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?*
	• New Zealand Paraplegic and Physically Disabled Foundation conducted a survey in Oct 2023 to provide us a better understanding of the financial environment disabled people in New Zealand experience. The survey was emailed to 73 disability organisations asking them to invite their members, clients etc to complete our survey. The survey responses were 470 viewed the survey with 180 (38%) fully and 64 (14%) partially completing the survey. From our financial survey the disabled community indicated concerns about approachability of other lenders.
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?*
	• This has a direct impact on each of the Trustees personally. The issue around indemnity and insurance would in the first instance be positive for protecting Trustees, although the Trustees Act may provide some level of protection here. However, the cost implications of such insurance would need to be taken into consideration as to whether it was financially viable to hold such insurance. • In terms of due diligence duty **–** It wouldn't make a difference in how we would work through this as we have both a legal and moral duty to ensure our clients are not put in a further disadvantageous financial position through the provision of lending by us.
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?*

- In terms of due diligence duty - It wouldn't make a difference in how we would work through this as we have both a legal and moral duty to ensure our clients are not put in a further disadvantageous financial position through the provision of lending by us.
- However, the cost implications of such insurance would need to be taken into consideration as to whether it was financially viable to hold such insurance.

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?*

- The same standard of due diligence duty should apply.

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?*

- Cannot abdicate responsibility of due diligence to FMA supervision. People have responsibility and some form of liability for the decisions they make is required. Without that there are no consequences for poor behaviour.

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?*

- The impact of A1 is the continued requirement for personnel and financial resources by our organisation to ensure compliance with this. Increased requirements would put pressure on our organisation to provide the services we currently provide. Ironically, A2 may create greater impact on us as a lender if the due diligence duty is relaxed, we may find our organisation being asked to support more disabled people as they experience financial difficulty after being provided with loans and finance they cannot afford - which would have been picked up under the current duty of due diligence. The unintended consequences of these changes need to be fully assessed before any decisions are made.

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?*

- For small lender organisations this is potentially an increase of time and cost for compliance to understand and meet the licencing requirements.

- Potential increase in cost from current certification and an increase in ongoing annual licencing fees. The compliance costs for a small lender whose focus is on delivering our core purpose to improve the quality of life of physically disabled people in New Zealand.

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?*

- If it is implemented, for small lenders a longer period would be appropriate, suggest 3 or more years. Especially as our current in certification has over 3 years before expiry.

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 agree that for Paraloan lower entry barriers through the certification model make it easier for us to serve our core charitable purpose.

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?*

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.*

- The disclosure obligations require us to provide too much information and unlikely to be relevant to the borrower. Many sections required are available on a lenders website which is where a person would most likely look if issues arose eg unforeseen hardship, complaint, disputes resolution or FSPR. Other sections which are included in the loan agreement or provided with payment reminder letter which includes financial mentoring disclosure, don't need to be advised again or multiple times.

17	*How could disclosure obligations be more targeted to the consumer's circumstances to ensure only relevant information is disclosed?*
	• your current consumer survey will provide more information on which information a consumer considers to be relevant and beneficial. • Disclosure obligations could be amended for types of loans eg higher cost loans require higher bar for disclosures Disclosure to provide the details of where information can be found on their website eg unforeseen hardship, complaints etc so less detail is in the disclosures. • Giving customer choice on how they receive the disclosure, some prefer electronic means, others by paper based. There should be options available so customer can choose the option that best suits them.
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))?*
	• There are some borrowers who require the disclosure to be posted. Therefore, any change would need to make sure these people can receive paper-based disclosure.
	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?*

	• Impacts greatly on the amount of time, effort and costs to make sure we have the disclosures correct. Then makes the disclosure cumbersome, difficult to understand and the customer is likely to be more confused or due to the size of the disclosure they potentially ignore the disclosure.
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?*
	• While not directly referenced in our survey results, we raise the issue here that organisations charging these high-cost credit options run the risk of targeting marginalised communities, such as the disabled community, and therefore there is a need to ensure that vulnerable populations are protected from unscrupulous traders.
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?*

	• Evidence from our survey suggests there is a lack of approachability felt by disabled people towards banks providing lending. This, therefore, has the potential to create an environment where in desperation, vulnerable people will look elsewhere for support. On a scale of 1 to 10 on approachability (1 = not approachable and 10 = very approachable), banks scored 3.84 out of 10.
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

Our financial survey (Oct 2023) was to gain an understanding on the financial needs and financial barriers faced day to day by disabled people. The findings from the survey identified the needs of disabled people to supplement their health and wellbeing. The current social support is failing them as they need financial support to renovate homes 33% to make them accessible or purchasing disability equipment 33% and covering ongoing medial costs 29%. These are NEEDS not WANTS and so there is an absolute responsibility on the Government to ensure that any decisions made around changes to CCCFA do not have a negative effect on disabled people.