Submission on discussion document: Consumer Credit Regulation Review

Your name and organisation

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Organisation	Good Shepherd New Zealand

Responses to discussion document questions

Regarding the excessive cost of some consumer credit agreements

1	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?
	We agree that the high cost of some consumer credit is still causing significant problems in vulnerable communities. We believe an additional reason for taking out high-cost loans is that the prevalence of these lenders in low-income communities has normalised these type of loans. We agree with MBIEs comments about the asymmetric information between high cost lenders and their customers, and believe it is unreasonable to expect a consumer to adequately assess the risk of taking on a loan when the potential impact is entirely disproportionate.
2	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?
	We support the extensions of Cap Option A. We would expect these extensions to further restrict access to short-term lending for people living on low incomes and note the importance of providing alternative solutions for these people, who will often be struggling to meet their family's basic needs. These alternatives may include microfinance products, debt advocacy, financial mentoring and welfare support.
3	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?
	High cost lenders leaving the market is listed as a cost of all three cap options. It is important to note that this is only a cost to those lenders, not necessarily to consumers, as there is no evidence that consumers benefit from competition in the small loan market. Cap Option B and Cap Option C both list under 'costs' the potential for increased illegal activity by people who have no alternatives. It is worth noting that this is not the only alternative people would seek, and that many people would not consider acting outside of the law. The lack of alternatives may mean that people choose not to borrow, or it may steer people towards financial mentors and microfinance services, leading to increased financial capability, creating a long-term benefit for the community.
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?
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.
	We support the intent of all the options presented, and believe that legislation has an important role to play in balancing out the issue of asymmetric information for the people in vulnerable communities who are affected by predatory lending. Cap Option C is our preferred option. We don't believe there are any circumstances under which charging more than 50% interest per annum is justified, considering the harm such lending can cause for people living on low incomes or who are otherwise vulnerable.

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?
	Yes. We believe that developing and implementing responsible lending systems requires accountability at various levels of organisational hierarchy. We support a model similar to Health and Safety Regulations, which promote this concept. As a comparison, we note that the liquor-licensing rules acknowledge the harm caused by alcohol by holding both the license holder and the duty manager accountable for breaches. We believe that because irresponsible lending can cause considerable harm to vulnerable communities the duties imposed on them should reflect this. We would however want to ensure that any duties did not become barriers for workers to enter the not-for-profit microfinance or community-lending sector.
7	If there are to be more prescriptive requirements for conducting affordability assessments, what types of lenders or loans should these apply to?
	We support the implementation of the Responsible Lending Code as a binding code, with requisite enforcement. We believe the Code is sufficiently clear to guide responsible practice, and would be concerned that more prescriptive requirements may result in unintended consequences.
8	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?
	We would support a slight shift in responsibility towards the lender, requiring them to consider whether a reasonable lender would make further enquiries in the circumstances rather than accepting all information provided by the client at face value.
9	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?
	We would like advertisements to include details of the reality of taking out one of these

	loans. This could include stating the percentage of an advertiser's loan book for the type of loan that is being offered that was in arrears (in the previous year). For example, that "xx% of customers with this type of loan are unable to meet the repayment deadlines of these loans."
10	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?
	Yes we agree with the assessment.
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?
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.
	We support all three registration options. We support a 'fit and proper' person registration test, and as a number of professional bodies require this, we think it is reasonable to expect this of the lending industry. We note that banks and charities already have requirements for registration and for ensuring employees are of good character. We believe organisations already covered/registered under equivalent systems should be deemed registered under the new lender registration regulations, rather than requiring lenders to register under two regimes. We support Enforcement Options A, B, C, D. Re: Enforcement Option B – we believe that directors have a critical role in governance to establish the organisational culture and framework within which the organisation prioritises responsible lending practices. We do not support Enforcement Option E as we do not think it is useful to require people to enter into discussions, and believe that many lenders are already prepared to talk to advocates, and incentivised to do so by the possibility of receiving some form of payment. We support Responsibility Options A and B. We support the intent of Responsibility Option C but acknowledge the enforcement and interpretation difficulties of contracts in a range of languages, and the difficulty establishing the difference between promotional material, and support material from a community organisation providing financial support or translations in other languages. For example, Good Shepherd NZ and BNZ have a StepUP loan product as part of our Community Finance offering, supported by MSD. While the promotional material is printed in English, a brief summary of the loan product is translated into a different language and stapled to the front so that speakers of other languages can access Community Finance loans. It is unclear whether Option C would capture this.

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?
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?
	We believe consumer goods should not be able to be sold door-to-door on credit – mobile traders should have to take full payment. Consumers who are vulnerable and under serious financial pressure often deliberately avoid shops as a strategy to save their money. It is concerning that they should have to rally another line of defence against lenders visiting them in their own homes. Stopping door-to-door sales on credit would create a dis-incentive for this type of practice.
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.
	We support both options.

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?
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?
	Yes. Although we believe the costs for Option A are overstated as it should be fairly simple for a sound business to document the basis on which it has set its fees.
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?
19	Which options for changes to fees regulation would you support? Which would you not support? Please explain how you made your assessment.
	We support Fees Option A because it is reasonable to ask a business to understand the cost behind what it is charging consumers, and we would expect responsible lenders to already know this information. It is also reasonable for lenders to be able to recover legitimate costs, which may be restricted if any fee cap is not appropriate and/or regularly revised.

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?

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?
22	What information should be provided to borrowers by debt collectors? When and how should this information be provided?
	[Insert response here]
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?
	[Insert response here]
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.
	[Insert response here]
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.
	We support Options A, C, D and E. We do not have a position on Option B.

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?
	[Insert response here]
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.
	Research into economic abuse (as defined in the Domestic Violence Act 1995) shows that manipulation of debt by perpetrators of family violence is widespread, and leaves their partners at significant and unfair disadvantage. This can include such behaviour as coercing a partner to take on the liability for a loan, and making no payments towards a joint debt. Responsible lending practices would make reasonable enquiries to determine whether a person entering a credit contract would be the person benefitting from entering that contract. In addition, there should be provisions to waive debts that have been incurred by coercion or force. We believe MBIE should consider raising awareness among lenders of the possible signs of economic abuse, including providing referral pathways for those affected by abuse, and guidelines for fair recovery processes where one partner has been abused and left with debt liability. (References: Milne, S. Maury, S. Gulliver, P. Eccleton, N. (2018) 'Exploring Economic Abuse in New Zealand.' Jury, A. Thorburn, N. Weatherall, R. (2015) 'Women's Experiences of Economic Abuse in New Zealand.' Corrie, T. McGuire, M. (2013) 'Economic Abuse: Searching for Solutions.')
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?
	[Insert response here]

Any other comments

	We welcome any other comments that you may have.
	We believe high cost loans cause considerable harm to people on low incomes or who are otherwise vulnerable. We support changes that shift the onus on the lenders to prove that they are of good character and have not previously engaged in predatory practices. We believe this will reduce the number of predatory lenders repeatedly looking for legislative loopholes around which to develop new products. We also support measures that prevent harmful practices occurring, rather than relying on consumers to complain after something has gone wrong, as many vulnerable consumers do not have agency in these situations and harmful practices will go unreported. We support some form of cap on interest and fees that can be charged, to help address the issue of asymmetric information between lenders and people who borrow from high cost lenders. We support increased and proactive enforcement against lenders operating outside the law. We believe it is vital that alongside any legislation restricting lending to people who are already financially excluded from mainstream borrowing options there is investment in fair

and affordable alternatives, and appropriate social service responses, to mitigate many of the costs of such restrictions. These alternatives include microfinance products, financial mentoring, debt advocacy and appropriate welfare support. We also support welfare and income increases that reflect the cost of living in New Zealand.

Loans provided by charitable organisations that do not attract interest, fees or penalties currently sit outside the CCCFA. Care will need to be taken to ensure that any changes to the CCCFA do not unintentionally affect provision of these loans.

We believe there is scope for banks, credit unions and community lenders to be defined differently to lenders providing high-cost loans to low income and vulnerable people, as the latter are causing most of the lending-related harm to these communities.