

31 July 2018

Submission to the Consumer Credit Regulation consultation review

The Manurewa-Papakura ward contains within its rohe the Manurewa and Papakura Local Boards, two of the 21 Local Boards under Auckland Council governance. It is located in the southern part of Auckland with a population of 127,878 (as per the 2013 census data).

The median household income across the ward is \$66,850, significantly lower than the regional median of \$76,500. It has the highest proportion across all areas of residents of Auckland who identify as Māori, at 28 per cent. Pacific Peoples make up 15 per cent of the Papakura area and 33 per cent of the Manurewa area.

The ward, in general, is acknowledged as a low socio-economic area and faces a range of social issues that come with this.

Mobile truck vendors and payday lenders are not welcome in our ward. Evidence gathered over several years has proven these vendors prey on our most vulnerable residents. Those include people with physical disabilities who are restricted from accessing the supermarket or retail stores to our families living in poverty who are attracted to the \$10 a week payback under a contract fraught with extortionist interest rates and sale of goods prices.

The reputation of payday lenders and mobile truck vendors is so poor Kiwibank recently announced they are `declining to bank organisations that don't provide fair and transparent information to their customers' adding `there are payday lenders and truck shops in particular preying on the most vulnerable people in our communities'.¹

While the sickening stories of those trapped in debt by these predators are endless, the odds for those affected by these crippling debts in asking for help are limited. In a recent article Lezanne Gibbs, credit advocacy advisor from the Commerce Commission's competition and consumer branch said ``They (purchasers) are highly unlikely to tell the Commerce Commission about it when they think they are being ripped off in some way. In fact, they are more likely to protect the lenders. That's a problem for a law enforcement agency." Susan Taylor, chief executive of Financial Services Complaints, said the scheme did not receive many complaints about predatory lending practices, despite extensive anecdotal evidence.²

These experiences were also identified in the 2007 Ministry of Consumer Affairs research findings report and the government's response strategy to Pacific Consumers' Behaviours and Experience in Credit Markets, with Particular Reference to the `Fringe Lending' Market.

This report is 11 years old in August 2018, and here we are dealing with exactly the same issues. How was this report used to mitigate the financial burden imposed by the fringe lending market?

¹ <https://www.kiwibank.co.nz/about-us/press-releases/kiwibank-wont-deal-predatory-lenders/>

² <https://www.stuff.co.nz/business/money/104655221/theres-just-too-many-dodgy-shady-bloodsucking-leech-businesses-out-there>

Key problems raised by consumers interviewed in 2007 are still relevant today;

- An urgent need for Pacific consumer protection
- Oppressive credit contracts and their hidden costs
- Inadequate focused monitoring and enforcement of credit provider practices in areas such as disclosure
- No definition of what is 'reasonable' in terms of interest rates and administration and other charges and what amounts to 'oppressive' conduct
- Aggressive marketing of fringe credit and the targeting of Pacific Peoples in lower socio-economic areas such as South Auckland.

The above 'problems' from 2007 can still be found today in all of the literature referenced in this submission which cover a time-span of 2015 – 2018. We know that most affected by mobile truck vendors and pay day lenders don't complain when they are in crisis from debt. While there may have been some changes to the legislation and code of compliance in the past 11 years, there is clearly still something fundamentally missing in terms of the protection of vulnerable consumers through preventative measures.

The Problem

The forming of a sale and/or contract by these vendors traverses poverty, low financial literacy, English as a second language and desperation. Buyers often do not have the cash to purchase the same products available in mainstream retail outlets, there are often no credit checks which suits the purchaser, and the onsite shopping opportunity is convenient for them.³

The short-term gain in immediate gratification of purchasing goods ends in untenable debt gained through extortionate product prices and interest rates. Both the companies and customers focus on weekly repayments required rather than the total amount to be paid. This explains why people sign agreements to pay inflated prices for items which they could purchase more cheaply in the local supermarket. A local budgeting service has seen contracts charging \$20 for a can of corned beef, \$35 for a packet of noodles and \$66 for powdered milk.⁴

One budgetary service has dealt with cases in which the original documents have differed from the carbon copies leaving the purchaser hundreds of dollars more in debt for goods they didn't purchase.⁵

There are examples of mums who have no transport to go to the shops with their young children and are paying \$90 for corned beef, noodles, milk and bread.

Contract

The primary purpose of the Credit Contracts and Consumer Finance Act 2003⁶ (the Act) is to protect the interests of consumers in connection with credit contracts, consumer leases, and buy-back transactions. Guidance for the implementation of this Act is provided in the Responsible Lending Code (the Code).

It is our view s9F of the Act, with weight on S9F 1(b)(i)(iii)(v) and (vii) is being regularly breached by mobile truck vendors. If the Act is difficult for vendors to understand, S 7.14 of the Code is clear:

³ <http://www.comcom.govt.nz/the-commission/consumer-reports/mobile-trader-201415-project/>

⁴ <https://www.consumer.org.nz/articles/responsible-lending>

⁵ <https://www.consumer.org.nz/articles/responsible-lending>

⁶ Credit Contracts and Consumer Finance Act 2003

7.14. Where a lender reasonably suspects that the borrower does not have a good understanding of the English language, a lender should provide, or refer the borrower to, alternative methods or mechanisms for receiving the relevant information. This could involve the lender providing access to, or referring the borrower to, an interpreter or a member of staff who is fluent in the relevant language, or providing access to the information in that particular language. A lender should not rely on children under 18 or those with a potential conflict of interest to act as interpreters; for instance, where a parent is obtaining a loan for an adult child's benefit, the child should not be an interpreter.

The Commerce Commission Mobile Trader 2014/15 project also identified that many of the sales agreements and credit contracts do not comply with the disclosure requirements of the FTA⁷ and the CCCFA⁸. They often fail to detail the goods purchased, the exact payment terms, the total amount owed and an end date.

The barriers to entering the market are low in this industry; currently there are about 40 companies with one of the largest operating 73 trucks. The government has no plans to regulate the mobile truck business and some central government politicians view it to be the role of local government to regulate this industry. We doubt any council will have an appetite to regulate these businesses.

Recommendations

- Introduce a total cost of credit cap.
- Improve disclosure requirements.
- Increase penalties and enforcement on oppressive contracts.
- Increase preventative measures for ESOL and consumers living in areas of poverty.

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⁷ Fair Trading Act 1986

⁸ Credit Contracts and Consumer Finance Act 2003

