options to amend disclosure requirements**<br>**C. Options for what and when information must be disclosed** |
| **15** | *As a consumer, do you receive the right kind and amount of information to make informed decisions? Why/why not?* |
| | It would assist if the information is presented in a clear and standardised (as much as possible) way, particularly around key terms such as the term, interest, amount, repayment, security in a summary statement. |
| **16** | *Do you consider any of the disclosure obligations to be irrelevant, confusing, or inappropriate? If so, please tell us what obligations you are referring to and what impact this has.* |
| | Some disclosures provide excessive technical details that are not relevant to my decision-making process. For example, references to dispute resolution schemes and financial advice are additional 'noise' that may preclude a borrower from focusing on the key information. |
| **17** | *How could disclosure obligations be more targeted to the consumer's circumstances to ensure only relevant information is disclosed?* |

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| | Disclosure obligations could be made more targeted by providing disclosures in plain language that is easy for consumers to understand, and tailoring disclosures to the consumer's specific circumstances, such as their income level, credit score, and borrowing history. |
| **18** | *Is the information set out in Regulations 4F and 4G both sufficient and do sections 22 and/or 23 require the right information to be disclosed when a contract is varied?* |
| | Enhancing these regulations to include plain language requirements and summary statements could further improve their effectiveness. |
| **19** | *Are there any other concerns or issues you would like to raise related to disclosure obligations?* |
| | The timing required for disclosures for variations to consumer contracts is impractical in many instances where a customer is wanting to take advantage of a lower rate of interest and needs to move quickly. |
| | **D. Options for how information must be disclosed** |
| **20** | *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?* |
| | • The requirement to provide a paper copy of disclosures if the borrower does not consent to electronic disclosure adds operational complexity and cost for lenders.<br>• Further complexity is added by electronic signing not being standard market practice. Some security documents that contain powers of attorney should not be signed electronically under the Contracts and Commercial Law Act 2019. |
| **21** | *As a lender, are there any practical difficulties with obtaining the borrower's consent for electronic forms of disclosure (section 32(4)(b))?* |
| | No comment. |
| **22** | *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))?* |
| | For lenders, it would significantly streamline the disclosure process, reducing administrative burdens and speeding up the delivery of important information. This change could enhance operational efficiency and improve the overall customer experience by facilitating quicker and more convenient access to disclosure documents. Borrowers could be given the choice to opt out of electronic disclosure, like many banks do for customers in respect of bank statements. |
| | **E. Options for penalties for incomplete disclosures by lenders** |
| **23** | *Do sections 95A and 95B meet their objectives? Why/why not?* |
| | Yes, however while the sections meet their objectives in principle, their practical effectiveness is hugely hampered by the fact an application to the court must be made. |

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| 24 | *As a lender, to what extent does section 99(1A) impact the time, effort, and costs you dedicate to initial and variation disclosures?* |
| | For lenders, this means investing significant resources and promotion of a form over substance approach in preparing, reviewing, and distributing these disclosures accurately and promptly. The process involves ensuring that all regulatory requirements are met, which can be time-consuming and costly and not necessarily in the consumer's interest (or desired by the consumer). |
| 25 | *Under option E1, what should a materiality test look like?* |
| | The test should assess whether the undisclosed information materially impacted on the customer's decision making and which has been shown by the customer to have a reasonably material and detrimental impact. This subjective-objective test means the customer has to show they have actually suffered some material detriment as a result of the non-disclosure. |
| 26 | *Under option E1, which party should have the burden of proof and what would this mean for the effectiveness of the option? If the onus is on borrowers to show materiality would that deter them from seeking redress under section 99(1A)?* |
| | See above, the borrower should demonstrate materiality. Provided the threshold is not unreasonable we do not consider this to be a barrier to redress. |
| 27 | *Under option E2, how should the maximum amount the lender forfeits be calculated?* |
| | No specific comments on this other than the amount should be proportionate to the detriment incurred. |
| 28 | *Under option E3, would there be the right incentives in place to ensure lenders comply with their disclosure obligations?* |
| | Some form of variation disclosure should be maintained, but it should focus on key information and terms which actually materially increase the obligations of the borrower. |
| 29 | *What would be the risks associated with each option? How could they be mitigated?* |
| | • **Option E1**: It is possible the materiality test could become complex and subjective, leading to inconsistent applications and potential disputes. However, if there are established parameters around the test we consider this risk can be managed.<br>• **Option E2**: Excessive forfeiture amounts could financially strain lenders, particularly smaller ones and may not be proportionate.<br>• **Option E3**: Incentives might not be strong enough to compel compliance or could inadvertently encourage minimal compliance just to avoid penalties. |
| | **3. Review of the high-cost credit provisions** |
| 30 | *What specific provisions (high-cost or other) have most impacted lenders' willingness or ability to offer high-cost consumer credit?* |
| | Not in a position to comment. |

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| **31** | *In the absence of high-cost loans, what other avenues are borrowers turning to?* |
| | We believe borrowers in this situation would have little choice but to turn to black market or unscrupulous lenders which of course is not regulated. |
| **32** | *Is the unavailability of high-cost consumer credit having positive or negative effects on would-be borrowers?* |
| | Not in a position to comment. |
| **33** | *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?* |
| | Not in a position to comment. |
| | **F. Options to amend the high-cost credit provisions** |
| | *Option F1: Expanding the definition of a high-cost consumer credit contract to contracts with an interest rate above 30 per cent* |
| **34** | *Are there any other issues associated with loans in the 30 per cent and 50 per cent interest rate range that we should be aware of?* |
| | Not supportive of a change in the interest rate as this will make it even harder for borrowers in this space to obtain credit, where often it is their last resort. |
| **35** | *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?* |
| | Not in a position to comment. |
| | *Option F2: Expanding the definition of a high-cost consumer credit contract to contracts with an interest rate above 45 per cent* |
| **36** | *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?* |
| | Not in a position to comment. |
| **37** | *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?* |
| | We consider borrowers seeking loans with interest rates upwards of this range are usually in circumstances which leave them with no other viable lending options. There is a market for these types of loans, and there will remain so, but the better way of approach HCC is to reduce the compliance burden for non-HCC lenders so they can potentially make available credit to a wider range of borrowers. |

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| **38** | *How is a revised definition of a high-cost consumer credit contract interest rate threshold likely to affect access to credit for borrowers?* |
| | For borrowers who rely on high-interest loans due to their inability to secure traditional loans, this could mean reduced access to necessary funds, potentially pushing them towards unregulated or informal lending sources. See comment above in relation to borrowers in the HCC space often being left with little or no choice but to turn to HCC loans. |
| **39** | *Do you recommend considering another interest rate threshold? If yes, please explain why.* |
| | We do not support a change in the interest rate threshold, but if this to be implemented a decrease to 40% would be a more measured approach. |
| *Option F3: Status quo* | |
| **40** | *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?* |
| | No comment. |
| *Option F4: Other high-cost provisions* | |
| **41** | *Is there evidence of certain industry lending practices that are causing harm which the high-cost credit provisions could address?* |
| | No comment. |
| **42** | *Are there any other industry lending practices that you believe are harmful to consumers?* |
| | Predatory lending, where lenders deliberately target vulnerable individuals with misleading information and unfavourable terms. |
| **43** | *Do you agree with the suggested impacts of each of the identified options? Why/why not?* |
| | Focus should be on the most predatory lenders who target vulnerable customers and and educative approach for financial literacy and budgetary management. |
| **44** | *Do you have any information or data that would support our assessment of the impacts of each of the options?* |
| | No comment. |
| **45** | *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?* |
| | Yes – the cost of these add-ons should be disclosed as part of the key information for initial disclosure. |
| **46** | *Finally, are there any other areas and options for change that we should consider that have not been addressed in this discussion document?* |