



Submission to Ministry of Business Innovation and Employment on: Discussion Paper: Review of Consumer Credit Regulation June 2018

1 August 2018



ONE HUNDRED YEARS OF TRUST

Dear Sir / Madam

Submission: Discussion Paper: Review of Consumer Credit Regulation June 2018

This submission is from:

Motor Trade Association (Inc)
PO Box 9244
Marion Square
Wellington 6141

The contact person in respect of this submission is:

Name: Mr Tony Everett
Title: Dealer sector Specialist and Mediation Manager
Ph:
Email:

Thank you for the opportunity for MTA to provide comment on the Review of Consumer Credit Regulation June 2018 and its effect on the automotive industry.

Yours sincerely

Greig Epps
Industry Relationship Manager

Introduction

The Motor Trade Association (Inc) (MTA) was founded in 1917 and last year celebrated 100 years of trust with the NZ motoring community. MTA currently represents approximately 3,600 businesses within the New Zealand automotive industry and its allied services. Members of our Association also operate businesses including automotive repairers (both heavy and light vehicle), collision repair, service stations, vehicle importers and distributors and retailers. The automotive industry employs 57,000 New Zealanders and contributes around \$3.7 billion to the New Zealand economy.

We appreciate the opportunity to comment on the Review of Consumer Credit Regulation June 2018 and have the following comments to make on behalf of the automotive industry.

Submission

The CCCFA and related Regulations have relevance and significance to our retail motor vehicle trader members. These businesses include new and used vehicle traders, and motorcycle traders. In those business sectors, MTA represents over 600 motor vehicle trader members.

The provision of finance is a significant element within a motor vehicle dealer's business. In most cases, dealers have business linkages with one or more established finance companies, the majority of which are likely to be members of the Financial Services Federation ('FSF'). Dealers and finance companies are typically distinct separate business entities with no ownership or management connections. In a very few cases, some dealers may operate their own financial services arm and, in this context, there will be some common ownership between a dealer and a finance company.

When looking at the operational aspects of motor vehicle financing, generally the relevant finance company prescribes the forms and processes to be followed by the dealer, who has no scope to deviate from those requirements. In most respects, the dealer effectively serves an intermediary role between the customer and the finance company, helping the respective parties establish a financial arrangement. The credit approval decision rests solely with the respective finance company; that is, it is the financier that determines if a loan should be made to the consumer, the dealer does not participate in that decision. Interest rates and fees are set by the respective finance company. The dealer may have some small latitude to negotiate interest rates and fees albeit only within defined boundaries controlled by the finance company involved.

It is also relevant to observe that the provision of finance has a small but important contribution in the vehicle repair sector, where consumers will sometimes seek to arrange finance for larger repair bills. Those finance requirements are predominantly arranged by the consumer directly with the respective 3rd party lender, with very little (if any) involvement by the repairer.

Given the strong relationships outlined above between dealers and their finance company partners, MTA supports the submission made by the FSF in respect of the Discussion Paper. MTA will also provide additional feedback on aspects where MTA has a slightly different position from that offered by FSF.

The discussion paper is interesting in that it identifies a problem (high-cost lending), but it does not provide any information about the scale of the problem. How big is it, and how significant is it within the total market? FSF include commentary in its submission that the number of credit contract related complaints lodged via the two dispute resolution schemes is minimal (64 complaints

in the 2016/17 year) especially given the size of the complete lending market. MTA operates a mediation service which is open to consumers and credit related queries through that service are very rare. Based on those measures it seems that the mainstream credit market is functioning well.

MTA is not convinced that changing or creating further regulation is the best approach. Law change will obviously seek to control any identified problematic aspects, but there is also the chance it will result in some unintended consequences. The Responsible Lending Code ('RLC') quite rightly imposes obligation on lenders to apply appropriate scrutiny to ensure a borrower could afford the repayments. But it is also claimed that, as a consequence of those new requirements, there may have been a reduction in lending to consumers with poor credit profiles. Where some of those people may have previously been able to secure credit through ethical mainstream lenders at reasonable rates, many may have now been denied that option and been forced, through necessity, to the high-risk lending sector. So rather than fix the problem, the change in regulation may have contributed its growth.

Unfortunately, there is no information available which quantifies those claims. In that context it is interesting to see the discussion paper now proposes even tighter compliance with RLC lending principles. Will this result in even more consumers being denied access to the 'ethical' lending market?

Perhaps an alternative strategy can be found through better targeted enforcement. It surely can't be difficult to identify the perpetrators. There is no shortage of social agencies who could cite specific case examples for investigation. The wider industry is another source who may be able to help identify where to look, and what to look for. To illustrate a point, at a very high level, it is easy to browse through various advertising initiatives and quickly identify non-compliant activity. It is concerning to note that a lot of that activity have been going on for a long time, seemingly undetected, and/or not subject to enforcement. If the perpetrators of such activity are never going to be held to account, the market will grow to accept such practice as normal and the incidence will expand. Enforcement must be seen to be done by the wider community.

Responses to selected 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?

Based on the information provided the problems within the high-cost lending sector sound serious.

Unfortunately, very little information was provided in the discussion paper to adequately define the scale of the problems, clarify how widespread those problems are, and quantify the scope of magnitude within the overall lending market. Of the hundreds of millions and perhaps billions of dollars provided in loans and finance, how much of that is categorised as being within the so called high-cost lending market?

If low-cost credit lending (for want of a term) is operating well, and if the problems cited are concentrated within the high-risk sector, then targeted enforcement action would be a

better option. Imposing more regulation on an otherwise largely compliant sector will only serve to add costs for no benefit.

If the abuse is largely limited to the high-cost lending market then it would be more appropriate that investigation and enforcement be applied toward that particular area. To some extent that has been happening with Commerce Commission successfully tackling the 'truck-shop' sector. More enforcement is needed.

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?

MTA is not able to declare a position on the ideas proposed. We do not consider the high-cost lending sector (subject to clear definition of what that term includes) is a common source of funds for use by consumers buying motor vehicles from Registered Traders. Conversely, it may be an option within the private selling market where the price of some vehicles may be such that a pay-day type short-term loan is a realistic option.

On the face of it, the Option A may sound reasonable and have some merit. But the key point would be whether an open high-cost lending market will continue to exist under those tighter control limits. If it does continue albeit in some modified form the ideas proposed will be successful. On the other hand, the tighter controls might only serve to drive the market underground. Some of the people who rely on the high-cost sector do so because they are desperate, and they either have no other option, or they aren't aware of any other option. If an open high-cost lending market ceases to exist, it would be wrong to assume all latent demand will no longer exist.

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?

MTA agrees with and supports the Financial Services Federation ('FSF') submission on this question.

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?

MTA agrees with and supports the FSF submission.

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.

MTA agrees with and supports the FSF submission.

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>MTA agrees with and supports the FSF submission.</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>MTA agrees with and supports the FSF submission.</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>MTA agrees with and supports the FSF submission.</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><i>While MTA agrees with most of the FSF submission, MTA is not averse to the idea that RLC advertising provisions be made mandatory.</i></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>MTA agrees with and supports the FSF submission.</i></p>
11	<p>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?</p>
	<p><i>MTA agrees with and supports the FSF submission.</i></p>
12	<p>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.</p>
	<p><i>MTA agrees with and supports the FSF submission.</i></p>

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>MTA agrees with and supports the FSF submission.</i>
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?
	<i>MTA agrees with and supports the FSF submission.</i>
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>MTA agrees with and supports the FSF submission.</i>

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?
	<i>MTA agrees with and supports the FSF submission.</i>
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?
	<i>MTA agrees with and supports the FSF submission.</i>
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?
	<i>MTA agrees with and supports the FSF submission.</i>
19	Which options for changes to fees regulation would you support? Which would you not support? Please explain how you made your assessment.

MTA supports Option C: The return to disclosure and advertising based on an 'equivalent interest rate'. This mechanism provides a useful and easy way to allow direct comparison between offers and includes the impact of both the interest rate and establishment fees.

That said, there will likely be a one-off implementation costs on lenders to include the respective calculations within their IT systems, and the revision to the respective finance contract templates.

Consideration would need to be given to the best way to title the feature. The industry and perhaps some consumers already have a residual understanding of the concept, based on the terminology used previously, ie 'Finance Rate'. For that reason, it may be best to adopt the previous title rather try to establish a new term such as 'Equivalent interest rate'.

Regardless of which title is used, it will need to be clearly defined about what is included in the calculation, and what isn't. An education campaign will also need to be provided to inform all parties about what it means and what to draw from the information.

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?

MTA agrees with and supports the FSF submission.

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?

MTA agrees with and supports the FSF submission.

22

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

MTA agrees with and supports the FSF submission.

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?

MTA agrees with and supports the FSF submission.

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>MTA agrees with and supports the FSF submission.</i>
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>MTA agrees with and supports the FSF submission.</i>

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?
	<i>MTA agrees with and supports the FSF submission.</i>
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.
	<i>MTA agrees with and supports the FSF submission.</i>
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?
	<i>MTA agrees with and supports the FSF submission.</i>

Any other comments

	We welcome any other comments that you may have.
	<i>MTA is conscious of the impacts of high-cost lending on poorer consumers or those with poor credit profiles. High-cost lending obviously imposes significant financial pressures on those people and may ultimately lead to serious longer-term consequences including the breakdown of families, communities and markets. In the long term it is hard to see any net benefit for consumers, but that view point is perhaps dismissive of the very real challenges facing those consumers. In some situations, it might well serve a need at that point in time, assuming the consumer is able to repay the loan and get through that time of crisis. In that context the resource might provide a valid albeit costly option. No information has been provided in the discussion paper on the incidence of successful completion of high-cost lending, or for that matter the frequency of how often it goes wrong.</i>
	<i>In follow-up to our comments provided earlier under question 1, we pose the question to MBIE as to whether it is possible to set a definition around what constitutes high-cost</i>

lending, and then design special legislative measures to control and manage that specific market?

If that were possible, it might avoid the imposition of unnecessary costs on the otherwise mainstream and perhaps compliant 'low-cost' lending market, minimise the risk of additional unintended consequences, and yet still achieve the aim of imposing better regulatory controls and enforcement over the targeted high-cost sector.

MTA appreciates the opportunity to comment on these proposed regulations.

National contact details:

Member toll free phone: **0800 001 144**

Phone: **04 385 8859**

Fax: **0800 000 695**

Email: **info@mta.org.nz**

Website: **www.mta.org.nz**

Other contact information:

Stationery line: **0508 682 682**

Mediation service: **0508 682 633**

Human Resources Advisor: **04 381 8841**

Physical address:

Level 12, Nokia House, 13-27 Manners Street, Wellington 6011

Postal address:

PO Box 9244, Marion Square, Wellington 6141



www.mta.org.nz