Submission on discussion document: Consumer Credit Regulation Review

Your name and organisation

Name	Kathryn Burton
Organisation	Waahi Whaanui Trust

Responses to 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?

While we do agree that the type of lending classified in this document as "high cost" causes significant problems, we do not feel that separating this type of lending from other types is an appropriate action. The reason for this is that we believe ***ALL*** *lending to be high cost and potentially harmful and we feel that classifying some lending classes as more harmful than others masks the true issues surrounding the excessive cost of many consumer credit agreements.*

To put this into perspective we compare 3 different loan types:

*Client borrows $600 from ; they repay $952 over 4 months**

*Client borrows $5,000 from ; they repay $9806.16 over 3 years***

*Client borrows $400,000 from ; they repay $844,008 over 30 years****

In each case the client is repaying far more than they are borrowing but only the loan would be classed as "High Cost' in this discussion document, when in fact it is the one classified as the least high cost (and often portrayed as most desirable) of them which will result in the client repaying the highest amount in proportion to the original loan.

In our view payday or short-term loans have a worse reputation than other forms of lending because they have a higher profile and are newer products to the credit market. The harm they cause is immediate and thus engenders an immediate response. We feel that other forms of lending which have equally high costs spread over longer periods do much greater harm – the difference is that the other loans cause ***insidious*** *harm which is often overlooked because of the time it takes for that type of harm to manifest.*

In order to see the harm each of these loans can cause it is necessary to consider what happens when a client fails to make payments on each of these loans.

: Failed payments at the half way point of this contract will result in additional interest costs (currently capped to $600) with the client eventually referred to a debt collection agency with a negative report on their credit file. The client will eventually enter into an agreement to repay the money at an affordable rate to the debt collection agency and they will have lost $600.

: Failed payments at the half way point of this contract will result in additional charges (no current cap), the repossession of the vehicle accompanied with additional charges for that action, and the client eventually referred to a debt collection agency with a negative report on their credit file. The client will have made payments of $4,903.08 and will still owe a debt to of around $10,000 (as evidenced by previous cases in similar circumstances). Meaning the loss to them will be almost $15,000. This is in addition to the loss to their ability to attend work, transport their family and otherwise participate in society due to having no car.

: Failed payments at the halfway stage of this contract will result in additional charges (currently no cap), the mortgagee sale of their home (often for far less than the current market value) with the client eventually referred to a debt collection agency with a negative report on their credit file. The client will have made payments of $421,920 and is likely to still owe a debt to for the shortfall between the sale price and the settlement amount demanded. This is in addition to the loss of their home, their stability and their aspirations for the future of their family.

The harm caused by the last example is far greater than in the first example. The cost in lost money, lost opportunity and lost mana is far greater in the third example than in the first example. And yet this discussion document seems to focus solely on the first example where the harm is already limited by the size of marketplace.

In the community we work in (Huntly) we see much greater harm caused by banks which offer mortgages or take guarantees on whanau-owned land which may have been homesteaded by a particular whanau for up to four generations, then encourage the whanau to continue taking out top-up loans far beyond the whanau's ability to service the debt.

**Source Website*

***Source Client Loan Contract from*

****Source website mortgage calculator*

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?
	We do not support any of the extensions to Cap Option A as we do not believe any of these options will have sufficient impact to curb the harm which high cost borrowing from all lenders does.
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?

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?
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.
	We are strongly opposed to Cap Option B for a number of reasons: • *The limit set is too high* • *The amount able to be charged in default fees is too high* • *Applying it to some lenders and not others does not recognise the harm which all borrowing does when it becomes unaffordable and allows for some lenders to engage in unscrupulous behaviour under the premise that they are not classified as a "High Cost" lender* *We support in principle Cap Option C however feel that the given range of 30-50% is too high. We feel that Aotearoa New Zealand as a society needs to have a conversation about how much profit lending institutions should be allowed to make off the rest of our society. High interest rates encourage predatory lending and incentivise bad behaviour on the part of lending organisation staff whilst allowing lending institutions – many owned by foreign nationals – to profit off the aspirations of our people. We would like to see the combined rate of fees and interest capped at a rate low enough to discourage organisations from being in the business of lending, so the culture of our society can return to one of saving instead of borrowing.*

Regarding continued irresponsible lending and other non-compliance

6	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?
	Yes. *Both Director's and all managers should also be personally liable for any awards for compensation or damages*
7	If there are to be more prescriptive requirements for conducting affordability assessments, what types of lenders or loans should these apply to?
	They should apply equally to all lenders and all loans. Creating different classes of lender or loan creates a compliance nightmare. Lenders can claim certain provisions of the law do not apply to them because of the way they are classified. This creates major problems for borrowers when they need to enter into Dispute Resolution. The default position of every lender will be "That doesn't apply to us" or "I am exempt from that provision" giving the consumer the impression there is nothing they can do to get redress for their issue. Our experience is that consumers who can be encouraged to take dispute resolution action are very quick to believe the creditor when told their complaint is wrong and it is very rare for a consumer to take a complaint/dispute further when a creditor is adamant in saying "That

doesn't apply to us."

This also creates the situation where a client will have to take their dispute all the way to court in order to get clarification of whether a lender is in breach or not. This will be far too onerous for the majority of consumers.

By having all lenders and all loans subject to the same provisions in the law Dispute Resolutions and other compliance action becomes a lot simpler – it comes down to have you breached the law or not.

8 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?

All lenders should be required to thoroughly verify all information supplied with loan applications. This verification should include in-depth study of recent bank statements, documentary evidence of all outgoings and income alongside an analysis of how the stated income and expenses measure up against the average for the same item in the area.

In cases where income is low and the risk of harm is great, or for lenders with a history of making unaffordable loans, it should be a requirement for the lender to have an independent assessment carried out by a Financial Mentor or other suitably trained person and the cost for this assessment should be met by the lender.

Currently a client can go onto the website to apply for a loan and the only affordability criteria that is applied is a box the client has to tick saying they believe they can afford the repayments. For the affordability check is a statement on the front page of the contract that says the borrower promises they are able to make the payments. In both of these cases no other affordability checks are carried out. These are just two examples of poor practice which currently exists – in our BFC service we see very few lenders applying rigorous checks to affordability assessments.

If these changes were made the impact to the credit market would be that far fewer unaffordable loans would be written. Borrowers would find it almost impossible to access credit they could not afford and lenders would no longer prey on vulnerable, low income people. Because unscrupulous lenders would need to meet the cost of having an independent assessment completed they are more likely to apply more stringent affordability criteria to their operations.

9 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?

The current provisions in the responsible lending code are adequate. They are not, however, adequately ***enforced.*** *Proper enforcement with substantial penalties would make a huge difference. It would be good to introduce a bounty system whereby the customers who report non-compliant advertising can receive a financial bonus paid to them by the lender who is in breach of the advertising standards. This would cost lenders a significant amount of money and would provide an adequate incentive for them to stop doing it.*

The current situation of relying on the Commerce Commission to investigate and prosecute these breaches is ridiculous as there is no way that organisation can police the entire sector.

10 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?
	We do not agree that lenders taking a more risk averse approach to lending is a bad thing. This would be a welcome change.
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?
	We believe that any temporary or illegal sources of income should be excluded from the affordability criteria as these are not guaranteed and cannot be relied upon. In our service we see a great deal of harm caused by loan assessments which include temporary sources of income such as boarders in the household; when the boarders move out the loans become unaffordable. *In addition, we would like to see all income from Family Tax Credits, Accommodation Supplement, Temporary Additional Support, Disability Allowance, Winter Energy Payments and other supplementary grants excluded from the income calculations for affordability assessments. This is because these payments are provided to meet the cost of specific expenses directly related to the payment and these funds are not available to meet the costs of loan repayments. For example, in our Building Financial Capability Service we often see clients who are receiving Disability Allowance which is calculated on an actual cost basis for their medical and other disability costs. This disability allowance is included in the income for their loan assessments, but the associated medical and other disability costs are not included in the costs section of the assessment. This presents a very distorted view of the client's ability to repay a loan.* *Lenders should also be forced to apply certain formulas regarding current costs of living regardless of information supplied by the borrower. For example, if a borrower is the single parent of 2 children; all living costs (housing, food, electricity consumption, school etc) should be calculated at either the stated figure or the average cost for that household for the area they live in (whichever is highest).* *If these changes were made the impact to the credit market would be that far fewer unaffordable loans would be written. Borrowers would find it almost impossible to access credit they could not afford and lenders would no longer prey on vulnerable, low income people.* *If there is a genuine desire to increase compliance, curb irresponsible lending and reduce the harm caused by unaffordable lending there is a need to greatly increase the amount of advocacy which is available to consumers. This will require an enormous increase in the amount of funding being put into this area.* *Currently the majority of advocacy for vulnerable consumers comes from Building Financial Capability Services. These services are funded by MSD and advocacy is not included in what MSD are purchasing under that contract.* *MBIE claims to meet the need for advocacy in the community by funding Citizens Advice Bureaux. This is a woefully inadequate response. If a consumer goes to a CAB wanting assistance because they are having a problem with a lender they will most likely be given a*

pamphlet produced by the Commerce Commission on their rights and possibly another pamphlet about Dispute Resolution Schemes. The CAB volunteer may or may not be able to answer any questions they have after reading these pamphlets. In poor areas many of the volunteers have limited understanding of the law themselves.

What these consumers need is someone who will support them through the entire process starting with their first complaint to the lender. This needs to be in writing and many vulnerable consumers lack the skills to write a coherent complaint. They then need to be supported through the process of the lender denying any wrongdoing, escalation to the Dispute Resolution scheme and negotiation of a fair settlement. Without this support most vulnerable consumers will not even start the process of enforcing their own rights because it is just too difficult for them to contemplate.

If more advocacy services were available more cases could be taken through complaints procedures and onto Dispute Resolution. The impact of this would be that lenders would start to find it unaffordable to write bad loans. They would be less likely to target vulnerable groups because the cost of doing so would be higher. Profits would no longer be assured and they would be forced to re-examine their business model.

Funding for advocacy should be sourced from the lenders. All lenders should have to pay a levy to fund the service. In addition, every time a dispute resolution service or court made a judgement against a lender they should have to pay an additional fee towards the funding of advocacy services. This would also contribute to lenders becoming better behaved as there would be a financial cost to not meeting their obligations.

There need to be much greater penalties for non-compliance to the responsible lending principles. Currently there is very little incentive to adhere to the law in this area. Strong financial disincentives are needed if progress is to be made. Until this behaviour has a strong negative impact on the profits of lending organisations they are unlikely to change.

We would like to see the inclusion of an automatic provision that where a lender has breached the law in any regard the loan is completely written off and the customer is released from any obligation to pay interest, fees or principal on the loan. This would send a strong message to lenders that this kind of behaviour will not be tolerated. It would severely impact their profits and force them to change their business model. Lenders who consistently did not comply with the law would be forced out of business and the market would become fairer. Low income and other vulnerable consumers would be adequately protected because it would no longer be profitable for lenders to target them.

If credit law was strengthened in these sorts of ways, the business of lending would be a lot less profitable and fewer businesses would enter the market. Many current lenders would exit as it would no longer be worth them being in that business. This would make it a lot harder for low income and other vulnerable consumers to get credit which we see as a positive impact. Currently Aotearoa New Zealand society has become fixated on borrowing money to fund consumerism. We would like to see the narrative of our society move to one where consumers are encouraged to live within their means, save for capital items, and consider purchases in a broader, less consumerist context.

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.

We do not believe any of the options outlined go far enough. Many of them exist in a slightly lesser form already and they are completely ineffective as they are not backed up by effective enforcement action and financial penalties which actually impact the offending lenders.

In our BFC service we deal with a continuous stream of low income and vulnerable consumers who have been targeted by lenders and coerced into unaffordable loans. They are bombarded with advertising and offers of credit. The lenders are making huge profits and they are not likely to stop unless severe financial penalties are introduced and significant funding is put into advocacy which will allow consumers to enforce their rights.

We do not feel that leaving enforcement action to the Commerce Commission is an effective strategy. The Commerce Commission takes very few cases to trial and, those that do go to trial, are long and drawn out processes taking years to resolve. The MTF/Sportzone case is a prime example of this. That case took almost a decade to resolve. In the meantime consumers continued to be harmed by high fees. The benefit of that case also did not accrue to consumers as there was no financial recompense for the hundreds of thousands of customers who had been harmed by high fees during the time it took the case to meander through the courts.

The discussion document itself points out just how few cases the Commerce Commission have taken since the inception of this law. Their process of selecting cases, investigating, and attempting out of court compliance action is time consuming and expensive.

MBIE's current approach to enforcement of credit law (advocacy through CAB, enforcement through the Commerce Commission) is simply not effective. We do not believe it is enough to just increase the amount of funding – the money needs to be spent differently.

If more funding was supplied to community advocates who work directly with and on behalf of consumers there would be a much greater benefit accruing directly to consumers. Community advocates are able to work with clients to get immediate redress for breaches of their rights. They are often able to negotiate fair settlements directly with lenders and, when that fails, they are able to assist the client to navigate the Dispute Resolution process, often to a successful conclusion for the client. This happens in a much more timely fashion and is of much greater benefit to the consumer.

This has a flow on effect of directly impacting lender behaviour. If they know that community advocates can and will target their behaviour they are more likely to change it. Currently many lenders consider it an acceptable risk to ignore the law because they know that the Commerce Commission will never get around to investigating them.

One source of extra funding for this sector is out of court settlements or court judgements against lenders. Currently financial penalties levied against lenders in compliance action accrue to the crown. If these funds were distributed to the advocacy sector it would increase the amount of possible activity in this area.

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?
	Under Scope Option A we believe any contract which has an account maintenance fee or a cancellation fee should also be captured in the definition of a credit contract. This would prevent lenders from re-naming their default fees to account maintenance fees and would also capture some of the worst offenders in this space who currently sit outside the CCCFA. *In our BFC practice we see a number of mobile shops claiming to be laybys to escape the CCCFA. Contracts mirror credit contracts in every way except instead of getting goods immediately, customers must make 1-3 payments first. We see this as no different to lenders requiring a deposit. This loophole is being viciously exploited. There is no dispute resolution track for these contracts. Clients make the first three payments, then default because they couldn't afford payments in the first place and end up with nothing to show for the money they have paid out. Often the goods do not arrive or are of very poor quality and there is no way to complain. Cancellation fees for these contracts are outrageous – often totalling more than the goods were worth and there is no way to complain.* *We feel strongly that these operations need to be brought under the CCCFA which will allow customers access to Dispute Resolution and open the door for possible enforcement action from the Commerce Commission.* *We see the increased compliance cost for lenders and more onerous credit application processes as benefits not costs. We definitely believe the likes of AfterPay, PartPay etc should be captured by the CCCFA.* *We fully support Scope Option B and think this will have the impact of severely curbing business activity in this space. Currently the primary profits from this business model come from exorbitantly high prices and fees. Ending the ability of traders to charge both of these will effectively make it an unprofitable endeavour.* *We see higher compliance costs for lenders as a benefit, not a cost.* *We think care needs to be taken that legislative change in this space is future proofed as much as possible. We believe that many retailers forced out of the Mobile Truck industry by law reform will simply move their business model to an on-line platform and continue to harm vulnerable consumers so the law change needs to account for this.*
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?
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.
	We support options A and B with the amendments suggested above and feel that both should

	be implemented.

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?
	*Fee caps should apply equally to all lenders and all credit products. We absolutely **do not** support any lender being exempt from fee caps.* *Fees should be set at the lowest rate possible and calculated using the lowest cost basis possible. For example, lending institutions should not be able to claim the wage cost of an administrative person to be $100 per hour when the average wage for administrative workers is $16 per hour. They should also not be able to include high-cost office space when low-cost space is equally available. The consumer should not be forced to pay for the profligate spending decisions of lenders.* *One process for regulating this could be as follows:* *Lenders calculate their fees on a cost recovery basis. They then submit their full schedule of fees along with their cost calculations to a regulatory panel who can approve or decline them. Once approved, fees would then have to be published on the lender's website along with their cost calculations and evidence of the regulatory panel's approval. This process would need to be repeated every time a lender changed fees and at stated regular periods (eg every two years) to ensure the fees have remained fair and consistent with other cost models in the market.* *The regulatory panel should consist of members from MBIE, the Commerce Commission and Community Advocate groups such as Financial Mentors. Funding for this panel should come via an application fee paid by the lenders and/or an on-going levy on lenders if the application fee provided insufficient funding.*
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?
	We do not necessarily see an inability of lenders to re-coup their costs through fees as a "cost". The low level of regulation and enforcement in Aotearoa New Zealand's credit market has led to a number of unscrupulous organisations entering the market due to the huge profits that can be made. Other more reputable organisations are also making enormous profits in this environment. This has led to our country being flooded with credit while our people are being saturated with advertising encouraging us to access this credit. By making the lending industry less profitable we may be able to limit some of the harm being done by over-borrowing and the rampant consumerism which has resulted.
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?
	Limit the total amount of fees which can be charged on any contract to no more than 1% of

	the principal of the loan. This would apply across the lifetime of the loan. So a $500 loan would have a maximum level of fees of $5 (effectively making low value loans unprofitable and possibly causing the complete collapse of this market which we see as a positive impact); a $5,000 loan would have a maximum of $50 charged in fees so if payments were spread over five years the fees would be no more than $10 per year; a $500,000 loan would have maximum fees of $5,000. This would include all application fees, default fees, administration fees etc. Lenders could call the fees whatever they liked as long as they did not exceed the maximum 1% of principal over the life of the loan. Penalties for exceeding the prescribed amount of fees could be a refund of all fees over the 1% along with a fine totalling 100% of the overcharged amount to be paid to the consumer. *The benefit of this system would be simplicity for compliance and enforcement. Consumers could easily calculate the amount of fees they should be paying and it would be a black and white matter if they were charged more than the 1%. Because the remedy is prescribed in law, enforcement cost is very low and redress is very accessible for consumers. It would make lending a considerably less profitable business and this could restrict the number of operators which we would also see as a benefit.* *Prohibit the capitalisation of fees in all loan contracts. Currently this is a major issue, particularly with vehicle financing. We have a current client who has a car loan with . The financing for the car is $5,000. In addition she has been charged various fees of $1948 which have been added to the principal amount. She is now being charged daily interest on the $6,948 total. The interest rate is 20% so capitalising these fees adds considerably to the total amount paid under this contract.* *If these fees could not be capitalised and had to be funded up front then many consumers would not be able to afford to pay them. Lenders would be forced to either not charge the fees or not lend to that person.*
19	Which options for changes to fees regulation would you support? Which would you not support? Please explain how you made your assessment.
	We support Fees Option A however, we feel the information with regard to how fees have been calculated should be a matter of public record and the law should mandate this information be published on lender's websites so customers and advocates have easy access to the information. *We believe a great deal of harm done to consumers results from a lack of access to information. Lenders can hide behind "commercial sensitivity" arguments in order to refuse disclosure around fees to their customers. This leaves consumers in a position of not knowing whether their rights have been breached. It also allows lenders to mask unlawful behaviour. Forcing lenders to publish their fee calculations in a public space would greatly increase the amount of accountability in this space. This could have an added benefit of increasing competition: If consumers are able to compare fees from similar traders/lenders this could influence their purchasing behaviour and then those businesses may react by lowering fees.* *We support in principle Fees Option B which would impose specific caps on some fees. We especially like the idea of prohibiting some mandatory fees currently being charged and would suggest that default fees and application fees be specifically included here. However, we do not support the statement* ***"charges for optional services would continue to be unregulated".*** *This would simply lead to lenders reclassifying the services for which they currently charge*

20	*mandatory fees.* *This is already a significant issue in the car finance industry where we frequently see contracts containing supposedly optional insurance cover for a variety of circumstances. Consumers are never told these are optional and are in fact led to believe that if they do not pay these additional costs their finance application will be declined.* *We are also concerned that a level of coercion will be applied to consumers in order to get them to agree to accept the "optional" extra charges.* *We do not support varying fees for different types of loans for the same reasons as mentioned at question 7 – having different rules for different classes of loans makes enforcement virtually impossible for consumers with average to low financial capacity as they are required to understand the difference between the various loan types and then be able to apply the different rules.* *We firmly support the implementation of Fees Option C where all rates and fees are combined into an "equivalent interest rate". Prior to the CCCFA this was mandatory for all credit agreements and evidence from Financial Mentors/Budget Advisers who worked in the sector at that time show that it was more effective at illustrating the true cost of credit. When this provision was in law consumers were more easily able to see how much they were actually paying for credit. It was also much easier for Budget Advisers to educate consumers on the cost of their credit. Comparison between credit products was much simpler and as a result fees were kept lower.* *We believe all three options presented in the paper have merit and the most benefit to consumers will result if all three of them are adopted.*
	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?
	In the example mentioned in question 18 the fees include a $600 broker fee. The client did not use a broker. The broker listed is not registered on the FSPR. They very probably do not exist. The car yard simply uses this as a justification to charge an additional fee. *The only way to prevent abuses of this kind is by outright prohibition of third party fees. If that was seen as too onerous for lenders it could be that third-party fees be included in the overall fee cap as outlined in option 1 of question 18.* *Third party fees should definitely be included in the fees provisions of the CCCFA. They should be subject to the same tests as all other fees and should not be allowed to be recovered on a "cost" basis. This is because many of these fees are charged by related parties (hidden through a variety of shelf companies) and they are in no way based on what anyone would consider reasonable costs.*

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?

This possibly understates the severity of the issue.

One client I was working with was being visited by every second day. Visits were occurring at the home of the client and at his wife's parents. There were constant threats that they would visit the client's employer to tell them the client was a dead beat and disclose details of the client's financial position. In addition to these visits there were phone calls at least once a day to the client and to his wife. The threats being made were intimidating and misleading – threats to repossess all their household goods, to get the client fired from his job, to take possession of his parent's property. When the client engaged with our BFC service we attempted to contact to ascertain the accurate information about the debt and negotiate an affordable repayment plan. They ignored all attempts at contact and refused to supply documentary evidence of the debt they were claiming.

In another instance: our service contacted to let them know the client was working with a financial mentor and an affordable payment plan would be entered into once a thorough assessment of the client's financial position was carried out. loaded the Financial Mentor's mobile phone number into their system resulting in that person receiving six text messages and two phone calls per day, every day, including weekends. When were contacted to get the communication to stop they refused unless an alternative phone number was supplied. It was only the threat of court action by our organisation which stopped this harassment.

Another client entered into a No Asset Procedure while owing money on a secured debt. They emailed the creditor to let them know they were entering the procedure and told them where they could collect the security from. In the email they requested all future communication be via email or standard post. The creditor ignored this request and made a large number of calls to the client. Initially she answered these calls in which the creditor threatened to have her arrested if she did not deliver the security to the address he specified. She was also told that she would still have to pay the remaining debt as he refused to accept the NAP and that if she didn't pay the debt he would send people around to her parents place to get the money off them (the parents had not singed a guarantee and were in no way involved in the loan). When these threats did not result in her paying the money owed he laid a complaint to the police that she had stolen the security. This resulted in a great deal of stress and anxiety for the client who had no redress whatsoever to stop the harassment and threats as the police were being told she was at fault.

We see many cases where debt collectors threaten clients with the removal of all their household goods. Our clients do not understand this is illegal and will often borrow money from loan sharks in order to meet the demands of debt collectors causing them further hardship and harm.

We have some creditors who use gang members to enforce debt collection which is extremely intimidating for clients. Our community (Huntly) has a high gang presence and gang affiliation is a source of constant conflict which adds to the issue.

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

	Debt collectors should have to provide full disclosure including the source of the original loan, the amount of the original loan, a full breakdown of the payments made and the fees charged on that loan, a full breakdown of charges relating to the repossession of goods or assignment of the debt to the collection agency and details of the dispute resolution process relating to the loan. This should be supplied in writing to the borrower at the time of first contact and should also be supplied to the borrower's advocate when applicable. *It should be mandatory for debt collectors to provide information to borrowers stating they are not permitted to repossess essential household goods and other items as listed in Section 83ZN (1)(a). Where disputes occur it should be up to the debt collector to prove they supplied this information and if they can't prove they supplied the information they should be subject to financial penalty. Having a consumer sign a piece of paper stating they were told should not be sufficient evidence.* *Debt collectors should have a responsibility to inform borrowers of Dispute Resolution processes and also about the availability of Community advocates such as Financial Mentors.*
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?
	We believe that the risks identified with cross subsidising of costs could easily be overcome by strengthening other parts of the act around fees and interest rates. We also support all measures that make debt collection less profitable as it will financially disincentivise unscrupulous operators from entering the market.
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.
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.
	We fully support option A as this would make it easier for people who are being harassed by Debt collectors to ascertain if the loan is actually theirs, if it is past statute date and if the fees charged are lawful. We would add to the information to be provided a full statement of all payments that have been made on the contract since its inception and all charges that have been added over the life of the contract. *We fully support option B particularly with regard to debt collection being suspended if it is shown that the client cannot afford to make repayments. Currently debt collection continues even after an agency has been supplied with information that the borrower has no means of making payments which causes an enormous amount of stress for people. We would expect this provision to be extended to court judgements. Currently courts will often make attachment orders of $20 per week which they consider to be reasonable without considering*

if that $20 is actually affordable. This is especially true in cases where borrowers are intimidated by the court process to the extent they do not attend hearings. Due to the current high cost of housing, electricity and food, many people are now in the situation where they simply do not have any money left over once these basics have been paid for. To expect children to go hungry, or for food banks to supply food, so that creditors can collect on debts which were possibly unlawful to begin with is unconscionable.

The issue we can see with this option is in determining which expenses should be included in the affordability assessment. If paying a debt collection agency for a historical debt will result in a current debt being defaulted on we believe it is better to let the historic debt languish until the client is in a better financial position. This may appear to be unfair to the holder of the historical debt but, over time, we believe this will lead to more thorough affordability assessments happening at the beginning of the loan.

We fully support option C. The borrower should be able to limit contact with the debt collection agency to the frequency which suits them. With regard to point 127 on penalties and damages for breaches, we would like to see these being made available to be paid directly to borrowers through dispute resolution schemes rather than having to be enforced by the Commerce Commission. Enforcement by the Commerce Commission is time consuming, drawn out and costly. By contrast, dispute resolution schemes are able to reach resolution quickly and without cost to the borrower.

We fully support option D. We believe access to dispute resolution when debt collection agencies have breached the rights of consumers will lead to better practices. This will need to be coupled with financial penalties which can be levied on debt collectors through dispute resolution schemes.

We do not support option E. We believe this will cause debt collection agencies to inflate their costs to justify their high fees. We would prefer that charging debt collection fees to borrowers be prohibited. We believe this is a better solution as it will directly impact the profitability of lending organisations. We feel this will lead to much tighter affordability checks at the beginning of loans – if the cost of collecting a debt is going to be borne by the lender they are much more likely to ensure collection does not become an issue. It will also incentivise the lender acting in a reasonable way with the borrower to reach resolution rather than having to pay a third party to collect their debt.

In addition we would like to see clearer provisions in the law around preventing creditors refusing to repossess security in order for them to be able to continue to charge interest and fees. We would welcome moves to crystallise debt at a set time in the default process. So, for instance, a debt which is in default for 6 weeks would have all interest, charges and penalties ceased at that point.

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?

We do not deal with these sorts of issues on our organisation.

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.

We can see benefits to that however the definition of "small" business would need careful consideration.

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?

This discussion document does not address the harm being caused by credit which breaches section 4 of the Responsible Lending Code. This section deals with the lender's responsibility to ensure that the credit product offered meets the needs of the consumer.

We frequently see clients who have been encouraged to purchase capital items based on advertising which promises "Interest Fee" credit. These provisions are being essentially ignored by many lenders who are partnered with retail outlets.

For example: A person goes to a retailer to buy a Television set which they have seen advertised as costing $1500 and being available on Interest Free credit. When they present to the counter to make their purchase the credit they are offered is most often ***not*** *a Credit contract for $1500. It is usually a* ***credit card facility*** *(most big box retailers in New Zealand partner with or) and the limit they are given far exceeds the $1500 they originally planned to spend. They are charged a fee for making the application and continuing fees for "account management". They are encouraged to spend up to the limit of this credit at the retail store and they are then bombarded with advertising from other partner retailers to continue spending on the card so the balance never reduces. It is not explained that once the interest free period expires they will be charged a high rate of interest on this purchase. The true nature and cost of this credit is never explained to the customer. If the original purchase does get paid off in the interest free period, the card is not cancelled at that point. Instead the customer is encouraged and pressured to make further purchases on the card.*

Customers who wanted and planned to make a single purchase very quickly find themselves in a lot more debt than they intended with payments that are no longer affordable. This often results in any interest free period expiring long before the original purchase can be paid off.

We see enormous harm caused by this type of retail credit and feel the law should be changed to prohibit retailers from offering these kinds of credit facilities.

Any other comments

We welcome any other comments that you may have.

We are concerned that the discussion document focuses on a very narrow part of the issues around current credit law in Aotearoa New Zealand. Whilst we agree these problems need addressing, we feel it is dangerous to ignore the very real and present harm that is being done by main stream lenders and the harm which is being suffered by those who are not classified as "vulnerable".

Client X is married with 4 children. He works 40-50 hours a week in the construction industry. There are no jobs available in Huntly, so he travels to Auckland each day. The family rent a standard 3-bedroom house and the children attend their local schools. The youngest child is only 3 so X's wife stays home to care for them and to provide a stable home for the other children.

X had a large number of debts from prior to his marriage. These debts totalled approximately $20,000 and he was struggling to pay them all while supporting his family. He approached his bank – – to request a consolidation loan. They conducted an affordability assessment and determined that X's income was not sufficient to allow the loan to be approved.

Rather than decline the loan they suggested X convince his wife to allow the Family Tax Credit she was receiving to be included in his income. This increased his supposed income high enough for the loan to be granted. *They did not alter the affordability assessment to include any of the expenses X's wife was paying for the children out of the Family Tax Credit. Nor did they explain to X and his wife the very dangerous consequences of doing this.*

- *The loan is now in both names meaning it has become Relationship property where prior to this it was X's individual property which severely penalises his wife in the event of a marriage dissolution.*
- *The family are unable to afford the payments on this loan as well as meeting their day to day costs so they have had to borrow from other lenders to pay their bills and they are now in a debt spiral.*
- *The bank's actions effectively locked X out of his insolvency options. Prior to this loan being granted X could have entered an NAP and started over. His credit record would have been affected but the family would still have had access to housing and other essential services because his insolvency would not have affected his wife's credit rating. If he enters an insolvency procedure now, will legally be able to force his wife to pay the debt.*
- *Her inability to make the payments will affect her credit record and could well mean the family is declined for future housing applications. If electricity supply is discontinued they would be unable to connect with another supplier. The family will effectively be locked out of the credit market.* ***This would not have been the case is had left the wife out of the loan application process.***

have been approached by this couple for assistance with sorting out the mess they helped to create but they have been unsympathetic. They insist they will take legal action against the family if the debt payments are not made. The family are too scared to enter into Dispute Resolution with as they fear the repercussions for their financial future and see the process as complicated and bound to favour the bank.

X is now working a second job to try and make ends meet. This is placing a great deal of strain *on the family as he is never at home; he is unable to support the children in their activities and he is constantly tired which leads to bad tempered behaviour.*

This is just one example of a high Street Bank – supposedly a reputable and responsible organisation – completely ignoring the provisions of the Responsible Lending Code. This loan did not meet the needs of the family, was not in their best interests and was unaffordable. It has caused enormous harm. In our BFC service we see regular examples of this sort of behaviour from main stream lenders.

The level of indebtedness in Aotearoa New Zealand has reached critical levels with many working families struggling to meet their commitments each week. Our cultural narrative has been changed from one where we save for things we need and don't spend money before we have earned it, to one where we are encouraged to buy now and pay later. We no longer objectively weigh needs vs wants and consider money which can be borrowed to be money we already have. This puts our people in a place of great vulnerability. Our rangitiratanga and mana are being eroded on a daily basis as our obligations to financial institutions become the controlling factor in our lives.

We feel major reform is needed and this sector needs to be made a lot less profitable. There needs to be recognition that our current standard of living is only possible when funded by credit. We need to change the conversation and stop talking as though debt is inevitable. Our parents and grandparent's generations lived almost entirely without debt and the time has come for us to consider seriously how we can return to that state.