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Ministry of Business, Innovation and Employment

Wellington

By email: consumer@mbie.govt.nz

Fit For Purpose Consumer Credit Legislation – Submission by Christians Against Poverty

Tēnā koutou, thank you for inviting submissions on the Fit For Purpose Consumer Credit Legislation Discussion Paper. CAP appreciates that this has asked a broad range of questions to address gaps in consumer protection.

CAP has strongly advocated for the reduction of the interest rate that defines a high-cost consumer credit contract from 50% to 30%. CAP has extensive experience in helping whānau experiencing financial hardship. Whānau are very commonly being trapped in financial hardship by one or more loans with an interest rate between 30%-50%. They are nearly always for thousands of dollars and secured against important household items.

The timeframe for submissions has limited our capacity to affix specific data and case studies to this submission but we remain willing to work with MBIE if collating case studies would be of value.

CAP provides feedback on the specific questions from the Discussion Paper, below, and we welcome further opportunities to discuss any aspects of this submission.

Discussion Paper Questions

1. ***Do you have any evidence or experience of the due diligence duty and personal liability resulting in overly conservative approaches to complying with the CCCFA? What impact did this have on consumers? How common do you think this is?***

CAP has no direct evidence or experience in this matter but notes that conversations with lenders indicate that this is at the crux of more conservative positions.

2. **Do you have any observations about how the impact of the due diligence duty and personal liability works may or may not depend on the size of the lender?**

From anecdotal observations, it appears that banks adopted a more significant approach to their lending model while smaller/higher-tier lenders did not make such significant changes. It is not possible to determine if this was due to due diligence changes or other factors.

3. Are you aware of any other problems with these liability settings?

No.

4. – 8. Questions relating to different options for liability settings

CAP recommends Option A3: Retain the status quo which is incentivising lenders to comply with the CCCFA.

9. – 14. Questions relating to regulatory model changes

No comments, as this falls outside of CAP's kaupapa.

15. As a consumer, do you receive the right kind and amount of information to make informed decisions? Why/why not?

The information provided during disclosure is particularly valuable for consumers but the form and manner in which the disclosure is presented is of significant importance.

Headings needs to be clear, wording needs to legible, language needs to be easy to understand.

There would be a higher level of engagement and consumer scrutiny of the disclosed information if it is visually presented well. Unfortunately, disclosure is often treated as a check-box exercise by lenders who squeeze all the relevant information into a densely worded, illegible document.

16. Do you consider any of the disclosure obligations to be irrelevant, confusing or inappropriate? If so, please tell us what impact this has.

Information that isn't legible or when it is presented in a confusing manner loses its relevance. As CAP has reported in its Vehicle Finance report[1], there is concerning behaviour among salespeople of intentionally confusing and brushing over important disclosure information during the sales process.

[1] https://www.capnz.org/research-and-policy/vehicle-finance/

It is not the content of disclosure that is the issue. It is the misrepresentation or obfuscation that weakens its relevance.

17. How could disclosure obligations be more targeted to the consumer's circumstances to ensure only relevant information is disclosed?

CAP would have low confidence in a lender's discernment about which information is relevant to a consumer, because each borrower is different and may have different needs. CAP recommends that the status quo requirements for disclosure remain in place.

18. Is the information set out in Regulations 4F and 4G both sufficient and do sections 22 and 23 require the right information to be disclosed when a contract is varied?

These regulations seem clear and seem to achieve their intended purpose.

19. Are there any other concerns or issues you would like to raise related to disclosure obligations?

No.

20. As a lender, do you identify any barriers in the Act to the use of electronic methods of disclosure? If so, can you explain what are these barriers and how they impact your processes?

N/A

21. As a lender, are there any practical difficulties with obtaining the borrower's consent for electronic forms of disclosure (section 32(4)(b))?

N/A

22. What would be the implications of removing the requirement to obtain borrower's consent for electronic communication and forms of disclosure (section 32(4)(b))?

CAP would be concerned that this may lead to poor disclosure outcomes, particularly for people that are not digitally knowledgeable, or may struggle to engage with technology. An opt-out function would work in theory if it was truly consumer-led as a free choice, but many lenders may steer borrowers towards accepting an opt-out as the 'standard' choice, for example by having a pre-selected 'opt-out' item in the contract. It would be too easy to skip over and would potentially leave a borrower with an unsuitable arrangement to receive disclosure.

23. Do sections 95A and 95B meet their objectives? Why/why not?

Section 99(1A) is an appropriate and effective method at encouraging lenders to comply with disclosure requirements. The introduction of sections 95A and 95B seem to provide an appropriate avenue to address any disproportionate negative impact.

24. As a lender, to what extent does section 99(1A) impact the time, effort, and costs you dedicate to initial and variation disclosures?

N/A

25. – 29. Questions related to Section 99(1A)

CAP supports Option E4: Retain the status quo. If another option is preferred, CAP would recommend that a presumption that the breach was material and that the burden to prove otherwise would fall to the creditor.

30. What specific provisions (high-cost or other) have most impacted lenders' willingness or ability to offer high-cost consumer credit?

CAP presumes that both the requirement to conduct a robust affordability assessment and the presumption that repayment of a high-cost loan is unlikely without the borrower suffering substantial hardship (Regulation 4AO) are having a significant impact. The reality is that high-cost loans are extremely expensive, extracting a large proportion of future income to meet today's expenses. They are a recipe for substantial hardship and these provisions accurately reflect this reality.

31. In the absence of high-cost loans, what other avenues are borrowers turning to?

Despite the often-touted fears of illegal lending, CAP has no evidence of this. In fact, there are very many **positive** avenues that borrowers turn to:

a) **Financial mentors and Debt Solutions specialists like CAP**. It is often when people have no other options left that they make the decision to reach out for help.
b) **Work and Income**. While the process of applying for government support can be challenging at times, there is significant help available and advocacy services can help connect people to more appropriate help like Temporary Additional Support or Disability Allowance, or a benefit advance rather than taking out high-cost loans.

c) **Low/No-interest alternative schemes**. While great initiatives like Ngā Tangata Microfinance and Good Shepherd do not have the large marketing budgets or streamlined applications that make high-cost lending attractive, microfinance initiatives are an excellent alternative that deserve government support.

d) **Non-payment/Default**. Unfortunately, borrowers facing non-payment of an existing debt have turned to high-cost lending to avoid falling into default. However, it is often a non-payment or late-payment that raises a red flag to a lender that a borrower may be facing financial hardship. This opens the avenue for discussions about hardship applications or temporary arrangements to address a change in circumstances, as well as referrals to financial mentors and external help. High-cost lending often only delays the point at which a person reaches out for help, by which time their situation is much worse.

CAP is concerned that there has been a rapid rise of BNPL products which, while interest free, are certainly not cost free (late fees, charges, debt collection costs). They have the same negative implications of high-cost lending that delay a person accessing appropriate help from the financial mentor sector.

32. ***Is the unavailability of high-cost consumer credit having positive or negative effects on would-be borrowers?***

Certainly positive. It used to be very commonplace for new clients of CAP to have horrendous high-cost debts to resolve. Now, much fewer new clients of CAP have high-cost loans. It is clear that people in financial hardship are reaching out for help without the additional burden of these extremely expensive debts.

33. What evidence, if any, is there of debt spirals and/or continued repeat borrowing for vulnerable borrowers across credit contracts with interest rates of 30 per cent to 49.9 per cent?

There is a very large body of cases at CAP of loans within the 30-49.9% category. This is most commonly cases of higher-tier vehicle finance companies – typically a 29.95% interest rate with a 10% default interest rate. Some higher-tier lenders also offer personal loans (secured over household items) for example, at 32.5% with a 7% default interest rate.

These higher-tier lenders can often be found to refinance one loan after another with top ups for essential needs like car repairs. Over the course of the loan, the borrower pays an extremely high rate of interest. Falling into financial hardship can lead to default interest charges and additional fees, and the debt balance quickly escalates.

Time hasn't permitted for a thorough analysis with case studies, but CAP would welcome further opportunities with MBIE to review some cases if this would be of value.

34. ***Are there any other issues associated with loans in the 30 per cent and 50 per cent interest rate range that we should be aware of?***

CAP strongly supports Option F1: the lowering of the interest rate threshold to 30%. For the hundreds of clients that CAP helps every year, a huge number have one or more loans that would fall into this category. Insights from CAP data shows that confirmed cases of irresponsible lending are very commonly associated with 30%-50% loan products.

Another aspect that is often overlooked is that these loan products are aggressively marketed towards, and sold to, pasifika communities. Maori and Pasifika clients of CAP are significantly overrepresented in cases of established irresponsible lending.

It is the 30%-50% loan products, secured over important personal belongings that are causing long-term financial hardship for families. They either get stuck in a debt spiral that quickly gets out of control or, worse, they have to endure financial and material hardship in order to maintain unaffordable loan repayments.

Vehicle loans are the most problematic because they are typically for thousands of dollars (meaning default interest and charges climb quickly), and because they are secured against an item that is essential (people will avoid repossession at any cost because they need their vehicle for work or family).

Time has not permitted for an analysis of data but CAP would welcome further opportunities with MBIE to analyse client case studies.

35. Are there examples where loans with interest rates between 30 per cent and 50 per cent would breach the 0.8 per cent rate of charge cap?

Unsure. There has not been adequate time to give this due consideration.

36. What evidence, if any, is there of debt spirals and/or continued repeat borrowing for vulnerable borrowers across credit contracts with interest rates of 45 per cent to 49.9 per cent? Are there any other issues associated with loans in this interest rate range that we should be aware of?

Clients of CAP do not typically present with many debts within the 45-49.9% range. There are thousands of people in financial hardship affected by loans in the 30%-50% range so CAP is supportive of Option F1. This is the option that will have the most influential change to prevent debt spirals and runaway, unmanageable debt.

37. For lenders: If the government extended the high-cost provisions to loans with annual interest rate of 30 per cent or more, what would be the impact on your operations (if any)? Are there any changes to the high-cost provisions we should consider to enable those loans to remain profitable, and on what terms?

N/A

38. How is a revised definition of a high-cost consumer credit contract interest rate threshold likely to affect access to credit for borrowers?

Lowering the interest rate threshold to 30% will likely affect access to credit for borrowers, but only so far as the required robust affordability assessment will demonstrate that the loan is likely to be unaffordable in the first place. Helping borrowers to avoid unsuitable, unaffordable loans is an excellent outcome.

Following the introduction of the initial introduction of the 50% threshold, there was an almost-overnight response by some lenders to adjust their product to meet the new rules. CAP expects that many lenders within the 30%-50% band will also adjust their products and those that can genuinely afford the product will still be able to access the credit.

39. Do you recommend considering another interest rate threshold? If yes, please explain why.

No, CAP strongly supports the implementation of Option F1.

40. Do you have any other feedback on any of the high-cost credit provisions? Have they been effective in reducing financial harm caused by the excessive cost of credit for some types of loans and repeat borrowing by vulnerable consumers?

The high-cost provisions have proven over the last three years to be an effective protection against the unsecured, low-value ‘payday’ loans. This protection has been proven successful and should now equally be applied to the far more damaging secured, high-value, three-year 30%-50% loan products. They are often millstones around the necks of whānau who now deserve the protection of legislation against the significant financial hardship we see as a result of these loan products.

41. Is there evidence of certain industry lending practices that are causing harm which the high-cost credit provisions could address?

As CAP has previously reported, there is widespread irresponsible lending in the vehicle finance industry in relation to assessing affordability. The high-cost provisions, particularly regulation 4AO, would place a higher expectation on lenders of >30% loan products to assess affordability carefully.

42. Are there any other industry lending practices that you believe are harmful to consumers?

CAP's Vehicle Finance report raised several harmful practices including:

a) the widespread sale of low value 'junk' insurance products which offer limited protection for borrowers;
b) the high commissions paid to dealers for selling insurance products;
c) the poor consumer value of single-premium policies wrapped up into the loan and charged at the same high interest rate;
d) the use of disabling devices to coerce repayment from people which places them at risk of harm;
e) Dealers profiting from 'flex' commissions. The higher the interest rate they can sign a consumer up to, the greater their commission;
f) Broker/Referral fees, and high establishment fees; and
g) the sales tactics that are often purposefully overwhelming and confusing to over-sell products to consumers.

43. Do you agree with the suggested impacts of each of the identified options? Why/why not?

CAP strongly recommends the adoption of Option F1 which will have the greatest positive impact to lower consumer harm by preventing debt spirals for the very expensive 30%-50% loan range.

44. Do you have any information or data that would support our assessment of the impacts of each of the options?

Case studies have not been added to this submission due to the short timeframe, but CAP would be happy to provide examples and case studies of the harm caused by loans within the 30%-50% bracket to MBIE if requested.

45. Do you think that the CCCFA could be strengthened to protect consumers who are sold lending products or add-ons that exceed the value of the product? If so, how?

Yes, please refer to CAP's Vehicle Finance report for recommendations to address the harms discussed already.

46. Finally, are there any other areas and options for change that we should consider that have not been addressed in this discussion document?

CAP has previously submitted that consumer protections could be strengthened by addressing a number of areas of consumer harm:

a) There has been very fast growth of BNPL products over the last three years. New clients of CAP are, on average, presenting with a greater number of BNPL debts, a higher overall debt balance for BNPL products. Concerningly, BNPL products seem to be relied on to purchase essential living costs.

b) Clients of CAP often owe significant debts on mobile phone plans – contracts for consumer mobile phones that currently fall outside of the CCCFA. There is a worrying trend to see borrowers now not only paying for their own phone but carrying contractual liability for multiple phones for family members under the same arrangement.

c) Debt Collection remains quite unregulated in New Zealand compared to overseas jurisdictions. In 2021, CAP reported[2] on the significant concerns about debt collection practices and made several recommendations to address these issues.

CAP welcomes any questions or comments on this submission.

Ngā mihi nui,

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[2] https://www.capnz.org/research-and-policy/demanding-better-report/