Submission template

Review of Consumer Credit Regulation
Submission on discussion document: Consumer Credit Regulation Review

Your name and organisation

Name	Louise Peters
Organisation	Insurance & Financial Services Ombudsman Scheme

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 do not have sufficient data to shed further light on the frequency and severity of high cost lending issues.
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?
	The enquiries we have had often concern loans that have escalated with default interest. However, we do not have the data to usefully comment on the impact of the extensions. We receive a small number of Consumer Credit Contract complaints relative to the number of credit providers and credit contracts in the market. It is not clear why we receive few complaints, but this is also the experience of the other dispute resolution schemes and the Commerce Commission.
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?
	We agree with your assessment of the costs and benefits. We do not have data to assist with your assessment.

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?
	We do not have any specific suggestions for the design of options for capping interest and fees, other than that a cap is highly likely to change lender behaviour if it is effectively enforced.
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 agree option A may lead to consumers taking loans with multiple lenders to cover earlier loans.

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 would align the duties and responsibility structures in the Act with other legislation, such as the Health and Safety at Work Act 2015.
7	If there are to be more prescriptive requirements for conducting affordability assessments, what types of lenders or loans should these apply to?
	Our experience is that affordability assessments are not being done, or not being done properly, especially where there is history of dealings between the parties and the lender relies on historical information. In that case, we have seen lenders simply ask the borrower if the information the lender already holds is up-to-date, without telling the borrower what the information is. They also rely on information already held that is not capable of being used to assess the borrower's financial position, or would not meet the current standard of what is required. In many of those cases, lenders have put their mind to the test and believe they had done enough to meet their obligations. Given that, we believe more specific or prescriptive requirements about the basic information required in order to complete an assessment and how to assess it, would clarify the standard. We believe a base assessment should apply across all forms of loans with additional requirements for high cost, or high risk, loans. **Case 00206263** In 2014, Ms S had a consumer credit contract, which was repaid with no issues. In January 2017, she arranged 2 consumer credit contracts to buy a caravan and a car. Both included "*Payment waiver – Platinum*" with premium of $3,344.37 and $1,232.24 respectively. In 2017, Ms S was diagnosed with chronic reflex pain syndrome and deemed unfit to work for 2 years. She made a disablement payment claim under the Payment waiver, however, was not eligible because she was not employed. Eventually, Ms S sold the car and the caravan and repaid both loans because she had difficulty repaying the loans.

	Ms S complained to the IFSO Scheme that she should not have been sold the Premium Waiver on either loan, as she was not employed when she applied for either. The lender said it relied on the financial information Ms S had provided in the 2014 application when it considered the 2017 applications, which stated Ms S was employed. Having considered the CCCFA and the information the lender relied on, the case manager decided that, while the 2014 information might have met the lender's obligations to make enquiries in 2014, it was not sufficient to meet the enhanced legislative obligations that applied in 2017. If those reasonable enquiries had been made in 2017, the lender would also have known Ms S was not employed, which would have impacted on the loans and Payment Waiver it gave Ms S. The cost to Ms S for the loans including fees, interest and the premium waiver was about $8,000. After discussion with the lender, it offered to settle the claim on the basis of making an ex-gratia payment to Ms S of $6,000.
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?
	Yes. We believe lenders should be required to obtain some evidence that supports the key information provided by borrowers. There should also be an obligation on lenders to continue to check that information provided previously is still correct and viable. We have seen cases where the financial position of the borrower as disclosed does not make sense, yet the information was accepted at face value and no further checks made. For example, a monthly food bill of $50 for a family and no transport costs listed, even though the borrower had a car and had travel expenses to get to their job. The impact of requiring substantiation includes: - Some borrowers no longer having access to credit; - Some risk associated with exactly what evidence is provided, such as a customer supplying one of multiple bank accounts to give a skewed view of income and/or expenditure; - Limitations on lending models based on "instant approval" and online applications.
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 have not received complaints raising issues about advertisements for credit. However, as a general principle, we believe that if somebody is engaged in a process in one language they should be able to continue and complete that process in the same language. Otherwise, they are encouraged to enter into discussion with the lender on one basis and complete the contract on another, without necessarily having the opportunity to properly understand the specific terms that apply.
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?
	We agree with your assessment of the costs and benefits. We have no additional data.
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?
	No comment.
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 believe Registration Options A and B and Enforcement Option B provide legislative consistency with other regulated occupations, which is desirable. We also support Enforcement Options A and C, and Responsibility Options A, B and C. If there are no repercussions for technical breaches, there is not necessarily any impetus for lenders to change their behaviour. We believe enforcement option A would resolve some of the issues we have encountered, applying the Act where there is a technical breach but no clearly identifiable loss. For example, the remedy set out in s.9C of the CCCFA requires the borrower to have "*suffered loss or damage by the conduct of the creditor*". In a recent complaint we considered, the lender did not make enquiries to satisfy himself of a borrower's ability to make payments without difficulty, however, no specific loss or damage resulting from that conduct was identifiable.

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?
	We have not considered any complaints about mobile traders. As a matter of principle, we believe any arrangement operating in a similar way to a consumer credit contract should be treated as one.
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.
	No comment.

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?
	Determining whether a fee is reasonable is not straightforward. A cap provides ease of business and certainty for consumers, but would still need to be underpinned by the actual costs, otherwise it will simply drive all fees up to the level of the cap, whether or not that is the actual cost. We have seen little evidence in the complaints and enquiries we have had that consumers make purchasing decisions based on fees. Most appear to consider the interest rates, if they have any choice in where to get a loan. Commonly, it is only when the loan is in default and additional fees are being applied that most people seem to be aware of the fees being charged.
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.
	No comment.
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?
	Mr D, a 72 year old consumer, bought a car and the car yard referred him to a broker to arrange a loan. The broker charged a fee of $435 to assist Mr D to complete an application for finance and the broker fee was included in the loan amount. As the complaint was not about the broker or the fees involved, we did not specifically need to consider the issue of the broker's fee, however, on the face of it, the fee appeared excessive. This is especially given the minimal level of information about Mr D's financial circumstances provided in the application. The other area where we see large additional costs added to loans is payment waiver arrangements, where thousands of dollars can be added to a loan, which then attracts

interest. Lenders receive a relatively high level of commission for the sale of payment waiver (we understand up to 50% of the premium paid). However, there is no specific requirement to disclose the commission, meaning borrowers have no visibility of it when buying this cover. In addition, selling practices are often poor and borrowers do not understand they have cover, what they can claim for, or when they can make a claim.

To be consistent with other obligations, we believe all fees that are included as part of a loan amount should be required to meet the same standard of "*reasonableness*".

We also believe people arranging payment waiver or other "*add-ons*" similar to insurance should be required to meet the same disclosure (of commission and advice) standards as financial advisers.

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?
	Consumers commonly allege poor debt collection practices have occurred, including not receiving required notice, excessive phone calls, and threatening behaviour. **Case study 00205590:** In October 2016, Ms B and her daughter each arranged loans with a finance company to purchase vacuum cleaners, after being visited by an unsolicited salesperson. Ms B stated that repossession agents picked up her daughter's vacuum cleaner at the beginning of the year. She said two men entered the house when her daughter was not there. Ms B said she told the two men she would call the police as they were intimidating her. She said they told her to go ahead. Ms B stated they then broke the lock on an outdoor shed where the vacuum was, and took it away.
22	What information should be provided to borrowers by debt collectors? When and how should this information be provided?
	We agree that the information listed under Debt Collection Option A should be provided to borrowers, together with information about the next steps. This should be provided at the time the debt collection process starts.
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?
	Yes. We do not have relevant data.
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.
	We agree a lender who contracts out debt collection should be responsible for compliance with debt collection obligations. We believe the debt collection agency should also be

	responsible for compliance, including belonging to a dispute resolution scheme.
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 generally support the options proposed. Where the borrower cannot afford to repay a loan and their circumstances are not likely to change, the best outcome for the borrower is often to crystallise the debt quickly to avoid continuing default interest and other fees and costs accruing. For that reason, we suggest required activities have timeframes assigned.

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?
	We have considered a small number of loans involving small businesses (of 2-5 people). In our experience, they are in a similar position to consumers, in regard to their knowledge and ability to access advice.
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.
	Yes. Our Terms of Reference allow us to consider complaints made by trustees of family trusts, clubs, incorporated societies, unit title body corporates and small businesses (19 full time equivalent employees or less). It would be consistent to treat these groups as consumers in terms of credit contracts.
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?
	We believe that consumer credit contracts arranged as part of door to door sales require extra consumer protection. Sales to people in their homes, where the consumer cannot simply choose to end the process by leaving, increase the consumer's vulnerability. Sales often target consumers who have English as a second language, using pushy sales techniques. We believe these sales should be treated as sales to vulnerable consumers. **Case study 00205590:** In October 2016, Ms B arranged a loan with a finance company to purchase a vacuum cleaner ("the loan"), after being visited by an unsolicited salesperson. She made four payments as required by the loan contract, before the account fell into arrears. Ms B returned the vacuum cleaner to the finance company, and it was resold. However, there remained an outstanding balance. The finance company issued legal proceedings to recover the debt and Ms B made a complaint to the IFSO Scheme. The finance company had conducted an affordability assessment as part of the loan application process. However, the case manager had concerns about the assessment, as follows: • The assessment was incomplete, because it did not capture Ms B's expenses for

public or alternative transport (she had no fuel expense listed), medical expenses, internet, charity or tithings, or other monthly costs;

- Monthly mortgage repayments were noted, but rates were not;
- The bank statement showed Ms B transferred the majority of her wages to a different account. The finance company had not obtained the bank statement of that other account; and
- The bank statement provided by Ms B did not verify the expenses listed in the affordability assessment.

After discussions with the finance company, it confirmed it would write off the outstanding debt, and would not pursue Ms B further.

Any other comments

We welcome any other comments that you may have.
Only 2% of the complaints investigated in the 2017/2018 financial year were about credit contracts; down from 3% the previous year. During that time, we also received 6.8% enquiries by phone, letter or email about credit contracts. Given the nature of credit contracts, the complaints relative to the number of our Participants who provide them and the number of contracts in the market, we believe these figures under-represent the actual complaints/issues with credit contract, particularly consumer credit contracts.