# Submission on discussion document: Consumer Credit Regulation Review

## Your name and organisation

| | |
|---|---|
| **Name** | Michael Ward – Client Services Director |
| **Organisation** | Christians Against Poverty (CAP) – Nationwide debt-counselling service |

## Responses to discussion document questions

### Regarding the excessive cost of some consumer credit agreements

| | |
|---|---|
| 1 | 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? |
| | Yes, CAP does agree with the problems identified. CAP provides a free debt-help service to help people in an unmanageable situation to pay off their debt and become debt-free. We are working with over 600 client families at any time and our services are available from Kaitaia to Dunedin. The problems with lending are both severe and very common. We know that from our experience with clients that we see plenty of people that are faced with loans where the interest rates are very high. This essentially means that it can take many years for a client to repay a loan or in worst cases it becomes impossible to repay.<br>We frequently see clients being charged exorbitant interest rates. For example, the company issues short term loan up to 547.5% ( ). <u>If the client is unable to pay that loan back in the short term, their situation would quickly unravel into unmanageable debt</u>. We have clients from Mangere, Auckland and Lower Hutt who have gotten loans from who are now in unmanageable debt.<br><br>There are many companies that operate this business model, the highest being which charge up to 624% daily on the balance of this loan.<br><br>Other lending companies with high interest rates that are clearly unreasonable are:<br><br>. These companies offer short term loans and take advantage of people in desperate situations. What the means for these companies is that they can get a short-term customer and create a long term one by offering a loan that can easily become impossible to pay. |
| 2 | 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? |
| | Yes, CAP agrees that a cooling off period and limiting loans to one per person will both have the desired effect of limiting debt accumulation and giving people the best possible opportunity to pay back the full amount in as short a time as possible. We would add that extending the cooling off period would provide borrowers further opportunity to determine whether they had borrowed under duress. |
| 3 | 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? |
| | CAP notes that there are many kinds of fees and interest rates so having a cap on <u>total cost of lending</u> is the most appropriate way of dealing with the issue. For example, if a person defaults on one loan repayment, they can be charged compounding interest on that default fee on top of the interest of the loan.<br>We have very many clients who, at the time they come to us, have been in default on their loans and have not been been able to pay off the loan as their payments are all being funnelled to clearing default fees and charges. Once in default, customers are often in default in perpetuity and there doesn't seem to be any exerted effort by finance companies to rectify these situations. Often our clients don't recognise that they are in arrears.<br>Option three eliminates short-term high-cost lending. |
| 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? |
| | As below. |
| 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. |
| | Option C is strong, as the cap on interest rates would effectively prohibit payday lending. This would remove the unnecessarily exorbitant rates that keep people trapped upon default. Although this doesn't stop the loan being rolled over and being considered as a new loan.<br>Option A is the second-best option. This would be effective for limiting the overall exposure for clients that end up in financial difficulty and unable to afford repayments, even if the original loan had been affordable.<br>Therefore, CAP is supportive of a combination of Option A and Option C, with a cap on total cost of credit. The total cost of lending maximum should be 50-75% of the loan for general lenders, and 100% of the loan for payday lenders. |

## 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?

Yes, because directors and senior managers both have a large amount of control over the financial service provider. There will be a discrepancy if only directors have to take reasonable steps, but senior managers are not required to, as senior managers are more likely to be the person in control of the organisation's operations.

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

Yes. CAP believes that this is one of the greatest areas of concern and the cause of significant financial hardship for our clients. Finance companies are very frequently not making an accurate assessment of affordability. This is equally important, not only at the time a loan is taken out, but also at any time when hardship is considered or a repayment arrangement is made to pay back arrears.

There is no binding code for assessing expenditure of a household correctly. Standard tests based on the number of people, including children should be included in any affordability assessment. For example, the cost of car including repairs and maintenance (based on age of vehicle), WOF, rego and petrol should be including in the full cost of running a car when issuing a loan.

CAP also believes that income from Work & Income benefits and Family Tax Credits should not be considered appropriately reliable income for the purpose of loan assessment and should be banned from forming part of income assessment. For examples, Disability Allowances are granted to help meet the cost of living with a disability. Accommodation Supplements are granted to help meet the shortfall between income and expenses necessary to pay accommodation costs.

EXAMPLES WHERE AFFORDABILITY ASSESSMENT HAS NOT BEEN ADEQUATELY CARRIED OUT:

1. A client from the Nelson area had been unemployed for 5.5 years and on a benefit. issued them a loan for $6,570 on top of the existing debt with other creditors and Work & Income debt. There was no disposable income to service this loan after paying essential bills. Clearly no affordability assessment had been carried out and this placed the client in hardship.
2. Another client in Hamilton had also been unemployed for many years and was issued a loan. The value of the loan was $13,498 and was issued by . The client already had existing debt and had no ability to pay this after covering the repayments for the existing debt. This was a high sum to issue someone on a limited income and a good example of irresponsible lending.
3. Another elderly client from Masterton had been on the pension for 12 years. gave her a loan of $1,700 when she already had multiple other loans. Another client from Christchurch was on a benefit and given loans and has up to 26 creditors she owes money too.
4. entered into a loan with a client that quickly fell into default. While in significant default on the first loan, loaned the client two further amounts of money. The second loan was also in default at the time the third loan fell into default.

It is difficult to believe that affordability assessments have been carried out.

| | |
|---|---|
| 8 | 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? |
| | Yes, include that the lender must make proper affordability assessments of the borrower for the life of the loan before approving a loan. Many borrowers have fluctuating incomes, so the lender must make an assessment of whether the borrower can repay the loan over the life of the loan.<br><br>Affordability assessments should not be just limited to the point in time when the loan is taken out, but done for the life of the loan.<br><br>Additionally, many creditors rely on a copy of a client's bank statement as sufficient evidence of their expenses. This is a lazy and inaccurate method of assessment. A bank statement only shows costs that the clients pay through their account. Further, clients in hardship generally don't spend money on things that should be allowances in a healthy budget. Just because a client doesn't spend money on clothing or doctor's prescriptions doesn't mean that these can be excluded as necessary expenses for a reasonable budget. |
| 9 | 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? |
| | Currently advertisements on TV and social media promote the upside of taking out a loan, for example the holiday in Fiji or the new car but never the realities of taking on debt. Most recently have been advertising the benefit of being debt free with the images of laughing people. Getting people debt free is not the core business of and it is deceptive to advertise that customers will experience this because of engaging with them.<br>Websites and app-based lending make it impossible to prove that people understand what they're signing up for. It also makes it easy to offer people deals all the time- hard to say no to. |
| 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? |
| | *[Insert response here]* |
| 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? |
| | CAP recommends requiring affordability assessments to be mandatory with the penalty of writing off the debt if the assessment has not been carried out. This incentivises lenders to ensure the borrower is able to pay the loan back. The more prescriptive the requirements, the easier they are to enforce. |

| 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. |
|---|---|
| | All three options have significant merit. A requirement for a license would be very effective in ensuring that people who issue loans are qualified to assess affordability and carry out assessments. A comprehensive licensing scheme, including the ability to deregister lenders, is central to this. Increased enforcement measures would also help; they could include writing off a debt if it has been made in an irresponsible manner or it cannot be proved that they made an adequate affordability assessment. A clear focus on working with budgeting agencies has the potential to improve lender behaviour.<br>From the third option, a defined procedure about what an adequate affordability approach looks like it would be ideal, and warnings on advertisements are in line with other areas of law. We also believe that items not deemed as income by the IRD (e.g. board payments received, Family Tax Credits, Child Support, Disability Allowances) should not be listed as relevant to affordability assessments. |

## 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? |
|---|---|
| | *[Insert response here]* |
| 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? |
| | CAP recommends prohibiting the sale of food items under credit contracts. This is becoming more frequent. Pricing is often misleading or not clear, dressed up as a good deal with an affordable weekly payment price.<br><br>CAP recommends that Option B to “prohibit the price of goods or services sold on credit from exceeding the cash price” should be implemented. By charging the additional element of the price as interest, this would mean that mobile traders would be covered by the Credit Contracts and Consumer Finance Act.<br>● Through this option, mobile traders will be subject to the Credit Contracts and Consumer Finance Act and therefore will be subject to disclosure requirements. This means that mobile traders will be required to advise the borrower that the sale is a consumer credit contract and that the consumer has rights under the Act, such as being able to make a hardship application.<br>● Charging the additional element on top of the cash price as interest means that the mobile trader will have to advise that the product can be purchased much cheaper up |

front.

The impact of redesigning mobile trader transactions to be covered under the Credit Contracts and Consumer Finance Act means that the borrower will need to be advised of their rights and that the borrower is aware they can purchase the item for the cash price upfront.

| | |
|---|---|
| 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. |
| | CAP supports both Option A “include credit contracts that charge default fees in the definition of consumer credit contract” and Option B “prohibit the price of goods or services sold on credit from exceeding the cash price”. However, CAP would prioritise Option B over Option A for the reasons stated above in Question 14.<br><br>Option A would also bring new layby company business models, such as Afterpay, Oxipay, and Partpay into the scope of the Credit Contract and Consumer Finance Act. These business models involves consumers purchasing goods and receiving them upfront and paying for the goods in weekly instalments. If a weekly payment is missed, then a default fee is charged. These business models are relatively new and should be covered by the CCCFA. |

## 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? |
| | CAP supports Option B, since this would lay down in law the maximum amount that may be charged for each type of fee, and ban certain types of fees. Different types of fees and caps would be permitted for different types of transactions. This is the clearest option for capping fees. |
| 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? |
| | These fees vary from creditor to creditor. For example, the default fee charged when a person misses a payment ranges from $13.95 to $62 ( ).<br><br>also charge a $60 fee. This means that if a person is in hardship and it’s likely so if they are defaulting on a payment, then they are likely to go further into debt.<br><br>A client we are working with in West Auckland with a gambling addiction was subject to significant fees with multiple creditors. are charging $25 Letter Fees, $15 Administration Fees on top of the nominal default fee. are charging $20 Letter fees and $5 call charges. Classic example of where the client takes loans to pay loans and then despite some payments being made, they have all spiraled and the client has only fallen further and further into debt. |

| | |
|---|---|
| | Another South Auckland client got a cash loan of $200 from an online payday lender charging 365% interest per annum. They added three different fees to set up the account (Account setup fee, establishment fee, same day deposit fee) bringing the total owed to $300. They entered into a contract to make $61 weekly payments. After less than a month of failed payments (only one payment was made) the total owing is $301.29 which doesn't even cover the interest charged.<br><br>A New Plymouth client was charge $65 as 'field visit charge' by . This is higher than the repayment rate of $45. Also charge 'Failed Payment Fee's of $15 which is 33% of the repayment rate. This is excessive. All this in addition to $25.50% interest.<br><br>These excessive fees are charged to the client's account and mean that they are much more likely to stay in debt when they are experiencing hardship. Excessive fees mean people are not able to escape the cycle of debt and the lender has a long-term customer. |
| 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? |
| | *[Insert response here]* |
| 19 | Which options for changes to fees regulation would you support? Which would you not support? Please explain how you made your assessment. |
| | *[Insert response here]* |
| 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? |
| | *[Insert response here]* |

## 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? |
| | Creditors are known to lend to clients and get them to sign their household goods over as security. This is punitive action and it means the client can't go through insolvency. The creditor should either repossess the goods or release the security. Even if the debt is passed over to a debt collection agency, the security is still not released. It's unlikely that the |

household goods would be of any value if recovered but to the client it presents a real threat.

In addition, when in default, the threat of repossession of secured goods is often used to coerce the client into making a payment arrangement to catch up on arrears, even if the arrangement is not suitable – just to avoid the threat of repossession. It is often clear to CAP, as debt counsellors, that these are just empty threats – the security may be over a dining suite, a couch and a TV. There is such little value in these goods but the intimidation of having a repossession take place is sufficient to get the client to comply. As an example, had contractual payment arrangements for $65/week that the client couldn't any longer afford and they'd fallen into arrears. threatened to repossess the client's property unless the client agreed to $95/week repayments to help clear arrears. This was an unreasonable expectation given that the client couldn't even afford the original $65. The client felt pressed to accept these terms. When CAP spoke to , their own affordability assessment had her falling short by $40 to the new verbal arrangement.

This issue needs to be addressed with firm guidance on when security can be placed on goods and when it can't. The security must be released when the debt is passed over to a debt collector.

Additionally, the process of applying for hardship is onerous and burdensome. A lot of paperwork is required as proof which is often a barrier to applying. The loan also cannot be in default for more than two weeks which is unreasonable given the circumstances of the people that we see. A creditor can decline an application without giving a reason and why they have made that decision. There are no standard measures which means there is no accountability for the decision.

Another the tactic is to pressure the client to visit the office. Once the client is there they are asked to enter into a verbal agreement to a repayment term. On top of this they pressure the client to sign security over the loan further placing the client in hardship.

As an example, an manager threatened to visit our client's work place on top of other harassing techniques. The client lived and worked in Beach Haven, Auckland. They have harassed the client and convinced them that they should not work with CAP to a point where our relationship with the client was placed in jeopardy. One manager has been known to call the client and demand payment from them convincing them not to pay CAP. This resultant behaviour caused none of their creditors to be paid, and consequently placed as a preferential creditor by pure default and bad faith. This was in the best interest of but to the determent of the client who was already in hardship.

Another client, from West Auckland, entered into a contract for some goods she needed from an online lender. The online lender was called . The Commerce Commission has already brought charges against this company for it's loan contracts and extended warranties. The company showed up repeatedly at her door with intimidating looking men, looking for payment. They ignored her 'do not knock' sticker. The client asked repeatedly for the direct debit to be stopped, and it was not -. The client has also reported multiple visits from two intimidating looking men at the following times: in a black RAV4 type car, had visited at least 4 times. They came on 1.05.18 at 1pm, 12.06.18 at 1pm and 26.06.18 between 4.30pm and 5.30pm. The neighbors also reported seeing them come one other time when no

| | |
|---|---|
| | one was at home. They've left multiple letters. This is clear evidence of harassment and intimidation.<br><br>There must be firm boundaries in place to limit the amount and type of contact that is allowed be used by creditors. Visiting people in their homes without their permission should be banned outright. Heavy penalties should be put in place as a deterrent to this practice. More resource for the Commerce Commission is key for them to be able to carry out investigations and lay charges before multiple reports are laid. |
| 22 | What information should be provided to borrowers by debt collectors? When and how should this information be provided? |
| | Disclosure document should be limited to one page and only include key information. Terms and conditions should be limited. Lenders should be explaining and going through the document, (which is already a requirement in the Act, but not followed). |
| 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? |
| | *[Insert response here]* |
| 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. |
| | CAP supports all five options to address irresponsible debt collection.<br><br>CAP also recommends four specific additions:<br>1. The crystallisation of debt on “recoveries status”. This means that when a debt is 180 days old and not able to be rehabilitated, it should be “locked” in line with the repossession rules in the Credit Contracts and Consumer Finance Act. “If the lender sells the goods within 15 days after repossession, the borrower’s liability is limited to the original advance made under the credit contract. The lender cannot add any costs of borrowing (interest or fees). If the borrower has paid more than the original advance, the lender must refund the balance to the borrower.”<br><br>2. If the creditor threatens to repossess, any payment arrangement that is entered into to avoid repossession should be in writing with a clear affordability assessment to justify the proposed arrangement.<br><br>3. Action to address the issue created by creditors not relinquishing their security, even over loans that have been sold to debt collection agencies. This effectively prevents |

| | |
|---|---|
| | debtors entering into insolvency to address their debt.<br><br>4. Prohibit creditors from refusing to work with or acting obstructively towards budget counselling services that are trying to help the clients. We have many examples of creditors refusing to work with us, avoiding us, delaying in providing necessary information to us and actively insisting the clients stop working with us. |
| 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. |
| | CAP supports all five options to address irresponsible debt collection plus the additional four points listed above. |

## 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? |
| | *[Insert response here]* |
| 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. |
| | *[Insert response here]* |
| 28 | 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? |
| | <u>Other issues which CAP sees as important</u><br>We would be keen to progress these additional issues:<br><br>• The Responsible Lending Code should be binding so that the approach of the law is rules-based instead of principles-based. This ensures that breaches of the Code can be enforceable.<br><br>• We are concerned about wage attachment orders, or wages deduction authorities. This means that loan repayments are being taken off the borrower's income before they receive their wages. Although the borrower must sign their approval, this often seems to be obtained under duress.<br><br>• Monitoring on the ground (especially by budgeting/BFC agencies) and the Commerce Commission ability to respond more quickly both need to be better resourced. |

- The paper lacks any focus on credit cards, which clearly have significant impact and are the focus of much policy debate in Australia and the UK at present.

## Any other comments

| We welcome any other comments that you may have. |
|---|
| *[Insert response here]* |