

Submission on discussion document: Consumer Credit Regulation Review

Your name and organisation

Name	Robert Choy
Organisation	Ngā Tangata Microfinance Trust

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. Ngā Tangata Microfinance (NTM) has been providing nil interest debt relief loans (**DRLS**) since October 2012 for the purpose of providing low income clients with necessary relief from high cost lending. Of the nearing 400 loans distributed, over 280 DRLS loans, totalling \$680,000, have been provided to clients of Budgeting Services who require help to escape from the punitive economic, financial, mental and social burden of high interest debt.

From NTM's 2016 external evaluation, one of the key results was that nearly 80% of clients interviewed communicated a 'huge' (5/5) improvement in well-being and peace of mind as a result of the loan supporting them to escape their high cost debt burden. Quotes received include:

"I had been really stressed and looked like I wasn't going anywhere. It was like chasing a rat."

"This process reduced the stress massively, and by the end of each meeting [with the budgeter], we had achieved a lot in getting my finances more under control"

"My children and family stopped being worried about me." [as a result of the loan]

Furthermore, current research* indicates that "The greater the economic hardship, the greater the likelihood and severity of child abuse and neglect."

** Paul Bywaters, Lisa Bunting, Gavin Davidson, Jennifer Hanratty, Will Mason, Claire McCartan and Nicole Steils, 2016, "The relationship between poverty, child abuse and neglect: an evidence review", Joseph Rowntree Foundation.*

NTM's DRLS loans have been set up for the sole purpose to relieve people in low income families from the trap of high interest debt. Significant effort has been made over the last 7 years with budgeting services, research, and the media to show that most applications we receive are from people with a budget that is in deficit, meaning not enough income for food. An NTM loan can at least restore a sufficient food component to their budget. NTM simply wouldn't be here if there was not the need to rescue people from the crippling cost of debt and the consequent lack of essential living standards as shown in their budgets.

NTM is currently operating via partnerships with 35-40 Budget services located in wider Auckland, Northland, Waikato, Bay of Plenty, Gisborne, Manawatu, Levin, Taranaki, and Dunedin. The spread and number of services is limited because of limited organisational

capacity and operational funding, not due to demand. Also, we receive constant feedback that our DRLS loan maximum amount of \$3,000 is not sufficiently high. The severity and impact of high cost lending is immeasurably greater than the number who have accessed relief via NTM's no interest DRLS loans.

The following example illustrates that once a low income consumer is in credit contract, a change of circumstances means a long slow escape out of debt due to the continual accumulation of interest and fees:

1. Moneyshop loan opened in 2016 (loan term unknown)

Loan not being unable to reduce due to the interest and fees

M. [redacted]
[redacted] ad
[redacted]
Auckland 0626

Date Opened 18 May 2016
Statement Starts 21 January 2018
Statement Ends 21 March 2018
Page 1

Opening Balance	less Credits	plus Debits	Closing Balance
\$2,825.10	\$186.30	\$203.17	\$2,841.97

Date	Reference	Description	Amount	Balance	Overdue
21/01/2018	Interest	Interest	\$16.33	\$2,841.43	\$180.00
21/01/2018	Facility Fee	Admin Fee	\$3.15	\$2,844.58	\$180.00
22/01/2018		Payment Due	\$30.00		\$210.00
22/01/2018		Payment Due (Promise)	\$30.00		\$210.00
28/01/2018	90	Payment	(\$30.00)	\$2,814.58	\$180.00
28/01/2018	Interest	Interest	\$16.26	\$2,830.84	\$180.00
28/01/2018	Facility Fee	Admin Fee	\$3.15	\$2,833.99	\$180.00
29/01/2018		Payment Due	\$30.00		\$210.00
29/01/2018		Payment Due (Promise)	\$30.00		\$210.00
2/02/2018	90	Payment	(\$30.00)	\$2,803.99	\$180.00
4/02/2018	Interest	Interest	\$16.20	\$2,820.19	\$180.00
4/02/2018	Default Fee	Default Fee	\$6.30	\$2,826.49	\$180.00

Prior 6 months: payments \$30, interest & fees \$20, and a \$50 'payment due override' fee

12/06/2017		Payment Due	\$50.00		\$50.00
12/06/2017	PAYDD	Payment Direct Debit	(\$50.00)	\$2,903.76	\$0.00
18/06/2017	Interest	Interest	\$16.68	\$2,920.44	\$0.00
18/06/2017	Facility Fee	Admin Fee	\$3.15	\$2,923.59	\$0.00
19/06/2017		Payment Due (Promise)	\$30.00		\$0.00
19/06/2017		Payment Due (Override)	\$50.00		\$50.00
19/06/2017	PAYDD	Payment Direct Debit	(\$30.00)	\$2,893.59	\$20.00
25/06/2017	Interest	Interest	\$16.62	\$2,910.21	\$20.00
25/06/2017	Facility Fee	Admin Fee	\$3.15	\$2,913.36	\$20.00
26/06/2017		Payment Due (Promise)	\$30.00		\$20.00
26/06/2017		Payment Due (Override)	\$50.00		\$70.00
26/06/2017	PAYDD	Payment Direct Debit	(\$30.00)	\$2,883.36	\$40.00
2/07/2017	Interest	Interest	\$16.56	\$2,899.92	\$40.00
2/07/2017	Facility Fee	Admin Fee	\$3.15	\$2,903.07	\$40.00
3/07/2017		Payment Due (Promise)	\$30.00		\$40.00
3/07/2017		Payment Due (Override)	\$50.00		\$90.00
3/07/2017	PAYDD	Payment Direct Debit	(\$30.00)	\$2,873.07	\$60.00
9/07/2017	Interest	Interest	\$16.50	\$2,889.57	\$60.00
9/07/2017	Facility Fee	Admin Fee	\$3.15	\$2,892.72	\$60.00
10/07/2017		Payment Due (Promise)	\$30.00		\$60.00
10/07/2017		Payment Due (Override)	\$50.00		\$110.00
10/07/2017	PAYDD	Payment Direct Debit	(\$30.00)	\$2,862.72	\$80.00
16/07/2017	Interest	Interest	\$16.44	\$2,879.16	\$80.00
16/07/2017	Facility Fee	Admin Fee	\$3.15	\$2,882.31	\$80.00
17/07/2017		Payment Due (Promise)	\$30.00		\$80.00
17/07/2017		Payment Due (Override)	\$50.00		\$130.00
17/07/2017	PAYDD	Payment Direct Debit	(\$30.00)	\$2,852.31	\$100.00
23/07/2017	Interest	Interest	\$16.38	\$2,868.69	\$100.00
23/07/2017	Facility Fee	Admin Fee	\$3.15	\$2,871.84	\$100.00
24/07/2017		Payment Due (Promise)	\$30.00		\$100.00
24/07/2017		Payment Due (Override)	\$50.00		\$150.00

Continued

Prior 6 months:

Opening Balance	less Credits	plus Debits	Closing Balance
\$3,336.22	\$1,716.30	\$1,143.16	\$2,763.08

Date	Reference	Description	Amount	Balance	Overdue
5/03/2017	Interest	Interest	\$19.16	\$3,355.38	\$0.00
5/03/2017	Facility Fee	Admin Fee	\$3.15	\$3,358.53	\$0.00
6/03/2017		Payment Due	\$50.00		\$50.00
6/03/2017	PAYDD	Payment Direct Debit	(\$50.00)	\$3,308.53	\$0.00
12/03/2017	Interest	Interest	\$19.00	\$3,327.53	\$0.00
12/03/2017	Facility Fee	Admin Fee	\$3.15	\$3,330.68	\$0.00
13/03/2017		Payment Due	\$50.00		\$50.00
13/03/2017	PAYDD	Payment Direct Debit	(\$50.00)	\$3,280.68	\$0.00
19/03/2017	Interest	Interest	\$18.84	\$3,299.52	\$0.00
19/03/2017	Facility Fee	Admin Fee	\$3.15	\$3,302.67	\$0.00
20/03/2017		Payment Due	\$50.00		\$50.00
20/03/2017	PAYDD	Payment Direct Debit	(\$50.00)	\$3,252.67	\$0.00

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?

Assuming that Cap Option A is for high cost lending (or known as Payday lending), NTM would support a cooling off period (30-60 days) between repayment of a high cost loan and obtaining a new one, to mitigate the risk of repeated exploitation.

NTM would also propose that a 'cooling off period' of 5 days be provided between the date of the loan being approved and the drawdown, to provide a protective mechanism for vulnerable consumers to reconsider their other financial options, recognise the true cost and risk of high interest credit, and change their minds without being penalised.

Limiting high cost loans to one per person at a time is desirable as it will limit the accumulation of debt, and give the borrower the best possible opportunity to pay back the full amount of the loan in as short a time as possible.

An important issue that is not clear within the Review Document is exactly what is included within the definition of "loan", as the inclusion of establishment fees, insurance etc. at the outset inflates the 'amount loaned' significantly, at times up to 40% or more, dependent on the principal amount borrowed. NTM suggests that the principal amount borrowed is considered as the 'loan' and that all other added costs are considered part of the "cost of credit" that are to be then limited within the 'cap' being proposed.

A high cost short term payday lending example follows, where \$400 is borrowed, Interest (at 365%) of \$193 and \$96 fees have been added (72% of principal). \$487 has been repaid by the borrower, but is still owing \$202, over 50% of the original principal.

0110

Client Ref	57229-147600
Statement Begins	23/03/2018
Statement Ends	18/05/2018
Amount to Debtor	\$400.00
Establishment Fee	\$0.00
Stamp Duty	\$0.00
Revs, Certificate, Bill of Sale	\$0.00
Total Credit	\$400.00

Opening Balance		Total Payments (Credited)		Total Interest (Debited)		Total Fees (Debited)		Payout Amount
\$400.00	-	\$487.50	+	\$193.75	+	\$96.00	=	\$202.25

Date	Description	Debit	Credit	Accruing Interest	Accruing Fees	Balance
23/03/2018	Loan	\$400.00	\$0.00	\$0.00	\$0.00	\$400.00
23/03/2018	Same Day Deposit Fee	\$12.00	\$0.00	\$0.00	\$12.00	\$412.00
23/03/2018	Establishment Fee	\$64.00	\$0.00	\$0.00	\$76.00	\$476.00
24/03/2018	Interest - 365 Percent	\$4.76	\$0.00	\$4.76	\$76.00	\$480.76
25/03/2018	Interest - 365 Percent	\$4.81	\$0.00	\$9.57	\$76.00	\$485.57
26/03/2018	Interest - 365 Percent	\$4.86	\$0.00	\$14.43	\$76.00	\$490.43
27/03/2018	Interest - 365 Percent	\$4.90	\$0.00	\$19.33	\$76.00	\$495.33
28/03/2018	Interest - 365 Percent	\$4.95	\$0.00	\$24.28	\$76.00	\$500.28
29/03/2018	Interest - 365 Percent	\$5.00	\$0.00	\$29.28	\$76.00	\$505.28
30/03/2018	Interest - 365 Percent	\$0.67	\$0.00	\$29.95	\$76.00	\$505.95
31/03/2018	Interest - 365 Percent	\$0.00	\$0.00	\$29.95	\$76.00	\$505.95
01/04/2018	Interest - 365 Percent	\$4.76	\$0.00	\$34.71	\$76.00	\$510.71
02/04/2018	Interest - 365 Percent	\$4.81	\$0.00	\$39.52	\$76.00	\$515.52
03/04/2018	Interest - 365 Percent	\$4.86	\$0.00	\$44.38	\$76.00	\$520.38
04/04/2018	Interest - 365 Percent	\$4.90	\$0.00	\$49.28	\$76.00	\$525.28
05/04/2018	Interest - 365 Percent	\$4.95	\$0.00	\$54.23	\$76.00	\$530.23
05/04/2018	Change of Payment Date Fee	\$10.00	\$0.00	\$54.23	\$86.00	\$540.23

A further example follows where an \$800 loan has an added \$145 establishment fee (18% of principal) and then \$274 interest added = \$1.219 repayable (52% of the principal being added costs). Payments are required weekly over 17 weeks (4 months). Effective annual interest rate is over 100%.

Pay day lender fees and interest = 52% added on top of that loaned

And for a \$800 loan with cash converters . 30% 4mths 102% pa

Total advances:

The total amount of all advances to be made to you: **\$800.00**

Initial unpaid balance We will provide \$800.00 to you if we apprc
The amount you owe as at the date of this statement is:

\$945.00 comprised:

\$800.00 Principal advanced

\$145.00 Establishment fee

PAYMENTS

You are required to make 17 payments of the amount specified by

Payment 1	Thu 29-03-2018	\$71.94
Payment 2	Mon 09-04-2018	\$71.94
Payment 3	Mon 16-04-2018	\$71.94
Payment 4	Mon 23-04-2018	\$71.94
Payment 5	Mon 30-04-2018	\$71.94
Payment 6	Mon 07-05-2018	\$71.94
Payment 7	Mon 14-05-2018	\$71.94
Payment 8	Mon 21-05-2018	\$71.94
Payment 9	Mon 28-05-2018	\$71.94
Payment 10	Fri 01-06-2018	\$71.94
Payment 11	Mon 11-06-2018	\$71.94
Payment 12	Mon 18-06-2018	\$71.94
Payment 13	Mon 25-06-2018	\$71.94
Payment 14	Mon 02-07-2018	\$71.94
Payment 15	Mon 09-07-2018	\$71.94
Payment 16	Mon 16-07-2018	\$71.94
Payment 17	Mon 23-07-2018	\$68.90
Total repayments		\$1,219.94

NTM has also experienced instances where a short term high cost loan rolled over a number of times with the same borrower, has created an unsustainable financial situation for the client, hence their approach via a Financial Mentor to NTM for high interest debt relief.

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?

NTM would strongly suggest that that a "total cost of lending" cap is the most appropriate way of dealing with the issue of high cost loans, due to the numerous kinds of administration fees and default fees* charged along with varying interest rates** NTM's often-seen experience with the near 300 clients who have accessed a debt relief loan is that when they had defaulted on a high cost loan, they were charged a number of default fees, along with associated penalty interest (for example 49% from finance companies), with further compounding interest on those additional costs escalating the term and cost of the loan.

A creditor example follows where the need for a cost of credit cap is highlighted. Fees and interest and account fees (which includes a top up) are 64% of the loan at the start of the loan. The refinance may include a repayment protection plan rebate, although this is not clear as it is not stated on the documents and the availability of a settlement statement is uncertain. This adds to the complexity of a vulnerable consumer understanding the cost of the credit. Any missed payments will have additional fees and penalties. The creditor has security over items in their household and a 35.5% interest rate. A total cost of credit of the contract is NOT noted and there is no total to be repaid back as a total figure. Some fine print in the document explains the makeup.

Statement Starts	
Statement Ends	17 April 2018
Page	1

Account Name	
Account Type	Consumer Credit

Date	Reference	Description	Debit	Credit	Balance
5/07/2017		Refinance	\$3,978.36		\$3,978.36
5/07/2017		Cash Price - NEW	\$800.00		\$4,778.36
5/07/2017		Loan Processing Fee	\$125.00		\$4,903.36
5/07/2017		Legal/Registration	\$8.05		\$4,911.41
5/07/2017		Repayment Protection Plan	\$465.00		\$5,376.41
5/07/2017		Vehicle Check	\$6.00		\$5,382.41
11/07/2017	DD	Direct Debits		\$180.00	\$5,202.41
25/07/2017	DD	Direct Debits		\$180.00	\$5,022.41
4/08/2017	Interest	Consumer Credit Interest	\$155.98		\$5,178.39
5/08/2017	Account	Account Maintenance Fee	\$10.00		\$5,188.39
8/08/2017	DD	Direct Debits		\$180.00	\$5,008.39
22/08/2017	DD	Direct Debits		\$180.00	\$4,828.39
4/09/2017	Interest	Consumer Credit Interest	\$149.08		\$4,977.47
5/09/2017	Account	Account Maintenance Fee	\$10.00		\$4,987.47
5/09/2017	DD	Direct Debits		\$180.00	\$4,807.47
19/09/2017	DD	Direct Debits		\$180.00	\$4,627.47
3/10/2017	DD	Direct Debits		\$180.00	\$4,447.47
4/10/2017	Interest	Consumer Credit Interest	\$137.12		\$4,584.59
5/10/2017	Account	Account Maintenance Fee	\$10.00		\$4,594.59
17/10/2017	DD	Direct Debits		\$180.00	\$4,414.59
31/10/2017	DD	Direct Debits		\$180.00	\$4,234.59
4/11/2017	Interest	Consumer Credit Interest	\$134.33		\$4,368.92
5/11/2017	Account	Account Maintenance Fee	\$10.00		\$4,378.92

CREDIT DETAILS		INTEREST	
The total amount of advances to be made to you is made up of:		Annual Interest Rate: 35.50% fixed for the whole contract being 40 Fortnights	
Refinanced from Account '47516'	\$3,978.36	Total Interest Charges: \$1,540.80	
Cash Price - NEW	\$800.00		
Plus			
Loan Processing Fee	\$125.00		
Legal/Registration	\$8.05		
Repayment Protection Plan	\$465.00		
Vehicle Check	\$6.00		
Dealer Introductory Fee	\$0.00		
TOTAL ADVANCES	\$5,382.41		
This is the total amount of all advances to be made to you but does not include interest and other credit fees and charges (including the account maintenance fee). See the Total Amount of Payments			

As far as NTM is aware, in overseas contexts where there is a capping of interest and fees, there is little evidence that this has led to illegal borrowing which weakens protection for borrowers. Rather than taking this unfounded assumption as an inhibitor to a cap on credit, NTM suggests a strengthening of consumer/institutional/community awareness and advocates, to ensure vigilance is maintained. Providing alternative accessible sources to ethical safe and affordable microfinance/credit options will also mitigate the risk of illegal borrowing practices.

The size of the "benefits" (that were listed) of a cost of lending cap could be measured by a likely sizeable reduction in the number of people that cannot afford to pay off their loan principal, and therefore NOT be in associated financial hardship. As described under question #1, a key benefit of a cost of lending cap is the significant improvement in mental health and reduced stress placed on borrowers, which has a flow on effect to wider whānau.

Once they default on payment(s), low income borrowers are continually struggling to pay off the principal as they can often only afford to pay the additional fees and interest.

An underlying premise of the 'cost and benefit' table (page16) is that low income clients are by nature higher risk and therefore high interest rates and fees are 'justified' to be charged to them. While it is true that when you are on a low income there is very little reserve in your

budget when financial shocks occur, NTM's experience in supporting such clients with nil interest/fee DRLS loans (without security), is that our default rate is no higher than what is incurred through normal personal lending provided through mainstream banks.

**reference Commerce Commission's Lender website review 2017/18, pages 9-12*

*** interest rates varied from 8 to 547% per page 13 of the Commerce Commission review*

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?

NTM suggests that there needs to be a distinction between and understanding of the various business "models" of high cost lenders (pay day lenders, mobile trucks, third tier finance companies, store cards and even banks where credit cards debt has become unmanageable), with appropriate legislation enacted for each, that protects vulnerable consumers affected by the specific practices employed that may cause hardship. Legislation needs to provide the 'right tool for the right job', with the underlying principle of a cap on the total cost of credit fundamental, so as to afford as much protection for vulnerable consumers as possible.

Furthermore, NTM suggests greater transparency in "categorising" or labelling the types of lending within the improved CCCFA legislation, which we see as beneficial for both lenders and consumers seeking credit. Lenders will have more certainty as to their obligations and borrowers will be assisted in their assessment of financial options, with community education on the subject of credit also advantaged, because of the greater clarity provided.

As mentioned above, an important issue in the design of a cap on interest and fees, is exactly what is included within the definition of "loan", as the inclusion of establishment fees, insurance etc. at the outset inflates the 'amount loaned' significantly, at times up to 40% or more, dependent on the principal amount borrowed. NTM suggest that the principal amount borrowed is considered as the 'loan' and that all other added costs are considered part of the "cost of credit" that are to be then limited within the 'cap' being proposed.

If pay day loan providers were completely removed there might be implications such as larger loans being acquired, if they are able to be afforded. Improving affordability assessments is necessary as larger loans could put vulnerable consumers at even more risk when interest and fees accrue, as is the experience of NTM's clients.

It must be clearly stated that long term borrowing for the purpose of home or property ownership (mortgage borrowing) would not be included within the new legislation.

A wider eco-system of alternative and accessible ethical safe and affordable finance/credit providers needs to be constructed under government, finance industry and NGO leadership, to allow those on low incomes to access safe affordable credit if so needed. This needs to incorporate services that provide 'relief' from those in financial hardship to provide a safety net for those on low incomes, who may still be trapped with unmanageable debt, even with protective mechanisms in place within the legislation. The July 2018 Financial Industry Inclusion Forum led by MBIE was a significant step in this direction.

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.

Comment: From the reading of the 3 alternatives on pages 13-16 of the Review Discussion paper, it appears that Option A and B are stated only to apply to "high cost lenders"? While this term is yet to be defined, NTM assumes that this would be in relation to the "short term high cost" (commonly known as payday lending) sector. NTM would query why these 2 options have been so specifically targeted when our experience is that pay day lending, while

undoubtedly harmful for low income borrowers who cannot repay, is a relatively smaller proportion of the clients we encounter in financial hardship. More common is the punitive effect of third tier finance companies who lend much larger amounts irresponsibly; their clients struggling to indent the significant principal due, when interest and fees accumulate increasingly from missed repayments.

With the above in mind NTM would support a combination of:

Option A for high cost lenders – the cost of credit limited to 100% (or desirably a lesser % such as 50%*) of the original amount with the stated extensions related to limitation of 1 loan and a cooling off period between loans

PLUS

Option C (in relation to banks and 2nd-3rd tier finance companies who lend larger sums), with a maximum interest/fees cap of 30% per annum. However it is suggested that a total cost of credit also needs to be invoked for this option for the protection of vulnerable consumers. The total cost of lending maximum should be in the range of 50% of the loan for such larger and longer term lenders.

Similar to the stated extension in Option A, rules around a cooling off period and preventing additional small loan withdrawals being considered as ‘new’ loans (and thus attracting establishment and other fees) need to be established.

As stated in question 4, in the wider context, an eco-system of alternative and accessible safe and affordable finance/credit providers needs to be constructed under government, finance industry and NGO leadership, to allow those on low incomes to access safe affordable credit if so needed. This needs to incorporate services that provide ‘relief’ from those in financial hardship to provide a safety net for those on low incomes, who may still be trapped with unmanageable debt, even with protective mechanisms in place.

** if the definition of “loan” is limited ONLY to the principal borrowed and not the ancillary establishment and other fees, this could be accommodated higher up to maximum 75%*

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 both directors and senior managers have significant control and responsibility over the financial service provider’s operations. 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 day to day operations and staff practices.

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

Affordability assessments should apply to all types of lenders and loans.

There needs to be an accurate affordability assessment undertaken as a safeguard against low income consumers entering into financial hardship because of debt. Suggest a requirement for the lender to take formal steps, including reviewing bank statements, to ensure the ‘affordability’ of the proposed credit.

Affordability assessments should also require more than one month’s income, as many people have fluctuating incomes over a longer period.

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?

We believe there should be a change in emphasis so that the lender is required to make “reasonable inquiries” to ensure the information is reliable. The information needs to be “verified” in some manner, and a standardised checklist developed, to ensure a thorough assessment is conducted by the lender.

This should include the lender considering an affordability assessments of the borrower over a longer period than just at the point of acquiring the loan (ideally the approximate life of the loan) before approving. Especially as many borrowers have fluctuating, seasonal or temporary incomes. For example, to provide mortgage funds to a prospective borrower, a bank requires evidence of income, other assets, and debts.

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?

Yes, more prescriptive requirements for advertising are required; being legal requirements that are enforceable, rather than recommendations on good practice.

The Commerce Commission’s Lender Website Review 2017/18 highlighted more than 20% of the 215 lenders reviewed, failed to meet one or more of their obligations around disclosing costs of borrowing, contract terms etc. in their advertising.

With the potential for severe financial hardship on low income vulnerable consumers arising from irresponsible lending, advertisements for borrowing could also provide a similar ‘warning’ for consumers. In 2015 a Code of Responsible Borrowing* was developed by the former NZ Federation of Family Budgeting Services, elements of which could be developed to both educate and warn on the danger of entering into a credit contract that is not safe and affordable.

*<https://www.interest.co.nz/personal-finance/75857/voluntary-responsible-borrowing-code-issued-nz-federation-family-budgeting>

Online lending advertising requires greater regulation, because of the ease with which a loan can be approved from an online lender (which raises issues of an adequate affordability assessment) but also the ease with which they can seductively advertise the product and propose that a borrower should take out another loan once one loan has been provided.

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?

Yes, NTM agrees that the costs and benefits of the options to reduce irresponsible lending are reasonably accurate. NTM notes also the immeasurable financial and emotional costs to families of the current high cost credit environment.

A comprehensive creditor licensing system, while advantageous, will have greater impact if effective monitoring of the industry takes place. NTM suggests a strengthening of consumer/institutional/community awareness and advocates, to ensure a vigilant observation over the conduct of licenced creditors, is maintained.

Providing alternative and accessible sources to ethical safe and affordable microfinance or

	<p>credit options needs to underpin attempts to address irresponsible lending. This needs to incorporate services that provide ‘relief’ from those in financial hardship, to provide a safety net for those on low incomes who may still be trapped with unmanageable debt, even with the reduction of irresponsible lending being achieved.</p>
11	<p>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?</p>
	<p>In relation to Enforcement Option A, NTM suggests one consequence of non-compliance with lender responsibilities should be that the loan is written off. While acting as a further deterrent to the lender, it importantly also reduces the stress and financial burden on low income borrowers who have suffered from irresponsible lending practices.</p> <p>In relation to Responsibility Option A, regarding more prescriptive requirements for affordability assessments, NTM suggests that the legislation should exclude certain items from income when assessing the ability of the borrower repay; such as board, Family Tax Credits, Child Support and Disability Allowances. These should not be relevant to affordability assessments as benefit levels and low incomes barely cover minimum basic expenses let alone sizeable loan repayments.</p> <p>Further in relation to Responsibility Option A, NTM suggests that lenders are audited at the outset and then regularly after that to check compliance with their obligations around affordability assessments and other key protective mechanisms. The burden of proof is currently on the client (or their advocate) needing to comprehensively prove irresponsible lending has occurred, placing them in a weaker position; whereas more proactive enforcement by the regulator is preferable.</p>
12	<p>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.</p> <p>Re REGISTRATION: NTM supports all three registration options A, B, C. We strongly support a ‘fit and proper’ person registration test, as a number of professional bodies dealing with the public require this. Therefore it is reasonable to expect this of the lending industry who are often dealing with those financially vulnerable and exploitable. Banks and charities already have requirements for registration and for ensuring employees are of good character, and similar processes could be employed. Registration should include lenders having “adequate systems and procedures” including training all staff on responsible lending. The regulator should have the power to de-license in the case of a serious breach of the license conditions.</p> <p>Re ENFORCEMENT: NTM supports all Enforcement Options A, B C, D, E Regarding Enforcement Option B, directors have a highly responsible role in governance to establish the organisational culture and framework within which the organisation prioritises responsible lending practices. NTM supports expanded powers to de-register lenders and ban directors for non-compliance with the responsible lending principles (i.e. this should be broader than “causing harm to consumers”).</p> <p>RE Affordability Assessments and advertising; NTM supports options A, B, C NTM supports increased prescription around affordability assessments with consequences for breaching, including writing off the loan. In addition, requiring lenders to verify their affordability and suitability assessments and having to supply a copy of those assessments to the borrower on request and to the Commerce Commission.</p>

NTM supports more prescriptive requirements around advertising, and a significant restriction on advertising for high-cost loans, with inclusion of a clear “warning” script.
 NTM supports requiring disclosure to be in the same accessible language as the advertising.

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?

NTM agrees with the assessment of costs and benefits outlined.

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?

No further suggestions

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.

NTM supports Scope Option A *“include credit contracts that charge default fees in the definition of consumer credit contract”*
and
 Scope Option B *“prohibit the price of goods or services sold on credit from exceeding the cash price”*.

The 2 options address different problem issues in our view:

In regard **to Option A**, NTM supports it because the protection of the CCCFA will extend to a wider group of business models, potentially otherwise not covered e.g. as listed in the table; models such as Afterpay, Laybuy and Oxipay. As these business models involve purchasing goods on credit, with default fees payable if payments are missed, protection for low income vulnerable consumers is as necessary as it is for other credit contacts.

NTM also supports **Scope Option B** “prohibit the price of goods or services sold on credit from exceeding the cash price” to be implemented, as this will enfold mobile traders within the CCCFA legislation; their often excessive inflation of the sale price now being considered as if it were “interest”. This means that mobile traders will be required to advise the borrower that the sale is a “consumer credit contract”, having the legal rights accorded under the CCCFA. This also offers protection from the irresponsible trading practices of mobile traders that many of NTM’s partner Budget Services are seeing.

As an aside, NTM would support the banning of the sale of food items from mobile trucks, often at highly inflated prices. Such sales take advantage of the situation of low income consumers at certain points in time when they are vulnerable, not having access to cash or to established food retailers. Refer to the investigative Newsroom story on mobile trucks: <https://www.newsroom.co.nz/2018/04/17/105316/inside-nzs-reprehensible-mobile-shopping-trucks>

Regarding unreasonable fees

16	<p>If prescribed fee caps were introduced, who should they apply to, and what process and criteria should be used to set them?</p>
	<p>NTM is of the view that fee caps should apply to all types of lenders.</p> <p>The legislation should set out the types of fees that can be charged, by type (e.g. establishment, early repayment and default fees), with a cap for each type. For example, for fees in relation to a loan “establishment fee”, the cap would be (for example) 1% of the loan amount. Regardless of what the fee was actually called, if it came within the definition of “establishment fee” then the cap would apply.</p> <p>There should also be a cap on the level of charges/fees per letter sent to customers, set at a realistic amount (e.g. \$10 per letter sent). The caps should be set after consultation with the industry and other stakeholders, and should reflect the amount of time the lender spent on the activity.</p> <p>Option B is the clearest way to set fee caps, and to enforce them; however the negative affect of some fees rising to the level of the cap needs to be considered.</p>
17	<p>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?</p>
	<p>NTM agrees with the Discussion Paper’s assessment of the costs and benefits of the three different options put forward in relation to the issue of unreasonable fees.</p>
18	<p>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?</p>
	<p>Refer above question #16.</p> <p>The evidence of the proliferation and inconsistency of the different types of fees currently being charged by lenders is found in the <i>Lender Websites Review 2017/18 (Commerce Commission)</i>, where the following findings arose:</p> <ul style="list-style-type: none">- Identified over 500 differently named fees. While some lenders had clear singular values for their fees, others listed fees as ranges or percentages. Some lenders varied the amount of specific fees based on the size and/or type of loan taken.- For establishment fees, there were 18 distinct variations in the names of establishment fees. The Commerce Commission identified 3 distinct sub-categories.- General fees encompass a variety of different fees which relate to the administration and maintenance of a loan or contract. Include periodic account administration fees, statement fees, early repayment fees, legal fees, among others.- 135 lenders displayed a total of 706 general fees, with a mean of five fees per lender. There were over 250 variation of fee names.

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

NTM would **support Option B**, the imposition of a specific fee cap. This will make clear what the maximum amount is that may be charged for each type of fee. Certain types of fees would also be banned under this approach. Different types of fees (with caps) would be permitted for different types of transactions. This is the clearest and easiest option for capping fees. If there was more categorisation of the types of loans made (as suggested in question #4) then fees could apply more appropriately within each category. In that process, such fees become more familiar to consumers to aid in their decision making process.

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?

NTM has seen the practice of excessive broker fees (see example below “referral fees”), which can add considerable amount to the amount owing. NTM suggests that in principle, all third party fees should be treated as being “credit fees”, being subject to regulation under the CCCFA.

CREDIT DETAILS	
Initial unpaid balance:	\$7,802.15
(This is the amount You owe Us as at the date of this statement, inclusive of any fees charged by Us).	
Made up of:	
New Cash Price:	\$6,200.00
Loan Establishment Fee:	\$595.00
Vedc:	\$9.00
PPSR:	\$11.50
Motorweb:	\$14.50
Driver Check:	\$1.55
Referral Fees:	\$495.00
Comprehensive Vehicle Insurance:	\$975.00
Less:	
Cash Deposit:	\$500.00
TOTAL ADVANCES	\$5,700.00
(This is the total amount of all advances made or to be made to You)	

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?

Yes, many of NTM’s partner budget services (within the broad network of the National Building Financial Capability Charitable Trust) indicate the Discussion Paper draws an accurate picture of the problems that their clients face when experiencing debt collection. In terms of how widespread the problems are, the services commonly report experiences of debt collectors harassing borrowers, commonly with phone calls and texts at all times of the

	<p>night and day. This reflects the collectors' desire to harass the debtor until they give in to the collector's demands.</p>
22	<p>What information should be provided to borrowers by debt collectors? When and how should this information be provided?</p> <p>NTM suggests that all key loan information concerning the loan should be shared with and disclosed to the debtor at the beginning of the debt collection process. This includes information about the debtor's rights from the outset. The accessibility and clarity of the information is most important, perhaps a standard form with specified fields for the core information that needs to be disclosed.</p> <p>Lenders should in particular ensure all fees and charges are disclosed that are stipulated in the loan contract, which would prevent debt collectors from inventing new fee types to further impact the debtor.</p> <p>The fee caps relevant to the lender (to be legislated) should apply to debt collectors, their agents or any third parties.</p>
23	<p>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?</p> <p>Yes, NTM agrees with the assessment of costs and benefits of the options.</p>
24	<p>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.</p> <p>NTM suggests that once a third party is involved (as a represented agent), be it a financial mentor/budget adviser, debt advisor or other support provider, that no further contact should be permitted to be made directly to the debtor other than legal document service. There should also be a prohibition on a debt collection agent contacting the employer of a borrower. This is unnecessary and constitutes unreasonable harassment.</p> <p>Debt collection agencies (and lenders) should have a legal obligation to work in good faith and constructively with the borrower and their agent (i.e. the financial mentor/budget adviser) when working through debt collection issues. NTM understands many Budget services experience debt collection agencies that avoid working with the financial mentor/budget adviser, by not answering phone calls or providing requested information.</p> <p>Before a financial mentor or other advocate becomes involved there should also be a limit on the number of texts, phone calls and emails a debt collector can make to the borrower.</p> <p>In the case of a debt having been on-sold to a debt collection agency, the original lender should remain responsible overall to prove that the responsible lending principles were adhered to, in particular that the affordability assessment was undertaken.</p> <p>There needs to be a cap on the amount to be collected, as creditors can outsource a debt to a collection agency or sell a debt to a debt collector, who can charge further interest and debt collection fees. NTM supports the principle of capping or crystallising the debt at this stage to protect the debtor from unreasonable escalation of the debt.</p>

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.

NTM would support **all options A-E** to address irresponsible debt collection practices. The sharing of key loan information at the outset of the process is a necessary transparent practice and informs the borrower of their rights. Contact information for a budget/building financial capability service is also helpful.

NTM supports requiring debt collectors to offer an affordable repayment plan and if it appears the loan has become unaffordable, to restructure the repayment schedule accordingly, based on a new affordability assessment.

NTM supports recommendations to limit contact with the borrower, with many Budget Services having seen cases where debtors have been unreasonably harassed during the debt collection process.

NTM supports third party debt collection agencies being subject to the CCCFA, as this would make them subject to the lender responsibility principles and fee caps.

External debt collection fees must be limited to the actual costs incurred and must be subject to a cap on fees as with other fees.

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?

NTM does not have any experience with these entities.

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.

Yes, the protections envisaged for consumers are fair and reasonable and should be extended to protect such borrowers and reduce their vulnerability

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?

The important issues of more stringent regulations around the **credit contract with the consumer** have not been addressed in the Discussion paper. It is important that:

- The agreement is written in plain English
- The real interest rate (annual) and all other additional charges are written in the contract
- The total cost of credit (excluding possible default charges) are included in the contract
- A suggested 'cooling off' period of 5 days (minimum) is included whereby the contract can be cancelled.

The Discussion paper lacks any focus on **credit cards**, which clearly have a significant impact on vulnerable consumers. Escalating credit card debt is a source of hardship amongst many NTM clients applying for a nil interest loan for debt relief. Over the last 2 years nearly 40 clients of NTM have required debt relief assistance with unmanageable credit card debt. NTM would suggest that banks need to exhibit a greater "duty of care" for their low income customers especially when they face a change in their financial or other circumstances, which places in jeopardy the repayment of their credit card debt

NTM is also encountering unmanageable **Store Card** debt amongst its clients, which is creating financial hardship for consumers. This also requires a specific focus perhaps amongst wider legislation outside the CCCFA

The imposition of interest rate and fee caps on credit cards/store cards and a level of affordability assessment needs to be implemented, although perhaps at a different level than what is proposed by the Discussion paper.

High cost loan creditors often require wage attachment orders or deduction authorities for loan repayments to be taken off the borrower's income before they receive their wages. Although the borrower must sign their approval, this can be obtained under duress. It is suggested that there is a cap on the amount that can be made subject to a wage deduction order for a high cost loan, For example, a maximum of 10% of the gross weekly wage could be subject to one or more wage deduction orders relating to high cost loans at any time.

Of note is the Small Amount Credit Contract (SACC) Review in Australia which has recommended capping payday loan repayments to 10% of the consumers' net income (if 50% or more of their income is from Centrelink, equivalent to MSD Work and Income). While this does not cover finance company loan repayments it does provide at least a measure of "protected earnings" against high cost short term loan providers. NTM would recommend a similar approach be considered in New Zealand.

NTM suggests that strengthening and supporting consumer advocates (Budgeting/BFC agencies) is important as that will provide the necessary "community" monitoring of the suggested improvements to the CCCFA legislation. As they see clients at the coal face of financial hardship, they need to be better resourced and supported to be able to respond more easily and quickly when contraventions of the legislation are found. The role of the Commerce Commission to better support such advocates as their effective "eyes and ears on the ground" is much needed.

NTM also suggests regulatory reporting back from the financial Industry of the fees and interest charged to clients (on a regular basis), this being an important monitoring system, especially if there are loopholes or gaps in the proposed cost of credit cap legislation when it is passed into law, that might be exploited by unprincipled lenders.

Any other comments

We welcome any other comments that you may have.

We live in an economy that is reliant on credit. Currently, in New Zealand, the poorest families pay the highest cost for access to credit. As a consequence, many of our poorest families are trapped in inescapable debt. To protect those families, the government can legislate a fair and ethical credit environment.

NTM has had many clients who have successfully paid off their nil interest loan, nearly 120 in the last 18 months alone. Most would have a poor credit history and rating before support from NTM was provided. For such consumers it would be advantageous to develop a "positive credit reporting" system within the wider credit industry, so that successful repayment behaviour is able to be acknowledged and recorded, positively influencing the debtors credit score.