

2 August 2018



Competition and Consumer Policy
Building, Resources and Markets
Ministry of Business, Innovation & Employment

By email to consumer@mbie.govt.nz

Submission to the [Review of Consumer Credit Regulation](#)

Kia orana kotou katotoa

The Human Rights Commission supports enhanced consumer credit reform

The Human Rights Commission supports enhanced consumer credit regulation to build on the 2015 reforms and to contribute to poverty reduction.

Consumer credit regulation is a human rights issue

New Zealanders recognise consumer credit regulation as a human rights issue.

Participants in our 2018 consultations on the rights of women in New Zealand¹ identified loan sharks and mobile shopping trucks targeting poor communities as a contributing cause of poverty. Women said they were “Getting into debt just trying to supply the basics.”

Also in 2018, in our Universal Periodic Review preparation consultation meetings around the country, more than any other communities Pasifika communities repeatedly identified consumer credit, loan sharks, and mobile shopping trucks as issues for their communities.

New Zealand has made an international commitment to the right to an adequate standard of living, as set out in article 11(1) of the International Covenant on Economic, Social and Cultural Rights (emphasis added):²

Article 11

*1. The States Parties to the present Covenant recognize the right of everyone to **an adequate standard of living** for himself and his family, including adequate food, clothing and housing, **and to the continuous improvement of living conditions**. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.*

The right to an adequate standard of living is a right that New Zealand has committed to “progressively realising”. This is a commitment to constant improvement to make the right real to the greatest extent that New Zealand can. This proposed reform is an opportunity to improve progress towards making the right to an adequate standard of living a reality for more New Zealanders.

¹ In 2018, in preparation for our submission to the periodic review of New Zealand’s compliance with the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

² Available at www.ohchr.org/en/professionalinterest/pages/cescr.aspx.

When the New Zealand Government recently appeared before the UN Committee on Economic, Social and Cultural Rights (CESCR), the government recognised that its goal of child poverty reduction will be supported by efforts to reduce overall poverty.³

As well as supporting a human rights approach to poverty reduction, effective consumer credit regulation is also part of the government's obligation to encourage responsible business and ensure that no harm is done to people by the conduct of business.⁴

Human rights law academic Professor Chrystin Ondersma proposes and explains "A Human Rights Approach to Consumer Credit", with "*a universal floor of protection that prevents a "race to the bottom" and that cannot be circumvented on economic efficiency grounds*". She gives the "*specific example of a consumer credit regulation based on human rights: states should not enforce a consumer credit contract if, at the time of the contract, there was a substantial likelihood that the contract would render the debtor unable to meet her basic needs.*"⁵

We urge the Ministry to progress these reforms because they have the potential to help address poverty and to improve the standard of living, particularly for Pasifika New Zealanders.

Pacific communities experience a discriminatory impact

Our consultations suggest that all of the issues identified in the consultation paper (the cost of credit, irresponsible lending, mobile shopping trucks, unreasonable fees, and debt collection methods) are all real issues warranting enhanced regulation.

Particularly in our fono with Pasifika communities around New Zealand, people have consistently raised the issue of access to reasonable lines of credit required to engage in

³ [Summary record of the 23 March 2018 10am meeting of the UN Economic and Social Council](#), E/C.12/2018/SR.19, comments of Minister Little, including at paragraph 47.

See also the Committee's concluding observations at paragraphs 37-38:

Right to an adequate standard of living

37. The Committee notes the State party's commitment to achieving a significant and sustained reduction in child poverty. However, it expresses its concern about the rise in child poverty in the State party. It is also concerned about the disproportionate numbers of Māori and Pasifika children and children with disabilities living in households with incomes below the relative income poverty line (art. 11).
38. The Committee recommends that the State party strengthen its efforts to combat poverty, in particular among households with dependent children, notably Māori or Pasifika children and children with disabilities. In particular, the Committee urges the State party to accelerate the enactment of the child poverty reduction bill introduced in January 2018, and ensure that the child well-being strategy is well resourced and effectively implemented. It also requests the State party to provide disaggregated information in its next periodic report on the progress achieved in meeting the targets in the strategy. Furthermore, the Committee recommends that the State party consider developing an overall poverty reduction strategy based on the Child Well-being Strategy.

UN Economic and Social Council Committee on Economic, Social and Cultural Rights
[Concluding observations on the fourth periodic report of New Zealand](#) (1 May 2018) E/C.12/NZL/CO/4.

⁴ The government's responsibility is explained in the UN Guiding Principles on Business and Human Rights, available at <https://www.unglobalcompact.org/library/2>.

⁵ "A Human Rights Approach to Consumer Credit" Tulane Law Review volume 90 (2015), pages 373 - 437. The same author has suggested "A Human Rights Framework for Debt Relief" in 36 U. PA. J. INT'L L. 269 (2014).

vital cultural practices. They have observed that loan sharks, payday lenders and mobile shopping trucks target their communities with high interest loans.

In our view, the proposals in the current discussion document (interest rate caps, caps on total repayments, enhanced regulation of lending and mobile shopping trucks, fee caps, requirements to evidence the reasonableness of fees, and all proposals to regulate debt collection methods further) would mitigate against this unequal impact on Pasifika communities.

Other issues: the cost of remittances

Beyond this current review, the United Nations has identified the cost of remittances (such as the wages that workers send home to family in Pacific Island countries) as a contributing cause of inequality. United Nations [Sustainable Development Goal 10 is to reduce inequalities](#) within and among countries. One of the ten targets under that goal is “By 2030, reduce to less than 3 per cent the transaction costs of migrant remittances and eliminate remittance corridors with costs higher than 5 per cent”.

MBIE’s 2016 [Remittance Pilot Project report](#), found average rates of around 8% for Tongan and Samoan workers in 2014/15.⁶ New options mean that lower rates are now available for Samoa and Tonga, but not for all countries. The [Send Money Pacific](#) web tool provides helpful comparisons of current remittance rates. At 30 July 2018, for remitting NZ\$200 it showed many options costing more than 5%, and few under 3% (none under 3% for sending remittances to Fiji, Papua New Guinea, Solomon Islands, or Vanuatu).

MBIE’s 2016 report recommended that MBIE coordinate exploration of low-cost, secure digital options for Recognised Seasonal Employer workers. The report also recommended MBIE act to increase workers’ knowledge about remittance costs and options.

Although remittance options are expanding and lower cost options are emerging, we remain keen to see MBIE coordinate efforts to ensure the Sustainable Development Goal is met by closing off options with fees greater than 5%, and ensuring that remittance costs average less than 3%. This work would have positive impacts for the financial well-being of many of the same communities who are most affected by consumer credit law.

Further engagement

We look forward to ongoing opportunities to engage with the Ministry in relation to this reform. We would be happy to meet with you or have a phone conversation about this submission letter, and to provide further guidance about using a human rights approach in progressing these reforms.

Meitaki ma’ata e kia manuia

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⁶ At page 15.