

Consumer Policy
Small Business, Commerce and Consumer Policy
Ministry of Business, Innovation & Employment
PO Box 1473
Wellington 6140
New Zealand

18 June 2024

UDC FINANCE LIMITED SUBMISSION - FIT FOR PURPOSE CONSUMER CREDIT LEGISLATION

1. UDC Finance Limited (**UDC**) thanks the Ministry of Business, Innovation and Employment (**MBIE**) for the invitation to submit on the proposed reforms of the Credit Contracts and Consumer Finance Act 2003 (**CCCFA**) as outlined in the discussion document "*Fit for purpose consumer credit legislation.*"
2. Subject to our specific comments and recommendations below, we broadly support the proposals in the discussion document, which we consider will help to ensure that the CCCFA strikes a more proportionate balance between protecting consumers and facilitating the responsible provision of credit. To summarise our submissions, we consider that:
 - (a) the current certification process should be maintained (rather than creating a new market services licence);
 - (b) we do not agree with the proposal to extend the usual enforcement powers of the FMA to the regulation of the CCCFA (which appears to overlook a current exemption for credit contracts from the fair dealing regime);
 - (c) the due diligence requirements should be removed outright due to their impact on lending behaviours;
 - (d) we agree that the disclosure obligations should be simplified, but only if the revised requirements are clearly expressed (and supported by the creation of updated statutory model forms); and
 - (e) section 99(1A) should be repealed in full, due to its disproportionate effects.

Certification

3. UDC submits that the current certification process should be maintained (as outlined in paragraphs 44 to 46 of the discussion paper) rather than transitioning to a new market services licence (as suggested under Option B1).
4. While certification created initial burdens for lenders when it was introduced in 2021, the existing certification process is now familiar to many lenders and has been integrated into their operational frameworks. As noted in the discussion document, certification also has lower entry barriers for most lenders which makes it easier for new consumer creditors to enter the market, enabling great innovation and diversity within the sector.
5. Introducing a new market services licence at this stage is likely to create cumbersome additional regulatory obligations. Lenders would need to invest time and resources in understanding and implementing the new process. This transition is likely to result in operational inefficiencies and

increased compliance costs, which may result in some lenders passing on those costs to consumers in the form of higher interest rates.

FMA enforcement powers

6. Options B1 and B2 both propose applying the broader enforcement powers of the FMA to the regulation of the CCCFA. For the reasons below, we do not consider that to be necessary.
7. First, we note that one of the justifications provided by MBIE for applying the FMA's regulatory powers to cover the CCCFA is that it would allow the FMA to "address fair dealing misconduct." That rationale appears to overlook the fact that being a creditor under a credit contract is expressly exempt from the fair dealing provisions.¹ That long-standing exemption is appropriate and should remain. Among other things, it avoids regulatory overlap and inconsistent liability provisions, ensuring that consumer credit is subject to its own standalone regime through the CCCFA.
8. Second, the CCCFA already provides a wide range of regulatory enforcement tools to the Commerce Commission. There is no need to expand those regulatory enforcement tools further, and transfer of oversight of the CCCFA to the FMA does not require any expansion of those tools to include other measures usually available to the FMA (such as Stop Orders or Direction Orders). We consider that the FMA's broader tools are more appropriate for more complex financial institutions regulated under the Financial Markets Conduct Act 2013 and may be disproportionately burdensome for the credit sector, particularly for small lenders.

Due Diligence requirements

9. Option A2 of the discussion document proposes the removal of the due diligence duty at section 59B of the CCCFA for certain categories of licensed lenders. We support that proposal.
10. In particular, we agree with the view expressed in the discussion paper that the due diligence duty likely drives conservative approaches to consumer lending. That was discernible following the changes to the CCCFA in December 2021, which was followed by declining approval rates (a natural consequence of combining detailed regulatory obligations with onerous liability provisions).
11. In addition, we consider that the due diligence duty is unnecessary. It is possible to enable a compliant and responsible credit sector without imposing personal duties on directors or senior managers, which can actively disincentive qualified individuals from taking up those positions. Moreover, the CCCFA provides separate mechanisms for enforcement against any person knowingly concerned in breaches² which should sufficiently address the rare circumstances where it is appropriate to hold an individual responsible.
12. While we agree with Option A2 in principle, we also suggest that the removal of the due diligence duty should apply equally for all lenders, and should not be contingent on licensing status (i.e. it should apply even if the certification model remains applicable, as we recommend above). That would also avoid a two-tier approach to regulation – with certain classes of creditors being exempt from due diligence, with others still subject to the duty – which would create an unfair "competitive advantage" as noted in the discussion paper.
13. Finally, if the removal of due diligence requirements was not deemed appropriate, UDC would also support (as a secondary alternative) the removal of restrictions on indemnities and insurance under Option A1. Allowing lenders to use these mechanisms to manage risk effectively would likely

¹ Regulation 14 of the Financial Markets Conduct Regulations 2014.

² Section 93 of the CCCFA.

mitigate some of the conservative lending behaviours prompted by the current due diligence requirements.

Disclosure Requirements

14. We support MBIE's proposal for greater simplicity in disclosure requirements. In our view both options C2 and C3 are beneficial options. Simplifying disclosure will make it easier for consumers to understand key information provided via disclosure and to make informed borrowing decisions.
15. However, we recommend that the standard for the revised disclosure should be clearly defined, through further specific consultation with lenders, to avoid confusion for borrowers and potential inconsistencies across the industry. The revised format for disclosure should highlight the most important information that borrowers need (in particular, regarding repayment obligations) without overwhelming them with excessive information about ancillary details.
16. We would also welcome the provision of updated statutory "model forms" that would serve as an optional safe harbour for lenders to use, which can assist lenders in meeting disclosure requirements while also assisting consumers to make clear comparisons between lenders.
17. Finally, we agree with Option D2, proposing greater flexibility in relation to the range of permissible disclosure methods. We consider that will enable more efficient and effective methods of electronic disclosure aligned with modern channels of customer communications. This greater flexibility will also assist lenders to manage situations involving consumers who change physical addresses without updating the lender.

Repeal of Section 99(1A)

18. We support the full repeal of section 99(1A) under Option E3 of the discussion document. We agree with MBIE that, in some cases, that section can create significant financial liability for lenders that is out of proportion to any harm caused to consumers in relation to disclosure breaches. The repeal of section 99(1A) would help to restore balance to the enforcement provisions of the CCCFA, allowing lenders to discharge disclosure obligations and advance credit without disproportionate consequences for breaches that are often immaterial to consumers.
19. For consistency, we also consider that similar amendments should be made to other sections of the CCCFA. In particular, section 89(1)(aaa) provides that certain responsible lending breaches are subject to statutory damages equal to the "interest charges, credit fees, and default fees" payable under the agreement. That consequence is similarly excessive and should also be revised, to ensure that remedies for any breaches are proportionate to any harm actually suffered by borrowers.

UDC considers that that the proposed changes, if adopted in line with our submissions above, should help to create a balanced regulatory environment that protects consumers while promoting an innovative and active consumer credit sector.

We appreciate the opportunity to provide input to the proposals and would be happy to answer any questions MBIE may have in relation to our submission.

Yours sincerely

Privacy of natural persons

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