

Submission template

Fit for purpose financial services conduct regulation

*This is the submission template for the discussion document, Fit for purpose consumer credit legislation. The Ministry of Business, Innovation and Employment (MBIE) seeks written submissions on the issues raised in the discussion document by **5pm on 19 June 2024**. Please make your submission as follows:*

1. Fill out your name, organisation and contact details in the table: “Your name and organisation”.
2. Fill out your responses to the consultation document questions in the table, “Responses to discussion document questions”. Your submission may respond to any or all of the questions in the discussion document. Where possible, please include evidence to support your views, for example references to independent research, facts and figures, or relevant examples.
3. If you would like to make any other comments that are not covered by any of the questions, please provide these in the “Other comments” section.
4. When sending your submission:
 - a. Delete this page of instructions.
 - b. Please clearly indicate in the cover letter or email accompanying your submission if you do not wish for your name, or any other personal information, to be disclosed in any summary of submissions or external disclosures.
 - c. Note that, except for material that may be defamatory, MBIE intends to upload PDF copies of submissions received to MBIE’s website. MBIE will consider you to have consented to uploading by making a submission, unless you clearly specify otherwise in your submission. If your submission contains any confidential information:
 - i. Please state this in the cover page or in the e-mail accompanying your submission, and set out clearly which parts you consider should be withheld and the grounds under the Official Information Act 1982 that you believe apply. MBIE will take such objections into account and will consult with submitters when responding to requests under the Official Information Act 1982.
 - ii. Indicate this on the front of your submission (eg the first page header may state “In Confidence”). Any confidential information should be clearly marked within the text of your submission (preferably as Microsoft Word comments).
 - d. Note that submissions are subject to the Official Information Act 1982 and may, therefore, be released in part or full. The Privacy Act 2020 also applies.
5. Send your submission:
 - as a Microsoft Word document to consumer@mbie.govt.nz (preferred), or
 - by mailing your submission to:

*Consumer Policy
Small Business, Commerce and Consumer Policy
Ministry of Business, Innovation & Employment
PO Box 1473
Wellington 6140
New Zealand*
6. Please direct any questions to consumer@mbie.govt.nz.

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

Your name and organisation

Name	Privacy of natural persons
Organisation (if applicable)	Insurance & Financial Services Ombudsman Scheme (IFSO Scheme)
Contact details	Privacy of natural persons

[Double click on check boxes, then select 'checked' if you wish to select any of the following.]

The Privacy Act 2020 applies to submissions. Please check the box if you do not wish your name or other personal information to be included in any information about submissions that MBIE may publish.

MBIE intends to upload submissions received to MBIE's website at www.mbie.govt.nz. If you do not want your submission to be placed on our website, please check the box and type an explanation below.

I do not want my submission placed on MBIE's website because... [Insert text]

Please check if your submission contains confidential information:

I would like my submission (or identified parts of my submission) to be kept confidential, and **have stated below** my reasons and grounds under the Official Information Act that I believe apply, for consideration by MBIE.

I would like my submission (or identified parts of my submission) to be kept confidential because... [Insert text]

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?*

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?*

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

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?*

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?*

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?*

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?*

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?*

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*

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?*

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?*

12 *What do you think about the transitional licence approach, including what time periods are appropriate?*

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?*

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?*

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?*

We have not received any complaints from consumers about the disclosure information and whether it helped them make informed decisions. In many cases, the consumer will have already decided on the loan/ purchase by the time disclosure is made, so it will have limited effect in terms of informing their decision to take the loan. However, our view is that if

disclosure information is helping some consumers make economically rational decisions, even if other consumers do not take notice of the information or find it unhelpful, it may be useful. We support maintaining the status quo in terms of disclosure, unless there is evidence of specific aspects of disclosure being unhelpful or contributing to information overload.

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.*

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

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?*

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

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?*

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

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))?*

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?*

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

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

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?*

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?*

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?*

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?*

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?*

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

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

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?*

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?*

42 *Are there any other industry lending practices that you believe are harmful to consumers?*

43 *Do you agree with the suggested impacts of each of the identified options? Why/why not?*

44

Do you have any information or data that would support our assessment of the impacts of each of the options?

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?

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