Submission on discussion document: Consumer Credit Regulation Review

Your name and organisation

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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?

The problems identified with high-cost lending are significant. Frequent use, debt spirals & excessive fees are all problems that (unless there has been a circumstance change) stem from lack of appropriate affordability assessments and the ease of access for these types of lending options.

- Many lenders are only doing superficial affordability assessments. There have been a number of situations where there is not a reasonable consideration of living costs or other debt obligations a consumer may already have.
- The heavy reliance of a principles-based approach in the CCCFA whilst allows for requirements that cover a vast array of lending options, does not effectively target specific area of concern. This makes it difficult for advocates to detect breaches, regulators to enforce, lenders to have clarity and consumers to compare to make informed decisions.
- Many high-cost, short term lenders operate purely online. As with door-to-door sales, this makes it easier for consumers to partake in impulse decisions with little regard to long term consequences. Consumers are more likely to make poor borrowing decisions if options are presented to them without any effort on their part to actively seek out lenders.

Lending of this nature does have a place within consumer credit and when used responsibly can be a useful service and even a way for consumers with poor credit worthiness to improve their credit score through Comprehensive Credit Reporting (CCR). However, the CCCFA principles reliance is setting consumers up for dependence and failure unless sacrifices are made in other areas. Responsible lenders are being bogged down with compliance resulting in higher costs being passed on to consumers. Regulators and consumer advocates are finding it difficult to identify breaches and enforcement is cost-prohibitive in many cases.

As a lender doing everything possible to be compliant and responsible, it is difficult to be seeing breaches very regularly by other lenders with no apparent consequences. I believe the CCCFA is failing to meet the consumer harm reduction objective through being too reliant on principles-based regulations.

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?

Cap option A - Limit the accumulation of interest and fees.

The extensions of cap option A relate to a prohibition on offering a high-cost loan to a person who has defaulted on an existing high-cost loan not yet repaid and possibly restricting the number of high-costs loans a person could have at any one time with cooling off periods between loans.

Not providing a high-cost loan to a person who has defaulted on an existing high-cost loan is what most responsible lenders would be already doing, likewise declining an application where the person already has one or several high-cost loans.

This comes down to robust affordability and credit worthiness assessments. However, if information about existing high-cost loan commitments is concealed and/or there is a timing delay for default notification on the likes of CENTRIX or EQUIFAX, these assessments may be compromised.

There is currently no way to accurately determine how long ago a consumer may have received their last high-cost, short term loan. The lender can only reasonably rely on their own relationship history with the consumer.

The only way I can see to resolve these issues and make these extensions work as intended is to require loans of this type to be listed on a register, like that of the PPSR. This would eliminate any possibility of a person's current commitments (or past) being concealed, withheld or minimised.

The introduction of these extensions may however result in unintended consequences that would increase rather than reduce consumer harm.

- Borrowers would simply switch between lenders more frequently and be more likely to obtain higher loan amounts with each switch. The debt spiral will accelerate.
- Lenders would start to offer more consolidation type lending options. Costs will increase due to the increase in new customer applications. These costs will be passed on to borrowers.
- The credit market will increase, potentially spiralling out of control with higher lending products, longer repayment terms and debt consolidation becoming the norm.
- Without some form of public register, it would very difficult for lenders to determine when a consumer last received a high-cost, short term loan in almost all cases and if they have one currently in some cases.
- Pawning of items, criminal activities, WINZ grant requests and possible exploitation of vulnerable family members would increase for some consumers who are no longer able to borrow as they need.

I think that if affordability requirements were tightened, there may not be a need for the extensions of cap option A. If all lenders, regardless of the loan type offered, operated within the same affordability requirements, the number of consumers being approved for credit

	contracts on unrealistic repayment terms would decrease.
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 option A – Limit the accumulation of interest and fees. I think this is a fair assessment. It still provides incentive for lenders to take a risk, but should hardship or default occur, there is a clear limit which would reduce the likelihood of a debt becoming oppressively high. There needs to be a greater consideration of the assessment cost of borrowers switching between different providers. Under this option not only will this occur very frequently, the amounts borrowed will increase, leading to an acceleration in debt spirals. Cap option B – Reduce the highest interest rates and limit the accumulation of interest and fees. This option will remove ability for those people that might have made mistakes, breakups etc from having access to finance as lenders will really tighten criteria. While some might argue this is a good thing, it is not, because it means the person will never gain an opportunity to show how they are no longer a credit risk. This means the likelihood of them ever being able to clean up their credit and regain access to mainstream credit options will be removed. The limiting of default fees to only $30 over the life of the contract could either lead to an increase in third-party debt collection, cross-subsidisation in some way to re-coop collection costs or both. I also do not believe that there would be a lower level of default and reduced hardship. It does not matter how much fees and charges are reduced by, if the consumer cannot afford the repayments, there will be defaults and hardship. It is affordability that needs to be focused on, not fees and charges. Cap option C – Set a low interest rate cap to eliminate high-cost lending. Banning high-cost lenders could create a raft of unintended consequences as removing the supply does not correspond in a reduction in demand. Consumers do not currently use these lenders if they have access to mainstream lending options. If a consumer has poor credit worthiness, they are not likely to be able to choose between lenders. The cost of credit is not compared. Main stream lenders are very unlikely to step in to fill the supply gap given the default risks.
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?
	Where interest caps would eliminate the risk of a debt spiralling out of control as a result of

financial hardship, the proposed extensions seek to change consumer behaviour by limiting the number and frequency of high-cost, short terms loans a consumer can have within a given timeframe.

Although I do not support these extensions as my preference is to narrowly and prescriptively focus on affordability, if they were to be introduced in some form to the CCCFA, there would need to be a register created (much like a cross between the PPSR and CCR ongoing reporting) for the registration and ongoing maintenance of high-cost, short term loans.

The key points surrounding the creation of such a register would be:

- Lenders would be able to see instantly whether the consumer already holds a high-cost, short term loan (or when one was last received) rather than potential guess work. There are some consumers who whether intentionally or not, conceal current commitments by non-disclosure and holding several non-related bank accounts.

  If the borrower does not disclose or does not advise of other bank accounts in use, there is no way currently for a lender to verify whether other commitments of this type exist.

- Regular information uploads in much the same way as is done with CCR, and a restriction to one high-cost, short term loan at a time with no more within a certain time frame, or while an existing one remains unpaid and in default may create more clarity for lenders over the amount of credit risk a borrower is, potentially opening up a more competitive market with higher consumer choice.

- A register would enable lenders to confirm when the last high-cost, short term loan was received. Otherwise there would be no way to accurately determine this.

- Advocates and enforcers could use general data from the register to map general trends regarding this form of lending.

- Advocates and enforcers could require a unique register generated code to be assigned to each specific high-cost, short term loan. If the loan did not have a registration code, it could be immediately voided.

- There would have to be harsh penalties to ensure that all lenders use the register as intended.

  For example, there would have to be severe penalties such as contract voiding if unregistered or registered where an obligation does not or no longer exists.

- The cost of setting up and maintaining such a register may be significant. There would need to be consideration on how this will be paid for, keeping in mind that any costs to the lender would be passed directly on to the borrower as it would be a legitimate cost of assessing a credit application.

- There is a risk that lending restrictions encapsulated through a register would increase the risk of consumers pressuring vulnerable family members to obtain credit under their name.

- There would need to be a mandatory auto-upload function (hence suggested similarity to CCR) to ensure lenders promptly update the register once a loan is finalised.

  Without this, consumers would be unfairly restricted from choosing to seek out another provider.

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.
	It is difficult to answer this without clarity over what the definition of a high-cost, short term lender is. Having said this, based on the information provided, option A would be the most likely to be preferred (with separate consideration to the extensions). It draws a line in the sand. Gives clarity for all while still allowing opportunities for lenders to take calculated risks. It is simple to calculate and easy to enforce. Option B is not supported. The reason for this is the limit on default fees to $30 over the life of the contract. Chasing up default accounts is time consuming and costly. Lenders would be faced with either trying to re-coop costs elsewhere through some form of cross-subsidisation or there will be an increase in third-party debt collection. Option C is not supported. The best cases presented are unrealistic. There will be a raft of unintended consequences and all that will eventually happen is underground lending and someone will dream up a new product that beats the rules (as is happening currently).

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?
	I would support directors having increased duties under the CCCFA, but this needs to be complemented with a change in focus from principles-based regulations to prescriptive based regulations. This will increase clarity and reduce the likelihood of multiple interpretations. I don't think these same obligations should extend to senior managers, but rather suggest lenders should have a designated compliance officer who would be required to be fully familiar with the CCCFA, ensure overall compliance, be of good moral character etc (like what is required for AML/CFT). Having a designated internal compliance officer would provide all stakeholders with clarity. It would also mean that lenders have fully documented and audited practices to ensure CCCFA compliance.
7	If there are to be more prescriptive requirements for conducting affordability assessments, what types of lenders or loans should these apply to?
	There should be more prescriptive requirements for conducting affordability assessments. This is irrespective of the type of credit being applied for or type of lender. It might seem excessive to some, but if MBIE are serious about reducing consumer harm, affordability needs to be a key focus of any reform.

	There are some lenders operating who do only superficial affordability assessments. This needs to change so that all lenders do full affordability assessments for every application to take all reasonable living costs and other debt commitments into consideration when determining affordability. Without this: • Consumers who currently have reasonable credit worthiness may find themselves with lower credit scores resulting in the removal of more favourable mainstream credit options due to taking on unaffordable debt without realising the impact. • Consumers who already have impaired credit worthiness may find themselves falling deeper into a debt spiral and hardship due to taking on unaffordable debt. A change in circumstances may result in an unavoidable situation of financial hardship, but by ensuring more prescriptive affordability assessments for all types of lenders and loan types are done before credit agreements are entered into, there is a real chance of stopping avoidable debt spirals before consumers find themselves excluded from more favourable mainstream credit options.
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?
	Particularly for high cost short term lending, consumers are often desperate. Expenses are understated & income overstated to ensure an approval. The responsible lender often sees through this fluff & changes what is said to what would be more reasonable for the situation. There is however, always the possibility of concealments being missed. Irresponsible or ignorant lenders would simply take the consumer's information on face-value. It is for these instances that I think there should be a change, by all lenders regardless of the loan product on offer. Creating more prescriptive requirements for affordability assessments would mean: • Borrowers would be unlikely to be approved for unaffordable credit. Although in the short term their immediate needs would not be meet, the likelihood of hardship would be minimised. • Lenders who currently only rely on information provided by the borrower would find their decline rates increase and default rates decrease. • I think an unintended consequence within the credit market though may be an increase in debt consolidation and higher amount credit contracts. This is because some lenders may choose to consolidate other lenders or increase the term for repayment to satisfy affordability requirements.
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?
	I think the current Responsible Lending Code guidance for advertising should be binding, regardless of the loan type or size because any debt should be carefully considered by consumers not just high-cost, short term loans. Providing a binding, clear disclaimer to all advertising would provide more clarity and remove ambiguity for lenders. With digital and social media advertising there is an increasing lead generator presence. These advertisements/links are often done by overseas entities who (within fine print) are not actually offering credit, but simply saying they will find a lender to match needs. Adverts might only appear for a matter of days, then disappear forever. These applications are then auctioned off within an online lender bidding environment. Lenders do not currently have any way of knowing where or how a lead was generated from originally. Where more robust requirements for lending code adherence regarding advertising can only be a good thing, MBIE needs to consider that there is an increasing amount of advertising occurring that is actually generated through entities that would fall outside CCCFA requirements as they are not lenders and not firmly established in a particular location.
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?
	Registration options: One of the costs suggested for option A would be that some concerns may arise over the provision of deregistration powers to the Commerce Commission (although an appeal to the courts would be available). I think these concerns would actually be significant. While the CCCFA is so heavily reliant on principle-based regulations, deregistration powers for an enforcer who is making an interpretation just like lenders are, could create significant bias. This would be unfair to lenders who may have a legitimate differing interpretation. The CCCFA would need to move to more prescriptive regulations to provide clarity and certainty for these registration options. Enforcement options: I agree with the costs and benefits but suggest director duties would be easier to be embraced and adhered to if the CCCFA moved from principles to prescriptive regulations. Lack of clarity and risk of mis-interpretation would be a major concern for any director under a principles-based system. Responsibility options: Introducing more prescriptive requirements for conducting affordability assessments would result in a significant reduction in irresponsible lending, not a small reduction as suggested. Where a change of circumstances cannot be predicted, unaffordability from the start can

often be easily established when adequate affordability assessments are conducted.

Consumers experiencing financial harm from unaffordable debt rarely have just one or two debts – they are more likely to have several debts to multiple loan providers. Better affordability assessments across the board would reduce the likelihood of a consumer getting into the position of having multiple debt commitments.

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?

Enforcement option E – Require creditors to work with consumers' advocates if asked.

I think this option could be extended to require lenders have a designated person (or person's) who's contact details are publicly disclosed for advocates to deal with.

- The designated person would be able to have more intensive skills in dealing with hardship.
- Advocates would be able to receive a consistent and timely outcome for all consumers.
- Collaboration and trust would improve between lenders and advocates.

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.

Registration options A, B & C – Expand powers to deregister lenders and ban directors from future involvement in the credit industry. Introduce fit and proper person test in registration of lenders. A comprehensive creditor licencing system.

I agree with these options. Existing lenders who comply or those who make a genuine mistake and take reasonable steps to rectify issues will not be affected by these options being introduced. The options completely target those lenders and specific persons who disregard the CCCFA and partake in activities likely to cause consumer harm.

- Option C will mean in increase in compliance costs for lenders but I think the majority of lenders who currently are taking genuine steps to ensure compliance would already have processes documented.

Enforcement option A – Civil pecuniary penalties, statutory damages and expanded injunction orders for breach of lender responsibilities.

I agree with this option, but I do not support breaches in suitability being part of this option.

Suitability is very subjective, what I might find unsuitable, another may find completely suitable for the need (unless in extreme cases).

Although there are some extreme examples where suitability would be able to be easily determined, most loan application reasons are not as clear, and difficult to define accurately.

Many borrowers are not forthcoming, specific or in some cases, particularly truthful about the reason for the loan application. In many cases the reason is not able to be independently verified to some extent as with affordability.

Where suitability can be subjective, affordability is not. Affordability can be independently assessed without reliance of "taking a response at face-value".

Affordability should be the only focus of enforcement option A.

Enforcement option B – Director duties.

I agree with directors being subject to duties to take reasonable steps to ensure creditor compliance but only if CCCFA requirements were changed to be more prescriptive rather than principles based. I also think extending this to senior managers would be taking this too far.

Having specific rules, caps etc to adhere to enables robust systems to be in place that are regularly reviewed and audited (much like that for AML/CFT requirements) would not be an overly onerous requirement for directors. Maybe in the same way, a compliance officer could be required.

Senior managers should however be subject to a fit persons regime to ensure only persons of the right character are participating in these roles.

Enforcement option C – Substantiation obligation for lenders.

I agree with this option. Most responsible lenders would already be doing this currently. It would not be unreasonable for this to be mandatory for all lenders.

Enforcement option D – Increase industry levy on creditors to help fund advocacy, monitoring and enforcement of CCCFA.

I do not agree with this option. This would place substantial additional costs on lenders who are compliant to fund advocacy, monitoring and enforcement for those that are not compliant. This would result cross-subsidisation between compliant and non-compliant lenders. The costs in some form will be passed to borrowers who hold a relationship with a compliant lender simply to cover the actions of other non-compliant lenders.

I believe there needs to be a move from principles focus to more prescriptive specifics such as caps, limits etc within the CCCFA. This would make it clearer when breaches have occurred without ambiguity or need for lengthy or costly investigation and judgement.

Enforcers would not need to spend significant resources in investigating and proving a case for prosecution. These funds could then be redistributed to advocacy services.

Enforcement option E – Require creditors and their agents to work with consumers' advocates if asked to do so, and in good faith.

I agree with this option. Responsible lenders would already be doing this. An extension should be to require a designated person or group within all lenders to provide consistent and more timely collaboration between lenders and advocates.

Responsibility option A – Introduce more prescriptive requirements for conducting affordability assessments.

I agree with this option. I think it's introduction would significantly reduce consumer harm due to borrowers being approved with unreasonable expectations.

I believe affordability is the root cause of consumers getting themselves in a position where their credit worthiness reduces so that mainstream credit options are closed to them. It is also the key reason why many vulnerable consumers and their families must sacrifice living costs to service unaffordable or excessive debt repayment commitments.

Responsibility option B – Introduce more prescriptive requirements for advertising.

While I agree with this option in principle, I think it might not be as effective as expected in practice.

The increase in social media and digital technologies has introduced the phenomenon of the lead generator. These are entities, often overseas based, who advertise to entice potential borrowers and then on-sell leads within legitimate online auction environments. As they are not providing credit, I'm fairly sure their practices fall outside CCCFA requirements. Even if they were subject to the CCCFA, enforcement could be difficult.

Responsibility option C – Require disclosure to be in the same language as advertising.

I agree with this option. Consumers should be able to understand what they are committing too. If they approach a lender based on information provided in their native language, there should be a reasonable expectation that all disclosure can also be provided in that language.

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?

Scope options

A – Include credit contracts that charge default fees in the definition of consumer credit contract.

B – Prohibit the price of goods or services sold on credit from exceeding the cash price.

I agree with the costs and benefits for these scope options. The following should also be considered when assessing whether the implementation of these scope options will reduce irresponsible lending practices and consumer hardship:

Scope option A covers contracts where default fees are charged but there is a risk that some lenders may stop charging default fees to remain outside CCCFA regulations or that newly established credit-based payment systems could be impacted significantly. Things to consider in detail should be:

- No lender is going to provide credit agreements for free. Even if there is no interest or establishment fees charged, the lender would need to make profit from either a discounted price from the retailer or default fees or both. A discounted price from the retailer suggests there should be the ability for a consumer to receive the same or similar discounted price upon cash payment. This scope option could only work effectively if implemented in conjunction with scope option B.

- The impact of, or potential irresponsible behaviour of the newly established credit-based payment systems is yet to be fully realised. They use a system of determining a credit limit for a consumer based solely upon a consumer's credit score. There is no consideration of affordability, no budget assessment, and no requirement for bank statement transactional proof of earnings / expenses.

  This should be a serious cause for concern as a reasonable credit score can in no way be considered affirmation of a consumer's ability to service repayments without suffering substantial financial harm. Furthermore, a consumer with a good credit score may find themselves ending up with a poor credit score through impulse buying when they cannot afford it.

  Some might argue that most purchases are rather small with term payments over less than two months, therefore the potential for financial harm is minimal. But what if the consumer cannot realistically afford the repayments? Do these consumers or their dependents reduce their food intake for these weeks or do other commitments get defaulted upon. The debt spiral begins.

  Some also might argue that consumers should not take on additional debt they can't afford - But consumers are being constantly bombarded with advertising enticing them to indulge their impulses with get now, pay later; made even more accessible with online shopping. Not everybody has the willpower to abstain or think of long-term consequences when confronted with these advertisements.

  I believe if these newly established credit-based systems are not encapsulated by the CCCFA in some form to ensure responsible lending practices, many more consumers will end up with lower credit scores due to being approved for term payment without affordability assessments. This will increase the number of consumers who do not have access to more favourable mainstream lending options resulting in even more vulnerable consumers requiring protection.

- There needs to be a level playing field between all lenders. Failure to have this just makes it harder for the average consumer to make informed choices to compare options and more difficult for compliant CCCFA lenders to compete with both non-compliant lenders and lenders who do not have to adhere to the CCCFA.

  Inflated purchase prices and the new credit-based payment systems have evolved, whether intentionally or not, to provide consumer credit contracts that fall outside the restrictions and requirements of the CCCFA.

  Consumer protection should be paramount for any consumer credit contract regardless of the terms or costs. A consumer should be able to be confident in receiving the same level of protection whether they get a loan to purchase an item or they use an "pay after" type credit service for that same item. If the consumer is required to make term payments, the CCCFA should apply in all cases.

A level playing field between all lenders would turn a "small reduction in irresponsible behaviour" into a massive reduction. Non-compliant lenders would stand out making breach detection and enforcement much easier to achieve.

Scope option B prohibits the price of goods or services sold on credit exceeding the cash price. The biggest issue I can see is that a cash price can be very subjective, particularly when bargaining or sale specials are involved. Specific issues may include:

- What I pay as a cash price from one store may be quite different from what you pay from a different store for the same item. Does this mean there will be an acceptable price range for a particular item. What about unique items that cannot be compared or when multiple purchases are bundled together. Online prices can be significantly cheaper than store prices – where is the line drawn?
- How are breeches going to be detected? Consumers are not going to necessarily know that lenders are not allowed to charge more than the reasonable cash price, or even what a reasonable cash price would be.

  This suggests it would be up to consumer advocates and budgeters to detect possible breeches and alert the Commerce Commission. How are they going to know what is reasonable?

  What if a consumer does not seek the services of an advocate or budgeter? Then we will be left with status quo in that there will be some irresponsible lenders who flout the rules without getting caught.

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?

I think there should be another option considered for implementation either on its own or in conjunction with scope option A and / or B.

Include all consumer credit agreements that require term payments (more than 1 in total).

Regardless of whether the price is inflated or not, establishment fees, interest or default fees are charged or not, if an item or service is to be paid off via instalments, there should be at least a requirement for all lenders to adhere to the principles of the responsible lending code. The focus being of affordability.

Affordability is one of the most significant causes of financial harm to consumers and their families.

It does not matter how favourable and reasonable the terms of a credit contract are, if the consumer cannot afford it – they and their dependents will experience financial harm and hardship potentially leading to debt spirals and poor credit scores.

A responsible lender would always conduct genuine affordability assessments and approve accordingly. It should not be left up to the consumer to realistically determine affordability themselves.

- Benefits:
    1. Significant reduction in irresponsible behaviour to the extent that all consumer contracts requiring term payment will have an adequate affordability assessment before commencement.
    2. Consumers can be confident that all credit contracts provide them with protection under the CCCFA regardless of how the credit was obtained.
    3. Consumers are less likely to have credit scores negatively influenced due to poor decisions while impulse buying.
    4. A level playing field between all lenders will be created.
- Costs:
    1. As with scope option A, borrowers using newly captured lenders would face longer and more onerous credit application processes.
    2. Newly captured lenders would face significantly higher compliance costs putting them on par with those already governed by the CCCFA.

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.

I support both scope options and would also like to see an extension to cover all contracts that require term payment.

- Cost of credit, Inflated prices and affordability are all key areas that are interlinked when consumers are experiencing financial hardship. It makes sense to ensure that any scope option adopted addresses all three areas.
- There needs to be a level playing field between all lenders who provide credit contracts to consumers where term payment is required. This would give consumers the assurance of protection no matter which method of obtaining credit they receive.
- The scope options adopted need to be forward thinking to capture new ways of lending as they are introduced. With the explosion of online transactions and rapid introduction of new technologies, any CCCFA adjustments need to be wide reaching to stop some lenders from simply changing the way they do things to fall outside CCCFA obligations.

If borrower protection is the ultimate objective, it makes sense to cover all aspects now rather than in the future, after harm has occurred.

The adoption of both scope options along with my suggested term payment one will mean that it would be very difficult for any lender whether existing or newly created to find any holes to provide credit without having to adhere to 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?
	Although I am largely in favour of fee caps as this would create clarity for all stakeholders, I have concerns on how this could work given the vastly different business models of lenders. It would not be as simple as simply setting a maximum that covers all lenders for all lending products. • Through economies of scale, large lenders would have lower overall costs per unit. • Lenders who operate from store-fronts would have significantly higher costs than those who operate purely online. For fee caps to work effectively in reality: • The lender needs to be classified according to both size and service delivery model. • Loan types need to be classified into specific groups. • There needs to be consideration for inflation or regular review.
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?
	Fees option A – Require lenders to substantiate reasonableness of fees. Fees option B – Impose specific fee caps in regulation. Fees option C – Disclosure and advertising based on an annual percentage rate that combines interest and fees. I agree with the assessment of costs and benefits except for those for Fees option A. Fees option A is still principles based and I believe this is a significant problem of the CCCFA as it is currently. The cost section even specifies that it is expected that responsible lenders would already be documenting to this degree within the existing fees regulations. I cannot see any point in continuing down a principles based reliance given most of the problems identified with the CCCFA as it is currently is because of a lack of clarity, difficulty in detecting breaches and costs of subsequent enforcement.
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?
	I suggest that a committee comprising of advocates, lenders of each loan type and the enforcer be formed to set then regularly review fee caps. Members should be represented from all the following sectors: • High-cost, short term providers • High-cost, medium term providers • After payment type lenders

- Finance companies / Store card providers
- Banks & credit unions.
- Commerce commission
- MBIE
- Budget advisers
- Consumer advocates
- Dispute resolution services
- Debt collectors
- Other Government departments and entities

There would be costs involved but I think it would be reasonable for lenders as part of registration to pay annual fees to help fund this committee.

It is important that lenders gain the opportunity to have input on fee cap amounts given they are most qualified to know what each specific loan type would cost to generate.

It is important for all other stakeholders to be confident that most lenders are committed to reducing consumer harm.

Collaboration will improve trust and mutual respect between all stakeholders. All will be working towards a common goal.

19 Which options for changes to fees regulation would you support? Which would you not support? Please explain how you made your assessment.

Fees option A – Require lenders to substantiate reasonableness of fees.

I do not support this option. Most lenders would already be doing this therefore there would be little impact. Without specific prescribed methods for substantiation, I can't see how an increase in a reliance on a principles-based approach will change things from how they are currently.

Fees option B – Impose specific fee caps in regulation.

I support this option. The clarity would ensure non-compliance is detected before significant numbers of consumers experience harm, enforcement would be straightforward and inexpensive to pursue, and lenders would either be required to find ways to work within the limits, or close.

Fees option C – Disclosure and advertising based on an annual percentage rate that combines interest and fees.

I support this option but am concerned that some lenders would use questionable methods to disguise mandatory fees as being voluntary to have them excluded from the equivalent interest rate.

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?

Broker fees:

- Not all brokers disclose to consumers that there may be a fee for using their service.
- Not all brokers clearly disclose that they are brokers. Consumers applying for a loan are not always able to clearly see if their application is being made directly with a lender or a broker.
- As I understand it, brokers do not currently have to adhere to CCCFA responsible lending principles.
- As brokers can be a significant vehicle for enticing a consumer to borrow, their practices should be regulated by the CCCFA to reduce consumer harm.

Third-party fees:

Where a consumer does have a choice on which lender to conduct a relationship with and disclosure requirements means that they will be informed of internal fees and charges before entering this relationship, third-party fees, even if mandatory may not be known.

The consumer is not able to make a completely informed choice.

For example, external debt collector fees can vary significantly between providers. The consumer does not have any choice on which third party is used but liability is mandatory upon default.

All broker and third-party fees and practices should be regulated under the CCCFA in some part to ensure the consumer is protected from excessive fees and irresponsible practices.

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?

I think the focus of debt collectors trying to get the debt paid as quickly as possible, rather than working with borrowers to help them through hardship holistically is the main contributor to debt collection problems.

On many occasions when engaged with borrowers due to default, the reason established is a change in circumstances and/or the borrower has taken on additional debt commitments without realising the impact. The responsible practice is for lenders to reduce payments to a level where the borrower can cover all living costs along with reduced payments to all creditors fairly. The borrower should also be encouraged to seek independent budgeting advise to sort out their situation with the view to find a way out of hardship.

	Unfortunately, on a regular basis, there are some lenders and/or debt collectors who are not so willing to be reasonable – often demanding payment instalments with little consideration to living costs, other creditors or any consideration to trying to help the borrower out of their hardship. This would be extremely stressful for borrowers, advocates and budgeters.
22	What information should be provided to borrowers by debt collectors? When and how should this information be provided?
	The proposed information to be provided are all reasonable things that should be disclosed at various points in the debt collection cycle. Disclosure should be made upon the debt being passed to the debt collector with ongoing disclosure at least once every six months or upon demand. Disclosure should consist of: • A statement showing a summary of all transactional activity, fees, interest, payments, original debtor details etc. • Disclaimers should be included with each disclosure that includes information about borrower rights, hardship, budget advisory services along with reference to the copy of the original contract along with any agreed variations being available upon request at any time Borrowers should be able to request all information be forwarded to them or passed to a third party within a reasonable timeframe.
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?
	Debt collection option A – Require key loan information to be shared with the debtor at commencement of debt collection. Most lenders already have practices in place to cover these situations and if they don't, they should. No lender or third party should be able to take steps to enforce a credit contract without adequate proof or disclosure of all information to help the borrower make informed decisions. The benefits and costs outlined are a fair assessment. Debt collection option B – Require debt collectors to offer an affordable repayment plan. I think the benefit of this option would provide a significant reduction in irresponsible debt collection and consumer harms, not a moderate reduction. If all creditors or their agents were to offer affordable repayment plans that worked holistically within a borrower's budget, the hardship faces by a borrower due to excessive debt repayment commitments would immediately be reduced. • I wonder though if there needs to be some form of register created for lenders to check so that other lenders do not unknowingly lend while the borrower is still under reduced payment plans? Too often does a consumer restructure or reduce payments for existing debt due to

hardship only to then quite quickly seek out other lenders for additional finance.

Regarding costs: I think the costs are a bit overstated, with the only significant costs I can see is that more creditors may have to wait longer for a debt to be finalised due to smaller repayments in some cases and that there may be a portion of consumers who are denied access to credit given lenders would be more careful with initial affordability assessments.

The cross-subsidisation point is debatable given the current fee justifications prohibit this from occurring and proposed interest rate caps would reduce the likelihood of this occurring to a significant degree.

Debt collection option C – Specify appropriate limits regarding contact between the debt collector, borrower and other persons.

I agree with the benefits listed but would suggest that if a budgeter becomes involved, all contact should be with them, not the borrower without the need for the borrower to request this. This would increase the reduction in irresponsible debt collection and consumer harms.

Regarding costs: I have my doubts about cross-subsidisation occurring, the lender is more likely to tighten credit policy to reduce the likelihood of default in the first place.

Debt collection option D & E – Make third-party debt collection agencies direct subject to the CCCFA. Make external debt collection fees cost-based.

These are interesting. The assessment suggests that the reduction in irresponsible debt collection and consumer harms would be small – I think these reductions could actually be quite significant.

- External debt collectors can be quite aggressive with collection techniques as they are not bound by CCCFA requirements nor are interested in long-term relationship maintenance.
- Debt collectors have the main objective of obtaining the fastest and best settlement for the specific debt being collected with no consideration to other debts or living costs a debtor may have. They are working exclusively for the specific lender.
- Lenders would be more careful with lending as they would not be able to rely on third party debt collections to achieve the same results they currently do.
- Third-party debt collection costs are very rarely known at the time a consumer is looking at lending options yet by entering into a credit agreement, the consumer is liable under default circumstances regardless.
- Third party debt collectors are likely to be more reluctant to co-operate with budgeters and consumer advocates to achieve the best outcome for the consumer given their focus is just the specific debt being collected.
- Stress consumers experience is escalated because of aggressive debt collection practices while under financial hardship.
- Any restrictions on default fees for lenders governed by the CCCFA will result in an increase in the use of external or third-party debt collectors. Without regulation of these, default fee restrictions may not have the same impact.

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.
	I don't have any specific suggestions for the design of irresponsible debt collection options, but I would imagine that regarding payment arrangements, contact after an arrangement has been finalised should not be more than once every three months to see if the situation has changed (if there is a reasonable expectation that it could have changed). For example, if the affordable repayment plan were for say $5 weekly, it would be perfectly reasonable for the lender to send a free letter to the borrower (or budgeter) every three months to see if there were a change in circumstances that enabled a higher payment plan to be established. If there has been no change, the existing plans continues. If there has been a change, a new plan is negotiated accordingly with the same holistic approach. • There does however need to be some way a lender can find out independently if a borrower is currently subject to a reduced affordable repayment plan. This would stop consumers from borrowing, reducing payments due to unaffordability and then obtaining further borrowings while still under the reduced payment plan with another lender.
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.
	Debt collection option A – Require key loan information to be shared with the debtor at commencement of debt collection. Debt collection option B – Require debt collectors to offer an affordable repayment plan. Debt collection option C – Specify appropriate limits regarding contact between the debt collector, borrower and other persons. Debt collection option D & E – Make third-party debt collection agencies direct subject to the CCCFA. Make external debt collection fees cost-based. I support all proposed options except for debt collection option C. These options A,B,D & E in conjunction with each other would ensure that all lenders and debt collectors act with compassion when a borrower is in default. The focus would shift from being narrowly on achieving specific debt repayment to collaboratively helping a borrower out of financial hardship. • Budgeters would find their task significantly easier as they will be confident of cooperation from all lenders, not just some. Those lenders that still prove difficult can easily be identified and reported. • Third party debt collection agencies should be directly subject to the CCCFA under all circumstances as all the most vulnerable consumers the CCCFA aims to protect are likely to be dealing with these agencies on many occasions though credit contract default, not choice. • Some lenders would not need to change their practices much whereas others and external debt collectors would need to change significantly. This is necessary though to create an environment that is reflective of the CCCFA's objective of consumer

protection.

I think debt collection option C in its entirety would not be necessary if option B were implemented. This is because there would be no need for further unreasonable contact once an affordable payment plan has been established.

I do support though the mandatory and immediate transfer of contact from the borrower to a budgeter once budget advise is sought to help reduce borrower stress.

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?

I don't believe there is significant harm being experienced by these entities because of them not being regulated under the CCCFA. There are two general reasons for this:

- Astuteness of borrower

  Person's involved in entities of this nature are more likely to have a higher financial literacy than many consumer borrowers. They are more likely to take long term consequences into consideration rather than focus on short term needs (cost / benefit analysis). As a result, they are less likely to commit themselves to terms that may not be in their best interests.

- Affordability assessments conducted by the lender

  Entities of this nature would generally require loans that are substantially higher on average than those that consumers are seeking. As a result, the consequence of an agreement defaulting would be more significant to a lender. Lenders are more likely to be prudent with affordability assessments to ensure a higher possibility of repayment.

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.

They do not need to have similar protections to consumers under the CCCFA because, as well as the reasons identified in question 26, the resources needed to monitor compliance could be significant. It would not make sense to invest finite COMCOM resources in an area that does not appear to be suffering undue harm.

Before any suggestions relating to these types of entities are proposed, the sensible option would be to first establish through a desk-based project whether there is a need for stronger regulations.

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?

I would like to expand on the following areas:

Principles versus prescriptive regulations.

The CCCFA in its current form is too heavy on principles-based regulations. Where this allows for a reduced number of regulations to cover a wide range of credit related issues, the lack of clarity and various interpretations has resulted in a rather weak tool in combating consumer harm.

Breaches can take years to detect, investigate and prosecute. The amount of consumer harm that could occur during this time may be staggering.

- Consumers are not able make reasonable comparisons between lenders or understand that there are different lender regulations for different product types.
- Lenders face a massive lack of clarity and wide-ranging interpretations. This has resulted in inconsistent practices.
- Advocates have difficulty detecting breaches. This has resulted in possibly many breaches remaining undetected.
- Enforcers face significant costs in investigation and prosecution. This has resulted in not all breaches being subject to enforcement action.

A complete overhaul to prescriptive regulations that narrowly target specific lending product types would reduce all these issues.

- Consumers would be able to make comparisons and have assurance that regardless of how the credit was obtained, they will be protected by the CCCFA.
- Lenders would have increased clarity and face significant compliance cost reductions. There will no longer be the need for interpretations.
- Advocates would be able to spot breaches immediately.
- Enforcers would not face high investigation or prosecution costs.

Through increased clarity, early detection and prosecution that is not via interpretation, the amount of consumer harm will be significantly reduced.

Affordability

Although touched on within this discussion paper, I would like to stress that affordability is one of the most profound contributors to financial hardship.

It does not matter how favourable the credit terms are, if the consumer cannot realistically afford a credit contract of any type without sacrificing living costs or other debt commitments, they will experience hardship.

I think if detailed prescriptive changes were made regarding affordability assessments, there would be a significant, almost immediate reduction in consumer harm.

Relationship between budgeters, advocates and lenders

The discussion paper suggests that lenders should be more willing to cooperate with a borrower's advocate.

I think this should be taken a step further to require all lenders to have a designated person or group of people for budgeters and advocates to communicate with. The contact details should be publicly disclosed.

I think many budgeters would agree that when dealing with lenders, the success of any negotiation can be inconsistent from situation to situation depending on which lender employee they are communicating with.

Benefits would include clarity, more timely communication and consistency when dealing with situations of financial hardship.

The requirement for a specific designated lender contact when situations of financial hardship occur is something I believe MBIE should flesh-out for consideration.

Any other comments

We welcome any other comments that you may have.

There are several areas relating to consumer harm I have had concerns about that I would like to share. I think it would be interesting to see if any of these could be addressed with the CCCFA changes.

"Next step" for declined applicants

Lenders operate independently from each other and it is very easy for consumers to interact with online lending platforms.

Consumers can often make multiple applications at the same time with different lenders who may be unaware of the status of other applications in progress.

If a consumer is declined for any reason, they can keep trying other lenders until they find one that will approve.

To put this into perspective: As lenders are not able to re-coop costs associated with declined applications, it is unlikely that anything other than a consumer being informed of the reason for a decline decision is going to occur.

So where does this leave the consumer who feels they have a genuine need to fulfil?

If a financially astute consumer were declined, they would seriously consider the decline reason, accepting that credit may not the best solution for them, look themselves towards a completely different solution or simply go without.

Consumers that are not financially astute, or may be facing a desperate situation, are more likely to be focused on the meeting of the immediate need regardless of long term consequences. They are more likely to simply try another lender.

An eventual approval could be the result of a different lender having a more relaxed approval criteria or the consumer in a state of desperation, adjusting the information provided to the lender.

These consumers are more likely to find themselves eventually trapped in a cycle of debt and experience financial harm.

I believe it is these consumers that make up a significant percentage of the vulnerable borrowers the CCCFA is trying to protect.

- MBIE should be considering ways to discourage vulnerable consumers from simply making applications with other lenders after receiving a decline notification.

  Requiring lenders to provide an information sheet (or link to a website) on "what to do now" to a consumer upon a decline notification could be a simple, inexpensive yet effective solution. I would imagine that a group of lenders, consumer advocates and budgeters could easily put together a generic information sheet or webpage to help vulnerable consumers decide what to do after receiving a decline if they have a need to fulfil.

A collaborative approach

COMCOM relies heavily on consumer advocates and budgeters to alert them if they see incidences of possible irresponsible or harmful lending practices. The reg flags fact sheets were distributed to provide assistance. These fact sheets are necessary as not all advocates and budgeters are intensely familiar with the provisions of the CCCFA.

The problem with this approach is that unless the consumer seeks the services of an advocate or budgeter, any irresponsible or harmful lending practices can remain undetected.

Because vulnerable consumers are more likely to make applications with multiple lenders over a period of time, lenders are actually in a much better position to detect irresponsible or harmful lending practices.

To put this into perspective: although I work for a small lender, it is not an unusual event to receive information regarding a new lending application that clearly shows evidence of either a CCCFA breach or disregard of particularly the affordability provisions of the responsible lending code by another lender – on a weekly, sometimes daily basis.

There is no encouragement or specific process for lenders to report suspected breaches to COMCOM.

This is significant and rather worrying.

Most lenders know exactly obligations are required under the CCCFA and what is expected regarding the responsible lending code (subject to interpretation). It is therefore disappointing that lenders are mostly excluded from forums and are not considered as an appropriate source of direct contact for breach detection.

- MBIE should be considering ways to encourage collaboration between all stakeholders - COMCOM, consumer advocates, budgeters, debt collectors and lenders to detect irresponsible or harmful lending practices.

Credit restoration

One of the main barriers to a consumer accessing lending with more favourable terms is a poor credit history. There are many consumers who either through poor financial decisions made in the past or through relationship breakups etc, have a poor credit score. This can be a long-term barrier.

- MBIE should consider ways that could encourage or assist a consumer in restoring their credit worthiness.

If all lenders subscribed to Comprehensive Credit Reporting (CCR), eventually a consumer with a poor credit score may be able to effectively restore it and as a result, be able to access more favourable lending options. This is a concept that should be investigated out for consideration.

Parallel between AML/CFT and CCCFA

In order to satisfy AML/CFT requirements, most (if not all) lenders are required to have completed a ML/FT risk assessment and programme which are independently audited every two years. They are also required to have a specific compliance officer.

It would make sense that similar assessment, programme and compliance occur to satisfy CCCFA obligations.

- An assessment to set and justify fees (whether maximum limits are imposed or not). This should be available for COMCOM audit in the same way as the AML/CFT risk assessment is available to DIA.
- A programme to describe processes staff are required to follow in order to ensure obligations under CCCFA are met. This should be available for audit in the same way as the AML/CFT programme is available to DIA.
- A compliance officer not only to ensure the accuracy of the assessment, the implementation of the programme but also to be (or work with) the designated contact for budgeters or other consumer advocates to liaise with.