

1 August 2018

Competition & Consumer Policy
Ministry of Business, Innovation and Employment
PO Box 1473
Wellington 6140

By email: consumer@mbie.govt.nz

**SUBMISSION on
"Review of consumer
credit regulation" discussion paper**

1. Introduction

Thank you for the opportunity to make a submission on the "Review of consumer credit regulation" discussion paper. This submission is from Consumer NZ, New Zealand's leading consumer organisation. It has an acknowledged and respected reputation for independence and fairness as a provider of impartial and comprehensive consumer information and advice.

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2. General comments

Consumer NZ welcomes the review of consumer credit regulation. While the 2015 amendments to the Credit Contracts and Consumer Finance Act 2003 (CCCFA) improved its consumer protection provisions, they have not been sufficient to achieve the changes required in the market.

Our main concerns are:

- (a) weakness of the responsible lending code
- (b) irresponsible credit advertising
- (c) pressure sales tactics employed by lenders and mobile truck operators
- (d) low level of awareness, and hence effectiveness, of dispute resolution schemes
- (e) insufficient resourcing for enforcement of the act and responsible lending obligations.

We therefore support the introduction of a further suite of changes to the CCCFA to provide better consumer protection.

3. Answers to questions

Our answers to specific questions in the discussion paper are set out in the attached document.

Thank you for the opportunity to make a submission on the discussion paper. If you require any further information, please do not hesitate to contact me.

Yours sincerely

A handwritten signature in cursive script, appearing to read "Sue Chetwin".

Sue Chetwin
Chief Executive

Q1. 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, we agree the problems identified with high-cost lending are significant.

Our 2017 consumer issues survey found 23 percent of consumers were experiencing financial difficulties meeting day-to-day living costs and 16 percent were very concerned about their level of household debt.¹

To make ends meet:

- 16 percent of consumers had lived off a credit card until pay day
- nine percent had missed paying a bill by the due date
- two percent had missed a mortgage or rent payment.

Our 2018 electricity survey also found eight percent of consumers had taken out a loan to pay their power bill.²

The financial difficulties these households face in meeting living costs make them vulnerable to exploitation by lenders charging high interest and fees. The CCCFA offers limited protection for consumers from these practices, effectively tolerating conditions where this type of lending can occur.

Recent complaints to our office highlight problems that are occurring in the market.

- In one case, a consumer borrowed \$300 from a pay-day lender. She was being charged interest on the debt of 584 percent per annum.
- In a second case, a consumer had fallen behind on payments to a pay-day lender. The lender attempted to deduct nearly \$500 per fortnight from her wages to repay a \$1900 debt. The consumer had not consented to the deductions and could not afford the repayments.

Q5. 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.

Evidence from the UK shows intervening to cap high-cost credit has delivered consumer benefits.

The UK's Financial Conduct Authority (FCA) has significantly strengthened regulation of high-cost short term credit by introducing a suite of reforms including a cap of 0.8 percent interest per day, a limit on default fees of £15 and a limit on fees and interest of no more than 100 percent of the cost of the credit.³

The FCA has reported these regulations have brought about substantial changes for consumers including a:

- reduction in the overall cost of a typical loan
- dramatic reduction in default rates on loans
- decline in the number of debt problems.⁴

¹ Nationally representative survey of 1022 New Zealanders, aged 18 and over, carried out in December 2017.

² Nationally representative survey of 1525 New Zealanders, aged 18 and over, carried out in May 2018.

³ <https://www.fca.org.uk/publications/policy-statements/ps14-16-detailed-rules-price-cap-high-cost-short-term-credit>

⁴ <https://www.fca.org.uk/publication/documents/infographic-fca-regulation-high-cost-short-term-credit.pdf>

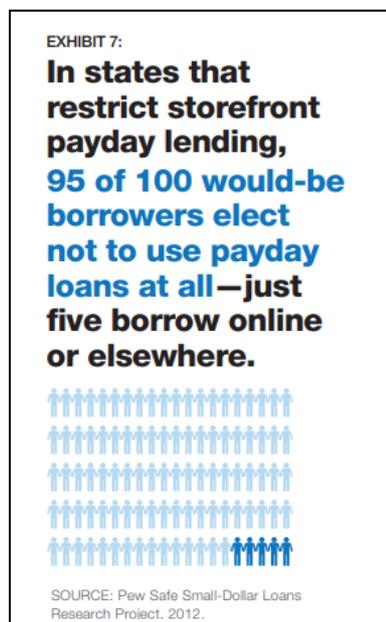
According to the FCA, the interest cap has led to 760,000 borrowers saving a total of £150 million per year. Notably, it reports consumers who were turned down for high-cost credit generally did not turn to other forms of high-cost or illegal lending.

Research published in 2012 by the US-based Pew Charitable Trusts also found benefits for consumers from regulating high-cost credit. The report concluded:

In states that enact strong legal protections, the result is a large net decrease in payday loan usage; borrowers are not driven to seek payday loans online or from other sources ... Restrictive states either do not permit payday lending or have price caps low enough to eliminate payday lending in the state. This rate cap often is 36 percent APR.⁵

Survey research included in the report found 81 percent of borrowers facing a cash shortfall would cut back on spending if payday loans were not available.⁶ The report noted:

Even though most borrowers use payday loans for recurring expenses, rather than for emergencies, survey respondents indicated they would use a variety of options to deal with those needs if payday loans were no longer available. In general, borrowers are more likely to choose options—such as adjusting their budgets, delaying bills, selling or pawning personal items, or borrowing from family or friends—that do not connect them to a formal institution.⁷



We consider interventions are required in New Zealand to regulate high-cost credit. Of the options proposed in the discussion document, our preference is option C as it provides better consumer protection.

While the discussion document suggests this option may result in illegal lending or driving lending underground, we're not aware of robust research showing this would occur.

Alongside regulation of pay-day lending, attention needs to be given to improving access to low-cost financial assistance for low-income consumers who may not be seen as a good credit risk by banks and other mainstream lenders.

Q6. 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?

We agree directors should have duties to take reasonable steps to ensure compliance with the CCCFA. With many small third-tier lenders, it's likely the company director/s is heavily involved in the firm's day-to-day management. If this is the case, there may not be significant benefit in extending the duty to senior managers.

Q7. If there are to be more prescriptive requirements for conducting affordability assessments, what types of lenders or loans should these apply to?

⁵ Ibid., p19-20.

⁶ http://www.pewtrusts.org/~media/legacy/uploadedfiles/pcs_assets/2012/pewpaydaylendingreportpdf.pdf

⁷ Ibid., p16.

We support more prescriptive requirements for conducting affordability assessments for all types of lenders and loans. This would provide certainty for the market and ensure a level playing field.

Problems are not confined to third tier lenders. Our latest banking survey found 27 percent of consumers had received unsolicited offers from their bank in the past year. Offers included credit cards, increases in credit limits, personal loans and mortgage top-ups.

Of those offered a new credit card or an increase in their card limit, only about one in three thought it suited their needs.

Consumer complaints also provide examples of inappropriate credit being offered by banks.

A recent complaint to our office involved a 22-year-old university student who was offered a credit card by her bank. The woman had casual part-time employment outside of study and could have quickly got into financial difficulties if she had accepted the credit card.

In a separate case published by the Banking Ombudsman, a woman struggling to pay debts was offered two unsolicited increases in her credit card limit. The woman had previously approached her bank to consolidate other debts but the bank declined her request.⁸

In Australia, there is now a ban on lenders offering unsolicited credit card limit increases. Credit card issuers are prohibited from sending consumers offers to increase their credit limit without first getting the customer's agreement.⁹ This applies to both new and existing credit cards.

The law changes, which took effect from 1 July 2018, mean credit card issuers will not be allowed to contact consumers in any way (including in writing, by phone or online) to offer to increase their credit limit, even if the consumer has previously opted to receive these offers.¹⁰

The Australian Securities and Investments Commission has also proposed new regulations to ensure consumers are only given credit limits on credit cards that can be repaid within three years.¹¹ We'd like to see similar rules regarding affordability introduced here.

Q8. 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?

We've previously raised concerns about section 9C(7), which states the lender may base their reasonable inquiries on information provided by the borrower unless there are grounds to believe the information is not reliable.

We consider some lenders use this section to limit their inquiries and encourage the borrower to take on debt when it may not be appropriate. We therefore support changes

⁸ <https://bankomb.org.nz/guides-and-cases/case-notes/37210>

⁹ <https://www.moneysmart.gov.au/borrowing-and-credit/consumer-credit-regulation>

¹⁰ <https://www.moneysmart.gov.au/borrowing-and-credit/credit-cards>

¹¹ <https://asic.gov.au/about-asic/media-centre/find-a-media-release/2018-releases/18-200mr-asic-consults-on-credit-card-responsible-lending-assessments/>

to this section to minimise the risk of lenders undertaking fewer or less extensive inquiries to assess affordability.

Q9. 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?

Yes, we agree changes need to be made to the current advertising requirements in the responsible lending code.

In our view, there has been little change in the advertising practices of lenders since the 2015 amendments. We continue to receive complaints about ads promoting credit as easy to obtain and suitable for non-essential spending, such as overseas holidays (for examples, see Appendix 1).

Other complaints to our office have raised concerns about credit ads that contain misleading information about interest and fees.

In one case, a car company advertised finance deals at 3.9 percent interest over 44 months. On the basis of the ad and confirmation from the lender of the interest rate, a consumer purchased a car on finance. He subsequently found he was being charged 3.9 percent per annum (not over 44 months), which substantially altered interest payments.

Q12. 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.

We support the introduction of a creditor licensing system, options proposed for strengthening enforcement (including penalties for irresponsible lending), and more prescriptive requirements for affordability and advertising.

We also support the extension of risk warnings to a wider range of credit products, a ban on advertising of high-cost lending products and disclosure in the same language as advertising.

These changes would result in better consumer protection. We acknowledge there would be some costs to lenders if these options are introduced but do not believe the costs would outweigh the benefits.

Q15. Which options for changes to cover additional credit contracts would you support? Which would you not support? Please explain how you made your assessment.

We are concerned about instalment payment providers such as Afterpay, Laybuy, Partpay and Oxipay, which may not be adequately covered by the CCCFA. We support the inclusion of these types of contracts in the definition of a consumer credit contract.

We are also concerned about the practices of mobile traders that are selling over-priced goods, charging high fees and trapping consumers in a cycle of debt. We would therefore support a prohibition on the price of goods or services sold on credit exceeding the cash price.

In addition, we want to see better protection for consumers who use "Do Not Knock" stickers to warn mobile traders they're not welcome. We've received complaints about mobile traders ignoring these stickers. Australia has made it an offence for traders to ignore a Do Not Knock sign. Similar consumer protections are required here.

Q19. Which options for changes to fees regulation would you support? Which would you not support? Please explain how you made your assessment.

Consumers can face a range of different charges when they enter into a credit contract and the basis for these fees can be difficult to determine. To date, amendments to the CCCFA have failed to assist consumers in identifying what constitutes an unreasonable fee.

Given the significant cost of credit fees, we support amendments to specify the fees lenders can charge and improve disclosure of the costs. We support disclosure of an annual percentage rate (APR) that combines interest and fees. Requiring lenders to publish the APR will make it easier for consumers to compare the cost of credit.

Q22. What information should be provided to borrowers by debt collectors? When and how should this information be provided?

We support requiring lenders to disclose the information set out in paragraph 119(a) to (d) of the discussion paper. We agree this information should be disclosed before taking debt collection action.

Q25. 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.

We support the options proposed in the discussion paper. We think a combination of these options would provide better protection for vulnerable consumers.

Q28. 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?

Dispute resolution schemes: We've previously commented on the problems for consumers caused by having four schemes.

In Australia, legislation was passed this year to create the Australian Financial Complaints Authority (AFCA). AFCA will replace the three financial dispute schemes in Australia. The UK also has a single dispute resolution body, the Financial Ombudsman Service, covering the financial system. We support similar changes here.

It is also important dispute resolution processes are transparent. To this end, we believe disputes schemes should be required to publish their decisions. In the UK, the Financial Ombudsman Service is required to publish all determinations unless there is good reason for withholding them.

Credit-related insurance: We have significant concerns about sales of insurance products with credit contracts.

Consumers may be pressured to buy insurance when taking out credit. For example, in one complaint to our office, a consumer was told payment protection insurance was compulsory when making a purchase on credit from Smiths City when this was not the case.

In many situations, the cover offered by insurance products may be of poor value and provide little benefit to the consumer. Mechanical breakdown insurance is one example. The policies can contain long lists of exclusions, stringent service requirements and often fail to provide more protection than a consumer has under the Consumer Guarantees Act.

We would like to see restrictions in the CCCFA on the sale of these types of products when consumers buy on credit.

Enforcement: For the legislation to achieve its purpose, effective monitoring and enforcement is required. We believe additional resources need to be made available to the Commerce Commission to increase market monitoring and ensure consumers can have confidence lenders are complying with the law.

Appendix 1: Examples of credit advertising

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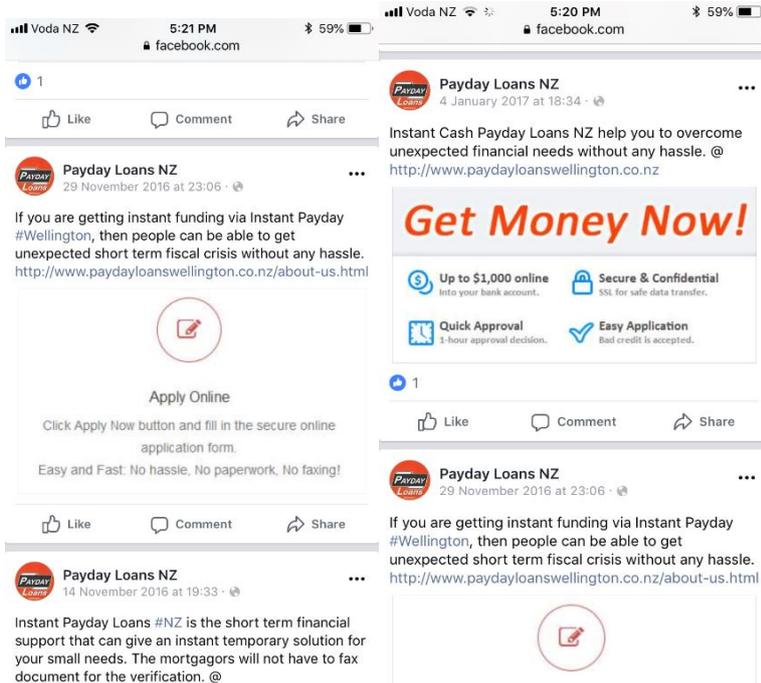
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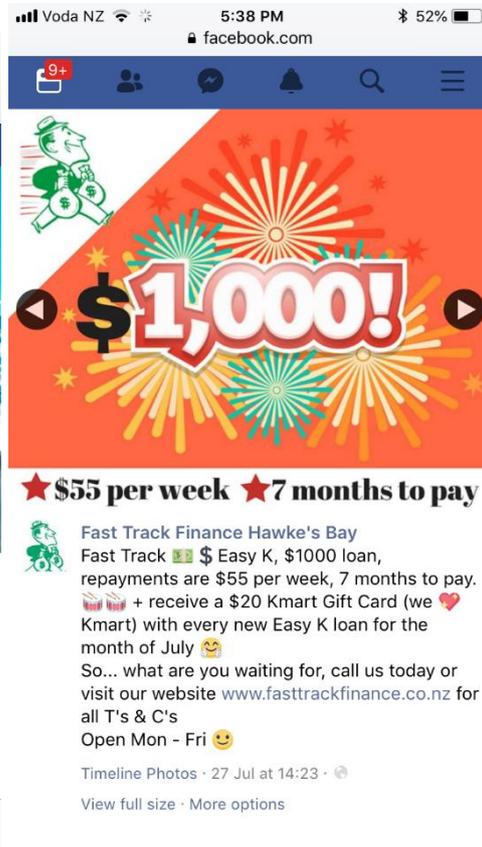
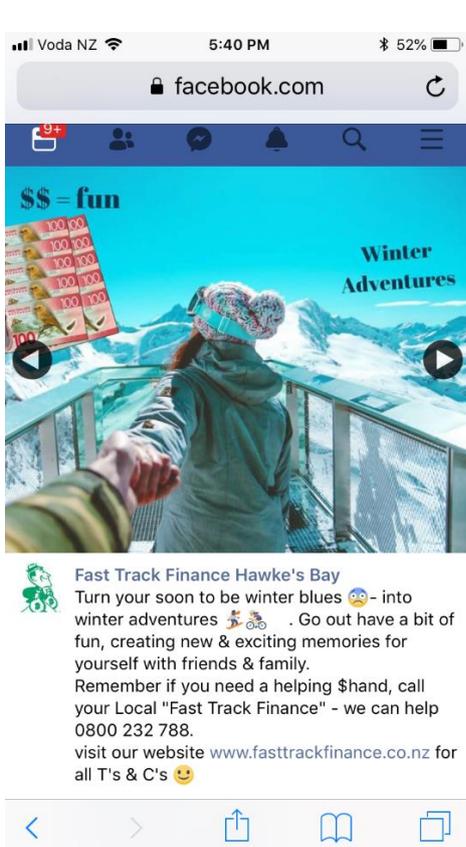
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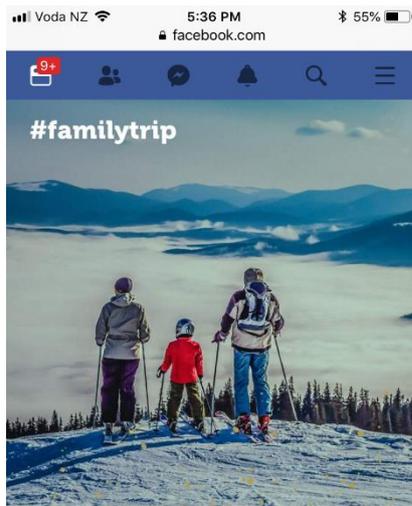


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