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

Your name and organisation

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Responses to discussion document questions

	1. Options to amend the CCCFA to enable the FMA to carry out its role effectively 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?*
	*No. DBAS has seen evidence from banks **claiming** that they are having to be overly conservative to comply when in fact this is not true.* hc31.xlsx *This document from the Reserve Bank shows that there has been no drop off in mortgage lending from the banks. Neither in 2020 nor 2022 when the strengthened CCCFA laws came into place. This is despite rising interest rates and a cooling housing market over that time.* *The only evidence we have seen has been from the banks in the media and lobbying Government to reduce the settings. We took this as a sign the banks were trying to make a point and cause media attention (which it did). However, in many cases we see for breaches of the CCCFA, the banks are seldom present – before and after the more prescribed regs.* *This article from Stuff in August 2022 attributes the increase in home loans being declined due to the test rates used by the banks, and the Reserve Bank's LVR restrictions at the time. There is no mention of due diligence or personal liability preventing loans.* https://www.stuff.co.nz/business/money/129260554/what-is-it-like-to-apply-for-a-loan-these-days *In this article from the NZ Herald in January 2022 a bank customer attributed her loan application being declined to a Christmas shopping trip at Kmart, a Saturday night out and a Q Card account. Again, there was no mention of due diligence or personal liability causing her loan to be declined. The amendments to the CCCFA in July 2022 and May 2023 gave more flexibility to lenders about how certain repayments may be calculated or excluded. These problems with the CCCFA have already been fixed and no further changes are required to appease the banks.* www.nzherald.co.nz/nz/dunedin-woman-says-urgent-extension-to-mortgage-declined-because-of-187-kmart-trip/76EOT76JLADLAWENKIQMVCKY2Q/ *We have seen no prosecutions bought against directors or senior managers of banks by Com Com whilst the bank's lending to first home buyers has remained steady since 2020. DBAS fails to see what the problem is. The strengthened CCCFA and RLC needs to remain unchanged so that it continues to protect borrowers.* *We have not seen any 2nd or 3rd tier lenders change their approach to lending which leads us to thinking the banks were the only lenders openly opposed to the strengthened CCCFA due to the time it now takes to know their*

	customers circumstances. All lenders should be having to spend more time on assessing each borrower's application, which may cause less profits. *We have continued to see breaches of the CCCFA.* *Since Dec '21 we have seen some lenders start to comply, while others clearly continue not.* *In May 2023, DTR a well-known and established 2nd tier lender closed its business. DTR lent to individuals with a higher credit risk that the banks had declined. Not one of the changes to the strengthened CCCFA were attributed to DTR's closure by chief operating officer Gary Stratta. "DTR has faced numerous challenges over the past 24 months. Our network of stores has struggled to recover from the economic effects of the Covid-19 pandemic. More recently high inflation, rising interest rates and the increasing cost of maintaining a bricks-and-mortar presence had also affected the business. This has coincided with changing consumer demands and the increased cost of living impacting DTR's consumer finance business."* *Personal liability has not resulted in more conservative lending practices. We see no evidence of risk aversion being built into lenders systems and procedures.* *As reported by credit bureau, Centrix, consumer credit arrears are at an all-time high since 2021* **https://www.centrix.co.nz/wp-content/uploads/2024/06/Centrix-Credit-Indicator-Report_May-2024_FINAL.pdf** *We can infer from this data that had the due diligence and personal liability settings not been in place then the banks would have given more loans and more New Zealanders would be struggling right now. Thank goodness that is not the case and that the current protections are protecting borrowers as intended.* *DBAS strongly believes that this is a perceived problem that does not need to be fixed.*
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?*
	Until such time as Commerce Commission prosecutes, it is unknown – a threat (or a promise, depending on whether you are a lender or a consumer advocate). Unfortunately, Com Com have appeared unwilling to take any action against directors or senior managers – The case register of consumer credit cases investigated by Com Com mostly as being issued a warning letter or reaching a settlement with the Commission. *From our understanding upon reading Commerce Commissions case register, in 2020 and 2021, Com Com investigated 5 individual cases against banks operating in Aotearoa.* *Since the due diligence duty came into effect in December 2021 there have been no further cases. This shows that the law is working as intended and that directors and senior managers have nothing to be concerned about.*

	DBAS looks forward with interest, to the only two upcoming court cases regarding CCCFA - Com Com v Second Chance Finance and ComCom vs Go Car Finance **Commerce Commission - ComCom to launch action against two car finance lenders**
3	*Are you aware of any other problems with these liability settings?*
	There are no problems with the liability settings. *The only issue we have is the lack of Com Com enforcing the law using the settings.* *DBAS is aware of many CCCFA breaches from the same lender and still nothing has been done by Com Com regarding prosecution. DBAS and others have notified Com Com of complaints, but nothing has happened.* *We are optimistic about the move of ComCom to the FMA and hope this will decrease the time in which CCCFA matters are dealt with.* *We are also hopeful there will be more action by the way of enforcement against lenders in this new setting.* *Making complaints on clients behalf is time consuming for a financial mentor and the service they work for. DBAS recommends financial mentors being paid by lenders for any complaint upheld by the lenders' Debt resolution Scheme and / or Com Com.*
Option A1: Retain the due diligence duty but remove restrictions on indemnities and insurance (preferred)	
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?*
	Nothing would change. The banks would continue to lend as they always have and so would 2nd and 3rd tier lenders. Aotearoa has the strongest consumer credit protections we have ever had. Do not fix what is not broken. *Lenders are always complaining about extra costs so we would be surprised if they chose to take on the significant cost to indemnify directors and senior managers when the risk is so low if they are acting as responsible lenders.* *Its been 3 years since the new regs came in, so lenders have their new systems in place and have been using it since.*
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?*

	If a lender knows an insurance company can pay their penalties for breaches, of course the lender is not going to be as committed to complying with the CCCFA as they are now. *If insurance were available, the ongoing cost of insurance would be borne by customers which is not a good thing.* *We would expect to see even more breaches than we do now, but whether Com Com (Soon to be FMA) would prosecute the directors and senior managers is another matter.*
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?*
	No, DBAS do not agree. CoFi aims to ensure that consumers are treated reasonably and that lenders conduct their business fairly. CoFI is not consumer credit protection. *DBAS recommends that all non-bank lenders, Buy Now Pay Later providers, Telco's that sell cell phones on credit, the TV shop models and debt collectors are included in the CoFI and CCCFA.*
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 do not agree with this. If a lender provides credit to a consumer, they need to be regulated by the CCCFA. That's what its there for. *If certain lenders are exempt from due diligence and personal liability (probably because they are large corporates with plenty of financial means) then that is simply not fair. It doesn't matter how big a business is, problems can still occur and the CCCFA still needs the tools to deal with these situations – see the cases previously bought by Com Com against the major banks that highlight the chance of issues affecting customers.* *Products and services may come under different laws, codes. A motor vehicle dealer comes under the MVS Act, CGA, FTA, CCCFA. A tenancy contract comes under the RTA, FTA, etc.* *Consumer protection and the law is not a one size fits all and should not be treated as such.*
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?*
	Removing protections for our whanau is negligent, risky and thoughtless. *DBAS supports option A3: Retain the status quo*
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*
	We think so.
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?*
looihgghhhgh	*We support this option.* *Hopefully, this will result in more timely enforcement of breaches.* *Lenders will demonstrate compliance with their responsible lending obligations earlier than required with the status quo .*
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?*
	• *Speed up the complaints process by reducing the time that lenders must provide documents to borrowers and their advocates.* • *Reduce to the time it takes to reach deadlock for a lender complaint.* • *The creation of a Financial Rights Legal Centre (FRLC) so consumers have appropriate support.* *This is something which is even more desperately needed now as the funding has been cut to over 45 financial mentoring services – many of whom are long established and have experienced kaimahi. DBAS is one of these services.* *Having drastically fewer financial mentors knowing what to look out regarding breaches of the CCCFA makes for uncomfortable thinking.* *We imagine the local Community Law Centres will be put under more pressure, however, not all Community Laws have put their limited resources towards financial services issues or have expertise in this area. We have been lucky that Community Law Otepoti has been able to assist us but know this is not the same for our financial mentoring colleagues in different areas.* • *To tidy up the mess which is 4 Disputes Resolution Schemes (DRS).* *Please see our submission on Effective Dispute Resolution for our views and experiences regarding this.*
12	*What do you think about the transitional licence approach, including what time periods are appropriate?*
	Transitional licences under the FMA should expire at the same time as the current certification that lenders hold with Com Com.
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?*
	We do not support this option. Licensing of lenders is preferred to certification because the entry barriers are higher and lenders who are less aware of their responsible lending obligations will find it more difficult to enter the market.
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?*
	Please see our views in relation to Q11
	2. Options to amend disclosure requirements
	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?*
	Disclosure is the basis of a lenders obligations and the current settings do this well. *We support option C1: Maintain the status quo, however we do feel that the problem is not the information that is disclosed, the problem is the way that the information is disclosed.* *Perhaps bringing all lenders under the CoFI Act (as well as the CCCFA) which requires that consumers be treated fairly and reasonably would reduce information asymmetries between consumers and lenders? The FMA could be monitoring the effectiveness of disclosure on an ongoing basis.* *Requiring that disclosure be provided in writing to a borrower would be useful. Some lenders point borrowers to standard disclosure documents available on their website or provide verbal disclosure that they have recorded which is not of much use to the borrower.*
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.*
	DBAS has seen many credit contracts with the wording "Power of Attorney" included. *There is no explanation for this to the client and often, once the client learns of that wording, they are fearful of its implications.* *Apologies as, due to the time constraints, we dont have time to find an example.*
17	*How could disclosure obligations be more targeted to the consumer's circumstances to ensure only relevant information is disclosed?*

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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?*
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19	*Are there any other concerns or issues you would like to raise related to disclosure obligations?*
	We reiterate the need for primarily written disclosure. as well if they wish, however the use of these should be alongside printed documentation. *Not all borrowers have access to, or knowledge of viewing their loan documentation online.* *DBAS has recently submitted a complaint against a lender for not providing continuing disclosure. The lender states continuing disclosure is available on their electronic platform. However, the client never received the access details for this and was unaware of what was happening with their loan.*
	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?*
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21	*As a lender, are there any practical difficulties with obtaining the borrower's consent for electronic forms of disclosure (section 32(4)(b))?*
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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))?*
	DBAS would like to see the requirement for consent to remain. Has this proposal been approved by the Privacy Commissioner? *Privacy – when sharing of email is used within households.* *Jumping online to do everyday tasks is now commonplace for most of us. However, for many other members of our communities, it is an unknown area and one which will never be explored for a variety of reasons.* *The 'analogue' clients we refer to here, are by no means the ones who use credit contracts less, but they are the ones who are marginalised by digital exclusion.*
	E. Options for penalties for incomplete disclosures by lenders

23	*Do sections 95A and 95B meet their objectives? Why/why not?*
24	*As a lender, to what extent does section 99(1A) impact the time, effort, and costs you dedicate to initial and variation disclosures?*
25	*Under option E1, what should a materiality test look like?*
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)?*
27	*Under option E2, how should the maximum amount the lender forfeits be calculated?*
28	*Under option E3, would there be the right incentives in place to ensure lenders comply with their disclosure obligations?*
29	*What would be the risks associated with each option? How could they be mitigated?*
	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?*
	The 50% cap and the provision that the borrower will never repay more than twice what they borrowed was immediately effective at reducing the harm caused to consumers by predatory, high-cost lenders. Most high-cost lenders either closed up shop or ran into trouble with Com Com. E.g. Moola and Pretty Penny. *The couple of lenders that remain have ceased offering very small loans (e.g. $50) with the minimum amount being $500 at 49.95% p.a.*
31	*In the absence of high-cost loans, what other avenues are borrowers turning to?*
	BNPLs and pawn loans both of which are designed to circumvent the CCCFA as much as possible.

	A sizeable proportion of our clients are paying off mobile phones to the major telco companies. These phone contracts are a problem because they currently sit outside the CCCFA and so there is no requirement for affordability or suitability assessments. Many of these phone contracts are clearly unaffordable for our clients but we are powerless to do anything. *Another positive outcome of high cost predators leaving is more whanau seeking out help from community agencies.*
32	*Is the unavailability of high-cost consumer credit having positive or negative effects on would-be borrowers?*
	The unavailability of high-cost consumer credit is having a positive effect for borrowers. The problem is that the use of other alternatives such as BNPL and pawn loans which circumvent the CCCFA is now occurring. These forms of credit are easy to access with few questions asked so they are attractive to borrowers who already have financial issues in their lives. These are separate CCCFA loopholes that we would like to see closed. *We support option F1: Expanding the definition of a high-cost consumer credit contract to contracts with an interest rate above 30 percent, however we urge the Minister to strongly consider 20%.* *We do not see a downside for our whanau*
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 much. Unfortunately, we have not had time to dig into this for this submission because the time was too tight. *We see debt spirals caused by loans in the 20% range and even lower, including 0% with the likes of BNPLs and telecommunication providers who supply credit to pay off devices.* *Around 20-30% per annum is typical of the interest rates we see charged by many lenders. For example, Q Card, GEM and Instant Finance.*

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?*
	Often companies advertise loans like this: "Affordable rates from 18% to 30%." However, they always charge the higher rate. *Stuffs reporter, Rob Stock, reported on this exact issue in June 2022, using his own personal circumstances. During the writing of the article he had no debt, in a steady job and had a credit score of 984 – he was offered an*

	interest rate of 20.99% with GEM (Latitude), a major lender in Aotearoa. Nothing has changed. **https://www.stuff.co.nz/business/opinion-analysis/128830425/my-credit-rating-is-984-out-of-1000-so-why-did-gem-offer-me-a-personal-loan-rate-of-2099**
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?*
	Unfortunately, we have not had time to dig into this for this submission because the time was too tight.
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?*
	We bring your attention back to clients having multiple BNPL debts and pawn loans.
37	*For lenders: If the government extended the high-cost provisions to loans with annual interest rate of 20 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?*
	Government needs to be careful here as we are sure they do not want to be seen to be caring more about a finance company's profits over the protection of consumers.
38	*How is a revised definition of a high-cost consumer credit contract interest rate threshold likely to affect access to credit for borrowers?*
	Any strengthened legislation should only ensure strengthened protection for consumers. *As we have seen in the past, when someone cannot access credit, they look to other avenues, like talking to a financial mentor who can then tell them of their options they didnt know about.* *DBAS has not seen any evidence of 'black market' loans. We are however aware of ethnic communities providing loans to each other for cultural reasons such as zero interest.*
39	*Do you recommend considering another interest rate threshold? If yes, please explain why.*
	20%, for the reasons already stated

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?*
	The fact that there are no high-cost loan providers in our motu anymore answers this question. Their model was profits, not protection. Once the law was strengthened to protect those most vulnerable, the easy profit-making business was gone. *We applaud the Government on these changes.*
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?*
	DBAS would like to see any credit supplied which is over 20% interest rate, deemed to be high-cost credit. *This would create a fairer environment for borrowers as the industry would be competitive, not the way it is now – more 'riskier' borrowers being charged at a higher rate of interest than those who have a good credit history.* *Even borrowers who have a good credit history are often hit with higher interest rates.* *Each application needs to be taken on its own merit.* *If a borrower can afford the repayments based on a sound affordability assessment, then the credit rating should not come into the application.* *This would take away the excuse some lenders use for charging some people much more interest than others. Others just charge more anyway – we refer you to Rob Stocks article once more.*
42	*Are there any other industry lending practices that you believe are harmful to consumers?*
	• *HEM (Household Expenditure Measure) benchmarking – this is not fit for Aotearoa standards. Everyone applying for credit needs to be treated as such – an individual.* • *Lay buy type credit advertised on TV – not regulated but just as harmful as the client must pay a minimum amount regularly.* • *Telecommunication providers supplying credit for the paying off phones, tablets, ear buds, smart watches, game consoles and other devices. This is currently outside the CCCFA and not regulated. Approx one in five of our client base is paying off a phone they could not afford to purchase.*

- *Brokers not being regulated. In one of our clients' credit contracts there is a $900 broker fee. The client wasnt even aware of this until we explained this to him. He stated he was surfing the net looking for a loan and doesnt even recollect reading about brokers fees.*
- *The flexibility of establishment fees due to the amount applied for. It does not matter how much credit is applied for, the processes should all be the same for the lender – care, diligence and skill for each application.*
- *The lack of consideration for what a disability allowance means. When a person is receiving a disability allowance from Work and Income, their medical costs on the affordability assessment with the lender needs to reflect these costs.*
- *The use of immobilisers in vehicles sold on credit. We find this oppressive behaviour beyond reprehensible and should be banned immediately.*
- *Lenders relying on a borrowers credit report. A credit report doesnt show how much money someone spends on food.*
- *Over inflation of goods sold on credit. This seems particularly rife in the vehicle sales industry, however we do see it elsewhere too. Often we see goods being sold on credit which are more than four times the price of the same item elsewhere. We believe these 2nd or 3rd tier lenders (including car finance companies) take advantage of those consumers who may have limited options regarding sourcing credit. These predatory lenders take this as a licence to print money, using the borrower to do it.*
- *When a complaint made to the lender and or their Disputes Resolution Scheme (DRS) is upheld for the consumer, often the consumer is left with a debt overhang. DBAS is of the strong belief that a lender needs to return that consumer to their financial position they were in, before the lender gave them credit they shouldn't have.*
- *The use of attachment orders from the lenders themselves or the debt collectors they use. This is oppressive at best.*
- *Some lenders require a redirection of benefit as part of their conditions. This is another power imbalance. If the lender has done their due diligence with care and skill they should have the confidence in the borrower to repay.*
- *Debt collectors not having all the financial information needed. When an FM requests information from a debt collector about a debt, that debt collector often needs to retrieve this information from the lender themselves. Surely if a debt collector has bought that debt or acting on behalf of, they would need to have all documents in the first instance? This is just shoddy practice with no due diligence applied.*

43	*Do you agree with the suggested impacts of each of the identified options? Why/why not?*
	We agree that option F1 is the most valid option and would like to see the interest rate capped at 20% for non high cost credit
44	*Do you have any information or data that would support our assessment of the impacts of each of the options?*
	Due to the time frame for this submission to be delivered by, DBAS doesnt have the time to expand on this.
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?*
	Absolutely it could. *We find add-on (junk) insurance bordering on criminal.* *One of our clients got a loan through a finance company. Our kaimahi submitted a request for all docs and it was discovered that not only was the loan unaffordable at the time it was given, but the client was paying for insurance he didn't need.* *This client has a chronic medical condition and he thought he was doing the right thing by getting insurance to cover his payments.* *This client is on a benefit so did not the need payment protection insurance he was sold.* *As this clients medical condition is pre-existing, the death cover he was sold is a total waste of money.* *The client was not aware of any of this as the lenders' representative didn't explain this to him.* *We also have multiple clients who have got car loans and insurance through their lender (which they pay interest on as its calculated into their contract) who are able to get vehicle insurance much cheaper elsewhere but have not been told they can source their own insurance.* *Upon reading through multiple MBI insurance T's & C's we have come to the strong conclusion this is most certainly junk insurance and a very easy way to make money from people who think they are doing the right thing, or who have been told to, by their lender.* *People who are purchasing a vehicle particularly, are standing in front of their new car nodding and agreeing to everything as they just want the process over so they can drive away.* *DBAS firmly believes the sales of insurance from lenders to borrowers should be forbidden.*
46	*Finally, are there any other areas and options for change that we should consider that have not been addressed in this discussion document?*

Other comments

- DBAS, like many other financial mentoring services, uses No Interest Loan Schemes (NILS).

  NILS are not only a fantastic alternative to high cost lending and obtaining debt a client often cant afford, but FMs use NILS to assist the client in paying off the credit as the repayments are affordable (having been assessed by an FM).

  Clients who are eligible for this option of a NILS get their control and their financial life back.
  We urge the Government to fund NILS as the amount of debts client now have often outweigh the limits NILS can provide.

  The Government funding NILS will see many more whanau become free from debt sooner and easier, thus establishing financial capability and freedom.

- DBAS would like to thank the Minister for the invitation to submit on this topic. However we feel we have not done our submission justice due to the very short time frames in which this needs to be done.
  For future invitations to submit on issues relating to our mahi and our community, we respectively urge the Minister to consider a longer span of time so us and other advocates ensure we all have time to have our say.