

## Submission on discussion document: Consumer Credit Regulation Review

Organisation	Westpac New Zealand Limited (Westpac)
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### Responses to discussion document questions

#### Issue 1: Regarding the excessive cost of some consumer credit agreements

1	<p><i>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?</i></p>
	<p>High cost lenders are defined in the 'Additional information to support the Discussion Paper' as lenders who charge a very high annualised interest rate (being an interest rate exceeding 50% per annum as per the Responsible Lending Code). In other parts of the Discussion Paper, it appears that high cost lending also presumes that high cost loans are of short duration. Clarification is required. Against that background, while we do not have data we can share that sheds light on the frequency of high cost lending and the severity of it, WNZL does not provide, and does not support the financing of, high cost lending.</p> <p>We agree that the problems identified with high cost lending are significant. We question whether the problems associated with high cost lending subsist because of gaps in the current legislation or because the existing rules are not being enforced to the maximum extent possible.</p> <p>As to why consumers take on high cost loans, in addition to the reasons set out in the Discussion Paper, we would add that:</p> <ul style="list-style-type: none"><li>• high cost lenders often actively target groups of vulnerable customers because of their lack of financial capability;</li><li>• where high cost lenders have become embedded in a community, it becomes usual for people in that community to approach those lenders for finance (rather than looking to other types of lenders and/or comparing lenders);</li><li>• some consumers seek high-cost loans to meet (sometimes unexpected) expenses that need to be paid before the next income cycle. These consumers could include potentially vulnerable customers such as those with dependencies, e.g. gambling or alcohol addictions, or customers with low financial capability or in financial hardship. Unexpected expenses could include such events as vehicle breakdowns, medical costs, children's school fees, etc; and</li><li>• technology (e.g. internet based lending particularly accessed through smart phones) makes it easy to access these types of loans without consumers leaving home or being seen to be using them.</li></ul> <p>In addition to the problems identified in the Discussion Paper, we would add that some high cost lenders lend to consumers in circumstances where it is clear (based on a reasonable affordability assessment) that the consumer cannot afford to repay the loan.</p>

2	<p>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?</p>
	<p>As noted below, our preferred option is Cap Option C. However, if Cap Option A is supported, please see our comments in response to Question 3 below regarding the appropriateness of Option A.</p> <p>Regarding the extension to Cap Option A (limiting the extent of high cost lending taken out by a consumer), we consider that the proposals would be very difficult to manage if the proposals are intended to apply across all high cost lenders. This is particularly because the current credit reporting information system does not provide sufficient information to meet the information needs of the proposals, including that there is insufficient information to ascertain whether or not a credit contract amounts to high cost lending.</p> <p>Even if these information gaps could be dealt with, further thought is required to make the extensions workable. For example, should the proposed prohibition on offering a loan to a person who has defaulted on an existing high-cost loan be temporal (i.e. should the question be whether the consumer is currently making repayments regardless of previous defaults).</p>
3	<p>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?</p>
	<p><b>Cap Option C</b></p> <p>Cap Option C is our preferred option. We strongly support the elimination of lenders charging unjustifiably high interest and fees.</p> <p>However, rather than limiting the total cost of interest and fees, we propose placing a cap on interest rates only. Bundling interest and fees under one cap adds another layer of complexity that is unnecessary, particularly given the proposals in Issue 4 (Cap Option A), which would ensure that fees are reasonable.</p> <p>Capping interest (and not fees) would:</p> <ul style="list-style-type: none"> <li>• eliminate high cost lending;</li> <li>• be simple for consumers to understand and apply;</li> <li>• avoid the issues we identify below with the EIR model;</li> <li>• be consistent with Commerce Commission’s existing policy regarding fees, and would not require a significant change in approach for most lenders (who already evidence how they have determined the reasonableness of their fees); and</li> <li>• maintain the onus on lenders to ensure that fees are reasonable no matter what their business or distribution model.</li> </ul>

We disagree that, by significantly reducing interest and fees, Cap Option C effectively prohibits payday lending and other commercial short-term lending of relatively small amounts of money (microfinancing). Instead:

- it would prohibit the current high cost lending model; and
- likely lead to a significant consolidation of these types of lenders as some go out of business and others adjust their business models to take account of smaller profits.

Short term commercial lending could likely still be conducted within the proposed range of 30-50%. However, careful consideration would need to be given when choosing the interest rate cap, so that it still permits some lenders to service the market currently serviced by high cost lenders. Also, consideration needs to be given to the process of how an interest rate cap should be set and determined in order to keep pace with changes in underlying funding rates.

The table on page 15 of the Discussion Paper notes that a best case outcome following from Cap Option A might be that consumers will obtain alternative finance in the form of a bank or credit union overdraft or credit card. It should be noted that:

- a number of consumers may fail the lenders' affordability tests for these products; and
- revolving credit products may not be suitable for some customers, particularly if they spend to the limit and do not pay off more than the minimum over a longer period of time.

Stricter affordability assessments are proposed on page 23 of the Discussion Paper for certain lenders and types of credit. The outcome must be that some consumers who currently obtain credit will no longer be able to access such credit. Support for these people is a social issue that needs to be considered and addressed. Some of these issues were considered at the recent Financial Inclusion Forum, of which Westpac was a participant, alongside other banks, finance providers, NGOs and government.

Likewise, if Cap Option C is chosen and high cost lending is eliminated, there will be some consumers who will find it more difficult to obtain credit (even if they meet the affordability criteria). There needs to be a suitable transition period to enable lenders to design lending services to meet this need.

### **Cap Option A**

We support Cap Option A's intent, but question its practical application in some circumstances. For example:

- where the amount of borrowing fluctuates (through repeated increases in borrowing or part repayments), it would be difficult for lenders (and, more importantly, consumers) to determine whether they were being required to repay more than twice the original loan principal; and
- where the amount of the loan balance is small, reasonable fees could conceivably take the total amount payable above the proposed threshold making the granting of small loans unfeasible for lenders and, therefore, limiting this type of credit.

It is key that any accumulation cap (as proposed) apply only to high-cost lenders (as is stated). If Cap Option A were chosen, the thresholds for its application would need to be carefully thought through and well defined. Two key components requiring thought would be the hurdle interest rate and the maximum term of the loan. A home loan lasting over 25 years at an interest rate of 6.5% would result in a total amount of interest payable that is more than the loan principal.

Regarding Cap Option A costs:

- the Discussion Paper states that some high cost lenders would lose revenue from interest and fees paid by defaulting consumers. In fact, some lenders may lose interest and/or fees charged above the cap (regardless of the status of the consumer).
- Cap Option A might also have the undesired effect of reducing the number of small loans available to consumers as lenders require consumers to agree to minimum levels of lending that enable lenders to meet the proposed requirements (but which surpass the consumer's lending requirements). This is because:
  - if a consumer defaults on a small loan, reasonable costs of recovering that loan (e.g. calls to that consumer) could easily push accumulated costs above the proposed threshold and would, therefore, make lending small amounts less attractive to lenders (even those seeking to recover reasonable costs); and
  - some legitimate small consumer lenders with higher cost business models might also be eliminated.

Regarding Cap Option A benefits, we agree that an accumulation cap would likely benefit consumers when compared with the current regime. However, the evidence supporting the following assumed benefits is unclear:

- that “fewer borrowers would accumulate unmanageable debt and get into financial hardship”. It would be helpful to understand how MBIE has assessed that debt accumulated below 100% of the original principal is manageable.
- that “borrowers would pay slightly less in interest and fees overall”. We do not have sufficient information ourselves to understand what impact this option would have on overall interest and fees for defaulting customers. To the extent that the only slightly less statement presumes that many high cost lenders already have an accumulation cap, the evidence supporting this is unclear; and
- a “small reduction in irresponsible lending”. Again, it is not clear what analysis and evidence supports this conclusion.

**Option B:**

Similar to Cap Option A, we support the intent behind Cap Option B, however, there are significant issues with its application.

Our key concern is that Cap Option B is far too complex. Consumer legislation should be easy for consumers to understand and apply to their circumstances. This is even more important for high cost loans where borrowers typically have financial capability issues.

By contrast, Cap Option B has three different reference points: (i) the Equivalent Interest Rate or separate interest and fee caps; (ii) the total accumulation cap; and (iii) the limits on default interest and fees.

We also have the following specific concerns:

#### *Equivalent Interest Rate (EIR)*

The EIR model raises the following issues (many of which existed pre-CCCFA):

- the EIR is a notional interest rate (i.e. it shows the amount of interest that would be payable if fees were incorporated as part of the interest component). We already know that this concept is not easily understood by consumers (pre-CCCFA) and seems even less likely to be understood by vulnerable customers;
- it relies on lenders taking a consistent approach as to which fees should be incorporated as part of the EIR calculation, when historically lenders have disagreed on the approach. It is not clear what 'mandatory' means.
- some lenders might try to manipulate the categorisation of fees to artificially lower their EIR (while still charging those amounts outside the EIR calculation); and
- in some circumstances, it is genuinely difficult for lenders to calculate an EIR (for example, in the case of revolving credit products) and this difficulty would lead to inconsistencies between lenders.

The Discussion Paper states that, if an EIR model is adopted, lenders would no longer be required to substantiate the reasonableness of fees falling within the EIR calculation (paragraph 107). We agree this makes sense because market forces will pressure lenders to maintain competitive EIRs in the same way it does currently for interest rates (lenders are not required to substantiate their interest rate calculations).

#### *Separate interest / fees caps*

We strongly support capping interest rates (see our comments on Cap Option C).

Capping fees is, however, highly problematic and we do not support that approach. Our comments below apply generally to fee caps (not just in the case of high cost lending fees) and are, therefore, also relevant to Question 16 and Fees Option B:

- increasingly, there are a wide range of lender business and delivery models (some being highly digitised and others relying heavily on manual processing). Devising a number of fee caps that are not meaningfully high for some lenders or cripplingly low for some small consumer lenders with higher costs would be difficult;
- we question who would set the cap and what the process would be for this. Any fees cap would need to be able to be changed regularly and we query whether, for example, the Commerce Commission would have the resources to reset the caps on a sufficiently regular basis given (understandably) divergent industry positions on what the cap should be;

	<ul style="list-style-type: none"> <li>• technology is moving at a rapid rate – now more than ever lender costs are changing as processes change. A fee (though reasonable when set at the time) might enable some lenders to charge fees for services that no longer reflect the actual costs of that service;</li> <li>• if fee caps result in actual costs for lenders exceeding the capped fee, this might dissuade lenders from providing loans to consumers where the lender anticipates actual costs will be higher than capped costs. This might encourage lenders to discriminate against less ‘straightforward’ cases, and marginalise certain groups of customers. For example, the cost of verifying income information from WINZ will be more expensive than verifying salary income; and</li> <li>• some lenders charge higher fees because they provide a better but more costly service. Capping fees might have the unintended impact of limiting the consumer services a bank will offer (which some consumers will want and are happy to pay for).</li> </ul> <p>Regarding Cap Option B benefits, the Discussion Paper states that there would be a markedly different outcome (between Cap Options A and B) regarding levels of payments made by consumers. However, it seems likely that, without a cap on all fees, a reduction in some fees will be offset by an increase in uncapped fees. Therefore, the impact on the consumer might not be as dramatically different as suggested in the costs/benefits table.</p>
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?
	See our comments above.
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 strongly support Option C (subject to our comments above). That option is the simplest and delivers the largest benefit to consumers. By contrast, Cap Options A and B are complex and would be difficult to understand, manage and enforce.

## Issue 2 - 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?
	<p><b>Options for increasing lender registration requirements</b></p> <p>Our preference is that all lenders are licensed (Registration Option C). If Financial Advice Providers (FAPs) are also required to be licensed under the CCCFA, there should only be one licensing regulatory body and hence one licence supervisor – which should be the Financial Markets Authority.</p> <p>Careful consideration should be given to how the Financial Adviser and CCCFA licensing regimes might fit together to avoid overlapping, and possibly inconsistent, licensing and supervision requirements. The different approach taken by the Commerce Commission and the Financial Markets Authority</p>

regarding the operation of Harmony's peer to peer lending service is a good example of the kinds of issues that might arise where there are competing regulatory requirements and approaches.

Provided the requirements were aligned to existing regulatory obligations under the FMCA, we would support Registration Option A (expanding powers to deregister lenders and banning directors from future involvement in the credit industry) and Registration Option B (introducing a fit and proper test in registration of lenders).

### **Options for strengthening enforcement and penalties for irresponsible lending**

Enforcement Option A: we are generally supportive.

Enforcement Option B: we are generally supportive, provided that the directors' duties are consistent with duties owed by directors under related legislation and clear regulatory guidance is provided around requirements for compliance.

We do not support the proposal in paragraph 235 (Additional Information to Support the Discussion Paper) to deem directors strictly liable for breaches of legislation by the lender. In the event that strict liability is introduced, it should only apply to a very limited number of offences to align with other regulated industry sectors. With principles-based legislation, it is challenging to introduce directors' duties or strict liability for directors in the event of breaches of legislation by the lender. Accordingly, our level of comfort with Enforcement Option B is dependent on the outcome of some of the other proposals that have been raised in the Discussion Paper, including introducing more prescriptive requirements for affordability assessments and advertising.

In practice, we do not consider that the adoption of Enforcement Option B would have a significant impact on incentives to serve on lender boards, as most people are likely to already be aware of the personal exposure involved with becoming a director under other regimes. However, it is possible that the increasing personal exposure may impact directors' fees, which may have a resulting impact on lenders' businesses.

Likewise, provided that any new directors' duties introduced under Enforcement Option B are consistent with duties already owed by directors under related legislation, we consider that the imposition of those duties is unlikely to have a material impact on the cost of directors' and officers' liability insurance in New Zealand. However, imposition of new duties could have a material impact on the cost of that insurance if the new duties were to extend beyond those owed by directors under related legislation, which we understand has been the case in offshore markets following the introduction of new regimes (such as the Senior Manager Regime in the United Kingdom and the Banking Executive Accountability Regime in Australia).

Enforcement Option C: we are generally supportive of the disclosure of assessment principles, but not (in the usual course of business) the disclosure of assessment risk settings or details for individual applications.

As outlined in responses to 7 and 8 below, we support the continuance of a non-prescriptive approach that can rely on a reasonable borrower declaration. There is significant guidance already provided in the Responsible Lending Code that can be bolstered to ensure industry best practice is clear (as well as allowing for scalability of approach across different products. In that context, the approach taken at an individual transaction level

maybe variable and subjective - such an assessment approach will be difficult to document in a way that adds any benefit to the borrower (in the normal course of business).

We note that the consumer already has knowledge of the assessment information used by the lender. The information used by the lender to make the assessment is obtained from the consumer in the course of the credit application, or derived from the borrower account or transaction information, or from a credit bureau (to which the borrower has access rights). Therefore, the basis of decision of the lender can be critiqued by the consumers or another party.

We note also that the Privacy Commissioner is currently consulting on amendments to the Credit Reporting Code.

Option D: we are generally supportive, and note that this obligation is already included in the Code of Banking Practice.

Option E: we are generally supportive provided this does not create data security and privacy risks for the consumer: i.e.

- the consumer would need to provide appropriate authorisation (and to remember to withdraw such authorisation when appropriate);
- the consumer would need to understand the risks of providing a third party with its financial personal information and the right to engage on his or her behalf; and
- where the consumer stops engaging with the budget advisor or the budget adviser stops engaging with the lender, the lender needs to be able to contact the consumer again directly.

7 If there are to be more prescriptive requirements for conducting affordability assessments, what types of lenders or loans should these apply to?

The review needs to consider whether there is any issue with the underlying regulatory framework or whether instead the current requirements are being enforced. If a lender is not undertaking that assessment presently, then that may offend the current regime without requiring more prescriptive requirements. We do not support the proposal for more prescriptive requirements. We are concerned that the desired benefit (reduced likelihood of hardship) from an increase in the extent of the prescribed requirements could be overestimated.

Lenders are currently required to make reasonable inquiries and be satisfied that it is likely the borrower will make payments without suffering substantial hardship. We accept that the current approach allows for a range of lender practices (rather than a standardised approach). However, this is appropriate given the reality of the varying range of products and consumers a lender may have within their portfolio or in comparison to others. A range of practices allows lenders to apply their learned experience and ultimately meet a wide range of consumer needs and circumstances in an efficient and timely manner.

Affordability assessment methodology as outlined in paragraph 280 (Additional Information to Support the Discussion Paper) is comprehensive and representative of the approach often applied by responsible lenders. More sophisticated lenders (such as Westpac) will extend the methodology further to apply discounts to some income types (with higher variability risks) and add further weighting to some outgoings (such as interest rate buffers and floors).



	<p>This type of affordability assessment methodology can be useful for screening out clearly non-viable credit applications both at face value and then with the added insight from the adversity weightings applied. Such an approach, however, does not effectively avoid the likelihood of hardship in other cases. An inevitable limitation of this methodology is that it is an assessment completed at a point in time and primarily based on the retrospective view of the consumer (or their account activity or other history). The extent to which the consumer’s situation (e.g. lifestyle, preferences) can change over the period of a loan term cannot be factored into these calculations. Genuine hardship usually arises due to the impact of an unforeseen event (loss of employment, loss of health, loss of relationship) and the extent, and speed, by which the consumer can adjust their position to compensate for the change.</p> <p>Minimum affordability standards should be considered in light of Financial Adviser legislative reform, to avoid regulatory uncertainty. Under the proposed Financial Adviser regime, a Financial Advice Provider will need to ensure that financial advice given in respect of a consumer credit contract complies with the Financial Adviser regime and its new Code of Conduct. That Code is outcome focused and includes duties to act in the best interests of the customer. We question whether considering affordability standards would be excluded from the ambit of the Financial Adviser regime.</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>There should be no change to the requirement that lenders can rely on information provided by the consumer unless the lender has reasonable grounds to believe the information is not reliable.</p> <p>The complete and reliable disclosure by the consumer of their financial position is a cornerstone of the relationship between the lender and the consumer. We are concerned that removal of this acknowledgement would shift the burden of the obligation and allow consumers more latitude for inaccurate disclosures.</p> <p>The threshold for reasonable grounds is subjective but is not a barrier for lenders undertaking appropriate inquiry or validation in order to fulfil their responsibility to assist the consumer to avoid foreseeable hardship. Responsible lenders can develop guidance and approaches for ‘doubt generation’ of the consumer’s declaration (which can include statistical approaches and models). As outlined in question 7, the relevance of a point in time affordability assessment may be limited, such that a reasonable approach to relying on the accuracy of borrower declared inputs would not substantially impact the validity of the assessment.</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>We support the mandatory application of the existing guidelines.</p> <p>Currently some lenders fail to disclose the full cost of lending, particularly in relation to high cost lending and lending for consumer goods and vehicles. Lenders targeting vulnerable consumers are often the same lenders that fail to disclose the full cost of a loan. This should be addressed. That said,</p>

	requiring lenders to fully disclose the cost of a loan is more straightforward for consumer goods and vehicles where the price of the product is known and assumptions on term can be made. It is challenging to provide at the advertising stage without knowledge of amount and term.
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?
	See our comments above.  Option C - We support the mandatory requirement that disclosure be provided in the borrower's language if the lender has advertised the credit facility in that language, which broadly reflects the existing provision in paragraph 7.15 of the Responsible Lending Code. If additional requirements regarding disclosure are to be included, thought should be given as to whether the requirements would apply to all disclosure (and not just the initial disclosure). It is essential that disclosure in a foreign language should only be required if the lender chooses to advertise a credit product in that language. This is because some language translations are more likely to result in interpretation risks, particularly where technical financial concepts or highly specific legislative disclosures are required. The focus should be on ensuring that all consumers understand the terms of the credit contracts they are entering into.
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?
	See our comments above.
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.
	See our comments above.

### Issue 3 - 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?
	We agree with the costs and benefits.
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?
	The proposal to include all contracts charging default fees as “consumer credit contracts” will make the definition too broad. Business loans may charge default fees and should not be treated as consumer credit contracts (see also our comments on Question 27 below).
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 are supportive of both options, provided that Option A only applies to consumer credit contracts (as currently defined under CCCFA).

**Issue 4 - 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?
	<p>We support Fees Option A assuming this requires no further changes to the regime. Under the existing CCCFA a credit or default fee must not be unreasonable. There have been significant developments regarding the application of this test in recent years, which include the Sportzone judgment and the updated Commerce Commission Credit Fee guidelines (2017). Therefore, the rationale for making further structural changes to the existing regime is unclear.</p> <p>Any changes should also take account of the fact that lenders will not want to provide commercially sensitive information regarding costing models to persons other than regulators.</p> <p>We do not support Fees Option B (see our above comments for question 3 - relating to Fees Option B).</p>
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?
	See our comments set out in relation to Issue 1 above.
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?
	See our comments set out in relation to Issue 1 above.
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 Option A for the reasons stated above.
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?
	We have not received any direct evidence that excessive broker or other third party fees are being added to loans.

## Issue 5 - 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?
	<p>The definition of 'debt collection' in the Discussion Paper is too wide. It would be better if debt collection was defined as meaning the point at which the lender believes that the consumer is either incapable or unwilling to adhere to the repayment schedule proposed following default for reasons explained below.</p> <p>Regarding paragraph 114 of the Discussion Paper:</p> <ul style="list-style-type: none"><li>- We agree with (a).</li><li>- In respect of (d), we note that we do not call consumers once they have a repayment arrangement with Westpac. Additionally, we call consumers between 8 and 6pm and not outside those hours. We do not speak with employers as this would likely be a breach of the Privacy Act requirements.</li><li>- In the case of (c), Westpac does not charge consumers with separate debt collection fees, and will often reverse fees and charges where consumers cannot pay loans because of hardship. For other lenders, it is possible that reasonable debt collection costs might exceed the initial loan, where the loan is very small. The question becomes whether lenders should be able to recover reasonable fees on small loans or whether such fees should be aligned to reflect the size of the loan.</li></ul> <p>It should also be noted that:</p> <ul style="list-style-type: none"><li>- behavioural insights are relevant when determining good debt collection practices. For example, there is good evidence that allowing a consumer too long a period to repay outstanding arrears is more likely to result in non-payment (and hence additional consumer stress); and</li><li>- if a consumer is unable to pay the loan (and/or loans with other banks or creditors), where the consumer's total lending is below \$47,000 and unsecured, the consumer may approach a budget adviser who can assist the consumer to apply to the Courts for a summary instalment order, under which the Court may reduce the amount of debt payable to all that consumer's creditors.</li></ul> <p>Regarding paragraph 117, high costs of housing (both rents, home purchase and construction) and food, when compared with wages, also significantly contribute to consumer stress. If this gap between costs and wages were lessened it would reduce consumer stress and lower the need for consumers to be borrowing money to pay for these essentials.</p>
22	What information should be provided to borrowers by debt collectors? When and how should this information be provided?
	The debt collector should be required to provide the consumer with a properly formulated notice that verifies the debt collector's right to collect the debt (i.e. amount of the loan, status of any repayment plan).

	In some instances it will not be possible to provide a consumer with the information outlined in paragraph 119. For example, we would not be able to provide a copy of a contract for a credit card that was applied for prior to 1980. Additional required disclosures to consumers will likely require further costs to be incurred by lenders, which may translate to increased debt collection costs for consumers.
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?
	Option B: this option requires that: <ul style="list-style-type: none"> <li>- debt collectors offer a borrower a new affordability assessment. In some cases, affordability (or hardship) is not the issue, rather, the consumer has either forgotten to pay or has decided to not pay.</li> <li>- a lender may not make repayment demands other than in accordance with the latest repayment schedule. However, in case of hardship, often circumstances can change. For example, a consumer may be unable to repay a loan due to losing his or her job. A repayment schedule will be agreed on that basis. However, if the consumer obtains new job, and his or her affordability materially improves, it is in both the borrower's and the lender's interests to update that repayment schedule.</li> </ul>
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.
	We have no comments to add.
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.
	<p>We support Option A.</p> <p>We do not support Option B. This goes to our proposed definition of debt collection. Debt collection is undertaken once a consumer has failed to adhere to or will not adhere to a repayment plan. It should be the lender that is required to offer the repayment plan.</p> <p>We support Option C.</p> <p>We support Option D. Debt collectors should be subject to the CCCFA requirements.</p> <p>We support Option E. Debt collection fees (if payable) should be cost based or capped. Unlike in the case of capped lenders' fees we do not believe that capped debt collection fees would marginalise certain groups of consumers. On the contrary, a cap on debt collection fees might ensure that a proportionate response to the recovery of smaller debts occurs. Third party debt collection agencies are able to profit based on the discounted amount</p>

they pay for the debts. It is conceivable that third party debt collection agencies could be required to factor in the cost of recovery into this discount and not separately charge for collection fees at all.

## Issue 6 - 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 have not seen harm from loans to small businesses, retail investors or family trusts as a result of them not being regulated under the CCCFA. We are more likely to see customers getting into difficulty due to challenges in the business environment or materialising business risks, rather than unsuitable products or harsh terms.
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.
	<p>No - we have not seen evidence of harm that would require this change.</p> <p>Consumers were given special protections under the CCCFA. A consumer credit contract is a type of credit contract where the consumer:</p> <ul style="list-style-type: none"><li>• is a private individual (in other words, they are not a company or incorporated society); and</li><li>• is entering the contract primarily for personal, domestic or household purposes (as opposed to primarily for business or investment purposes)</li></ul> <p>The nature of the two part test means that changes to either part will result in a range of consequences.</p> <p>We need to understand precisely what the proposed changes are to this current definition in order to assess the consequences. MBIE's proposals are unclear – if the proposal is to include small businesses, investment loans and family trusts, which might result in no credit contracts being excluded from the definition.</p> <p>Further detailed analysis is required. For example, as regards retail investors / investment loans, a loan to an individual for the purpose of purchasing an investment property appears close to the types of loans currently captured within the existing definition of consumer credit contract. Compare this with a loan to a company for the purchase of shares, which appears far removed from the kinds of situations the CCCFA was intended to apply to.</p> <p>Likewise, in the case of family trusts used in connection with household lending, trustees are often intrinsically linked to the family trust, there is usually a reliance on the trustees' personal income to service family trust debt and the security property is the family home. In these cases, arguably, the protections should be the same. However, where a family trust is used for the purpose of business lending different considerations should apply (see our comments on small businesses below).</p> <p>In practice, where individuals use consumer credit products (e.g. home loans) to borrow money from Westpac (regardless of the borrowing entity used or purpose for which they borrowing it), those consumers are for the most part treated the same as individuals whose loans fall within the definition of a consumer credit contract.</p> <p><b>Small businesses</b></p> <p>Applying the same or similar CCCFA protections to small business would be problematic because:</p>



- Factors relevant to business lending significantly differ in nature. For example:
  - small business owners borrow to fund working capital or purchase business assets. This kind of finance is typically medium to long term (as compared with the short term finance provided by payday lenders);
  - the suitability of the loan structure is important. For example, typically asset finance is not provided beyond the depreciated life of a business asset;
  - credit policies appropriate for business lending are different to those applied to retail lending. Credit analysis for business lending focuses on sustainable cash flow (having to often factor in variable cash flows). Business lending is inherently higher risk due to the uncertainty around business cash flows. This is harder to assess and not something that easily fits into the current provisions of CCCFA. Security and adequate rights of enforcement are also key requirements;
  - debt collection for business lending is typically a multi-staged process that may ultimately necessitate the appointing of a receiver or liquidator if other options to recapitalise the venture are unsuccessful; and
  - businesses are able to use limited liability companies to protect owners from the outcome of a failed business.
- It will be extremely difficult to draw a distinction between which business should fall within the CCCFA and which should not. In particular we do not support using a financial threshold to determine who falls within the CCCFA as it sets a bar that is too easily crossed year on year and would be very complex for lenders to monitor. It could also mean that even holding just the family home in a family trust would cause a customer to reach a financial threshold whereas this would not necessarily mean the customer is any more sophisticated.
- Additional lending requirements might reduce lending to small businesses.
- Many businesses obtain credit from a number of sources (e.g. supplier credit). It may make supplier / small business relationships far more complicated which might reduce supplier credit for small businesses.
- Typically, business lending is secured using a General Security Agreement (GSA). If CCCFA protections impede or override lenders' general recourse under GSAs, this will impede a lender's ability to put in place a receiver in order to save or fix the business. This in turn potentially negatively impacts both lenders and business borrowers. An additional outcome is that, given the fact that delays can rapidly result in the substantial financial deterioration of a business, business lenders would need to build the uncertainty of enforcement (and the potential impact on security) into their credit modelling and debt pricing.
- Historically, business lending fees were set and not open to negotiation. The business lending market is now highly competitive. A number of business lending fees are negotiable and market driven. Borrowers are able to use their market power to negotiate down fees (sometimes below lenders' costs).

	<p>- Businesses owners may use limited liability companies to protect themselves from business failure. From a public policy perspective, should business owners be further protected from business failure at the cost of lenders (and potentially other business owners who might be required to pay higher interest rates to offset the additional uncertainty of recovery).</p> <p>There are parts of the CCCFA that would need to be significantly rethought if it applied to small businesses. Examples include: hardship protections, debt collection requirements and affordability assessments. If, from a policy perspective, it is decided that extra protections for small businesses are required it would be better to start afresh: identifying the problems and developing solutions that address those problems.</p> <p>If MBIE remains concerned regarding potential harm of lending to small business, Westpac would be happy to participate in industry discussions as to how MBIE might improve business lending behaviour (for example by improving the standards of credit policy decisioning).</p>
28	<p>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?</p>
	<p>See our comments above.</p>

**Any other comments**

	<p>We welcome any other comments that you may have.</p>
	<p>We have no further comments.</p>