

# Submission on discussion document: Consumer Credit Regulation Review

## Your name and organisation

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## 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 note that “high-cost loans” are not defined in the discussion paper. My comments on “high-cost loans” therefore depend ultimately on what constitutes “high-cost loans”.</p> <p>There may be many elements that make up a high-cost loan such as the interest rate, term of the loan, default fees and “add ons” such as unnecessary insurances and warranties.</p> <p>The paper identifies why borrowers take out high-cost loans. It would have been useful to identify some of the reasons why. It may be that a loan taken out for short timeframes or small amounts are for necessities and therefore the focus on interest rates in my view becomes irrelevant. These borrowers have no option but to take out high-cost loans because they do not fit the mainstream lenders criteria. If such loans were prohibited then people might be forced “underground” to borrow.</p> <p>There are social issues to consider. Why are people taking out high-cost loans? How can the issue be resolved in other ways (e.g. education, more resources to ensure compliance with the law, other funding sources etc.)?</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>My comments above are relevant, particularly as to what a high-cost loan is.</p> <p>I support the idea of a prohibition on offering a high-cost loan to a person who has defaulted on an existing high-cost loan (or a loan that refinances that loan), and has not yet been repaid. I think the longer cooling off period should apply to all high-cost loans. There should not be a limit if the caps are put in place.</p> <p>Under Option A. interest and fees over the life of the loan would be capped at 100% but that</p>

should depend on the term of the loan. The 100% should not be seen as a target for say a short-term loan.

In principle, I support capping to at least stop lenders from letting the loan run on (incurring additional default interest and fees). In some cases, there may be no contact with the borrower during that time.

There could be situations where a loan might be extended (e.g. in cases of hardship) which could mean going over the cap.

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?

No comment on Option B – difficult to comment without knowing what a high-cost loan would be.

In relation to Option C (as with Option B) interest and fees would be limited to a certain percentage and expressed as an “equivalent interest rate” that adds up both interest and fees. Interest rates are generally calculated on the lenders own cost of borrowing plus a profit margin. I am not sure whether it is still intended to also include the “interest rate” and “credit fees” etc as well as the “equivalent interest rate otherwise we would be back to the Credit Contract Act 1981 days of annual finance rates which I don’t think was clearly understood by consumers.

I do not believe lenders who do not engage in “high-cost lending” should have a cap. The current law is adequate in ensuring those lenders comply.

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?

See 3 above

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.

See my comments to Q2 & Q3.

## 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>There is already legislation capturing senior managers to some degree (e.g. the AML/CFT legislation).</p> <p>The Financial Markets Conduct Act 2013 may assist in determining how far a senior manager's duties should extend and the possible ramifications should there be a breach. Under that Act a senior manager's duties appear limited as opposed to a duty to ensure compliance with all obligations under that Act.</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>This should only apply to high-cost loans. However as mentioned earlier no definition has been provided.</p> <p>I believe the current law works well for most lenders.</p> <p>The paper says the prescriptive requirements "could be required for loans where there are greater concerns about concerns about non-compliance, such as vehicle loans and high- cost loans". However not all vehicle loans are high cost, in fact the large majority are not. It would be concerning if vehicle loans were singled out. Therefore, it should be limited to "high-cost loan" and nothing else.</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>No. It is sufficient that the section has the "reasonable grounds" threshold.</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>No comment.</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>"Damages increase the incentives for consumers to take action where breaches occur" is noted as a benefit in relation to Enforcement Option A. However, in many cases vulnerable</p>

consumers do not instigate action for various reasons e.g. the cost, a lack of understanding of their rights, not knowing that there are other places they can look to seek a remedy such as the Disputes Tribunal etc.

Enforcement Option B: Directors' duties. These were strengthened under Financial Markets regime and I don't think there has been much (if any) disincentives for professional directors to serve on issuer boards.

Compliance costs in relation to some of the options will increase for many lenders especially where it involves systems changes. Costs might ultimately be passed on the consumers. This won't affect many high cost lenders!

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?

See 12 below on criminal sanctions

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.

I generally support the Enforcement Option. However there is already other legislation that may cover certain enforcement aspects such as the Fair Trading Act 1986.

Maybe consider what has been done under the Financial Markets Conduct Act 2013 – criminal sanctions for misconduct which is deliberate and reckless rather than just relying on monetary penalties as assets can be hidden in family trusts.

## 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?

I agree with the assessment of the costs and benefits of the options for covering additional credit contracts. The intention is to capture predatory and irresponsible behaviour by mobile traders and other businesses such as \_\_\_\_\_ and \_\_\_\_\_ (although see my comments under Q14). However, this may inadvertently capture other financiers.

There could be issues determining "fair market value".

With some mobile trucks shops the goods cost substantially more. In effect, therefore interest and costs are built into price of the goods thus avoiding being captured under the CCCFA. This is addressed in Scope Option B.

See my further comments under Q14.

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?

- a. See above. I am not familiar with the recent credit-based payment system. I did look at the website of one of them and they get a fee from the supplier the customer purchases the goods from. It appears therefore the customer would be paying a fair market value for the goods so an inflated price would not apply unless the fee is added to what the customer pays. The issue, I think, appears to be capturing any unreasonable default fees and unreasonable default fees cannot be detected unless the arrangement is a consumer credit contract. As pointed out in the discussion paper some lenders might simply stop charging default fees.
- b. There may be a good argument that these payment systems provide a valuable service to some consumers who might ordinarily purchase goods by using credit cards that incurs high interest charges.
- c. Maybe there should be a different disclosure regime and requirements where the contract is only caught by the mere fact of charging default fees (assuming default fees are to be included in the definition of consumer credit contract).
- d. In relation option B, to address the issue of inadvertently capturing other financiers maybe include a definition of "fair market value" but only for the purposes of the CCCFA. In this regard, there would be a few things to consider such as whether the customer purchased goods from a third party and the lender provided the funding to enable the customer to purchase the goods. E.g. A customer purchases a motor vehicle from a registered motor vehicle trader. A finance company lends the customer the money to purchase the vehicle. Subject to my comments in e. below, in this case the motor vehicle is deemed to be at fair market value (for the purposes of the CCCFA). The same would apply to insurances which are purchased by the customer and added to the loan. Lender carve-outs could be considered which could be achieved in a similar way the "exemption notices" are done under the Financial Markets Conduct Act.
- e. In relation to my comments in d. above one would need to consider whether the supplier of the goods and services are related to the lender. Things to consider in relation to an exemption would include:
  - Whether the parties are directly related or not.
  - Whether the arrangements between them are 'arms lengths'.
  - Whether a party's dealings are non-exclusive, e.g. the motor vehicle trader deals with a number of finance companies.

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 would support both options provided that:

- a. A different disclosure regime and requirements are in place where the contract is only caught by the mere fact of charging default fees (see above). This would minimise compliance costs and should not impact on the business models of the credit-based payment systems;
- b. Option B does not inadvertently capture other financiers. See my suggestions under 14 d. and e. above.

## 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?

In relation to Option C I doubt whether the vulnerable would understand or appreciate disclosures and advertising based on an “equivalent interest rate”. I recall that was an issue with the “annual finance rate” under the Credit Contracts Act 1981.

In any event the Commerce Commission produced useful guidelines last year on credit fees. The solution would be to give the Commerce Commission more resources to ensure compliance and to take action where necessary for any breaches.

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 would not support Option C for the reasons I mention above and for the reasons under the heading “Cons”. I can’t see any benefit there might be to consumers that in any way outweighs the lender’s transaction costs etc.

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?
	No comment

## 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?
	No comment
22	What information should be provided to borrowers by debt collectors? When and how should this information be provided?
	No comment
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?
	No comment
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.
	No comment
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.
	No comment

## 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?
	No comment
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.
	There is a perception that if a borrower is a small business, retail investor or a trustee of a family trust you are savvy enough to understand the credit and costs involved and therefore

do not deserve the protections under the CCCFA. This is far from true in many cases. For example, there are many small businesses in New Zealand e.g. sole traders and closely held family business. Loans to sole traders or partnerships would be under individual names anyway and therefore captured under the CCCFA.

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?

No further comment

## Any other comments

We welcome any other comments that you may have.

- a. The Commerce Commission needs further resourcing.
- b. Some “high-cost loans” need to be bought under the CCCFA e.g. those charging inflated prices for goods on credit.
- c. The concerns relate to “high-cost loans”. There is a risk that in trying to address these concerns they have the unintended consequence of including other lenders. This leads to other issues such as increased compliance costs.
- d. Social issues need to be considered and addressed.