

Submission to the Finance and Expenditure Select Committee, on the Credit Contracts Legislation Amendment Bill

To the Finance and Expenditure Committee
Select Committee Office
Parliament Buildings
WELLINGTON 6011

Date: 14 June 2019

This submission is from:

Robert Choy
Executive Officer
Nga Tangata Microfinance
Phone: 021 925 460 Email: eo@ntm.org.nz

We are grateful for the opportunity to submit on the Credit Contracts Legislation Amendment Bill.

We are available to make an oral submission to the Committee.

Our organisation and community

The kaupapa of Ngā Tangata Microfinance Trust, established in 2010 by Child Poverty Action Group, NZ Council Christian Social Services and NZ Federation of Family Budgeting Services, is to promote and support social justice and financial inclusion for those on low incomes. The social justice aim of NTM is expressed through advocacy and provision of safe, fair and affordable no interest loans (“microfinance”) in low income communities. With capital from Kiwibank, NTM offers loans with no interest, fees or security, for purposes of family well-being or relief from high interest debt.

Partnering with budgeting services and financial mentors, it achieves its objectives of financial education and capability, protection and relief for clients against predatory high interest lenders.

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 interest lending (primarily from fringe finance companies, mobile truck vendors, and pay day lenders). Of the nearing 500 loans distributed, over 350 DRLS loans, totalling \$864,000, 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 interest-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]

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 items 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. We receive constant feedback that our DRLS loan maximum amount of \$3,000 is not sufficiently high and so we have recently instituted a loan extension, so that a total of \$6,000 of high interest debt could possibly be alleviated per client. We observe that 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.

Summary of our submission

The primary purpose of the Credit Contracts and Consumer Finance Act 2003 is "to protect the interests of consumers in connection with credit contracts, consumer leases, and buy-back transactions of land".

While we support the changes proposed in the Bill which increase to some degree the level of protection for consumers from predatory lending in a range of ways, we are concerned that this Bill, as currently drafted, does not adequately address the extreme harm caused to consumers by predatory and irresponsible lending, and higher cost loans. Our direct experience of addressing these issues over many years places us in a position to communicate credibly to the Committee, with the absence of an interest rate cap in this Bill, particularly concerning. An interest rate cap is a fundamental mechanism for protecting low income consumers from making expensive unaffordable repayments, which frequently drive them into a debt spiral and poverty.

We are recommending that the Government instates an interest rate cap, COMBINED WITH the limit on the cost of borrowing already in the Bill for loans above 30% annual interest (ideally less), not above 50% as is being currently proposed. BOTH of these are important - one as a 'protective' mechanism at the TOP of the cliff, the other as a means of providing 'relief' should consumers fall to the BOTTOM of the cliff. To explain further:

The cost of credit cap being proposed is akin to the *'ambulance at the BOTTOM of the cliff'* as it will reduce the quantum of financial harm (to 100% of the principal borrowed) which is caused by lenders charging excessively high rates. However, as it is currently proposed, this will be for loans with interest rates > 50%, thus many third tier finance companies with which people have larger sized loans with interest rates < 50% will escape the ruling. The 100% cost of credit cap is important but regrettably as it stands, it will ONLY help those who are ensnared by the excessively high interest lenders (or pay day lenders). NTM's experience is that it is the third tier finance companies whose base rate of interest is often < 50% who are causing the most significant financial hardship to low income consumers because of the larger amounts borrowed, the high interest (up to 50% is still extremely high!) and the default interest charges and penalties that escalate to sizeably increase the amount owing, when borrowers struggle to repay.

The interest rate cap we are strongly recommending is akin to *"the ambulance at the TOP of the cliff"*. Placing such a protective interest rate cap measure "at the top" (when loans are extended or credit is provided at the outset) will create a protective "fence" to reduce those falling "off the cliff" (into severe financial difficulty) because of the extreme burden of high interest charges being placed on them. As a result, the financial hardship pain, stress, and suffering on whanau and tamariki caused by having insufficient financial resources each week for the basic essentials, can be avoided.

In respect to above, NTM appreciates the Commerce Commission making available their submission on the MBIE Discussion Document: Consumer Credit Regulation, 1 August 2018, and strongly endorse their arguments toward strengthening protections in the consumer credit legislation:

“frequent use of high-cost loans, debt spirals, and comparably high interest and fees – are ... identified in our work. The Commission also receives anecdotal evidence from community advisers, who work with affected borrowers, that these issues ... exacerbate the financial hardship experienced by their clients and dramatically escalate costs of borrowing beyond the point where borrowers feel that they have any practical ability to repay their debts.”¹

Without a cap on interest rates, the Commerce Commission is hampered in its ability to provide adequate protection to financially vulnerable families in the current predatory environment.

We also make a range of other proposals to strengthen the legislation. They include:

- Expanding the scope of the proposed cap on the total cost of borrowing to apply to other expensive loans/loans above 30% p.a. interest, at the very least.
- A maximum % (suggest no more than 10%) of a borrower’s income should go towards paying high cost loans
- Equivalent protection for loan guarantors as for borrowers;
- Credit arrangements used by mobile traders should be under the Act as consumer credit contracts.
- Do not knock stickers becoming legally enforceable
- More effective enforcement
- Stronger regulation of debt collection
- After Pay and equivalent post-pay schemes being included in the scope of the Bill, so that they are regulated in the same way as other credit-related loans
- A ban on the use of direct debit payment authorities by high cost lenders.

Uncapped interest rates and resultant debt spirals

Limit on the cost of borrowing

We support the 100% cap on the cost of borrowing for high cost loans (> 50% interest rate), under clause 22 of the Bill, or section 45A of the proposed new legislation, “Costs of borrowing must not exceed loan advance”. The repayment cap is a good step to stopping debt spirals from high cost short term loans. This idea has been successful in Australia and the United Kingdom, but it has always been accompanied by other measures.

An important issue that requires clarity 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.

Debt spirals from loans under 50% per annum

However, harmful debt spirals are NOT only caused by high cost short term lending. Other loans that have interest rates of under 50% per annum and that are generally longer term in nature also cause very significant debt spirals in NTM’s experience; such as motor vehicle loans, truck shop purchases and personal loans. We ask the committee to expand the scope of the proposed cap on the total cost of borrowing to apply to other expensive loans/loans above 30% p.a. interest, at the very least.

¹ See https://comcom.govt.nz/_data/assets/pdf_file/0025/98260/Submission-to-the-Ministry-of-Business-Innovation-and-Employment-on-the-Review-of-Consumer-Credit-Regulation-1-August-2018.pdf, p. 10, paraphrased

An example follows of an NTM client who borrowed from Money Shop (charges interest rates currently in the vicinity of 30-35% so this would not be covered by the cost of credit cap proposed). The inability to repay because of the escalating interest and fees highlights the punitory nature of such loans, even where interest charged is less than 50%. NTM has numerous examples from its client files.

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 |
| 26/01/2018 | 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 |

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 |

The need for an interest rate cap

NTM has raised the concern around excessive interest rates for many years and during the last review of this legislation, consumer organisations lobbied strongly for some control over interest rates to be introduced. We were heartened when the Minister of Commerce announced a review into the Credit Contracts and Consumer Finance Act, signalling that the review would consider an interest rate cap. The financial capability, budgeting and microfinance sector submitted in favour of an interest rate cap to MBIE's Discussion Paper. However, we were disappointed when the proposals by the Government only included a limit on the cost of borrowing.

The limit to the total cost of borrowing does not provide adequate consumer protection against irresponsible and predatory lenders. For example, in the case of very short-term loans, the weekly repayments can be extremely high without the total repayable reaching the 100% repayment cap. In the United Kingdom and Australia this measure has always been accompanied by other measures. Rates of 1.5% a day are common in New Zealand and this is almost twice the rate of 0.8% a day allowed in the UK.

An interest rate cap would indirectly force high cost lenders to be more responsible about the ability of the borrower to repay the loan. Recent investigations and prosecutions by the Commerce Commission have shown that many lenders are not complying with their responsible lending obligations. An interest rate cap would reduce lenders' freedom to cover the cost of borrowers defaulting via the charging of very high rates of interest. Lenders would be forced to lend more responsibly by carrying out extensive affordability assessments.

For the adequate protection of consumers, NTM suggests the Bill must include an interest rate cap. We argue that such high cost loans do more harm than good and should not be available in the marketplace, especially as they are targeted towards and affect low income vulnerable consumers.

As the authors of the 2019 BERL report, 'The harm from high cost lending' state:

*"Lending is an essential part of a functioning economy, but some loans do more harm than good."*²

We ask the committee to introduce an interest rate cap which restricts the interest that lenders can charge, similarly to the caps in the United Kingdom and Australia. We would like the Government to investigate how the UK and the Australian systems could apply to or work best in the New Zealand context. Either of these types of caps would mean that the families that we support are spending less money on punitive interest payments and have more money for essentials such as food housing and required medical costs.

We acknowledge the concerns about the implications on the access to credit, and endorse the work currently underway by MSD, MBIE, TPK, banking sector and microfinance sector to increase both the reach and scale up of safe fair and affordable credit alternatives for both the prevention and relief of high interest debt, particularly for those most vulnerable on low incomes

Limiting the percentage of income that can be spent on high cost loans

We recommend that a maximum % (suggest no more than 10%) of a borrower's income should go towards paying high cost loans. Clients should not have to spend their income on high cost loan repayments when this is needed for essential spending. This is important because users of high cost loans are typically low-income earners that have very little or no discretionary income.

Lenders should have the responsibility to ascertain what proportion of the borrower's income is going towards high cost loans. This is regardless of whether the high cost loan is spread over many lenders.

² Green, S, Robertson, N, Nana, G., *The harm from high cost lending*, *Haratua* 2019, www.berl.co.nz, at <https://berl.co.nz/economic-insights/community-development-retail-markets/time-rein-payday-lenders>.

Lenders should not be able to lend if the borrower is spending (say 10%) of their income on high cost loan repayments. We are aware that Australia operates a similar prohibition for borrowers that are on benefits, where the maximum the borrower can commit to is 20% of income on high cost loans. Although the Australian cap is 20% of income, the Australian government is aware of the risks of this cap and there are efforts being made to change this to 10% of net income. This prohibition has had a significant impact on reducing the harm from high cost short term lending in Australia.

Supporting this proposal would be the creation of a loan register. Currently, apart from information provided by the borrower, lenders only know of the borrower's loan history with themselves. This may not give a complete picture of the borrower's commitments. Therefore, a register of high cost loans would be very beneficial to help lenders comply with the prohibition on borrowers committing more than 10% of income to high cost loans.

Example follows where a 100% cost of credit cap was not reached but where high interest created financial stress and a demand for debt relief from Nga Tangata Microfinance. 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 |

Another example below involves a client borrowing from a 3rd tier Finance Company (interest rate 29.95%) who defaulted on payments and because of the extra charges resulting, the repayments she is now making is matching the interest charges only. She was put in a worse financial position by consolidating loans to this one, than she was before the loan.



INSTANT FINANCE

Name: [Redacted] asi
 Address: [Redacted] ine
 Palmerston North 4414

CONTINUING DISCLOSURE

This statement is provided to you under the Continuing Disclosure requirements of the Consumer Credit Contracts and Finance Act

| | | | |
|------------------|----------------|----------------------|----------------------------|
| Account Name: | [Redacted] asi | Statement Date: | 04-Apr-2019 |
| Account Number: | 2941947 | Statement Period: | 13-Feb-2019 to 04-Apr-2019 |
| Loan Start Date: | 13-Feb-2019 | Interest Rate (%pa): | 29.95 |

Loan Details:

A brief summary of the key financial terms of your Loan Contract

| | | | |
|---------------------|-------------|-------------------------|-----------------------|
| Loan Advance | \$8,905.12 | Total Balance Repayable | \$12,995.00 |
| Establishment Fee | \$400.00 | Term of Loan | 87 Instalments Weekly |
| Other Fee | \$0.00 | Instalments | 149.37 |
| Insurance Premium* | \$758.04 | First Payment Date | 20-Feb-2019 |
| Amount Financed | \$10,062.00 | Final Payment Date | 14-Oct-2020 |
| Interest Charges* | \$2,759.00 | Loan Status | Active |
| Administration Fee* | \$174.00 | | |

The items marked with an asterisk () are rebateable in the event of early repayment*

Summary of Transactions in Statement Period:

| | |
|-------------------|------------|
| Opening Balance | \$0.00 |
| Advances Made | \$9,662.08 |
| Interest Charged | \$394.78 |
| Payments Received | (\$507.48) |
| Fees Charged | \$489.00 |

Fees Charged include any Establishment Fee, Administration Fee or Credit Fee charged to the loan during the statement period

| | |
|------------------|--------|
| Default Interest | \$0.00 |
| Journals | \$0.00 |

Journals show manual adjustments and insurance premium rebates (if applicable) on the account during the statement period

| | |
|-----------------|------------|
| Closing Balance | \$9,948.34 |
|-----------------|------------|

Other Important Information:

| | |
|---------------------|-------------|
| Next Payment Date | 10-Apr-2019 |
| Next Payment Amount | \$149.37 |

This statement is not a settlement quotation

Please contact us to obtain a settlement quote should you wish to repay your loan in full

Equivalent protection for loan guarantors as borrowers

Ngā Tangata Microfinance's experience has shown that predatory lenders will ensure they have access to one or more guarantors for a high cost loan that is likely to be unaffordable for the borrower. The lender will then immediately and relentlessly pursue the guarantor when the borrower is unable to meet the repayments. The 10% protected limit should equally apply to the guarantor. People should not have to spend their income on high cost loan repayments when this is needed for essential spending.

Truck shops and mobile traders

Including mobile traders under the credit contracts law

We support the recommendation that credit arrangements used by mobile traders should be under the Act as consumer credit contracts. Often mobile traders have layby arrangements that are not currently considered credit contracts. This law change ensures that mobile traders will have to comply with the same laws as other lenders offering credit contracts.

Do not knock stickers

We support Do not knock stickers becoming legally enforceable. If a person has a Do not knock sticker it means that they have taken proactive steps to not purchase from mobile traders. Do not knock stickers are often ignored by mobile traders at the moment. Breaching this request should have legal consequence.

We understand that this proposal is being considered in the review of the Fair Trading Act. Because it was announced as part of the proposals to reform consumer credit law, we ask the committee to follow up on this proposal with officials.

A Newsroom investigation into the predatory nature of mobile trucks was conducted, with NTM involvement

<https://www.newsroom.co.nz/2018/04/17/105316/inside-nzs-reprehensible-mobile-shopping-trucks>

Enforcement

We support all the changes to the Bill regarding enforcement. There needs to be stronger incentives for firms to follow the law. In particular, we support pecuniary penalties and statutory damages to assist with compensation for irresponsible lending. They are helpful additions so that the Commerce Commission will be better equipped to take enforcement action against lenders.

Where there is a breach of the responsible lending principles by failing to make reasonable inquiries before entering into an agreement, clause 25 of the Bill allows for statutory damages equal to the interest charges, credit fees, and default fees that have become payable under the agreement. This is a particularly good addition.

However, strict liability offences should be created for certain oppressive behaviours such as failing to carry out adequate affordability assessment and offering extensions of credit in breach of the law.

Borrowers are unlikely to enforce breaches because they are not in the best position to know what their rights are. If a borrower enforced breaches of the law, it is a slow and costly process. Our partner budgeting services, as consumer advocates, have ample skills to manage lenders whilst borrowers are unlikely to have the same skills.

NTM's partner budgeting services often refer cases to dispute resolution schemes. This is good for individual outcomes. However, more effective enforcement measures need to be in place for the Commerce Commission to be able to resolve disputes efficiently. We suggest that there should be a legal requirement for lenders to be obliged to refer a matter to their dispute resolution scheme if a borrower defaults within one month of taking out the loan. The early default suggests that the loan was not affordable for the borrower in the first place. The scheme can then investigate and if it appears to be a systemic problem, it

can refer the matter to the Commerce Commission for more investigation. This would be a way of alerting the Commission to lenders that are not complying with responsible lending principles.

We also suggest that there should be a requirement to have to refer a borrower to a financial mentor (budgeting service) before a loan is taken out if the borrower falls into the category of vulnerable borrower, for example, if they are in receipt of a benefit, or have defaulted on a high cost loan in the previous 12 months, or if they have taken out three or more high cost loans in the last twelve months. Then the mentor can work with the borrower to make sure they are aware of all their options and their rights.

Debt Collection

We support the disclosure requirement in the Bill which sets out the rights and obligations of the debtor at the start of the debt collection process.

While we understand that debt collection law might be outside the scope of the current Bill because it applies more widely than merely to high cost lending, we would encourage the Select Committee to recommend changes to debt collection law as a matter of urgency. Stronger law to control debt collection practices is required, and New Zealand is already significantly behind comparable countries.

Debt collectors should be regulated to prevent predatory collection practises. The law should cover contact, privacy and harassment issues. Harassment and high costs of collection are causing extreme emotional and financial harm to borrowers. People caught up in the process of debt collection are often vulnerable. The process of frequent and oppressive contact by debt collection companies can have very negative effects on the mental health of borrowers.

In Australia, the UK and the United States, extensive rules govern the way in which debt collectors can carry out their business. Many debt collectors currently active in New Zealand operate under the Australian regime and would not be disadvantaged by facing similar law in New Zealand.

Affordability Assessments

We support the strengthening of the current principle that lenders must make reasonable inquiries of a borrower so that the payments will not cause them substantial hardship. We support the change that lenders will need to verify information provided by borrowers.

We support the change that requires records to be kept about inquiries and those records to be made available to the Commerce Commission, the borrower, the guarantor, or the relevant dispute resolution scheme on request. Borrowers often find it difficult to obtain information about their loan and the assessments made which makes it more challenging to identify whether there has been a case of irresponsible lending.

Affordability assessments should also be required when mobile trader accounts are established. The product provided by a mobile trader is a “consumer credit contract” under the Bill and as part of this, the mobile trader should be obliged to assess whether the borrower can afford repayments.

More prescriptive affordability assessments will hopefully mean fewer borrowers will be taking out loans they will not be able to afford. We look forward to seeing the detail of what is proposed around prescription when the draft regulations are released.

We note that prescription around affordability assessments has been part of the law in Australia for several years, but the problem of irresponsible lending remains. The recent Senate Inquiry into Credit and Financial Products Targeted at Australians at Risk of Financial Hardship found that payday lenders were not complying with responsible lending obligations. This means that responsible lending obligations need to be supported by other measures. An interest rate cap, which exists in Australia, is a good start to force lenders to be more careful about who they lent money to, which requires thorough affordability assessments. Other measures that could help would be automatic referrals to the dispute resolution scheme and to a financial mentor, and more proactive enforcement by the Commerce Commission, as mentioned above.

Nga Tangata Microfinance compares client budget calculations both prior to and after incorporation of a safe fair and affordable loan to replace a number of high interest debts. It's clear that affordability assessments are often poorly done by lenders and that multiple loans are often given to consumers without the undue harm caused by the poor affordability assessment, being considered.

Reasonable Fees

The evidence of the proliferation and inconsistency of the different types of fees currently being charged by lenders is found in the *Lender Websites Review 2017/18 (Commerce Commission)*, where the following findings arose:

- 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.

We strongly support the strengthening of the current rules around reasonable fees. We support the requirements that creditors keep records about how fees are calculated and to make these records available to the Commerce Commission or the relevant dispute resolution scheme. The prohibition against "unreasonable" fees is an inadequate measure as we have seen instances of this law being breached. Therefore, we support measures to make it easier to enforce the current rules around unreasonable fees

Fit and Proper Person's test

We support the Fit and Proper Persons test for creditors, mobile traders, and their controlling owners, directors and senior managers. It is beneficial for mobile traders to be included within this test because mobile traders often close when enforcement action is taken against them and reopen under new names. These are called "phoenix companies" and cause the same harm in the community. This measure makes enforcement against these types of lenders easier.

Advertising

Advertising for high cost short term loans should be banned. These products are extremely harmful and are advertised as desirable products. Advertising is often targeted at vulnerable communities through radio, local newspapers and the internet. This means that these advertisements are readily accessible. Advertising for high cost short term loans should be regulated like other harmful products such as tobacco, where the social harm of the product is recognised.

We support the amendment that disclosure must be in the language that a loan was advertised in.

We support the strengthening of the advertising standards for all loans.

Examples:

Celebrity/ high profile individual endorsements should be banned as these people would unlikely need to get a high interest debt with the company they are representing, therefore they are misleading the public, eg Kieran Read with Smith City and Stacey Jones with Instant Finance.

Pamphlet drops are targeted in low-socio economic districts.

Advertising no credit checks is targeting people who may have bad credit rating and therefore seen to be encouraging getting more credit.

After Pay and emerging issues

We would support After Pay and equivalent post-pay schemes being included in the scope of the Bill, so that they are regulated in the same way as other credit-related loans. This is necessary as these products are very accessible and enable debt to build up very quickly. As was reported when ASIC, the Australian corporate regulator, welcomed the passage of legislation that gives it new powers to regulate buy-now-pay-later providers such as Afterpay and Zip Co.:

"In a report into the \$903 million industry released in November last year, ASIC found one-in-six buy-now-pay-later customers had either become overdrawn, delayed bill payments or borrowed additional money to meet their payments.... ASIC says this will "bring accountability" to the industry, forcing providers to create products which meet consumer needs. The reforms will be phased in over two years and will require companies to identify customers they're products are appropriate for, and subsequently, direct their distribution efforts to that market. Treasurer Josh Frydenberg said "These reforms mean consumers will be better protected from being sold financial and credit products that are not suitable for their circumstances," he said in a statement."³

We support the call-in power that is proposed to be included in regulations to enable the government to bring these products into the scope of the Credit Contracts and Consumer Finance Act. We also recommend that the Commerce Commission or government undertake an investigation into the use of these products to assess the harm they are causing, especially now that they have become a recognised feature of retail shopping.

Other issues

We advocate for an obligation to be placed on financial services providers to cooperate with financial mentors and budgeting services in defined ways, such as referrals to MoneyTalks, individual services, and provision of contact information to enable more effective advocacy.

We would like it to be a legal requirement that lenders must advertise the MoneyTalks service on their communications, particularly their websites. Legislation could ensure that it is prominently positioned on their website and is also promoted by the lenders when a borrower is in arrears. This will open up greater opportunities to the borrower by encouraging more borrowers to discuss their money issues with qualified budget advisers/debt counsellors.

³ See <https://www.smartcompany.com.au/industries/retail/afterpay-zip-asic/>.

We recommend that there be a ban on the use of direct debit payment authorities by high cost lenders. There is no reason why the debt to the lender should be automatically deducted from the borrower's income. As a minimum standard, there should be ban on using direct debit authorities in the case of beneficiaries. These borrowers have very little income to cover daily expenses and the lenders use their powerful bargaining position to insist on taking first priority to the beneficiary's income. When direct debit's fail there are also additional bank charges that cause more hardship for the borrower. Ngā Tangata Microfinance has had the experience of lenders with duplicates of direct debit authorities replacing the authority removed by the borrower with a duplicate.

Conclusion

Thank you for considering our submission. We appreciate the extensive consultation that has taken place on this issue in 2018 by the Ministry of Business, Innovation and Employment. In addition to the amendments in this Bill, the changes we propose are necessary to prevent harm to low income vulnerable consumers. We ask the Finance and Expenditure Select Committee to introduce all these changes including the amendments in this Bill.

We particularly ask that the members of the Committee strongly advocate for the introduction of an interest rate cap. This would mean that this law would be effective in preventing debt spirals by making weekly repayments smaller and preventing irresponsible lending.

We also ask the committee to expand the scope of the proposed cap on the total cost of borrowing to apply to other expensive loans/loans above 30% p.a. interest, at the very least.

This would help mitigate the harm borrowers are currently enduring as consumers of high cost credit.