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MBIE "Fit for Purpose" Consultation – Submissions on Limited Aspects of the Consultation

Issue	Submission
Options for liability settings	**Removal of restrictions on indemnities and insurance for directors and senior managers** We support the removal of restrictions on indemnities and insurance for directors and senior managers regardless of what happens elsewhere in the Act. In our view these restrictions are unduly harsh and have contributed to undue compliance costs and overly conservative lending practices. It also seems likely that the restrictions are a considerable disincentive for talented and responsible individuals to take on these important roles. The prohibition of insurance and indemnification for civil liability and legal defence costs is very unusual. Even under the Health and Safety at Work Act 2015 (see section 29) only insurance in relation to fines and infringement fees – i.e. criminal penalties – is prohibited. The prohibition under section 107E is inconsistent with the general statutory approach of allowing insurance for directors' liability and for the costs of defence to civil actions in other acts e.g., in the Financial Markets Conduct Act 2013 or the Deposit Takers Act 2023. Additionally, the current penalties for directors or senior managers who breach the Act are significant (fines of up to $200,000 and/or court-ordered damages). This, combined with the prohibition on insurance/indemnification, means the overall regime is extremely harsh.
Options for what and when information should be disclosed	**A more targeted approach to disclosure** We support a more targeted approach disclosure. We consider: • the detailed granular information that needs to be provided is quite often not relevant for clients – for example, the number of remaining weekly payments in a long-term loan • the current regime is inflexible and does not accommodate different loan repayment arrangements. For example the requirement to provide the 'required' payments is often unhelpful if a borrower is voluntarily paying a different higher amount • the time and investment that lenders have dedicated to ensuring all granular information is accurate is disproportionate when compared to the significance and relevance of the information to customers

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	• in relation to variation disclosure, changes should clarify the meaning of 'full particulars of the change'. The Commerce Commission Disclosure Guidelines have resulted in interpretation uncertainty and, as a result, considerably increased compliance burden and costs. The problems with the current disclosure regime are increased exponentially when coupled with risks associated with section 99(1A) (which we strongly support repealing as discussed below).
Options on how information must be disclosed	**Greater flexibility in disclosure methods** In our view, lenders should have greater flexibility to provide disclosure electronically. Under the current regime lenders must obtain very specific wording in their consent to electronic disclosure to comply with the requirements of s 35(1)(c) of the CCCFA. In our view, to be 'fit for purpose' the regime should encourage disclosure in the most effective and efficient means possible, which for most people is to receive information instantly through electronic means.
Options for penalties for incomplete disclosures by lenders	**Repeal of Section 99(1A)** We support the repeal of Section 99(1A) with effect from 6 June 2015. The risks posed by Section 99(1A) on the credit industry are severe and disproportionate to the harm it seeks to protect against. Section 99(1A) has had the effect of undermining the CCCFA's legislative intent by inhibiting fair, efficient and transparent markets for credit. There is no scalability of the provision, so lenders are faced with the potentially harsh consequences for minor omissions. This has increased lenders' financial risk and solvency concerns and led to overly conservative lending practice and increased compliance burden. We consider that introducing a materiality threshold would not go far enough to address the issue. A new materiality threshold would also introduce more uncertainty as to the operation of the regime. We do not agree with the concern raised by MBIE that there would be insufficient incentives for compliance without section 99(1A). There are perfectly adequate mechanisms under the CCCFA that incentivise disclosure e.g., civil pecuniary penalties, statutory damages and criminal offences.

Issue	Submission
Options for changing the high-cost credit provisions	**High-Cost Credit Provisions** Regardless of whether the threshold for high-cost credit contracts is changed or not, MBIE should consider changing the language in section 45C. We understand it is difficult to lenders to understand the meaning of 'or is likely to be' (for example) in the following excerpt: *a contract under which the weighted average annual interest rate applied to the unpaid balance is, or is likely to be, 50% or greater on any day during the term of the contract;*