

1 August 2018

Competition & Consumer Policy
Ministry of Business, Innovation & Employment
WELLINGTON

By email: consumer@mbie.govt.nz.

To whom it may concern,

Submission on “Review of consumer credit regulation” discussion paper

Thank you for the opportunity to provide feedback to the Ministry of Business, Innovation & Employment (MBIE) on the “Review of consumer credit regulation” discussion paper published in June 2018.

UDC supports amendments to the Credit Contracts and Consumer Finance Act 2003 (CCCFA) which focus on preventing predatory lending and the exploitation of borrowers.

UDC does not propose to answer all the questions posed in the discussion document. Instead, we have provided comments on key issues in each of the areas covered by the discussion document. However, we are happy to provide feedback on a specific question if that would be helpful.

Contact for submission

UDC welcomes the opportunity to discuss any of our submissions directly with MBIE officials. Contact details for UDC to arrange a meeting, if required, are:

Gretchen Cotter, General Counsel
s9(2)(a)

Yours sincerely

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Issue 1: Excessive cost of some consumer credit agreements

UDC supports the introduction of new measures to address the harm to consumers caused by “high-cost” lending.

As a general comment (and in line with our submission under Issue 4 below), in the context of addressing the concerns in relation to high-cost lending, UDC is interested in the possibility of expressing interest and fees as a combined annualised percentage.

Issue 2: Continued irresponsible lending and other non-compliance

i. Options for increasing lender registration requirements

UDC supports Registration Option B in relation to a fit and proper person test for directors of lending entities. UDC does not support extending the fit and proper person test to senior managers.

UDC supports investigating the possibility of introducing a licensing system specifically for the high cost lending sector. This could be another tool for regulating this group of lenders.

ii. Options for strengthening enforcement and penalties for irresponsible lending

UDC also supports Enforcement Option D, which will involve increasing the industry levy on creditors to help fund advocacy, monitoring and enforcement of the CCCFA.

iii. Options for introducing more prescriptive requirements for affordability assessments and advertising

As a general comment, UDC is supportive of ensuring that affordability assessments are relevant and effective.

UDC does not support changing or removing section 9C(7) of the CCCFA under Responsibility Option A (which allows lenders to rely on information provided by a borrower or guarantor unless the lender has reasonable grounds to believe the information is not reliable). Our concern is that this would significantly impact the process, timeframes and (accordingly) the cost to lenders for all affordability assessments, without any real benefit for the majority of consumers. Instead, UDC supports enhancements to the Responsible Lending Code to provide more clarity on what constitutes “reasonable grounds”.

UDC supports Responsibility Option B, making the Responsible Lending Code guidance on advertising mandatory.

Issue 3: Continued predatory behaviour by mobile traders

UDC considers that it is important that mobile traders are required to comply with the same laws and codes as other lenders. The loopholes that mobile traders exploit through their credit and pricing structures allow for predatory behaviour and should be closed.

UDC supports Scope Option A, extending the scope of the CCCFA to include credit contracts that charge default fees within the definition of “consumer credit contract”.

Issue 4: Unreasonable Fees

UDC is interested in Fee Option C, expressing interest and fees as a combined annualised percentage, but we would need to see more detail on how this proposal would work in practice before committing to it. We are particularly interested in which fees will be included and how the remaining fees will be regulated. We would suggest that any replacement regime needs to be simple, understandable and accessible to all relevant parties.

If there are clear rules around what fees are to be included in the annualised percentage, this may allow consumers to more easily compare loan products on offer and assess the total cost of their proposed borrowing.

We note that there were transparency concerns leading to the removal of the concept of an 'annual finance rate' when the CCCFA was introduced and we would expect that these concerns would be addressed if this Fee Option is developed further by MBIE.

Issue 5: Irresponsible debt collection practices

UDC supports responsible and fair debt collection practices, to ensure that consumers are afforded the same level of protection during debt collection as they are at the other stages of their borrowing.

In respect of the 5 options suggested in the discussion paper:

- Debt Collection Option A (key loan information to be shared with the debtor at commencement of debt collection)

UDC supports this proposal.

- Debt Collection Option B (debt collectors to offer an affordable repayment plan)

In general, UDC supports this proposal. We do note that in some cases, deterioration in a borrower's circumstances may mean that what they can afford to pay no longer repays the loan over a manageable timeframe, which can lead to a significantly greater amount of interest paid over the term of the loan. Rules around the setting of interest and fees on any replacement repayment schedule would need to strike a balance between keeping interest and fees reasonable and ensuring that the loan remains commercially viable for the lender.

- Debt Collection Option C (specify appropriate limits regarding contact between the debt collector, borrower and other persons)

UDC supports making debt collection contact with a debtor fair and reasonable, including options to deal through a third party.

UDC submits that any option for the debtor to request the debt collector to cease contacting them would be open to abuse by those seeking to avoid paying their debt. Having debt collectors subject to the CCCFA would be a more effective control (per Option D below).

- Debt Collection Option D (make third party debt collection agencies directly subject to the CCCFA)

UDC supports this proposal.