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Competition & Consumer Policy
Building, Resources and Markets
Ministry of Business, Innovation & Employment
PO Box 1473
Wellington 6140
New Zealand

via email: consumer@mbie.govt.nz

Submission on review of Consumer Credit law

Thank you for the opportunity for Auckland Regional Public Health Service (ARPHS) to provide a submission on the Ministry of Business, Innovation and Employment's (MBIE) *Review of Consumer Credit law*.

The following submission represents the views of ARPHS and does not necessarily reflect the views of the three District Health Boards it serves. Please refer to Appendix 1 for more information on ARPHS.

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Yours faithfully,

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Introduction

Auckland Regional Public Health Service

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1. Auckland Regional Public Health Service (ARPHS) is Auckland's regulatory public health agency serving Auckland's diverse populations through health protection, prevention and promotion.

Scope of submission and recommendations

2. ARPHS' supports MBIE's review of consumer credit law and welcomes the opportunity to make a submission. We support the intent of the consumer credit law review to provide greater protection from predatory and high-interest lending practices that create significant hardship for lower-income families and communities. Our submission is based on the following:
 - a. Funds available to a household are an important determinant of health. Insufficient money reduces the ability of a household to meet basic needs such as nutritious food,¹ an adequately heated home,² medical care, and clothing.³
 - b. Predatory lending behaviour and credit practices of high-cost lenders create financial hardship for lower-income households and families that can have significant and long-lasting socio-economic and health impacts. Use of fringe lending has been associated with poor self-rated health.⁴
 - c. There are often legitimate reasons for needing to access short-term credit for essential items, unexpected costs, or income shocks for example, funerals, family emergencies or medical expenses.
 - d. High-cost lending preys on the immediate needs of people on low-incomes who have no other alternative. Lower-income households do not have savings to deal with unexpected expenses. Over 80% of families living in significant deprivation are unable to cope with an unexpected expense of \$500 without having to borrow money.⁵
 - e. Stronger regulation around high-cost lending is needed to protect families from predatory and high-cost lending practices that can create a downward spiral of debt.⁶
 - f. Feedback from communities in Auckland is that predatory lending, especially in relation to mobile lending trucks, continues to be of high concern; along with the hardship created by unserviceable debt and repossessions.
3. Our main recommendations are for the following options:
 - a. Cap interest rates and fees based on an annual percentage rate (APR/EIR) and limit accumulation of interest and fees;

¹ Bowers S, Carter K, Gorton D, Heta C, Lanumata T, Maddison R, McKerchar C, Ni Mhurchu C, O'Dea D, Pearce J, Signal L, Walton M (2009). *Enhancing food security and physical activity for Māori, Pacific and low-income Peoples*. Wellington: Clinical Trials Research Unit, University of Auckland; GeoHealth Laboratory, University of Canterbury; Health Promotion and Policy Research Unit, University of Otago; Te Hotu Manawa Māori.

² Lawson R, Williams J. The nature of fuel poverty in New Zealand. Available from: <https://www.otago.ac.nz/centre-sustainability/otago055642.pdf>. Accessed 12 July 2018.

³ Gorton D, Bullen CR, Ni Mhurchu C (2010). Environmental influences on food security in high-income countries, *Nutrition Reviews* 68(1):1–29, <https://doi.org/10.1111/j.1753-4887.2009.00258.x>

⁴ Eisenberg-Guyot J, Firth C, Klawitter M, Hajat A. (2018) From Payday Loans To Pawnshops: Fringe Banking, The Unbanked, And Health. *Health Affairs* 37:3, 429-437.

⁵ Perry B. (2012) Household Incomes in New Zealand: Trends in Indicators of Inequality and Hardship 1982 to 2011. *Ministry of Social Development*, Wellington.

⁶ Dale, C. (2014) Child Poverty Action Group Background Paper: New Zealand's debt society and child poverty.

- b. Strengthen licensing, monitoring, enforcement, and penalties;
- c. Collect the data needed to monitor if the CCCFA is working;
- d. Use an APR/EIR and risk warnings in all advertising and documentation and use it to help improve the financial literacy of consumers; and
- e. Consider implementing anti-avoidance principles.

Consultation questions

Q1: Do you agree that the problems identified with high-cost lending (even where it is compliant with the CCCFA) are significant? Do you have any information or data that sheds light on their frequency and severity?

- 4. ARPHS agrees that the problems associated with high-cost lending are significant, and that they disproportionately impact on lower-income households. Experience with Pacific communities in the Auckland region suggests significant problems with financial hardship, which fringe lending contributes to. The predatory behaviour of some fringe lenders, high interest rates charged, and inappropriate lending are our main areas of concern in relation to high-cost lending.

Q2: Do you support any of the extensions of Cap Option A? What would be the impact of these extensions on borrowers, lenders and the credit markets? Do you have any information or data that would support an assessment of the impact of these extensions?

- 5. We support the extension which prevents people who have defaulted on a high-cost loan from accessing another high-cost loan before repayment. The purpose would be avoidance of a compounding downward debt spiral for the borrower. For the lender it should lessen the chance of loan defaults for lenders.
- 6. The further extensions limiting high-cost loans to one per person and a cooling-off period seems sensible but would need to be carefully considered to ensure they did not adversely impact on borrowing for legitimate need such as food, housing and medical care.

Q3: Do you agree with our assessment of the costs and benefits of the options for capping interest and fees? Are any costs or benefits missing? Do you have any information or data that would help us to assess the degree or estimate the size of these costs and benefits?

- 7. Interest rate caps provide greater protection from exploitation. They could potentially lead to a reduction in the number of high-cost lenders by making it less economically attractive for lenders. This could be a positive outcome but could also lead to reduced access to credit for lower-income households. This can be solved by other policy interventions to ensure people in high-need are able to quickly access short-term low-value lending⁷ or through support of lending institutions to provide affordable credit alternatives, for example, the Step Up programme and the Nga Tangata Microfinance Trust.

⁷ Signal L, Lanumata T, Bowers S. 2012. Punching loan sharks on the nose: effective interventions to reduce financial hardship in New Zealand. *Health Promotion Journal of Australia* 23: 108-11.

Q4: Do you have any suggestions for the design of options for capping interest and fees? If so, what would be the impact of your proposed design on borrowers, lenders and the credit markets?

8. ARPHS supports the introduction of an interest rate cap applied to high-cost lenders. A cap on interest rates was a preferred option of key informants in New Zealand research on fringe lenders.⁸ They are a commonly used tool, and the World Bank states restrictions on lending rates are used in at least 76 countries around the world.⁹
9. We support the use of an annual percentage rate (APR/EIR) with one figure that includes all fees and charges. This helps limit hidden costs or cost shifts between interest rates and fees. It increases transparency, making it easier to understand the full financial commitment and compare lending options. We note the experience in Australia when interest rates were capped that lenders consequently charged higher fees.¹⁰ Even with a 48% interest rate cap, loans with 300% APR were still possible due to the ability to charge establishment fees.¹¹ An APR would mean any cost shifts are captured in one overall sum.

Q5: Which interest rate cap options, if any, would you prefer? Which interest rate options would you not support? Please explain how you made your assessment.

10. In principle, we support the approach in option B with a combined cap on interest rates and all fees defined by a maximum APR/EIR. This option allows such lending to still be available but under fairer terms than currently exist. The main impact of this change would be increased transparency for borrowers on the full cost of the lending and providing a standardised measure to compare lending options. However, an APR is only useful if it is required to be disclosed to potential borrowers.
11. The interest range of 200-300% is lower than current high-cost loans, but still higher than in some jurisdictions. The balance needs to be made between protecting consumers from unscrupulously high rates and creating adverse effects or incentives within the market, creating a black market, or preventing those in need from accessing short-term loans. We recommend that the capped rate is able to be amended in future to ensure it is meeting the desired objectives.
12. We do not support Option C at this stage as it could lead to the inability for high-need families to quickly access extra funds, due to a lack of alternatives. Option C would be the preferred option if introduced as a comprehensive range of actions to address the issue, as

⁸ Signal L, Lanumata T, Bowers S. 2012. Punching loan sharks on the nose: effective interventions to reduce financial hardship in New Zealand. *Health Promotion Journal of Australia* 23: 108-11.

⁹ Ferrari A, Masetti O, Ren J. 2018. Interest rate caps: the theory and the practice. Policy Research working paper; no. WPS 8398. Washington DC. World Bank Group.

¹⁰ Shann A. How Effectively does Credit Contract Legislation Protect the Vulnerable from Excessive Rates of Interest Charged by Fringe/Payday Lenders. Wellington (NZ): University of Wellington; 2008

¹¹ Gardiner J. (2014) The Challenges of Regulating High-Cost Short-Term Credit: A Comparison of UK and Australian Approaches. CHASM. Available from: <https://www.birmingham.ac.uk/Documents/college-social-sciences/social-policy/CHASM/2014/the-challenges-of-regulating-high-cost-short-term-credit-UK-and-Australia.pdf>. Accessed 16 July 2018.

caps at this level in other jurisdictions have eliminated high-cost short-term lending.¹² However, as there is no indication that alternative access to low-cost short-term lending for high-need families will be created, this option cannot currently be supported.

13. Research conducted by Regional Public Health found that in 2012 there were 26,000 successful short-term loans repaid through third-tier lenders in the Wellington region. The loans were for paying the rent, paying the power bill, fixing the roof, fixing the plumbing, unexpected visitors, or food for the month,¹³ demonstrating the legitimate need for access to affordable credit alternatives for higher-need families.

Q8: Should there be any change to the requirement that lenders can rely on information provided by the borrower unless the lender has reasonable grounds to believe the information is not reliable? What would be the impact of such a change on borrowers, lenders and the credit markets?

14. Under the Act lenders have a responsibility (and as the main beneficiaries of any business transaction) to ensure consumers are reasonably placed to enter into a lending agreement so as not to be disadvantaged, or experience further financial strain – this means appropriately communicating with consumers in a broad context (i.e. not just discussing their existing financial situation, but also gaining a wider understanding of their personal situation, including cultural obligations). We also believe the onus should be on the lenders to ensure consumers fully understand their contractual obligations, and therefore help improve the financial literacy of consumers.
15. ARPHS considers that the lender responsibility of reasonable inquiry should include lenders confirming with the borrower if he or she has explored all other available options to meet their requirements and objectives, prior to any agreement taking place. Such confirmation is particularly pertinent to potential borrowers deemed at-risk of defaulting on repayments. This may mean that lenders actively ask if borrowers have approached Work and Income for any hardship assistance, or obtained budgeting advice from a budgeting service in their area.
16. Research evaluating Pacific consumers' behaviour in the credit market noted that meeting social and cultural obligations was the third most common reason for borrowing, and is often an area that requires access to 'instant cash'.¹⁴ ARPHS believes there needs to be discussion around what credit opportunities are available for people who have cultural essential needs. A person who considers they need to meet a cultural obligation may not have access to credit at the same low interest rate as someone who is applying for credit or assistance to meet a conventional need. Others in society may not view a particular expense as an essential need, but such views do not deter a person from taking on a high risk loan if it aids them in meeting obligations that are important to them.

¹² Howell N, Wilson T, Davidson J. (2008) Interest rate caps: protection or paternalism? CCCL Research Paper. Griffith University, Queensland.

¹³ <http://www.rph.org.nz/content/2551fee2-3378-415c-9ecd-8f5196dfc2ec.cmr>

¹⁴ Anae, M., Coxon, E., Lima, I., Atiga, L. and Tolley, H. (2007) *Pacific consumers' behaviour and experience in the credit market, with particular reference to the fringe lending market*, Ministry of Consumer Affairs, Wellington, New Zealand.

17. We support the requirements noted elsewhere that applications for short-term credit must be supported by bank statements or other documentation and that affordability assessments must be recorded and made available to assess compliance if required.

Q9: Do you consider there should be any changes to the current advertising requirements in the Responsible Lending Code? If so, what would be the impact of those changes on borrowers, lenders and the credit markets?

18. ARPHS supports the use of an APR/EIR in disclosure and advertising as it provides more transparency on the total cost and allows for comparison between products. This helps ensure that advertising is not misleading or deceptive in relation to the total cost from fees and interest. To gain the full benefits of using an APR/EIR it must be mandatory in disclosures and advertising.

19. ARPHS also supports the use of risk warnings and recommends they are mandatory for high-cost loans.

20. Third-tier loans are generally targeted at vulnerable groups that often have limited financial literacy and/or English as a second language. To ensure that financing arrangements are understood written material may need to be provided in languages other than English or an interpreter used. This should be a requirement if advertising is in a language other than English.

21. A review of small amount credit contract laws in Australia recommended that lenders should be prevented from making unsolicited offers to current or previous borrowers.¹⁵ This was only accepted by the government for unsolicited lease sales made door-to-door. A similar approach controlling unsolicited offers is recommended.

Q12: Which options for reducing irresponsible lending and other non-compliance would you support? Which would you not support? Please explain how you made your assessment.

22. We agree that irresponsible lending and non-compliance needs to be reduced. This has to be balanced with any increased costs of regulatory compliance which will be passed onto the borrower. In some cases, non-compliance may be best addressed by increased monitoring and enforcement of existing regulation rather than more regulation. With this in mind, we agree with the following proposed options which allow more effective enforcement or which should be part of any reputable lending process.

23. In relation to lender registration requirements, we support:

- a. Registration Option A for expanded powers to de-register lenders and ban directors from the industry where this is necessary.
- b. Registration Option C for a comprehensive creditor licensing system as an important step in starting to raise the standards in the fringe lender market.

¹⁵ The Australian Government the Treasury. (2016) Review of the small amount credit contract laws. Final Report. Commonwealth of Australia, Canberra.

24. In relation to strengthening enforcement and penalties, we support:
- a. Enforcement Option A to create penalties for breaches of lender responsibilities.
 - b. Enforcement Option B that directors' are subject to duties to ensure compliance with CCCFA obligations.
 - c. Enforcement Option C that lenders must be able to substantiate their affordability and suitability assessments.
 - d. Enforcement Option D for a levy on creditors providing consumer credit to be used to support monitoring and enforcement activities.
 - e. Enforcement Option E requiring creditors and their agents to work with consumer advocates if asked to do so and in good faith, as this is for the best interests of the borrower.
 - f. We also note that enforcement cannot rely solely on complaints being made, but there needs to be a monitoring system, especially in communities where fringe lending is known to be causing issues.
25. In relation to affordability assessments, we support:
- a. Responsibility Option A affordability assessment with mandatory requirements based on a borrower's uncommitted income, based on bank transactions or similar documentation. We note Australia's experience that more prescriptive affordability assessments are required as the principles-based approach did not bring about sufficient change.
 - b. Responsibility Option B to make the guidance on advertising under the Responsible Lending Code compulsory, including displaying an APR and risk warnings.
 - c. Responsibility Option C if advertisements are made in a language other than English, that all documentation and information must be available in that language, if preferred by the borrower.
 - d. We see merit in prohibiting any advertising for high-cost lending and support this option being explored.
 - e. We also see merit in the Australian approach of capping repayments as a proportion of income (income cap) as a means to avoid debt spiral.¹⁶

Q14: Do you have any suggestions for the design of options for covering additional credit contracts under the CCCFA? If so, what would be the impact of your proposed options on borrowers, lenders and the credit markets?

26. Australia has accepted anti-avoidance provisions in its review of small amount credit contract laws.¹⁷ The business model of mobile traders could be considered avoidance activity for the purposes of the CCCFA as their structure can be designed so they are not considered a consumer credit contract. If appropriately worded, there may be room to capture them as a lender under an anti-avoidance provision and make them subject to the rules of the CCCFA.

¹⁶ The Australian Government the Treasury. (2016) Review of the small amount credit contract laws. Final Report. Commonwealth of Australia, Canberra.

¹⁷ <http://kmo.ministers.treasury.gov.au/media-release/105-2016/>

Q15: Which options for changes to cover additional credit contracts would you support? Which would you not support? Please explain how you made your assessment.

27. Mobile traders (including mobile shops and door-to-door sales) engaging in predatory behaviour and high purchase costs are reported as a significant issue by some communities in Auckland. Option B to prohibit the price of goods or services sold on credit from exceeding the cash price or recommended retail price is supported as it gives greater transparency for borrowers.

Q25: Which options for changes to the regulation of debt collection would you support? Which would you not support? Please explain how you made your assessment.

28. Primarily we support an approach that firstly focuses on prevention of inappropriate lending, reducing the need for debt collection.

29. If debt collection agencies are behaving ethically, it would be expected that they would provide key loan information (Debt Collection Option A) and create an affordable repayment plan (Debt Collection Option B) as detailed in the Responsible Lending Code. We therefore support this being mandatory.

30. We support making third-party debt collection agencies directly subject to the CCCFA (Debt Collection Option D). As with other actions, this needs to be accompanied by monitoring and enforcement to ensure compliance.

Q27: Do you think small businesses, retail investors or family trusts should have the same or similar protections to consumers under the CCCFA? Please explain why/why not.

31. A report for the Ministry of Pacific Peoples noted that Pacific business start-ups may have greater difficulty obtaining seed funding and loans than normal. Immigrants face even greater difficulty accessing finance.¹⁸ As fringe lenders tend to target communities where there are often significant numbers of Pacific people, this could place Pacific small business at particular risk from unscrupulous fringe lending. We support the extension to small businesses.

Q28: Are there any other issues with the CCCFA or its impact on vulnerable people that are not addressed in this discussion paper? If so, what options should MBIE consider to address these issues?

32. An unintended consequence of more prescriptive legislation is avoidance activity where lenders find a way around provisions. We note that the Australian Government supported introduction of anti-avoidance provisions to limit this.¹⁹ These were intended as a systematic

¹⁸ McKernon S, Bennett S. (2011) Pacific Island Communities and Social Enterprise: discussion paper. Ministry for Pacific Peoples. Wellington.

¹⁹ Brody G. (2017) Responsible Lending: lessons from Australia. University of Birmingham. Available from: <https://www.birmingham.ac.uk/Documents/college-social-sciences/social-policy/CHASM/briefing-papers/2017/CHASM-Briefing-Paper-BP5-2017.pdf>

response to avoidance practices, rather than individual responses to specific practices. We recommend incorporation of anti-avoidance principles.²⁰

Other comments

33. Families report resorting to high-cost short-term lending because of a lack of other options.²¹ Protecting lower-income communities from predatory and unscrupulous lending is important, but is only one part of a larger approach needed to address the social and economic factors which cause the need for high-cost lending in the first place. Until such issues are fully addressed, there needs to be affordable public and private short-term credit and micro-financing for high-need families provided in a mana-enhancing way.
34. Improving financial literacy is important to build greater protection for consumers. This is particularly important for low-income households and communities for whom limited income makes financial management a daily challenge. We support a programme of work to improve the financial literacy of communities.
35. There is currently a lack of data to monitor how the CCCFA is doing. We support ongoing collection and public reporting of such data.
36. Thank you for the opportunity to submit on the review of Consumer Credit law.

²⁰ <https://static.treasury.gov.au/uploads/sites/1/2017/10/c2017-t229374-Explanatory-Memorandum-1.pdf>

²¹ Garden, E. (2014) Speaking for Ourselves: the truth about what keeps people in poverty from those who live it. Auckland City Mission, Auckland.

Appendix 1 - Auckland Regional Public Health Service

Auckland Regional Public Health Service (ARPHS) provides public health services for the three district health boards (DHBs) in the Auckland region (Counties Manukau Health and Auckland and Waitemata District Health Boards).

ARPHS has a statutory obligation under the New Zealand Public Health and Disability Act 2000 to improve, promote and protect the health of people and communities in the Auckland region. The Medical Officer of Health has an enforcement and regulatory role under the Health Act 1956 and other legislative designations to protect the health of the community.

ARPHS' primary role is to improve population health. It actively seeks to influence any initiatives or proposals that may affect population health in the Auckland region to maximise their positive impact and minimise possible negative effects on population health.

The Auckland region faces a number of public health challenges through changing demographics, increasingly diverse communities, increasing incidence of lifestyle-related health conditions such as obesity and type 2 diabetes, infrastructure requirements, the balancing of transport needs, and the reconciliation of urban design and urban intensification issues.