CHRISTCHURCH BUDGET SERVICE (INC)
Te Whakaruruhau ki Otautahi
(Established 1967)
Unit 4 473 Brougham St
P O Box 10089
Christchurch 8145
Ph: (03) 3663 422
Txt: 021 08271472
Email: chchbudget@gmail.com

A community where everyone is financially literate and has the ability to control their own financial future and lives with pride for themselves and their families

Submission

To MBIE

On the review of the

Consumer Finance and Credit Contracts Act 2014.

1st August 2018

1. Excessive costs

Option One	Require that the amount to be paid back (including interest and fees) cannot exceed 100% of the original loan. Possible refinements of this proposed law change would be: 1. that it would not be possible to lend to a borrower who had defaulted on a high cost loan and not yet repaid that loan; *and* 2. that there was a limit of one high cost loan per borrower and a cooling off period between repayment of one high cost loan and a new high cost loan.
Option Two	Setting limits on the interest rate (of between 200% and 300%) which would include both interest and fees
Option Three	Maximum interest rates that could be charged being between 30% and 50%. (This would include interest and fees). Option 3 would effectively prohibit high cost lenders.

1.1 Interest rate and fees limits

Christchurch Budget Service (CBS) recommends a maximum annualised interest rate of 25 to 30% and a limit on fees that limits the actual cost of borrowing including debt collection fees and on-sold debts (fees plus interest) to a maximum of 50% per annum with a maximum of fees plus interest being no greater than 100% of the original loan

1.2 Evidence that high interest rates are causing hardship

Low and fluctuating unreliable incomes are the principle problem facing CBS clients and their families as they provides a significant barrier to accessing interest free assistance and correct entitlements from New Zealand Work and Income and IRD Working for Families entitlements. Short-term lenders recognize vulnerable working people as both a lucrative and high risk market which provides justification for punitive fees and interest rates. CBS experience is that finance company debts grow very quickly when inevitably clients with fluctuating incomes miss a payment due to insufficient income one week. While they may catch up the following week they are already both further in debt and have insufficient funds to meet basic living costs. This puts them in even greater hardship which tends to compound with the compounding debt. Clients then begin to miss essential payments such as rent, power, and school fees in order to control their finance company debt which never goes down.

1.3 IRD debt

IRD debt, particularly child support, income tax, GST, and (occasionally) PAYE and are among the highest cost debts that people present with when penalties and interest charges are accrued. CBS budget advisers have found that there is no apparent consistency with regards to how IRD treat these debts.

1.4 Longer term loans including mortgages.

One legacy of post-earthquake Christchurch and surrounding districts is middle income earthquake refugee families who have taken out substantial mortgages to invest in executive homes in new suburbs. Sadly these homes and lifestyles come with a range of unexpected costs including: covenants that require things like professional landscaping and fencing to a particular style and standard within a strict time frame; additional travel and transport costs; and lifestyle and furnishing expectations commensurate with the new housing. As a result many highly mortgaged homeowners also have substantial consumer debt, particularly credit cards and car finance. All it takes is a redundancy, drop in income, illness and or an unplanned pregnancy for the whole mountain of debt to come tumbling down. This risk become increasingly acute in the face of a flat or declining real estate market in which CBS finds many are over geared. Increasing mortgage interest rates are a terrifying prospect.

1.6 Extent of debt among CBS Clients

87% of 163 clients registered with CBS between Feburary and June 2018 presented with substantial debt. The average debt at registration was $30,123 excluding mortgages and student loans. The range was from $200,000 to less than $1,000. It is normal that clients underestimate their total level of indebitness. Most debt is consumer debt with the banks being the largest lenders, followed closely by Harmoney and car finance companies, Latitude Finance (Gem Visa) and Credit Cards.

2. Irresponsible lending practices

Option One	Some form of licensing requirements imposed on lenders, or tougher requirements around registration under the existing Financial Service Providers (Registration and Dispute Resolution) Act. Including: Commerce Commission power to deregister a lender; a 'fit and proper' test for directors and general managers; introducing a comprehensive licensing scheme.
Option Two	Increased enforcement measures around breaches of the responsible lending principles, coupled with increased resourcing of the Commerce Commission. These include: penalties for breaching the responsible lending principles; have lenders prove they have made an affordability assessment; imposing a levy on lenders to fund the ComCom's enforcement; enabling borrowers to require lenders to work with their financial mentor/budgeting adviser in *good faith.*
Option Three	The law would include more prescriptive requirements around affordability testing and advertising. This means the lender would have to show that they went through a defined procedure when they lent, and that their decision could be reviewed. There could also be tougher requirements around advertising, for example requiring risk warnings or prohibiting advertising of high cost lending. Finally, one option is to require that the disclosure document be in the same language as the advertising

2.1 CBS argues that parts of all three options should be included in law reform.

2.2 Comprehensive licensing scheme

CBS recommends that a comprehensive licensing scheme, including the ability to deregister lenders, is considered as an essential central plank to effective law reform, however this must also come with properly funded, robust and consistent enforcement. Self-regulation has proven to be a failure across multiple industries and there is nothing to indicate that the consumer finance industry would be any different.

2.3 Fit and proper test.

The licensing scheme must include a 'fit and proper' test for directors, general managers, loans officers and contracted agents including retailers at the point of sale. The introduction of an extended version of the financial advisor's legislation is suggested plus a lifetime ban of any person who has been prosecuted of theft, fraud or of any criminal charges relating to their financial probity. Professional Lawyers, accountants and registered financial advisors who have been struck off for professional and financial misdemeanours should also be included in the ban as should company directors who have involved in serial company bankruptcies where creditors, including contractors and employees have been left out of pocket.

2.4 Enforcement measures.

Increased enforcement measures including writing off a debt if the loan has been approved in an irresponsible manner or it cannot be proved that the lender, be it a finance company, credit union, peer to peer lender or a bank made an adequate assessment of affordability and undue financial hardship.

2.5 Clear focus on working with budgeting agencies

A clear focus on working with budgeting agencies has the potential to improve lender behaviour. From the third option, a defined procedure about what an adequate affordability approach looks like would be ideal. And warnings on advertisements are in line with other areas of law.

2.6 Inaccessible income

CBS argues that money not deemed as income by the IRD (e.g. board payments received, Family tax Credits, Child Support, Disability Allowances) should not be listed as relevant to affordability assessments

2.7 Advertising

CBS argues that a regulatory approach be taken to the advertising of credit across all media. CBS recommends that all advertising must include references to lenders obligations under the CCCFAct and a recommendation that prospective borrowers seek professional advice from a budget / BFC service or an independent registered financial advisor prior to borrowing money

2.8 Enforcement measures.

Increased enforcement measures including writing off a debt if the loan has been approved in an irresponsible manner or it cannot be proved that the lender, be it a finance company, credit union, peer to peer lender or a bank made an adequate assessment of affordability and undue financial hardship.

3. Predatory behaviour by mobile traders

Option One	Any credit contract that charged default fees would be treated as a "consumer credit contract" and therefore would be covered by the CCCFAct. (These products would already be "credit contracts" as defined in the CCCFAct because that term includes contracts to purchase goods on deferred payment terms).
Option Two	Prohibit the price of goods (or services) being sold on credit terms when the price of the goods (excluding interest and fees) exceeded the cash price of the goods (or services). This would have the effect of forcing the additional element of the price to be identified as interest.

3.1 Mobile traders represent just one example of numerous predatory retailers and lenders that target financially vulnerable people

CBS recognizes and agrees that predatory behaviour mobile traders represents a significant risk to vulnerable people however CBS also argues that there are a number of predatory retailers, particularly those offering the hire to buy and or offering products like

and zero deposit and interest free deals on inflated retail prices that deserve the same attention.

CBS prefers Option 2 because the charging of interest rates indicates to the borrower that they can purchase the item for the cash price at a traditional shop. Charging the additional element of the price as interest would mean that mobile traders and similar would be covered by the CCCFAct.

However, the benefit of Option 1 is that it brings online traders including layby companies (a new business model such as Afterpay, Oxipay, and Partpay) into coverage by the CCCFAct. These business models, where a consumer purchases goods and pays off the goods in a small number of weekly instalments risking a default fee is charged, are relatively new. We think these business models should be covered by the CCCFAct.

4. Unreasonable fees

Option One	Require lenders to have reasonable grounds for their assessment that a fee is not unreasonable, calculating fees by reference to the cost of the activity being recovered and keep records to show how fees have been calculated.
Option Two	Prescribe in the law the maximum amount that may be charged for each type of fee and prohibit certain types of fees. Different types of fees and caps would be permitted for different types of transactions.
Option Three	Bundle fees and interest rates into one rate so that borrowers would be told the one rate in the disclosure and advertising material.

4.1 CBS supports Option 2

Option 2 lays down in law the maximum amount that may be charged for each type of fee, and ban certain types of fees including multiple fees for one transaction/default. Different types of fees and caps would be permitted for different types of transactions. This is the clearest option for capping fees.

4.2 Interest rate and fees limits

A limit on the actual cost of borrowing including debt collection fees and on-sold debts (fees plus interest) to a maximum of 50% per annum with a maximum of fees plus interest being no greater than 100% of the original loan

5. Irresponsible debt collection practices

Option One	More disclosure at the start of the debt collection process. The lender or assignee debt collector would have to disclose certain key information to the borrower at the start of the debt collection process including on the rights of the borrower
Option Two	Require the debt collector to offer the borrower an affordability repayment plan. The borrower would first be offered a new affordability assessment, then- if that was accepted - a new repayment schedule would be prepared with the borrower, based on the maximum amount affordable.
Option Three	Contact between the debt collector and the borrower would be limited, and the borrower could request no further contract, and would then nominate a representative that the debt collector must contact instead.
Option Four	Putting additional regulation on debt collectors that are acting as agents of the lender, making the agent directly subject to a number of the CCCFAct requirements, such as compliance with the lender responsibilities and being a member of a dispute resolution scheme.
Option Five	Limiting the fees that an external debt collector can impose. Only actual costs incurred by the debt collector could be passed onto the borrower.

5.1 CBS supports all five options in relation to debt collection. This is an important area in which New Zealand law is particularly weak.

5.2 CBS recommends five specific additions:

- the crystallization of debt on "recoveries status". That means that when a debt is 180 days old and not able to be rehabilitated, it should be "locked" in line with the Credit Repossession Act.

- action to address the issue created by creditors not relinquishing their security, even over loans that have been sold to collection agencies. This effectively prevents debtors entering into insolvency to address their debt.
- to limit the number of calls a debt collection agency may make to an agency to 1 call/ text per week. Anything beyond that would be considered harassment.
- to ban the use of vague and potentially illegal threats clearly employed to intimidate the debtor. These include threats of legal action where there is no intention to carry through; threats to contact the debtor's employer; references to the debtor's credit rating and threats to uplift unsecured property.
- to set a time frame to a minimum of six months before a collection agency can review an agreed arrangement and any review must be on the basis of a change in the debtor's material circumstances and must be consistent with the CCCFAct. .

6 Other issues that CBS considers to be important

I. The Responsible Lending Code should be binding so that the approach of the law is rules-based instead of principles-based. This ensures that breaches of the Code can be enforceable.

II. CBS argues that wage attachment orders, or wages deduction authorities should be based on net wages after tax, child support and student loan repayments. Attachment orders should only be considered following a full assessment of the debtors financial position, and net wages after the costs of employment such as transport to and from work, child care, tools of trade, work clothing and the costs of private motor vehicle should the employment be dependent the debtor owning a vehicle. Attachment orders should then be limited to 25% of the surplus net wages after the costs of employment after allowances are made for essential costs such as rent (or Mortgage, Rates and Insurance), power, food and critical hire purchases.

Note: *If there are insufficient funds available after the above deductions for the debtor to meet his or her obligations the loan should be assessed by the courts vis-à-vis compliance with CCCFA at the time the loan was made.*

III. Monitoring on the ground (especially by budgeting/BFC agencies) and the Commerce Commission ability to respond more quickly both need to be better resourced.

IV. The paper lacks any focus on credit cards, which clearly have significant impact and are the focus of much policy debate in Australia and the UK at present.

V. The paper lacks specific attention to debt consolidation loans and the advertising and marketing of said loans. CBS argues that the CCCFAct needs to put the onus on lenders to ensure that there is absolute transparency regarding the terms and real costs of debt consolidation including fees and interest over the loan period with compared with the potential buyer's current cost of debt. If a debt consolidation loan is approved then the lender should settle all debts directly with the creditors covered by the debt consolidation loan.

VI. The paper lacks focus on the role and responsibilities of retailers who are effectively acting as finance companies commissioned agents. CBS argues that any retailer that is effectively receiving a fee for selling credit is a commissioned agent and as such needs to be covered by the CCCFAct.

7. Mandatory Assessments by lenders.

To be effective, fair and easily administered all lenders including Banks, Finance Companies, Credit Unions, legal Trust Funds and other registered financial institution that lend money should be required to make affordability assessments in accordance with a defined procedure

8. Lenders ability to rely on information provided by the borrower

CBS argues that lenders must be liable for the risks they incur when they choose not to verify information provided by the borrower. This change would encourage lenders to take a more cautious approach to lending and by doing so protect themselves and their potential clients from financial hardship.

8. Inclusion of small Businesses

CBS specialises in providing budget and debt management services for people who are in work. As such CBS is at the cutting edge of the casualised labour market in which large numbers of working people are effectively treated as independent contractors, self-employed and or sub-contractors on a take it or leave it basis. It is common to find that these small businesses and independent traders incur business costs and related debt from sources ranging from suppliers, banks, finance companies and the IRD. In most instances the credit is covered by a personal guarantee which effectively make the debt a personal debt, rendering any protections that may exist under the provisions of a limited liability company redundant. CBS argues that if these working people were Covered by the CCCFAct their creditors would be more cautious as lenders which would in turn help to raise the issue around the financial viability of such workplace arrangements to both the individuals concerned and to regulatory bodies.