Submission on discussion document: *Fit for purpose consumer credit legislation*

Your name and organisation

Name	Privacy of natural persons
Organisation (if applicable)	Financial Services Complaints Limited
Contact details	Privacy of natural persons

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Responses to discussion document questions

	1. Options to amend the CCCFA to enable the FMA to carry out its role effectively A. Options for liability settings
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?*
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?*
3	*Are you aware of any other problems with these liability settings?*
Option A1: Retain the due diligence duty but remove restrictions on indemnities and insurance (preferred)	
4	*If lenders were able to indemnify their directors and senior managers from liability for pecuniary penalties (and costs), what difference (if any) would you expect that to make to how those individuals and the company as a whole approach the due diligence duty?*
5	*If insurance were available for pecuniary penalties liability, what difference (if any) would you expect that to make to how directors and senior managers and the company as a whole meet their due diligence duty? Do you have any information about how affordable that insurance might be for different types of lenders?*
Option A2: Remove due diligence duty for licenced lenders	
6	*Do you agree that the due diligence duty is less likely to be needed for lenders who are sophisticated enough to be licensed under the CoFI Act? Why/Why not?*
7	*How well do you think licensing and ongoing supervision by the FMA could replace the need for due diligence and personal liability? Does this depend on the kind of lender? If so, how?*
8	*What impacts might options A1 and A2 have on lenders and consumers compared to the status quo? For lenders, how would you expect lender decision-making and compliance cultures to change under these options?*

	B. Options for regulatory model
9	*Do you agree that these are a fair reflection of the minimum legislative changes that are required to transition credit to the FMA? If not, please explain*
Option B1: Transition to a market services licence and apply all FMA core and licencing powers to consumer credit (preferred)	
10	*What implications would you expect from adopting a licencing approach and the associated regulatory tools for credit?*
11	*What modifications to the FMA's existing regulatory tools, such as stop orders, should we consider if extending them to the CCCFA under this option?*
12	*What do you think about the transitional licence approach, including what time periods are appropriate?*
Option B2: Retain 'Fit and proper' certification (status quo) and add FMA core tools for enforcing the regulatory perimeter	
13	*Do you agree with our analysis about the relative benefits and risks of the certification model? Why/ why not?*
14	*Are there additional tools that you consider the FMA should have to regulate credit, for examples tools like action plans or censures that are usually only available under a licensing model?*
	2. Options to amend disclosure requirements
	C. Options for what and when information must be disclosed
15	*As a consumer, do you receive the right kind and amount of information to make informed decisions? Why/why not?*
16	*Do you consider any of the disclosure obligations to be irrelevant, confusing, or inappropriate? If so, please tell us what obligations you are referring to and what impact this has.*

17	*How could disclosure obligations be more targeted to the consumer's circumstances to ensure only relevant information is disclosed?*
18	*Is the information set out in Regulations 4F and 4G both sufficient and do sections 22 and/or 23 require the right information to be disclosed when a contract is varied?*
19	*Are there any other concerns or issues you would like to raise related to disclosure obligations?*
	D. Options for how information must be disclosed
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?*
21	*As a lender, are there any practical difficulties with obtaining the borrower's consent for electronic forms of disclosure (section 32(4)(b))?*
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))?*
	E. Options for penalties for incomplete disclosures by lenders
23	*Do sections 95A and 95B meet their objectives? Why/why not?*
24	*As a lender, to what extent does section 99(1A) impact the time, effort, and costs you dedicate to initial and variation disclosures?*
25	*Under option E1, what should a materiality test look like?*
26	*Under option E1, which party should have the burden of proof and what would this mean for the effectiveness of the option? If the onus is on borrowers to show materiality would that deter them from seeking redress under section 99(1A)?*

27	*Under option E2, how should the maximum amount the lender forfeits be calculated?*
28	*Under option E3, would there be the right incentives in place to ensure lenders comply with their disclosure obligations?*
29	*What would be the risks associated with each option? How could they be mitigated?*

3. Review of the high-cost credit provisions

30	*What specific provisions (high-cost or other) have most impacted lenders' willingness or ability to offer high-cost consumer credit?*
31	*In the absence of high-cost loans, what other avenues are borrowers turning to?*
32	*Is the unavailability of high-cost consumer credit having positive or negative effects on would-be borrowers?*
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?*

F. Options to amend the high-cost credit provisions

Option F1: Expanding the definition of a high-cost consumer credit contract to contracts with an interest rate above 30 per cent

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?*
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?*

Option F2: Expanding the definition of a high-cost consumer credit contract to contracts with an interest rate above 45 per cent

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?*
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?*
38	*How is a revised definition of a high-cost consumer credit contract interest rate threshold likely to affect access to credit for borrowers?*
39	*Do you recommend considering another interest rate threshold? If yes, please explain why.*
Option F3: Status quo	
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?*
Option F4: Other high-cost provisions	
41	*Is there evidence of certain industry lending practices that are causing harm which the high-cost credit provisions could address?*
42	*Are there any other industry lending practices that you believe are harmful to consumers?*
	Our short submissions relate to paragraphs 109 – 112 and questions 42, 45, and 46 of the discussion paper. As a general observation we note that Centrix's May 2024 report says that BNPL enquiries are up 24.4% year on year (although BNPL arrears are 12% lower year on year). We have seen the number of high-cost lending complaints fall close to 0%. It appears that the gap left by high-cost lenders exiting the market may have been filled, at least in part, by BNPL, although we do see relatively few BNPL complaints. We note with reference to paragraph 109 of the discussion document that in motor vehicle finance it is often the case that after interest, fees, immobilising devices, and dealer commissions are factored in, some consumers can end up paying close to

double the vehicle's original price by the time they pay back the loan (usually within 5 years).

Typically, in irresponsible (unaffordable) lending complaints we investigate, the interest rate is below 30% per annum, and reducing the maximum interest rate is unlikely to prevent unaffordable lending in this space. This type of lending is expensive compared to some other types of lending, however that is the nature of the product. If the maximum interest rate had to be reduced to not more than 30%, it could risk the availability of this type of lending, which would not be a good consumer outcome. However, our observation is that the problems we see arising from **some** motor vehicle lending (not all), is **not** the interest rate per se. The problem is that the lending was unaffordable in the first place.

We also suspect that a lot of the vehicles being purchased are not worth what people are paying for them. In unpacking this further, we do bear in mind that motor vehicles depreciate in value quickly as opposed to other assets, like the family home, which, over time, benefit from capital gains. However, where the person has paid significantly more for a vehicle than it is worth, they end up with an asset worth much less that one might expect, by the time they have paid a significant amount over the loan term.

This problem is exacerbated if the borrower falls over in their payments soon after taking out the loan, and the vehicle is repossessed and sold. Even with crystallisation of the debt at this point, the consumer can be left with a very large loan balance, even after the sale proceeds are credited to the balance.

We have had cases where we have found unaffordable lending, and all fees and interest are written off, however the loan balance remains high. Often the borrower has no option but to surrender the vehicle. And, even when the vehicle is sold, they may still have a very large 'debt overhang' to pay. Our observation is that the root of this problem is that the vehicle they purchased was never worth the amount the consumer paid for it, and the loan was unaffordable, in the first place. The problem is not the interest rate, per se.

43	*Do you agree with the suggested impacts of each of the identified options? Why/why not?*
44	*Do you have any information or data that would support our assessment of the impacts of each of the options?*

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?*
	See above, answer to question 42.
46	*Finally, are there any other areas and options for change that we should consider that have not been addressed in this discussion document?* See above, answer to question 42.

Other comments