MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
HĪKINA WHAKATUTUKI

COVERSHEET

Minister	Hon Kris Faafoi	Portfolio	Commerce and Consumer Affairs
Title of Cabinet paper	Review of Consumer Credit Regulation – further policy recommendations	**Date to be published**	14 October 2019

List of documents that have been proactively released		
Date	**Title**	**Author**
28 August 2019	Review of Consumer Credit Regulation – further policy recommendations	Office of Hon Kris Faafoi
28 August 2019	DEV Minute: Review of Consumer Credit Regulation: Further Policy Proposals	Cabinet Office
28 August 2019	Impact Summary: Review of Consumer Credit Regulation – further policy recommendations	MBIE

Information redacted **YES / ~~NO~~**

Any information redacted in this document is redacted in accordance with MBIE's policy on Proactive Release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982. Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

Some information has been withheld for the reasons of confidentiality of advice to Government and that making the information available would constitute contempt of the House of Representatives.

Impact Summary: Review of Consumer Credit Regulation – further policy recommendations

Section 1: General information

Purpose
The Ministry of Business, Innovation and Employment is solely responsible for the analysis and advice set out in this Regulatory Impact Statement, except as otherwise explicitly indicated. This analysis and advice has been produced for the purpose of informing final decisions to proceed with a policy change to be considered by Cabinet

Key Limitations or Constraints on Analysis

This Impact Summary has been prepared to analyse two additional issues that have grown in impact since the primary Regulatory Impact Statement (RIS) titled *Review of Consumer Credit Regulation*, dated 6 September 2018 was written:

- Predatory behaviour of mobile traders, particularly in regards to responsible lending.
- Borrowers not being aware of or encouraged to use financial support services.

The analysis of the problems and range of options considered are based on the public and industry submissions that have been made to the Finance and Expenditure select committee and the submissions that MBIE received during our 2018 review of the Credit Contracts and Consumer Finance Act 2003. The evidence used is based on a mix of qualitative reports and anecdotal evidence from submitters. The quantitative evidence is limited and the extent of some of the potential impacts (both positive and negative) of the options are unknown.

The criteria used to assess options is based off relevant criteria used in the primary RIS to ensure consistency:

- Reduce consumer harm from high-cost lending and irresponsible lending (weighted most highly).
- Consumers can access finance to alleviate genuine short-term financial difficulties.
- Compliance costs are reasonable.

This analysis has been significantly time constrained – only a few weeks were available between the end of oral submissions on the Bill at select committee and finalising an impact statement. The options have therefore focused on how to improve the effectiveness of the policy intent of the Bill in the above two areas. Consultation and testing has also been limited due to any changes needing to be made in time to inform potential amendments to the Bill before it is passed.

Responsible Manager (signature and date):
Authorised by: Jennie Kerr Competition & Consumer Policy Ministry of Business, Innovation and Employment 10 October 2019

Section 2: Problem definition and objectives

2.1 What is the policy problem or opportunity?

MBIE's Credit Contracts Review in 2018 (the Review) identified ongoing issues in the credit market and significant harm to vulnerable consumers from problem debt. The issues identified included the excessive cost of some consumer credit agreements; continued irresponsible lending and other non-compliance, including by mobile traders; unreasonable fees[1]; and irresponsible debt collection practices.

The Credit Contracts Legislation Amendment Bill (the Bill) amends the Credit Contracts and Consumer Finance Act 2003 (the Act) by strengthening requirements to lend responsibly, especially in relation to how affordability and suitability tests should be conducted; limiting the accumulation of interest and fees on high-cost loans; and providing new remedies and penalties for non-compliance.

These changes support the primary purpose of the Act: "to protect the interests of consumers in connection with credit contracts, consumer leases, and buy-back transactions of land". The other purposes of the Act include promoting confident and informed consumer participation in credit markets and providing consumer protection.

This Impact Statement evaluates two changes to the Bill proposed by submitters to the Finance and Expenditure committee.

Predatory behaviour by unregulated mobile traders

The Bill is intended to help reduce problem debt and resulting consumer harms (such as financial hardship, and mental and physical health issues).

Mobile traders are businesses that do not have fixed retail premises and sell goods predominantly or exclusively on credit or other deferred payment terms. Some of these traders operate mobile shops, usually from trucks, while others employ sales staff who sell unsolicited goods door-to-door using catalogues and brochures. These goods include electronics, bedding, clothes and other consumables. The price of these goods are usually substantially higher than the cash price for comparable goods at mainstream retail outlets. Mobile traders tend to target consumers in lower socio-economic areas.

Where we refer to mobile traders, we are not referring to traders who sell goods where payment is made at the point of purchase (such as coffee, ice cream, or fast food trucks), or where the trader is offering services, utilities or seeking charitable contributions.

Numerous, widespread and ongoing instances of harm caused by mobile traders were reported to MBIE by stakeholders during the Credit Contracts Review and to the Finance and Expenditure Committee in relation to the Bill. These harms relate to:

[1] The Act provides that a credit fee or default fee must not be "unreasonable". Currently the main (but not only) test for the reasonableness of fees is that they recover costs that are closely relevant to the transactional activity (such as processing a loan application) that they are being charged for. The Review found that there is a lack of clarity about when a fee was unreasonable. While the Supreme Court's judgement in Sportzone/MTF clarified the fee provisions to some extent, the court noted that the test of "reasonableness" is imprecise and difficult to apply. Although the Responsible Lending Code was updated to reflect this judgment, the Review found that creditors continue to charge excessive fees. The Bill contains provisions that require lenders to substantiate the reasonableness of their fees.

- **The high cost of purchasing goods with some mobile traders.** The Commerce Commission's 2014/2015 investigation into mobile traders found that many products are sold at prices that are significantly higher than the cash prices for a comparable product purchased from a mainstream retailer.[2] This reflects the costs of what is effectively a loan being incorporated into the upfront price, rather than being charged explicitly as interest or credit fees. In these cases, the contracts are not "consumer credit contracts" and so these mobile traders are not regulated by the Act. This means they do not have to provide disclosure and lend responsibly (such as by making inquiries to be satisfied that the consumer can afford the repayments).
- **Providing credit without an affordability assessment**. During MBIE's 2018 review of the CCCFA, mobile traders were widely reported to contribute to problem debt, especially where they do not conduct adequate affordability assessments or credit checks prior to providing credit contracts.

In most cases where mobile traders are not subject to the Act, they are acting lawfully, despite engaging in irresponsible behaviour. This means that the Commerce Commission cannot prosecute these traders under the Act. Mobile traders who are currently subject to the Act but act unlawfully were addressed in the previous RIS, and are therefore outside the scope of this Impact Summary.

The Bill currently proposes a 'deeming' power which allows regulations to prescribe what agreements are deemed to be consumer credit contracts. The policy intention was to use this power to deem all contracts between mobile traders and consumers to be consumer credit contracts once the Bill was passed, to regulate those mobile traders who are not currently subject to the Act.

However, given the serious harms that unregulated mobile traders are causing to consumers through irresponsible lending, submitters to the Finance and Expenditure committee have requested that mobile traders be brought within the scope of the Act through the Bill, rather than waiting until after it has passed and using regulations. This request – to extend responsible lending requirements to all mobile traders - is consistent with submissions we received during our review of the Act in 2018.

Borrowers are not aware of or encouraged to use financial support services

In supporting the primary purpose of the Act, the Bill provides a package of changes designed to reduce problem debt and resulting consumer harms. One part of this will require debt collectors to disclose key information about the debt to the borrower, at the commencement of debt collection action[3]. Once the Bill is passed, it is envisioned that supporting regulations could include a requirement for debt collectors to disclose information about financial support services to borrowers.

In submissions to select committee, most budgeting services and several other submitters broadly supported the proposal requiring debt collectors to disclose key information to borrowers, but considered that it did not enough to help borrowers manage their debt. Submitters suggested that steps to help borrowers manage their finances could be taken

[2] Commerce Commission (2015). Mobile Trader 2014/15 Project. Retrieved on 12 August 2019 from: https://comcom.govt.nz/__data/assets/pdf_file/0035/95993/Mobile-Trader-2014-2015-Project.pdf

[3] Note that we understand that there are concerns generally about the lack of regulation in the debt collection industry, which is linked to wider problems about harassment and undue contact with borrowers. These issues are wider than what the Act, and the Bill, can address, and are also out of scope for this proposal.

earlier in the process to help debtors avoid default, with some suggesting this should be before the loan is taken out[4].

It is in the interest of both borrowers and lenders for borrowers to repay what they owe, and when borrowers take out a loan they must abide by the repayment schedule in the contract. If a borrower is overdue on their repayments, the lender will typically send the borrower payment reminders, before escalating the issue to debt collection or other enforcement activity.

The Responsible Lending Code suggests that lenders should encourage early, open, and honest communication when a borrower is experiencing financial difficulties, and provide borrowers who have missed payments with information which may include:

i. notifying the borrower of the missed payment(s);

….

v. reminding the borrower of the borrower's ability to obtain … advice from free and independent budgeting services.

For high-cost credit agreements, the Responsible Lending Code states that "a lender should ordinarily contact the borrower after one missed payment to notify the borrower of the missed payment and the risk of escalating debt".

2.2 Who is affected and how?

Borrowers and potential borrowers are suffering harms from unregulated mobile traders through irresponsible lending and the high cost of the goods these traders sell, relative to the market value.

Borrowers also suffer undue hardship if they do not know about, or are not encouraged to visit financial support services if they are struggling to meet their loan repayments. Financial support services can help borrowers to better manage their finances, restructure their payments and submit a hardship application to the lender(s) if required.

Some mobile traders (those whose loans are not currently classified as consumer credit contracts) will be subject to more requirements under the Act, which will involve higher compliance costs. Many mobile traders are already subject to the Act, including the largest, Home Direct. Therefore, these changes are primarily an anti-avoidance measure. through irresponsible lending and the high cost of the goods.

Lenders more generally will be subject to greater compliance costs because they will have to update some of their standard form communications to borrowers.

The Commerce Commission, the Crown entity that enforces the Act, will have a small amount of increased monitoring and enforcement activities to give effect to the proposals in

[4] See for example submission 051 - Fincap, which recommends (at page 51) that before a lender can agree to make a high-cost loan, it must have been provided with a budget from the borrower drawn up by an independent person, such as a financial mentor, if the borrower is in a category identified as vulnerable, and that if a borrower defaults on a high-cost loan within one month of taking out the loan, the lender must report the matter to their dispute resolution scheme.

this impact summary.

Government departments, including MBIE, MSD and the Commission for Financial Capability provide or fund guidance and support programmes and services to lenders and borrowers. They are likely to see an uptake in the services that they provide.

Financial mentoring and budgeting services which deliver in person, on line and telephone support for people struggling with their finances, are likely to see an increase of use for their services.

2.3 Are there any constraints on the scope for decision making?

The Bill was introduced into Parliament on 9 April 2019 and it is currently before the Finance and Expenditure committee, which is due to be reported back on 30 October. This limits the scope of workable options because these options must be able to be included in the Bill to meet the current timeframes.

There is other cross-government work going on in the consumer credit space which has some links to the proposals in this RIS. Government, industry and community agencies are working together to increase vulnerable consumers' access to inclusive banking products and services, emergency savings, microfinance and car finance.

One part of the actions committed to is to build closer relationships between consumer advocates and lenders, and better referral mechanisms between lenders and financial capability organisations.

The Commission for Financial Capability and Ministry for Social Development also have work programmes that aim to build financial capability.

Section 3: Options identification

3.1 What options have been considered?

Due to the constraints outlined above, the options available for both issues are limited.

Predatory behaviour by unregulated mobile traders

Option A: Status Quo

The status quo is the Bill as currently drafted. The Bill currently requires that the directors and senior managers of mobile traders be certified by the Commerce Commission as fit and proper persons, regardless of whether or not the rest of the Act regulates them.

All mobile traders will also have to register on the Financial Service Providers Register. Everyone in New Zealand in the business of providing a financial service (including consumer credit contracts), whether in New Zealand or overseas, must be registered on the Financial Service Providers Register (FSPR) before they can legally provide financial services. If mobile traders do not register, and continue to provide consumer credit contracts, their contracts will be invalid. Registration will generally make it easier for the Commerce Commission to know who the mobile traders are, and make it easier to enforce some breaches of the Act.

In addition, the Bill contains a “deeming” power under which regulations can be made to deem a product to be a consumer credit contract and subject to the requirements of the Act. The intention is to use the power where this is needed to protect the interests of consumers. In developing the Bill, MBIE considered that unregulated mobile traders were potential candidates for a future use of this regulation-making power.

However, evidence from submitters is that consumer harm is being experienced now. We expect that if the status quo persists, even with the above requirements, these harms will continue. Consumers would have to wait longer for the protections and remedies of the Act to become available in respect of mobile traders.

Option B: Mobile traders to comply with responsible lending and other relevant requirements of the Act

This option would amend the Bill to apply the Act to all credit contracts provided by mobile traders. This would mean that the contracts will be consumer credit contracts and mobile traders will have to comply with the responsible lending and disclosure obligations. This will help to address issues with irresponsible lending by mobile traders and ensure that mobile traders do not avoid the Act by careful drafting of their contracts. It would also mean that the harms that consumers are facing from irresponsible lending by mobile traders are dealt with faster.

RESPONSIBLE LENDING OBLIGATIONS under the Act

Lenders must exercise the care, diligence, and skill of a responsible lender.

ASSISTANCE TO REACH INFORMED DECISIONS	SUITABILITY	AFFORDABILITY	ETHICAL AND REASONABLE TREATMENT	SAFEGUARDS FOR CONSUMERS SUBJECT TO REPOSSESSION
Lenders must assist borrowers and guarantors to reach an informed decision to enter into the agreement, and its implications.	Lenders must make reasonable inquiries to be satisfied that the credit product likely meets the borrower's requirements and objectives.	Lenders must be satisfied that the borrower or guarantor will make the payments under the agreement without suffering substantial hardship (e.g. being able to meet essential day-to-day expenses, and other pre-existing financial commitments.)	Lenders must treat borrowers and guarantors reasonably and ethically throughout the life of the loan.	There are a number of requirements for repossessions, including licensing of repossession agents.

All mobile traders will also have to abide by the Bill's proposed responsible advertising requirements.

During MBIE's 2018 Review, submitters on the discussion paper (which proposed to bring mobile trader transactions within scope of the Bill) were predominantly in favour of this option. Three submitters raised concerns – Financial Services Federation, Direct Cash Orders Ltd trading as DCO Finance and Thorn Group Financial Services Ltd – although these were primarily related to the specific proposal that we included in the discussion paper, which is different from this current proposal.[5]

There may be some legislative design impacts to align the current provisions in the Bill with this proposal.

Borrowers are not aware of or encouraged to use financial support services

Option A: Status quo

The status quo is the Bill as currently drafted. The Bill's debt collection disclosure requirements (new section 132A) aim to increase transparency in the debt collection process and access to redress. The Bill does this by introducing new requirements for what information debt collectors should disclose to debtors at the commencement of debt collection action. As previously stated, the regulations may prescribe a requirement to provide contact details for financial support services.

When a borrower is in financial hardship, borrowers can submit a hardship application to the lender, which the lender must consider under s55 of the Act. This could result in the terms and payment amount being reassessed, or a repayment holiday.

However, when a borrower defaults on their loan, they are no longer eligible to make a hardship application. The lender has some commercial incentives to encourage the borrowers to catch up on their repayments, and the Responsible Lending Code provides

[5] Some of the concerns raised on the proposal related specifically to the mechanism proposed at the time (deeming prices inflated above market rates to have an 'interest rate' component). We agree this mechanism presents difficulties. If Option B was adopted, we would seek to rely instead on the definition of mobile trader already used in the Bill for the fit and proper person test.

guidance around communications with borrowers who have missed payments, however there are no legislative requirements for lenders to do this.

Therefore, the Bill as currently drafted is likely to leave some borrowers in continued financial hardship because any information about contact details for financial support services would come too late in the process for them to submit a hardship application or otherwise restructure their finances to meet their repayment obligations. In situations where the lender is in breach of the Act, financial support services can also assist borrowers to take action and seek redress.

Option B: Require consumer credit providers to refer borrowers to financial mentoring or budgeting services during the loan application process

During select committee, most budgeting services and several other submitters suggested that consumer credit providers be required to promote or otherwise refer borrowers to financial mentoring or budgeting services before the loan is taken out. Almost all budget advisors that submitted on the Bill recommended that this be a requirement in all advertising and communications from lenders[6].

Financial mentoring alongside a loan has been shown to be beneficial in some contexts. Research from Good Shepherd microfinance in Australia and Good Shepherd New Zealand illustrates that in the case of a microfinance loan application, potential borrowers can increase their financial capability, confidence and literacy if they have a financial conversation with an advisor as part of an application to receive the loan[7]. In one study, more than 50 percent of survey respondents said that the financial conversations had helped them to better understand their finances and develop a budget that would allow them to repay the loan without forgoing essentials. As a result, 46 per cent of the respondents reported paying off debt faster and 40 percent reported saving more money[8].

So, a second option is to require lenders to provide contact information for financial mentors to applicants before or during the loan application process.

The drawbacks to this option are that it would likely have a low level of uptake (given behavioural biases towards proceeding with a transaction which has started). It would also require:

- provision of contact information to all applicants, whether they needed support or not, or else
- provision of contact information to a specified class of borrowers (e.g borrowers with

[6] List of submitters who would like it to be a legal requirement that lenders must advertise the MSD service *MoneyTalks,* the local financial mentor and/or budgeting services on their communications, particularly their websites: Whangarei Anglican Care Trust, Family Finances Service Trust (re. high cost/ short term loans only), FinCap, Child Poverty Action Group, Citizens Advice Bureau, Newtown Ethical Lending Trust, Salvation Army Oasis, Christians Against Poverty and a group of budgeting services.

[7] Good Shepherd Microfinance. (2015). Life Changing Chats: Impact of the financial conversation on StepUP applicants' financial literacy and capability. Retrieved on 6 August 2019 from: https://goodshepherdmicrofinance.org.au/assets/files/2016/06/Life-Changing-Chats-Report_April-2015.pdf; Randrianarisoa A. & Eccles K. (2016). Life Changing Chats: The impact of financial conversations on the financial capability of NILS applicants. Melbourne: Good Shepherd Microfinance; Malatest International (2018). Interim report: Outcomes evaluation of the Community Finance Initiative. Good Shepherd New Zealand.

[8] Malatest International (2018). Interim report: Outcomes evaluation of the Community Finance Initiative. Good Shepherd New Zealand. Page 5.

low incomes). In order to screen for the target group this provision would have to occur further into the application process, which further reduces the likelihood of uptake.

Confidential advice to Government

Option C: Overdue payment reminders to provide contact details for financial support services

Submitters also strongly supported a requirement for lenders to promote the MSD funded service *MoneyTalks* when the borrower was in arrears[9]. The purpose of this would be to help make borrowers aware of, and encourage contact with, trained financial mentors at the earliest possible opportunity when they are behind on any debt repayments.

There are also benefits to borrowers accessing financial capability and budgeting services after they have received a loan. Research by Fincap found that borrowers who accessed help early allowed them to get ‘back on track’ through restructuring their finances. This meant they were able to avoid the financial distress experienced by individuals that found themselves ‘overloaded’ with loans and who could not afford the repayments.[10] Financial support services are also able to connect vulnerable consumers to a range of support services and suggest alternatives to high-cost consumer loans.

We consider that borrowers are more likely to choose to access a service when they are behind on payments rather than prior to getting a loan (option B). This is due to financial incentives (late payment fees, high interest rates, risk of low credit score) as well as behavioural incentives of loss aversion. This option therefore targets the group of borrowers in potential financial distress better than option B, and better targets borrowers in circumstances where they can avoid default, as compared to option A.

Additionally, financial support services would have more precise information to share with the Commerce Commission about lenders whose borrowers are disproportionately struggling with repayments. This would enhance the Commission’s monitoring function by alerting them to lenders who may be conducting inadequate affordability assessments.

This option would require an amendment to the Bill to impose a statutory requirement to provide prescribed information after missed payments, which could then be implemented through regulations, (similar to the debt collection information disclosure requirements currently in the Bill).

[9] List of submitters who would like it to be a legal requirement that lenders must advertise the MSD service *MoneyTalks* in their communications, **and to borrowers in arrears**: Child Poverty Action Group, Newtown Ethical Lending Trust, Wendy Wallis, Ngā Tangata Microfinance, Kiwidebt Limited, Alexandra Rumbal (Porirua Salvation Army), Budget Advisory Service Rangitaiki Inc, Connecting Communities Wairarapa, Coromandel Budget Advisory Service Inc, Dunedin Budget Advisory Service, Family Finances Service Trust, Family Works Presbyterian Support Otago, Franklin Family Support Services, Gisborne Budget Moni Ora, Henderson Budget Service Inc, Jubilee Budget Advisory Service, Justice and Peace Commission Catholic Diocese of Auckland, Michael Barnett (Strathmore Park & Raukawa Community Centres), Mid North Budgeting Services, Nelson Budgeting Service, Northcote Baptist Christian Trust, Salvation Army Oasis, Taupo Budget Advisory Service Inc, Te Aroha Family Budgeting Services Inc, Te Whare Putea Trust, Tokoroa Budget Advisory Service Inc, Turangi Budget Service, VisionWest Community Trust, Whangarei Budgeting Service.

[10] Green S, Robertson N & Nana Dr G. (2019) The harm from high cost lending: the case for increased and improved regulation. Wellington: Berl. Page 12.

Impact analysis for all options

Mobile Traders

	Option A (Bill as currently drafted/ deem mobile traders' agreements to be credit contracts at a later date)	Option B (Bring mobile traders within scope of the Act as part of the Bill)
Reduce consumer harm from high cost and irresponsible lending	**0**	+ Consumer credit provided to borrowers must be suitable and not cause them significant financial hardship. This extends protections of the Act to a wider range of credit agreements. Only some mobile traders will be affected by this proposal.
Consumers can access finance to alleviate genuine short-term financial difficulties	**0**	- Likely to slightly reduce access to credit for higher risk borrowers, as mobile traders tighten lending criteria.
Compliance costs are reasonable	**0**	- Most mobile traders are already subject to the Act. Therefore, compliance costs will only impact a few mobile traders. For those affected, the compliance costs are proportionate to the harms prevented. Compliance will require monitoring and enforcement.
Overall assessment	**0**	Likely to be a small improvement on the status quo.

Key:

++ much better than doing nothing/the status quo
+ better than doing nothing/the status quo
0 about the same as doing nothing/the status quo
- worse than doing nothing/the status quo
- - much worse than doing nothing/the status quo

When contact details for financial support services should be required to be disclosed to borrowers

	Option A (Bill as currently drafted: new information disclosure requirements at debt collection, including about financial mentoring services)	**Option B** (Require lenders to refer consumers to financial support service during loan application process)	**Option C** (Overdue payment reminders to disclose information on contact details for financial support services)
Reduce consumer harm from high-cost lending and irresponsible lending	**0**	+ All (potential) borrowers of consumer credit contracts would have information on where to access financial support services that they can access if they wish. However, high uncertainty about whether this will actually reduce consumer harm.	+ Borrowers who are behind on their repayments are prompted to access financial support services. Borrowers have a financial incentive to act on the information.
Consumers can access finance to alleviate genuine short-term financial difficulties	**0**	+ Some borrowers may contact financial mentoring services and this could encourage better management of finances, access to alternative support, or a decision to not get a loan at all.	+ Higher probability that borrowers will use the services when in arrears than before the loan is taken out. Use of service results in higher likelihood of timely hardship applications, avoiding poor credit scores and default. In the medium term, those borrowers less likely to have reduced access to credit.
Compliance costs are reasonable	**0**	- - All lenders would have to update their loan application documents and processes to include information for financial support services. The cost of this is unclear. Would require monitoring and enforcement to ensure compliance.	- Most lenders would have to update their missed payment or payment reminder processes to include information about financial support services. The cost of this is unclear. Would require monitoring and enforcement to ensure compliance.
Overall assessment	**0**	Unclear that benefits outweigh costs.	Likely to be a small improvement on the status quo.

3.2 Which of these options is the proposed approach?

Bring mobile traders within scope of the Act before the Bill is passed

We believe that the best option is to amend the Act so that it would apply to all credit contracts provided by mobile traders, rather than relying on the 'deeming' provisions. This is because evidence from submitters to the Committee is that consumer harm from irresponsible lending is being experienced now.

Imposing responsible lending obligations on all mobile traders will prevent them from selling high-priced goods to consumers on credit if it would be irresponsible to do so and/or the consumer could not afford the repayments without undue hardship. The Salvation Army's Good Shop (see section 4.2) provides an alternative to the high-cost aspect of mobile traders.

We consider the costs of this change are likely to be low for the market as a whole, although they will be significant for the minority of mobile trader businesses whose contracts are not already covered by the Act. Most mobile trader contracts are already covered by the Act, including the largest mobile trader (Home Direct), and this change is primarily an "anti-avoidance" measure.

Contact details for financial support services to be disclosed at payment reminder AND debt collection stages (option C in addition to the status quo)

MBIE's view is that requiring lenders to disclose contact details for financial support services at the point of payment reminders (in addition to the status quo which proposes to disclosure contact details at the time of debt collection) would allow borrowers to take steps to access budgeting and other support services earlier in the process, when they start to get behind on their payments. While disclosing contact details for financial support services at the time of debt collection is less likely to have a meaningful impact than disclosing contact details at the point of payment reminders, we think it is worthwhile to provide borrowers with contact information at two opportunities, so that borrowers who have not accessed financial support services at the payment reminder stage have another prompt to do so if they reach debt collection.

When combined with the broader package of reforms in the Bill, we think that this approach is better targeted towards borrowers who are risking default and problem debt than option B (disclosing contact details for financial support services during the loan application process) because it is more targeted towards the group of borrowers who have the most need for this service.

This approach would involve some additional cost to lenders (the cost of adding the information to their communications or making separate communications specifically to provide the information). We do not yet know the nature of these costs, although in many cases we would expect them to be related to one-off systems changes (e.g. modifying reminder letter templates). We note that this proposed approach could also slightly reduce the costs incurred by lenders in pursuing defaults and debt recovery, in cases where borrowers do seek support and proactively manage their debts.

Section 4: Impact Analysis (Proposed approach)

4.1 Summary table of costs and benefits for proposed approach to regulating mobile traders

Bring mobile traders within scope of the Act before the Bill is passed

Affected parties *(identify)*	**Comment**: nature of cost or benefit (eg ongoing, one-off), evidence and assumption (eg compliance rates), risks	**Impact** *$m present value, for monetised impacts; high, medium or low for non-monetised impacts*

Additional costs of proposed approach, compared to taking no action		
Regulated parties	Most mobile trader contracts are already covered by the Act, including the largest mobile trader (Home Direct) so they will not need to take any action. Changes will be significant, with ongoing compliance requirements for the minority of mobile trader businesses whose contracts are not covered by the Act.	Low
Regulators	There will be a small additional cost to the Commerce Commission in ensuring that mobile traders lend responsibly and provide disclosure. These costs will be low as it is only a minority of mobile traders for whom the requirements will change.	Low
Wider government	There are no material cost changes to other government departments and agencies.	None
Other parties	Some consumers may not be able to access goods sold by mobile traders if it would be irresponsible for the lender to provide them with the goods, or if some mobile traders leave the market.	Low
Total Monetised Cost	*N/A*	*N/A*
Non-monetised costs	*Overall we consider that the costs to parties for implementing this change will be low*	*Low*

Expected benefits of proposed approach, compared to taking no action		
Regulated parties	For mobile traders who are already subject to the Act, there will be a benefit in the whole mobile trader market being subject to the same laws and requirements. This is a competition benefit because it will level the playing field.	Low

Regulators	The Commerce Commission will have more remedies and enforcement mechanisms available to it in regards to previously unregulated mobile traders.	Medium
Wider government	With reduced harm from mobile traders this may reduce the need for assistance from social agencies and charities.	Low
Other parties	Consumers would benefit from a reduction of harms caused by mobile traders. Consumer credit provided to them must be suitable and not cause them significant financial hardship. Some consumers will have greater access to redress where new consumer protections apply.	Medium
Total Monetised Benefit	*N/A*	*N/A*
Non-monetised benefits	*Overall we consider that the benefits to parties for implementing this change will be low-medium.*	*Low-Medium*

4.2 What other impacts is this approach likely to have?

This option will make goods purchased on credit less available to some groups of consumers. This could have indirect impacts if consumers who cannot access these goods from mobile traders, or brick-and-mortar stores, must go without certain necessities. A mitigation to this impact is the ability to order groceries and other goods online for delivery, which will be an alternative for some consumers. Another potential future mitigation is the Salvation Army Good Shop, currently being piloted in Auckland and Porirua. The Good Shop is a mobile shopping vehicle that provides groceries, household and personal items at store-comparable prices on interest free terms. This is a less expensive option for consumers that better represents value for money.

4.3 Summary table of costs and benefits for proposed approach to when contact details for financial support services should be required to be disclosed to borrowers

Overdue payment reminders to provide contact details for financial support services

Affected parties *(identify)*	**Comment**: nature of cost or benefit (eg ongoing, one-off), evidence and assumption (eg compliance rates), risks	**Impact** *$m present value, for monetised impacts; high, medium or low for non-monetised impacts*
Additional costs of proposed approach, compared to taking no action		
Regulated parties	There will be a small increase in costs to all lenders who will have to update their payment reminder standard form with contact details for financial support services. However, there may be slight reductions in costs incurred by lenders	Low

	pursuing defaults and debt recovery in cases where borrowers do seek support and proactively manage their debts.	
Regulators	There will be a small additional cost to the Commerce Commission to ensure that lenders comply with the requirement to include contact details for financial support services in their payment reminder communications.	Low
Wider government	There are no material cost changes to other government departments and agencies (see row below)	None
Other parties	Financial mentoring services (which are mostly fully government funded) may see an increase in enquiries as a result of this change. However there are unlikely to be problems with capacity or funding because, following a recent Cabinet decision [CAB-19-MIN-0329], beneficiaries will no longer be required to attend financial mentoring prior to accessing certain support.	None
Total Monetised Cost	*N/A*	*N/A*
Non-monetised costs	*Overall we consider that the costs to parties for implementing this change will be low.*	*Low*

Expected benefits of proposed approach, compared to taking no action		
Regulated parties	There are commercial benefits to the lender from this proposal. The inclusion of contact details in the payment reminder may encourage the borrowers to get financial mentoring or other support that will help them to manage their finances and catch up on their repayments.	Medium
Regulators	The Commission's monitoring function would be enhanced as financial support services would be able to provide them with more information about lenders whose borrowers disproportionately struggle with repayments.	Low
Wider government	Indirectly, this change may increase the financial capability of borrowers who are struggling to manage their money, which could lead to less reliance on government financial support.	Low
Other parties	Borrowers who are experiencing financial distress can get in touch with financial support services and get help to manage their repayments and increase their financial capability.	High

Total Monetised Benefit	*N/A*	*N/A*
Non-monetised benefits	*Overall we consider that the benefits to parties for implementing this change will be medium.*	*Medium*

4.4 What other impacts is this approach likely to have?
The preferred approach better empowers the borrower to access financial support services. However, given that the borrower must take action themselves, it is difficult to determine how many borrowers will choose to access financial support services as a result of the proposal.

Section 5: Stakeholder views

5.1 What do stakeholders think about the problem and the proposed solution?

Due to the constraints outlined earlier in this paper, additional public and stakeholder consultation on these proposals is not possible.

Bring mobile traders within scope of the Act before the Bill is passed

Constitute contempt of Court/House of Representatives

We expect that MBIE's preferred option would have widespread support from consumer advocates and charity groups. Around 80 submissions have been made to the Finance and Expenditure Committee in favour of banning mobile trader sales[11] or else bringing their transactions under the consumer protections in the Act[12]. These were primarily from budget advisors and financial mentors, but also the Salvation Army, the NZ Council of Christian Services, Ngā Tangata Microfinance, Good Shepherd NZ and a range of church groups.

Overdue payment reminders to provide contact details for financial support services

Consumer advocates, dispute resolution schemes, and budgeting and financial capability providers support MBIE's proposed option, although some may feel that it does not go as far as they would want.

However, this proposal is likely to raise concerns from lenders. While some banks and other lenders are already working on referrals to the MSD service *MoneyTalks*, the addition of a new statutory requirement to provide contact details with payment reminders may be unwelcome.

This topic has not yet been discussed in hearings before the Finance and Expenditure Committee.

---

11 List of submitters who support a ban on mobile traders (with the exemption of non-profit mobile traders: Wellington Community Justice Project, Whangarei Anglican Care Trust, Fincap, Hutt City Budget and Advocacy Service, The Salvation Army New Zealand Fiji Tonga and Samoa Territory.

12 List of submitters who support that means credit arrangements used by mobile traders can be made consumer credit contracts: Damien Hazlewood, Henderson Budgeting Service, Whangarei Budgeting Service, Te Hau Awhiowhio o Otangarei Trust, Taupo Budget Advisory Service Inc., Agape Budgeting Service, Child Poverty Action Group, Connecting Communities Wairarapa, Coromandel Budget Advisory Service Inc., Dunedin Budget Advisory Service, Family Finances Services Trust, Hutt City Budget and Advocacy Service, Mid North Budgeting Services Trust, Newtown Ethical Lending Trust, Pakuranga and Howick Budgeting Service, Petone Budget Service, Raukura Hauora O Tainui, Te Aroha Family Budgeting Services, Te Whare Putea Trust, The Salvation Army Oasis, Tokoroa Budget Advisory Service, Turangi Budget Service, Wendy Wallis, Whangarei Anglican Care Trust, Alexandra Rumbal/Porirua Salvation Army, Auckland Social Justice Group, Anglican Church, BudgetFirst Incorporated, Christians Against Poverty, Compassion Trust Financial Mentoring Centre, Family Works Presbyterian Support Otago, Franklin Family Support Services, Justice and Peace Commission Catholic Diocese of Auckland, Lending Matters, Nelson Budget Service, Nga Tangata Microfinance, Northcote Baptist Christian Trust, Salvation Army Dunedin City, VisionWest Community Trust, Budget Advisory Service Rangitaiki Inc., Jubilee Budget Advisory Service, Josephite Justice Network, NZ Council of Christian Social Services, Gisborne Budget Moni Ora, Good Shepherd NZ, Fincap, Michael Barnett, Financial Services Complaints Limited.

Section 6: Implementation and operation

6.1 How will the new arrangements be given effect?
If Cabinet approves these policy changes, they will be implemented by amendments to the Bill. If the Committee does not separately recommend the changes in their report, we will use a Supplementary Order Paper to add them to the Bill during the Committee of the whole House stage. We have consulted with Parliamentary Counsel Office, and will continue to do so as the legislative process continues. The commencement dates for the Bill are being considered by the Finance and Expenditure committee, and so the commencement of these changes will align with other provisions as appropriate. Once the Bill is passed, the Commerce Commission will continue to be responsible for ongoing enforcement of the new amendments. No additional funding is proposed for these changes. Budget 2019, provided additional funding of $3.50 million per year for four years for the Commerce Commission's General Markets Consumer appropriation and $0.50 million per year for four years to the Commission's major litigation fund to give effect to the proposals in the Bill.

Section 7: Monitoring, evaluation and review

7.1 How will the impact of the new arrangements be monitored?

To assess whether the anticipated impacts of the Bill, with these two further recommendations will materialise, we will need to monitor the consumer credit industry. Further information on evaluating and reviewing these changes is included below in section 7.2.

As the enforcement agency for the Act, the Commerce Commission produces an annual consumer issues report which identifies current issues and emerging risks that have the potential to affect consumers or markets. As part of these reports, the Commerce Commission uses its own data as well as information from other government and community agencies to present a picture of the consumer credit environment, including the number of complaints, enforcement responses and prosecutions for breaches. Consequently, the consumer issues reports are an effective tool for monitoring changes in the consumer credit industry over time, which will include these changes.

We would also rely on Commerce Commission reviews, investigations, cases etc. on an ongoing basis.[13] This information, as well as data on the costs of implementing and enforcing the changes from the Commission, would be exchanged with MBIE.

We will have ongoing engagement with lender, consumer and government stakeholders through regular catch-ups, and formal engagement through forums such as MBIE's Consumer Protection Partnership Forum (comprised of consumer advocates and government agencies) and the Responsible Lending Code Advisory Group (comprised of lenders, dispute resolution schemes, and consumer advocates). These forums will provide the opportunity for us to monitor on-the-ground impacts on lenders and consumers and identify any issues with the new arrangements.

7.2 When and how will the new arrangements be reviewed?

While there are currently no plans for a formal review of these changes, nor the other changes contained in the Bill, MBIE regularly evaluates and reviews amendments to the laws it administers. These changes could, for example, be reviewed and evaluated two to three years after coming into force (subject to resource constraints). An evaluation or review at this time would allow the changes to have bedded in and any anticipated and desired impacts to show.

A plan for research and data collection while the Bill passes through the different stages of the House has been prepared. The aim of this research is to produce a baseline of evidence and data measuring the makeup and structure of the consumer credit markets prior to the introduction of the law changes. The baseline could include research and primary data collection around consumer awareness of the law, borrowing behaviours and trends, lender practices, compliance with the responsible lending principles and the size of the industry.

Having a stocktake of the consumer credit markets before the changes come into force will enable effective monitoring and evaluation of the law changes when they are reviewed. A similar baseline evaluation and data collection was carried out by MBIE in 2016 and is

[13] See, for example, Commerce Commission (2015). Mobile Trader 2014/15 Project. Retrieved on 12 August 2019 from: https://comcom.govt.nz/__data/assets/pdf_file/0035/95993/Mobile-Trader-2014-2015-Project.pdf

available at http://www.mbie.govt.nz/publications-research/research/consumer-protection/compiled-CCCFA-baseline-evaluation-report.

The monitoring identified above in section 7.1 is likely to capture any unexpected results or impacts which may arise as a result of the changes. Any issues or concerns that stakeholders have in relation to implementation of the changes can be directed to the relevant enforcement body, the Commerce Commission.