

Submission on discussion document: Consumer Credit Regulation Review

Your name and organisation



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Organisation	FULL Balance Financial Coaching and Consulting

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 I agree that the problems are significant. Nearly all clients that seek out our help via EAP or directly, are suffering stress because they have taken on too much debt. When this debt has such high payback rates, this just puts them under more stress and starts a downward spiral where they get new pay day loans, to pay the old payday loans. Often the only way they can get out of it, is by defaulting which clearly shows that the loans were not affordable in the first place.</i></p> <p><i>These companies know they can get away with this because the legislation for responsible lending is not working, as they can blame it on the borrower for not declaring everything.</i></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>Yes I support this so it is illegal for interest and fees to continue to be added continuously. In my experience though many pay day loan lenders already cap the amount of interest charged when it gets to a certain stage. So just doing this will not stop the problem, but will stop it getting out of control in case there are some lenders are doing this already.</i></p> <p><i>The problem was that they the repayment rates are too high and they could not afford it in the first place, and the current Act is not working for responsible lending.</i></p> <p><i>I question whether this needs to be limited to high cost lenders and how you will define it. I think it needs to apply to all consumer debt purposes, i.e. not investment debt.</i></p> <p><i>I note that in some circumstances (EG GE finance in Baycorp) continue to charge interest on a debt that all gone to debt collection, on top of the already debt collection cost. If no or little affordability is made for payments, this debt could potentially go on forever.</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>
	<p><i>I think there are some major benefits missed out here. When people aren't able to access emergency lending, they are more likely to seek out help for whatever has caused them to need to money in the first place and to get professional help with their finances sooner. Whether it be an addiction, over spending, pressure from family....</i></p>
4	<p>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?</p>
	<p><i>No Comment</i></p>
5	<p>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.</p>
	<p><i>I support option A to limit the total amount payable, and think it should apply to all loans. There is obviously a business case for these loans and it is a free market, and the only reason they are causing harm is because of the high payback period. If the responsibly lending affordability was able to be enforced easily, then the harm would be stopped – that is the key here.</i></p>

Regarding continued irresponsible lending and other non-compliance

6	<p>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?</p>
	<p><i>Yes, this will make managers personally responsible and responsible for their actions.</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>All loans, how else will you determine affordability! It may be that after initial information gathering it can be seen that the person/family can easily afford the loan, and then further detail is not required. However I believe the definition of vulnerable consumer needs to include those that are already struggling and if there is evidence of that eg they can't keep up with their current debts bills (see below for more detail), then the lender would need to collect more information to verify income and expenses.</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>
	<p><i>Yes, this requirement should be removed, as in my opinion this is where the main issue and failure in the legislation is.</i></p> <p><i>The borrowers that are most likely to be adversely effected by the loans are the ones that are desperate and will lie to get the loan. I commonly see this where the borrower has not declared other loans, because they were afraid they would have not got the loan otherwise. Clients also do this by accident as well, and often forget about loans to friends or the government or loans that their partner has.</i></p> <p><i>This is going to mean more checks are going to be needed, and more information is going to be needed. This will mean that loans may not be able to be processed online or quickly, and there will be delays. This will be good from a consumer point of view as clients may think twice before getting the loan. It will be bad for the lenders as they will miss out on business and have more administration costs, which could then increase cost and fees for borrowing. But who are we trying to protect here, lenders business or the consumers wellbeing?</i></p> <p><i>It may be that these checks can be scaled down where there is evidence of high affordability, eg the client clearly shows evidence of a current surplus and is actively saving, or current high discretionary spending which can be reduced to accommodate the loan payments.</i></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>Particular attention should be given to advertising that implies the person will be better off getting a loan and their life will be better, when the reality may be a lot different. This is just false advertising.</p> <p>If you can't legislate against this, then counter advertising of the harm lending does with funding provided by government and/or a levy on lenders or from proceedings from non compliance</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>One of the major costs is going to be increases in compliance costs, risks of enforcement and less loans being given out. This is going to mean the industry is going to take a hit, and may need to increase the cost of borrowing or look for further ways to make the businesses more efficient.</i></p> <p><i>They may meet the responsible lending guidelines by taking the loans over a longer period – and this is going to mean the consumer may pay more in interest, or they may be declined</i></p> <p><i>However borrowers often need to get declined for loans in order to address their financial issues, and the positive is that they will seek out help and be more financially literate as a consequence. It may also force them to address any issues that were causing the need to borrow in the first place.</i></p>

If we are going to reduce the harm from borrowing, this needs to happen. And I am not just talking about short term loans. The harm done to people's ability to get ahead with their finances, is even worse when they are taking on larger loans over longer periods eg bank loans.

11

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?

I question how they are going to prove non compliance with responsible lending and the definition of substantial hardship and how it is proved.

They must gather correct information to determine affordability, and the law must say what that is as a minimum and evidence that they have to show they have complied.

The enforcement must be easy to take and for the consumer to be easy to report. Therefore there needs to be key elements that were checked to see if the personal was already in hardship before taking on the loan. There are easy red flags, but currently lenders ignore these as they are just interested in making money and know that they can't be taken to court easily.

It would be good also, that if they borrower receives a no to the loan, that they are then referred to a budget /financial advisor to look at other options, as there is often other ways that are in the clients better interest. It should be mandatory that this information is available from all loan providers websites/offices.

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.

Currently the legislation isn't working is because there is low / No consequences for lenders. Therefore I support greater penalties for non compliance and the ability to prosecute.

I support the banning of directors for repeat offenders, although they can of course get a relative to start the business in their name, so may not have that much effect.

I do not support Option B person tests as I think this will be a lot of administration for little reward.

Option C – I fully support the use of adequate systems and procedures in place, however I think this needs to be written into the legislation rather than having a license. Also the obligation to provide a copy to the borrower or agent is supported, as currently when I have asked for to prove responsible lending, many lenders do not provide it willingly.

I also support the increasing of the levy to fund advocacy, monitoring and enforcement as this is a win/win for consumers and lenders for compliance. However I note this needs to be done with effective and easy enforcement consequences, otherwise the impact and behaviour change will be minimal.

Companies must be able to demonstrate how they determine affordability in order to confirm compliance with the act, rather than proving the consequence of substantial hardship.

Many companies would already have this in place, but experience has shown that they are not robust enough. There needs to be a certain amount of minimum checks and process improvement where it would be encouraged that where a client had defaulted or a budget advisor has got involved, what elements were missed if any, in assessing affordability in the first place.

I support that the companies have to work with advocates and need to reply in a certain time frame eg 2 working days.

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?

No comment

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?

No comment

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.

I support making sure the contract is including in the definition of the CCCFA.

I am unsure as to the restrictions on the cost of the items, as this may be too constricting to a "free market"

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?

No comment

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?

No comment

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?

No comment

19

Which options for changes to fees regulation would you support? Which would you not support? Please explain how you made your assessment.

I do not support a cap on fees, but support the current regulation.

I support the introduction of an equivalent interest rate with the current regulation of fees, and am surprised this is not in regulation already.

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 have not seen excess fees being charged. Although I note that many client forget that they have been charged fess and that the initial borrowing was larger than they realised.

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?

Yes it is common practice for debt collectors to harass clients and demand high payments, which is of course what their job is to get the debt paid back as much as they can by being the squeaky wheel. There are a lot of threats about court/legal action, which causes a lot of stress to clients, especially those clients that have never been in that situation before.

The reality is that it is just that, they are just threats and it is highly unlikely that it goes to court and even if it does the court isn't going to agree to high payments that the client can't afford.

A good budget/financial advisor can diffuse this situation and negotiate affordable payments which usually the debt collection agents will accept with suitable evidence.

However one does feel for those clients that haven't sort out professional help, and are being pressured into prioritising this debt above their families needs.

I also find that clients that are already stressed (eg single parents), will often then more likely look at bankruptcy options in order to rid them self of this stress.

I note that one particular collection company with one particular company, seem to think that it is ok to continue to charge interest after the 30% debt collection fee has been added. This seems unfair and could led to the person being charged an unlimited amount of interest, on an account that could have already had significant interest and default fees added when the loan was previously active.

22

What information should be provided to borrowers by debt collectors? When and how should this information be provided?

One of the most important issues, it when the debt is going to go on the persons credit record as this can have ramifications down the track for them, especially if their credit record is currently clean.

The borrower needs to be aware of any one off and ongoing costs as well.

This information needs to be in writing and with enough notice to enable the person to take action prevent the high costs/credit record. I would say 10 working days, given that most people get paid fortnightly these days and it make take that long to get some professional help.

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?

Option A: I think you are missing the benefit that if there is more transparency, borrowers may be more incentivised to find other options to pay in full before the extra charges are put on. Possibility creating a win/win situation, although most borrowers have probably already run out of options by this stage.

Option B: I think there would be more than a moderate reduction in harm. Although I question how you are going to determine and define and prove affordable. How would this effect the amounts that a judge currently determines rates payable at or what insolvency would require payments and allowable lifestyle costs to be?

Option C: No comment

Option D: One benefit would mean there is an even playing field for max payments, regardless where the debt is in the payment process

Option E: Collection agencies need to recoup from debts that they may never get payment from, therefore it would be difficult to come up with a direct cost of that?

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.

I'm not sure it is appropriate to dictate what is an appropriate frequency for contact when chasing a debt, although I think there needs to be a descriptive limit and limits of who they can contact eg debt collectors often ring employers to try and get hold of them or next of kin and may break the privacy act by letting them know there is a debt – There should be a prescriptive limit on how many times they can contact others and what they can disclose.

I wonder if it would be a good idea to prevent debt collection to continue to add interest on, (as the can't if it is a secured debt that has been repossessed). Most companies do this already, but there is a chance that they could start charging interest as a way to recoup costs due to legislation costs. This would then make it an even playing field as well.

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.

I support that they come under CCCFA Option D, as why shouldn't they? They are in the business of chasing credit and working out payments, and shouldn't be able to put them in substantial hardship.

I do not support Option E, as business should have the right to work out how much to charge to make their business viable.

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?

Yes people are being approved business loans eg from the likes of second tier lenders that they can't afford. Suggest that if they are taking a personal guarantee that they do need to be included.

Not had any retail investment clients that had got in trouble from borrowing.

I can't imagine that there are many family trusts that borrow money for consumer goods, although I have come across trusts that have lent money to family and not checked affordability – I would of thought this would come under trust legislation though for prudent investing.

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.

If personal guarantees are taken then yes.

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?

Have you addressed when collecting the financial information, whether the person is looked at as an individual or a couple/family. If they were just looking at an individual because they have separate bank accounts, this will probably not reflect the actual situation where they are in a long term relationship with children. Therefore detail of both persons finances are required to get an accurate picture.

Any other comments

We welcome any other comments that you may have.

The main issue with this legislation and why it hasn't work is because of adequate checks are not being done to check affordability.

There needs to be two tiers of levels of required proof to determine affordability. If borrowers show a red flag that they are already struggling, then extra information is required. The current definition of vulnerable does not include this, they may not be currently be defined as vulnerable, but are vulnerable because they are in hardship.

Please refer to red flags of hardship attached to email and below.

Here are 7 red flags that your customer may already be under financial stress:

1. They are using the debt to pay for essential bills, such as power, rent, debt arrears
2. They live up to the limit of their overdrafts and/or their credit cards are maxed out
3. They are consolidating debt, because they are having difficulty keeping up with the debt they already have
4. They are on a low income relative to the number of dependants, and are relying on government support to get by
5. The amount they spend on food relative to the number of people they are supporting is minimal (\$60 - \$100/wk/adult is normal)
6. They are not able to put any money aside for savings, or redrawing back straight away the savings
7. There is minimal discretionary spending showing on their bank account, and it is mainly bills, food and petrol.