

Submission on discussion document: Consumer Credit Regulation Review

Your name and organisation

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Organisation	CBNZ Inc

Responses to discussion document questions

Regarding the excessive cost of some consumer credit agreements

1	<p>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?</p> <p><i>Yes, there are very significant problems identified with high-cost lending, even when it is legally compliant. Too often clients spiral into uncontrollable debt, made worse by extortionate interest rates. A number of clients are reported to have paid a loan for a year, yet they still owe the same amount. Some have paid loans for 3 years, yet their balance is higher than when it was started - It has been suggested that most financial mentors would have clients who would fall into this category. Furthermore, too often the item purchased (e.g. a car), has passed its 'used by' date before the loan has been repaid.</i></p> <p><i>Comments from one budget service reported that 50% of its clients had fallen prey to high interest loans. Most financial mentors would report having some clients who have unmanageable debt as a result of high interest loans.</i></p> <p>.</p>
2	<p>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?</p> <p><i>(Option A) is seen as a second choice, with the amount to be paid back not to exceed 100% of the loan.</i></p> <p><i>It was suggested that fees should not charge interest. Furthermore, one budget service suggested that the amount to be paid back should not exceed 50% and that the interest rates should always be per annum.</i></p>
3	<p>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?</p>

[Insert response here]

4

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?

One CBNZ member suggested a limit be put on the number of 'high interest' loans given to any one borrower. In addition, it is suggested that loans need to be in the applicant's name, not in the partner's name, as on many occasions a client is unaware that a debt is in their name.

5

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.

Members felt strongly that interest rates should be capped, with high cost interest loans being prohibited (Option C). There was a preference for capping levels at 25 – 30% to align with banking credit interest rates.

High interest rates typically result in defaults, with additional fees and charges which are unsustainable. Such high rates are causing increased hardship on clients in the community.

High interest rates are resulting in many financial mentors reporting an increase in the number of KiwiSaver hardship and insolvency applications, as well as hardship variations to lending companies. There appears to be a huge difference as to how 'lenders' respond to hardship variations. These two hardship applications illustrate this:

Client 1 – hardship application accepted by lender. Statement shows that client is now only paying interest, repaying nothing off the principal.

Client 2 – hardship application accepted by lender. Two debts were combined, the loan is being paid back over longer period of time, with both interest and principal being repaid.

Comment was made that clients are sometimes 'forced' to go down the insolvency path as their high interest lender requires 'immediate' repayment, but refuses to accept lower repayment options.

It is not uncommon for clients to 'pawn' items in a desperate attempt to pay for basic essentials, such as food and power.

Regarding continued irresponsible lending and other non-compliance

6

If directors have duties to take reasonable steps to ensure that the creditor complies with its' CCCFA obligations, should any duties apply to senior managers?

A combination of all 3 registration options suggested may help to address issues of irresponsible lending and non-compliance. Of members surveyed, 90% agreed in the

	<p><i>importance of increasing the requirements for who is allowed by be a lender. A 'fit and proper' test for both directors and general/senior managers is appropriate, with the Commerce Commission given powers to de-register a lender.</i></p>
7	<p>If there are to be more prescriptive requirements for conducting affordability assessments, what types of lenders or loans should these apply to?</p>
	<p><i>90% of CBNZ respondents to our survey reported that rules should be more specific around affordability testing and advertising. There should be standard affordability tests that all lenders can use, including a requirement for 'pay slips'. Suggestion that if lender has concerns of the potential affordability of a loan, that they refer client to a budget service for an assessment, and to bring back a cash flow/budget statement as part of their affordability assessment.</i></p> <p><i>The importance of easily understandable 'disclosure' statements is essential (this would include production of statements in variety of languages, including facility being made for those who have hearing or visual difficulties). Some responsibility still remains with the client to disclose all their debts while applying for a loan.</i></p>
8	<p>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?</p>
9	<p>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?</p>
	<p>The Responsible Lending Code should be binding so that the approach of the law is rules-based instead of 'principles' based. This would ensure that breaches of the Code could be enforceable.</p>
10	<p>Do you agree with our assessment of the costs and benefits of the options to reduce irresponsible lending and other non-compliance? 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?</p> <p><i>[Insert response here]</i></p>
11	<p>Do you have any suggestions for the design of options for reducing irresponsible lending and other non-compliance? If so, what would be the impact of your proposed options on borrowers, lenders and the credit markets?</p>

Concern has been raised regarding wage attachment orders, or wages deduction authority. This means that repayments are taken off the borrower's income before they receive wage. Although the borrower must sign their approval, this often seems to be obtained under duress. Design for options to reduce irresponsible lending and non-compliance should take this practice into account.

The discussion document doesn't take into account the use of credit cards and credit card debt. More emphasis should be placed on this area. Promotional material for such cards, is seen as 'encouraging' spending by enticing clients to 'earn bonus points'.

12

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.

Regarding continued predatory behaviour by mobile traders

13

Do you agree with our assessment of the costs and benefits of the options for covering additional credit contracts under the CCCFA? 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?

CBNZ members who responded agreed with both the need to include more sales of goods on credit in the CCCFA, and to require a fair sale price.

Additional comments made include:

(1) The importance of ensuring the borrower knows exactly how much they will paying on interest. Too many clients do not know what the true sale price on a specific item.

(2) Charging 'interest' as a separate item, would allow mobile traders to be covered under the CCCFA.

(3) Prohibit the price of goods on credit from exceeding actual cash price of goods. All contracts should be required to show full RRP of goods sold, alongside full description of actual goods sold, e.g. TV make and model, year of manufacture.

(4) Suggestion that mobile traders have a 'good practice bond' that has to be paid yearly.

14

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?

[Insert response here]

15

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

[Insert response here]

Regarding unreasonable fees

16

If prescribed fee caps were introduced, who should they apply to, and what process and criteria should be used to set them?

Prescribed fee caps to be given for each type of fee, with certain fees being prohibited. Fees to be explained clearly to clients at the time of contract – important to ensure that client understands fees prior to signing up to loan.

One member suggested consideration to be given to prescribing a fees structure within the Act.

90% of CBNZ respondents agreed with fee capping; with a further 60% suggesting that lenders should be able to prove that their fees are reasonable.

Financial mentors have reported that on some occasions penalty charges have exceeded the actual amount borrowed and the interest calculated for the whole term of the loan. In such cases, the clients make no headway at all on reducing their loan.

Investigation to be given to a 'time limit' on a loan, so if a client buys a product, they don't end up paying 10x the original amount 20 years later.

Concern that vulnerable clients don't read the contract, let alone the fine print, or fully understand it. They are so desperate to get the money, they'll just blindly agree to terms. Fee capping may give such clients some level of protection.

17

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?

[Insert response here]

18

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

[Insert response here]

19	Which options for changes to fees regulation would you support? Which would you not support? Please explain how you made your assessment.
	<i>[Insert response here]</i>
20	Have you seen issues with excessive broker fees, or other unavoidable fees charged by third parties, being added to the loan? If so, are there any specific changes that should be made to the regulation of third-party fees? What would be the impact of these changes on lenders, borrowers and third parties?
	<i>[Insert response here]</i>

Regarding irresponsible debt collection practices

21	Is this an accurate picture of the problems for consumers experiencing debt collection? Do you have information that confirms or refutes these issues, or sheds light on how widespread or severe they are?
	<p><i>Harassment of debt collectors is a major issue for clients, including ‘bombing’ of text messages, with many receiving 5/6 phone calls a day from early morning until 10 pm at night– sometimes 24/7 contact. They have also reported debt collectors arriving on their doorsteps with direct debit payment forms, with no statement or paperwork regarding the alleged debt. Such harassment has a huge impact on vulnerable borrowers, adding to their stress levels, with other negative health and social consequences for borrowers and their families.</i></p> <p><i>Many clients do not know or understand the process of debt collection. They are fearful that they will take belongings that have nothing to do with debt. Clients are often even more fearful when debt collectors dress like police officers, with some afraid that they may be thrown into prison. Foreign debt collectors are also unaware of NZ legislation in this area.</i></p> <p><i>There is also sometimes a difference in ‘corporate values’ of the original lender, and debt collection agency, which may also adversely impact a client.</i></p>
22	What information should be provided to borrowers by debt collectors? When and how should this information be provided?
	<i>(1) More disclosure at the start of the debt (as suggested in Option A), including its relationship with the original loan company.</i>
23	Do you agree with our assessment of the costs and benefits of the options for addressing irresponsible debt collection? 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?

Debt collection agencies vary greatly in their ability to assist a client who has outstanding debt. Recent cases reported are:

*Client (1) – Financial Mentor helped client to apply to ‘lender’ for hardship variation, which was accepted. However, on client statement, only the INTEREST is being repaid, **not** the principal. Result - No progress being made by client in the repaying of debt...*

Client (2) – ‘Lender’ combined two debts, extended the length of time for the loan to be repaid; more ‘affordable’ repayment scheme arranged; both interest and principal are being repaid. Result – Loan will be repaid.

N.B. Many clients are forced into ‘insolvency’, when negotiation with debt collection agencies fails. When debt agency does not negotiate, it often ends up the loser too when clients enter down the insolvency route.

24

Do you have any suggestions for the design of options for addressing irresponsible debt collection? In particular, what is an appropriate frequency of contact with debtors before (and then after) a payment arrangement is entered into? Please state the likely impact of your proposed options on borrowers, lenders and the credit market.

25

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.

- (1) More disclosure at the start of debt collection process.
Vulnerable, stressed clients frequently do not understand the process or their rights. Debt collection agencies should be made to disclose information so that full understanding is given, without adding additional stress.*
- (2) Requirement of debt collector to offer affordability repayment plan.
Too much variation in the way different debt collection agencies work with clients. Affordable repayment plans work in the favour of both the client and the lender, and careful consideration should be given to such arrangements.*
- (3) Limited contact between collector and borrower, with potential for borrower to nominate a representative that the debt collector may contact instead.
Harassment of ‘borrowers’ is extremely harmful, often resulting in negative health implications, including severe mental health difficulties.*
- (4) Additional regulation making the debt collector agency directly subject of CCCFA requirements.
This would go some way to preventing malpractice.*
- (5) Limiting fees that external debt collection agency can impose.
Additional fees may escalate and get out of control, making it even less affordable for the borrower to be able to repay a loan, again ‘forcing’ them down the insolvency route.*

Regarding other issues

26	Are you seeing harm from loans to small businesses, retail investors or family trusts as a result of them not being regulated under the CCCFA?
	<i>Many small businesses, retail investors or family trusts, are ill equipped or well resourced enough resourced to make informed decisions. Consideration should be given as to how best to reduce such harm.</i>
27	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.
	<i>[Insert response here]</i>
28	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?
	<p><i>(1) Responsible Lending Code to be binding, with breaches being enforceable.</i></p> <p><i>(2) A) Credit Card / Overdraft limits – unsolicited ‘increases’ in limits often provides an ‘invitation’ to clients to ‘spend more’. Credit card companies to be prohibited from sending letters, following pay back of a loan, informing client that their loan has been repaid and as a ‘thank you’, their credit limit has been increased ... enticing them to spend even more!</i></p> <p><i>B) Greater transparency of credit card fees – e.g. estimated time of repayment if only ‘minimum payment’ is made.</i></p> <p><i>(3) More consideration given to the ease of ‘online’ borrowing and associated regulation. Promotion of ‘3’ or ‘5’ minute loan applications’ – hard to believe that such lenders comply with ‘responsible lending’. Advertising frequently relates to ‘faster borrowing’ or ‘you could do better ...’ all potentially encouraging consumers to buy more and increase their too often unsustainable debt level.</i></p>

Any other comments

	We welcome any other comments that you may have.
	<p><i>Additional comments made by CBNZ members include:</i></p> <p><i>(1) It is also noted that Banks and credit card debt is also a major cause of ‘uncontrollable’ debt. A) Regularly increasing limits provides an opportunity for a client to fall further into debt. B) Even if a client is able to make ‘minimum payments’ they will not make headway to reduce their debt.</i></p> <p><i>UK legislation changes now requires these lenders to take steps to notify clients that</i></p>

are paying 'minimum' amounts – this is seen, by many in the UK, as just not going far enough to prevent further debt.

- (2) Concern has been raised over wage attachment orders or wages deduction authority, meaning that loan repayments are being taken off the borrower's income before they receive wages. This is understood to often be the 'last hope' for a lender to be repaid, but some protection for the 'borrower' seems appropriate.*

Concern is also given regarding Direct Debits, especially relating to the difficulty of 'stopping direct debits', with a number of lenders making more than one copy of a direct debit form, so when one direct debit is 'switched off', another is put in place, which is seen as being unscrupulous behaviour. Clients frequently find it hard to stop such payments, which adds to their stress levels and overall mental health.

- (3) Greater resources to be given to the Commerce Commission to speed up their ability to respond to breaches.*
- (4) Potential robust 'audit' procedures (similar to those required by charities for DIA) requiring annual returns.*
- (5) Important to encourage an environment of 'seeking out' and 'prosecuting' those lenders who are carrying out illegal practices. Possible 'reward' for whistle blowers leading to successful prosecutions.*
- (6) Consideration to be given to prevent loans from being 'topped up' – they should have to be repaid, before more credit is offered.*
- (7) TV shop should disclose full amount of cost of product advertised on TV.*
- (8) Some lenders still using 'all present and acquired property' to try and repossess items. More advertising regarding what can and cannot be added to the list of 'secured items' may be required, as financial mentors have reported abuse.*